NO. COA08-1271

NORTH CAROLINA COURT OF APPEALS

Filed: 1 September 2009

VOLLER REALTY &
CONSTRUCTION, LTD.,
d/b/a MORRIS ROWLAND
CONSTRUCTION COMPANY,
Plaintiff,

v. Chatham County
No. 06 CVS 538

D.V. HOLDINGS, INC.
and TRIPP GARDENS, LLC,
Defendants.

Appeal by defendants from order and judgment entered 3 March 2008 by Judge Allen Baddour in Chatham County Superior Court. Heard in the Court of Appeals 6 April 2009.

Nelson Mullins Riley & Scarborough, LLP, by Frank A. Hirsch, Jr. and Joseph S. Dowdy; and Swanson, Martin & Bell, LLP, by P. Stephen Fardy, pro hac vice, for plaintiff-appellee.

Ortiz & Schick, PLLC, by John-Paul Schick and Melinda C. Hemphill, for defendant-appellants.

STEELMAN, Judge.

Because an unlicensed general contractor is not among the class of persons the Legislature intended to protect by the licensing requirements of N.C. Gen. Stat. § 87-1, and the enforcement of the subcontract will not result in any injury to the public, plaintiff, an unlicensed subcontractor, was not barred from bringing an action against defendants. Based upon the admissions

of defendants, the notice of claim of lien and the claim of lien were properly served and filed. The trial court failed to make findings of fact as to whether Tripp Gardens, LLC made payments to D.V. Holdings, Inc. following receipt of the notice of claim of lien and claim of lien, and this matter is remanded to the trial court for entry of such findings.

I. Factual and Procedural Background

In 2005, defendant Tripp Gardens, LLC purchased real estate for the development of a residential subdivision, known as "Tripp Cottages" located in Chatham County, North Carolina. D.V. Holdings, Inc. was the general contractor of this project. On 4 November 2005, Voller Realty & Construction, Ltd., d/b/a Morris Rowland Construction Company (plaintiff) entered into an agreement with D.V. Holdings, Inc. for the construction of water and storm sewer utilities, an erosion control fence, a retention pond, fine grading and asphalt, and a sidewalk, curb, and gutter on the property. The contract between plaintiff and D.V. Holdings, Inc. contained a provision, which stated: "In order to protect our interest in any billed amounts that are past due, a lien will be filed before the expiration of our lien rights, and may be filed any time an amount is past due." On 27 March 2006, plaintiff notified D.V. Holdings, Inc. that all of the construction had been completed and requested prompt payment of the balance of the contract price.

On 13 April 2006, Darvin Schroeder, the owner of D.V. Holdings, Inc., wrote plaintiff a letter expressing concern over

unfinished or incorrect work. However, plaintiff was not allowed to return to the property in order to remedy these purported deficiencies. Because D.V. Holdings, Inc. failed to provide plaintiff with payment on the agreed upon date in the contract, plaintiff filed a Notice of Claim of Lien as a subcontractor pursuant to N.C. Gen. Stat. § 44A-19 on 24 April 2006. Two days later, plaintiff filed the Claim of Lien.

On 19 July 2006, plaintiff filed a complaint against Tripp Gardens, LLC and D.V. Holdings, Inc. (collectively, defendants) alleging breach of contract and seeking enforcement of a lien upon the Tripp Cottages property. In December 2006, defendants posted bond in the amount of $308,000.00 with the Clerk of Superior Court of Chatham County and the lien was discharged. Plaintiff subsequently amended its complaint to include claims for fraudulent concealment and unjust enrichment. Defendants filed a motion to dismiss and an answer denying the material allegations of plaintiff's complaint.

On 3 March 2008, after a five-week bench trial, the trial court entered its order and judgment. Based upon eighty-four findings of fact, the trial court concluded that a valid contract existed between plaintiff and D.V. Holdings, Inc. and that D.V. Holdings, Inc. breached the contract by failing to pay plaintiff sums due under the contract. The trial court also concluded that plaintiff had breached the contract when it failed to complete the retention pond and the erosion control fence. Plaintiff was awarded $243,309.56 in damages, with defendants being jointly and

severally liable for that sum. D.V. Holdings, Inc. was awarded $5,375.00 for plaintiff's breach of contract and $20,000.00 as a set-off or credit for money paid to a subcontractor of plaintiff for "work properly done and contracted for under the scope of [p]laintiff's work." Plaintiff's claim for enforcement of the lien was allowed. The Chatham County Clerk of Court was ordered to preserve the $308,000.00 bond pending further orders from the court. Plaintiff's claims for fraudulent concealment as to each defendant were dismissed. Defendants appeal. Plaintiff also made cross-assignments of error.

