ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CONSOLIDATED CASE NO.: 2018-CP-10-04724
RICHARD A. SISCO and DEBORAH L. SISCO,	)	
Plaintiffs,	)	
v.	)	
IMPERIAL DOCKS BY DESIGN, INC.,	)	
Defendant.	)	**FINAL ORDER**
STATE OF SOUTH CAROLINA	)	
COUNTY OF CHARLESTON	)	
Imperial Docks By Design, Inc. (License No. 110182),	)	
Plaintiff,	)	
v.	)	
Richard A. Sisco and JPMORGAN CHASE BANK, N.A.,	)	
Defendants.	)	

RECEIVED
Aug 30 2022
SC Court of Appeals

This consolidated action comes before the Court following a non-jury trial on July 27 and 28, 2021. Over the course of the two-day trial, five witnesses testified, and various exhibits, including a 315-page stipulated exhibit consisting of emails, letters, and other documents, were admitted as evidence. Upon consideration of the issues presented by the parties, the documents presented, and the credibility of the testifying witnesses, the Court issues the following findings of fact and conclusions of law pursuant to Rule 52, SCRCP.

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

Factual Background and Triable Issues

This case arises from a contract to build a dock on the Charleston Harbor. Richard and Deborah Sisco ("Sisco") signed a contract with Imperial Docks By Design, Inc. ("Imperial Docks") on November 3, 2017. There is no dispute that the Siscos agreed to pay $79,580.00 for the demolition of their existing dock, which was severely damaged by Hurricane Irma in September 2017, and the construction of a new dock that incorporated a material known as "hog slats."[1]

The pertinent provisions in the signed, written agreement (the "Contract") relevant to this dispute are as follows:

A. The Contract provided for payment in five installments:

   i. 22.5% prior to jobsite mobilization and for acquisition of all hog slats;

   ii. 22.5% upon demolition and completion of 150' of walkway piles;

   iii. 22.5% upon completion of 280' of walkway piles;

   iv. 22.5% upon completion of the walkway; and

   v. 10% upon completion of the entire project.

B. The Contract stated Imperial Docks would build a dock "using 4"x3'x10' concrete hog slats by customer provided specifications" and referred to a "Figure 1" drawing attached to the contract. The Contract further stated that a "12 ft x 24 ft" pierhead would use the same specifications as the walkway, including "hog slat[s] and same size pilings & hardware."

[1] Hog slats are prefabricated concrete slabs originally designed for use in hog farming and have been repurposed for use in marine environments.

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

C. The Contract contained a provision that stated, "Estimated Duration: 10 weeks (weather permitting) under a (1) one shift per day (8) eight hours per shift (5) five days per week shift arrangement." A handwritten sentence was added, stating, "Imperial [D]ocks to have their #1 crew and supervisor at all times (Barge Crew)."

D. The Contract stated the Siscos were responsible for:

   i. "Procurement of any & all permits required for the work to be performed" and

   ii. "Ensur[ing] uninterrupted access to the work area for the duration of the project."

E. The Contract contained additional notes stating:

   i. "Construction of the dock to be consistent with Fig 1 (attached)"; and

   ii. "Access to either the community boat-landing or the neighboring property will be provided for material acquisition and removal of demolish debris."

F. The Contract stated that the written agreement, including the attached "drawings, plans and exhibits . . . incorporated herein by reference" and the Selling Policy "set forth the entire agreement between the parties." Similar language is also included in the Selling Policy portion of the Contract.

G. In the attached Selling Policy, under the heading "Terms of Payment," the Contract reads, "Time is of the essence in the Agreement. If payments are not made when due, Imperial Docks may suspend all further construction work hereunder."

H. The Selling Policy also includes the following paragraph under the heading "Force Majeure":

> Imperial Docks will not be liable for failure to perform any obligation or delay in performance resulting from or contributed to by any cause beyond

the control of Imperial Docks or its suppliers or from any act of God, act of civil or military authority, act of war, act (including delay, failure to act, or priority) of any governmental authority or Purchaser, civil disturbance, riot, sabotage, fire, inclement weather conditions, earthquake, flood, strike, work stoppage or other labor difficulty, major equipment breakdown or delay or accident in shipping or transportation.

I. Finally, the Selling Policy, which disclaims "the warranties of merchantability and fitness for a particular purpose and all warranties arising from course or dealing or usage of trade," expressly warrants that the dock "will be free of defects in workmanship and materials" for three years "from the date of completion of the scope of work specified."

On or about April 10, 2018, after a dispute between the parties over payment and the condition of the hog slat material, Imperial Docks ceased performing pursuant to the Contract, and the cause and effect of non-performance is now before this Court. Ultimately, the Siscos hired another contractor, Blutide Marine Construction ("Blutide Marine") to complete the project.

Imperial Docks recorded a notice of a mechanic's lien for $14,050.50 on July 5, 2018, and promptly served it upon Richard Sisco. The Siscos filed an action for breach of contract on October 1, 2018. On October 5, 2018, Imperial Docks filed its own action for breach of contract, quantum meruit, and to enforce its previously filed mechanic's lien. The actions were consolidated on November 1, 2019, and referred to this Court.

In their pleadings, each party claims the opposing party breached the contract. The Siscos assert that Imperial Docks breached the contract in several ways: (i) failing to perform the contract within the Contract's estimated duration; (ii) using smooth-cut timbers instead of rough-cut timbers; (iii) using hex bolts instead of timber bolts; (iv) countersinking the bolts; (v) installing damaged hog slats; and (vi) negligently designing the pierhead. The Siscos allege damages greater than $50,000.00. Imperial Docks, on the other hand, asserts that the Siscos breached the contract

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

when Richard ordered Jason Jones, Imperial Docks' owner, to demobilize the work site and "stay off [his] property" and refused to allow Imperial Docks to complete the dock unless it performed additional actions that were not part of the contract. Imperial Docks demanded that the Siscos pay the $14,050.50 invoice representing the work performed through and resulting from the Siscos decision to not allow Imperial Docks to complete the project. The parties conducted extensive discovery in preparation for the two-day trial held on July 27 and 28, 2021.

