

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO. 18-CP-10-3825

K-CON, INC.,

Plaintiff,

v.

KING STREET ENTERPRISES, LLC, and  
OHIO IMAGING ASSOCIATES, INC.,

Defendants.

FILED  
2019 SEP 23 PM 3:40  
JULIE J. ARMSTRONG  
CLERK OF COURT

**PLAINTIFF'S MEMORANDUM IN OPPOSITION  
TO MOTION FOR SUMMARY JUDGMENT  
BY DEFENDANT, KING STREET ENTERPRISES, LLC**

The Defendant, King Street Enterprises, LLC ("King Street"), contends that it is entitled to summary judgment, and should be completely dismissed from this case because it bonded off the mechanic's lien pursuant to SC Code § 29-5-110. King Street is not entitled to be dismissed from this case because there is a separate cause of action against it or unjust enrichment/quantum meruit, and there are disputed facts that preclude summary judgment.

This case involves a claim by the Plaintiff, K-Con, Inc. ("K-Con") against Ohio Imaging Associates, Inc. ("Ohio Imaging") and King Street relating to an up-fit at 484 King Street, Suite 205. King Street is the owner of the property, and Ohio Imaging is the lessee. With the knowledge and consent of King Street, Ohio Imaging contracted with K-Con to perform the work. Disputes arose and K-Con filed a Complaint alleging a cause of action against Ohio Imaging for breach contract. K-Con also filed a cause of action against King Street for foreclosure under the mechanic's lien statute, SC Code § 29-5-10, and for unjust enrichment/quantum meruit. King Street bonded off the lien pursuant to SC Code § 29-5-110, and K-Con filed a motion to amend to

substitute the bond for the property. King Street refused to agree to the amendment unless K-Con agreed to completely dismiss King Street from the lawsuit, including dismissing the claim for unjust enrichment/quantum meruit.

**1. There are Disputed Issues of Material Fact.**

Plaintiff served King Street with Requests for Admissions. (Attachment 1). Request No.

4 stated:

Admit or deny that King Street Enterprises, LLC has received a benefit from the improvements to the premises that is the subject matter of this litigation as a result of the work performed by K-Con.

King Street responded:

Denied in part. KSE is the owner of the building, had no contract with Plaintiff and a vast majority of the commercial upfit benefits (less detriments) were conferred to tenant, not to KSE. **To the extent there was a benefit conferred on KSE, it would be limited to one of the water heaters (non-malfunctioning).** (emphasis added).

King Street's acknowledgement that there may have been some benefit established a disputed issue of material fact that precludes summary judgment.

**2. The Claim On The Bond And The Claim For Unjust Enrichment/Quantum Meruit May Co-Exist.**

King Street apparently contends that since it bonded off the lien, the claim for unjust enrichment/quantum meruit is precluded as a matter of law. The argument is not supported by any case law or statute. Claims for foreclosure under the Mechanics' Lien statute and claims for unjust enrichment/quantum meruit are routinely filed in the same complaint. *See, e.g., Utilities Const. Co. v. Wilson*, 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996)(Owner of property who successfully defended electrical contractor's effort to enforce mechanics' lien was prevailing party in mechanics' lien cause of action and, thus, was entitled to attorney fees under mechanics' lien statute despite fact that electrical contractor prevailed in claims for breach of contract and unjust

enrichment. Code 1976, § 29–5–10); Butler Contracting, Inc. v. Court St., LLC, 369 S.C. 121, 631 S.E.2d 252 (2006); Cape Romain Contractors, Inc. v. Wando E., LLC, 405 S.C. 115, 747 S.E.2d 461 (2013); Rose Elec., Inc. v. Cooler Erectors of Atlanta, Inc., 418 S.C. 424, 433, 794 S.E.2d 382, 387 (Ct. App. 2016).

The fact that the lien is bonded off makes no difference. “The effect of a bond under section 29–5–110 is that the debt owed to the respondents would be paid out of the bond—and it would not be necessary to proceed with the actual sale of the property at a foreclosure sale. **However, a section 29–5–110 bond has no effect on the law that applies.**” (emphasis added). Moorhead Const., Inc. v. Enter. Bank of S.C., 410 S.C. 386, 391, 765 S.E.2d 1, 3 (Ct. App. 2014). When a bond is filed, the bond simply takes the place of the property and no foreclosure action is required. “If such an undertaking is filed, the lien on the property is discharged and the cash, securities or surety bond take the place of the property and are subject to the lien. [internal cite omitted]. This ‘bonding out’ procedure permits the owner to convey or encumber the property free and clear of the mechanic’s lien.” Shelley Const. Co. v. Sea Garden Homes, Inc., 287 S.C. 24, 27, 336 S.E.2d 488, 490 (Ct. App. 1985).


