

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APR 18th 2013

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

S.C. Supreme Court

William H. Seals, Jr., Circuit Court Judge

RECEIVED

APR 19 2013

CASE NO.: 2009-CP-15-0595

S.C. Supreme Court

THE SPRIGGS GROUP, P.C., ... Respondent,

v.

GENE R. SLIVKA, ... Petitioner.

**APPENDIX TO PETITION FOR WRIT OF CERTIORARI
(Volume 2 of 2)**

Robert T. Lyles, Jr.
Lyles & Lyles, LLC
342 East Bay Street
Charleston, South Carolina 29401
(843) 577-7730
Attorneys for Petitioner

Other Counsel of Record

A. Bright Ariail, Esquire
James A. Bruorton, IV, Esquire
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite 400
Post Office Box 893
Charleston, S.C. 29402
(843) 577-6726
bariail@rrhlawfirm.com
cbruorton@rrhlawfirm.com
Attorneys for Respondent

INDEX

Court of Appeals Opinion Number 5081.....	A
(S.C. Ct. App. filed February 6, 2013)	
Slivka's Petition for Rehearing and Supporting Memorandum, ...	B
dated February 21, 2013	
Court of Appeals' Ruling on Petition for Rehearing.....	C
Final Brief of Appellant, dated July 19, 2012.....	D
Respondents' Brief, dated July 20, 2012	E
Reply Brief of Appellants, dated July 19, 2012.....	F
Record on Appeal	G

CHARLES KENNETH SPRIGGS - DIRECT

1 So the October letter is really an understanding of
2 listening to Mr. Slivka, talking with our consultants and
3 then coming up with sort of a list of what we thought
4 would be involved in the project.

5 And I did that by each building, and the sizes in this
6 case just by how long they are and how big they are. And
7 I wrote this back with a series of questions to say, if
8 there's any more information, I believe at the end, he had
9 asked us to prepare a proposal.

10 Well, you can imagine with all of these buildings and
11 all we had to make some assumptions. And so we asked some
12 questions and then we said, we will start trying to put
13 together a fee proposal to you.

14 Q. Okay. And what's the date of that letter again?

15 A. The date of the letter is October 5th, 2006.

16 Q. And if you look at the third page of that letter,
17 you've mentioned the assumptions. Tell me what the first
18 assumption that you've made and that you identified there
19 is.

20 A. I'll have to show my age, just a moment. (Puts on
21 glasses.)

22 The first assumption at the top of the pages, we
23 assumed the project will be located in an area of
24 Julianston Plantation. All soils test we require for
25 design of structural foundations will be directly

CHARLES KENNETH SPRIGGS - DIRECT

1 contracted by you.

2 Q. In October of 2006, what did you understand Julianton
3 Plantation to be?

4 A. Well, Julianton Plantation is a magnificent property
5 of 3,300 acres. So there's a little bit of room to put a
6 few buildings around if you want to be in a different
7 location --

8 Q. Okay --

9 A. -- within the plantation.

10 Q. Excuse me. When you prepared this letter, who did you
11 understand would be the contractor?

12 A. Mr. Slivka told me at the beginning of this project
13 that he was going to hire JT Turner Contractor. And that
14 he was going to hire a civil engineer for site work,
15 Thomas and Hutton Engineering.

16 Q. And what was the significance of the -- who he
17 identified as the contractor?

18 A. In the first place, Turner Construction is an
19 excellent contractor. We have worked on a number of
20 projects with them. I know Jim Turner very well. And
21 they are first-rate builders.

22 So we knew that we would have someone who was a good
23 builder, that we could rely on and that would, frankly,
24 organize the construction process and that we felt
25 comfortable, given the number of buildings and the nature

CHARLES KENNETH SPRIGGS - DIRECT

1 of this, with Turner Construction.

2 Q. How did that affect your pricing or your decision to
3 do this project?

4 A. Actually if we did not have a contractor identified
5 and one that we knew well, and that this was going to be
6 sort of done in another manner, I had serious reservations
7 of taking the project.

8 Q. And you mentioned the civil engineer that had been
9 identified. What was the importance of that?

10 A. The importance of a civil engineer, basically the
11 civil engineer is responsible for what we call horizontal
12 construction. And that is pipes, paving, sidewalks,
13 also -- how I do want to call it -- grading and drainage.

14 And so with a civil engineer we knew that we could
15 design these buildings and basically our responsibility
16 stopped. And this is a typical way that you connect a
17 building is five feet from the edge of the building. So
18 someone else has utilities that come up to the building or
19 whatever, our work would stop at that point.

20 Q. And how did that affect your pricing for the project
21 or your decision to pursue this project?

22 A. Mr. Slivka had said, I -- these sketches are exactly
23 what I want. You're just going to draw up the project and
24 it will be constructed. And I said to myself, if we have
25 the engineering for all of this work we'll know where

CHARLES KENNETH SPRIGGS - DIRECT

1 these buildings are supposed to go on the site, and we'll
2 know where we have to take our mechanical and our
3 electrical and plumbing work out from the buildings and,
4 I'll use the term, hook them up.

5 Q: And did you receive a response from Mr. Slivka from
6 this letter?

7 A. We received no written response.

8 There's some notes that he wrote on it. And he
9 said -- I said -- if I may cite the notes or do you --

10 Q. Well, my question is: How did he provide additional
11 information to you?

12 A. Again, some of it verbal and some of it, I believe,
13 and I'm not sure whether -- I think he delivered this
14 letter back with some handwritten notes on it.

15 Q. Thank you. Your Honor, at this time I'd like to offer
16 Plaintiff's Exhibit Number 20 into evidence.

17 THE COURT: Any objection?

18 MR. LYLES: No objection.

19 THE COURT: Plaintiff's 20 into evidence without
20 objection.

21 (Thereupon, Plaintiff's Exhibit No. 20, 10-05-06
22 letter, was received into evidence.)

23 BY MS. ARIAIL:

24 Q. You mentioned a proposal. Did you prepare a proposal
25 to send to Mr. Slivka for doing the project for his work?

CHARLES KENNETH SPRIGGS - DIRECT

1 A. I did prepare a proposal. And based on what I knew, I
2 did my best to try to put all of the parameters, if you
3 would, together and prepared a letter in November.

4 Q. All right. I'm going to hand up Plaintiff's Exhibit
5 Number Seven. And tell me what that is.

6 A. That's the letter that I prepared in late November.

7 Q. And what's the date on that letter?

8 A. The date is the 27th of November, 2006.

9 Q. And what type of services did you propose to provide
10 to Mr. Slivka?

11 A. Based on what Mr. Slivka said, I focused on three
12 areas in the letter. The first, I tried to determine the
13 size. I wanted to confirm, since we had these diagrams,
14 how big these buildings were.

15 And also, I thought it was important to at least begin
16 to note the probable construction cost of these
17 buildings. In part that was to say, they're going -- they
18 may cost this much money or more and so are we fine with
19 that.

20 The second was our estimate of drawings and
21 specifications. And you can imagine, with some diagrams
22 and some sketches, you have to sit down and figure out
23 what would it take me to describe these buildings so that
24 someone could build them.

25 So the second part of the proposal was to come up with

CHARLES KENNETH SPRIGGS - DIRECT

1 a list of drawings. What did I think we would need to
2 build this building, and how many drawings might we need
3 for the different engineering services.

4 So I prepared a list.

5 Q. Okay.

6 A. And then the third focus was really based on the sizes
7 of these buildings, based on the number of drawings that
8 we had. It's a difficult proposal to put together because
9 you have minimum information, but I said that we would
10 have several areas. One that we would sit down and take
11 what he gave us. And we'd have some meetings to put this
12 together.

13 Now, remember I understood that this is exactly what
14 he wanted, we're going to draw it up. So I estimated
15 some, maybe two weeks' worth of work. Then I said that
16 there was some project management. That's the organizing
17 of both our staff and our consultants.

18 Q. Tell me what page you're on.

19 A. I'm on page four.

20 Q. I'd like to go through it in a little more detail.

21 A. Okay.

22 Q. If you -- but just a general question. When you
23 proposed to perform the project for Mr. Slivka, what did
24 you anticipate providing to him?

25 A. Since he said that he would be involved in all of the

CHARLES KENNETH SPRIGGS - DIRECT

1 interior work and he knew exactly what he wanted, our
2 project was to put together drawings that would allow the
3 permitting of these buildings, basically to put together a
4 permit set of drawings and, that they would contain a
5 certain degree of detail.

6 Q. And what do you mean by a permit set of drawings?

7 A. Well, a permit set of drawings is what is necessary
8 for either a county or a city department. They want to
9 know what the foundations are of a building. They want to
10 know the structure of the building. They want to know
11 what it looks like, in some cases where there are
12 restrictions, how high, how tall.

13 So you have a series of elevations.

14 And the mechanical, electrical, plumbing that would be
15 involved in the buildings so that they can make a judgment
16 of, does this building or buildings meet current codes.

17 Q. Okay. All right. You mentioned that your letter was
18 broken or provided three different things. And the first
19 one -- let's look at the very first page of the letter.
20 You've got here an estimated construction cost based on
21 program outlined in 5 October 2006 letter. And then you
22 list each of the structures that you're proposing to
23 design.

24 And you've come up with -- tell me how you determined
25 the cost to construct each one of those structures. Run

CHARLES KENNETH SPRIGGS - DIRECT

1 me through that analysis.

2 A. / Well, each of the buildings has a certain number of
3 square feet. And in the case of the main house, a number
4 of floors.

5 So listening to what Mr. Slivka wanted to do and based
6 on my experience of new construction as opposed to
7 historic renovation or other work, I used some preliminary
8 square foot costs for each of the parts of the main house
9 and then for each of the other buildings.

10 Q. And how did you determine those square-foot costs?

11 A. Well, at the time in 2006, for a house or a residence
12 like this, from anywhere from 225, to frankly it could be
13 as high as \$400 a square foot. We've seen houses of this
14 level cost that much.

15 So I used \$250 saying that this is new construction.
16 There are products that are made by others that we can
17 assemble together and it was a first effort to put a cost
18 on the project.

19 Q. And is that a normal way to estimate the cost of
20 construction of a structure?

21 A. Certainly at this stage of design.

22 Q. Okay. And where did you get square footages for each
23 one of these buildings?

24 A. The square footages came from taking the sketches that
25 we had and putting them on our computer database,

CHARLES KENNETH SPRIGGS - DIRECT

1 basically to draw straight lines that are so wide and so
2 long and that tells me about how many square feet. Now
3 there's no design yet, it's just the layout of those
4 spaces.

5 Q. Okay. And what was the total estimated cost of the
6 construction based on your proposal?

7 A. The cost of the buildings was around -- well, it's,
8 specifically I said the total estimate was \$4,845,880.
9 Then we -- he mentioned that there might be some walls
10 around the greenhouse. So I estimated a four foot high
11 wall at \$100 a linear foot and came up with \$16,000.

12 Now, these walls weren't laid out. We just assumed
13 there'd be that many -- well, actually at \$40 a square
14 foot. I'm sorry. We allowed for a hundred feet.

15 Q. Okay. And what did you identify as being potential
16 additional costs?

17 A. Well, the additional costs, certainly think of these
18 as just seven buildings sitting on the ground. So the
19 site grading, the civil work which were wells, piping,
20 septic tanks, drain fields.

21 He mentioned interest in a solar energy system. So I
22 said that's, you know, there's no cost that I can put.
23 And also that obviously they're going to sit on sites that
24 are going to be grassed and landscaped.

25 So all of those civil, if you would, costs would be

CHARLES KENNETH SPRIGGS - DIRECT

1 additional.

2 Q. Okay. And the next item shows a list of drawings and
3 specifications. How did you determine how many drawings
4 were needed for each one of the buildings?

5 A. Well, from our experience in designing residence and
6 commercial buildings and series of buildings, we knew that
7 we had to have a site plan saying where the buildings
8 would be.

9 Certainly the usual parts that I mentioned. You have
10 to have a foundation plan. You have to have, in this case
11 we contemplated a basement. So that would be a plan.
12 First floor, second floor. And so I identified the items
13 that would need to be depicted in each of the buildings
14 and I gave them numbers to distinguish the different
15 disciplines.

16 So A for architecture, P for plumbing, M for
17 mechanical, E for electrical. And I listed them.

18 Q. Why aren't there any structural drawings listed?

19 A. Well, in Georgia and certainly in a residential
20 project, you can do the structural work as a licensed
21 architect and put the structural details in your
22 drawings.

23 And so, we felt that all of the structural work would
24 be part of our A drawings. And actually A-14 was what I
25 call structural details.

CHARLES KENNETH SPRIGGS - DIRECT

1 were what Mr. Slivka was going to do and then the
2 remainder of the items were some of the things we would do
3 and also restrictions of since at this time we have not
4 really started. So we set up, if we are requested to do
5 construction phase work, how would we do that work. And
6 so I said it was on an hourly basis.

7 And then if we began documents and we're in the middle
8 of drawing based on the time that we estimated, if we
9 started to change those documents, we would bill on an
10 hourly basis.

11 And then finally I noted that we were not going to
12 design a dock for the boat house.

13 Q. Okay. Well, let's back up a bit. You mentioned the
14 first 13 items were items that Mr. Slivka was to perform;
15 right?

16 A. Correct.

17 Q. Okay. Did he perform some of those?

18 A. He, to an extent performed one, two and three. I'll
19 just outline quickly, kitchens and layouts, some of that.
20 A stair builder, he would provide that. And then he did
21 not take on solar energy work. It was going to be given
22 to us.

23 He provided some molding and trim information but not
24 all. Lighting fixtures were --

25 Q. Which page are you on now?

CHARLES KENNETH SPRIGGS - DIRECT

1 A. I'm on page two -- excuse me. I'm on page five. I
2 need my glasses.

3 Q. All right. Keep going. I'm sorry.

4 A. Okay. You will contract directly with a civil
5 engineering firm and we will be provided site drawings.
6 That never occurred.

7 You will engage a testing laboratory to provide soils
8 tests. I'm not aware that any were done.

9 You will engage a testing laboratory for concrete
10 frequently. I don't know what that is. I'm not sure -- I
11 have no knowledge that any testing laboratory was
12 engaged.

13 He did select the brick.

14 He did select roofing material.

15 Flooring material, to the extent that we got into it.

16 And then exterior colors and interior colors, really
17 never evolved that much, but he would have picked those.

18 Q. Okay. And, how did -- you identified these
19 assumptions at the time you prepared the proposal for the
20 work. How did that affect your pricing on the proposal
21 itself?

22 A. Well, obviously I'm trying to estimate a number of
23 things and it was important that all of these would be
24 done by someone else. In this case, through the owner.

25 Q. And how does that impact your fee?

CHARLES KENNETH SPRIGGS - DIRECT

1 book. And it serves two purposes: Are you charging
2 enough, because this is what is being charged elsewhere;
3 or, do you want to show a potential client a range that he
4 could expect to pay for --

5 Q. Okay.

6 A. -- such services.

7 Q. And why did you include this as an attachment to that
8 proposal?

9 A. Well, Mr. Slivka is sort of his own person
10 particularly down at Juliananton. And although he had
11 worked with us for the raising of these buildings as I
12 told you, it was really to give a sense of what could be
13 charged and then what we were actually charging to give
14 you a feel of what -- was this a reasonable price.

15 Q. And by using that document, what do you feel like the
16 percentage that that document would support is?

17 A. You mean our fee, where it fell?

18 Q. For this sort of project?

19 A. Oh. If -- probably, not probably. It would be at
20 least in the 15 percent range and depending on the
21 involvement of construction, could go up to 19 percent.

22 Q. And this document is what you reached an agreement
23 with Mr. Slivka for design of his project on, based on;
24 right?

25 A. Yes. Based on the information I was given and the

CHARLES KENNETH SPRIGGS - DIRECT

1 understanding of what our, the amount of our role would
2 be.

3 Q. Okay. And how was the fee that was proposed by this
4 letter modified before you reached an agreement?

5 A. The first thing Mr. Slivka did is he said that he
6 didn't, he decided not to do, or to have a boat house, to
7 design it.

8 So he went to the list of drawings that I did, and he
9 used the prices that we estimated, that is, the number of
10 hours per sheet times the person who did the sheets rate.
11 And said, you have four sheets. So I'd like to delete
12 that and I'd like to reduce your fee because of the
13 absence of that building. And I believe it was \$10,000.

14 Q. Okay. Let's look at page three of your document, your
15 proposal. And tell me what sheets were deleted from the
16 scope of work.

17 A. On the boards, you all can see, down toward the bottom
18 is the titled boat house. And there were four sheets,
19 three architectural and then one combined plumbing and
20 electrical. Remembering that any structural work for a
21 boat house would be in one of those three architectural
22 drawings.

23 Q. So you've deleted four sheets?

24 A. Correct.

25 Q. And in looking at page four of your proposal, tell me

CHARLES KENNETH SPRIGGS - DIRECT

1 how again you determined the deduction to make for those
2 four sheets that were deleted.

3 A. Well, we had a total number of sheets. And if you
4 take the hours --

5 Q. Tell me specifically where you're looking.

6 A. Oh. The deduction would come under the title
7 construction documents.

8 Q. Okay. And you deleted four sheets. How did you
9 determine the amount of money to delete?

10 A. Mr. Slivka took the rate that we showed, 24 hours per
11 sheet times \$105 times the number of sheets.

12 Q. And so what was the total fee that was agreed upon?

13 A. The \$10,000 reduction produced a fee of \$151,500.

14 Q. Actually the agreement was 152,420; correct?

15 A. Yes.

16 Q. Okay.

17 A. I was doing that in my head.

18 Q. Okay. And I understand that the Spriggs Group
19 designed a potting shed. Tell me when that was added to
20 the project and what your understanding of that was.

21 A. Well, let's take the name. It's a shed. And let's
22 imagine what a shed is. It's -- I thought at the time it
23 was a utilitarian building that might be out near the
24 greenhouse to store tools.

25 Q. And how was that added to the scope of work?

CHARLES KENNETH SPRIGGS - DIRECT

1 And then Mr. Bozeman, Andy Bozeman, started setting up
2 the drawings, the databases that we were going to work off
3 of and began what I would call the preliminary drawing
4 process. What are these plans going to be and how are we
5 going to develop them.

6 And it sort of became an interactive, an interactive
7 way of developing this project.

8 Q. Okay. And how did you first learn that the project
9 was going to be built in Colleton County instead of at
10 Julianston Plantation in McIntosh County, Georgia?

11 A. Well, I wrote the proposal thinking it was in McIntosh
12 County, Georgia. And then I didn't hear anything and we
13 learned from Jim Turner's people that they were making
14 some visit to property in South Carolina. And I said,
15 well, no, I think it's in Georgia. And the other person
16 said, no, we, we've been to the site, which I had never,
17 had never seen.

18 Q. And who was this other person?

19 A. It was a representative of Turner Construction.

20 Q. Okay.

21 A. And, and it may be that anywhere from sometime in
22 December I heard the first discussion of that, to after
23 the first of the year.

24 Q. Okay. And how did you learn that you actually had to
25 provide stamped structural engineering drawings?

CHARLES KENNETH SPRIGGS - DIRECT

1 A. Well, actually not for some time. It really ended up
2 almost in the spring because being in South Carolina or
3 being in Georgia was not so much the real issue, because
4 we work in both states.

5 It's that when we, as we always do, when we're in a
6 different location, is we call the inspections
7 department. We introduce ourselves, said who we are.
8 We're going to be doing this project, we want to work with
9 you.

10 And as the first project, and I believe it was the
11 conservatory, the local inspector for Colleton County
12 which is out of Walterboro said, I want all of the
13 structure, structural work that you do has to be sealed by
14 a structural engineer. And that's the first time I really
15 learned of that, is we're down the line a little and then
16 how do we shift and delineate those drawings.

17 Q. And when did that occur?

18 A. It was in the spring because we were, we were going to
19 produce the potting shed and conservatory first.

20 Q. Okay. Spring of what year?

21 A. Spring of 2007.

22 Q. Okay. And how did that impact the design effort that
23 was required by the Spriggs Group?

24 A. Well, the first thing we had to do with each building
25 is separate out what items would be structural. And for

CHARLES KENNETH SPRIGGS - DIRECT

1 that it would be the foundation because that's what the
2 building is built on, the structure itself, and any
3 details that would be required.

4 Q. How did that impact the fee?

5 A. Well, the first impact would be that we had to pay the
6 structural engineer to produce drawings or even if they --
7 databases were given to them, that they would -- all of
8 the drawings and they would produce separate sheets. And
9 there was no -- there was no way to contemplate how many
10 drawings that would be until you got into each building.

11 Q. Okay. And originally you had a list of the
12 architectural drawings that you expected to produce for
13 each building. And you've testified earlier that that was
14 going to include certain structural details.

15 What ended up taking the room on those drawings when
16 you removed the structural details from the architectural
17 drawings and moved them to individual structural sheets?

18 A. Well, it became an evolutionary process in that
19 removing structural details may not necessarily leave a
20 blank space. As each of these buildings evolved, the
21 complexity at many times increased and so other details
22 took up those spaces on the sheets.

23 Q. And can you give me just briefly a couple of examples
24 of those types of details?

25 A. Well, I guess we could visit the potting shed. The

CHARLES KENNETH SPRIGGS - DIRECT

1 potting shed was not a shed as we know it. It was a
2 little jewel of a traditional building complete with entry
3 columns and an entry gable. A gable is a roof that comes
4 out from the building.

5 And then it had the introduction of reusing historic
6 windows from Julianston. It had interior requirements that
7 were beyond my image of what a shed would be. So they
8 took up space.

9 Q. Okay. And you mentioned reusing existing materials
10 from the other plantation. How did that affect the design
11 effort required by the Spriggs Group?

12 A. Well, depending on what those items were, it could be
13 simply the substitution of a door for a manufactured
14 door. On the other hand, if it was an unusual door, it
15 took a different way of framing it and containing it.

16 The other impact, and this is important to note, is we
17 are now under current codes. So how we framed the door in
18 the 1900s compared to what we have to do for wind impact,
19 which is the particular emphasis, and I might add that
20 Mr. Slivka wrote down that he wanted 140 mile-an-hour wind
21 impact capability.

22 So you get into how do you reinforce these buildings,
23 the doors, the windows, and any of the items that could be
24 impacted by wind.

25 Q. Tell me what effect the fact that there was no civil

CHARLES KENNETH SPRIGGS - DIRECT

1 in other cases from the owner, quantity takeoffs of
2 various material items.

3 Q. And who was the -- who was Mr. Slivka's primary
4 contact at the Spriggs Group during both the construction
5 and the design phase?

6 A. For day-to-day work, Mr. Bozeman was Mr. Slivka's
7 contact, although he was certainly free to contact me if
8 he so wished.

9 Q. And how did Mr. Slivka treat Mr. Bozeman?

10 A. Mr. Slivka started off in what I would call a civil
11 manner, but as the project evolved he was, Mr. Bozeman was
12 frequently screamed at over the phone, yelled at. I think
13 in some cases a better terminology would be tantrum. And
14 it was -- if it weren't for Andy Bozeman's personality, I
15 don't know that many people would take that behavior
16 toward them.

17 Q. When did the Spriggs Group actually finish its work
18 effort for Mr. Slivka?

19 A. The final work effort was after the -- that was the
20 first month of January 2009.

21 Q. And what work did the Spriggs Group perform for
22 Mr. Slivka during January of 2009?

23 A. Well, there were several items. We received a call
24 directly, which I actually also investigated, from the
25 plumber. And he requested, at Mr. Slivka's urging I

CHARLES KENNETH SPRIGGS - DIRECT

1 believe, that the size of the waste line, and that's the
2 line that goes down from a sink or goes down from a
3 toilet, the main line that collects these at least through
4 the floors, be reduced from a four foot, excuse me, a
5 four-inch diameter, that's across, pipe to a three-inch
6 pipe.

7 And, before we did anything else, I wanted to look at
8 the plumbing drawings myself because there are numbers of
9 bathroom, kitchen and a whole series of plumbing-related
10 fixtures to see if that size would be workable. And it
11 seemed like it would be feasible.

12 So I then asked Andy Bozeman to contact our plumbing
13 engineer, Kayton Smith, who was mentioned earlier, who
14 needed to look at the amount of water flow and see if it
15 was acceptable.

16 It's important to note that in sizing pipe you have
17 to consider a certain percentage of all of these toilets
18 and sinks and fixtures are being used at the same time in
19 order to ensure that there's proper drainage.

20 The second item is that we got a call from the
21 framer, Todd Sauls, whom we've talked with on a number of
22 occasions, asking about, I believe it was flashing details
23 and some other connections.

24 When Mr. Bozeman said, well, you can see this one
25 item on drawing A-whatever-it-was, he said, I never was

CHARLES KENNETH SPRIGGS - DIRECT

1 given those drawings. So we had to assume that not
2 everything was presented to Mr. Sauls to do the work and
3 therefore we clarified it for him.

4 Q. And when did you send Mr. Slivka a bill or an invoice
5 for the second half of the services?

6 A. You mean the January services or the --

7 Q. All -- the second half -- you received one payment up
8 front; right?

9 A. We received one payment one and a half months after we
10 started.

11 Q. Okay. When did you send him the next invoice for
12 services that were done by the Spriggs Group?

13 A. We sent invoices in February of 2009.

14 Q. All right. I'm going to give you what's been marked
15 as Plaintiff's Exhibit Number Eight and ask you: Did you
16 prepare the letter that is the front portion of Exhibit
17 Eight?

18 A. I did prepare the letter.

19 Q. Okay. And what was the purpose of that letter?

20 A. The purpose of the letter was to orient Mr. Slivka to
21 what had taken place over the course of the project and to
22 identify a series of invoices covering specific parts of
23 the project.

24 Q. Okay. And generally -- let's see. Tell me which
25 invoices are attached to that letter.

CHARLES KENNETH SPRIGGS - DIRECT

1 A. The first invoice is a recognition of the payment in
2 February of 2007 as his initial payment.

3 The second invoice is a listing of the sheets that
4 were, that represent the final preparation of all
5 documents. That is, all the buildings that we were
6 assigned to prepare.

7 The third invoice is additional services and changes
8 based on that initial proposal letter in which I had noted
9 what Mr. Slivka was to do, what we were to do and what
10 would be considered hourly additional services.

11 The fourth invoice is a compilation of construction
12 administrative services itemized by the months that they
13 occurred and identifying the individuals by type, i.e.,
14 project architect or project architectural designers.

15 And the fifth invoice is a compilation of the
16 reimbursable expenses that we had from January through --
17 January of 2007 through December 2008.

18 Q. Let's go back to your letter. And those are actually,
19 those invoices are numbers one through five; is that
20 right?

21 A. One through five; that's correct.

22 Q. Let's go back to your letter, the first page of the
23 letter. And looking at Paragraph two, tell me what you
24 indicate in this letter is the reason behind invoice
25 number two.

CHARLES KENNETH SPRIGGS - DIRECT

1 A. It covers the design and preparation of -- preparation
2 of construction documents over a two-year period to obtain
3 permits for all of these buildings.

4 And then a second set of drawings was prepared for the
5 main house after the permit was obtained in August of
6 2008.

7 Q. Okay. And what did those drawings incorporate?

8 A. I noted that the total sets of drawings for all
9 building comprised 85 sheets.

10 Q. And the -- specifically the second set of drawings
11 that were prepared for the main house after the permit set
12 was received, what does this paragraph indicate or what
13 does this letter indicate was included on those, that
14 second set of drawings?

15 A. From, from August all of the, all of the changes that
16 the owner wished to make throughout the house were
17 recorded changes made. They may have influenced various
18 drawing sheets, and then they were put back together as an
19 updated drawing set of the main house.

20 Q. Okay. And the next paragraph gives a narrative
21 related to invoice number three; right?

22 A. Yes.

23 Q. And just briefly, again, tell me again what that
24 invoice encompasses.

25 A. It encompasses services in addition to the basic work

CHARLES KENNETH SPRIGGS - DIRECT

1 that was discussed in our initial letter required for the
2 preparation of construction documents of the seven
3 buildings.

4 I also noted the following. At the onset, we
5 anticipated creating one set of documents for all the
6 buildings which were to be constructed by your selected
7 contractor, JT Turner Construction Company. However, you
8 directed us to produce documents for the buildings in a
9 sequence you chose and that could start as each building
10 set was completed.

11 Q. Okay. The next paragraph references invoice number
12 three again. Tell me what it describes.

13 A. Actually, the last paragraph on the first page has a
14 typo. The notice is a second paragraph for invoice
15 three. But it is actually invoice four.

16 Q. Okay. And how do you know that?

17 A. I know that because it covers construction-phase
18 services for activities that the owner requested us to
19 undertake.

20 Q. And, briefly, what does that paragraph describe as the
21 services you performed for him?

22 A. Well, I noted that after the first buildings were
23 underway, that he chose to terminate Turner and enter into
24 negotiations with independent contractors for specialty
25 trades that would normally have been subcontractors to the

CHARLES KENNETH SPRIGGS - DIRECT

1 general contractor.

2 And we assisted in recommending a number of companies,
3 distributed drawings for pricing, and once the independent
4 contractors were engaged by Mr. Slivka, we answered field
5 questions and provided additional information for them.

6 Q. Okay. Let's go to page two. And if you go down three
7 paragraphs it references invoice number five. Tell me
8 what that briefly describes as being contained in invoice
9 number five.

10 A. The invoice number five covers all the expenses, the
11 printing that we incurred, mailing, all of the items that
12 had costs. And I noted that my original estimate for
13 reimbursable costs was based on your identification of a
14 contractor, JT Turner, who usually asks us for digital
15 drawings. Those are drawings on a disk or sent over the
16 Internet, and then produces all the copies needed for
17 actual pricing and construction. As your consultant after
18 terminating Turner, we were charged with providing and
19 distributing all those documents.

20 Q. Okay. Skip down to the last paragraph on that page,
21 on page two. And you're expressing some concerns there.
22 Tell me what concerns you expressed in this letter.

23 A. Well, we had -- I used the term we were rounding the
24 bend. Actually by the end of 2008, all seven buildings
25 were under construction in one form or another.

CHARLES KENNETH SPRIGGS - DIRECT

1 And I said that, we were asked to do a number of
2 items, a number of things. And then I said, our invoices
3 are based on my friendship with you and the modest amounts
4 charged. I would not want these figures to be made public
5 knowing that the construction costs of seven buildings is
6 well over \$7 million. Normally construction costs for a
7 project like this one, our fees would be between 10 to 15
8 percent. Our total invoices amount to just 3.9 percent.
9 I'm sure you will keep our fees in confidence.

10 Q. All right. Let's go to the last paragraph of the
11 letter which appears on page three.

12 And tell me at that time frame what services the
13 Spriggs Group indicates here it was still performing.
14 A. Well, I noted that here we are in February at this
15 time, the beginning of February. And I said, we've
16 occasionally received calls from your contractors and we
17 always have responded to these past two months of 2009.
18 I'm sure there are many things you may still want to do
19 and as always we will support you to achieve your goals.
20 Just let me know how we may assist.

21 Q. Okay. Flip the page and look at invoice number one.

22 A. Yes.

23 Q. Tell me how much that invoice was for.

24 A. The invoice number one is for 76,000 and it's a typo
25 down below, it's 76,210.

CHARLES KENNETH SPRIGGS - DIRECT

1 Q. And what's the date of that invoice?

2 A. The date of the invoice is 26 February 2007.

3 Q. And when did you actually receive the money for that
4 initial work?

5 A. It was in, I'm going -- I'm going to say approximately
6 mid February of that month.

7 Q. This invoice is dated 26 February.

8 A. I'm sorry.

9 Q. Why did you issue an invoice after you received the
10 money?

11 A. Well, in the first place, we, we needed to record the
12 date when the actual money was paid. It certainly wasn't
13 the first week in January. So I documented that we had
14 received the amount of money. And I can't remember if in
15 a later conversation whether Mr. Slivka said he wanted it
16 dated at that time.

17 Q. Who did you send this invoice number one to?

18 A. We were requested to send this invoice to one of
19 Mr. Slivka's attorneys in Savannah. I believe it was at
20 firm Oliver, Maner and Gray.

21 Q. Okay. And is that what you did?

22 A. And that's what we did.

23 Q. All right. Let's look at number two. Walk me through
24 in detail what this invoice is for.

25 A. When we made our initial proposal and we were to

CHARLES KENNETH SPRIGGS - DIRECT

1 document what would be involved in each of the buildings,
2 we had estimated a number of sheets.

3 When the project was completed permits were issued and
4 our final sets were done. We, we took the number of
5 sheets actually produced for each of the buildings and
6 used the same formula which is an hourly-based formula of
7 which we take the number of hours for each sheet times the
8 number of sheets times the rate that we agreed to, to
9 categorize sheets at \$105 an hour. And we then produced
10 totals for all of the drawings in the final sets.

11 Q. And you said that's an estimate of 24 hours per
12 sheet. Do you know how many hours per sheet you actually
13 or was actually expended by the Spriggs Group creating
14 these documents?

15 A. Easily on the work that ended up involving, I guess
16 I'm a bad estimator, because they were at least
17 approximately 36 hours, some cases more, to produce the
18 most complicated sheets.

19 Q. And why didn't you charge \$36 per hour for these
20 sheets?

21 A. Because we had an agreement with a formula. And I
22 felt that it was important to keep the same formula that
23 we established and therefore that's what I used.

24 Q. All right. There's also line item on invoice number
25 two that says consultants paid by architect. Tell me what

CHARLES KENNETH SPRIGGS - DIRECT

1 that includes.

2 A. Those are the moneys that were paid to the structural
3 engineer and payments to date of the mechanical
4 engineer -- well, actually in this case mechanical,
5 electrical and plumbing engineering.

6 Q. And how much was that?

7 A. That was \$20,535.

8 Q. And going back to the number of drawings produced and
9 the formula here, 24 hours per sheet times \$105 per hour,
10 why aren't there any fees there or sheet rates there for
11 175, which I understand was your rate?

12 A. This was the formula we used in the beginning in our
13 proposal. My rates were for project management and for
14 activities that I was to supervise.

15 Q. And you show a credit on invoice number two. Tell me
16 why that credit appears here.

17 A. That was the credit -- this was, the subtotal was for
18 total work that we did. And then we credited the payment
19 in February of 76,000. And, again, I'm bad at
20 arithmetic. It's 210, not 201.

21 Q. So that's a typo?

22 A. Typo.

23 Q. All right. Let's look at invoice number three. Tell
24 me generally what this invoice is for.

25 A. These items were identified as additional requests and

CHARLES KENNETH SPRIGGS - DIRECT

1 include the dental moldings that I had mentioned. The
2 research and the dog wash and the various activities that
3 occurred on an hourly rate, additional work.

4 Q. Okay.

5 A. And it also -- excuse me. It includes the agreed
6 drafting for the steps and the wall that we looked at
7 earlier.

8 Q. Okay. I'm going to hand you Plaintiff's Exhibit
9 Number Seven which is the November 27th, 2006 agreement.
10 And tell me which paragraph in that agreement that this
11 additional work falls under.

12 A. The additional work in invoice number three, this
13 falls under Paragraph 19. Once we begin construction
14 documents any changes in room layouts, sizes, window
15 locations, door locations, exterior elevation designs, it
16 lists a series of items, would be done on an hourly basis.

17 Q. Okay. Let's go back to invoice number three and just
18 hold onto Exhibit Eight for me.

19 A. I'm at invoice number?

20 Q. I think it's seven. I'm sorry. Look at Exhibit
21 Eight, invoice number three.

22 A. Yes.

23 Q. Okay. Tell me what you charged for, what work you
24 charged for that was performed in August of 2007.

25 A. In August of 2007, it was the redesign of the rear

CHARLES KENNETH SPRIGGS - DIRECT

1 wall system. This is the exterior wall of the potting
2 shed once the construction documents had been completed.

3 And then it's changing those documents.

4 Q. And what was your charge for that work?

5 A. It was for six hours at \$105 an hour.

6 Q. Which totals?

7 A. \$650.

8 Q. And how did you determine that was six hours of time?

9 A. The time sheets show work during August and then we
10 also have a transmittal and dates of when these drawings
11 were changed and we knew how much time was spent on each
12 drawing.

13 Q. Okay. How about October of 2007? What work did you
14 perform that you're invoicing by invoice number three in
15 October of '07?

16 A. That was the agreed work for the garden wall which I
17 mentioned earlier with a pair of steps that go up, and
18 that was for completing that work.

19 Q. And what was your charge for that?

20 A. \$825.

21 Q. And how was that computed?

22 A. It was computed by the actual drafting work and also
23 the time to meet with the contractor. And you may have
24 seen the grid that was talked about yesterday that was put
25 out on the ground, the preparation of that drawing.

CHARLES KENNETH SPRIGGS - DIRECT

1 Q. Go ahead and take a drink.

2 A. Thank you. (Complying.)

3 Q. How many hours were charged for the garden wall?

4 A. Eleven hours were charged for the garden wall.

5 Q. And what was the rate?

6 A. The rate was \$75 an hour.

7 Q. And that's a new rate. What is that rate?

8 A. That is a rate for someone doing pure drafting. And
9 it was in a way, Mr. Bozeman did it who is normally at
10 \$105 an hour.

11 So we, said, it really didn't end up as drafting. It
12 was a lot more than that but we agreed to that price and
13 that's what we charged.

14 Q. And do you recall how many drawings were actually
15 produced for the garden wall?

16 A. I believe at least two plus a grid drawing would make
17 three drawings.

18 Q. Okay. What is the work that was performed during
19 March and April, March through April of 2008, that appears
20 on invoice number three?

21 A. We noted earlier that we received a request to do what
22 is a rather elaborate -- a soffit is the underside of a
23 roof that overhangs from the building and the roof comes
24 up. This surface is known as the soffit.

25 And Mr. Slivka had decided that he wanted a rather

CHARLES KENNETH SPRIGGS - DIRECT

1 elaborate series of moldings, that are called dental
2 moldings. And a dental is a series of little blocks that
3 go along in a row. And it also had quite an elaborate
4 series of recesses in it.

5 And he referenced the Taft House Museum. Andy Bozeman
6 mentioned yesterday, you may remember, when you think of
7 Taft you think of President Taft. So we were looking up
8 what is at the Taft House Museum for President Taft. And
9 then Mr. Slivka calls, no, no, no. I meant the Taft House
10 in Cincinnati. So off we went to Cincinnati to look for
11 the moldings.

12 And you may remember that Mr. Bozeman went into some
13 detail of what it took including going to the Library of
14 Congress, requesting photographs. And then what took a
15 particular amount of time is that the overhang, that's the
16 amount of, that the roof comes out from the side of the
17 building, at the Taft Museum is three feet. And we had to
18 reduce this to two feet.

19 And then when he mentioned the barns, what he thought
20 he would do there, he would use them in all the places.
21 We had some concern because those are much smaller.

22 So if you took a quick look, that's the overhang with
23 this elaborate underside and we're going (using tape
24 measure), down to here and we just have to, we have to
25 miniaturize, shrink, all of this elaborate work, and to an

CHARLES KENNETH SPRIGGS - DIRECT

1 overhang of that measure.

2 Q. How many hours were billed for that work?

3 A. That was a total of 32 hours.

4 Q. And at what rate?

5 A. At \$105 an hour.

6 Q. So what was the total for that work?

7 A. \$3,360.

8 Q. All right. Describe for me the work that was
9 performed during May of 2008 that appears on invoice
10 number three.

11 A. That was the adventure with the dog wash. And it
12 originally started for a dog wash out at the stable or
13 barn on the ground and basically comprising an area like a
14 tub to put a dog with a hose bib to hook up a hose and
15 wash a dog.

16 But then Mr. Slivka decided to move the dog wash into
17 the basement of the main house. It's interesting that
18 there is no direct access to the basement so you have to
19 come in either front door or one of the side doors, go
20 through the house, go down the stairs to the basement and
21 that's where this dog wash would be located.

22 But in this case we needed to come up with something
23 in which an older dog could get up and you could wash him
24 at, let's say, standing height. So it needed a ramp and
25 so we began to look at commercial spas for dogs, and

CHARLES KENNETH SPRIGGS - DIRECT

1 veterinarian-type equipment in order to wash.

2 At least one or two of the dogs were Great Pyrenees
3 and if you're not familiar, they're very large dogs. And
4 so we came up with probably a half-dozen varieties after
5 going through this and then he decided to select one. And
6 then we needed to figure out how you have to hook it up,
7 where the drainage would go, and if it needed any
8 electricity and also whether we needed to rearrange some
9 lighting so you could look down at the dog.

10 Q. Other than the dog wash research, what other work took
11 place in May of 2008 that's billed on this invoice?

12 A. It's -- there were, there were several doors that were
13 taken from Julianston Plantation in McIntosh County,
14 Georgia. And these were thin, original doors. By thin I
15 mean there was a certain delicacy to them. And they had
16 to be accommodated.

17 And you may remember Mr. Bozeman referred to the
18 hyphens. These are the little connecting pieces of the
19 main house. So we have the big main house, the hyphens
20 and then the wings.

21 And so, we also had some head height issues in there
22 and we had to work out using those doors and what kind of
23 interior trim. And Andy alluded, this -- this is trim and
24 how you make all of this work around the doors.

25 Q. Okay. And how much time was billed on invoice number

CHARLES KENNETH SPRIGGS - DIRECT

1 three for the dog wash research?

2 A. The dog wash was one and a half hours.

3 Q. At what rate?

4 A. \$105 an hour.

5 Q. For a total charge of what?

6 A. \$157.50.

7 Q. Okay. And the details to incorporate the existing
8 doors from Juliananton, how many hours did that work take?

9 A. That took four hours.

10 Q. What was the rate for that?

11 A. \$420.

12 Q. And what is the total for that charge?

13 A. Well, it was four hours at 100 -- I'm sorry, four
14 hours at \$105, and the charge was \$420.

15 Q. Okay. And on page one of invoice number three, you
16 show, on each one of those you show a number of hours that
17 are associated with a particular task. Where do you get
18 those hours from?

19 A. We go to our time sheets and look at activities. And
20 if they're specific, we document them directly from that
21 task list. When we started out we had the subject of
22 Juliananton main house and out buildings. And we simply
23 totaled the hours as we went along.

24 As this became more complicated and as more things
25 came up, we began to try to identify these different

CHARLES KENNETH SPRIGGS - DIRECT

1 tasks. But we always could tell the hours because we
2 could see what drawings were done that day. And we could
3 see if there was any correspondence to other parties and
4 determine if we had nine hours shown for a day whether
5 some task was four hours, six hours.

6 Q. Okay. Let's look at page two of invoice number
7 three. And tell me what services, what additional
8 services were performed during August of 2008 that are
9 shown on this invoice.

10 A. We redesigned the front entry windows. This is on the
11 elevation. You may remember of the front of the building
12 with the two-story columns coming in and the main front
13 entrance.

14 And Mr. Slivka had very specific windows in his
15 sketches that he wanted. But during August he, he felt
16 they just really didn't look right. There was something
17 not in proportion.

18 And I listened to it. And I suggested that the
19 palladium window was a little squat, it was compressed.
20 And that I showed some other historic houses in which we
21 had taller, double-hung windows. And he liked that very
22 much and asked us to go in and basically change the
23 windows out at the second floor.

24 Q. And how many hours of effort was related to that?

25 A. Doing the windows and re-detailing them was 15 hours'

CHARLES KENNETH SPRIGGS - DIRECT

1 worth of work.

2 Q. And what rate did you apply to that?

3 A. We used the rate for Mr. Bozeman at \$105 an hour.

4 Q. And what was your total charge for that?

5 A. \$1,575. And I didn't charge my time.

6 Q. What's the next item that was accomplished in August
7 of 2008 that's invoiced on invoice number three?

8 A. The other was we were, we were still designing and he
9 asked us to provide manufacturing sources for slate
10 millwork and moldings.

11 The work here is distinct in that from the original
12 proposal we noted that Mr. Slivka will pick the moldings.
13 He will tell us who the manufacturers are and then we will
14 simply be able to make a schedule and say in room 111
15 you're going to use molding 3204 by Pine Grove
16 Manufacturing. Instead he said, go out and find these
17 manufacturers and come up with molding numbers and
18 product.

19 And also, go out and look for sources for slate and
20 millwork. Millwork is finished trim that you see around
21 the windows. And we did that work.

22 Q. Okay. And how many hours were related with that?

23 A. That took nine and a half hours.

24 Q. What was the rate applied?

25 A. The rate was \$105 an hour.

CHARLES KENNETH SPRIGGS - DIRECT

1 Q. What's the total charge?

2 A. The total charge was \$997.50.

3 Q. What's the next item of work that was performed in
4 August of 2008 that's charged on invoice number three?

5 A. This is to research Rinnai hot water system and a
6 little brief explanation. It's a particular type of
7 point-of-source water heater. And you may or may not have
8 seen these. They are tankless and basically they have a
9 heating coil in them and then you can put these under
10 cabinets and you have immediate hot water right at that
11 source.

12 Mr. Slivka thought that maybe he didn't want the hot
13 water tanks that we had in the basement. If you can
14 imagine, this house is very long. There are bathrooms
15 here. There are bathrooms down there. So we had to look
16 at that specific water system.

17 He had a friend who had one installed in a much
18 smaller house in downtown Savannah.

19 We got into it. We found that one of the other
20 implications is it needed to be gas fired. So you were
21 going to have to get a gas system and then vent it out.
22 And that became a little bit cumbersome, so that was
23 abandoned.

24 Q. And how much time was charged for that work?

25 A. We spent one and a half hours.

CHARLES KENNETH SPRIGGS - DIRECT

1 Q. What was the rate?

2 A. \$105 an hour.

3 Q. Go ahead with the total.

4 A. The total was \$157.50.

5 Q. All right. Tell me what work was performed that was
6 additional work during September of 2008.

7 A. In September of 2008, we had a series of columns. You
8 may be familiar with seeing the pictures of the porches on
9 the outside. And there was an exercise that we undertook
10 to see if the columns were this large in diameter, and by
11 that I mean 24 inches, 18 inches. We had already had them
12 at a particular diameter.

13 And also the columns had to be structural. And
14 Mr. Bozeman talked a little bit about that, that they had
15 to have a special inset set in these columns so that you
16 could attach into them, and frame into the porch into the
17 columns.

18 Q. And how much time was spent performing that task?

19 A. That took seven hours at \$105 an hour for a total of
20 \$735.

21 Q. All right. What was the next item of work that was
22 performed in September 2008 that was additional work?

23 A. Well, we talked earlier of the chimneys, and the idea
24 of making them wider. And we needed to go back into the
25 architectural drawings and redesign the masonry work and

CHARLES KENNETH SPRIGGS - DIRECT

1 also the width and depths of these columns as they made
2 their way down to the basement.

3 Q. And how much time was spent on that effort?

4 A. That took 23 and a half hours at \$105 an hour for a
5 total of \$2,467.

6 Q. What was the last item of work that was performed in
7 September of 2008 that was additional to the contract?

8 A. Mr. Bozeman noted earlier a palladium window and we
9 became familiar with the arched central window then
10 stepped down two sidelight windows. These are the smaller
11 windows that are on either side.

12 But Mr. Slivka decided that he wanted to replicate the
13 palladium window that is in President Washington or
14 General Washington's house at Mount Vernon, Virginia. And
15 this window is rather elaborate. I may be mistaken, it
16 has an eagle but it has flares on it.

17 It's quite a spectacular window but it also had to be
18 sized and proportioned to work with this project.

19 Q. And how much time was spent on that?

20 A. That took five hours at \$105 an hour and resulted in a
21 cost of \$525.

22 Q. Okay. So what was the total amount of fees invoiced
23 to Mr. Slivka for the additional work that was
24 contemplated by Paragraph 19 of your contract?

25 A. \$11,849.50.

CHARLES KENNETH SPRIGGS - DIRECT

1 Q. And how much of that's been paid?

2 A. None of that has been paid.

3 Q. Let's actually flip back to invoice number two that we
4 looked at a minute ago. What's the total of that invoice?

5 A. Invoice number two is for \$163,574.

6 Q. How much of that invoice has been paid?

7 A. None has been paid.

8 Q. Let's look at invoice number four. Got it?

9 A. Yes.

10 Q. All right. This invoice is also dated February 9th of
11 2009 and indicates that it's for construction
12 administration services; right?

13 A. Yes.

14 Q. What paragraph of your agreement that you've got in
15 front of you allows for additional charges related to
16 construction administration services?

17 A. Paragraph -- well, number 18 of the conditions which
18 is on page five of the proposal: We will provide any
19 requested construction phase services by the project
20 architect or staff on an hourly basis.

21 Q. And tell me what services were charged for by invoice
22 number four.

23 A. If you will remember, we now have seven buildings
24 potentially all going on at different times. So we were
25 asked to get bids. That was more for, more of an activity

CHARLES KENNETH SPRIGGS - DIRECT

1 for the main house. We identified trade contractors. We
2 answered field questions. Sometimes we had to produce
3 field sketches for the garages, barn and main house.

4 These would be sketches that would be done on an,
5 either a normal letter size and sent out to the field or
6 may require a larger drawing. But whatever was
7 appropriate.

8 And then we had quantity takeoffs for the main house
9 with all these sheet rock panels. And then we, that was
10 sort of a highlighting of the different kinds of work and
11 then we went in on the time sheets and took the various --
12 either myself or Mr. Bozeman and we took the hours and
13 then we put them month by month.

14 Q. So, for example, May of 2008, you've got both listed a
15 project architect. Who is that?

16 A. That's myself.

17 Q. And your rate is?

18 A. At \$175 an hour.

19 Q. And you also have listed a project architectural
20 designer.

21 A. That's Mr. Bozeman at \$105 an hour.

22 Q. Okay. And let's look at your charge for May 2008.
23 How many hours did you work?

24 A. My charge for May 2008 was two hours.

25 Q. And what's the total there?

CHARLES KENNETH SPRIGGS - DIRECT

1 A. \$350.

2 Q. And do -- Mr. Bozeman, how many hours did you charge
3 for his services in May of 2008?

4 A. He had two and a half hours at \$105 an hour.

5 And the total cost for his activity in May 2008 was
6 \$262.50.

7 Q. And where did you find the number of hours for each of
8 these months as listed on this invoice?

9 A. We went to our time sheets and also if we needed to we
10 checked our documents for plot dates and any other time --
11 and possibly transmittal sheets if necessary to determine
12 exactly for a day what activity was done and then how many
13 hours.

14 Q. And what months does invoice four bill Mr. Slivka for
15 construction administration services that were performed
16 by the Spriggs Group?

17 A. The 9th of February, 2009.

18 Q. What months did work occur --

19 A. Oh.

20 Q. -- that's shown on this invoice?

21 A. Oh. The work occurred from May of 2008 through
22 December, 2008.

23 Q. Okay. And what is the total for the services pursuant
24 to Paragraph 18 of your agreement with Mr. Slivka that you
25 are invoicing him for by invoice four?

CHARLES KENNETH SPRIGGS - DIRECT

1 A. \$19,532.50.

2 Q. And how much of that's been paid?

3 A. None has been paid.

4 Q. Okay. Let's look at invoice number five. And tell me
5 what that is.

6 A. Invoice five is the amount of printing, copies, any
7 blueprinting from January 2007 through December 2008.

8 Q. All right. And tell me what charges are included on
9 this invoice.

10 A. In our office through our own copy machines we made a
11 number of both black and white and color copies. I'll
12 just do a quick add. It's about 430-some dollars.

13 We had postage of \$27.07.

14 Blueprints at \$51. These are all made in our office
15 and we keep sheets in which we mark down the number of
16 copies, and we go back and add them up.

17 And then computer plots. And these are plots -- we
18 have a large machine that if you're sending a drawing out,
19 like these drawings that you've seen, they go through a
20 plotter. And they come out in sheets this large
21 (indicating). And it actually physically with pens, draws
22 the sheet that you see there.

23 Then we frequently, if we need lots of printing
24 quickly, we'll go to a copy company, a printing company.

25 And so, with one of two local firms, Coastal Digital

CHARLES KENNETH SPRIGGS - DIRECT

1 Graphics, we paid out in invoices \$2,270.51. And then to
2 another local blueprint company, Savannah Blueprint, we
3 paid \$134.72.

4 Q. Okay. So the first copies that are listed on this
5 invoice were copies produced in-house?

6 A. That's correct.

7 Q. And they're about 430, \$430?

8 A. \$430.70.

9 Q. Okay. The next item you said was postage. That's
10 postage out of your office?

11 A. Yes.

12 Q. And what was the total of that?

13 A. \$27.07.

14 Q. And the blueprints, what's the charge for that?

15 A. Those are prints that we did ourself in-house and we
16 have rates for those. And it was a total of \$51.03.

17 Q. And the computer plots, I believe you said those are
18 in-house plots?

19 A. Yes.

20 Q. How do you determine the price for that?

21 A. We take -- a number of years ago we take the
22 equipment, we expense it over a five-year period, then we
23 buy ink. We -- and these are plotting pens. You have to
24 look at them. They go along a roll.

25 Then we take the cost of paper. And we use our total

CHARLES KENNETH SPRIGGS - DIRECT

1 cost for a year, we divide into the copies that we make
2 and we come up with a rate, whether it's an intermediate
3 sheet is one rate and a bigger sheet is another rate.

4 Q. What was your total charge on invoice number five for
5 your in-house computer plots?

6 A. \$964.50.

7 Q. You've already mentioned the total for the out-of-the
8 office copies. Tell me what your total invoice for
9 reimbursable expenses was.

10 A. \$3,878.53.

11 Q. And have you been paid that by Mr. Slivka?

12 A. No.

13 Q. Let's go back to your letter that is at the beginning
14 of Exhibit Number Eight, the cover letter to the
15 invoices.

16 When you wrote that letter in February of 2009, did
17 you understand that the Spriggs Group had allegedly been
18 terminated?

19 A. No.

20 Q. And you mentioned on page two that you wanted to keep
21 your fee in confidence. Why did you want to keep your fee
22 in confidence?

23 A. Well, frankly, for all that we went through, the
24 amount of work we did, in my opinion it was extremely,
25 extremely low. And I could not take on a project even

CHARLES KENNETH SPRIGGS - DIRECT

1 remotely like this scale and charge what we charged.

2 Q. I'm going to hand you Plaintiff's Exhibit Eight-A and
3 Eight-B. And tell me what Plaintiff's Exhibit Eight-A
4 is.

5 A. Exhibit Eight-A is an invoice, it's number six. And
6 it's for services that we did for an appraisal company
7 that contacted us on behalf of Mr. Slivka to obtain
8 documents that the individual, or that she needed to put
9 together her appraisal.

10 Q. And what services did the Spriggs Group perform?

11 A. She contacted me several times and said that she
12 was -- she's actually here in Walterboro, and said that it
13 would be very difficult for her to take our large drawing
14 sheets and reduce them down. She might have to send it to
15 Charleston and several other problems.

16 Also she needed to identify rooms. Mr. Slivka decided
17 on his drawings, particularly the main house, to take all
18 the names of the rooms off. He didn't actually want
19 people to know what these rooms were, particularly when
20 they came in for permit.

21 So we changed a bedroom which might be on the second
22 floor to number 207. If it's a large dining room on the
23 first floor, it might be 115. And for the appraiser, she
24 said, I can't identify these numbers. Would you please
25 take all the numbers and put all the room names back? So,

CHARLES KENNETH SPRIGGS - DIRECT

1 to -- and she said, I'd really be grateful if you could do
2 this.

3 So I gave that work to Andy Bozeman and then he went
4 back and we made a list for her that said, here are the
5 room numbers, here are the work.

6 Then she wanted to know if I could give her totals of
7 bedrooms. And these are typical things that appraisers
8 need to give a probable cost. And so we did those and
9 then we put them in a file. And you may not be familiar
10 with this format, it's called .PDF.

11 And Andy Bozeman alluded to that. It's a -- you
12 translate whatever document you're working in into this
13 universal file and anyone can read it. So I can send it
14 to someone who has a Mac computer or someone with any
15 computer and you can call these up and read them.

16 So we translated them and sent them to her.

17 Q. Do you remember the name of the appraisal company?

18 A. Oh, boy. Maybe something like Compass or --

19 Q. Okay. And what was your -- how many hours did you
20 work on -- or did you bill for that?

21 A. Well, I just billed an hour of my time because I
22 listened to her, I responded to her several times and then
23 I worked with Andy. And then Mr. Bozeman spent two and a
24 half hours shrinking these drawings down so she could use
25 to a size, you've seen these earlier, to letter size and

CHARLES KENNETH SPRIGGS - DIRECT

1 then putting them into a package. And that saved her a
2 lot of time.

3 Q. What was your total charge for the services that you
4 performed to support this appraisal?

5 A. \$437.50.

6 Q. And has that been paid by Mr. Slivka?

7 A. No.

8 Q. All right. Let's look at, I guess it's Eight-B. Tell
9 me what that document is.

10 A. This is invoice number seven. It's dated the 16th of
11 November, 2009.

12 Q. And what kind of services is that invoice for?

13 A. This was picking up the construction phase services
14 after the first of the year. The previous documents that
15 I sent to him basically summarized all the work from the
16 beginning of January 2007 through the end of 2008.

17 So we were picking up the last work that we did
18 directly related to the buildings on the site and we
19 totaled our hours. And then we used the same -- we also
20 had to because of a request, had to contact our consulting
21 engineer and he, too, charged us for the time he spent.

22 Q. Okay. Can you read the description of what the work
23 was that is covered by this invoice?

24 A. Yes. Received requests from independent contractors
25 in the field for details concerning main house balcony

CHARLES KENNETH SPRIGGS - DIRECT

1 framing, flashing -- framing flashing, including use of
2 alternate materials. Request to substitute main house
3 plumbing waste line size above basement level, research
4 and coordination with plumbing engineer, go over details
5 for grotto pavilion, provide explanation to owner of what
6 is shown on various drawings.

7 Q. And what was your charge for, as the project
8 architect, how many hours?

9 A. One and a half hours at \$175 an hour for a total of
10 \$262.50.

11 Q. And whose time was that?

12 A. That's my time.

13 Q. And what's the next charge that appears?

14 A. For Mr. Bozeman's time labeled project architectural
15 designers, six and a half hours at \$105 an hour, for a
16 total of \$682.50.

17 Q. And what's the third charge that appears on this
18 invoice?

19 A. The third charges are consultant engineer who did
20 receive the information about the size I noted earlier of
21 this waste pipe and how it was reduced. And then run --
22 to run the calculations to see whether it was acceptable
23 and that was one hour at \$140 an hour.

24 Q. And who was that consultant engineer?

25 A. That consultant engineer was Kayton Smith of Smith and

CHARLES KENNETH SPRIGGS - DIRECT

1 Vandembulck.

2 Q. And what did Mr. Smith, what did he perform throughout
3 the project?

4 A. He performed various engineering tasks including
5 mechanical, electrical and plumbing engineering.

6 Q. All right. And what was your total for invoice number
7 seven for the construction administration services in
8 January of 2009?

9 A. \$1,085.

10 Q. And has that been paid by Mr. Slivka?

11 A. No.

12 Q. Why is that -- why was that invoice sent in November
13 of 2009?

14 A. It was interesting that we still got calls, random
15 calls as construction was going on. And we also had a
16 decision to make of whether any other invoices might come
17 in.

18 And so, we -- and we also were becoming less and less
19 familiar of what was being done out at the site. So I
20 chose that clearly we weren't going to be asked any more
21 and then totaled that work up.

22 Q. All right. Flip back to Exhibit Eight-A. That's
23 invoice six?

24 A. Yes.

25 Q. Who asked you actually to perform that work, the

CHARLES KENNETH SPRIGGS - DIRECT

1 A. That's the time sheet for Mr. Bozeman.

2 Q. And what's the period?

3 A. It is the period, time period or pay period ending the
4 15th of January 2009.

5 Q. And, again, you have several projects listed on here
6 but you also have the Slivka project; right?

7 A. Yes.

8 Q. What services did Mr. Bozeman perform on January 2nd?

9 A. On January 2nd there was some work, construction
10 administration work for the grotto.

11 Q. How about on January 5?

12 A. On January 5, there was an hour and a half relating to
13 balcony framing flashing.

14 Q. And what work did Mr. Bozeman perform on January 7th?

15 A. On January 7th, balcony framing flashing and then he
16 spent a half hour that said meet slash phone explain to
17 Gene.

18 Q. Okay.

19 A. That's Mr. Slivka.

20 Q. And finally, what work did he perform on January 13th
21 of 2009, according to this time sheet?

22 A. He had an hour and a half time. I believe it was for
23 general coordination.

24 Q. Okay.

25 A. That's the 13th.

CHARLES KENNETH SPRIGGS - DIRECT

1 Q. And what does that bond consist of?

2 A. The bond, I believe, consists of a cash payment to the
3 Court in the amount of the lien, plus a percentage, and
4 I'm not sure of the exact percentage, but it's
5 approximately \$265,000.

6 Q. Why did you file a lawsuit against that bond and
7 against Mr. Slivka for breach of contract and other
8 actions?

9 A. We had the issue that we were -- by that time my
10 opinion, we were not going to get paid, and we were going
11 to have to pursue another path in order to recoup our
12 costs and our invoices.

13 Q. What is your understanding of the demand that was made
14 to Mr. Slivka under state law 27-1-15?

15 A. The demand says that if you agree that certain moneys
16 have to be -- that you owe the person or the company an
17 amount of money, but you may not agree with the rest of
18 moneys requested, that you are to pay what you agree that
19 you owe. And you can then dispute the difference.

20 Q. Mr. Slivka has alleged that he terminated the Spriggs
21 Group services in December of 2008. Was the Spriggs Group
22 terminated in 2008?

23 A. No. He came to pick up the last drawings and said, I
24 don't want any more drawings. But that was the only, the
25 only direction that we got.

CHARLES KENNETH SPRIGGS - DIRECT

1 And in fact, we did get calls after that time by
2 contractors. I'm going to call them contractors.
3 Normally they would be subcontractors to a general
4 contractor. And so we continued performing those
5 services.

6 Q. What -- the drawings that he picked up in December of
7 '08, what did those drawings include?

8 A. Those drawings were corrections that he had requested
9 earlier for redistribution of all the mechanical registers
10 and returns. And for you to understand, they would be
11 what you see in the ceilings here, providing
12 air-conditioning and return air to the various rooms
13 throughout the main house.

14 Q. When did he request that those services be performed?

15 A. We were at a mutual function for the Telfair Museum of
16 Art that was an appreciation evening for former trustees.
17 I think it ran from about five to seven or 7:30,
18 approximately the middle part of November 2008.

19 And he approached me and said, let me -- I want to go
20 to your office and sit down and go through all this
21 mechanical work. So at 7:30 in the evening, I went to the
22 office, worked for the next three to four hours. He
23 wanted to go over all of these possibilities and I sat
24 there and worked room through room with him.

25 Q. Okay. I've marked, pre-marked as Plaintiff's Exhibit

CHARLES KENNETH SPRIGGS - CROSS

1 A. We made three trips to the site but since we were not
2 allowed to know what phase of the construction was going
3 on and we received no request to do that, it became very
4 difficult to make an observation.

5 Q. Okay. And the last time you went out and actually
6 observed construction was at the completion of the
7 basement?

8 A. No. The last time I went out was during the framing
9 of the house above the basement, and the rebuilding of the
10 chimneys and masonry construction. And I had concern as
11 to how that was going to -- how it was being done.

12 Q. And was in 2007 or 2008?

13 A. I believe it was in 2008.

14 Q. Okay. Now, construction observation as a term of art
15 in the architectural profession involves only observing
16 construction. It specifically does not include the
17 architect in any way directing or otherwise controlling
18 the means and methods of construction?

19 A. That's correct.

20 Q. And the idea is as an architect you're willing to go
21 look and see conditions but you're not assuming
22 responsibility for those conditions?

23 A. That's correct.

24 Q. And you're not directing the work; is that right?

25 A. No.

CHARLES KENNETH SPRIGGS - CROSS

1 Q. And you're not ordering the work in any particular
2 sequence or method or means?

3 A. That's correct.

4 Q. Okay. And you're not as part of the observation
5 services supervising construction?

6 A. That's correct.

7 Q. I will show you again what has been marked as
8 Plaintiff's Exhibit Number Seven. And that is the
9 agreement between you and Mr. Slivka.

10 Isn't it true that you knew that Mr. Slivka wanted a
11 fee to be quoted to him; isn't that right?

12 A. He asked for a fee based on what he told me verbally
13 and some sketches.

14 Q. Well, he expressly did not agree to a relationship
15 where you simply billed him by the hour on a periodic
16 basis and it was open ended..

17 A. No. He did make a suggestion of periodic payments in
18 the proposal as we progressed through the project which he
19 rejected.

20 Q. But you -- but you would agree with me that it wasn't
21 simply an open-ended arrangement where you simply billed
22 him at whatever interval for whatever time you expended on
23 the project?

24 A. It's not open ended, but it is not a closed end,
25 either based on the stipulations within the document that

CHARLES KENNETH SPRIGGS - CROSS

1 translate that into some understandable form.

2 Q. You mentioned a formula. Do you believe that your
3 letter of November of 2006 contained a billing formula
4 based on the sheets?

5 A. It certainly was the basis of putting together the fee
6 proposal together with other activities.

7 Q. Okay.

8 A. It was the heart of the construction documents as a
9 product.

10 Q. Now, with regard to these invoices, when you billed
11 Mr. Slivka in February of 2009, you did not include in
12 here any time that you had ostensibly spent in January of
13 2009; isn't that correct?

14 A. The invoices we presented him at the time were to
15 summarize the year, the two years from our start to our
16 finish.

17 Q. Okay.

18 A. And that's where I chose to stop at that moment in
19 order to -- we had accumulated so much cost that we were
20 basically going to present the majority of our work.

21 Q. So simply stated, those invoices do not include any
22 time that you ostensibly did in January of 2009?

23 A. At the time we prepared them we had already incurred
24 that time.

25 Q. And they were not included on the invoices?

CHARLES KENNETH SPRIGGS - CROSS

1 A. They were not included in the invoices that were to be
2 through December 31st.

3 Q. Let me show you what I marked as Plaintiff's (sic)
4 Exhibit 10. This is your notice of mechanic's lien. Ask
5 you to review that for me.

6 And you'll notice on there there is a sworn statement
7 of account. Sworn by you?

8 A. Yes.

9 Q. And the date of that document is April 13th in 2009?

10 A. That's correct.

11 Q. And in your sworn statement of account you do not
12 include any time for any services you performed in
13 January?

14 A. The dollar value of the time was not included but the
15 time was expended and documented.

16 Q. It was not included in your sworn statement of account
17 in April of 2009?

18 A. The time that was expended was documented.

19 Q. It was not included in your sworn statement of account
20 from April the 13th of 2009?

21 A. The dollars included do not, do not end the services.

22 Q. Mr. Spriggs, I'll ask the jury to read that.

23 Let me show you what's been marked as Exhibit Eight-A.
24 This is your invoice number six from May of 2009?

25 A. Correct.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF COLLETON

CIRCUIT COURT
2009-CP-15-00595

3
4 SPRIGGS GROUP, P.C.,
5 Plaintiff,

6 -vs-

TRANSCRIPT OF RECORD

7 GENE R. SLIVKA,
8 Defendant.

VOLUME TWO

9 Heard on Thursday, July 21, 2011

10 & Friday, July 22, 2011

11 in

12 Walterboro, South Carolina

13 BEFORE:

14 THE HONORABLE WILLIAM H. SEALS, JR.

15 AND A JURY

16 APPEARANCES:

17 Counsel on Behalf of the Plaintiff:
18 A. Bright Ariail, Esq.
19 James A. Bruorton, Esq.

20 Counsel on Behalf of the Defendant:
21 Robert T. Lyles, Jr., Esq.

22
23 Cheri L. Young, RPR
Circuit Court Reporter
P O Box 1154
24 Aiken, SC 29802-1154
25

CHARLES KENNETH SPRIGGS - CROSS

1 Q. Okay. And what you did there in that line, that
2 \$32,000 which was included in your fee proposal, I think
3 you testified yesterday that was for the consultants,
4 meaning the engineers, to prepare the plans that were
5 going to be necessary?

6 A. Or to draw or review details prepared by us or to draw
7 details which we would then incorporate in the
8 architectural drawings.

9 Q. Okay.

10 A. At that level you could call it a collaborative effort
11 of getting information and then placing it on drawings and
12 in some places for mechanical, electrical and plumbing,
13 the engineers would prepare drawings based on our input
14 and their information and calculations.

15 Q. Now let's go to invoice six. I'm going to go ahead
16 and give you invoices six and seven. That's in Exhibits
17 Eight-A and Eight-B.

18 Now, again, invoice number six was a charge that you
19 sent Mr. Slivka in May of 2009. That was after you filed
20 a mechanic's lien against him?

21 A. That's correct.

22 Q. Right. And those charges are based upon work that you
23 did or information that you gave to an appraiser who
24 called you or sent you an e-mail; right?

25 A. I sent several e-mails.

CHARLES KENNETH SPRIGGS - CROSS

1 Q. Okay. And Mr. Slivka never authorized you to provide
2 those services?

3 A. We were told that she was preparing an appraisal for
4 Mr. Slivka or of the Slivka property. So we had to assume
5 that she would not be calling us if there was not some
6 knowledge that she needed documents for that appraisal on
7 his behalf.

8 Q. Let's do it this way. You never talked to Mr. Slivka
9 before you provided those services about providing those
10 services; did you?

11 A. I didn't talk with him but she said that they
12 represented Mr. Slivka. And also this was needed pretty
13 quickly.

14 Q. Mr. Spriggs --

15 A. This was something --

16 Q. -- she did not represent to you that she represented
17 Mr. Slivka. She told you that she was an appraiser and
18 she was doing an appraisal on the Slivka property --

19 A. That's correct.

20 Q. -- and needed information?

21 A. That's correct.

22 Q. You didn't talk to Mr. Slivka about it and you were
23 not authorized by Mr. Slivka to do the work.

24 A. We were asked to do the work in order to complete the
25 appraisal.

CHARLES KENNETH SPRIGGS - CROSS

1 A. I didn't --

2 Q. You didn't produce those until we were in discovery.

3 A. The opportunity was there to look at them and also,
4 frankly, other documents and to go through these
5 thoroughly. And I was ready to avail myself to go over
6 anything that he wanted.

7 But, I was told in one quick telephone call, send me a
8 bill for half. That's it. And that opportunity was lost.

9 Q. Okay. Now, if you will, stay with Exhibit Number
10 Eight. And go back to invoice number two.

11 A. Yes.

12 Q. The first thing. Invoice number two, you state,
13 design in preparation of final drawings. And then you
14 say, based on formula stated in our proposed -- proposal
15 letter dated 27 November 2006?

16 A. That's correct.

17 Q. You referred there to the formula; correct?

18 A. Yes.

19 Q. Okay. Now, in invoice number two and we reviewed this
20 a little bit yesterday, did you list the number of sheets
21 that were prepared for billing?

22 A. That's correct.

23 Q. Okay. And then what you do in invoice -- and you
24 provide a charge for the sheets which you say is pursuant
25 to the formula in your agreement; is that right?

CHARLES KENNETH SPRIGGS - CROSS

1 A. That's correct.

2 Q. And then you reflect that you have paid consultants
3 \$20,535?

4 A. That's correct.

5 Q. And you give a subtotal, then you subtract what he had
6 paid, minus the typo, 76,210?

7 A. That's correct.

8 Q. And you reflected an invoice amount or an amount due
9 of \$163,574. Now, in invoice number two as you're
10 counting up the sheets you don't distinguish between A
11 sheets and PME sheets and S sheets; do you?

12 A. It is a total of all of those sheets.

13 Q. And so you don't distinguish between the types of
14 sheets?

15 A. That's correct.

16 Q. So Mr. Slivka, when he receives this, has no way to go
17 back and figure out for example how many A sheets you're
18 billing him?