Witnesses

The Siscos presented three witnesses in their case in chief: Deborah Sisco; Karl Rakes, the owner of Blutide Marine; and Roddy Altine (by deposition), an employee of Blutide Marine who oversaw the Sisco project's completion. Imperial Docks presented two witnesses in its case in chief: Jason Jones and Richard Sisco. The Court's credibility findings are incorporated in the below Findings of Fact to the extent that the Court finds certain testimony relating to a disputed fact either credible or not.

Findings of Fact

1. The scope of the Contract included a walkway, a pierhead, and an aluminum gangway. Steps were not included in the scope of the Contract. While Deborah Sisco testified she believed the steps were part of the Contract since they were part of their existing dock, nothing in the itemized scope of the Contract, which incorporated a "Figure 1" drawing and listed other items like the aluminum gangway, supports the existence of any agreement to include steps. An earlier proposal included a roof, which the existing dock also had, but the Siscos did not want a roof in the Contract they ultimately signed on November 3, 2017.

2. Jason Jones never agreed to provide the Siscos an opinion regarding the quality of work performed by James "Jimmy" Abbott, the Siscos' prior contractor who performed work on

the seawall. After the Contract was signed, the Siscos followed up by email with Jones regarding various items they forgot, stating they "would also appreciate it if you send us a letter outlining the deficiencies you observed on our sea wall." (Sisco was in litigation with Abbott over previous work on this site.) Jones never responded affirmatively to the request, and he further testified he never agreed to write anything about the quality of Abbott's work. Jones did agree to provide a statement of work that he performed; however, that was not sufficient for the Siscos. The Court finds further support in the consistency of this testimony as Karl Rakes, the Siscos subsequent dock builder, declined to write anything about Imperial Docks' work. Jones testified that he is "morally" against criticizing another dock builder's work.

3. In addition to performing work on the Siscos' seawall, Abbott constructed a dock for the Siscos' neighbor, incorporating the hog slat material. The Siscos inquired about Abbott building a similar dock for them, and Abbott provided them with a drawing which was ultimately incorporated into the Contract with Imperial Docks as Figure 1.

4. On October 31, 2017, Jones stated that he "would be willing to credit $1,600 for each referral based, signed contract."

5. On or about November 20, 2017, Imperial Docks mobilized its equipment to the Sisco work site and began demolishing the Siscos' existing dock. Imperial Docks received delivery of the first set of new piles on or about December 7, 2017 and began installation of those piles soon thereafter.

6. Imperial Docks installed at least sixty-six 10" butt piles ranging in lengths from 20 feet to 30 feet. Over the 280-foot walkway, one section of piling was slightly shorter than the 10-foot span needed to accommodate a 10' hog slat. Jones believed that the short section could be addressed by cutting several inches off a hog slat to fit the section; however, Jones was not

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

provided an opportunity to attempt this after April 10, 2018. Further, while Jones envisioned a pierhead design that incorporated a hog slat length that did not exist, he ultimately designed and installed a piling layout for the pierhead that would accommodate a 10' hog slat and provide flexibility to construct both a 10'x20' pierhead and a 12'x24' pierhead. Jones and Imperial Docks were not given the opportunity to frame and finish the pierhead.

7. The Siscos were permitted by the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management to build only a 10'x20' pierhead and not the 12'x24' pierhead that they asked Imperial Docks to build as the Contract specified. According to the Contract, the Siscos were responsible for procuring any permits and they did not obtain a permit for a 12'x24' pierhead. Ultimately, Blutide Marine constructed the 10'x20' pierhead, replacing the piles because of the existing permit and because Altine had a different method of building the pierhead than Jones did.

8. Imperial Docks installed headers between the walkway piles using 18" "hex" bolts rather than the 18" "timber" bolts shown in the Figure 1 drawing. Timber bolts are a bolt with a wide head and do not require a washer. Because 10" butt piles were used instead of 8" butt piles, some of the 18" hex bolts were "countersunk," meaning a portion of the lumber was bored out to accommodate the bolt. Later, at the suggestion of Richard Sisco, Imperial Docks incorporated longer hex bolts and washers to extend the bolt ends and make them flush with the lumber surface. Sisco never demanded that Imperial Docks replace any lumber or hex bolts with timber bolts. Further, there was no evidence presented to suggest that the structural integrity of the headers was impaired or to suggest there is any structural difference between hex bolts with washers and timber bolts. Figure 1 was Abbott's (the prior dock builder) design, not the design of an engineer.

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

9. Hex bolts were used to fasten only the headers because Imperial Docks was unable to secure the timbers and hog slats before it was asked to stop work on April 10, 2018. Those hex bolts were never replaced. Further, Imperial Docks intended to use custom bolts with flat heads to secure the hog slats and timbers, although there was no opportunity to present this option to the Siscos before Imperial Docks was told to stop work on April 10, 2018. Imperial Docks subtracted the cost of these bolts from its final invoice.

10. Imperial Docks installed smooth-cut timbers rather than the rough-cut timbers shown in the Figure 1 drawing. Jones testified that he did not appreciate Figure 1's incorporation of rough-cut timbers, believing that the smooth-cut material was better suited for dock walkways because it was a better product and did not splinter. To the extent the timbers were not flush with the hog slats, Jones planned to shim the material with stainless steel washers or another durable material, a standard practice in dock building. Blutide Marine replaced the timbers entirely with rough-cut timbers at a significant cost despite the Siscos' initial request that he keep the timbers and use shims, as Jones suggested to them. Rakes testified that he "did not have to" replace the timbers but stated it was a requirement if he was going to perform the work. Notably, Altine testified that shims were an acceptable and widely-used practice in dock building, and the evidence shows that even Blutide Marine used shims on the Siscos' dock.