At best, this is an election of remedies issue. It “is within a trial judge's discretion to decide when it is appropriate to require a party to elect his remedy.” Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 331, 368 S.E.2d 462, 464 (1988).

For the foregoing reasons, K-Con requests that the motion for summary judgment by King Street Enterprises, LLC be denied.

[SIGNATURE ON NEXT PAGE}

Respectfully submitted,

PEDERSEN & SCOTT, P.C.

A handwritten signature in black ink, appearing to read "William A. Scott", is written over a horizontal line.

William A. Scott  
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Charleston, SC 29407  
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Email: [bscott@pslawpc.com](mailto:bscott@pslawpc.com)

ATTORNEY FOR PLAINTIFF

Dated this 19th day of September, 2019

**ATTACHMENT 1**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-3825
	)	
K-CON, INC.,	)	
	)	
Plaintiff,	)	
	)	<b><u>KING STREET ENTERPRISES LLC'S</u></b>
vs.	)	<b><u>ANSWERS TO K-CON, INC.'S</u></b>
	)	<b><u>REQUESTS FOR ADMISSIONS</u></b>
	)	
	)	
KING STREET ENTERPRISES, LLC	)	
and OHIO IMAGING ASSOCIATES INC.	)	
	)	
	)	
Defendants.	)	
	)	

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Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Defendant King Street Enterprises, LLC hereby serves this their Answers to Plaintiff's First Set of Requests for Admission, served on or about October 9, 2018 to Defendant King Street Enterprises, LLC as follows:

**Answers**

1. Admit or deny that King Street Enterprises, LLC knew that Ohio Imaging Associates, Inc. was having work performed on the premises that is the subject matter of this litigation.

Answer:     **Admit.**

2. Admit or deny that King Street Enterprises, LLC authorized Ohio Imaging Associates, Inc. to have work performed on the premises that is the subject matter of this litigation.

Answer:     **Admit.**

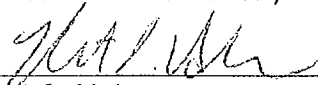
3. Admit or deny that King Street Enterprises, LLC is the owner of the premises that is the subject matter of this litigation

Answer: Admit.

4. Admit or deny that King Street Enterprises, LLC has received a benefit from the improvements to the to the premises that is the subject matter of this litigation as a result of the work performed by K-Con.

Answer: Denied in part. KSE is the owner of the building, had no contract with Plaintiff and a vast majority of the commercial upfit benefits (less detriments) were conferred to tenant, not to KSE. To the extent there was a benefit conferred to KSE, it would be limited to one of the water heaters (non-malfunctioning).

Brent Souther Halversen, LLC

By: 

Brent S. Halversen  
751 Johnnie Dodds Blvd., Suite 200  
Mount Pleasant, SC 29464  
T: 843-284-5790  
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11/8, 2018.  
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

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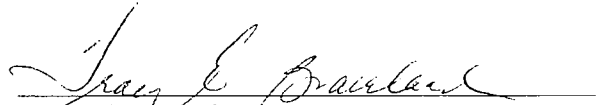
Defendants.

**CERTIFICATE OF SERVICE**

FILED  
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JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

The undersigned paralegal at Pedersen & Scott, P.C., hereby certifies that a copy of the **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT BY DEFENDANT, KING STREET ENTERPRISES, LLC** in the above-captioned matter has been emailed and placed in an envelope, and addressed and mailed via U.S. Mail to:

Brent Halversen, Esq.  
Brent Souther Halversen, LLC  
751 Johnnie Dodds Blvd., Suite 200  
Mount Pleasant, SC 29464

  
Tracy E. Braceland  
Paralegal

Dated this 19th day of September, 2019



**PEDERSEN & SCOTT, P.C.**  
ATTORNEYS AT LAW

P 843-556-5656  
F 843-556-5635  
bscott@pslawpc.com

September 19, 2019

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401

RE: K-Con, Inc. v. King Street Enterprises, LLC and Ohio Imaging Associates, Inc.  
C.A. No. 2018-CP-10-3825

Dear Ms. Armstrong:

Enclosed please find the original and one copy of *Plaintiff's Memorandum in Opposition to Motion for Summary Judgment by Defendant, King Street Enterprises, LLC* in this matter. A courtesy copy has been provided to Judge Jefferson in advance of the hearing scheduled on September 25, 2019.

Kindly date stamp the copy provided and return to us in the enclosed return addressed stamped envelope.

If you have any questions, please do not hesitate to contact me.

With regards,



William A. Scott

WAS/teb

Enclosure

cc: K-Con, Inc. (w/enc.)  
Brent S. Halversen, Esq. (w/enc.)