19 A. All he had to do when he received these invoices is to
20 call and say, Ken, I would like to find out this
21 information.

22 Q. Okay.

23 A. And he did not do that.

24 Q. Your invoice; right?

25 A. That's correct.

1 Q. And this is how you chose to bill him?

2 A. That's correct.

3 Q. Okay. Are you willing to be bound by the formula
4 stated in your February, excuse me, your November of 2006
5 agreement, Mr. Spriggs?

6 A. I want to look at the agreement.

7 Q. I believe it's Exhibit Seven.

8 A. In the agreement, the number of sheets and the formula
9 does not distinguish in the pricing the different

10 sheets --

11 Q. Okay.

12 A. -- the A sheets, M sheets, E sheets or P sheets. It's
13 a total number.

14 Q. Okay.

15 A. Now, it is based on the anticipated sheets that were
16 listed earlier.

17 Q. Okay.

18 A. And in a similar manner, using the total for each of
19 the buildings. They're summarized in invoice number two.

20 Q. Okay.

21 A. They are not distinguished nor were they distinguished
22 in the proposal.

23 Q. Okay. You're willing to live and be bound by the
24 formula that you created in your November 26, 2006

25 agreement; is that correct?

CHARLES KENNETH SPRIGGS - CROSS

1 A. Bound in what manner, sir?

2 Q. You referred to the formula. I'm just asking if
3 you're willing to be bound by the formula set forth in
4 your agreement, the one that you referred to in invoice
5 number two.

6 A. Based on the individual buildings and the Actual
7 sheets produced?

8 Q. You're qualifying whether or not you want to be bound
9 by your own formula?

10 A. No. I'm asking because your question is general and
11 it doesn't refer specifically to each of the buildings or
12 to some total or -- you did not qualify it.

13 Q. I'm referring to the formula that you refer to on
14 invoice number two, that you're asking, you're telling
15 Mr. Slivka he's bound by in February of '09. I'm just
16 asking you if you want to be bound by it.

17 A. The total number of sheets for each of the buildings
18 that we had times the rate that we saw, times 24 hours
19 would be the totals.

20 Q. Okay. Let me turn your attention real quickly to
21 Paragraph 23. I'll try to move through this as quickly as
22 we can.

23 A. Excuse me. You were saying --

24 Q. Exhibit 23. If you will look at Exhibit 23. I think
25 I gave that to you earlier. It's your damages summary in

CHARLES KENNETH SPRIGGS - REDIRECT

1 understand where he's going with this.

2 THE COURT: Come on up.

3 (Off-the-record discussion).

4 MS. ARIAIL: I'll withdraw that question.

5 Q. After you sent the bills to -- the invoices to
6 Mr. Slivka, he never requested or even allowed you to
7 provide further documentation to support those; did he?
8 A. No. Approximately 30 days after the invoice, I
9 received a call and he said, I don't accept these
10 invoices. I'll pay you, I think it was the 76,210. Send
11 me an invoice.

12 And as I reiterated earlier, based on the situation, I
13 wasn't going to do that.

14 Q. And earlier today Mr. Lyles made a big deal about
15 invoice number four and the fact that you just have the
16 months that construction administration services
17 occurred. And you just list those services at the top,
18 but you don't exactly take every one of those items and
19 list when it occurred.

20 If you went through your time sheets, can't you
21 support each one of those items and show when it occurred
22 by looking, by referring back to your time sheets?

23 A. Oh, yes.

24 Q. Do you have Defense Exhibit Three? Defense Exhibit
25 Three indicates that he will pay 50 percent of the

MYLES IVAN GLICK - DIRECT

1 full scope of drawings.

2 Q. What is your professional opinion as to how the fee
3 was to be determined for this project based on the count?

4 MR. LYLES: Objection, Your Honor. The contract says
5 what the contract says.

6 THE COURT: Overruled. Go ahead.

7 THE WITNESS: Based on the contract, the fee was
8 derived on a sheet basis, number of drawings, those two
9 words are interchangeable, for a basic set of drawings
10 based on a standard set of house plans.

11 The services during construction were called out to
12 be hourly. And what's interesting is there was a
13 deletion. We talk about adds to a contract. Mr. Spriggs
14 deleted one of the buildings, the boat house, from this
15 contract. Mr. Slivka received a credit by taking off the
16 number of sheets.

17 So clearly it was acknowledged that the fee basis on
18 this project was based on the number of sheets or the
19 number of drawings. You add to it if you want more work
20 done or you take away from it. Very, very fair for both
21 sides.

22 Q. Are you aware of the total number of sheets that were
23 produced by the Spriggs Group in this case?

24 A. My understanding that the total was about 43 sheets
25 for the main house as opposed to 22 originally. And I

MYLES IVAN GLICK - DIRECT

1 think the overall sheet count was 87 total.

2 Q. In your opinion, why did the sheet count exceed from
3 the original proposal?

4 A. The sheet count exceeded the original proposal quite a
5 bit by the nature of the requests from the owner. The
6 owner consistently requested additional work, the
7 inclusion of more details, chimneys, thicker walls,
8 drainage systems.

9 He also asked to include rooms. Mr. Slivka had
10 purchased or owned historic rooms and Mr. Spriggs had to
11 include those kind of details in the drawings. He was
12 requested to design a cupula that represented George
13 Washington's Mount Vernon home. You just don't draw that
14 as an architect. You've got to research it. You've got
15 to take the proportions of not only the cupula but how
16 does that proportion relate to the barn. This takes
17 tremendous time.

18 In the case of details for the Taft Museum House in
19 Cincinnati, he had to do the same thing. He had to
20 proportion the soffit details, the scale of that soffit,
21 meaning where the shingles came down and hits that board
22 that you normally see in your house. That's called the
23 soffit. He had to proportion that for all the houses.
24 The houses are different sizes, both the main house and
25 the other buildings on the plantation.

MYLES IVAN GLICK - DIRECT

1 So he had to do quite a bit of work. So all those
2 things add more effort, more time and more drawings. So
3 there was constant requests for that and it added to the
4 drawing count.

5 Q. On the projects that you performed on a sheet count
6 basis, what hourly rate did you charge for that?

7 A. For this type project, I would typically use a \$100 an
8 hour as a blended rate between a \$75 draftsman and a
9 \$125 per hour project architect. This would be an
10 experienced architect with 10 or 15 years' experience
11 who's licensed.

12 And then I take that hourly rate, \$100, times number
13 of hours per sheet. In my office we use 30 hours per
14 sheet.

15 Q. Are you aware of what the formula calculation is in
16 the November proposal that's in front of you as Exhibit
17 Seven?

18 A. Yes, sir. The Spriggs Group used \$105 an hour which
19 is pretty close to mine. But they only had 24 hours per
20 sheet. I think that's a little low in the industry. I
21 think there's a lot of value given in this proposal.

22 Q. Now you talked about contracts that you've had for a
23 fixed fee. On your fixed-fee contract, does that allow
24 for additional services to be paid on an hourly basis?

25 A. Yes, it allows for additional services because even

1 though a contract is fixed, it's still only fixed with
2 what somebody wants you to do. An architect is strictly
3 working for a client. He's going to go out of his way or
4 she's going to go out of her way to make that client
5 happy. It's their money.

6 So at some point you got to say, I'm going to do X.
7 If you wanted more, this is additional services.

8 Q. Okay. Does the contract in this case, which is in
9 front of you as Exhibit Seven, provide for additional
10 services to be compensated as an hourly rate?

11 A. Yes, it does.

12 Q. That's in addition to the fee that's set forth in the
13 contract?

14 A. Yes, yes, it is.

15 Q. For design service fees, how are payments generally
16 made?

17 A. Well, again, those are business decisions by the
18 contracting parties. This contract, you pay half in the
19 beginning, and then half at the end of the job. So
20 there's only one methodology to bill the additional
21 services and also the reimbursable expenses.

22 You could estimate reimbursable expenses, meaning
23 costs of blueprints, copies, long distance phone calls,
24 but you don't know what it's going to be at the end of the
25 job because you don't know how long a job is going to

MYLES IVAN GLICK - DIRECT

1 expenses?

2 A. Absolutely nothing would prevent Mr. Spriggs from
3 invoicing the full costs associated with the project which
4 is normal.

5 Q. What does the contract say about what work the owner
6 would perform?

7 A. It's quite extensive. It states that the owner will
8 deal with issues of solar energy, talks about the owner
9 providing a civil engineer and a landscape architect
10 rather than the architect doing it.

11 This had major implications in terms of the drainage
12 system. Drainage systems are handled by civil engineers.
13 Mr. Spriggs ended up doing all that work. No civil
14 engineer was provided by the owner. Mr. Spriggs wanted to
15 get the job done and get it done right, he provided that
16 extra work. Those are two examples.

17 Q. Based on the November 27 agreement, what services were
18 to be performed by the Spriggs Group on an hourly basis?

19 A. The construction administration. These are these
20 services during construction.

21 Q. Okay. Can you give us some examples of what that
22 would include?

23 A. Well, normally construction administration would be
24 visits to the sites beyond what was agreed to originally.
25 It would be answering questions from the contractor. And

MYLES IVAN GLICK - DIRECT

1 it's really critical to have a general contractor with
2 this size project. The minute you don't have a general
3 contractor, the architect's work goes up exponentially.
4 It goes through the roof in terms of time allocated.

5 Q. Do you have any knowledge as far as the sequence of
6 how the design of the individual structures was performed
7 on this project?

8 A. Well, the proposal is a pretty straight forward
9 proposal. And it assumes that you're going to sit down
10 and you're going to design one building, go to the next
11 building and complete the work, in that manner. That's
12 what we call a good work flow. It makes a lot of sense.

13 What in fact happened is that the owner requested that
14 Mr. Spriggs and the Spriggs Group work on one building and
15 then immediately change to another building and change to
16 another building. And what that does to an architect is
17 adds tremendously to the time and effort. Once again,
18 it's the start and the stopping of that sequence that --
19 it's very much like a lawyer. You can't work on one case
20 and then someone says work on another case for a day and
21 then go back to the other case.. You got to remember what
22 you did, who worked on what.

23 And with an architect, you got to remember: What was
24 working with the engineers? Where was the dimensions?
25 Was I coordinating the sheets? Where did I leave off?

MOTIONS

1 our lunch break until about 1:45. All right. Don't talk
2 about the case and enjoy your lunch.

3 (Jury exits courtroom at 12:10 p.m.)

4 THE COURT: All right. Does the Plaintiff rest?

5 MS. ARIAIL: Yes, sir.

6 MR. BRUORTON: We do, Your Honor.

7 THE COURT: Any motions from the defense?

8 MR. LYLES: Yes, sir. I have a number of motions.

9 The first motion is for a directed verdict. I'm old
10 school. I graduated in '87.

11 Based on the Plaintiff's cause of action under
12 Statute 27-1-15, and that is the demand for payment
13 statute. I believe that the statute has been provided to
14 the Court and it clearly says that when a demand for
15 payment is made appropriately, and this one was
16 appropriate, that someone receiving the demand for payment
17 has an obligation to investigate the claim and to make
18 payment of the portions of the claim being valid. That
19 cause of action doesn't apply in this case and is legally
20 unsustainable for the following reasons.

21 First of all, the demand for payment in this case was
22 made in May, I believe, or March of 2010, some eight or
23 nine months after the claim had already begun.

24 The testimony from Mr. Slivka is that by the time the
25 demand was received he had retained a lawyer, he was

MOTIONS

1 disputing the charge and that the lawyers were engaged in
2 discovery which, as Mr. Slivka pointed out, was a form of
3 investigation.

4 Additionally, as Mr. Slivka pointed out, whether or
5 not he owes anything, and if anything how much he would
6 owe Mr. Spriggs, is going to be something for the jury and
7 the Court to decide at this point.

8 Again, that demand for payment had been made after
9 litigation had been commenced between these parties.

10 The authority that we submitted to the Court that
11 says even if a Defendant or someone who receives the
12 demand is incorrect about the amount that he or she may
13 owe, they're still not liable under the statute.

14 THE COURT: When was the complaint filed?

15 MR. LYLES: In July of 2009.

16 THE COURT: And when was the demand made?

17 MR. LYLES: In March of 2010.

18 THE COURT: Well, any response from the Plaintiff?

19 MR. BRUORTON: Yes, Your Honor. I actually have -- we
20 were moving for directed verdict on the same thing. And I
21 have a written motion prepared.

22 THE COURT: All right, sir.

23 MR. BRUORTON: I'll pass it up. It includes an
24 affidavit of attorney fees for Ms. Ariail.

25 THE COURT: Thank you.

MOTIONS

1 MR. BRUORTON: During the course of Mr. Slivka's
2 testimony in this case he made admissions to the Court
3 that he agrees he owes the Plaintiffs the \$76,210 as the
4 second half of the contract.

5 He also admitted that he owed for the two-hour
6 construction meeting that was attended by both Mr. Bozeman
7 and Mr. Spriggs at their hourly rate. He also admitted
8 that he owes the Plaintiff \$825 for the potting shed
9 design which is a total of \$77,595 that he admitted he
10 owes the Plaintiff.

11 Now, their only defense to not paying that is that
12 they had paid the money into Court to bond off the
13 mechanic's lien. That's not payment to the Spriggs Group,
14 and there's nothing, there's no cases that prevent
15 Mr. Slivka from making a payment of the undisputed amounts
16 as determined under the Section 27-1-15 of the statute to
17 the Spriggs Group.

18 The mechanic's lien would have been reduced by the
19 amount of money that he admits that he owes Mr. Spriggs.
20 And their offer of settlement would be reduced by that
21 same amount.

22 Because what they're doing now is they're trying to
23 take advantage of the amount that he knows that he owes
24 them to position themselves with their offer of settlement
25 on the additional services that are in dispute.

MOTIONS

1 All that should be before the jury is what's in
2 dispute. That \$77,595 is not in dispute. He's failed to
3 comply with the statute by not making payment for the
4 undisputed amount within 45 days of receiving the -- of
5 actually with the demand letter being issued which is what
6 the statute says.

7 I'm not aware of any cases that say because a lawsuit
8 has been commenced there cannot be payment made under that
9 statute.

10 So we would move for a directed verdict based off the
11 admissions made by Mr. Slivka in the amount of \$77,595 for
12 the undisputed amount, plus the attorney's fees and
13 interest that the statute provides as set forth in
14 Ms. Ariail's affidavit which is for a total directed
15 verdict of \$256,185.17 under Statute Section 27-1-15.

16 THE COURT: I'll take it under advisement over lunch
17 and come back to you on that.

18 MR. LYLES: Okay. I have just a couple more points
19 on that.

20 THE COURT: All right.

21 MR. LYLES: And what he doesn't take into
22 consideration is the fact that we believe, and have
23 asserted a cause of action for slander of title because of
24 an untimely-filed lien which created an item of damage on
25 the part of Mr. Slivka which obviously would be set off

MOTIONS.

1 against any sums that Mr. Slivka at any point in time did
2 believe would have been due and owing.

3 Filing the mechanic's lien changed the dynamics of
4 this entire situation as it relates to what was due. He's
5 incurred attorney's fees and he's incurred interest, and
6 he testified as to both of those.

7 And then the other point, the money has been paid
8 into the Court pursuant to the mechanic's lien statute.
9 That was our obligation under the statute. And there's
10 certainly nothing that obligates us to pay the money
11 twice, even if he hasn't been damaged, and even if he
12 believes it was due and owing.

13 Our next motion --

14 MR. BRUORTON: Your Honor, may I just briefly reply to
15 that?

16 THE COURT: Very briefly.

17 MR. BRUORTON: We're not asking that they pay twice.
18 What we're saying the money should have been released from
19 the Court to pay the undisputed amount in the mechanic's
20 lien.

21 Also the damages that he claims related to the
22 interest on the slander of title is a voluntary damage
23 that he incurred by bonding off the lien. He didn't have
24 to bond off the lien. He voluntarily bonded off the lien
25 to get that mechanic's lien off his property.

MOTIONS

1 A mechanic's lien cause is separate from the 27-1-15
2 and we believe we're entitled to a directed verdict on the
3 27-1-15.

4 THE COURT: Move to your next one.

5 MR. LYLES: Yes, sir. That's on the timeliness of the
6 mechanic's lien. The mechanic's lien was filed on April
7 the 13th, 2010. As Your Honor, knows it has to be filed
8 within 90 days of the last date of the provision of the
9 labor or materials performed by the party filing the lien.

10 The statute is obviously applicable. It must be
11 strictly complied and the law in South Carolina is very
12 explicit on that point.

13 The mechanic's lien statute defines labor as
14 including the preparation of design specification and
15 other project drawings. It does not include the provision
16 of contract administration services. Very explicitly, the
17 legislature if it intended to include contract
18 administration services, telephone calls to clients, so on
19 and so forth, could have said that.

20 It's the provision of claims actually used in the
21 erection or alteration of the improvement to real property
22 that is allowed to be the subject of a mechanic's lien.

23 Here, it is undisputed based on the testimony of all
24 the witnesses that the last date that the Spriggs Group
25 provided labor in the form of the development of plans or

MOTIONS

1 design documents was in December of 2008.

2 The only thing that the Spriggs Group did in January
3 of 2009, if you believe that they did what they billed for
4 in November of 2009, the only thing they did would be
5 qualified and characterized as contract administration
6 services.

7 And that is not the subject of a mechanic's lien by
8 the definition of the mechanic's lien statute.

9 There's a case called Preferred Savings and Loan
10 Association versus Laurel Garden which I submitted in our
11 pretrial brief. It says: When a party files a notice of
12 lien under Section 25-5-90 he's asserting that at a time
13 within 90 days before this he has performed work for which
14 he is entitled to assert a lien.

15 And that did not occur here. The mechanic's lien is
16 untimely.

17 THE COURT: All right.

18 MS. ARIAIL: Your Honor, I disagree with Mr. Lyles
19 that the mechanic's lien somehow limits the -- what's lien
20 able by an architect in preparation of plans and specs.

21 There are South Carolina cases that talk about mental
22 labor, not just physical labor. Williamson versus Hotel
23 Melrose. I can give you a cite for that. The general
24 principle that's contained within that case, it says: Any
25 person that has contributed by his labor, and again this

MOTIONS

1 is talking about mental labor, to the improvement of the
2 property has a claim against that property for his
3 compensation.

4 That case also talks specifically about other states'
5 laws as they relate to mechanic's liens. And
6 interestingly, other states generally -- there are many
7 other states out there that don't allow for mechanic's
8 liens associated with the preparation of plans and specs,
9 but they do allow an architect to file a lien when there
10 are construction administration-type services. Because
11 that is what is actually contributing to the improvement
12 of the property.

13 For example, there's a Pennsylvania case, Allen
14 Porter Lee versus Do Right Products, 366 Pennsylvania
15 548. Their statute specifically does not allow for plans
16 and specs, but they do allow for liens related to the
17 improvement of property as perpetuated by construction
18 administration services.

19 There are -- I haven't heard an argument about the
20 significance of the work but the South Carolina cases
21 absolutely support that it doesn't have to be the lion's
22 share of work. It can be the most insignificant piece of
23 work that allows the mechanic's lien to be filed within
24 that 90 days.

25 There are cases where a plumber came out and did

MOTIONS

1 maintenance work. There are cases where a contractor
2 provided additional ceiling tile and because he performed
3 some labor, then that has triggered that 90 days.

4 And that's from the express language of the statute.
5 29-5-90 says: 90 days after he ceases to labor. And I
6 would say that this is obviously work that the architect
7 performed as mental labor, answering questions of the
8 contractors that were on-site performing work.

9 THE COURT: How about your next motion?

10 MR. LYLES: May I address the Williamson case?

11 THE COURT: Quick.

12 MR. LYLES: Very briefly. She cited the Williamson
13 case. There are actually a couple of South Carolina cases
14 that talk about an architect being entitled to recover for
15 construction supervision services. And the Williamson
16 case that she cited versus Hotel Melrose turns out the
17 architect in that case was actually serving as the project
18 superintendent.

19 If you will recall in the cross-examination of
20 Mr. Spriggs, I had him articulate the definition of the
21 terms of art between construction phase services,
22 construction administration and observation. And then he
23 said very specifically, supervision is different than
24 that.

25 The statute says what it says as it relates to

MOTIONS

1 architects. And the statute's to be strictly construed.

2 There are a number of cases on that point.

3 So that's what I would say with respect to the
4 Williamson case.

5 MS. ARIAIL: Quick reply?

6 THE COURT: Sure.

7 MS. ARIAIL: The statute does not expressly prohibit
8 construction administration cases, or services.

9 I believe that Mr. Spriggs' testimony was that the
10 construction services that -- the observation-type
11 services are very similar to the construction
12 administration services. The point is, it all relates to
13 the improvements that are being made to the property.

14 And the whole purpose of the mechanic's lien statute
15 is to allow somebody that is owed money from doing those
16 types of services to collect their money and if they don't
17 to lien the property.

18 THE COURT: How about your next motion?

19 MR. LYLES: With respect to the quantum meruit cause
20 of action, as I indicated in the pretrial, everybody has
21 admitted there is a contract --

22 MR. BRUORTON: We've dropped that claim.

23 THE COURT: That claim is gone.

24 Mr. LYLES: Oh, I'm sorry. I missed that.

25 THE COURT: Thank you.

MOTIONS

1 MR. LYLES: I would move for directed verdict as to
2 the breach of contract claim.

3 There is -- there is -- Mr. Spriggs has admitted and
4 I think that the evidence conclusively establishes, that
5 Mr. Spriggs agreed to perform the services in connection
6 with this project for \$152,000, together with whatever
7 additional services were caused by the agreement. There
8 is no language in that contract or in that agreement
9 calling for Mr. Slivka to pay Mr. Spriggs additional sums
10 based on the number of sheets which is largely their
11 theory of the case. There's simply no contractual
12 obligation to do that.

13 As I indicated or as I got Mr. Spriggs to admit
14 during his testimony, even if the agreement can somehow be
15 construed to be a by-the-sheet agreement, he admitted that
16 the only by-the-sheet cost was for A drawings.

17 They have tens and tens of thousands of drawings for
18 MEP and S that he never -- was never a part of the
19 agreement to be billed on an hourly basis.

20 He also testified that he has never invoiced
21 Mr. Slivka for the cost of the consultant services beyond
22 the \$20,000 that was included in his invoice number two of
23 which Mr. Slivka had already paid \$17,000 as part of the
24 original agreement.

25 But, the concept that this is somehow a by-the-sheet

MOTIONS

1 contract is simply not supported by the evidence or the
2 testimony in the case. And I'd move for directed verdict
3 on that basis.

4 THE COURT: Brief reply.

5 MR. BRUORTON: Your Honor, I disagree with that. And
6 I believe that at a minimum there's a factual dispute on
7 that issue.

8 We also are moving for directed verdict on our breach
9 of contract and mechanic's lien claim if you find the
10 mechanic's lien to be timely. I think we looked at
11 express contract provisions that specifically allow for
12 the services that were billed by the Spriggs Group to
13 Mr. Slivka.

14 The contract provides for contract administration
15 services per provision -- per Paragraph Number 18. That
16 relates to invoice four, seven and six. The contract
17 provides for an hourly rate on the changes after the
18 issuance of the contract drawings for permit. That
19 relates to invoice number three.

20 The contract provides for reimbursable expenses
21 estimated at \$1,000. The total was 3,878.53. That
22 relates to invoice number five.

23 The construction documents in the contract were based
24 on a formula of 24 hours per sheet at \$105 an hour times
25 34 sheets which has been testified that it's actually

1 probably low and should be increased. But that relates to
2 invoice two.

3 And there's additional sheets that we went through
4 and counted up how much additional sheets they are as set
5 forth in Exhibit 23 for that total amount set forth in
6 invoice number two.

7 The only defense that Defendants have to our breach
8 of contract claim is that the invoices were untimely and
9 that the invoices are unclear. And that's just simply not
10 a basis to defend a claim.

11 We've heard testimony from Mr. Glick. We've heard
12 testimony from Mr. Spriggs. All the time sheets are
13 documented to reflect what's in the invoices. He deserves
14 to be paid for those services and we believe we're
15 entitled to a directed verdict on the mechanic's lien.

16 THE COURT: I believe if everything was that clear we
17 wouldn't be here on Thursday afternoon. Those motions are
18 now denied. Any more motions?

19 MR. LYLES: No, sir.

20 THE COURT: Anything from the Plaintiff?

21 MR. BRUORTON: That's it from us, Your Honor.

22 THE COURT: All right. We'll be back at 1:45 and go
23 from there, and I'll address those motions at that time.

24 (Thereafter, the lunch break was taken at 12:30 p.m.

25 After lunch at 1:45 p.m., the trial resumed:)

1 and I think it's just a great example of how the process
2 builds. You know, the more you talk about this stuff, and
3 this is a personal thing for me, this has been a horrible
4 experience, you get excited about it. And I'm getting
5 more and more excited.

6 And the first year it was okay, but by the second
7 year, you know, it really had gotten to the point where it
8 was getting unpleasant. And I had yet to have, you know,
9 really hostile kind of outburst with Ken, but I had one
10 with him around this period of time.

11 And -- and don't get me wrong, it's just this
12 excitement that you're seeing right now, a little louder
13 in volume. I'm not an angry guy and so I've not been mean
14 to Ken or Andy but real, real vocal.

15 Q. At any point in time other than with respect to the
16 construction meeting and the garden wall, did Mr. Spriggs
17 or Mr. Bozeman for that matter, tell you what you're
18 asking for is not within the contemplation of the original
19 agreement and will be additional services?

20 A. No.

21 Q. Had you been told in 2006, early 2007 that extensive
22 structural engineering services were going to be required,
23 is that something that you would have accepted?

24 A. It -- I don't know whether I would have accepted it or
25 not accepted it. I can tell you this, that if I had

GENE RAYMOND SLIVKA - DIRECT

1 And I think they understood and should have understood
2 that I was not going to talk to them again.

3 And when I don't -- you know, this is a guy that's
4 calling their office every couple days, and all of a
5 sudden no calls in January, no calls, you know, I think
6 they should have had the idea.

7 Q. At the time you terminated Mr. Spriggs' services in
8 December '08, did you expect to get a bill for the other
9 half of the services?

10 A. I did.

11 Q. And did you receive one in December?

12 A. No.

13 Q. And how about January?

14 A. No.

15 Q. And, if I could direct your attention to Exhibit
16 Eight.

17 A. Okay.

18 Q. And is that the letter you received from Mr. Spriggs
19 in February of '09?

20 A. Yes.

21 Q. Were you surprised when you got that letter?

22 A. Yes.

23 Q. Why were you surprised?

24 A. Well, because I had already told the jury on Monday
25 when I do get a bill in December and didn't get one in

1 Q. In May of 2009, did you authorize an appraiser to
2 contact Mr. Spriggs to talk to him about the house or
3 anything in connection with an appraisal?

4 A. No. And I want the jury to understand -- and you saw
5 my shock when I saw that appraisal guy come in. It wasn't
6 that I cared about what was in it, but the banks must
7 order these appraisals themselves. And they do it and you
8 have no control of it. They want this distance.

9 So Enterprise Bank ordered that confidential appraisal
10 from the appraiser. I had never seen it. And so, you
11 know, the relationship is completely with them. I was
12 really floored that it ended up here.

13 But at any rate, the point is that I had nothing to do
14 with that. They did send the appraiser out to the house.
15 I let the appraiser into the house but beyond that I have
16 no relationship with the appraiser. I didn't pay her. It
17 was paid through the bank.

18 Q. And in May you got another invoice from Mr. Spriggs;
19 do you recall that? It's Exhibit Eight-A. It's a single
20 sheet. That's Exhibit Eight. You need Exhibit Eight-A.

21 A. Eight. Oh. I see here. Okay. I thought that's the
22 one we just talked about.

23 Q. Yeah. And you got that invoice and after that you
24 wrote that letter to Mr. Spriggs; right?

25 A. Yes, sir.

GENE RAYMOND SLIVKA - CROSS

1 Thank you.

2 Q. Well, you took \$25,000 a year for three years and you
3 built it into the property that you own in Georgia, that
4 you still own, and this amazing plantation estate in South
5 Carolina; right?

6 A. Yes, ma'am.

7 Q. Okay. And this is just the house. We haven't seen
8 pictures of the rest of it; have we?

9 A. No, ma'am.

10 Q. And you said earlier that you deal with contracts all
11 the time.

12 A. Yes, ma'am.

13 Q. Okay. But now you want us to believe that you didn't
14 understand that anything that's not included in this
15 contract would be extra; is that right?

16 A. No. I'm not asking you to do that at all. I
17 understood from 18 and 19 that if there were extra charges
18 that they would be billed.

19 What we're taking exception with is that we don't know
20 what those charges are. Ken gets to decide what those
21 charges are. And Ken decided not to tell anybody for two
22 years what those charges were.

23 That's the problem in this case; not my objecting to
24 those provisions and paying additionally on them. I read
25 the contract. I understood the contract.

1 Q. You admit that they had your authority to provide
2 sketches to the vendors and the contractors working on
3 your home; correct?

4 A. I don't know there was ever a discussion about it.
5 Certainly if you're talking about the course of the
6 project, if -- and, really, these calls, and Andy
7 testified to this same thing, the calls were really
8 limited to Todd Sauls and the plumber. The rest of the
9 people really didn't seem to have particular questions.

10 But certainly if they looked at the plans and they
11 were trying to build something and it didn't work out, and
12 the case of Todd Sauls, he goes to frame up the second
13 floor and it's not lining up with down below because of
14 where the foundation was. You know, all kinds of
15 different things that just mechanically didn't work out.
16 Then they called and Andy helped them over the phone and
17 told them whatever and maybe then supplied sketches, I
18 don't know. But I never had any particular discussions
19 about additional sketches.

20 Q. You've already said that they did not have authority
21 to take calls from your contractors.

22 A. I thought you were referring to this period after
23 December 11th. You asked me about --

24 Q. So sometimes they did have your authority and some
25 they didn't?

GENE RAYMOND SLIVKA - CROSS

1 A. You've just gone through this questioning of me about
2 terminating the contract December 11th. And then you
3 asked that. So I thought you were asking me from December
4 11 after I terminated where I authorized them to take
5 calls and my answer was no.

6 Q. Okay. Prior to that time --

7 A. Yes, ma'am.

8 Q. -- did they have your authority to take calls from the
9 contractors and vendors?

10 A. Yes, ma'am.

11 Q. And how were they supposed to know that that authority
12 had been taken away from them?

13 A. I guess that's a legitimate question. I don't know if
14 I discussed it with them or not; I don't know.

15 Q. So you never told them, do not take calls from any
16 contractors or vendors from December 11th or 12th on; did
17 you?

18 A. I don't remember. I don't think so.

19 Q. And you also didn't tell them not to prepare sketches
20 if they were asked by the contractors; did you?

21 A. Well, that certainly I wouldn't have approved.

22 Q. But you didn't tell them to stop; did you?

23 A. Well, I -- nobody got any sketches. So, it's a moot
24 point. I can tell you that.

25 Q. Are you testifying that they did not have authority to

1 prepare sketches for your subcontractors and vendors if
2 those subcontractors and vendors had questions?

3 A. Absolutely.

4 Q. They did or did not?

5 A. Did not.

6 Q. They did not?

7 A. Because the only way my vendors could have gotten
8 sketches would have been via me.

9 Q. Do you remember being deposed on November 29th, 2010?

10 A. I do.

11 Q. Your Honor --

12 THE COURT: You can go ahead and open it if you want
13 to.

14 BY MS. ARIAIL:

15 Q. (Opens sealed deposition transcript.) Mr. Slivka,
16 I'm going to hand you the original transcript from your
17 deposition that was taken on November 29th, 2010. I'm
18 going to ask you to turn to page 70.

19 A. Okay.

20 Q. I'm going to ask you to find line 11 where I asked you
21 a question. Go ahead and read that.

22 A. It says: Did the contractor have the access to the
23 Spriggs Group to ask construction-related questions, and I
24 answered affirmatively.

25 Q. What was your answer?

1 A. I think so.

2 Q. And what's the next question?

3 A. Did you authorize that? I don't know. There wasn't
4 an objection to it, so I guess the answer is yes.

5 Q. All right. Keep going.

6 A. Did the Spriggs Group provide any sketches during the
7 construction phase to clarify detail or answer a
8 construction-related question that you were aware of? I
9 said, I think I do.

10 Q. Okay. Keep going.

11 A. Did you authorize that? I don't know that I'm the one
12 but I don't know that I asked for those but certainly it
13 was all right for them to do that.

14 Q. Okay. So when you were deposed in November of 2010 it
15 was okay for them to provide sketches but now you're
16 testifying that it's not okay, it wasn't okay.

17 A. No, I didn't change my testimony at all. I'm saying
18 the same thing. We're talking, again, about this period
19 after December 11th. If you're talking about during the
20 construction thing, I'm telling you that if they had a
21 question and they had a problem, and I used the example of
22 Todd, and they needed sketches, fine.

23 Q. Mr. Slivka --

24 A. Am I not doing it right?

25 Q. -- one minute it's okay for them to provide sketches.

1 One minute it's not. One minute it's okay for them to
2 take phone calls from subcontractors and vendors. One
3 minute it's not.

4 If that is what your testimony is, then when did you
5 tell them it was no longer okay for them to either take
6 calls from vendors or subcontractors or produce sketches
7 for them?

8 A. Well, I think, one, I may be going crazy but I think
9 I'm answering the question the same way both times. And
10 that is that I didn't have any objections to it. I didn't
11 stop them from doing it. It was not a problem for me.

12 And after December 11th and my termination with
13 Spriggs, there were never any more calls or anything to
14 Andy. I mean, most of these calls were really prompted by
15 me. So that if there's a problem, you know, the guy comes
16 to me and says, I can't work with this. And then I will
17 call Andy and if I can't explain it back to the guy I'll
18 have the guy call them. So it kind of all gets filtered
19 through me anyway, but I'm not changing my position on it
20 in any way.

21 It may be a little confusing about what happens after
22 December 11th, but.

23 Q. So now you're saying there was no contact from your
24 vendors or subcontractors to Mr. Bozeman after December
25 11th?

1 A. Not that I'm aware of.

2 Q. And you were here yesterday when Mr. Bozeman
3 testified; right?

4 A. Yes, ma'am.

5 Q. And you looked at the time sheets and you heard him
6 say that he performed worked for you --

7 A. Yes, ma'am.

8 Q. -- as late as January 13th; correct?

9 A. Yes, ma'am.

10 Q. And Plaintiff's Exhibit 19 is an e-mail from
11 Mr. Smith, Kayton Smith, to Mr. Bozeman on January 13th
12 where they're talking about changing four-inch waste line
13 on the main house to a three-inch waste line. Do you
14 remember that?

15 A. No, ma'am. I remember the -- in the courtroom, I
16 remember.

17 Q. All right. I'm going to let you look at Exhibit 19.

18 A. Okay.

19 Q. And when you're comfortable that you have looked at
20 that and understand it...

21 A. (Reviewing document.) Okay.

22 Q. All right. And are you somehow now testifying that
23 you think that Mr. Bozeman fabricated that e-mail?

24 A. Oh, gosh. I hate for you to put it like that.

25 No, I don't think he necessarily fabricated the e-mail

1 at all.

2 Q. But didn't you just say he had no contract with your
3 subcontractors or vendors after December 11th?

4 A. Well this, these gas lines actually were put in by
5 the, oh, Carmichael here in town which is the only thing
6 that they did out at the plantation. Carmichael Company
7 put in the gas lines. I don't know. Maybe they called
8 him, I don't know. But they would not have been regular
9 workers on the property.

10 Q. Yesterday Mr. Bozeman testified that he got a call
11 from the plumbing contractor. This isn't about gas. This
12 is about plumbing.

13 A. Uh-huh.

14 Q. And changing the waste line which is the drain
15 lines --

16 A. I see.

17 Q. -- from four inches to three inches?

18 A. Okay.

19 Q. In response to the contractor's question about
20 reducing the waste line from four inches to three inches
21 he contacted, Mr. Bozeman contacted Kayton Smith.

22 A. I see.

23 Q. And then they responded.

24 A. Okay.

25 Q. That's the subject of this e-mail. Has nothing to do

SCOTT ANTHONY HARVEY - DIRECT

1 with the gas lines.

2 A. I see.

3 Q. Are you disputing --

4 A. I don't know, I guess would be the best answer.

5 Q. You have no reason to think that Mr. Bozeman
6 fabricated this; do you?

7 A. No.

8 MS. ARIAIL: Just one minute. (Pause.) That's all I
9 have, Your Honor.

10 THE COURT: Mr. Lyles?

11 MR. LYLES: I don't think I have any further
12 questions.

13 THE COURT: All right. You may step down. Thank
14 you. Go ahead and call your next witness.

15 MR. LYLES: That would be Mr. Scott Harvey.

16 THE COURT: This is your last witness.

17 SCOTT ANTHONY HARVEY, having been duly sworn, was
18 examined and testified as follows:

19 THE CLERK: Have a seat on the witness stand. State
20 your full name for the record and spell your last name.

21 THE WITNESS: My full name is Scott Anthony Harvey.
22 Last name is H-A-R-V-E-Y.

23 DIRECT EXAMINATION

24 BY MR. LYLES:

25 Q. Good afternoon, Mr. Harvey.

1 practice with agreements between architects and clients
2 with the provision of architectural services?

3 A. Yes, I have.

4 Q. Have you been involved in the preparation of those
5 agreements?

6 A. Yes.

7 Q. And tell the jury, if you will, what other types of
8 experiences you've had as an architect besides new
9 construction that you think is relevant to your testimony
10 in this case today.

11 A. Again, aside from the new construction, most of what
12 I've been doing since Applied Building Sciences, since
13 2005, is, or since starting with Applied Building Sciences
14 is repair, renovation and investigation of buildings as
15 well as analyzing contracts that somebody gives to me to
16 review to see if it includes the content that it should,
17 repair -- or reviewing specifications for particular
18 designs and doing design reviews for other architects.

19 Q. I'd like to move to qualify Mr. Harvey as an expert in
20 the area of architectural standards and practices.

21 THE COURT: Any objection?

22 MS. ARIAIL: No objection.

23 BY MR. LYLES:

24 Q. Mr. Harvey, have you reviewed anything in connection
25 with this litigation, this dispute between Mr. Spriggs and

SCOTT ANTHONY HARVEY - DIRECT

1 have agreed to do for me, is that an alteration of the
2 scope of the work?

3 A. Yes.

4 Q. And at that point does that ethical, or rule of
5 professional conduct compel the architect to say to the
6 client, you are asking me to do something that's not
7 included in the original scope of work?

8 A. Yes, I believe it does.

9 Q. And if an architect fails to do that, is the architect
10 in violation of that rule of professional conduct?

11 A. Yes.

12 Q. And the applicable standard of care?

13 A. Yes.

14 Q. When you have a fixed-price contract and it doesn't
15 spell out specifically -- strike that.

16 If you have a fixed-price contract, who determines
17 whether or not some design service is within the original
18 scope or is additional service?

19 A. It's no one entity. It's an agreement between the
20 owner and the architect as to what is an additional
21 service. It has to be discussed to figure out whether
22 both parties are in agreement as to that particular item
23 being an additional scope of work.

24 Q. Okay. Now, you -- as part of your work in this case,
25 have you counted the drawings that were done by

SCOTT ANTHONY HARVEY - CROSS

1 language.

2 Q. Are you talking about the AIA document B-141?

3 A. Yes, that's correct.

4 Q. That is a standard document that's promulgated by the
5 AIA; right?

6 A. That's correct.

7 Q. That has absolutely no bearing on this contract. This
8 is not the contract between Mr. Slivka and the Spriggs
9 Group; is it?

10 A. That is not the contract, but it includes the same
11 basic language in regards to the standard of care for
12 additional services.

13 Q. Okay. And where is the standard of care for
14 additional services in the contract between the Spriggs
15 Group and Mr. Slivka? Do you have that document? Exhibit
16 Seven, I believe.

17 A. Yes, I believe it's up here.

18 Q. Okay. Where is the standard of care related to
19 changes in the work in that letter?

20 A. There's nothing specifically included within this
21 contract or within this proposal that addresses additional
22 services.

23 Q. Not as far as it relates to the standard of care;
24 right?

25 A. Yes. I'm sorry.

1 Q. In fact, there's no notice requirement in there,
2 either; is there? There's nothing in there that says
3 every time a change is contemplated, every time the owner
4 directs Mr. Spriggs to make a change to his design he's
5 supposed to stop and provide some type of notice. There's
6 nothing in there that requires that; does it?

7 A. No, there's not.

8 Q. And in fact, there are very specific terms in the
9 contract that talk about how changes will be -- what they
10 are and how they will be paid for, specifically Paragraph
11 Number 18 which says, we will provide any requested
12 construction phase services by the project architect or
13 staff on an hourly basis.

14 That identifies how those changes are going to be
15 made; doesn't it?

16 A. It addresses how construction phase services will be
17 provided.

18 Q. So if the owner or his contractors are given
19 permission to contact the Spriggs Group and ask questions
20 and the owner asks for takeoffs and other things that are
21 considered construction phase services, then the contract
22 already addresses how those are going to be paid; doesn't
23 it?

24 A. Yes, in regards to construction-phase services.

25 Q. And also any changes to the design documents

MOTIONS

1 THE COURT: Any motions?

2 MR. BRUORTON: Yes, Your Honor. We're making a motion
3 for a directed verdict on their slander of title claim. I
4 don't believe they've carried their burden of proof as
5 relates to that claim.

6 The damages that they seek were voluntarily
7 undertaken due to the bonding off the lien. And there's
8 been plenty of evidence to show that the mechanic's lien
9 that was filed on that property was timely, therefore
10 there should be no slander of title claim.

11 THE COURT: Any response?

12 MR. LYLES: With regard to the damages, it was in the
13 form of mitigation of damages which is what Mr. Slivka
14 testified to. He was trying to get the cloud off the
15 title, particularly since they've liened his whole 2800
16 acres.

17 If the lien is untimely, it's a wrongful lien and the
18 law in South Carolina is that there is a slander of title
19 if they wrongfully filed a lien.

20 THE COURT: Motion is denied. Any other motions?

21 MR. BRUORTON: That's it, Your Honor.

22 THE COURT: Let me go over what I put together, and
23 my law clerk put together for the charge.

24 Of course, I'm going to have a small introduction;
25 duties of the Judge and jury; direct and circumstantial

1 ON FRIDAY, JULY 22, 2011 AT 9:35 A.M.:

2 THE COURT: Everybody ready?

3 MS. ARIAIL: Yes, sir.

4 MR. LYLES: Your Honor, I have a couple points based
5 on your rulings yesterday.

6 Your Honor, I just want to make sure that I've
7 preserved my arguments particularly with respect to
8 27-1-15 which is the mechanic's lien statute.

9 Yesterday the Court denied the Plaintiff's motion for
10 a directed verdict on the slander of title. There is a
11 colorful dispute that's going to be submitted to this jury
12 between these parties about who owes what.

13 And I believe that under 27-1-15 that establishes as
14 a matter of law that there was not a particularly valid
15 amount of money that was due at the time this demand was
16 received from Mr. Spriggs to Mr. Slivka. They were in the
17 middle of litigation over valid disputes.

18 And as a matter of law, I think that that provision
19 doesn't apply.

20 On the mechanic's lien statute, the only thing that
21 I'd like to know about -- I'd like to point out on the
22 mechanic's lien statute is, I'm aware that the jury can
23 decide issues of fact relative to the mechanic's lien.
24 And, clearly, the timeliness of the lien is a question of
25 fact.

1 But it seems to me that whether or not an architect's
2 provision of contract administration services is an issue
3 for the Court. That is, it's an interpretation of the
4 statute whether or not that type of service qualifies in
5 the statute because that requires an interpretation and
6 application of the statute.

7 And I was sort of getting ready to argue that to the
8 jury but I don't know that I argue to the jury that they
9 need to interpret a South Carolina statute. And I think
10 that that's the issue with regards to the provision of
11 contract administration services.

12 And I just want to point that out to the Court, that
13 that seems to me that it is an issue for Your Honor as
14 opposed to the jury. Even though, obviously, if you find
15 that that is the type of activity that's covered by the
16 mechanic's lien statute, then we'll argue the timeliness
17 of facts to the jury.

18 THE COURT: And your response to that?

19 MR. BRUORTON: I'll address the 27-1-15 and then I'll
20 let her address the mechanic's lien since that's kind of
21 how we argued it to you yesterday.

22 I disagree with the characterization of 27-1-15 as
23 the way that the statute clearly reads is that it says, if
24 a party after a reasonable investi -- fair investigation,
25 which they say was ongoing through discovery, fails to --

1 refuses to pay the claim for a proper portion.

2 The Defendant has admitted that he owes half of what
3 is the proposal fee on the contract that was admitted into
4 evidence. So there's no dispute that that 76,210 is that
5 money should have been paid to the Defendant (verbatim)
6 regardless of what was deposited into the Court. And I
7 believe that statute does apply and Your Honor can rule
8 after the jury gives their verdict as to whether or not
9 we're entitled to fees and interest in accordance with
10 that statute.

11 THE COURT: About the mechanic's lien?

12 MS. ARIAIL: Your Honor, concerning the mechanic's
13 lien statute, obviously the statute can't list every
14 specific instance of work that could potentially be
15 applied to construct a building. It even includes
16 language like -- it includes but it is not limited to. It
17 clearly allows for the preparation of plans and specs.
18 That's an express term in the statute.

19 As I mentioned yesterday, there -- it doesn't make
20 sense to allow that and then somehow not allow the
21 construction administration services which are in the
22 furtherance of the actual construction on-site.

23 THE COURT: In other words, is it for me to decide or
24 for the jury to decide?

25 MS. ARIAIL: It's for the jury to decide. This is a

1 question of fact whether or not -- my understanding of
2 their position has been that it wasn't timely. And that's
3 an issue for the jury to find.

4 I think the statute clearly addresses work of an
5 architect.

6 THE COURT: Why don't we take a 10-minute recess and
7 I'll think about it and come back to you?

8 MR. BRUORTON: Thank you, Your Honor.

9 MR. LYLES: Thank you, Your Honor.

10 (Thereupon a break was taken at 9:40 a.m., until
11 10:00 a.m., when the trial resumed as follows:)

12 THE COURT: In reference to 27-1-15, you know, what
13 makes that a little bit interesting is that the demand was
14 made after a lawsuit had already been instituted. And
15 whether or not the litigation process is a reasonable
16 investigation or not, and whether or not having all this
17 money, even though it's applicable to the mechanic's lien,
18 deposited with the Court, it's safe with the Court, it's
19 there to be had and there's a counterclaim which may be
20 some offset.

21 I mean, the idea of just paying it out in the middle
22 of the litigation process seems a little strange to me.
23 I'm going to leave it to the jury and y'all can argue it
24 and let them decide whether or not all of this is
25 reasonable after paying money into the Court and a demand

1 made after the lawsuit is filed and all of that kind of
2 stuff.

3 The mechanic's lien itself, I'm just going to submit
4 it to the jury. I'm going to read them the statute. I'm
5 going to give them the charge. They can carry it back
6 there to the jury room. They can look at it and they can
7 read it. It's not very, very complex. It's kind of long
8 and redundant but y'all can argue whether that is service
9 that falls within the mechanic's lien statute.

10 And of course you can argue the timeliness and all of
11 that kind of stuff. We'll give it to the Colleton County
12 and let them decide. Right, wrong or in between, that
13 seems like the fair thing to do.

14 MR. LYLE: I gotcha.

15 I have one more issue that I'd like to take up. It's
16 our view that you ruled that certain evidence in terms of
17 invoices that have been submitted to Mr. Spriggs by
18 consultants but never produced could not come into
19 evidence. I think Bright and I talked about that and made
20 that agreement.

21 You allowed her to elicit testimony about those
22 invoices, however. But in her examination of Mr. Spriggs
23 she did not elicit that testimony. There was no testimony
24 about invoices that he had received from consultants that
25 either had been paid or had not not paid.

CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF

1 Mr. Slivka the scope of work.

2 Construction documents. This is important. Drawing
3 setup, layout, design details and schedules; 24 hours per
4 sheet at 105 hours times 34 sheets. That was the total
5 for the engineering sheets -- I mean, for the
6 architectural sheet. Excuse me.

7 So this sheet count -- fee proposal for the sheets is
8 based on an hourly rate. Clearly delineated in the
9 contract.

10 Specifications. Sub-out consultants.

11 Both Mr. Bozeman and Mr. Spriggs testified that, yes,
12 they had to have plumbing, mechanical and electrical
13 engineers to prepare all those MEP drawings that we've
14 talked about.

15 And the structural engineering, their intentions when
16 they entered into the contract and when this contract was
17 written, was that, structural engineer, they would hire
18 one who would provide details and review what they put,
19 they as architects, put on the architectural drawings.
20 That's why we've got no structural drawings. That's why
21 for the main house we have structural-related details
22 occurring on the architectural drawings.

23 That's what this money was.

24 All right. So the total fee, 161-50 (verbatim), and
25 then you add to that, estimated. Mr. Slivka wants you to

JUDGE'S CHARGE TO THE JURY

1 THE COURT: All right. Members of the jury, it is
2 now my duty as the Trial Judge to instruct you on the law
3 applicable to this case.

4 It is your duty as jurors to accept and apply the law
5 as I now state it to you. Furthermore, it is your
6 exclusive duty to decide all the issues of fact in this
7 case and to determine the effect, value, weight and truth
8 of the evidence.

9 Both the parties have the right to expect that you
10 will carefully consider the value, weigh the evidence, and
11 apply the laws applicable to it so that in the end both
12 parties will have received a fair trial.

13 During this trial you and I have separate duties to
14 perform. As the Trial Judge, it is my responsibility to
15 preside over this trial and to rule upon the admissibility
16 of the evidence offered during the trial.

17 In that regard you are to consider only the evidence
18 before you. Thus, you are to consider only the testimony
19 which has been presented from this witness stand, together
20 with any exhibits admitted into the record of this case.

21 Furthermore, I have the additional duty to charge you
22 on the law applicable to this case. And in that regard it
23 is your duty to accept and apply the law as I now state it
24 to you.

25 If you have any preconceived ideas as to what the law

JUDGE'S CHARGE TO THE JURY

1 is or what the law -- or what you think the law ought to
2 be, and it does not agree with what I tell you the law is,
3 you are to abandon those preconceptions and accept the law
4 as I now give it to you.

5 In this trial you are the sole and exclusive judge of
6 facts. Do not infer that I have any opinion about the
7 facts in this case from anything I have said or done
8 during the course of this trial. In that regard the law
9 simply does not permit me to have an opinion about the
10 facts.

11 As jurors it is your duty alone to determine the
12 effect, value, weight and truth of the evidence presented
13 during the course of this trial.

14 Furthermore, it is your job as jurors to determine
15 the credibility and believability of the witnesses who
16 have testified in this case. You must evaluate the
17 evidence and determine which evidence convinces you of its
18 truth.

19 In determining the believability of witnesses who
20 have testified in this case, you may believe one witness
21 over many or many over one. You may believe a part of the
22 testimony of a witness and reject the remaining part. You
23 may believe the testimony of a witness in its entirety or
24 reject it in full. You may consider whether the witness
25 has an interest in the result of the trial, whether the

JUDGE'S CHARGE TO THE JURY

1 witness is prejudiced toward either party, the witness's
2 opportunity for the witness to have seen the matters and
3 things about which the witness may testify, and the way
4 the witness acts on the witness stand.

5 Furthermore, evidence may be direct or
6 circumstantial. Direct evidence is testimony by a witness
7 about what the witness personally saw or heard or did.

8 Circumstantial evidence is indirect evidence. In
9 other words, it is proof from one or more facts from which
10 one can find another fact. You may consider both direct
11 and circumstantial evidence equally.

12 The burden of proof in this case is by a
13 preponderance of the evidence. A preponderance of
14 evidence simply means the greater weight of the evidence.
15 In other words, it is evidence that as a whole shows that
16 the facts sought to be proved is more likely true than not
17 true.

18 This can be illustrated by imagining a set of
19 scales. When the case begins, the scales are even. After
20 all of the evidence has been presented, if the scales
21 remain even or if they tip even slightly in favor of the
22 Defendant, the Plaintiff has failed to meet the burden of
23 proof and would not be entitled to recover in this case.

24 If, on the other hand, the scales tip even slightly
25 in favor of the Plaintiff, the Plaintiff will have met the

JUDGE'S CHARGE TO THE JURY

1 burden of proof and you should return a verdict for the
2 Plaintiff.

3 Furthermore, this also holds true in regards to the
4 Defendant's counterclaim which I will discuss further in
5 this charge.

6 The preponderance of the evidence is not determined
7 by the number of witnesses. Instead, it must be
8 determined by the greater weight of all the evidence.

9 Furthermore, the rules of evidence ordinarily do not
10 permit witnesses to testify to opinions or conclusions.
11 An exception to this rule exists for witnesses we call
12 expert witnesses.

13 A witness who by education and experience has become
14 an expert in some art, science or profession may give an
15 opinion as to the subject the witness claims to be an
16 expert in, and may also give the reasons for the opinion.

17 You should consider any expert opinion given by a
18 witness and, like any other evidence, give it the weight
19 you think it deserves. If you decide that an expert
20 witness's opinion is not based on sufficient education or
21 experience, or if you decide that the reasons given in
22 support of the opinion are not sound or that the opinion
23 is outweighed by other evidence, you may disregard the
24 opinion entirely.

25 An expert witness's testimony is to be given no

JUDGE'S CHARGE TO THE JURY

1 greater weight than that of other witnesses simply because
2 the witness is an expert. And you do not have to accept
3 an expert's opinion even though it is uncontradicted.

4 In this case there has been a conflict of testimony
5 of expert witnesses. To that end, you must weigh one
6 expert's opinion against that of the other. And you must
7 consider the reasons given by one as compared with those
8 of the other. And you should consider the relative
9 credibility and knowledge of the experts who have
10 testified. Then you should find in favor of the expert
11 testimony which in your opinion is entitled to the greater
12 weight.

13 In this case certain testimony has been presented
14 into evidence by deposition. A deposition is testimony
15 taken under oath before a trial and preserved in writing.
16 You are to consider that testimony as if the witness had
17 given it in court.

18 Furthermore, in our courts no distinction is made
19 between corporations and individuals. A corporation is a
20 person in the eyes of the law. A corporation is entitled
21 to the same fair and impartial consideration and to
22 justice by the same legal standards as an individual.

23 A person to whom a debt is due for labor performed or
24 furnished or for materials furnished and actually used in
25 the erection, alteration or repair of a building or

JUDGE'S CHARGE TO THE JURY

1 structure upon real estate or the lowering and equipping
2 of wells by virtue of an agreement with or by consent of
3 the owner of the building or structure or a person having
4 authority from or rightfully acting for the owner in
5 procuring or furnishing the labor or materials shall have
6 a lien upon the building or structure and upon the
7 interest of the owner of the building or structure and the
8 lot of land upon which it is situate to secure the payment
9 of the debt due to him.

10 As used in this section, labor performed or furnished
11 in the erection, alteration or repair of any building or
12 structure upon any real estate includes the preparation of
13 plans, specifications, and design drawings and the work of
14 making the real estate suitable as a site for the building
15 or structure.

16 The work is considered to include but not be limited
17 to the grading, bulldozing, leveling, excavating and
18 filling of land, including the furnishing of fill soil,
19 the grading and paving of curbs and sidewalks and all
20 asphalt pavement, the construction of ditches and other
21 drainage facilities, and the laying of pipes and conduits
22 for water, gas, electric, sewage and drainage purposes,
23 and the disposal of any construction and demolition debris
24 including final disposal by a construction and demolition
25 landfill.

JUDGE'S CHARGE TO THE JURY

1 Any private security guard services provided by any
2 person at the site of the building or structure during its
3 erection, alteration or repair is considered labor
4 performed or furnished within the meaning of this
5 section. As used in this section materials furnished and
6 actually used include tools, appliances, machinery or
7 equipment supplied for use on the building or structure to
8 the extent of their reasonable rental value during their
9 actual use.

10 Person as used in this section means any individual,
11 corporation, partnership, proprietorship, firm,
12 enterprise, franchise, association, organization or other
13 entity. For the purposes of this section, the term
14 materials includes flooring, floor coverings and wall
15 coverings.

16 In order to protect and enforce a mechanic's lien the
17 person asserting the lien, one, must serve upon the owner
18 or person in possession and file with the Registry of
19 Deeds or Clerk of Court a notice or certificate of lien
20 containing the lien amount, a description of the real
21 property and other required information within 90 days
22 after he ceases to labor on or furnish labor or materials
23 for such building or structure.

24 Two, must commence a lawsuit seeking to enforce the
25 lien within six months after ceasing to provide labor or

JUDGE'S CHARGE TO THE JURY

1 materials for such real property.

2 And, three, must file a notice of the pending action
3 which is called a lis pendens within six months after
4 ceasing to provide labor or materials for such real
5 property.

6 No inaccuracy in such statement relating to the
7 property to be covered by the lien, if the property can be
8 reasonably recognized, or in stating the amount due for
9 labor or materials, shall invalidate the proceedings
10 unless it appears that the person filing the certificate
11 has willfully and knowingly claimed more than he is due.

12 The deadline to serve and record a mechanic's lien
13 begins running from the date the last material was
14 furnished or work performed, regardless of whether such
15 material or work is insignificant, regardless of whether
16 the final work is delayed, provided the reason for the
17 delay is not to improperly extend the period for
18 perfecting the lien.

19 In this case, the Plaintiff claims that the Defendant
20 breached a contract that existed between the parties.

21 In order to recover for a breach contract, the
22 Plaintiff must prove the claim by a preponderance or the
23 greater weight of the evidence. In this case, the parties
24 have stipulated a contract existed between them.

25 A contract is an agreement entered into by two or

1 will bring in the items of evidence and instruct you to
2 begin your deliberations at that time.

3 Also, should you have any questions during your
4 deliberations you must put them in writing and send them
5 to me by way of the bailiff. The Court bailiff will be
6 placed immediately outside of the jury room door to
7 provide security and assistance for you during your
8 deliberations.

9 Once you have reached your verdict, please knock on
10 the jury room door and ask the bailiff to advise the Court
11 that you have reached a verdict and we will return to the
12 courtroom as promptly as possible thereafter.

13 Thank you. And you may now retire to the jury room,
14 but, again, do not begin your deliberations until you have
15 been advised to do so.

16 Food should be brought in any given moment.. You can
17 eat and deliberate, take a break, deliberate, whatever you
18 want to do, but do not begin until I tell you.

19 (Jury exits courtroom at 12:56 p.m.)

20 THE COURT: Any objections to the charge given from
21 the Plaintiff?

22 MS. ARIAIL: No, Your Honor.

23 THE COURT: From the Defendant?

24 MR. LYLE: I would request that the Court instruct the
25 jury on 27-1-15 that, simply because they determine that

1 the Plaintiff prevails, if in fact they do, does not mean
2 that Mr. Slivka is automatically liable under 27-1-15 as
3 long as there is evidence of a probable dispute they can
4 find if the investigation was reasonable and he didn't
5 violate the statute which is consistent with the holding
6 in Carolina Steel versus Palmetto Ridge Construction case.
7 It's a 2006 District Court case. That's 444 F. Sup Second
8 577.

9 THE COURT: Does the Plaintiff have any problem with
10 that?

11 MR. BRUORTON: I think the charge that was given was
12 clear, Your Honor.

13 THE COURT: That didn't answer my question. Do you
14 have a problem with that? Apparently it's good law.

15 MR. BRUORTON: Can I read the case?

16 THE COURT: Sure. Take your time.

17 (Pause.)

18 MR. BRUORTON: It's a little different, Your Honor,
19 in that in this case there was a reasonable investigation
20 made by the Defendant and an amount of money actually paid
21 to the Plaintiff. In this case that hasn't happened. The
22 Plaintiff has admitted that he owes certain moneys to the
23 Plaintiff -- I mean, the Defendant has admitted that he
24 owes certain moneys to the Plaintiff.

25 This is not the case. I think this case is not on

1 point in the fact that the request from the Defendant for
2 the additional instructions to the jury would create a
3 little bit of an issue with the way that the statute
4 actually reads.

5 THE COURT: I think I'm just going to leave it as I
6 stated. I read the statute verbatim.

7 You already did very well and you did, too. And I
8 think they have taken in all they could possibly take in.

9 All right. Why don't you take a look at the
10 exhibits, make sure they're all in order?

11 (Attorneys comply.)

12 THE COURT: Is that correct from the Plaintiff's
13 perspective?

14 MR. LYLE: Yes, sir.

15 THE COURT: Before we adjourn, I do want to tell the
16 parties that regardless of the outcome in this case you
17 both have very good lawyers. They have worked a long time
18 and they have worked very hard, and they have exhausted
19 themselves mentally and physically. And regardless of the
20 outcome, you can't blame your lawyer. They've done a good
21 job.

22 MR. LYLE: Thank you, Judge.

23 THE COURT: And I appreciate y'all doing that and
24 acting the way you've acted.

25 MR. BRUORTON: Thank you, Your Honor. It's been a

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

COURT OF COMMON PLEAS
2009-CP-15-00595

THE SPRIGGS GROUP, P.C.)
PLAINTIFF)

vs.)

GENE R. SLIVKA)
DEFENDANT)

TRANSCRIPT OF RECORD

July 22, 2011
Walterboro, South Carolina

B E F O R E:

HON. WILLIAM H. SEALS, JR., Judge and a jury.

A P P E A R A N C E S:

A. BRIGHT ARIAIL, ESQ.
JAMES A. BRUORTON, IV, ESQ.
Attorneys for the Plaintiff

ROBERT T. LYLES, JR., ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

1 (During jury deliberations, Court Reporter Cheri
2 Young was replaced by Court Reporter Carol Thueme.)

3 THE COURT: Go ahead and bring the jury in.

4 (The jury came into open court at approximately
5 4:15 p.m.)

6 THE CLERK: Madam Forelady, have you reached a
7 verdict?

8 THE FOREPERSON: Yes, ma'am, we have.

9 THE COURT: I find that the verdict form is in
10 order. You may publish the verdict.

11 You all may have a seat. Thank you.

12 THE CLERK: In Case 2009-CP-15-595, the Spriggs
13 Group, P.C. versus Gene R. Slivka, with regard to the
14 Plaintiff's claim for foreclosure of mechanic's lien
15 against the Defendant, we find for the Plaintiff.

16 With regard to the Plaintiff's breach of
17 contract claim against the Defendant, we find for the
18 Plaintiff.

19 With regard to the Plaintiff's claim based on
20 Defendant's failure to comply with South Carolina Statute
21 27-1-15, we find for the Plaintiff.

22 With regard to the Defendant's slander of title
23 claim against the Plaintiff, we find for the Plaintiff.

24 If you find for the Plaintiff on Questions 1, 2,
25 and 3, you should consider Question 5. No. 5 is, We

1 reward the Plaintiff \$173,990.53 in actual damages.

2 If you find for the Defendant on Question 4, you
3 should consider Question 6. We award the Defendant zero
4 dollars in actual damages.

5 I certify that this decision is the unanimous
6 decision of the jury, signed by the foreperson, Matrell H.
7 Causey, July 22nd, 2011.

8 Ladies and gentlemen of the jury, if this is
9 your verdict, will you please raise your right hand.

10 (All hands are raised.)

11 THE CLERK: Thank you.

12 THE COURT: Thank you very much.

13 Is there need for further polling from the
14 Plaintiff?

15 MR. BRUORTON: No, Your Honor.

16 THE COURT: How about from Defense?

17 MR. LYLES: No.

18 THE COURT: All right. Members of the jury, I
19 want to thank you. You reached your verdict on 4:15 on
20 Friday afternoon. You have been here all week and you
21 have worked hard. And you have sat through this and
22 listened to all of the evidence and listened to all of the
23 witnesses. You have paid attention. Some of you haven't
24 even felt good and you stayed and did your job. I'm very,
25 very appreciative of that.

1 I want to let you know that you are dismissed
2 for the week, of course. You have earned a three-year
3 exemption by being here and serving this week. And you
4 will also get paid.

5 When you get your check, do not think I had
6 anything to do with it. I didn't sign it, I didn't set
7 the amount of money you get, take that to your politician,
8 but that is a small token of our appreciation.

9 Thank you very much, and you are dismissed.

10 THE JUROR: Excuse me, Your Honor. I believe
11 you said a small token?

12 THE COURT: A small token.

13 THE JUROR: All right. That's okay.

14 (The jury was excused at 4:18 p.m.)

15 THE COURT: All right. Any motions from the
16 Plaintiff?

17 MR. BRUORTON: No, Your Honor.

18 THE COURT: Any motions from the Defense?

19 MR. LYLES: Not at the present time. I would
20 like to reserve the right to make some post-trial motions
21 within a week to ten days.

22 THE COURT: Ten days. Ten days for both sides.

23 MR. BRUORTON: Your Honor, that would give us
24 time to get together obviously our motion for -- and I
25 guess I might just make that now -- our motion for

1 attorney's fees, interest and costs pursuant to 27-1-15,
2 and also the mechanic's lien statute, the prevailing
3 party, but we would ask for some time to submit that
4 documentation to the Court.

5 THE COURT: Right. You can do that. That would
6 be fine.

7 Thank you very much. You all have a good
8 weekend.

9 (The proceedings were concluded.)

10 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A NO. 2009-CP-15-000595

Verdict

Defendant.

- Continued on Following Page.

If you find for the Plaintiff on Questions 1, 2, or 3 you should consider Question 5.

5. We award the Plaintiff \$173,990.53 in actual damages.

If you find for the Defendant on Question 4, you should consider Question 6.

6. We award the Defendant 0 in actual damages.

I certify that this decision is the unanimous decision of the jury.

Foreperson

July 22nd, 2011

The Spriggs Group, P.C. v. Gene R. Slivka
Appellate Case No. 2011-204366

PLAINTIFF'S EXHIBIT 2

OVERSIZED

(Main House Site Plan, Sheet A01)

(Issued for Permit 8/01/08)

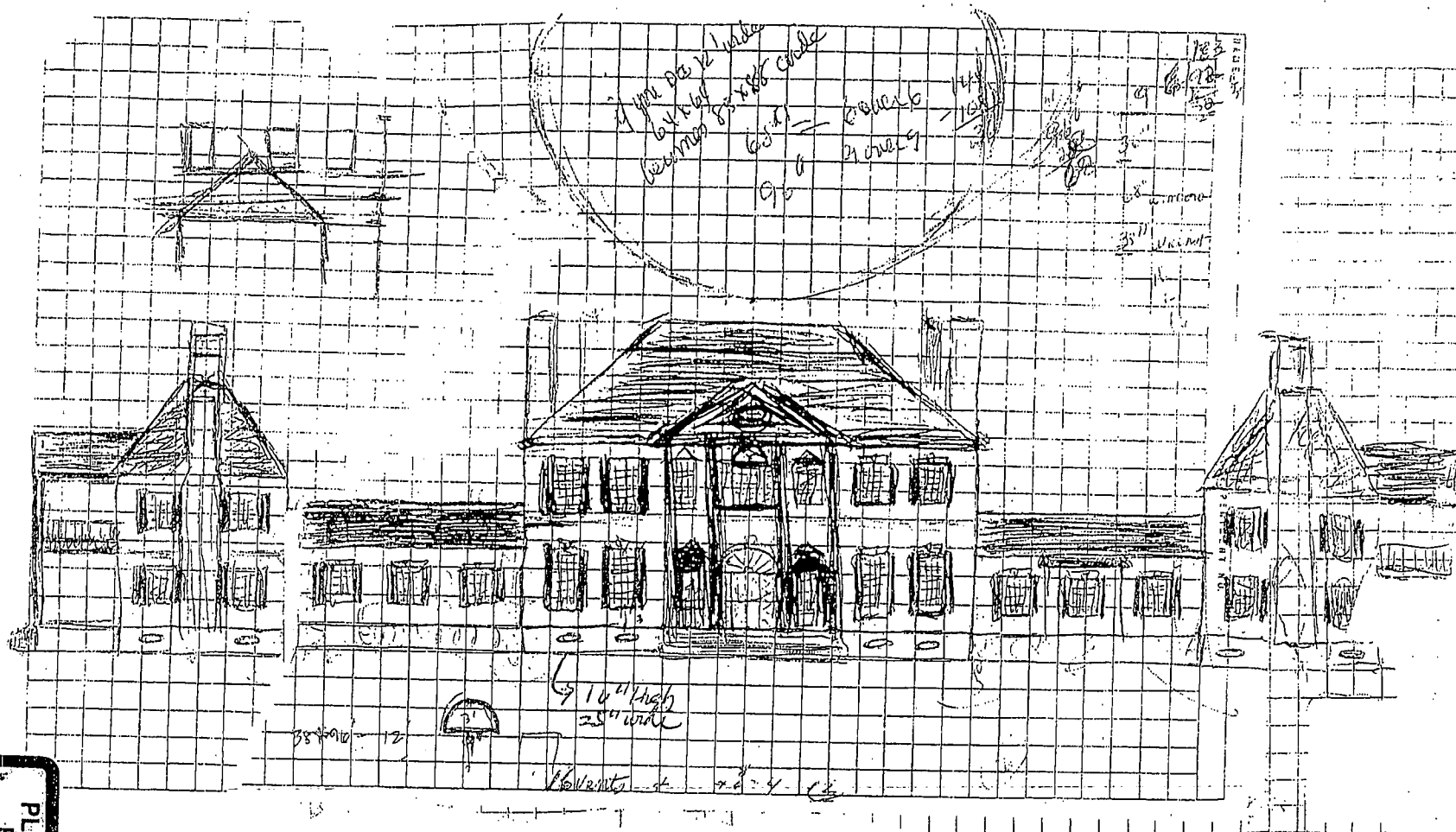
The Spriggs Group, P.C. v. Gene R. Slivka
Appellate Case No. 2011-204366

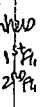
PLAINTIFF'S EXHIBIT 3

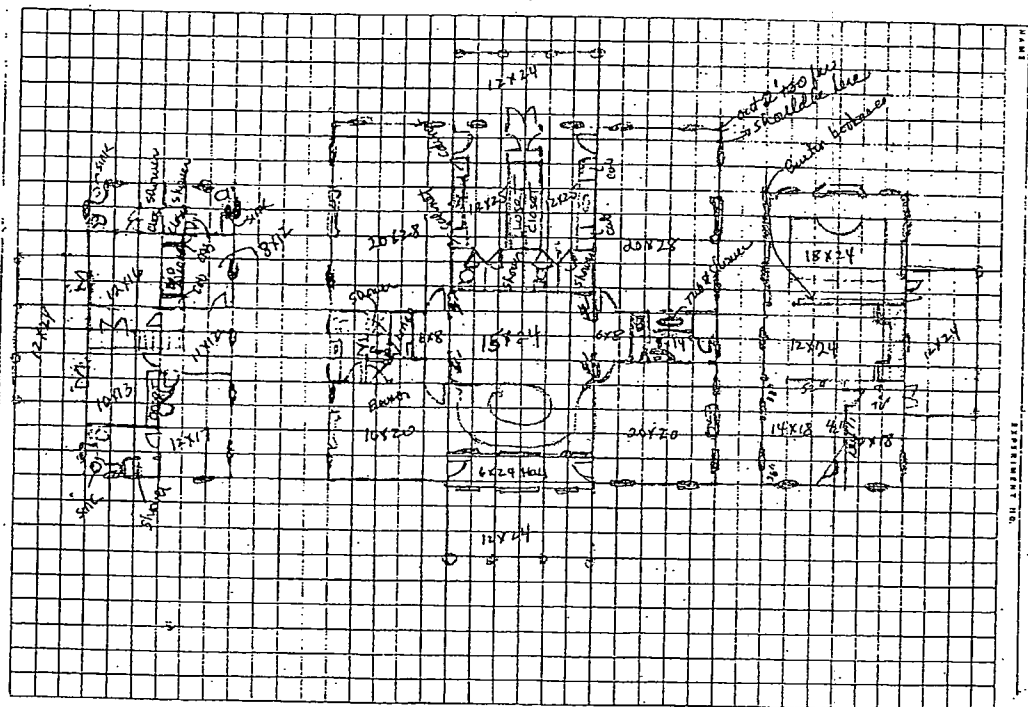
OVERSIZED

(Main House Site Plan, Sheet A02)

(Issued for Permit 8/01/08)







The
Spriggs
Group
P.C.