11. Imperial Docks experienced various delays in performing the Contract that were beyond its control.

a. The Contract included an agreement to use two locations for "material acquisition and removal of demolished debris" during the project because use of the Siscos' yard was not feasible. However, one location, the next-door neighbor's backyard, was quickly eliminated as on option when the neighbor rescinded her permission at the

beginning of the project. The other stipulated location, the James Island Yacht Club, was used as a staging location for the demolition and pile work until access was denied there as well. The evidence shows that certain grading work was being performed at the yacht club during the Sisco project (February 2018), and Jones testified about his concern in ordering the hog slat material without an appropriate staging location—this concern was supported by communications with the Siscos early in the project. While there was some dispute about why access for Imperial Docks was ultimately denied, the staging location for the hog slats—a neighbor's yard two doors down from the Siscos—was not procured until mid-March, allowing for delivery of the hog slats on or about March 20, 2018.

b. On several occasions, Richard ordered work to be stopped or ordered Jones not to continue work until they could discuss matters. Jones testified that this occurred numerous times, and the communications between the parties, as well as Richard Siscos' conduct relating to Blutide Marine's subsequent work, supports Jones's testimony. Emails and testimony support the fact that work stoppages occurred on December 17, 2017, January 14, 2018, February 20, 2018, April 8, 2018, and finally, on April 10, 2018, when Imperial Docks was last ordered to demobilize and leave the property. Further, Jones testified that he ultimately agreed to install steps at no charge because Richard threatened to terminate the Contract in early April 2018. Even Richard recognized that he contributed to project delays in an April 11, 2018 email to Jones, stating, "Let's not bicker over who has stopped the work and how many times, neither of us are blameless." Finally, Imperial Docks' (particularly Jones's) work was regularly interrupted by long and unscheduled face-to-face meetings called by Sisco.

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

c. Weather events—including winds, tides, and waves—caused significant delays. Jones testified that the area of the Charleston Harbor where the Siscos' dock sits is shallow and beach-like at low tide, and the pile driving took longer than anticipated because the crew would have to wait for appropriate conditions to perform the precise pile-driving work from the barge. Annotations in the barge crew's daily log support this fact, and Jones testified that Imperial Docks' barge crew maintained a practice of notifying the Siscos when these conditions affected the work. Imperial Docks also experienced unusual weather conditions during this period, including a major snowstorm in January 2018. While there were emails from the Siscos complaining about workers not being on the site during the framing stage when they felt the weather was appropriate, Jones testified that he had workers assigned to the project, and timecard records from mid-February to early April support this testimony.

d. Finally, Imperial Docks encountered various mechanical issues with its barge which was necessary to drive the piles. Both Jones and Deborah Sisco testified about these equipment issues.

12. The hog slats were delivered on or about March 20, 2018. On the first day Imperial Docks worked on installing them, it installed eight of the twenty-eight hog slats intended for the walkway. On April 6, 2018, Jones stated in an email that, "[b]y the end of next week, we should have the walkway complete." Also in that email, Jones acknowledged "[t]here are some minor cosmetic chips on a few of the slats, that we will repair once all of the slats are in place. Both the slats and the boards will be bolted, which will take care of the uneven boards."

13. The Siscos failed to prove that the general condition of the hog slats on April 10, 2018, was such that would require Imperial Docks to return them to the manufacturer, who

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

provided no warranty regarding the material's surface condition. There was no agreement between the parties relating to the condition of the hog slat material, and Jones testified that the manufacturer would not allow Imperial Docks to return the material. Further, Deborah testified that the Siscos themselves ultimately replaced only six of the thirty-four hog slats that were purchased by Imperial Docks and the Siscos admitted in an email on April 10, 2018, that the quality of the hog slats used by Imperial Docks exceeded the quality of the hog slats installed on his neighbor's dock by Abbott. In the email, Richard states, "I had Debbie go over and walk [the neighbor's] entire dock Walkway and she did find many chips and uneven framing boards. I was wrong, Yours is better."

14. After a heated dispute over the hog slats on April 10, 2018, Richard Sisco ordered Jones and Imperial Docks to demobilize the work site and stay off the property. Richard admitted this fact at trial. This order to cease work resulted from the Siscos' belief that the hog slats were damaged because they had chips in them and Jones's position that Imperial Docks would not return the material or provide new material because the material, despite the chips, was a conforming product and the manufacturer would not replace it. Hours after the meeting, the Siscos sent Jones their email admitting that Imperial's dock was "better" than Abbott's dock, which had "many chips and uneven framing." Still, the Siscos told Jones before he could finish the hog slat installation that he had to build a set of stairs and provide "a letter or email that [Jones] promised about the quality of work you inherited from [Abbott] on our seawall." The Siscos wanted a letter to support their claims in a small claims court case they had pending against Abbott relating to work Abbot performed on the Siscos' seawall. At trial, Richard testified that he drew a line in the sand refusing to provide Sisco the Abbott letter, which was claimed to be due in mid-April.

15. In response to Richard's order to demobilize, Jones sent the Siscos a letter proposing options to cease construction and demobilize or to complete the dock after receiving 90% of the contract price. He also provided the Siscos with an invoice for $14,050.50, which he calculated was the cost of materials and labor Imperial Docks furnished for the project through April 10, 2018. The Siscos already paid the first three installments under the Contract, totaling $53,716.50. The new and final invoice subtracted the labor and cost of unused bolts from the fourth installment in the Contract, and added a $1,825.00 fee for demobilization of the work site, which was part of the Contract's scope.

