The Supreme Court of South Carolina

In the Matter of Eric J. Davidson, Respondent.

Appellate Case No. 2013-000691

ORDER

In accordance with the opinion filed in this matter, Peyre Thomas Lumpkin, Esquire, Receiver, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Mr. Lumpkin shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Lumpkin may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment. This includes paying restitution to any clients who were underpaid, or otherwise dispersing funds from the accounts according their ownership. In the event that unidentified funds remain in the accounts, at the end of his appointment, the receiver will relinquish those funds to the Lawyers' Fund for Client Protection, until the claims period expires.

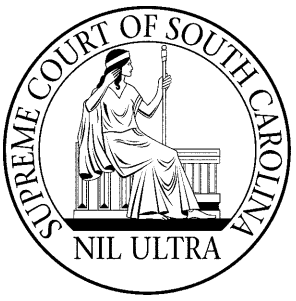
This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that the Receiver, Peyre Thomas Lumpkin, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and

the authority to direct that respondent's mail be delivered to Mr. Lumpkin's office. Mr. Lumpkin's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina
August 13, 2014



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 32
August 13, 2014
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

PETITIONS – UNITED STATES SUPREME COURT

EXTENSION TO FILE PETITION – UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

27400 - Dennis Lambries v. Saluda County Denied 8/6/2014

27407 - The State v. Donta Kevon Reid Denied 8/6/2014

27408 - The State v. Anthony Nation Denied 8/6/2014

27410 - Ferguson Fire v. Preferred Fire Protection Denied 8/13/2014

27415 - The State v. Erick Hewins Denied 8/6/2014

27418 - The State v. James Ervin Ramsey Pending

2014-MO-020 - The State v. Eric Dantzler Denied 8/6/2014

2014-MO-021 - Seyed D. Tahaei v. Sherri L. Tahaei
Pending

2014-MO-022 - Travelers Property v. Senn Freight Pending

2014-MO-027 - The State v. Jake Antonio Wilson Pending

2014-MO-031 - Andreal Holland v. J. C. Witherspoon, Jr. Pending

EXTENSION TO FILE PETITIONS FOR REHEARING

27422 - Shannon Ranucci v. Corey Crain Granted until August 18, 2014

27423 - Vicki Wilkinson v. East Cooper Granted until August 18, 2014

The South Carolina Court of Appeals

PUBLISHED OPINIONS

None

UNPUBLISHED OPINIONS

2014-UP-320-Ralph Thomas and Nancy Thomas v. Gulf Stream Coach, Inc., et al.

2014-UP-321-In the matter of the care and treatment of Richard Dean Capps

2014-UP-322-Christopher Lee v. Wendy Lee

2014-UP-323-SCDSS v. Rubi Bertaud-Cabrera

PETITIONS FOR REHEARING

5219-Moorhead Construction Inc. et al. v. Pendleton Station et al.	Pending
5229-Coleen Mick-Skaggs v. William Skaggs	Pending
5232-State v. Clarence Jenkins	Pending
5237-Palms v. School District of Greenville County	Pending
5242-Patricia Fore v. Griffco of Wampee, Inc.	Pending
5243-Kerry Levi v. Northern Anderson County EMS	Pending
5244-Clifford Thompson v. State	Pending
5245-Allegro, Inc. v. Emmett J. Scully et al.	Pending
5246-State v. Jason Alan Johnson	Pending
5247-State v. Henry Haygood	Pending
5248-Demetrius Mack v. Leon Lott	Pending
5250-Precision Walls v. Liberty Mutual Fire Ins.	Pending
2014-UP-200-Branch Banking and Trust v. Luquire	Pending

2014-UP-203-Helena P. Tirone v. Thomas W. Dailey	Pending
2014-UP-206-State v. Forrest K. Samples	Pending
2014-UP-210-State v. Steven Kranendonk	Pending
2014-UP-215-Yossi Haina v. Beach Market, LLC	Pending
2014-UP-217-State v. Douglas Bret Bishop	Pending
2014-UP-222-State v. James Curtis Tyner	Pending
2014-UP-223-Permanent General v. Karen D. Givens	Pending
2014-UP-224-State v. James E. Wise	Pending
2014-UP-228-State v. Taurus Thompson	Pending
2014-UP-230-State v. Travis N. Buck	Pending
2014-UP-234-State v. Julian C. Young	Pending
2014-UP-235-Rest Assured, LLC v. SCDEW	Pending
2014-UP-241-First Citizens Bank v. Charles T. Brooks, III	Pending
2014-UP-248-SCDOT v. RI CS5, LLC	Pending
2014-UP-250-Xu Dong Sun v. Xiaolan Wang	Pending
2014-UP-255-Loretta Katzburg v. Peter Katzburg	Pending
2014-UP-265-State v. Gregory Allen Ivery	Pending
2014-UP-266-Mark R. Bolte v. State	Pending
2014-UP-267-Jane Doe v. Charles Smith	Pending
2014-UP-268-Jones G. Herring v. Gilbert Bagnell	Pending
2014-UP-270-Progressive Northern Ins. v. Stanley Medlock	Pending

2014-UP-273-Gregory J. Feldman et al. v. William Mark Casey et al.	Pending
2014-UP-277-Raymond Weatherford v. Shelly Weatherford	Pending
2014-UP-279-Jacqueline Smith v. Horry County Schools	Pending
2014-UP-281-Tina Mayers v. OSI Group	Pending
2014-UP-282-State v. Donald M. Anderson	Pending
2014-UP-284-John Musick v. Thomas L. Dicks	Pending
2014-UP-288-Gayla Ramey v. Unihealth Post Acute	Pending
2014-UP-292-Keith Roberts v. Randall J. Drew	Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

4909-North American Rescue v. Richardson	Pending
4960-Justin O'Toole Lucey et al. v. Amy Meyer	Pending
4975-Greeneagle Inc. v. SCDHEC	Pending
4977-State v. Phillip Miller	Dismissed 08/06/14
4979-Major v. City of Hartsville	Pending
5008-Willie H. Stephens v. CSX Transportation	Pending
5019-John Christopher Johnson v. Reginald C. Lloyd et al.	Pending
5022-Gregory Collins v. Seko Charlotte and Nationwide Mutual	Pending
5025-State v. Randy Vickery	Pending
5031-State v. Demetrius Price	Pending
5052-State v. Michael Donahue	Pending
5055-Hazel Rivera v. Warren Newton	Pending
5072-Michael Cunningham v. Anderson County	Pending

5077-Kirby L. Bishop et al. v. City of Columbia	Pending
5078-Estate of Livingston v. Clyde Livingston	Pending
5084-State v. Kendrick Taylor	Pending
5092-Mark Edward Vail v. State	Pending
5095-Town of Arcadia Lakes v. SCDHEC	Pending
5099-Roosevelt Simmons v. Berkeley Electric	Pending
5111-State v. Alonza Dennis	Pending
5112-Roger Walker v. Catherine Brooks	Pending
5113-Regions Bank v. Williams Owens	Denied 08/06/14
5117-Loida Colonna v. Marlboro Park (2)	Pending
5118-Gregory Smith v. D.R. Horton	Pending
5119-State v. Brian Spears	Pending
5126-A. Chakrabarti v. City of Orangeburg	Pending
5131-Lauren Proctor v. Whitlark & Whitlark	Pending
5135-Microclean Tec. Inc. v. Envirofix, Inc.	Pending
5140-Bank of America v. Todd Draper	Pending
5144-Emma Hamilton v.Martin Color Fi	Pending
5151-Daisy Simpson v. William Simpson	Pending
5152-Effie Turpin v. E. Lowther	Pending
5156-State v. Manuel Marin	Pending
5157-State v. Lexie Dial	Granted 08/06/14