27 November 2006

27th Year Anniversary

Mr. Gene Slivka

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Reference: New Residence and Outbuildings
Julianton Plantation

Planning
Architecture
Interior Design

Dear Gene:

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

For your project, I have provided three focus areas for your consideration. The first is an estimate of probable construction cost for each of seven buildings. The second is our estimate of drawings and specifications needed by the contractor to build the structures. The third is our fee proposal to complete the architectural and engineering work with restrictions and limitations noted. I have enclosed national average fee schedules from 2005 for this type of project for your information.

Estimated Construction Cost Based on Program Outlined in 5 October 2006 Letter

Main House		
Total Gross Heated Space	13,056 SF x \$250/SF	\$3,264,000
Basement	7,168 SF x \$ 70/SF	501,760
Porches	1,152 SF x \$ 60/SF	69,120
Exterior Porch Stairs	4 x \$12,000 each	48,000
Total Main House		\$3,882,880
Conservatory		
Total Gross Space	864 SF x \$150/SF	\$ 129,600
Stable		
Total Gross Ground Space	2,250 SF x \$125/SF	\$ 315,000
Hay Loft	1,000 SF x \$70/SF	70,000
Total Stable		\$ 385,000
Garages		
Total Gross Ground Space	1,300 SF x \$90/SF	\$ 117,000
Attic (No HVAC)	900 SF x \$75/SF	67,500
Total Each Garage		\$ 184,500
Total Garages		\$ 369,000
Pavilion and Grotto		
Total Gross Space	200 SF x \$100/SF	\$ 20,000

PLAINTIFF'S
EXHIBIT

7

Mr. Gene Slivka
20 November 2006

Boat House		
Total Gross Space	540 SF x 110/SF	\$ 59,400

Total Buildings		\$4,845,880

Walls at Conservatory and Stable (4 F High x 100 LF)	400 SF x \$40/SF	\$ 16,000

Additional Costs

Site Grading
Civil: Wells & Piping.
Septic Tanks & Drain Fields
Solar Energy System
Grassing & Landscaping

Drawings and Specifications

Main House

Sheet Number-Description

A1-Site Plan (Includes adjacent out-buildings)
A2-Foundation Plan & Details
A3-Basement & First Floor Plans
A4-Second Floor & Attic Plans
A5 & 6-Enlarged Partial Plans
A7-Building & Wall Sections & Details
A8-Schedules
A9 & 10-Elevations
A11- Roof Plan & Details
A12 & 13-Framing Plans
A14-Structural Details
P1-Plumbing Basement & First Floor Plans
P2-Plumbing Second Floor & Attic Plans
P3-Plumbing Riser Plans & Schedules
M1-Mechanical Basement & First Floor Plans
M2-Mechanical Second Floor & Attic Plans
M3-Mechanical Schedules & Details
E1-Electrical Basement & First Floor Plans (Power & Lighting)
E2-Electrical Second Floor & Attic Plans (Power & Lighting)
E3-Electrical Schedules & Details

Conservatory

Sheet Number-Description

A1-Foundation & Floor Plans & Details
A2-Elevations
A3-Framing Plan, Building & Wall Sections

Mr. Gene Slivka
20 November 2006

Conservatory Continued

A4-Window & Door Elevations & Details

PME1-Plumbing, Mechanical & Electrical Plans

PME2-Plumbing, Mechanical & Electrical Details

Stable

Sheet Number-Description

A1-Foundation Plan & Details

A2-Floor & Hay Loft/Attic Plans

A3-Building & Wall Sections

A4-Elevations

A5-Schedules & Details

A6-Framing & Details

A7-Roof & Details

PME1-Plumbing, Mechanical & Electrical Plans

PME2-Plumbing, Mechanical & Electrical Schedules

PME3-Plumbing, Mechanical & Electrical Details

Garages

Sheet Number-Description

A1-Foundation & Floor Plans

A2-Attic & Roof Plans

A3-Elevations & Sections

A4-Framing Plans & Details

PME1-Plumbing, Mechanical, Electrical Plans & Details

Grotto

Sheet Number-Description

A1-Foundation & Floor Plans & Details

A2-Roof Plan, Elevations & Details

PE1-Plumbing & Electrical Plans & Details

Boat House

Sheet Number-Description

A1-Site Plan, Foundation & Floor Plans & Details

A2-Elevations & Sections

A3-Framing Plan & Details

PE1-Plumbing & Electrical Plans & Details

Total drawings: 52 sheets consisting of 34 architectural and 18 engineering drawings plus cover sheet.

Specifications

Applicable sections of 16-Division Master Format. Preliminary estimate is approximately 100 pages.

Mr. Gene Slivka
20 November 2006

Fee Proposal

Concept Design sit-down sessions and
Design Refinement for six building types
Project architect 80 hours @ \$175/hr \$ 14,000

Project Management
Internal - Project architect 40 hours @ \$175/hr 7,000
Consultants - project architect 40 hours @ \$175/hr 7,000

Construction Documents
Drawing set-up, lay-outs, design details, and schedules
24 hours/sheet @ \$105/hr X 34 sheets 85,680
Cover sheet 4 Hours @ \$105/hr 420

Specifications
Project architect 80 hours @ \$175/hr 14,000
Clerical 40 hrs @ \$35/hr 1,400

Consultants
Plumbing, mechanical, electrical engineering 20,000
Structural engineering 12,000

Total Fee \$161,500

Estimated Reimbursable Expenses \$ 1,000
Computer plots, printing, copying

You are welcome to use material samples, catalogs and other resources at our office.
This proposal is based on the following assumptions:

- 1) You will layout the kitchen and will work with a supplier such as Home Depot who will produce a floor plan and cabinet elevations for our use to confirm room size and dimensions and to determine plumbing locations and hood exhaust location.
- 2) You will select all kitchen appliances and will provide manufacturers, model numbers, and cut sheets for our use in preparing applicable plumbing and electrical plans.
- 3) You will work with a stair builder who will provide a stair shop drawing for the main house central stair for our use to determine structural support and framing.
- 4) You will contact and work with a solar energy system provider who will give us all information about panel locations, support requirements, and connections for our use to determine structural framing, connections, and ventilation of storage batteries.

Mr. Gene Slivka
20 November 2006

- 5) You will provide molding and trim supply sources and model numbers for our inclusion on the drawings.
- 6) You will select all lighting fixtures and will supply manufacturers and models for our use in preparing electrical schedules.
- 7) You will contract directly with a civil engineering firm, landscape architect and/or nursery. We will be provided with site drawings for water wells, septic tanks, and drain fields locations to determine our water and sanitary line entries to the buildings.
- 8) You will engage a testing laboratory to provide soils tests requested by our structural engineer.
- 9) You will engage a testing laboratory to provide tests for concrete requested by our structural engineer.
- 10) You will select brick manufacturer, color, and style.
- 11) You will select roofing material, manufacturer, and style.
- 12) You will select flooring material, colors, and styles and will provide manufacturer, and model numbers for our inclusion on finish schedules.
- 13) You will select interior and exterior colors and will provide manufacturers and numbers for our inclusion on finish schedules.
- 14) We will select door, window, and shutter hardware for your review and approval.
- 15) We will select plumbing fixtures for your review and approval.
- 16) We will provide shop drawing review for mechanical systems, site visits for electrical inspection prior to cover up, and final plumbing, mechanical, and electrical punch list.
- 17) We will provide structural foundation inspections and one framing inspection for each building.
- 18) We will provide any requested construction phase services by the project architect or staff on an hourly basis.
- 19) Once we begin construction documents, any changes in room layouts, sizes, window locations, door locations, and exterior elevation designs will be performed on an hourly basis.
- 20) We have not included any dock design for the boat house area since none was mentioned earlier.

Mr. Gene Slivka
20 November 2006

I am concerned that we may not have estimated enough time for this project and that our fee is too low. However, I am going on the information you gave over the telephone. If you look at the attached fee schedule, you will see that fees range from 15 to 19 percent of construction cost for custom single family dwellings. Typically fees breakdown by phases with the following percentages of fee by phase: schematic design - 15%, design development - 15%; construction documents - 45%; bidding or contractor negotiations - 5%; construction administration - 20%. For the construction documents phase, our proposed fee is less than half the fee that would be charged under national averages.

Gene, this is an exciting project, and I think that my estimates are accurate. I suggest you might contact Jim Turner and his chief estimator Mark Hiott to go over my projections. Let me know his review turns out. I will happy to talk with you further about the project.

Yours very truly,

THE SPRIGGS GROUP, P.C.


C. Kenneth Spriggs, AIA

CKS:bwv

FEES 2005

FEES FOR PROFESSIONAL DESIGN SERVICES

A GUIDELINES PUBLICATION

HOUSING

	Typical Fee Range as % of construction cost	Scope of Design Services			Highest Level Full-Service Fees
		Baseline Economy	Standard Average	Comprehensive Superior	
Dwellings, Single Family (Developer, Quality Tract) New Construction	3 - 8%	3%	6.4%	8%	8 - 12%
Typical construction cost range: \$56 to \$130 Average cost: \$85 sq. ft. (not including sitework) Typical range of building sizes: 1,400 - 3,000 sq. ft. Average size: 1,900 sq. ft.					
Note: Higher priced tract housing is rarely designed by architects, and unlicensed designer or drafting service fees are considerably lower than those cited above.					
Renovation/Additions (Not applicable.)					
Dwellings, Single Family (Developer, Luxury) New Construction	7.5 - 12.5%	7.5%	9.5%	12.5%	12.5 - 14%
Typical construction cost range: \$105 to \$262 Average cost: \$140 sq. ft. (not including sitework) Typical range of building sizes: 2,500 - 6,000 sq. ft. Average size: 3,500 sq. ft.					
Renovation/Additions	n/a - 16%	n/a	15%	16%	16 - 18%
Dwellings, Single Family (Custom Luxury) New Construction	n/a - 17.5%	n/a	15.2%	17.5%	17.5 - 19%
Typical construction cost range: \$117 to \$295 Average cost: \$175 sq. ft. (not including sitework) Typical range of building sizes: 3,000 - 9,000 sq. ft. Average size: 3,900 sq. ft.					
Renovation/Additions	n/a - 20%	n/a	18.5%	20%	20 - 22%

The architectural fee percentages include normal structural, mechanical, and electrical engineering fees.
 See page 4 for an explanation of building size and construction cost information.
 See page 5 for more details about what is and what is not included in consultant pass-through fees.
 See page 6 for an explanation of how to read and use the information in this survey.

**The
Spriggs
Group
P.C.**

35th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443

www.spriggsgroup.com

9 February 2009

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianon Plantation
Colleton County, South Carolina

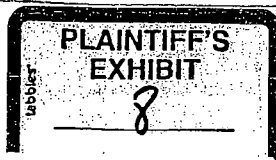
Dear Gene:

Enclosed are invoices for our work from January 2007 through December 2008 focusing on seven buildings forming the main part of your new development for a single family residence. The project is located on land in Colleton County and borders Whitehall Road in Greenpond, South Carolina. I chose to divide our work into four invoices dealing with specific topics. They are numbered 0609-2 through 0609-5. The first invoice 0609-1 dated 26 February 2007 and paid that day was the initial payment for services based on our letter dated 27 November 2006 outlining our understanding of the project at the time.

Invoice 0609-2 covers the design and preparation of constructions documents over a two-year period and which you used to obtain permits for each building. A second set of drawings was prepared for the Main House after a permit was obtained in August 2008. Those drawings incorporated changes which you wished to make for various aspects of the house. The total sets of drawings for all buildings comprised 85 sheets.

Invoice 0609-3 covers services in addition to the basic work discussed in the referenced letter and changes requested during preparation of construction documents for the seven buildings. At the onset we anticipated creating one set of documents for all the buildings which were to be constructed by your selected contractor J. T. Turner Construction Company. However, you directed us to produce documents for the buildings in a sequence you chose and that could start as each building set was completed.

Invoice 0609-3 covers construction phase services for activities you requested us to undertake. After the first buildings were under way, you chose to terminate Turner and enter into negotiations with and obtain pricing from independent contractors for specialty trades who normally would have been subcontractors to a general contractor such as Turner. We assisted in recommending a number of companies, distributed drawings for pricing, and once they were engaged by you, we answered field questions and provided additional information for their use.



Mr. Gene Slivka

9 February 2009

Page

I am pleased that we recommended Chatham Concrete Construction Inc., for as you noted, the company's price for poured-in-place concrete and masonry block work was \$250,000 less than prices you received from the general contractor.

Our knowledge of unusual specialty contractors also was helpful in building your grotto. Last May at New Julianston, we introduced you to Dave Manwarren whose company D. L. Manwarren Corporation is located in Rancho Cucamonga, California. We are working with him on our museum project in Conway, South Carolina. He successfully developed and constructed out of concrete your quarter-sphere grotto structure within the brick pavilion. Your desire was to have the appearance of dry stacked rock with slow-dripping water covering the surface as found in old grottos in Europe. You also asked Dave if he could construct a large bolder out of poured concrete to serve as the base of your waterfall feature located near the gardens adjacent to the Conservatory. I believe he is just completing that work.

Invoice 0609-5 covers all our reimbursable expenses for providing copies, prints, mailing, and other items over a two-year period. My original estimate of reimbursable costs was based on your identification of the contractor, J. T. Turner, who usually asks us for digital drawings and then produces all the copies needed for actual pricing and construction. As your consultant after terminating Turner, we were charged with producing and distributing all documents.

Over the past two years you have certainly challenged us to achieve your goals and schedules as you got further into the project. To accommodate your obligations on site, we met with you regularly after 6 PM in our office to go over areas of interests, concerns, and clarifications. When you mentioned that you could not read detailed drawings, Andy Bozeman from our office and I explained the intricacies of construction details and why certain sequences and materials had to be employed. I remember one session which started at 7 PM one evening and went to 2 AM in the morning of the next day. On another occasion, I heard the door bell ring at my house one Sunday morning at 7 AM and saw you standing there asking for drawings to take back to South Carolina. As you know, my friend, trying to satisfy all your verbal directives, sometimes I forget. That time I thought you said you were coming by at "evening" and you thought you said "morning".

After two years from start to "rounding the bend", I am excited that you have all seven buildings up with the Main House enclosed and receiving interior finishes. I do ask one thing. Our invoices are based on my friendship with you and the modest amounts we charged. I would not want these figures to be made public, knowing that the construction cost of the seven buildings is well over \$7,000,000. Normally, as a percentage of construction cost for a project like this one, our fees would be between 10 to 15 per cent. Our total invoices amount to just 3.9%. I'm sure you will keep our fees in confidence.

Mr. Gene Slivka
9 February 2009
Page

We have occasionally received calls from your contractors, and we always have responded during these past two months of 2009. I am sure there are many things you may still want to do, and as always, we will support you to achieve your goals. Just let me know how we may assist.

Yours very truly,

THE SPRIGGS GROUP, P.C.


C. Kenneth Spriggs, AIA
Principal

enc.

CKS:bwv

**The
Spriggs
Group
P.C.**

INVOICE
0609-1

26 February 2007

25th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianston Plantation
Colleton County, South Carolina

Item:

Design Services for Main House, 2 garage buildings
with apartments above, conservatory, potting building,
stable, and pavilion with grotto, based on letter
dated November 27, 2006 from The Spriggs Group, P.C.

Initial Payment for Services \$76,210.00

Total this Invoice \$76,201.00

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

INVOICE
0609-2

9 February 2009

30th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianston Plantation
Colleton County, South Carolina

January 2007 through December 2008:

Design and preparation of final drawings based on
formula stated in our proposal letter dated 27 November 2006.

Main House	42 sheets x 24 hours/sheet x \$105/hr.	\$105,840
Conservatory	6 sheets x 24 hours/sheet x \$105/hr.	15,120
Potting Shed	6 sheets x 24 hours/sheet x \$105/hr.	15,120
Barn	12 sheets x 24 hours/sheet x \$105/hr.	30,240
Garages (2)	18 sheets x 24 hours/sheet x \$105/hr.	45,360
Grotto	3 sheets x 24 hours/sheet x \$105/hr.	7,560

Total Preparation of Final Drawings	\$219,240
Consultants Paid by Architect	20,535
Sub-Total	239,775

Previous Invoice 0609-1 Credit	(76,201)

Total this Invoice	\$163,574

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

INVOICE
0609-3

9 February 2009

30th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianton Plantation
Colleton County, South Carolina

Additional Services and Changes based on items
listed in our proposal letter dated 27 November 2006:

August 2007:

Re-design rear wall system and change
construction documents for potting shed. 6 hrs. @ \$105/hr. \$ 650.00

October 2007:

Drafting for steps and retaining walls at garden.
Meet with contractor and prepare grid plan. 11 hrs. @ \$75/hr. 825.00

March - April 2008:

Research dentil mouldings at Taft House Museum,
Cincinnati; contact Historic American Building Survey
(HABS), obtain drawing and photo, develop and
reproportion original mouldings for barn and garages.
Reproportion original moulding for Main House.
Develop alternative moulding details for barn and
garages. 32 hrs. @ \$105/hr. 3,360.00

May 2008:

Research dog wash equipment and provide
cut sheets of products. 1.5 hrs. @ \$105/hr. 157.50
Design interior trim and details to incorporate
existing doors from Julianton Plantation,
McIntosh County, Georgia. 4 hrs. @ \$105/hr. 420.00

Mr. Gene Slivka
9 February 2009
Page

August 2008:

Redesign front entry windows, delete palladian exterior window and change 6 foot window to 8 feet.	15 hrs. @ \$105/hr.	1,575.00
Provide manufacturer sources for slate, millwork, mouldings.	9.5 hrs. @ \$105/hr.	997.50
Research Rinnai hotwater system.	1.5 hrs. @ \$105/hr.	157.50

September 2008:

Column redesign.	7 hrs. @ \$105/hr.	735.00
Chimney redesign from steel frame to masonry.	23.5 hrs. @ \$105/hr.	2,467.00
Interior Palladian window redesign.	5 hrs. @ \$105/hr.	525.00

Total this Invoice	\$11,849.50

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

INVOICE
0609-4

9 February 2009

30th Year Anniversary

Mr. Gene Slivka

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Reference: Architectural/Engineering Services
New Julianton Plantation
Colleton County, South Carolina

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Construction Administration Services.
Distribute documents for bid pricing, identify
trade contractors, answer field questions and
produce field sketches for garages, barn, main
house and grotto. Do quantity take-offs for
main house sheet rock panels.

May 2008:

Project Architect (P.A.)	2 hrs. @ \$175/hr.	350.00
Project Architectural Designers (P.A.D.)	2.5 hrs. @ \$105/hr.	262.50

June 2008:

P.A.	2 hrs. @ \$175/hr.	350.00
P.A.D.	3 hrs. @ \$105/hr.	315.00

July 2008:

P.A.D.	8 hrs. @ \$105/hr.	840.00

August 2008:

P.A.	.5 hrs. @ \$175/hr.	87.50
P.A.D.	19 hrs. @ \$105/hr.	1,995.00

September 2008:

P.A.	1.5 hrs. @ \$175/hr.	262.50
P.A.D.	13.5 hrs. @ \$105/hr.	1,417.50

October 2008:

P.A.	14.5 hrs. @ \$175/hr.	2,537.50
P.A.D.	44.4 hrs. @ \$105/hr.	4,672.50

Mr. Gene Slivka
9 February 2009
Page 2

November 2008:

P.A.	9.5 hrs. @ \$175/hr.	1,662.50
P.A.D.	1 hr. @ \$105/hr.	105.00

December 2008:

P.A.	10.5 hrs. @ \$175/hr.	1,837.50
P.A.D.	27.5 hrs. @ \$105/hr.	2,887.50

Total this Invoice	\$19,532.50

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

**INVOICE
0609-5**

9 February 2009

30th Year Anniversary

Mr. Gene Slivka

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Reference: Architectural/Engineering Services
New Julianton Plantation
Colleton County, South Carolina

Planning
Architecture
Interior Design

Reimbursable Expenses:

January 2007 through December 2008:

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Copies: Xerox, Laser, Fax

B/W

\$ 397.50

Color

33.20

Postage:

\$ 27.07

Blue Prints:

51.03

Computer Plots:

964.50

Coastal Digital Reprographics

Paid Invoices

\$2,270.51

Savannah Blue Print Co.

Paid Invoices

\$ 134.72

Total

\$3,878.53

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

INVOICE
0609-6

21 May 2009

30th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianston Plantation
Colleton County, South Carolina

Appraisal Services:

Prepare room name schedule corresponding to room numbers on plans, calculate square footages, provide breakdowns requested by appraiser, reduce plans to letter size format and convert to pdf format.

Architect	1 hr. @ \$175 per hr.	\$175.00
Designer	2.5 hrs. @ \$105 per hr.	\$262.50

Total		\$437.50

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

INVOICE
0609-7

16 November 2009

30th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianton Plantation
Colleton County, South Carolina

Construction Phase Services:

1 -13 January 2009

Receive requests from independent contractors in the field for details concerning main house balcony framing flashing including use of alternate materials, request to substitute main house plumbing waste line size above basement level, research and coordination with plumbing engineer, go over details for Grotto Pavilion. Provide explanation to owner of what is shown on various drawings.

Project Architect 1.5 hrs @\$175/hr	\$ 262.50

Project Architectural Designer 6.5 hrs @ \$105/hr	\$ 682.50

Consultant Engineer 1 hr @ \$140/hr	\$ 140.00

Total	\$1,085.00

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

ROSEN, ROSHN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

134 MEETING STREET, SUITE 200

P.O. Box 893

CHARLESTON, SOUTH CAROLINA 29402

PHONE (843) 577-6726

FAX (843) 724-8036

www.rhllawfirm.com

A. Bright Ariail
barail@rhllawfirm.com

March 15, 2010

REGISTERED MAIL - RETURN RECEIPT REQUESTED

Gene Slivka

REGISTERED MAIL - RETURN RECEIPT REQUESTED

J. Reaves McLeod
McLeod Fraser & Cone
PO Box 230
Walterboro, SC 29488

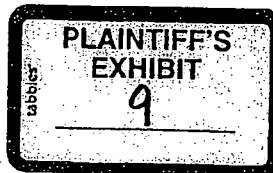
Re: The Spriggs Group, P.C. v. Gene Slivka

Dear Mr. Slivka and Mr. McLeod:

Pursuant to the Agreement between Mr. Slivka ("Slivka") and The Spriggs Group, PC ("Spriggs"), Spriggs performed architectural and engineering design services for Slivka for renovations on property known as the New Julianton Plantation (also known as the Myrtle Grove Plantation or the Myrtle Grove Tract) in Colleton County, South Carolina (the "Project"). Currently, fees totaling \$199,919.53 have been billed by the attached invoices (No. 0609-2 through 0609-5 and 0609-7).

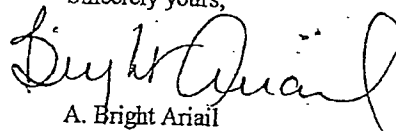
Demand for payment of monies due is hereby made pursuant to S. C. Code Ann. § 27-1-15 which requires the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within forty-five days from the date of the mailing of this demand. Failure to make a proper investigation or to pay it, or whatever portion of it is determined as valid may make you liable for attorney's fees and interest.

Pursuant to the terms of S. C. Code Ann. § 27-1-15, I am making this demand on behalf of The Spriggs Group, PC directly on Mr. Slivka and his attorney of record, Mr. McLeod.



March 15, 2010
Page

Sincerely yours,


A. Bright Ariail

ABA/aba

**The
Spriggs
Group
P.C.**

INVOICE
0609-2

9 February 2009

30th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianton Plantation
Colleton County, South Carolina

January 2007 through December 2008:

Design and preparation of final drawings based on
formula stated in our proposal letter dated 27 November 2006.

Main House	42 sheets x 24 hours/sheet x \$105/hr.	\$105,840
Conservatory	6 sheets x 24 hours/sheet x \$105/hr.	15,120
Potting Shed	6 sheets x 24 hours/sheet x \$105/hr.	15,120
Barn	12 sheets x 24 hours/sheet x \$105/hr.	30,240
Garages (2)	18 sheets x 24 hours/sheet x \$105/hr.	45,360
Grotto	3 sheets x 24 hours/sheet x \$105/hr.	7,560

Total Preparation of Final Drawings	\$219,240
Consultants Paid by Architect	20,535
Sub-Total	239,775

Previous Invoice 0609-1 Credit	(76,201)

Total this Invoice	\$163,574

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

INVOICE
0609-3

9 February 2009

30th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianton Plantation
Colleton County, South Carolina

Additional Services and Changes based on items
listed in our proposal letter dated 27 November 2006:

August 2007:

Re-design rear wall system and change
construction documents for potting shed. 6 hrs. @ \$105/hr. \$ 650.00

October 2007:

Drafting for steps and retaining walls at garden.
Meet with contractor and prepare grid plan. 11 hrs. @ \$75/hr. 825.00

March - April 2008:

Research dentil mouldings at Taft House Museum,
Cincinnati; contact Historic American Building Survey
(HABS), obtain drawing and photo, develop and
reproportion original mouldings for barn and garages.
Reproportion original moulding for Main House.
Develop alternative moulding details for barn and
garages. 32 hrs. @ \$105/hr. 3,360.00

May 2008:

Research dog wash equipment and provide
cut sheets of products. 1.5 hrs. @ \$105/hr. 157.50
Design interior trim and details to incorporate
existing doors from Julianton Plantation,
McIntosh County, Georgia. 4 hrs. @ \$105/hr. 420.00

Mr. Gene Slivka
9 February 2009
Page

August 2008:

Redesign front entry windows, delete
palladian exterior window and change
6 foot window to 8 feet.

15 hrs. @ \$105/hr. 1,575.00

Provide manufacturer sources for slate,
millwork, mouldings.

9.5 hrs. @ \$105/hr. 997.50

Research Rinnai hotwater system.

1.5 hrs. @ \$105/hr. 157.50

September 2008:

Column redesign.

7 hrs. @ \$105/hr. 735.00

Chimney redesign from steel frame to
masonry.

23.5 hrs. @ \$105/hr. 2,467.00

Interior Palladian window redesign.

5 hrs. @ \$105/hr. 525.00

Total this Invoice

\$11,849.50

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

INVOICE
0609-4

9 February 2009

30th Year Anniversary

Mr. Gene Slivka

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Reference: Architectural/Engineering Services
New Julianon Plantation
Colleton County, South Carolina

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Construction Administration Services.

Distribute documents for bid pricing, identify
trade contractors, answer field questions and
produce field sketches for garages, barn, main
house and grotto. Do quantity take-offs for
main house sheet rock panels.

May 2008:		
Project Architect (P.A.)	2 hrs. @ \$175/hr.	350.00
Project Architectural Designers (P.A.D.)	2.5 hrs. @ \$105/hr.	262.50
June 2008:		
P.A.	2 hrs. @ \$175/hr.	350.00
P.A.D.	3 hrs. @ \$105/hr.	315.00
July 2008:		
P.A.D.	8 hrs. @ \$105/hr.	840.00
August 2008:		
P.A.	.5 hrs. @ \$175/hr.	87.50
P.A.D.	19 hrs. @ \$105/hr.	1,995.00
September 2008:		
P.A.	1.5 hrs. @ \$175/hr.	262.50
P.A.D.	13.5 hrs. @ \$105/hr.	1,417.50
October 2008:		
P.A.	14.5 hrs. @ \$175/hr.	2,537.50
P.A.D.	44.4 hrs. @ \$105/hr.	4,672.50

Mr. Gene Slivka
9 February 2009
Page

November 2008:

P.A.	9.5 hrs. @ \$175/hr.	1,662.50
P.A.D.	1 hr. @ \$105/hr.	105.00

December 2008:

P.A.	10.5 hrs. @ \$175/hr.	1,837.50
P.A.D.	27.5 hrs. @ \$105/hr.	2,887.50

Total this Invoice	\$19,532.50

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

INVOICE
0609-5

9 February 2009

30th Year Anniversary
545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianton Plantation
Colleton County, South Carolina

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Reimbursable Expenses:

January 2007 through December 2008:

Copies: Xerox, Laser, Fax	
B/W	\$ 397.50
Color	33.20

Postage:	\$ 27.07
Blue Prints:	51.03
Computer Plots:	964.50

Coastal Digital Reprographics Paid Invoices	\$2,270.51

Savannah Blue Print Co. Paid Invoices	\$ 134.72

Total	\$3,878.53

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

INVOICE
0609-7

16 November 2009

30th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianon Plantation
Colleton County, South Carolina

Construction Phase Services:

1 -13 January 2009

Receive requests from independent contractors in the field for details concerning main house balcony framing flashing including use of alternate materials, request to substitute main house plumbing waste line size above basement level, research and coordination with plumbing engineer, go over details for Grotto Pavilion. Provide explanation to owner of what is shown on various drawings.

Project Architect 1.5 hrs @\$175/hr	\$ 262.50
Project Architectural Designer 6.5 hrs @ \$105/hr	\$ 682.50
Consultant Engineer 1 hr @ \$140/hr	\$ 140.00

Total	\$1,085.00

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

J. Reeves McLeod
McLeod Fraser & Cone
P.O. Box 230
Walterboro, SC 29488

2. Article Number
(Transfer from service label)

7008 1830 0003 7734 0717

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Jennifer E Bell

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Jennifer Bell

C. Date of Delivery

3

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gene Slivka

2. Article Number
(Transfer from service label)

7008 1830 0003 7734 0700

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Green Hill

☒ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

3-17-10

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

THE SPRIGGS GROUP, PC)

Plaintiff,)

vs.)

GENE R. SLIVKA)

Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.

NOTICE OF MECHANIC'S LIEN

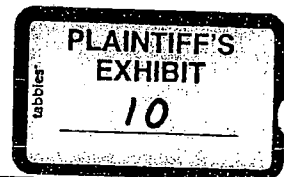
200900011272
Filed for Record in
COLLETON COUNTY SC
KARLA DADDIECO
04-13-2009 At 02:44 pm.
MECH LIEN 17.00
DR Volume 1742 Page 276 - 286

TO THE DEFENDANT ABOVE NAMED AND ALL OTHERS CONCERNED;

YOU WILL PLEASE TAKE NOTICE that the Plaintiff above named, by virtue of the attached Affidavit, does hereby claim a mechanic's lien of real estate hereinafter described, said lien being in the amount of One Hundred Ninety Eight Thousand, Eight Hundred and Thirty-Four Dollars and Fifty Three Cents (\$198,834.53) plus prejudgment interest, costs and attorney's fees, for labor, services and materials furnished and used for the improvements situated on the below described real estate. Such having been authorized by the Owner, or made by virtue of and in agreement with and by consent of the owner of such improvements or some person or agent having authority from or rightfully acting for such owner of the procuring or furnishing of such materials.

The property upon which this lien is attached includes those parcels below for which architectural and engineering services have been provided by The Spriggs Group, PC and is more particularly described as follows:

All those pieces, parcels and tracts of land containing two thousand seven hundred ninety-three and seven-tenths (2,793.7) acres, more or less, together with the buildings and improvements thereon, situate in the County of Colleton, State of South Carolina, known as Myrtle Grove Plantation, and delineated on two (2) survey plats prepared by S.S. Snook, Registered Land Surveyor, one delineated as containing one hundred eleven and three-tenths (111.3) acres, dated May 7, 1980, and recorded November 3, 1982, in Plat book 21 at Page 150; and the other delineated as containing two thousand six hundred eighty-two and four-tenths (2,682.4) acres, dated July 11, 1980, and recorded November 3, 1982, in Plat Cabinet C at Slide 47, in the Office of the Clerk of Court for Colleton County, South Carolina.

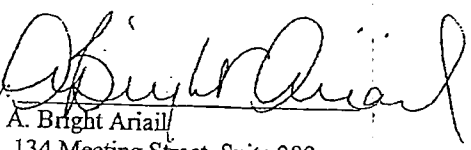


LESS AND EXCEPT All that certain tract or parcel of land lying and being in Colleton County, South Carolina and being know as Five (5) acres which parcel is a portion of the property more commonly known as MYRTLE GROVE TRACT, as shown on that certain map recorded in the Colleton County Register of Deeds, Colleton County, South Carolina in Deed Book CX, Page 47, and being more particularly described as follows: beginning 200 feet due North from the Northeast corner of the Myrtle Grove House being the POINT OF BEGINNING and running East for a distance of 200 feet; thence running due South for a distance of 900 feet; thence due West for a distance of 2420 feet; thence due North for a distance of 900 feet; thence due East for a distance of 700 feet to the POINT OF BEGINNING. Said tract to include the house currently known as Myrtle Grove.

BEING ALL OF TMS#: 282-00-00-021.000/271-00-00-082.000/282-00-00-020.000/282-00-00-008.000/281-00-00-057.000/ and 291-00-00-002.000 AND the remaining Portion of 291-00-00-001.000 and/or 282-00-00-021/271-00-00-082/282-00-00-020/282-00-00-008/281-00-00-057 and 291-00-00-002 AND the remaining Portion of 291-00-00-001

This being the same property conveyed to Berwind LLC by Limited Warranty Deed from William Henry Varn, dated February 22, 2007, recorded in Deed Book 1474, Page 61, recorded in the Office of the Register of Deeds for Colleton County, South Carolina.

ROSEN, ROSEN, & HAGOOD, LLC

By: 

A. Bright Ariail
134 Meeting Street, Suite 200
Post Office Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR PLAINTIFF
THE SPRIGGS GROUP, PC

Charleston, South Carolina

April 13, 2009

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC

Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.

) AFFIDAVIT OF MECHANIC'S LIEN

PERSONALLY appeared before me, The Spriggs Group, PC, a professional corporation, by C. Kenneth Spriggs, its President, who, being first duly sworn, deposes and states that certain labor, services and/or materials were furnished for the improvement of the property described in the attached Notice of Mechanic's Lien, such materials having been furnished at the special instance and request of the owner of said property or by consent of the owners or some person or agent having authority from or rightfully acting for such owner or authorized by the owner and were last furnished within ninety (90) days from the date of this Affidavit.

Deponent further states that there is past due and owing from the owners of said property to it the sum of One Hundred Ninety Eight Thousand, Eight Hundred and Thirty-Four Dollars and Fifty-Three Cents (\$198,834.53), representing the sum to which materials are reasonably worth as evidenced by the statement of account (attached hereto and incorporated herein as Exhibit "A") plus prejudgment interest, costs and reasonable attorney's fee.

THE SPRIGGS GROUP, P.C.

By: C. Kenneth Spriggs
C. KENNETH SPRIGGS
PRESIDENT

SWORN TO before me this

10th Day of April, 2009.

Olivia Mason
NOTARY PUBLIC FOR [state]

My Commission Expires:

OLIVIA MASON
Notary Public, Chatham County, GA
My Commission Expires December 3, 2010

EXHIBIT A

The Spriggs Group P.C.
New Julianton Plantation
Architectural/Engineering Services

Statement of Account

Invoice

Amount Due

0609-2	\$ 163,574.00
0609-3	\$ 11,849.50
0609-4	\$ 19,532.50
0609-5	\$ 3,878.53
	\$ 198,834.53

**The
Spriggs
Group
P.C.**

**INVOICE
0609-2**

9 February 2009

30th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianton Plantation
Colleton County, South Carolina

January 2007 through December 2008:

Design and preparation of final drawings based on
formula stated in our proposal letter dated 27 November 2006.

Main House	42 sheets x 24 hours/sheet x \$105/hr.	\$105,840
Conservatory	6 sheets x 24 hours/sheet x \$105/hr.	15,120
Potting Shed	6 sheets x 24 hours/sheet x \$105/hr.	15,120
Barn	12 sheets x 24 hours/sheet x \$105/hr.	30,240
Garages (2)	18 sheets x 24 hours/sheet x \$105/hr.	45,360
Grotto	3 sheets x 24 hours/sheet x \$105/hr.	7,560
Total Preparation of Final Drawings		\$219,240
Consultants Paid by Architect		20,535
Sub-Total		239,775
Previous Invoice 0609-1 Credit		(76,201)
Total this Invoice		\$163,574

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

INVOICE
0609-3

9 February 2009

30th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianton Plantation
Colleton County, South Carolina

Additional Services and Changes based on items
listed in our proposal letter dated 27 November 2006:

August 2007:

Re-design rear wall system and change
construction documents for potting shed. 6 hrs. @ \$105/hr. \$ 650.00

October 2007:

Drafting for steps and retaining walls at garden.
Meet with contractor and prepare grid plan. 11 hrs. @ \$75/hr. 825.00

March - April 2008:

Research dentil mouldings at Taft House Museum,
Cincinnati; contact Historic American Building Survey
(HABS), obtain drawing and photo, develop and
reproportion original mouldings for barn and garages.
Reproportion original moulding for Main House.
Develop alternative moulding details for barn and
garages. 32 hrs. @ \$105/hr. 3,360.00

May 2008:

Research dog wash equipment and provide
cut sheets of products. 1.5 hrs. @ \$105/hr. 157.50
Design interior trim and details to incorporate
existing doors from Julianton Plantation,
McIntosh County, Georgia. 4 hrs. @ \$105/hr. 420.00

Mr. Gene Slivka
9 February 2009
Page

August 2008:

Redesign front entry windows, delete
palladian exterior window and change
6 foot window to 8 feet.

15 hrs. @ \$105/hr. 1,575.00

Provide manufacturer sources for slate,
millwork, mouldings.

9.5 hrs. @ \$105/hr. 997.50

Research Rinnai hotwater system.

1.5 hrs. @ \$105/hr. 157.50

September 2008:

Column redesign.

7 hrs. @ \$105/hr. 735.00

Chimney redesign from steel frame to
masonry.

23.5 hrs. @ \$105/hr. 2,467.00

Interior Palladian window redesign.

5 hrs. @ \$105/hr. 525.00

Total this Invoice

\$11,849.50

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

INVOICE
0609-4

9 February 2009

30th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianton Plantation
Colleton County, South Carolina

Construction Administration Services.

Distribute documents for bid pricing, identify
trade contractors, answer field questions and
produce field sketches for garages, barn, main
house and grotto. Do quantity take-offs for
main house sheet rock panels.

May 2008:

Project Architect (P.A.)	2 hrs. @ \$175/hr.	350.00
Project Architectural Designers (P.A.D.)	2.5 hrs. @ \$105/hr.	262.50

June 2008:

P.A.	2 hrs. @ \$175/hr.	350.00
P.A.D.	3 hrs. @ \$105/hr.	315.00

July 2008:

P.A.D.	8 hrs. @ \$105/hr.	840.00

August 2008:

P.A.	.5 hrs. @ \$175/hr.	87.50
P.A.D.	19 hrs. @ \$105/hr.	1,995.00

September 2008:

P.A.	1.5 hrs. @ \$175/hr.	262.50
P.A.D.	13.5 hrs. @ \$105/hr.	1,417.50

October 2008:

P.A.	14.5 hrs. @ \$175/hr.	2,537.50
P.A.D.	44.4 hrs. @ \$105/hr.	4,672.50

Mr. Gene Slivka
9 February 2009
Page

November 2008:

P.A.	9.5 hrs. @ \$175/hr.	1,662.50
P.A.D.	1 hr. @ \$105/hr.	105.00

December 2008:

P.A.	10.5 hrs. @ \$175/hr.	1,837.50
P.A.D.	27.5 hrs. @ \$105/hr.	2,887.50

Total this Invoice

\$19,532.50

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

**The
Spriggs
Group
P.C.**

INVOICE
0609-5

9 February 2009

30th Year Anniversary

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com
www.spriggsgroup.com

Mr. Gene Slivka

Reference: Architectural/Engineering Services
New Julianon Plantation
Colleton County, South Carolina

Reimbursable Expenses:

January 2007 through December 2008:

Copies: Xerox, Laser, Fax
B/W
Color

\$ 397.50
33.20

Postage:

\$ 27.07

Blue Prints:

51.03

Computer Plots:

964.50

Coastal Digital Reprographics
Paid Invoices

\$2,270.51

Savannah Blue Print Co.
Paid Invoices

\$ 134.72

Total

\$3,878.53

Please remit to:

The Spriggs Group, P.C.
P. O. Box 10062
Savannah, GA 31412

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
THE SPRIGGS GROUP, PC,	)	
Plaintiff,	)	
vs.	)	BOND FOR RELEASE OF
	)	MECHANIC'S LIEN
GENE R. SLIVKA,	)	FILED IN BK 1742 PG 276
Defendant.	)	

I, Gene R. Slivka, the undersigned, do hereby stand fully bound to the Plaintiff for the payment of any judgment obtained in this matter and do herewith post with the Clerk of Court for Colleton County, as security for said bond cash in the amount of Two Hundred Sixty-Five Thousand One Hundred Twelve and 71/100 Dollars (\$265,112.71), said amount being one and one-third (1 1/3) times the amount of the lien recorded at Volume 1742 at Page 276 in the Office of the ROD for Colleton County, South Carolina, as required by S.C. Code Ann. § 29-5-110 (2008).

In witness whereof I have hereunto set my hand and seal this 12th day of May 2009.

Gene R. Slivka
Gene R. Slivka, Defendant

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

ACKNOWLEDGMENT

I G. W. Cone, a Notary Public, do hereby certify that Gene R. Slivka, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.
Witness my hand and official seal this the 12th day of May 2009.

G. W. Cone (Seal)
Notary Public for South Carolina
My Commission Expires: 6/7/16

PLAINTIFF'S
EXHIBIT

11

81
200900012007
Filed for Record in
COLLETON COUNTY SC
KARLA DADDIECCO
05-13-2009 at 03:43 pm.
ORCE N/C
OR Volume 1753 Page 81

200900012007
MICHAEL PRASER & CONE
ATTORNEYS AT LAW

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

THE SPRIGGS GROUP, PC,)

Plaintiff,)

vs.)

GENE R. SLIVKA,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUITRECEIPT FOR BOND POSTED FOR THE
RELEASE OF MECHANIC'S LIEN
FILED IN BK 1742 PG 276

WHEREAS, Gene R. Slivka previously deposited cash in the amount of Two Hundred Sixty-Five Thousand One Hundred Twelve and 71/100 Dollars (\$265,112.71) with Patricia S. Grant, Clerk of Court for Colleton County, South Carolina as security for his bond in this matter; and

WHEREAS, no suit has been filed to foreclose the Mechanic's Lien in this matter and the Clerk of Court wishes to transfer the funds deposited with her to the ROD for Colleton County, South Carolina in whose office the Mechanic's Lien is filed; NOW, THEREFORE,

I, Karla Daddiecco, ROD for Colleton County do hereby acknowledge receipt of the cash security for the bond of Gene R. Slivka referenced above in the amount of Two Hundred Sixty-Five Thousand One Hundred Twelve and 71/100 Dollars (\$265,112.71) from Patricia S. Grant, Clerk of Court for Colleton County, South Carolina.

Karla Daddiecco
Karla Daddiecco,
ROD for Colleton County

Date: 5/15/09

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
THE SPRIGGS GROUP, PC,	)	
Plaintiff,	)	
vs.	)	ORDER ACCEPTING BOND
GENE R. SLIVKA,	)	AND RELEASING MECHANIC'S LIEN
Defendant.	)	FILED IN BK 1742 PG 276

IT APPEARING TO THE COURT, that Patricia C. Grant, Clerk of the Court of Common Pleas for Colleton County, has acknowledged receipt of the bond of Gene R. Slivka in this matter and cash in the amount of Two Hundred Sixty-Five Thousand Twelve and 71/100 Dollars (\$265,112.71) from Gene R. Slivka as security for said bond.

#1
P.S. THEREFORE, sufficient bond and cash security having been posted for the payment of debt evidenced by a mechanic's lien recorded at Volume 1742, Page 276 in the Office of the R.O.D. for Colleton County, South Carolina,

IT IS ORDERED that said mechanic's lien is hereby released and there is substituted therefor the bond of Gene R. Slivka and the cash security posted with said bond; and

IT IS FURTHER ORDERED that any *Lis Pendens* filed in connection with the foreclosure of said mechanic's lien is hereby released; and

IT IS FURTHER ORDERED that the ROD for Colleton County shall mark the County records so as to reflect the posting of the bond and the release of the Mechanic's Lien and *Lis Pendens* filed in connection therewith, if any; and

IT IS FURTHER ORDERED that said funds be deposited in an

interest bearing account, with the accrued interest being added to the cash posted as security for the bond for the benefit of the parties as their interests may be determined by the Court; and

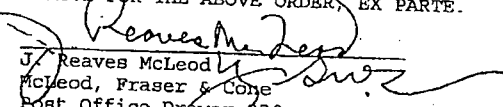
IT IS FURTHER ORDERED that the posting of the bond and cash security shall not prejudice the right of Defendant to contest the correctness or timeliness of the filing, perfecting or foreclosing of the lien, including without limiting the generality of the foregoing, the right to contest the timeliness of filing of the Mechanic's Lien and the Lis Pendens for the foreclosure thereof and if successful from receiving an Order cancelling the bond and directing the Clerk of Court to refund to Defendant the cash security posted.

AND IT IS SO ORDERED the 12th day of May, 2009.

Walterboro, South Carolina


Judge, Court of Common Pleas
Fourteenth Judicial Circuit

THE ABOVE ORDER BEING ALLOWED BY
S.C. CODE ANN. § 29-5-110 (2008),
I MOVE FOR THE ABOVE ORDER, EX PARTE.


J. Reaves McLeod
McLeod, Fraser & Cone
Post Office Drawer 230
Walterboro, SC 29488
(843) 549-2516
(843) 549-2306 facsimile
SC Bar No. 70283

Attorneys for Defendant

May 2, 2009
Walterboro, South Carolina

200900011894
Filed for Record in
COLLETON COUNTY SC
KARLA DADDIECO
05-12-2009 At 03:17 pm.
REL MECH LN 10.00
OR Volume 1751 Page 115 - 118

200900011894
MCLEOD FRASER & CONE
ATTORNEY AT LAW

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

THE SPRIGGS GROUP, PC,)

Plaintiff,)

vs.)

GENE R. SLIVKA,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

RECEIPT FOR BOND POSTED FOR THE
RELEASE OF MECHANIC'S LIEN
FILED IN BK 1742 PG 276

I, Patricia C. Grant, Clerk of the Court of Common Pleas for Colleton County, do hereby acknowledge receipt of the bond of Gene R. Slivka in this matter and cash in the amount of Two Hundred Sixty-Five Thousand One Hundred Twelve and 71/100 Dollars (\$265,112.71) from Gene R. Slivka as security for said bond.

Patricia C. Grant
Patricia C. Grant
Clerk of Court for Colleton
County

The Spriggs Group, P.C. v. Gene R. Slivka
Appellate Case No. 2011-204366

PLAINTIFF'S EXHIBIT 13

OVERSIZED

(Main House Basement Plan)

(Issued for Permit 11/19/08 & Rev. 1 for Permit 1/29/08)

The Spriggs Group, P.C. v. Gene R. Slivka
Appellate Case No. 2011-204366

PLAINTIFF'S EXHIBIT 14

OVERSIZED

(Main House Plan)

(Issued for Permit 8/01/08)

The Spriggs Group, P.C. v. Gene R. Slivka
Appellate Case No. 2011-204366

PLAINTIFF'S EXHIBIT 15

OVERSIZED

(Office Copy of Permit Plan Set)

(With Subsequent Prints)

The Spriggs Group, P.C. v. Gene R. Slivka
Appellate Case No. 2011-204366

PLAINTIFF'S EXHIBIT 16

OVERSIZED

(Garage Buildings Plans)

(Issued for Pricing 6/18/07, 7/26/07, 11/12/07 &

Issued for Permit 9/26/07)

The Spriggs Group, P.C. v. Gene R. Slivka
Appellate Case No. 2011-204366

PLAINTIFF'S EXHIBIT 17

OVERSIZED

(Potting Shed Plans)

(Issued for Pricing 6/18/07 & Issued for Permit 8/31/07)

The Spriggs Group, P.C. v. Gene R. Slivka
Appellate Case No. 2011-204366

PLAINTIFF'S EXHIBIT 18

OVERSIZED

(Garden Wall and Stair Plans)

(Issued for Review, 10/15/07)

From: Andy Bozeman
Sent: Tuesday, January 13, 2009 3:13 PM
To: 'Kayton Smith'
Subject: RE: Follow-up on 3" waste line change

Thanks. I like to be reassured about these things. It's also useful for me to hear about the price difference being small, as these things sometimes get exaggerated by certain parties.

~TAB

From: Kayton Smith [mailto:Kayton@savengineer.com]
Sent: Tuesday, January 13, 2009 2:31 PM
To: Andy Bozeman
Subject: RE: Follow-up on 3" waste line change

The use of 3" waste lines instead of 4" waste branch and stack lines is acceptable on this project. The initial decision for using 4" is that the cost difference (3" vs. 4") is small and reduces the opportunity for waste lines to become fully obstructed. Horizontal slope minimum (1/8" per ft) requirement applies to both sizes.

Kayton Smith Jr., P.E.

Vice President

Smith and VandenBulck

A Division of SAV Engineering, Inc.

5 Oglethorpe Professional Blvd., Suite 130

Savannah, GA 31406

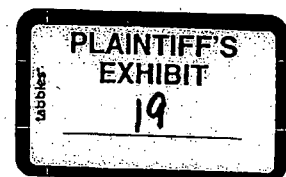
Phone 912-354-5249

Fax 912-352-8429

Cell 912-660-0636

From: Andy Bozeman [mailto:ABozeman@spriggsgroup.com]
Sent: Tuesday, January 13, 2009 12:31 PM
To: Kayton Smith
Subject: Follow-up on 3" waste line change

I mentioned the question to Ken, & he didn't hesitate to approve the



change from 4" to 3" waste lines from each bathroom to the 4" line in the basement. I thought I should not only update you on that decision, but also inquire if you are uncomfortable with that smaller sizing in any particular instance that drove the initial decision to use larger pipes.

Please verify that you are comfortable with 3" waste lines serving each bathroom or explain which circumstance(s) a 4" line is required.

~TAB

Thomas A. Bozeman
The Spriggs Group, P.C.
545 East York Street
Savannah, Georgia 31401
Tel: (912) 232-6441
Fax: (912) 232-6443
Web: www.spriggsgroup.com <<http://www.spriggsgroup.com/>>
E-mail: abozeman@spriggsgroup.com <<mailto:abozeman@spriggsgroup.com>>

**The
Spriggs
Group
P.C.**

545 East York Street
P.O. Box 10062
Savannah
Georgia
31412
USA

Planning
Architecture
Interior Design

Tel. 912.232.6441
Fax. 912.232.6443
tsg@spriggsgroup.com

5 October 2006

Mr. Gene Slivka

Reference: New Residence and Outbuildings

Dear Gene:

Our engineers have had several questions relating to the scope of work for your project. Highlighted below is the summary scope of work as I understand it for your confirmation.

We will have a sit-down session in which you will go over each building. We will determine floor plan layouts, massing, window patterns and style, roof shapes, and appropriate details. For the main house, we will determine the kitchen layout with locations for equipment and cabinets. These discussions will be documented on drawings which will be the basis for our development of construction documents.

You mentioned that you will obtain plans of a house that you wish to use as the basis of design for your residence. Whether the proportions, sizes of spaces, overall dimensions of building parts, roof and window styles are the same or will be modified will be determined at the sit-down session. We would prefer to review the plans first if possible.

Our work will include structural, mechanical, electrical, and plumbing engineering. Utility lines will be taken to 5 feet from the building for connection by other consultants under your supervision, including deep and shallow wells, septic tanks and drainage fields, solar energy systems, underground electrical and potable water distribution. We will not be responsible for site work, walkways, garden walls, or landscaping.

All buildings will have a brick exterior at solid wall surfaces.

You will select all kitchen equipment, plumbing fixtures, and lighting fixtures. We will specify all door, cabinet, and shutter hardware based on our sit-down session.

All buildings will be designed to current codes as related to wind loads, energy consumption, and fire safety.

We will prepare a base site plan for buildings locations which can be used by your civil engineer. We are assuming that you have a surveyed site plan.

Building Information

Main House

Organization is two-story central building with connecting one-story hyphens at each side and linking two-story wing buildings. Porches will occur at front entry, rear side, and outside face of each wing.

There will be a basement with clear head height of 8'. The basement will be partially below grade with a tapered berm surrounding the structure, thus exposing approximately 4' in height of the perimeter walls.

PLAINTIFF'S
EXHIBIT

20

Mr. Gene Elivka
5 October 2006

The HVAC system will be water source fed by a deep well. My estimate of the system size differs from Brunson Heating & Air. The estimator may not have known of the two-story parts of the house. The hyphen/ wings would be supplied by 5 to 6-ton units each. The central building would be supplied by a 14-ton unit.

Dimensions are 64' wide by 56' deep for central building with 32' wide by 20' deep hyphens, and 48' deep by 24' wide wing buildings. All porches are 24' wide by 12' deep. Based on the above dimensions the main house square footage will be:

1 st floor	3584
2 nd floor	3584
Hyphen	640
Hyphen	640

Wing	
1 st floor	1152
2 nd floor	1152

Wing	
1 st floor	1152
2 nd floor	1152

Total Heated 13,056

Basement 7168

Porches 1152

Conservatory

Footprint will be 36' wide by 24' deep. Total square footage is 864.

Stable

Footprint will be 84' wide by 30' deep. Total square footage is 2520.

There will be 8 stalls, a tack room, and a workshop. You will confirm if an attic with hay storage will be included.

Garages

There will be two four-car garages. Together with the stable, they will form a U-shape grouping but will not be connected.

Footprints for each garage will be approximately 50' wide by 26' deep. Total square footage will be 1300. A possible attic may be developed with square footage matching the ground floor for up to 1300 square feet.

Grotto

A raised flat-roof pavilion with four columns will front a stone grotto. The pavilion will be 24' by 12'. The stone grotto will be a semi-circle with 6-foot radius (12' wide by 6' deep). There be a pool and base to house a statue. Please confirm the size and relationship of the grotto to the pavilion.

Boathouse

The boathouse will house a flat-bottom pontoon boat. The structure will be approximately 18' wide by 30' deep. Total square footage will be 540. The building will be constructed on a spit of land which will be excavated to the adjacent water to create a channel to the boathouse.

Mr. Gene Slivka
3 October 2006

We assume the project will be located in an area of Julianston Plantation. All soil tests we require for design of structural foundations will be directly contracted by you.

Please let us know if this information is correct and provide any additional items you may decide are important.

Will we review submittals and shop drawings for architectural casework, hardware, mechanical, electrical, and plumbing systems? *yes*

Will we make any site visits during construction to review building foundations, structural framing, electrical wiring and plumbing lines before cover-up? *no*

Do you want us to review contractor pay requests? *no*

Do you want us to make a final punch list prior to close-out of construction? *no*

We are in the process of preparing a fee proposal and can complete our work upon confirmation of the program and clarification of questions we have raised.

Thank you for asking us to be involved in this exciting project.

Yours very truly,

THE SPRIGGS GROUP, P.C.

[Signature]
C. Kenneth Spriggs, AIA

CKS:bwip

Architects

Employee Thomas A. Bozeman
Phase Codes

Pay Period Ending

4/31/2008

- A Schematic Design
- B Design Development
- C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

Project No.	Project Name Description of work	Code	Hours Worked																												Total Hours
			16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31													
0408	Anesthesiology Consultants	F																													0.00
0410	CGCC Phys. Ed.	F																													0.00
	Submittal Review/RFI	F																													0.00
	Libraries																														0.00
	Natatorium																														0.00
0502	Kennickell Residence	C																													0.00
0602	Horry Co. Museum	A																													0.00
0604	ADA Libraries	A																													0.00
0606	Andrew Low House Museum	A																													0.00
0609	Slivka Residence & Outbldgs.	C																													0.00
	Garage/Stable	F	0.5							2																					0.00
	Main House	C	0.5		1					1	2.5	4	1.5																		0.00
	Foundation wall	C								1	2.5	4	1	0.5																	0.00
	Dentils & Moulding	C	1	4						1	3	2	2.5	2																	0.00
	Grotto		3	1.5	1					1			0.5																		0.00
0611	TitleMax HQ	A																													0.00
0511	Piccadilly	L																													0.00
																															0.00
																															0.00
	Herty Dwg. Search																														0.00
	IPC Dwg. Search																														0.00
	Project Devel. - RFP	L																													0.00
P0703	Colleton Center	L																													0.00
																															0.00
	Computer Administration	J	0.5	0.5	0.5					0.5	0.5	0.5	0.5	0.5																	0.00
	Comp. Admin. - Patrick	J																													0.00
	Comp Admin. - CAD	J																													0.00
																															0.00
	Administration	J	3.5	3	1.5					3.5	3	2.5	3	1																	0.00
	Awards	N																													0.00
																															0.00
	Holiday	P																													0.00
	Comp Time From 2-18,17-08																														0.00
	Other Time																														0.00
	Vacation																														0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00

**PLAINTIFF'S
EXHIBIT**

2

Architects

Employee **Thomas A. Bozeman**
Phase Codes

Pay Period Ending 4/15/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

[illegible]

Architects

Employee Thomas A. Bozeman
Phase Codes

Pay Period Ending 3/15/2008

- A Schematic Design
- B Design Development
- C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

[illegible]

Architects

Employee **Thomas A. Bozeman**
Phase Codes

Pay Period Ending

5/15/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

[illegible]

Architects

Employee Thomas A. Bozeman
Phase Codes

Pay Period Ending

5/31/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

Project No.	Project Name Description of work	Code	Hours Worked																												Total Hours
			16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31													
0408	Anesthesiology Consultants	F										0.5																		0.50	
0410	CGCC Phys. Ed.	F																												0.00	
	Submittal Review/RFI	F																												0.00	
	Libraries																													0.00	
	Nalatorium																													0.00	
0502	Kennickell Residence	C																												0.00	
0602	Hony Co. Museum	A																												0.00	
		A																												0.00	
0604	ADA Libraries																													0.00	
0608	Andrew Low House Museum	A																												0.00	
		A																												0.00	
0609	Slivka Residence & Outbldgs.	C	1																											0.00	
	Garage/Stable	F																												1.00	
	Main House	C									1							0.5												1.50	
	Foundation wall	C				2.5	3	1.5		1	0.5							4	5	4.5	1.5									23.50	
	Dentils & Moulding	C																												0.00	
	Grotto	C				2.5	1	1.5			1																			0.00	
	Shutter Research/Detail	C						1.5	2.5																					6.00	
	Interior Finishes/Details	C									4																			4.00	
																														0.00	
0611	TitleMax HQ	A																												0.00	
0511	Piccadilly	L																												0.00	
	Project Devel. - RFP	L																												0.00	
																														0.00	
																														0.00	
	Computer Administration	J	1.5			0.5	0.5	0.5	0.5	0.5																				0.00	
	Comp. Admin. - Patrick	J																1	1	1.5	1	0.5								9.00	
	Comp Admin. - CAD	J																												0.00	
																														0.00	
	Administration	J	1.5			3.5	3	3	2.5	1.5																				13.50	
																		3.5	3	3	1.5									12.50	
	Awards	N																												0.00	
	Holiday	P																												0.00	
	Other Time																	9												9.00	
	Vacation																													0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	

Architects

Employee T
Phase Codes

Pay Period Ending

8/31/2008

8 Design Development

C Construction Documents

E Bidding / Negotiation

F Construction Administration

H Fee / Negotiation

↓ General Administration

M Consulting / Studies

N Promotional

P Holiday

[illegible]

Architects

Employee
Phase Codes

Pay Period Ending

8/15/2008

A Schematic Design

B Design Development

C Construction Documents

D Specifications

E Bidding / Negotiation

F Construction Administration

G Program

H Fee / Negotiation

J General Administration

L P/C and P/C

M Consulting / Studie's

N Promotional

P Holiday

[illegible]

A r c h i t e c t s

Pay Period Ending

9/30/2008

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

Project No.	Project Name Description of work	Code	Hours Worked																												Total Hours
			16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31													
																															0.00
0410	CGCC Phys. Ed.	F																													0.00
	Submittal Review/RFI	F																													0.00
	Libraries																														0.00
	Nataforium																														0.00
0802	Horry Co. Museum	C																													0.00
																															0.00
0804	ADA Libraries	C																													0.00
																															0.00
0806	Andrew Low House Museum	C																													0.00
																															0.00
0609	Stivka Residence & Outbldgs.																														0.00
	Meet/Explain to Gene	B	1								1	1	0.5																		0.00
	Main House CDs	C			0.5																										3.50
	Engineering Coord.	C	2								0.5																				0.50
	Window Redesign	C					1										1									1	1				5.50
	Chimney Design/Refine	C		1		0.5					3.5	3.5	1			1											1	4.5			16.00
	Meet w/Truss Mfr.	C														3.5															3.50
	Refine/Redesign Windows	C	1																												1.00
	M-H CA/GC Efforts & Distrib	F		1																											2.00
	Mfr. Coord.	F	1.5	1																								1			3.50
	Column Redesign	C										1.5	3.5	1													1				7.00
																															0.00
	Garage/Stable C.A.	F																													0.00
	Grotto	C		1	4	0.5																									5.50
																															0.00
																															0.00
	Project Devel. - RFP	L																													0.00
																															0.00
	Computer Administration	J	0.5	0.5	0.5	0.5					0.5	0.5	0.5	0.5	0.5																7.50
	Comp. Admin. - Patrick	J																													0.00
	Comp Admin. - CAD	J																													0.00
	Administration	J	3	3.5	3	1.5					3.5	2.5	3.5	3	1.5																30.50
	Awards	N																													0.00
																															0.00
	Holiday	P																													0.00
	Other Time																														0.00
	Vacation																														0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00

Architects

Employee **Thomas A. Bozeman**
Phase Codes

Pay Period Ending 9/15/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

[illegible]

The Spriggs Group

Architects

Employee Ken Spriggs

Pay Period Ending

5/31/2008

Phase Codes

A Schematic Design

D Specifications

G Program

L P/C and P/C

B Design Development

E Bidding / Negotiation

H Fee / Negotiation

M Consulting / Studies

C Construction Documents

F Construction Administration

J General Administration

N Promotional

P Holiday / Vacation

CE Cont Ed

Project No.	Project Name Description of Work	Code	Hours Worked																												Total Hours
			16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31													
0602	Horry County Hist. Museum	J																													0.00
	Demolition Project	C/D																													0.00
	Exhibits	B																													0.00
	Consultants	B																													0.00
	Consultant Contracts	J																													0.00
	Travel	G																													0.00
	Design Development	B					0.5																								0.50
	Tel/E-mail/ Meetings	B																													0.00
	SC Grants	M																													0.00
0604	CGCC Library ADA Restroom	F																													0.00
	Consultants	F																													0.00
	Construction	F						1	0.5	0.5	0.5						1	0.5													4.00
	Submittals						1.5																								1.50
0811	TitleMax HQ Expansion	F																													0.00
	Administration	J																													0.00
	Sybil Jones	M																													0.00
0606	Andrew Low House	J																													0.00
	Modifications	M																													0.00
	Contractor	F	0.5							0.5																					1.00
	Client Meetings/E-Mails	F								1.5																					1.50
	Lighting Consulting	M								1.5																					1.50
	Smith & VandenBulck	F								1.5																					0.00
	Submittals	F																													0.00
	Vacation/Princeton	P																													0.00
0502	Kennickell Residence	J																										4	8		12.00
	Interior Designer	F																													0.00
	Roof Deck	M																													0.00
	Contractor	F						1.5																							0.00
	Consultants	F																										0.5			2.00
	E-mail/tel conf	F																													0.00
	TerraceDetails	M																													0.00
	Main Stair Review	M																													0.00
0607	O.T. Consulting	M																													0.00
0704	Rick Meyer	M																													0.00
	Telfair Consulting	M																													0.00
0609	New Slivka Residence	J																													0.00
	Consultant/MEP	B																													0.00
	Meetings/ Tel Conf	B																													0.00
	Foundation/Basement Mods	C																													0.00
	Grotto	B																													0.00
	Consultant/Structural	B																													0.00
	Construction Clarifications	M	1.5														4	2													6.00
	Main House	B	0.5								0.5	0.5	0.5																		2.00
	Mia Flores Thesis	N																													2.50
0410	CGCC Phys Ed. Renov	J							1																						1.00
	Natorium Modification	F							1	1.5	1						0.5	3	1												8.00
	Travel Brunswick	F																													0.00
	Consultants	C																													0.00
	Construction	F	1				0.5	1.5																							3.50
	Client Meetings/ Tel Conf	F					0.5										0.5														1.00
	Submittals	F					1.5										0.5														2.00
	Travel	J															2.5														2.50
0408	Anesthesiology Consultants	F					0.5				0.5	1.5					1.5	0.5													4.50
	Medical	J	2					1.5				2	0.5																		8.00
	Herty Pilot Plant	M																													0.00
	Administration	J	2.5				2.5	2	2	3	4.5						1	1	2	3											23.50
Total hours / pay period:			3.0				9.0	2.0	6.0	0.8	3.0				0.0	6.0	10.0	8.0	3.0	8.0	0.0										90.00

Architects

Employee Thomas A. Bozeman
Phase Codes

Pay Period Ending 5/31/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

[illegible]

Architects

Employee Ken Spriggs
Phase Codes

Pay Period Ending 8/30/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday Vacation
CE Cont Ed

[illegible]

Architects

Pay Period Ending

6/31/2008

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

[illegible]

Architects

Employee **Thomas A. Bozeman**

Pay Period Ending

6/15/2008

A Schematic Design

B Design Development

D Specifications

E Bidding / Negotiation

F Construction Administration

G Program

H Fee / Negotiation

↓ General Administration

L P/C and P/C

M Consulting / Studies

N Promotional

P Holiday

[illegible]

The Spriggs Group

Architects

Employee Ken Spriggs
Phase Codes

Pay Period Ending 8/31/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday / Vacation
CE Cont Ed

Project No.	Project Name Description of Work	Code	Hours Worked																												Total Hours
			16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31													
0602	Horry County Hist. Museum	J				0.5																									0.50
	Demolition Project	E					1.5	2	0.5																						4.00
	Exhibits	B																													0.00
	Consultants	B																													0.00
	Consultant Contracts	J																													0.00
	Travel	G																													0.00
	Design Development	B																													0.00
	Tel/E-mail/ Meetings	B																													0.00
0604	CGCC Library ADA Restroom	F																													0.00
	Consultants	F																													0.00
	Construction	F																													0.00
	Submittals																0.5														0.50
																															0.00
	USGBC	N																													0.00
0606	Andrew Low House	J																													0.00
	Modifications	M																													0.00
	Contractor	F																													0.00
	Client Meetings/E-Mails	F																													0.00
	Lighting Consulting	M																													0.00
	Smith & VandenBulck	F																													0.00
	Submittals	F																													0.00
0801	Massie Heritage Preservation	H																													0.00
0502	Kennickell Residence	J																													2.00
	Contractor	F																													0.00
	E-mail/tel conf	F																													0.00
	Punch List	F																													0.00
	Power Point	F					1																								1.00
0802	Kingsland Municipal Expand	J																													0.00
	433 Habersham	J															0.5														0.50
P0807	Health Sciences Bldg CCG	L			2.5		2.5	1.5	2																						8.50
	Project Development	L																													0.00
	SF 254/255 Update	L						5																							5.00
0609	New Slivka Residence	J				0.5											0.5	1.5													7.00
	Consultant/MEP	C															1														1.50
	Meetings/ Tel Conf	C																													0.00
	Foundation/Basement Mods	C							0.5									2.5													3.00
	Grotto	C																													0.00
	Consultant/Structural	C																													0.00
	Construction Clarifications	M																													0.00
	Main House	C			0.5	0.5	0.5		0.5																						0.50
	Submittals/Shop Drawings	F															1														3.00
0410	CGCC Phys Ed. Renov	J				0.5																									0.50
	Natatorium Modification	F																													0.00
	Travel Brunswick	F																													0.00
	Consultants	F																													0.00
	Construction	F			0.5				0.5								1	0.5	0.5	0.5											3.50
	Client Meetings/ Tel Conf	F															4														4.00
	Interior FF&E	C							1	1.5							0.5	1.5	1	1	0.5										7.00
	New Project Funding	M						1																							1.00
	Travel Brunswick																														0.00
	Medical	J															2.5														2.50
	Personel/Staff Preparation	J																													1.00
	Administration	J			4.5	5	2.5	1.5	2.5								4	2.5													31.50
Total hours / pay period:					2.5	2.0	8.0	9.0	0.5	0.0		8.0	2.0	6.0	0.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	73.00

Architects

Employee Thomas A. Bozeman
Phase Codes

Pay Period Ending

8/15/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

[illegible]

Architects

Employee Thomas A. Bozeman
Phase Codes

Pay Period Ending

8/31/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

Project No.	Project Name Description of work	Code	Hours Worked																												Total Hours
			16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31													
																														0.00	
0410	CGCC Phys. Ed.	F																												0.00	
	Submittal Review/RFI	F																												0.00	
	Libraries																													0.00	
	Natorium																													0.00	
0602	Horry Co. Museum	C																												0.00	
																														0.00	
0604	ADA Libraries	C																												0.00	
																														0.00	
0606	Andrew Low House Museum	C																												0.00	
																														0.00	
0609	Slivka Residence & Outbldgs.																													0.00	
	Meet/Explain to Gene	B				1	1	0.5	0.5				0.5	0.5	2.5		0.5													0.00	
	Main House CDs	C						1.5																						7.00	
	Engineering Coord.	C					0.5													2.5										4.00	
																			1											1.50	
	Research MH Skirt/Gutter	M			2	3																								0.00	
	Research Rinnai HW Sys.	M			0.5																									5.00	
	Refine/Redesign Windows	C				0.5	2.5		2	0.5					1.5	3	1													0.50	
	M-H CA/GC Efforts & Distrib	F			2.5	1.5	1																							11.00	
	Mfr. Coord.	F							1.5	1					3	3	1			2.5	1.5									9.00	
																														9.50	
																														0.00	
																														0.00	
	Garage/Stable C.A.	F					1																							0.00	
	Grotto	C																												1.00	
																														0.00	
																														0.00	
	Project Devel - RFP	L																												0.00	
																														0.00	
	Computer Administration	J			0.5	0.5	0.5	0.5	0.5					0.5	0.5	0.5	0.5	0.5												5.00	
	Comp. Admin. - Patrick	J																												0.00	
	Comp Admin. - CAD	J																												0.00	
																														0.00	
	Administration	J			3.5	2.5	2.5	2.5	1					4	2	3.5	2.5	1.5												25.50	
	Awards	N																												0.00	
																														0.00	
	Holiday	P																												0.00	
	Other Time																													0.00	
	Vacation																													0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	
																														0.00	