16. The Siscos rejected Jones's proposed options in a response, stating, "Let's finish getting these hog slats installed properly and move on to complete the contract and we can walk away from each other in an amicable fashion." Jones agreed to remobilize, but he wanted the Siscos to acknowledge that the contract required them "to ensure uninterrupted access to the job site" and that they never specified that the hog slats would have a specific surface finish. Jones also offered to patch certain chipping in the hog slats according to "materials and techniques" provided by the manufacturer. Despite this, the Siscos continued to make demands of Imperial Docks that were not part of the Contract, including a $1,600 payment for referring Imperial Docks to a neighbor (Jones earlier agreed to a credit). In an April 14, 2018 email to Jones, the Siscos made it clear that they would not budge on their requirement that Jones agree to provide them a letter for their court case against Abbott, as well as a referral fee.

17. Ten days later, on April 24, 2018, Jones declared the Siscos in breach of the Contract and demanded payment of the $14,050.50 invoice. During that 10-day period, the Siscos met with an attorney and sent Imperial Docks a letter dated April 18, 2018, containing their first written notification that Imperial Docks was in breach of the Contract "pertain[ing] to [the]

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

timeline." They also stated "[t]he final thing that brought all of this to a head, was the hog slats," again mentioned the referral fee and the Abbott letter, and gave Imperial Docks five days to meet with them to discuss the best way "to solve this problem in the most amicable way." Deborah Sisco testified that she mailed the letter on April 19, 2018, but Jones did not receive a copy of the letter until April 27, 2018, when the Siscos emailed it to him and three days after he declared the Siscos in breach. With regard to the timeline, the *post hoc* letter is inconsistent with all of the documentary evidence produced before the letter was written. While the emails show that the Siscos were frustrated with the pace of the project, no emails indicated Imperial Docks was in breach of the Contract or notified Imperial Docks that the Siscos would terminate the Contract if Imperial Docks did not perform by a specific date. To the contrary, the Siscos on several occasions (and even after the April 10, 2018 meeting) indicated that they wanted Imperial Docks to finish the project, and as late as March 20, 2018, they were negotiating with Imperial Docks to perform additional work on the dock. The Court finds that on April 10, 2018, the Siscos ordered Imperial Docks to stop work because they would not accept the condition of the hog slats that were delivered, and they would not allow Imperial Docks to restart work on the project until Jones agreed to write a letter to support them in their lawsuit against Abbott.

18. Also, during that 10-day period, on the same day (April 19, 2018) the Siscos mailed their letter to Imperial Docks suggesting Imperial Docks could finish the project, the Siscos were communicating with Blutide Marine about completing the dock project. Blutide Marine provided its estimate to complete the scope of work in the Contract on May 7, 2018. The proposed estimate totaled $64,760.00, which included $25,200.00 to install the rest of the hog slats and $25,880.00 to replace the smooth-cut timbers. Blutide Marine started work on the project approximately two months after Imperial Docks demobilized the site and finished in late August 2018. In addition to

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

the $64,760.00, the Siscos paid $2,200.00 for six additional hog slats and $1,126.40 to patch chips on the hog slats.

19. Imperial Docks performed labor on the work site as late as April 10, 2018, when it began its demobilization, work that was expressly listed within the scope of the Contract.

Discussion and Conclusions of Law

A breach of contract is a failure to perform a contractual promise without legal excuse. To recover for a breach of contract a party must allege and prove (1) the existence of a contract, (2) its breach or unjustifiable failure to perform, and (3) damages suffered as a direct and proximate cause of the breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). Damages in a breach of contract action are intended to place the nonbreaching party in the position he or she would have been had there been no breach and the contract was performed. *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 698 S.E.2d 773 (2010).

A non-material breach does not justify rescission, repudiation, or termination. A breach justifying termination must be so material as in effect to defeat the very terms of the contract. *See Ackerman v. McMillan*, 314 S.C. 268, 271, 442 S.E.2d 618, 619-20 (Ct. App. 1994) ("In order to warrant a repudiation, a breach must be so fundamental and substantial as to defeat the purpose of the contract. Where the breach is not so material as to defeat the purpose of the contract, the nonbreaching party is compensated by damages.") (citations omitted).

Further, the South Carolina Supreme Court has recognized and applied the "diminution of value" method of calculating damages. *See Diamond Swimming Pool Co. v. Broome*, 252 S.C. 379, 166 S.E.2d 308 (1969). Although South Carolina case law is underdeveloped on the doctrine,

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

other jurisdictions offer instructive authority. In cases where the "cost to repair" method of calculating damages produces significant economic waste, the diminution of value method is the better measure of damages. *See* Restatement (Second) of Contracts § 348(2) (1981). Where the diminution caused by a defect is grossly disproportional to the costs sought for repair or replacement, the cost of repair method is wholly ineffectual at placing each party in the position he or she would be in upon full performance. *See Jacob & Youngs, Inc. v. Kent*, 230 N.Y. 239, 244, 129 N.E. 889, 891 (1921) (J., Cardozo) ("The owner is entitled to the money which will permit him to complete, unless the cost of completion is grossly and unfairly out of proportion to the good to be attained. When that is true, the measure is the difference in value."); *see also Kenney v. Medlin Constr. & Realty Co.*, 68 N.C. App. 339, 315 S.E.2d 311 (1984) ("[If] a minor defect could be repaired only at a high cost disproportionate to the minor loss value, then the diminution in value method is the better measure of damages."); *Ideal Pool Corp. v. Hipp*, 187 Ga. App. 273, 370 S.E.2d 32 (1988). The measure of damages utilizing this method is "the difference between the value of the improvement as finished and the improvement as it ought to have been finished." *Hipp*, 187 Ga. App. at 275, 370 S.E.2d at 34; *see also* Restatement (Second) of Contracts § 348(2) (1981).

I. The Siscos materially breached the Contract.

Imperial Docks alleges that the Siscos materially breached the Contract when Richard Sisco ordered Imperial Docks to stay off his property on April 10, 2018 and refused to allow Imperial Docks to complete the project unless Jones performed work not within the scope of the Contract—specifically, writing a letter about the quality of Abbott's work on the Siscos' seawall. The Court finds this breach was material and actionable, causing Imperial Docks actual damages.