5160-State v. Ashley Eugene Moore	Pending
5165-Bonnie L. McKinney v. Frank J. Pedery	Granted 08/06/14
5166-Scott F. Lawing v. Univar USA Inc.	Pending
5171-Carolyn M. Nicholson v. SCDSS and State Accident Fund	Granted 05/29/14
5175-State v. Karl Ryan Lane	Pending
5176-Richard A. Hartzell v. Palmetto Collision, LLC	Pending
5178-State v. Michael J. Hilton	Pending
5181-Henry Frampton v. SCDOT	Pending
5188-Mark Teseniar v. Professional Plastering	Pending
5191-Jacqueline Carter v. Verizon Wireless	Pending
5193-Israel Wilds v. State	Pending
5195-Laura Riley v. Ford Motor Company	Pending
5196-State v. James Anderson	Pending
5197-Gladys Sims v. Amisub	Pending
5198-State v. Julia Gorman and Robert Palmer	Pending
5200-Tynyasha Horton v. City of Columbia	Pending
5201-Phillip Grimsley v. SLED	Pending
5203-James Teeter v. Debra Teeter	Pending
5209-State v. Tyrone Whatley	Pending
5217-H. Eugene Hudson v. Mary Lee Hudson	Pending
5224-State v. Alex Lorenzo Robinson	Pending

5227-State v. Frankie Lee McGee	Pending
5230-State v. Christopher L. Johnson	Pending
5231-Centennial Casualty v. Western Surety	Pending
2011-UP-502-Heath Hill v. SCDHEC and SCE&G	Pending
2012-UP-078-Seyed Tahaei v. Sherri Tahaei	Pending
2012-UP-081-Hueble v. Vaughn	Pending
2012-UP-276-Regions Bank v. Stonebridge Development et al.	Pending
2012-UP-312-State v. Edward Twyman	Pending
2012-UP-351-State v. Kevin J. Gilliard	Pending
2012-UP-433-Jeffrey D. Allen v. S.C. Budget and Control Bd. Employee Insurance Plan et al.	Pending
2012-UP-479-Elkachbendi v. Elkachbendi	Pending
2012-UP-502-Hurst v. Board of Dentistry	Pending
2012-UP-552-Virginia A. Miles v. Waffle House	Pending
2012-UP-577-State v. Marcus Addison	Pending
2012-UP-600-Karen Irby v. Augusta Lawson	Pending
2012-UP-603-Fidelity Bank v. Cox Investment Group et al.	Pending
2012-UP-608-SunTrust Mortgage v. Ostendorff	Pending
2012-UP-658-Palmetto Citizens v. Butch Johnson	Pending
2012-UP-663-Carlton Cantrell v. Aiken County	Pending
2013-UP-010-Neshen Mitchell v. Juan Marruffo	Granted 08/06/14

2013-UP-015-Travelers Property Casualty Co. v. Senn Freight	Pending
2013-UP-034-Cark D. Thomas v. Bolus & Bolus	Denied 08/06/14
2013-UP-062-State v. Christopher Stephens	Pending
2013-UP-066-Dudley Carpenter v. Charles Measter	Pending
2013-UP-071-Maria McGaha v. Honeywell International	Pending
2013-UP-081-Ruth Sturkie LeClair v. Palmetto Health	Pending
2013-UP-082-Roosevelt Simmons v. Hattie Bailum	Denied 08/06/14
2013-UP-090-JP Morgan Chase Bank v. Vanessa Bradley	Pending
2013-UP-125-Caroline LeGrande v. SCE&G	Denied 08/06/14
2013-UP-127-Osmanski v. Watkins & Shepard Trucking	Pending
2013-UP-147-State v. Anthony Hackshaw	Pending
2013-UP-158-CitiFinancial v. Squire	Pending
2013-UP-183-R. Russell v. DHEC and State Accident Fund	Denied 08/06/14
2013-UP-188-State v. Jeffrey A. Michaelson	Pending
2013-UP-251-Betty Jo Floyd v. Ken Baker Used Cars	Pending
2013-UP-256-Woods v. Breakfield	Pending
2013-UP-257-Matter of Henson (Woods) v. Breakfield	Pending
2013-UP-267-State v. William Sosebee	Denied 07/24/14
2013-UP-272-James Bowers v. State	Pending
2013-UP-279-MRR Sandhills v, Marlboro County	Pending
2013-UP-288-State v. Brittany Johnson	Pending

2013-UP-290-Mary Ruff v. Samuel Nunez	Pending
2013-UP-294-State v. Jason Thomas Husted	Denied 08/06/14
2013-UP-297-Greene Homeowners v. W.G.R.Q.	Pending
2013-UP-304-State v. Johnnie Walker Gaskins	Denied 08/06/14
2013-UP-310-Westside Meshekoff Family v. SCDOT	Pending
2013-UP-317-State v. Antwan McMillan	Granted 08/06/14
2013-UP-322-A.M. Kelly Grove v. SCDHEC	Pending
2013-UP-323-In the interest of Brandon M.	Denied 08/06/14
2013-UP-333-In re Russell	Denied 08/06/14
2013-UP-358-Marion L. Driggers v. Daniel Shearouse	Pending
2013-UP-360-State v. David Jakes	Granted 08/06/14
2013-UP-393-State v. Robert Mondriques Jones	Pending
2013-UP-424-Lyman Russell Rea v. Greenville Cty.	Pending
2013-UP-428-State v. Oran Smith	Pending
2013-UP-435-State v. Christopher Spriggs	Pending
2013-UP-442-Jane AP Doe v. Omar Jaraki	Pending
2013-UP-459-Shelby King v. Amy Bennett	Pending
2013-UP-461-Ann P. Adams v. Amisub of South Carolina Inc.	Pending
2013-UP-489-F.M. Haynie v. Paul Cash	Pending
2014-UP-013-Roderick Bradley v. The State	Pending
2014-UP-020-Joseph Marshall v. Carrie Marshall	Pending

2014-UP-047-State v. Sam Harold Smith	Pending
2014-UP-056-In the matter of the care and treatment of P. Guess	Pending
2014-UP-062-Stoneledge v. IMK Development	Pending
2014-UP-074-Tim Wilkes v. Horry County	Pending
2014-UP-082-W. Peter Buyck v. Williams Jackson	Pending
2014-UP-087-Moshtaba Vedad v. SCDOT	Pending
2014-UP-088-State v. Derringer Young	Pending
2014-UP-091-State v. Eric Wright	Pending
2014-UP-094-Thaddeus Segars v. Fidelity National	Pending
2014-UP-095-Patricia Johnson v. Staffmark	Dismissed 08/04/14
2014-UP-103-State v. David Vice	Pending
2014-UP-113-State v. Jamaal Hinson	Pending
2014-UP-114-Carolyn Powell v. Ashlin Potterfield	Pending
2014-UP-121-Raymond Haselden v. New Hope Church	Pending
2014-UP-122-Ayree Henderson v. State	Pending
2014-UP-128-3 Chisolm Street v. Chisolm Street	Pending
2014-UP-132-State v. Ricky S. Bowman	Pending
2014-UP-143-State v. Jeffrey Dodd Thomas	Pending
2014-UP-159-City of Columbia v. William K. Wilson	Pending
2014-UP-167-State v. David G. Johnson	Pending
2014-UP-172-Willie Rogers v. Charles Carr	Pending

2014-UP-173-Reda Reilly v. Kevin Reilly	Pending
2014-UP-178-State v. Anthony R. Carter	Pending
2014-UP-180-State v. Travas D. Jones	Pending
2014-UP-183-Allison Johnson v. Russell Johnson	Pending
2014-UP-192-Lawrence Terry v. Allen University	Pending

The Supreme Court of South Carolina

Ferguson Fire and Fabrication, Inc., Plaintiff,

v.

Preferred Fire Protection, L.L.C.; Fair Forest of Greenville, L.L.C.; Thomas F. Wong; and Immedion, L.L.C., Defendants,

Of Whom Ferguson Fire and Fabrication, Inc., is Petitioner,

and Immedion, L.L.C., is Respondent.

Immedion, L.L.C., Third-Party Plaintiff,

v.

Rescom Construction, L.L.C., Third-Party Defendant.