II. Standard of Review

> It is well settled in this jurisdiction that when the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts. Findings of fact by the trial court in a non-jury trial have the force and effect of a jury verdict and are conclusive on appeal if there is evidence to support those findings. A trial court's conclusions of law, however, are reviewable *de novo*.

Shear v. Stevens Building Co., 107 N.C. App. 154, 160, 418 S.E.2d 841, 845 (1992) (internal citations omitted). "Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal." *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). At the outset, we note that defendants have failed to except to any of the findings of fact contained in the trial court's order. Thus, all of the trial court's findings are binding

on appeal and our review is limited to whether these findings support its conclusions of law.

III. N.C. Gen. Stat. § 87-1

In their first argument, defendants contend that the trial court erred by concluding that the parties to the action are not within the class of persons protected by N.C. Gen. Stat. § 87-1 and that no injury would arise by the enforcement of the contract. We disagree.

The relevant portion of N.C. Gen. Stat. § 87-1 (2005) provides:

> For the purpose of this Article any person or firm or corporation who for a fixed price, commission, fee, or wage, undertakes to bid upon or to construct or who undertakes to superintend or manage, on his own behalf or for any person, firm, or corporation that is not licensed as a general contractor pursuant to this Article, the construction of any building, highway, public utilities, grading or any improvement or structure where the cost of the undertaking is thirty thousand dollars ($ 30,000) or more, or undertakes to erect a North Carolina labeled manufactured modular building meeting the North Carolina State Building Code, shall be deemed to be a "general contractor" engaged in the business of general contracting in the State of North Carolina.

The purpose of N.C. Gen. Stat. § 87-1 "is to protect the public from incompetent builders. When, in disregard of such a protective statute, an unlicensed person contracts with an owner to erect a building costing more than the minimum sum specified in the statute, he may not recover for the owner's breach of that contract." *Builders Supply v. Midyette*, 274 N.C. 264, 270, 162 S.E.2d 507, 511 (1968) (citations omitted); *see also Brady v.*

Fulghum, 309 N.C. 580, 583, 308 S.E.2d 327, 330 (1983) ("Generally, contracts entered into by unlicensed construction contractors, in violation of a statute passed for the protection of the public, are unenforceable by the contractor." (citation omitted)), *superseded by statute on other grounds as stated in Hall v. Simmons*, 329 N.C. 779, 407 S.E.2d 816 (1991). This proposition is true even though it is not specifically set forth in the statute. *Builders Supply*, 274 N.C. at 270, 162 S.E.2d at 511.

In the instant case, it is undisputed that neither plaintiff nor D.V. Holdings, Inc. were licensed as general contractors in the State of North Carolina at the time the contract and amendment were signed.[1] Defendants argue that because plaintiff was not licensed pursuant to N.C. Gen. Stat. § 87-1, its action should be barred. Defendants' contention is misplaced.

In *Vogel v. Supply Co.*, 277 N.C. 119, 177 S.E.2d 273 (1970), our Supreme Court addressed the issue of whether an unlicensed

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[1]The trial court entered unchallenged findings of fact that plaintiff was the subcontractor and D.V. Holdings, Inc. was the general contractor on the Tripp Cottages project. Although N.C. Gen. Stat. § 87-1 only references "general contractor[s,]" our Supreme Court has held that subcontractors are also required to be licensed pursuant to that statute unless "the work in question is not the type of work referred to in section 87-1." *Baker Construction Co. v. Phillips*, 333 N.C. 441, 448, 426 S.E.2d 679, 683 (1993). In the instant case, plaintiff entered into a subcontract with D.V. Holdings, Inc. for, *inter alia*, the construction of water and sewer utilities. Such construction requires licensure under N.C. Gen. Stat. § 87-1. *See* N.C. Gen. Stat. § 87-10(b)(3) (2005) (providing that the certificate to engage as a general contractor may be limited to five classifications including public utilities contractors whose operations are the performance of construction work on water and sewer mains, water service lines, and house and building sewer lines).