The Spriggs Group

Architects

Employee **Ken Spriggs**
Phase Codes

Pay Period Ending **9/15/2008**

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday / Vacation
CE Cont Ed

Project No.	Project Name Description of Work	Code	Hours Worked															Total Hours
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
0802	Horry County Hist. Museum	J																0.00
	Demolition Project	E																0.00
	Exhibits	B																0.00
	Consultants	B																0.00
	Consultant Contracts	J																0.00
	Travel	G															1.5	1.50
	Design Development	B																0.00
	E-mail/tel conf	F																0.00
0804	CGCC Library ADA Restroom	J																0.00
	Construction	F																0.00
0802	Kingsland Municipal Bldg	H		1.5	2	0.5												4.00
	Set-up	G				1				0.5	0.5						0.5	2.50
	Travel Kingsland	G									3							3.00
	Site Meeting										3							3.00
0801	Massie Heritage Preservation	H		0.5	0.5													1.00
	Programming/Meetings	G										3						3.00
0808	Andrew Low House	J																0.00
	Submittals	F																0.00
	Contractor	F			0.5	0.5												1.00
	Client Meetings/E-Mails	F																0.00
	Exterior Lighting	M																0.00
	Smith & Vandenberg	F																0.00
	Site Visits	F		0.5														0.50
0502	Kennickell Residence	J																0.00
	Photo Album & CD	N																0.00
	E-mail/tel conf	N																0.00
	Contractor	F																0.00
	Project Development	L																0.00
P0807	Health Sciences Bldg, CCG	L								0.5								0.50
	Owens-Thomas Advisory	N								2.5								2.50
	Labor Day	P	8															8.00
0408	Anesthesiology Close-Out	N																0.00
	Web Site	N		0.5														0.50
0809	New Sivka Residence	J																0.00
	Consultant/MEP	F																0.00
	Meetings/ Tel Conf	F			3													3.00
	Shop Drawings	F																0.00
	Construction Coordination	F			1	0.5												1.50
	Consultant/Structural	F																0.00
	Stairs/Retaining Wall	M																0.00
	Main House	F		1	0.5					0.5		0.5					0.5	3.00
	Grotto	F																0.00
0410	CGCC Phys Ed. Renov	J																0.00
	Fire Marshal	F																0.00
	FF&E	E		1	1	2												4.00
	Consultants	C																0.00
	Construction	F		0.5		2				2.5							1.5	5.00
	Client Meetings/ Tel Conf	F																0.00
	Submittals	F																0.00
	Portfolio	L		0.5														0.50
	Medical	J										0.5						0.50
	NYC Trip	J										1.5						1.50
	545 East York	P		0.5										8	8			16.50
	Administration	J		4	2	2.5	2			2.5	1.5	2.5					6	16.50
Total hours / pay period:			8.0	10.0	11.0	9.0	2.0			8.0	3.0	2.0	5.0	2.0			10.0	90.00

Architects

Employee Thomas A. Bozeman
Phase Codes

Pay Period Ending 9/15/2008

- A Schematic Design
- B Design Development
- C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

Project No.	Project Name Description of work	Code	Hours Worked															Total Hours
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
		F															0.00	
0410	CGCC Phys. Ed.	F															0.00	
	Submittal Review/RFI	F															0.00	
	Natorium	F															0.00	
		F															0.00	
0602	Harry Co. Museum	C															0.00	
																	0.00	
0808	Andrew Low House Museum	F															0.00	
																	0.00	
0609	Sivka Residence & Outbldgs																0.00	
	Main House CD's	C			2												0.00	
	Meet/Explain to Gene	F			4												2.00	
	Redesign Windows	B								4.5		0.5			0.5		9.50	
	Chimney Redesign	B		2.5	2	0.5				2.5	0.5					0.5	3.50	
	Coord. Engineering Docs	C				0.5	0.5			1	4	3				2	15.00	
	Main House CA	F										1				1	3.00	
	Distr. For Pricing	F				2	0.5			2.5						0.5	0.50	
	Submittal Review	F				1.5							0.5			0.5	5.00	
	Meet with M. Sikes	C											0.5				2.50	
													2				2.00	
																	0.00	
	Grotto	C										0.5					0.50	
	Garage & Stable CA	F		1.5													1.50	
																	0.00	
																	0.00	
																	0.00	
	Project Devel. - RFP	L															0.00	
																	0.00	
																	0.00	
																	0.00	
	Computer Administration	J		0.5	0.5	0.5	1.5			0.5	0.5	0.5	0.5	0.5		0.5	6.00	
	Comp. Admin. - Patrick	J		1.5						0.5	0.5	0.5	0.5	0.5			1.50	
	Comp. Admin. - Laptop	J		1.5		3	0.5			2							7.00	
																	0.00	
	Administration	J		1.5	3	1	1			3.5	3	3	2.5	1.5		4	24.00	
	Awards	N															0.00	
	Holiday	P		9													0.00	
																	9.00	
	Vacation																0.00	
	Other Time																0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	

Architects

Phase Codes

Pay Period Ending

9/30/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

Project No.	Project Name Description of work	Code	Hours Worked																												Total Hours	
			16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31														
																															0.00	
0410	CGCC Phys. Ed.	F																													0.00	
	Submittal Review/RFI	F																													0.00	
	Libraries																														0.00	
	Natorium																														0.00	
0602	Horry Co. Museum	C																													0.00	
																															0.00	
0604	ADA Libraries	C																													0.00	
																															0.00	
0606	Andrew Low House Museum	C																													0.00	
0609	Slivka Residence & Outbldgs.																														0.00	
	Meet/Explain to Gene	B	1								1	1	0.5																		0.00	
	Main House CDs	C			0.5																										3.50	
	Engineering Coord.	C	2							0.5																					0.50	
	Window Redesign	C					1									1													1		5.50	
	Chimney Design/Refine	C		1			0.5				3.5	3.5	1			1													1	4.5	18.00	
	Meet w/Truss Mfr.	C	1												3.5																3.50	
	Refine/Redesign Windows	C																													1.00	
	M-H CA/GC Efforts & Distrib	F		1																									1		2.00	
	Mfr. Coord.	F	1.5	1																											3.50	
	Column Redesign	C												1.5	3.5	1													1		7.00	
																															0.00	
	Garage/Stable C.A.	F																													0.00	
	Grotto	C		1	4	0.5																										0.00
																																0.00
																																0.00
	Project Devel. - RFP	L																														0.00
																																0.00
	Computer Administration	J	0.5	0.5	0.5	0.5					0.5	0.5	0.5	0.5	0.5																	0.00
	Comp. Admin. - Patrick	J																												2.5	0.5	7.50
	Comp Admin. - CAD	J																														0.00
																																0.00
	Administration	J	3	3.5	3	1.5					3.5	2.5	3.5	3	1.5																	0.00
																																0.00
	Awards	N																														0.00
																																0.00
	Holiday	P																														0.00
	Other Time																															0.00
	Vacation																															0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00

The Spriggs Group

Architects

Employee Ken Spriggs
Phase Codes

Pay Period Ending 10/15/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday / Vacation
CE Cont Ed

Project No.	Project Name	Code	Hours Worked															Total Hours
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
0602	Horry County Hist. Museum	J																
	Demolition Project	E																0.00
	Exhibits	B														0.5		0.50
	Consultants	B																0.00
	Consultant Contracts	J																0.00
	Travel	G															1	1.00
	Design Development	B																0.00
	Stair Project	M			0.5			0.5							0.5			1.50
0604	CGCC Library ADA Restroom	J		0.5	2	2.5		4	5									14.00
	Construction	F		0.5														0.00
0802	Kingsland Municipal Bldg	H																0.50
	Report	G	1															0.00
	Pricing	G							1								1	3.00
	Schematic Design	J									1	1			0.5	0.5	0.5	3.50
0801	Massie Heritage Preservation	H								4	4	2						10.00
	Programming/Meetings	G		0.5														0.00
0606	Andrew Low House	J									0.5	0.5			0.5		1	3.00
	Submittals	F																0.00
	Contractor	F																0.00
	Client Meetings/E-Mails	F							0.5							0.5		1.00
	Exterior Lighting	M																0.00
	Smith & VandenBulck	F																0.00
	Site Visits	F																0.00
0502	Kennickell Residence	J																0.00
	Photo Album & CD	N																0.00
	E-mail/tel conf	N																0.00
	Contractor	F																0.00
	Project Development	L		0.5				0.5										0.00
P0807	Health Sciences Bldg, CCG	L														2.5		3.50
	Owens-Thomas Advisory	N																0.00
0408	Anesthesiology Close-Out			2	0.5													0.00
	Web Site	N		0.5												0.5		3.00
0609	New Slivka Residence	J										0.5						1.00
	Consultant/MEP	F																0.00
	Meetings/ Tel Conf	F														2.5		2.50
	Shop Drawings	F																0.00
	Construction Coordination	F						0.5		0.5		0.5				1		2.50
	Consultant/Structural	F													1.5			1.50
	Stairs/Retaining Wall	M																0.00
	Main House	F	0.5	0.5	1.5		0.5					0.5			0.5	0.5		4.50
	Grotto	F																0.00
0410	CGCC Phys Ed. Renov	J										0.5						0.00
	Fire Marshal	F																0.00
	FF&E	E	0.5															0.50
	Consultants	C													1	0.5		2.00
	Construction	F			0.5			0.5		1	0.5	0.5			0.5			3.50
	Client Meetings/ Tel Conf	F																0.00
	Submittals	F	0.5	1	0.5			0.5	0.5	1	0.5							4.50
	Portfolio	L													3	1.5	2	6.50
	Medical	J																0.00
	Administration	J	2.5	2	2			2	1	1	1.5	2			2	2.5	1	0.00
Total hours / pay period:			7.0	08.0	8.0			9.0	08	8.0	8.0	8.0		10.0	10.0	10.0	0.0	93.00

Architects

Employee Ken Spriggs
Phase Codes

Pay Period Ending 10/31/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday Vacation
CE Cont Ed

[illegible]

Architects

Employee Thomas A. Bozeman
Phase Codes

Pay Period Ending

10/15/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

Project No.	Project Name Description of work	Code	Hours Worked															Total Hours
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
		F															0.00	
0410	CGCC Phys. Ed.	F															0.00	
	Submittal Review/RFI	F															0.00	
	Natorium	F															0.00	
0602	Horry Co. Museum	F															0.00	
		C															0.00	
0608	Andrew Low House Museum	F															0.00	
0609	Silvka Residence & Outbldgs																0.00	
	Main House CD's	C															0.00	
	Meet/Phone Explain to Gene	F	0.5		0.5			0.5	0.5	0.5	0.5	0.5		0.5	0.5	0.5	0.00	
	Redesign Windows	B	0.5														5.00	
	Chimney/Hearth Redesign	B		3	1												0.50	
	Coord. Engineering Docs	C	2		0.5			3		3	0.5	0.5				3	4.00	
	Main House CA	F		1.5													12.50	
	Distr. For Pricing(Roof Bid)	F	1	1													1.50	
	Submittal Review	F												0.5			2.50	
	Meet with M. Sikes	C															0.00	
	Update Permit Docs	C	1					1.5	3	2.5	3	1		3	2.5	1	0.00	
	Coord. Subs	F												0.5	2	2	18.50	
	Grotto	C															4.50	
	Garage & Stable CA	F															0.00	
																	0.00	
																	0.00	
																	0.00	
	Project Devel. - RFP	L															0.00	
																	0.00	
																	0.00	
	Computer Administration	J	0.5	0.5	0.5			0.5	0.5	0.5	0.5	0.5		0.5	0.5	0.5	0.00	
	Comp. Admin. - Patrick	J															5.50	
	Comp. Admin. - Laptop	J	1					1.5		1.5				1			0.00	
																	5.00	
	Administration	J	2.5	3	1.5			3.5	3	2.5	3	1.5		3.5	3	2	0.00	
	Awards	N															28.00	
																	0.00	
	Holiday	P															0.00	
																	0.00	
	Vacation																0.00	
	Other Time																0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	

Architects

Pay Period Ending

10/16/2008

D Specifications
E Bidding / Negotiation
F Construction Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

Total hours / pay period:

The Spriggs Group

Architects

Employee **Ken Spriggs**
Phase Codes

Pay Period Ending **11/15/2008**

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday / Vacation
CE Cont Ed

Project No.	Project Name	Code	Hours Worked															Total Hours
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
0602	Horry County Hist. Museum	J																0.00
	Demolition Project	F										1	0.5	0.5				2.00
	Exhibits	B																0.00
	Consultants	B			0.5													0.50
	Consultant Contracts	J																0.00
	Travel	G																0.00
	Design Development	B																0.00
	Stair Project	M																0.00
0604	CGCC Library ADA Restroom	J																0.00
	Construction	F																0.00
0802	Kingsland Municipal Bldg	J																0.00
	Report	G																0.50
	Pricing	G					3.5	1.5				0.5	2.5	2	1.5			11.50
0801	Massie Heritage Preservation	J						1										1.00
	Meetings/e-mail	B			0.5													0.50
	Design Development	B												1.5		1.5		3.50
	Consultant MEP	A			0.5				1.5						0.5	2.5		4.50
	Consultant Structural	B			0.5									2				2.50
	Consultant Timber Framing	B													0.5			1.00
0606	Andrew Low House	F												0.5	0.5			1.00
	Construction	F							0.5			0.5	0.5					1.50
	Final Punch List	F																0.00
	Close-out	F																0.00
0502	Kennickell Residence	J																0.00
	Photo Album & CD	N																0.00
	E-mail/tel conf	N																0.00
	Contractor	F																0.00
	Project Development	L																0.00
	Owens-Thomas Advisory	N																0.00
0408	Anesthesiology Close-Out	F																0.00
0609	New Sivka Residence	J																0.00
	Consultant/MEP	F							1				1.5		2			4.50
	Meetings/ Tel Conf	F											1.5					1.50
	Shop Drawings	F																0.00
	Construction Coordination	F											0.5					0.50
	Consultant/Structural	F							0.5									0.50
	Main House	F				0.5	1	1.5				3						6.00
	Grotto	F																0.00
0410	CGCC Phys Ed. Renov	J																0.00
	Fire Marshal	F																0.00
	FF&E	E				1.5									1	0.5		3.00
	Consultants	C			0.5													0.50
	Construction	F			2.5	1.5						1	1	1	0.5			7.50
	Client Meetings/ Tel Conf	F																0.00
	Submittals	F																0.00
0803	VA Clinic Report	M					1									0.5		1.50
																		0.00
	Administration	J			3	5	6.5	2.5	2			2	2	1.5	1.5	2.5		0.00
Total hours / pay period:					8.0	8.0	8.0	8.0	0.5			8.0	10.0	9.0	6.0	22.50		85.00

The Spriggs Group

Architects

Employee Ken Spriggs
Phase Codes

Pay Period Ending 11/30/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday / Vacation
CE Cont Ed

Project No.	Project Name Description of Work	Code	Hours Worked																															Total Hours
			16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31																
0602	Horry County Hist. Museum	J																														0.00		
	Demolition Project	E						1.5					1.5	1	1																	5.00		
	Exhibits	B																														0.00		
	Consultants	B																														0.00		
	Consultant Contracts	J																														0.00		
	Travel	G																														0.00		
	Design Development	B																														0.00		
	Tel/E-mail Meetings	B																														0.50		
	Stair/Aquarium	H																														0.00		
0604	CGCC Library ADA Restroom	F																														0.00		
	Consultants	F																														0.00		
	Construction	F			0.5					0.5																						0.00		
	Submittals	F											0.5																			1.50		
	Tile Mods in Staff RMs	F				1	1	0.5																								0.00		
0803	VA Clinic Documentation	J						1																								2.50		
																																1.00		
0606	Andrew Low House	J																														0.00		
	Construction Phase	F																														0.00		
	Client Meetings/E-Mails	F																														0.00		
	MEP Consultant	F																														0.00		
0801	Massie Heritage Preservation	J																														0.00		
	Design Development	B				1.5																										0.00		
	E-mails/Meetings	J																														2.00		
	Consultant MEP	B																														0.50		
	Consultant Structural	B																														0.00		
	Gabel Holder	M						1					3.5																			0.00		
																																4.50		
																																0.00		
																																0.00		
0502	Kennickell Residence	F																														0.00		
	E-mail/tel conf	F																														0.00		
	Power Point	J																														0.00		
0802	Kingsland Municipal Expand	J																														0.00		
	Project Development	L																														0.00		
																																0.00		
0609	New Slivka Residence	J																														0.00		
	Consultant/MEP	C				2.5	6	4	6																							0.00		
	Meetings/ Tel Conf	C																														25.50		
	Main House	F					1	0.5					3.5																			3.50		
	Grotto	C											0.5	0.5	0.5																	3.00		
	Consultant/Structural	C				0.5																										0.50		
	Construction Clarifications	F				0.5																										0.50		
	Submittals/Shop Drawings	F																														0.00		
																																0.00		
																																0.00		
0410	CGCC Phys Ed. Renov	J																														0.00		
	Travel Brunswick	F			2.5																											0.00		
	Consultants	F																														2.50		
	Construction	F				2	0.5		0.5																							0.00		
	Client Meetings/ Tel Conf	F																														3.00		
	Interior FF&E	F				1.5	0.5																									0.00		
																																2.00		
																																0.00		
																																0.00		
																																0.00		
	Administration	J			2.5	2	2	1	1.5				1	1.5	1.5																	0.00		
																																13.00		
Total hours / pay period:					9.0	9.0	10.0	10.0	8.0	0.0	0.0	0.0	11.0	8.0	6.0																	71.00		

Architects

Employee Thomas A. Bozeman
Phase Codes

Pay Period Ending 11/15/2008

- A Schematic Design
- B Design Development
- C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

[illegible]

Architects

Employee: Thomas A. Bozeman
Phase Codes

Pay Period Ending

10/15/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/O
M Consulting / Studies
N Promotional
P Holiday

[illegible]

The Spriggs Group Architects

Employee Ken Spriggs
Phase Codes

Pay Period Ending 12/15/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday / Vacation
CE Cont Ed

Project No.	Project Name	Code	Hours Worked															Total Hours
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
0602	Horry County Hist. Museum	J																
	Demolition Project	F	0.5				1.5											0.00
	Site Documentation	C					3					0.5		1				3.50
	Consultants	B																3.00
	Consultant Contracts	J									1	0.5						1.50
	Travel	G																0.00
	Design Development	B					7.5											7.50
	Stair Project	M																0.50
0604	CGCC Library ADA Restroom	J			1	4						0.5		0.5			0.5	6.00
	Construction	F																0.00
0802	Kingsland Municipal Bldg	J										0.5						0.50
0801	Massie Heritage Preservation	J										0.5						0.50
	Cost Estimating	B									1							1.00
	Site Review Fred Ecker	B		2					1.5	0.5			1.5					3.50
	Meetings/e-mail	B																2.00
	Schematic Design	A								1.5								1.50
	Consultant MEP	A							1			1	2	1				5.00
	Consultant Structural	A	0.5							1	2							3.00
	Consultant Timber Framing	B				0.5					0.5							1.00
	Site Documentation	B	1.5		0.5													0.50
	Power Point Presentation	A							0.5			0.5						3.00
0606	Andrew Low House	J														6		6.00
	Construction	F	1															0.00
	Close-out	F							0.5									1.50
0502	Kennickell Residence	J																0.00
	Photo Album & CD	N																0.00
	E-mail/tel conf	N																0.00
	Contractor	F																0.00
	Project Development	L																0.00
	Owens-Thomas Advisory	N																0.00
0408	Anesthesiology Close-Out	F																0.00
0609	New Sivka Residence	J																0.00
	Consultant/MEP	F	1	2	2.5	1			1	1	1	1	1					0.00
	Meetings/ Tel Conf	F		1	1				0.5									11.50
	Shop Drawings	F																2.50
	Construction Coordination	F		1	0.5													0.00
	Consultant/Structural	F	2															1.50
	Main House	F	0.5	1	1.5	1.5				1	1	0.5	1.5					2.00
	Grotto	F																8.50
0410	CGCC Phys Ed. Renov	J																0.00
	Fire Marshal	F							0.5				0.5					1.00
	FF&E	E			0.5													0.00
	Consultants	C	0.5						0.5						0.5			1.50
	Construction	F	0.5	1														0.50
	Client Meetings/ Tel Conf	F							2	1.5		0.5						5.50
	Submittals	F								0.5								0.50
																		0.00
																		0.00
																		0.00
	Administration	J	2	2	1.5	2			2		2	2	2.5			1		0.00
Total hours / pay period:			9.0	10.0	20.0	9.0	12.0		11.0	5.0	10.0	8.0	8.0		8.0			104.00

Architects

Employee Ken Spriggs.
Phase Codes

Pay Period Ending 12/31/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday / Vacation
CE Cont Ed

		Hours Worked																													CE Cont Ed	
Project No.	Project Name Description of Work	Code	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total Hours													
0602	Horry County Hist. Museum	J																														
	Demo Project	F	1	0.5					0.5	1.5																						0.00
	Stair/Aquarium	B																														10.00
	Consultants	B																														1.00
	Consultant Contracts	J																														0.00
	Travel	G																														0.00
	Design Development	B																														0.00
	Tel/E-mail Meetings	B					1																									1.50
	Exhibits	J																														0.00
																																0.00
0604	CGCC Library ADA Restroom																															0.00
	Construction	F																														0.00
																																0.00
																																0.00
	Holiday/Vacation	P																														0.00
																																0.00
																																0.00
0808	Andrew Low House	J																														20.00
	Construction	F																														0.00
	Punch List/Close-out	F																														0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
																																0.00
0502	Kennickell Residence	J																														0.00
																																0.00
																																0.00
0801	Massie Heritage Center	J																														0.00
	Schematic Design	A																														0.00
	Rosser	B				3	2			1																						8.00
	Fischetti	B																														0.00
	Contracts	J				0.5																										0.50
	Site Documentation	B																														0.00
	Power Point	A																														0.00
	Drawings/Specs	B	4	3																												3.50
0809	New Siliva Residence	J																														7.00
	Consultant/MEP	F																														1.50
	Meetings/ Tel Conf	F																														0.00
	Main House	F																														0.00
	Grotto	F																														0.00
	Consultant/Structural	F	1	2.5	3				0.5																							0.50
																																0.00
																																0.00
																																0.00
0410	CGCC Phys Ed. Renov	J																														0.00
	Construction	F																														0.00
	FF&E																															0.00
	IT/AV																															2.00
	Client Meetings/ Tel Conf	F																														0.00
																																0.00
	Portfolio	N																														0.00
																																0.00
	CADD Review	J																														0.00
	Holiday Cards	N					2																									0.00
	Administration	J																														0.00
			2	2	1.5	3			1	1.5				2																		12.00
Total hours / pay period:			5.0	6.5	8.0	8.0	0.0		0.8	8.0	8.0	2.0				1.5	2	4														90.00

Architects

Employee **Thomas A. Bozeman**
Phase Codes

Pay Period Ending 12/15/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

Project No.	Project Name Description of work	Code	Hours Worked															Total Hours
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
		F															0.00	
0410	CGCC Phys. Ed.	F															0.00	
	Submittal Review/RFI	F															0.00	
	Natalorium	F															0.00	
		F															0.00	
0602	Horry Co. Museum	C									2	1				1	4.00	
																	0.00	
0606	Andrew Low House Museum	F															0.00	
																	0.00	
0609	Slivka Residence & Outbldgs																0.00	
	Main House CD's	C															0.00	
	Meet/Phone Explain to Gene	F		1	0.5	0.5				0.5				0.5			3.00	
	Field Clarification	F				1					1	1.5	3				6.50	
	Chimney/Hearth Redesign	C															0.00	
	Coord. Engineering Docs	C									1			1			2.00	
	Main House CA	F										1					2.50	
	Calc. Inter. SF for Walls	F		2	3	4	1			3.5				0.5	1		13.50	
	Submittal Review	F															0.00	
	Drainage Sys. Design/Draft	C	3		2												5.00	
	Update Permit Docs	C											0.5				0.50	
	Coord. Subs	F					0.5										0.50	
	Research Column Mfr. Corres	C														1	1.00	
	Garage & Stable CA	F															0.00	
																	0.00	
0801	Massie Heritage Center	A	0.5	3												2.5	8.00	
																	0.00	
0803	Sav. V.A. Clinic	M	1														1.00	
																	0.00	
	Project Devel. - RFP																0.00	
																	0.00	
	Computer Administration	J	0.5	0.5	0.5	0.5	0.5			0.5	0.5	0.5	0.5	0.5		0.5	5.50	
	Comp. Admin. - Patrick	J	0.5														0.50	
	Comp. Admin. - Laptop	J															0.00	
	Comp. Admin. - New CAD	J									4.5	2	1			1	8.50	
	Administration	J	3.5	2.5	3	3	2			3.5	3	2	2.5	2		3	30.00	
	Awards	N															0.00	
	Holiday	P															0.00	
																	0.00	
	Vacation																0.00	
	Other Time																0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
																	0.00	
													</					

Architects

Employee **Thomas A. Bozeman**
Phase Codes

Pay Period Ending

12/31/2008

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

Project No.	Project Name Description of work	Code	Hours Worked																												Total Hours
			16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31													
0410	CGCC Phys. Ed.	F																												0.00	
	Submittal Review/RFI	F																													0.00
	Libraries																														0.00
	Natorium																														0.00
0802	Horry Co. Museum	C	2	2.5	0.5	1				0.5																	1	0.5	2		10.00
0604	ADA Libraries	C																													0.00
																															0.00
0606	Andrew Low House Museum	C																													0.00
0609	Slivka Residence & Outbldgs.																														0.00
	Meet/Explain to Gene	B										0.5																			0.50
	Main House Cds	C																													0.00
	Engineering Coord.	C	0.5	1	1.5																										0.00
	Window Redesign	C																													3.00
	Column Replacement	C																													0.00
	Coord. w/Truss Mfr.	C																								0.5	1.5				2.00
	Refine/Redesign Windows	C																													0.00
	M-H CA/GC Efforts & Distrib	F																													0.00
	Mfr. Coord./Distrib.	F																									1				1.00
	Drainage Sys. Design/Draft	C																													0.00
	Sub Coord.	F																													0.00
																															0.00
	Garage/Stable C.A.	F																													0.00
	Grotto	C																													0.00
0801	Massie Heritage Center	A	2		3.5	1				2.5	0.5																	3	0.5		13.00
	Project Devel. - RFP	L																													0.00
	Computer Administration	J	0.5	0.5	0.5	0.5				0.5	1	0.5															0.5	1	0.5		6.00
	Comp. Admin. - Patrick	J																													0.00
	Comp Admin. - New CAD	J	2	3						2	3.5																2.5	1			14.00
	Administration	J	2	2	3	1.5				3.5	3.5	1.5															3.5	2	1		23.50
	Awards	N																													0.00
	Holiday	P																													0.00
	Other Time												4	8																	12.00
	Vacation																														5.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
																															0.00
													</																		

The Spriggs Group

Architects

Employee Ken Spriggs
Phase Codes

Pay Period Ending 01/1-15/2009

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday / Vacation
CE Cont Ed

Project No.	Project Name	Code	Hours Worked															Total Hours
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
0602	Horry County Hist. Museum	J																0.00
	Demolition Project	F		0.5			0.5	0.5			0.5					0.5		2.50
	Site Documentation	C																0.00
	Consultants	B					0.5	2							1.5	0.5		4.50
	Consultant Contracts	J													0.5			3.00
	Travel	G																0.00
	Design Development	B									0.5				0.5	1.5	1	3.50
	Stair Project	M																0.00
	Demolition Scope Mods	F		1.5			0.5	2	1.5									5.50
	Meetings/e-mails	B													0.5	0.5		1.00
	Exhibit Next Phase	B														1	0.5	1.50
0801	Massie Heritage Preservation	J		0.5														0.50
	Cost Estimating	B					0.5											0.50
	Site Review Fred Ecker	B					0.5	0.5	1									2.00
	Meetings/e-mail	B																0.00
	Consultant MEP	B					1	0.5		0.5				0.5				2.50
	Consultant Structural	B					0.5								2			2.50
	Site Documentation	B																0.00
	New Scope Estimate	J					0.5	0.5										1.00
	Design Development	B									0.5				0.5	0.5	2	3.50
	Product Research	B															2	2.00
0606	Andrew Low House	J								0.5								0.50
	Construction	F																0.00
	Close-out	F																0.00
0502	Kennickell Residence	J																0.00
	Photo Album & CD	N													0.5			0.50
	Holiday	P	8															8.00
	Project Development	L								0.5								0.50
	Portfolio	N												2.5	0.5			3.00
0408	Anesthesiology Close-Out	F																0.00
0609	New Slivka Residence	J																0.00
	Consultant/MEP	F																0.00
	Meetings/ Tel Conf	F																0.00
	Shop Drawings	F																0.00
	Construction Coordination	F																0.00
	Consultant/Structural	F														2		2.00
	Main House	F					0.5	0.5										1.00
	Grotto	F		0.5														0.50
0410	CGCC Phys Ed. Renov	J									2					0.5		2.50
	Fire Marshal	F																0.00
	FF&E	E									0.5							0.50
	Consultants	C																0.00
	Construction	F					0.5	0.5	2	2	0.5							5.50
	Client Meetings/ Tel Conf	F						0.5		2								2.50
	Final Punch List	F																0.00
	Travel Brunswick	F								2.5								2.50
0604	CCGA ADA Library Restroom	J		0.5														0.50
	Construction	F								0.5	0.5							1.00
	Administration	J		4.5			2.5	1	0.5	0.5	2			4	2.5	1.5	2	0.00
Total hours / pay period:			35.0				8.0	3.0	08	3.0	3.0			2.0	6.0	3.0	8.0	80.00

Architects

Employee **Thomas A. Bozeman**
Phase Codes

Pay Period Ending

1/15/2009

A Schematic Design
B Design Development
C Construction Documents

D Specifications
E Bidding / Negotiation
F Construction Administration

G Program
H Fee / Negotiation
J General Administration

L P/C and P/C
M Consulting / Studies
N Promotional
P Holiday

[illegible]

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO.: 2009-CP-15-0595

THE SPRIGGS GROUP, P.C., ... Respondent,

v.

GENE R. SLIVKA, ... Appellant.

RECORD ON APPEAL, VOLUME 2

Robert T. Lyles, Esquire
Lyles & Lyles, LLC
342 East Bay Street
Charleston, South Carolina 29401
(843) 577-7730
Rtl@lylesfirm.com
Attorneys for Appellants

James A. Bruorton, IV, Esquire
A. Bright Ariail, Esquire
Rosen, Rosen & Hagood, LLC
Post Office Box 893
Charleston, S.C. 29402
(843) 577-6726
cbruorton@rrhlawfirm.com
bariail@rrhlawfirm.com
Attorney for Respondent

INDEX

Order Denying Defendant's Motion to Dismiss filed March 2, 2010	1
Order denying Motion for Summary Judgment dated April 12, 2011	2
Order Denying Defendant's Motion for JNOV and/or For New Trial, filed on September 7, 2011.	4
Order for Award of Interest, Fees, and Costs initially filed on September 7, 2011	14
Order for Award of Interest, Fees, and Costs v and filed on October 3, 2011.	19
Order denying Defendant's Motion to Alter/Amend Court's Order Denying Defendant's Motion for JNOV and/or for New Trial on November 22, 2011.	24
Order Denying Defendant's Rule 59 Motion Regarding Award of Interest, Fees and Costs to Plaintiff filed on November 22, 2011.	26
Complaint filed July 8, 2009.	31
Answer and Counterclaim filed September 10, 2009.	55
Amended Complaint filed May 5, 2010.	68
Answer and Counterclaim filed May 18, 2010.	94
Transcript of Proceedings	
Volume 1	105
Pre-Trial Motions	106
Gene Raymond Slivka	
Direct by Ms. Ariail	109
Cross by Mr. Lyles	125
Redirect by Ms. Ariail	129

Thomas Anderson Bozeman

Direct by Ms. Ariail 138

Cross by Mr. Lyles 201

Redirect by Ms. Ariail 205

Charles Kenneth Spriggs

Direct by Ms. Ariail 206

Cross by Mr. Lyles 267

Volume 2 271

Charles Kenneth Spriggs

Cross by Mr. Lyles (Continued) 272

Redirect by Ms. Ariail 278

Myles Ivan Glick

Direct by Mr. Bruorton 279

Motions 285

Gene Raymond Slivka

Direct by Mr. Lyles 298

Cross by Ms. Ariail 301

Harvey Anthony Scott

Direct by Mr. Lyles 309

Cross by Ms. Ariail 312

Post-Trial Motions 314

Closing Arguments by Plaintiff 320

Judge's Charge to the Jury	321
Theume Transcript of Proceedings	332
Verdict.	337
Plaintiff Exhibits	
2 (Oversized, Main House Site Plan, Sheet A01)	339
3 (Oversized, Main House Site Plan, Sheet A02)	340
6 (Slivka Hand Drawn Sketches)	341
7 (Proposal dated November 27, 2006)	346
8 (Letter dated February 9, 2009 with invoices)	354
8a (Invoice 0609-6 dated May 21, 2009)	364
8b (Invoice 0609-7 dated November 16, 2009)	365
9 (S.C. Code Ann. § 27-1-15 Letter)	366
10 (Mechanic's Lien)	376
11 (Bond to discharge Mechanic's Lien)	387
13 (Oversized, Main House, Basement Plan)	392
14 (Oversized, Main House Plans)	393
15 (Oversized, Permit Plan Set)	394
16 (Oversized, Garage Building Plans)	395
17 (Oversized, Potting Shed Plans)	396
18 (Oversized, Garden Wall and Stair Plans)	397
19 (Email to Kayton Smith)	398
20 (Letter dated October 5, 2006)	400

21 (Timesheets)	403
Defendant's Exhibit	
3 (Handwritten Letter dated June 4, 2009)	437
Plaintiff's Motion to Strike Affirmative Defenses and Counterclaim dated June 23, 2010.	438
Defendant's Motion for Summary Judgment dated January 27, 2011.	449
Plaintiff's Motion for Summary Judgment dated January 31, 2011.	453
Defendant's Offer of Settlement dated July 1, 2011.	461
Plaintiff's Motion to Strike Offer dated July 11, 2011.	462
Plaintiff's Motion for Interest, Fees and Costs dated July 27, 2011 with affidavits and exhibits.	465
Defendant's Motion Notwithstanding the Verdict and/or for a New Trial Absolute or Nisi Remittitur dated August 1, 2011.	522
Defendant's Memorandum in Opposition to Plaintiff's Motion for Attorneys' Fees and Costs dated August 11, 2011 with exhibits.	536
Plaintiff's Memorandum in Opposition to Defendant's Motion for Judgment Notwithstanding the Verdict and/or for a New Trial filed August 12, 2011.	555
Defendant's Rule 59(e) Motion dated September 16, 2011.	567
Plaintiff's Letter to Court Enclosing Letter to Judge Seals dated September 22, 2011.	574
Defendant's Rule 59(e) Motion dated October 7, 2011.	576

Plaintiff's Memorandum in Opposition to	586
Defendant's Motion for Judgment Notwithstanding the Verdict and/or for New Trial with affidavit and exhibits dated October 20, 2011	
Defendant's Notice of Appeal	598

cc Jennifer Skan
Keara McCubed

June 4, 2009

RECEIVED

JUN 08 2009

THE SPRIGGS GROUP, P.C.

Ken Spriggs
Spriggs Group
P.O. Box 10062
Savannah, Ga
31412

GONE Sluka
6938 Whitehall Rd
Green Pond, SC
29446

Dear Mr Spriggs,

You are more outrageous than even I imagined. You were advised on December 10, 2008 that I was done fooling around trying to get you to complete your work and on December 11th I picked up whatever incomplete and inadequate work you had. I have ever spoken to you again except in one phone conversation to refute our attempt to charge me beyond our contract price of \$15,000 and to advise you that I would not pay until I received a corrected invoice for the other 50% of the \$15,000. We are now in a lawsuit. We are in a lawsuit over the very kind of billing issue. Why would you think you would provide services to someone who was a stranger to you and then bill me. Why would you have even done the work. I never requested these services, I never requested Compass South to request them on my behalf (see attached letter to Compass South) and therefore I suggest you send a bill to them. Since I certainly owe you nothing.

It is reasonable to say that the poor service from your company is disgusting enough, but your delusional billing is an outrage..

Disgusted and Outraged
Gene Sluka

200000



STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
THE SPRIGGS GROUP, PC,)
Plaintiff,)
vs.)
GENE R. SLIVKA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2009-CP-15-595

**PLAINTIFF'S MOTION TO
STRIKE AFFIRMATIVE
DEFENSES AND COUNTERCLAIMS
FROM DEFENDANT'S ANSWER
AND COUNTERCLAIMS TO
AMENDED COMPLAINT**

2010 JUN 23 PM 12:09
PATRICIA C. GRIFFIN
COLLETON COUNTY
COMMON PLEAS

Pursuant to South Carolina Rule of Civil Procedure 12(f), Plaintiff, The Spriggs Group, PC, by and through its counsel, hereby moves this Court for an Order striking certain insufficient, immaterial and redundant affirmative defenses and counterclaims from Defendant's Answer and Counterclaims to the Amended Complaint.

BACKGROUND

Plaintiff, The Spriggs Group, PC ("Plaintiff"), is a professional corporation organized under the laws of the state of Georgia and licensed to do business in the state of South Carolina. Defendant Gene R. Slivka ("Defendant") is, upon information and belief, a resident of the state of South Carolina. The action herein arose out of Defendant's failure and/or refusal to pay Plaintiff for architectural and engineering design services it provided to Defendant for improvements on property known as New Julianton Plantation (also known as the Myrtle Grove Plantation or Myrtle Grove Tract) in Colleton County, South Carolina (the "Project").

LEGAL ANALYSIS

Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order

stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter. Rule 12, SCRCP (2009). Pursuant to this rule, Plaintiff hereby asserts the following affirmative defenses and counterclaims are defective and should be stricken from Defendant's Answer and Counterclaims to Plaintiff's Amended Complaint:

1. Defendant's second affirmative defense asserting statute of limitations and/or repose pertaining to Plaintiff's mechanic's lien. Defendant claims that Plaintiff "judicially admitted" that it ended its work on the project on or before December 31, 2008 and argues that Plaintiff's notice of mechanic's lien in this matter was untimely. This claim has already been addressed and dismissed by the Court. Defendant presented this same argument as the basis for his motion to dismiss and for dissolution of Plaintiff's mechanic's lien, a copy of which is attached hereto as Exhibit A. After considering Defendant's argument and hearing oral arguments on this issue, Defendant's motion was denied by Judge J. Ernest Kinard, Jr. on March 2, 2010. A copy of Judge Kinard's Order is attached hereto as Exhibit B. Contrary to Defendant's allegations and as already observed by the Court, the filed affidavit of Thomas A. Bozeman evidences that work was in fact performed on the project through January 13, 2009, within the required ninety (90) days from the filing of Plaintiff's mechanic's lien and within the applicable statute of limitations. In recognition of this fact, Plaintiff's mechanic's lien was properly upheld and Defendant's motion to dismiss and for dissolution of mechanic's lien was thereby denied. Therefore, because Defendant's affirmative defense only attempts to renew the same allegations previously dismissed by this Court, this affirmative defense should be stricken as a redundant matter and insufficient defense.

2. Defendant's third affirmative defense asserting a material defect in notice of mechanic's lien. Defendant alleges that Plaintiff's claim of right under its mechanic's lien are

barred by the requirements of S.C. Code Ann. Title 29, Chapter 5, including but not limited to § 29-5-90 and § 29-5-120. These statutes require, *inter alia*, that the lien be filed and served within ninety days of the last date of work performed and that the related foreclosure action be filed within six months of the last date of work performed. This matter was likewise addressed by Defendant's motion to dismiss and for dissolution of Plaintiff's mechanic's lien, Exhibit A, and denied by the Order of Judge J. Ernest Kinard, Jr., Exhibit B, whereby the Court dismissed Defendant's motion to dismiss and for dissolution of mechanic's lien based on these same alleged statutory deficiencies. The filed affidavit of Thomas A. Bozeman again establishes that Defendant's notice argument is without merit. Accordingly, because this matter was previously addressed and dismissed by the Court, Defendant's third affirmative defense should be stricken as a redundant matter and an insufficient defense to Plaintiff's Amended Complaint.

3. Defendant's fourth affirmative defense asserting a frivolous lien. Defendant alleges that Plaintiff's mechanic's lien is frivolous because of purported non-compliance with S.C. Code Ann. § 29-5-15. This statutory section went into effect on June 2, 2009, *after* the filing of Plaintiff's mechanic's lien in this matter, and this statute was not retroactive as adopted. Therefore, § 29-5-15 is wholly inapplicable to Plaintiff's mechanic's lien in this lawsuit. For this reason, Defendant's affirmative defense alleging a frivolous lien based the requirements of § 29-5-15 is simply inaccurate, constitutes an insufficient affirmative defense, and should be stricken as a response to Plaintiff's Amended Complaint.

4. Defendant's fifth affirmative defense asserting payment. In this affirmative defense, Defendant claims that Plaintiff "judicially admits" that a previous payment to Plaintiff was made in the amount of \$76,210.00 for work performed and that this should constitute a complete bar to some or all of the claims contained in Plaintiff's Amended Complaint. These

funds are not sought in the action by Plaintiff therefore are completely immaterial to the allegations contained in Plaintiff's Amended Complaint. Because the payment of these funds is immaterial, Defendant's affirmative defense asserting payment for this amount should be deemed an immaterial matter, an insufficient defense, and should be stricken by this Court.

5. Defendant's sixth affirmative defense asserting waiver. In this defense, Defendant alleges that descriptions of certain documents and statements contained in exhibits to Plaintiff's Amended Complaint constitute "judicial admissions" for purposes of waiver, thereby precluding Plaintiff or this Court from interpreting these items in any other manner. For example, Defendant argues that reference to the "contract" as a "proposal" in an exhibit, despite also being identified as a "contract" in Plaintiff's Amended Complaint, serves to unequivocally prove the document is a "proposal" and precludes any other interpretation of this document. While facts contained in a pleading may constitute an evidentiary admission, no law supports Defendant's onerous position here. Defendant's oppressive analysis of waiver appears to substitute the situation here for the effect of a party's "admission" pursuant to the available discovery methods contained in Rule 36 of the South Carolina Rules of Civil Procedure. A contravening reference to a document or statement in an exhibit is not the same as an admission pursuant to a request to admit. Defendant's allegation of a waiver defense hinges on this incorrect analysis. Accordingly, Defendant's affirmative defense of waiver is insufficient and should be stricken as a response to Plaintiff's Amended Complaint.

6. Defendant's seventh affirmative defense asserting modification/ratification. Defendant again argues that Plaintiff's claims should be barred because of a "judicial admissions" made in Plaintiff's Amended Complaint. Defendant extracts individual words from Plaintiff's Amended Complaint, labels them admissions and sweepingly concludes that these

"judicial admissions" preclude any other manner of interpretation by Plaintiff or this Court. Plaintiff's Amended Complaint must be considered as a whole and cannot be dissected word by word and used in a piecemeal fashion by Defendant to support a modification/ratification defense. For the same reasons as described above, Defendant's defense is unsupported, insufficient, and should be stricken by this Court.

7. Defendant's eighth affirmative defense asserting the Statute of Frauds, S.C. Code Ann. § 32-3-10. In this defense, Defendant alleges that because the contracted work was not completed within a year that Plaintiff's claims are barred by the Statute of Frauds, codified as S.C. Code Ann. § 32-3-10. The contract at issue here could have been completed within a year but was in fact delayed because of Defendant's conduct. South Carolina law holds that contracts that could have been performed within a year are not subject to the Statute of Frauds. See, e.g., Florence Printing Co. v. Parnell, 178 S.C. 119, 182 S.E. 313 (1935) ("This statute does not apply except in cases where the contract cannot possibly be performed within the year."). Because the contract at issue could have been performed within one year, Defendant's affirmative defense asserting the Statute of Frauds is insufficient and should be stricken by this Court.

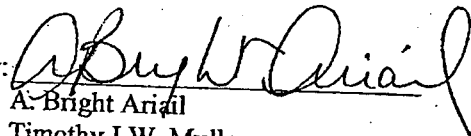
8. Defendant's ninth affirmative defense asserting slander of title. Defendant premises this defense again on his allegation that Plaintiff's mechanic's lien was defective because it was not timely filed and was not filed on the proper real property. As previously detailed, this Court dismissed Defendant's claims relating to alleged deficiencies in Plaintiff's mechanic's lien by Order of Judge J. Ernest Kinard, Jr., Exhibit B. Because this mechanic's lien was properly filed, Plaintiff was entitled to publish its lien and Defendant's defense alleging slander of title on this basis is insufficient. Further, this matter was previously addressed and dismissed by the Court and should likewise be stricken by this Court.

9. Defendant's second counterclaim alleges a violation of the Frivolous Claims Sanctions Act, S.C. Code § 15-36-10. Defendant's counterclaim is insufficient and incomplete as alleged. In his counterclaim, Defendant merely acknowledges that Plaintiff's Complaint and Amended Complaint were signed and litigation has been maintained. Defendant wholly fails to identify any basis how this lawsuit violates the Frivolous Claims Sanctions Act. Accordingly, Defendant's second counterclaim is clearly insufficient to constitute a defense to Plaintiff's Amended Complaint and should be stricken pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure.

10. Defendant's fourth counterclaim alleges a tortious interference with contractual relationships with third parties resulting from an alleged defective notice in Plaintiff's mechanic's lien. In support of this counterclaim, Defendant argues that Plaintiff "falsely" attached its notice of mechanic's lien to Defendant's tract of land. This counterclaim, also presented in Defendant's motion to dismiss and for dissolution of Plaintiff's mechanic's lien, Exhibit A, has been addressed and dismissed by the Order of Judge J. Ernest Kinard, Jr, Exhibit B. Because this matter was previously addressed and dismissed by the Court, Defendant's fourth counterclaim should be stricken as a redundant matter and an insufficient defense.

WHEREFORE, Plaintiff respectfully moves this Court for an Order striking the above-referenced affirmative answers and counterclaims of Defendant and awarding it such other and further relief as this Court may deem just and proper including fees and costs related to this Motion as many of these items have previously been addressed by this Court.

ROSEN, ROSEN & HAGOOD, LLC

By: 
A. Bright Ariail
Timothy J.W. Muller
P.O. Box 893
Charleston, SC 29401
(843) 577-6726

ATTORNEY(S) FOR PLAINTIFF
THE SPRIGGS GROUP, PC

Charleston, South Carolina
June 21, 2010

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC

☐ Plaintiff

v.

GENE R. SLIVKA

☒ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO.
2009-CP-15-595

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

A. Bright Ariail, Bar No. 69570

Address:

P.O. Box 893, Charleston, SC 29402

phone: 843-577-6726 fax: 843-724-8036

e-mail: bariaail@rhlawfirm.com other:

Defendant's Attorney:

J. Reaves Mcleod, Bar No. 70283

Address:

P.O. Box 230, Walterboro, SC 29488

phone: 843-549-2516 fax: 843-549-2306

e-mail: reavesmcleod22@hotmail.com other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

12-14-09 2009 DEC 16 AM 11:24

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

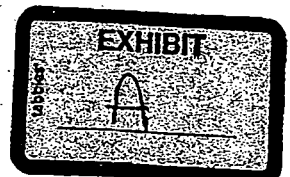
Collected by:

Date Filed:

☐ MOTION FEE COLLECTED:

☐ CONTESTED - AMOUNT DUE:

SCCA/233 (11-03)



STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.,

Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO. 2009-CP-15-595

) DEFENDANT'S NOTICE OF MOTION
) AND MOTION TO DISMISS AND FOR
) DISSOLUTION OF MECHANIC'S LIEN

2009 DEC 31 AM 11:24

PATRICIA L. GRANT
COLLETON COUNTY
COMMON PLEAS

TO THE ABOVE NAMED PLAINTIFF AND ITS ATTORNEY A. BRIGHT ARIAIL:

YOU WILL PLEASE TAKE NOTICE that the undersigned, attorney for the Defendant, will move before the presiding judge of the Fourteenth Judicial Circuit, at the Colleton County Courthouse in Walterboro, South Carolina, on the tenth (10th) day after service hereof, or as soon as counsel may be heard or at such time and place as may be set by the Court, for an Order granting the following relief:

1. Dissolving the Mechanic's Lien filed by the Plaintiff herein; returning the cash bond deposited by Defendant with the Colleton County Clerk of Court to the Defendant with interest added; and, further, Defendant requests that the Plaintiff be ordered to pay the attorney's fees expended by Defendant in connection with defending against said Mechanic's Lien, as provided by law. Defendant seeks to have said Mechanic's Lien dissolved for the following:

a. The Mechanic's Lien was not filed or served within the time required by law;

b. The Complaint for Foreclosure of Mechanic's Lien was not filed or served within the time required by law; and

c. The Mechanic's Lien was filed against a tract of land owned by the Defendant that did not encompass the tract on which the work

was performed and the Complaint for Foreclosure of Mechanic's Lien was also filed on a tract of land that did not encompass the tract on which the work was performed. Further, the Mechanic's Lien and Complaint specifically excluded the tract of land on which the work was performed.

2. Dismissing the Plaintiff's Complaint for Foreclosure of Mechanic's Lien pursuant to SCRCF Rule 12(b)6 for the following reasons:

a. The Mechanic's Lien was not filed or served within the time required by law;

b. The Complaint for Foreclosure of Mechanic's Lien was not filed or served within the time required by law; and

c. The Mechanic's Lien was filed against a tract of land owned by the Defendant that did not encompass the tract on which the work was performed and the Complaint for Foreclosure of Mechanic's Lien was also filed on a tract of land that did not encompass the tract on which the work was performed. Further, the Mechanic's Lien and Complaint specifically excluded the tract of land on which the work was performed.

Dec 14, 2009
Walterboro, South Carolina


J. Reaves McLeod
Attorneys for Defendant
Post Office Drawer 230
Walterboro, SC 29488
(843) 549-2516
(843) 549-2306 facsimile
ATTORNEY FOR DEFENDANT
GENE R. SLIVKA

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2009CP1500595

2010 MAR -2 PM 2:10
COLLETON COUNTY
COMMON PLEAS

Spriggs Group Pc vs. Gene R Slivka

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):**
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
☐ Other: ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
- ☐ **ACTION STRICKEN (CHECK REASON):**
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other:

IT IS ORDERED AND ADJUDGED:

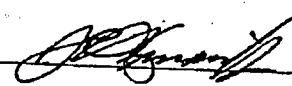
☐ See attached order;

☐ Statement of Judgment by the Court;

The Motion to Strike filed 1/12/10 is withdrawn per J. Reaves McLeod. The Motion to Dismiss filed 12/16/09 is respectfully denied.

Dated at Walterboro, South Carolina, this 2 day of March 2010.

Court Reporter:


PRESIDING JUDGE - J. Ernest Kinard Jr.

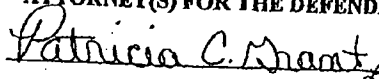
This judgment was entered on the 2nd day of March 2010, and a copy mailed first class this 2nd day of March 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Anne Bright Ariall Rosen Rosen & Hagood,
LLC P.O. Box 893 Charleston, SC 29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Reaves McLeod McLeod Fraser & Cone
P.O. Box 230 Walterboro, SC 29488

ATTORNEY(S) FOR THE DEFENDANT(S)



Patricia C Grant - Clerk of Court

SCRCP APP-24/FORM 4

CPFORM4M

RECEIVED

MAR 03 2010



Defendants.

**NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

1. The Plaintiff may not recover compensation over and above the basic fee set forth in the terms of the November 27, 2006, Proposal for Services for New Residence and Outbuildings at Julianston Plantation (referred to for the purposes of this motion as "the contract"), which provided that certain specific services were to be compensated on an hourly basis. Where a contract provides that additional services are to be compensated on an hourly basis above and beyond the compensation for basic services under a contract, the architect's failure to keep any documentation of the time for these additional services performed precludes his recovery. In the matter at hand: (1) the Plaintiff failed to keep time records that itemized the tasks and time to be billed on an hourly basis; (2) the Plaintiff issued no invoices for any

services to be billed on an hourly basis over the approximately two year period of the project; (3) Plaintiff admits that the invoices for services which he contends are billable on an hourly basis are not calculated on an hourly basis; and (4) Plaintiff admits that at no time did they inform the Defendant that services they were providing were not included in the basic services fee under the contract. Therefore Plaintiff has failed to present any evidence to support its claim for payment for hourly services under the terms of its own contract. Therefore Plaintiff is only entitled to the balance owed for the basic services under the flat fee contract as a matter of law.

2. The Plaintiff cannot establish breach of contract given that the Defendant agreed to pay the contract amount.
3. Because the Plaintiff failed to first request and receive approval from the owner for compensation before proceeding with performing services that it now contends are outside of the scope of the contract and in failing to periodically invoice for said hourly services over a two-year period, it cannot establish that Defendant has breached the contract in refusing to pay for services that Plaintiff now contends are over and above the contract amount.
4. Plaintiff cannot establish any fraudulent act on the part of the Defendant and therefore as a matter of law the Plaintiff cannot establish that Defendant has breached any contract with fraudulent intent.
5. The Plaintiff is not entitled to quantum meruit as there is an agreement between the parties that provided a method of compensation for the work that is the subject of this action.
6. The Plaintiff is not entitled to quantum meruit or any other equitable claim as the Plaintiff has unclean hands.

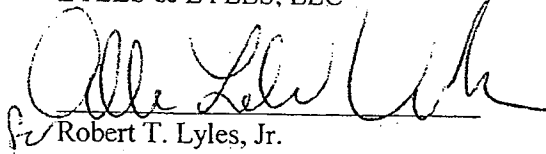
7. Plaintiff cannot establish entitlement to recovery under S.C. Code Ann § 27-1-15, as on March 15, 2010, when it made its demand under the statute: (1) the entire amount of the fees in dispute was on deposit with the court as Plaintiff had filed a mechanic's lien and action to foreclose the same in 2009; and (2) on that date (and still to this date) the Plaintiff has not produced any time records that itemize the tasks and time for which it seeks to be compensated as additional services under its contract. Therefore, Plaintiff has presented no evidence that Defendant unreasonably refused to pay any portion of the claim and cannot establish that the Defendant has failed to make a fair investigation of the claim.
8. Plaintiff failed to timely serve and file the mechanic's lien in this matter.

This motion is supported by the pleadings, discovery, and deposition testimony which is on file and is of record.

[SIGNATURE PAGE FOLLOWS]

Dated this 7th day January, 2011.

LYLES & LYLES, LLC



Robert T. Lyles, Jr.

P.O. Box 773

Charleston, SC 29402

(843) 577-7730

rtl@lylesfirm.com

ATTORNEY FOR DEFENDANT,
GENE R. SLIVKA

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC,
Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2009-CP-15-0595

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR
SUMMARY JUDGMENT**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JAN 31 PM 1:00

Pursuant to South Carolina Rule of Civil Procedure 56(a), Plaintiff, The Spriggs Group PC, by and through its counsel, hereby moves this Court for an Order granting summary judgment and/or partial summary judgment as to causes of action asserted in the above captioned case. This motion is made on the grounds that there are no genuine issues of material fact and the Plaintiff is entitled to a judgment as a matter of law, specifically as follows:

1. The Plaintiff is entitled to recovery under S.C. Code Ann § 27-1-15 as a matter of law. Pursuant to S.C. Code Ann § 27-1-15, Plaintiff demanded that the Defendant make a reasonable and fair investigation of the merits of a demand for monies due and to pay it, or whatever portion of it is determined as valid, within forty five days of the mailing of the demand (which was made on March 15, 2010). Defendant freely admits that he owes the remaining balance of the original agreement of \$76,210 and that he owes Plaintiff for design of the garden step and a two hour construction meeting. Defendant further admits that he did not perform an investigation of the merits of the demand nor has he paid the monies he freely admits are due. As such, the Plaintiff is entitled to payment of the monies that Defendant freely admits are due and to recovery under S.C. Code

Ann. § 27-1-15 as a matter of law which allows for the recovery of attorneys' fees and interest at the judgment rate from the date of the demand. See Affidavit in Support of Plaintiff's Motion for Summary Judgment p. 1.

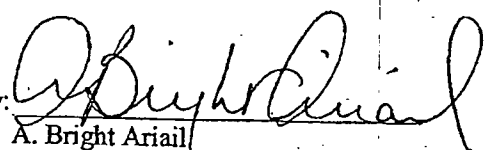
2. Defendant may not recover its counterclaim for slander of title. Defendant has admitted that the Plaintiff performed work on the property named in the Notice of Mechanic's Lien. As such, Defendant is not entitled to a claim for slander of title as a matter of law. See Affidavit in Support of Plaintiff's Motion to Strike Affirmative Defenses and Counterclaims From Defendant's Answer and Counterclaims to Amended Complaint pp. 7 – 10.
3. Defendant may not recover its counterclaim for violation of the Frivolous Claims Sanctions Action, S.C. Code Ann. § 15-36-10 as his counterclaim is defective on its face as has not complied with the express terms of that statute. As such, Defendant is not entitled to a claim for violation of the Frivolous Claims Sanctions Act as a matter of law.
4. Defendant may not recover its counterclaim for tortuous interference with contractual relationships dependant upon performance by Plaintiff. Defendant can not establish failure of performance by Plaintiff which has interfered with other contracts between Slivka and third parties. As such, Defendant is not entitled to a claim for tortuous interference with contractual relationships dependant upon performance by Plaintiff as a matter of law.
5. Defendant may not recover its counterclaim for tortuous interference with contractual relationships resulting from a defective Notice of Mechanic's Lien. Again, Defendant has admitted that the Plaintiff performed work on the property

named in the Notice of Mechanic's Lien. As such, Defendant is not entitled to a claim for tortious interference with contractual relationships resulting from a defective Notice of Mechanic's Lien as a matter of law. See Affidavit in Support of Plaintiff's Motion to Strike Affirmative Defenses and Counterclaims From Defendant's Answer and Counterclaims to Amended Complaint pp. 7 - 10.

This motion is supported by the pleadings, affidavits, discovery, and deposition testimony which are on file and of record.

ROSEN, ROSEN & HAGOOD, LLC

By:


A. Bright Ariail
Timothy J.W. Muller
P. O. Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR PLAINTIFF
THE SPRIGGS GROUP, PC

Charleston, South Carolina

January 31, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

THE SPRIGGS GROUP, PC,)

Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-15-0595

**AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JAN 31 3PM 1:07

PERSONALLY APPEARED before me, A. Bright Ariail, who being duly sworn does
state as follows under the penalty of perjury:

- 1) I am over the age of eighteen years old and am competent in all other respects to execute this Affidavit.
- 2) I have personal knowledge of all matters set forth herein.
- 3) I am an attorney with the law firm of Rosen, Rosen & Hagood, LLC, and am one of the attorneys representing the Plaintiff in this matter.
- 4) In Plaintiff's Motion for Summary Judgment (hereinafter "Motion"), Plaintiff asserts that it is entitled to recovery under S.C. Code Ann § 27-1-15 as a matter of law. See Motion p. 1.
- 5) By letter of march 15, 2010, I made a proper demand upon Mr. Slivka and his counsel of record pursuant to the requirements of S.C. Code § 27-1-15.
- 6) As grounds for recovery under S.C. Code Ann. § 27-1-15, Plaintiff asserts that Defendant freely admits that he owes the remaining balance of the original agreement of \$76,210 and that he owes Plaintiff for design of the garden step and a two hour construction

meeting. Defendant further admits that he did not perform an investigation of the merits of the demand as required by S.C. Code Ann § 27-1-15 nor has he paid the monies he freely admits are due.

- 7) In further support of Plaintiff's recovery under S.C. Code Ann § 27-1-15 as a matter of law, I submit the following deposition testimony of Defendant which establishes that Defendant admits that he did not perform an investigation of the merits of the demand nor has he paid the monies he freely admits are due. Further, Defendant freely admits that he owes the remaining balance of the original agreement of \$76,210 and that he owes Plaintiff for design of the garden step and a two hour construction meeting.

15 BY MS. ARIAIL:

16 Q. Exhibit 10 is a letter dated March 15 of
17 2010 from me to you and to Mr. McLeod, your prior
18 counsel. Did you receive this document?

19 A. Yes, ma'am.

20 Q. Do you understand this document, the letter?

21 A. I think so.

22 Q. The second paragraph says, "Demands for
23 payment of monies due is hereby made pursuant to SC Code
24 Annotated 27-1-15, which requires the person upon whom
25 the claim is made to make a reasonable and fair

Page 153

1 investigation of the merits of the claim and to pay it
2 or whatever portion of it is determined is valid within
3 45 days from the date of the mailing of this demand."

4 Did you make an investigation of the merits
5 of the claim that's attached or that's included in this
6 letter?

7 A. I don't know.

8 Q. You don't know if you made any type of
9 investigation?

10 A. I don't remember.

11 Q. This was March of this year. Have you made
12 any payments to the Spriggs Group after March 15 of
13 2010?

14 A. I placed \$300,000 into the courts.
15 Q. But you've made no payments directly to the
16 Spriggs Group?
17 A. No, ma'am.
18 Q. Is there a portion of money under your
19 agreement with the Spriggs Group that is due them?
20 A. Yes.
21 Q. And how much is that?
22 A. I don't know the exact amount.
23 Q. What would it include?
24 A. It would certainly include the balance of
25 the contractual agreement, which would be the \$76,000,

Page 154

1 and I don't know if I'm entitled to any kind of offsets
2 for some of the construction issues or not.
3 Q. Have you made a claim for any of the -- for
4 offset of any of the construction issues?
5 A. My attorney would have to answer that for
6 you, because I don't know. I hope he filed a
7 counterclaim.
8 Q. The next sentence reads, "Failure to make a
9 proper investigation or to pay it or whatever portion of
10 it is determined is valid may make you liable for
11 attorney's fees and interest." You are aware of that?
12 A. Yes, ma'am.

Page 155

And then that left the final total at 152,420.
11 And then the agreement was that I would pay half of it
12 up front. So half of that was the 76,210.

Page 57

Tell

13 me, I've heard about there's a garden stair?
14 A. Yes, ma'am.
15 Q. Tell me what that is. I'm having a hard time
16 visualizing that.
17 A. The house is at this level, and the garden is
18 at this level, and it's a step to connect the two.
19 Q. So it's actually a step between? It follows

20 the contour of the land to get you from the level of the
21 garden to the house?

22 A. Yes, ma'am.

23 Q. Who designed that?

24 A. Andy Bozeman.

25 Q. For the Spriggs Group?

Page 27

1 A. Yes, ma'am.

2 Q. Was that part of the original agreement?

3 A. No, ma'am.

4 Q. Was that a change order to the original
5 agreement?

6 A. No, ma'am. I specifically approached them,
7 asked them how much it would cost to do that and if they
8 would do that, and they said they would and told me they
9 would bill me by the hour for it, and spent seven hours
10 on it.

11 Q. So you approved the seven hours?

12 A. Yes, ma'am.

13 Q. Have you paid them for that?

14 A. I asked them for a bill twice. They never
15 presented one to me.

Page 28

3 Q. And why haven't you made a final payment to
4 the Spriggs Group?

5 A. I asked him to send me an invoice for the
6 balance that I owed them, which was the \$75,000, and
7 would have paid that had he sent me that, along with an
8 invoice for the staircase, and there was a two-hour
9 construction meeting that I had also agreed to pay for.

Page 38

3 Q. Was there someone there from the Spriggs
4 Group?

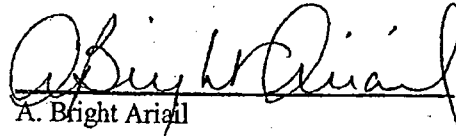
5 A. Yes, ma'am.

6 Q. Who was there for them?

7 A. I don't remember for sure, but I think that
8 both Ken and Andy were there.

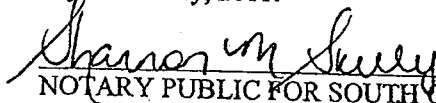
Page 39

FURTHER AFFIANT SAYETH NOT.


A. Bright Ariail

SWORN to before me this 31st

day of January, 2011.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/20/13



STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, P.C.

Plaintiffs,

vs.

GENE R. SLIVKA,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-15-0595

) OFFER PURSUANT TO
) S.C. CODE ANN. § 29-5-20
)
)
)
)
)
)

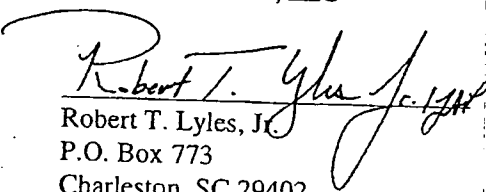
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JUL 21 PM 12:13

YOU WILL PLEASE TAKE NOTICE that Pursuant to South Carolina Code Annotated
29-5-20 *et seq.*, GENE. R. SLIVKA hereby submits an Offer of Settlement in the amount of
Hundred Thousand and no/100 Dollars (\$100,000.00), exclusive of interest and costs, for the
settlement of the mechanic's lien claimed by Plaintiff and any other claims asserted by Plaintiff
and/or Defendant in the above matter.

If this Offer of Settlement is not timely accepted, Defendant shall seek to recover from
Plaintiff all amounts allowable by law.

Dated this 30th day of June, 2011.

LYLES & LYLES, LLC


Robert T. Lyles, Jr.
P.O. Box 773
Charleston, SC 29402
(843) 577-7730

ATTORNEY FOR PLAINTIFF,
GENE R. SLIVKA

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
THE SPRIGGS GROUP, P.C.,)
Plaintiff,)
vs.)
GENE R. SLIVKA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-15-595

**PLAINTIFF'S MOTION TO STRIKE
DEFENDANT'S OFFER OF
SETTLEMENT**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JUL 13 PM 3:26

PLEASE TAKE NOTICE that Plaintiff, The Spriggs Group, P.C. ("Plaintiff"), by and through its undersigned counsel, will move before the Court as soon as this matter may be heard and before the commencement of the trial herein pursuant to Rule 12(f) for an Order striking the Offer of Settlement submitted by the Defendant for filing on June 30, 2011.

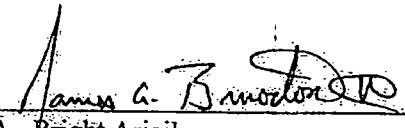
Plaintiff's basis for its motion is that Defendant's Offer of Settlement is not a proper offer pursuant to S.C. Code Ann. § 29-2-10 or § 29-5-20 as cited by Defendant. Specifically, Defendant submitted an "Offer of Settlement in the amount of One Hundred Thousand and no/100 Dollars (\$100,000.00), exclusive of interest and costs, for the settlement of the mechanic's lien claimed by Plaintiff *and any other claims asserted by Plaintiff and/or Defendant in the above matter.*" A copy of Defendant's Offer is attached hereto as Exhibit A. Plaintiff's Complaint alleges causes of action for Foreclosure of Mechanic's Lien, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Quantum Meruit and Violation of S.C. Code Ann. § 27-1-15. Defendant makes no distinction in its Offer of Settlement as to what amount is intended for resolution of the lien claim versus Plaintiff's other causes of action.

Pursuant to S.C. Code Ann. § 29-2-10 or § 29-5-20, "[t]he offer shall state that it is made under this section and specify the amount, exclusive of interest and costs, which the party

serving the offer is willing to agree constitutes a settlement of the lien." Defendant's offer is not in strict compliance with the statute as it fails to indicate what the Defendant is willing to agree constitutes a settlement of the lien. Without such information, it is impossible to make a determination of what amount of Defendant's offer should be used in determining the prevailing party under Plaintiff's mechanic's lien claim.

For the reasons set forth above, Defendant's Offer of Settlement should be stricken and made inapplicable.

ROSEN, ROSEN & HAGOOD, LLC

By: 
A. Bright Ariail
James A. Bruorton IV
Timothy J.W. Muller
134 Meeting Street, Suite 200
Charleston, South Carolina 29401
Ph: (843) 577-6726
Fax: (843) 724-8036

ATTORNEYS FOR PLAINTIFFS

July 11, 2011
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-15-0595

THE SPRIGGS GROUP, P.C.

)
)
) Plaintiffs,

)
) vs.

) GENE R. SLIVKA,

)
)
) Defendants.
)

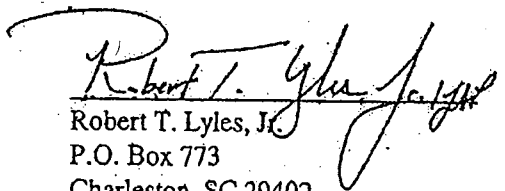
) OFFER PURSUANT TO
) S.C. CODE ANN. § 29-5-20

YOU WILL PLEASE TAKE NOTICE that Pursuant to South Carolina Code Annotated § 29-5-20 *et seq.*, GENE. R. SLIVKA hereby submits an Offer of Settlement in the amount of One Hundred Thousand and no/100 Dollars (\$100,000.00), exclusive of interest and costs, for the settlement of the mechanic's lien claimed by Plaintiff and any other claims asserted by Plaintiff and/or Defendant in the above matter.

If this Offer of Settlement is not timely accepted, Defendant shall seek to recover from Plaintiff all amounts allowable by law.

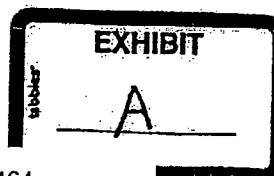
Dated this 30th day of June, 2011.

LYLES & LYLES, LLC


Robert T. Lyles, Jr.
P.O. Box 773
Charleston, SC 29402
(843) 577-7730

ATTORNEY FOR PLAINTIFF,
GENE R. SLIVKA

Charleston, South Carolina



) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-15-595

) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-15-595

) CASE NO.: 2009-CP-15-595

)

)
)
)
)

PLAINTIFF'S MOTION FOR INTEREST,
FEES AND COSTS

)
)
)

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JUL 27 AM 11:21

PC
22

aga

oced

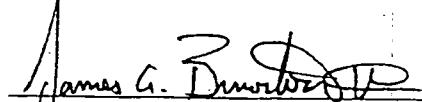
Plaintiff is considered the prevailing party in the action and can be awarded attorney's fees and costs pursuant to the statute. The determination as to the amount of attorney fees which should be awarded under the mechanic's lien statute is addressed to the sound discretion of the trial court and its decision will not be disturbed absent abuse of discretion. See Seckinger v. Vessel Excalibur, 326 S.C. 382, 483 S.E.2d 775 (S.C. App. 1997).

In addition to the attorney's fees and costs allowable under the verdict on Plaintiff's foreclosure of mechanic's lien claim, the verdict reached as to Defendant's failure to comply with S.C. Code Ann. § 27-1-15 also provides for a recovery of attorney's fees and interest at the judgment rate on the money claimed due. See S.C. Code Ann. § 27-1-15. The express provisions of S.C. Code Ann. § 27-1-15 does not limit the recovery of attorney's fees to a maximum amount like the mechanic's lien statute. Id. In this case, the allowable attorney's fees and costs should not be capped by the amount of the mechanic's lien, because the verdict reached allows for attorney's fees for Defendant's failure to comply with S.C. Code Ann. § 27-1-15.

Plaintiff's claim for interest, attorney's fees and costs are supported by the Affidavit of A. Bright Ariail, Esq., attached hereto as **Exhibit 1**, and the Affidavit of N. Keith Emge, Jr., Esq. attached hereto as **Exhibit 2**, and being filed contemporaneously herewith. Plaintiff respectfully request that an award of \$235,030.31 for attorney's fees and costs, plus interest in the amount of \$37,413.92 be added to the verdict reached and a total judgment of \$446,434.76 be entered against the Defendant in favor of the Plaintiff.

Respectfully submitted by,

ROSEN, ROSEN & HAGOOD, LLC

A handwritten signature in black ink, appearing to read "James A. Bruorton, IV", written over a horizontal line.

A. Bright Ariail

James A. Bruorton, IV

134 Meeting Street, Suite 200

P. O. Box 893

Charleston, SC 29402

(843) 577-6726

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
July 26, 2011

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.

Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2009-CP-15-0595

AFFIDAVIT OF A. BRIGHT ARIAIL

PERSONALLY APPEARED before me, A. Bright Ariail, who being duly sworn does
state as follows:

1. I am an attorney for the Plaintiff in the above captioned action.
2. I am member of the firm of Rosen, Rosen & Hagood, LLC, and have been a member of the South Carolina Bar since 2001.
3. The Plaintiff has entered into a fee agreement with the law firm of Rosen, Rosen & Hagood, LLC. Under the terms of this agreement, the Plaintiff is charged an hourly rate of \$250.00 per hour for my time in the case. Other members of my staff bill at their normal hourly rates, including James A. Bruorton IV who assisted with the trial of this matter at \$210.00 per hour. I keep itemized billing and accounting records for every case.
4. Rosen, Rosen & Hagood, LLC's representation of Plaintiff began on April 10, 2009.
5. Since the inception of this case, Defendant Gene R. Slivka by and through his first legal counsel created unnecessary delays, filed meritless motions, and forced Plaintiff to incur additional attorney's fees and costs above and beyond what would otherwise have been incurred on a case like this. For example, Defendant filed a Motion to Dismiss specifically related to his

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JUN 27 AM 11:22



position that the property upon which the Plaintiff performed its work was all contained within a five acre area expressly excluded from the property description contained in the mechanic's lien. Plaintiff incurred additional costs for new title work, additional preparation of survey information by the defendant's original surveyor, and a lengthy Memorandum in Opposition to the Motion to Dismiss. When the Court heard the Motion to Dismiss, which required travel on the part of Plaintiff's attorney, the Defendant did not argue this issue as a basis for his motion.

The Defendant filed a motion to strike affidavits of Kenneth Spriggs, Thomas Bozeman (an employee of the Plaintiff) and David Youmans (a surveyor that had performed some work for Defendant) based on an allegation that they were improper because they did not include the wording "upon the threat of perjury" based on an article contained in The South Carolina Lawyer. Two of the three affidavits were amended and refiled (Mr. Spriggs affidavit could not be refiled as it would then be untimely as it supported the mechanic's lien). At the hearing on Defendant's motion to strike, these motions were withdrawn.

The Defendant filed a Motion to Quash a subpoena issued for financial records in the possession of the Defendant's banker. Before filing the motion, the Defendant's first attorney sent the banker a letter informing him not to release the documents because "his client had instructed him to object to the production of the documents". Additional time was expended by plaintiff's counsel communicating with the subpoenaed party and defending a motion to quash that had no legal basis.

The Defendant was uncooperative regarding his deposition, postponing it on several occasions, and once indicating at the last minute that he would not appear after several requests by him that it again be postponed. In response, Plaintiff was forced to file a Motion to Compel and/or Motion for Sanctions and Finding of Contempt (See Exhibit A, without Exhibits)

concerning Defendant's deposition. Contained within an Order to be Relieved as Counsel issued after the hearing on August 12, 2010, the Court ordered "...due to concerns raised during the hearing by A. Bright Ariail, attorney for the Plaintiff, about the timing of the Scheduling Order previously entered into by the parties and the completion of discovery, counsel for the Plaintiff may move for appropriate remedies if Defendant Gene R. Slivka fails to appear for depositions without adequate reasons or if discovery is hindered." (See **Exhibit B** for Order filed August 25, 2010.)

Finally, the defendant filed several unfounded affirmative defenses which required additional fees and costs to be expended on behalf of the plaintiff. Specifically, he filed a violation of the Frivolous Claims Sanction Act which expressly requires the party alleging its violation to notify the court and all parties of the conduct that constitutes a violation of its provision and that it explain the basis for the potential sanction. The defendant's claim was general in nature with no specific allegations. Defendant also plead an affirmative defense based on S.C. Code Ann. § 29-5-15 which was not in effect at the time that the mechanic's lien was filed and therefore did not apply. Defendant later withdrew these motions after Plaintiff had incurred the cost of filing a motion to strike.

6. At the trial of this case, Plaintiff obtained a verdict against Defendant on its claim for foreclosure of mechanic's lien under the South Carolina Mechanic's Lien Statute, S.C. Code Ann. § 29-5-10, et. seq, Breach of Contract and failure to comply with South Carolina Code Ann. § 27-1-15. Both S.C. Code Ann. § 29-5-10 and S.C Code Ann. § 27-1-15 provider for a recovery of attorney's fees and costs.

7. Under the South Carolina Mechanic's Lien statute, the costs which may arise in enforcing or defending against the lien, including a reasonable attorney's fee, may be

recoverable by the prevailing party.

8. Defendant filed an Offer of Settlement in the amount of \$100,000.00, which is made exclusive of interest and costs, under the Mechanic's Lien Statute. Plaintiff did not file an Offer of Settlement; therefore, the amount prayed for in Plaintiff's complaint, \$198,834.53, is considered Plaintiff's final Offer of Settlement. 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. Thus, Plaintiff is considered the prevailing party by virtue of the \$173,990.53 verdict being closer to Plaintiff's prayed mechanic's lien amount of \$198,834.53 than Defendant's \$100,000.00 Offer of Settlement. Under South Carolina's Mechanic's Lien Statute, the fees and court costs may not exceed the amount of the lien.

9. Under S.C. Code Ann. § 27-1-15, the Defendant is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand pursuant to the statute, which was March 15, 2010, as set forth by Plaintiff's Trial Exhibit 9. Under S.C. Code Ann. § 27-1-15 there is no restriction to the fees and court costs so long as they are determined as reasonable by the Court.

10. Plaintiff has incurred legal fees in this action to date in the total amount of \$207,639.60. Attached hereto as Exhibit C are the billing records for this case.

11. I am also estimating that James A. Bruorton IV will spend an additional 7 hours preparing Plaintiff's Petition for Attorney's Fees, Costs and Interest, supporting affidavits and responding to Defendant's Post Trial Motions. The additional fees for legal services are estimated to be \$1,470.00.

12. Plaintiff has been billed legal costs by my firm through the trial of this action in

the total amount of \$11,100.84. Attached hereto as Exhibit D are the cost records for this case. Plaintiff will also incur additional legal costs for the expert services of Myles Glick in the amount of \$13,150.00. A copy of Mr. Glick's invoice for architectural consulting services is attached as Exhibit E. In addition, Plaintiff has paid legal costs directly to vendors for copy, scanning, title work and surveying in the amount of \$1,669.87. A copy of these invoices is attached as Exhibit F.

13. Plaintiff's Complaint prays for prejudgment interest on the money owed by Defendant from the date the money became due, which would be February 9, 2009 as indicated in Plaintiff's Trial Exhibit 8. Also, S.C. Code Ann. § 27-1-15 allows for a recovery of interest at the judgment rate from the date of the March 15, 2010 demand. Interest on the \$173,990.53 judgment at 8 3/4 % since February 9, 2009 is \$37,413.92.

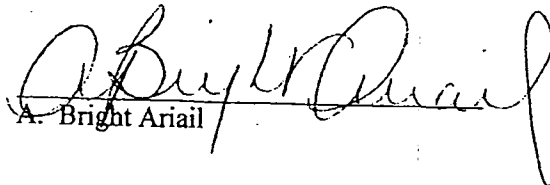
14. I am respectfully requesting that the Court award attorney's fees in the amount of \$209,109.60 to the Plaintiff as the prevailing party on its foreclosure of mechanic's lien pursuant to the S.C. Mechanic's Lien statute and pursuant to S.C. Code Ann. § 27-1-15.

15. I am respectfully requesting that the Court award costs in the amount of \$25,920.71 to the Plaintiff as the prevailing party on its foreclosure of mechanic's lien, pursuant to the S.C. Mechanic's Lien statute.

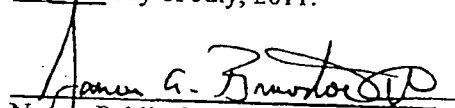
16. I am respectfully requesting that the Court award interest on the money awarded Plaintiff on the verdict reached in the amount of \$37,413.92 in accordance with S.C. Code Ann. § 34-31-20.

17. The total award sought for attorney's fees and cost is \$235,030.31, plus interest in the amount of \$37,413.92, to be added to the verdict amount of \$173,990.53 for a total judgment in favor of Plaintiff against the Defendant in the amount of \$446,434.76.

FURTHER AFFIANT SAYETH NOT.


A. Bright Ariail

SWORN to before me this
26th day of July, 2011.


Notary Public for South Carolina
My commission expires: 9/22/13

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.

Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO: 2009-CP-15-0595

AFFIDAVIT OF N. KEITH EMGE JR.

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JUL 27 AM 11:22

PERSONALLY APPEARED before me, N. Keith Emge, Jr., who being duly sworn, do state as follows:

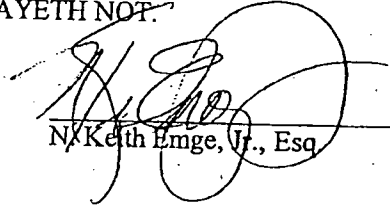
1. I am partner with the law firm Carlock Copeland & Stair, LLP located at 40 Calhoun Street, Suite 400, Charleston, South Carolina.
2. I obtained an undergraduate degree from Duke University in 1985 and a Juris Doctorate degree from the University of Virginia in 1990.
3. I am admitted to practice before all state and federal courts in South Carolina and I am a member of the Virginia Bar. I served as a law clerk to the Honorable Falcon B. Hawkins, Chief Judge, U.S. District Court, District of South Carolina from 1990-1992.
4. In my 19 years of legal practice I have handled a wide variety of legal cases, including complex and class action litigation. My practice focuses on construction and business litigation, including representation of several architectural and engineering firms. I am also a certified mediator for both the State and Federal Courts in South Carolina.
5. I am aware of the hourly fees charged by the law firm of Rosen, Rosen & Hagood, LLC in its representation of The Spriggs Group, PC in the above referenced matter. Specifically, I am aware of the following hourly rates being charged:



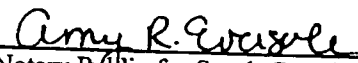
- A. Bright Ariail (Member) - \$250.00 per hour
- James A. Bruorton IV (Member) - \$210.00 per hour
- R. Britton Kelly (Associate) - \$190.00 per hour
- Timothy J. Muller (Associate) - \$175.00 per hour
- Shannon S. Skelly (Paralegal) - \$125.00 per hour
- Law clerks - \$110.00 per hour

6. The hourly rates charged by the law firm of Rosen, Rosen & Hagood, LLC are reasonable and comparable to similar rates charged for legal representation of architects and construction clients within the Charleston County Bar.

7. FURTHER AFFIANT SAYETH NOT.


N. Keith Emge, Jr., Esq.

SWORN to before me this
26th day of July, 2011.


Notary Public for South Carolina
My commission expires: March 16, 2017

Embossed Hereon is My
State Of South Carolina Notary Public Seal
My Commission Expires March 16, 2017
AMY R. EVERSOLE

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
THE SPRIGGS GROUP, PC,)
Plaintiff,)
vs.)
GENE R. SLIVKA,)
Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-15-0595

PLAINTIFF'S MOTION TO
COMPEL AND/OR MOTION
FOR SANCTIONS AND FINDING
OF CONTEMPT

(Expedited Hearing Requested)

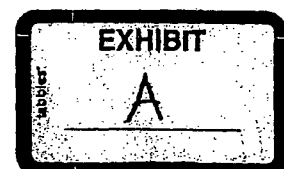
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2010 AUG - 6 PM 1:38

TO: J. REAVES McLEOD, ESQUIRE, ATTORNEY FOR DEFENDANT GENE R. SLIVKA:

YOU WILL PLEASE TAKE NOTICE that Plaintiff, The Spriggs Group, PC ("Spriggs"), moves, pursuant to Rules 37(d) and 45 of the South Carolina Rules of Civil Procedure for an Order compelling Defendant, Gene R. Slivka ("Slivka") to comply with a Notice of Deposition and Subpoena served upon him by A. Bright Ariail, counsel for The Spriggs Group, PC, or in the alternative, for an Order sanctioning Mr. McLeod and his client, Gene R. Slivka, and finding them in contempt of this court for failing to comply with the subpoena. The grounds for this Motion are as follows:

(1) Spriggs, through their undersigned counsel, served a Notice of Deposition and Subpoena upon J. Reaves McLeod, Esquire, counsel for Slivka, on July 22, 2010, seeking the deposition of Slivka pursuant to Rule 30 of the South Carolina Rules of Civil Procedure on August 3, 2010. *See Exhibit "A" attached hereto.*

(2) On July 26, 2010 the administrative assistant for Slivka's counsel contacted Counsel for Spriggs advising that Mr. McLeod holds Court as a Magistrate in Colleton County on Tuesdays of every week and would not be able to accommodate the start time of 10 a.m. as



set forth in the Notice of Deposition and Subpoena dated July 22, 2010 (aforementioned Exhibit "A"). Subsequently, a series of telephone calls and e-mail communications took place between the assistants to both counsel in an attempt to secure a date and time for Slivka's deposition that suited all parties. Eventually, August 9, 2010 was deemed an acceptable date for the deposition by all. *See Exhibit "B" attached hereto.*

(3) On July 27, 2010, Spriggs, through their undersigned counsel, served an Amended Notice of Deposition and Amended Subpoena upon J. Reaves McLeod, Esquire, counsel for Slivka, seeking the deposition of Slivka pursuant to Rule 30 of the South Carolina Rules of Civil Procedure on August 9, 2010. *See Exhibit "C" attached hereto.*

(4) On July 29, 2010 Slivka's Counsel requested that the Defendant's deposition scheduled for August 9, 2010 be postponed as Slivka was seeking new counsel for the defense of this matter. *See Exhibit "D" attached hereto.*

(5) Pursuant to the Consent Scheduling Order filed in this case on June 4, 2010, discovery must be complete on or before September 2, 2010 and the case must be mediated on or before September 13, 2010. *See Exhibit "E" attached hereto.*

(6) In response and by letter of August 2, 2010, Counsel for Spriggs indicated that she would agree to postpone the deposition if a Consent Order of Substitution and a revised Consent Scheduling Order were executed by the parties and signed by the Administrative Judge for this circuit extending the deadlines for discovery, mediation and trial of this matter by thirty days. *See Exhibit "F" attached hereto.*

(7) A series of letters and e-mail communications ensued between Counsel for Spriggs and Counsel for Slivka regarding the request to postpone Slivka's deposition. *See Exhibit "G" attached hereto.*

(8) By email dated August 4, 2010, Counsel for Slivka indicated that defendant Slivka was not available for his deposition noticed for August 9, 2010 as he was going on vacation. *See Exhibit "H" attached hereto.*

WHEREFORE, Plaintiff Spriggs requests the following relief:

(a) That the Court issue an Order compelling Defendant Slivka to comply with the Subpoena served upon him on July 27, 2010 through Defendant's counsel, or, in the alternative, that the Court issue an Order sanctioning Mr. McLeod and his client, and finding them in contempt of this Court for failing to obey the subpoena;

(b) That the Court issue an Order granting Plaintiff Spriggs all relief sought in it's Amended Complaint;

(c) That the Court award Spriggs the fees and costs incurred in filing, bringing, preparing and arguing this motion;

That the Court award such other and further relief as the Court deems appropriate.

ROSEN, ROSEN & HAGOOD, LLC

By: 

A. Bright Ariail
Timothy J.W. Muller
P.O. Box 893
Charleston, SC 29401
(843) 577-6726

ATTORNEY(S) FOR PLAINTIFF
THE SPRIGGS GROUP, PC

Charleston, South Carolina
August 6, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
THE SPRIGGS GROUP, PC,)
Plaintiff,)
vs.)
GENE R. SLIVKA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-15-0595

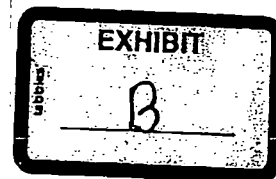
ORDER TO BE RELIEVED AS COUNSEL

2010 AUG 25 PM 1:03
COLLETON COUNTY
COMMON PLEAS

THIS MATTER comes before the Court on the motion of J. Reaves McLeod, attorney for Gene R. Slivka, to be relieved as counsel of record for Defendant Gene R. Slivka, such hearing having been held before me on August 12, 2010 with J. Reaves McLeod and A. Bright Ariail, attorney for the Plaintiff, being present. Defendant Gene R. Slivka was notified of the time, date and place of hearing but was not present for the hearing.

#1
P.B.
IT APPEARING that J. Reaves McLeod and his client, Defendant Gene R. Slivka, are not able to effectively communicate and J. Reaves McLeod is unable to provide his client with effective legal counsel and, therefore, J. Reaves McLeod moves to be relieved as counsel for Gene R. Slivka. Therefore,

IT IS HEREBY ORDERED that J. Reaves McLeod be relieved as counsel for Defendant Gene R. Slivka. Defendant Gene R. Slivka is hereby given thirty (30) days from the date of this hearing to obtain new counsel, to be on or before September 10, 2010. The Defendant shall, in writing, advise the Clerk of Court and attorney for the Plaintiff of his new counsel and the address of his new counsel by September 10, 2010. Should Defendant Gene R. Slivka fail to obtain new counsel within the thirty (30) days, the case will proceed with Defendant Gene R. Slivka being *Pro Se*.



IT IS FURTHER ORDERED that, due to concerns raised during the hearing by A. Bright Arial, attorney for the Plaintiff, about the timing of the Scheduling Order previously entered into by the parties and the completion of discovery, counsel for the Plaintiff may move for appropriate remedies if Defendant Gene R. Slivka fails to appear for depositions without adequate reasons or if discovery is hindered. Counsel for the Plaintiff may amend the standing Scheduling Order if it appears that the Defendant Gene R. Slivka's new counsel, or lack of counsel, prevents compliance with the Scheduling Order.

IT IS FURTHER ORDERED that J. Reaves McLeod serve upon Defendant Gene R. Slivka and counsel for the Plaintiff the Order to be Relieved as Counsel and he shall file the proof of service with the Clerk of Court.

IT IS SO ORDERED.

Walterboro, South Carolina
August 23, 2010

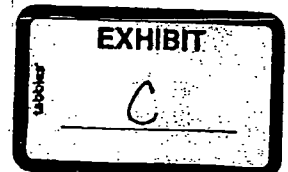

The Honorable Perry M. Buckner
Administrative Judge
Fourteenth Judicial Circuit

I consent:


Gene R. Slivka
6938 Whitchall Road
Green Pond, SC 29446

Detail Fee Transaction File List
Rosen, Rosen & Hagood, LLC
Client ID 9016.000 The Spriggs Group, PC, C. Kenneth Spriggs

Client	Trans Date	Tmkr	H P	Rate	Hours Worked	Hours to Bill	Amount	Description
9016	10/07/2009	HBH	A	325.00	0.50	0.50	162.50	Conference with ABA to review plats received from client.
9016	11/09/2009	HBH	A	325.00	0.40	0.40	130.00	Conference with ABA re: lien issues.
Subtotal for Timekeeper HB				Billable	0.90	0.90	292.50	H. Brewton Hagood
9016	11/03/2009	DGJ	A	250.00	0.50	0.50	125.00	Conference with ABA; review file
9016	11/09/2009	DGJ	A	250.00	0.50	0.50	125.00	Conference with ABA; review plats
Subtotal for Timekeeper DG				Billable	1.00	1.00	250.00	David G. Jennings
9016	06/27/2011	CAB	A	210.00	0.60	0.60	126.00	Conference with ABA regarding trial strategy
9016	06/27/2011	CAB	A	210.00	0.70	0.70	147.00	Review Amended Complaint; Review mediation power point presentation; Prepare questions for witness interviews
9016	06/29/2011	CAB	A	210.00	0.30	0.30	63.00	(Attempted) telephone call to Ron Horton, David Miller and Clark Hughes; Email communications with ABA regarding trial strategy meeting and witness communications; strategize regarding Offer of Settlement, pre trial motions, and other trial procedures
9016	06/30/2011	CAB	A	210.00	1.50	1.50	315.00	Telephone conference with Ron Horton; Trial Strategy meeting with ABA, TJM and SMS
9016	07/01/2011	CAB	P	210.00	0.10	0.10	21.00	Review emails regarding trial; Attempted phone call to Chatham Concrete
9016	07/07/2011	CAB	P	210.00	0.70	0.70	147.00	Review emails regarding Spriggs trial preparation; Phone conference with Clark Hughes; Phone call to David Miller; Phone call to ABA; Email communications with ABA
9016	07/08/2011	CAB	P	210.00	0.20	0.20	42.00	Receipt/review email from ABA regarding Slivka position on mechanic's lien; Email communications with ABA regarding trial prep meeting; Review email from RBK
9016	07/09/2011	CAB	P	210.00	2.00	2.00	420.00	Review deposition transcript of Spriggs in preparation of trial
9016	07/10/2011	CAB	P	210.00	2.50	2.50	525.00	Review Spriggs deposition transcript; Review Slivka deposition transcript; Outline differences in Slivka and Spriggs testimony regarding work scope
9016	07/11/2011	CAB	P	210.00	8.20	8.20	1,722.00	Review Slivka deposition; Trial preparation; Prepare motion to strike offer of settlement; Revision of motion for jury visitation; revision of settlement letter to Lyles; Phone conference with Clark Hughes; Strategize with ABA regarding settlement potential
9016	07/12/2011	CAB	P	210.00	3.50	3.50	735.00	Review Slivka deposition; Review



								email from Bright regarding settlement negotiations; Conference with ABA regarding judgment potential; Preparation of additional work spreadsheet; Trial preparation; Email communications regarding exclusion of witness arguments
9016	07/13/2011	CAB	P	210.00	5.60	5.60	1,176.00	Prepare Voir Dire; Trial preparation of witness outlines; Review and revision of motions in limine
9016	07/14/2011	CAB	P	210.00	6.80	6.80	1,428.00	Prepare for trial; meeting with Spriggs, Bozeman and ABA in preparation of trial; Phone conference with Ron Horton; Phone conference with Clark Hughes
9016	07/15/2011	CAB	P	210.00	0.80	0.80	168.00	Review Silvka pre-trial brief; Phone conference with Skip Utsey; Phone call to Dave Miller; Phone conference with SMS; Email communications with ABA regarding trial prep; Email communication with TJM regarding motion to strike legal support
9016	07/16/2011	CAB	P	210.00	0.20	0.20	42.00	E-mail communications with ABA regarding settlement preparation
9016	07/17/2011	CAB	P	210.00	6.50	6.50	1,365.00	Trial preparation
9016	07/18/2011	CAB	P	210.00	14.50	14.50	3,045.00	Prepare for Trial; Travel to Walterboro for trial; Pretrial motions; Jury selection; Pretrial; Preparation of Motion for Directed Verdict; Preparation of Jury Charges; Email jury charges to clerk
9016	07/19/2011	CAB	P	210.00	15.00	15.00	3,150.00	Trial; Trial prep
9016	07/20/2011	CAB	P	210.00	14.50	14.50	3,045.00	Trial Trial prep
9016	07/21/2011	CAB	P	210.00	12.80	12.80	2,688.00	Trial; Trial prep
9016	07/22/2011	CAB	P	210.00	9.50	9.50	1,995.00	Trial; Return travel from Trial
9016	07/25/2011	CAB	P	210.00	2.80	2.80	588.00	Telephone conference with Chip Emge regarding Affidavit to Support Petition for Attorney's fees; Prepare Affidavit of Attorney's Fees and Petition for Costs, Fees and Interest
Subtotal for Timekeeper CA				Billable	109.30	109.30	22,953.00	Chip A. Bruorton
9016	11/03/2009	RBK	A	190.00	0.10	0.10	19.00	Conference with ABA
9016	07/20/2011	RBK	P	190.00	1.50	1.50	285.00	Legal research per CAB and ABA to assist with trial and defense to motions for directed verdict
9016	07/21/2011	RBK	P	190.00	0.20	0.20	38.00	Legal research on mechanic's lien; E-mail with CAB & ABA re: trial
Subtotal for Timekeeper RB				Billable	1.80	1.80	342.00	R. Britt Kelly
9016	04/10/2009	ABA	A	250.00	1.20	1.20	300.00	Telephone conference with Spriggs; E-mail Spriggs; Prepare Affidavit of Mechanic's Lien.
9016	04/13/2009	ABA	A	250.00	3.20	3.20	800.00	Telephone conference with Spriggs; Conference with SMS; Prepare Notice of Mechanic's Lien; Various conferences with SMS; E-mail Spriggs; Telephone conference with Spriggs.
9016	06/25/2009	ABA	A	250.00	2.10	2.10	525.00	E-mail Spriggs; Prepare Complaint; Legal research.

9018	06/26/2009	ABA	A	250.00	0.20	0.20	50.00	E-mail Ken.
9016	06/29/2009	ABA	A	250.00	0.40	0.40	100.00	E-mail/conference with SMS; E-mail Slivka.
9016	07/01/2009	ABA	A	250.00	2.80	2.80	700.00	Prepare Complaint; E-mail Spriggs; Prepare lis pendens; Telephone conference with Spriggs.
9016	07/07/2009	ABA	A	250.00	1.90	1.90	475.00	Review title examiner documents; Revise Complaint; Telephone conference with Spriggs.
9016	09/10/2009	ABA	A	250.00	0.10	0.10	25.00	Review documents; Answer due date
9016	09/16/2009	ABA	A	250.00	2.00	2.00	500.00	Review Answer and Counterclaim; Review file and documents; E-mail Spriggs; Prepare Reply
9016	09/23/2009	ABA	A	250.00	2.10	2.10	525.00	Conf w/ HBH; PC w/ Spriggs; Legal Research; Prepare letter
9016	10/02/2009	ABA	A	250.00	0.10	0.10	25.00	E-mail Spriggs.
9016	10/05/2009	ABA	A	250.00	0.20	0.20	50.00	E-mail Spriggs.
9016	10/06/2009	ABA	A	250.00	0.30	0.30	75.00	Review documents.
9016	10/07/2009	ABA	A	250.00	1.10	1.10	275.00	E-mail Spriggs; Telephone conference with Spriggs; Conference with HBH.
9016	10/08/2009	ABA	A	250.00	0.20	0.20	50.00	Telephone conference with McLeod; Conference with SMS.
9016	10/09/2009	ABA	A	250.00	0.50	0.50	125.00	E-mail Spriggs; Conference with SMS.
9016	10/15/2009	ABA	A	250.00	0.50	0.50	125.00	CW SMS; Email Spriggs
9016	10/19/2009	ABA	A	250.00	0.20	0.20	50.00	Email Spriggs; Review Correspondence
9016	11/02/2009	ABA	A	250.00	1.50	1.50	375.00	Review title work surveys and tax map records; Email Spriggs.
9016	11/03/2009	ABA	A	250.00	1.80	1.80	450.00	Review Documents; Conference with DGJ; Email Spriggs; Phone Conference with Spriggs; Conference with RBK; Review Documents;
9016	11/04/2009	ABA	A	250.00	0.10	0.10	25.00	Email Spriggs;
9016	11/05/2009	ABA	A	250.00	0.40	0.40	100.00	E-mail Spriggs;
9016	11/06/2009	ABA	A	250.00	0.80	0.80	200.00	Email Spriggs; Phone Conversation with McLeod; Email Bozeman; Review Plat; Email DGJ;
9016	11/09/2009	ABA	A	250.00	2.70	2.70	675.00	Conference with DGJ; Review Documents; Email HBH; Prepared Reply;
9016	11/16/2009	ABA	A	250.00	3.60	3.60	900.00	Email Spriggs; Prepared discovery requests and Subpoena; Review Invoice;
9016	11/17/2009	ABA	A	250.00	0.90	0.90	225.00	Email Spriggs; Prepare Discovery; Conference with SMS;
9016	11/23/2009	ABA	A	250.00	0.10	0.10	25.00	Phone Conversation with Surveyor;
9016	11/24/2009	ABA	A	250.00	0.60	0.60	150.00	Conference with SMS; Email Spriggs;
9016	12/03/2009	ABA	A	250.00	0.10	0.10	25.00	Review Correspondence;
9016	12/07/2009	ABA	A	250.00	2.90	2.90	725.00	Review Correspondence; Prepare Letter; Email Spriggs; Email McLeod; Review Beaufort Surveying Documents; Phone Conversation with McLeod;
9016	12/29/2009	ABA	A	250.00	0.40	0.40	100.00	Email McLeod
9016	01/11/2010	ABA	A	250.00	0.80	0.80	200.00	Review Slivka discovery; Email Spriggs
9016	01/13/2010	ABA	A	250.00	0.40	0.40	100.00	Review Motion; Review Affidavit; Email Spriggs;
9016	01/14/2010	ABA	A	250.00	0.20	0.20	50.00	Conference with Bozeman;
9016	01/15/2010	ABA	A	250.00	0.20	0.20	50.00	Review Plats;
9016	01/26/2010	ABA	A	250.00	3.00	3.00	750.00	Review documents, Prepare Affidavits, Phone conversation with Bozeman, Phone Conversation with Youmans;
9016	01/27/2010	ABA	A	250.00	4.00	4.00	1,000.00	Prepare Affidavits; Various emails and Phone Conversations with Bozeman and Youmans; Prepare memo in opposition; Conference with TJM; Prepared Memo in Opposition and
9016	01/28/2010	ABA	A	250.00	3.50	3.50	875.00	

9016	01/29/2010	ABA	A	250.00	4.00	4.00	1,000.00	Exhibits; Prepare Memo/Various Emails and Phone conversations;
9016	02/11/2010	ABA	A	250.00	0.30	0.30	75.00	Conference with SMS; Emails with Scott
9016	02/17/2010	ABA	A	250.00	0.60	0.60	150.00	Legal research- Affidavits
9016	02/18/2010	ABA	A	250.00	0.30	0.30	75.00	Conference with TJM;
9016	02/22/2010	ABA	A	250.00	2.50	2.50	625.00	Conference with HBH; Conference with TJM; Email with Bogeman; Email with Youmans; Revised memo in Opposition; Conference with SMS.
9016	02/23/2010	ABA	A	250.00	0.30	0.30	75.00	Review Affidavits; Conference with SMS;
9016	02/24/2010	ABA	A	250.00	0.30	0.30	75.00	Conference with SMS;
9016	02/26/2010	ABA	A	250.00	1.00	1.00	250.00	Conference with TJM, LR, Review
9016	03/01/2010	ABA	A	250.00	0.80	0.80	200.00	Prepare Motion;
9016	03/02/2010	ABA	A	250.00	6.40	6.40	1,600.00	Travel to and From Motion Hearing; Various Emails;
9016	03/03/2010	ABA	A	250.00	0.50	0.50	125.00	Email Spriggs; Conference with SMS;
9016	03/04/2010	ABA	A	250.00	1.50	1.50	375.00	Email Ken Spriggs; Review Documents
9016	03/10/2010	ABA	A	250.00	2.20	2.20	550.00	Prepare discovery responses; Email Spriggs;
9016	03/11/2010	ABA	A	250.00	1.80	1.80	450.00	Review Correspondence; Email Spriggs; Phone conversation with Spriggs; Phone conversation with McLeod; Prepare Note; Prepare Letters;
9016	03/15/2010	ABA	A	250.00	5.20	5.20	1,300.00	Phone conversation with Spriggs; Various emails; Prepare Motion to Amend; Review Complaint;
9016	03/16/2010	ABA	A	250.00	4.00	4.00	1,000.00	Prepare Motion to Amend COmplaint; Prepare discovery responses;
9016	03/18/2010	ABA	A	250.00	0.30	0.30	75.00	Review Correspondence; Prepare response;
9016	03/22/2010	ABA	A	250.00	1.90	1.90	475.00	Review Correspondence; Emails with McLeod; Prepare Letter to Enterprise;
9016	03/31/2010	ABA	A	250.00	0.50	0.50	125.00	E-mail Clerk of Court; Conference with SMS; E-mail Spriggs.
9016	04/01/2010	ABA	A	250.00	0.10	0.10	25.00	Email Spriggs.
9016	04/02/2010	ABA	A	250.00	0.30	0.30	75.00	Email Spriggs; Email McLeod;
9016	04/08/2010	ABA	A	250.00	1.00	1.00	250.00	Conference with TJM; Conference with SMS re: Motion Hearing;
9016	04/26/2010	ABA	A	250.00	0.80	0.80	200.00	Various emails; Conference with TJM; Review Orders;
9016	04/27/2010	ABA	A	250.00	1.20	1.20	300.00	Revise Amended Complaint; Prepare letter to Duffie; Email Spriggs;
9016	04/28/2010	ABA	A	250.00	0.20	0.20	50.00	Prepare Amended Complaint;
9016	05/05/2010	ABA	A	250.00	0.10	0.10	25.00	Email McLeod;
9016	05/11/2010	ABA	A	250.00	0.10	0.10	25.00	Email Spriggs;
9016	05/12/2010	ABA	A	250.00	0.20	0.20	50.00	E-mail Spriggs; email McLeod
9016	05/20/2010	ABA	A	250.00	0.50	0.50	125.00	Review correspondence; email McLeod;
9016	05/21/2010	ABA	A	250.00	2.00	2.00	500.00	Conference with SMS re: Sch Order Review Answer to Amended Complaint, Preparation of Reply to Counterclaims to Amended Complaint; Legal Research
9016	05/25/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail McLeod
9016	05/28/2010	ABA	A	250.00	0.50	0.50	125.00	Conference with Tim Muller; Review Counterclaims
9016	06/15/2010	ABA	A	250.00	0.80	0.80	200.00	Conference with TJM; Legal research; Review motion.
9016	06/21/2010	ABA	A	250.00	3.60	3.60	900.00	Preparation of Motion to Strike.
9016	06/24/2010	ABA	A	250.00	1.00	1.00	250.00	Build litigation file in Casemap.
9016	06/29/2010	ABA	A	250.00	2.50	2.50	625.00	Prepare Casemap litigation Information; review documents; conference with SMS.
9016	07/16/2010	ABA	A	250.00	2.00	2.00	500.00	Review Spriggs documents.

9016	07/19/2010	ABA	A	250.00	2.80	2.80	700.00	Review documents; preparation of casemap.
9016	07/20/2010	ABA	A	250.00	1.10	1.10	275.00	E-mail Spriggs; review documents.
9016	07/21/2010	ABA	A	250.00	0.80	0.80	200.00	E-mail Spriggs; review complaint; conference with TMJ; conference with SMS.
9016	07/22/2010	ABA	A	250.00	0.50	0.50	125.00	Telephone conference with Duffie; prepare letter regarding mediation; review deposition notice.
9016	07/28/2010	ABA	A	250.00	2.30	2.30	575.00	Review complaint and E-mail Spriggs regarding answer; review documents and prepare casemap.
9016	07/29/2010	ABA	A	250.00	5.00	5.00	1,250.00	Conference with TJM; review documents and prepare case map.
9016	07/30/2010	ABA	A	250.00	6.00	6.00	1,500.00	Review documents; prepare case map; conference with TJM; E-mail Spriggs; review correspondence.
9018	08/02/2010	ABA	A	250.00	5.30	5.30	1,325.00	conference with Shannon Skelly; prepare letter; E-mails with McLeod; Review documents and prepare case map.
9016	08/03/2010	ABA	A	250.00	2.00	2.00	500.00	Review documents and prepare casemap.
9018	08/04/2010	ABA	A	250.00	7.60	7.60	1,900.00	Review files; prepare casemap; various E-mails to McLeod; prepare letter to McLeod; E-mails to TJM; conference with TJM; Conference with Spriggs and Bozeman.
9016	08/05/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail Spriggs.
9016	08/06/2010	ABA	A	250.00	2.40	2.40	600.00	Telephone conference with Oberski; revision of Motion to Compel; conference with SMS; E-mails with mediator; E-mail SMS regarding subpoena.
9016	08/09/2010	ABA	A	250.00	0.50	0.50	125.00	Review Motion; conference with SMS; E-mails with Clerk of Court.
9016	08/10/2010	ABA	A	250.00	5.00	5.00	1,250.00	Prepare Casemap information from notes from meeting with Spriggs and Bozeman; E-mail McLeod; Review correspondence and Motion; E-mails to court; conference with SMS.
9016	08/11/2010	ABA	A	250.00	1.70	1.70	425.00	conference with SMS regarding preparation; prepare casemap information; E-mail Spriggs.
9016	08/12/2010	ABA	A	250.00	5.90	5.90	1,475.00	Prepare, travel, and attend Motion Hearing; E-mail and conference with SMS regarding document subpoenas; conference with SMS regarding pending motions; E-mail Spriggs and McLeod; review proposed order.
9016	08/23/2010	ABA	A	250.00	0.20	0.20	50.00	Review correspondence and proposed order.
9018	08/25/2010	ABA	A	250.00	0.50	0.50	125.00	Conferences with SMS and E-mail regarding Motions on September 8.
9016	08/31/2010	ABA	A	250.00	0.20	0.20	50.00	Review Order relieving counsel; E-mail McLeod.
9016	09/01/2010	ABA	A	250.00	0.30	0.30	75.00	E-mail SMS; E-mail Court.
9016	09/02/2010	ABA	A	250.00	0.20	0.20	50.00	E-mail Court.
9016	09/07/2010	ABA	A	250.00	0.20	0.20	50.00	Conference with SMS.
9016	09/15/2010	ABA	A	250.00	0.70	0.70	175.00	Prepare letter to Spriggs; E-mail Spriggs.
9016	09/16/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail Ken.
9016	09/23/2010	ABA	A	250.00	0.10	0.10	25.00	Telephone conference with Lyles.
9016	09/28/2010	ABA	A	250.00	0.10	0.10	25.00	Email Lyles.
9018	09/30/2010	ABA	A	250.00	1.30	1.30	325.00	E-mail Spriggs.
								Telephone call Robert Lyles.
								Conference with SMS. Conference with HBH. Email Spriggs.

9016	10/04/2010	ABA	A	250.00	0.30	0.30	75.00	Review Notice of Appearance. Conference with SMS re: meeting with Lyles.
9016	10/06/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail Spriggs.
9016	10/07/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail SMS re: Slivka deposition notice.
9016	10/08/2010	ABA	A	250.00	1.00	1.00	250.00	Conference with SMS. Phone conference with Lyles.
9016	10/19/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail Lyles re: Slivka depo.
9016	10/21/2010	ABA	A	250.00	0.30	0.30	75.00	E-mails Lyles. Email Spriggs.
9016	10/26/2010	ABA	A	250.00	0.30	0.30	75.00	Conference with SMS re: depositions and scheduling order.
9016	10/28/2010	ABA	A	250.00	0.20	0.20	50.00	Conference with SMS. Email Lyles.
9016	11/03/2010	ABA	A	250.00	1.30	1.30	325.00	Various emails SMS. Draft letter to Lyles concerning depositions, document production and concerning Motion to Strike.
9016	11/04/2010	ABA	A	250.00	0.30	0.30	75.00	E-mail SMS re: deposition notice.
9016	11/10/2010	ABA	A	250.00	0.10	0.10	25.00	Finalize letter to Lyles.
9016	11/12/2010	ABA	A	250.00	0.40	0.40	100.00	Conference with SMS re: motion hearing.
9016	11/22/2010	ABA	A	250.00	0.20	0.20	50.00	Review deposition notices, email Spriggs re: deposition schedule, case events, etc.
9016	11/23/2010	ABA	A	250.00	5.40	5.40	1,350.00	Conference with SMS.
9016	11/24/2010	ABA	A	250.00	3.80	3.80	950.00	Prepare for deposition of Slivka, review documents, email Lyles, email Spriggs.
9016	11/28/2010	ABA	A	250.00	3.20	3.20	800.00	Prepare for Slivka deposition, review documents, telephone conference with Spriggs and Bozeman.
9016	11/29/2010	ABA	A	250.00	8.00	8.00	2,000.00	Email Spriggs.
9016	11/30/2010	ABA	A	250.00	9.00	9.00	2,250.00	Prepare for Slivka deposition.
9016	12/02/2010	ABA	A	250.00	0.50	0.50	125.00	Prepare for/attend Slivka deposition. Conference with Spriggs re: The Spriggs Group 30b6 depo.
9016	12/06/2010	ABA	A	250.00	0.10	0.10	25.00	Prepare for/attend 30b6 depo for The Spriggs Group, PC.
9016	12/13/2010	ABA	A	250.00	0.10	0.10	25.00	Various emails and conversations with SMS re: mediation. Emails to/from Lyles. Emails to/from Spriggs.
9016	12/16/2010	ABA	A	250.00	4.20	4.20	1,050.00	E-mail SMS re: mediation.
9016	12/17/2010	ABA	A	250.00	7.00	7.00	1,750.00	E-mail Clerk of Court re: Motion Hearing.
9016	12/20/2010	ABA	A	250.00	5.00	5.00	1,250.00	Review Slivka depo transcript.
9016	12/21/2010	ABA	A	250.00	6.30	6.30	1,575.00	Prepare discovery request related to documents in possession of Slivka.
9016	12/22/2010	ABA	A	250.00	0.20	0.20	50.00	Review drawings. Prepare for mediation.
9016	12/28/2010	ABA	A	250.00	0.40	0.40	100.00	Review Slivka deposition.
9016	01/03/2011	ABA	A	250.00	4.50	4.50	1,125.00	Conference with TJM re: preparation of affidavit related to Slivka testimony and motion to strike.
9016	01/04/2011	ABA	A	250.00	2.70	2.70	675.00	Review drawings in preparation for mediation. Conference with SMS re: mediation.
								Review drawings. Prepare for mediation. Prepare casemap info.
								Conference with TJM re: Affidavit and Motion to Strike.
								Prepare Affidavit. Conferences and emails to/from SMS.
								Prepare for Motion hearing. Emails to/from SMS. Various emails to/from Lyles.
								Prepare for Motion to Strike.
								Conference with SMS. Various emails

								with Lyles and the Court concerning continuance of motion hearing. Review Consent Motion of Continuance.
9016	01/05/2011	ABA	A	250.00	0.30	0.30	75.00	Conferences with SMS re: mediation setup. Email Spriggs.
9016	01/06/2011	ABA	A	250.00	7.80	7.80	1,950.00	Prepare for mediation.
9016	01/07/2011	ABA	A	250.00	4.60	4.60	1,150.00	Prepare for mediation.
9016	01/09/2011	ABA	A	250.00	0.50	0.50	125.00	Prepare for mediation.
9016	01/10/2011	ABA	A	250.00	6.00	6.00	1,500.00	Prepare for and attend mediation.
9016	01/11/2011	ABA	A	250.00	0.50	0.50	125.00	E-mail Spriggs. Conference with HBH. Conference with SMS.
9016	01/24/2011	ABA	A	250.00	0.10	0.10	25.00	Review Correspondence Lyles.
9016	01/27/2011	ABA	A	250.00	1.10	1.10	275.00	E-mails to/from Spriggs. Review Slivka Motion for Summary Judgment. Review pleadings.
9016	01/28/2011	ABA	A	250.00	6.00	6.00	1,500.00	Prepare Motion for Summary Judgment. Email SMS re: Letter regarding Motion to Compel. Various emails Spriggs re: discovery. Conference with TJM re: Defense of Slivka Motion for Summary Judgment. Review Slivka depo transcript re: testimony regarding 2-1-15.
9016	01/31/2011	ABA	A	250.00	1.60	1.60	400.00	Prepare Affidavit in Support of Motion for Summary Judgment.
9018	02/01/2011	ABA	A	250.00	0.50	0.50	125.00	Conference with SMS. E-mail Spriggs and Bozeman. Conference with SMS re: Motions for Summary Judgment and Continuance of Motion to Strike. Review Consent Order.
9016	02/02/2011	ABA	A	250.00	0.40	0.40	100.00	Emails to/from Spriggs. Review/sign Motion for Continuance.
9016	02/14/2011	ABA	A	250.00	1.10	1.10	275.00	Conference with SMS. Emails to/from Spriggs. Review discovery requests. Review court roster. Email SMS. Email Lyles.
9016	02/17/2011	ABA	A	250.00	0.50	0.50	125.00	E-mails to/from Spriggs. Email Lyles.
9016	02/22/2011	ABA	A	250.00	0.20	0.20	50.00	Phone Call Lyles. Conference with SMS.
9016	02/23/2011	ABA	A	250.00	0.20	0.20	50.00	E-mails Lyles.
9016	02/27/2011	ABA	A	250.00	0.40	0.40	100.00	E-mails to/from Spriggs - review additional witness info.
9016	03/01/2011	ABA	A	250.00	0.60	0.60	150.00	Various emails re: discovery responses. Review info on ftp site. Email Bozeman.
9016	03/07/2011	ABA	A	250.00	2.30	2.30	575.00	Prepare discovery responses. Various emails to/from Spriggs and Bozeman.
9018	03/08/2011	ABA	A	250.00	0.50	0.50	125.00	Various emails Spriggs and Bozeman. Phone call Lyles. (NC) Prepare letter to Judge Buckner re: Motion hearing (NC).
9016	03/09/2011	ABA	A	250.00	0.50	0.50	125.00	Prepare Discovery Responses.
9016	03/10/2011	ABA	A	250.00	0.20	0.20	50.00	Various emails, Spriggs, Colleton Co. Court
9016	03/11/2011	ABA	A	250.00	5.40	5.40	1,350.00	Various emails with Spriggs, Lyles and Court. Prepare outline for motion hearing.
9016	03/22/2011	ABA	A	250.00	0.20	0.20	50.00	E-mails to/from SMS, Spriggs and Bozeman re: continuation of 30b6 deposition.
9016	03/23/2011	ABA	A	250.00	0.10	0.10	25.00	Email Court re: motions hearing.
9016	03/31/2011	ABA	A	250.00	5.00	5.00	1,250.00	Prepare for motions hearing.
9016	04/04/2011	ABA	A	250.00	1.60	1.60	400.00	Prepare for Motions hearing.
9016	04/05/2011	ABA	A	250.00	2.50	2.50	625.00	Conference with SMS. Prepare exhibits for motion hearing.

9016	04/11/2011	ABA	A	250.00	2.00	2.00	500.00	Prepare for motion hearing.
9016	04/12/2011	ABA	A	250.00	5.50	5.50	1,375.00	Prepare, travel and attend motion hearing. Conference with SMS and TMJ. Email Clerk of Court. Email Lyles. conference with HBH.
9016	04/20/2011	ABA	A	250.00	0.10	0.10	25.00	E-mail Spriggs.
9016	04/21/2011	ABA	A	250.00	0.20	0.20	50.00	E-mails to/from Spriggs.
9016	04/25/2011	ABA	A	250.00	0.50	0.50	125.00	E-mails to/from Glick. Prepare for meeting with Glick.
9016	04/26/2011	ABA	A	250.00	3.70	3.70	925.00	Prepare for and attend conference with Glick. Review documents. Emails Glick.
9016	04/27/2011	ABA	A	250.00	0.60	0.60	150.00	E-mail Glick. Prepare supplemental discovery. Email Ken. Conference with SMS.
9016	05/09/2011	ABA	A	250.00	0.80	0.80	200.00	E-mail Ken Spriggs. Email Glick. Review Sivka documents.
9016	05/11/2011	ABA	A	250.00	2.70	2.70	875.00	E-mail Glick. Email Murdaugh. Phone call Murdaugh. Emails to/from Spriggs. Voicemail Glick. Prepare discovery request. Draft Reply to Counterclaims.
9016	05/17/2011	ABA	A	250.00	0.10	0.10	25.00	Conference with CAB.
9016	05/17/2011	ABA	A	250.00	0.50	0.50	125.00	Review Supplemental Discovery response. Email Glick. Phonecall Glick.
9016	05/19/2011	ABA	A	250.00	0.40	0.40	100.00	E-mail Glick. Emails to TJM.
9016	06/08/2011	ABA	A	250.00	0.30	0.30	75.00	Various emails to/from Myles and to/from Lyles.
9016	06/12/2011	ABA	A	250.00	0.20	0.20	50.00	E-mail Glick. Email Dupree.
9016	06/15/2011	ABA	A	250.00	0.10	0.10	25.00	E-mail Glick.
9016	06/16/2011	ABA	A	250.00	0.30	0.30	75.00	Emails to/from Glick. Emails to/from Spriggs. Phone call Glick.
9016	06/17/2011	ABA	A	250.00	0.40	0.40	100.00	Conference with TJM. Review case law.
9016	06/20/2011	ABA	A	250.00	2.70	2.70	675.00	Review file. Review Harvey depo. Prepare for Harvey depo.
9016	06/23/2011	ABA	A	250.00	4.00	4.00	1,000.00	Prepare for depositions of experts. Meet with Glick.
9016	06/24/2011	ABA	A	250.00	8.00	8.00	2,000.00	Prepare for/attend depositions of expert witnesses.
9016	06/27/2011	ABA	A	250.00	1.00	1.00	250.00	Conference with SMS. Conference with CAB. Various emails to/from Spriggs.
9016	06/28/2011	ABA	A	250.00	8.00	8.00	1,500.00	E-mails to/from Spriggs and Glick. Conference with SMS. Conference with CAB. Email CAB and TJM. Trial prep.
9016	06/29/2011	ABA	A	250.00	4.80	4.80	1,200.00	Prepare for trial.
9016	06/30/2011	ABA	A	250.00	5.00	5.00	1,250.00	Emails to/from Lyles. Emails to/from Spriggs. Review deposition notice. Review rules. Meet with trial team. Prepare for trial.
9016	07/01/2011	ABA	P	250.00	5.60	5.60	1,400.00	Prepare for trial.
9016	07/05/2011	ABA	P	250.00	7.00	7.00	1,750.00	Email to Spriggs. Trial prep.
9016	07/05/2011	ABA	P	250.00	1.10	1.10	275.00	Review transcripts. Email Spriggs.
9016	07/06/2011	ABA	P	250.00	11.30	11.30	2,825.00	Prepare for trial. Conference call with Ken and Andy. Review various letters from Lyles/Dupree. Conferences with trial team members. Review transcripts.
9016	07/07/2011	ABA	P	250.00	6.00	6.00	1,500.00	Trial Preparation.
9016	07/08/2011	ABA	P	250.00	10.60	10.60	2,650.00	Prepare for trial. Conference with Glick. Phone call with Spriggs. Emails to/from Spriggs and Bozeman. Review Spriggs documents.
9016	07/09/2011	ABA	P	250.00	11.30	11.30	2,825.00	Prepare for trial. Various emails to Spriggs and Bozeman. Prepare

9016	07/10/2011	ABA	P	250.00	6.30	6.30	1,575.00	witness outlines. Review drawings and do drawing count summary. Email Glick. Review Spriggs documents. Prepare for trial. Emails to/from Lyles. Emails to/from Spriggs. Review documents. Review case facts from initial casemap data.
9016	07/11/2011	ABA	P	250.00	8.30	8.30	2,075.00	Prepare for trial. Meet with trial team. Conference call with CAB, TJM and Spriggs. Prepare settlement letter. Review trial exhibits.
9016	07/12/2011	ABA	P	250.00	8.60	8.60	2,150.00	Prepare
9016	07/13/2011	ABA	P	250.00	9.30	9.30	2,325.00	Prepare for trial.
9016	07/14/2011	ABA	P	250.00	10.30	10.30	2,575.00	Prepare for trial. Meet with Sprigs and Bozeman. Prepare witnesses for trial. Prepare witness outlines. Prepare damages summary. Conference with trial team re: exhibits, trial brief, motions in limine, document production.
9016	07/15/2011	ABA	P	250.00	8.30	8.30	2,075.00	Prepare for trial. Prepare witness outlines, exhibits, emails to TSG. Phone conversation with Glick. Review defendant's motions, pretrial brief.
9016	07/16/2011	ABA	P	250.00	7.20	7.20	1,800.00	Prepare for trial. Prepare witness outlines, prepare exhibits. Prepare opening statement.
9016	07/17/2011	ABA	P	250.00	10.00	10.00	2,500.00	Prepare for trial.
9016	07/18/2011	ABA	P	250.00	15.30	15.30	3,825.00	Travel and attend trial - roster meeting, motions and jury selection. Trial Prep.
9016	07/19/2011	ABA	P	250.00	15.00	15.00	3,750.00	Attend Trial, trial prep.
9016	07/20/2011	ABA	P	250.00	14.50	14.50	3,625.00	Attend trial.
9016	07/21/2011	ABA	P	250.00	13.00	13.00	3,250.00	Trial; Trial prep
9016	07/22/2011	ABA	P	250.00	10.30	10.30	2,575.00	Prepare for and attend trial. Travel to Charleston.
9016	07/25/2011	ABA	P	250.00	1.80	1.80	450.00	Conference with CAB. Prepare/review Affidavit of attorney's fees. Emails to/from Glick.
Subtotal for Timekeeper AB				Billable	508.20	508.20	127,050.00	Anne Bright Atrial
9016	07/15/2011	CC	P	110.00	5.10	5.10	561.00	Legal research- Researched issue on aggregation of compensatory damages for punitive damages award for the upcoming trial in the Spriggs matter. Wrote a memo for Attorney Tim Muller on my findings.
Subtotal for Timekeeper CC				Billable	5.10	5.10	561.00	Charles Condon
9016	01/26/2010	TJM	A	175.00	0.25	0.25	43.75	Conference with ABA re: necessary research
9016	01/27/2010	TJM	A	175.00	1.75	1.75	306.25	Research mechanic liens statute; CJS, Am Jur., ALR for law on defective property descriptions in mechanics liens; conference with ABA
9016	01/28/2010	TJM	A	175.00	2.10	2.10	367.50	Conference with ABA, review memo in opposition to motion to dismiss; affidavits; draft legal standard, revise
9016	02/02/2010	TJM	A	175.00	0.50	0.50	87.50	Review memo to strike affidavit, article
9016	02/18/2010	TJM	A	175.00	2.25	2.25	393.75	Pull law cited by McLead; pull 4th circuit S.C. law on affidavits; search secondary sources; conference

9016	02/22/2010	TJM	A	175.00	1.00	1.00	175.00	with ABA Draft bullet point overview re: affidavits
9016	03/18/2010	TJM	A	175.00	0.30	0.30	52.50	Review email from ABA re: required research, check notes
9016	03/19/2010	TJM	A	175.00	1.70	1.70	297.50	Review letter to Enterprise Bank from ABA; review letter from McLead; letter from bank; research rules regarding subpoenas to non-parties and how to properly object
9016	03/21/2010	TJM	A	175.00	1.40	1.40	245.00	Draft letter to Enterprise Bank based on research re: objecting to subpoena to non-priority; email ABA
9016	03/22/2010	TJM	A	175.00	0.60	0.60	105.00	Review and revise letter to Enterprise Bank, conference with SMS
9016	04/08/2010	TJM	A	175.00	0.40	0.40	70.00	Conference with ABA re: upcoming motion hearings before Judge Mullen
9016	04/20/2010	TJM	A	175.00	1.80	1.80	315.00	Prepare for motion hearing; review documents & pleadings
9016	04/20/2010	TJM	A	175.00	1.40	1.40	245.00	Pull law on legal standards
9016	04/20/2010	TJM	A	175.00	1.40	1.40	245.00	Draft outline for hearing conference with SMS
9016	04/21/2010	TJM	A	175.00	5.50	5.50	962.50	Travel to and from Waltherboro for motion hearing, attend motion to amend and Defendants motion to quash
9016	04/21/2010	TJM	A	175.00	1.10	1.10	192.50	Draft proposed order denying Defendant's motion to quash; emails to ABA
9016	04/22/2010	TJM	A	175.00	0.70	0.70	122.50	Revise proposed order; conference with SMS, draft email to Judge
9016	04/28/2010	TJM	A	175.00	0.20	0.20	35.00	Email from judge/conference with SMS
9016	05/28/2010	TJM	A	175.00	0.40	0.40	70.00	Conference with ABA re: motion to strike
9016	06/01/2010	TJM	A	175.00	0.70	0.70	122.50	Review pleadings, file motion to strike law
9016	06/03/2010	TJM	A	175.00	2.40	2.40	420.00	Review pleadings, begin drafting motion to strike affirmative answers and counterclaims of Defendant
9016	06/04/2010	TJM	A	175.00	3.40	3.40	585.00	Draft motion to strike defendant's review/research law related to motion to strike
9016	06/08/2010	TJM	A	175.00	2.90	2.90	507.50	Continue drafting motion to strike Defendant's affirmative answers and counterclaims
9016	06/08/2010	TJM	A	175.00	0.70	0.70	122.50	Research re: judicial admissions; pull cases
9016	06/14/2010	TJM	A	175.00	1.40	1.40	245.00	Review/revise motion to strike
9016	06/15/2010	TJM	A	175.00	2.75	2.75	481.25	Conference with ABA; review and revise motion to strike
9016	06/15/2010	TJM	A	175.00	0.50	0.50	87.50	Review SCRCF Rule 12 for necessity of filing answer; review citing references
9016	06/21/2010	TJM	A	175.00	1.50	1.50	262.50	Draft letter to Enterprise Bank enclose copies of order, original communication
9016	07/21/2010	TJM	A	175.00	0.20	0.20	35.00	Conference with ABA re: needed research, review email
9016	07/23/2010	TJM	A	175.00	1.00	1.00	175.00	Review pleadings and mechanics lien statutes; search on secondary sources
9016	07/26/2010	TJM	A	175.00	0.40	0.40	70.00	Research re: tax lien
9016	07/28/2010	TJM	A	175.00	0.20	0.20	35.00	Email/conference to law clerk with legal research
9016	07/30/2010	TJM	A	175.00	0.60	0.60	105.00	Conference with ABA re: research, pull sources and review research from law clerk
9016	08/04/2010	TJM	A	175.00	1.10	1.10	192.50	Review/legal research re: motion to compel; motion for judgment for

9016	12/20/2010	TJM	A	175.00	0.25	0.25	43.75	failure to attend deposition; conference with ABA; review proposed motion to compel
9016	12/22/2010	TJM	A	175.00	2.75	2.75	481.25	Conference with ABA re: needed affidavit Review deposition testimony of Gene Slivka, review pleadings, draft affidavit in support of motion to strike
9016	12/23/2010	TJM	A	175.00	2.70	2.70	472.50	Work on second section of Affidavit in support of motion to strike
9016	01/04/2011	TJM	A	175.00	0.20	0.20	35.00	Conference with ABA re motion
9016	01/04/2011	TJM	A	175.00	0.40	0.40	70.00	Research proper filing of motion to strike affidavit
9016	01/06/2011	TJM	A	175.00	0.30	0.30	52.50	Research interest rate calculation for ABA and email findings
9016	01/28/2011	TJM	A	175.00	0.40	0.40	70.00	Conference with ABA regarding necessary work on motion for summary judgment; second conf w/ ABA re depo transcript
9016	01/31/2011	TJM	A	175.00	1.75	1.75	306.25	Research questions related to motion for summary judgment; review motion; find and read section on Architectural Handbook of Professional Services concerning billing; locate and research S.C. Code section on architects related to billing; locate and research S.C. Reg section on architects related to billing
9016	01/31/2011	TJM	A	175.00	0.60	0.60	105.00	Review deposition of K. Spriggs for purpose of motion for summary judgment
9016	02/01/2011	TJM	A	175.00	0.50	0.50	87.50	Review (continued) of deposition for motion for summary judgment; research summary judgment topics
9016	03/03/2011	TJM	A	175.00	2.25	2.25	393.75	Review Spriggs depo (continued); review issues for research, begin drafting topic memo re motion for summary judgment; research issues
9016	03/04/2011	TJM	A	175.00	1.80	1.80	315.00	Work on Spriggs research for motion for summary judgment; continue review of deposition transcript, continue draft of research topics
9016	03/07/2011	TJM	A	175.00	2.50	2.50	437.50	Review Spriggs depo compared to billing issues in MSJ; westlaw search on various research topics
9016	03/07/2011	TJM	A	175.00	2.20	2.20	385.00	Draft research memo
9016	03/08/2011	TJM	A	175.00	3.75	3.75	656.25	Research motion for summary judgment issues; work on research memo
9016	03/09/2011	TJM	A	175.00	1.50	1.50	262.50	Research quantum merit issues, continue draft of research memo
9016	03/10/2011	TJM	A	175.00	0.40	0.40	70.00	Review and revise memo
9016	03/11/2011	TJM	A	175.00	2.25	2.25	393.75	Work on research memo for B. Ariail; supplement research on statute, westlaw search, pull sources, email B. Ariail research
9016	03/31/2011	TJM	A	175.00	0.40	0.40	70.00	E-mail from B. Ariail re AIA Handbook section research; pull material up online for printing; email B. Ariail with link to material
9016	03/31/2011	TJM	A	175.00	1.80	1.80	315.00	Review research question from B. Ariail; review cause of action book; review secondary sources re slander of title and mechanics liens; pull SC case law relevant to topic; draft email with research findings and attachment

9016	04/11/2011	TJM	A	175.00	2.00	2.00	350.00	Conference with B. Ariail re needed research; review SC Jurisprudence, SCRCF and citing references, research SC case law on attorney's reference to depositions not identified by affidavit; email to and from B. Ariail with research findings and case law attachments; review Colleton County docket for transcript filings per rule; email B. Ariail further research findings and update on Colleton County Docket
9016	05/10/2011	TJM	A	175.00	3.25	3.25	568.75	Research secondary sources, westlaw (case law and statutes, citing references) pertaining to recoverable amounts under statute (lien); pull citing sources; review trial court orders
9016	05/11/2011	TJM	A	175.00	0.30	0.30	52.50	E-mails from ABA; conf w/ B. Ariail re research conducted
9016	05/12/2011	TJM	A	175.00	0.70	0.70	122.50	Research (cont)
9016	05/13/2011	TJM	A	175.00	0.80	0.80	140.00	Research supplement regarding recoverable amounts under mechanics lien
9016	05/16/2011	TJM	A	175.00	0.50	0.50	87.50	Research continued on mechanic lien
9016	05/19/2011	TJM	A	175.00	0.30	0.30	52.50	Review emails from B. Ariail, emails from Miles Glick, review docs needed for completion during next 2 weeks
9016	05/20/2011	TJM	A	175.00	0.50	0.50	87.50	Review and pull research related to lien
9016	05/31/2011	TJM	A	175.00	0.30	0.30	52.50	Review ltr, prepare reply for filing
9016	06/01/2011	TJM	A	175.00	0.20	0.20	35.00	Conference with SMS re notice of deposition; email to SMS
9016	06/02/2011	TJM	A	175.00	0.25	0.25	43.75	Conference with S. Skelly re subpoena, notice of depo, review email
9016	06/07/2011	TJM	A	175.00	0.10	0.10	17.50	E-mail to and from B. Ariail
9016	06/13/2011	TJM	A	175.00	1.20	1.20	210.00	Conference with B. Ariail; continue research of architect related costs lienable nationwide; pull sources
9016	06/14/2011	TJM	A	175.00	0.50	0.50	87.50	Review research sources, ALR section for conf w/ B. Ariail
9016	06/17/2011	TJM	A	175.00	0.20	0.20	35.00	Conference with B. Ariail re research conducted
9016	06/30/2011	TJM	A	175.00	1.20	1.20	210.00	Conference with C. Bruorton and B. Ariail re trial prep
9016	06/30/2011	TJM	A	175.00	0.20	0.20	35.00	Review Casemap file; email re trial brief
9016	07/06/2011	TJM	P	175.00	5.25	5.25	918.75	Conference with ABA re required research x3; Research mechanics lien statute for offer of settlement; prevailing party for attorney fees; emails re further research required; email to clerks; pull all research; work on elements of causes of action in casemap (trial prep)
9016	07/07/2011	TJM	P	175.00	2.10	2.10	367.50	Trial preparation - upload elements; research to case map; conf w/ staff; conf w/ ABA re: further work needed; conf w/ clerk and review research
9016	07/08/2011	TJM	P	175.00	3.40	3.40	595.00	Trial preparation - Casemap work; upload sources; supplement research; emails; conf w/ staff; continue upload and linking of research; expand elements
9016	07/08/2011	TJM	P	175.00	2.20	2.20	385.00	Trial preparation - review ltr; samples of trial briefs; review existing documents for content;

9016	07/08/2011	TJM	P	175.00	1.60	1.60	280.00	emails to ABA re research; conf re trial brief
9016	07/09/2011	TJM	P	175.00	3.50	3.50	612.50	Trial preparation - review topics of motion in limine; begin draft
9016	07/11/2011	TJM	P	175.00	7.50	7.50	1,312.50	Trial preparation - work on motions in limine; research in support
								Trial preparation; pull research materials; attend conference with legal team; draft motion for jury visit; revise motion in limine; draft motion in limine with respect to new witness offered; review settlement ltr; conf w/ ABA re further work
9016	07/12/2011	TJM	P	175.00	1.20	1.20	210.00	Conference with ABA; draft confidentiality agreement re Miles
9016	07/12/2011	TJM	P	175.00	4.75	4.75	831.25	Glick documents; draft email to Lyles end agreement
9016	07/13/2011	TJM	P	175.00	7.75	7.75	1,356.25	Trial preparation - work on Trial Brief; research for legal issues involved
								Trial preparation - Continue draft and research with pretrial brief, conf w/ ABA; emails; review and revise motion in limine; conf w/ CAB re research needed and motion concerning evidentiary issues
9016	07/14/2011	TJM	P	175.00	7.30	7.30	1,277.50	Trial preparation (Draft memorandum in opposition to D's motion in limine; research); (Conf w/ clerks and team); (emails, review of Myles Glick documents, redact; update confidentiality agreement)
9018	07/15/2011	TJM	P	175.00	8.25	8.25	1,443.75	Trial preparation - Draft/revise pleadings
9016	07/17/2011	TJM	P	175.00	7.50	7.50	1,312.50	Trial preparation
9016	07/18/2011	TJM	P	175.00	6.40	6.40	1,120.00	Trial - Review/research directed verdict forms; emails; reseach issues from trial team; review research from clerks; draft and revise jury charges
9016	07/19/2011	TJM	P	175.00	2.40	2.40	420.00	Conference with SMS; trial prep, begin draft of motion; email; draft/review/revise verdict form for jury
9016	07/20/2011	TJM	P	175.00	0.75	0.75	131.25	Conference with SMS re jury charges; review and research case law
Subtotal for Timekeeper TJ				Billable	157.55	157.55	27,571.25	Timothy JW Muller
9016	04/10/2009	SMS	A	125.00	0.40	0.40	50.00	Conferences with Ariail regarding lien to be filed and served in Colleton County; Telephone message for process server; Research on Myrtle Grove Plantation
9016	04/13/2009	SMS	A	125.00	2.50	2.50	312.50	Conferences with Ariail; Telephone conferences with process server; Finalize notice and certificate of mechanic's lien; Draft letter to Slivka; Prepare instructions and directions for process server
9016	06/29/2009	SMS	A	125.00	0.10	0.10	12.50	Conference with Ariail regarding foreclosure to be filed and need for copy of any mortgages
9016	06/30/2009	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail; Telephone conference with Edisto Title; E-mail title search request to Edisto Title

9016	07/02/2009	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail; Telephone conference with Edisto Title
9016	07/06/2009	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding Colleton County title work; E-mail communication with Edisto Title; Telephone conference with Edisto Title
9016	07/07/2009	SMS	A	125.00	2.00	2.00	250.00	Conferences with Ariail regarding title work from Colleton County, filing of complaint and bonding of lien; Prepare summons and civil cover sheet; Request check for filing fee; Draft letter to Slivka serving complaint via process server; Finalize complaint for filing and service; Telephone conference with process server; Prepare instructions on filing and service for process server
9016	07/08/2009	SMS	A	125.00	0.25	0.25	31.25	Telephone conference with process server regarding filing and service of complaint; Conference with Ariail
9016	07/09/2009	SMS	A	125.00	0.50	0.50	62.50	Telephone conference with Ariail; Telephone conference with process server regarding status of filing and service; Telephone conference with Reeves McLeod regarding acceptance service of complaint for Slivka; E-mail communications with Ariail
9016	07/15/2009	SMS	A	125.00	0.25	0.25	31.25	Draft letter to clerk forwarding affidavit of service and acceptance of service for filing
9016	07/15/2009	SMS	A	125.00	0.10	0.10	12.50	E-mail Spriggs regarding service of complaint on Slivka
9016	09/16/2009	SMS	A	125.00	0.50	0.50	62.50	Conference with Ariail; Draft cover letter for filing reply
9016	09/23/2009	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding case status, reply to counter-claim, possible amended complaint
9016	10/01/2009	SMS	A	125.00	0.20	0.20	25.00	E-mail communication with Ariail regarding upcoming Reply and Amended Answer
9016	10/05/2009	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding contact with Spriggs and upcoming reply and/or amended complaint
9016	10/08/2009	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding contact with McLeod and need for Colleton County title abstractor
9016	10/09/2009	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding various title work to be requested; E-mail communication with Edisto Title; E-mail Ariail
9016	10/11/2009	SMS	A	125.00	0.10	0.10	12.50	E-mail Edisto Title regarding request for records search in Colleton County
9016	10/13/2009	SMS	A	125.00	0.25	0.25	31.25	Telephone conference with Cheryl Schlessner regarding request for title work on Slivka property; Fax requested information to Schlessner
9016	10/22/2009	SMS	A	125.00	0.30	0.30	37.50	Telephone conference with title abstractor Schlessner; E-mail communication with Ariail; Conference with Ariail
9016	10/27/2009	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding results of requested title work;

9016	10/28/2009	SMS	A	125.00	0.30	0.30	37.50	Telephone message for title abstractor Schlesser
9016	11/03/2009	SMS	A	125.00	0.30	0.30	37.50	Telephone conference with title abstractor Cheryl Schlesser; Review file regarding due date for responsive pleading; Conference with Ariail
9016	11/05/2009	SMS	A	125.00	0.20	0.20	25.00	Conferences with Ariail regarding results of title work, conferences with Jennings and Spriggs
9016	11/06/2009	SMS	A	125.00	1.25	1.25	156.25	Conferences with Ariail regarding information from client and upcoming reply
9016	11/10/2009	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding filing and service of reply; Prepare cover letter per Ariail's instructions; Prepare certificate of service
9016	11/17/2009	SMS	A	125.00	1.50	1.50	187.50	Conferences with Ariail regarding filing of reply
9018	11/19/2009	SMS	A	125.00	0.40	0.40	50.00	E-mail communication with Ariail regarding discovery requests; Finalize first interrogatories and request for production of documents to be served on defendant Slivka; Prepare certificate of service; Draft letter to McLeod forwarding discovery requests; Conference with Ariail; Index discovery and organize file
9016	11/20/2009	SMS	A	125.00	1.30	1.30	162.50	Draft document subpoena to Beaufort Surveying, Inc.
9018	11/24/2009	SMS	A	125.00	1.50	1.50	187.50	Prepare letter to David Youmans forwarding document subpoena; Finalize document subpoena and attachment; Prepare certified mailing; Update discovery and correspondence files
9016	12/02/2009	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding documents from Youmans and Spriggs; Telephone conferences with Youmans; E-mail communication with Youmans to coordinate copying and pick up of documents
9016	12/07/2009	SMS	A	125.00	0.50	0.50	62.50	Conference with Ariail; Coordinate production of Youmans' documents
9016	12/28/2009	SMS	A	125.00	0.75	0.75	93.75	Conferences with Ariail regarding documents produced by Youmans (Beaufort Surveying) per document subpoena; Review documents and invoice from ProLegal Copies; Conference with Ariail regarding motion to dismiss; Draft letter to McLeod regarding overdue discovery responses; Update pleadings and correspondence
9016	01/07/2010	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding client documents
9016	01/11/2010	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding status of receiving client documents
9016	01/26/2010	SMS	A	125.00	1.50	1.50	187.50	Conferences with Ariail regarding upcoming motion to dismiss mechanic's lien, affidavits and memo to be filed; Review motions roster; Review defendant's motion to dismiss lien; Telephone conference with clerk's office regarding motions hearing; Misc. preparation for