Appellate Case No. 2012-212191
Lower Court Case No. 2008-CP-23-02746

ORDER

The Petition for Rehearing in the above matter is denied. However, the opinion is refiled to eliminate a sentence from the factual recitation that does not affect the result.

s/ Costa M. Pleicones A.C.J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

Acting Justice D. Craig Brown and
Acting Justice Dorothy Mobley Jones, not participating.

Columbia, South Carolina

August 13, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Ferguson Fire and Fabrication, Inc., Plaintiff,

v.

Preferred Fire Protection, L.L.C., Fair Forest of Greenville, L.L.C., Thomas F. Wong, and Immedion, L.L.C., Defendants,

Of whom Ferguson Fire and Fabrication, Inc., is Petitioner,

and Immedion, L.L.C., is Respondent.

Immedion, L.L.C., Third-Party Plaintiff,

v.

Rescom Construction, L.L.C., Third-Party Defendant.

Appellate Case No. 2012-212191

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Greenville County
The Honorable R. Lawton McIntosh, Circuit Court Judge

Opinion No. 27410
Heard June 12, 2014 – Refiled August 13, 2014

REVERSED AND REMANDED

Robert E. Culver, of Charleston, for Petitioner.

Ronald G. Tate, Jr., and Zachary Lee Weaver, both of Gallivan, White & Boyd, P.A., of Greenville, for Respondent.

JUSTICE BEATTY: This Court granted a petition for a writ of certiorari to review the decision in *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Protection, L.L.C.*, 397 S.C. 379, 725 S.E.2d 495 (Ct. App. 2012), in which a supplier of materials ("Ferguson Fire") brought an action for foreclosure of a mechanic's lien against the owner of a data center ("Immedion") and its contractor ("Preferred Fire"). Ferguson Fire contends, and we agree, that the Court of Appeals erred in adding requirements to S.C Code Ann. § 29-5-40 (2007), governing a notice of furnishing, that are not in the statute itself and in concluding Ferguson Fire did not establish an effective lien upon which a foreclosure action could be premised. We reverse and remand.

I. FACTS

This case arises out of Ferguson Fire's efforts to obtain payment for materials it supplied to Preferred Fire for Immedion's data center. An outline of the events leading to Ferguson Fire's mechanic's lien action and the lower courts' rulings follow.

Contracts for Improvements to Immedion's Data Center

In 2007, Immedion, a telecommunications company, hired Rescom, L.L.C. to be the general contractor for improvements planned for its data center on property Immedion leased in Greenville. This contract excluded the performance of part of the fire protection work that was needed. Rescom, in turn, hired Preferred Fire, a fire sprinkler company, as a subcontractor.

In addition, Immedion directly hired Preferred Fire under a separate contract for $30,973.00 to install a special "pre-action" fire suppression system[1] in its data center. To complete this work, Preferred Fire purchased materials from Ferguson Fire. Ferguson Fire began delivering materials to Preferred Fire on August 24, 2007, and the deliveries continued through October 16, 2007.

Notice of Furnishing Labor and/or Materials

On September 21, 2007, while its deliveries were in progress, Ferguson Fire sent a "Notice of Furnishing Labor and Materials" ("Notice of Furnishing") to Immedion advising it in relevant part that it had been employed by Preferred Fire to deliver labor, services, or materials with an estimated value of $15,000.00 to Immedion's premises. The Notice of Furnishing advised that it was being given as "a routine procedure to comply with certain state requirements that may exist," and that it was not a lien, nor any reflection on Preferred Fire's credit standing.

Immedion paid Preferred Fire $15,486.50 of the $30,973.00 contract price for installation of the system *before* receiving Ferguson Fire's Notice of Furnishing on September 21, 2007. *After* receiving the Notice of Furnishing, Immedion issued two additional checks to Preferred Fire totaling $15,486.50 for the unpaid balance of the contract price.

It is undisputed that Immedion paid everything it owed to Rescom, and it also paid its contractor Preferred Fire in full under the separate contract for the fire suppression system. However, Preferred Fire never paid Ferguson Fire for the materials it furnished.

Notice or Certificate of Lien

On January 8, 2008, Ferguson Fire served upon Immedion, Preferred Fire, and others (and later filed) a "Statement and Notice of Mechanic's Lien," which gave notice of the existence of a lien and included a Statement of Account. Ferguson Fire indicated it had supplied $15,548.93 in materials to Preferred Fire for Immedion's premises from August 24, 2007 through October 16, 2007 pursuant

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[1] Pre-action fire suppression systems are multi-step systems designed to prevent accidental activation in areas that are highly sensitive to water damage. *See* "Fire sprinkler system," *available at* http://en.wikipedia.org/wiki/Fire_sprinkler_system.

to an agreement with Preferred Fire that was entered into "with the knowledge and consent and permission and authorization of Immedion." Ferguson Fire stated $15,548.93 was still owing and due, and it asserted a mechanic's lien upon the described premises.

Complaint for Foreclosure of Lien & Summary Judgment Motions

On April 11, 2008, Ferguson Fire filed a complaint and a lis pendens against Preferred Fire, Fair Forest of Greenville, L.L.C., Thomas F. Wong, and Immedion seeking foreclosure of a mechanic's lien as to all defendants, as well as attorney's fees, costs, and interest.[2]

Immedion answered[3] and thereafter moved for summary judgment, maintaining (1) there was no evidence Ferguson Fire had furnished any materials for the benefit of property owned by Immedion, as it was a mere leaseholder; (2) there was no contractual relationship giving rise to liability between Ferguson Fire and Immedion; and (3) Immedion paid in full for all work performed by its contractors, so it had no further liability pursuant to S.C. Code Ann. § 29-5-20(B).

Ferguson Fire filed a cross-motion for summary judgment, arguing (1) under S.C. Code Ann. § 29-5-30 a leasehold interest in property is subject to a materialman's lien; (2) a materialman supplying materials to a contractor has a lien for the value of the materials on the leaseholder's interest under S.C. Code Ann. § 29-5-20, and the value of the lien is limited to the amount due to the contractor by the owner/leaseholder as of the date of notice under sections 29-5-20 and 29-5-40; and (3) Immedion should have been aware of its potential claim because

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[2] Ferguson Fire additionally asserted claims for breach of contract and unjust enrichment as to Preferred Fire only. Ferguson Fire obtained a default judgment against Preferred Fire but was unable to collect on it. Ferguson Fire stipulated to a dismissal of Fair Forest and Wong.

[3] In addition, Immedion counterclaimed against Ferguson Fire for attorney's fees, and it instituted a third-party complaint against Rescom for breach of contract. Rescom counterclaimed against Immedion, but the two reached a settlement and dismissed Immedion's third-party complaint when they determined Ferguson Fire's suit did not involve Immedion's contract with Rescom.

Ferguson Fire gave Immedion the Notice of Furnishing prior to Immedion's full payment to Preferred Fire.

Ferguson Fire asserted since it gave Immedion notice on September 21, 2007 that it was furnishing materials for its premises, under South Carolina's mechanic's lien statutes, it was entitled to a lien up to the amount Immedion paid to its contractor, Preferred Fire, *after* that date, plus attorney's fees and interest.[4] Ferguson Fire noted that the value of the materials it supplied to Preferred Fire was actually greater than the amount of its lien, but acknowledged that under the statutory provisions its lien was limited to the unpaid balance of the contract between Immedion and Preferred Fire as of the date of its Notice of Furnishing.

Decisions of Circuit Court & Court of Appeals

The circuit court granted summary judgment to Immedion and extinguished the mechanic's lien filed by Ferguson Fire. The court stated, "The issue is whether the Notice of Furnishing was sufficient to notify the owner [Immedion] of the lien given by § 29-5-20. Because the Notice explicitly stated that it was not a mechanic's lien and contained no demand for payment, the Notice is ineffective under § 29-5-40 as a Notice of Lien."