general contractor who could not enforce its contract against the owner, was precluded from enforcing the subcontract or receiving damages for breach thereof against an unlicensed subcontractor. *Id.* at 133, 177 S.E.2d at 282. The Court answered in the negative and stated that "[t]his is true because [the subcontractor] is not among the class of persons the Legislature intended to protect by enactment of G.S. 87-1 *et seq.* The purpose of that enactment . . . is to 'protect the public from incompetent builders.'" *Id.* (quotation omitted). Our Supreme Court held that "[t]he licensing statues have no application to the rights and liabilities of contractors and subcontractors *inter se* where the public interest is not involved." *Id.* The Court reasoned that:

> The rule that contracts in contravention of public policy are not enforceable is based on the premise that no one can rightfully do "that which tends to injure the public or is detrimental to the public good." Even so, "if it definitely appears that enforcement of a contract will not be followed by injurious results, then, generally at least, what the parties have agreed to ought not to be struck down on the ground of public policy."

Id. at 133–34, 177 S.E.2d at 282 (internal quotations omitted). Because the Court found that "no injury to the public [was] apparent from enforcement of the subcontract between the parties to it[,]" the unlicensed general contractor was free to assert claims against the unlicensed subcontractor. *Id.* at 134, 177 S.E.2d at 282.

The reasoning and holding of *Vogel* is applicable to the instant case. Plaintiff is not precluded from bringing an action against the unlicensed general contractor, D.V. Holdings, Inc., in

this case because an unlicensed general contractor is "not among the class of persons the Legislature intended to protect by enactment of G.S. 87-1 *et seq*" and the enforcement of the contract will not result in any injury to the public. *Id.* at 133, 177 S.E.2d at 282; *see also In re Lake Providence Properties*, 168 B.R. 876, 880 (W.D.N.C. Bankr. 1994) ("[N.C. Gen. Stat. § 87-1] was intended to protect an otherwise unprotected public, not to provide an occasion for developers to obtain free general contracting services from unlicensed partners."), *aff'd*, 51 F.3d 267 (4th Cir. 1995). We further note that this Court has held that "no injury to the public, as contemplated by the licensing statutes, which will arise from the enforcement of a lien by a subcontractor where the lien arises out of a valid contract between an unlicensed general contractor and a property owner." *Zickgraf Enterprises, Inc. v. Yonce*, 63 N.C. App. 166, 168, 303 S.E.2d 852, 853–54 (1983).

Based upon the analyses in *Vogel* and *Zickgraf*, we hold the trial court properly concluded that the parties to the action are not within the class of persons protected by N.C. Gen. Stat. § 87-1 and that no injury would arise by the enforcement of the contract.

This argument is without merit.

IV. Enforcement of Lien

In their second argument, defendants contend the trial court erred in allowing plaintiff's claim for enforcement of lien on three alternative bases. We disagree in part and remand this matter to the trial court for further findings of fact in part.

"A lien in favor of a subcontractor may arise either directly under G.S. 44A-18 and G.S. 44A-20 or by subrogation under G.S. 44A-23." *Con Co. v. Wilson Acres Apts.*, 56 N.C. App. 661, 663, 289 S.E.2d 633, 635, *cert. denied*, 306 N.C. 382, 294 S.E.2d 206 (1982). N.C. Gen. Stat. § 44A-18 provides that a first tier subcontractor "shall be entitled to a lien upon funds that are owed to the contractor with whom the first tier subcontractor dealt and that arise out of the improvement on which the first tier subcontractor worked or furnished materials." N.C. Gen. Stat. § 44A-18(1) (2005). Liens obtained under N.C. Gen. Stat. § 44A-18 are perfected by giving notice in writing to the property owner as provided by N.C. Gen. Stat. § 44A-19 and are effective upon receipt by the owner. N.C. Gen. Stat. § 44A-18(6) (2005). Once the owner receives notice of the lien, the owner is under a duty to retain any funds subject to the lien. N.C. Gen. Stat. § 44A-20(a) (2005). When a subcontractor notifies the owner of a claim against the general contractor and the owner makes payment to the general contractor after such notification, the owner is liable to the subcontractor to the extent of the funds disbursed and the subcontractor may perfect a lien on the property being improved. N.C. Gen. Stat. § 44A-20(b) and (d) (2005).

