

COURT OF APPEALS OF SOUTH CAROLINA

Montgomery Holdings, LLC d/b/a IBI Builders v. Christopher J. Merlo and Grandsouth Bank; Christopher J. Merlo v. Gregory K. Grissinger, Jr. and John Montgomery

Montgomery Holdings · No. 2022-001189 · Decided February 11, 2026

SUMMARY

The South Carolina Court of Appeals affirmed a master-in-equity judgment awarding Montgomery Holdings, LLC \$402,861.66 and ordering foreclosure and sale of property in a dispute arising from the construction of a custom home. The court rejected challenges concerning breach of contract, consideration for a guaranty, construction defects, change-order charges, negligence, fiduciary duty, and the effect of satisfying the judgment during the appeal. The court also held that several appellate arguments were abandoned or unpreserved.

CASE DETAILS

COURT	Court of Appeals of South Carolina
WRITING FOR THE COURT	KONDUROS, J.; GEATHERS, J.; VINSON, J.
JURISDICTION	South Carolina Court of Appeals
DECIDED	February 11, 2026
DOCKET	2022-001189
DISPOSITION	affirmed
PROCEDURAL POSTURE	Merlo appealed from the master-in-equity's judgment after a four-day bench trial awarding IBI \$402,861.66 on its breach-of-contract and mechanic's-lien foreclosure claims, ordering sale of the property, rejecting Merlo's counterclaims and third-party claims, and denying Merlo's motion to alter or amend.
STANDARD OF REVIEW	For directed-verdict rulings, the court applies the same standard as the trial court, viewing the evidence in the light most favorable to the nonmoving party and denying the motion if the evidence yields more than one inference or the inference is in doubt; credibility conflicts may not be resolved. Questions of law are reviewed de novo. In a law action tried without a jury, factual findings will not be disturbed unless unsupported by evidence reasonably supporting them. Abandoned issues are not considered on appeal.

PRECEDENTIAL VALUE	published
PARTIES	Christopher J. Merlo v. Montgomery Holdings, LLC d/b/a IBI Builders, Gregory K. Grissinger, Jr., John Montgomery

TOPICS

construction defects construction law breach of contract mechanics liens appellate procedure

PRACTICE AREAS

construction law contracts real estate appellate procedure commercial litigation

QUESTIONS PRESENTED

1. Whether Merlo's payment and satisfaction of the judgment waived, mooted, or otherwise barred his appeal.
2. Whether the master erred in denying Merlo's motions for directed verdict on his breach-of-contract claims based on the basement ceiling height, alleged deviations from the plans, and lack of consideration for the guaranty.
3. Whether the absence of specific invoices for certain add-ons and overages required directed verdicts on Merlo's negligence, fraud, negligent-misrepresentation, SCUTPA, and breach-of-fiduciary-duty claims.
4. Whether IBI breached the construction contract by failing to build according to the plans, including issues involving basement height, driveway and boulder-wall encroachments, and a retaining wall.
5. Whether the master erred in rejecting Merlo's negligence, fiduciary-duty, change-order, judicial-notice, and damages arguments.
6. Whether the master's factual findings were supported by evidence.

HOLDINGS

1. Payment and satisfaction of a judgment do not automatically waive the right to appeal, moot the controversy, or estop the appellant absent circumstances showing a compromise or agreement to end the litigation and provided restitution could be enforced if the judgment were reversed.
2. Merlo was not entitled to judgment on his breach-of-contract claim because the evidence did not clearly establish that the basement height or other challenged construction differed from the plans, Merlo had acquiesced to or participated in certain changes, and he failed to prove resulting damages.
3. The guaranty was supported by new consideration because IBI agreed to forbear immediate collection of contractually due add-ons and overages and to carry them on the balance sheet until completion of the project.
4. The absence of specific invoices for identified add-ons and overages did not require directed verdicts for Merlo because testimony and balance-sheet evidence provided a sufficient basis for the charges, and Merlo did not present contrary evidence or establish what the charges should have been.