The Court of Appeals affirmed, finding the Notice of Furnishing was ineffective under section 29-5-40 because it "was sent prior to furnishing all the material, failed to identify the final amounts of the goods delivered, and never made a demand for payment." *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Protection, L.L.C.*, 397 S.C. 379, 386, 725 S.E.2d 495, 499 (Ct. App. 2012). The court concluded "the circuit court did not err in finding the Notice [of Furnishing] was insufficient to notify Immedion of a lien." *Id.* at 387, 725 S.E.2d at 499. This Court granted Ferguson Fire's petition for a writ of certiorari.

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[4] Although Ferguson Fire inadvertently referred to the balance remaining on the notice date as $15,485.50 in some of its materials, this appears to be a scrivener's error as the balance remaining on the notice date, and thus the potential lien, was $15,486.50.

II. STANDARD OF REVIEW

Rule 56(c) of the South Carolina Rules of Civil Procedure provides a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 42, 747 S.E.2d 178, 182 (2013) (citation omitted). Determining the proper interpretation of a statute is a question of law, which this Court reviews de novo. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 662 S.E.2d 40 (2008).

III. LAW/ANALYSIS

On certiorari, Ferguson Fire contends the Court of Appeals erred in adding requirements for the timing and form of a Notice of Furnishing under S.C. Code Ann. § 29-5-40; specifically, it erred in determining a Notice of Furnishing could not be delivered to an owner until *after* a materialman delivers all materials to the worksite and that a demand for payment of a specific amount must be included in the notice. We agree. The Court of Appeals has added requirements that are not present in the statute itself and, as a result, erred in concluding Ferguson Fire's lien was ineffective as a matter of law.

A. Overview of Mechanics' Liens Statutes

In South Carolina, mechanics' liens are purely statutory and may be acquired and enforced only in accordance with the terms and conditions set forth in the statutes creating them. *Multiplex Bldg. Corp. v. Lyles*, 268 S.C. 577, 235 S.E.2d 133 (1977); *accord Skiba v. Gessner*, 374 S.C. 208, 212, 648 S.E.2d 605, 606 (2007) (stating "one's right to a mechanic's lien is wholly dependent upon the language of the statute creating it"); *Butler Contracting, Inc. v. Court St., L.L.C.*, 369 S.C. 121, 130, 631 S.E. 252, 257 (2006) (observing mechanics' lien statutes "must be strictly followed"). The statutory process encompasses several steps, including the (1) creation, (2) perfection, and (3) enforcement of the lien. *See*

generally S.C. Code Ann. §§ 29-5-10 to -440 (2007 & Supp. 2013) (governing mechanics' liens).

(1) Creation of Lien

As a general rule, mechanics' liens arise when a contractor, subcontractor, or other person improves real property by furnishing labor and/or materials for a building or structure. 22 S.C. Jur. *Mechanics' Liens* § 2 (1994). "Because the improvements usually attach to and become an inseparable part of the structure, the lien statutes give the persons responsible for the improvements a security interest, or a lien on the improvement to the value of the amount due them." *Id.* § 3 (footnote omitted).

The primary lien statutes are found in sections 29-5-10 and 29-5-20 of the South Carolina Code, and they distinguish between two classes of persons: (1) those with a direct contractual relationship to the owner (or leaseholder, as the case may be), such as contractors, and (2) those who are not in direct privity of contract with the owner, such as subcontractors and materialmen or suppliers. *Id.* § 8; *see* S.C. Code Ann. § 29-5-10 (2007) (creating liens for those with a direct contractual relationship with the owner); *id.* § 29-5-20 (creating liens for those not in direct privity with the owner).

In this case, Ferguson Fire did not contract directly with the leaseholder of the premises, Immedion; rather, it was a supplier of materials to Immedion's contractor, Preferred Fire. This implicates section 29-5-20(A), which provides in relevant part: "Every laborer, mechanic, subcontractor, *or person furnishing material* for the improvement of real estate when the improvement has been authorized by the owner *has a lien thereon*, subject to existing liens of which he has actual or constructive notice, to the value of the labor or material so furnished . . . ." S.C. Code Ann. § 29-5-20(A) (emphasis added).

"The lien arises, inchoate, when the labor is performed or the materials are furnished." *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 26, 336 S.E.2d 488, 489 (Ct. App. 1985). In other words, "when the labor is performed or material is furnished, the right exists but *the lien has not been perfected*." *Butler Contracting*, 369 S.C. at 128, 631 S.E.2d at 256 (emphasis added).

Moreover, if the person furnishing the labor or materials was employed by someone *other* than the owner (such as a contractor), for the lien to attach the person must meet the *additional* requirement of giving written notice to the owner of the furnishing of the labor or material. *Id.* (citing S.C. Code Ann. § 29-5-40; *Lowndes Hill Realty Co. v. Greenville Concrete Co.*, 229 S.C. 619, 93 S.E.2d 855 (1956); *Shelley Constr. Co.*, 287 S.C. at 26, 336 S.E.2d at 490).

Section 29-5-40, entitled "Notice to owner before lien attaches when laborer was employed by someone other than owner," provides in full as follows:

> Whenever work is done or *material is furnished* for the improvement of real estate *upon the employment of a contractor* or some other person than the owner *and such* laborer, mechanic, contractor or *materialman shall in writing notify the owner of the furnishing of such labor or material and the amount or value thereof*, *the lien given by § 29-5-20 shall attach upon the real estate improved* as against the true owner for the amount of the work done or material furnished. But in no event shall the aggregate amount of liens set up hereby exceed the amount due by the owner on the contract price of the improvement made.

S.C. Code Ann. § 29-5-40 (2007) (emphasis added). By its terms, section 29-5-40 requires a supplier to give written notice to the owner (1) "of the furnishing of such labor or material" and (2) "the amount or value thereof."

(2) Perfection & Enforcement of Lien

For an inchoate lien to become valid, the lien must be perfected and enforced in compliance with South Carolina's mechanic's lien statutes. *Preferred Sav. & Loan Ass'n v. Royal Garden Resort, Inc.*, 301 S.C. 1, 389 S.E.2d 853 (1990). To perfect and enforce a lien, one must timely complete the following three steps found in sections 29-5-90 and 29-5-120 of the South Carolina Code: (1) serve and file a notice or certificate of the lien, (2) commence a lawsuit to enforce the lien, and (3) file a lis pendens. *See* S.C. Code Ann. §§ 29-5-90 & -120 (2007); *Butler Contracting*, 369 S.C. at 129, 631 S.E.2d at 256; *see also* 22 S.C. Jur. *Mechanics' Liens* §§ 15 to 19 (1994) (discussing procedures). The trigger for determining when all three of these events must be performed is the date when the supplier ceases furnishing labor or materials.

(a) Notice or Certificate of Lien. Section 29-5-90 requires that, within ninety days after he ceases to furnish labor or materials for a building or structure, the party asserting a lien must serve upon the owner (or person in possession of the property) and file with the register of deeds or clerk of court a notice or a certificate that includes a statement of the amount due him, together with a description of the property intended to be covered by the lien, the name of the owner of the property, if known, and other required information. S.C. Code Ann. § 29-5-90 (2007); *Butler Contracting*, 369 S.C. at 129, 631 S.E.2d at 256.

(b) Commencement of Lawsuit to Enforce the Lien. Pursuant to section 29-5-120, a party must commence a lawsuit seeking to enforce the lien within six months after ceasing to provide labor or materials for the property. S.C. Code Ann. § 29-5-120 (2007). The lien may be enforced by a petition to the court of common pleas in the county where the building or structure is located. *Id.* § 29-5-140.

(c) Notice of Lis Pendens. Section 29-5-120 further requires a party to file a notice of the pending action (lis pendens) within six months after ceasing to provide labor or materials. *Id.* § 29-5-120.

"If these steps are taken, the person claiming the lien may foreclose against the property to satisfy the debt." *Butler Contracting*, 369 S.C. at 129, 631 S.E.2d at 256. "On the other hand, if he fails to take any one of these steps, the lien against the property is dissolved pursuant to Sections 29-5-90 and 29-5-120." *Id.*

The importance of strictly adhering to the statutory requirements is that, once a party claiming a lien gives the proper notice, he is entitled to be paid in preference to the contractor who procured the labor or materials, and the owner's payment to the contractor *after* receiving the proper notice shall not diminish the amount recoverable by the party asserting a lien. S.C. Code Ann. § 29-5-50 (2007).