The claim of lien upon real property is perfected when the lien claimant files the claim of lien pursuant to N.C. Gen. Stat. § 44A-12.

> The claim of lien on real property shall be in the form set out in G.S. 44A-12(c) and shall contain, in addition, a copy of the notice of claim of lien upon funds given pursuant to

> G.S. 44A-19 as an exhibit together with proof of service thereof by affidavit, and shall state the grounds the lien claimant has to believe that the [owner] is personally liable for the debt under subsection (b) of this section.

N.C. Gen. Stat. § 44A-20(d).

A lien on real property may also arise by subrogation when a subcontractor gives notice as provided in Article 2 of Chapter 44A. N.C. Gen. Stat. § 44A-23(a) (2005). However, "[b]ecause the subcontractor is entitled to a lien under G.S. 44A-23 only by way of subrogation, his lien rights are dependent upon the lien rights of the general contractor." *Mace v. Construction Corp.*, 48 N.C. App. 297, 303, 269 S.E.2d 191, 194–95 (1980) (citation omitted). The claim of lien on real property by subrogation is perfected

> as of the time set forth in G.S. 44A-10 upon filing of the claim of lien on real property pursuant to G.S. 44A-12. Upon the filing of the claim of lien on real property, with the notice of claim of lien upon funds attached, and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the subcontractor without his written consent.

N.C. Gen. Stat. § 44A-23(a).

In the instant case, the trial court concluded that:

> 18. The notice of claim of lien upon funds was properly made to the record owner, Tripp [Gardens, LLC], and to the contractor, [D.V. Holdings, Inc.], pursuant to N.C.G.S. Sect. 44A-19 as stated in Plaintiff's Notice of Claim of Lien filed April 24, 2006, in a form that substantially follows the form required in 44A-19(b).
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> 19. The lien was properly filed.

Defendants argue these conclusions are erroneous for three separate reasons. First, defendants argue the trial court failed to make sufficient findings to support the conclusion that the notice of claim of lien on funds was "properly made."[2] We first note that the trial court entered finding of fact number 74 pertaining to the notice of claim of lien filed by plaintiff, which states "Plaintiff filed a notice of claim of lien on the Tripp Gardens property on April 24, 2006 and a claim of lien on April 26, 2006, listing Tripp [Gardens, LLC] as the record owner of the property and [D.V. Holdings, Inc.] as the contractor with whom Plaintiff contracted to furnish labor and materials." Defendants have failed to challenge this finding and it is binding on appeal.

In their brief, defendants contend that there was no finding that the notice of claim of lien had been "perfected" or was "effective," *i.e.*, received, by appellants and argue that "[t]his [was] not surprising, as there [was] no evidence in the record that would support such findings." Contrary to this disingenuous assertion, defendants' own admissions in their pleadings show the notice of claim of lien had been received. In both defendants' original answer and answer to plaintiff's amended complaint, it was admitted that "on May 1, 2006, Tripp Gardens was served by certified mail to its registered agent a copy of [the notice of claim of lien and claim of lien]." It is well-established that

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[2]We note defendants do not present any argument in their brief challenging the second half of the trial court's conclusion that the Notice of Claim of Lien substantially complied with the form set forth in N.C. Gen. Stat. § 44A-19(b). We therefore do not address this issue.

"[a] party is bound by his pleadings and, unless withdrawn, amended, or otherwise altered, the allegations contained in all pleadings ordinarily are conclusive as against the pleader. *He cannot subsequently take a position contradictory to his pleadings*." *Davis v. Rigsby*, 261 N.C. 684, 686, 136 S.E.2d 33, 34 (1964) (citations omitted) (emphasis added). Further, "[t]he effect of a judicial admission is to establish the fact for the purposes of the case and to eliminate it entirely from the issues to be tried." *Rollins v. Miller Roofing Co.*, 55 N.C. App. 158, 162, 284 S.E.2d 697, 700 (1981) (citation omitted). Because unchallenged finding of fact number 74 establishes that plaintiff filed a notice of claim of lien and claim of lien, and defendants' own admissions establish that these documents were served on Tripp Gardens, LLC, the trial court's conclusion that the notice of claim of lien was "properly made" to the record owner was not erroneous. This argument is without merit.