9016	01/27/2010	SMS	A	125.00	1.25	1.25	156.25	upcoming motions hearing Conferences with Ariail; Telephone conference with Beaufort Surveying regarding Youmans affidavit; Misc. preparation for upcoming motions hearing
9016	01/28/2010	SMS	A	125.00	2.75	2.75	343.75	Conferences with Ariail; Prepare for motions hearing; Finalize exhibits for memo in opposition and affidavits; E-mail communication with Judge Mullen's clerk; Prepare cover letters to Judge and clerk of court
9016	01/29/2010	SMS	A	125.00	4.00	4.00	500.00	Conferences with Ariail; Finalize memo in opposition to Slivka's motion to dismiss for filing with court and service on McLeod; E-mail communication with Judge Mullen's clerk;
9016	02/09/2010	SMS	A	125.00	0.10	0.10	12.50	Conference with Ariail regarding upcoming motions hearings
9016	02/22/2010	SMS	A	125.00	1.75	1.75	218.75	Conferences with Ariail; Review motions roster for any instructions from sitting judge, Kinard; E-mail communication with Judge Kinard's law clerk regarding submission of amended memo in opposition, amended affidavits and exhibits; E-mail communication with Youmans' office regarding forwarding amended affidavit; Review pleadings and discovery filings
9016	02/23/2010	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding amended affidavits; Review amended affidavits of Youmans' and Bozeman
9016	02/24/2010	SMS	A	125.00	2.50	2.50	312.50	Conferences with Ariail regarding filing and service of amended memo in opposition and amended affidavits; Finalize amended memo in opposition and amended affidavits with proper exhibits for earch for filing
9016	02/25/2010	SMS	A	125.00	2.00	2.00	250.00	Conferences with Ariail; Finalize letter to clerk filing amended memo in opposition and amended affidavits; Prepare documents to filed with clerk and set to be served on McLeod;
9016	02/28/2010	SMS	A	125.00	1.00	1.00	125.00	Update pleadings, discovery, correspondence and organize file Prepare for upcoming motions hearing; Update pleadings
9016	03/01/2010	SMS	A	125.00	1.70	1.70	212.50	Conferences with Ariail regarding Slivka affidavit and preparation for motions hearing; Review Slivka affidavit; Update pleadings and correspondence; Prepare for 3/2/10 motions hearings
9016	03/02/2010	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding results of motions hearing
9016	03/03/2010	SMS	A	125.00	0.75	0.75	93.75	Conferences with Ariail; Review complaint regarding request for jury trial; Review mandated Alternative Dispute Resolution rules for specified counties within South Carolina; Calculate time since filing of complaint in conjunction with ADR rules

9016	03/04/2010	SMS	A	125.00	0.10	0.10	12.50	Review fax from McLeod regarding motion to strike
9016	03/11/2010	SMS	A	125.00	0.25	0.25	31.25	Review letter from McLeod with settlement offer; Conferences with Ariail
9016	03/15/2010	SMS	A	125.00	1.20	1.20	150.00	E-mail communications with Ariail regarding motion to amend complaint and subpoena for Slivka financial records; Conferences with Ariail; Prepare motion information cover sheet; Begin letter to clerk for forwarding motion to amend complaint; Review subpoena issued by Utsey; Review SC Judicial Dept. calendar regarding upcoming terms of motions hearings
9016	03/16/2010	SMS	A	125.00	1.30	1.30	162.50	Work on finalizing motion to amend complaint; Review proposed amended complaint; Prepare certificate of service and cover letter to clerk of court; Conferences with Ariail;
9016	03/17/2010	SMS	A	125.00	2.00	2.00	250.00	Prepare document subpoena for Enterprise Bank of SC for financial records of Slivka; Prepare cover letter and certified mailing to bank; Conferences with Ariail; Review answers to defendant's interrogatories per Ariail's instructions
9016	03/18/2010	SMS	A	125.00	2.25	2.25	281.25	Prepare certificate of service and cover letter for discovery responses; Finalize discovery responses to be served on McLeod; Conferences with Ariail; Corrections to motion information cover sheet per request of clerk's office; Resend motion to amend complaint to clerk's office for filing; Review fax from Enterprise Bank of SC in response to document subpoena
9016	03/22/2010	SMS	A	125.00	0.30	0.30	37.50	Conference with Muller regarding letter to Enterprise Bank; Email Spriggs
9016	03/23/2010	SMS	A	125.00	0.50	0.50	62.50	Review civil cover sheet and Alternate Dispute Resolution instructions; Conferences with Ariail regarding mediation requirements; E-mail Muller
9016	03/29/2010	SMS	A	125.00	0.30	0.30	37.50	E-mail communications with Ariail and Muller regarding upcoming motions hearing for Spriggs' motion to amend complaint and Slivka's motion to quash subpoena to Enterprise Bank; Conference with Ariail
9016	03/31/2010	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding Colleton County Jury Mediations Roster; Review Jury Mediations roster and updated rules and instructions for mediation roster
9016	04/08/2010	SMS	A	125.00	0.10	0.10	12.50	Conferences with Ariail regarding possible mediator
9016	04/19/2010	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail regarding upcoming motions hearings; Conference with Muller; Review Colleton County motions roster for updates and notations
9016	04/20/2010	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail and Muller regarding motions hearing;

9016	04/23/2010	SMS	A	125.00	0.25	0.25	31.25	Preparation for motions hearing Conference with Muller regarding form order received from Court regarding results of motions hearing; Restore file subsequent motions hearing
9016	04/26/2010	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail regarding results of motions hearing, need for scheduling order
9016	04/27/2010	SMS	A	125.00	0.50	0.50	62.50	Conference with Ariail regarding amended complaint to be filed and served; Forward correspondence and proposed order to McLeod
9016	04/28/2010	SMS	A	125.00	1.50	1.50	187.50	Draft letter to clerk forwarding amended complaint for filing and service on McLeod; Finalize amended complaint for filing and service; E-mail Spriggs forwarding correspondence to clerk and copy of amended complaint; Conference with Muller regarding order in connection with subpoena issued to Enterprise Bank of SC
9016	04/29/2010	SMS	A	125.00	1.00	1.00	125.00	Draft consent scheduling order; Conferences with Ariail regarding scheduling order dates; Revisions to scheduling order; E-mail McLeod forwarding proposed consent scheduling order;
9016	05/03/2010	SMS	A	125.00	0.80	0.50	62.50	Review McLeod letter regarding extension of time to answer amended complaint; Review rules of procedure regarding time to answer pleadings; Conference with Ariail
9016	05/04/2010	SMS	A	125.00	1.25	0.25	31.25	Conferences with Ariail regarding extension of time requested by McLeod, status of consent scheduling order; Letter to McLeod, via fax and mail, regarding extension of time to answer amended complaint;
9016	05/05/2010	SMS	A	125.00	1.00	1.00	125.00	Organize file - drawings, CKS documents and documents from Youmans - reconstitute and relocate files
9016	05/06/2010	SMS	A	125.00	0.10	0.10	12.50	Review filed copy of amended complaint received from clerk's office
9016	05/11/2010	SMS	A	125.00	0.75	0.50	62.50	Update pleadings, discovery and correspondence
9016	05/17/2010	SMS	A	125.00	0.25	0.25	31.25	E-mail communication with McLeod regarding scheduling order; Conference with Ariail
9016	05/20/2010	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding proposed consent scheduling order; Review upcoming schedule of Judge Buckner
9016	05/21/2010	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail regarding proposed consent scheduling order; Review Colleton County roster news; E-mail communications with Judge Buckner's clerk regarding Judge's preferences on proposed orders; E-mail communications with McLeod
9016	05/24/2010	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail; Draft letter to McLeod requesting extension to file reply to Defendant's counterclaims; E-mail McLeod forwarding request for extension of time

9016	05/25/2010	SMS	A	125.00	0.80	0.80	100.00	Conferences with Ariail; E-mail communications with McLeod regarding signature page for scheduling order; Revise consent scheduling order to reflect agreed upon dates
9016	05/26/2010	SMS	A	125.00	1.25	1.25	158.25	Conferences with Ariail regarding consent scheduling order; E-mail communications with McLeod; Finalize consent scheduling order for review by Judge Buckner; Prepare motion and order information cover sheet; Prepare letter to Judge Buckner; Update pleadings/correspondence
9016	06/01/2010	SMS	A	125.00	0.50	0.50	62.50	E-mail filed scheduling order to McLeod; Update pleadings and correspondence
9016	06/07/2010	SMS	A	125.00	0.80	0.80	100.00	Conferences with Ariail regarding motion to strike to be filed; Prepare motion and order information cover sheet
9016	06/18/2010	SMS	A	125.00	0.60	0.60	75.00	Conferences with Ariail; Finalize motion to strike for filing and service; Draft letter to clerk for filing motion to strike
9016	06/21/2010	SMS	A	125.00	0.75	0.75	93.75	Conference with Ariail; Motion to Strike to clerk for filing with copy to McLeod
9016	06/22/2010	SMS	A	125.00	0.70	0.70	87.50	Conference with Muller regarding letter to Enterprise Bank; Update pleadings with filed motion to strike
9016	06/25/2010	SMS	A	125.00	0.40	0.40	50.00	Conferences with Ariail regarding client documents
9016	06/29/2010	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail regarding noticing deposition of Slivka
9016	07/20/2010	SMS	A	125.00	0.10	0.10	12.50	Conference with Ariail regarding date for deposing Slivka; Prepare notice of deposition, subpoena to appear at deposition/produce documents and certificate of service for Gene Slivka; Draft letter to McLeod forwarding notice of deposition; Conference with Ariail; E-mail Spriggs forwarding deposition notice and letter regarding mediation; E-mail Carolina Realltime forwarding notice of deposition; Update discovery index
9016	07/21/2010	SMS	A	125.00	0.10	0.10	12.50	E-mail communication with Ariail and Fagerstrom regarding Slivka deposition date and date for mediation; Multiple telephone conferences with McLeod's office regarding scheduling of Slivka deposition and confirming date for mediation; Multiple telephone conferences with Duffie's office regarding confirmation of date for mediation; Prepare case caption document for mediator; E-mail amended pleadings and case caption to mediator;
9016	07/22/2010	SMS	A	125.00	1.40	1.40	175.00	Multiple conferences with Ariail
9016	07/26/2010	SMS	A	125.00	2.75	2.75	343.75	Telephone conference with McLeod regarding change to date for Slivka deposition; Prepare amended deposition notice, subpoena and certificate of service; Draft letter
9016	07/27/2010	SMS	A	125.00	1.00	1.00	125.00	

9016	08/02/2010	SMS	A	125.00	0.30	0.30	37.50	to McLeod; E-mail McLeod; E-mail Spriggs with updated schedule; Conferences with Ariail
9016	08/03/2010	SMS	A	125.00	0.10	0.10	12.50	Review Ariail letter to McLeod regarding status of Slivka deposition; Conferences with Ariail
9016	08/04/2010	SMS	A	125.00	1.50	1.50	187.50	Update on status of Slivka deposition Conferences with Ariail regarding status of Slivka deposition, possible motion to compel; Conference with Muller regarding motion to compel production of witness; E-mail Jennifer Bell in McLeod's office forwarding correspondence on status of Slivka deposition; Research on motion to compel production of witness at deposition and review similar motion from closed matter; E-mail Ariail and Muller regarding motion to compel
9016	08/05/2010	SMS	A	125.00	2.25	2.25	281.25	Conferences with Ariail regarding Slivka deposition and drafting motion to compel production of witness; Draft motion to compel; Prepare motion and order information cover sheet; Draft letter to clerk for filing of motion; Review 8/8/10 motions roster for Colleton County
9016	08/06/2010	SMS	A	125.00	1.50	1.50	187.50	Conferences with Ariail regarding motion to be filed; Review additional exhibits for motion to compel production of witness; Finalize motion for filing and service; Instructions to courier on filing and service of motion; Draft subpoena and cover letter to Compass South, Inc. for appraisal documents; Conferences with Ariail; Update pleadings and discovery indexes; Review Colleton County motions roster for 9/8/10 for expedited motion to compel; Review McLeod motion to be relieved
9016	08/09/2010	SMS	A	125.00	1.25	1.25	156.25	Conferences with Ariail; Ariail e-mail on document subpoena to Colleton County planning department; Review McLeod e-mail and letter regarding expedited hearing before Judge Buckner on motion to be relieved; E-mail communication with Judge Buckner's clerk regarding motions hearing and request for our expedited motions to be heard; Review Colleton County roster news regarding continuances
9016	08/10/2010	SMS	A	125.00	1.20	1.20	150.00	Work on document subpoena to Philip Slayter at Colleton County planning and development office for files on Slivka property; Draft letter to Slayter forwarding subpoena; Conferences with Ariail; Prepare for motions hearing on McLeod's motions to be relieved and to extend scheduling order
9016	08/11/2010	SMS	A	125.00	2.00	2.00	250.00	E-mail communication and telephone
9016	08/12/2010	SMS	A	125.00	0.75	0.75	93.75	

9016	08/13/2010	SMS	A	125.00	0.25	0.25	31.25	conferences with Philip Slayter at Colleton County planning department regarding document subpoena for files on Slivka's property; Conferences with Ariail; E-mail communication with Slayter at Colleton County planning department regarding document subpoena; E-mail Ariail regarding contact with Slayter in response to subpoena for files on Slivka's property
9016	08/20/2010	SMS	A	125.00	0.25	0.25	31.25	Review documents produced by Compass South in response to document subpoena
9016	08/23/2010	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail regarding documents produced by Compass South; Letter to Compass South forwarding check for payment of copies of documents produced and federal express shipping of documents requested in subpoena; Conference with Ariail regarding upcoming motions hearings; Review roster information
9016	08/24/2010	SMS	A	125.00	0.80	0.80	100.00	E-mail communication with Weiss at Colleton County clerk's office and Judge Mullen's clerk regarding status of upcoming motions; Review current motions roster and roster news
9016	08/25/2010	SMS	A	125.00	0.25	0.25	31.25	Review signed and filed Order relieving McLeod as counsel for Slivka; E-mail Weiss at Colleton County clerk's office
9016	08/27/2010	SMS	A	125.00	0.30	0.30	37.50	Review motions roster for term on 9/8/10 regarding notations for motions to compel, sanctions and strike; E-mail Weiss at Colleton County clerk's office regarding notations on motions hearing; Conference with Ariail
9016	08/30/2010	SMS	A	125.00	0.60	0.60	75.00	E-mail communications with Weiss in Colleton Co. clerk's office regarding motion to strike; Conference with Ariail
9016	08/31/2010	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding status of upcoming motions hearing; Review motions roster on Colleton Co. site; E-mail communication with Judge Buckner's clerk; E-mail communications with Weiss in Colleton Co. clerk's office; Telephone conference with Judge Buckner's clerk regarding continuation of motion to strike
9016	09/01/2010	SMS	A	125.00	1.00	1.00	125.00	Review e-mail from Judge Buckner's law clerk regarding continuation of motion to strike; Review roster notice for notation on continuation; Conference with Ariail
9016	09/07/2010	SMS	A	125.00	0.25	0.25	31.25	Review public case index regarding potential new counsel for defendant Slivka; Conference with Ariail
9016	09/13/2010	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail regarding document subpoena issued to Colleton County planning department
9016	09/14/2010	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding case/file status
9016	09/16/2010	SMS	A	125.00	0.10	0.10	12.50	

9016	09/21/2010	SMS	A	125.00	0.50	0.50	82.50	Research on Colleton County case records search for any filings regarding new counsel for Silvka; Conference with Ariail
9016	09/29/2010	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail regarding Silvka representation; Review e-mail from Ariail regarding pleadings to be forwarded to Lyles; Review pleadings and update profiles; E-mail Welzig in Lyles' office forwarding pleadings per Ariail's instructions
9016	09/30/2010	SMS	A	125.00	1.75	1.50	187.50	E-mail communication with Welzig in Lyles' office; Telephone conference with Welzig regarding case status and meeting between Lyles and Ariail; Coordinate meeting for Lyles and Ariail; Conferences with Ariail; Review Lyles' notice of appearance; Update pleadings index; Notes for upcoming meeting with Lyles
9016	10/07/2010	SMS	A	125.00	1.75	1.75	218.75	E-mail communications with Lyles' office confirming meeting; Conferences with Ariail; Draft notice of deposition for Silvka, subpoena to appear at deposition and produce documents and certificate of service; Draft letter to Lyles delivering notice of deposition and subpoena; Prepare for Ariail meeting with Lyles
9016	10/08/2010	SMS	A	125.00	1.50	1.50	187.50	Prepare for Ariail meeting with Lyles; Update file - correspondence, pleadings and discovery indexes; Conferences with Ariail; E-mail to Lyles forwarding copies of the notice of deposition and subpoena for Silvka with copy to Spriggs;
9016	10/19/2010	SMS	A	125.00	0.10	0.10	12.50	Review Ariail e-mail to Lyles regarding deposition of Silvka and need to amended scheduling order
9016	10/21/2010	SMS	A	125.00	0.20	0.20	25.00	E-mail communication with Ariail regarding contact with Lyles on deposition dates
9016	11/02/2010	SMS	A	125.00	0.25	0.25	31.25	Review Lyles' letter and 30b6 deposition notice for Spriggs Group; Conferences with Ariail
9016	11/03/2010	SMS	A	125.00	1.50	1.50	187.50	E-mail communications with Ariail and Croft regarding notice of deposition for Spriggs 30b6; Review letters to Lyles and Spriggs; Draft 4th amended notice of deposition, subpoena to appear and certificate of service
9016	11/04/2010	SMS	A	125.00	1.00	1.00	125.00	Conference with Ariail; Finalize 4th amended notice of deposition and subpoena for Silvka; Forward fourth amended notice of deposition and subpoena for Silvka to Lyles via e-mail and US Mail
9016	11/09/2010	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail; Review Spriggs e-mail
9016	11/10/2010	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding depositions and motion to strike; Review Colleton County terms of court
9016	11/11/2010	SMS	A	125.00	0.10	0.10	12.50	Conference with Ariail on upcoming depositions and scheduling motion to

9016	11/12/2010	SMS	A	125.00	0.20	0.20	25.00	strike
9016	11/15/2010	SMS	A	125.00	0.50	0.50	62.50	Review judicial calendar for terms of motions in Colleton County
9016	11/18/2010	SMS	A	125.00	1.80	1.80	225.00	Review motion to strike and previous e-mail communications with Colleton County clerk of court regarding hearing date for motion; E-mail Weiss in Colleton County clerk of court's office regarding motion to strike and new hearing date; Telephone conference with Wetzig in Lyles' office regarding upcoming depositions of Sivka and Spriggs; E-mail communications with Ariail regarding documents to be produced; Telephone conference with Wetzig regarding drawings to be reviewed; Prepare for document review and duplicate CDs of documents to be produced
9016	11/19/2010	SMS	A	125.00	2.00	2.00	250.00	Prepare invoice to Lyles for production of CDs of Spriggs documents; Conferences with Wetzig regarding project drawings, pleadings and discovery indexes; Update discovery index; Coordinate production/copying of pleadings and discovery files for Lyles
9016	11/22/2010	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail regarding upcoming depositions, preparation with client and review of documents by Lyles' office; Telephone conference with Spriggs; E-mail communications with Wetzig in Lyles' office regarding index of drawings; Revise invoice for production of Spriggs documents to Lyles
9016	11/23/2010	SMS	A	125.00	1.75	1.75	218.75	Conferences with Ariail; Telephone conferences with Wetzig in Lyles' office regarding index of drawings; E-mail communications with Wetzig regarding drawings and PST files; Review CD of PST files; Preparation for deposition of Sivka; Telephone conference with Colleton County clerk's office regarding motion to strike
9016	11/29/2010	SMS	A	125.00	1.75	1.75	218.75	Sivka deposition
9016	11/30/2010	SMS	A	125.00	1.25	1.25	156.25	Spriggs' deposition
9016	12/01/2010	SMS	A	125.00	1.00	1.00	125.00	Organize file - post depositions; Review drawings entered as exhibits for depositions of Spriggs and Sivka; Conferences with Ariail
9016	12/07/2010	SMS	A	125.00	0.25	0.25	31.25	E-mail communications with Wetzig regarding drawings submitted as deposition exhibits and date for mediation;
9016	12/10/2010	SMS	A	125.00	0.25	0.25	31.25	E-mail all parties regarding mediation
9016	12/13/2010	SMS	A	125.00	1.75	1.75	218.75	Receipt/review digital transcript of Sivka deposition; Download transcript and exhibits from court reporting repository; Conferences with Ariail regarding upcoming motions hearing and listings for motions to strike and defendant's motion to extend scheduling order; Review motions

9016	12/16/2010	SMS	A	125.00	0.80	0.80	100.00	roster; E-mail Ariail pertinent portions of roster
								Conferences with Ariail regarding rescheduling mediation, upcoming motions hearing, additional motion to file and amending memo in support of motion to strike
9016	12/17/2010	SMS	A	125.00	0.50	0.50	62.50	Telephone conferences with Welzig in Lyles' office; Conferences with Ariail;
								Pull project drawings per Ariail's request
9016	12/20/2010	SMS	A	125.00	1.00	1.00	125.00	E-mail Spriggs regarding mediation; Conferences with Ariail; E-mail communications with Welzig on upcoming motions and roster information; Review Colleton County rosters
9016	12/28/2010	SMS	A	125.00	1.25	1.25	156.25	Review affidavit of Bright Ariail in support of motion to strike affirmative defenses; Finalize affidavit for filing and service; Draft letter to clerk forwarding affidavit for filing; Conference with Ariail; E-mail Lyles forwarding affidavit
9016	01/03/2011	SMS	A	125.00	2.00	2.00	250.00	Update pleadings and correspondence; Conferences with Ariail; Preparation for motions hearing
9016	01/04/2011	SMS	A	125.00	4.00	4.00	500.00	Conferences with Ariail regarding preparation for motions hearing; Telephone conferences and e-mail communications with Lyles regarding motions hearing; Preparation for motions hearing; Telephone conferences and e-mail communications with Judge Buckner's office regarding continuatin of motions hearings; Prepare consent order of continuance, cover sheet and cover letter for continuation of motions; Multiple communications with Judge's law clerk regarding status of motions
9016	01/05/2011	SMS	A	125.00	0.20	0.20	25.00	Conferences with Ariail regarding motions hearing and preparation for upcoming mediation;
9016	01/06/2011	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail regarding mediation preparation;
9016	01/07/2011	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding preparation for mediation
9016	01/10/2011	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail regarding mediation; Review correspondence for McLeod letter on subpoena to bank for use in mediation
9016	01/11/2011	SMS	A	125.00	0.20	0.20	25.00	Follow up on responses to discovery requests issued by Lyles/Silvka; E-mail Spriggs forwarding Silvka discovery requests for review
9016	01/12/2011	SMS	A	125.00	0.20	0.20	25.00	Update pleadings
9016	01/14/2011	SMS	A	125.00	0.75	0.75	93.75	Review Walker letter, invoice for mediation and Proof of ADR form; Update pleadings with Proof of ADR
9016	01/18/2011	SMS	A	125.00	0.50	0.50	62.50	Review February motions roster; Conference with Muller regarding upcoming motion to strike
9016	01/19/2011	SMS	A	125.00	0.20	0.20	25.00	Review Bozeman affidavit
9016	01/24/2011	SMS	A	125.00	0.25	0.25	31.25	Review Lyles letter regarding

								discovery responses and request to depose Bozeman; Conferences with Ariail
9016	01/28/2011	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail regarding upcoming motions hearing; Draft overdue discovery letter to Lyles per Ariail's instructions; E-mail Lyles forwarding Ariail letter on previously requested documents
9016	01/31/2011	SMS	A	125.00	2.50	2.50	312.50	Conferences with Ariail regarding motion for summary judgment to be filed; Finalize motion for summary judgment and Ariail affidavit in support for filing and service; Draft letter to clerk forwarding motion for summary judgment for filing; Review of Colleton County motions roster and roster notes regarding upcoming term of motions and service of affidavits; E-mail Riley in clerk's office regarding additional motion to be heard; E-mail from Lyles' office regarding request for additional documents; E-mail Lyles forwarding motion for summary judgment
9016	02/01/2011	SMS	A	125.00	2.50	2.50	312.50	E-mail communication with Weiss at Colleton County clerk's office regarding plaintiff's motion for summary judgment; Conferences with Ariail regarding upcoming term of motions, information from clerk's office and possible postponement of motions; Telephone conference with Lyles' office regarding defendant's motion for summary judgment; Prepare motion and order information cover sheet; Begin draft letter to Judge Buckner; Conferences with Ariail regarding discovery responses, scheduling order and trial roster; Review March 14, 2011 trial roster; Review SC Judicial site for upcoming terms of court in Colleton County; E-mail Ariail regarding terms of court; Draft amended scheduling order; E-mail Lyles with proposed amended scheduling order
9016	02/14/2011	SMS	A	125.00	1.75	1.75	218.75	Telephone conference with Welzig in Lyles' office regarding copy of Sivka documents; E-mail Ariail; Conference with Ariail regarding Sivka documents and dates for Bozeman deposition; E-mail communication with Welzig in Lyles' office regarding Bozeman and what capacity they want to depose him
9016	02/15/2011	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding scheduling order; E-mail communication with Lyles regarding consent scheduling order
9016	02/16/2011	SMS	A	125.00	0.25	0.25	31.25	E-mail Lyles' office forwarding consent scheduling order and consent order of protection for signature; Telephone conferences with Lyles' office; E-mail communication with
9016	02/18/2011	SMS	A	125.00	0.30	0.30	37.50	

9016	02/22/2011	SMS	A	125.00	0.40	0.40	50.00	Ariail Telephone conference with Welzig in Lyles' office regarding consent scheduling order; Conferences with Ariail regarding contact with Lyles and status of orders to be forwarded to Judge Buckner for consideration; E-mail communications with Lyles' office regarding proposed orders
9016	02/23/2011	SMS	A	125.00	0.40	0.40	50.00	Conferences with Ariail following up on status of consent scheduling order; Telephone conferences and e-mail communications with Lyles' office regarding status of consent scheduling order
9016	02/24/2011	SMS	A	125.00	0.80	0.80	100.00	Draft letter to Judge Buckner forwarding proposed consent scheduling order for consideration; E-mail communication with Judge Buckner's law clerk with copy to Lyles; Prepare motion and order cover sheet for filing of scheduling order; Conferences with Ariail
9016	02/28/2011	SMS	A	125.00	0.20	0.20	25.00	Conferences with Ariail regarding upcoming motions and outstanding discovery requests
9016	03/03/2011	SMS	A	125.00	0.25	0.25	31.25	E-mail communications with Ariail regarding scheduling order; Review Colleton County case records search; E-mail communication with Judge Buckner's clerk regarding scheduling order
9016	03/07/2011	SMS	A	125.00	0.10	0.10	12.50	Conference with Ariail regarding additional documents from Spriggs
9016	03/08/2011	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail; Review letter to Judge Buckner; E-mail Judge Buckner's clerk regarding request on motions to be heard
9016	03/09/2011	SMS	A	125.00	2.50	2.50	312.50	Conference with Ariail regarding discovery responses; Review responses to defendant's discovery requests and finalize for service; Prepare certificate of service and cover letter to Lyles; E-mail Lyles; Conference with Ariail regarding upcoming motions hearing and change of location; Update file
9016	03/10/2011	SMS	A	125.00	0.60	0.60	75.00	Conference with Ariail regarding upcoming motions hearings; Update file in preparation of motions hearings
9016	03/15/2011	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding motions for strike and summary judgment; Review Colleton County motions roster - notation of motions continued
9016	03/23/2011	SMS	A	125.00	0.20	0.20	25.00	E-mail communication with Ariail regarding Colleton County motions roster; Review April 12, 2011 motions roster
9016	03/30/2011	SMS	A	125.00	0.10	0.10	12.50	Conference with Ariail regarding upcoming motions hearing and preparation for motions hearing
9016	04/04/2011	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding preparations for upcoming motions hearing, amended affidavit to be filed and deposition dates for Bozeman; Review Colleton County

9016	04/05/2011	SMS	A	125.00	1.25	1.25	156.25	roster news; Conference with Ariail to prepare for upcoming motions hearing; Review and revise amended affidavit in support of motion for summary judgment; Prepare letter to clerk forwarding amended affidavit for filing; E-mail Lyles forwarding amended affidavit
9016	04/07/2011	SMS	A	125.00	0.30	0.30	37.50	E-mail communication with Welzig in Lyles' office regarding exhibits to Slivka deposition and forward electronic copy of transcript with linked exhibits; Receipt and review of filed amended affidavit of Bright Ariail
9016	04/08/2011	SMS	A	125.00	3.00	3.00	375.00	Prepare for upcoming motions hearing - create notebook of materials per Ariail's instructions; Update pleadings and correspondence
9016	04/11/2011	SMS	A	125.00	2.50	2.50	312.50	Conferences with Ariail; Misc. preparation for motions hearings;
9016	04/12/2011	SMS	A	125.00	0.70	0.70	87.50	Conferences with Ariail regarding motions hearing; Review pleadings and case record search for amended consent scheduling order; Review SC Supreme Court site regarding grievance filings
9016	04/14/2011	SMS	A	125.00	1.25	1.25	156.25	E-mail communications with Ariail regarding filed copy of amended consent scheduling order; Telephone conference with Colleton County clerk's office; Letter to Colleton County requesting clocked copy of amended consent scheduling order; Case records search in Colleton County for foreclosure cases against Gene Slivka per Ariail's request
9016	04/18/2011	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail regarding receipt of filed amended consent scheduling order and form order issued on recent motions hearing; Review form order on motions for summary judgment; Update pleadings index; E-mail Lyles forwarding filed copy of amended consent scheduling order
9016	04/26/2011	SMS	A	125.00	0.25	0.25	31.25	E-mail from Ariail regarding transcript for Glick; Condensed deposition transcript of Spriggs for Glick; Conference with Ariail
9016	04/27/2011	SMS	A	125.00	1.50	1.50	187.50	Update pleadings and discovery and reconstitute file with motions hearing materials; Prepare certificate of service and cover letter for supplemental interrogatory answers naming Glick as expert; Conference with Ariail regarding supplemental discovery responses; Server supplemental interrogatory answer on Lyles
9016	05/09/2011	SMS	A	125.00	0.20	0.20	25.00	Conferences with Ariail regarding case status and discovery to issue
9016	05/11/2011	SMS	A	125.00	0.30	0.30	37.50	Conference with Ariail regarding supplemental discovery to issue to Lyles; Finalize second set of interrogatories and request for production of documents; Prepare

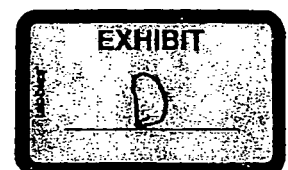
9016	05/12/2011	SMS	A	125.00	0.50	0.50	62.50	certificate of service and cover letter
								Prepare second set of interrogatories and request for production of documents to be served on Lyles; Conference with Ariail; E-mail Lyles
9016	05/25/2011	SMS	A	125.00	0.25	0.25	31.25	Update discovery
9016	06/01/2011	SMS	A	125.00	0.20	0.20	25.00	Conference with Muller regarding reply to counterclaims to amended complaint and need for notice of deposition for Scott Harvey of ABS
9016	06/02/2011	SMS	A	125.00	2.00	2.00	250.00	Conferences with Muller regarding Reply and Harvey deposition to be noticed; Prepare notice of deposition and subpoena duces tecum for Scott Harvey (expert named by Slivka); Prepare letter and certificate of service to Lyles; Update pleadings and discovery indexes; E-mail Lyles forwarding copy of Reply, Harvey deposition notice and subpoena with copy to Spriggs and Glick; E-mail Ariail
9016	06/07/2011	SMS	A	125.00	0.20	0.20	25.00	Receipt/review notice of deposition for Glick; Conference with Ariail
9016	06/08/2011	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding notice of deposition for Glick;
9016	06/09/2011	SMS	A	125.00	0.20	0.20	25.00	E-mail communication with Ariail and Welzig on depositions of Harvey and Glick
9016	06/16/2011	SMS	A	125.00	0.50	0.50	62.50	Conference with Ariail regarding upcoming depositions and discovery responses due from defendant; Draft letter to Lyles requesting responses to discovery requests; E-mail Lyles
9016	06/20/2011	SMS	A	125.00	0.50	0.50	62.50	Conference with Ariail regarding upcoming depositions of Harvey and Glick; Review database for depositions of Scott Harvey in other actions
9016	06/22/2011	SMS	A	125.00	0.75	0.75	93.75	Conference with Ariail regarding trial roster for week of July 18, 2011; Receipt/review filed copy of reply; Letter to Lyles forwarding filed copy of reply; E-mail Lyles
9016	06/23/2011	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail;
9016	06/24/2011	SMS	A	125.00	1.50	1.50	187.50	Update pleadings index; Misc. for depositions of Harvey and Glick; Conferences with Ariail; Review SC Judicial site for upcoming terms of court for August and September, 2011
9016	06/27/2011	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail; E-mail communication with Lyles regarding responses to second discovery requests; Review Colleton County Clerk of Court site and roster news for July 18th term of court; E-mail Polly Riley in Colleton Clerk's office regarding jury list and juror information for July 18th term
9016	06/28/2011	SMS	A	125.00	2.00	2.00	250.00	Conferences with Ariail regarding photos of plantation to produce, motion to compel to draft regarding defendant's lack of discovery responses and miscellaneous items for trial preparation;

9016	06/29/2011	SMS	A	125.00	0.75	0.75	93.75	Letter to Lyles producing photos of plantation; Review Lyles' discovery responses to plaintiff's second set of interrogatories and request for production of documents
9016	06/30/2011	SMS	A	125.00	3.00	3.00	375.00	Conferences with Ariail regarding motion to compel; Review Lyles offer of settlement; E-mail communication with court reporter regarding Harvey and Glick transcripts
9016	07/01/2011	SMS	P	125.00	2.00	2.00	250.00	Attend trial preparation meeting with Ariail, Bruorton, Muller and Dawson; E-mail Judge Seals clerk regarding pre-trial submissions; Spriggs and Sivka transcripts for Bruorton per his instructions; Download Harvey and Glick transcripts with linked exhibits as well as condensed versions for Ariail copies
9016	07/02/2011	SMS	P	125.00	0.50	0.50	62.50	Draft motion to compel discovery responses from Defendant; Conferences with Ariail; Prepare motion cover sheet, cover letter and certificate of service for motion to compel; Review e-mail from Judge Seals clerk regarding pre-trial submissions
9016	07/06/2011	SMS	P	125.00	5.00	5.00	625.00	Update file
9016	07/07/2011	SMS	P	125.00	2.50	2.50	312.50	Trial preparation
9016	07/08/2011	SMS	P	125.00	5.00	5.00	625.00	Trial preparation
9016	07/09/2011	SMS	P	125.00	1.00	1.00	125.00	Trial preparation
9016	07/11/2011	SMS	P	125.00	5.00	5.00	625.00	Trial preparation
9016	07/12/2011	SMS	P	125.00	4.00	4.00	500.00	Trial preparation
9016	07/13/2011	SMS	P	125.00	4.00	4.00	500.00	Trial preparation
9016	07/14/2011	SMS	P	125.00	8.50	8.50	1,062.50	Trial preparation
9016	07/15/2011	SMS	P	125.00	5.00	5.00	625.00	Trial preparation
9016	07/16/2011	SMS	P	125.00	4.50	4.50	562.50	Trial preparation
9016	07/17/2011	SMS	P	125.00	7.50	7.50	937.50	Trial preparation
9016	07/18/2011	SMS	P	125.00	8.00	8.00	1,000.00	Trial (with travel to and from Walterboro)
9016	07/19/2011	SMS	P	125.00	0.50	0.50	62.50	Conferences with Hagood and Muller regarding status of trial; Telephone conference with Ariail; Reimbursement spreadsheet
9016	07/20/2011	SMS	P	125.00	1.00	1.00	125.00	Trial; Coordinate exhibit boards for closing argument
9016	07/21/2011	SMS	P	125.00	0.50	0.50	62.50	Trial - misc regarding exhibit boards for closing argument
Subtotal for Timekeeper SM				Billable	228.05	224.25	28,031.25	Shannon M. Skelly
9016	06/10/2011	CGW	A	125.00	0.10	0.10	12.50	Prepare Reply to Defendant's Counterclaim and file with clerk of court.
9016	07/08/2011	CGW	P	125.00	1.30	1.30	162.50	Trial prep including preparation of document f and research for use in trial and case management system.
Subtotal for Timekeeper CG				Billable	1.40	1.40	175.00	Claire Whitsett
9016	07/07/2011	BD	P	110.00	1.09	1.09	119.90	Legal research re: admissibility of depositions at trial
9018	07/11/2011	BD	P	110.00	0.10	0.10	11.00	Legal research re: 2007 AIA Code of

9016	07/14/2011	BD	P	110.00	1.57	1.57	172.70	Ethics Legal research re: strict construction of SC mechanics' lien statute
9016	07/18/2011	BD	P	110.00	0.70	0.70	77.00	Legal research re: admissibility of other lawsuits into evidence
9016	07/25/2011	BD	P	110.00	0.30	0.30	33.00	Legal research re: pre-judgment interest rate applicable to mechanic's lien
Subtotal for Timekeeper BD				Billable	3.76	3.76	413.60	Brandon Dawson
				Billable	1,015.06	1,013.26	207,639.60	The Spriggs Group, PC, C. Kenneth Spriggs v. Gene Slivka
				Total	1,015.06	1,013.26	207,639.60	

Detail Cost Transaction File List
Rosen, Rosen & Hagood, LLC
Client ID 9016.000 The Spriggs Group, PC, C. Kenneth Spriggs

Client	Trans Date	Trmkr	H P	Rate	Amount	Description
9016	04/21/2009	ABA	A		282.54	Process Service, Inc. service fee per Shannon Skelly.
9016	04/30/2009	ABA	A		0.42	Postage to date
9016	04/30/2009	ABA	A		0.42	Postage to date
9016	04/30/2009	ABA	A		0.42	Postage to date
9016	07/07/2009	ABA	A		150.00	Coleton County Clerk of Court filing fee per Shannon Skelly
9016	07/07/2009	ABA	A	0.22	18.04	In house photocopies to date
9016	07/08/2009	ABA	A		128.50	Edisto Title Services, Inc invoice# 155118B limited title examination per Shannon Skelly
9016	07/15/2009	ABA	A		205.50	Process Service, Inc invoice# 2009002346 service of process per Shannon Skelly
9016	07/15/2009	ABA	A	0.22	1.54	In house photocopies to date
9016	07/16/2009	ABA	A	0.22	0.22	In house photocopies to date
9016	07/20/2009	ABA	A		0.61	Postage to date
9016	07/20/2009	ABA	A		0.44	Postage to date
9016	09/23/2009	ABA	A	0.22	0.44	In house photocopies to date
9016	09/23/2009	ABA	A		0.44	Postage to date
9016	10/08/2009	ABA	A	0.22	3.08	In house photocopies to date
9016	10/20/2009	ABA	A		12.74	West Payment Center invoice# 819194273 computer research charges for September 2009 per Robert Hodges
9016	10/30/2009	ABA	A		205.25	Abstracts Unlimited, Inc statement 10/29/09 professional services per Shannon Skelly
9016	11/09/2009	ABA	A	0.22	6.16	In house photocopies to date
9016	11/09/2009	ABA	A		3.73	Postage to date
9016	11/16/2009	ABA	A		0.61	Postage to date
9016	11/17/2009	ABA	A	0.22	1.98	In house photocopies to date
9016	11/20/2009	ABA	A	0.22	1.76	In house photocopies to date
9016	11/20/2009	ABA	A		6.15	Postage to date
9016	12/07/2009	ABA	A	0.22	0.22	In house photocopies to date
9016	12/07/2009	ABA	A	0.22	0.22	In house photocopies to date
9016	12/07/2009	ABA	A		0.44	Postage to date
9016	12/09/2009	ABA	A		372.42	Pro-Legal Copies, Inc invoice# 13897 Outside copy charges per Shannon Skelly
9016	12/09/2009	ABA	A	0.22	0.66	In house photocopies to date
9016	12/14/2009	ABA	A		0.44	Postage to date
9016	12/14/2009	ABA	A		24.92	West Payment Center invoice# 819581858 computer research charges for November 2009 per Robert Hodges
9016	12/14/2009	ABA	A		1.73	Postage to date
9016	12/28/2009	ABA	A	0.22	0.22	In house photocopies to date
9016	12/28/2009	ABA	A		0.44	Postage to date
9016	01/20/2010	ABA	A	0.22	10.78	In house photocopies to date
9016	01/26/2010	ABA	A		90.30	Pro-Legal Copies, Inc invoice# 106639 Outside copy charges per Bright Atrial
9016	01/26/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	01/26/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	01/27/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	01/27/2010	ABA	A	0.22	1.10	In house photocopies to date
9016	01/27/2010	ABA	A	0.22	5.94	In house photocopies to date
9016	01/28/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	01/28/2010	ABA	A	0.22	1.32	In house photocopies to date
9016	01/28/2010	ABA	A	0.22	0.88	In house photocopies to date
9016	01/28/2010	ABA	A	0.22	0.88	In house photocopies to date
9016	01/28/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	01/29/2010	ABA	A		4.04	Pro-Legal Copies, Inc invoice# 106713 Outside copy charges per Shannon Skelly
9016	01/29/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	01/29/2010	ABA	A	0.22	20.24	In house photocopies to date
9016	01/29/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	02/04/2010	ABA	A	0.5	51.50	Dan Oberski reimbursement for mileage to and from Walterboro on 02/01/10
9016	02/11/2010	ABA	A	0.22	1.98	In house photocopies to date
9016	02/22/2010	ABA	A		166.80	West Payment Center, invoice# 819989171, computer research charges for January 2010 per Robert Hodges.
9016	02/22/2010	ABA	A	0.22	9.02	In house photocopies to date
9016	02/24/2010	ABA	A		4.04	Pro-Legal Copies, Inc invoice# 107423 Outside copy charges per Shannon Skelly
9016	02/24/2010	ABA	A	0.22	3.52	In house photocopies to date
9016	02/24/2010	ABA	A	0.22	19.36	In house photocopies to date.



9016	02/25/2010	ABA	A		14.37	Federal Express, Inv # 9-501-59785 package sent to Bright Atrial by Melinda Cator on 01/27/10
9016	02/25/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	02/28/2010	ABA	A	0.22	14.52	In house photocopies to date
9016	02/28/2010	ABA	A	0.22	10.58	In house photocopies to date
9016	02/28/2010	ABA	A	0.22	0.88	In house photocopies to date
9016	03/01/2010	ABA	A	0.22	1.78	In house photocopies to date
9016	03/11/2010	ABA	A	0.5	51.00	Dan Oberski reimbursement for mileage to Walterboro Court Submittal
9016	03/11/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	03/12/2010	ABA	A		0.44	Postage to date
9016	03/12/2010	ABA	A		11.42	Postage to date
9016	03/15/2010	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	03/15/2010	ABA	A	0.22	3.52	In house photocopies to date
9016	03/16/2010	ABA	A	0.22	7.92	In house photocopies to date
9016	03/16/2010	ABA	A		0.78	Postage to date
9016	03/16/2010	ABA	A		1.73	Postage to date
9016	03/17/2010	ABA	A		89.89	West Payment Center invoice# 820160067 computer research charges for February 2010 per Robert Hodges
9016	03/17/2010	ABA	A	0.22	1.78	In house photocopies to date
9016	03/17/2010	ABA	A		6.15	Postage to date
9016	03/18/2010	ABA	A	0.22	1.54	In house photocopies to date
9016	03/18/2010	ABA	A	0.22	5.06	In house photocopies to date
9016	03/18/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	03/18/2010	ABA	A		3.12	Postage to date
9016	03/22/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	03/22/2010	ABA	A		5.54	Postage to date
9016	03/23/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	03/23/2010	ABA	A		0.44	Postage to date
9016	03/23/2010	ABA	A		5.54	Postage to date
9016	03/29/2010	ABA	A	0.5	14.30	Federal Express, inv # 7-022-59319 package sent to Bright Atrial by Melinda Cato on 02/22/10
9016	04/15/2010	ABA	A		48.00	Bright Atrial reimbursement for mileage to Colleton County Court House on 03/02/2010
9016	04/19/2010	ABA	A	0.22	6.48	West Payment Center invoice# 820344349 computer research charges for March 2010 per Robert Hodges
9016	04/23/2010	ABA	A	0.5	17.60	In house photocopies to date
9016	04/27/2010	ABA	A	0.22	48.00	Timothy J. Muller reimbursement for mileage to Walterboro on 04/21/10
9016	04/27/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	04/27/2010	ABA	A		0.88	In house photocopies to date
9016	04/27/2010	ABA	A		0.88	Postage to date
9016	04/28/2010	ABA	A	0.22	0.88	Postage to date
9016	04/28/2010	ABA	A	0.22	3.96	In house photocopies to date
9016	04/28/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	04/28/2010	ABA	A		23.98	In house photocopies to date
9016	04/28/2010	ABA	A		1.56	Postage to date
9016	04/28/2010	ABA	A		2.58	Postage to date
9016	04/28/2010	ABA	A		14.63	Postage to date
9016	04/30/2010	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	05/04/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	05/04/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	05/04/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	05/04/2010	ABA	A		0.44	Postage to date
9016	05/10/2010	ABA	A	0.22	1.10	In house photocopies to date
9016	05/10/2010	ABA	A		0.61	Postage to date
9016	05/13/2010	ABA	A		13.07	West Payment Center invoice# 820546830 computer research charges for April 2010 per Robert Hodges
9016	05/21/2010	ABA	A	0.22	3.08	In house photocopies to date
9016	05/26/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	05/26/2010	ABA	A	0.22	1.54	In house photocopies to date
9016	05/26/2010	ABA	A		0.44	Postage to date
9016	05/26/2010	ABA	A		1.22	Postage to date
9016	05/28/2010	ABA	A	0.22	3.08	In house photocopies to date
9016	06/11/2010	ABA	A		33.44	West Payment Center invoice no. 820725267 computer research charges for May 2010 per Robert Hodges
9016	06/21/2010	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	06/21/2010	ABA	A	0.22	11.00	In house photocopies to date
9016	06/21/2010	ABA	A		7.37	Postage to date
9016	06/22/2010	ABA	A	0.22	8.58	In house photocopies to date

9016	06/22/2010	ABA	A		0.78	Postage to date
9016	06/22/2010	ABA	A		1.73	Postage to date
9016	06/22/2010	ABA	A		0.78	Postage to date
9016	07/08/2010	ABA	A		966.85	Pro-Legal Copies Inc invoice no. 110751 Outside copy charges per Shannon Skelly
9016	07/13/2010	ABA	A		17.99	West Payment Center invoice no. 820907041 computer research charges for June 2010 per Robert Hodges
9016	07/22/2010	ABA	A	0.22	1.54	In house photocopies to date
9016	07/22/2010	ABA	A		1.05	Postage to date
9016	07/22/2010	ABA	A		1.05	Postage to date
9016	07/27/2010	ABA	A	0.22	1.32	In house photocopies to date
9016	07/27/2010	ABA	A		0.61	Postage to date
9016	08/02/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	08/02/2010	ABA	A		0.44	Postage to date
9016	08/04/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	08/04/2010	ABA	A	0.22	10.56	In house photocopies to date
9016	08/04/2010	ABA	A		0.44	Postage to date
9016	08/05/2010	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	08/05/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	08/05/2010	ABA	A	0.22	0.88	In house photocopies to date
9016	08/06/2010	ABA	A	0.22	1.32	In house photocopies to date
9016	08/06/2010	ABA	A	0.22	21.12	In house photocopies to date
9016	08/06/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	08/06/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	08/09/2010	ABA	A	0.22	1.76	In house photocopies to date
9016	08/09/2010	ABA	A		5.71	Postage to date
9016	08/09/2010	ABA	A		0.61	Postage to date
9016	08/11/2010	ABA	A	0.5	50.50	Dan Oberski reimbursement for mileage to Walterboro on 08/06/10
9016	08/11/2010	ABA	A		25.00	Dan Oberski reimbursement for Colleton County Clerk of Common Pleas filing fee for motion on 08/06/10
9016	08/11/2010	ABA	A	0.22	1.76	In house photocopies to date
9016	08/11/2010	ABA	A		0.44	Postage to date
9016	08/11/2010	ABA	A		5.71	Postage to date
9016	08/12/2010	ABA	A		22.83	West Payment Center invoice no. 821085786 computer research for July 2010 per Robert Hodges
9016	08/23/2010	ABA	A		75.00	Compass South, Inc. copies and fed x of file per Bright Atrial
9016	08/23/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	08/23/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	08/24/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	08/24/2010	ABA	A		0.44	Postage to date
9016	09/09/2010	ABA	A	0.50	49.00	Bright Atrial reimbursement for mileage to Colleton Co. Courthouse on 08/12/10
9016	09/15/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	09/15/2010	ABA	A		0.44	Postage to date
9016	09/23/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	10/07/2010	ABA	A		0.61	Postage to date
9016	10/08/2010	ABA	A	0.22	1.76	In house photocopies to date
9016	10/08/2010	ABA	A	0.22	12.54	In house photocopies to date
9016	10/08/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	10/15/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	10/15/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	10/15/2010	ABA	A		0.61	Postage to date
9016	11/04/2010	ABA	A	0.22	1.54	In house photocopies to date
9016	11/04/2010	ABA	A		0.81	Postage to date
9016	11/23/2010	ABA	A	0.22	11.44	In house photocopies to date
9016	11/23/2010	ABA	A	0.22	5.28	In house photocopies to date
9016	11/24/2010	ABA	A	0.22	29.04	In house photocopies to date
9016	11/24/2010	ABA	A	0.22	1.76	In house photocopies to date
9016	11/24/2010	ABA	A	0.22	1.32	In house photocopies to date
9016	11/29/2010	ABA	A	0.22	6.82	In house photocopies to date
9016	11/29/2010	ABA	A	0.22	3.52	In house photocopies to date
9016	11/29/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	11/30/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	12/09/2010	ABA	A		453.91	Carolina Realtime, LLC invoice no. 5435 deposition transcript per Shannon Skelly
9016	12/13/2010	ABA	A		877.94	Carolina Realtime, LLC invoice no. 5438 deposition transcript per Shannon Skelly
9016	12/17/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	12/20/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	12/20/2010	ABA	A		0.44	Postage to date

9016	12/28/2010	ABA	A	0.22	2.42	In house photocopies to date
9016	12/28/2010	ABA	A	0.22	4.62	In house photocopies to date
9016	12/28/2010	ABA	A		0.70	Postage to date
9016	12/28/2010	ABA	A		0.61	Postage to date
9016	12/28/2010	ABA	A		1.73	Postage to date
9016	01/03/2011	ABA	A	0.22	6.60	In house photocopies to date
9016	01/03/2011	ABA	A	0.22	20.24	In house photocopies to date
9016	01/04/2011	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	01/04/2011	ABA	A	0.22	8.14	In house photocopies to date
9016	01/04/2011	ABA	A	0.22	1.10	In house photocopies to date
9016	01/04/2011	ABA	A	0.22	23.32	In house photocopies to date
9016	01/04/2011	ABA	A		1.05	Postage to date
9016	01/07/2011	ABA	A	0.22	0.44	In house photocopies to date
9016	01/07/2011	ABA	A	0.22	0.66	In house photocopies to date
9016	01/10/2011	ABA	A	0.22	0.22	In house photocopies to date
9016	01/14/2011	ABA	A	0.22	0.44	In house photocopies to date
9016	01/14/2011	ABA	A		0.44	Postage to date
9016	01/18/2011	ABA	A		879.19	Pratt-Thomas Walker, PA 1/2 balance of statement dated 01/11/11 for mediation services per Shannon Skelly
9016	01/18/2011	ABA	A	0.22	0.44	In house photocopies to date
9016	01/26/2011	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	01/27/2011	ABA	A		0.44	Postage to date
9016	01/28/2011	ABA	A	0.22	1.76	In house photocopies to date
9016	01/28/2011	ABA	A	0.22	0.66	In house photocopies to date
9016	01/31/2011	ABA	A	0.22	6.38	In house photocopies to date
9016	01/31/2011	ABA	A		0.61	Postage to date
9016	02/01/2011	ABA	A	0.51	51.51	Kelley Andrews reimbursement for mileage to and from Walterboro Courthouse on 01/31/11
9016	02/01/2011	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	02/02/2011	ABA	A	0.22	1.10	In house photocopies to date
9016	02/02/2011	ABA	A		1.05	Postage to date
9016	02/08/2011	ABA	A		20.83	West Payment Center invoice no. 822226126 computer research charges for January 2011 per Robert Hodges
9016	02/17/2011	ABA	A		150.77	Pro-Legal Copies Inc invoice no. 115758 outside copy charges per Shannon Skelly
9016	02/18/2011	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	02/23/2011	ABA	A	0.22	0.66	In house photocopies to date
9016	02/23/2011	ABA	A		0.44	Postage to date
9016	02/24/2011	ABA	A	0.22	1.10	In house photocopies to date
9016	02/24/2011	ABA	A		0.61	Postage to date
9016	02/25/2011	ABA	A	0.22	1.32	In house photocopies to date
9016	02/25/2011	ABA	A		0.61	Postage to date
9016	03/08/2011	ABA	A		1.39	Postage to date
9016	03/09/2011	ABA	A	0.22	4.40	In house photocopies to date
9016	04/05/2011	ABA	A	0.22	11.66	In house photocopies to date
9016	04/05/2011	ABA	A		4.24	Postage to date
9016	04/07/2011	ABA	A	0.22	7.48	In house photocopies to date
9016	04/08/2011	ABA	A	0.22	26.62	In house photocopies to date
9016	04/08/2011	ABA	A	0.22	25.96	In house photocopies to date
9016	04/08/2011	ABA	A	0.22	12.32	In house photocopies to date
9016	04/11/2011	ABA	A	0.22	1.98	In house photocopies to date
9016	04/11/2011	ABA	A	0.22	10.78	In house photocopies to date
9016	04/11/2011	ABA	A	0.22	24.86	In house photocopies to date
9016	04/11/2011	ABA	A	0.22	5.50	In house photocopies to date
9016	04/13/2011	ABA	A		214.28	West Payment Center invoice no. 822571304 computer research charges for March 2011 per Robert Hodges
9016	04/14/2011	ABA	A	0.22	0.22	In house photocopies to date
9016	04/14/2011	ABA	A		0.44	Postage to date
9016	04/19/2011	ABA	A	0.51	52.02	Bright Atrial reimbursement for mileage to and from Colleton County Courthouse on 04/12/11
9016	04/27/2011	ABA	A	0.22	0.68	In house photocopies to date
9016	04/27/2011	ABA	A		0.44	Postage to date
9016	05/12/2011	ABA	A	0.22	1.76	In house photocopies/scans to date
9016	05/12/2011	ABA	A		0.64	Postage to date
9016	05/13/2011	ABA	A		158.83	West Payment Center invoice no. 82256764 computer research charges during April 2011 per Robert Hodges
9016	06/02/2011	ABA	A		0.64	Postage to date
9016	06/10/2011	ABA	A		1.72	Postage to date
9016	06/13/2011	ABA	A		16.87	West Payment Center invoice no. 8229403989 computer

9016	06/16/2011	ABA	A	0.22	research charges for May 2011 per Robert Hodges
9016	06/16/2011	ABA	A		0.22 In house photocopies/scans to date
9016	06/22/2011	ABA	A		0.44 Postage to date
					0.20 Sally Graham reimbursement for postage at USPS on 06/22/11
9016	06/22/2011	ABA	A	0.22	0.88 In house photocopies/scans to date
9016	06/22/2011	ABA	A		0.44 Postage to date
9016	06/23/2011	ABA	A	0.22	10.56 In house photocopies/scans to date
9016	06/24/2011	ABA	A	0.22	10.56 In house photocopies/scans to date
9016	06/24/2011	ABA	A	0.22	1.98 In house photocopies/scans to date
9016	06/24/2011	ABA	A	0.22	15.84 In house photocopies/scans to date
9016	06/24/2011	ABA	A	0.22	0.88 In house photocopies/scans to date
9016	06/24/2011	ABA	A	0.22	1.54 In house photocopies/scans to date
9016	06/28/2011	ABA	A	0.50	1.00 In house color photocopies to date
9016	06/28/2011	ABA	A		0.44 Postage to date
9016	06/29/2011	ABA	A	0.22	0.66 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	1.98 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	1.76 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	1.10 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	0.66 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	2.20 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	1.98 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	2.20 In house photocopies/scans to date
9016	06/30/2011	ABA	A		790.52 Carolina Realtime, LLC invoice no. 5709 for digital transcript of Harvey and Glick depositions per Shannon Skelly
9016	06/30/2011	ABA	A	0.22	14.08 In house photocopies/scans to date
9016	07/01/2011	ABA	P		25.00 Colleton County Clerk of Court filing fee per Shannon Skelly
9016	07/01/2011	ABA	P	0.22	1.10 In house photocopies/scans to date
9016	07/01/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/01/2011	ABA	P	0.22	14.52 In house photocopies/scans to date
9016	07/01/2011	ABA	P		1.48 Postage to date
9016	07/01/2011	ABA	P		2.48 Postage to date
9016	07/06/2011	ABA	P	0.22	1.10 In house photocopies/scans to date
9016	07/06/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/07/2011	ABA	P		35.00 Colleton County Clerk of Court charge for jury list, return information and copy fee per Shannon Skelly
9016	07/08/2011	ABA	P	0.22	33.22 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.88 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	1.10 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	2.20 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	1.32 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	1.32 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.88 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.44 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.44 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	2.42 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	1.32 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	1.10 In house photocopies/scans to date
9016	07/09/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/09/2011	ABA	P	0.5	1.00 In house color photocopies to date
9016	07/09/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/09/2011	ABA	P	0.22	0.44 In house photocopies/scans to date
9016	07/11/2011	ABA	P		50.00 Colleton County Clerk of Court filing fee per Shannon Skelly
9016	07/11/2011	ABA	P	0.22	2.64 In house photocopies/scans to date
9016	07/11/2011	ABA	P	0.22	5.72 In house photocopies/scans to date
9016	07/11/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/11/2011	ABA	P		2.96 Postage to date
9016	07/12/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/12/2011	ABA	P	0.22	4.18 In house photocopies/scans to date
9016	07/12/2011	ABA	P	0.22	3.08 In house photocopies/scans to date
9016	07/13/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/13/2011	ABA	P	0.22	0.88 In house photocopies/scans to date
9016	07/13/2011	ABA	P	0.22	0.44 In house photocopies/scans to date
9016	07/14/2011	ABA	P		25.00 Colleton County Clerk of Court filing fee per Shannon Skelly
9016	07/14/2011	ABA	P		10.44 Pro-Legal Copies Inc invoice no. 119041 outside copy

9016	07/14/2011	ABA	P	0.22	charges per Bright Atrial
9016	07/14/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	1.32 In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	3.52 In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	0.88 In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	6.60 In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	2.20 In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	1.76 In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	12.10 In house photocopies/scans to date
9016	07/15/2011	ABA	P	0.22	39.16 In house photocopies/scans to date
9016	07/15/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/15/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/15/2011	ABA	P	0.22	6.60 In house photocopies/scans to date
9016	07/16/2011	ABA	P	0.22	8.80 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	22.44 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	18.26 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.5	5.00 In house color photocopies to date
9016	07/17/2011	ABA	P	0.22	60.28 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	7.70 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	27.72 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	49.50 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	0.88 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	1.32 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	2.86 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	2.64 In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	1.32 In house photocopies/scans to date
9016	07/18/2011	ABA	P	0.22	29.04 In house photocopies/scans to date
9016	07/19/2011	ABA	P	0.555	629.30 Pro-Legal Copies Inc invoice no. 119091 outside copy charges per Shannon Skelly
9016	07/19/2011	ABA	P		59.22 Shannon Skelly reimbursement for mileage to and from Walterboro on 07/18/11
9016	07/20/2011	ABA	P		25.00 Shannon Skelly reimbursement for Colleton County Clerk of Court motion filing fee on 07/18/11
9016	07/21/2011	ABA	P		25.60 West Payment Center invoice no. 823052669 computer research charges for June 2011 per Robert Hodges
9016	07/25/2011	ABA	P	0.555	260.40 Pro-Legal Copies Inc invoice no. 119204 professional services per Shannon Skelly
9016	07/25/2011	ABA	P	0.555	114.33 Chip Brurton reimbursement for mileage to and from Walterboro for trial and to and from courthouse from hotel on 07/18/11 - 07/22/11
9016	07/25/2011	ABA	P	0.555	67.71 Bright Atrial reimbursement for mileage to and from Colleton County Courthouse and hotel on 07/18/2011 - 07/22/2011
9016	07/25/2011	ABA	P		400.00 Cash - Quality Inn conference room for trial per Bright Atrial on 07/22/2011
9016	07/26/2011	ABA	P		1,101.66 American Express, Bright Atrial reimbursement for lodging expenses during trial at Quality Inn from 07/18/11 - 07/21/2011
		Billable		11,100.84	The Spriggs Group, PC, C. Kenneth Spriggs v. Gene Sivka
		Billable		11,100.84	GRAND TOTALS

MYLES I. GLICK, AIA ARCHITECTURAL CONSULTANT

Tax ID #26-0472288

To: Ms. Bright Ariail, Esq.
Attorney
Rosen, Rosen & Hagood, LLC
134 Meeting Street
P.O. Box 893
Charleston, South Carolina, 29402-0893

July 23, 2011

Re: The Spriggs Group, PC vs. Gene R. Slivka
Colleton County, South Carolina

Due at this time:

Attorney Phone Calls / emails	1.0
Initial Attorney Meeting to review case	2.0
Phones calls with Mr. Spriggs (3)	1.0
File Research (depositions etc.)	4.0
Deposition Preparation	3.5
Deposition and attendance at Harvey deposition	5.0
Trial preparation with Attorney	1.5
Trial preparation	4.0

Trial (Two day charge)

22 Hours x \$325/ hour = \$7,150.00
\$6,000.00

Thank you,

Due \$13,150.00

Please remit to: Myles Glick Architect LLC
66 Rebellion Road
Charleston, SC, 29407

66 Rebellion Road, Charleston, South Carolina 29407 843-696-2264



Coastal Digital

Reprographics & Design, Inc.
P.O. Box 30567
Savannah, GA. 31410

Pl / add 3/19/10. At 11:00

RECEIVED

JAN 04 2010

THE SPRIGGS GROUP, P.C.

Invoice

Date	Invoice #
12/28/2009	32155

Bill To
SPRIGGS GROUP P.O. BOX 10062 SAVANNAH, GA 31412

Ship To
SPRIGGS GROUP 545 E. YORK ST. SAVANNAH, GA 31410

P.O. Number	Rep	DATE	Ship Via	Contact	Project
06094	D	12/28/2009	DELIVERY	ANDY	
Item Code	Description	Quantity	Price Each	Amount	
XB6	24 X 36 BOND PRINT	620	1.50	930.00T	
XB3	18 X 24 BOND PRINT	289	0.75	216.75T	
QC1	8.5 X 11 COPY	58	0.10	5.80T	
QC3	11 X 17 COPY	9	0.20	1.80T	
XB9	30 X 42 BOND PRINT	5	2.25	11.25T	
XB2	2 SQ/FT XEROX BOND	5	0.50	2.50T	
				Sales Tax (7.0%)	\$81.77
				Total	\$1,249.87

POOLER: Tower Plaza
1057 Highway 80 East @ Coleman Blvd.
Pooler, GA 31322
912-330-9900 or 912-233-4400
Please DO NOT FORGET, we will still offer
pick-up/delivery to downtown customers!

EXHIBIT
F



BEAUFORT SURVEYING, INC.

1613 Paris Ave.

Port Royal, SC 29935

(843) 524-3261

INVOICE

DATE	INVOICE #
10/15/2009	13203RES

ATTENTION
THE SPRIGGS GROUP, PC 545 EAST YORK STREET SAVANNAH, GA 31412-0262

*pd 26 Oct 2009
12560*

P. O. NO.	TERMS	DUE DATE
	Due on receipt	10/15/2009

DESCRIPTION	AMOUNT
RESEARCH GENE SLIVKA FILE TO GET RELATIONSHIP OF HOUSE AND 5.0 ACRES PARCEL	150.00
JULIANTON PLANTATION COLLETON COUNTY	
It's been a pleasure working with you!	
Total	\$150.00

11/16/09



BEAUFORT SURVEYING, INC.

1613 Paris Ave.
Port Royal, SC 29935
(843) 524-3261

INVOICE

DATE	INVOICE #
11/11/2009	13203ADD

ATTENTION
THE SPRIGGS GROUP, PC 545 EAST YORK STREET SAVANNAH, GA 31412-0262

RECEIVED

NOV 13 2009

THE SPRIGGS GROUP, P.C.

P. O. NO.	TERMS	DUE DATE
	Due on receipt	11/11/2009

DESCRIPTION	AMOUNT
SKETCH OF JULIANTON PLANTATION	150.00
GENE SLIVKA COLLETON COUNTY	

THE SPRIGGS GROUP, P.C.
545 E. YORK STREET
SAVANNAH, GA 31401

Wachovia
Wachovia Bank, N.A.
wachovia.com
64-22810

12579

Date 16 Nov 2009

Pay to the order of: Beaufort Surveying Inc.
\$150.00
One Hundred and Fifty 00/100 DOLLARS

Memo Slivka, Colleton County

061000227120001878912661 2579

C. Kuntz

It's been a pleasure working with you.

Total \$150.00

Colleton County Assessor's Office
 Harrelson Building Room 307 · 31 Klein Street
 PO Box 1166 · Walterboro, SC 29488
 Ph (843)549-1213 · Fax (843)549-6185
email: wcraven@colletoncounty.org

Receipt

Customer
Spriggs Kenneth

Date	10/5/2009
Sale No.	3161
Rep	WOC
Payment Method	Check
Check No.	2153
GIS Invoice No	1761

Item	Description	Tax Map Number	Qty	Rate	Amount
Color 17x22 Misc	Color 17x22 GIS	Scanning to digital	10 10	7.00 5.00	70.00 50.00

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

THE SPRIGGS GROUP, P.C.

Plaintiffs,

vs.

GENE R. SLIVKA,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-15-0595

) NOTICE OF MOTION AND
) MOTION FOR JUDGMENT
) NOTWITHSTANDING THE
) VERDICT AND/OR FOR A
) NEW TRIAL ABSOLUTE OR
) *NISI REMITTIUR*

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 AUG - 1 PM 5:04

TO: THE HONORABLE WILLIAM H. SEALS, JR., PRESIDING JUDGE

PLEASE TAKE NOTICE the Defendant Gene R. Slivka, by and through his undersigned attorneys, will move before this Honorable Court, ten (10) days after the date hereof, or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 50, *SCRCP*, granting a judgment notwithstanding the verdict and/or in the alternative, for a new trial pursuant to *SCRCP* 50(b)¹ and *SCRCP* 59. Under Rule 59(a) a new trial may be granted on all or part of the issues in an action which has been tried for a jury for any of the reasons for which new trials have been granted in actions at law in the courts of the State.

1. The Defendant is entitled to a judgment notwithstanding the verdict as to Plaintiff's claims pursuant to S.C. Code Ann. § 27-1-15 as the evidence was undisputed that an investigation had taken place into the Plaintiff's claim and the Defendant did not unreasonably refuse to pay the claim upon the demand.

¹Under *SCRCP* 50(b), whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A Party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party may move for a judgment in accordance with a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed.

A trial court should grant JNOV when the evidence is insufficient to support the verdict. *Helms Realty, Inc., v. Gibson-wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (S.Ct., 2005). In deciding motions for a directed verdict or judgment notwithstanding the verdict, the trial judge must consider the evidence in the light most favorable to the nonmoving party. *Dunsil v. E.M. Jones Chevrolet Co.*, 268 S.C. 291, 233 S.E.2d 101 (1977). However, where only one reasonable inference can be drawn from the evidence, the motion must be granted. *Young v. Tide Craft Inc.*, 270 S.C. 453, 242 S.E.2d 671 (1978).

S.C. Code Ann. § 27-1-15 provides:

Whenever a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within forty-five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand.

- a. **At the time the Plaintiff made its demand under §27-1-15, litigation was primarily between the parties and investigation of the merits of all claims was underway by way of discovery in that lawsuit, the Defendant is entitled to judgment as a matter of law despite the fact that he did not prevail.**

Where a Defendant has made a fair and reasonable investigation into a Plaintiff's claims under the statute, he is not liable for attorneys fees pursuant to *S.C. Code Ann. § 27-1-15*, even if the court ultimately finds against the Defendant and the investigation had taken place prior to the demand pursuant to the statute. *Carolina Steel Corporation v. Palmetto Bridge Constructors*, 444 F.Supp.2d 577 (D.S.C. 2006). In *Carolina Steel*, the Defendant made an investigation of the claims

of the Plaintiff prior to Plaintiff's demand under the statute and paid what they considered valid. The Defendant did not prevail on all of the issues raised with the Plaintiff's claims, but the court found that because an investigation had occurred and a dispute existed, no attorneys fees pursuant to the statute would be awarded.

Litigation between the parties was officially commenced by the filing of the Plaintiff's mechanic's lien on April 13, 2009. A cash bond was posted by the Defendant on May 12, 2009, and Plaintiff's Complaint was filed on July 8, 2009. In his Answer, the Defendant denied liability to Plaintiff, asserted numerous affirmative defenses, including those related to the Plaintiff's non-conformance with the mechanic's lien statute, and asserted counterclaims seeking to recover damages from the Plaintiff. Plaintiff's demand under § 27-1-15 occurred on March 15, 2010, while the litigation, and discovery, was ongoing.

Mr. Slivka testified at trial that when he received the demand he had already hired an attorney to defend the pending litigation, was incurring costs associated with the bond and had asserted compulsory counterclaims against the Plaintiff. His attorney and the Plaintiff's counsel were actively involved in discovery which he testified was his investigation, which was the proper form of investigation between two parties involved active litigation. The Plaintiff selected the form of investigations in this matter when it initiated formal litigation prior to making a demand under the statute.

Additionally, a genuine dispute existed between the parties as to the merits of their respective claims and any amounts owed. Mr. Slivka had pending counterclaims including costs to correct and complete the Defendant's work as well as costs associated with the encumbrance of his property and attorney's fees, all of which were recoverable against the Plaintiff. These disputes continued

throughout the litigation and Plaintiff's motion for summary judgment was denied by Judge Kinard by Order dated April 12, 2011. Even, at trial, claims between the parties were recognized by the court as valid, and involving questions of fact, when it denied Plaintiff's motion for directed verdict and submitted not only the Plaintiff's claims to the jury, but also the Defendants' counterclaims.

Plaintiff argues that even with the previous claim, Slivka acknowledged he owed the other half of the agreed upon fee. This is erroneous as the opposing claims meant that, under appropriate circumstance, set off would apply, and Slivka's obligations to Spriggs would only be finally determined when the court and the trier of fact decided all pending claims between the parties.²

The fact that the Defendant did not prevail does not entitle the Plaintiff to recovery under the statute. Even the jury found that a valid dispute existed as to the amount owed to the Plaintiff when it found a verdict in the amount of \$173,990.53, an amount less than the \$199,919.53 demanded by the Plaintiff in its letter issued pursuant to Section 27-1-15 and the amount set forth in the Plaintiff's lien. As the law clearly states that a party is not entitled to recovery where an investigation is made and a valid dispute exists, Defendant is entitled to judgment as a matter of law as to § 27-1-15.

- b. **Defendant is entitled to judgment as a matter of law because he had paid both the contested and uncontested fees into the court pursuant to the mechanic's lien statute at the time the Plaintiff made its demand under S.C. Code Ann. § 27-1-15.**

The statute provides for recovery of attorney's fees and interest only if the "person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion." S.C. Code Ann. § 27-1-15 (emphasis added). In this matter the Plaintiff chose the mechanic's lien

²A setoff...becomes a part of a single controversy between the parties, requiring only *one verdict and one judgment* according to the facts. Generally, if an established setoff or counterclaim less than the plaintiff's demand, the plaintiff has a judgment for the residue only. 20 A.Jur.2d *Counterclaim, Recoupment & Setoff* § 88 (1995).

statute as his method of recovery. On May 15, 2009, the Plaintiff recorded a Notice of Mechanic's Lien in the amount of \$198,834.53 encumbering the Defendant's property. To release the mechanic's lien on his property and in an effort to mitigate his damages as a result of an untimely lien, the Defendant posted a cash bond with the Clerk of Court in the amount of \$265,012.71 on May 12, 2009 pursuant to §29-5-10 of the South Carolina Mechanic's Lien Statute. At this time, Mr. Slivka was not only deprived of the use of this money, but was incurring the cost of interest at the annual rate of six percent (6%). At no time prior to filing the mechanic's lien, or the payment of the cash bond, did Plaintiff make a demand for payment pursuant to the procedures outlined in *S.C. Code Ann.* § 27-1-15. It was only ten months after Mr. Slivka had made the payment as a cash bond did Plaintiff's counsel make the statutory demand.