Relevant to this analysis is: (i) the factual finding that there was no agreement between Imperial Docks and the Siscos that Jones would write a letter about the quality of Abbott's work

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

and (ii) the provision in the Contract stating that the Siscos' were responsible to provide Imperial Docks with access to the work site to perform its obligations under the Contract. The Siscos materially and substantially breached the Contract on April 10, 2018, when Richard ordered Imperial Docks to demobilize the work site and stay off his property, and they continued to breach the Contract by tying Imperial Docks' access and ability to perform its obligations to terms that were not part of the Contract, *i.e.*, the Abbott letter. Doing so "defeat[ed] the purpose of the contract" and rose to the level of a material breach because access to the property was necessary for Imperial Docks to perform. Indeed, a request for modification, coupled with a threat to breach—specifically "a statement that under a fair reading amounts to a statement of intention not to perform except on conditions which go beyond the contract"—satisfies the second element of a breach of contract claim. 15 Williston on Contracts § 43:21 (4th ed. 1993); *cf. Sterling Dev. Co. v. Collins,* 309 S.C. 237, 241-42, 421 S.E.2d 402, 405 (1992) (noting that performance "is excused by the imposition of unwarranted conditions by the person to whom it was to be made.") (citing 15 Williston on Contracts § 43:21 (4th ed. 1993)).

The documentary evidence overwhelmingly supports the fact that the Siscos' decision to stop work had nothing to do with any of the breaches alleged by the Siscos, except their belief about the condition of the hog slats, which the Court below concludes was unreasonable because they failed to prove the condition of the hog slats amounted to a breach that justified termination or repudiation of the Contract. Imperial Docks was directly damaged by the Siscos' material breach and is entitled to its lien for the improvement of the Siscos' property as discussed below in Part III.

II. Imperial Docks did not breach the Contract.

The Siscos allege that Imperial Docks committed several breaches of the Contract. As noted above, the asserted breaches are: (i) failing to perform the contract within the Contract's

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

estimated duration; (ii) using smooth-cut timbers instead of rough-cut timbers; (iii) using hex bolts instead of timber bolts; (iv) countersinking the bolts; (v) installing damaged hog slats; and (vi) negligently designing the pierhead. As further discussed below, the Court finds that Imperial Docks failed to meet its burden of proving that Imperial Docks committed actionable breaches of the Contract. The Court addresses each alleged breach in turn.

A. Project Duration.

The Siscos argue that "time is of the essence" language in the Contract's payment section applies to the Contract's language estimating the duration of the work to be ten weeks and assert that, because Imperial Docks did not finish the project within a period reasonably tied to that estimated duration, Imperial Docks breached the Contract. After a review of the Contract's language, applicable law, and the factual findings above, the Court finds Imperial Docks did not breach the Contract as the Siscos assert. First, the Court holds the Contract only requires Imperial Docks to perform its work within a reasonable period of time. Second, the Court finds that the Siscos failed to meet their burden of proof that Imperial Docks' performance was unreasonable.

Time for performance is not of the essence in a construction contract, which must otherwise be performed within a reasonable time. *Drews Co. v. Ledwith-Wolfe Assocs., Inc.*, 296 S.C. 207, 209, 371 S.E.2d 532, 533 (1988); *see also* 17A Am. Jur. 2d *Contracts* § 462 (2021). Project deadlines can be made of the essence: (1) by the express stipulations of the parties, in the contract itself, or (2) by "giving notice to the other party of intention to abandon the contract, unless it be completed within the time fixed." *Alexander v. Herndon*, 84 S.C. 181, 186, 65 S.E. 1048, 1049 (1909). The latter method requires the party wishing to make time of the essence to provide "express, unequivocal and reasonable notice that unless within a specified time" the other party performs, he or she intends to terminate the contract. *Davis v. Cordell*, 237 S.C. 88, 101-02, 115 S.E.2d 649, 655 (1960) (emphasis added); *see also Gen. Sprinkler Corp. v. Loris Indus.*

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

Developers, Inc., 271 F. Supp. 551, 558 (D.S.C. 1967) ("[O]ne party may not suddenly and in the absence of reasonable notice, terminate the contract while the other is endeavoring in good faith to perform it."). The emphasis on requiring the establishment of "specified" or "fixed" time clearly indicates South Carolina's courts are, and should be, reluctant to impose deadlines—not firmly established either in the contract or by reasonable notice—upon contracting parties. *See, e.g., Davis,* 237 S.C. at 101, 115 S.E.2d at 655 ("Time is not of the essence of a contract which is to be performed within a reasonable time[.]").

The Contract provided no fixed or specific time for Imperial Docks to complete the project, thereby making the time for completion a reasonable period of time. The section providing for duration expressly begins: "*Estimated* Duration." (emphasis added). The plain meaning of the word "estimation," used in this context, unambiguously communicates that the parties agreed the completion time for the work was not fixed or specified and merely estimated, accounting for weather conditions and Imperial Docks' ability to man "a (1) one shift per day (8) eight hours per shift (5) five days per week shift arrangement." Thus, despite the existence of "time is of the essence" language in the Contract, the parties never stipulated a specific deadline for Imperial Docks to complete the project. Rather, the time is of the essence language, read within the context of the entire Contract, specifically relates to the Contract's fixed payment terms. The clause is contained under the heading "Terms for Payment," and the payment section refers to payment deadlines—obvious references to the Contract's five payment milestones—that were specifically tied to actual events. Further, a review of the plethora of emails admitted at trial shows the Siscos never provided Imperial Docks with "express, unequivocal and reasonable notice" it would

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

terminate the Contract if Imperial Docks did not perform by a specific date.[2] Accordingly, the Court finds that the "time is of the essence" language in the Contract did not apply to the *estimated* duration of Imperial Docks' performance.

