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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Jennifer B. McCoy
Circuit Court Judge
Case No.: 2016-CP-10-03468

Appellate Case No. 2021-001510

Charles Blanchard Construction Corp, Inc., Respondent,

v.

480 King Street, LLC, Defendant,

And

480 King Street, LLC Plaintiff,

v.

Glick/Boehm & Associates, Inc., Defendant,

Of Whom 480 King Street, LLC is the Appellant,

And

Glick/Boehm & Associates, Inc. is the Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Charles Blanchard construction Corp., Inc.

vs.

480 King Street, LLC, and TD Bank N.A.,
NQ,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2016-CP-10-3468

COMPLAINT
(Debt Collection, Foreclosure of Liens)
(Jury Trial Demanded)

FILED
2016 JUL -6 PM 1:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Plaintiff above named, complaining of the Defendants herein, would show unto this
Honorable Court as follows:

JURISDICTION AND PARTIES

1. The Plaintiff is a corporation organized under and operating pursuant to the laws of the
State of South Carolina, and maintaining an office in the City of North Charleston and doing
business in the City and County of Charleston.

2. Upon information and belief, the Defendant 480 King Street, LLC, is a limited liability
corporation organized and existing under the laws of the State of South Carolina and operating in
the County of Charleston, South Carolina (hereafter "Defendant Owner") and at all times herein
was the owner of the real property which is the subject of this action.

3. Defendant T.D. Bank, N.A., NQ, upon information and belief, is a National Banking
Organization, organized and existing under the laws of the United States and the State of South
Carolina, doing business in the County of Charleston South Carolina (hereafter "Bank") and is

made a party hereto because it may have an interest in the real property that is the subject of this action.

4. The real property at issue herein is described on the Exhibit A attached hereto and made a part hereof and known hereafter as the Real Property, is located in the City and County of Charleston, state of South Carolina.

5. The parties, property and issues herein all are within the jurisdiction of this Honorable Court.

FACTS

6. Plaintiff reasserts and realleges all facts and claims of the preceding paragraphs of this Complaint as if set forth verbatim herein.

7. On June 26, 2014, Plaintiff entered into a construction contract with Defendant Owner by and through its manager, Mary Ann Kanters, for labor, materials, equipment and services in connection with the building located on the real property owned by Defendant Owner (hereafter the "Contract").

8. On or about June 27, 2014, Plaintiff began work pursuant to the Contract, furnishing the agreed upon labor and materials and making applications for payment as specified therein.

9. Almost immediately after signing the contract, delays occurred affecting the ultimate completion date of the contract.

10. Mere hours after execution of the contract, Plaintiff discovered that the Defendant Owner's architectural plans for the elevator were incorrect, requiring an additional one foot of depth for the elevator equipment selected by the Defendant Owner and drawn by Defendant Owner's architect.

11. While under the original contract the Plaintiff was responsible for providing the elevator in accordance with Defendant Owner's plans and specifications, the improper design by Defendant Owner's architect necessitated a change order whereby the Defendant Owner was then to be responsible for providing a re-design of the elevator shaft or acquiring a different elevator that would fit within the previously designed elevator shaft.

12. The delay caused by the incorrect elevator design was neither the fault of nor the responsibility of the Plaintiff.

13. At the time of placing rebar and pouring the elevator pit and foundation slab, the Defendant Owner put a hold on the work to add sewer/storm drainage that was outside the scope of the project, anticipating that the drainage would run beneath the foundation of the stairtower.

14. The Defendant Owner hired an engineer to design the placement of the future sewer/storm drainage, and requested three quotes for pricing of the design.

15. Upon receipt of the quotes for the cost of the storm drainage, the Defendant Owner decided not to install the drainage.

16. The delay caused by the Defendant Owner's hold to design and quote the cost to install sewer/storm drainage pipes was neither the fault of nor the responsibility of the Plaintiff.

17. Many months before the project started and again early in the project, the Plaintiff advised the Defendant Owner in writing that the site needed a civil engineering plan to deal with site elevation and water run off, telling the owner that he was "afraid that the area behind 480 will be a pond."

18. Nonetheless, the Defendant Owner did not retain a civil engineer to review the site

elevations or to design a water run off plan until June 29, 2015, after the water run off at the site caused water intrusion in the elevator shaft and first floor of the stair tower.

19. In July of 2015, the Defendant Owner alleged that the water intrusion in the building's exterior walls was the result of the Plaintiff's failure to properly waterproof the exterior walls according to the design specifications.

20. The Defendant Owner claimed this failure was a construction deficiency and that the water intrusion was the result of both this construction deficiency and of the Plaintiff's failure to properly maintain and supervise the site to prevent this damage.

21. The Plaintiff informed Defendant Owner in writing that the building's perimeter walls were installed with the designated weather barrier required by the plans and specifications, which was designed only to shed water and was not a waterproofing material.

22. Defendant Owner's architect confirmed in writing to Plaintiff and Defendant Owner that the building's perimeter walls were lined with the appropriate material as called for in the plans.

23. The grade and site elevations were the responsibility of the Defendant Owner pursuant to the Contract.

24. The Defendant Owner failed to address the grade and site elevations prior to the water intrusion, no civil engineer had been retained by the Defendant Owner to draw plans addressing the site grade or elevation prior to the water intrusion, and no site grade or elevation plans had been given by the Defendant Owner to the Plaintiff to address the potential flooding.

25. The delay caused by the water intrusion and damage to the elevator shaft and first floor of

the stair tower resulting from the Defendant Owner's failure to retain a civil engineer to review the site elevations or design a water run off plan was neither the fault of nor the responsibility of the Plaintiff.

26. Prior to the signing of the contract, the Defendant Owner met with the Plaintiff and Plaintiff's subcontractors to value engineer portions of the job but did not invite the architect to all of the meeting(s).

27. Prior to the signing of the contract, the Defendant Owner met with building officials about the project and did not invite the Plaintiff or the architect to the meeting(s).

28. The Defendant Owner met with AT&T and would not let the Plaintiff attend the meeting(s).

29. The Defendant Owner's architect and electrical engineer were not present the meetings where the Defendant Owner chose less expensive light fixtures for the project, and the Defendant Owner neglected to tell the architect or electrical engineer that she had chosen less expensive light fixtures for many months.

30. Had the Defendant Owner invited the architect and engineer to these meetings or informed them of decisions made therein, several issues that caused delays would have been avoided.

31. On August 12, 2014, the Plaintiff submitted the light fixtures chosen by the Defendant Owner to the electrical engineer for approval.

32. By September 29, 2014, when the electrical engineer rejected the light fixture submittals as not being the original specified fixtures, the Defendant Owner still had not informed the electrical engineer that she had selected different fixtures for the project.

33. The Plaintiff's submittal of the light fixtures chosen by the Defendant Owner was finally approved by the Defendant Owner's electrical engineer on February 16, 2015, six months from its initial submittal date.

34. The lighting submittal delays caused late delivery of the light fixtures, as they could not be ordered until they were approved.

35. The delay caused by the Defendant Owner's failure to inform her architect and engineer of changes she had made to the light fixtures was neither the fault of nor the responsibility of the Plaintiff.

36. The Defendant Owner also had multiple electrical re-designs after the contract was signed, but did not provide them to the Plaintiff.

37. On August 12, 2014, the Plaintiff submitted to the Defendant Owner's electrical engineer electrical gear that met the original Contract's April 22, 2014 electrical drawings and specifications.

38. The Defendant Owner's electrical engineer rejected the submittal because it did not meet the most recent re-design specifications from drawings dated October 6, 2014, which were not part of the original contract.

39. The Defendant Owner did not provide the Plaintiff with updated electrical plans until October 14, 2014, and because of ongoing changes with the elevator requiring the Defendant Owners electrical engineer to continue to modify the necessary gear, the electrical gear submittal was not accepted until May 5, 2015.

40. The Defendant Owner's electrical engineer's insistence that the gear be changed to that

required in the most recent re-design necessitated a change order to the Contract, Change Order

4.

41. The Defendant Owner disputed Change Order 4, which further delayed the electrical gear.

42. The delays in the electrical gear prevented the installation of the elevator.

43. The delays caused by the electrical submittal issues were neither the fault of nor the responsibility of the Plaintiff.

44. Throughout the project, attempts to discuss problems and issues with the Defendant Owner so that the project could continue to move forward were ignored or stymied by Defendant Owner.

45. Many Change Order proposals sent to the Defendant Owner by the Plaintiff were modified by the Defendant Owner and then disputed by the parties, causing delays on the project.

46. The Contract requires the Defendant Owner to issue a Construction Change Directive to the Plaintiff contractor in the event of a dispute over a change order, and the Construction Change Directive allows work to continue on the contract without waiving any rights to dispute time or cost of the change order until the end of the contract.

47. The Plaintiff first requested in writing that the Defendant Owner sign a Construction Change Directive on April 3, 2015, to avoid cessation of work on the project when Change Order 4 was disputed.

48. The April 3, 2015 email to the Defendant Owner cited § 7.3.2 of the Contract, which

states: A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

49. The Defendant Owner refused to issue a Construction Change Directive.

50. The Plaintiff requested the Construction Change Directive in writing, multiple times between April and July of 2015.

51. On May 11, May 14, and July 10 of 2015, the Defendant Owner was again sent the language from § 7.3.2 of the Contract, stating that “A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.”

52. On June 29, 2015, during the continued dispute over the terms of Change Order 4, the Defendant Owner emailed the Plaintiff, saying the Plaintiff was “attempting to use the change order process as a blackmail device which is unacceptable under the contract. . . you continue to terrorize and harass me and frankly I think your behavior is reprehensible and entirely unprofessional.”

53. In response to that email, the Plaintiff replied in writing that far from being unprofessional or attempting to harass the Defendant Owner, the issuance of a Construction Change Directive in the absence of agreement on all terms of a change order was a required and normal part of the AIA contracts.

54. The Plaintiff explained, in writing, more than once, that the word “shall” in § 7.3.2 means “must” and that the Defendant Owner was required by the Contract to issue a Construction Change Directive in the absence of agreement on a Change Order.

55. On June 30, 2015, the Plaintiff notified the Defendant Owner in writing that the

electrician would be demobilized in the absence of a Construction Change Directive by close of business the following day, as the electrician had no further work that could be performed without such authorization.

56. On July 8, 2015, the Plaintiff notified the Defendant Owner by email that the continued failure to issue a Construction Change Directive constituted a breach of the contract.

57. On July 10, 2015, the Defendant Owner demanded that notice from the Plaintiff regarding the alleged breach of the contract or any claims be given pursuant to the notice requirements of the contract and not by email, and therefore there was no notice of breach.

58. The Defendant Owner continued to refuse to issue a Construction Change Directive.

59. The Defendant Owner's failure to issue a Construction Change Directive as required by the Contract caused delays, and these delays resulted in inefficiency in production due to out-of-sequence work, stopping and starting segments while awaiting authorization, erratic staffing and eventual trade stacking.

60. These delays and the resulting inefficiency of production caused by the Defendant Owner's refusal to issue a Construction Change Directive were neither the fault of nor the responsibility of the Plaintiff.

61. The Plaintiff sent Construction Change Directive 1 to the Defendant Owner on July 30, 2015.

62. Despite the clear purpose of the Construction Change Directive as spelled out in the Contract, the Defendant Owner wrote comments on the Construction Change Directive attempting to have the Plaintiff waive all rights in connection with the disputed change order and be responsible for daily damages for the completion of the contract.

63. The Plaintiff did not sign the revised Construction Change Directive, as allowed by the Contract, and continued to perform work under the Directive and Contract, although the Defendant Owner refused to pay in full the pay applications.

64. In addition to the Construction Change Directive, the Contract provided for mediation and arbitration to resolve disputes during the pendency of the project and avoid delay and disruption.

65. Pursuant to the Defendant Owner's request on July 10, 2015, all notice regarding alleged breaches of contract and claims under the contract had to be given in accordance with the notice requirements of the Contract.

66. Section 13.2.3 of the Contract provides: "Written notice shall be deemed to have been duly served if delivered in person to the individual ...or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to the last business address known to the party giving notice."

67. Section 15.3 of the contract provided for mediation of claims, disputes, or other matters in controversy arising out of or relating to the contract as a condition precedent to binding arbitration.

68. On July 15, 2015, the Plaintiff delivered to Defendant Owner and Defendant Owner's architect, in person, a request for mediation under 15.3.1 of the contract.

69. Defendant Owner did not respond to this request.

70. On July 24, 2015, the Plaintiff sent correspondence and the renewed request for mediation by certified mail to the office address provided in the contract, however the Defendant Owner refused to pick it up at the post office.

71. On or about July 24, 2015, the Defendant Owner hired Rick Newcomb, as its project manager, to supervise the construction.

72. The Plaintiff delivered the July 24 letter requesting mediation to Rick Newcomb, the Defendant Owner's project manager, at the job site.

73. The Defendant Owner refused to acknowledge its receipt or respond.

74. On July 31, 2015, the Plaintiff sent an additional letter again requesting mediation, along with the previous correspondence and documents, by certified mail to the office address provided in the contract, however the Defendant Owner refused to pick it up at the post office.

75. The July 31 letter and its attachments were also emailed to the Defendant Owner.

76. The July 31 letter and its attachments were also delivered personally to Rick Newcomb, the Defendant Owner's project manager on the jobsite.

77. The Defendant Owner refused to acknowledge its receipt or respond.

78. On September 3, 2015, the Plaintiff sent a second request for mediation, along with previous correspondence and documents to the Defendant Owner by Federal Express to the office at the address for notice provided in the contract, however the office was closed and there was no one there during the three times Federal Express attempted to deliver it.

79. The September 3 correspondence and attachments were personally delivered to the Defendant Owner's project manager, Rick Newcomb.

80. The Defendant Owner refused to acknowledge its receipt or respond.

81. On September 28, 2015, the Plaintiff attempted, through his job supervisor, to deliver the

second request for mediation and supporting documents to the Defendant Owner in person by handing it to her when she came to the job site, but Defendant Owner refused to accept it, put her hands behind her, and left saying it needed to be sent to her office.

82. On December 1, 2015, Plaintiff had a process server in Ohio personally deliver the Plaintiff's third request for mediation to the office address provided in the contract.

83. Although this third mediation request was also sent by email and personally delivered to the Defendant Owner's project manager, Rick Newcomb, the Defendant Owner refused to acknowledge receipt or respond.

84. The Defendant Owner refused to participate in the contractually mandated dispute resolution process.

85. The Defendant Owner required the Plaintiff to provide documentation of each receipt, bill for material and the timesheet for each worker throughout the job, even though the Contract was bid as a fixed price contract rather than a time and materials contract.

86. The Defendant Owner refused to process any application for payment from the Plaintiff until all documentation was received, even though the Contract was a fixed price contract rather than a time and materials contract.

87. The fixed price Contract dictates that Applications for Payment are to be based on a percentage of completion for each line item.

88. The Plaintiff complied with this request to provide all documentation of each receipt, bill for material and the timesheet for each worker, although it placed an onerous administrative burden on the Plaintiff that was not and should not have been contemplated as part of the fixed price Contract.

89. None of the Plaintiff's subcontractors complained to the Defendant Owner that that they had not been paid by the Plaintiff.

90. None of the Plaintiff's subcontractors filed a lien on the Defendant Owner's property to insure payment based on work done as subcontractor to the Plaintiff.

91. All of Plaintiff's subcontractors were paid by the Plaintiff for amounts due under their subcontract with the Plaintiff, even though Defendant Owner did not pay the Plaintiff the full amounts of pay applications under the main Contract.

92. All of the job materials for the subject property were paid for by the Plaintiff even though the contract required their installation on the property prior to reimbursement from the Defendant Owner, because the materials needed to be ready to install at the appropriate time.

93. Although all of the subcontractors had been paid, Defendant Owner attempted to pay portions of the Plaintiff's pay applications by issuing joint checks to Plaintiff and subcontractors.

94. Plaintiff negotiated those joint checks that were possible due to the location and availability of the subcontractor, however some of the subcontractors who had been previously paid by the Plaintiff were not local and it was impossible to appear with them in person as requested by the bank to negotiate the checks.

95. These checks were then voided and returned to Defendant Owner along with an explanation, citing that the subcontractor and materials had been paid previously and that the amount on the application was reimbursement to the Plaintiff.

96. On or about September 17, 2015, the Plaintiff's materials supplier, Miller Clapperton, informed the Defendant Owner in writing that the balance of their subcontract was \$3,674.20 for retainage.

97. On that same date, Miller Clapperton provided the Defendant Owner with lien waivers for the total amount of their subcontract, less the \$3,674.20 retainage, and shortly thereafter, provided Defendant Owner with a lien waiver for the retainage.

98. Miller Clapperton is a Georgia company, with offices in Austell, Georgia, many hours from Charleston.

99. After being advised in writing by the subcontractor of the balance due on the subcontract, and receiving lien waivers from the subcontractor for all amounts due on the subcontract except the \$3,674.20 retainage, on or about September 21, 2015, the Defendant Owner issued a joint check to Miller Clapperton and the Plaintiff in the amount of \$16,309.95.

100. On or about September 21, 2015, the Defendant Owner issued a second joint check to Miller Clapperton and the Plaintiff in the amount of \$1,016.50.

101. The amounts of these two joint checks exceeded the retainage due to the subcontractor by \$13,652.50.

102. The Defendant Owner knew the subcontractor had already been paid everything but retainage and that these funds were due to the Plaintiff solely.

103. The Plaintiff voided these joint checks and returned them to the Defendant Owner.

104. On or about November 16, 2015, the Plaintiff informed the Defendant Owner in writing that the Plaintiff itself had performed all the work reflected in line 22 of the Application for Payment 15, installation of the steel lintels and closure angle plates.

105. After being informed that the Plaintiff, not the subcontractor Accu Welding, had installed the steel lintels and closure angle plates, on or about November 30, 2015, the Defendant Owner issued a joint check to Accu Welding and the Plaintiff in the amount of \$270.39.

106. The Defendant Owner knew at the time of the issuance of the check that the subcontractor Accu Welding was not due these funds and that they were due to the Plaintiff solely.

107. Plaintiff voided the joint check and returned it to the Defendant Owner however the Defendant Owner refused to re-issue the check solely to the Plaintiff.

108. More joint checks followed, including one to subcontractor Pleasant Places and the Plaintiff, for which the Defendant Owner had already received a lien waiver but wrote a joint check for more than was owed to the subcontractor.

109. On April 21, 2015, the Plaintiff purchased materials for the wire trellis system for the Defendant Owner's project from SECO South, an online materials supplier, using a company VISA card, and forwarded the back-up documentation of this purchase to the Defendant Owner in May of 2015.

110. Seven months later, on December 30, 2015, the Defendant Owner wrote a joint check to SECO South and Plaintiff knowing that these materials had been purchased by the Plaintiff and the funds were due solely to the Plaintiff.

111. This joint check was voided and returned to the Defendant Owner, but Defendant Owner refused to re-issue the check solely to the Plaintiff.

112. The Defendant owner wrote two joint checks to Plaintiff's subcontractor, Allphase Electrical on or about January 9, 2016, which exceeded the amount due to Allphase under its subcontract with the Plaintiff, including retainage, by \$12,232.31.

113. The remainder of the funds paid to Allphase by the Defendant Owner were due to Plaintiff as reimbursement for amounts Plaintiff had already paid to Allphase for materials.

114. There was never a time when the Defendant Owner issued a joint check that was returned by the Plaintiff because the amount was insufficient to cover the amount due to a subcontractor under its subcontract with the Plaintiff.

115. The Plaintiff attempted to deal with the Defendant Owner's improperly issued joint checks for significantly more than the subcontractor was due, however this placed an undue administrative burden on the Plaintiff in a fixed price Contract.

116. Several times, the Plaintiff returned a voided joint check to the Defendant Owner with an explanation, and whether the Defendant Owner had received written confirmation of the amount due from the subcontractor, had received lien waivers, or both, the Defendant Owner refused to re-issue the check solely to the Plaintiff.

117. The few times prior to November of 2015 when the Plaintiff did re-issue a voided joint check solely to the Plaintiff, payment was delayed by several weeks.

118. The Defendant Owner requested in writing that the Plaintiff provide the amounts each subcontractor was due.

119. The Defendant Owner made clear that it was only paying the subcontractors and not any amounts billed or claimed due to the Plaintiff.

120. Application for Payment 15, for work done through October 30, 2015, was sent to the Defendant Owner on November 9, 2015.

121. The Defendant Owner did not pay any amounts due solely to the Plaintiff from this Application for Payment.

122. The Defendant Owner did not pay \$9,888.13 of Application for Payment 15 by December 31, 2015.

123. The \$9,888.13 owing for Application for Payment 15 as of the end of December does not include the joint check made out to the Plaintiff and the trellis materials supplier, SECO South, for which the Defendant Owner had received documentation of the credit card charge in May and knew was for reimbursement to the Plaintiff for materials purchased for the Defendant Owner's project.

124. The \$9,888.13 owing for Application for Payment 15 as of the end of December does not include the \$2,608.09 due and owing from previous Applications for Payment, for which the Plaintiff filed a Mechanic's Lien on December 17, 2015.

125. The Defendant Owner was sent Application for Payment 16, for work done through November 30, 2015, on December 9, 2015.

126. The Defendant Owner did not pay any amounts due on Application for Payment 16, whether by joint check or otherwise.

127. The amounts due to the Plaintiff for the joint checks that the Defendant Owner refused to re-issue solely to the Plaintiff were only a small percentage of what was due and owing to the Plaintiff under the Contract; the remaining amounts were simply not paid at all by the Defendant Owner.

128. On December 30, 2015, the Plaintiff mailed notice to the Defendant Owner of its intent to demobilize in 7 days pursuant to the Contract provisions if it did not receive payment for amounts due under the applications for payment.

129. On January 2, 2016, the Plaintiff emailed the December 30 letter to the Defendant Owner along with the proof of delivery of the letter to Defendant Owner's office address.

130. The Defendant Owner did not acknowledge or respond to this correspondence.

131. The Plaintiff continued to perform work pursuant to the Contract through January 12, 2016, despite the Defendant Owner's continued failure to pay in full all applications for payment.

132. The Plaintiff notified the Defendant Owner by email on January 12, 2016, that they had demobilized and removed all equipment from the jobsite in accordance with the Contract provisions as set forth in the December 30 letter.

133. The Defendant Owner responded by claiming the Plaintiff had breached the contract in a variety of ways and stating that if the Plaintiff did not resume work within 7 days, the Defendant Owner was terminating the contract for cause.

134. The Plaintiff did not resume work under the contract.

135. The Plaintiff duly and timely filed a Notice and Certificate of Mechanics Lien with the Office of the RMC for the County of Charleston at Book 0524, Page 038, on December 17, 2015, as of which date, the amount due and unpaid by Defendant under the contract was Two Thousand Six Hundred Eight and 09/100 Dollars (\$2,608.09), plus interest as provided under the Contract, plus attorneys' fees, a copy of which is attached hereto as Exhibit B (hereafter "the first Lien").

136. The Plaintiff duly and timely filed a Notice and Certificate of Mechanics Lien with the Office of the RMC for the County of Charleston at Book 0542, Page 405, on March 22, 2016, as of which date, the amount due and unpaid by Defendant under the contract, not including the amount for the first Lien set forth above, was Twenty Nine Thousand Five Hundred Twenty One and 28/100 (29,521.28), plus interest as provided under the Contract, plus attorneys' fees, a copy of which is attached hereto as Exhibit C (hereafter "the second Lien").

137. The Plaintiff duly and timely filed a Notice and Certificate of Mechanics Lien with the Office of the RMC for the County of Charleston at Book 0546, Page 296, on April 11, 2016, as of which date, the amount due and unpaid by Defendant under the contract, not including the amount of the first Lien and second Lien set forth above, was Fifty Two Thousand Eight Hundred Sixty Eight and 78/100 Dollars (\$52,868.78), plus interest as provided under the Contract, plus attorneys' fees, a copy of which is attached hereto as Exhibit D (hereafter "the third Lien").

138. The Defendant Owner has failed to pay in full the amount of the first, second and third Liens.

AS A FIRST CAUSE OF ACTION
Foreclosure of Mechanics Liens

139. Plaintiff reasserts and re-alleges all facts and claims of the preceding paragraphs of this Complaint as if set forth verbatim herein.

140. Plaintiff has commenced this action within six months of the last date it provided labor and materials on the Real Property.

141. Plaintiff is entitled to an Order of Foreclosure of its first, second and third Mechanic's Liens on the Real Property, requiring that the Real Property be sold and that the proceeds of sale, after deducting all lawful charges and expenses, be paid to Plaintiff to be applied to the amount owed pursuant to the Lien, including interest, plus attorneys' fees and the costs of this action.

AS A SECOND CAUSE OF ACTION
(Breach of Contract)

142. Plaintiff reasserts and re-alleges all facts and claims of the preceding paragraphs of

this Complaint as if set forth verbatim herein.

143. The Defendant Owner willfully breached the contract with the Plaintiff in multiple ways, including but not limited to the following:

- a. Failing to pay for labor and materials furnished and billed under the Contract between Defendant Owner and the Plaintiff;
- b. Improperly issuing joint checks when Defendant Owner was informed by the subcontractor of the amount due and was provided lien waivers;
- c. Improperly issuing joint checks when Defendant Owner was provided lien waivers;
- d. Improperly issuing joint checks to Plaintiff and materials suppliers when Defendant Owner was provided proof of payment for materials;
- e. Refusing to re-issue improperly issued joint checks solely to the Plaintiff;
- f. Providing an unattended address for service of notice under the contract;
- g. Refusing to accept notice under the contract;
- h. Refusing to participate in contractually mandated alternative dispute resolution;
- i. Refusing to issue Construction Change Directives to keep the job moving forward in the event of a dispute over a Change Order as required by the Contract, despite multiple requests by the Plaintiff;
- j. Wrongfully terminating the Contract for cause claiming Plaintiff was in breach.

144. As a result of the breach of contract by Defendant Owner, the Plaintiff has been damaged in the amounts owed; plus interest as provided under the contract; or in the event of willful breach, interest as provided by statute, contract damages for costs, overhead and profit for

the unfinished work, increased project administration and project management costs, and increased reimbursable project costs caused by delays; attorneys' fees; and the costs of this action, for which amounts Defendant is responsible.

AS A THIRD CAUSE OF ACTION
(Quasi-Contract/Unjust Enrichment)

145. Plaintiff reasserts and re-alleges all facts and claims of the preceding paragraphs of this Complaint as if set forth verbatim herein.

146. The Defendant Owner and Bank have had the use and benefit of the materials and labor furnished by the Plaintiff and are unjustly retaining the benefit of the materials and labor without paying Plaintiff in full for them.

147. The Defendant Owner and Bank are liable to Plaintiff for the reasonable value of the labor and materials for which it has not paid in full, plus prejudgment interest from the date such labor and materials were supplied.

WHEREFORE, the Plaintiff prays for judgment as follows:

A) On its First Cause of Action, Plaintiff demands that Plaintiff's Mechanic's Lien be foreclosed, that due notice of said foreclosure be given all proper parties, that the priorities of the Plaintiff and the Bank be determined, that the Real Estate be sold and that the proceeds used to satisfy the amounts due Plaintiff on its Liens and for the costs incurred in prosecuting this action, including attorneys' fees, with any deficiency remaining a debt of the Defendant Owner to the Plaintiff.

B) On its Second Cause of Action, Plaintiff demands judgment against Defendant Owner for Breach of Contract in the amount of all unpaid balance, plus prejudgment interest, costs and attorneys' fees; and in the event of willful breach, interest as provided by statute, contract

damages for costs, overhead and profit for the unfinished work, increased project administration and project management costs, and increased reimbursable project costs caused by delays, attorneys' fees, and the costs of this action.

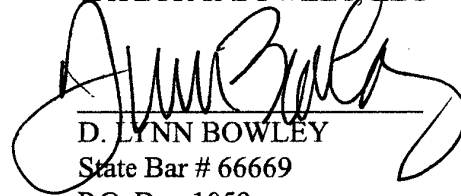
C) On its Third Cause of Action, Plaintiff prays for judgment against Defendant Bank and Defendant Owner, jointly and severally, in the amount of all labor and materials supplied by Plaintiff but not paid for by Defendants, plus prejudgment interest from the date such labor and materials were provided, and for the costs herein expended.

D) Plus such other and further relief that this Court deems just, equitable, and proper.

Charleston, S. C.

07.06, 2016

TAYLOR & BOWLEY LLC



D. LYNN BOWLEY

State Bar # 66669

P.O. Box 1059

Charleston, SC 29402

(843) 723-4020; fax (843) 723-4021

EXHIBIT A

All that piece or parcel of land, together with the building and improvements located thereon, situate, lying and being on the East side King Street, between Ann and Mary Streets, in the City of Charleston, and the State aforesaid. MEASURING AND CONTAINING on the front of King Street and on the East or back thirty seven (37') feet, and on the North and South lines one hundred fifty-nine (159') feet and six (6") inches, being the dimensions more or less. BUTTING AND BOUNDING to the North on the lands now or formerly of the South Carolina Railway Company, to the South on lands now or late of the Estate of William Schneider, and to the West of King Street aforesaid.

The premises herein described is known as No. 480 in the present numbering system of King Street, and being more fully described on a plat of the said No. 480 King Street by Joseph Needle, G.E., dated December 13, 1939 and recorded in the RMC Office for Charleston County in Plat Book F, Page 49.

TMS No. 460-12-02-028

BEING the same property conveyed to 480 King Street, LLC by Warranty Deed of GLR King Street Property, LLC, dated April 15, 2013 and recorded on April 18, 2013, in the RMC Office for Charleston County in Book 0324, Page 189.

EXHIBIT B



BP0524038

PGS:

6

STATE OF SOUTH CAROLINA	)	IN THE OFFICE OF THE RMC FOR
	)	THE COUNTY OF CHARLESTON
COUNTY OF CHARLESTON)	
)	
Charles Blanchard Construction Corp.,)	
)	
Petitioner)	
	)	NOTICE AND CERTIFICATE OF
vs.	)	MECHANIC'S LIEN
)	
480 King Street, LLC,)	
)	
Respondent.)	
_____)	

The Petitioner above named claims a lien in the amount set forth below and established by the sworn statement (Exhibit A), which is a true and just account of the amount due to the Plaintiff with all just credits given for labor and materials furnished and actually used in the erection, alteration, or repair of buildings or structures situated on the real estate described in Exhibit B, by virtue of its contract and consent of the Defendant property owner, by Mary Ann Kanters, the manager of its agent, 480 King Street, LLC, for its property 480 King Street

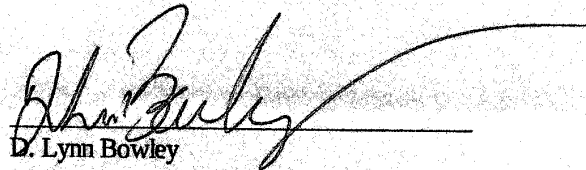
The value of the labor and materials furnished is the sum of Two Thousand, Six Hundred- Eight and 69/100 (\$2,608.69) Dollars, as is evidenced by the sworn statement of account attached hereto as Exhibit "A", and labor and materials were furnished to the after-described real estate less than ninety (90) days prior to date of the filing and service of this Mechanic's Lien.

That by virtue of the aforesaid labor and materials furnished to the after-described property, and by the service and filing of this Mechanic's lien, Petitioner, has and claims a Mechanic's Lien for the payment of the indebtedness aforesaid and the cost of enforcing said lien upon the following described real estate, attached hereto as Exhibit "B":

WHEREFORE, Petitioner claims a Mechanic's Lien in the sum of Two Thousand, Six Hundred-Eight and 69/100 (\$2,608.69) Dollars, plus interest, a reasonable attorney's fee as prescribed by statute, and for the costs and disbursements of this action.

RESPECTFULLY SUBMITTED:

TAYLOR, BOWLEY & BYRD, LLC by:



D. Lynn Bowley
39 Broad St., Suite 101
Charleston, SC 29401
843-723-4020
Attorneys for Petitioner

Dated 12/17/15
Charleston, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CHARLES BLANCHARD)
CONSTRUCTION CORPORATION)

Petitioner)

vs.)