B. Application of Statutory Scheme to Ferguson Fire

The current dispute centers on the Court of Appeals's determination that Ferguson Fire never acquired a lien because it gave a Notice of Furnishing to Immedion prior to delivering all of the materials to the worksite and without

including a demand for payment of a specific amount. The court's holding turns on its interpretation of section 29-5-40, which imposes written notice upon the owner as a prerequisite for a lien to attach when the supplier is hired by someone other than the owner.

If a statute is ambiguous, the courts must construe its terms. *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 750 S.E.2d 61 (2013). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." *Id.* at 128, 750 S.E.2d at 63 (citation omitted). However, "[w]here the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Id.* (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03, at 94 (5th ed. 1992)). "We are not at liberty, under the guise of construction, to alter the plain language of [a] statute by adding words which the Legislature saw fit not to include." *Shelley Constr. Co.*, 287 S.C. at 28, 336 S.E.2d at 491. "Our duty is to apply the statute according to its own terms." *Id.* at 29, 336 S.E.2d at 491.

Upon reviewing the plain terms of section 29-5-40 and considering its relation to the other mechanic's lien provisions as well as prior case law, we believe Immedion and the Court of Appeals have confused the requirements for a Notice of Furnishing to an owner under section 29-5-40 with the requirements for a notice or certificate of a lien under section 29-5-90.

Application of the mechanic's lien statutes outlined above indicates Ferguson Fire followed the proper timing and sequence of events for (1) creation, (2) perfection, and (3) enforcement of a mechanic's lien. An inchoate lien normally arises upon the furnishing of the labor and materials under section 29-5-20. However, section 29-5-40 additionally provides that, in cases where the person seeking the lien was employed by someone *other* than the owner, the supplier must notify the owner in writing "of the furnishing of such labor or material and the amount or value thereof" for "the lien given by § 29-5-20 [to] attach upon the real estate . . . ." S.C. Code Ann. § 29-5-40. Thus, Ferguson Fire was required to meet

the terms of both section 29-5-20(A) and section 29-5-40 for it to have an inchoate lien attach.

In this case, Ferguson Fire gave Immedion written notice on September 21, 2007 that it was supplying materials to Preferred Fire for its premises with an estimated value of $15,000.00. This is all of the information specifically required by the General Assembly in section 29-5-40 for a Notice of Furnishing. Ferguson Fire's Notice of Furnishing correctly indicated that it was *not* then noticing a lien and it did *not* include a demand for payment as it had not yet delivered all of the materials to the premises, and there was no amount delinquent at that time. The cessation of deliveries and a specific demand for payment are elements that are required for a lien notice. In contrast, the Notice of Furnishing under section 29-5-40 was simply to apprise Immedion as the leaseholder of the property that Ferguson Fire was "furnishing . . . labor or material" to its premises.

Once all of the materials had been furnished and Preferred Fire failed to pay the amount due, Ferguson Fire *then* proceeded with the next step in the process under section 29-5-90 to prepare a lien notice that included a Statement of Account. The lien notice indicated that the materials had been furnished and that there was a specific amount then owing and unpaid for which a lien was being pursued.

The Court of Appeals acknowledged that section 29-5-40 "does not prescribe the specific format of the notice," and it "does not contain a time limit for providing written notice to the owner," but stated that "it is impossible for a notice of a lien to precede the actual performance of work that creates the lien." *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Protection, L.L.C.*, 397 S.C. 379, 387, 725 S.E.2d 495, 499 (Ct. App. 2012). We agree with the Court of Appeals that a lien notice could not be prepared until all of the materials were delivered. *See* S.C. Code Ann. § 29-5-90 (providing a notice or certificate of a lien is to be served and filed "after [a person] ceases to labor on or furnish labor or materials for such building or structure"). However, Ferguson Fire provided *both* a Notice of Furnishing and a lien notice, which serve two different purposes, and it did not file its lien notice until after the delivery of all materials.

In *Lowndes Hill Realty Co. v. Greenville Concrete Co.*, 229 S.C. 619, 629, 93 S.E.2d 855, 860 (1956), this Court expressly stated that the Notice of

Furnishing statute specifies no time when the notice should be given to the owner, and it could be "given at any time":

> Section 45-254 [now 29-5-40] *specifies no time at which or within which notice of the furnishing of material is to be given to the owner. Such notice may be given at any time*. Cf. Hughes v. Peel, 221 S.C. 307, 70 S.E.2d 353; but of course it will be ineffectual if the other requisites to the perfection and enforcement of the lien, Sections 45-259 and 45-262 [now sections 29-5-90 and 29-5-120], are not met. Delay in giving the notice cannot operate to the detriment of the owner, because his liability under the lien is limited to the balance due by him to the prime contractor at the time he receives the notice.

(Emphasis added.) In *Wood v. Hardy*, 235 S.C. 131, 137-38, 110 S.E.2d 157, 160 (1959), this Court quoted *Lowndes* extensively and reiterated that the General Assembly has set forth no time limit as to the filing of a Notice of Furnishing, so it may be given at any time. However, as noted in *Lowndes*, the lien is limited to the amount of the unpaid balance at the time the owner receives the notice, so the timing of the notice affects the amount of the potential lien. *Id.* at 138, 110 S.E.2d at 160.

The Court of Appeals also recognized the impact of the timing of a Notice of Furnishing upon the potential lien amount in *Stovall Building Supplies*:

> S.C. Code Ann. § 29–5–40 (1976) provides, in pertinent part, that a mechanic's lien will not attach to the owner's property unless the owner is given notice of the claim of a materialman who contracted with a person other than the owner prior to the payment in full of the amount owed the contractor. In addition, the materialman's lien is limited to the amount the owner owes the contractor at the time the materialman gives notice.

Stovall Bldg. Supplies, Inc. v. Mottet, 305 S.C. 28, 32, 406 S.E.2d 176, 178 (Ct. App. 1990) (footnote omitted). More recently, in *Butler Contracting*, this Court again explicitly noted, "Section 29-5-40 does not contain a time limit for providing written notice to the owner when the person asserting the lien is employed by someone other than the owner." *Butler Contracting*, 369 S.C. at 128 n.3, 631 S.E.2d at 256 n.3 (citations omitted).

Ferguson Fire obviously gave its Notice of Furnishing to Immedion. Once it received the proper notice, Immedion made any additional payments at its own peril. *See generally Lowndes Hill Realty Co.*, 229 S.C. at 629, 93 S.E.2d at 860 (citing the prior codifications of sections 29-5-20 and 29-5-40 and stating there is a "manifest two-fold purpose" for the two statutes, to wit, "(1) [t]he protection of one, not a party to a contract with the owner, who furnishes labor or material in the improvement of the owner's property, by giving him a lien for such labor or material; and (2) the protection of the property owner by limiting his liability and that of his property in respect of all such liens 'to the amount due by the owner on the contract price of the improvement made'" (citation omitted)).

The Court of Appeals has created additional requirements not provided by the General Assembly in section 29-5-40 for a Notice of Furnishing. Ferguson Fire gave proper notice to Immedion that it was furnishing materials to its premises, as well as a separate lien notice that included a demand for the amount due once the materials had actually been supplied and its invoices became delinquent. All of these steps occurred prior to Ferguson Fire's service and filing of its complaint for foreclosure of the mechanic's lien and a lis pendens. As a result, the Court of Appeals erred in holding Ferguson Fire did not establish an effective lien.

IV. CONCLUSION

We conclude Ferguson Fire followed the statutory procedures to establish a mechanic's lien upon which a foreclosure action could be maintained, so summary judgment was improperly awarded to Immedion. We reverse and remand for further proceedings.[5]

REVERSED AND REMANDED.

KITTREDGE, J. and Acting Justices D. Craig Brown and Dorothy M. Jones, concur. PLEICONES, Acting Chief Justice, concurring in result only.