The question for this Court then becomes whether Imperial Docks' performance was reasonable in the context of the 10-week estimate in the Contract and the reality of what was going on during the course of the project. Again, the estimated duration in the Contract expressly assumed acceptable weather conditions and Imperial Docks' ability to man "a (1) one shift per day (8) eight hours per shift (5) five days per week shift arrangement." Further, the Selling Policy recognized that a "major equipment breakdown" would excuse nonperformance in the Force Majeure paragraph. Considering the Court's factual findings, specifically those in ¶11 of the above Findings of Fact, the Court concludes that Imperial Docks performed its obligations reasonably until Richard revoked their access to the work site. The evidence shows that from late November 2017 until April 10, 2018, Imperial Docks had dedicated crews assigned and working on the Siscos' dock. At the very least, the Siscos failed to meet their burden of showing that Imperial Docks failed to perform their obligations reasonably.

The fact that the Siscos' own actions contributed to their alleged delay is significant. *Cf. Hunter Bros. Sys., Inc. v. Brantley Constr. Co.*, 286 S.C. 59, 332 S.E.2d 206 (1985) (holding electrical subcontractor was not liable for delay caused by general contractor's failure to timely complete prerequisite roof work). The Contract obligated the Siscos to "[e]nsure uninterrupted

[2] In fact, the Siscos made it clear, even after April 10, 2018, that they wanted Imperial Docks to finish its work: "Of course I want you to finish the contract[.]" *See, e.g.,* 15 Williston on Contracts § 46:14 (4th ed. 1993) ("When a specific time is fixed for the performance of a contract . . . but the parties proceed with the performance of it after that time, the right to suddenly insist upon a forfeiture for failure to perform within the specified time will be deemed to have been waived and the time for performance will be deemed to have been extended for a reasonable time.").

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

access to the work area for the duration of the project" and provided that "Imperial Docks will not be liable for failure to perform any obligation or delay in performance resulting from or contributed to by . . . Purchaser[.]" As noted above, the Siscos repeatedly ordered Imperial Docks to stop work until Richard could discuss his concerns—whether valid or not—with Jones.[3] And that was only one contributing factor; indeed, there were several, including the loss of the stipulated staging areas, the weather, and major equipment delays as testified by both Jones and Deborah. In the end, the breakdown in the parties' relationship was premised on the condition of the hog slats—not a delay in performance. The Siscos' *post hoc* allegations of Imperial Docks' delay ultimately provide neither a basis to excuse their material breach of the Contract nor a basis for damages.

B. Smooth-Cut Timbers.

The Siscos allege Imperial Docks breached the Contract by using smooth-cut timbers instead of rough-cut timbers—the material described in the Figure 1 drawing—for the walkway's fenders. The Court finds that the Siscos failed to prove at trial that actual damages resulted from this deviation from the Figure 1 drawing.

The parties do not dispute that smooth-cut timbers were used instead of rough-cut timbers. Instead, the dispute is over the difference between the two materials and whether that difference is material enough to satisfy the damages element of a breach of contract claim. *See Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962) ("The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach."). The Siscos claim damages because Blutide Marine ultimately

[3] The fact that the Siscos' own actions contributed to the delay does not necessary render their actions unreasonable. A property owner should have a reasonable say. But the Siscos' "exacting" standards (as their counsel put it) were a contributing factor that Imperial Docks faced in performing their obligations and which undermine their allegations of delay.

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

replaced the timbers at a cost of $25,880.00, a significant portion of the Siscos' overall damages total at trial. They assert that the smooth-cut timbers created an uneven surface (*i.e.*, a tripping hazard) between the hog slats and the fenders and had to be replaced. This argument has several flaws when confronted with the actual evidence.

First, Rakes testified at trial that he did not have to replace the timbers but made doing so a condition for Blutide Marine to finish the project for the Siscos. Second, Jones testified at trial that he planned to use stainless steel washers to shim the fenders to a height that was even with the hog slats—an acceptable practice in the dock-building industry (according to Altine) and a plan that even the Siscos endorsed when they later attempted to negotiate the scope of work with Blutide Marine. Indeed, a review of photographs of the dock taken on April 10, 2018—the day Imperial Docks stopped work—reveals only slight deviations in the height of the timbers that are consistent with Imperial Docks' theory of the case. The $25,880.00 replacement cost quoted by Blutide Marine thus dwarfed the cost of Imperial Docks' plan to shim the timbers, which was no additional cost to the Siscos. But that plan was never realized because the Siscos ultimately prevented Imperial Docks from completing the project. Accordingly, the Court finds the damages claimed by the Siscos was the result of their own conduct and not any breach they allege was committed by Imperial Docks.

Regardless, the Court holds that a diminution of value method of calculating damages is the appropriate measure when considering the disproportionate options presented by the parties. *Cf. Diamond Swimming Pool Co. v. Broome*, 252 S.C. 379, 166 S.E.2d 308 (1969). Replacing hundreds of feet of installed timbers was clearly disproportional when Imperial Docks could even the surface between the hog slats and the fenders with little expense. The only evidence presented by the Siscos relating to the diminution of value of their dock related to the size of the dock's

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

dimensions—not the use of any one material specified in Figure 1 over the other. Instead, the relevant evidence presented was: (i) Jones's testimony that smooth-cut timbers are a more customary material because of the reduced risk of splintering, and (ii) the absence of any objection by the Siscos to the look of the material in their emails (only the uneven surfaces the timbers created). Therefore, this Court cannot conclude that the smooth-cut timbers, when shimmed to a height even with the hog slats, would have caused a depreciation in the value of the Siscos' dock.

Accordingly, the Siscos have not met their burden of proving a breach of the Contract resulting from Imperial Docks' use of smooth-cut timbers instead of rough-cut timbers.

C. Countersunk Hex Bolts.

The Siscos allege that Imperial Docks breached the Contract by using hex bolts—instead of timber bolts—to fasten the dock's headers to the piles, as well as by countersinking some of those bolts. The Court finds that the Siscos failed to prove at trial, as with the use of the smooth-cut timbers, that they were damaged by this deviation from Figure 1. Further, the Court finds that the Sisco's waived their rights to claim such a breach.