480 King Street, LLC)

Respondents)
_____)

IN THE OFFICE OF THE RMC:
COUNTY OF CHARLESTON

AFFIDAVIT OF MIKE
BLANCHARD

Personally appeared before me the undersigned Mike Blanchard who first being duly sworn,
states and deposes as follows:

1. That I am the principal of Charles Blanchard Construction Corporation, and my Contractor's License number is 611461.
2. That Charles Blanchard Construction Corporation contracted for construction work on the premises located at 480 King Street owned, upon information and belief, by 480 King Street, LLC
3. That this work commenced on or around June 4, 2010, and meaningful work on this property was ongoing less than ninety (90) days from the filing of this Mechanic's Lien.
4. That payment for this work in the amount of \$ 2,608.69 is due and owing as of this date.

FURTHER THIS AFFIANT SAYETH NOT.

affidavit of Michael Blanchard p.1

EXHIBIT B

All that piece or parcel of land, together with the building and improvements located thereon, situate, lying and being on the East side King Street, between Ann and Mary Streets, in the City of Charleston, and the State aforesaid. MEASURING AND CONTAINING on the front of King Street and on the East or back thirty seven (37') feet, and on the North and South lines one hundred fifty-nine (159') feet and six (6") inches, being the dimensions more or less. BUTTING AND BOUNDING to the North on the lands now or formerly of the South Carolina Railway Company, to the South on lands now or late of the Estate of William Schneider, and to the West of King Street aforesaid.

The premises herein described is known as No. 480 in the present numbering system of King Street, and being more fully described on a plat of the said No. 480 King Street by Joseph Needle, G.E., dated December 13, 1939 and recorded in the RMC Office for Charleston County in Plat Book F, Page 49.

TMS No. 460-12-02-028

BEING the same property conveyed to 480 King Street, LLC by Warranty Deed of GLR King Street Property, LLC, dated April 15, 2013 and recorded on April 18, 2013, in the RMC Office for Charleston County in Book 0324, Page 189.

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Charles Blanchard Construction Corp.,)
)
 Petitioner)
)
 vs.)
)
 480 King Street, LLC,)
 Respondent.)
 _____)

IN THE OFFICE OF THE RMC FOR
 THE COUNTY OF CHARLESTON



PGS:
 6

NOTICE AND CERTIFICATE OF
 MECHANIC'S LIEN

The Petitioner above named claims a lien in the amount set forth below and established by the sworn statement (Exhibit A), which is a true and just account of the amount due to the Plaintiff with all just credits given for labor and materials furnished and actually used in the erection, alteration, or repair of buildings or structures situated on the real estate described in Exhibit B, by virtue of its contract and consent of the Defendant property owner, by Mary Ann Kanters, the manager of its agent, 480 King Street, LLC, for its property 480 King Street

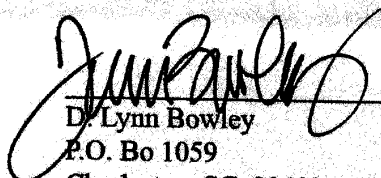
The value of the labor and materials furnished is the sum of Twenty Nine Thousand Five Hundred Twenty One and 28/100 (\$29,521.28) Dollars, as is evidenced by the sworn statement of account attached hereto as Exhibit "A", and labor and materials were furnished to the after-described real estate less than ninety (90) days prior to date of the filing and service of this Mechanic's Lien.

That by virtue of the aforesaid labor and materials furnished to the after-described property, and by the service and filing of this Mechanic's lien, Petitioner, has and claims a Mechanic's Lien for the payment of the indebtedness aforesaid and the cost of enforcing said lien upon the following described real estate, attached hereto as Exhibit "B":

WHEREFORE, Petitioner claims a Mechanic's Lien in the sum of Twenty Nine Thousand Five Hundred Twenty One and 28/100 (\$29,521.28) Dollars, plus interest, a reasonable attorney's fee as prescribed by statute, and for the costs and disbursements of this action.

RESPECTFULLY SUBMITTED:

TAYLOR, BOWLEY & BYRD, LLC by:



D. Lynn Bowley
P.O. Bo 1059
Charleston, SC 29402
843-723-4020
Attorneys for Petitioner

Dated 03-22-16
Charleston, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CHARLES BLANCHARD)
CONSTRUCTION CORPORATION)

Petitioner)

vs.)

480 King Street, LLC)

Respondents)
_____)

IN THE OFFICE OF THE RMC:
COUNTY OF CHARLESTON

AFFIDAVIT OF MIKE
BLANCHARD

Personally appeared before me the undersigned Mike Blanchard who first being duly sworn, states and deposes as follows:

1. That I am the principal of Charles Blanchard Construction Corporation, and my Contractor's License number is G11461.
2. That Charles Blanchard Construction Corporation contracted for construction work on the premises located at 480 King Street owned, upon information and belief, by 480 King Street, LLC.
3. That this work commenced on or around June of 2014, and meaningful work on this property was ongoing less than ninety (90) days from the filing of this Mechanic's Lien.
4. That payment for this work in the amount of \$ 29,521.28 is due and owing as of this date. This amount is in addition to the \$2,608.69 for which a previous lien was filed with the Charleston County RMC at Book 0524, page 038.

[Signature block on following page]

FURTHER THIS AFFIANT SAYETH NOT.



Mike Blanchard

Sworn to before me this 18th day of March 2016

Veronica A. Frutchey
Notary Public for South Carolina
My commission expires Nov 3, 2024.

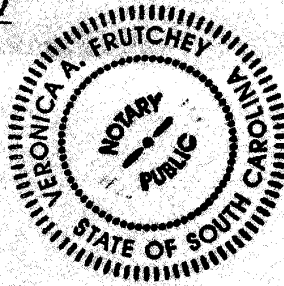


EXHIBIT B

All that piece or parcel of land, together with the building and improvements located thereon, situate, lying and being on the East side King Street, between Ann and Mary Streets, in the City of Charleston, and the State aforesaid. MEASURING AND CONTAINING on the front of King Street and on the East or back thirty seven (37') feet, and on the North and South lines one hundred fifty-nine (159') feet and six (6") inches, being the dimensions more or less. BUTTING AND BOUNDING to the North on the lands now or formerly of the South Carolina Railway Company, to the South on lands now or late of the Estate of William Schneider, and to the West of King Street aforesaid.

The premises herein described is known as No. 480 in the present numbering system of King Street, and being more fully described on a plat of the said No. 480 King Street by Joseph Needle, G.E., dated December 13, 1939 and recorded in the RMC Office for Charleston County in Plat Book F, Page 49.

TMS No. 460-12-02-028

BEING the same property conveyed to 480 King Street, LLC by Warranty Deed of GLR King Street Property, LLC, dated April 15, 2013 and recorded on April 18, 2013, in the RMC Office for Charleston County in Book 0324, Page 189.

EXHIBIT D



BP0546296

PGS:

6

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Charles Blanchard Construction Corp.,)
)
 Petitioner)
)
 vs.)
)
 480 King Street, LLC,)
 Respondent.)
 _____)

IN THE OFFICE OF THE RMC FOR
 THE COUNTY OF CHARLESTON

NOTICE AND CERTIFICATE OF
 MECHANIC'S LIEN

The Petitioner above named claims a lien in the amount set forth below and established by the sworn statement (Exhibit A), which is a true and just account of the amount due to the Plaintiff with all just credits given for labor and materials furnished and actually used in the erection, alteration, or repair of buildings or structures situated on the real estate described in Exhibit B, by virtue of its contract and consent of the Defendant property owner, by Mary Ann Kanters, the manager of its agent, 480 King Street, LLC, for its property 480 King Street

The value of the labor and materials furnished is the sum of Fifty Two Thousand Eight Hundred Sixty Eight and 78/100 (\$52,868.78) Dollars, as is evidenced by the sworn statement of account attached hereto as Exhibit "A", and labor and materials were furnished to the after-described real estate less than ninety (90) days prior to date of the filing and service of this Mechanic's Lien.

That by virtue of the aforesaid labor and materials furnished to the after-described property, and by the service and filing of this Mechanic's lien, Petitioner, has and claims a Mechanic's Lien for the payment of the indebtedness aforesaid and the cost of enforcing said lien upon the following described real estate, attached hereto as Exhibit "B":

EXHIBIT A

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 CHARLES BLANCHARD)
 CONSTRUCTION CORPORATION)
)
 Petitioner)
 vs.)
 480 King Street, LLC)
)
 Respondents)
 _____)

IN THE OFFICE OF THE RMC:
COUNTY OF CHARLESTON

AFFIDAVIT OF MIKE
BLANCHARD

Personally appeared before me the undersigned Mike Blanchard who first being duly sworn, states and deposes as follows:

1. That I am the principal of Charles Blanchard Construction Corporation, and my Contractor's License number is G11461.
2. That Charles Blanchard Construction Corporation contracted for construction work on the premises located at 480 King Street owned, upon information and belief, by 480 King Street, LLC.
3. That this work commenced on or around June of 2014, and meaningful work on this property was ongoing less than ninety (90) days from the filing of this Mechanic's Lien.
4. That payment for this work in the amount of \$52,868.78 is due and owing as of this date. This amount is in addition to the \$2,608.69 for which a previous lien was filed with the Charleston County RMC on December 17, 2015 at Book 0524, page 038. This amount is also in addition to the \$29,521.28 for which a previous lien was filed with the Charleston County RMC on March 22, 2016 at Book 0542, page 405.

Affidavit of Michael Blanchard p.1

FURTHER THIS AFFIANT SAYETH NOT.



Mike Blanchard

Sworn to before me this 11th day of April, 2024
Veronica A. Frutichey
Notary Public for South Carolina
My commission expires Nov 3, 2024

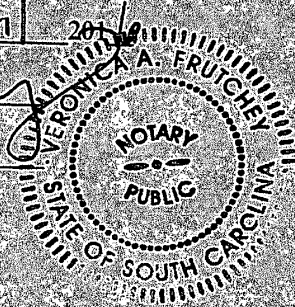


EXHIBIT B

All that piece or parcel of land, together with the building and improvements located thereon, situate, lying and being on the East side King Street, between Ann and Mary Streets, in the City of Charleston, and the State aforesaid. MEASURING AND CONTAINING on the front of King Street and on the East or back thirty seven (37') feet, and on the North and South lines one hundred fifty-nine (159') feet and six (6") inches, being the dimensions more or less. BUTTING AND BOUNDING to the North on the lands now or formerly of the South Carolina Railway Company, to the South on lands now or late of the Estate of William Schneider, and to the West of King Street aforesaid.

The premises herein described is known as No. 480 in the present numbering system of King Street, and being more fully described on a plat of the said No. 480 King Street by Joseph Needle, G.E., dated December 13, 1939 and recorded in the RMC Office for Charleston County in Plat Book F, Page 49.

TMS No. 460-12-02-028

BEING the same property conveyed to 480 King Street, LLC by Warranty Deed of GLR King Street Property, LLC, dated April 15, 2013 and recorded on April 18, 2013, in the RMC Office for Charleston County in Book 0324, Page 189.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 CHARLES BLANCHARD)
 CONSTRUCTION CORP., INC.,)
)
 Plaintiff,)
)
 vs.)
)
)
)
 480 KING STREET, LLC et.al.)
)
)
)
 Defendant.)
)
 _____)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2016-CP-10-3468

**ANSWER, AFFIRMATIVE DEFENSES
 AND COUNTERCLAIMS**

(Jury Trial Demanded)

2016 AUG -4 PM 3:02
 JUDGE J. ARMSTRONG
 CLERK OF COURT

FILED

Comes now Defendant, 480 King Street, LLC (hereinafter, "Defendant" or "Owner"), by and through its undersigned attorneys and Answers the allegations of Plaintiff's Complaint, asserts certain Affirmative Defenses and Counterclaims and states the following:

FOR A FIRST DEFENSE

(Qualified Denial)

1. Except as otherwise admitted, qualified, or explained hereinafter, Defendant denies each and every allegation contained in the Complaint and demands strict proof thereof.

2. Defendant admits the allegations of paragraph 1 only inasmuch as the defendant is a Corporation organized and operating under the laws of South Carolina. Defendant denies the remaining allegations of paragraph 1 of the Plaintiff's Complaint and demands strict proof thereof.

3. Defendant admits the allegations of paragraph 2 only inasmuch as the Defendant is a Corporation organized and existing under the laws of South Carolina. Defendant denies the remaining allegations of paragraph 2 of the Plaintiff's Complaint and demands strict proof thereof.

4. Defendant admits the allegations of paragraph 3 only inasmuch as the Defendant, TD Bank, N.A., NQ is a National Banking Organization, organized and existing under the laws of the United States and the State of South Carolina. Defendant denies the remaining allegations of paragraph 3 of the Plaintiff's Complaint and demands strict proof thereof.

5. Defendant admits the allegations of paragraph 4 of the Plaintiff's Complaint.

6. Defendant admits the allegations of paragraph 5 of the Plaintiff's Complaint.

7. Answering paragraph 6 of the Plaintiff's Complaint, Defendant repeats and realleges its Answer to paragraphs 1 through 6 as fully as if repeated herein verbatim.

8. Defendant denies for lack of knowledge the allegations of paragraph 7 of the Plaintiff's Complaint and demands strict proof thereof.

9. Defendant denies for lack of knowledge the allegations of paragraph 8 of the Plaintiff's Complaint and demands strict proof thereof.

10. Defendant admits the allegations of paragraph 9 insomuch as there were delays. Defendant denies the remaining allegations of paragraph 9 and demands strict proof thereof.

11. Defendant admits the allegations of paragraph 10 inasmuch as the Plaintiff after reviewing the plans of the project for the contracted work ordered the wrong elevator for the project. Defendant denies the remaining allegations of paragraph 10 and demands strict proof thereof.

12. Defendant admits the allegations of paragraph 11 inasmuch as the Plaintiff was responsible for providing the elevator. Defendant denies the remainder of the allegations of paragraph 11 and demands strict proof thereof.

13. Defendant denies the allegations of paragraph 12 and demands strict proof thereof.

14. Defendant denies the allegations of paragraph 13 inasmuch as there was a hold placed on that portion of the work on the project. There was plenty of other work that could have continued to be done on the project, but Plaintiff decided to use this as a 'complete stop' of work. Defendant denies the remaining allegations of paragraph 13 and demands strict proof thereof.

15. Defendant admits the allegations of paragraph 14 inasmuch as the engineers determined that it was not needed.

16. Defendant denies the allegations of paragraph 15 of the Plaintiff's Complaint and demands strict proof thereof.

17. Defendant denies the allegations of paragraph 16 of Plaintiff's Complaint and demands strict proof thereof.

18. Defendant denies the allegations of paragraphs 17 and 18 and demands strict proof thereof.

19. Defendant denies the allegations of paragraph 19 and demands

strict proof thereof.

20. Defendant denies the allegations of paragraphs 19, 20, 21, 22, 23 24, 25 and demands strict proof thereof, as no work was being performed by Charles Blanchard Construction or any of its subcontractors from May 4, 2015 through most of July, 2015.

21. Defendant admits to the allegations of paragraph 26 inasmuch as there were meetings regarding the value engineer portions of the job. Plaintiff stated that value engineering could be handled by Plaintiff. Architect and Engineers were involved when requested by Plaintiff. Plaintiff had free access to Architect and Engineer and on numerous occasions communicated with Architect and Engineer without Owners knowledge. Defendant denies the remaining allegations of paragraph 26 and demands strict proof thereof.

22. Defendant denies the allegations of paragraph 27 and demands strict proof thereof.

23. Defendant admits the allegations of paragraph 28 inasmuch as the Defendant did have a meeting with AT&T. Defendant denies the remaining allegations of paragraph 28 and demands strict proof thereof.

24. Defendant denies the allegations of paragraphs 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 and demands strict proof thereof.

25. Defendant denies the allegations of paragraph 44 and demands strict proof thereof.

26. Defendant admits the allegations of paragraph 45 inasmuch that Plaintiff submitted change orders Defendant denies the remaining allegations of

paragraph 45 and demands strict proof thereof.

27. Defendant denies the allegations of paragraph 46 of Plaintiff's Complaint and demands strict proof thereof.

28. Defendant admits that the contractor emailed the owner but denies the remainder of the allegations of paragraph 47 of Plaintiff's Complaint and demands strict proof thereof.

29. Defendant denies the allegations of paragraph 48 of Plaintiff's Complaint and demands strict proof thereof.

30. Defendant denies the allegations of paragraph 49 of Plaintiff's Complaint and demands strict proof thereof.

31. Defendant denies the allegations of paragraph 50 of Plaintiff's Complaint and demands strict proof thereof.

32. Defendant admits the allegations of paragraph 51 of Plaintiff's Complaint inasmuch as received email. Defendant denies the remaining allegations of paragraph 51 and demands strict proof thereof.

33. Defendant admits the allegations of paragraph 52 of Plaintiff's Complaint.

34. Defendant denies the allegations of paragraph 53 of the Plaintiff's Complaint and demands strict proof thereof.

35. Defendant denies the allegations of paragraph 54 of the Plaintiff's Complaint and demands strict proof thereof.

36. Defendant admits the allegations of paragraph 55 of Plaintiff's Complaint

insomuch as the Plaintiff gave instructions to the election to demobilize despite the fact that there was plenty of other work that could have been done.

Defendant denies the remainder of the allegations of paragraph 55 of Plaintiff's Complaint and demands strict proof thereof.

37. Defendant admits the allegations of paragraph 56 inasmuch as receiving email. Defendant denies the remainder of the allegations of paragraph 56 of Plaintiff's Complaint and demands strict proof thereof.

38. Defendant admits the allegations of paragraph 57 of Plaintiff's Complaint.

39. Defendant denies the allegations of paragraph 58 of Plaintiff's Complaint and demands strict proof thereof.

40. Defendant denies the allegations of paragraph 59 of Plaintiff's Complaint and demands strict proof thereof.

41. Defendant denies the allegations of paragraph 60 of Plaintiff's Complaint and demands strict proof thereof.

42. Defendant admits the allegations of paragraph 61 of Plaintiff's Complaint.

43. Defendant denies the allegations of paragraph 62 of Plaintiff's Complaint and demands strict proof thereof.

44. Defendant admits the allegations of paragraph 63 insomuch as Plaintiff did not sign the Construction Change Order. Defendant denies the remaining allegations of paragraph 63 and demands strict proof thereof.

45. Defendant admits the allegations of paragraph 64 insomuch that

the Contract provided for mediation and arbitration to resolve disputes.

Defendant denies the remainder of the allegations of paragraph 64 and demands strict proof thereof.

46. Defendant denies the allegations of paragraph 65 of Plaintiff's Complaint. The method of notice is clearly defined in the contract and the Plaintiff failed to confirm notice to the terms and conditions of the contract.

General Conditions of the Contract Section 13.3 Written Notice: "Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice."

Addendum reads: "This Addendum and its provisions supersede the original body of the Agreement, A201, all exhibits, attachments and all its references in its entirety, and whenever there may be a conflict between the Addendum and the Agreement and/or A201, this Addendum shall be the controlling document."

47. Defendant admits the allegations of paragraph 66 of Plaintiff's Complaint.

48. Defendant denies the allegation of paragraph 67 of Plaintiff's Complaint and demands strict proof thereof.

49. Defendant denies the allegations of paragraph 68 of Plaintiff's Complaint and demands strict proof thereof.

Addendum reads: "This Addendum and its provisions supersede the original body of the Agreement, A201, all exhibits, attachments and all its references in its entirety, and whenever there may be a conflict between the Addendum and the Agreement and/or A201, this Addendum shall be the controlling document."

50. Defendant denies the allegations of paragraph 69 of Plaintiff's Complaint and demands strict proof thereof.

51. Defendant denies the allegations of paragraph 70 of Plaintiff's Complaint and demands strict proof thereof.

52. Defendant denies the allegations of paragraph 71 of Plaintiff's Complaint and demands strict proof thereof.

53. Defendant denies the allegations of paragraph 72 of Plaintiff's Complaint and demands strict proof thereof.

54. Defendant denies the allegations of paragraph 73 of Plaintiff's Complaint and demands strict proof thereof.

55. Defendant denies the allegations of paragraph 74 of Plaintiff's Complaint and demands strict proof thereof.

55. Defendant denies the allegations of paragraph 75 of Plaintiff's Complaint and demands strict proof thereof.

56. Defendant denies the allegations of paragraph 76 of Plaintiff's Complaint and demands strict proof thereof.

57. Defendant denies the allegations of paragraph 77 of Plaintiff's Complaint and demands strict proof thereof.

58. Defendant denies the allegations of paragraph 78 of Plaintiff's Complaint and demands strict proof thereof.

59. Defendant denies the allegations of paragraph 79 of Plaintiff's Complaint and demands strict proof thereof.

60. Defendant denies the allegations of paragraph 80 of Plaintiff's Complaint and demands strict proof thereof.

61. Defendant denies the allegations of paragraph 81 of Plaintiff's Complaint and demands strict proof thereof.

62. Defendant denies the allegations of paragraph 82 of Plaintiff's Complaint and demands strict proof thereof.

63. Defendant denies the allegations of paragraph 83 of Plaintiff's Complaint and demands strict proof thereof.

64. Defendant denies the allegations of paragraph 84 of Plaintiff's Complaint and demands strict proof thereof.

65. Defendant denies the allegations of paragraph 85 of Plaintiff's Complaint and demands strict proof thereof.

66. Defendant denies the allegations of paragraph 86 of Plaintiff's Complaint and demands strict proof thereof.

67. Defendant denies the allegations of paragraph 87 of Plaintiff's Complaint and demands strict proof thereof.

68. Defendant denies the allegations of paragraph 88 of Plaintiff's Complaint and demands strict proof thereof.

69. Defendant denies the allegations of paragraph 89 of Plaintiff's

Complaint and demands strict proof thereof.

70. Defendant admits the allegations of paragraph 90 of Plaintiff's Complaint.

71. Defendant denies the allegations of paragraph 91 of Plaintiff's Complaint and demands strict proof thereof.

72. Defendant denies the allegations of paragraph 92 of Plaintiff's Complaint and demands strict proof thereof.

73. Defendant denies the allegations of paragraph 93 of Plaintiff's Complaint and demands strict proof thereof.

74. Defendant denies the allegations of paragraph 94 of Plaintiff's Complaint and demands strict proof thereof.

75. Defendant denies the allegations of paragraph 95 of Plaintiff's Complaint and demands strict proof thereof.

76. Defendant admits the allegations of paragraph 96 inasmuch as that on September 17, 2015 the Plaintiff's material supplier, Miller Clapperton did contact Defendant. Defendant denies the remainder of the allegations of paragraph 96 of Plaintiff's Complaint and demands strict proof thereof.

77. Defendant denies the allegations of paragraph 97 of Plaintiff's Complaint and demands strict proof thereof.

78. Defendants admit the allegations of paragraph 98 of plaintiff's Complaint inasmuch as Miller Clapperton is a Georgia company with offices in Austell Georgia. Defendant denies the remaining allegations of paragraph 98 of Plaintiff's Complaint and demands strict proof thereof.

79. Defendant admits the allegations of paragraph 99 of Plaintiff's Complaint insomuch as Defendant did issue a joint check the Miller Clapperton and the Plaintiff. Defendant denies the remainder of the allegations contained in paragraph 99 and demands strict proof thereof.

80. Defendant admits the allegations of paragraph 100 of the Plaintiff's Complaint.

81. Defendant denies the allegations of paragraph 101 of Plaintiff's Complaint and demands strict proof thereof.

82. Defendant denies the allegations of paragraph 102 of Plaintiff's Complaint and demands strict proof thereof.

83. Defendant admits the allegations of paragraph 103 of Plaintiff's Complaint.

84. Defendant denies the allegations of paragraph 104 of Plaintiff's Complaint and demands strict proof thereof.

85. Defendant admits the allegations of paragraph 105 of Plaintiff's Complaint insomuch as Defendant did issue a joint check to Accu Welding and the Plaintiff in the amount of \$270.30. Defendant denies the remainder of the allegations of paragraph 105 of Plaintiff's Complaint and demands strict proof thereof.

86. Defendant denies the allegations of paragraph 106 of Plaintiff's Complaint and demands strict proof thereof.

87. Defendant denies the allegations of paragraph 107 of Plaintiff's Complaint and demands strict proof thereof.

88. Defendant denies the allegations of paragraph 108 of Plaintiff's Complaint and demands strict proof thereof.

89. Defendant denies the allegations of paragraph 109 of Plaintiff's Complaint and demands strict proof thereof.

90. Defendant denies the allegations of paragraph 110 of Plaintiff's Complaint and demands strict proof thereof.

91. Defendant denies the allegations of paragraph 111 of Plaintiff's Complaint and demands strict proof thereof.

92. Defendant admits the allegations of paragraph 112 of Plaintiff's Complaint insomuch as Defendant wrote two joint checks to Plaintiff subcontractor. Defendant denies the remainder of the allegations of paragraph 112 of Plaintiff's Complaint and demands strict proof thereof.

93. Defendant denies the allegations of paragraph 113 of Plaintiff's Complaint and demands strict proof thereof.

94. Defendant denies for lack of knowledge the allegations of paragraph 114 of Plaintiff's Complaint and demands strict proof thereof.

95. Defendant denies the allegations of paragraph 115 of Plaintiff's Complaint and demands strict proof thereof.

96. Defendant denies the allegations of paragraph 116 of Plaintiff's Complaint and demands strict proof thereof.

97. Defendant denies the allegations of paragraph 117 of Plaintiff's Complaint and demands strict proof thereof.

98. Defendant admits the allegations of paragraph 118 of Plaintiff's

Complaint.

99. Defendant denies the allegations of paragraph 119 of Plaintiff's Complaint and Demands strict proof thereof.

100. Defendant admits the allegations of paragraph 120 of Plaintiff's Complaint.

101. Defendants admits the allegations of paragraph 121 of Plaintiff's Complaint. Defendant did not issue payment solely to Plaintiff due to The fact that there were numerous deficiencies in this Application for Payment #15 that Defendant notified Plaintiff of in Defendant's cover letter enclosing partial payment sent on November 30, 2015.

102. Defendant admits the allegations of paragraph 122 of Plaintiff's Complaint. Defendant did not pay the \$9,888.13 of Application for Payment #15 by December 31, 2015 because the deficiencies noticed to Plaintiff of Application for Payment #15 were not cured by December 15, 2015.

103. Defendant denies for lack of knowledge the allegations of paragraph 123 of Plaintiff's Complaint and demands strict proof thereof.

104. Defendant denies for lack of knowledge the allegations of paragraph 124 of Plaintiff's Complaint and demands strict proof thereof.

105. Defendant admits the allegations of paragraph 125 of Plaintiff's Complaint.

106. Defendant denies the allegations of paragraph 126 of Plaintiff's Complaint as Defendant did make payment on this Application for Payment #16 on December 30, 2015 sent via Fed Ex.

107. Defendant denies the allegations of paragraph 127 of Plaintiff's Complaint and demands strict proof thereof. Defendant denies the allegations of paragraph 128 of Plaintiff's Complaint and demands strict proof thereof.

108. Defendant denies for lack of knowledge the allegations of paragraphs 129 and paragraph 130 of Plaintiff's Complaint and demands strict proof thereof.

109. Defendant denies the allegations of paragraph 131 of Plaintiff's Complaint and demands strict proof thereof.

110. Defendant admits the allegations of paragraph 132 inasmuch as Plaintiff did notice Defendant. Defendant denies the remainder of the allegations of paragraph 132 and demands strict proof thereof.

111. Defendant admits the allegations of paragraph 133 inasmuch as Plaintiff did notice Defendant. Defendant denies the remainder of the allegations of paragraph 133 and demands strict proof thereof.

112. Defendant admits the allegations of paragraph 134 of Plaintiff's Complaint.

113. Defendant admits the allegations of paragraph 135 inasmuch as Plaintiff attempted to file a Notice and Certificate of Mechanic's Lien on December 17, 2015. Defendant denies that the lien is justified or enforceable or that Defendant was properly served. Defendant denies the remainder of the allegations of paragraph 135 as stated herein and demands strict proof thereof.

114. Defendant admits the allegations of paragraph 136 of Plaintiff's Complaint inasmuch as Plaintiff attempted to file a Notice and Certificate of

Mechanics Lien on March 22, 2016. Defendant denies that the Lien is justified or enforceable, or that Defendant was properly served. Defendant denies the remainder of the allegations of paragraph 136 of Plaintiff's Complaint as stated herein and demands strict proof thereof.

115. Defendant denies for lack of knowledge the allegations of paragraph 137 of Plaintiff's Complaint and demands strict proof thereof.

116. Defendant denies the allegations of paragraph 138 of Plaintiff's Complaint and demands strict proof thereof, however, the contract has been paid in full.

117. Answering paragraph 139 of Plaintiff's Complaint, Defendant repeats and realleges its answers to paragraphs 1 through 138 of the Plaintiff's Complaint as fully as if repeated herein verbatim.

118. Defendant denies the allegations of paragraph 140 of Plaintiff's Complaint and demands strict proof thereof.

119. Defendant denies the allegations of paragraph 141 of Plaintiff's Complaint and demands strict proof thereof.

120. Answering paragraph 142 of Plaintiff's Complaint, Defendant repeats and realleges its answers to paragraphs 1 through 141 of the Plaintiff's Complaint as fully as if repeated herein verbatim.

121. Defendant denies the allegations of paragraph 143 of Plaintiff's Complaint and demands strict proof thereof.

122. Defendant denies the allegations of paragraph 144 of Plaintiff's Complaint and demands strict proof thereof.

123. Answering paragraph 145 of Plaintiff's Complaint, Defendant repeats and realleges its answers to paragraphs 1 through 144 of the Plaintiff's Complaint as fully as if repeated herein verbatim.

124. Defendant denies the allegations of paragraph 146 of Plaintiff's Complaint and demands strict proof thereof.

125. Defendant denies the allegations of paragraph 147 of Plaintiff's Complaint and demands strict proof thereof.

126. Defendants deny that the Plaintiff is entitled to any of the relief requested in the prayer for relief.

FOR A SECOND DEFENSE

(Failure to State a Claim)

127. The Complaint, in whole or in part, should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim against the Defendant. The facts as alleged in the Complaint do not state an actionable claim or support a theory of recovery against the Defendants as a matter of law. In particular, Plaintiff's claim for lien foreclosure fails as a matter of law. Pursuant to S.C. Code § 29-5-15 (A), a contractor is required to state his contractor license number on the lien document when the lien is filed. Plaintiff did not place his license number on the lien document, and instead placed it on an affidavit. . In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. See First Baptist Church of Mauldin v. City of Mauldin 308 S.C. 226, 229, 417 S.E.2d 592, 593

(1992). A mechanic's lien is purely statutory. Therefore, the requirements of the statute must be strictly followed. See Ferguson Fire and Fabrication, Inc. v. Preferred Fire Protection, LLC 397 S.C. 379, 384, 725 S.E.2d 495, 498 (S.C. App. 2012). 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 the court is not at liberty to depart from the plain meaning of the mechanic lien's statutory language. See Skiba v. Gessner, 374 S.C. 208, 212, 648 S.E.2d 605, 607 (2007).

FOR A THIRD DEFENSE

(Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing)

128. Any failure on the part of the Defendant to perform as agreed under any contract with the Plaintiff, although specifically denied, was excused because of the Plaintiff's breaches of the parties' Contract and Addendum and Plaintiff's breaches of the express or implied covenant of good faith and fair dealing in such particulars as the evidence will show.

FOR A FOURTH DEFENSE

(First Material Breach)

129. Plaintiff's claims are barred in whole or part because the Plaintiff was the first to materially breach the Contract in such particulars as the evidence will show.

FOR A FIFTH DEFENSE

(Unclean Hands)

130. Plaintiff's claims are barred in whole or part by the doctrine of unclean hands.

FOR A SIXTH DEFENSE

(Waiver)

131. Plaintiff's claims are barred in whole or part by the doctrine of waiver due to its own failures to perform, comply with, and/or conform with the terms of the parties' Contract and Addendum in such particulars as the evidence will show.

FOR A SEVENTH DEFENSE

(Estoppel)

132. Plaintiff's claims are barred in whole or part by the doctrine of estoppel due to their own failures to perform, comply with, and/or conform with the terms of the parties' Contract and Addendums in such particulars as the evidence will show.

FOR AN EIGHTH DEFENSE

(Set-Off /Recoupment)

133. To the extent that the Defendant is found liable to the Plaintiff, which liability is expressly denied, the claims alleged in the Complaint should be reduced under the doctrines of set-off, and/or recoupment for monies owed by the Plaintiff to the Defendant.