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[5] In light of our result, the award of attorney's fees to Immedion is likewise reversed.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Alma C. Defillo, Respondent.

Appellate Case No. 2014-001077

Opinion No. 27431
Submitted July 29, 2014 – Filed August 13, 2014

DISCIPLINE IMPOSED

Lesley M. Coggiola, Disciplinary Counsel, and Barbara M. Seymour, Deputy Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Alma C. Defillo, of Jacksonville, Florida, pro se.

PER CURIAM: Respondent is licensed to practice law in Florida; she is not licensed to practice law in South Carolina. In November 2013, the Office of Disciplinary Counsel (ODC) filed Formal Charges against respondent alleging she operated a law firm and offered legal services in South Carolina. In addition, ODC alleged that respondent advertised and solicited clients in South Carolina in violation of Rule 7, RPC, Rule 413, SCACR, and Rule 418, SCACR. Respondent did not answer the Formal Charges, was found to be in default, and is therefore deemed to have admitted the factual allegations made in those charges. See Rule 24(a), RLDE, Rule 413, SCACR. Following an evidentiary hearing in which respondent did not appear, the Hearing Panel issued a Panel Report recommending the Court sanction respondent for her misconduct. Neither ODC nor respondent filed exceptions to the Panel Report. The matter is now before the Court for consideration.

Facts

Matter I

In 2012, respondent opened an office in Greenville, ostensibly to handle federal immigration matters. Respondent had no law partners or associates who were licensed in South Carolina except for a period of approximately fourteen days in August 2012. Respondent offered to provide legal services in South Carolina using methods specifically targeted at potential clients in South Carolina, including a law firm website, business cards, print advertisements, and radio commercials as discussed below.

In connection with her representation of two clients in federal immigration matters, respondent sent letters to judges for the state circuit court in Greenville, requesting certification that the clients were crime victims. The letterhead contained the phrase "Attorneys and Counselors at Law" when, in fact, respondent had no partners or associates at the times the letters were written. Respondent's letterhead included her Greenville office address without indicating the jurisdictional limitations on her ability to practice law.

Respondent advertised her law firm through the use of a website available to residents of South Carolina. Included on the website are references to respondent's Greenville office. Respondent's website contains material misrepresentations and omits facts necessary to make the contents considered as a whole not materially misleading. On her website, respondent advertises her office in Greenville but fails to state that she is not licensed to practice law in South Carolina or to otherwise set forth the jurisdictional limitations on her practice in this state. Further, respondent's website is not limited to the promotion of her federal immigration practice as she advertises her experience in both criminal and family law and offers to "analyze the facts of [her prospective client's] case by applying current…State Laws."

In addition to false and misleading statements regarding offers to practice in this jurisdiction, respondent repeatedly refers to the firm's "lawyers" and "attorneys" when, in fact, respondent is a sole practitioner with no partners, only sporadically employing associates in her law firm.

Respondent's website compares her services with other lawyers' services in a way that cannot be factually substantiated by stating her law firm is "unique" because she and her staff are fluent in Spanish and English. Additionally, respondent includes forms of the words "specialist" and "expert" on her website even though she is not a specialist certified by this Court.

Respondent promotes her law firm by distributing printed business cards. The business cards advertise her office in Greenville without disclosing the fact that respondent is not licensed to practice law in South Carolina or disclosing the geographical limitation of her law practice in this state.

Respondent promotes her law firm by publication of print advertisements in Spanish-language magazines and other periodicals distributed in South Carolina. Respondent's print media advertisements lists her office in Greenville without disclosing the fact that she is not licensed to practice law in South Carolina or disclosing the jurisdictional limitations on her practice in this state.

Respondent promotes her law firm by broadcasting commercials on Spanish-language radio stations in South Carolina. Respondent's radio commercials include reference to her office in Greenville without disclosing the fact that she is not licensed in South Carolina or disclosing the geographical limitations of her practice of law in this state.

Matter II

Respondent initially cooperated with the disciplinary investigation by timely submitting her responses to the notice of investigation and ODC's subpoena for her client files and record of advertising dissemination. However, respondent failed to submit a response to the supplemental notice of investigation served on her on April 5, 2013.

As a result of her failure to submit a response to the supplemental notice of investigation, ODC issued a notice for respondent to appear for an interview on May 23, 2013. Respondent contacted ODC and requested the interview be postponed. Pursuant to that request, ODC issued an amended notice to appear, setting the interview for May 31, 2013. Respondent failed to appear, although her husband called ODC thirty-two minutes before the scheduled interview time to

state respondent would not be attending the interview due to a court appearance in Georgia. Respondent's husband was asked to instruct respondent to contact ODC after her court appearance in Georgia to reschedule the interview. As a result of respondent's failure to contact ODC pursuant to this instruction, ODC issued a third notice to appear, setting the interview for July 2, 2013. Respondent did not appear on July 2, 2013, and has not contacted ODC with regard to this disciplinary matter since that time.

Respondent made the following false or misleading statements in her response to the initial notice of investigation that she submitted to ODC:

> My practice is limited to Immigration Law.
>
> I have [not] portrayed myself to practice any other law but federal immigration law.
>
> At no time I have portrayed myself to represent residence [sic] of South Carolina with any legal services other than those that are exclusively related to immigration law.
>
> I solely practice federal immigration law.

The Hearing Panel found respondent's conduct violated the following Rules of Professional Conduct, Rule 407, SCACR[1]: Rule 5.5(b)(2) (lawyer who is not admitted in this jurisdiction shall not hold out to public or otherwise represent that lawyer is admitted to practice law in this jurisdiction); Rule 7.1(a) (lawyer shall not make false, misleading, or deceptive communications about lawyer or lawyer's services: communication violates this rule if it contains a material misrepresentation of fact or law, or omits fact necessary to make statement considered as a whole not materially misleading); Rule 7.1(c) (lawyer shall not make false, misleading, or deceptive communications about lawyer or lawyer's services: communication violates this rule if it compares the lawyer's services with

[1] The Rules of Professional Conduct, Rule 407, SCACR, are applicable as respondent's advertising and solicitation specifically targeted prospective clients in South Carolina. See Rule 418(b), SCACR (any advertising or solicitation by unlicensed lawyer shall comply with Rules 7.1 through 7.5 of RPC when advertising or solicitation is targeted to potential client in this state).

other lawyers' services, unless the comparison can be factually substantiated); Rule 7.4(b) (lawyer who is not certified as a specialist by the Supreme Court of South Carolina may not advertise or publicly state lawyer is a "specialist" or "expert"); Rule 7.5(a) (lawyer shall not use firm name, letterhead or other professional designation that is false, misleading, or deceptive); Rule 7.5(b) (law firm with offices in more than one jurisdiction shall indicate jurisdictional limitations of lawyers not licensed to practice in the jurisdiction where the office is located); Rule 7.5(d) (lawyer may state or imply that lawyer practices in a partnership or other organization only when that is the fact); and Rule 8.1(b) (in connection with disciplinary matter, lawyer shall not knowingly fail to respond to lawful demand from disciplinary authority).

The Hearing Panel further found respondent is subject to discipline pursuant to the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct or other rules of this jurisdiction regarding professional conduct of lawyers) and Rule 7(a)(3) (it shall be ground for discipline for lawyer to willfully violate valid order of Commission or hearing panel, willfully fail to appear personally as directed, or knowingly fail to respond to lawful demand from disciplinary authority to include request for response or appearance).

Discussion

The Commission and this Court have jurisdiction over all allegations that a lawyer has committed misconduct. The term "lawyer" includes "a lawyer not admitted in this jurisdiction if the lawyer …offers to provide any legal services in this jurisdiction [and] anyone whose advertisement or solicitations are subject to Rule 418, SCACR." Rule 2(q), RLDE. Further, Rule 418, SCACR, titled "Advertising and Solicitation by Unlicensed Lawyers" defines "unlicensed lawyer" as an individual "admitted to practice law in another jurisdiction but…not…in South Carolina." Rule 418(a). The rule also provides for jurisdiction over allegations of misconduct by unlicensed lawyers, procedures for determining charges of misconduct, and for sanctions. Rule 418(c) and (d). Accordingly, even though she is not admitted to practice law in South Carolina, respondent is subject to discipline in this state.