No dispute exists between the parties that hex bolts were used instead of timber bolts, nor do they dispute that some of those bolts were countersunk because the Contract specified butt piles that had a larger diameter than what Figure 1 specified for the walkway. But the Siscos failed to present any damages to support a breach of contract arising from this alleged nonconformity. Blutide Marine did not replace these bolts (or any headers or piles, for that matter) in its completion of the walkway, and to the extent the use of the bolts led to a diminution of the dock's value, the Siscos failed to tie their diminution claim to the use of the hex bolts specifically, arguing instead that the diminution resulted from the size of the completed dock. The evidence at trial supports only one key difference between the two types of bolts—the head—and no evidence suggests that this difference was material to the value of the dock, resulting in any diminution. Further, no

evidence was presented to show that countersinking the bolts affected the structure of the dock, and Jones specifically testified that there was no adverse effect to the dock's structure.

Most notably, however, is that the parties discussed the countersunk hex bolts during construction and agreed to a fix that Richard Sisco himself conceived. Accordingly, the Court finds the Siscos have not met their burden of proving a breach of the Contract resulting from Imperial Docks' use of countersunk hex bolts.

D. Hog Slat Condition.

The Siscos allege Imperial Docks breached the Contract by receiving, causing, and installing damaged hog slats. As noted above, this belief is what caused Richard to demand that Imperial Docks demobilize the work site and stay off his property on April 10, 2018—before Imperial Docks finished installing the hog slats. The Court finds the Siscos failed to show that the condition of the hog slats did not conform to the Contract's specifications. Furthermore, the Siscos' breach of the Contract precludes them from asserting such a claim because *their* conduct caused Imperial Docks' inability to substantially perform its obligations relating to the hog slats.

While the Contract expressly incorporated the use of hog slats in the Siscos' dock design, the Contract did not provide any description or specification relating to the surface condition of the material, which was designed for use in hog farming and repurposed in dock building to construct sturdier docks. Any duties of Imperial Docks relating to the surface condition of the hog slats thus arise from any implied warranties not disclaimed by the Contract, particularly the implied warranty that the project be performed with proper workmanship. *See Hill v. Polar Pantries*, 219 S.C. 263, 64 S.E.2d 885 (1951).

The Siscos never presented any evidence that the chips on the surface of the hog slats failed to conform to any industry standard. There is no evidence beyond the testimony of the Siscos themselves and seven photographs taken before April 10, 2018, showing various chips (which

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

Jones acknowledges), that the chipping of the material gave rise to a defect in workmanship—and especially a breach so material as to support the Siscos' demand that Imperial Docks cease work. Instead, the Court credits the evidence presented at trial showing that the chipping was normal for the material, that there was no way to specify a surface condition for the material from the manufacturer, and that there were certain techniques developed by the manufacturer to address chipping in the hog slats. Notably, when Imperial Docks stopped work on April 10, 2018, it had installed eight hog slats on the walkway, which the Siscos admitted was "better" than their neighbor's dock—their inspiration to build a dock using hog slats in the first place. Ultimately, each of those eight hog slats were used by Blutide Marine to complete the dock. In fact, Blutide Marine ultimately finished the walkway using most of the hog slats ordered by Imperial Docks,[4] and the Siscos patched the chipping as Jones proposed. Accordingly, the Siscos failed to prove that the hog slats were defective and that their demands of Imperial Docks to replace them were reasonable.

This finding is significant because the Siscos' complaint about the condition of the hog slats is the "thing that brought all of this to a head." This complaint set in motion the causal chain that led the Siscos to materially and substantially breach the Contract and to prevent Imperial Docks from fully performing its obligations under the Contract. For the Siscos to then claim damages arising from the condition of the hog slats is unavailing when Imperial Docks was never given a meaningful opportunity to complete the work—when, for approximately two months, the hog slats sat in the elements, and then were moved several more times by Blutide Marine before

[4] Blutide Marine used a custom-made slat for one section of the walkway at no additional cost to the Siscos. Also, according to Deborah's testimony, the only new hog slats ordered—six in total—were used in the pierhead, and apparently those were replaced because the Siscos themselves opted to use an 8-foot hog slat on the pierhead that was reconfigured by Blutide Marine.

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

they were finally installed on the walkway. For these reasons, the Court finds Imperial Docks is not liable for any damages resulting from the surface condition of the hog slats.

E. Pierhead Design.

The Siscos finally argue that they were entitled to damages for the diminution in value of the dock based on a pierhead that was reduced in size, as well as loss of enjoyment of the dock because of the reduced pierhead size. They allege that the pierhead had to be reduced as a result of Imperial Docks' design, which initially incorporated a hog slat length that did not exist. The Court finds that these allegations are not supported by the evidence presented at trial.

First, the evidence shows that Imperial Docks' conduct was not the cause of the smaller pierhead that Blutide Marine ultimately constructed, and therefore the Siscos cannot claim Imperial Docks caused the diminished value of the dock resulting from the pierhead size. When the Siscos revoked Imperial Docks' access to the job site, only the piles for the pierhead were in place. Jones testified at trial that the configuration of the pierhead piles that Imperial Docks installed allowed the framing of both a 10'x20' and a 12'x24' pierhead because the piles were driven *after* he learned the hog slats were not sold in 12-foot lengths. Notably, the Contract does not specify the length of hog slat to be incorporated in the pierhead. Blutide Marine ultimately decided to build the smaller pierhead, in part, because Altine could not figure out how to make the pierhead work with Imperial Docks' pile configuration and wanted to use his own design. Thus, the Siscos cannot prove a breach had even occurred before April 10, 2018, when Imperial Docks stopped work.