FOR A NINTH DEFENSE

(Reservation of Additional and Further Defenses)

134. Defendant reserves any additional and further defenses as may be revealed by additional information through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

**FOR AN TENTH DEFENSE AND BY WAY OF
A FIRST COUNTERCLAIM AGAINST THE PLAINTIFF**

(Breach of Contract)

135. Defendant repeats, alleges, and incorporates by reference as if fully set forth herein its answers to the allegations contained in the Complaint and its allegations in paragraphs 1 through 134 herein-above.

136. The Plaintiff and the Defendant entered into a Contract.

137. The Contract and Addendum contain mutually dependent obligations by and between Contractor and Owner. Each party's performance of its obligations under the terms of the Contract and Addendum is a condition precedent to that party's enforcement of the terms and provisions of the Contract and Addendum.

138. Notwithstanding the above-referenced Contract and Addendum, and the full and continued performance on the part of Defendant Owner, Plaintiff has materially breached the terms and provisions of the parties' Contract and Addendum as stated herein by, *inter alia*, having failed to complete the project according to the Contract, implementing cost over-runs, caused foreseeable lost profits to Owner, and caused Owner to pay others to fix Plaintiff's defective work.

139. As a direct and proximate result of the Plaintiff's breaches of the Contract and Addendum, Owner has been damaged in an amount to be determined by the trier of fact.

140. Defendant is entitled to compensation from Plaintiff for its actual, compensatory, consequential, special, and incidental damages, together with prejudgment interest at the rate of 8.75% per annum pursuant to S.C. Code Ann. § 34-31-20(A), as well as costs, expenses and attorney's fees incurred in bringing this action, all in an amount to be determined by the trier of fact.

**FOR A ELEVENTH DEFENSE AND BY WAY OF
A SECOND COUNTERCLAIM AGAINST THE PLAINTIFF**
(Negligence/Gross Negligence as to Plaintiff Builder)

141. Defendant hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

142. Defendant is the owner of the premise described in Plaintiff's Complaint.

143. At all times relevant hereto, Plaintiff was engaged in the practice of designing, developing, constructing and selling buildings in Charleston County.

144. Upon information and belief, Michael Blanchard is or was the qualifying license holder for Charles Blanchard Construction Corp., Inc (hereinafter, "Plaintiff Builder").

145. The Plaintiff Builder obtained the necessary building permits which allowed the building to be constructed. As such, Plaintiff Builder owed a duty to the Plaintiffs to construct the Residence free from defects, in a good and

workmanlike manner and in accordance with applicable building codes and industry standards.

146. Defendant, due to recent investigations, has determined that the building is and has been extensively damaged, which damage was proximately caused by the Plaintiff, their agents, servants, employees, and/or subcontractors. As a direct and proximate result of the Plaintiff's actions, Defendant has spent and will continue to expend substantial sums of money in order to renovate and restore the building to make it safe and habitable, and in addition thereto, the building has suffered a loss in value and depreciation by virtue of the defects and damages. In addition, Defendant will be required to expend substantial sums which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct, and indirect damages all to Defendant's damage in an amount to be determined. As a result of the conduct referenced herein, Defendant is entitled to punitive damages in an amount to be determined.

147. Notwithstanding that Defendant has properly maintained the building, the construction defects set forth herein have caused occurrences in the form of leaks, air infiltration, defects, and failures within the building envelope which are not readily apparent to one examining the exterior surface thereof.

148. The latent construction defects have resulted in repeated exposure to the same generally harmful conditions over time and have resulted in consequential damages. Such repeated exposure to the same generally harmful conditions constitutes "occurrences" and compensable damage. Further, the

negligence of each Defendant herein has resulted in damage to the work of the other subcontractors and trades, damage to non-defective components of the work, damage to the building, the Defendant's property (real and personal), and the Defendant's use and enjoyment of the Residence.

149. Upon information and belief, the Plaintiff Builder, either with their own employees or through the use of subcontractors, designed, constructed and sold the building.

150. Upon information and belief, Defendant Michael Blanchard is the holder of a South Carolina Commercial Builder's license and was the qualifying license holder for Charles Blanchard Construction Corp., Inc.

151. As a licensed commercial builder, Plaintiff Builder owed a duty to the Defendant to exercise due care in the construction of the building and to construct the building free from defects and in conformity with applicable building and dwelling codes, approved construction plans and specifications, and in a careful, diligent, and workmanlike manner.

152. The Plaintiff Builder and their agents, servants, employees, and/or subcontractors were negligent, careless, reckless, willful and wanton in failing to design and/or construct the building in accordance with the applicable building and dwelling codes, and in a careful, diligent, and workmanlike manner, thereby breaching the above-referenced duty by, but not limited to, the following particulars:

- a. In failing to construct the building so as to make the exterior building envelope water tight and thereby violating the building code in effect at the time the work was performed;

- b. In failing to install, or properly an appropriate secondary weather resistant barrier on the exterior wall sheathing;
- c. In failing to install, or properly install, flashing at windows and/or doors;
- d. In failing to properly protect the rough openings from moisture intrusion;
- e. In installing a roof covering that allows water intrusion into the interior of the building, causing damage to other components of the building besides the roof;
- f. In failing to ensure appropriate grading at the premises;
- g. In failing to investigate the subcontractors to determine if they were competent and capable of performing their work in accordance with good construction practices and in accordance with the manufacturer's specifications;
- h. In failing to adequately supervise the work of their subcontractors and/or employees;
- i. In failing to properly sequence the work;
- j. In failing to discover defects in the work performed by their subcontractors and/or employees;
- k. In failing to correct defective work;
- l. In designing and constructing the building in a defective manner;
- m. In failing to design and construct the building in accordance with applicable building codes and industry standards; and
- n. In such other failures that will be shown during the discovery of this case and at trial.

153. As a direct, foreseeable and proximate result of the negligence and gross negligence of the Plaintiff Builder, the Defendant has suffered significant

physical damage to the building as well as diminution in its value and loss of use. The Defendant has further been damaged in that they have spent, and will continue to expend, large sums of money in order to determine the extent of the damage to the structure and to repair it.

154. The violation of applicable building codes constitutes negligence *per se*.

155. The breach of duty, code violations, and deviations from industry standards on the part of the Plaintiff constitute gross negligence, entitling Defendant to an award of all actual, consequential, and punitive damages.

**FOR A TWELFTH DEFENSE AND BY WAY OF
A THIRD COUNTERCLAIM AGAINST THE PLAINTIFF**
(Breach of Implied Warranties as to Plaintiff Builder)

156. Defendant hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

157. By operation of law, Plaintiff Builder impliedly warranted that their work would be performed using the utmost skill and attention and would be of a good and workmanlike quality free from all defects.

158. Plaintiff Builder breached the implied warranty of workmanlike service by performing defective work as set forth above.

159. In selling the building or otherwise placing the building into the stream of commerce, Plaintiff Builder, by operation of law, impliedly warranted that the building would be habitable and free from all defects.

160. Plaintiff Builder has breached the implied warranty of habitability by constructing and selling a defective building as set forth above.

161. As a direct, foreseeable and proximate result of the Plaintiff's breach of warranties, the Defendant has suffered significant physical damage to the building, as well as diminution in its value and loss of use. The Defendant has further been damaged in that they have spent, and will continue to expend, large sums of money in order to determine the extent of the damage to the structure and to repair it.

**FOR A THIRTEENTH DEFENSE AND BY WAY OF
A FOURTH COUNTERCLAIM AGAINST THE PLAINTIFF**
(Breach of Express Warranty as to Plaintiff Builder)

162. Defendant hereby incorporates the allegations of the foregoing Paragraphs as if fully restated herein.

163. Plaintiff Builder expressly warranted all workmanship performed and materials furnished would be of good and workmanlike quality.

164. Plaintiff Builder expressly warranted that their work would be free from all defects.

165. Plaintiff Builder breached this express warranty by designing and constructing the building in a defective manner as set forth above, which has, among other things, resulted in actual property damage to the building beyond the work product itself.

166. As a direct, foreseeable and proximate result of the Plaintiff's breach of express warranties, the Defendant has suffered significant physical damage to the building, as well as diminution in its value and loss of use. The Defendant has further been damaged in that they have spent, and will continue to expend, large sums of money in order to determine the extent of the damage to the structure and

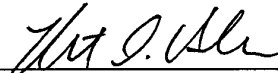
to repair it.

WHEREFORE, the Defendant pray this Honorable Court inquire into the matters set forth herein and award judgment in favor of the Defendant against the Defendant, as follows:

1. For all actual and consequential damages against the Plaintiff, in an amount to be shown at trial;
2. For punitive damages in an amount to be determined by the trier of fact;
3. For prejudgment interest;
4. For all attorneys fees and costs associated with investigating and prosecuting this action; and
5. For all other relief this Honorable Court deems just and proper.

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: 

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Attorneys for the Plaintiff

8/4, 2016.
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 480 KING STREET, LLC)
)
 Plaintiff,)
)
 vs.)
)
)
 GLICK/BOEHM & ASSOCIATES, INC.)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 2017-CP-10- 3267

COMPLAINT
 (Jury Trial Demanded)
 2017 JUN 26 PM 3:12
 JULIE J. ARMSTRONG
 CLERK OF COURT
 FILED

COMES NOW THE PLAINTIFF, 480 King Street, LLC, (hereinafter, "480 King") by and through their undersigned counsel, complaining of the Defendant herein, Glick / Boehm & Associates, Inc. (hereinafter, "GBA") and allege unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff, 480 King is a limited liability company organized and doing business in the State of South Carolina.
2. Defendant, GBA, is a corporation organized and existing under the laws of the State of South Carolina, and is doing business in Charleston County as GBA.
3. Upon information and belief, GBA served as the architect of record for the stair tower located at 480 King Street, Charleston, South Carolina, agreeing to provide professional architectural services for the design of the stair tower, specifically including, but not limited to, the issuance of the plans and specifications for the construction of the stair tower. These documents and/or instruments of service were required to be in

compliance with all applicable ordinances, codes, regulations, statutes, and industry standards. Upon information and belief, GBA agreed to make periodic visits to the stair tower during construction, and otherwise perform contract administration services during construction to observe whether the construction was being completed in accordance with the plans and specifications (itself created) and all applicable building codes.

4. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto, and venue is proper in this forum pursuant to §15-7-30 (E)(1).

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. Plaintiff hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

6. On or about October 16, 2013, 480 King and GBA entered in to a Contract for GBA to provide design and construction administration services for a for a stair tower that Charles Blanchard Construction Corporation (hereinafter, "CBCC") later constructed at 480 King Street, Charleston, South Carolina 29403, for the contract sum of \$706,878.84.

7. The contract called for GBA to design the stair tower and, inter-alia, to act as 480 King's agent to interpret the contract documents, visit the site, review the Contractor's submittals, reject non-conforming work, keep 480 King informed about the progress and quality of the work as and when completed, and to report to 480 King known deviations from the Contract documents.

8. Pursuant to the Contract, substantial completion of the project was to be achieved within 150 days from the date of commencement. The date of project commencement was dated June 30, 2014, therefore, the stair tower should have been substantially completed by November 27, 2014, and in no event later than December 15,

2014 pursuant to the Contract Addendum. CBCC and 480 King agreed that time was of the essence.

9. GBA breached their contractual duties set forth above in the following and particular and herein described manners:

- a) Failing to properly design and prepare specifications for the stair tower which were compliant with all applicable building codes and professional standards;
- b) Failing to specify products that were in compliance with all applicable building codes;
- c) Failing to design and specify the correct elevator system, shaft, and component parts for the stair tower;
- d) Failing to properly administer, observe and inspect the construction of the stair tower for compliance with the plans and specifications and applicable building codes;
- e) Failing to act as a reasonably prudent design professional would act under similar circumstances
- f) Failing to detect non-code compliant work completed by CBCC including the following: (i) failure of CBCC to construct the building so that the exterior of the building envelope was water tight; (ii) failure of CBCC to install or properly install an appropriate secondary weather resistant barrier on the exterior wall sheathing; (iii) failure of CBCC to install or properly install flashing at windows and doors; (iv) failure of CBCC to properly protect the rough openings from moisture intrusion; (v) failure

of CBCC to install a roof covering that allows water intrusion into the interior of the building, causing damage to other components of the building besides the roof; and (vi) failure of CBCC to properly grade the premises.

- g) Specifying the incorrect travel length of the stair tower elevator;
- h) Improperly designed elevator and electrical chase;
- i) Improperly designed electrical conduit;
- j) Improperly designed HVAC unit header;
- k) Improperly designed soffit/header;
- l) Improperly designing windows, flashing and connections resulting in water penetration and damage;
- m) Improperly designed stairs;
- n) Failing to discover defects in the work performed by CBCC and its subcontractors;
- o) Other breaches that may be determined to be shown at the trial of this matter;

10. The deviations in what was called for in the Contract documents, versus what was supplied and rendered by CBCC was not rejected by GBA as non-conforming, nor reported to 480 King as deviations in the Contract documents. At a minimum, GBA was under a contractual duty to inform 480 King as to the above referenced errors, omissions and deviations in the quality of the project, and GBA never did.

11. The acts described above are plain breaches GBA's contractual duties by reviewing and approving items of work at the project that were either not performed, or

were performed in derogation of the Contract documents. These breaches were material and deprived 480 King of the benefit of their bargain, as the project was a value engineered building, and was designed to be built with specific requirements that were largely ignored. GBA's complete supervision of all work, design, submittals, RFI's, and ASI's rendered the product contracted for of significantly diminished value in the eyes of 480 King and prospective third-party purchasers and constitute actual, special damages as plead herein. This loss may reasonably be construed to have been in the contemplation of the parties at the time the contract was formed as the plans were unique. Pursuant to South Carolina law, 480 King is entitled to be placed in as good a position as if the contract had been correctly, thus giving them the benefit of their bargain, in addition to remediation costs, replacement costs, loss of use, loss of revenue, delay costs, consequential damages, extra expenses, and loss of time.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to GBA)

12. Plaintiff hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

13. Upon information and belief, GBA, pursuant to its contract with the Plaintiff, expressly warranted that its plans, specifications, and other instruments of service would be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards.

14. GBA warranted the sufficiency of the designs, plans, and specifications for the stair tower.

15. On August 25, 2014, CBCC stated that the problems with the elevator were design errors by GBA.

16. On May 12, 2015, CBCC stated that design issues regarding the electrical chase were causing delays.

17. In August, 2014, Mr. Myles Glick of GBA admitted GBA specified the incorrect travel length for the elevator.

18. On June 23, 2015, CBCC stated that the contract drawings did not show a chase, and permit drawings showed a rated wall.

19. Plaintiff is a beneficiary of the express and implied warranties provided by GBA.

20. The contemporaneous filing requirement of § 15-36-100 subsection (B) does not apply in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, an affidavit of an expert could not be prepared. Upon information and belief, the first date upon which Plaintiff was aware, or could have been aware of a potential issue and/or claim as to GBA was June 27, 2014, one day after the project commenced when CBCC notified owner of major problem with the elevator which would require a change order. Upon information and belief, GBA breached their express and implied warranties by failing to design the stair tower free from defects and in compliance with applicable building codes and industry standards.

21. Plaintiff has been proximately damaged by GBA's breach of their express and implied warranties in that Plaintiff has spent, and will continue to expend, substantial sums of money in order to renovate and restore the stair tower. In addition thereto, the insufficiency of the designs, plans, and specifications caused defects and damages, including, but not limited to, cost overruns, delay costs, loss of rental income, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct and indirect damages all to Plaintiff's damage in an amount to be determined.

22. As a result of GBA's breach of express and implied warranties, the Plaintiff is entitled to a judgment against GBA for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at trial.

FOR A THIRD CAUSE OF ACTION
(Negligence as to GBA)

23. Plaintiff hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

24. GBA agreed to provide professional architectural and engineering services for the design and construction of the stair tower, specifically including, but not limited to, the issuance of the plans and specifications for construction. These documents and/or instruments of service were required to be in compliance with all applicable ordinances, building codes, regulations, statutes, and industry standards.

25. Upon information and belief, GBA agreed to make periodic visits to the stair tower during construction and perform other contract administration services to observe, among other things, whether construction was being completed in accordance with the plans and specifications and all applicable building codes and regulations.

26. It was foreseeable that Plaintiff would be damaged if GBA breached the above-referenced duties. As such, GBA owed a duty of care to the Plaintiff. In fact, GBA owed a heightened degree of care to Plaintiff as GBA designed the plans and specifications, and was also retained to oversee implementation of the same plans it created.

27. The contemporaneous filing requirement of § 15-36-100 subsection (B) does not apply in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, an affidavit of an expert could not be prepared. Upon information and belief, the first date upon which Plaintiff was aware, or could have been aware of a potential issue and/or claim as to GBA was June 27, 2014, one day after the project commenced when CBCC notified owner of change order request for the elevator. Upon information and belief, GBA breached their duty of care in the following particulars, including but not limited to:

- a) Failing to properly design and prepare specifications for the stair tower which were compliant with all applicable building codes and professional standards;
- b) Failing to specify products that were in compliance with all applicable building codes;

- c) Failing to design and specify the correct elevator system, shaft, and component parts for the stair tower;
- d) Failing to properly administer, observe and inspect the construction of the stair tower for compliance with the plans and specifications and applicable building codes;
- e) Failing to act as a reasonably prudent design professional would act under similar circumstances
- f) Failing to detect non-code compliant work completed by CBCC including the following: (i) failure of CBCC to construct the building so that the exterior of the building envelope was water tight; (ii) failure of CBCC to install or properly install an appropriate secondary weather resistant barrier on the exterior wall sheathing; (iii) failure of CBCC to install or properly install flashing at windows and doors; (iv) failure of CBCC to properly protect the rough openings from moisture intrusion; (v) failure of CBCC to install a roof covering that allows water intrusion into the interior of the building, causing damage to other components of the building besides the roof; and (vi) failure of CBCC to properly grade the premises.
- g) Specifying the incorrect travel length of the stair tower elevator;
- h) Improperly designed elevator and electrical chase;
- i) Improperly designed electrical conduit;
- j) Improperly designed HVAC unit header;
- k) Improperly designed soffit/header;

- l) Improperly designing windows, flashing and connections resulting in water penetration and damage;
- m) Improperly designed stairs;
- n) Failing to discover defects in the work performed by CBCC and its subcontractors
- o) Other breaches that may be determined to be shown at the trial of this matter;

28. As a direct, foreseeable and proximate result of the negligence, design defects and resulting property damage, Plaintiff has spent, and will continue to expend, substantial sums of money in order to renovate and restore the stair tower. In addition thereto, the insufficiency of the designs, plans, and specifications caused defects and damages, including, but not limited to, cost overruns, delay costs, loss of rental income, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct and indirect damages all to Plaintiff's damage in an amount to be determined.

29. As a result of GBA's negligence, the Plaintiff is entitled to a judgment against GBA for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at trial.

WHEREFORE, the Plaintiff prays this Honorable Court inquire into the matters set forth herein and award judgment in favor of 480 King and against GBA, as follows:

1. For all actual, direct, indirect, compensatory, resulting, consequential and special damages against the Defendant, in an amount to be shown at trial;
2. For all costs associated with investigating and prosecuting this action; and

3. For all other relief this Honorable Court deems just and proper.

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By:  _____

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Attorneys for the Plaintiff

6/26, 2017.
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL DISTRICT
COUNTY OF CHARLESTON)	
	)	CASE NO.: 2017-CP-10-03267
480 KING STREET, LLC,)	
)	
Plaintiff,)	
)	
vs.	)	GLICK/BOEHM & ASSOCIATES, INC.'S
	)	ANSWER TO PLAINTIFF'S COMPLAINT
GLICK/BOEHM & ASSOCIATES, INC.)	
)	
Defendant.)	

COMES NOW Defendants Glick/Boehm & Associates, Inc., (hereinafter "GBA") by and through their undersigned attorneys, hereby answers the Complaint of Plaintiff 480 King Street, LLC ("Plaintiff") as follows:

FOR A FIRST DEFENSE

Plaintiff fails to state a cause of action upon which relief may be granted.

FOR A SECOND DEFENSE

Some or all of Plaintiff's claims are or may be barred by the Statute of Limitations and/or Statute of Repose.

FOR A THIRD DEFENSE

Some or all of Plaintiff's claims are or may be barred by the doctrines of waiver, laches, and/or estoppel.

FOR A FOURTH DEFENSE

Some or all of Plaintiff's claims are or may be the result of the acts and/or omissions of some party or parties other than GBA, with a result that Plaintiff cannot recover from GBA.

2017 AUG 29 PM 1:17
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY OS

FOR A FIFTH DEFENSE

Some or all of Plaintiff's claims are or may be barred by Plaintiff's failure to mitigate any damages.

FOR A SIXTH DEFENSE

The work and services provided by GBA (if any) were at all times applicable to the subject project in conformity with the professional standards for that time.

FOR A SEVENTH DEFENSE

Any award of punitive damages for Plaintiff would violate constitutional safeguards provided to GBA by the United States and South Carolina Constitutions.

FOR AN EIGHTH DEFENSE

Plaintiff may not have a contract or may not be in privity with GBA.

FOR A NINTH DEFENSE

The allegations of the Complaint fail to state a claim for which any prejudgment interest, attorneys' fees, or other litigation expenses may be granted.

FOR A TENTH DEFENSE

Some or all of Plaintiff's claims are or may be barred, or in the alternative, reduced to the extent of comparative negligence of Plaintiff.

FOR AN ELEVENTH DEFENSE

To the extent that GBA has not been afforded the opportunity to inspect and examine the alleged defects and deficiencies at the subject project and to the extent that the subject project has been modified, repaired, or destructively tested without affording GBA the opportunity to

inspect or examine, such actions constitute a spoliation of evidence and act as a complete bar to recovery against GBA and/or an adverse inference against Plaintiff.

FOR A TWELFTH DEFENSE

Some or all of Plaintiff's claims may fail for lack of standing.

FOR A THIRTEENTH DEFENSE

Plaintiff's claims may be barred in whole or in part by the doctrine of assumption of the risk.

FOR A FOURTEENTH DEFENSE

Plaintiff's claims are or may be barred by the intervening and superseding negligent acts and/or omissions on behalf of persons or entities other than GBA, which act as a complete bar to recovery against GBA, or alternatively, a reduction in recovery against GBA.

FOR A FIFTEENTH DEFENSE

Any claims alleged by Plaintiff for breach of warranty should be barred to the extent that Plaintiff failed to give proper notice of any alleged breach of any warranty.

FOR A SIXTEENTH DEFENSE

The conditions and deficiencies alleged to exist in Plaintiff's pleadings may not be within the scope of services (if any) which were requested of GBA, and GBA's responsibility (if any) is limited only to those conditions and deficiencies (if any) which are within the scope of services agreed to (if any); and such constitutes a complete defense to the claims alleged.

FOR A SEVENTEENTH DEFENSE

The final completion and acceptance of work undertaken by GBA (if any) constitutes a complete defense to all of Plaintiff's claims.

FOR AN EIGHTEENTH DEFENSE

Plaintiff's claims may be barred by Plaintiff's failure to join as a party to this action a party or parties in whose absence complete relief cannot be accorded among those already parties, consequently subjecting GBA to the risk of incurring double, multiple, or otherwise inconsistent obligations.

FOR A NINETEENTH DEFENSE

Plaintiff's claims must be dismissed in whole or in part based upon Plaintiff's failure to comply with the requirements of S.C. Code Ann. § 15-36-100.

FOR A TWENTIETH DEFENSE

GBA has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of the Plaintiff's allegations. GBA intends to act as best it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported injury or damage to Plaintiff as alleged in the Complaint, and gives notice of its intent to assert any further affirmative defense that its information-gathering process may indicate is supported by fact and law. GBA reserves the right to amend this Answer and assert such defenses.

FOR A TWENTY-FIRST DEFENSE

Each allegation of the Complaint not specifically admitted herein is denied. GBA responds to the individually numbered paragraphs of the Complaint as follows:

1. Responding to Paragraph 1 of Plaintiff's Complaint, GBA is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in these paragraphs and, therefore, denies the same and demands strict proof thereof.

2. Responding to Paragraph 2 of Plaintiff's Complaint, GBA admits the allegations contained therein.

3. Responding to Paragraph 3 of Plaintiff's Complaint, GBA denies the allegations as stated therein and demands strict proof thereof.

4. Responding to Paragraph 4 of Plaintiff's Complaint, this Paragraph sets forth a legal conclusion to which no response is required.

5. Responding to Paragraph 5 of Plaintiff's Complaint, GBA incorporates all previous responses as if fully restated herein.

6. Responding to Paragraphs 6 through 11 of Plaintiff's Complaint, including all subparts, GBA denies the allegations and demands strict proof thereof.

7. Responding to Paragraph 12 of Plaintiff's Complaint, GBA incorporates all previous responses as if fully restated herein.

8. Responding to Paragraphs 13 through 22 of Plaintiff's Complaint, GBA denies the allegations and demands strict proof thereof.

9. Responding to Paragraph 23 of Plaintiff's Complaint, GBA incorporates all previous responses as if fully restated herein.

10. Responding to Paragraph 24 of Plaintiff's Complaint, GBA denies the allegations as stated and demands strict proof thereof.

11. Responding to Paragraphs 25 through 26 of Plaintiff's Complaint, GBA denies the allegations and demands strict proof thereof.

12. Responding to Paragraph 27 of Plaintiff's Complaint, including all subparts, GBA denies the allegations contained therein and demands strict proof thereof. Further answering, GBA craves specific reference to its Motion to Dismiss for Plaintiff's failure to comply with the requirements of Section 15-36-100.

13. Responding to Paragraphs 28 through 29 of Plaintiff's Complaint, GBA denies the allegations contained therein and demands strict proof thereof.

14. Responding to the unnumbered paragraph beginning with "WHEREFORE," following Paragraph 29 of Plaintiff's Complaint, and including all subparts, this paragraph contains Plaintiff's prayer for relief and requires no response of GBA. To the extent a response is required, GBA denies the allegations contained in this paragraph, including all subparts, and demands strict proof thereof.

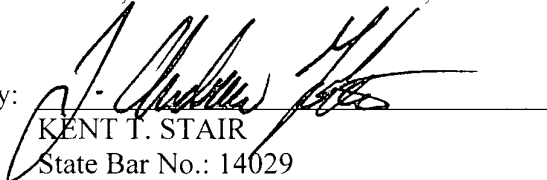
WHEREFORE, having fully answered the allegations contained in Plaintiff's Complaint, GBA prays for judgment in its favor and against Plaintiff, and for all expenses of this litigation, including interest, as well as any further relief that this Court deems just and proper.

SIGNATURE BLOCK TO FOLLOW

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By:


KENT T. STAIR

State Bar No.: 14029

PAUL E. SPERRY

State Bar No.: 68441

J. ANDREW YOHO

State Bar No.: 100803

**Attorneys for Glick/Boehm & Associates,
Inc.**

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
843-727-0307

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2017-CP-10-3267
480 KING STREET, LLC)	
)	
)	
Plaintiff,)	
)	
vs.)	
)	
)	
GLICK/BOEHM & ASSOCIATES, INC.)	
)	
)	
Defendant.)	

ORDER

FILED
 2017 DEC -7 AM 9:00
 JULIE J. ARBIS/FRANK
 CLERK OF COURT

THIS CAUSE comes before the Court on Plaintiff 480 King Street, LLC's Motion for Extension of Time filed with this Court on August 10, 2017, and Defendant's Motion to Dismiss filed on August 29, 2017. The Court heard the arguments of counsel regarding the motions on November 17, 2017. Brent Halversen, Esq. appeared on behalf of the Plaintiff 480 King Street, LLC, and Kent Stair, Esq. appeared on behalf of the Defendant, Glick/Boehm & Associates, Inc.

Plaintiff filed its Complaint in the matter on June 27, 2017. One of the causes of action was for professional negligence against the Defendant. Pursuant to S.C. Code § 15-36-100(B), the Plaintiff is required to file the affidavit of an expert witness which must specify at least one negligent act or omission. Plaintiff alleged in its Complaint that it could not prepare an affidavit of an expert because of time constraints. Forty-five days after filing the Complaint, the Plaintiff filed a motion to extend the time period for filing the affidavit with this Court. South Carolina law allows for an affidavit to be filed within 45 days after the Complaint is filed, or, the Court may extend this period upon motion after a showing of good cause.

The statute states:

The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires.

S.C. Code § 15-36-100(C)(1).

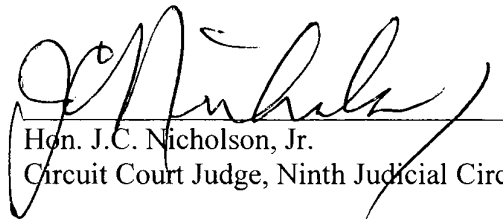
Plaintiff filed a motion to extend the 45 day period with this Court on August 10, 2017. Plaintiff sought leave of Court to file the affidavit late because it's expert, Louis Hackney P.E., REWC, RRC, CDT, LEED AP, was not able to complete review of the approximately 8,000 documents that had been sent to him prior to expiration of the 45 day period. Mr. Hackney, was able to complete his review of the 8,000 documents and prepared his affidavit on September 7, 2017. According to counsel for Plaintiff, Mr. Halversen, the affidavit was sent to counsel for Defendant, Mr. Stair, the same day it was prepared on September 7, 2017. Plaintiff now seeks leave of Court to file the September 7, 2017 affidavit of Mr. Hackney outside the 45 day period.

The Court finds that good cause exists for Plaintiff to request and be granted extra time to file its affidavit based upon the voluminous amount of documents that had been provided to its expert within the 45 day period referenced in the statute. It appears that it only took Mr. Hackney less than 30 days to prepare and execute his affidavit after Plaintiff filed its motion for extension of time at the end of the 45 day statutory period on August 10, 2017. The Court believes that the request for an extension, given the quantity of materials that had been sent to him, is not an unreasonable request under these circumstances. The Court also finds no prejudice to the Defendant in granting this motion.

Plaintiff may file the September 7, 2017 affidavit of Louis Hackney P.E., REWC, RRC, CDT, LEED AP within ten days of the date of this Order, to wit, November 27, 2017. Upon filing of the affidavit by this date, the Plaintiff will have been deemed to be in compliance with the requirements of SC Code § 15-36-100(B). Defendant will then have 30 days from the date of the filing of the Affidavit to file any motion contesting the sufficiency of the Affidavit.

Defendant's Motion to Dismiss was premised on the Plaintiff's failure to file the affidavit in accordance with S.C. Code § 15-36-100(B). That Motion is rendered moot at this point due to the grant of Plaintiff's Motion for Extension of Time.

Given the foregoing findings of the Court, **IT IS THEREFORE ORDERED** that Plaintiff's Motion for Extension of Time is **GRANTED**, as stated herein, and **IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss is **DENIED**.


Hon. J.C. Nicholson, Jr.
Circuit Court Judge, Ninth Judicial Circuit

November 27, 2017
Charleston, South Carolina

480 King Street LLC
PLAINTIFF(S)

Glick Boehm & Associates Inc.
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (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):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

FILED
2018 AUG 24 PM 4:31
CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

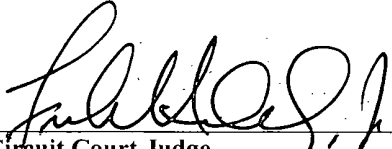
IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This order ends does not end the case.
Additional Information for the Clerk :

Motion/Consolidation by Plaintiff – Granted

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge

2159

Judge Code

Date

MOTION TO DISMISS

In its Motion, Defendant contends that the claims asserted against it by Plaintiff are all based upon its alleged negligent performance of professional services as an Architect, and that Plaintiff failed to file a proper Affidavit in support of those claims as required by S.C. Code Ann. §15- 36-100(B). The Court agrees with those and other arguments presented by Counsel for Defendant and, as a result, grants the Motion.

Defendant is an Architect, and not a Professional Engineer. Architects are one of the 22 professional groups specifically afforded protection in actions for damages alleging professional negligence under S.C. Code Ann. § 15-36-100(G) (2015). The sole Affiant presented by Plaintiff in support of its Complaint, Louis Hackney, is a Professional Engineer and not an Architect. Professional Engineers are a different and separate group covered by the same statute. Architects and Professional Engineers receive different educational degrees, are licensed and regulated by separate registration boards, and otherwise are, simply stated, different professions.

