

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

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

Elite Construction, Inc., Respondent,

v.

Doris E. Tummillo and Georgia Bank and Trust
Company of Augusta, Defendants,

Of Whom Doris E. Tummillo is the Appellant,

And

Georgia Bank and Trust Company of Augusta is the
Respondent.

Appellate Case No. 2013-001624

Appeal From Aiken County
James Martin Harvey, Jr., Special Referee

Unpublished Opinion No. 2015-UP-351
Heard June 2, 2015 – Filed July 15, 2015

AFFIRMED

Neal W. Dickert and Paul K. Simons, both of Hull
Barrett, PC, of Augusta, Georgia; and T. Paul

Timmerman, of Braithwaite Law Firm, of Aiken, for Appellant Doris E. Tummillo.

Clarke W. McCants, III, of Nance, McCants & Massey, of Aiken, for Respondent Elite Construction, Inc.; and James S. Murray, of Warlick Stebbins Murray & Chew, LLP, of Augusta, Georgia, for Respondent Georgia Bank and Trust Company of Augusta.

PER CURIAM: In this action for breach of contract and foreclosure of a mechanic's lien, Doris Tummillo argues the special referee erred in awarding judgment to Elite Construction. Specifically, Tummillo contends the special referee erred in: (1) finding the parties' contract was unambiguous; (2) refusing to reduce Elite's recovery; (3) finding time was not of the essence in the contract; and (4) awarding Elite attorney's fees. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the special referee erred in (1) finding the parties' contract was unambiguous; (2) refusing to reduce Elite's recovery; and (3) finding time was not of the essence in the contract: *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 127, 631 S.E.2d 252, 255 (2006) (holding the foreclosure of a mechanics' lien is an action at law); *id.* at 127, 631 S.E.2d at 255-56 (holding in an action at law, tried without a jury, an appellate court will not disturb the trial court's findings of fact unless they are wholly unsupported by the evidence or unless it clearly appears the findings are controlled by an error of law); *Sheek v. Crimestoppers Alarm Sys.*, 297 S.C. 375, 377, 377 S.E.2d 132, 133 (Ct. App. 1989) (holding questions regarding credibility and the weight of the evidence are exclusively for the trial court).

2. As to whether the special referee erred in awarding Elite attorney's fees: S.C. Code Ann. § 29-5-10(a) (2007) ("The costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party."); S.C. Code Ann. § 29-5-10(b) (2007) ("For purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action The party whose offer is closer to the verdict reached is considered the prevailing party in the action. If the difference between both offers and the verdict is equal, neither party is considered to be the prevailing party for purposes of determining the award of costs and

attorney's fees. If the plaintiff makes no written offer of settlement, the amount prayed for in his complaint is considered to be his final offer of settlement. If the defendant makes no written offer of settlement, the value of his counterclaim is considered to be his negative offer of settlement.").

AFFIRMED.

SHORT, LOCKEMY, and McDONALD, JJ., concur.