5. A directed verdict must be denied when the evidence permits more than one reasonable inference or the inference is doubtful, and appellate courts may not resolve credibility conflicts; factual findings in a nonjury law action are affirmed when reasonably supported by evidence.
6. Issues supported only by conclusory assertions without factual argument or authority are abandoned, and a party may not argue one evidentiary or procedural ground at trial and an alternative ground on appeal.

KEY QUOTATIONS

“A payment of a judgment is not necessarily a bar to appeal.”

“The usual rule in the federal courts is that payment of a judgment does not foreclose an appeal.”

“When reviewing the trial court's ruling on a motion for a directed verdict, we must employ the same standard as the trial court—that is, we must consider the evidence in the light most favorable to the non-moving party.”

“When considering a motion for a directed verdict, neither the appellate court nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony and evidence.”

FACTUAL BACKGROUND

IBI agreed to construct Merlo's custom home under a written contract for \$625,000 plus change orders and allowance overages. In May 2019, IBI agreed to defer collection of certain overages and carry them on a balance sheet in exchange for Merlo's guaranty acknowledging the amounts owed and promising payment before move-in or a certificate-of-occupancy request. After IBI requested payment as construction neared completion, Merlo terminated the contract, asserting that the home remained unfinished and required extensive rework. IBI filed a mechanic's lien and related claims, and the master found Merlo had breached first while IBI had substantially performed, awarding IBI \$402,861.66 and ordering a foreclosure sale.

PROCEDURAL HISTORY

IBI sued Merlo to foreclose a mechanic's lien and recover for breach of contract, unjust enrichment, and quantum meruit. Merlo counterclaimed against IBI and filed a third-party action against IBI's principals, Grissinger and Montgomery. The consolidated actions were referred to the Oconee County master-in-equity, who entered judgment for IBI after a bench trial and granted directed verdicts on several of Merlo's claims. Merlo appealed; while the appeal was pending, the judgment was satisfied and the scheduled foreclosure sale was canceled. The Court of Appeals rejected IBI's arguments that payment waived or mooted the appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- Chase Home Fin., LLC v. Risher, 405 S.C. 202, 213, 746 S.E.2d 471, 477 (Ct. App. 2013)
- Gadsden v. Fripp, 330 F.2d 545, 548 (4th Cir. 1964)

- Woodson v. Chamberlain, 317 F.2d 245, 246 (4th Cir. 1963)
- Dakota Cnty. v. Glidden, 113 U.S. 222, 224 (1885)
- Fickling v. City of Charleston, 372 S.C. 597, 603, 643 S.E.2d 110, 113-14 (Ct. App. 2007)
- Branche Builders, Inc. v. Coggins, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009)
- McPeters v. Yeargin Const. Co., 290 S.C. 327, 331, 350 S.E.2d 208, 211 (Ct. App. 1986)
- AMA Mgmt. Corp. v. Strasburger, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992)
- RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012)
- Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)
- Sorin Equip. Co. v. The Firm, Inc., 323 S.C. 359, 365, 474 S.E.2d 819, 823 (Ct. App. 1996)
- Anderson v. S.C. Dep't of Highways & Pub. Transp., 322 S.C. 417, 420 n.1, 472 S.E.2d 253, 255 n.1 (1996)
- Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n, 426 S.C. 97, 102, 825 S.E.2d 721, 724 (Ct. App. 2019)
- Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001)
- Steele v. Victory Sav. Bank, 295 S.C. 290, 293, 368 S.E.2d 91, 93 (Ct. App. 1988)
- O'Shea v. Lesser, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992)
- State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003)
- Knox v. Bogan, 322 S.C. 64, 66, 472 S.E.2d 43, 45 (Ct. App. 1996)
- State v. Blackwell, 420 S.C. 127, 140, 801 S.E.2d 713, 720 (2017)

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