The initial provision of the Act defines "expert witness" as "an expert who is qualified as to the acceptable conduct of *the professional whose conduct is at issue.*" S.C. Code Ann. § 15-36-100 (A) (emphasis added). The "expert witness must specify at least one negligent act of omission claimed to exist," keeping in mind that negligence in that context is the failure of an accused professional to abide by the standard of care applicable to the profession against whom the negligence is alleged. S.C. Code Ann. § 15-36-100 (B). As previously noted, the Defendant in this case is an Architect and its services must be judged against the standard of care of an Architect. Given Mr. Hackney's acknowledgement that he is not an Architect; the statement in his affidavit that his experience has been "[a]s a Professional Engineer," with no corresponding expression of any experience "as an Architect;" his failure to express any opinion against the Defendant in terms

of the standard of care of an Architect and his deposition testimony stating that, “[b]y signing the Affidavit, (he) did not intend to offer an opinion about the standard of care of an Architect,” and that he does “not intend in this case to offer a professional opinion about the standard of care of an Architect,” this Court concludes that Plaintiff has failed to present an affidavit in support of the claims against this Defendant, as required by n S.C. Code Ann. §15- 36-100, et. seq. As a result, Defendant’s Motion to Dismiss must be granted, and Defendant Glick/Boehm & Associates, Inc. is hereby dismissed with prejudice.

MOTION FOR SANCTIONS

While the Court disagrees with the arguments asserted by Plaintiff’s counsel pertaining to the merits for Defendant’s dismissal, it cannot be said that those arguments are specious or of any nature giving rise to an award of sanctions in favor of Defendant. Therefore, that portion of Defendant’s Motion is denied.

ORDER

ORDERED for the reasons set forth above and otherwise under this Court’s interpretation of the legal principles applicable, that Defendant’s Motion to Dismiss is **GRANTED**, and the case against Defendant is dismissed with prejudice.

ORDERED for the reasons set forth above and otherwise under this Court’s interpretation of the legal principles applicable, that Defendant’s Motion for Sanctions is **DENIED**.

AND IT IS SO ORDERED.

The Honorable Jennifer B. McCoy
Circuit Court Judge

Charleston, South Carolina

This ____ day of _____, 2021.



Charleston Common Pleas

Case Caption: Charles Blanchard Construction Corp Inc VS 480 King Street LLC ,
defendant, et al
Case Number: 2016CP1003468
Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2021-12-15 15:34:06 page 5 of 5

ELECTRONICALLY FILED - 2021 Dec 16 9:11 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003468

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-10-3267

480 KING STREET, LLC

Plaintiff,

vs.

GLICK/BOEHM & ASSOCIATES, INC.

Defendant.

MOTION FOR EXTENSION OF TIME

FILED
2017 AUG 10 PM 3:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY DS

COMES NOW THE PLAINTIFF, 480 King Street, LLC, (hereinafter, "Plaintiff") by and through their undersigned counsel, and files this motion for extension of time and states the following in support therefor:

1. On June 26, 2017 Plaintiff filed a Summons and Complaint against the Defendant asserting claims for breach of contract, breach of warranty, and negligence.
2. As averred in Plaintiff's Complaint, the first date upon which Plaintiff could have been aware of a potential issue or claim as to Defendant was on June 27, 2014. Accordingly, Plaintiff timely filed its Summons and Complaint against Defendant on June 26, 2017.
3. The contemporaneous affidavit filing requirement of § 15-36-100 subsection (B) does not apply in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, an affidavit of an expert could not be prepared.

In such case, the statute allows for an affidavit to be filed 45 days after the Complaint is filed or the Court may extend the period upon motion after a showing of good cause. The statute states:

The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires.

SC Code § 15-36-100(C)(1)

4. In this case good cause exists as Plaintiff just filed its Complaint on June 26, 2017 and has not had adequate time to have an expert review all attendant documents in order to render an expert opinion to support Plaintiff's non-contractual claims.

5. Plaintiff initially contacted an expert Louis Hackney P.E., REWC, RRC, CDT, LEED AP in June, 2017 prior to filing its Complaint, and formally retained Mr. Hackney on July 19, 2017.

6. After retention, Mr. Hackney has been sent approximately 8,000 documents, and it was not possible for Mr. Hackney to review all of the documents necessary within the 45 days after filing the Complaint to form an opinion reducible to affidavit form by August 10, 2017- which is 45 days after filing.

7. Due the nature of the case, Mr. Hackney's schedule, and the volume of materials that exist necessary for review, Plaintiff believes good cause exists for the Court to extend the time for filing the affidavit, as is allowable upon the showing of good cause.

WHEREFORE, Plaintiff requests this Court extend the time for filing an affidavit pursuant to SC Code § 15-36-100(C)(1) for reasons stated herein and presented to the Court in the premises.

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
Attorneys for the Plaintiff

August 10th, 2017.
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

480 KING STREET, LLC,

Plaintiff,

vs.

GLICK/BOEHM & ASSOCIATES, INC.

Defendant.

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL DISTRICT

) CASE NO.: 2017-CP-10-03267

) **GLICK/BOEHM & ASSOCIATES, INC.'S**
) **MOTION TO DISMISS PLAINTIFF'S**
) **COMPLAINT**

FILED
JULIE J. ANASTROM
CLERK OF COURT
AUG 29 PM 1:20

TO ATTORNEY FOR PLAINTIFF:

Defendant Glick/Boehm & Associates (hereinafter "GBA"), by and through the undersigned attorneys, hereby moves for dismissal of the Complaint pursuant to S.C. Code Ann. § 15-36-100 (2016) on the grounds that Plaintiff has failed to file an affidavit from an "expert" setting forth specific allegations of professional negligence against GBA.

LEGAL AUTHORITY

This case involves professional negligence allegations concerning the alleged provision of architectural services by GBA in connection with a stair tower located at 480 King Street in Charleston.

Architects and Engineers are two of the 22 professional groups specifically identified in S.C. Code Ann. § 15-36-100(G) (2015). Pursuant to that statute, an affidavit from an expert *must* be filed contemporaneously with any complaint alleging damages arising from alleged professional negligence of an architect, engineer, or surveyor. The affidavit "must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." S.C. Code Ann. § 15-36-100(B) (2015). If a proper affidavit "is not filed . . . and the defendant against whom an affidavit should

have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim.” S.C. Code Ann. § 15-36-100(C)(1) (2015).

The statute, however, provides an exception to the contemporaneous filing requirement in instances where the “period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.” S.C. Code Ann. § 15-36-100(C)(1) (2015). In such a scenario, the statute grants Plaintiff an additional forty-five days to comply with the affidavit requirement. Id. In addition, in the event an additional forty-five days is an insufficient amount of time, a plaintiff may move for additional time to procure an affidavit. Id. The court, after a hearing and for good cause, may grant additional time as justice so requires. Id.

In the case at hand, Plaintiff has alleged in its Complaint that the statute of limitations may have been triggered on June 27, 2014, and thus, the Complaint filed on June 26, 2017 was well within the exception to the contemporaneous filing requirement.¹ Plaintiff specifically alleges in the Complaint that an affidavit of an expert could not be prepared. On day forty-five of the forty-five day extension granted by the statute, Plaintiff moved for an extension of time to supply the requisite affidavit of an expert.² In the motion, Plaintiff has alleged that despite retaining an expert approximately a week prior to filing the Complaint, the expert has been unable to form an opinion and reduce it to affidavit form. Plaintiff contends that as a result, good cause exists to extend the time for the filing of the affidavit.

The expert affidavit requirement is a part of the South Carolina Frivolous Civil Proceedings Sanctions Act; its purpose is to guard against frivolous lawsuits involving

¹ See Plaintiff’s Complaint page 8, Paragraph 27 attached hereto as Exhibit A.

² Attached as Exhibit B.

professionals. Steinmetz v. Cooper (In re Steinmetz), Nos. 07-00628, 07-00579, 10-80177, 2011 Bankr. LEXIS 3830, at 8 (U.S. Bankr. D.S.C. Mar. 18, 2011) The expert witness affidavit serves to ensure that claims of professional negligence “have some validity before filing and alerts the professional to the merits of the claim.” Id. There is no language in the statute that indicates the filing of an affidavit is optional. Id.

In the case hand, the matter has been pending against GBA since June 26, 2017. Although the claim was filed on the eve of the expiration of the statute of limitations, this matter has been well known to Plaintiff for some time. As noted in the Complaint, this claim arose as early as June 27, 2014.³ Furthermore, Plaintiff was named a defendant in a separate action on July 6, 2016 concerning the construction of the very property that is the subject of this action, and upon information and belief, involved the identical stairwell shaft at issue in the present matter.⁴ Moreover, per the attached affidavit, Mr. Myles Glick contacted Plaintiff’s counsel directly after receiving the lawsuit to inquire concerning the same and was told, despite counsel’s best efforts to dissuade Plaintiff from bring the action for over two months, the lawsuit was initiated against GBA.⁵

It is Defendant’s position that Plaintiff has not adhered to the statutory requirement for supplying an expert affidavit and the Complaint should be dismissed with prejudice. Section 15-36-100 does not require a full vetted or comprehensive affidavit. Rather, the statute mandates only that the affidavit “specify *at least one* negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” S.C. Code Ann. § 15-36-100 (B) (emphasis added). According to Plaintiff’s own filings, it has had over three years and forty-five days to obtain an affidavit that sets forth only

³ See Ex. A.

⁴ See Complaint in matter of Charles Blanchard Construction Corp. v. 480 King Street, LLC, et al. 2016-CP-10-3468, attached hereto as Exhibit C.

⁵ See Affidavit of Myles Glick attached hereto as Exhibit D.

one instance of professional negligence and the factual basis for the claim, but has yet to do so. While the statute provides leeway for plaintiffs who are filing at or near the expiration of the statute of limitations, it is not intended to present plaintiffs with an option to evade the affidavit requirement by presuming additional time will be made available. Plaintiff has had ample opportunity to provide the requisite affidavit yet has failed to do so. Therefore, Plaintiff's need for additional time to procure an affidavit is the result of Plaintiff's own actions which does not constitute good cause under the statute.

Moreover, the result of the delay in providing an expert affidavit presents the very scenario the Frivolous Proceedings Act is meant to prevent. GBA is now a defendant to a lawsuit alleging professional negligence without the benefit knowing the merits of the claim or whether the claim has any validity. As a result of Plaintiff's failure to adhere to the requirements of the affidavit requirement, Plaintiff's Complaint should be dismissed with prejudice.

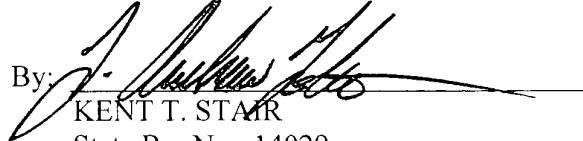
CONCLUSION

For all of the preceding reasons, GBA is entitled to an Order dismissing the Complaint. This Motion is based on South Carolina law, the pleadings filed in this case, and any supporting documents to be submitted hereafter.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 
KENT T. STAIR
State Bar No.: 14029

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
843-727-0307

PAUL E. SPERRY
State Bar No.: 68441

J. ANDREW YOHO
State Bar No.: 100803

**Attorneys for Glick/Boehm & Associates,
Inc.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2017-CP-10- <u>2247</u>
480 KING STREET, LLC)	
)	
Plaintiff,)	
)	
vs.)	
)	
GLICK/BOEHM & ASSOCIATES, INC.)	
)	
Defendant)	

COMPLAINING
(Jury Trial Demanded)

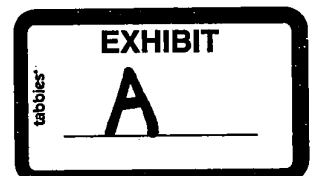
2017 JUN 26 PM 3:13
JULIE J. AUSTIN, CLERK
COURT

FILED

COMES NOW THE PLAINTIFF, 480 King Street, LLC, (hereinafter, "480 King") by and through their undersigned counsel, complaining of the Defendant herein, Glick / Boehm & Associates, Inc. (hereinafter, "GBA") and allege unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff, 480 King is a limited liability company organized and doing business in the State of South Carolina.
2. Defendant, GBA, is a corporation organized and existing under the laws of the State of South Carolina, and is doing business in Charleston County as GBA.
3. Upon information and belief, GBA served as the architect of record for the stair tower located at 480 King Street, Charleston, South Carolina, agreeing to provide professional architectural services for the design of the stair tower, specifically including, but not limited to, the issuance of the plans and specifications for the construction of the stair tower. These documents and/or instruments of service were required to be in



compliance with all applicable ordinances, codes, regulations, statutes, and industry standards. Upon information and belief, GBA agreed to make periodic visits to the stair tower during construction, and otherwise perform contract administration services during construction to observe whether the construction was being completed in accordance with the plans and specifications (itself created) and all applicable building codes.

4. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto, and venue is proper in this forum pursuant to §15-7-30 (E)(1).

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. Plaintiff hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

6. On or about October 16, 2013, 480 King and GBA entered in to a Contract for GBA to provide design and construction administration services for a for a stair tower that Charles Blanchard Construction Corporation (hereinafter, "CBCC") later constructed at 480 King Street, Charleston, South Carolina 29403, for the contract sum of \$706,878.84.

7. The contract called for GBA to design the stair tower and, inter-alia, to act as 480 King's agent to interpret the contract documents, visit the site, review the Contractor's submittals, reject non-conforming work, keep 480 King informed about the progress and quality of the work as and when completed, and to report to 480 King known deviations from the Contract documents.

8. Pursuant to the Contract, substantial completion of the project was to be achieved within 150 days from the date of commencement. The date of project commencement was dated June 30, 2014, therefore, the stair tower should have been substantially completed by November 27, 2014, and in no event later than December 15,

2014 pursuant to the Contract Addendum. CBCC and 480 King agreed that time was of the essence.

9. GBA breached their contractual duties set forth above in the following and particular and herein described manners:

- a) Failing to properly design and prepare specifications for the stair tower which were compliant with all applicable building codes and professional standards;
- b) Failing to specify products that were in compliance with all applicable building codes;
- c) Failing to design and specify the correct elevator system, shaft, and component parts for the stair tower;
- d) Failing to properly administer, observe and inspect the construction of the stair tower for compliance with the plans and specifications and applicable building codes;
- e) Failing to act as a reasonably prudent design professional would act under similar circumstances
- f) Failing to detect non-code compliant work completed by CBCC including the following: (i) failure of CBCC to construct the building so that the exterior of the building envelope was water tight; (ii) failure of CBCC to install or properly install an appropriate secondary weather resistant barrier on the exterior wall sheathing; (iii) failure of CBCC to install or properly install flashing at windows and doors; (iv) failure of CBCC to properly protect the rough openings from moisture intrusion; (v) failure

of CBCC to install a roof covering that allows water intrusion into the interior of the building, causing damage to other components of the building besides the roof; and (vi) failure of CBCC to properly grade the premises.

- g) Specifying the incorrect travel length of the stair tower elevator;
- h) Improperly designed elevator and electrical chase;
- i) Improperly designed electrical conduit;
- j) Improperly designed HVAC unit header;
- k) Improperly designed soffit/header;
- l) Improperly designing windows, flashing and connections resulting in water penetration and damage;
- m) Improperly designed stairs;
- n) Failing to discover defects in the work performed by CBCC and its subcontractors;
- o) Other breaches that may be determined to be shown at the trial of this matter;

10. The deviations in what was called for in the Contract documents, versus what was supplied and rendered by CBCC was not rejected by GBA as non-conforming, nor reported to 480 King as deviations in the Contract documents. At a minimum, GBA was under a contractual duty to inform 480 King as to the above referenced errors, omissions and deviations in the quality of the project, and GBA never did.

11. The acts described above are plain breaches GBA's contractual duties by reviewing and approving items of work at the project that were either not performed, or

were performed in derogation of the Contract documents. These breaches were material and deprived 480 King of the benefit of their bargain, as the project was a value engineered building, and was designed to be built with specific requirements that were largely ignored. GBA's complete supervision of all work, design, submittals, RFI's, and ASI's rendered the product contracted for of significantly diminished value in the eyes of 480 King and prospective third-party purchasers and constitute actual, special damages as plead herein. This loss may reasonably be construed to have been in the contemplation of the parties at the time the contract was formed as the plans were unique. Pursuant to South Carolina law, 480 King is entitled to be placed in as good a position as if the contract had been correctly, thus giving them the benefit of their bargain, in addition to remediation costs, replacement costs, loss of use, loss of revenue, delay costs, consequential damages, extra expenses, and loss of time.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to GBA)

12. Plaintiff hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

13. Upon information and belief, GBA, pursuant to its contract with the Plaintiff, expressly warranted that its plans, specifications, and other instruments of service would be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards.

14. GBA warranted the sufficiency of the designs, plans, and specifications for the stair tower.

15. On August 25, 2014, CBCC stated that the problems with the elevator were design errors by GBA.

16. On May 12, 2015, CBCC stated that design issues regarding the electrical chase were causing delays.

17. In August, 2014, Mr. Myles Glick of GBA admitted GBA specified the incorrect travel length for the elevator.

18. On June 23, 2015, CBCC stated that the contract drawings did not show a chase, and permit drawings showed a rated wall.

19. Plaintiff is a beneficiary of the express and implied warranties provided by GBA.

20. The contemporaneous filing requirement of § 15-36-100 subsection (B) does not apply in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, an affidavit of an expert could not be prepared. Upon information and belief, the first date upon which Plaintiff was aware, or could have been aware of a potential issue and/or claim as to GBA was June 27, 2014, one day after the project commenced when CBCC notified owner of major problem with the elevator which would require a change order. Upon information and belief, GBA breached their express and implied warranties by failing to design the stair tower free from defects and in compliance with applicable building codes and industry standards.

21. Plaintiff has been proximately damaged by GBA's breach of their express and implied warranties in that Plaintiff has spent, and will continue to expend, substantial sums of money in order to renovate and restore the stair tower. In addition thereto, the insufficiency of the designs, plans, and specifications caused defects and damages, including, but not limited to, cost overruns, delay costs, loss of rental income, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct and indirect damages all to Plaintiff's damage in an amount to be determined.

22. As a result of GBA's breach of express and implied warranties, the Plaintiff is entitled to a judgment against GBA for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at trial.

FOR A THIRD CAUSE OF ACTION
(Negligence as to GBA)

23. Plaintiff hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

24. GBA agreed to provide professional architectural and engineering services for the design and construction of the stair tower, specifically including, but not limited to, the issuance of the plans and specifications for construction. These documents and/or instruments of service were required to be in compliance with all applicable ordinances, building codes, regulations, statutes, and industry standards.

25. Upon information and belief, GBA agreed to make periodic visits to the stair tower during construction and perform other contract administration services to observe, among other things, whether construction was being completed in accordance with the plans and specifications and all applicable building codes and regulations.

26. It was foreseeable that Plaintiff would be damaged if GBA breached the above-referenced duties. As such, GBA owed a duty of care to the Plaintiff. In fact, GBA owed a heightened degree of care to Plaintiff as GBA designed the plans and specifications, and was also retained to oversee implementation of the same plans it created.

27. The contemporaneous filing requirement of § 15-36-100 subsection (B) does not apply in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, an affidavit of an expert could not be prepared. Upon information and belief, the first date upon which Plaintiff was aware, or could have been aware of a potential issue and/or claim as to GBA was June 27, 2014, one day after the project commenced when CBCC notified owner of change order request for the elevator. Upon information and belief, GBA breached their duty of care in the following particulars, including but not limited to:

- a) Failing to properly design and prepare specifications for the stair tower which were compliant with all applicable building codes and professional standards;
- b) Failing to specify products that were in compliance with all applicable building codes;

- c) Failing to design and specify the correct elevator system, shaft, and component parts for the stair tower;
- d) Failing to properly administer, observe and inspect the construction of the stair tower for compliance with the plans and specifications and applicable building codes;
- e) Failing to act as a reasonably prudent design professional would act under similar circumstances
- f) Failing to detect non-code compliant work completed by CBCC including the following: (i) failure of CBCC to construct the building so that the exterior of the building envelope was water tight; (ii) failure of CBCC to install or properly install an appropriate secondary weather resistant barrier on the exterior wall sheathing; (iii) failure of CBCC to install or properly install flashing at windows and doors; (iv) failure of CBCC to properly protect the rough openings from moisture intrusion; (v) failure of CBCC to install a roof covering that allows water intrusion into the interior of the building, causing damage to other components of the building besides the roof; and (vi) failure of CBCC to properly grade the premises.
- g) Specifying the incorrect travel length of the stair tower elevator;
- h) Improperly designed elevator and electrical chase;
- i) Improperly designed electrical conduit;
- j) Improperly designed HVAC unit header;
- k) Improperly designed soffit/header;

- l) Improperly designing windows, flashing and connections resulting in water penetration and damage;
- m) Improperly designed stairs;
- n) Failing to discover defects in the work performed by CBCC and its subcontractors
- o) Other breaches that may be determined to be shown at the trial of this matter;

28. As a direct, foreseeable and proximate result of the negligence, design defects and resulting property damage, Plaintiff has spent, and will continue to expend, substantial sums of money in order to renovate and restore the stair tower. In addition thereto, the insufficiency of the designs, plans, and specifications caused defects and damages, including, but not limited to, cost overruns, delay costs, loss of rental income, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct and indirect damages all to Plaintiff's damage in an amount to be determined.

29. As a result of GBA's negligence, the Plaintiff is entitled to a judgment against GBA for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at trial.

WHEREFORE, the Plaintiff prays this Honorable Court inquire into the matters set forth herein and award judgment in favor of 480 King and against GBA, as follows:

1. For all actual, direct, indirect, compensatory, resulting, consequential and special damages against the Defendant, in an amount to be shown at trial;
2. For all costs associated with investigating and prosecuting this action; and

3. For all other relief this Honorable Court deems just and proper.

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: _____


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Email: brent@halversenlaw.com
Attorneys for the Plaintiff

6/26, 2017.
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
480 KING STREET, LLC

Plaintiff,

vs.

GLICK/BOEHM & ASSOCIATES, INC.

Defendant.

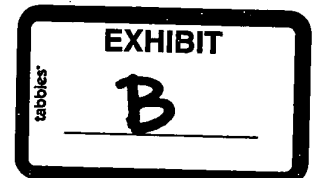
) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-10-3267

MOTION FOR EXTENSION OF TIME

BY _____
CLERK OF COURT
2017 AUG 10 PM 3:13

COMES NOW THE PLAINTIFF, 480 King Street, LLC, (hereinafter, "Plaintiff") by and through their undersigned counsel, and files this motion for extension of time and states the following in support therefor:

1. On June 26, 2017 Plaintiff filed a Summons and Complaint against the Defendant asserting claims for breach of contract, breach of warranty, and negligence.
2. As averred in Plaintiff's Complaint, the first date upon which Plaintiff could have been aware of a potential issue or claim as to Defendant was on June 27, 2014. Accordingly, Plaintiff timely filed its Summons and Complaint against Defendant on June 26, 2017.
3. The contemporaneous affidavit filing requirement of § 15-36-100 subsection (B) does not apply in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, an affidavit of an expert could not be prepared.



In such case, the statute allows for an affidavit to be filed 45 days after the Complaint is filed or the Court may extend the period upon motion after a showing of good cause. The statute states:

The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires.

SC Code § 15-36-100(C)(1)

4. In this case good cause exists as Plaintiff just filed its Complaint on June 26, 2017 and has not had adequate time to have an expert review all attendant documents in order to render an expert opinion to support Plaintiff's non-contractual claims.

5. Plaintiff initially contacted an expert Louis Hackney P.E., REWC, RRC, CDT, LEED AP in June, 2017 prior to filing its Complaint, and formally retained Mr. Hackney on July 19, 2017.

6. After retention, Mr. Hackney has been sent approximately 8,000 documents, and it was not possible for Mr. Hackney to review all of the documents necessary within the 45 days after filing the Complaint to form an opinion reducible to affidavit form by August 10, 2017- which is 45 days after filing.

7. Due the nature of the case, Mr. Hackney's schedule, and the volume of materials that exist necessary for review, Plaintiff believes good cause exists for the Court to extend the time for filing the affidavit, as is allowable upon the showing of good cause.

WHEREFORE, Plaintiff requests this Court extend the time for filing an affidavit pursuant to SC Code § 15-36-100(C)(1) for reasons stated herein and presented to the Court in the premises.

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: 

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171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
Attorneys for the Plaintiff

August 10¹², 2017.
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion via U.S. Mail and process server with postage prepaid on this 16th day of August, 2017.

HALVERSEN & ASSOCIATES, LLC

By: *Brent S. Halversen*

Brent S. Halversen
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Attorneys for the Plaintiff

August 16th, 2017.
Charleston, South Carolina

2017 AUG 19 PM 3:19
BY *[Signature]*

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Charles Blanchard construction Corp., Inc.

vs.

480 King Street, LLC, and TD Bank N.A.,
NQ,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

2016-CP-10-3468

COMPLAINT

(Debt Collection, Foreclosure of Liens)
(Jury Trial Demanded)

FILED
2016 JUL -6 PM 1:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

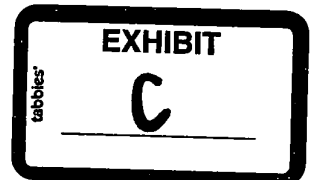
The Plaintiff above named, complaining of the Defendants herein, would show unto this
Honorable Court as follows:

JURISDICTION AND PARTIES

1. The Plaintiff is a corporation organized under and operating pursuant to the laws of the
State of South Carolina, and maintaining an office in the City of North Charleston and doing
business in the City and County of Charleston.

2. Upon information and belief, the Defendant 480 King Street, LLC, is a limited liability
corporation organized and existing under the laws of the State of South Carolina and operating in
the County of Charleston, South Carolina (hereafter "Defendant Owner") and at all times herein
was the owner of the real property which is the subject of this action.

3. Defendant T.D. Bank, N.A., NQ, upon information and belief, is a National Banking
Organization, organized and existing under the laws of the United States and the State of South
Carolina, doing business in the County of Charleston South Carolina (hereafter "Bank") and is



made a party hereto because it may have an interest in the real property that is the subject of this action.

4. The real property at issue herein is described on the Exhibit A attached hereto and made a part hereof and known hereafter as the Real Property, is located in the City and County of Charleston, state of South Carolina.

5. The parties, property and issues herein all are within the jurisdiction of this Honorable Court.

FACTS

6. Plaintiff reasserts and realleges all facts and claims of the preceding paragraphs of this Complaint as if set forth verbatim herein.

7. On June 26, 2014, Plaintiff entered into a construction contract with Defendant Owner by and through its manager, Mary Ann Kanters, for labor, materials, equipment and services in connection with the building located on the real property owned by Defendant Owner (hereafter the "Contract").

8. On or about June 27, 2014, Plaintiff began work pursuant to the Contract, furnishing the agreed upon labor and materials and making applications for payment as specified therein.

9. Almost immediately after signing the contract, delays occurred affecting the ultimate completion date of the contract.

10. Mere hours after execution of the contract, Plaintiff discovered that the Defendant Owner's architectural plans for the elevator were incorrect, requiring an additional one foot of depth for the elevator equipment selected by the Defendant Owner and drawn by Defendant Owner's architect.

11. While under the original contract the Plaintiff was responsible for providing the elevator in accordance with Defendant Owner's plans and specifications, the improper design by Defendant Owner's architect necessitated a change order whereby the Defendant Owner was then to be responsible for providing a re-design of the elevator shaft or acquiring a different elevator that would fit within the previously designed elevator shaft.

12. The delay caused by the incorrect elevator design was neither the fault of nor the responsibility of the Plaintiff.

13. At the time of placing rebar and pouring the elevator pit and foundation slab, the Defendant Owner put a hold on the work to add sewer/storm drainage that was outside the scope of the project, anticipating that the drainage would run beneath the foundation of the stairtower.

14. The Defendant Owner hired an engineer to design the placement of the future sewer/storm drainage, and requested three quotes for pricing of the design.

15. Upon receipt of the quotes for the cost of the storm drainage, the Defendant Owner decided not to install the drainage.

16. The delay caused by the Defendant Owner's hold to design and quote the cost to install sewer/storm drainage pipes was neither the fault of nor the responsibility of the Plaintiff.

17. Many months before the project started and again early in the project, the Plaintiff advised the Defendant Owner in writing that the site needed a civil engineering plan to deal with site elevation and water run off, telling the owner that he was "afraid that the area behind 480 will be a pond."

18. Nonetheless, the Defendant Owner did not retain a civil engineer to review the site

elevations or to design a water run off plan until June 29, 2015, after the water run off at the site caused water intrusion in the elevator shaft and first floor of the stair tower.

19. In July of 2015, the Defendant Owner alleged that the water intrusion in the building's exterior walls was the result of the Plaintiff's failure to properly waterproof the exterior walls according to the design specifications.

20. The Defendant Owner claimed this failure was a construction deficiency and that the water intrusion was the result of both this construction deficiency and of the Plaintiff's failure to properly maintain and supervise the site to prevent this damage.

21. The Plaintiff informed Defendant Owner in writing that the building's perimeter walls were installed with the designated weather barrier required by the plans and specifications, which was designed only to shed water and was not a waterproofing material.

22. Defendant Owner's architect confirmed in writing to Plaintiff and Defendant Owner that the building's perimeter walls were lined with the appropriate material as called for in the plans.

23. The grade and site elevations were the responsibility of the Defendant Owner pursuant to the Contract.

24. The Defendant Owner failed to address the grade and site elevations prior to the water intrusion, no civil engineer had been retained by the Defendant Owner to draw plans addressing the site grade or elevation prior to the water intrusion, and no site grade or elevation plans had been given by the Defendant Owner to the Plaintiff to address the potential flooding.

25. The delay caused by the water intrusion and damage to the elevator shaft and first floor of

the stair tower resulting from the Defendant Owner's failure to retain a civil engineer to review the site elevations or design a water run off plan was neither the fault of nor the responsibility of the Plaintiff.

26. Prior to the signing of the contract, the Defendant Owner met with the Plaintiff and Plaintiff's subcontractors to value engineer portions of the job but did not invite the architect to all of the meeting(s).

27. Prior to the signing of the contract, the Defendant Owner met with building officials about the project and did not invite the Plaintiff or the architect to the meeting(s).

28. The Defendant Owner met with AT&T and would not let the Plaintiff attend the meeting(s).

29. The Defendant Owner's architect and electrical engineer were not present the meetings where the Defendant Owner chose less expensive light fixtures for the project, and the Defendant Owner neglected to tell the architect or electrical engineer that she had chosen less expensive light fixtures for many months.

30. Had the Defendant Owner invited the architect and engineer to these meetings or informed them of decisions made therein, several issues that caused delays would have been avoided.

31. On August 12, 2014, the Plaintiff submitted the light fixtures chosen by the Defendant Owner to the electrical engineer for approval.

32. By September 29, 2014, when the electrical engineer rejected the light fixture submittals as not being the original specified fixtures, the Defendant Owner still had not informed the electrical engineer that she had selected different fixtures for the project.

33. The Plaintiff's submittal of the light fixtures chosen by the Defendant Owner was finally approved by the Defendant Owner's electrical engineer on February 16, 2015, six months from its initial submittal date.

34. The lighting submittal delays caused late delivery of the light fixtures, as they could not be ordered until they were approved.

35. The delay caused by the Defendant Owner's failure to inform her architect and engineer of changes she had made to the light fixtures was neither the fault of nor the responsibility of the Plaintiff.

36. The Defendant Owner also had multiple electrical re-designs after the contract was signed, but did not provide them to the Plaintiff.

37. On August 12, 2014, the Plaintiff submitted to the Defendant Owner's electrical engineer electrical gear that met the original Contract's April 22, 2014 electrical drawings and specifications.

38. The Defendant Owner's electrical engineer rejected the submittal because it did not meet the most recent re-design specifications from drawings dated October 6, 2014, which were not part of the original contract.

39. The Defendant Owner did not provide the Plaintiff with updated electrical plans until October 14, 2014, and because of ongoing changes with the elevator requiring the Defendant Owners electrical engineer to continue to modify the necessary gear, the electrical gear submittal was not accepted until May 5, 2015.

40. The Defendant Owner's electrical engineer's insistence that the gear be changed to that

required in the most recent re-design necessitated a change order to the Contract, Change Order

4.