As noted above, since respondent failed to answer the Formal Charges, she is deemed to have admitted the allegations in the charges. See Rule 24(a), RLDE.

Further, since she failed to appear for the Panel Hearing, respondent is deemed to have admitted the factual allegations and to have conceded the merits of any recommendations considered at the Panel Hearing. See Rule 24(b), RLDE. Finally, since respondent did not file a brief taking exception to the Hearing Panel's report, she has accepted the findings of fact, conclusions of law, and the Hearing Panel's recommendations. See Rule 27(a), RLDE.

The authority to discipline lawyers and the manner in which the discipline is imposed is a matter within the Court's discretion. In the Matter of Berger, 2014 WL 1386688 (2014); In the Matter of Van Son, 403 S.C. 170, 742 S.E.2d 660 (2013). When the lawyer is in default, the Court need only determine the appropriate sanction. Id.

The misconduct in this matter is similar to that in In the Matter of Van Son, id., where a lawyer who was not admitted in this state sent solicitation letters to at least two South Carolina residents and, thereafter, failed to cooperate with ODC's investigation. In addition to other sanctions, the Court barred the lawyer from admission in this state and from advertising or soliciting clients in South Carolina for a period of five years.

In the current matter, not only did respondent target residents of South Carolina through various forms of advertising including radio communications and print media, but she also held herself out as licensed to practice law in this state, welcomed clients with criminal and family law concerns, and sent letters on behalf of clients addressed to state court judges. Further, when she did participate in the disciplinary investigation, respondent made false statements of material fact concerning the extent of her practice and the extent of her advertising in South Carolina to ODC. Since then, respondent has failed to cooperate in the disciplinary investigation and to appear for the hearing. In the Matter of Hall, 333.S.C. 247, 251, 509 S.E.2d 266, 268 (1998) ("An attorney's failure to answer charges or appear to defend or explain alleged misconduct indicates an obvious disinterest in the practice of law. Such an attorney is likely to face the most severe sanctions because a central purpose of the disciplinary process is to protect the public from unscrupulous or indifferent lawyers.").

We find it appropriate to permanently debar respondent from seeking any form of admission to practice law in this state (including pro hac vice admission) without first obtaining an order from this Court allowing her to seek admission. Further,

we prohibit respondent from advertising or soliciting business in South Carolina without first obtaining an order from this Court allowing her to advertise or solicit business in this state. Before seeking an order from this Court to either allow her to seek admission or to advertise or solicit, respondent shall complete the South Carolina Bar's Legal Ethics and Practice Program Ethics School and Advertising School. Respondent shall pay the costs of the investigation and prosecution of this matter by ODC and the Commission within thirty (30) days of the date of this order.

DISCIPLINE IMPOSED.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Eric J. Davidson, Respondent.
Appellate Case No. 2013-000691

Opinion No. 27432
Heard August 7, 2013 – Filed August 13, 2014

DISBARRED

Disciplinary Counsel Lesley M. Coggiola and Assistant Disciplinary Counsel Barbara M. Seymour, of Columbia, for Office of Disciplinary Counsel.

Eric J. Davidson, of Baltimore, Maryland, pro se Respondent.

PER CURIAM: In this attorney discipline matter, the Office of Disciplinary Counsel (ODC) filed formal charges against Eric J. Davidson (Respondent) based on allegations of misconduct. On July 9, 2012, Respondent was served with a notice of filing of formal charges and formal charges by certified mail. After two extensions, Respondent did not file an answer.

By administrative order dated December 14, 2012, the Commission on Lawyer Conduct (the Commission) declared Respondent in default for failing to respond to the formal charges against him; thus, it deemed the facts contained in the formal charges admitted.[1]

[1] *See* Rule 24(a), RLDE, Rule 413, SCACR ("Failure to answer the formal charges shall constitute an admission of the allegations. On motion of disciplinary counsel, the administrative chair may issue a default order setting a hearing to determine the

On February 26, 2013, a Panel of the Commission (the Panel) held a hearing to determine the appropriate sanctions. Following this hearing, the Panel recommended that Respondent be disbarred, as well as other conditions.

We adopt the Panel's recommendation of disbarment.

FACTUAL/PROCEDURAL HISTORY

A. Complaint

Respondent hired a lawyer to represent him in a domestic matter (the domestic lawyer). After the representation ended, the domestic lawyer hired another lawyer (the settlement lawyer) to collect unpaid attorneys' fees from Respondent. The settlement lawyer negotiated an agreement with Respondent whereby Respondent agreed to pay the domestic lawyer two payments of $2,000.

In January 2009, Respondent made the first payment. In March 2009, Respondent sent the settlement lawyer the second $2,000 payment. Upon receipt of the check, the settlement lawyer noticed that Respondent wrote the check from his trust account. He telephoned Respondent, who stated that he had earned a fee and that he was paying his settlement obligation from that fee. The settlement lawyer informed Respondent that it was improper to pay his personal obligations directly from a trust account, even if it was an earned fee. Respondent agreed to replace the trust account check with a personal check. Respondent asked the settlement lawyer if he could wire the payment directly into his account. The settlement lawyer agreed, and Respondent completed the wire transaction. When the settlement lawyer later received confirmation from his bank, he noticed that the payment again drew on Respondent's trust account. Therefore, the settlement lawyer filed a complaint with ODC.

B. Financial Recordkeeping Investigation

As a result of the complaint, ODC initiated an investigation and uncovered further financial misconduct. From 1988 until 2003, Respondent was a partner in a law firm practicing general litigation and real estate. From the Fall of 2003 until

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appropriate sanction to recommend to the Supreme Court.").

April 2004, Respondent had a solo practice, but kept open various trust accounts from his prior partnership. In 2004, Respondent entered into a new partnership in which he held a majority interest, Davidson & Bradshaw. Respondent continued to practice in the area of real estate law, while his new law partner handled tax, business, and estate matters at the firm. Davidson & Bradshaw opened several trust accounts for use by the firm, but Respondent kept open various trust accounts from his prior law firms.

In June 2009, Respondent moved to Maryland.[2] In February 2010, he began to perform legal work for a nonprofit agency; however, Davidson & Bradshaw continued to operate until September 2010.

Until 2004, Respondent's title insurance company reconciled some of his trust accounts; other trust accounts were not reconciled. From 2004 until 2007, Respondent did not reconcile any of his trust accounts. In 2007, Respondent hired a bookkeeper to reconcile the Davidson & Bradshaw's trust accounts; however, Respondent did not supervise the reconciliation process and did not review any reports from the bookkeeper. Moreover, Respondent did not make arrangements for the bookkeeper to reconcile several of the trust accounts he kept open from his former law practices, some of which still contained client funds.

In addition, paralegals employed by Davidson & Bradshaw prepared settlement statements for Respondent's real estate closings, entered the data into bookkeeping software, and prepared disbursement checks from an account designated as the real estate trust account. Respondent's paralegals were given signatory authority on this real estate trust account. Respondent did not verify that checks matched settlement statements prior to closing or disbursement and failed to ensure that all earned fees were withdrawn from the trust account in a timely fashion.

Furthermore, Respondent did not maintain an accounting journal, accurate client ledgers, bank statements, images of canceled checks, or deposit records as

[2] At oral arguments before the Court, Respondent stated that, even at the time of the formation of the partnership, it had always been his intention to "phase out" his work at Davidson & Bradshaw and move into the non-profit sector.

required by Rule 417, SCACR. Likewise, Respondent failed to identify and correct numerous discrepancies in various client transactions because the accounts were not being properly reconciled.

When Respondent moved to Maryland in 2009, he took no steps to disburse the funds in the old trust accounts or make any steps to close the accounts. One of those trust accounts contained positive ledger balances, or undispersed client funds, dating to 2004 and totaling approximately $1,000. That account also had thirteen outstanding checks totaling approximately $3,600 dating to November 2005.