Defendants next argue the claim of lien was not properly filed under N.C. Gen. Stat. §§ 44A-20(d) or -23. Defendants contend plaintiff failed to file a claim of lien on real property with any exhibits attached to it and that the claim of lien did not indicate why plaintiff thought it was entitled to a lien on the real property. At the outset, we note that:

> The materialman's lien statute is remedial in that it seeks to protect the interests of those who supply labor and materials that improve the value of the owner's property. A remedial statute must be construed broadly in the light of the evils sought to be eliminated, the remedies intended

> to be applied, and the objective to be attained.

O & M Indus. v. Smith Eng'r Co., 360 N.C. 263, 268, 624 S.E.2d 345, 348 (2006) (internal citations and quotation omitted). In the instant case, plaintiff filed a notice of claim of lien on 24 April 2006. The claim of lien on real property was filed two days later on 26 April 2006. The notice of claim of lien was not filed as an attachment to the claim of lien. In 2005, our General Assembly enacted the following provision to be effective 1 October 2005:

> Notices of claims of lien upon funds shall not be filed with the clerk of superior court and shall not be indexed, docketed, or recorded in any way as to affect title to any real property, except . . . :
>
> > (1) When the notice of claim of lien upon funds is attached to a claim of lien on real property filed pursuant to G.S. 44A-20(d) or G.S. 44A-23.

N.C. Gen. Stat. § 44A-19(e)(1) (2005). Both the notice and claim of lien were filed with the Chatham County Superior Court and defendants have admitted they were served with these documents. Our Supreme Court has recognized that there is a distinction between the entitlement and the perfection provisions in the materialman's lien statute and that "[m]ost courts hold that once entitlement to a lien has been established, statutory requirements concerning perfection must be liberally construed in favor of the lien claimant." *Contract Steel Sales, Inc. v. Freedom Construction Co.*, 321 N.C. 215, 222-23, 362 S.E.2d 547, 552 (1987) (citations omitted); *see also Con Co.*, 56 N.C. App. at 665, 289 S.E.2d at 636 (where the plaintiff notified the owner of a claim against the

contractor prior to payment by the owner to the contractor, but the notice was not properly given under N.C. Gen. Stat. § 44A-20 because the plaintiff filed the lien claim before giving actual notice to the owner, this Court stated "[w]e do not believe the fact that the lien claim was filed before the notice was actually served should make a difference."); *but see Cameron & Barkley Co. v. American Insurance Co.*, 112 N.C. App. 36, 44-45, 434 S.E.2d 632, 637 (1993) (holding that a notice of claim of lien was fatally defective because the second tier subcontractor failed to indicate who was the general contractor and properly "list[] all parties in the construction chain in descending order . . . thereby linking the owner of the property to the second tier subcontractor.").

Although we recognize that there was a minor procedural defect in the filing of the claim of lien, defendants were not prejudiced in any way merely because the notice of claim of lien was not filed as an attachment to the claim of lien. The specific requirements for the notice and the claim of lien affecting title to real property are

> intended to place 'the world' on notice of the claim. Such notice must clearly delineate the tiered relationships in which the claimant is involved. This is so the owner may understand how the lien has arisen, and also so a title-searcher may ascertain which entities are potential claimants and how each is connected to the real estate.

Cameron & Barkley Co., 112 N.C. App. at 45, 434 S.E.2d at 637. There is no question that the owner of the real estate was put on notice of the claim of lien and understood how the lien arose. The same reasoning applies to plaintiff's failure to state why it was

entitled to a lien on real property pursuant to N.C. Gen. Stat. § 44A-20(d). In defendants' answer it is admitted that plaintiff made repeated demands for payment on numerous occasions, which were denied based upon plaintiff's alleged failure to complete all of the work and to complete the work in a workmanlike manner. To hold that the claim of lien upon real property is invalidated by such a technical and minor defect, based upon the facts of the instant case, would be to construe the statute contrary to "the evils sought to be eliminated, the remedies intended to be applied, and the objective to be attained." *O & M Indus.*, 360 N.C. at 268, 624 S.E.2d at 348. This argument is without merit.