41. The Defendant Owner disputed Change Order 4, which further delayed the electrical gear.

42. The delays in the electrical gear prevented the installation of the elevator.

43. The delays caused by the electrical submittal issues were neither the fault of nor the responsibility of the Plaintiff.

44. Throughout the project, attempts to discuss problems and issues with the Defendant Owner so that the project could continue to move forward were ignored or stymied by Defendant Owner.

45. Many Change Order proposals sent to the Defendant Owner by the Plaintiff were modified by the Defendant Owner and then disputed by the parties, causing delays on the project.

46. The Contract requires the Defendant Owner to issue a Construction Change Directive to the Plaintiff contractor in the event of a dispute over a change order, and the Construction Change Directive allows work to continue on the contract without waiving any rights to dispute time or cost of the change order until the end of the contract.

47. The Plaintiff first requested in writing that the Defendant Owner sign a Construction Change Directive on April 3, 2015, to avoid cessation of work on the project when Change Order 4 was disputed.

48. The April 3, 2015 email to the Defendant Owner cited § 7.3.2 of the Contract, which

states: A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

49. The Defendant Owner refused to issue a Construction Change Directive.

50. The Plaintiff requested the Construction Change Directive in writing, multiple times between April and July of 2015.

51. On May 11, May 14, and July 10 of 2015, the Defendant Owner was again sent the language from § 7.3.2 of the Contract, stating that “A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.”

52. On June 29, 2015, during the continued dispute over the terms of Change Order 4, the Defendant Owner emailed the Plaintiff, saying the Plaintiff was “attempting to use the change order process as a blackmail device which is unacceptable under the contract. . . you continue to terrorize and harass me and frankly I think your behavior is reprehensible and entirely unprofessional.”

53. In response to that email, the Plaintiff replied in writing that far from being unprofessional or attempting to harass the Defendant Owner, the issuance of a Construction Change Directive in the absence of agreement on all terms of a change order was a required and normal part of the AIA contracts.

54. The Plaintiff explained, in writing, more than once, that the word “shall” in § 7.3.2 means “must” and that the Defendant Owner was required by the Contract to issue a Construction Change Directive in the absence of agreement on a Change Order.

55. On June 30, 2015, the Plaintiff notified the Defendant Owner in writing that the

electrician would be demobilized in the absence of a Construction Change Directive by close of business the following day, as the electrician had no further work that could be performed without such authorization.

56. On July 8, 2015, the Plaintiff notified the Defendant Owner by email that the continued failure to issue a Construction Change Directive constituted a breach of the contract.

57. On July 10, 2015, the Defendant Owner demanded that notice from the Plaintiff regarding the alleged breach of the contract or any claims be given pursuant to the notice requirements of the contract and not by email, and therefore there was no notice of breach.

58. The Defendant Owner continued to refuse to issue a Construction Change Directive.

59. The Defendant Owner's failure to issue a Construction Change Directive as required by the Contract caused delays, and these delays resulted in inefficiency in production due to out-of-sequence work, stopping and starting segments while awaiting authorization, erratic staffing and eventual trade stacking.

60. These delays and the resulting inefficiency of production caused by the Defendant Owner's refusal to issue a Construction Change Directive were neither the fault of nor the responsibility of the Plaintiff.

61. The Plaintiff sent Construction Change Directive 1 to the Defendant Owner on July 30, 2015.

62. Despite the clear purpose of the Construction Change Directive as spelled out in the Contract, the Defendant Owner wrote comments on the Construction Change Directive attempting to have the Plaintiff waive all rights in connection with the disputed change order and be responsible for daily damages for the completion of the contract.

63. The Plaintiff did not sign the revised Construction Change Directive, as allowed by the Contract, and continued to perform work under the Directive and Contract, although the Defendant Owner refused to pay in full the pay applications.

64. In addition to the Construction Change Directive, the Contract provided for mediation and arbitration to resolve disputes during the pendency of the project and avoid delay and disruption.

65. Pursuant to the Defendant Owner's request on July 10, 2015, all notice regarding alleged breaches of contract and claims under the contract had to be given in accordance with the notice requirements of the Contract.

66. Section 13.2.3 of the Contract provides: "Written notice shall be deemed to have been duly served if delivered in person to the individual ...or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to the last business address known to the party giving notice."

67. Section 15.3 of the contract provided for mediation of claims, disputes, or other matters in controversy arising out of or relating to the contract as a condition precedent to binding arbitration.

68. On July 15, 2015, the Plaintiff delivered to Defendant Owner and Defendant Owner's architect, in person, a request for mediation under 15.3.1 of the contract.

69. Defendant Owner did not respond to this request.

70. On July 24, 2015, the Plaintiff sent correspondence and the renewed request for mediation by certified mail to the office address provided in the contract, however the Defendant Owner refused to pick it up at the post office.

71. On or about July 24, 2015, the Defendant Owner hired Rick Newcomb, as its project manager, to supervise the construction.

72. The Plaintiff delivered the July 24 letter requesting mediation to Rick Newcomb, the Defendant Owner's project manager, at the job site.

73. The Defendant Owner refused to acknowledge its receipt or respond.

74. On July 31, 2015, the Plaintiff sent an additional letter again requesting mediation, along with the previous correspondence and documents, by certified mail to the office address provided in the contract, however the Defendant Owner refused to pick it up at the post office.

75. The July 31 letter and its attachments were also emailed to the Defendant Owner.

76. The July 31 letter and its attachments were also delivered personally to Rick Newcomb, the Defendant Owner's project manager on the jobsite.

77. The Defendant Owner refused to acknowledge its receipt or respond.

78. On September 3, 2015, the Plaintiff sent a second request for mediation, along with previous correspondence and documents to the Defendant Owner by Federal Express to the office at the address for notice provided in the contract, however the office was closed and there was no one there during the three times Federal Express attempted to deliver it.

79. The September 3 correspondence and attachments were personally delivered to the Defendant Owner's project manager, Rick Newcomb.

80. The Defendant Owner refused to acknowledge its receipt or respond.

81. On September 28, 2015, the Plaintiff attempted, through his job supervisor, to deliver the

second request for mediation and supporting documents to the Defendant Owner in person by handing it to her when she came to the job site, but Defendant Owner refused to accept it, put her hands behind her, and left saying it needed to be sent to her office.

82. On December 1, 2015, Plaintiff had a process server in Ohio personally deliver the Plaintiff's third request for mediation to the office address provided in the contract.

83. Although this third mediation request was also sent by email and personally delivered to the Defendant Owner's project manager, Rick Newcomb, the Defendant Owner refused to acknowledge receipt or respond.

84. The Defendant Owner refused to participate in the contractually mandated dispute resolution process.

85. The Defendant Owner required the Plaintiff to provide documentation of each receipt, bill for material and the timesheet for each worker throughout the job, even though the Contract was bid as a fixed price contract rather than a time and materials contract.

86. The Defendant Owner refused to process any application for payment from the Plaintiff until all documentation was received, even though the Contract was a fixed price contract rather than a time and materials contract.

87. The fixed price Contract dictates that Applications for Payment are to be based on a percentage of completion for each line item.

88. The Plaintiff complied with this request to provide all documentation of each receipt, bill for material and the timesheet for each worker, although it placed an onerous administrative burden on the Plaintiff that was not and should not have been contemplated as part of the fixed price Contract.

89. None of the Plaintiff's subcontractors complained to the Defendant Owner that that they had not been paid by the Plaintiff.

90. None of the Plaintiff's subcontractors filed a lien on the Defendant Owner's property to insure payment based on work done as subcontractor to the Plaintiff.

91. All of Plaintiff's subcontractors were paid by the Plaintiff for amounts due under their subcontract with the Plaintiff, even though Defendant Owner did not pay the Plaintiff the full amounts of pay applications under the main Contract.

92. All of the job materials for the subject property were paid for by the Plaintiff even though the contract required their installation on the property prior to reimbursement from the Defendant Owner, because the materials needed to be ready to install at the appropriate time.

93. Although all of the subcontractors had been paid, Defendant Owner attempted to pay portions of the Plaintiff's pay applications by issuing joint checks to Plaintiff and subcontractors.

94. Plaintiff negotiated those joint checks that were possible due to the location and availability of the subcontractor, however some of the subcontractors who had been previously paid by the Plaintiff were not local and it was impossible to appear with them in person as requested by the bank to negotiate the checks.

95. These checks were then voided and returned to Defendant Owner along with an explanation, citing that the subcontractor and materials had been paid previously and that the amount on the application was reimbursement to the Plaintiff.

96. On or about September 17, 2015, the Plaintiff's materials supplier, Miller Clapperton, informed the Defendant Owner in writing that the balance of their subcontract was \$3,674.20 for retainage.

97. On that same date, Miller Clapperton provided the Defendant Owner with lien waivers for the total amount of their subcontract, less the \$3,674.20 retainage, and shortly thereafter, provided Defendant Owner with a lien waiver for the retainage.

98. Miller Clapperton is a Georgia company, with offices in Austell, Georgia, many hours from Charleston.

99. After being advised in writing by the subcontractor of the balance due on the subcontract, and receiving lien waivers from the subcontractor for all amounts due on the subcontract except the \$3,674.20 retainage, on or about September 21, 2015, the Defendant Owner issued a joint check to Miller Clapperton and the Plaintiff in the amount of \$16,309.95.

100. On or about September 21, 2015, the Defendant Owner issued a second joint check to Miller Clapperton and the Plaintiff in the amount of \$1,016.50.

101. The amounts of these two joint checks exceeded the retainage due to the subcontractor by \$13,652.50.

102. The Defendant Owner knew the subcontractor had already been paid everything but retainage and that these funds were due to the Plaintiff solely.

103. The Plaintiff voided these joint checks and returned them to the Defendant Owner.

104. On or about November 16, 2015, the Plaintiff informed the Defendant Owner in writing that the Plaintiff itself had performed all the work reflected in line 22 of the Application for Payment 15, installation of the steel lintels and closure angle plates.

105. After being informed that the Plaintiff, not the subcontractor Accu Welding, had installed the steel lintels and closure angle plates, on or about November 30, 2015, the Defendant Owner issued a joint check to Accu Welding and the Plaintiff in the amount of \$270.39.

106. The Defendant Owner knew at the time of the issuance of the check that the subcontractor Accu Welding was not due these funds and that they were due to the Plaintiff solely.

107. Plaintiff voided the joint check and returned it to the Defendant Owner however the Defendant Owner refused to re-issue the check solely to the Plaintiff.

108. More joint checks followed, including one to subcontractor Pleasant Places and the Plaintiff, for which the Defendant Owner had already received a lien waiver but wrote a joint check for more than was owed to the subcontractor.

109. On April 21, 2015, the Plaintiff purchased materials for the wire trellis system for the Defendant Owner's project from SECO South, an online materials supplier, using a company VISA card, and forwarded the back-up documentation of this purchase to the Defendant Owner in May of 2015.

110. Seven months later, on December 30, 2015, the Defendant Owner wrote a joint check to SECO South and Plaintiff knowing that these materials had been purchased by the Plaintiff and the funds were due solely to the Plaintiff.

111. This joint check was voided and returned to the Defendant Owner, but Defendant Owner refused to re-issue the check solely to the Plaintiff.

112. The Defendant owner wrote two joint checks to Plaintiff's subcontractor, Allphase Electrical on or about January 9, 2016, which exceeded the amount due to Allphase under its subcontract with the Plaintiff, including retainage, by \$12,232.31.

113. The remainder of the funds paid to Allphase by the Defendant Owner were due to Plaintiff as reimbursement for amounts Plaintiff had already paid to Allphase for materials.

114. There was never a time when the Defendant Owner issued a joint check that was returned by the Plaintiff because the amount was insufficient to cover the amount due to a subcontractor under its subcontract with the Plaintiff.

115. The Plaintiff attempted to deal with the Defendant Owner's improperly issued joint checks for significantly more than the subcontractor was due, however this placed an undue administrative burden on the Plaintiff in a fixed price Contract.

116. Several times, the Plaintiff returned a voided joint check to the Defendant Owner with an explanation, and whether the Defendant Owner had received written confirmation of the amount due from the subcontractor, had received lien waivers, or both, the Defendant Owner refused to re-issue the check solely to the Plaintiff.

117. The few times prior to November of 2015 when the Plaintiff did re-issue a voided joint check solely to the Plaintiff, payment was delayed by several weeks.

118. The Defendant Owner requested in writing that the Plaintiff provide the amounts each subcontractor was due.

119. The Defendant Owner made clear that it was only paying the subcontractors and not any amounts billed or claimed due to the Plaintiff.

120. Application for Payment 15, for work done through October 30, 2015, was sent to the Defendant Owner on November 9, 2015.

121. The Defendant Owner did not pay any amounts due solely to the Plaintiff from this Application for Payment.

122. The Defendant Owner did not pay \$9,888.13 of Application for Payment 15 by December 31, 2015.

123. The \$9,888.13 owing for Application for Payment 15 as of the end of December does not include the joint check made out to the Plaintiff and the trellis materials supplier, SECO South, for which the Defendant Owner had received documentation of the credit card charge in May and knew was for reimbursement to the Plaintiff for materials purchased for the Defendant Owner's project.

124. The \$9,888.13 owing for Application for Payment 15 as of the end of December does not include the \$2,608.09 due and owing from previous Applications for Payment, for which the Plaintiff filed a Mechanic's Lien on December 17, 2015.

125. The Defendant Owner was sent Application for Payment 16, for work done through November 30, 2015, on December 9, 2015.

126. The Defendant Owner did not pay any amounts due on Application for Payment 16, whether by joint check or otherwise.

127. The amounts due to the Plaintiff for the joint checks that the Defendant Owner refused to re-issue solely to the Plaintiff were only a small percentage of what was due and owing to the Plaintiff under the Contract; the remaining amounts were simply not paid at all by the Defendant Owner.

128. On December 30, 2015, the Plaintiff mailed notice to the Defendant Owner of its intent to demobilize in 7 days pursuant to the Contract provisions if it did not receive payment for amounts due under the applications for payment.

129. On January 2, 2016, the Plaintiff emailed the December 30 letter to the Defendant Owner along with the proof of delivery of the letter to Defendant Owner's office address.

130. The Defendant Owner did not acknowledge or respond to this correspondence.

131. The Plaintiff continued to perform work pursuant to the Contract through January 12, 2016, despite the Defendant Owner's continued failure to pay in full all applications for payment.

132. The Plaintiff notified the Defendant Owner by email on January 12, 2016, that they had demobilized and removed all equipment from the jobsite in accordance with the Contract provisions as set forth in the December 30 letter.

133. The Defendant Owner responded by claiming the Plaintiff had breached the contract in a variety of ways and stating that if the Plaintiff did not resume work within 7 days, the Defendant Owner was terminating the contract for cause.

134. The Plaintiff did not resume work under the contract.

135. The Plaintiff duly and timely filed a Notice and Certificate of Mechanics Lien with the Office of the RMC for the County of Charleston at Book 0524, Page 038, on December 17, 2015, as of which date, the amount due and unpaid by Defendant under the contract was Two Thousand Six Hundred Eight and 09/100 Dollars (\$2,608.09), plus interest as provided under the Contract, plus attorneys' fees, a copy of which is attached hereto as Exhibit B (hereafter "the first Lien").

136. The Plaintiff duly and timely filed a Notice and Certificate of Mechanics Lien with the Office of the RMC for the County of Charleston at Book 0542, Page 405, on March 22, 2016, as of which date, the amount due and unpaid by Defendant under the contract, not including the amount for the first Lien set forth above, was Twenty Nine Thousand Five Hundred Twenty One and 28/100 (29,521.28), plus interest as provided under the Contract, plus attorneys' fees, a copy of which is attached hereto as Exhibit C (hereafter "the second Lien").

137. The Plaintiff duly and timely filed a Notice and Certificate of Mechanics Lien with the Office of the RMC for the County of Charleston at Book 0546, Page 296, on April 11, 2016, as of which date, the amount due and unpaid by Defendant under the contract, not including the amount of the first Lien and second Lien set forth above, was Fifty Two Thousand Eight Hundred Sixty Eight and 78/100 Dollars (\$52,868.78), plus interest as provided under the Contract, plus attorneys' fees, a copy of which is attached hereto as Exhibit D (hereafter "the third Lien").

138. The Defendant Owner has failed to pay in full the amount of the first, second and third Liens.

AS A FIRST CAUSE OF ACTION
Foreclosure of Mechanics Liens

139. Plaintiff reasserts and re-alleges all facts and claims of the preceding paragraphs of this Complaint as if set forth verbatim herein.

140. Plaintiff has commenced this action within six months of the last date it provided labor and materials on the Real Property.

141. Plaintiff is entitled to an Order of Foreclosure of its first, second and third Mechanic's Liens on the Real Property, requiring that the Real Property be sold and that the proceeds of sale, after deducting all lawful charges and expenses, be paid to Plaintiff to be applied to the amount owed pursuant to the Lien, including interest, plus attorneys' fees and the costs of this action.

AS A SECOND CAUSE OF ACTION
(Breach of Contract)

142. Plaintiff reasserts and re-alleges all facts and claims of the preceding paragraphs of

this Complaint as if set forth verbatim herein.

143. The Defendant Owner willfully breached the contract with the Plaintiff in multiple ways, including but not limited to the following:

- a. Failing to pay for labor and materials furnished and billed under the Contract between Defendant Owner and the Plaintiff;
- b. Improperly issuing joint checks when Defendant Owner was informed by the subcontractor of the amount due and was provided lien waivers;
- c. Improperly issuing joint checks when Defendant Owner was provided lien waivers;
- d. Improperly issuing joint checks to Plaintiff and materials suppliers when Defendant Owner was provided proof of payment for materials;
- e. Refusing to re-issue improperly issued joint checks solely to the Plaintiff;
- f. Providing an unattended address for service of notice under the contract;
- g. Refusing to accept notice under the contract;
- h. Refusing to participate in contractually mandated alternative dispute resolution;
- i. Refusing to issue Construction Change Directives to keep the job moving forward in the event of a dispute over a Change Order as required by the Contract, despite multiple requests by the Plaintiff;
- j. Wrongfully terminating the Contract for cause claiming Plaintiff was in breach.

144. As a result of the breach of contract by Defendant Owner, the Plaintiff has been damaged in the amounts owed; plus interest as provided under the contract; or in the event of willful breach, interest as provided by statute, contract damages for costs, overhead and profit for

the unfinished work, increased project administration and project management costs, and increased reimbursable project costs caused by delays; attorneys' fees; and the costs of this action, for which amounts Defendant is responsible.

AS A THIRD CAUSE OF ACTION
(Quasi-Contract/Unjust Enrichment)

145. Plaintiff reasserts and re-alleges all facts and claims of the preceding paragraphs of this Complaint as if set forth verbatim herein.

146. The Defendant Owner and Bank have had the use and benefit of the materials and labor furnished by the Plaintiff and are unjustly retaining the benefit of the materials and labor without paying Plaintiff in full for them.

147. The Defendant Owner and Bank are liable to Plaintiff for the reasonable value of the labor and materials for which it has not paid in full, plus prejudgment interest from the date such labor and materials were supplied.

WHEREFORE, the Plaintiff prays for judgment as follows:

A) On its First Cause of Action, Plaintiff demands that Plaintiff's Mechanic's Lien be foreclosed, that due notice of said foreclosure be given all proper parties, that the priorities of the Plaintiff and the Bank be determined, that the Real Estate be sold and that the proceeds used to satisfy the amounts due Plaintiff on its Liens and for the costs incurred in prosecuting this action, including attorneys' fees, with any deficiency remaining a debt of the Defendant Owner to the Plaintiff.

B) On its Second Cause of Action, Plaintiff demands judgment against Defendant Owner for Breach of Contract in the amount of all unpaid balance, plus prejudgment interest, costs and attorneys' fees; and in the event of willful breach, interest as provided by statute, contract

damages for costs, overhead and profit for the unfinished work, increased project administration and project management costs, and increased reimbursable project costs caused by delays, attorneys' fees, and the costs of this action.

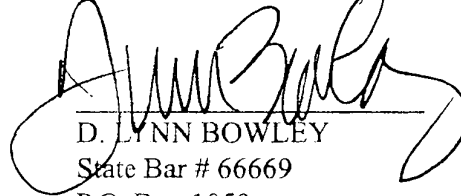
C) On its Third Cause of Action, Plaintiff prays for judgment against Defendant Bank and Defendant Owner, jointly and severally, in the amount of all labor and materials supplied by Plaintiff but not paid for by Defendants, plus prejudgment interest from the date such labor and materials were provided, and for the costs herein expended.

D) Plus such other and further relief that this Court deems just, equitable, and proper.

Charleston, S. C.

07.06, 2016

TAYLOR & BOWLEY LLC



D. LYNN BOWLEY

State Bar # 66669

P.O. Box 1059

Charleston, SC 29402

(843) 723-4020; fax (843) 723-4021

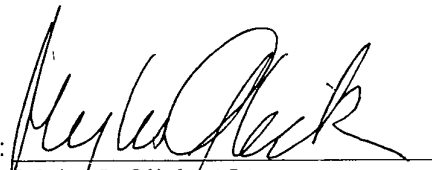
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT OF MYLES I. GLICK, AIA

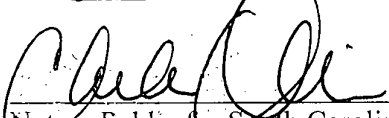
Personally appeared before me Myles I. Glick, AIA LEED AP, who first being duly sworn, deposes and states as follows:

1. I am a licensed architect in the State of South Carolina.
2. I am the President of Glick/Boehm & Associates, Inc.
3. Glick/Boehm & Associates, Inc. has been named a Defendant in a lawsuit filed by 480 King Street, LLC bearing the case number 2017-CP-10-3267.
4. Upon receiving a copy of the Complaint I spoke to Mr. Brent Halversen, the attorney for Plaintiff, the week of August 14, 2017. In response to my question of why Glick/Boehm was being sued, Mr. Halversen responded that he tried to talk Ms. Mary Ann Kantor – the owner of 480 King Street, LLC – out of suing Glick/Boehm & Associates, Inc. for over two months. Unfortunately, he was not successful and Glick/Boehm & Associates, Inc. was sued right before the statute deadline.
5. As of the date of this Affidavit, I have not been provided a copy of an expert affidavit detailing the professional allegations alleged against Glick/Boehm.

FURTHER AFFIANT SAYETH NOT.

By: 
Myles I. Glick, AIA

SWORN to and subscribed before me
This 25th day of August, 2017.


Notary Public for South Carolina
My Commission Expires: June 4, 2025



THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL DISTRICT

480 KING STREET, LLC,) CASE NO.: 2017-CP-10-03267
Plaintiff,)

vs.) **GLICK/BOEHM & ASSOCIATES, INC.'S**
GLICK/BOEHM & ASSOCIATES, INC.) **MEMORANDUM IN OPPOSITION TO**
Defendant.) **PLAINTIFF'S MOTION FOR EXTENSION**
) **OF TIME**

Defendant Glick/Boehm & Associates (hereinafter "GBA"), by and through the undersigned attorneys, respectfully submits this Memorandum in Opposition to Plaintiff's Motion for Extension of Time to comply with the affidavit requirement prescribed by S.C. Code Ann. § 15-36-100 (2016).

BACKGROUND

This case involves claims of professional negligence concerning the alleged provision of architectural services by GBA in connection with a stair tower located at 480 King Street in Charleston. Plaintiff did not file an expert affidavit contemporaneously with its Complaint and despite the expiration of forty-five days has yet to comply with the statutory mandate of supplying an expert affidavit. Plaintiff now requests additional time to comply with the statute, but additional time in this instance is unwarranted and in violation of the relevant statute.

LEGAL AUTHORITY

Architects and Engineers are two of the 22 professional groups specifically identified in S.C. Code Ann. § 15-36-100(G) (2015). Pursuant to that statute, an affidavit from an expert *must* be filed contemporaneously with any complaint alleging damages arising from alleged professional negligence of an architect, engineer, or surveyor. The affidavit "must specify at

least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” S.C. Code Ann. § 15-36-100(B) (2015). If a proper affidavit “is not filed . . . and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim.” S.C. Code Ann. § 15-36-100(C)(1) (2015).

The statute, however, provides an exception to the contemporaneous filing requirement in instances where the “period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.” S.C. Code Ann. § 15-36-100(C)(1) (2015). In such a scenario, the statute grants Plaintiff an additional forty-five days to comply with the affidavit requirement. *Id.* In addition, in the event an additional forty-five days is an insufficient amount of time, a plaintiff may move for additional time to procure an affidavit. *Id.* The court, after a hearing and for good cause, may grant additional time as justice so requires. *Id.*

ARGUMENT

Plaintiff’s failure to obtain the required affidavit does not warrant additional time under section 15-36-100 as there is no good cause to justify the extension of time and doing so would not further the ends of justice. In the case at hand, Plaintiff alleged in its Complaint that the statute of limitations may have been triggered on June 27, 2014, and thus, the Complaint filed on June 26, 2017 was well within the exception to the contemporaneous filing requirement.¹ Plaintiff specifically alleges in the Complaint that an affidavit of an expert could not be prepared. On day forty-five of the forty-five day extension granted by the statute, Plaintiff moved for an

¹ See Plaintiff’s Complaint page 8, Paragraph 27 attached hereto as Exhibit A.

extension of time to supply the requisite affidavit.² In its motion, Plaintiff has alleged that despite retaining an expert approximately a week prior to filing the Complaint, the expert has been unable to form an opinion and reduce it to affidavit form. Plaintiff contends that as a result, good cause exists to extend the time for the filing of the affidavit.

The expert affidavit requirement is a part of the South Carolina Frivolous Civil Proceedings Sanctions Act; its purpose is to guard against frivolous lawsuits involving professionals. Steinmetz v. Cooper (In re Steinmetz), Nos. 07-00628, 07-00579, 10-80177, 2011 Bankr. LEXIS 3830, at 8 (U.S. Bankr. D.S.C. Mar. 18, 2011) The expert witness affidavit serves to ensure that claims of professional negligence “have some validity before filing and alerts the professional to the merits of the claim.” Id. There is no language in the statute that indicates the filing of an affidavit is optional. Id.

In the case hand, the matter has been pending against GBA since June 26, 2017. Although the claim was filed on the eve of the expiration of the statute of limitations, this matter has been well known to Plaintiff for some time. As noted in the Complaint, this claim arose as early as June 27, 2014.³ Furthermore, Plaintiff was named a defendant in a separate action on July 6, 2016 concerning the construction of the very property that is the subject of this action, and upon information and belief, involved the identical stairwell shaft at issue in the present matter.⁴ Moreover, per the attached affidavit, Mr. Myles Glick contacted Plaintiff’s counsel directly after receiving the lawsuit to inquire concerning the same and was told, despite counsel’s best efforts to dissuade Plaintiff from bring the action for over two months, the lawsuit was initiated against GBA.⁵

² Attached as Exhibit B.

³ See Ex. A.

⁴ See Complaint in matter of Charles Blanchard Construction Corp. v. 480 King Street, LLC, et al. 2016-CP-10-3468, attached hereto as Exhibit C.

⁵ See Affidavit of Myles Glick attached hereto as Exhibit D.

It is Defendant's position that Plaintiff has not adhered to the statutory requirement for supplying an expert affidavit and the Complaint should be dismissed with prejudice. Section 15-36-100 does not require a full vetted or comprehensive affidavit. Rather, the statute mandates only that the affidavit "specify *at least one* negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." S.C. Code Ann. § 15-36-100 (B) (emphasis added). According to Plaintiff's own filings, it has had over three years and forty-five days to obtain an affidavit that sets forth only *one* instance of professional negligence and the factual basis for the claim, but has yet to do so. While the statute provides leeway for plaintiffs who are filing at or near the expiration of the statute of limitations, it is not intended to present plaintiffs with an option to evade the affidavit requirement by presuming additional time will be made available. Plaintiff has had ample opportunity to provide the requisite affidavit yet has failed to do so. Therefore, Plaintiff's need for additional time to procure an affidavit is the result of Plaintiff's own actions and does not constitute good cause under the statute.

Moreover, the result of the delay in providing an expert affidavit presents the very scenario the Frivolous Proceedings Act is meant to prevent. GBA is now a defendant to a lawsuit alleging professional negligence without the benefit of knowing the merits of the claim or whether the claim has any validity. Plaintiff's request for additional time to procure an affidavit would not further the ends of justice as the statute contemplates, but would instead reward Plaintiff for its failure to act timely in supporting its claims against GBA with the necessary affidavit.

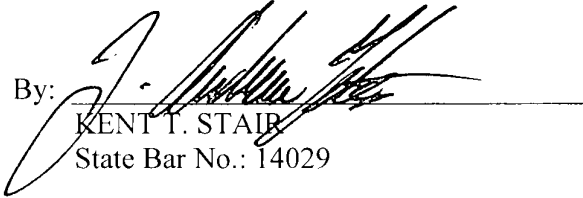
CONCLUSION

For all of the preceding reasons, as a result of Plaintiff's failure to adhere to the requirements of the affidavit requirement and lack of good cause for additional time, Plaintiff's request should be denied and the case should be dismissed with prejudice under section 15-36-

100. This Motion is based on South Carolina law, the pleadings filed in this case, and any supporting documents to be submitted hereafter.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 
KENT T. STAIR
State Bar No.: 14029

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
843-727-0307

PAUL E. SPERRY
State Bar No.: 68441

J. ANDREW YOHO
State Bar No.: 100803

**Attorneys for Glick/Boehm & Associates,
Inc.**

THE STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

480 KING STREET, LLC,

Plaintiff,

vs.

GLICK/BOEHM & ASSOCIATES, INC.

Defendant.

) IN THE COURT OF COMMON PLEAS

) THE NINTH JUDICIAL DISTRICT

)

) CASE NO.: 2017-CP-10-03267

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing *Glick/Boehm & Associates, Inc.'s Memorandum In Opposition To Plaintiff's Motion For Extension Of Time* upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Brent S. Halversen, Esq.
Halversen & Associates, LLC
171 Church Street, Suite 330
Charleston, SC 29401
Attorney for Plaintiff

2017 SEP -1 PM 11:37
CLERK OF COURT
BY

This 30th day of August, 2017.



Miriam A. Peeler
Legal Secretary to Kent T. Stair

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
480 KING STREET, LLC)
Plaintiff,)
vs.)
GLICK/BOEHM & ASSOCIATES, INC.)
Defendant.)

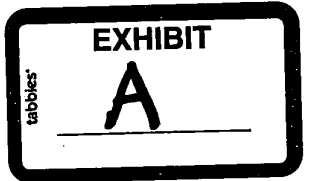
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10- 22607

FILED
2017 JUN 26 PM 3:13
JULIE J. ANDRZEJCZAK
CLERK OF COURT
COMPLAINT
(Jury Trial Demanded)

COMES NOW THE PLAINTIFF, 480 King Street, LLC, (hereinafter, "480 King") by and through their undersigned counsel, complaining of the Defendant herein, Glick / Boehm & Associates, Inc. (hereinafter, "GBA") and allege unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff, 480 King is a limited liability company organized and doing business in the State of South Carolina.
2. Defendant, GBA, is a corporation organized and existing under the laws of the State of South Carolina, and is doing business in Charleston County as GBA.
3. Upon information and belief, GBA served as the architect of record for the stair tower located at 480 King Street, Charleston, South Carolina, agreeing to provide professional architectural services for the design of the stair tower, specifically including, but not limited to, the issuance of the plans and specifications for the construction of the stair tower. These documents and/or instruments of service were required to be in



compliance with all applicable ordinances, codes, regulations, statutes, and industry standards. Upon information and belief, GBA agreed to make periodic visits to the stair tower during construction, and otherwise perform contract administration services during construction to observe whether the construction was being completed in accordance with the plans and specifications (itself created) and all applicable building codes.

4. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto, and venue is proper in this forum pursuant to §15-7-30 (E)(1).

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. Plaintiff hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

6. On or about October 16, 2013, 480 King and GBA entered in to a Contract for GBA to provide design and construction administration services for a for a stair tower that Charles Blanchard Construction Corporation (hereinafter, "CBCC") later constructed at 480 King Street, Charleston, South Carolina 29403, for the contract sum of \$706,878.84.

7. The contract called for GBA to design the stair tower and, inter-alia, to act as 480 King's agent to interpret the contract documents, visit the site, review the Contractor's submittals, reject non-conforming work, keep 480 King informed about the progress and quality of the work as and when completed, and to report to 480 King known deviations from the Contract documents.