Another old trust account contained a balance of approximately $41,000. The limited records provided by Respondent indicate that, with respect to that trust account, there were (1) 95 outstanding checks totaling approximately $21,000 and dating to 2003; (2) approximately $25,000 in positive ledger balances, or undispersed client funds, some as old as ten years; (3) seven negative ledger balances totaling approximately $1,900; and (4) approximately $5,600 in unidentified transactions. Respondent did not produce any bank statements for this account. Since the initiation of these proceedings, Respondent has neither produced an accounting of these funds, nor personally attempted to reconcile this account.

A final trust account has had a balance of over $10,000 since at least 2008. Respondent did not produce any reconciliations of this account or an accounting of these funds.[3]

Based on these facts, ODC alleged that Respondent engaged in misconduct as defined in Rule 7(a), RLDE, Rule 413, SCACR, in that he violated the Rules of Professional Conduct, Rule 407, SCACR: Rules 1.15, 8.4(d), and 8.4(e); and Rules 7(a)(1) and 7(a)(5), RLDE, Rule 413, SCACR.

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[3] During ODC's investigation, Respondent provided limited financial records to ODC. Rather, his former law partner provided the requisite information to the best of his ability, as he was unaware of the existence of all of the former trust accounts. He further participated in the investigation as to all of the accounts owned by Davidson & Bradshaw. ODC did not uncover any wrongdoing by Respondent's former law partner.

Panel's Recommendation

Respondent did not appear before the Panel, and therefore the Panel deemed him to have admitted the factual allegations and conceded the merits of the allegations of misconduct.[4] Therefore, the Panel found Respondent violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.15 (Safekeeping Property), Rule 8.4(d) (Conduct involving Dishonesty, Fraud, Deceit or Misrepresentation), and Rule 8.4(e) (Conduct Prejudicial to the Administration of Justice). The Panel also determined the Respondent violated Rule 417, SCACR (Financial Recordkeeping).

The Panel considered two aggravating circumstances: Respondent's prior disciplinary offenses[5] and Respondent's failure to answer the formal charges or appear at the hearing.

Based on these findings, the Panel recommended that this Court: (1) disbar Respondent from the practice of law; (2) order Respondent, within 120 days of this order, to file a report of outstanding client obligations and unidentified funds in all trust accounts, including documentation demonstrating that Respondent has fully disbursed any remaining client funds from all accounts and will close those

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[4] *See* Rule 24(b), RLDE, Rule 413, SCACR ("If the respondent should fail to appear when specifically so ordered by the hearing panel . . . , the respondent shall be deemed to have admitted the factual allegations which were to be the subject of such appearance and to have conceded the merits of any motion or recommendations to be considered at such appearance.").

[5] Respondent's disciplinary history includes an admonition in 2001 citing Rules 1.7 (Conflict of Interest: Current Clients) and 1.9 (Duties to Former Clients) of the Rules of Professional Conduct, Rule 407, SCACR; and an admonition in 2006 citing Rules 1.5 (Fees), 4.1 (Truthfulness in Statements to Others), 8.4(a) (Violating the Rules of Professional Conduct), 8.4(b) (Criminal Act Reflecting Adversely on Lawyer's Honesty), and 8.4(e) (Conduct Prejudicial to the Administration of Justice) of the Rules of Professional Conduct, Rule 407, SCACR.

accounts; (3) order Respondent to pay restitution to any clients who were underpaid; (4) order Respondent to pay any unidentified funds to the Lawyers' Fund for Client Protection; and (5) pay the costs of these proceedings.

DISCUSSION

The sole authority to discipline attorneys and decide appropriate sanctions rests with this Court. *In re Welch*, 355 S.C. 93, 96, 584 S.E.2d 369, 370 (2003); *In re Thompson*, 343 S.C. 1, 10–11, 539 S.E.2d 396, 401 (2000). We are not bound by the Panel's recommendation and may make our own findings of fact and conclusions of law. *In re Hazzard*, 377 S.C. 482, 488, 661 S.E.2d 102, 106 (2008). Nonetheless, the findings and conclusions of the Panel are entitled much respect and consideration. *Thompson*, 343 S.C. at 11, 539 S.E.2d at 401.

We agree with the Panel that Respondent committed misconduct with respect to the matters discussed above. While Respondent appeared and represented himself at the hearing before this Court, he took no exception to the Panel's findings. Accordingly, he is "deemed to have accepted the Panel's findings of fact, conclusions of law, and recommendations" as to these matters. *In re Prendergast*, 390 S.C. 395, 396 n.2, 702 S.E.2d 364, 365 n.2 (2010) (*citing* Rule 27(a), RLDE, Rule 413, SCACR, which states, "The failure of a party to file a brief taking exceptions to the report constitutes acceptance of the findings of fact, conclusions of law, and recommendations.").

Thus, we find Respondent violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.15 (Safekeeping Property); Rule 8.4(d) (Conduct involving Dishonesty, Fraud, Deceit or Misrepresentation), and Rule 8.4(e) (Conduct Prejudicial to the Administration of Justice); and Rule 417,SCACR (Financial Recordkeeping).

Respondent's misconduct, coupled with his failure to cooperate with or answer the ODC investigation, failure to appear before the Panel, and failure to provide any explanation for his lack of diligence in resolving this disciplinary matter, warrant disbarment from the practice of law.[6]

[6] Currently, Respondent is administratively suspended from the practice of law for failing to pay his bar dues and comply with Continuing Legal Education requirements.

This Court has recognized that "the primary purpose of disbarment . . . is the removal of an unfit person from the profession for the protection of the courts and the public, not punishment of the offending attorney." *In re Pennington*, 393 S.C. 300, 304, 713 S.E.2d 261, 263 (2011) (*citing In re Burr*, 267 S.C. 419, 423, 228 S.E.2d 678, 680 (1976)). Moreover, a central purpose of the disciplinary process is to protect the public from unscrupulous and indifferent lawyers. *In re Hall*, 333 S.C. 247, 251, 509 S.E.2d 266, 268 (1998). In *Hall*, this Court said:

> An attorney usually does not abandon a license to practice law without a fight. Those who do must understand that "neglecting to participate in a disciplinary proceeding is entitled to substantial weight in determining the sanction." An attorney's failure to answer charges or appear to defend or explain alleged misconduct indicates an obvious disinterest in the practice of law. Such an attorney is likely to face the most severe sanctions . . . .

333 S.C. at 251, 509 S.E.2d at 268 (quoting *Matter of Sifly*, 279 S.C. 113, 115, 302 S.E.2d 858, 859 (1983)) (alterations in original).

Not only did Respondent abandon his practice without proper closure, but he then failed to engage in these disciplinary proceedings, despite asking for numerous extensions of time. During oral arguments before this Court, he could not explain his indifference toward resolving this matter. Therefore, at that time, ODC took exception to the Panel's recommendation that Respondent be given 120 days to reconcile his trust accounts, and instead requested that the Court appoint a receiver to handle the reconciliation of his trust accounts and proper disbursement of the funds therein. We agree with ODC that Respondent has been given numerous opportunities to reconcile his accounts, and even though it is in his best interests to do so, he has not.[7] We find that the appointment of a receiver would best facilitate the closure of these accounts.

[7] Based on the limited records in the possession of ODC, most of the funds in these accounts appear to belong to Respondent.

CONCLUSION

Therefore, Respondent is disbarred. Respondent is further ordered to pay the costs of these proceedings within 60 days. Furthermore, a receiver shall be appointed by separate order to reconcile Respondent's files and accounts, pay restitution to any clients who were underpaid, or otherwise disperse funds from the accounts according their ownership. In the event that unidentified funds remain in the accounts, at the end of his appointment, the receiver will relinquish those funds to the Lawyers' Fund for Client Protection, until the claims period expires.

Within fifteen (15) days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30 of Rule 413, SCACR, and shall also surrender his Certificate of Admission to the Practice of Law to the Clerk of Court.

DISBARRED.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.