Second, the Siscos cannot claim damages for a pierhead that was never permitted to be built in the first place. *See generally Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 593, 493 S.E.2d 875, 879 (Ct. App. 1997) (recognizing that impossibility under the law is a defense to nonperformance); S.C. Code Ann. § 48-39-130 (requiring permits). Indeed, this was another

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

reason Altine did not build the 12'x24' pierhead. Specifically, the Siscos were only permitted to rebuild their dock using the same dimensions of their former dock, which had a 10'x20' pierhead. The Contract made the Siscos responsible for obtaining the proper permitting, but they never obtained a new permit to build the 12' x 24' pierhead they desired. Thus, the Siscos cannot claim the loss of use of something they never were never allowed to use in the first place. *See* 30 S.C. Jur. *Contracts* § 62 (2021) (recognizing where one party is the cause for nonperformance, the other party's nonperformance is excused).

Accordingly, the Court finds that the need to redesign the pierhead pilings was caused by both the Siscos' failure to procure the proper permit and their breach of the Contract. Any subsequent costs resulting from the removal of pilings or diminution in value resulting from the redesign of the pierhead are not damages for which Imperial Docks is liable.

III. Imperial Docks is entitled to relief for the Sisco's breach and non-payment.

A. Materials and Labor Furnished.

In light of Imperial Docks' mechanic's lien and the Court's finding that the Siscos breached the Contract, a determination of the lien and the amount of damages by the Court is necessary. At trial, Imperial Docks did not submit any specific evidence of lost profits and relied instead on industry recognized pricing methods for pile driving, which made up the bulk of the work performed by Imperial Docks on the Sisco project according to Jones's testimony. In essence, Imperial Docks claims its damages caused by the breach were the materials and labor furnished under the Contract for which it did not receive payment, as shown by the final invoice sent to the Siscos on April 10, 2018. Indeed, the methodology behind the final invoice was to allow Imperial Docks to recoup its out-of-pocket costs and realize any potential profits under the Contract for the work that was performed to that date.

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

This methodology is further supported by the mechanic's lien statute, which addresses the mechanic's lien remedy when a construction contract is only partially performed:

> When the owner fails to perform his part of the contract and by reason thereof the other party, without his own default, is prevented from completely performing his part, he shall be entitled to a reasonable compensation for as much as he has performed in proportion to the price stipulated for the whole and the court shall adjust his claim accordingly.

S.C. Code Ann. § 29-5-250.

This amount can include fees through the date of performance for "oversight" and "supervisory services." Therefore, items such as overhead and profit can become part of the lien when they are included in a contract price. 53 Am. Jur.2d *Mechanic's Liens*, § 107 (1970); *see also Sentry Eng'g & Constr., Inc. v. Mariner's Cay Dev. Corp.*, 287 S.C. 346, 352, 338 S.E.2d 631, 634-35 (1985) (["Overhead and profit] become lienable when they are included in a contract price or are reflected in the reasonable value of labor or materials furnished. Thus, the cost or value of labor for which a lien may be claimed is not necessarily confined to the actual wages paid by the employer to the employee actually performing the labor. It may also include costs and expenses of operation in addition to direct wages paid.").

The total payment Sisco would owe Imperial Docks for a completed project under the Contract is $79,580.00. The Contract stipulated that 90% of the Contract, or the fourth milestone, would be complete once the walkway was complete. The evidence shows that Imperial Docks installed eight hog slats in one day and that it had twenty more to lay on the walkway before the Siscos ordered Imperial Docks to stop work. The $14,050.50 invoice that Imperial Docks sent the Siscos would total $67,767, or 85.2% of the project. Accordingly, the Court finds this adjustment under S.C. Code Ann. § 29-5-250 reasonable.

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

The $14,050.50 amount is also supported as reasonable damages under Imperial Docks' breach of contract claim. Based on pricing of driving piles provided by Rakes, the Siscos' own witness, Jones calculated that the price of driving the piles for the Sisco project alone was approximately $67,000. When the $5,807.19 that Imperial Docks paid for the hog slats is added and the Siscos are provided a credit for the $53,716.50 that they paid Imperial Docks, a difference of $19,090.69 remains, which exceeds the $14,050.50 amount of the invoice. Accordingly, the Court finds that the $14,050.50 amount is a fair and reasonable calculation of actual damages to make Imperial Docks whole.

B. Prevailing Party.

Attorney's fees and costs are taxable under the mechanic's lien statute, which reads, in pertinent part:

> For purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. One verdict assumes some entitlement to the mechanic's lien and the consideration of compulsory counterclaims. 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. If the defendant has not asserted a counterclaim, his offer of settlement is considered to be zero.

S.C. Code Ann. § 29-5-10(b).

Imperial Docks stated in its pleading that it was entitled to a lien of $14,050.50. The Siscos, in turn, claimed they were entitled to damages greater than $50,000 in their pleading. In light of this Court's finding that Imperial Docks is entitled to $14,050.50, the Court finds that Imperial Docks is the "prevailing party" under the statute and is accordingly entitled to attorney's fees and costs consistent with the statute.

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

Conclusion

For the forgoing reasons:

IT IS THEREFORE ORDERED that Imperial Docks is entitled to an award and damages and mechanic's lien of $14,050.50 against the Siscos;

IT IS FURTHER ORDERED that counsel for Imperial Docks shall submit an affidavit for attorney's fees and costs within fourteen (14) days of the entry of this Order, and counsel for the Siscos shall have seven (7) days to respond to the affidavit.

IT IS SO ORDERED.

____
The Honorable Mikell R. Scarborough
Master-in-Equity
Charleston County

______________, 2021
Charleston, South Carolina

ELECTRONICALLY FILED - 2021 Oct 20 3:37 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1004724

Charleston Common Pleas

Case Caption:	Richard A Sisco , plaintiff, et al VS Imperial Docks By Design Inc , defendant, et al
Case Number:	2018CP1004724
Type:	Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-10-20 14:58:11