8. Pursuant to the Contract, substantial completion of the project was to be achieved within 150 days from the date of commencement. The date of project commencement was dated June 30, 2014, therefore, the stair tower should have been substantially completed by November 27, 2014, and in no event later than December 15,

2014 pursuant to the Contract Addendum. CBCC and 480 King agreed that time was of the essence.

9. GBA breached their contractual duties set forth above in the following and particular and herein described manners:

- a) Failing to properly design and prepare specifications for the stair tower which were compliant with all applicable building codes and professional standards;
- b) Failing to specify products that were in compliance with all applicable building codes;
- c) Failing to design and specify the correct elevator system, shaft, and component parts for the stair tower;
- d) Failing to properly administer, observe and inspect the construction of the stair tower for compliance with the plans and specifications and applicable building codes;
- e) Failing to act as a reasonably prudent design professional would act under similar circumstances
- f) Failing to detect non-code compliant work completed by CBCC including the following: (i) failure of CBCC to construct the building so that the exterior of the building envelope was water tight; (ii) failure of CBCC to install or properly install an appropriate secondary weather resistant barrier on the exterior wall sheathing; (iii) failure of CBCC to install or properly install flashing at windows and doors; (iv) failure of CBCC to properly protect the rough openings from moisture intrusion; (v) failure

of CBCC to install a roof covering that allows water intrusion into the interior of the building, causing damage to other components of the building besides the roof; and (vi) failure of CBCC to properly grade the premises.

- g) Specifying the incorrect travel length of the stair tower elevator;
- h) Improperly designed elevator and electrical chase;
- i) Improperly designed electrical conduit;
- j) Improperly designed HVAC unit header;
- k) Improperly designed soffit/header;
- l) Improperly designing windows, flashing and connections resulting in water penetration and damage;
- m) Improperly designed stairs;
- n) Failing to discover defects in the work performed by CBCC and its subcontractors;
- o) Other breaches that may be determined to be shown at the trial of this matter;

10. The deviations in what was called for in the Contract documents, versus what was supplied and rendered by CBCC was not rejected by GBA as non-conforming, nor reported to 480 King as deviations in the Contract documents. At a minimum, GBA was under a contractual duty to inform 480 King as to the above referenced errors, omissions and deviations in the quality of the project, and GBA never did.

11. The acts described above are plain breaches GBA's contractual duties by reviewing and approving items of work at the project that were either not performed, or

were performed in derogation of the Contract documents. These breaches were material and deprived 480 King of the benefit of their bargain, as the project was a value engineered building, and was designed to be built with specific requirements that were largely ignored. GBA's complete supervision of all work, design, submittals, RFI's, and ASI's rendered the product contracted for of significantly diminished value in the eyes of 480 King and prospective third-party purchasers and constitute actual, special damages as plead herein. This loss may reasonably be construed to have been in the contemplation of the parties at the time the contract was formed as the plans were unique. Pursuant to South Carolina law, 480 King is entitled to be placed in as good a position as if the contract had been correctly, thus giving them the benefit of their bargain, in addition to remediation costs, replacement costs, loss of use, loss of revenue, delay costs, consequential damages, extra expenses, and loss of time.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to GBA)

12. Plaintiff hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

13. Upon information and belief, GBA, pursuant to its contract with the Plaintiff, expressly warranted that its plans, specifications, and other instruments of service would be in compliance with all applicable ordinances, codes, regulations, statutes, and industry standards.

14. GBA warranted the sufficiency of the designs, plans, and specifications for the stair tower.

15. On August 25, 2014, CBCC stated that the problems with the elevator were design errors by GBA.

16. On May 12, 2015, CBCC stated that design issues regarding the electrical chase were causing delays.

17. In August, 2014, Mr. Myles Glick of GBA admitted GBA specified the incorrect travel length for the elevator.

18. On June 23, 2015, CBCC stated that the contract drawings did not show a chase, and permit drawings showed a rated wall.

19. Plaintiff is a beneficiary of the express and implied warranties provided by GBA.

20. The contemporaneous filing requirement of § 15-36-100 subsection (B) does not apply in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, an affidavit of an expert could not be prepared. Upon information and belief, the first date upon which Plaintiff was aware, or could have been aware of a potential issue and/or claim as to GBA was June 27, 2014, one day after the project commenced when CBCC notified owner of major problem with the elevator which would require a change order. Upon information and belief, GBA breached their express and implied warranties by failing to design the stair tower free from defects and in compliance with applicable building codes and industry standards.

21. Plaintiff has been proximately damaged by GBA's breach of their express and implied warranties in that Plaintiff has spent, and will continue to expend, substantial sums of money in order to renovate and restore the stair tower. In addition thereto, the insufficiency of the designs, plans, and specifications caused defects and damages, including, but not limited to, cost overruns, delay costs, loss of rental income, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct and indirect damages all to Plaintiff's damage in an amount to be determined.

22. As a result of GBA's breach of express and implied warranties, the Plaintiff is entitled to a judgment against GBA for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at trial.

FOR A THIRD CAUSE OF ACTION
(Negligence as to GBA)

23. Plaintiff hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

24. GBA agreed to provide professional architectural and engineering services for the design and construction of the stair tower, specifically including, but not limited to, the issuance of the plans and specifications for construction. These documents and/or instruments of service were required to be in compliance with all applicable ordinances, building codes, regulations, statutes, and industry standards.

25. Upon information and belief, GBA agreed to make periodic visits to the stair tower during construction and perform other contract administration services to observe, among other things, whether construction was being completed in accordance with the plans and specifications and all applicable building codes and regulations.

26. It was foreseeable that Plaintiff would be damaged if GBA breached the above-referenced duties. As such, GBA owed a duty of care to the Plaintiff. In fact, GBA owed a heightened degree of care to Plaintiff as GBA designed the plans and specifications, and was also retained to oversee implementation of the same plans it created.

27. The contemporaneous filing requirement of § 15-36-100 subsection (B) does not apply in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, an affidavit of an expert could not be prepared. Upon information and belief, the first date upon which Plaintiff was aware, or could have been aware of a potential issue and/or claim as to GBA was June 27, 2014, one day after the project commenced when CBCC notified owner of change order request for the elevator. Upon information and belief, GBA breached their duty of care in the following particulars, including but not limited to:

- a) Failing to properly design and prepare specifications for the stair tower which were compliant with all applicable building codes and professional standards;
- b) Failing to specify products that were in compliance with all applicable building codes;

- c) Failing to design and specify the correct elevator system, shaft, and component parts for the stair tower;
- d) Failing to properly administer, observe and inspect the construction of the stair tower for compliance with the plans and specifications and applicable building codes;
- e) Failing to act as a reasonably prudent design professional would act under similar circumstances
- f) Failing to detect non-code compliant work completed by CBCC including the following: (i) failure of CBCC to construct the building so that the exterior of the building envelope was water tight; (ii) failure of CBCC to install or properly install an appropriate secondary weather resistant barrier on the exterior wall sheathing; (iii) failure of CBCC to install or properly install flashing at windows and doors; (iv) failure of CBCC to properly protect the rough openings from moisture intrusion; (v) failure of CBCC to install a roof covering that allows water intrusion into the interior of the building, causing damage to other components of the building besides the roof; and (vi) failure of CBCC to properly grade the premises.
- g) Specifying the incorrect travel length of the stair tower elevator;
- h) Improperly designed elevator and electrical chase;
- i) Improperly designed electrical conduit;
- j) Improperly designed HVAC unit header;
- k) Improperly designed soffit/header;

- l) Improperly designing windows, flashing and connections resulting in water penetration and damage;
- m) Improperly designed stairs;
- n) Failing to discover defects in the work performed by CBCC and its subcontractors
- o) Other breaches that may be determined to be shown at the trial of this matter;

28. As a direct, foreseeable and proximate result of the negligence, design defects and resulting property damage, Plaintiff has spent, and will continue to expend, substantial sums of money in order to renovate and restore the stair tower. In addition thereto, the insufficiency of the designs, plans, and specifications caused defects and damages, including, but not limited to, cost overruns, delay costs, loss of rental income, the cost of the investigation, the design of the repair, the repair itself and other actual, incidental, consequential, special, direct and indirect damages all to Plaintiff's damage in an amount to be determined.

29. As a result of GBA's negligence, the Plaintiff is entitled to a judgment against GBA for all actual, direct, indirect, resulting and consequential damages in an amount to be proven at trial.

WHEREFORE, the Plaintiff prays this Honorable Court inquire into the matters set forth herein and award judgment in favor of 480 King and against GBA, as follows:

1. For all actual, direct, indirect, compensatory, resulting, consequential and special damages against the Defendant, in an amount to be shown at trial;
2. For all costs associated with investigating and prosecuting this action; and

3. For all other relief this Honorable Court deems just and proper.

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: 

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Attorneys for the Plaintiff

6/26, 2017.
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

480 KING STREET, LLC

Plaintiff,

vs.

GLICK/BOEHM & ASSOCIATES, INC.

Defendant.

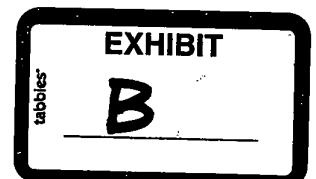
) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-10-3267

MOTION FOR EXTENSION OF TIME

BY _____
CLERK OF COURT
2017 AUG 10 PM 3:13

COMES NOW THE PLAINTIFF, 480 King Street, LLC, (hereinafter, "Plaintiff") by and through their undersigned counsel, and files this motion for extension of time and states the following in support therefor:

1. On June 26, 2017 Plaintiff filed a Summons and Complaint against the Defendant asserting claims for breach of contract, breach of warranty, and negligence.
2. As averred in Plaintiff's Complaint, the first date upon which Plaintiff could have been aware of a potential issue or claim as to Defendant was on June 27, 2014. Accordingly, Plaintiff timely filed its Summons and Complaint against Defendant on June 26, 2017.
3. The contemporaneous affidavit filing requirement of § 15-36-100 subsection (B) does not apply in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, an affidavit of an expert could not be prepared.



In such case, the statute allows for an affidavit to be filed 45 days after the Complaint is filed or the Court may extend the period upon motion after a showing of good cause. The statute states:

The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires.

SC Code § 15-36-100(C)(1)

4. In this case good cause exists as Plaintiff just filed its Complaint on June 26, 2017 and has not had adequate time to have an expert review all attendant documents in order to render an expert opinion to support Plaintiff's non-contractual claims.

5. Plaintiff initially contacted an expert Louis Hackney P.E., REWC, RRC, CDT, LEED AP in June, 2017 prior to filing its Complaint, and formally retained Mr. Hackney on July 19, 2017.

6. After retention, Mr. Hackney has been sent approximately 8,000 documents, and it was not possible for Mr. Hackney to review all of the documents necessary within the 45 days after filing the Complaint to form an opinion reducible to affidavit form by August 10, 2017- which is 45 days after filing.

7. Due the nature of the case, Mr. Hackney's schedule, and the volume of materials that exist necessary for review, Plaintiff believes good cause exists for the Court to extend the time for filing the affidavit, as is allowable upon the showing of good cause.

WHEREFORE, Plaintiff requests this Court extend the time for filing an affidavit pursuant to SC Code § 15-36-100(C)(1) for reasons stated herein and presented to the Court in the premises.

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
Attorneys for the Plaintiff

August 10th, 2017.
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion via U.S. Mail and process server with postage prepaid on this 10th day of August, 2017.

HALVERSEN & ASSOCIATES, LLC

By: _____

Brent S. Halversen
Brent S. Halversen
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Attorneys for the Plaintiff

August 10th
August 10th, 2017.
Charleston, South Carolina

BY _____
2017 AUG 10 PM 3:13
COURT REPORTER

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
 Charles Blanchard construction Corp., Inc.)
 vs.)
 480 King Street, LLC, and TD Bank N.A.,)
 NQ,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 2016-CP-10-3468

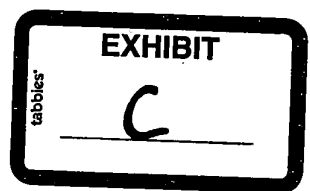
COMPLAINT
 (Debt Collection, Foreclosure of Liens)
 (Jury Trial Demanded)

FILED
 2016 JUL -6 PM 1:46
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

The Plaintiff above named, complaining of the Defendants herein, would show unto this Honorable Court as follows:

JURISDICTION AND PARTIES

1. The Plaintiff is a corporation organized under and operating pursuant to the laws of the State of South Carolina, and maintaining an office in the City of North Charleston and doing business in the City and County of Charleston.
2. Upon information and belief, the Defendant 480 King Street, LLC, is a limited liability corporation organized and existing under the laws of the State of South Carolina and operating in the County of Charleston, South Carolina (hereafter "Defendant Owner") and at all times herein was the owner of the real property which is the subject of this action.
3. Defendant T.D. Bank, N.A., NQ, upon information and belief, is a National Banking Organization, organized and existing under the laws of the United States and the State of South Carolina, doing business in the County of Charleston South Carolina (hereafter "Bank") and is



made a party hereto because it may have an interest in the real property that is the subject of this action.

4. The real property at issue herein is described on the Exhibit A attached hereto and made a part hereof and known hereafter as the Real Property, is located in the City and County of Charleston, state of South Carolina.

5. The parties, property and issues herein all are within the jurisdiction of this Honorable Court.

FACTS

6. Plaintiff reasserts and realleges all facts and claims of the preceding paragraphs of this Complaint as if set forth verbatim herein.

7. On June 26, 2014, Plaintiff entered into a construction contract with Defendant Owner by and through its manager, Mary Ann Kanters, for labor, materials, equipment and services in connection with the building located on the real property owned by Defendant Owner (hereafter the "Contract").

8. On or about June 27, 2014, Plaintiff began work pursuant to the Contract, furnishing the agreed upon labor and materials and making applications for payment as specified therein.

9. Almost immediately after signing the contract, delays occurred affecting the ultimate completion date of the contract.

10. Mere hours after execution of the contract, Plaintiff discovered that the Defendant Owner's architectural plans for the elevator were incorrect, requiring an additional one foot of depth for the elevator equipment selected by the Defendant Owner and drawn by Defendant Owner's architect.

11. While under the original contract the Plaintiff was responsible for providing the elevator in accordance with Defendant Owner's plans and specifications, the improper design by Defendant Owner's architect necessitated a change order whereby the Defendant Owner was then to be responsible for providing a re-design of the elevator shaft or acquiring a different elevator that would fit within the previously designed elevator shaft.

12. The delay caused by the incorrect elevator design was neither the fault of nor the responsibility of the Plaintiff.

13. At the time of placing rebar and pouring the elevator pit and foundation slab, the Defendant Owner put a hold on the work to add sewer/storm drainage that was outside the scope of the project, anticipating that the drainage would run beneath the foundation of the stairtower.

14. The Defendant Owner hired an engineer to design the placement of the future sewer/storm drainage, and requested three quotes for pricing of the design.

15. Upon receipt of the quotes for the cost of the storm drainage, the Defendant Owner decided not to install the drainage.

16. The delay caused by the Defendant Owner's hold to design and quote the cost to install sewer/storm drainage pipes was neither the fault of nor the responsibility of the Plaintiff.

17. Many months before the project started and again early in the project, the Plaintiff advised the Defendant Owner in writing that the site needed a civil engineering plan to deal with site elevation and water run off, telling the owner that he was "afraid that the area behind 480 will be a pond."

18. Nonetheless, the Defendant Owner did not retain a civil engineer to review the site

elevations or to design a water run off plan until June 29, 2015, after the water run off at the site caused water intrusion in the elevator shaft and first floor of the stair tower.

19. In July of 2015, the Defendant Owner alleged that the water intrusion in the building's exterior walls was the result of the Plaintiff's failure to properly waterproof the exterior walls according to the design specifications.

20. The Defendant Owner claimed this failure was a construction deficiency and that the water intrusion was the result of both this construction deficiency and of the Plaintiff's failure to properly maintain and supervise the site to prevent this damage.

21. The Plaintiff informed Defendant Owner in writing that the building's perimeter walls were installed with the designated weather barrier required by the plans and specifications, which was designed only to shed water and was not a waterproofing material.

22. Defendant Owner's architect confirmed in writing to Plaintiff and Defendant Owner that the building's perimeter walls were lined with the appropriate material as called for in the plans.

23. The grade and site elevations were the responsibility of the Defendant Owner pursuant to the Contract.

24. The Defendant Owner failed to address the grade and site elevations prior to the water intrusion, no civil engineer had been retained by the Defendant Owner to draw plans addressing the site grade or elevation prior to the water intrusion, and no site grade or elevation plans had been given by the Defendant Owner to the Plaintiff to address the potential flooding.

25. The delay caused by the water intrusion and damage to the elevator shaft and first floor of

the stair tower resulting from the Defendant Owner's failure to retain a civil engineer to review the site elevations or design a water run off plan was neither the fault of nor the responsibility of the Plaintiff.

26. Prior to the signing of the contract, the Defendant Owner met with the Plaintiff and Plaintiff's subcontractors to value engineer portions of the job but did not invite the architect to all of the meeting(s).

27. Prior to the signing of the contract, the Defendant Owner met with building officials about the project and did not invite the Plaintiff or the architect to the meeting(s).

28. The Defendant Owner met with AT&T and would not let the Plaintiff attend the meeting(s).

29. The Defendant Owner's architect and electrical engineer were not present the meetings where the Defendant Owner chose less expensive light fixtures for the project, and the Defendant Owner neglected to tell the architect or electrical engineer that she had chosen less expensive light fixtures for many months.

30. Had the Defendant Owner invited the architect and engineer to these meetings or informed them of decisions made therein, several issues that caused delays would have been avoided.

31. On August 12, 2014, the Plaintiff submitted the light fixtures chosen by the Defendant Owner to the electrical engineer for approval.

32. By September 29, 2014, when the electrical engineer rejected the light fixture submittals as not being the original specified fixtures, the Defendant Owner still had not informed the electrical engineer that she had selected different fixtures for the project.

33. The Plaintiff's submittal of the light fixtures chosen by the Defendant Owner was finally approved by the Defendant Owner's electrical engineer on February 16, 2015, six months from its initial submittal date.

34. The lighting submittal delays caused late delivery of the light fixtures, as they could not be ordered until they were approved.

35. The delay caused by the Defendant Owner's failure to inform her architect and engineer of changes she had made to the light fixtures was neither the fault of nor the responsibility of the Plaintiff.

36. The Defendant Owner also had multiple electrical re-designs after the contract was signed, but did not provide them to the Plaintiff.

37. On August 12, 2014, the Plaintiff submitted to the Defendant Owner's electrical engineer electrical gear that met the original Contract's April 22, 2014 electrical drawings and specifications.

38. The Defendant Owner's electrical engineer rejected the submittal because it did not meet the most recent re-design specifications from drawings dated October 6, 2014, which were not part of the original contract.

39. The Defendant Owner did not provide the Plaintiff with updated electrical plans until October 14, 2014, and because of ongoing changes with the elevator requiring the Defendant Owners electrical engineer to continue to modify the necessary gear, the electrical gear submittal was not accepted until May 5, 2015.

40. The Defendant Owner's electrical engineer's insistence that the gear be changed to that

required in the most recent re-design necessitated a change order to the Contract, Change Order

4.

41. The Defendant Owner disputed Change Order 4, which further delayed the electrical gear.

42. The delays in the electrical gear prevented the installation of the elevator.

43. The delays caused by the electrical submittal issues were neither the fault of nor the responsibility of the Plaintiff.

44. Throughout the project, attempts to discuss problems and issues with the Defendant Owner so that the project could continue to move forward were ignored or stymied by Defendant Owner.

45. Many Change Order proposals sent to the Defendant Owner by the Plaintiff were modified by the Defendant Owner and then disputed by the parties, causing delays on the project.

46. The Contract requires the Defendant Owner to issue a Construction Change Directive to the Plaintiff contractor in the event of a dispute over a change order, and the Construction Change Directive allows work to continue on the contract without waiving any rights to dispute time or cost of the change order until the end of the contract.

47. The Plaintiff first requested in writing that the Defendant Owner sign a Construction Change Directive on April 3, 2015, to avoid cessation of work on the project when Change Order 4 was disputed.

48. The April 3, 2015 email to the Defendant Owner cited § 7.3.2 of the Contract, which

states: A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

49. The Defendant Owner refused to issue a Construction Change Directive.

50. The Plaintiff requested the Construction Change Directive in writing, multiple times between April and July of 2015.

51. On May 11, May 14, and July 10 of 2015, the Defendant Owner was again sent the language from § 7.3.2 of the Contract, stating that “A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.”

52. On June 29, 2015, during the continued dispute over the terms of Change Order 4, the Defendant Owner emailed the Plaintiff, saying the Plaintiff was “attempting to use the change order process as a blackmail device which is unacceptable under the contract. . . you continue to terrorize and harass me and frankly I think your behavior is reprehensible and entirely unprofessional.”

53. In response to that email, the Plaintiff replied in writing that far from being unprofessional or attempting to harass the Defendant Owner, the issuance of a Construction Change Directive in the absence of agreement on all terms of a change order was a required and normal part of the AIA contracts.

54. The Plaintiff explained, in writing, more than once, that the word “shall” in § 7.3.2 means “must” and that the Defendant Owner was required by the Contract to issue a Construction Change Directive in the absence of agreement on a Change Order.

55. On June 30, 2015, the Plaintiff notified the Defendant Owner in writing that the

electrician would be demobilized in the absence of a Construction Change Directive by close of business the following day, as the electrician had no further work that could be performed without such authorization.

56. On July 8, 2015, the Plaintiff notified the Defendant Owner by email that the continued failure to issue a Construction Change Directive constituted a breach of the contract.

57. On July 10, 2015, the Defendant Owner demanded that notice from the Plaintiff regarding the alleged breach of the contract or any claims be given pursuant to the notice requirements of the contract and not by email, and therefore there was no notice of breach.

58. The Defendant Owner continued to refuse to issue a Construction Change Directive.

59. The Defendant Owner's failure to issue a Construction Change Directive as required by the Contract caused delays, and these delays resulted in inefficiency in production due to out-of-sequence work, stopping and starting segments while awaiting authorization, erratic staffing and eventual trade stacking.

60. These delays and the resulting inefficiency of production caused by the Defendant Owner's refusal to issue a Construction Change Directive were neither the fault of nor the responsibility of the Plaintiff.

61. The Plaintiff sent Construction Change Directive 1 to the Defendant Owner on July 30, 2015.

62. Despite the clear purpose of the Construction Change Directive as spelled out in the Contract, the Defendant Owner wrote comments on the Construction Change Directive attempting to have the Plaintiff waive all rights in connection with the disputed change order and be responsible for daily damages for the completion of the contract.

63. The Plaintiff did not sign the revised Construction Change Directive, as allowed by the Contract, and continued to perform work under the Directive and Contract, although the Defendant Owner refused to pay in full the pay applications.

64. In addition to the Construction Change Directive, the Contract provided for mediation and arbitration to resolve disputes during the pendency of the project and avoid delay and disruption.

65. Pursuant to the Defendant Owner's request on July 10, 2015, all notice regarding alleged breaches of contract and claims under the contract had to be given in accordance with the notice requirements of the Contract.

66. Section 13.2.3 of the Contract provides: "Written notice shall be deemed to have been duly served if delivered in person to the individual ...or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to the last business address known to the party giving notice."

67. Section 15.3 of the contract provided for mediation of claims, disputes, or other matters in controversy arising out of or relating to the contract as a condition precedent to binding arbitration.

68. On July 15, 2015, the Plaintiff delivered to Defendant Owner and Defendant Owner's architect, in person, a request for mediation under 15.3.1 of the contract.

69. Defendant Owner did not respond to this request.

70. On July 24, 2015, the Plaintiff sent correspondence and the renewed request for mediation by certified mail to the office address provided in the contract, however the Defendant Owner refused to pick it up at the post office.

71. On or about July 24, 2015, the Defendant Owner hired Rick Newcomb, as its project manager, to supervise the construction.

72. The Plaintiff delivered the July 24 letter requesting mediation to Rick Newcomb, the Defendant Owner's project manager, at the job site.

73. The Defendant Owner refused to acknowledge its receipt or respond.

74. On July 31, 2015, the Plaintiff sent an additional letter again requesting mediation, along with the previous correspondence and documents, by certified mail to the office address provided in the contract, however the Defendant Owner refused to pick it up at the post office.

75. The July 31 letter and its attachments were also emailed to the Defendant Owner.

76. The July 31 letter and its attachments were also delivered personally to Rick Newcomb, the Defendant Owner's project manager on the jobsite.

77. The Defendant Owner refused to acknowledge its receipt or respond.

78. On September 3, 2015, the Plaintiff sent a second request for mediation, along with previous correspondence and documents to the Defendant Owner by Federal Express to the office at the address for notice provided in the contract, however the office was closed and there was no one there during the three times Federal Express attempted to deliver it.

79. The September 3 correspondence and attachments were personally delivered to the Defendant Owner's project manager, Rick Newcomb.

80. The Defendant Owner refused to acknowledge its receipt or respond.

81. On September 28, 2015, the Plaintiff attempted, through his job supervisor, to deliver the

second request for mediation and supporting documents to the Defendant Owner in person by handing it to her when she came to the job site, but Defendant Owner refused to accept it, put her hands behind her, and left saying it needed to be sent to her office.

82. On December 1, 2015, Plaintiff had a process server in Ohio personally deliver the Plaintiff's third request for mediation to the office address provided in the contract.

83. Although this third mediation request was also sent by email and personally delivered to the Defendant Owner's project manager, Rick Newcomb, the Defendant Owner refused to acknowledge receipt or respond.

84. The Defendant Owner refused to participate in the contractually mandated dispute resolution process.

85. The Defendant Owner required the Plaintiff to provide documentation of each receipt, bill for material and the timesheet for each worker throughout the job, even though the Contract was bid as a fixed price contract rather than a time and materials contract.

86. The Defendant Owner refused to process any application for payment from the Plaintiff until all documentation was received, even though the Contract was a fixed price contract rather than a time and materials contract.

87. The fixed price Contract dictates that Applications for Payment are to be based on a percentage of completion for each line item.

88. The Plaintiff complied with this request to provide all documentation of each receipt, bill for material and the timesheet for each worker, although it placed an onerous administrative burden on the Plaintiff that was not and should not have been contemplated as part of the fixed price Contract.

89. None of the Plaintiff's subcontractors complained to the Defendant Owner that that they had not been paid by the Plaintiff.

90. None of the Plaintiff's subcontractors filed a lien on the Defendant Owner's property to insure payment based on work done as subcontractor to the Plaintiff.

91. All of Plaintiff's subcontractors were paid by the Plaintiff for amounts due under their subcontract with the Plaintiff, even though Defendant Owner did not pay the Plaintiff the full amounts of pay applications under the main Contract.

92. All of the job materials for the subject property were paid for by the Plaintiff even though the contract required their installation on the property prior to reimbursement from the Defendant Owner, because the materials needed to be ready to install at the appropriate time.

93. Although all of the subcontractors had been paid, Defendant Owner attempted to pay portions of the Plaintiff's pay applications by issuing joint checks to Plaintiff and subcontractors.

94. Plaintiff negotiated those joint checks that were possible due to the location and availability of the subcontractor, however some of the subcontractors who had been previously paid by the Plaintiff were not local and it was impossible to appear with them in person as requested by the bank to negotiate the checks.

95. These checks were then voided and returned to Defendant Owner along with an explanation, citing that the subcontractor and materials had been paid previously and that the amount on the application was reimbursement to the Plaintiff.

96. On or about September 17, 2015, the Plaintiff's materials supplier, Miller Clapperton, informed the Defendant Owner in writing that the balance of their subcontract was \$3,674.20 for retainage.

97. On that same date, Miller Clapperton provided the Defendant Owner with lien waivers for the total amount of their subcontract, less the \$3,674.20 retainage, and shortly thereafter, provided Defendant Owner with a lien waiver for the retainage.

98. Miller Clapperton is a Georgia company, with offices in Austell, Georgia, many hours from Charleston.

99. After being advised in writing by the subcontractor of the balance due on the subcontract, and receiving lien waivers from the subcontractor for all amounts due on the subcontract except the \$3,674.20 retainage, on or about September 21, 2015, the Defendant Owner issued a joint check to Miller Clapperton and the Plaintiff in the amount of \$16,309.95.

100. On or about September 21, 2015, the Defendant Owner issued a second joint check to Miller Clapperton and the Plaintiff in the amount of \$1,016.50.

101. The amounts of these two joint checks exceeded the retainage due to the subcontractor by \$13,652.50.

102. The Defendant Owner knew the subcontractor had already been paid everything but retainage and that these funds were due to the Plaintiff solely.

103. The Plaintiff voided these joint checks and returned them to the Defendant Owner.

104. On or about November 16, 2015, the Plaintiff informed the Defendant Owner in writing that the Plaintiff itself had performed all the work reflected in line 22 of the Application for Payment 15, installation of the steel lintels and closure angle plates.

105. After being informed that the Plaintiff, not the subcontractor Accu Welding, had installed the steel lintels and closure angle plates, on or about November 30, 2015, the Defendant Owner issued a joint check to Accu Welding and the Plaintiff in the amount of \$270.39.

106. The Defendant Owner knew at the time of the issuance of the check that the subcontractor Accu Welding was not due these funds and that they were due to the Plaintiff solely.

107. Plaintiff voided the joint check and returned it to the Defendant Owner however the Defendant Owner refused to re-issue the check solely to the Plaintiff.

108. More joint checks followed, including one to subcontractor Pleasant Places and the Plaintiff, for which the Defendant Owner had already received a lien waiver but wrote a joint check for more than was owed to the subcontractor.

109. On April 21, 2015, the Plaintiff purchased materials for the wire trellis system for the Defendant Owner's project from SECO South, an online materials supplier, using a company VISA card, and forwarded the back-up documentation of this purchase to the Defendant Owner in May of 2015.

110. Seven months later, on December 30, 2015, the Defendant Owner wrote a joint check to SECO South and Plaintiff knowing that these materials had been purchased by the Plaintiff and the funds were due solely to the Plaintiff.

111. This joint check was voided and returned to the Defendant Owner, but Defendant Owner refused to re-issue the check solely to the Plaintiff.

112. The Defendant owner wrote two joint checks to Plaintiff's subcontractor, Allphase Electrical on or about January 9, 2016, which exceeded the amount due to Allphase under its subcontract with the Plaintiff, including retainage, by \$12,232.31.

113. The remainder of the funds paid to Allphase by the Defendant Owner were due to Plaintiff as reimbursement for amounts Plaintiff had already paid to Allphase for materials.

114. There was never a time when the Defendant Owner issued a joint check that was returned by the Plaintiff because the amount was insufficient to cover the amount due to a subcontractor under its subcontract with the Plaintiff.

115. The Plaintiff attempted to deal with the Defendant Owner's improperly issued joint checks for significantly more than the subcontractor was due, however this placed an undue administrative burden on the Plaintiff in a fixed price Contract.

116. Several times, the Plaintiff returned a voided joint check to the Defendant Owner with an explanation, and whether the Defendant Owner had received written confirmation of the amount due from the subcontractor, had received lien waivers, or both, the Defendant Owner refused to re-issue the check solely to the Plaintiff.

117. The few times prior to November of 2015 when the Plaintiff did re-issue a voided joint check solely to the Plaintiff, payment was delayed by several weeks.

118. The Defendant Owner requested in writing that the Plaintiff provide the amounts each subcontractor was due.

119. The Defendant Owner made clear that it was only paying the subcontractors and not any amounts billed or claimed due to the Plaintiff.

120. Application for Payment 15, for work done through October 30, 2015, was sent to the Defendant Owner on November 9, 2015.

121. The Defendant Owner did not pay any amounts due solely to the Plaintiff from this Application for Payment.

122. The Defendant Owner did not pay \$9,888.13 of Application for Payment 15 by December 31, 2015.

123. The \$9,888.13 owing for Application for Payment 15 as of the end of December does not include the joint check made out to the Plaintiff and the trellis materials supplier, SECO South, for which the Defendant Owner had received documentation of the credit card charge in May and knew was for reimbursement to the Plaintiff for materials purchased for the Defendant Owner's project.

124. The \$9,888.13 owing for Application for Payment 15 as of the end of December does not include the \$2,608.09 due and owing from previous Applications for Payment, for which the Plaintiff filed a Mechanic's Lien on December 17, 2015.