Under the provisions of Chapter 44A of the General Statutes, the lien of a first tier subcontractor becomes a lien on funds owed by the owner to the general contractor following service of the notice of claim of lien upon the owner. N.C. Gen. Stat. § 44A-18(6). If the owner makes disbursements to the general contractor following receipt of the notice of claim of lien and claim of lien without protecting the rights of the subcontractor, the lien attaches to the real property involved. N.C. Gen. Stat. § 44A-20(b) and (d). This Court has held that if no funds were due to the general contractor on the date of the receipt of the notice of claim of lien, "and no funds thereafter became due, no duty would be imposed upon the owners by G.S. 44A-20, and no lien upon the land could arise in plaintiff's favor." *Mace*, 48 N.C. App. at 305, 269 S.E.2d at 196 (citation omitted).

Under N.C. Gen. Stat. § 44A-23, a first tier subcontractor's right to a lien on real property by subrogation is dependent upon the lien rights of the general contractor. *Watson Elec. Constr. Co. v. Summit Cos.*, 160 N.C. App. 647, 650, 587 S.E.2d 87, 91 (2003). Because "[t]he general contractor can enforce the lien *only for the amount due on the contract*, . . . the subcontractor is similarly limited." *Id.* at 651, 587 S.E.2d at 91 (quoting *Vulcan Materials Co. v. Fowler Contracting Corp.*, 111 N.C. App. 919, 922, 433 S.E.2d 462, 464 (1993)) (emphasis added) (alterations omitted).

Defendants contend that there were no funds owed to D.V. Holdings, Inc. by Tripp Gardens, LLC and therefore no lien could attach to the real property. The trial court found that Tripp Gardens, LLC obtained a loan for the project and that it transferred these funds to D.V. Holdings, Inc. However, the order and judgment are devoid of any findings as to when disbursements were made by Tripp Gardens, LLC to D.V. Holdings, Inc. in relation to the service of the notice of claim of lien and claim of lien on Tripp Gardens, LLC.

Our review in this matter is hampered by the fact that the parties, for some unknown reason, elected not to provide this Court with a transcript of the proceedings in the trial court. Rather, they have sent this Court some 2000 pages of exhibits in a Rule 11(c) supplement to the record. Contained in this supplement are plaintiff's Exhibit 11 and defendants' Exhibit 85, which include applications for interim payments by D.V. Holdings, Inc. to the architect supervising the project. One application, dated 12 June

2006, for a payment of $110,621.00 is contained in both plaintiff's Exhibit 11 and defendants' Exhibit 85. Another application, dated 11 May 2006, for a payment of $204,415.00, is only found in plaintiff's Exhibit 11. Both of these applications were subsequent to the service of the notice and claim of lien. Each of these applications were approved.

Since the 12 June 2006 application was included in both plaintiff's and defendants' exhibits, there was no dispute over this document and we treat that as a stipulation that sums were due pursuant to that application. However, in order to support the claim of lien on real property (which transferred to the bond paid by Tripp Gardens, LLC) in the amount of $217,934.56 as found by the trial court, the amounts paid by Tripp Gardens, LLC to D.V. Holdings, Inc. must equal or surpass that amount.

Based on the record before us, there is no way to ascertain whether the 11 May 2006 application was stipulated to by the parties. It is not the role of the appellate courts to engage in fact-finding. *Godfrey v. Zoning Bd. of Adjustment*, 317 N.C. 51, 63, 344 S.E.2d 272, 279 (1986) ("Fact finding is not a function of our appellate courts."). We remand this matter to the trial court for additional findings of fact on the question of whether sums were due to D.V. Holdings, Inc. from Tripp Gardens, LLC under the 11 May 2006 application and approval after it received the notice of claim of lien and claim of lien, and whether such sums were in fact paid. As to the 12 June 2006 application, the trial court must enter additional findings of fact as to whether those sums

were in fact paid. In the unlikely event that this matter should return to the appellate courts, counsel are admonished to include either a transcript of the trial proceedings or a narrative of the proceedings as required by Rule 9(c) of the Rules of Appellate Procedure.

Defendants' remaining assignments of error are necessarily dependent upon whether plaintiff had a valid claim of lien on Tripp Gardens, LLC's real property in the amount of $217,934.56 and need not be discussed.

Plaintiff has failed to argue its cross-assignments of error, and therefore they are deemed abandoned. N.C.R. App. P. 28(b)(6) (2008).

AFFIRMED IN PART AND REMANDED IN PART.

Chief Judge MARTIN and Judge CALABRIA concur.

Publish per Rule 30(e).