Nothing in *S.C. Code Ann.* § 27-1-15 can be read to require Mr. Slivka to pay any sum he deemed "valid" twice. To the contrary, the statute specifically only allows recovery of attorneys fees when a party **unreasonably** refuses to pay. To require Mr. Slivka to pay even the portion of the claim which he did admit was due, specifically the \$76,210.00 balance of the fee would not have been reasonable, as at the time the demand was made Mr. Slivka had claims pending against the Plaintiff to which the doctrine of setoff would apply.

Additionally Mr. Slivka made an offer to pay \$100,000.00 pursuant to the mechanic's lien statute. As both payment and offers to pay had been made pursuant to the statutory course initially selected by the Plaintiff, the Defendant is entitled to judgment as a matter of law on the Plaintiff's claims under § 27-1-15.

2. **Defendant is entitled to judgment notwithstanding the verdict on Plaintiff's claim under the mechanic's lien statute as there was no evidence that Plaintiff performed**

work which entitled it to a lien within ninety days prior to filing the lien that is the subject of this action.

The work that was the subject of the invoices specified in the Plaintiff's mechanic's lien concluded in December, 2008, more than ninety days prior to the filing of the mechanic's lien on April 13, 2009. Under *S.C. Code Ann. § 29-5-90* (1976, as amended), a mechanic's lien is dissolved unless person filing the lien does so within ninety days after he ceases to labor on, or furnish labor or materials for, such building or structure. "When a party files a notice of lien under Section 29-5-90 he is asserting that at a time within ninety days before the notice he has performed **work for which he is entitled to assert a lien.**" *Preferred Savings and Loan Association, Inc., v. Royal Garden Resort, Inc.*, 295 S.C. 268, 272, 368 S.E.2d 78, 81 (Ct. App. 1988). Plaintiff contends that contract administration work performed in January 2009 satisfies the requirement of work for which it is entitled to assert a lien performed within ninety days of filing its lien. This claim is not supported by the mechanic's lien statute.

Section 29-5-10 states as follows:

A person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate or the boring and equipping of wells, by virtue of an agreement with, or by consent of, the owner of the building or structure, or a person having authority from, or rightfully acting for, the owner in procuring or furnishing the labor or materials shall have a lien upon the building or structure and upon the interest of the owner of the building or structure in the lot of land upon which it is situated to secure the payment of the debt due to him....As used in this section, labor performed or furnished in the erection, alteration, or repair of any building or structure upon any real estate includes the preparation of plans, specifications, and design drawings. (Emphasis added.)

"A mechanic's lien exists only by virtue of statute; therefore, one's right to a mechanic's lien is wholly dependent upon the language of the statute creating it." *Clo-Car Trucking Co., Inc. v.*

Cliffure Estates of South Carolina, Inc., 282 S.C. 573, 320 S.E.2d 51 (Ct.App.1984). "We are not at liberty to depart from the plain meaning of the mechanic lien's statutory language." *Id.* As noted by the *Clo-Car* court, "statutory liens, then, will not be extended by us to permit a claim not specified by the Statute." *Id.* Our Supreme Court has consistently limited recovery under the mechanic's lien statute to work specifically authorized by the statute. *George A.Z. Johnson, JR., Inc. v. Barnhill*, 279 S.C. 242, 306 S.E.2d 216 (S.Ct. 1983)(Court rejected a surveyor's claim that the work of surveying and laying out lines in a subdivision was not a basis for the filing of a mechanic's lien against the property as such services were not specified in the statute).

With regard to design professionals, the legislature specifically included, in the definition of "labor," "the preparation of plans, specifications, and design drawings" It is undisputed that Plaintiff's work in January, 2009, was not of that nature. Instead, the Plaintiff contends that contract administration work that he performed in January, 2009, is work for which he may assert a lien even though the statute clearly does not include, in its definition of "labor" contract administration or other various tasks a design professional may perform. Plaintiff's counsel argued that it only "makes sense that contract administration would be included as work entitling a design professional to a lien. Had the legislature decided to include other types of work that a design professional may perform in its definition of "labor" it could have done so. It did not and the Plaintiff asks this Court to do what it cannot do, which is to expand the statute beyond its plain language. It is not within the authority of this Court to expand the lien to include work not spelled out in the statute. Therefore, the Plaintiff's lien was not timely and the Defendant is entitled to judgment as a matter of law.

3. The Defendant is entitled to a judgment notwithstanding the verdict or in the alternative a new trial because it was not proper to submit the question of whether contract administration is included in the mechanic's lien statute to the jury.

The issue of interpretation of a statute is a question of law for the court. *State v. Sweat*, 379 S.C. 367, 665 S.E.2d (645 S.C.App., 2008). In this case the jury was asked to interpret whether contract administration by a design professional is included in the definition of "labor" under § 29-5-90. As discussed hereinabove, this is a question of statutory interpretation requiring the application of the rules of statutory construction and was therefore not a question for the jury.

4. The Plaintiff is entitled to a new trial because the Court failed to charge Defendant's Request to Charge Number 6.

The Defendant requested that the following be charged to the jury in its Request to Charge Number 6 (attached as Exhibit "A" to this motion):

Where a Defendant has made a fair and reasonable investigation into a Plaintiff's claims under the statute, he is not liable for attorneys fees pursuant to S.C. Code Ann. § 27-1-15, even if the court ultimately finds against the Defendant and the investigation had taken place prior to the demand pursuant to the statute. *Carolina Steel Corporation v. Palmetto Bridge Constructors*, 444 F.Supp.2d 577 (D.S.C. 2006).

A trial judge is required to charge only the current and correct law of South Carolina; ordinarily a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence. *Fernanders v. Marks Const. Of S.C., Inc.*, 330 S.C. 2470, 499 S.E.2d 509 (S.C. App. 1998) citing *Brown v. Smalls*, 325 S.C. 547, 554-55, 481 S.E.2d 444, 448 (Ct.App. 1998). To warrant reversal for refusal to give a requested charge a party must show both error and prejudice. *Cohens v. Atkins*, 333 S.C. 345, 509 S.E.2d 286 (S.C. App. 1998).

While the Defendant contends that this cause of action should not have been submitted to the jury because a directed verdict was appropriate relevant to this claim, for reasons set forth previously, the Court should have given the requested charge.

The Court recognized that the requested charge included the current and correct law of South Carolina and is clearly applicable to the facts and issues. By claiming only the statute, and not the interpretation and explanation of it to the jury, the Court adjudicates its duty to interpret the statute. The requested charge, which addresses the timing of the investigation made by a Defendant pursuant to the statute, as well as explaining that Defendant may not have violated the statute simply because the jury did not find in his favor, is central to the core issues of this case. As set forth hereinabove, the facts of the case warranted the charge. Defendant is therefore entitled to new trial absolute as to the Plaintiff's claim pursuant to *S.C. Code Ann. 27-1-10*.

5. The Plaintiff is entitled to a new trial absolute pursuant to the Thirteenth Juror Doctrine.

Under the thirteenth juror doctrine a trial court may grant a new trial if the judge determines the jury's verdict is "contrary to the preponderance of the evidence." *R.C. Mcentire v. Mooreguard Exterminating Servs., Inc.*, 353 S.C. 629, 633, 578 S.E.2d 746, 748 (2003). The trial court's decision to grant or deny a new trial as the thirteenth juror is very broad. "As often has been said, the trial judge is the thirteenth juror, possessing the veto power to the Nth degree." *Worrell v. S.C. Power Co.*, 186 S.C. 306, 313-14, 195 S.E. 638, 641 (1938). The trial court sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case. *Youmans ex rel. Elmore v. South Carolina Dept. of Transp.*, 280 S.C. 263, 272 (Ct.Ap. 2008)(citing *Graham v.*

Whitaker, 282 S.C. 393, 321 S.E.2d 40(1984). Because the jury's verdict is contrary to the evidence presented at trial, the Defendant is entitled to a new trial.

- a. The jury's verdict is contrary to the preponderance of the evidence as to the Plaintiff's claim for breach of contract (and therefore all of Plaintiff's causes of action), as the Plaintiff did not comply with the duty of good faith and fair dealing implied in its contract.

There exists in every contract an unspoken, but legally enforceable, promise of good faith and fair dealing. *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 473 S.E.2d 52 (1996). Fraud, misrepresentation and bad faith in performance of one's contractual duties would give rise to a violation of the implied obligation of good faith and fair dealing. *U.S. for Use and Benefit of Williams Elec. Co., Inc. v. Metric Constructors, Inc.*, 325 S.C. 129, 480 S.E.2d 477 (1997). It is an elementary principle that one who seeks to recover damages for the breach of a contract, to which he was a party, must show that the contract has been performed on his part, or at least that he was at the appropriate time able, ready and willing so to perform it. *Parks v. Lyons*, 219 S.C. 40, 64 S.E.2d 123 (S.Ct. 1951).

It is undisputed that Plaintiff did not comply with the covenant of good faith and fair dealing in its billing practices with the Defendant. The testimony of the Plaintiff's own employee, Andy Bozeman, as well as that of the Plaintiff's expert, Myles Glick, and the Defendant's expert, Scott Harvey, established that it was inappropriate for the Spriggs Group to bill the Plaintiff for the production of documents that The Spriggs Group did not produce. Yet, it was Ken Spriggs' own testimony that Invoice # 2 include charges for sheets prepared by engineering consultants that The Spriggs Group admits it did not prepare.³ Even though the drawings were prepared by engineers,

³These charges should have been billed as a line item, as proposed by Spriggs in his November 26, 2006 agreement.

Spriggs billed them as, and at the same rate at which he billed sheets prepared by the Spriggs Group themselves. Not only was this unethical, but Mr. Glick also testified that the cost to produce engineering drawings was less than the cost to produce architectural drawings, meaning that Spriggs over-billed for these drawings. Additionally, Spriggs' Invoice #2 included fees for consultants in the amount of \$20,535. Thus, The Spriggs Group billed twice for drawings prepared by consultants, billing it as both their own work and that of a consultant.

Additionally, the Plaintiff clearly admitted that it did not inform the Defendant over a period of two years that any services performed over a two year period would be billed to him as additional services. The Plaintiff did not obtain any approval from the Defendant to perform any "additional services." The Defendant's expert, Scott Harvey, testified that prior to billing for additional services, an architect is required, by the applicable standard of care and by the AIA, to advise the client that the architect was performing additional services and to obtain the client's consent. Mr. Bozeman and Mr. Glick agreed that this was good practice. It is undisputed that The Spriggs Group failed to do this, thereby breaching the obligation of good faith and fair dealing as a matter of law. For the foregoing reasons, the evidence is uncontroverted that the Plaintiff failed to comply with the implied covenant of good faith and fair dealing.

b. The jury's verdict under S.C. Code Ann. § 27-1-15 is contrary to the evidence.

Where a Defendant has made a fair and reasonable investigation into a Plaintiff's claims under the statute, he is not liable for attorneys fees pursuant to S.C. Code Ann. § 27-1-15. *Carolina Steel Corporation v. Palmetto Bridge Constructors*, 444 F.Supp.2d 577 (D.S.C. 2006) For the reasons set forth in section 1 of this motion (incorporated by reference herein), the jury's finding under this statute is contrary to the evidence. There is no evidence that the Plaintiff failed to

investigate the claim or that he unreasonably failed to pay it. The fact that the Plaintiff's demand under the statute was made after the Plaintiff had initiated litigation and required the Defendant had posted a cash bond for a mechanic's lien, together with the jury's verdict in the amount of \$173,990.53, an amount less than the amount invoiced by the Plaintiff and less than the amount asserted in the Plaintiff's mechanic's lien, establishes that the Defendant did not unreasonably fail to investigate and/or pay the uncontested portion of the Plaintiff's claim.

c. **The jury's finding that the Plaintiff's lien was timely is contrary to the evidence.**

As discussed herein above, for a mechanic's lien to be timely the claimant must have performed work for which he is entitled to assert a lien within ninety days of when he files his lien." *Preferred Savings and Loan Association, Inc., V. Royal Garden Resort, Inc.*, 295 S.C. 268, 272, 368 S.E.2d 78, 81 (Ct. App. 1988). The mechanic's lien law permits a lien to be asserted for preparation of plans, specifications, and design drawings. *S.C. Code Ann.* 29-5-10.

As set forth in section two of this motion (which is incorporated herein by reference) the Plaintiff did not perform work entitling it to a lien during the ninety day period before the lien was filed. The Plaintiff's invoices which form the basis of its lien cover a time period through December, 2008. The Plaintiff's lien was filed on April 13, 2009, more than ninety days after the time period covered by the invoices. Any services performed after December 2008 were in the nature of contract administration. No construction supervision or other labor on the project site was performed. As contract administration is not included in the definition of labor performed on the project under the statute, the Plaintiff did not present evidence that it performed work entitling it to a lien during that time. The jury's finding that the mechanic's lien was timely is contrary to the evidence and the Defendant is entitled to a new trial.

- d. **Because the Plaintiff's mechanic's lien was untimely as a matter of law the Defendant is entitled to a new trial on his claim for slander of title.**

A wrongfully filed lien may serve as a basis for an action for slander of title. *Huff v. Jennings*, 319 S.C. 142, 459 S.E.2d 886 (S.C.App.,1995). As discussed herein, Plaintiff's lien was untimely and therefore wrongfully filed. The Plaintiff is therefore entitled to recovery under his counterclaim for slander of title as a matter of law.

6. **The Defendant is entitled to a new trial absolute or in the alternative, a new trial nisi remittitur," as the jury's verdict was excessive.**

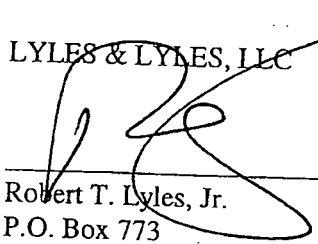
"If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute. *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 638 S.E.2d 667, (2006). In the alternative to the Defendant's motion for a new trial, the Defendant asks for a *nisi remittitur*. "A motion for a new trial *nisi remittitur* asks the court to reduce the verdict because the verdict is merely excessive." *Id.* "The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented." *Proctor v. Depot of Health and Envtl. Control*, 368 S.C. 297, 320, 628 S.E.2d 496 (Ct. App. 2006).

The jury's verdict of \$173,990.53 is not supported by the Plaintiff's own testimony and is therefore the result of some factor outside of the evidence warranting a new trial. In its discovery responses Plaintiff indicated that it sought payment for its Invoice #s 2-7 (which total \$200,357.03). With respect the work included in Invoice #2, even using the "by the sheet" billing formula of \$2,520.00 per sheet asserted by the Plaintiff, the Plaintiff only prepared three Architectural sheets in addition to those anticipated in its fee agreement for \$152,420.00. Three sheets at this rate would add a charge of \$7,560.00 to the agreed upon fee, totaling \$159,980.00. The balance remaining after

Mr. Slivka's initial payment of \$76,210.00 would then be \$83,770.00. Invoices #3-7 total \$36,783.03. Added to the other half of the agreed upon fee, plus the three extra "A" sheets, would result in a maximum due to the Plaintiff's own testimony of \$120,553.03. Therefore the jury's verdict of \$173,990.53 is not supported by any evidence and warrants a new trial. Alternatively, the jury's verdict is excessive warranting *remittitur*.

Dated this 1 day August, 2011.

LYLES & LYLES, LLC


Robert T. Lyles, Jr.
P.O. Box 773
Charleston, SC 29402
(843) 577-7730
rtl@lylesfirm.com

ATTORNEY FOR DEFENDANT,
GENE R. SLIVKA

Charleston, South Carolina

Defendants.

**DEFENDANT'S MEMORANDUM
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR INTEREST
FEES, AND COSTS**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

2011 AUG 11 PM 2:51

ARGUMENT

The Plaintiff is not entitled to attorneys fees and costs in the requested amount of \$235,030.31, or interest in the amount of \$37,413.92. First, for the reasons set forth at trial and in *Defendant's Notice of Motion and Motion for Judgment Notwithstanding the Verdict and/or for a New Trial Absolute or Nisi Remittitur* (filed on August 1, 2011), Plaintiff is not entitled to an award of attorney's fees under either the South Carolina Mechanic's Lien Statute (*S.C. Code Ann. § 29-5-10, et. seq.*) or under § 27-1-15. Second, if the Court awards fees, for the reasons set forth below, the amount of fees requested, \$209,109.60, is not legally supportable under either statute, is not customary and is grossly excessive.

- I. Plaintiff seeks to recover attorneys fees associated with its non-statutory claims and its defense of counterclaims, neither of which are authorized by statute.

Plaintiff requests that the Court award attorneys fees in the amount of \$209,109.60 pursuant to two statutes: *S.C. Code Ann. § 27-1-15* and *§ 29-5-10*. *Affidavit of A. Bright Ariail*, dated July 26, 2011, at ¶ 14 (hereinafter "Ariail Affidavit"). This amount includes the total amount of legal fees incurred in this action through the date of the affidavit \$207,639.60 with anticipated future costs. *Id.* at ¶ 10. This would therefore include all time expended on all causes of action asserted by the Plaintiff, as well as all time expended in defense of counterclaims.

- A. Plaintiff may not recover fees pursuant to the Mechanic's Lien Statute which are not related to the mechanic's lien claim.

In this matter the Plaintiff asserted multiple causes of action: (1) Foreclosure under the Mechanic's Lien Statute; (2) Breach of Contract; (3) Breach of Contract with Fraudulent Intent; (4) *Quantum Meruit*; and (5) Recovery under *S.C. Code Ann. § 27-1-15*. Under the mechanic's lien

statute, a party may only recover attorneys fees related to the mechanic's lien action. *Utilities Const. Co., Inc., v. Wilson*, 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996). See also. *EFCO Corp. V. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 635 S.E.2d 922 (S.C. App. 2006). In *Utilities Construction* counsel for the prevailing party, the Defendant, submitted an affidavit of the total fee for services rendered through trial. The court found that some "substantial portion" of the attorneys time had been spent on other causes of action. 321 S.C. at 250. The court found that to award the full fees in this case constituted an abuse of discretion and remanded the case back for an entry of an award based upon the time the attorney spent "in defending the mechanic's lien cause of action only." *Id.*

Likewise in this case counsel for the Plaintiff asserts, "Plaintiff has incurred legal fees in this action to date in the total amount of \$207,639.60." *Ariail Affidavit*, ¶ 10. Documentation supporting the amount of these fees was submitted to the Court by Plaintiff's counsel in the form of billing records. See. Exhibit "C" to *Plaintiff's Motion for Interest, Fees, and Costs*. These billing records make it clear that substantial portion of the fees are related to causes of action other than the Plaintiff's mechanic's lien action and to the defense of counterclaims.

For example (and this is not to be considered exhaustive), the fees requested include time spent contacting other individuals with whom Mr. Slivka had payment disputes. These witnesses included Clark Hughes, David Miller, and Ron Horton, all employees of entities with whom Plaintiff alleges the Defendant is involved in payment disputes. The objective of calling these witnesses was clearly related to the Plaintiff's claim for punitive damages under breach of contract with fraudulent intent and not to the mechanic's lien action. The Plaintiff is not entitled to recover attorneys fees related to pursuing that cause of action.

Additionally, Plaintiff aggressively pursued presenting an alternative basis for valuing the services rendered by the Plaintiff, specifically based on the cost of construction. This was not the basis of the fees sought in the Plaintiff's mechanic's lien action, but would only have been relevant to Plaintiff's claim for *quantum meruit* (which was eventually withdrawn).

The entries also establish that the Plaintiff spent considerable time doing research for those other claims as well as preparing, filing, and arguing motions relative to the non-statutory claims and to the defenses and counterclaims asserted by Defendant.

Finally, the majority of the time entries for the Plaintiff make it impossible to determine whether the time spent involved the mechanic's lien action, the defense of counterclaims, or the pursuit of other causes of action. The Plaintiff should only be allowed to recover fees which can be demonstrated as related to the mechanic's lien action.

B. Plaintiff may not recover fees under S.C. Code Ann. § 27-1-15 which are not related to its claim under this statute.

Similarly, S.C. Code Ann. § 27-1-15 authorizes recovery of certain fees after the demand was made pursuant to the statute on March 15, 2010. The statute does not provide for recovery of attorneys fees related to seeking recovery of anything other than the amount sought in the statutory demand. The statute states:

Whenever a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within forty-five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise **unreasonably refuses to pay the claim or proper portion**, he is liable.

for reasonable attorney's fees and interest at the judgment rate from the date of the demand. (emphasis added)

Based on an analysis of the time records produced by the Plaintiff, \$24,785.25 of the fees sought by the Plaintiff were incurred prior to the Plaintiff's statutory demand on March 15, 2010. These fees are clearly not recoverable under this statute. The statute makes no mention of recovery for defense of counterclaims (which, importantly, were not related to this claim), the pursuit of other causes of action that permit recovery of punitive damages, or the pursuit of equitable remedies such as *quantum meruit*. It only includes attorneys fees incurred to recover the portion of the claim that Plaintiff contend should have been paid by Defendant upon receipt of the demand.

Also, the Court may recall that Plaintiff's counsel argued to the Court and the jury that Slivka was liable under *S.C. Code Ann.* § 27-1-15 because he "admitted he owed" the other half of the agreed-upon fees, totaling \$76,210.00. Thus, if entitled to anything, Plaintiff would be entitled to recover fees related to the recovery of that sum only (and interest on that sum only) from March 15, 2010, and then, any award must be limited to time entries that are demonstrably related to Plaintiff's claims under this statute.

II. The fees sought by the Plaintiff are not reasonable.

Both the Mechanic's Lien Statute and § 27-1-15 allow the recovery of some degree of "reasonable" attorneys fees. While the Defendant denies that the Plaintiff is entitled to any award under either statute, the fees sought by the Plaintiff under any theory are not reasonable. "[T]he court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6)

customary legal fees for similar services.” *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). See also. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993); *Taylor v. Medenica*, 331, S.C. 575, 503 S.E.2d 458 (S.Ct. 1998). Consideration should be given to all six factors; none of the factors is controlling. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). When considering these factors, the total fees of \$209,109.60 sought by the Plaintiff in this matter is excessive.

A. The nature and difficulty of the case do not warrant the time devoted to the case and the fees sought.

As an initial matter, and relevant in some degree to all six factors, the fees sought by the Plaintiff, \$209,109.60, exceed the amount of the Plaintiff’s claim (\$198,834.53 under the Mechanic’s Lien Statute and \$199,919.33 under § 27-1-15). The fees sought are more than 120% of the award.

With respect to difficulty, this breach of contract case involved only two parties and a total of five witnesses. Plaintiff seeks attorneys fees for the work of two partners (both of which participated in the trial of the case), two associates, as well as law clerks and staff, which is excessive given the nature of the case or its difficulty.

To the extent the case was complex or difficult, it was made so by Plaintiff’s vigorous pursuit of difficult and unsupportable causes of action in an attempt to recover sums over and above the invoices it had submitted to the Plaintiff. These causes of action included *quantum meruit*, in which Plaintiff spent time and effort to develop damages based upon alternative values for its services, and breach of contract accompanied by a fraudulent act so that Plaintiff could recover punitive damages. The Plaintiff was not successful on either of those claims and ultimately withdrew them, but those claims themselves, and the witness Plaintiff sought to bring to trial, did complicate the case

substantially. There is no legal basis on which Plaintiff can claim fees for fees associated with these efforts and any recovery should be limited to time entries that do not relate to those claims.

B. The result obtained by Plaintiff's counsel do not justify the amount sought.

As noted, when Plaintiff made its § 27-1-15 demand on March 15, 2010, its fees totaled \$24,785.25 (per billing records produced by Plaintiff). On July 11, 2011 (one week prior to trial), Plaintiff represented that it had incurred fees from March 15, 2010 to July 11, 2011 of \$81,372.74. *Correspondence of A. Bright Ariail* dated July 11, 2011, attached as Exhibit "A". Thus, between the Notice of Lien, on April 15, 2009 and one week before trial, Plaintiff had incurred only \$106,157.99 in fees.

On June 30, 2011, Defendant made an offer of \$100,000.00 pursuant to *S.C. Code Ann* § 29-5-20 in an effort to settle the case. Plaintiff refused to counter under the statute and instead elected to incur additional costs by filing a Motion to Strike Defendant's Offer (which was denied by the Court). Plaintiff then proceeded to trial in an effort to recover the difference between Defendant's offer (\$100,000.00) and their Mechanic's Lien claim (\$198,834.53), essentially going to trial over \$98,834.53. In doing so, Plaintiff apparently incurred an additional \$101,481.61 in fees and only recovered an additional \$73,990.53. This result certainly does not warrant recovery of the cost of trial.

Plaintiff's counsel asserts in her affidavit that the Defendant created unnecessary delays, filed meritless motions and forced the Plaintiff to incur fees over what would generally be incurred on a similar case. *Ariail Affidavit* ¶ 5. Even if the Court concludes that this is true, then costs were included in the \$106,157.99 in fees that had been incurred prior to July 11, 2011. (It should also be stated that Plaintiff filed motions to strike affirmative defenses and counterclaims which were denied

by the Court and filed and argued a substantial Motion for Summary Judgment which was denied by Judge Kinard on April 12, 2011.

As set forth above, the majority of the fees were incurred for a trial in which Plaintiff was clearly seeking to conduct a meritless campaign against the Defendant for punitive damages and to try and seek recovery of amounts over and above that included in what was invoiced. These claims were eventually excluded by the Court or withdrawn. Plaintiff did not even recover the total sums sought in this action. Thus, attorneys' fees in excess of the claim and the award is certainly not justified by the result.

C. Plaintiff has not presented evidence as to the contingency of the fee.

In ¶ 3 of the *Ariail Affidavit* Plaintiff's counsel asserts that the Plaintiff has entered into a fee agreement under which he is charged an hourly rate of \$250.00 per hour for her services. While she references a fee agreement, no fee agreement has been produced outlining any terms or conditions that may relate to the services. No invoices or evidence of payment of any fees by the Plaintiff has been presented. The *Ariail* affidavit only asserts that the Plaintiff has been billed for costs incurred by the firm through trial. Thus the rates of the fee agreement itself, and whether Plaintiff has paid or even been billed for fees is unknown at this time, and Plaintiff has failed to provide a requisite element of an award of fees.

D. The fee of \$209,109.60 is not customary for similar services.

The Plaintiff offers no evidence that a fee that a fee, which is over 105 % of the amount claimed in a lien (and over 120 % of actual recovery) is customary for similar services. Plaintiff offers the affidavit of N. Keith Emge, Jr., dated July 25, 2011, previously filed with this Court (hereinafter "Emge Affidavit") in support of its contention that the requested fees are customary.

In his affidavit Mr. Emge asserts that the hourly rates charged by the firm of Rosen Rosen & Hagood, LLC, are reasonable and comparable to similar rates charged for legal representation of architects and construction clients within the Charleston County Bar. Neither he nor Plaintiff counsel address the total amount of the fees sought by the Plaintiff or on points specifically including, whether it is customary to have two partners of a firm participate at trial of a claim of this nature, whether it is customary to have two associates participate in the preparation of the case, whether the number of hours spent on the case is customary or reasonable.

Courts have recognized that a fee equal to one-third ($33\frac{1}{3}\%$) of the Plaintiff's total award is customary. *Global Protection Corp. V. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998)(In awarding attorneys fees under the South Carolina Unfair Trade Practices Act the Court awarded one-third of the total damages although attorney's fee contract provided for a fee 40% of any recovery.) The mechanic's lien statutes of South Carolina recognize this as a reasonable ceiling for recovery of attorneys fees in that a mechanic's lien may be discharged by filing a cash bond in an amount equal to one and one-third times the amount claimed in a lien. *S.C. Code Ann.* § 29-5-110.

Other statutes recognize similar limits. South Carolina law provides for attorneys fees where an insurer had refused to pay a claim in bad faith, but it specifically limits that said fees may not exceed one-third of the amount of the judgment. *S.C. Code Ann.* § 38-59-40 The Worker's Compensation Statutes of South Carolina provide for recovery of attorneys fees in certain circumstances, but said fees may not exceed one third of the total claim amount paid by the carrier to the injured employee. *S.C. Code Ann.* § 42-1-560.

Per custom, the Plaintiff's fees should be capped at one-third of the amount of the judgment and per the language of the statutes, Plaintiff should only be able to recover a reasonable amount, within that limit, that can be demonstrated attributable to the mechanic's lien action or Plaintiff's claim under *S.C. Code Ann. § 27-1-15*.

III. Under the South Carolina Mechanic's Lien Statute, total recovery is limited to the amount of the cash bond posted by the Defendant with the Clerk of Court.

Under the mechanic's lien statute the Plaintiff is only entitled to payment from the cash posted by the Defendant with the court pursuant to *S.C. Code Ann. § 39-5-110*. This statute states:

At any time after service and filing of the statement required under § 29-5-90 the owner or any other person having an interest in or lien upon the property involved may secure the discharge of such property from such lien by filing in the office of clerk of court or register of deeds where such lien is filed his written undertaking, in an amount equal to one and one-third times the amount claimed in such statement, secured by the pledge of United States or State of South Carolina securities, by cash or by a surety bond executed by a surety company licensed to do business in this State, and upon the filing of such undertaking so secured **the lien shall be discharged and the cash, securities or surety bond deposited shall take the place of the property upon which the lien existed** and shall be subject to the lien. In the event of judgment for the person filing such statement in a suit brought pursuant to the provisions of this chapter, **such judgment shall be paid out of the cash deposited** or, in event of pledge of securities, it shall be paid from the proceeds of a sale of so much of the pledged securities as shall be necessary to satisfy such judgment or, in event of the filing of a surety bond, the surety company issuing such bond shall pay such amount found due, not to exceed the amount of the bond. Unless suit for enforcement of the lien is commenced as required by § 29-5-120, the undertaking herein required shall be null and void and the principal therein shall have the right to have it canceled and such cash or securities deposited or pledged or surety bond filed shall be released from the lien herein provided. (emphasis added)

Pursuant to this statute, the Defendant deposited \$266,012.71 in cash with the clerk of court on May 12, 2009 and the Plaintiff's mechanic's lien was released. (Order Accepting Bond and Releasing Mechanic's Lien Filed attached hereto as Exhibit "B"). Upon making this deposit the Plaintiff's

mechanic's lien was discharged and the cash deposited took the place of the Plaintiff's property. Per the statute, the total payment to the Plaintiff under the mechanic's lien statute is limited to the \$266,012.71 deposited by the Defendant with the Clerk of Court. The Plaintiff's verdict was \$173,990.53. Therefore, any award of attorneys fees under the Mechanic's Lien Statute is limited to a maximum of \$92,022.18¹.

IV. The Plaintiff may not recover attorneys fees for staff members.

Plaintiff includes \$28,619.25 in fees for time spent by staff members. Both the statutory claims of the Plaintiff provide for recovery of "attorneys fees." Whether these statutes allow for the recovery of fees related to service by staff members has not been specifically addressed in South Carolina. "We are not at liberty to depart from the plain meaning of the mechanic lien's statutory language." *Clo-Car Trucking Co., Inc. v. Cliffure Estates of South Carolina, Inc.*, 282 S.C. 573, 320 S.E.2d 51 (Ct.App.1984). Therefore, the Plaintiff may not include fees related to staff members in its claims for attorneys fees under the statute.

Even in jurisdictions where recovery of fees related to staff members has been allowed under the mechanic's lien laws, the claimant is required to show: (1) that the legal assistant was qualified through education, training or work experience to perform substantive legal work (2) the substantive legal work was performed under the direction and supervision of an attorney; (3) the nature of the legal work which was performed; (4) the hourly rate being charged for the legal assistant; and (5) the number of hours expended in the performance of the services by the legal assistant. *Gill Sav. Asso. v. International Supply Co.* 759 S.W.2d 697 (Tex. Appl Dallas 1998). Plaintiff makes no such

¹For the reasons set forth herein, the sum is excessive but represents the Plaintiff's maximum recovery of attorney's fees under the South Carolina Mechanic's Lien Statute.

showing in this matter. Furthermore, timesheets included in Exhibit "C" to the *Plaintiff's Motion for Interest, Fees and Costs* show that routine tasks such as filing by staff members is included.

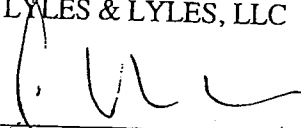
Therefore, the Plaintiff is not entitled to recover these fees.

CONCLUSION

While the Defendant denies that Plaintiff is entitled to fees, costs and/or interest pursuant to the South Carolina Mechanic's Lien Statute or S.C. Code Ann. § 27-1-15, the Plaintiff's motion for fees and costs in the requested amount of \$235,030.31 must be denied, as this amount includes fees and costs that the Plaintiff is not entitled to recovery under either of these statutes. Any fees awarded must be demonstrably attributable to the claims under the statutes by which any award is made. Additionally, the fees sought by the Defendants are excessive and unreasonable.

Dated this 11th day of August, 2011.

LYLES & LYLES, LLC


Robert T. Lyles, Jr.
P.O. Box 773
Charleston, SC 29402
(843) 577-7730
rtl@lylesfirm.com

ATTORNEY FOR DEFENDANT,
GENE R. SLIVKA.

Charleston, South Carolina

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

134 MEETING STREET, SUITE 200

P.O. Box 893

CHARLESTON, SOUTH CAROLINA 29402

PHONE (843) 577-6726

FAX (843) 724-8036

www.rhllawfirm.com

A. Bright Ariail
bariail@rhllawfirm.com

July 11, 2011

VIA EMAIL ONLY

Robert T Lyles, Jr., Esquire

Lyles & Lyles, LLC

P. O. Box 773

Charleston, SC 29402

Re: The Spriggs Group, P.C. v. Gene Slivka

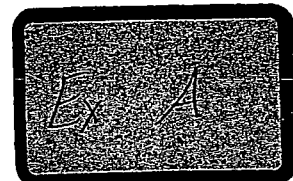
FOR SETTLEMENT DISCUSSIONS ONLY

Dear Robert:

I received your email yesterday in which you inquired what it would take to settle this case. Since returning to the office today and reviewing certain pertinent information, I wanted to share the following information with you to see if there is any possibility that this case can be settled rather than tried.

Based on the testimony contained in Mr. Slivka's deposition, he admits that he owes The Spriggs Group, PC the balance for basic fees per the original agreement which total \$76,210.00. He admits that he owes for a two hour coordination meeting attended by both Mr. Spriggs and Mr. Bozeman as well as for seven (7) hours of time during which Mr. Bozeman prepared drawings for the garden wall. In addition, Mr. Slivka testified that The Spriggs Group was authorized to perform construction administration services on his behalf which total an additional \$19,532.50. Applying an hourly rate for Mr. Spriggs of \$175 per hour and an hourly rate for Mr. Bozeman of \$105 per hour, the minimum admitted amount due The Spriggs Group totals \$97,037.50.

Mr. Slivka testified that he received the demand made pursuant to S.C. Code Ann §27-1-15 dated March 15, 2010 but recalls no investigation of the amounts due The Spriggs Group as required by that statute. Further, he admits the he has made no payments to The Spriggs Group related to the project except for the initial \$76,210.00. Per the statute, Mr. Slivka will be liable for attorney's fees and interest from the date of the demand to present. Interest at the statutory rate of 8.75% totals \$20,517.45 and fees from that date through yesterday total \$81,372.74. The total of fees Mr. Slivka admits he owes The Spriggs Group combined with attorney's fees and interest to date totals \$198,927.69 which is the absolute minimum we believe is recoverable



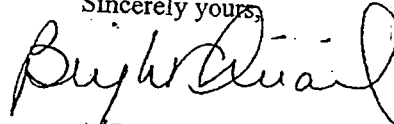
July 11, 2011

Page 2

under this case. This amount does not account for the additional services The Spriggs Group was required to perform on the project due to owner changes, the location of the project, material selection, etc..

With our additional claims for foreclosure of the mechanic's lien, breach of contract, breach of contract with fraudulent intent, and quantum merit, other damages may be awarded including punitive damages. Obviously each additional day of trial preparation and the fees and costs related to the actual trial will greatly increase the claim. I would request that you review this information with your client and contact me if there is any opportunity to settle this case. At this time, I am authorized to settle this action for the sum of One Hundred and Ninety One Thousand Dollars (\$191,000.00.) Given the time sensitivity of the pending trial, this offer may be revoked at any time.

Sincerely yours,



A. Bright Ariail

ABA/aba

cc: The Spriggs Group, P.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
THE SPRIGGS GROUP, PC,	)	
Plaintiff,	)	ORDER ACCEPTING BOND
vs.	)	AND RELEASING MECHANIC'S LIEN
GENE R. SLIVKA,	)	FILED IN BK 1742 PG 276
Defendant.	)	

IT APPEARING TO THE COURT, that Patricia C. Grant, Clerk of the Court of Common Pleas for Colleton County, has acknowledged receipt of the bond of Gene R. Slivka in this matter and cash in the amount of Two Hundred Sixty-Five Thousand Twelve and 71/100 Dollars (\$265,112.71) from Gene R. Slivka as security for said bond.

#1
P.S. THEREFORE, sufficient bond and cash security having been posted for the payment of debt evidenced by a mechanic's lien recorded at Volume 1742, Page 276 in the Office of the R.O.D. for Colleton County, South Carolina,

IT IS ORDERED that said mechanic's lien is hereby released and there is substituted therefor the bond of Gene R. Slivka and the cash security posted with said bond; and

IT IS FURTHER ORDERED that any *Lis Pendens* filed in connection with the foreclosure of said mechanic's lien is hereby released; and

IT IS FURTHER ORDERED that the ROD for Colleton County shall mark the County records so as to reflect the posting of the bond and the release of the Mechanic's Lien and *Lis Pendens* filed in connection therewith, if any; and

IT IS FURTHER ORDERED that said funds be deposited in an

Ex B

interest bearing account, with the accrued interest being added to the cash posted as security for the bond for the benefit of the parties as their interests may be determined by the Court; and

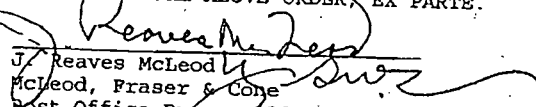
IT IS FURTHER ORDERED that the posting of the bond and cash security shall not prejudice the right of Defendant to contest the correctness or timeliness of the filing, perfecting or foreclosing of the lien, including without limiting the generality of the foregoing, the right to contest the timeliness of filing of the Mechanic's Lien and the Lis Pendens for the foreclosure thereof and if successful from receiving an Order cancelling the bond and directing the Clerk of Court to refund to Defendant the cash security posted.

AND IT IS SO ORDERED the 12th day of May, 2009.

Walterboro, South Carolina


Judge, Court of Common Pleas
Fourteenth Judicial Circuit

THE ABOVE ORDER BEING ALLOWED BY
S.C. CODE ANN. § 29-5-110 (2008),
I MOVE FOR THE ABOVE ORDER, EX PARTE.


J. Reaves McLeod
McLeod, Fraser & Cone
Post Office Drawer 230
Walterboro, SC 29488
(843) 549-2516
(843) 549-2306 facsimile
SC Bar No. 70283

Attorneys for Defendant

May 2, 2009
Walterboro, South Carolina

200900011894
Filed for Record in
COLLETON COUNTY SC
KARLA DADDIEDO
05-12-2009 AT 03:17 PM.
REL MECH LN 10.00
OR Volume 1751 Page 115 - 118

200900011894
MCLEOD FRASER & CONE
ATTORNEY AT LAW

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

THE SPRIGGS GROUP, PC,)

Plaintiff,)

vs.)

GENE R. SLIVKA,)

Defendant.)

RECEIPT FOR BOND POSTED FOR THE
RELEASE OF MECHANIC'S LIEN
FILED IN BK 1742 PG 276

I, Patricia C. Grant, Clerk of the Court of Common Pleas for Colleton County, do hereby acknowledge receipt of the bond of Gene R. Slivka in this matter and cash in the amount of Two Hundred Sixty-Five Thousand One Hundred Twelve and 71/100 Dollars (\$265,112.71) from Gene R. Slivka as security for said bond.

Patricia C. Grant
Patricia C. Grant
Clerk of Court for Colleton
County

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

THE SPRIGGS GROUP, PC,

Plaintiff,

vs.

GENE R. SLIVKA,

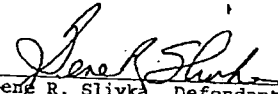
Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

BOND FOR RELEASE OF
MECHANIC'S LIEN
FILED IN BK 1742 PG 276

I, Gene R. Slivka, the undersigned, do hereby stand fully bound to the Plaintiff for the payment of any judgment obtained in this matter and do herewith post with the Clerk of Court for Colleton County, as security for said bond cash in the amount of Two Hundred Sixty-Five Thousand One Hundred Twelve and 71/100 Dollars (\$265,112.71), said amount being one and one-third (1 1/3) times the amount of the lien recorded at Volume 1742 at Page 276 in the Office of the ROD for Colleton County, South Carolina, as required by S.C. Code Ann. § 29-5-110 (2008).

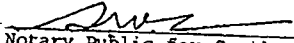
In witness whereof I have hereunto set my hand and seal this 12th day of May 2009.


Gene R. Slivka, Defendant

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

ACKNOWLEDGMENT

I G.W. Cone, a Notary Public, do hereby certify that Gene R. Slivka, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this the 12th day of May 2009.

 (Seal)
Notary Public for South Carolina
My Commission Expires: 6/7/16

81

200900012007
Filed for Record in
COLLETON COUNTY SC
KARLA DADDIECCO
05-13-2009 At 03:43 PM
AGREE N/C
OR Volume 1753 Page 81

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

THE SPRIGGS GROUP, PC,

Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

RECEIPT FOR BOND POSTED FOR THE
RELEASE OF MECHANIC'S LIEN
FILED IN BK 1742 PG 276

200900012007
MCLEOD FRASER & CONE
ATTORNEYS AT LAW

WHEREAS, Gene R. Slivka previously deposited cash in the amount of Two Hundred Sixty-Five Thousand One Hundred Twelve and 71/100 Dollars (\$265,112.71) with Patricia S. Grant, Clerk of Court for Colleton County, South Carolina as security for his bond in this matter; and

WHEREAS, no suit has been filed to foreclose the Mechanic's Lien in this matter and the Clerk of Court wishes to transfer the funds deposited with her to the ROD for Colleton County, South Carolina in whose office the Mechanic's Lien is filed; NOW, THEREFORE,

I, Karla Daddiecco, ROD for Colleton County do hereby acknowledge receipt of the cash security for the bond of Gene R. Slivka referenced above in the amount of Two Hundred Sixty-Five Thousand One Hundred Twelve and 71/100 Dollars (\$265,112.71) from Patricia S. Grant, Clerk of Court for Colleton County, South Carolina.

Karla Daddiecco
Karla Daddiecco,
ROD for Colleton County

Date: 5/15/09

Defendant.

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S MOTION
FOR JUDGMENT NOTWITHSTANDING
THE VERDICT and/or FOR NEW TRIAL

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 AUG 2 3 41 PM
CLERK

money into the Court.

RECEIVED

AUG 15 2011

By *JS*

indicating he would pay 50% of the \$151,000 upon receipt of a corrected invoice. Defendant has provided no legal precedent that payment into the Court constitutes compliance with S.C. Code Ann § 27-1-15. The issue as to whether a reasonable and fair investigation of Plaintiff's claim had been made is one for the jury to decide and the issue of whether a valid portion of Plaintiff's claim, to the extent one exists, was paid in a timely manner in compliance with the statute is an issue for the jury to decide. After a full week of listening to the evidence in this case, the jury correctly unanimously determined that the Defendant had not made a reasonable and fair investigation of Plaintiff's claim and failed to properly pay the proper portion of Plaintiff's claim deemed valid.

Defendant argues that discovery in the lawsuit amounts to a fair and reasonable investigation into Plaintiff's claims under the statute. Defendant relies upon Carolina Steel Corporation v. Palmetto Bridge Construction, 444 F.Supp.2d 577 (D.S.C. 2006) stating that the court found that because an investigation had occurred and a dispute existed, no attorneys fees pursuant to the statute would be awarded. In Carolina Steel, the Defendant made an investigation of the claims of the Plaintiff prior to Plaintiff's demand under the statute and paid what was considered valid. This case is distinguishable from Carolina Steel in that the Defendant never paid Plaintiff either prior to Plaintiff's demand or after Plaintiff's demand despite readily admitting he owes Plaintiff at a minimum one half of \$151,000.00. Defendant provides no legal authority that litigation prior to a demand under S.C. Code Ann. § 27-1-15 bars recover of attorney's fees for Defendant's failure to comply with the statute. Further, Defendant provides no legal authority that payment to the Court by bonding off a mechanic's lien, constitutes compliance with S.C. Code Ann. § 27-1-15.

Under S.C. Code Ann. § 27-1-15, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, *or*

whatever portion of it is determined valid, within forty-five days from the date of mailing the demand. Defendant admits to owing Plaintiff at a minimum one half of \$151,000 and admits he never made any payment to Plaintiff after the initial contract payment in February 2007. If a person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand. See S.C. Code Ann. § 27-1-15. Defendant has never made payment to the Plaintiff of the undisputed amount he admits he owes to the Plaintiff; therefore, the verdict rendered as to Plaintiff's claim for failure to comply with S.C. Code Ann. § 27-1-15 is supported by the evidence presented and Plaintiff should be award reasonable attorney's fees and interest against the Defendant.

2. **Defendant is not entitled to judgment notwithstanding the verdict on Plaintiff's claim under the mechanic's lien statute as the evidence supports the jury's verdict.**

Defendant argues that there was no evidence that Plaintiff performed work which entitled it to a lien within ninety days to filing the lien that is the subject of this action. Plaintiff presented evidence by way of invoices, timesheets, emails and testimony that Plaintiff performed work on this project up to January 14, 2009 and then again in May 2009 for 3.5 hours. See Plaintiff's Exhibits 8(a), 19, and 21. The Defendant testified that the Plaintiff was authorized to respond to questions from the field from various contractors and admitted that he never told Plaintiff to stop responding to these questions prior to the services performed in January 2009. Plaintiff's mechanic's lien was filed on April 13, 2009, which is within ninety (90) days of January 14, 2009 and prior to the work performed in May 2009. See Plaintiff's Exhibit 10.

Plaintiff's claim against a mechanic's lien in this matter arises out of statutory law. Because Plaintiff provided extensive labor and services connected with Defendant's construction project and Defendant refused to pay for these services, Plaintiff is entitled to a claim under the

mechanic's lien statute. In accordance with § 29-5-10, Plaintiff properly filed a mechanic's lien for services furnished in the erection, alteration, and repair of Defendant's building within ninety days of the last work performed. See Butler Contracting, Inc. v. Court Street, LLC, 369 S.C. 121, 131, 631 S.E.2d 252, 257 (2006) ("The deadline to serve and record a mechanic's lien begins running from the date the last material was furnished or work performed, *regardless of whether such material or work is insignificant and regardless of whether the final work is delayed*, provided the reason for the delay is not to improperly extend the period for perfecting the lien.") (emphasis added).

Defendant argues that the services performed by Plaintiff in January 2009 are not part of the invoices specified in the Plaintiff's mechanic's lien. Under S.C. Code Ann. § 29-5-100, "no inaccuracy in such statement relating to the property to be covered by the lien, if the property can be reasonably recognized, or *in stating the amount due for labor* or materials shall invalidate the proceedings, unless it appear that the person filing the certificate has wilfully and knowingly claimed more than is his due." Plaintiff's error in the amount stated for labor due does not invalidate the proceedings. In fact, Plaintiff testified the invoices submitted in November for January's work was part of project closeout and capturing of time spent on the project since January 1, 2009 for construction administration services that had not yet been billed. The only requirement of the law is that the account be filed within ninety (90) days after person seeking lien ceases to labor on or furnish labor or materials for such building or structure. See Wood v. Hardy, 235 S.C. 131, 110 S.E.2d 157 (1959). Regardless of when the invoices were submitted, the Plaintiff's timesheets, emails and testimony of both Andy Bozeman and Ken Spriggs show that the Plaintiff labored on the project within ninety (90) days of the date in which the mechanic's lien was filed on Defendant's property. Because Plaintiff properly followed the statutory requirements and Defendant has failed to pay for labor and services provided by

Plaintiff within the scope of the mechanic's lien statute, Plaintiff has a cause of action under S.C. Code of Laws § 29-5-10, *et al.* against Defendant.

Defendant further argues that the services performed by Plaintiff in January 2009 are not the type of services for which a lien is allowed. However, Defendant has not argued that the services performed in May 2009 by Plaintiff are not the type of services for which a lien is allowed¹. Defendant's argument as to the January 2009 services is that the S.C. Mechanic's lien statute does not provide for lien rights associated with the performance of construction administration services. Defendant insinuates that because the statute defines labor to include the preparation of plans, specifications, and design drawings that it somehow excludes contract administration services from the type of labor for which a lien is allowed. The statute provides as follows:

"As used in this section, labor performed or furnished in the erection, alteration, or repair of any building or structure upon any real estate includes the preparation of plans, specifications, and design drawings and the work of making the real estate suitable as a site for the building or structure. The work is considered to include, but not be limited to, the grading, bulldozing, leveling, excavating, and filling of land (including the furnishing of fill soil), the grading and paving of curbs and sidewalks and all asphalt paving, the construction of ditches and other drainage facilities, and the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes, and the disposal of any construction and demolition debris, as defined in Section 44-96-40(6), including final disposal by a construction and demolition landfill. Any private security guard services provided by any person at the site of the building or structure during its erection, alteration, or repair is considered to be labor performed or furnished within the meaning of this section."

See S.C. Code Ann. 29-5-10 (emphasis added).

Defendant's argument is disingenuous and not supported by South Carolina law. Inclusion language in this section is clearly not exclusive; rather, it is meant to illustrate. How

¹ Plaintiff provided design sketches for an appraisal of Defendant's property. Andy Bozeman testified he was contacted by an appraiser for the Defendant and asked to provide floor plan sketches and room name information for preparation of the appraisal of Defendant's home.

could security guard services during construction be services for which a lien is created but not architectural services overseeing and supporting proper construction of a residence? Likewise, it is implausible that construction administration services would be excluded from the description of "labor performed or furnished in the erection, alteration, or repair of any building." Clearly, construction administration work is instrumental in delivering an appropriate residence or structure.

In a 1918 decision, the South Carolina Supreme Court held that an architect who furnished the plans and specifications and supervised the construction of a building had furnished labor within the meaning of South Carolina's mechanic's lien statute. Williamson v. Hotel Melrose, 110 S.C. 1, 96 S.E.2d 407 (1918). In so holding, the Court ruled that "labor furnished" was not limited to manual labor, but also encompassed mental labor. Id. Plaintiff is unaware of a single South Carolina case where construction administration services were excluded as the type of labor for which a lien can be filed under South Carolina's mechanic's lien statute and actually supports the erection, alteration or repair of a building more so than the preparation of plans, specifications and design drawings related to the project.

Other jurisdictions provide for contract administration services to support a lien and specifically exclude the preparation of plans, specifications and design drawings from the labor for which lien rights arise. In Pennsylvania, an architect has no lien for merely drawing plans and specifications for the building, but does have rights to a lien for providing construction administration services that furthers the plans and specifications prepared. See Lee v. Du-Rite Products, Co., Inc., 366 Pa. 548, 79 A.2d 218 (1951). To infer that South Carolina's legislature would allow a lien for preparation of plans, specifications and design drawings but not the services that further and support the design is contrary to legislative intent and without merit.

(3) Defendant is not entitled to a judgment notwithstanding the verdict or a new trial as the jury was asked to determine only whether the lien filed by Plaintiff was timely.

Defendant argues that the jury was asked improperly to interpret whether contract administration by a design professional is included in the definition of "labor" under § 29-5-90. The jury was properly charged as to what the law in South Carolina is as it relates to filing and enforcing a mechanic's lien. Both the Plaintiff and the Defendant were in agreement as to the charge given to the jury on the mechanic's lien law. The jury was asked to determine whether Plaintiff's lien was valid and timely. The jury unanimously determined that based upon the evidence presented, Plaintiff's lien was valid.

(4) Plaintiff is not entitled to a new trial because the Court properly charged the Jury as to the law.

Defendant argues that the Court omitted Defendant's Charge Number 6 related to Plaintiff's claim for failure to comply with S.C. Code Ann. § 27-1-15. Defendant argues that the Court should have included language from Carolina Steel Corporation v. Palmetto Bridge Constructors, 444 F.Supp.2d 577 (D.S.C. 2006) related to a fair and reasonable investigation. As discussed previously, the Defendant in Carolina Steel made payment to the Plaintiff for the undisputed amount. The Court held the Defendant was not subject to attorneys fees because an investigation had occurred and a dispute exists. The Defendant's requested charge would have been misleading to the jury given the distinguishing characteristics of this case from Carolina Steel.

A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. Yolanda Burroughs v. John W. Worsham, 352 S.C. 382, 574 S.E.2d 215 (Ct. App. 2002)(citing Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 514 S.E.2d 570 (1999)). "The substance of the law is what must be instructed to the

jury, not any particular verbiage.” *Id.* at 392. “A jury charge which is substantially correct and covers the law does not require reversal.” *Id.* The charge given by the Court as to S.C. Code Ann. § 27-1-15 was substantially correct and covered the law of the statute. To warrant reversal for refusal to give a requested charge a part must show both error and prejudice. Cohens v. Atkins, 333 S.C. 345, 509 S.E.2d 286 (Ct. App. 1998). Regardless of whether an error in the charge exists, which is disputed, Defendant has not set forth the prejudice such error had on the Defendant.

(5) Defendant is not entitled to a new trial based upon the Thirteenth Juror Doctrine as the evidence supports the verdict rendered.

Defendant argues that the jury’s verdict is contrary to the preponderance of the evidence because (a) the Plaintiff did not comply with the duty of good faith and fair dealing implied in its contract, (b) the Defendant made a fair and reasonable investigation of Plaintiff’s claims under S.C. Code Ann. § 27-1-15, (c) the work performed subject to the mechanic’s lien is not work for which Plaintiff is entitled to assert a lien, and (d) Plaintiff’s mechanic’s lien was untimely as a matter of law. After two years of highly contested litigation and a full week’s worth of trial on the merits, a competent jury of eleven unanimously found that the evidence presented by both the Plaintiff and the Defendant when weighed together tipped the scale in favor of the Plaintiff. Therefore, Plaintiff met its burden of proof as to all causes of action submitted to the jury.

(a) The Jury rightfully found that Plaintiff complied with the duty of good faith and fair dealing.

Defendant argues that “it is undisputed that Plaintiff did not comply with the covenant of good faith and fair dealing in its billing practices with the Defendant.” If the facts were undisputed as represented by the Defendant, a trial on the merits would not have been necessary. Whether the Plaintiff complied with the covenant of good faith and fair dealing in its billing practices with the Defendant is an issue of fact to be determined by the jury. Based upon the

evidence presented at trial, a legitimate dispute as to the terms of the contract existed and eleven respectable jurors made a competent decision after a week of testimony that the Plaintiff was entitled to a verdict in the amount of \$173,990.53.

Testimony was presented at trial by Plaintiff's expert Myles Glick and Defendant's expert, Scott Harvey that the Plaintiff can bill for the work of its consultants. Further, Plaintiff representatives, Ken Spriggs and Andy Bozemen both testified that the Plaintiff was involved in the preparation of the structural, electrical, plumbing and mechanical drawings which were invoiced on a per sheet basis in Invoice # 2. Testimony was presented at trial that a per sheet cost formula was established in the contract between the parties and Defendant relied upon this formula to remove the boathouse building from the contract. Ken Spriggs testified he used the same per sheet formula for additional drawings added to the contract that Defendant used in removing drawings from the contract.

While the Plaintiff admits that it did not notify Defendant every time an additional service was being billed to the contract, Defendant's expert admitted that the contract between the parties does not set forth a notice requirement when additional services are being billed. Contract provisions 18 and 19 allow for additional services to be billed at an hourly rate as testified to by Andy Bozeman, Ken Spriggs, Myles Glick, Gene Slivka and Scott Harvey. Each additional service requested by the Defendant was billed on an hourly basis pursuant to provision 18 or 19 of the stipulated contract. Also, Mr. Spriggs and Mr. Slivka both testified that the remaining contract balance was to be billed at contract completion. Plaintiff billed for the remaining contract balance, which included the construction administration services; additional design services, and reimbursable expenses for the project, at the end of the project. See Plaintiff's Exhibits 8, 8(a) and 8(b).

Defendant's expert Scott Harvey relied upon three documents in formulating his opinion that Plaintiff breached the standard of care of an architect. First, Mr. Harvey relied upon an AIA form contract, which set forth notice obligations for additional services. Mr. Harvey admitted that the contract between Plaintiff and Defendant was not an AIA contract and did not contain the boilerplate notice language for additional services. Second, Mr. Harvey relied upon the notice guidelines for changes in services set forth in the AIA Handbook, 14th edition. Mr. Harvey admitted that the 14th edition did not come into existence until after the contract was entered into between Plaintiff and Defendant and that the 13th edition of the AIA Handbook did not address any guidelines for changes in services. Finally, Mr. Harvey relied upon an Architect's Ethics Advisory Opinion stating that a member is required to give notice when it changes the contract with a client. Mr. Harvey admitted that the term "member" as set forth in the Advisory Opinion referred to the Plaintiff. Evidence was presented at trial that the only person who requested changes to the contract between Plaintiff and Defendant was the Defendant. Therefore, the Architect's Ethics Advisory Opinion is inapplicable.

Expert testimony constitutes evidence to be considered by the jury in connection with all of the other testimony and evidence in the case. See RALPH KING ANDERSON, JR., SOUTH CAROLINA REQUESTS TO CHARGE-CIVIL 2002, §1-6. A jury may consider the expert's opinion just as it does all other evidence in the case and give it such weight as the jury in its experience and discretion may determine appropriate. Id. While evidence was presented at trial as to good billing practices, it is a factual issue as to whether the billing practices of the Plaintiff fail to comply with Plaintiff's obligation of good faith and fair dealing. The Defendant shares an equal obligation of good faith and fair dealing. The jury determined that based upon the evidence presented, Plaintiff is entitled to a verdict of \$173,990.53 on its claim for breach of contract.

(b) Jury's verdict is not contrary to the evidence as to Defendant's failure to comply with S.C. Code Ann. § 27-1-15.

Defendant reiterates its prior argument that Defendant made a fair and reasonable investigation into Plaintiff's claims under S.C. Code Ann. § 27-1-15 and therefore should not be liable for attorneys fees under the statute. Plaintiff relies upon its arguments presented previously in this memorandum in supporting the Jury's verdict rendered on Defendant's failure to comply with S.C. Code Ann. § 27-1-15 cause of action.

(c) Jury's verdict is not contrary to the evidence as to Plaintiff's mechanic's lien being timely

Defendant reiterates its prior argument that Plaintiff's work included in its mechanic's lien is not work for which Plaintiff is entitled to assert a lien; therefore, Plaintiff's lien is untimely. Plaintiff relies upon its arguments presented previously in this memorandum in supporting the Jury's verdict rendered on Plaintiff's mechanic's lien cause of action. Because Plaintiff's lien is timely, Defendant has no basis for its slander of title claim. Therefore, Defendant is not entitled to recovery under his counterclaim for slander of title.

(6) The Jury's verdict rendered is not excessive

Defendant argues it is entitled to a new trial because the amount of the jury's verdict is grossly inadequate or excessive. In the alternative, Defendant asks the court to reduce the jury's verdict because it is excessive in light of the evidence presented. As stated by Defendant, "the consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented." Proctor v. Dept. of Health and Env. Control, 368 S.C. 297, 628 S.E.2d 496 (Ct. App. 2006).

An excessive verdict is one that results from the jury's passion or prejudice and thereby shocks the court's conscience. See Black's Law Dictionary, 7th Edition (1999). Under the evidence presented at trial, the jury's verdict is clearly not excessive and should not shock the

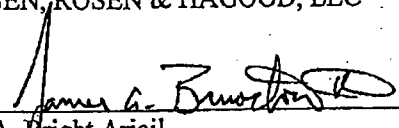
court's conscience as it is less than the amount of actual damages claimed by the Plaintiff. Plaintiffs claimed actual damages for design services due in the total dollar amount of \$201,773.03. See Plaintiff's Exhibit 23. Plaintiff provided evidence through testimony, drawings, time sheets and invoices to substantiate each and every dollar claimed. See Plaintiff's Exhibits 8, 8(a), 8(b), 13-18, 21 & 23. After listening to the testimony and reviewing the evidence presented, the jury determined that Plaintiff is entitled to a verdict in the amount of \$173,990.53. While the jury's verdict is not equal to the actual damages claimed by the Plaintiff, the verdict rendered is supported by the evidence presented at trial.

CONCLUSION

For the reasons set forth above, Defendant's Motion for Judgment Notwithstanding the Verdict and/or For a New Trial should be denied.

Respectfully submitted by,

ROSEN, ROSEN & HAGOOD, LLC

By: 

A. Bright Ariail
James A. Bruorton, IV
134 Meeting Street, Suite 200
P. O. Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
August 11, 2011

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, P.C.

Plaintiffs,

vs.

GENE R. SLIVKA,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-15-0595

DEFENDANT'S NOTICE OF
MOTION PURSUANT TO SCRPC
59(e) REGARDING THE COURT'S
ORDER DENYING DEFENDANT'S
MOTION FOR JNOV and/or
FOR NEW TRIAL

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 SEP 19 PM 3:04

Defendant makes this motion pursuant to *SCRPC* 59(e) regarding the Order Denying Defendant's Motion for JNOV and/or for New Trial (hereinafter "Order"). Defendant received said Order on Friday, September 2, 2011. Under *SCRPC* 59(e) a party may move to alter or amend a judgment and may also ask for reconsideration of issues and arguments. *Elam v. South Carolina Dept. Of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (S.C. 2004). For the reasons set forth in its *Notice of Motion and Motion for JNOV and/or for New Trial*, incorporated by reference herein, and for the reasons set forth below, the Defendant asks this Court to alter or amend its Order and/or to reconsider its award.

- I. The Order contains an error of law in its ruling that the lien that is the subject of this action was timely filed.

To assert a lien under *S.C. Code Ann. § 29-5-90* the claimant must have performed work for which he is entitled to assert a lien, specifically labor within the meaning of the statute, at a time within ninety days before the notice. *Preferred Savings and Loan Association, Inc., V. Royal Garden Resort, Inc.*, 295 S.C. 268, 272, 368 S.E.2d 78, 81 (Ct. App. 1988).

The Order finds that Plaintiff was entitled to assert a lien for work performed in January, 2009, specifically answering questions of contractors regarding the project. The Court relies on *Williamson v. Hotel Melrose*, 110 S.C. 1, 96 S.E. 407 (1918) as authority to support its finding that this work is included in the definition of "labor" under *S.C. Code Ann. § 29-5-10*. The Court's Order in this regard, and its reliance on *Williamson*, is in error.

In *Williamson*, decided under a prior and different version of the Mechanic's Lien statute, the Court specifically sought to determine whether service provided by an architect was within the scope of the lien statute which existed at the time. The Court specifically found that the architect who not only furnished plans and specifications but also "supervised" and "superintended" the construction of the project had performed labor within the meaning of that version of the statute. *Id.* at 408 and 411. "Superintend" is defined as "to oversee and direct work" or "to exercise supervision over."¹

The actual activities by The Spriggs Group that the Order relies on as work justifying the lien do not even fit within the definition of "labor" set forth in *Williamson*. At trial, Mr. Spriggs testified on cross-examination that "contract administration" services, such as conversing with subcontractors on the telephone, is different than "construction observation", and is also different than "supervision" of construction. The Court may recall that Mr. Spriggs testified that "contract administration" and the term "supervision" are terms of art and have specific meaning in architectural contracts and in the architectural industry. Mr. Spriggs testified that he avoids performing "supervision" because he does not want to be responsible for the errors and omissions of contractors in the actual erection of improvements to real property. He testified that he did not "supervise" the construction on this

¹*The Random House College Dictionary*, Revised Edition, © 1984.

project and was only at the site three times and not at all in 2009. Thus, unlike *Williamson*, it cannot be said that Spriggs “supervised” or “superintended” the work because he testified that he did not.

More importantly, since *Williamson*, the South Carolina Legislature has enacted a new mechanic’s lien statute which reads:

As used in this section, labor performed or furnished in the erection, alteration, or repair of any building or structure upon any real estate includes the preparation of plans, specifications, and design drawings and the work of making the real estate suitable as a site for the building or structure. The work is considered to include, but not be limited to, the grading, bulldozing, leveling, excavating, and filling of land (including the furnishing of fill soil), the grading and paving of curbs and sidewalks and all asphalt paving, the construction of ditches and other drainage facilities, and the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes, and the disposal of any construction and demolition debris, as defined in Section 44-96-40(6), including final disposal by a construction and demolition landfill. Any private security guard services provided by any person at the site of the building or structure during its erection, alteration, or repair is considered to be labor performed or furnished within the meaning of this section. *S.C. Code Ann.* 29-5-10. (Emphasis added)

The new version of the statute specifically added “preparation of plans, specifications, and design drawings” to its definition of “labor.” The legislature declined to include in its definition of labor other services commonly performed by architects such as “contract administration” services. Because other types of services were omitted from the statute, it is improper, and in error, for the Court to expand the statute to include services the legislature did not include. *Clo-Car Trucking Co., Inc. v. Cliffure Estates of South Carolina, Inc.*, 282 S.C. 573, 320 S.E.2d 51 (Ct. App.1984)(A mechanic’s lien exists only by virtue of statute; therefore, one’s right to a mechanic’s lien is wholly dependent upon the language of the statute creating it and we are not at liberty to depart from the plain meaning of the mechanic lien’s statutory language.)

The Order also finds that work performed in May, 2009, justifies the lien which was filed on April 13, 2009. This is also a clear error. First, referencing the May, 2009 work, the Court finds, "Plaintiff provided design sketches for an appraisal of Defendant's property. Andy Bozeman testified he was contacted by an appraiser for the Defendant and asked to provide floor plan sketches and room name information for preparation of the appraisal of Defendant's home." *Order Denying Defendant's Motion for JNOV and/or for New Trial*, dated September 7, 2011, P. 5, FN1. The language of the Order itself establishes that this work was not for the "erection, alteration, or repair" of any building and, therefore, is not covered by the lien statute.

Second, this work was performed after the Plaintiff filed its mechanic's lien on April 13, 2009. "When a party files a notice of lien under Section 29-5-90, he is asserting that at a time **within ninety days before the notice he has performed work for which he is entitled to assert a lien.**" *Preferred Savings and Loan Association, Inc., v. Royal Garden Resort, Inc.*, 295 S.C. 268, 272, 368 S.E.2d 78, 81 (Ct. App. 1988)(emphasis added). The work done in May, 2009, cannot, as a matter of law, support the lien filed by Spriggs before the work was done.

Third and finally, to be subject to the Mechanic's Lien Statute, work must be performed at the request or with knowledge of the owner. *Wood v. Hardy*, 235 S.C. 131, 140, 110 S.E.2d 157, 161 (S.Ct. 1959). There was no evidence that the work was done at the request or with the knowledge of the Defendant. Rather, Spriggs and Bozeman both testified that they simply "assumed" that Slivka was aware of the appraiser's request. Slivka, however, denied authorizing the appraiser's request and testified that he did not know of it until he received Spriggs' June, 2009 invoice.

II. The Defendant's failure to pay undisputed funds after receiving the demand from the Plaintiff pursuant to S.C. Code Ann. § 27-1-15 was not unreasonable and the Defendant is entitled to judgment under this claim as a matter of law.

In the Order, the Court finds that since the Defendant did not pay to the Plaintiff one half of the agreed upon \$151,000.00 fee, the Defendant is not entitled to a judgment notwithstanding the verdict on the Plaintiff's claim under *S.C. Code Ann. § 27-1-15*. This is in error for several reasons.

First, the *S.C. Code Ann. § 27-1-15* demand was made on March 15, 2010, eight months after the Plaintiff commenced the lawsuit and ten months after Defendant had deposited \$265,012.71 to bond off the untimely lien. Thus, because the Plaintiff filed the mechanic's lien action, any amount which may have been an undisputed amount (which is denied) had been deposited with the Court. There is no legal obligation for Slivka to pay both a bond into the court **and** any undisputed amount. Given the fact that a mechanic's lien action was pending, and a bond had been deposited, there is nothing to support a finding that Slivka immediately failed to pay any sum under *S.C. Code Ann. § 27-1-15*.

In support of its ruling, the Court's Order states, "Further, Defendant wrote Plaintiff a letter in June of 2009, after he had paid money into the Court, indicating he would pay 50% of the \$151,000 upon receipt of a corrected invoice." That letter is immaterial and irrelevant on the issue of liability under § 27-1-15 for two reasons. First, it pre-dated the demand under § 27-1-15 by more than eight months and during which much had changed between the parties. While the letter was certainly written and sent in June, 2009, it is undisputed that Spriggs refused to accept that sum in satisfaction of his claim. Instead, Spriggs chose to file suit, in July, 2009, thereby obligating Mr. Slivka to continue to incur additional and significant attorney's fees and costs associated with the

litigation, as well as damages related to the cost of the money that had been deposited with the Court. In other words, when Spriggs failed to accept the settlement proposal in June 2009, and filed suit, Slivka's damages associated with the untimely filing of the lien increased and Slivka filed his counterclaim. Of critical importance to the disposition of the § 27-1-15 claim, Slivka's counterclaim was recognized as having factual support and Mr. Slivka's claims for damages was submitted to the jury upon the denial of the Plaintiff's Motion for Directed Verdict.

As a matter of law, when this entire "dispute" was submitted to the jury on Friday, July 22, 2011, no one, not Mr. Spriggs, not Mr. Slivka, and not even the Court could say that an "undisputed" amount was due and owing to Mr. Spriggs. The fact that it was submitted to the jury establishes that it was all, very much, in dispute. Had some amount due to Spriggs by Slivka been undisputed, the Court would have directed a verdict in favor of Spriggs in that amount, which the Court did not do. When the Court denied Plaintiff's motions for directive verdict, as a matter of law, it established that Slivka had no liability under § 27-1-15.

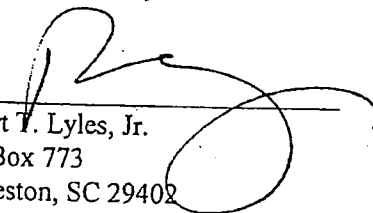
The same result is reached by the analysis of the statute in *Carolina Steel Corporation v. Palmetto Bridge Construction*, 444 F.Supp.2d 577 (D.S.C. 2006). It is undisputed that when the demand was made under § 27-1-15, the parties were engaged in discovery with claims pending against each other. This satisfies the requirement of an investigation, as a matter of law, and as stated above, as of the time this matter was submitted to the jury, all amounts, and who owed them, were in dispute.

CONCLUSION

For the foregoing reasons, Slivka requests that the Court remand its earlier rulings and grant the post-trial motions made by Slivka.

Dated this ___ day Sept 16, 2011.