125. The Defendant Owner was sent Application for Payment 16, for work done through November 30, 2015, on December 9, 2015.

126. The Defendant Owner did not pay any amounts due on Application for Payment 16, whether by joint check or otherwise.

127. The amounts due to the Plaintiff for the joint checks that the Defendant Owner refused to re-issue solely to the Plaintiff were only a small percentage of what was due and owing to the Plaintiff under the Contract; the remaining amounts were simply not paid at all by the Defendant Owner.

128. On December 30, 2015, the Plaintiff mailed notice to the Defendant Owner of its intent to demobilize in 7 days pursuant to the Contract provisions if it did not receive payment for amounts due under the applications for payment.

129. On January 2, 2016, the Plaintiff emailed the December 30 letter to the Defendant Owner along with the proof of delivery of the letter to Defendant Owner's office address.

130. The Defendant Owner did not acknowledge or respond to this correspondence.

131. The Plaintiff continued to perform work pursuant to the Contract through January 12, 2016, despite the Defendant Owner's continued failure to pay in full all applications for payment.

132. The Plaintiff notified the Defendant Owner by email on January 12, 2016, that they had demobilized and removed all equipment from the jobsite in accordance with the Contract provisions as set forth in the December 30 letter.

133. The Defendant Owner responded by claiming the Plaintiff had breached the contract in a variety of ways and stating that if the Plaintiff did not resume work within 7 days, the Defendant Owner was terminating the contract for cause.

134. The Plaintiff did not resume work under the contract.

135. The Plaintiff duly and timely filed a Notice and Certificate of Mechanics Lien with the Office of the RMC for the County of Charleston at Book 0524, Page 038, on December 17, 2015, as of which date, the amount due and unpaid by Defendant under the contract was Two Thousand Six Hundred Eight and 09/100 Dollars (\$2,608.09), plus interest as provided under the Contract, plus attorneys' fees, a copy of which is attached hereto as Exhibit B (hereafter "the first Lien").

136. The Plaintiff duly and timely filed a Notice and Certificate of Mechanics Lien with the Office of the RMC for the County of Charleston at Book 0542, Page 405, on March 22, 2016, as of which date, the amount due and unpaid by Defendant under the contract, not including the amount for the first Lien set forth above, was Twenty Nine Thousand Five Hundred Twenty One and 28/100 (29,521.28), plus interest as provided under the Contract, plus attorneys' fees, a copy of which is attached hereto as Exhibit C (hereafter "the second Lien").

137. The Plaintiff duly and timely filed a Notice and Certificate of Mechanics Lien with the Office of the RMC for the County of Charleston at Book 0546, Page 296, on April 11, 2016, as of which date, the amount due and unpaid by Defendant under the contract, not including the amount of the first Lien and second Lien set forth above, was Fifty Two Thousand Eight Hundred Sixty Eight and 78/100 Dollars (\$52,868.78), plus interest as provided under the Contract, plus attorneys' fees, a copy of which is attached hereto as Exhibit D (hereafter "the third Lien").

138. The Defendant Owner has failed to pay in full the amount of the first, second and third Liens.

AS A FIRST CAUSE OF ACTION
Foreclosure of Mechanics Liens

139. Plaintiff reasserts and re-alleges all facts and claims of the preceding paragraphs of this Complaint as if set forth verbatim herein.

140. Plaintiff has commenced this action within six months of the last date it provided labor and materials on the Real Property.

141. Plaintiff is entitled to an Order of Foreclosure of its first, second and third Mechanic's Liens on the Real Property, requiring that the Real Property be sold and that the proceeds of sale, after deducting all lawful charges and expenses, be paid to Plaintiff to be applied to the amount owed pursuant to the Lien, including interest, plus attorneys' fees and the costs of this action.

AS A SECOND CAUSE OF ACTION
(Breach of Contract)

142. Plaintiff reasserts and re-alleges all facts and claims of the preceding paragraphs of

this Complaint as if set forth verbatim herein.

143. The Defendant Owner willfully breached the contract with the Plaintiff in multiple ways, including but not limited to the following:

- a. Failing to pay for labor and materials furnished and billed under the Contract between Defendant Owner and the Plaintiff;
- b. Improperly issuing joint checks when Defendant Owner was informed by the subcontractor of the amount due and was provided lien waivers;
- c. Improperly issuing joint checks when Defendant Owner was provided lien waivers;
- d. Improperly issuing joint checks to Plaintiff and materials suppliers when Defendant Owner was provided proof of payment for materials;
- e. Refusing to re-issue improperly issued joint checks solely to the Plaintiff;
- f. Providing an unattended address for service of notice under the contract;
- g. Refusing to accept notice under the contract;
- h. Refusing to participate in contractually mandated alternative dispute resolution;
- i. Refusing to issue Construction Change Directives to keep the job moving forward in the event of a dispute over a Change Order as required by the Contract, despite multiple requests by the Plaintiff;
- j. Wrongfully terminating the Contract for cause claiming Plaintiff was in breach.

144. As a result of the breach of contract by Defendant Owner, the Plaintiff has been damaged in the amounts owed; plus interest as provided under the contract; or in the event of willful breach, interest as provided by statute, contract damages for costs, overhead and profit for

the unfinished work, increased project administration and project management costs, and increased reimbursable project costs caused by delays; attorneys' fees; and the costs of this action, for which amounts Defendant is responsible.

AS A THIRD CAUSE OF ACTION
(Quasi-Contract/Unjust Enrichment)

145. Plaintiff reasserts and re-alleges all facts and claims of the preceding paragraphs of this Complaint as if set forth verbatim herein.

146. The Defendant Owner and Bank have had the use and benefit of the materials and labor furnished by the Plaintiff and are unjustly retaining the benefit of the materials and labor without paying Plaintiff in full for them.

147. The Defendant Owner and Bank are liable to Plaintiff for the reasonable value of the labor and materials for which it has not paid in full, plus prejudgment interest from the date such labor and materials were supplied.

WHEREFORE, the Plaintiff prays for judgment as follows:

A) On its First Cause of Action, Plaintiff demands that Plaintiff's Mechanic's Lien be foreclosed, that due notice of said foreclosure be given all proper parties, that the priorities of the Plaintiff and the Bank be determined, that the Real Estate be sold and that the proceeds used to satisfy the amounts due Plaintiff on its Liens and for the costs incurred in prosecuting this action, including attorneys' fees, with any deficiency remaining a debt of the Defendant Owner to the Plaintiff.

B) On its Second Cause of Action, Plaintiff demands judgment against Defendant Owner for Breach of Contract in the amount of all unpaid balance, plus prejudgment interest, costs and attorneys' fees; and in the event of willful breach, interest as provided by statute, contract

damages for costs, overhead and profit for the unfinished work, increased project administration and project management costs, and increased reimbursable project costs caused by delays, attorneys' fees, and the costs of this action.

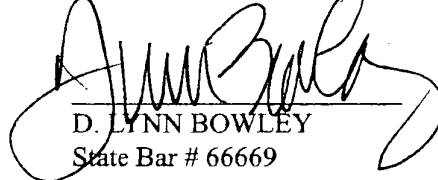
C) On its Third Cause of Action, Plaintiff prays for judgment against Defendant Bank and Defendant Owner, jointly and severally, in the amount of all labor and materials supplied by Plaintiff but not paid for by Defendants, plus prejudgment interest from the date such labor and materials were provided, and for the costs herein expended.

D) Plus such other and further relief that this Court deems just, equitable, and proper.

Charleston, S. C.

07.06, 2016

TAYLOR & BOWLEY LLC



D. LYNN BOWLEY

State Bar # 66669

P.O. Box 1059

Charleston, SC 29402

(843) 723-4020; fax (843) 723-4021

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT OF MYLES I. GLICK, AIA

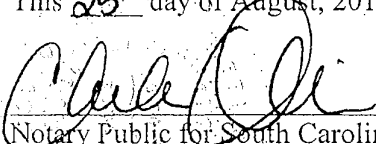
Personally appeared before me Myles I. Glick, AIA LEED AP, who first being duly sworn, deposes and states as follows:

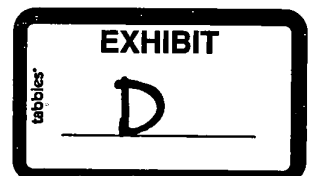
1. I am a licensed architect in the State of South Carolina.
2. I am the President of Glick/Boehm & Associates, Inc.
3. Glick/Boehm & Associates, Inc. has been named a Defendant in a lawsuit filed by 480 King Street, LLC bearing the case number 2017-CP-10-3267.
4. Upon receiving a copy of the Complaint I spoke to Mr. Brent Halversen, the attorney for Plaintiff, the week of August 14, 2017. In response to my question of why Glick/Boehm was being sued, Mr. Halversen responded that he tried to talk Ms. Mary Ann Kantor – the owner of 480 King Street, LLC – out of suing Glick/Boehm & Associates, Inc. for over two months. Unfortunately, he was not successful and Glick/Boehm & Associates, Inc. was sued right before the statute deadline.
5. As of the date of this Affidavit, I have not been provided a copy of an expert affidavit detailing the professional allegations alleged against Glick/Boehm.

FURTHER AFFIANT SAYETH NOT.

By: 
Myles I. Glick, AIA

SWORN to and subscribed before me
This 25th day of August, 2017.


Notary Public for South Carolina
My Commission Expires: June 4, 2025



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-10-3267

480 KING STREET, LLC

Plaintiff,

vs.

GLICK/BOEHM & ASSOCIATES, INC.

Defendant.

MOTION FOR CONSOLIDATION

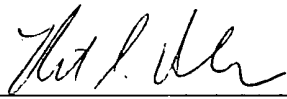
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2018 MAY -2 PM 2:32
NINTH JUDICIAL CIRCUIT

Pursuant to Rule 42(a) of the South Carolina Rules of Civil Procedure, Plaintiff, 480 King Street, LLC (hereinafter, "480 King") moves for an order consolidating this matter with *Charles Blanchard Construction Corp., Inc. v. 480 King Street, LLC*, Case Number 2016-CP-10-3468. The grounds for the motion is that both cases involve common questions of fact, liability and damages regarding the construction of a stair tower. Pursuant to Rule 11, the undersigned counsel certifies communication with opposing counsel however no consent has been made as of today's date precipitating the filing of this motion.

WHEREFORE, 480 King respectfully requests that the Court order consolidate this case with Case Number 2016-CP-10-3468 and issue any and all other relief as deemed just and appropriate.

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: _____

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Attorney for the Plaintiff

5/2, 2018.
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL DISTRICT
COUNTY OF CHARLESTON)	
	)	CASE NO.: 2016-CP-10-03468
CHARLES BLANCHARD CONSTRUCTION)	
CORP., INC.,)	
)	
Plaintiff,)	
	)	GLICK/BOEHM & ASSOCIATES, INC.’S
vs.	)	REQUEST FOR LEAVE TO FILE MOTION
	)	TO DISMISS AND MOTION FOR
480 KING STREET, LLC	)	SANCTIONS
)	
Defendant.)	
_____)	
480 KING STREET, LLC,)	
)	
Plaintiff,)	
)	
vs.)	
)	
GLICK/BOEHM & ASSOCIATES, INC.)	
)	
Defendant.)	
_____)	

COMES NOW Defendant Glick/Boehm & Associates, Inc. (“Glick/Boehm”), by and through undersigned counsel, and hereby respectfully submits this Request for Leave to File a Motion to Dismiss the Complaint of Plaintiff 480 King Street, LLC (“480 King”) and Motion for Sanctions against 480 King. The grounds for this Request are as follows:

1. Glick/Boehm is an Architect and pursuant to S.C. Code Ann. § 15-36-100(B), the plaintiff was required to file a timely affidavit of a qualified expert specifying at least one negligent act or omission committed by this defendant (“Affidavit”).
2. The record in this case reflects that:
 - a. Plaintiff’s Complaint was filed on June 27, 2017 without a supporting Affidavit;

- b. On August 10, 2017 Plaintiff filed a Motion for Extension of Time, requesting additional time to file the required Affidavit;
- c. By reason of Plaintiff's failure to file the required Affidavit, Glick/Boehm filed a Motion to Dismiss on August 29, 2017;
- d. On November 17, 2017, the Hon. J.C. Nicholson, Jr, conducted a hearing on these cross motions, resulting in an Order signed on November 27, 2017 granting Plaintiff's Motion for Extension of Time and denying Defendant's Motion to Dismiss;
- e. In his Order, Judge Nicholson allowed Plaintiff to "file the September 7, 2017 affidavit of Louis Hackney, P.E., REWC, RRC, CDT, LEED AP within ten days of the date this Order" and further provided that "Upon the filing of the affidavit by this date, the Plaintiff will have been deemed to be in compliance with the requirements of S.C. Code § 15-36-100(B) (and) Defendant will then have 30 days from the date of the filing of the Affidavit to file any motion contesting the sufficiency of the Affidavit."
- f. Plaintiff filed the Hackney Affidavit on November 20, 2017, opining that "it is my professional opinion, to a reasonable degree of professional certainty, that the Architect deviated from the standard of care in failing to properly complete contract administration services as a part of its contractual duties so as to prevent the aforementioned improper and code violating construction methods to occur and this deviation for the standard of care caused damage to (Plaintiff)....." (emphasis added)

3. Glick/Boehm questioned then, as it will continue to question going forward, whether an Engineer (and particularly this Engineer) is qualified to express an opinion of this type concerning the standard of care of an Architect. The opinion given by Mr. Hackney in his Affidavit, however, appeared on its face to express such an opinion and, as a result, Glick/Boehm did not then contest its “sufficiency” by filing any further Motion to Dismiss.
4. Glick/Boehm (and the co-defendant) recently concluded Mr. Hackney’s deposition and the testimony he gave concerning his opinions as to the standard of care of an “Architect” give rise to this request that Glick/Boehm be granted leave to now file a Motion to Dismiss contesting the sufficiency of that Affidavit. The final version of the transcript has not been prepared, but the “Rough Draft” of the transcript of the portion of the deposition taken on August 27, 2020 accurately reflects, among other things, the following testimony:

Q You do not intend in this case to offer a professional opinion about the standard of care of an architect, do you?

A No.

Q That’s something that would be beyond your qualifications?

A I don’t believe so, but I have never done it in the past. I’ve looked at enough buildings, I have looked at enough plans, and seen enough issues to feel like I could provide an opinion about that but I have -- to this point, I have not provided one.

Q And you don’t intend to start in this case?

A No, not at this time.

(Louis A. Hackney, P.E. Deposition Vol. II, page 208, lines 15-25, page-209, lines 1-2; emphasis added)

5. The “Rough Draft” of the conclusion of Mr. Hackney’s deposition (September 4, 2020) reflects, among other things, these follow up questions on that line of testimony:

Q Do you recall telling me when we were together last that you were not going to offer an opinion about the standard of care of the architect in this case?

A Yes.

Q Does that remain your intention?

A Yes. I feel comfortable talking about individual details if questioned about them, and I feel comfortable talking about construction phase services, but not specifically about the architect’s standard of care.

Q In relation to either of those things, correct?

A Correct. I’ll talk about -- I feel comfortable as a design professional talking about details specifically and/or lack of details as a design professional but not specifically to the standard of care of an architect.

Q And, in fact, without addressing the standard of care of the architect in this case, right?

A Correct.

(Louis A. Hackney, P.E. Deposition Vol. III, page 278, lines 18-25, page 279, lines 1-13; emphasis added))

Q When he asked you to sign the affidavit, did you tell him that you would not offer an opinion about the standard of care of an architect in the case?

A I don’t recall the specific conversations about standard of care at that point in time.

Q By signing the affidavit, though, you did not intend to offer an opinion about the standard of care of an architect, did you?

A No. The affidavit says, and I talked about it before, that pertaining to the construction phase services and construction administration services that were provided.

Q But when you talked about those things in your affidavit, you did not intend to state an opinion about the standard of care of an architect performing those services, did you?

A A better word there than a professional performing -- a design professional performing the role of a -- during construction phase services.

Q You are an engineer?

A I am.

Q Mr. Glick is an architect?

A Correct.

Q Glick/Boehm are architects and not engineers?

A Correct.

Q Getting back to question then is: You did not intend this affidavit to contradict your intention against offering an opinion of the standard of care related to the architect, did you?

A My intent -- again, I know we're parsing words a little bit. My intent is that I feel comfortable talking about the standard of care that a professional would provide in either giving or completing construction administration services, whether that be an architect or an engineer. Those services are similar across the board of professionals, and I feel confident and comfortable in talking about them.

Q So your intention is to state an opinion of the standard of care of a professional but not an architect, correct?

A That's probably a better way to say it. Yes.

(Louis A. Hackney, P.E. Deposition Vol. III, page 282, line 25, page 283, lines 1-25, page 284, lines 1-16; emphasis added)

6. “Architects” and “Engineers” are separately trained, licensed and regulated professionals under the laws of South Carolina (and everywhere else) and while both of those professions might be generally/collectively/casually referred to as “Design Professionals”, there are no educational degrees, licensing or regulation of that generically described group of people. It is *now* apparent from Mr. Hackney’s deposition testimony that he did not express, nor did he intend to express, an opinion as to the standard of care of an *Architect*, as his Affidavit would indicate he did and as the law would require him to do. Given these recent revelations, Glick/Boehm would now like to formally contest the sufficiency of the affidavit given in support of Plaintiff’s Complaint, but in deference to the prior Order of Judge Nicholson, counsel for this Defendant believes it appropriate to request leave of this Court to do so.

7. Given the fact that the Affidavit expressing a materially misstated opinion has caused Glick/Boehm to participate in this lawsuit at great cost in many ways, and the Plaintiff's refusal to mitigate those costs by now voluntarily dismissing this action against Glick/Boehm, this Defendant feels it would be appropriate to include a request for sanctions in its Motion to Dismiss and similarly requests leave of Court to do so.
8. Counsel for Glick/Boehm will raise these issues and make this request at today's Status Conference and thought that this historical background would be of benefit in connection with the discussion of these requests.

Wherefore, Glick/Boehm respectfully asks the Court to consider this Request for Leave to File its Motion to Dismiss and For Sanctions at the Status Conference and to either provide such leave or give other direction as to how the request should be pursued.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

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By: s/ Kent T. Stair
KENT T. STAIR
State Bar No.: 14029

PAUL E. SPERRY
State Bar No.: 68441

C. ROBIN SCHMIDT
State Bar No.: 78911

Counsel for Glick/Boehm & Associates, Inc.

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL DISTRICT
COUNTY OF CHARLESTON)	
	)	CASE NO.: 2016-CP-10-03468
CHARLES BLANCHARD CONSTRUCTION)	
CORP., INC.,)	
)	
Plaintiff,)	
	)	GLICK/BOEHM & ASSOCIATES, INC.’S
vs.	)	MOTION TO DISMISS AND MOTION FOR
	)	SANCTIONS
480 KING STREET, LLC)	
)	
Defendant.)	
<hr/>		
480 KING STREET, LLC,)	
)	
Plaintiff,)	
)	
vs.)	
)	
GLICK/BOEHM & ASSOCIATES, INC.)	
)	
Defendant.)	
<hr/>		

COMES NOW Defendant Glick/Boehm & Associates, Inc. (“Glick/Boehm”), by and through undersigned counsel, and hereby respectfully submits this Motion to Dismiss the Complaint of Plaintiff 480 King Street, LLC (“480 King” or “Plaintiff”), pursuant to Rule 12(b)(6), SCRPC and Motion for Sanctions against 480 King pursuant to Rule 11, SCRPC. The grounds for these Motions are as follows:

- Glick/Boehm is an Architect named as a defendant in the above-captioned matter. Plaintiff’s claims against Glick/Boehm in this action arise solely out of Glick/Boehm’s performance of its professional services as an architect, and pursuant to S.C. Code Ann. §15-36-100(B), Plaintiff was required to file a timely affidavit of a qualified expert specifying at least one negligent act or omission committed by Glick/Boehm to support its Complaint. If a plaintiff fails to file an

affidavit sufficient to meet the requirements of this statute, the complaint “is subject to dismissal for failure to state a claim.” §15-36-100(E).

2. The record in this case reflects that:
 - a. Plaintiff’s Complaint was filed on June 27, 2017 without a supporting Affidavit;
 - b. On August 10, 2017 Plaintiff filed a Motion for Extension of Time, requesting additional time to file the required Affidavit;
 - c. By reason of Plaintiff’s failure to file the required Affidavit, Glick/Boehm filed a Motion to Dismiss on August 29, 2017;
 - d. On November 17, 2017, the Hon. J.C. Nicholson, Jr, conducted a hearing on these cross motions, resulting in an Order signed on November 27, 2017 granting Plaintiff’s Motion for Extension of Time and denying Defendant’s Motion to Dismiss (Nov. 17, 2017 Order attached as Exhibit 1);
 - e. In his Order, Judge Nicholson allowed Plaintiff to “file the September 7, 2017 Affidavit of Louis Hackney, P.E., REWC, RRC, CDT, LEED AP within ten days of the date this Order” and further provided that “[u]pon the filing of the Affidavit by this date, the Plaintiff will have been deemed to be in compliance with the requirements of S.C. Code §15-36-100(B). Defendant will then have 30 days from the date of the filing of the Affidavit to file any motion contesting the sufficiency of the Affidavit.” (See Exhibit 1, page 3);

- f. Plaintiff filed the Hackney Affidavit on November 20, 2017, opining that “it is my professional opinion, to a reasonable degree of professional certainty, that the Architect deviated from the standard of care in failing to properly complete contract administration services as a part of its contractual duties so as to prevent the aforementioned improper and code violating construction methods to occur and this deviation for the standard of care caused damage to (Plaintiff).....” (*See Hackney Affidavit attached as Exhibit 2*) (emphasis added).
3. Glick/Boehm questioned then whether an Engineer (and particularly this Engineer, Mr. Hackney) is qualified to express an opinion of this type concerning the standard of care of an Architect. The opinion given by Mr. Hackney in his Affidavit, however, appeared on its face to express such an opinion. As a result, Glick/Boehm did not then contest its “sufficiency” by filing any further Motion to Dismiss.
4. Since that time, Glick/Boehm (and the co-defendant) concluded Mr. Hackney’s deposition, taken over the course of three days, and the testimony he gave concerning his opinions as to the standard of care of an “Architect” give rise to this Motion to Dismiss.¹ Specifically, Glick/Boehm contests the sufficiency of the Affidavit on the basis that Mr. Hackney – as set forth in his own testimony – is not qualified to provide an opinion as to the standard of care of an architect. Without the support of a timely affidavit of a *qualified* expert, Plaintiff’s Complaint against Glick/Boehm fails as a matter of law.

¹ Hackney Depo. Vol. I, taken January 28, 2019; Hackney Depo. Vol. II, taken August 27, 2020; and Hackney Depo. Vol. III, taken September 4, 2020.

5. In support of Glick/Boehm's Motion to Dismiss, the transcripts of Mr. Hackney's deposition testimony reflect, among other things, the following:

Q You do not intend in this case to offer a professional opinion about the standard of care of an architect, do you?

A No.

Q That's something that would be beyond your qualifications?

A I don't believe so, but I have never done it in the past. I've looked at enough buildings, I have looked at enough plans, and seen enough issues to feel like I could provide an opinion about that but I have -- to this point, I have not provided one.

Q And you don't intend to start in this case?

A No, not at this time.

(See Exhibit 3, Louis A. Hackney, P.E. Deposition Vol. II, page 208, lines 15-25, page-209, lines 1-2; emphasis added)

6. The final transcript of the conclusion of Mr. Hackney's deposition (taken on September 4, 2020) reflects, among other things, these questions in follow-up to that line of testimony:

Q Do you recall telling me when we were together last that you were not going to offer an opinion about the standard of care of the architect in this case?

A Yes.

Q Does that remain your intention?

A Yes. I feel comfortable talking about individual details if questioned about them, and I feel comfortable talking about construction phase services, but not specifically about the architect's standard of care.

Q In relation to either of those things, correct?

A Correct. I'll talk about -- I feel comfortable as a design professional talking about details specifically and/or lack of details as a design professional but not specifically to the standard of care of an architect.

Q And, in fact, without addressing the standard of care of the architect in this case, right?

A Correct.

(See Exhibit 4, Louis A. Hackney, PE Deposition Vol. III, page 278, lines 17-25, page 279, lines 1-12; emphasis added)

Q When he asked you to sign the Affidavit, did you tell him that you would not offer an opinion about the standard of care of an architect in the case?

A I don't recall the specific conversations about standard of care at that point in time.

Q By signing the Affidavit, though, you did not intend to offer an opinion about the standard of care of an architect, did you?

A No. The Affidavit says, and I talked about it before, that pertaining to the construction phase services and construction administration services that were provided.

Q But when you talked about those things in your Affidavit, you did not intend to state an opinion about the standard of care of an architect performing those services, did you?

A A better word there than a professional performing -- a design professional performing the role of a -- during construction phase services.

Q You are an engineer?

A I am.

Q Mr. Glick is an architect?

A Correct.

Q Glick/Boehm are architects and not engineers?

A Correct.

Q Getting back to question then is: You did not intend this Affidavit to contradict your intention against offering an opinion of the standard of care related to the architect, did you?

A My intent -- again, I know we're parsing words a little bit. My intent is that I feel comfortable talking about the standard of care that a professional would provide in either giving or completing construction administration services, whether that be an architect or an engineer. Those services are similar across the board of professionals, and I feel confident and comfortable in talking about them.

Q So your intention is to state an opinion of the standard of care of a professional but not an architect, correct?

A That's probably a better way to say it. Yes.

(See Exhibit 5, Louis A. Hackney, PE Deposition Vol. III, page 282, lines 22-25, page 283, lines 1-25, page 284, lines 1-13; emphasis added)

7. "Architects" and "Engineers" are separately trained, licensed and regulated professionals under the laws of South Carolina (and everywhere else). While both

of those professions might be generally or casually referred to as “design professionals,” there are no educational degrees, licensing or regulation of that generically described group of people. It is *now* apparent from Mr. Hackney’s deposition testimony that he did not express, nor did he intend to express, an opinion as to the standard of care of an *Architect*, as his Affidavit would indicate he did and as the law would require him to do. Given these revelations, Glick/Boehm now formally contests the sufficiency of the Affidavit given in support of Plaintiff’s Complaint and presents this Motion to Dismiss.

8. Counsel for Glick/Boehm was going to seek Leave of Court to file this Motion at the most recent Status Conference, but consent to do so was given by Plaintiff’s counsel prior to the hearing.
9. Further, given the fact that the Affidavit expressing a materially misstated opinion has caused Glick/Boehm to participate in this lawsuit at great cost in many ways, and the Plaintiff’s refusal to mitigate those costs by now voluntarily dismissing this action against Glick/Boehm, this Defendant now moves for an award of sanctions against Plaintiff.
10. Pursuant to Rule 11, SCRCF, the filing of a pleading signed by an attorney or party “constitutes a certificate by him that . . . to the best of his knowledge, information and belief there is good ground to support it.” Id. “If a pleading . . . is in violation of this Rule, the court . . . may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, . . . including a reasonable attorney’s fee.” Id.

11. Following the conclusion of Mr. Hackney's deposition testimony, it is clear that Mr. Hackney does not intend to testify as to the standard of care applicable to Glick/Boehm as the architect of record in this case and moreover that he cannot testify to that standard of care. While there may have been some question as to the sufficiency of the Affidavit prior to Mr. Hackney's testimony, none now remains. It is now undisputed that the Affidavit does not contain the opinions of an expert qualified to testify as to the standard of care of an architect; therefore, the Affidavit filed in support of the Complaint against Glick/Boehm is on its face insufficient. Thus, Plaintiff's Complaint against Glick/Boehm does not meet the threshold requirements of SC Code §15-36-100 and must be dismissed as a matter of law.
12. Further, following the completion of Mr. Hackney's deposition testimony, counsel for Glick/Boehm conferred with Plaintiff's counsel regarding the deficiencies of the Affidavit and to request that Plaintiff withdraw its claims against Glick/Boehm. Plaintiff has refused to do so. Therefore, Glick/Boehm moves for sanctions against Plaintiff, including but not limited to the costs and attorneys' fees incurred in defending this action.

Wherefore, Glick/Boehm respectfully asks the Court to grant its Motion to Dismiss and Motion for Sanctions and for any further relief this Court may find just and proper. This Motion may be further supported by applicable case law, statutory law, memoranda and arguments of counsel.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

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Charleston, South Carolina 29401
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kstair@cskl.law
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By: s/ Kent T. Stair
KENT T. STAIR
State Bar No.: 14029

PAUL E. SPERRY
State Bar No.: 68441

C. ROBIN SCHMIDT
State Bar No.: 78911

Counsel for Glick/Boehm & Associates, Inc.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2017-CP-10-3267
480 KING STREET, LLC)	
)	
)	
Plaintiff,)	
)	
vs.)	
)	
)	
GLICK/BOEHM & ASSOCIATES, INC.)	
)	
)	
Defendant.)	

ORDER

FILED
 2017 DEC -7 AM 9:00
 JULIE J. HARRIS PRONG
 CLERK OF COURT

THIS CAUSE comes before the Court on Plaintiff 480 King Street, LLC’s Motion for Extension of Time filed with this Court on August 10, 2017, and Defendant’s Motion to Dismiss filed on August 29, 2017. The Court heard the arguments of counsel regarding the motions on November 17, 2017. Brent Halversen, Esq. appeared on behalf of the Plaintiff 480 King Street, LLC, and Kent Stair, Esq. appeared on behalf of the Defendant, Glick/Boehm & Associates, Inc.

Plaintiff filed its Complaint in the matter on June 27, 2017. One of the causes of action was for professional negligence against the Defendant. Pursuant to S.C. Code § 15-36-100(B), the Plaintiff is required to file the affidavit of an expert witness which must specify at least one negligent act or omission. Plaintiff alleged in its Complaint that it could not prepare an affidavit of an expert because of time constraints. Forty-five days after filing the Complaint, the Plaintiff filed a motion to extend the time period for filing the affidavit with this Court. South Carolina law allows for an affidavit to be filed within 45 days after the Complaint is filed, or, the Court may extend this period upon motion after a showing of good cause.

The statute states:

The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires.

S.C. Code § 15-36-100(C)(1).

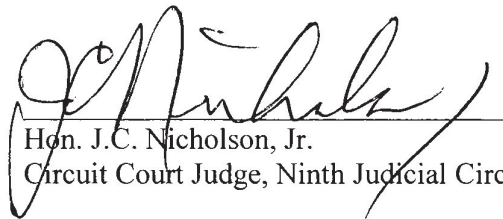
Plaintiff filed a motion to extend the 45 day period with this Court on August 10, 2017. Plaintiff sought leave of Court to file the affidavit late because it's expert, Louis Hackney P.E., REWC, RRC, CDT, LEED AP, was not able to complete review of the approximately 8,000 documents that had been sent to him prior to expiration of the 45 day period. Mr. Hackney, was able to complete his review of the 8,000 documents and prepared his affidavit on September 7, 2017. According to counsel for Plaintiff, Mr. Halversen, the affidavit was sent to counsel for Defendant, Mr. Stair, the same day it was prepared on September 7, 2017. Plaintiff now seeks leave of Court to file the September 7, 2017 affidavit of Mr. Hackney outside the 45 day period.

The Court finds that good cause exists for Plaintiff to request and be granted extra time to file its affidavit based upon the voluminous amount of documents that had been provided to its expert within the 45 day period referenced in the statute. It appears that it only took Mr. Hackney less than 30 days to prepare and execute his affidavit after Plaintiff filed its motion for extension of time at the end of the 45 day statutory period on August 10, 2017. The Court believes that the request for an extension, given the quantity of materials that had been sent to him, is not an unreasonable request under these circumstances. The Court also finds no prejudice to the Defendant in granting this motion.

Plaintiff may file the September 7, 2017 affidavit of Louis Hackney P.E., REWC, RRC, CDT, LEED AP within ten days of the date of this Order, to wit, November 27, 2017. Upon filing of the affidavit by this date, the Plaintiff will have been deemed to be in compliance with the requirements of SC Code § 15-36-100(B). Defendant will then have 30 days from the date of the filing of the Affidavit to file any motion contesting the sufficiency of the Affidavit.

Defendant's Motion to Dismiss was premised on the Plaintiff's failure to file the affidavit in accordance with S.C. Code § 15-36-100(B). That Motion is rendered moot at this point due to the grant of Plaintiff's Motion for Extension of Time.