LYLES & LYLES, LLC



Robert T. Lyles, Jr.
P.O. Box 773
Charleston, SC 29402
(843) 577-7730
rtl@lylesfirm.com

ATTORNEY FOR DEFENDANT,
GENE R. SLIVKA

Charleston, South Carolina

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

James A. Bruorton, IV
cbruorton@rrhlawfirm.com

134 MEETING STREET, SUITE 200
P.O. Box 893
CHARLESTON, SOUTH CAROLINA 29402
PHONE (843) 577-6726
FAX (843) 724-8036
www.rrhlawfirm.com

September 22, 2011

VIA EMAIL AND U.S. MAIL

Patricia Grant
Colleton County Clerk of Court
101 Hampton Street
Walterboro, SC 29488

Re: The Spriggs Group, P.C. v. Gene Slivka
Case No.: 2009-CP-15-595

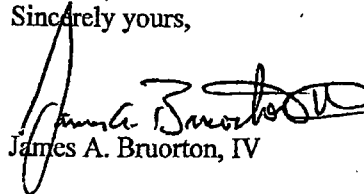
Dear Clerk:

Enclosed for filing, please find The Spriggs Group, P.C.'s reply to Defendant Gene Slivka's Rule 59(e) Motion to Alter or Amend the Court's Order denying Defendant's Motion for JNOV and/or for New Trial. I ask that you please file the original and return a filed stamped copy in the enclosed envelope.

I appreciate your attention in this matter.

With kindest regards, I am

Sincerely yours,



James A. Bruorton, IV

CAB/lsc
Enclosures

cc: Robert T. Lyles, Jr.

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

James A. Bruorton, IV
cbruorton@rrhlawfirm.com

134 MEETING STREET, SUITE 200
P.O. Box 893
CHARLESTON, SOUTH CAROLINA 29402
PHONE (843) 577-6726
FAX (843) 724-8036
www.rrhlawfirm.com

September 22, 2011

The Honorable William H. Seals, Jr.
Court of Common Pleas of Colleton County
101 Hampton Street
Walterboro, SC 29488

Re: The Spriggs Group, P.C. v. Gene Slivka
Case No.: 2009-CP-15-595

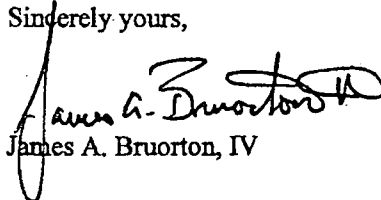
Dear Judge Seals:

I am in receipt of Defendant Gene Slivka's Rule 59(e) Motion seeking to alter or amend your Order denying Defendant's Motion for JNOV and/or for New Trial. I am also in receipt of your law clerk's email indicating that the motion will be ruled upon based upon the written record and any response to the motion should be submitted to the Court for consideration within ten (10) days. Having reviewed the most recent motion made by the Defendant in comparison with the Defendant's original Motion for JNOV and/or for a New Trial, I do not believe a response is necessary from the Plaintiff. Mr. Slivka's counsel raises and reiterates the arguments previously submitted to the court related to the timeliness of Plaintiff's mechanic's lien and as to the reasonableness of Defendant's actions under S.C. Code Ann. § 27-1-15. Plaintiff has previously submitted a brief to the Court addressing these issues in its Memorandum in Opposition to Defendant's Motion for Judgment Notwithstanding the Verdict and/or For New Trial. I believe the Court has correctly ruled on these issues before and do not see any basis set forth in Defendant's most recent motion that would warrant a modification to the Court's prior Order.

Plaintiff will rely upon the written record already submitted to the Court and respectfully requests that Defendant's Rule 59(e) Motion to Alter or Amend be denied. If you have any further questions or concerns, please feel free to contact our office.

With kindest regards, I am

Sincerely yours,


James A. Bruorton, IV

CAB/cab
cc: Robert T. Lyles, Jr.

)

)

)

1

—

)

)

)

1

)

)

5

1

11

11

;

)

9

10

nn

II

er

er

2

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
CLERK
608
OCT 12 AM 11:47
2012

Courts must interpret statutes that grant the power to award attorney's fees narrowly because these laws have been enacted in derogation of the common law. *Harris-Jankins, et al. v. Nissan Cr Mart, Inc.*, 348 S.C. 171, 557 S.E.2d 708 (Ct. App. 2001), citing *Dowaliby v. Chambless*, 344 S.C. 558, 562, 544 S.E.2d 646, 648 (Ct. App. 2001). Because the Court is basing its award on one or both of the referenced statutes, it must specify what fees are awarded under which statute. Otherwise, Defendant is deprived of the right to assess whether the award of fees is proper under either statute. That is particularly so where, as here, the award, on its face, is not proper under either statute and each statute has limitations which would prohibit the Court from awarding Plaintiff all fees it incurred in this action, or fees in the amount awarded.

Here, Court has issued an award of attorneys fees in the single amount of \$235,030.31, which are all fees incurred by Plaintiff from the Notice of Mechanic's Lien in April, 2009 through the trial of the case in July, 2011. This award not only exceeds the amount of the verdict, \$173,990.53 (which is itself impermissible, as discussed below), but also exceeds the amount that is authorized by the applicable statutes. Neither statute provides for the recovery of fees and costs incurred in the defense of counterclaims (which, importantly, were not related to this statutory claim), the pursuit of other causes of action that permit recovery of punitive damages, or the pursuit of equitable remedies such as *Quantum Meruit*, all of which were prosecuted by Plaintiff and which were without merit and were withdrawn.

It is undisputed that Plaintiff asserted and prosecuted several causes of action against Defendant that were separate from its claims under the Mechanics Lien Statute and S.C. Code Ann. §27-1-15, including Breach of Contract, Breach of Contract Accompanied by Fraudulent Acts, and Unjust Enrichment/*Quantum Meruit*. Plaintiff's attorney's billing records indicate that they spent

substantial time and effort, up through trial, prosecuting all of those causes of action. This included the development of evidence of other suits against Defendant and preparing witnesses to come forward at trial to testify against Defendant with respect to these claims.¹ At trial, the Plaintiff's causes of action for Breach of Contract Accompanied by Fraudulent Acts and Unjust Enrichment/*Quantum Meruit* were withdrawn since they had no merit. Additionally, Plaintiff defended Defendant's counterclaims for Slander of Title, Violation of the Frivolous Claims Sanction Act - *S.C. Code Ann.* §15-36-10, Tortious Interference with Contractual Relationships with Third Parties Dependent Upon Performance by Plaintiff, and Tortious Interference with Contractual Relationships with Third Parties Resulting from Defective Notice of Mechanic's Lien. These claims were not withdrawn until trial, either.

By awarding Plaintiff all fees incurred by Plaintiff's counsel, from the filing of the Notice of Lien through trial, the Court has awarded Plaintiff fees for the prosecution of those causes of action other than the Mechanic's Lien Statute and § 27-1-15, and for the costs of defending Plaintiff's counterclaims, none of which are recoverable under either statute.

A. Mechanic's Lien Statute Limitations

Under the mechanic's lien statute, there are two significant limitations on the amount of an attorneys fee award to the prevailing party. First, the amount of the award of attorney's fees may not exceed the amount of the lien. *S.C. Code Ann.* 29-5-10(a). Second, under the Mechanic's Lien Statute, as noted previously by Defendant, a party may only recover attorneys fees related to the mechanic's lien action. *Utilities Const. Co., Inc., v. Wilson*, 321 S.C. 244, 468 S.E.2d 1 (Ct. App.

¹Only during the week of trial did the Court prohibit these witnesses from testifying, meaning that they had been prepared for trial by Plaintiff's counsel.

1996). Notwithstanding these express and established limitations, the Court's Order awards attorneys fees and costs in the amount of \$235,030.31, which both exceeds the amount of the claimed mechanic's lien by \$36,195.78 (and the amount of the lien established by the jury, by \$61,039.78).

As noted above, the amount awarded includes all of the fees incurred by Plaintiff, including those incurred to prosecute non-mechanic's lien causes of action and the defense of Slivka's counterclaims. Accordingly these fees are improper under the Mechanic's Lien Statute.

B. Limitations in S.C. Code Ann. § 27-1-15

The fees awarded by the Court also exceed, on its face, the amount of fees recoverable under S.C. Code Ann. § 27-1-15.

S.C. Code Ann. § 27-1-15. states, in part:

If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand. (emphasis added)

Plaintiff made its demand pursuant to S.C. Code Ann. § 27-1-15 on March 15, 2010, eight months after litigation commenced between the parties. The amount awarded includes all fees and costs incurred by the Plaintiff in this action, including those that were undisputedly incurred during the eight months before the § 27-1-15 demand was even made which is clearly not authorized by § 27-1-15.

It should also be noted that the Court has not stated or determined what amount, allegedly due to Plaintiff by Defendant, was a "proper portion" on March 15, 2010. That is important in that, if that sum is the \$76,201.00 Defendant agreed to pay, in a letter dated June 4, 2009, then the fees awarded are over 300% that amount which is patently improper.

II. The fees and costs awarded by the Plaintiff are excessive.

The attorneys fees awarded in the Order in this matter exceed the amount of the verdict awarded to the Plaintiff in this matter, as well as the amount authorized by statute and customary fees. See. *Defendant's Memorandum In Opposition to Plaintiff's Motion for Interest, Fees and Costs*, which is incorporated into this motion by reference.

The Order issued by the Court recognizes that awards of attorneys fees which exceed the verdict have been upheld. *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (S.Ct. 1998). However, the award made in *Taylor v. Medenica* was made pursuant to the South Carolina Unfair Trade Practices Act and not pursuant to either of the statutes at issue in this case. The object of the Unfair Trade Practices Act is to discourage parties who are repeatedly using deceptive acts and practices in the conduct of trade or commerce. *Id.* Under the Unfair Trade Practices Act the attorneys fees provision is a tool to effect the object of the statute and encourage Plaintiff's to fight the use of unfair trade practices even in cases where their damages may be minimal. *Id.* The Unfair Trade Practices Act is clearly a punitive statute which also awards treble damages. *S.C. Code Ann.* § 39-5-140. The recovery of treble damages and attorneys fees encourages claimants to pursue claims against those practicing unfair or deceptive trade practices where the actual damages which might be recovered may be minimal.

The objective of the provisions awarding attorneys fees in the statutes at issue in this case is to facilitate resolution of disputes rather to punish or deter particular conduct. The legislature placed very specific limitations on the attorneys fees which can be awarded under the Mechanic's Lien Statute, specifically limiting any such award to the amount of the lien. *S.C. Code Ann.* § 29-5-10. Additionally, under the Mechanic's Lien Statute, either party to the dispute may be forced to pay

attorneys fees, depending on who prevails. *S.C. Code Ann.* § 29-5-10. "Clearly, the intent of the legislature in allowing the prevailing party in an action brought under the mechanic's lien statute to recover attorney fees and costs stems from a desire to deter both wrongful filing of liens and unjustified refusal to pay debts subject to mechanic's liens." *Cedar Creek Properties v. Cantelou Assoc., Inc.*, 320 S.C. 483, 465 S.E.2d 774 (Ct. App. 1995).

Likewise, the purpose of *S.C. Code Ann.* § 27-1-15 is not punitive. The statute also contains specific limitations as the award of attorneys fees is limited to those incurred after the date of the statutory demand. The obvious purpose of the statute is to avoid litigation by promoting pre-suit investigation with the threat of recovery of attorneys fees before the use of the courts is required (although Plaintiff in this matter waited until he had initiated a lien on the Defendant's property, the Defendant had already posted a sizeable cash bond, and Plaintiff had already initiated litigation). The purpose of this statute is to promote investigation of claims and resolution of portions of the claims which are not disputed. *Id.* A finding against the Defendant with respect to the claim does not even mandate an award of attorneys fees under this statute. *Carolina Steel Corp. v. Palmetto Bridge Constructors*, 44 F.Supp.2d 577 (D.S.C. 2006).

III. The Order does not contain sufficient reasonable factual findings to support the finding of reasonableness with respect to the amount of the fees awarded.

Both the Mechanic's Lien Statute and § 27-1-15 allow the recovery of some degree of "reasonable" attorneys fees. While the Defendant denies that the Plaintiff is entitled to any award under either statute, the fees sought by the Plaintiff under any theory are not reasonable. "[T]he court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional

standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). See also. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993); *Taylor v. Medenica*, 331, S.C. 575, 503 S.E.2d 458 (S.Ct. 1998). Consideration should be given to all six factors; none of the factors is controlling. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). The Order does not set forth reasonable factual support for awarding a total amount that exceeds the Plaintiff's recovery in this matter by \$61,039.88. For the reasons set forth in *Defendant's Memorandum In Opposition to Plaintiff's Motion for Interest, Fees and Costs* which is incorporated herein verbatim, the total fees and costs of \$235,030.41 awarded to the Plaintiff in this matter are excessive. The Court's order fails to set forth facts to justify the total amount of the award under the aforementioned factors.

IV. The Order awards a judgment which exceeds that authorized by the Mechanic's Lien Statute where total recovery is limited to the amount of the cash bond posted by the Defendant with the Clerk of Court.

The Order enters a judgment in the total amount of \$446,434.76. Under the mechanic's lien statute the Plaintiff is only entitled to payment from the cash posted by the Defendant with the court pursuant to *S.C. Code Ann. § 39-5-110*. This statute states:

At any time after service and filing of the statement required under § 29-5-90 the owner or any other person having an interest in or lien upon the property involved may secure the discharge of such property from such lien by filing in the office of clerk of court or register of deeds where such lien is filed his written undertaking, in an amount equal to one and one-third times the amount claimed in such statement, secured by the pledge of United States or State of South Carolina securities, by cash or by a surety bond executed by a surety company licensed to do business in this State, and upon the filing of such undertaking so secured the lien shall be discharged and the cash, securities or surety bond deposited shall take the place

of the property upon which the lien existed and shall be subject to the lien. In the event of judgment for the person filing such statement in a suit brought pursuant to the provisions of this chapter, **such judgment shall be paid out of the cash deposited** or, in event of pledge of securities, it shall be paid from the proceeds of a sale of so much of the pledged securities as shall be necessary to satisfy such judgment or, in event of the filing of a surety bond, the surety company issuing such bond shall pay such amount found due, not to exceed the amount of the bond. Unless suit for enforcement of the lien is commenced as required by § 29-5-120, the undertaking herein required shall be null and void and the principal therein shall have the right to have it canceled and such cash or securities deposited or pledged or surety bond filed shall be released from the lien herein provided. (emphasis added)

Pursuant to this statute, the Defendant deposited \$266,012.71 in cash with the clerk of court on May 12, 2009 and the Plaintiff's mechanic's lien was released. Upon making this deposit the Plaintiff's mechanic's lien was discharged and the cash deposited took the place of the Plaintiff's property. Per the statute, the total payment to the Plaintiff under the mechanic's lien statute is limited to the \$266,012.71 deposited by the Defendant with the Clerk of Court. The Plaintiff's verdict was \$173,990.53. Therefore, any award of attorneys fees under the Mechanic's Lien Statute is limited to a maximum of \$92,022.18.

These arguments are set forth in more detail in *Defendant's Memorandum In Opposition to Plaintiff's Motion for Interest, Fees and Costs* which is incorporated herein verbatim.

V. The Order awards fees for staff members which are not authorized to be recovered by either statute.

The Order awards the total fees incurred by Plaintiff's counsel which includes time spent by staff members. Both the statutory claims of the Plaintiff provide for recovery of "attorneys fees." Whether these statutes allow for the recovery of fees related to service by staff members has not been specifically addressed in South Carolina. "We are not at liberty to depart from the plain meaning of the mechanic lien's statutory language." *Clo-Car Trucking Co., Inc. v. Clifflore*

Estates of South Carolina, Inc., 282 S.C. 573, 320 S.E.2d 51 (Ct.App.1984). Therefore, the Plaintiff may not include fees related to staff members in its claims for attorneys fees under the statute.

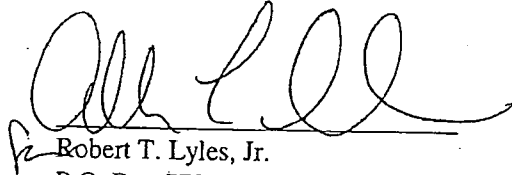
These arguments are set forth in more detail in *Defendant's Memorandum In Opposition to Plaintiff's Motion for Interest, Fees and Costs* which is incorporated herein verbatim.

VI. The Order awards attorneys fees, costs and prejudgement interest to which Plaintiff is not entitled.

The Order awards attorneys fees and costs pursuant to S.C. Code Ann. 29-5-10 and S.C. Code Ann. 27-1-15. Additionally, the Order awards prejudgment interest in the amount pursuant to S.C. Code Ann. 27-1-15. For reasons set forth in *Defendant's Notice of Motion and Motion for Judgment Notwithstanding the Verdict and/or for a New Trial Absolute or Nisi Remittitur* the Plaintiff is not entitled to recovery of attorneys fees, costs, or prejudgment interest under these statutes.

Dated this 7th day October, 2011.

LYLES & LYLES, LLC

A handwritten signature in black ink, appearing to read "R. T. Lyles, Jr.", written over a horizontal line.

Robert T. Lyles, Jr.

P.O. Box 773

Charleston, SC 29402

(843) 577-7730

rtl@lylesfirm.com

ATTORNEY FOR DEFENDANT,
GENE R. SLIVKA

Charleston, South Carolina

2011 OCT 20 AM 10:05
PATRICK J. GARRITY
COLLETON COUNTY
COMMON PLEAS
CLERK
JULIA L. GARRITY
CLERK

)

3

)

)

)

)

)

)

)

)

)

)

)

)

1. Plaintiff is entitled to recover all of its fees as it prevailed under the Mechanic's Lien Statute and S.C. Code Ann. § 27-1-15.

586

prevailing party up to the amount of the lien. See S.C. Code Ann. § 29-5-10. The verdict reached as to Defendant's failure to comply with S.C. Code Ann. § 27-1-15 provides for a recovery of attorney's fees and interest at the judgment rate on the money claimed due, but the express provisions of the statute do not limit the recovery of attorney's fees to a maximum amount like the mechanic's lien statute. See S.C. Code Ann. § 27-1-15. Thus, Plaintiff is entitled to attorney's fees and costs up to the amount of the mechanic's lien. Fees and costs over and above the amount of the mechanic's lien are recoverable under S.C. Code Ann. § 27-1-15. Based upon the express provisions of the statute, Plaintiff's full amount of fees and costs since March 15, 2010 can be awarded under S.C. Code Ann. § 27-1-15.

Defendant also argues that Plaintiff asserted and prosecuted several causes of action against Defendant which were separate from its claims under the Mechanic's Lien Statute and S.C. Code Ann. § 27-1-15. All claims submitted by Plaintiff were ancillary to Plaintiff's mechanic's lien action, which serves as the primary basis for the damages sought by Plaintiff. The prosecution of the Plaintiff's case is directly related to professional services provided pursuant to its contract with the Defendant for which Plaintiff's mechanic's lien rights were triggered as a result of Defendant's non-payment. See Ariail Second Affidavit ¶ 4. Plaintiff's quantum meruit/unjust enrichment and breach of contract causes of action rely upon the same facts and seek the same damages as those sought under the mechanic's lien cause of action. See Ariail Second Affidavit ¶ 4. Attorney's fees and costs related to these causes of action are indistinguishable from those incurred related to the mechanic's lien action. See Ariail Second Affidavit ¶ 4. Of the \$209,109.60 worth of attorney's fees submitted in this action, approximately \$5,750.00 (5 hours at \$250.00 per hour; 13.1 hours at \$210.00 per hour; and 10 hours at \$175.00 per hour) is attributable to the prosecution of Plaintiff's breach of contract accompanied by a fraudulent act cause of action, which sought additional damages based upon

additional facts outside of the services provided by Plaintiff to Defendant. See Atrial Second Affidavit ¶ 5.

Plaintiff did spend a substantial amount of time defending against the counterclaims filed by Defendant. However, all but one of Defendant's counterclaims relate to the mechanic's lien action. Defendant's counterclaims for Slander of Title, Violation of the Frivolous Claims Sanction Act, and Tortious Interference with Contractual Relationships with Third-Parties Resulting from Defective Notice of Mechanic's Lien all relate to the mechanic's lien action brought by Plaintiff. The Mechanic's Lien statute allows for a party to recover attorney's fees related to the mechanic's lien action. See S.C. Code Ann. § 29-5-10, et seq.

The intent of the Legislature in allowing the prevailing party in an action brought under the mechanic's lien statute to recover attorney's fees and costs stems from a desire to deter both wrongful filing of liens and unjustified refusal to pay debts subject to the mechanic's lien. Cedar Creek Properties v. Canelou Associates, Inc., 326 S.C. 483, 465 S.E.2d 774 (S.C. App. 1995). In this action, Defendant's unjustified failure to pay the debt owed to Plaintiff, which is subject to the mechanic's lien, is the root cause of the fees and costs incurred by Plaintiff in this action. Determination as to the amount of attorney's fees which should be awarded under the mechanic's lien statute is addressed to the sound discretion of the trial court. Seckinger v. Vessel Excalibur, 326 S.C. 382, 483 S.E.2d 775 (S.C. App. 1997).

Defendant further argues that S.C. Code Ann. § 27-1-15 only allows for recovery of attorney's fees and costs from the date of the demand. Plaintiff incurred attorney's fees in the amount of \$24,260.25 and costs in the amount of \$1,962.27 prior to the S.C. Code Ann. § 27-1-15 demand being made on March 15, 2010. See Atrial Second Affidavit 5. Attorneys fees in the amount of \$184,849.35 and costs in the amount of \$23,958.44 were incurred by the Plaintiff after the S.C. Code Ann. § 27-1-15 demand was made on March 15, 2010. See Atrial Second

Affidavit ¶ 5. Plaintiff continues to incur attorney's fees and costs in defending the numerous post trial motions being made by the Defendant. Even if the Plaintiff is found not entitled to recover attorney's fees and costs prior to March 15, 2010 under S.C. Code Ann. § 27-1-15, those attorney's fees and costs are recoverable by the Plaintiff as the prevailing party under the mechanic's lien statute.

2. The fees and costs awarded to the Plaintiff are reasonable and not excessive

In determining the award of attorney's fees, the court considered six factors: (1) nature, extent, and difficulty of legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in locality for similar services; and (6) beneficial results obtained. See Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961); Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993); Dedes v. Stickland, 307 S.C. 155, 414 S.E.2d 134 (1992). The Court gave consideration to all six criteria in establishing the attorney's fees awarded and none of these factors was controlling. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974)). The Court based its award on the evidence presented through the Affidavits of A. Bright Ariail and N. Keith Emge along with its impression of the case presented by Plaintiff's counsel at trial. It is without question that when an action cannot be resolved prior to a trial, the fees and costs associated with the preparation of the case for trial and the time spent at trial greatly increases the fees and costs incurred. The Court sufficiently analyzed all six factors under Collins and made specific findings as to each factor, which supports the award given.

3. The total recovery under the Mechanic's Lien Statute is not limited to the amount of the cash bond posted by the Defendant.

Defendant argues that a bond was posted with the Court pursuant to S.C. Code Ann. § 39-5-110 which limits Plaintiff's total recovery to the amount of the lien. The statutory language quoted by Defendant is misconstrued and nothing within the quoted language limits the judgment to the amount of the cash bond posted. See S.C. Code Ann. § 39-5-110. Under South Carolina's Mechanic's Lien Statute, the costs which may arise in enforcing or defending against the lien, including a reasonable attorney's fee, may be recoverable by the prevailing party up to the amount of the lien. See S.C. Code Ann. § 29-5-10. The express language of the statute indicates that a party is entitled to a judgment up to twice the amount of the lien. For example, if the mechanic's lien is for \$100,000, the prevailing party can be awarded up to \$100,000 in attorney's fees making the total judgment \$200,000.

Defendant's filing of a bond pursuant to S.C. Code Ann. § 39-5-110 does not void the express language of the South Carolina Mechanic's Lien Statute. Under Defendant's theory, Plaintiff would only be entitled to attorney's fees in the amount of one third of the lien amount in all circumstances. Defendant provides no legal support for this argument and Defendant's argument is in contradiction to the express provisions of South Carolina's Mechanic's Lien Statute.

4. The South Carolina Mechanic's Lien Statute does not exclude staff members from the definition of attorney's fees.

Defendant argues that time spent by staff members is not recoverable in its claim for attorney's fees under the statutes. Defendant provides no legal authority for its position other than reliance on the term "attorney's fees" set forth in the statute. South Carolina's Mechanic's Lien Statute does not define what is considered to be included as attorney's fees. Attorneys fees, as defined by Black's Law Dictionary, is the charge to a client for services performed for the

client, such as an hourly fee, a flat fee, or a contingent fee. See Black's Law Dictionary 7th Edition (1999). The definition does not restrict the charge to a client solely to services provided by an attorney. Plaintiff's fee agreement with counsel sets forth that time billed by attorneys, paralegals and law clerks are part of the legal services being provided. See Ariail Second Affidavit ¶ 3.

In this action, the time spent by staff members of Plaintiff's counsel represents only \$29,180.85 of the total attorney's fee award. See Ariail Second Affidavit ¶ 5. The staff member time includes 226.5 hours of billable time at \$125.00 per hour from Shannon S. Skelly, the primary paralegal assigned to the file and 1.4 hours of billable time at \$125.00 per hour from a second paralegal, Claire G. Whitsett. See Ariail Second Affidavit ¶ 5. Both Ms. Skelly and Mrs. Whitsett are qualified legal professionals with thirty (30) years of combined paralegal experience whose time billed in this matter supported the legal services provided and furthered the prosecution of the case. See Ariail Second Affidavit ¶¶ 6-7. In addition, 8.76 hours were billed to Plaintiff at \$110.00 per hour for legal research performed by law clerks. See Ariail Second Affidavit ¶ 5. Attorney hours represent over 75% of the hours billed to the Plaintiff in this matter. See Ariail Second Affidavit ¶ 5.

5. Plaintiff is entitled to an award of pre-judgment interest

Defendant argues that the Court awarded pre-judgment interest in an amount pursuant to S.C. Code Ann. § 27-1-15. The award of pre-judgment interest is based upon Plaintiff's demand in its Complaint and is calculated from February 9, 2009 per the South Carolina interest statute. See S.C. Code Ann. § 34-31-20(A). The Court's award of prejudgment interest is not based upon S.C. Code Ann. § 27-1-15. Even if Plaintiff had not prevailed under its claim for failure to comply with S.C. Code Ann. § 27-1-15, it would still be entitled to pre-judgment interest based upon South Carolina's Interest Statute. Plaintiff's breach of contract claim allows for recovery

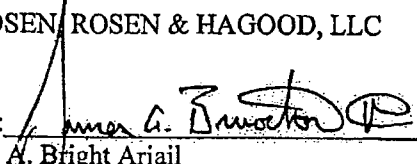
of prejudgment interest based upon the pleadings. South Carolina law allows prejudgment interest on obligations to pay money from time when payment is demandable, if sum due is capable of being reduced to certainty. See GTR Rental, LLC v. DalCanton, 547 F.Supp.2d 510 (2008). The fact that a sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id.

CONCLUSION

For the reasons set forth above, Defendant's Motion Pursuant to SCRPC 59 Re Order For Award of Interest, Fees and Costs to Plaintiff should be denied.

Respectfully submitted by,

ROSEN, ROSEN & HAGOOD, LLC

By: 

A. Bright Ariail
James A. Bruorton, IV
134 Meeting Street, Suite 200
P. O. Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
October 18, 2011

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.

Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2009-CP-15-0595

SECOND AFFIDAVIT OF
A. BRIGHT ARIAIL

2011 OCT 20 AM 10:29

FATHIMA D. GRANT
COLLETON COUNTY
COMMON PLEAS

PERSONALLY APPEARED before me; A. Bright Ariail, who being duly sworn does
state as follows:

1. I am an attorney for the Plaintiff in the above captioned action.
2. I am member of the firm of Rosen, Rosen & Hagood, LLC, and have been a member of the South Carolina Bar since 2001.
3. The Plaintiff entered into a fee agreement, attached as Exhibit A, with the law firm of Rosen, Rosen & Hagood, LLC. Under the terms of this agreement, the Plaintiff is charged an hourly rate for attorneys, paralegals and law clerks as part of the legal services provided for under the fee agreement.
4. The prosecution of the Plaintiff's case is directly related to professional services provided pursuant to its contract with the Defendant for which Plaintiff's mechanic's lien rights were triggered as a result of Defendants non-payment. Plaintiff's quantum meruit/unjust enrichment and breach of contract causes of action rely upon the same facts and seek the same damages as those sought under the mechanic's lien cause of action. Attorney's fees and costs related to these causes of action are indistinguishable from those incurred related to the

mechanic's lien action.

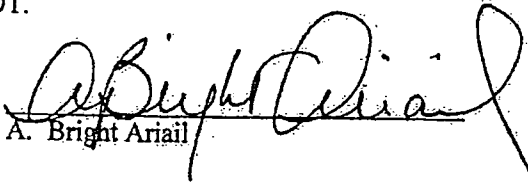
5. I have reviewed in detail the Detail Fee Transaction File List and Detail Cost Transaction File List, which were attached as Exhibits C and D to my July 27, 2011 Affidavit submitted in the above referenced case. Based upon my review, and discussions with the attorneys and paralegals whose time has been billed to the file, I have made the following determinations as to the legal services provided:

- Of the \$209,109.60 worth of attorney's fees submitted in this action, approximately \$5,750.00 (5 hours at \$250.00 per hour; 13.1 hours at \$210.00 per hour; and 10 hours at \$175.00 per hour) is attributable to the prosecution of Plaintiff's breach of contract accompanied by a fraudulent act cause of action.
- Attorney's fees in the amount \$24,260.25 and costs in the amount of \$1,962.27 were billed to Plaintiff prior to the S.C. Code Ann. § 27-1-15 demand being made to Defendant on March 15, 2010.
- Attorney's fees in the amount of \$184,849.35 and costs in the amount of \$23,958.44 have been incurred by the Plaintiff since the S.C. Code Ann. § 27-1-15 demand was made to Defendant on March 15, 2010.
- The time spent by non-attorney staff members of Plaintiff's counsel represents \$29,180.85 of the total attorney's fees claimed. The staff member time includes 226.5 hours of billable time at \$125.00 per hour from the primary paralegal on the file, Shannon S. Skelly, and 1.4 hours of billable time at \$125.00 per hour from paralegal, Claire G. Whitsett. In addition, 8.76 hours were billed to the Plaintiff at \$110.00 per hour for legal research performed by law clerks. The attorney hours billed to the matter represent over 75% of the hours billed to the Plaintiff.

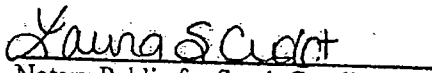
6. Ms. Skelly has over eighteen (18) years of experience as a paralegal. She is a 1992 graduate of the University of South Carolina and has a bachelor of science (cum laude) in Criminal Justice. Additionally, Ms. Skelly holds a certificate of completion (May, 1993) for the Lawyer's Assistant Program of The National Center for Paralegal Training. Ms. Skelly has been a paralegal with my firm for ten years.

7. Mrs. Whitsett has over twelve (12) years of experience as a paralegal. She attended Lander University in Greenwood, South Carolina as English major. She completed the post-graduate paralegal certification program at the ABA approved National Center for Paralegal Training in Atlanta, GA in 1989. Mrs. Whitsett has been a paralegal with my firm for 4 years.

FURTHER AFFIANT SAYETH NOT.


A. Bright Ariail

SWORN to before me this
10th day of October, 2011.


Notary Public for South Carolina
My commission expires: 5-28-2018

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

134 MEETING STREET, SUITE 200

P.O. Box 893

CHARLESTON, SOUTH CAROLINA 29402

PHONE (843) 577-6726

FAX (843) 724-8036

www.rrhlawfirm.com

A. Bright Ariail
bariail@rrhlawfirm.com

April 14, 2009

C. Kenneth Spriggs, AIA
The Spriggs Group, P.C.
545 East York Street
P.O. Box 10062
Savannah, GA 31412

Re: The Spriggs Group, P.C. v. Gene Slivka

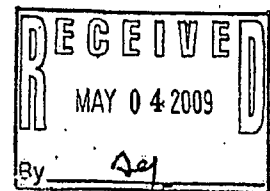
Dear Ken:

I've enjoyed speaking with you over the last few days and look forward to working with you on the above referenced matter. As discussed, I have filed a mechanic's lien on Mr. Slivka's property in Colleton County, as requested, and will continue to assist with collection of the monies due The Spriggs Group, PC for architectural and engineering services that you performed for him. As we discussed, the lien must be foreclosed within six months of the date that you last performed work on the project. I will file a foreclosure action and pursue other legal remedies on your behalf, if necessary.

We will handle this matter on an hourly basis. My time will be billed at \$250.00 per hour. Should another attorney within the firm be employed in this matter, such attorney's fees will be charged at the regular hourly rate for services of a similar nature. Paralegal time will be charged at \$125.00 per hour. Legal research may be accomplished by law clerks which are charged at \$110.00 per hour. In the event the firm should change its hourly rates, the new rates shall be effective and deemed substituted in this letter on written notice to you of such change.

In addition to hourly rates, you will also be billed for all costs and expenses incurred on your behalf. Customary costs include filing fees, service fees, copy costs, case costs, expert witness fees, investigators' fees, deposition costs, travel costs, facsimile transmissions, computer based research, and long distance telephone calls.

We request that you forward a \$3000.00 retainer at your earliest convenience. This retainer will be charged against until it is depleted at which time a new retainer should be deposited on your account. You will receive monthly statements reflecting the status of your account.

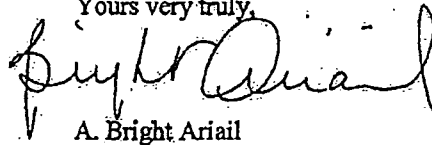


If the account is outstanding for more than 60 days, we may move to be relieved as counsel. If you fail to pay all amounts owed, then you agree to reimburse us for all costs incurred in collecting these amounts, including reasonable attorney's fees and costs. If legal action is brought to collect, you agree to the jurisdiction of the courts located in South Carolina.

Please review the above paragraphs closely and if they are agreeable, please sign the enclosed copy of this agreement on the space provided and return it to me. If the fee arrangement is unclear in any way or if you have any questions, please do not hesitate to call me.

We look forward to working with you.

Yours very truly,

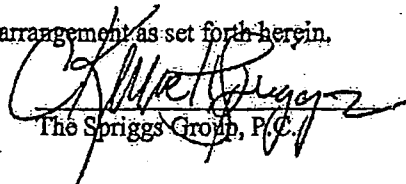


A. Bright Ariail

ABA/aba

Enclosures

I hereby acknowledge and accept the fee arrangement as set forth herein.



The Spriggs Group, P.C.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO.: 2009-CP-15

RECEIVED
DEC 06 2011
SC Court of Appeals

THE SPRIGGS GROUP, P.C., ... Respondent,

v.

GENE R. SLIVKA, ... Appellant.

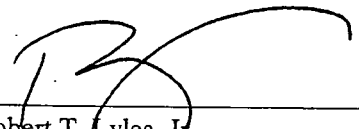
NOTICE OF APPEAL

Gene R. Slivka appeals the verdict and judgment in this matter including but not limited to the rulings of the court as follows:

1. Order Denying Defendant's Motion for JNOV and/or For New Trial, filed on September 7, 2011;
2. Order for Award of Interest, Fees, and Costs initially filed on September 7, 2011, then amended and filed on October 3, 2011,
3. Order denying Defendant's Motion to Alter/Amend Court's Order Denying Defendant's Motion for JNOV and/or for New Trial; and
4. Order Denying Defendant's Rule 59 Motion Regarding Award of Interest, Fees and Costs to Plaintiff filed on November 22, 2011.

Appellant received notice of the Order Denying Defendant's Motion to Alter/Amend Court's
Order Denying Defendant's Motion for JNOV and/or for New Trial and Order Denying Defendant's
Rule 59 Motion Regarding Award of Interest, Fees, and Costs to Plaintiff on November 22, 2011.

December 2, 2011


Robert T. Lyles, Jr.
LYLES & LYLES, LLC
P.O. Box 773
Charleston, SC 29402
(843) 577-7730
Rtl@lylesfirm.com
Attorney for Appellant

Other Counsel of Record

A. Bright Ariail, Esquire
Rosen, Rosen & Hagood, LLC
134 Meeting Street, Suite 200
Post Office Box 893
Charleston, S.C. 29402
(843) 577-6726
bariail@rrhlawfirm.com
Attorney for Respondent

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

RECEIVED
DEC 06 2011

SC Court of Appeals

CASE NO.: 2009-CP-15-0595

THE SPRIGGS GROUP, P.C., ... Respondent,

v.

GENE R. SLIVKA, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on November 17, 2011, addressed to their attorneys of record, A. Bright Ariail, Esquire, Rosen, Rosen & Hagood, LLC, 134 Meeting Street, Suite 200, Post Office Box 893, Charleston, S.C. 29402.

December 2, 2011



Robert T. Lyles, Jr.
Lyles & Lyles, LLC
342 East Bay Street (29401)
Post Office Box 773
Charleston, South Carolina 29402
(843) 577-7730
Rtl@lylesfirm.com
Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.

Plaintiff,

v.

GENE R. SLIVKA

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-1005

RECEIVED
SEP 06 2011
SC Court of Appeals

) **ORDER DENYING DEFENDANT'S**
) **MOTION FOR JNOV and/or FOR NEW**
) **TRIAL**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

2011 SEP - 7 AM 11:29

This matter is before the Court upon the Defendant's Motion for Judgment Notwithstanding the Verdict and/or For New Trial. Plaintiff obtained a jury verdict against the Defendant Gene R. Slivka in the amount of \$173,990.53 on its claims for foreclosure of mechanic's lien, breach of contract and failure to comply with S.C. Code Ann. § 27-1-15. Defendant now seeks to have that verdict set aside for various reasons.

1. Defendant is not entitled to judgment notwithstanding the verdict as to Plaintiff's claims pursuant to S.C. Code Ann. § 27-1-15 as the evidence supports the jury's verdict.

Defendant argues that it was undisputed that an investigation had taken place into the Plaintiff's claim and the Defendant did not unreasonably refuse to pay the claim upon the demand. Clearly, a factual issue existed as to whether a fair and reasonable investigation was made by the Defendant. Defendant admitted on several occasions during trial that he owed Plaintiff at least half of \$151,000. Defendant admitted he received the March 15, 2010 demand letter under S.C. Code Ann § 27-1-15 and did not pay the amount he admits was undisputed. Defendant's explanation for not paying was that he had paid the money into the Court. Further, Defendant wrote Plaintiff a letter in June of 2009, after he had paid money into the Court, indicating he would pay 50% of the \$151,000 upon receipt of a corrected invoice. The issue as

#1
2AS

to whether a reasonable and fair investigation of Plaintiff's claim had been made is one for the jury to decide. Likewise, the issue of whether a valid portion of Plaintiff's claim, to the extent one exists, was paid in a timely manner in compliance with the statute is an issue for the jury to decide. After a full week of listening to the evidence in this case, the jury unanimously determined that the Defendant had not made a reasonable and fair investigation of Plaintiff's claim and failed to properly pay the proper portion of Plaintiff's claim deemed valid.

Defendant argues that discovery in the lawsuit amounts to a fair and reasonable investigation into Plaintiff's claims under the statute. Defendant relies upon Carolina Steel Corporation v. Palmetto Bridge Construction, 444 F.Supp.2d 577 (D.S.C. 2006) stating that the court found that because an investigation had occurred and a dispute existed, no attorney's fees pursuant to the statute would be awarded. In Carolina Steel, the Defendant made an investigation of the claims of the Plaintiff prior to Plaintiff's demand under the statute and paid what was considered valid. This court finds Carolina Steel distinguishable from this case in that the Defendant never paid Plaintiff either prior to Plaintiff's demand or after Plaintiff's demand despite admitting he owes Plaintiff at a minimum one half of \$151,000.00. This Court finds that recovery under S.C. Code Ann. § 27-1-15 is not barred when a demand under the statute is made after litigation has commenced. Further, this Court finds that payment to the Court to bond off a mechanic's lien claim does not constitutes compliance with S.C. Code Ann. § 27-1-15.

Under S.C. Code Ann. § 27-1-15, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, *or whatever portion of it is determined valid*, within forty-five days from the date of mailing the demand. Defendant admitted owing Plaintiff a minimum of one half of \$151,000 and admitted he made n further payments to Plaintiff after the initial contract payment in February 2007. If a person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or

proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand. See S.C. Code Ann. § 27-1-15. Defendant never made payment to the Plaintiff of the undisputed amount he admits he owes to the Plaintiff; therefore, the verdict rendered as to Plaintiff's claim for failure to comply with S.C. Code Ann. § 27-1-15 is supported by the evidence presented.

2. Defendant is not entitled to judgment notwithstanding the verdict on Plaintiff's claim under the mechanic's lien statute as the evidence supports the jury's verdict.

Defendant argues there was no evidence that Plaintiff performed work which entitled it to a lien within ninety days of filing the mechanic's lien that is the subject of this action. Plaintiff presented evidence by way of invoices, timesheets, emails and testimony that Plaintiff performed work on this project up to January 14, 2009 and then again in May 2009 for 3.5 hours. See Plaintiff's Exhibits 8(a), 19, and 21. The Defendant testified that the Plaintiff was authorized to respond to questions from the field from various contractors and admitted that he never told Plaintiff to stop responding to these questions prior to the services performed in January 2009. Plaintiff's mechanic's lien was filed on April 13, 2009, which is within ninety (90) days of January 14, 2009 and prior to the work performed in May 2009. See Plaintiff's Exhibit 10.

Plaintiff's claim against a mechanic's lien in this matter arises out of statutory law. It is undisputed that the Plaintiff provided labor and services connected with Defendant's construction project. In accordance with § 29-5-10, Plaintiff properly filed a mechanic's lien for services furnished in the erection, alteration, and repair of Defendant's building within ninety days of the last work performed based upon the evidence presented. See Butler Contracting, Inc. v. Court Street, LLC, 369 S.C. 121, 131, 631 S.E.2d 252, 257 (2006) ("The deadline to serve and record a mechanic's lien begins running from the date the last material was furnished or work performed, *regardless of whether such material or work is insignificant and regardless of*

#3
2/13

whether the final work is delayed, provided the reason for the delay is not to improperly extend the period for perfecting the lien.”) (emphasis added).

Defendant argues that the services performed by Plaintiff in January 2009 are not part of the invoices specified in the Plaintiff's mechanic's lien. Under S.C. Code Ann. § 29-5-100, “no inaccuracy in such statement relating to the property to be covered by the lien, if the property can be reasonably recognized, or *in stating the amount due for labor* or materials shall invalidate the proceedings, unless it appear that the person filing the certificate has wilfully and knowingly claimed more than is his due.” Plaintiff's error in the amount stated for labor due does not invalidate its lien. The only requirement of the law is that the account be filed within ninety (90) days after person seeking lien ceases to labor on or furnish labor or materials for such building or structure. See Wood v. Hardy, 235 S.C. 131, 110 S.E.2d 157 (1959). Regardless of when the invoices were submitted, the Plaintiff presented evidence by way of timesheets, emails and testimony of Andy Bozeman and Ken Spriggs showing that the Plaintiff labored on the project within ninety (90) days of the date in which the mechanic's lien was filed on Defendant's property. Because Plaintiff properly followed the statutory requirements and Defendant has failed to pay for labor and services provided by Plaintiff within the scope of the mechanic's lien statute, the evidence supports the verdict rendered on Plaintiff's cause of action under S.C. Code of Laws § 29-5-10, *et al.*

Defendant further argues that the services performed by Plaintiff in January 2009 are not the type of services for which a lien is allowed. However, the Defendant did not argue that the services performed in May 2009 by Plaintiff were not the type of services for which a lien is

#4
21B

allowed¹. Defendant's argument as to the January 2009 services is that the S.C. Mechanic's lien statute does not provide for lien rights associated with the performance of construction administration services. Defendant argues that because the statute defines labor to include the preparation of plans, specifications, and design drawings that it excludes contract administration services from the type of labor for which a lien is allowed. The statute provides as follows:

"As used in this section, labor performed or furnished in the erection, alteration, or repair of any building or structure upon any real estate includes the preparation of plans, specifications, and design drawings and the work of making the real estate suitable as a site for the building or structure. The work is considered to include, but not be limited to, the grading, bulldozing, leveling, excavating, and filling of land (including the furnishing of fill soil), the grading and paving of curbs and sidewalks and all asphalt paving, the construction of ditches and other drainage facilities, and the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes, and the disposal of any construction and demolition debris, as defined in Section 44-96-40(6), including final disposal by a construction and demolition landfill. Any private security guard services provided by any person at the site of the building or structure during its erection, alteration, or repair is considered to be labor performed or furnished within the meaning of this section."

See S.C. Code Ann. 29-5-10 (emphasis added).

This Court finds that it is implausible that construction administration services would be excluded from the description of "labor performed or furnished in the erection, alteration, or repair of any building." Clearly, construction administration work is instrumental in delivering an appropriate residence or structure. In a 1918 decision, the South Carolina Supreme Court held that an architect who furnished the plans and specifications and supervised the construction of a building had furnished labor within the meaning of South Carolina's mechanic's lien statute. Williamson v. Hotel Melrose, 110 S.C. 1, 96 S.E.2d 407 (1918). In so holding, the Court ruled that "labor furnished" was not limited to manual labor, but also encompassed mental labor. Id.

¹ Plaintiff provided design sketches for an appraisal of Defendant's property. Andy Bozeman testified he was contacted by an appraiser for the Defendant and asked to provide floor plan sketches and room name information for preparation of the appraisal of Defendant's home.

#5
ZAB

This Court finds that construction administration services are the type of labor for which a lien can be filed under South Carolina's mechanic's lien statute as those services actually support the erection, alteration or repair of a building more so than the preparation of plans, specifications and design drawings related to the project.

Other jurisdictions provide for contract administration services to support a lien and specifically exclude the preparation of plans, specifications and design drawings from the labor for which lien rights arise. In Pennsylvania, an architect has no lien for merely drawing plans and specifications for the building, but does have rights to a lien for providing construction administration services that furthers the plans and specifications prepared. See Lee v. Du-Rite Products, Co., Inc., 366 Pa. 548, 79 A.2d 218 (1951). To infer that South Carolina's legislature allows a lien for preparation of plans, specifications and design drawings but excludes the services that further and support the design and actually result in improvements to the building or structure is contrary to legislative intent and without merit. Thus, the evidence presented supports the jury's verdict on Plaintiff's mechanic's lien cause of action.

3. Defendant is not entitled to a judgment notwithstanding the verdict or a new trial as the jury was presented with factual issue of whether Plaintiff's lien is valid and timely.

Defendant argues that the jury was asked improperly to interpret whether contract administration by a design professional is included in the definition of "labor" under § 29-5-90. At the conclusion of the trial, the jury was charged as to what the law in South Carolina is as it relates to filing and enforcing a mechanic's lien. At that time, both the Plaintiff and the Defendant indicated they were in agreement as to the charge given to the jury on the mechanic's lien law. The jury was asked to determine whether Plaintiff's lien was valid and timely. The jury unanimously determined that based upon the evidence presented, Plaintiff's lien was valid.

#6
2/18

4. Defendant is not entitled to a new trial based upon the Court omission of Defendant's Charge Number 6 as the Court properly charged the Jury as to the law.

Defendant argues that the Court omitted Defendant's Charge Number 6 related to Plaintiff's claim for failure to comply with S.C. Code Ann. § 27-1-15. Defendant argues that the Court should have included language from Carolina Steel Corporation v. Palmetto Bridge Constructors, 444 F.Supp.2d 577 (D.S.C. 2006) related to a fair and reasonable investigation. As discussed previously, the Defendant in Carolina Steel made payment to the Plaintiff for the undisputed amount. The Court held the Defendant was not subject to attorneys fees because an investigation had occurred, undisputed fees had been paid, and a dispute existed concerning the remaining fees. Id. The Defendant's requested charge would have been misleading to the jury given the distinguishing characteristics of this case from Carolina Steel.

A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. Yolanda Burroughs v. John W. Worsham, 352 S.C. 382, 574 S.E.2d 215 (Ct. App. 2002)(citing Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 514 S.E.2d 570 (1999)). "The substance of the law is what must be instructed to the jury, not any particular verbiage." Id. at 392. "A jury charge which is substantially correct and covers the law does not require reversal." Id. The charge given by the Court as to S.C. Code Ann. § 27-1-15 was substantially correct and covered the law of the statute. To warrant reversal for refusal to give a requested charge, a party must show both error and prejudice. Cohens v. Atkins, 333 S.C. 345, 509 S.E.2d 286 (Ct. App. 1998). Defendant has not presented this Court with any evidence of prejudice based upon the alleged incorrect charge. Plaintiff's recovery of interest and attorney's fees are provided for by the jury's verdict on Plaintiff's cause of action for foreclosure of mechanic's lien and breach of contract and not solely dependent upon the cause of action for failure to comply with S.C. Code Ann. § 27-1-15.

#7
2/18

5. Defendant is not entitled to a new trial based upon the Thirteenth Juror Doctrine as the evidence supports the verdict rendered.

Defendant argues that the jury's verdict is contrary to the preponderance of the evidence because (a) the Plaintiff did not comply with the duty of good faith and fair dealing implied in its contract, (b) the Defendant made a fair and reasonable investigation of Plaintiff's claims under S.C. Code Ann. § 27-1-15, (c) the work performed subject to the mechanic's lien is not work for which Plaintiff is entitled to assert a lien, and (d) Plaintiff's mechanic's lien was untimely as a matter of law.

Specifically, Defendant argues that "it is undisputed that Plaintiff did not comply with the covenant of good faith and fair dealing in its billing practices with the Defendant." Whether the Plaintiff complied with the covenant of good faith and fair dealing in its billing practices with the Defendant is an issue of fact to be determined by the jury. Based upon the evidence presented at trial, a legitimate dispute as to the terms of the contract existed and eleven respectable jurors made a competent decision after a week of testimony that the Plaintiff was entitled to a verdict in the amount of \$173,990.53. Defendant's arguments as to S.C. Code Ann. § 27-1-15 and the entitlement to a mechanic's lien have previously been addressed by this Court within this Order.

The arguments presented by the Defendant that the verdict is contrary to the preponderance of the evidence all present issues of fact to be determined by the jury. Plaintiff in this action bears the burden to prove its claims by the greater weight or preponderance of the evidence. See Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992)(findings of fact based upon a preponderance of the evidence are those supported by the greatest weight, amount, credibility of truth, as reflected by the whole of the evidence before the court, or evidence which convinces as to its truth). After a full week trial on the merits, a competent jury of eleven unanimously found that the evidence presented by both the

#8
2/13

Plaintiff and the Defendant when weighed together tipped the scale in favor of the Plaintiff. Plaintiff met its burden of proof as to all causes of action submitted to the jury and the verdict rendered is supported by the evidence.

6. The Jury's verdict rendered is not excessive.

Defendant argues it is entitled to a new trial because the amount of the jury's verdict is grossly inadequate or excessive. In the alternative, Defendant asks the court to reduce the jury's verdict because it is excessive in light of the evidence presented. "The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented." Proctor v. Dept. of Health and Env. Control, 368 S.C. 297, 628 S.E.2d 496 (Ct. App. 2006). An excessive verdict is one that results from the jury's passion or prejudice and thereby shocks the court's conscience. See Black's Law Dictionary, 7th Edition (1999).

Under the evidence presented at trial, the jury's verdict is clearly not excessive and does not shock the court's conscience as it is less than the amount of actual damages claimed by the Plaintiff. Plaintiffs claimed actual damages for design services due in the total dollar amount of \$201,773.03. See Plaintiff's Exhibit 23. Plaintiff provided evidence through testimony, drawings, time sheets and invoices to substantiate the dollars claimed. See Plaintiff's Exhibits 8, 8(a), 8(b), 13-18, 21 & 23. After listening to the testimony and reviewing the evidence presented, the jury determined that Plaintiff is entitled to a verdict in the amount of \$173,990.53. While the jury's verdict is not equal to the actual damages claimed by the Plaintiff, the verdict rendered is supported by the evidence presented at trial.

THEREFORE, for the reasons set forth herein, Defendant's Motion for Judgment Notwithstanding the Verdict and/or For a New Trial is denied.

IT IS SO ORDERED this 30th day of August, 2011.

W. H. Seals, Jr.

The Honorable William H. Seals, Jr.
Presiding Judge

(1)

reached is considered the prevailing party in the action. Id. In this case, Plaintiff's offer of \$198,834.53 is closer to the verdict reached than Defendant's offer of \$100,000.00, which was filed with the Court in accordance with the S.C. Mechanic's Lien Statute prior to the commencement of trial. Thus, the Plaintiff is the prevailing party in the action and can be awarded attorney's fees and costs pursuant to the statute. The determination as to the amount of attorney fees which should be awarded under the mechanic's lien statute is addressed to the sound discretion of the trial court. See Seckinger v. Vessel Excalibur, 326 S.C. 382, 483 S.E.2d 775 (S.C. App. 1997).

In addition to the attorney's fees and costs allowable under the verdict rendered on Plaintiff's foreclosure of mechanic's lien claim, S.C. Code Ann. § 27-1-15 also provides for a recovery of attorney's fees and interest at the judgment rate on the money claimed due. See S.C. Code Ann. § 27-1-15. The express provisions of S.C. Code Ann. § 27-1-15 do not limit the recovery of attorney's fees to the amount of the lien as expressed in the S.C. Mechanic's Lien Statute. Id. Thus, the allowable attorney's fees and costs are not required to be capped by the amount of the mechanic's lien.

Also, Plaintiff sought pre-judgment interest in its complaint as to all causes of action against Defendant and has moved the Court for an award of the same. See Atrial Affidavit ¶ 13. South Carolina law allows prejudgment interest on obligations to pay money from time when payment is demandable, if sum due is capable of being reduced to certainty. See GTR Rental, LLC v. DalCanton, 547 F.Supp.2d 510 (2008). S.C. Code Ann. § 27-1-15 provides for interest to be awarded from the date of the demand being sent pursuant to the statute. In this case, the evidence in the record indicates that the sum due Plaintiff was demandable as of February 9, 2009. In addition, Plaintiff sent a demand to Defendant pursuant to S.C. Code Ann. § 27-1-15 on

March 15, 2010. Under South Carolina law, the fact that a sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id.

In determining an award of attorney's fees, the court considers six factors: (1) nature, extent, and difficulty of legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in locality for similar services; and (6) beneficial results obtained. See Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961); Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993); Dedes v. Stickland, 307 S.C. 155, 414 S.E.2d 134 (1992). Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these factors is considered controlling. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974)).

To support its Motion for Interest, Attorney's Fees and Costs, Plaintiff submitted the Affidavits of A. Bright Ariail and N. Keith Emge, Jr. Included in the Affidavit of A. Bright Ariail are detailed bills for legal services rendered setting forth each task performed, who performed the task and the amount of time spent on each task shown in six minute increments. Upon evaluation of the nature, extent and difficulty of the legal services rendered, Plaintiff was required to expend considerably more time and effort on this case due to specific actions of the Defendant who created unnecessary delays, filed meritless motions, and forced Plaintiff to incur additional attorney's fees and costs above and beyond what would otherwise have been incurred. See Ariail Affidavit ¶ 5. A review of the billing records submitted by Plaintiff clearly indicates that they are properly detailed and that the time and labor spent by Plaintiff's counsel is both reasonable for the effort required to litigate this case and not duplicative in any manner. See Exhibits C-F of Ariail Affidavit. Plaintiff's team of legal counsel consists of experienced, skilled

#3
2ms

attorneys, of high professional standing in the community and in good standing with the Bar of this State. The fees charged in this matter were on an hourly basis and not based upon a contingency of compensation. The hourly fees charged by Plaintiff's counsel are of those customarily charged in the locality for similar legal services. See Emge Affidavit ¶¶ 5-6. Plaintiff obtained a substantial benefit from the legal services provided by receiving an award in close proximity to the total damages claimed and avoiding thousands of dollars in liability on Defendant's counterclaims.

This Court finds that Plaintiff is entitled to the recovery of attorney's fees and costs in this matter pursuant to S.C. Code Ann. § 29-5-10 and S.C. Code Ann. § 27-1-15 in the amount of \$235,030.31. Further, this Court finds that the attorney's fees and costs awarded are reasonable based upon the six criteria established by the Supreme Court of South Carolina for determining attorney's fees. There is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment. See Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998). South Carolina courts have approved awards of attorney's fees where the fee substantially exceeded the actual recover. Id. at 582; see also Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(finding that trial court did not abuse its discretion in awarding attorney fees to Plaintiff greater than recovery realized by Plaintiff).

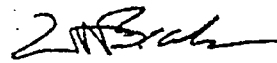
Plaintiff is also entitled to an award of prejudgment interest on the verdict reached in the amount of \$37,413.92 being calculated at the legal rate of interest as set forth in S.C. Code Ann. § 34-31-20(A) from February 9, 2009.

THEREFORE, judgment in the total amount of \$446,434.76 is to be entered in this matter against the Defendant in favor of the Plaintiff.

#4
LMS

FURTHER, the Bond for Release of Mechanic's Lien deposited with the Court in the amount of \$265,112.71 and filed with the Register of Deeds Office in Colleton County at Book 1742 at Page 276 shall be released to the Plaintiff in full, along with any interest accrued thereon.

IT IS SO ORDERED this 30th day of August, 2011.



The Honorable William H. Seals, Jr.
Presiding Judge

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-15-595

) FOURTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2009-CP-15-595

)

)

)

)

)

)

)

)

, ,

11

2

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 OCT -3 PM 1:47

Pursuant to S.C. Code Ann. § 29-5-10, et seq., the costs which may arise in enforcing or defending against the lien, including a reasonable attorney's fee, may be recoverable by the prevailing party. See S.C. Code Ann. § 29-5-10. The fee must be determined by the court in which the action is brought but the fee and court costs may not exceed the amount of the lien. Id. For purposes of the award of attorney's fees, the party whose offer is closer to the verdict

#1 2/13

reached is considered the prevailing party in the action. Id. In this case, Plaintiff's offer of \$198,834.53 is closer to the verdict reached than Defendant's offer of \$100,000.00, which was filed with the Court in accordance with the S.C. Mechanic's Lien Statute prior to the commencement of trial. Thus, the Plaintiff is the prevailing party in the action and can be awarded attorney's fees and costs pursuant to the statute. The determination as to the amount of attorney fees which should be awarded under the mechanic's lien statute is addressed to the sound discretion of the trial court. See Seckinger v. Vessel Excalibur, 326 S.C. 382, 483 S.E.2d 775 (S.C. App. 1997).

In addition to the attorney's fees and costs allowable under the verdict rendered on Plaintiff's foreclosure of mechanic's lien claim, S.C. Code Ann. § 27-1-15 also provides for a recovery of attorney's fees and interest at the judgment rate on the money claimed due. See S.C. Code Ann. § 27-1-15. The express provisions of S.C. Code Ann. § 27-1-15 do not limit the recovery of attorney's fees to the amount of the lien as expressed in the S.C. Mechanic's Lien Statute. Id. Thus, the allowable attorney's fees and costs are not required to be capped by the amount of the mechanic's lien.

Also, Plaintiff sought pre-judgment interest in its complaint as to all causes of action against Defendant and has moved the Court for an award of the same. See Ariail Affidavit ¶ 13. South Carolina law allows prejudgment interest on obligations to pay money from time when payment is demandable, if sum due is capable of being reduced to certainty. See GTR Rental, LLC v. DalCanton, 547 F.Supp.2d 510 (2008). S.C. Code Ann. § 27-1-15 provides for interest to be awarded from the date of the demand being sent pursuant to the statute. In this case, the evidence in the record indicates that the sum due Plaintiff was demandable as of February 9, 2009. In addition, Plaintiff sent a demand to Defendant pursuant to S.C. Code Ann. § 27-1-15 on

WTS

March 15, 2010. Under South Carolina law, the fact that a sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id.

In determining an award of attorney's fees, the court considers six factors: (1) nature, extent, and difficulty of legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in locality for similar services; and (6) beneficial results obtained. See Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961); Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993); Dedes v. Stickland, 307 S.C. 155, 414 S.E.2d 134 (1992). Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these factors is considered controlling. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974)).

To support its Motion for Interest, Attorney's Fees and Costs, Plaintiff submitted the Affidavits of A. Bright Ariail and N. Keith Emge, Jr. Included in the Affidavit of A. Bright Ariail are detailed bills for legal services rendered setting forth each task performed, who performed the task and the amount of time spent on each task shown in six minute increments. Upon evaluation of the nature, extent and difficulty of the legal services rendered, Plaintiff was required to expend considerably more time and effort on this case due to specific actions of the Defendant who created unnecessary delays, filed meritless motions, and forced Plaintiff to incur additional attorney's fees and costs above and beyond what would otherwise have been incurred. See Ariail Affidavit ¶ 5. A review of the billing records submitted by Plaintiff clearly indicates that they are properly detailed and that the time and labor spent by Plaintiff's counsel is both reasonable for the effort required to litigate this case and not duplicative in any manner. See Exhibits C-F of Ariail Affidavit. Plaintiff's team of legal counsel consists of experienced, skilled

attorneys, of high professional standing in the community and in good standing with the Bar of this State. The fees charged in this matter were on an hourly basis and not based upon a contingency of compensation. The hourly fees charged by Plaintiff's counsel are of those customarily charged in the locality for similar legal services. See Emge Affidavit ¶¶ 5-6. Plaintiff obtained a substantial benefit from the legal services provided by receiving an award in close proximity to the total damages claimed and avoiding thousands of dollars in liability on Defendant's counterclaims.

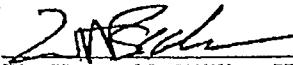
This Court finds that Plaintiff is entitled to the recovery of attorney's fees and costs in this matter pursuant to S.C. Code Ann. § 29-5-10 and S.C. Code Ann. § 27-1-15 in the amount of \$235,030.31. Further, this Court finds that the attorney's fees and costs awarded are reasonable based upon the six criteria established by the Supreme Court of South Carolina for determining attorney's fees. There is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment. See Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998). South Carolina courts have approved awards of attorney's fees where the fee substantially exceeded the actual recover. Id. at 582; see also Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(finding that trial court did not abuse its discretion in awarding attorney fees to Plaintiff greater than recovery realized by Plaintiff).

Plaintiff is also entitled to an award of prejudgment interest on the verdict reached in the amount of \$37,413.92 being calculated at the legal rate of interest as set forth in S.C. Code Ann. § 34-31-20(A) from February 9, 2009.

THEREFORE, judgment in the total amount of \$446,434.76 is to be entered in this matter against the Defendant in favor of the Plaintiff.

FURTHER, the Bond for Release of Mechanic's Lien deposited with the Court and transferred to the Register of Deeds for Colleton County in the amount of \$265,112.71 as documented by the Receipt for Bond Posted for the Release of Mechanic's Lien Filed in BK 1742 PG 276 that is and filed with the Register of Deeds Office in Colleton County at Book 1742 1753 at Page 276-81 shall be released by the Register of Deeds for Colleton County to the Plaintiff in full, along with any interest accrued thereon.

IT IS SO ORDERED this 12th day of ~~August~~ September, 2011.


The Honorable William H. Seals, Jr.
Presiding Judge

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2009-CP-15-595

1

1

—

4

人

)

)

)

)

5

11

)

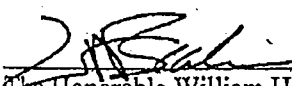
)

PAIRING OF
COLLECTOR
COMMON PLEAS
to
2011 NOV 22 @ 12:33 PM
JANOV

#1 WTS

#1 WTS

IT IS SO ORDERED this 3 day of September, 2011.


The Honorable William H. Seals, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.

Plaintiff,

v.

GENE R. SLIVKA

Defendant.

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2009-CP-15-595

)

)

)

)

)

)

)

)

)

)

)

)

**ORDER DENYING DEFENDANT'S
RULE 59 MOTION REGARDING AWARD
OF INTEREST, FEES AND COSTS TO
PLAINTIFF**

This matter is before the Court upon the Defendant's motion pursuant to SCRC ⁵⁹ regarding the Court's Order awarding interest, fees and costs to the Plaintiff. This Court has previously denied Defendant's motion pursuant to SCRC ⁵⁹ regarding a motion for JNOV and/or for new trial. Plaintiff obtained a jury verdict against the Defendant Gene R. Slivka in the amount of \$173,990.53 on its claims for foreclosure of mechanic's lien, breach of contract and failure to comply with S.C. Code Ann. § 27-1-15. Plaintiff was determined to be the prevailing party by the Court and awarded attorney's fees and costs pursuant to the South Carolina Mechanic's Lien Statute. Additionally, Plaintiff was awarded fees and costs pursuant to S.C. Code Ann. § 27-1-15. Finally, Plaintiff was awarded prejudgment interest pursuant to S.C. Code Ann. § 34-31-20.

Defendant's motion sets forth several arguments related to the reasonableness of the fees and costs awarded, limitations that should be placed on the fees and costs awarded, the types of fees and costs awarded and Plaintiff's entitlement to fees, costs and prejudgment interest. Having carefully reviewed Defendant's Motion Pursuant SCRC Rule 59 RE Order for Award of Interests, Fees, and Costs to Plaintiff and Plaintiff's Memorandum in Opposition, along with

2011 NOV 22 PM 12:39
PATRICIA J. GORDON
COLLETON COUNTY
COMMON PLEAS

#1
LWS

the Second Affidavit of A. Bright Ariail in support thereof, this Court finds that Defendant's Motion is denied for the following reasons:

1. Plaintiff is entitled to recover all of its fees as it prevailed under the Mechanic's Lien Statute and S.C. Code Ann. § 27-1-15.

Determination as to the amount of attorney's fees which should be awarded under the mechanic's lien statute is addressed to the sound discretion of the trial court. Seckinger v. Vessel Excalibur, 326 S.C. 382, 483 S.E.2d 775 (S.C. App. 1997). Defendant argues that because the Court is basing its award on one or both of the referenced statutes, it must specify what fees are awarded under which statute. Plaintiff is entitled to recover all of its fees and costs by the cumulative affect of reading both statutes. Under South Carolina's mechanic's lien statute, the prevailing party S.C. Code Ann. § 29-5-10, et seq., the costs which may arise in enforcing or defending against the lien, including a reasonable attorney's fee, may be recoverable by the prevailing party up to the amount of the lien. See S.C. Code Ann. § 29-5-10. The verdict reached as to Defendant's failure to comply with S.C. Code Ann. § 27-1-15 provides for a recovery of attorney's fees and interest at the judgment rate on the money claimed due, but the express provisions of the statute do not limit the recovery of attorney's fees to a maximum amount like the mechanic's lien statute. See S.C. Code Ann. § 27-1-15. Thus, Plaintiff is entitled to attorney's fees and costs up to the amount of the mechanic's lien. Additionally, any fees and costs over and above the amount of the mechanic's lien are recoverable under S.C. Code Ann. § 27-1-15. Alternatively, Plaintiff could have recovered all fees and costs incurred after March 15, 2010 under S.C. Code Ann. § 27-1-15 if its mechanic's lien action had failed.

Defendant also argues that Plaintiff asserted and prosecuted and defended several causes of action which are separate from the claims under the Mechanic's Lien Statute and S.C. Code Ann. § 27-1-15. All claims submitted by Plaintiff were ancillary to Plaintiff's mechanic's lien

#2
WMB

action, which serves as the primary basis for the damages sought by Plaintiff. Plaintiff's quantum meruit/unjust enrichment, which was voluntarily dismissed at trial, and breach of contract causes of action relied upon the same facts and seek the same damages as those sought under the mechanic's lien cause of action. See Ariail Second Affidavit ¶ 4. Attorney's fees and costs related to these causes of action are indistinguishable from those incurred related to the mechanic's lien action. See Ariail Second Affidavit ¶ 4. Defendant's counterclaims for Slander of Title, Violation of the Frivolous Claims Sanction Act, and Tortious Interference with Contractual Relationships with Third-Parties Resulting from Defective Notice of Mechanic's Lien all relate to the mechanic's lien action brought by Plaintiff. The Mechanic's Lien statute allows for a party to recover attorney's fees related to the mechanic's lien action. See S.C. Code Ann. § 29-5-10, et seq.

2. The fees and costs awarded to the Plaintiff are reasonable and not excessive

In determining the award of attorney's fees, the court considered six factors: (1) nature, extent, and difficulty of legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in locality for similar services; and (6) beneficial results obtained. See Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961); Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993); Dedes v. Stickland, 307 S.C. 155, 414 S.E.2d 134 (1992). The Court gave consideration to all six criteria in establishing the attorney's fees awarded and none of these factors was controlling. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974)). The Court based its award on the evidence presented through the Affidavits of A. Bright Ariail and N. Keith Emge along with its impression of the case presented by Plaintiff's counsel at trial. The Court analyzed all six factors under Collins thoroughly and made specific findings as to each factor, which supports the award given.

#3
LMS

3. The total recovery under the Mechanic's Lien Statute is not limited to the amount of the cash bond posted by the Defendant.

Defendant argues that a bond was posted with the Court pursuant to S.C. Code Ann. § 39-5-110 which limits Plaintiff's total recovery to the amount of posted bond. The statutory language of S.C. Code Ann. § 39-5-110 does not limit a mechanic's lien judgment to the amount of the cash bond posted. See S.C. Code Ann. § 39-5-110. Under South Carolina's Mechanic's Lien Statute, the costs which may arise in enforcing or defending against the lien, including a reasonable attorney's fee, may be recoverable by the prevailing party up to the amount of the lien. See S.C. Code Ann. § 29-5-10. The express language of the Mechanic's Lien Statute indicates that a party is entitled to a judgment up to twice the amount of the lien. Defendant's interpretation of S.C. Code Ann. § 39-5-110 is inconsistent with the express language of S.C. Code Ann. § 29-5-10.

4. The South Carolina Mechanic's Lien Statute does not exclude staff members from the definition of attorney's fees.

Defendant argues that time spent by staff members is not recoverable in its claim for attorney's fees under the statutes. South Carolina's Mechanic's Lien Statute does not define what is considered to be included as attorney's fees. Attorneys fees, as defined by Black's Law Dictionary, is the charge to a client for services performed for the client, such as an hourly fee, a flat fee, or a contingent fee. See Black's Law Dictionary 7th Edition (1999). The definition does not restrict the charge to a client solely to services provided by an attorney. Plaintiff's fee agreement with counsel sets forth that time billed by attorneys, paralegals and law clerks are part of the legal services being provided. See Ariail Second Affidavit ¶ 3.

#4
WHS

Both paralegals, Ms. Skelly and Mrs. Whitsett, are qualified legal professionals with thirty (30) years of combined paralegal experience whose time billed in this matter supported the legal services provided and furthered the prosecution of the case. See Ariail Second Affidavit ¶¶ 6-7. The hours spent by law clerks in performing legal research in support of the case also constitutes legal services performed on behalf of the client. The Court finds that the fees incurred by the Plaintiff for attorney, paralegal and law clerk time are the types of legal services intended to be included in the attorney's fees award pursuant to S.C. Code Ann. § 29-5-10 and S.C. Code Ann. § 27-1-15.

5. Plaintiff is entitled to an award of pre-judgment interest

This Court's award of pre-judgment interest is based upon Plaintiff's demand in its Complaint and is calculated from February 9, 2009 per the South Carolina interest statute. See S.C. Code Ann. § 34-31-20(A). Plaintiff's breach of contract claim allows for recovery of prejudgment interest based upon the pleadings. South Carolina law allows prejudgment interest on obligations to pay money from time when payment is demandable, if the sum due is capable of being reduced to certainty. See GTR Rental, LLC v. DalCanton, 547 F.Supp.2d 510 (2008). The fact that a sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id.

THEREFORE, Defendant's SCRCP 59 motion regarding the Court's Order For Award of Interest, Fees and Costs to Plaintiff is hereby denied.

IT IS SO ORDERED this 3 day of ~~October~~^{Nov.}, 2011.


The Honorable William H. Seals, Jr.
Presiding Judge

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 19, 2012

A handwritten signature in black ink, appearing to read 'Robert T. Lyles, Jr.', is written over a horizontal line.

Robert T. Lyles, Jr.
Lyles & Lyles, LLC
342 East Bay Street
Charleston, SC 29401
(843) 577-7730
Attorney for Appellant