Given the foregoing findings of the Court, **IT IS THEREFORE ORDERED** that Plaintiff's Motion for Extension of Time is **GRANTED**, as stated herein, and **IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss is **DENIED**.


Hon. J.C. Nicholson, Jr.
Circuit Court Judge, Ninth Judicial Circuit

November 27, 2017
Charleston, South Carolina

2017-CP-10-3267

STATE OF NORTH CAROLINA)
) AFFIDAVIT OF LOUIS A. HACKNEY
COUNTY OF MECKLENBURG)

PERSONALLY APPEARED BEFORE ME, Louis A. Hackney, P.E., REWC, RRC, CDT, LEED AP, who being duly sworn does state as follows:

1. I am over eighteen years of age and in all other respects am competent to execute this Affidavit.
2. The matters set forth in this Affidavit are based on my personal knowledge and observations, as well as my professional education, training, and experience as an engineer.
3. I am a Professional Engineer and am registered in the State of South Carolina. I also hold registrations as a Professional Engineer in North Carolina, Florida, Louisiana, Ohio and Mississippi.
4. As a Professional Engineer, I am routinely responsible for property condition assessments, structural and nonstructural failure analysis, building envelope evaluations, damage assessments, and engineering investigations of both new and existing construction involving numerous types of structures. I also have experience performing contract administration services and preparing planning reports, designs, specifications, cost opinions, and contract documents for new construction and repair projects.
5. I have experience investigating and assessing the design and construction of commercial buildings in Charleston, South Carolina and my investigation of the 480 King Stair Tower is ongoing. I have examined the plans and construction documents of the 480 King Stair Tower building to investigate the nature of the construction and the deficiencies and damage associated therewith. I further reviewed the architectural drawings for the 480 King Stair Tower prepared by Glick/Boehm & Associates, Inc.

FILED
2017 NOV 20 PM 3:05
JULIE L ARMSTRONG
CLERK OF COURT
BY *[Signature]*

ELECTRONICALLY FILED - 2021 Jun 28 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003468

("Architect") in addition to the Architect's contract with 480 King Street, LLC, which included contract administration services.

6. Based on my investigation and analysis to date, it is my opinion that elements of the building's envelope has been compromised by design and construction deficiencies.

7. Specifically, there are numerous construction deficiencies that require repair including, but not limited to:

- a. Water intrusion through the building envelope which is/was occurring at the slab on grade level;
- b. Water intrusion through the building envelope which is/was occurring through the roof system;
- c. Water intrusion through the building envelope which is/was occurring through the window systems;
- d. Water intrusion through missing or inadequate building envelope flashings;

8. Based on my investigation and analysis to date, it is my opinion that that there was information missing from the plans that resulted in construction errors, additional cost, and delays.

9. Based on my investigation and analysis to date, it is my opinion that there was incorrect information contained within the project specifications that resulted in construction errors, additional cost, and delays.

10. Based on the information that I have received and reviewed to date, it is my professional opinion, to a reasonable degree of professional certainty, that the Architect deviated from the standard of care in failing to properly complete contract administration services as part of its contractual duties so as to prevent the aforementioned improper and code violating construction methods to occur and this deviation from the standard of care caused damage to 480 King Street, LLC in that it will have to expend funds to repair these items, or incurred damages from past remediations and associated delay costs.

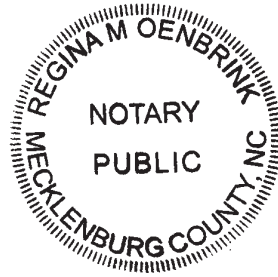
11. I reserve the right to supplement or amend this Affidavit and I or my professional opinion upon receipt of additional documents or information pertaining to this matter.

FURTHER AFFIANT SAYETH NOT.

By: Louis A. Hackney
Louis A. Hackney

SWORN to before me this
7th day of September, 2017

Regina M. Oenbrink
Notary Public for Mecklenburg County, NC
My Commission Expires: March 20, 2021



In the Matter Of:

BLANCHARD CONSTRUCTION vs 480 KING STREET

2016-CP-10-3468

LOUIS A. HACKNEY, P.E.

August 27, 2020

VOLUME II



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DEPOSITIONS

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1 of those things and understanding how a project
2 construction phase services was completed throughout
3 the course of the project, and I have reviewed
4 numerous, numerous building envelope projects in that
5 kind of capacity.

6 Q I fully understand your desire to extend my
7 question or limit it, if you will, to building
8 envelope issues, and I want to get beyond that and
9 just look at the totality of a new building going up
10 and being the design professional responsible for the
11 totality of contract administration services related
12 to that, that is not something that you have ever
13 done, correct?

14 A I have not.

15 Q You do not intend in this case to offer a
16 professional opinion about the standard of care of an
17 architect, do you?

18 A No.

19 Q That's something that would be beyond your
20 qualifications?

21 A I don't believe so, but I have never done it
22 in the past. I've looked at enough buildings, I have
23 looked at enough plans, and seen enough issues to feel
24 like I could provide an opinion about that but I have
25 -- to this point, I have not provided one.



1 Q And you don't intend to start in this case?

2 A No, not at this time.

3 Q As it relates to the process of developing
4 and producing a building like this one that is a new
5 construction, does the term developer have any meaning
6 to you?

7 A Yes.

8 Q What in this process -- how would you define
9 developer in relation to this process of new
10 construction of a building?

11 A The developer is, generally, the individual
12 that is going to pay for the initial process, which
13 includes the design, the purchase of the land, and the
14 building construction, and they generally have the
15 original concept for what the building will be, and
16 that developer can then either become an owner where
17 they use that building as it was intended or they can
18 sell the property, so I have seen it both ways.

19 Q As it relates to the particular project that
20 we're here about today, do you consider Ms. Kanters
21 and/or Dr. Cook to be developers in addition to being
22 the owner?

23 A I have kind of classified them as the
24 developer/owner because they did intend to own the
25 property. It's my understanding that they still do

In the Matter Of:

CHARLES BLANCHARD CONSTRUCTION vs 480 KING STREET

2016-CP-10-3468

LOUIS A. HACKNEY, P.E.

September 04, 2020

Vol. III



ESQUIRE

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1 Q As we attempt to place you in the closest
2 proximity to the situation that was involved in this
3 case, in this project, which was a totally new
4 building coming out of the ground, that is a project
5 in which you have never been involved as an engineer,
6 correct?

7 A From the standpoint of building envelope
8 consulting, yes. I have been asked to look at
9 building envelope components while a building was
10 under construction to assess details to do testing on
11 that building and to provide recommendations to both
12 the architect and the contractor. So, yes, I have
13 been involved from that capacity. But, like I said,
14 I'm not -- again, and I have said it before, I'm not
15 an architect, so I have not designed a building from
16 the ground up.

17 Q Do you recall telling me when we were
18 together last that you were not going to offer an
19 opinion about the standard of care of the architect in
20 this case?

21 A Yes.

22 Q Does that remain your intention?

23 A Yes. I feel comfortable talking about
24 individual details if questioned about them, and I
25 feel comfortable talking about construction phase



1 services, but not specifically about the architect's
2 standard of care.

3 Q In relation to either of those things,
4 correct?

5 A Correct. I'll talk about -- I feel
6 comfortable as a design professional talking about
7 details specifically and/or lack of details as a
8 design professional but not specifically to the
9 standard of care of an architect.

10 Q And, in fact, without addressing the standard
11 of care of the architect in this case, right?

12 A Correct.

13 Q So I told everyone we're going to try
14 something new that is a first-time experience for me,
15 so let's see how it works.

16 You've given an Affidavit -- actually given
17 two affidavits in this case. Do you recall those?

18 A Yes. I haven't reviewed them recently, but I
19 have given two affidavits.

20 Q When you were asked to give the Affidavit, or
21 either of them, what did you understand your purpose
22 to be in giving them?

23 A The first Affidavit, which was November 13th,
24 2017, was just -- was a request by Mr. Halversen
25 because there were a significant number of documents,



In the Matter Of:

CHARLES BLANCHARD CONSTRUCTION vs 480 KING STREET

2016-CP-10-3468

LOUIS A. HACKNEY, P.E.

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1 added some stuff, maybe subtracted some stuff, I can't
2 remember, until it was where I liked it.

3 Q Okay. So we have been given as a part of the
4 production the original draft that he gave you and the
5 red lines that you -- red lining that you did to
6 complete it.

7 When I say "red lining," do you know what I'm
8 talking about?

9 A I do.

10 Q All right. And that's in your file, so
11 that's where I got it. Do you recall the specific
12 changes you made to the draft that he gave you?

13 A No. In fact, I don't even know if I have
14 that version.

15 Q Okay. We must have got it from him. But in
16 any event, we've got it. As it relates, though, to
17 the Affidavit that you signed as Exhibit 5, what did
18 you understand the purpose of that Affidavit to be in
19 relation to this litigation?

20 A Just to set out the issues and facts in the
21 case that we were aware of at the time.

22 Q When he asked you to sign the Affidavit, did
23 you tell him that you would not offer an opinion about
24 the standard of care of an architect in the case?

25 A I don't recall the specific conversations



1 about standard of care at that point in time.

2 Q By signing the Affidavit, though, you did not
3 intend to offer an opinion about the standard of care
4 of an architect, did you?

5 A No. The Affidavit says, and I talked about
6 it before, pertaining to the construction phase
7 services and construction administration services that
8 were provided.

9 Q But when you talked about those things in
10 your Affidavit, you did not intend to state an opinion
11 about the standard of care of an architect performing
12 those services, did you?

13 A A better word may have been a professional
14 performing -- a design professional performing the
15 role of a -- during construction phase services.

16 Q You are an engineer?

17 A I am.

18 Q Mr. Glick is an architect?

19 A Correct.

20 Q Glick/Boehm are architects and not engineers?

21 A Correct.

22 Q Getting back to question then is: You did
23 not intend this Affidavit to contradict your intention
24 against offering an opinion of the standard of care
25 related to the architect, did you?



1 A My intent -- again, I know we're parsing
2 words a little bit. My intent is that I feel
3 comfortable talking about the standard of care that a
4 professional would provide in either giving or
5 completing construction administration services,
6 whether that be an architect or an engineer. Those
7 services are similar across the board of
8 professionals, and I feel confident and comfortable in
9 talking about them.

10 Q So your intention is to state an opinion of
11 the standard of care of a professional but not an
12 architect, correct?

13 A That's probably a better way to say it. Yes.

14 Q Okay. And in your Affidavit, I think we can
15 look down as it relates to your opinion, the only one
16 you state is in Paragraph 10. And read the others
17 before we get to that, and tell me if that is a
18 correct statement.

19 A I'm sorry, could you repeat your question
20 again?

21 Q Yes, sir. If we start at the top of your
22 Affidavit, you note, of course, in Paragraph 2 that
23 you give this Affidavit based on your professional
24 education, training, and experience as an engineer,
25 highlighting your status as an engineer as distinct



Ann. §15-36-100(B), 480 King was required to file in support of its Complaint a timely affidavit of a qualified expert specifying at least one negligent act or omission committed by Glick/Boehm.. The basis for the motion is that 480 King failed to meet the requirements of the statute, and the Complaint is, therefore, subject to dismissal for failure to state a claim.” §15-36-100(E).

The Motion should be heard and resolved on its merits.

In its Memorandum in Opposition, 480 King understandably seeks to avoid the dispositive, fundamental issue being addressed by this Court, saying that the reasons Glick/Boehm’s counsel has given for failing to file it within 30 days of Judge Nicholson’s Order are “suspect and specious,” or just an “excuse for his neglect.” The undersigned assures the Court that none of those things are the case. As stated by the undersigned in the Paragraph 3 of the Motion:

Glick/Boehm questioned then whether an Engineer (and particularly this Engineer, Mr. Hackney) is qualified to express an opinion of this type concerning the standard of care of an **Architect**. The opinion given by Mr. Hackney in his Affidavit, however, appeared on its face to express such an opinion. As a result, Glick/Boehm did not then contest its “sufficiency” by filing any further Motion to Dismiss. (bold as appears in Motion; underline added)

Of note, in a different way, Plaintiff’s counsel makes a similar observation in his Memo:

“.... the Affidavit on its face satisfies SC Code §15-36-100(A)(3) and Mr. Hackney is an ‘expert witness’ under SC Code §15-36-100(A)(3), and can testify regarding the architect Glick’s performance of contract administration services.”

The problem that misled Counsel for Glick/Boehm is that when the “expert” appeared to testify under oath about what he had said under oath in the Affidavit, it was clear that his statements were not the same—and that he was not going to testify about the standard of care *of an architect*. When the truth of Mr. Hackney’s testimony became known, it became clear that the “face of the affidavit” drafted by Plaintiff’s counsel and the mouth of the expert testifying on this own behalf were saying two materially different things. To suggest, as Plaintiff’s counsel does, that “a review of (Hackney’s) Affidavit and his deposition testimony shows that they are in perfect harmony” is

to demonstrate an ear that has not heard what the witness sang at his deposition and/or is not attuned to the critical distinctions between the recognized and licensed profession of “architecture” and the generically used term of “design professional.” Simply stated, Mr. Hackney’s affidavit spoke in terms of the standard of care of an “architect” and his deposition testimony did not.

Given the circumstances above and as otherwise set forth in Defendant’s Motion, leave was sought and received (with consent of Plaintiff’s counsel) to file the Motion outside the 30-day time period referenced in Judge Nicholson’s Order. As much as Plaintiff’s counsel would prefer to have the merits of Defendant’s arguments addressed, they should be heard by this Court.

The Motion should be granted as to all claims.

Architects are one of the 22 professional groups specifically afforded protection in actions for damages alleging professional negligence under S.C. Code Ann. § 15-36-100(G) (2015). Engineers are a different and separate group covered by the same statute. Critically, “Design Professionals” are not included as a protected group in the statute, most likely because there is no such “profession” recognized by law.

Pursuant to that statute, an affidavit from an expert *must* be filed contemporaneously with any complaint alleging damages arising from alleged professional negligence of an architect. *See* S.C. Code Ann. § 15-36-100(B). The affidavit “must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.” S.C. Code Ann. § 15-36-100(B). If a proper affidavit “is not filed... and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim.” S.C. Code Ann. § 15-36-100(C)(1).

“[T]he standard of care that the plaintiff must prove is that the professional failed to conform to the generally recognized and accepted practices *in his profession.*” *Doe v. Am. Red Cross Blood Servs.*, 297 S.C. 430, 435, 377 S.E. 2d 323, 326 (1989) (emphasis added). While the affidavit filed by 480 King in support of its case against Glick/Boehm appears to do so “on its face,” the discovery cross-examination of the Affiant demonstrated clearly that his reference to “architectural standard of care” was misplaced and that he was not intending to express an opinion about *that* standard of care, but instead was expressing his opinion about some standard of care applicable to a group he labeled as “design professional.” The effect, in the end, was to rule out the affidavit testimony concerning the standard of care of an architect—thus leaving 480 King without a proper affidavit in support of its Complaint for architectural malpractice. Since the affidavit filed by 480 King is insufficient to support its Complaint against Glick/Boehm, 480 King’s Complaint against Glick/Boehm does not meet the threshold requirements of S.C. Code Ann. §15-36-100, *et. seq.* and must be dismissed as a matter of law.

Any other claims against Glick/Boehm, no matter how denominated, are derivative of the negligence claims that 480 King has failed to properly assert. Additionally, claims for Breach of Implied Warranty under South Carolina law are limited to design activities and would have no application to contract administration services. For these and other reasons, the Plaintiff’s Complaint should be dismissed in its entirety.

Motion for Sanctions

In conjunction with its Motion to Dismiss, Glick/Boehm moves for sanctions against 480 King. Under Rule 11(a), SCRCPC, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *See Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be sanctioned

for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *See id.* The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *See id.* Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. *See id.*

Further, pursuant to Rule 11, SCRPC, the filing of a pleading signed by an attorney or party “constitutes a certificate by him that . . . to the best of his knowledge, information and belief there is good ground to support it.” *Id.* “If a pleading . . . is in violation of this Rule, the court . . . may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, . . . including a reasonable attorney's fee.” *Id.*

Following the completion of Mr. Hackney's incontrovertible deposition testimony, undersigned counsel conferred with Plaintiff's counsel regarding 480 King's inability to meet the requirements of S.C. Code Ann. §15-36-100, *et. seq.* Undersigned counsel repeated deficiencies of Mr. Hackney's Affidavit and requested that Plaintiff withdraw its claims against Glick/Boehm. 480 King has refused to oblige Glick/Boehm's request. Therefore, Glick/Boehm moves for sanctions against 480 King, including but not limited to the costs and attorneys' fees incurred in defending this action. It is clear that 480 King cannot support the claims it has asserted

against Glick/Boehm under South Carolina law and, thus, 480 King's Complaint is a mere, frivolous pleading as it relates to Glick/Boehm.

CONCLUSION

As a result of Plaintiff 480 King's failure to provide a sufficient affidavit establishing the required standard of care for *Architect* Glick/Boehm relative to the Project at issue in this matter, the claims against Glick/Boehm should be dismissed with prejudice under § 15-36-100, *et. seq.* and sanctions, including but not limited to the costs and attorneys' fees incurred in defending this action, should be awarded under Rule 11, SCRPC. This Motion is based on applicable South Carolina law, the pleadings filed in this case, and any supporting documents to be submitted hereafter.

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Respectfully submitted,
COPELAND, STAIR, KINGMA & LOVELL, LLP
By: s/ Kent T. Stair
KENT T. STAIR
State Bar No.: 14029

Counsel for Glick/Boehm & Associates, Inc.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	CASE NO. 2016-CP-10-3468
)	
CHARLES BLANCHARD)	
CONSTRUCTION CORP., INC.,)	
)	
Plaintiff,)	
)	
vs.	)	<u>MEMORANDUM IN OPPOSITION TO</u>
	)	<u>GLICK/BOEHM & ASSOCIATES,</u>
	)	<u>INC.'S MOTION TO DISMISS AND</u>
	)	<u>MOTION FOR SANCTIONS</u>
)	
480 KING STREET, LLC et.al.)	
)	
)	
Defendant.)	
_____)	

Comes now Defendant 480 King Street LLC and files this Memorandum in Opposition to Glick/Boehm & Associates, Inc.'s Motion to Dismiss and Motion for Sanctions and states the following:

I. Procedural Background.

The Plaintiff, general contractor, filed this lawsuit for non-payment claims on July 6, 2016. 480 King Street, LLC (hereinafter, "480 King") counterclaimed for cost over runs and construction defects associated with the Plaintiff's work- a brand new stair tower located on King Street behind Charleston Beer Works. On June 26, 2016, 480 King filed a separate action against Glick/Boehm & Associates, Inc.- the architect on the project that did design work and contract administration services (hereinafter, "Glick"). 480 King sued Glick for Breach of Contract, Breach of Warranty, and Negligence. Because 480 King could not procure an affidavit timely, 480 King moved for an extension of time to file same in accordance with statute on August 10, 2017, asserting there was

good cause for an extension because 480 King's expert had not yet had a chance to review the 8,000 + pages from the commercial project.. On August 29, 2017, Glick answered and filed a Motion to Dismiss asserting that 480 King, 'failed to file an affidavit from an "expert" setting forth specific allegations of professional negligence against GBA," and asserted that no good cause existed to allow the filing after the summons and complaint. (See Motion filed of record, August 29, 2017). On September 7, 2017, the undersigned emailed Glick's lawyer the Affidavit of expert Louis Hackney P.E., REWC, RRC, CDT, LEED AP, which the undersigned planned to file pending a ruling on the Motion for Extension of Time (See Email, Exhibit # 1 and December 7, 2017 Order).

On November 17, 2017 Judge Nicholson heard 480 King's Motion for Extension of Time and found good cause did exist to allow 480 King extra time to procure and file the Affidavit of Mr. Hackney, and allowed 480 King 10 days after the hearing to file it in the Court record. Importantly, as Mr. Stair already had the Affidavit of Mr. Hackney in hand at the hearing, Mr. Stair informed Judge Nicholson that he planned to challenge the Affidavit, which the Court had no issue with:

THE COURT: All right. Once he gets the file [sic], I'll just dismiss your motion to dismiss without prejudice, so you can bring it again after the pleadings have joined.

MR. STAIR: That will be fine, 'cause we may want to pick on the affidavit once it's filed, but we'll do that.

November 17, 2017 Hearing Transcript. (Exhibit #2)

After the ruling, the undersigned prepared a proposed order for Judge Nicholson, to which Mr. Stair made proposed redline changes to, evidencing his earlier statement in Court that he planned

to challenge (or “pick on”) the Affidavit. In particular, Mr. Stair added to the proposed Order the following language in the final sentence:

Defendant will then have 30 days from the date of the filing of the Affidavit to file any motion contesting the sufficiency of the Affidavit.

(Exhibit #3).

The undersigned had no objections to Mr. Stair’s inclusion of this provision, and Judge Nicholson signed the Order as modified by Mr. Stair. Despite Mr. Stair requesting 30 days to “contest the sufficiency of the Affidavit,” for unknown reasons, Mr. Stair failed to file a motion to contest the sufficiency of the Affidavit by the December 30, 2017, the Court ordered deadline to file such motion. Mr. Stair filed this motion to dismiss- contesting the sufficiency of the Affidavit- on June 28, 2021- three and half years after the Court ordered deadline¹.

II. Glick’s Motion to Dismiss is barred by the plain language of Judge Nicholson’s Order that Glick had 30 days from the date of the filing of the Affidavit to file “any motion contesting the sufficiency of the Affidavit.”

As referenced above, Mr. Stair specifically requested the language be included in Judge Nicholson’s Order to allow Glick 30 days to challenge the sufficiency of the Affidavit. Mr. Stair does not follow the language that he requested to be in the Order (which was incorporated in this

¹ Mr. Stair’s explanation for the delay is suspect and specious. Mr. Stair concedes he could have challenged the Affidavit from when he first received it. See ” ¶ 3 of Motion to Dismiss, “Glick/Boehm questioned then whether an Engineer (and particularly this Engineer, Mr. Hackney) is qualified to express an opinion of this type concerning the standard of care of an Architect. The opinion given by Mr. Hackney in his Affidavit, however, appeared on its face to express such an opinion. As a result, Glick/Boehm did not then contest its “sufficiency” by filing any further Motion to Dismiss. See also ¶ 11 of Motion to Dismiss, “While there may have been some question as to the sufficiency of the Affidavit prior to Mr. Hackney’s testimony....”

Court's November 17, 2017 Order). Accordingly, Glick has no right to now file a motion to dismiss to contest the sufficiency of the Affidavit².

Moreover, South Carolina law supports that Glick could only challenge the sufficiency of the Affidavit at the onset of the case, once the Affidavit was filed. Glick states in Paragraph 1 of his motion that the Complaint is subject to dismissal pursuant to SC Code § 15-36-100(E). That provision states:

(E) If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, **by motion to dismiss filed contemporaneously with its initial responsive pleading**, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective. The trial court may, in the exercise of its discretion, extend the time for filing an amendment or response to the motion, or both, as the trial court determines justice requires. The filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(Emphasis added).

Glick's previous motion to dismiss filed August 29, 2017 was specifically denied *without* prejudice by the Court so that Glick could, "pick on the Affidavit," to use Mr. Stair's words. Mr. Stair requested and received thirty days to challenge the sufficiency of the Affidavit, as set forth in Judge Nicholson's Order, and never filed the motion in the time period prescribed, nor has Glick provided any logical explanation to the Court why he should be now be allowed to by-pass the mandatory deadline of Judge Nicholson's December 7, 2017 Order, or the time requirements enunciated in SC Code § 15-36-100(E). Instead, Glick has manufactured an argument that Mr. Hackney's deposition testimony was incongruous with his Affidavit, which is demonstrably false.

² 480 King anticipates Glick will attempt to argue that 480 King consented to the relief sought in this motion to dismiss. Such an argument is misplaced. The undersigned told Mr. Stair he could file whatever motion he wanted to, however, 480 King informed Mr. Stair at the time that it never agreed to the relief sought in Glick's motion to dismiss, the substance of the motion, or that it was timely filed according to Judge Nicholson's Order. (Exhibit #4).

A review of his Affidavit and his deposition testimony shows that they are in perfect harmony, as set forth below.

II. Even if Glick’s Motion to Dismiss was not in violation of Judge Nicholson’s Order (which it is), Glick’s substantive arguments concerning the insufficiency of the Affidavit are incorrect.

Glick attempts to argue in his motion that he cannot be sued -because he is an architect- and in order to sue an architect- you must have an affidavit- from an architect. That is simply not true under South Carolina law. In furtherance of this argument, Glick’s motion alleges categorically and without legal support that:

“Without the support of a timely affidavit of a *qualified* expert, Plaintiff’s Complaint against Glick/Boehm fails as a matter of law.”

¶ 4, Glick Motion to Dismiss

“Architects” and “Engineers” are separately trained, licensed and regulated professionals under the laws of South Carolina (and everywhere else).

¶ 7, Glick Motion to Dismiss

“...the Affidavit does not contain the opinions of an expert qualified to testify as to the standard of care of an architect; therefore, the Affidavit filed in support of the Complaint against Glick/Boehm is on its face insufficient. Thus, Plaintiff’s Complaint against Glick/Boehm does not meet the threshold requirements of SC Code §15-36-100”

¶ 11, Glick Motion to Dismiss.

All that is required in South Carolina to sue an architect (or any other professional) is to be an “expert witness” if the requirements of the catch-all provision of (A)(3) is followed. That provision

was completely fulfilled in this case. The statute is clear regarding who can testify as an “expert witness”:

SECTION 15-36-100. Complaint in actions for damages alleging professional negligence; contemporaneous affidavit of expert specifying negligent act or omission.

(A) As used in this section, "expert witness" means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who:

(1) is licensed by an appropriate regulatory agency to practice his or her profession in the location in which the expert practices or teaches; and

(2)(a) is board certified by a national or international association or academy which administers written and oral examinations for certification in the area of practice or specialty about which the opinion on the standard of care is offered; **or**

(b) has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in:

(i) the active practice of the area of specialty of his or her profession for at least three of the last five years immediately preceding the opinion;

(ii) the teaching of the area of practice or specialty of his or her profession for at least half of his or her professional time as an employed member of the faculty of an educational institution which is accredited in the teaching of his or her profession for at least three of the last five years immediately preceding the opinion; or

(iii) any combination of the active practice or the teaching of his or her profession in a manner which meets the requirements of subitems (i) and (ii) for at least three of the last five years immediately preceding the opinion;

(3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

(Emphasis added).

In this case, Mr. Hackney qualifies as an “expert witness” under SC Code §15-36-100(A)(3). To qualify under this provision, an affidavit filed by a proposed expert witness must contain an explanation of the expert's credentials and their relevance to the case (as the statute states). The information contained in Mr. Hackney’s Affidavit is clearly sufficient to satisfy this provision. The affidavit lists Mr. Hackney’s experience and qualification in performing contract administration services and then critiques Glick’s performance of those services. Mr. Hackney then states that it is his, “opinion that there was information missing from the plans that resulted in construction errors, additional cost and delays.” (Affidavit, ¶8). Mr. Hackney then states that, “Based upon my investigation and analysis to date, it is my opinion that there was incorrect information contained within the project specifications that resulted in construction errors, additional cost, and delays.” (Affidavit, ¶ 9). Then Mr. Hackney forms his specific opinion as to the architect Glick’s role in failing to perform construction administration services:

10. Based on the information that I have received and reviewed to date, it is my professional opinion, to a reasonable degree of professional certainty, that the Architect deviated from the standard of care in failing to properly complete contract administration services as part of its contractual duties so as to prevent the aforementioned improper and code violating construction methods to occur and this deviation from the standard of care caused damage to 480 King Street, LLC in that it will have to expend funds to repair these items, or incurred damages from past remediations and associated delay costs.

Affidavit, ¶ 10.

Accordingly, the Affidavit on its face satisfies SC Code §15-36-100(A)(3) and Mr. Hackney is an “expert witness” under SC Code §15-36-100(A)(3), and can testify regarding the architect Glick’s performance of contract administration services.

Moreover, nowhere in Mr. Hackney’s Affidavit did he assert that Glick fell below the standard of care as an architect in preparing design work, of such type that perhaps only an architect is required to be critical of. Mr. Hackney very clearly testified (in the deposition selections cited in Glick’s Motion to Dismiss) and in the Affidavit as well, that he was only testifying that the architect Glick fell below the standard of care for performing contract administration services. Mr. Stair did not need to take Mr. Hackney’s deposition to confirm that: it is entirely consistent and clear from the face of the Affidavit which Mr. Stair has had in his possession since September 7, 2017. More likely, Mr. Stair is contorting what the Affidavit does not say as an excuse for his neglect to file the motion to challenge the sufficiency of the Affidavit in the 30 days that he requested.

III. 480 King Has Contractual Claims Pending Against Glick that Warrant a Jury Trial Irrespective of its Negligence claim Against Glick.

Finally, Glick’s motion made no mention that 480 King has lodged breach of contract and warranty claims against Glick as 480 King and Glick were operating under a contract to perform contract administration services. The Court needs no authority for the proposition that an Affidavit of an expert witness is not needed to make a breach of contract or warranty claim. Accordingly, there is absolutely no basis to dismiss these counts either.

WHEREFORE, Plaintiff respectfully requests that the Court deny Glick's Motion to Dismiss and for Sanctions for the reasons contained herein.

S/ Brent S. Halversen
Brent S. Halversen
Brent Souther Halversen, LLC
751 Johnnie Dodds Blvd, Suite 200
Mt. Pleasant, South Carolina 29464
Phone: 843-284-5790
brent@halversenlaw.com

Attorneys for Plaintiff

November 19, 2021

Exhibit #1

ELECTRONICALLY FILED - 2021 Nov 19 11:47 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003468

From: [Brent Halversen](#)
To: [Stair, Kent T.](#); [Sperry, Paul E.](#); [Yoho, J. Andrew](#)
Cc: [Ashley King](#); [Muller, Megan](#)
Subject: Fwd: 480 King v. Glick/Boehm 2017-CP-10-3267
Date: Tuesday, November 21, 2017 4:34:33 PM
Attachments: [Notice of filing Hackney.pdf](#)

Attached is the Affidavit of Louis Hackney which was filed today.

Brent

Get [Outlook for iOS](#)

From: Ashley King
Sent: Tuesday, November 21, 2017 3:38:12 PM
To: Brent Halversen
Subject: 480 King v. Glick/Boehm 2017-CP-10-3267

Ashley M. King
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Exhibit #2

1 STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
 2 COUNTY OF CHARLESTON) 2017-CP-10-3267
 3 480 KING STREET, LLC,)
 4 PLAINTIFF,) MOTION HEARING
 5 vs.) TRANSCRIPT OF RECORD
 6 GLICK BOEHM & ASSOCIATES, INC.,)
 7 DEFENDANT.)
 _____)

8
 9 Friday, November 17, 2017
 10 Charleston, South Carolina

11
12 B E F O R E:

13 The Honorable J.C. Nicholson, Jr.
14

15 A P P E A R A N C E S:

16 Brent Souther Halversen, Esquire
17 Attorney for Plaintiff

18 Kent Taylor Stair, Esquire
19 Attorney for Defendant

20
 21
 22
 23 Maria Dempsey, RPR
 24 Official Court Reporter
 25 Charleston County Circuit Court
 Ninth Judicial Circuit
 Charleston, South Carolina

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INDEX TO PROCEEDINGS

PAGE

MOTION HEARING

3

CERTIFICATE OF THE COURT REPORTER

12

E X H I B I T S

(No Exhibits Proffered.)

1 THE COURT: All right. Who's here for the plaintiff?

2 MR. HALVERSEN: Brent Halversen here on behalf of 480
3 King Street, LLC.

4 THE COURT: Mr. Halversen.

5 MR. HALVERSEN: Yes.

6 THE COURT: And who's here for the defendant?

7 MR. STAIR: Kent Stair, defendants, sir.

8 THE COURT: Okay. What is it a motion for, a motion
9 for the defendant or a motion for the plaintiff?

10 MR. HALVERSEN: Yes, Your Honor. I filed a motion for
11 extension of time, and the defendants have filed a motion --
12 or defendant has filed a motion to dismiss.

13 MR. STAIR: Flip flops to the motion --

14 THE COURT: What time do you want to extend it?

15 MR. HALVERSEN: Your Honor, this is for -- I filed a
16 motion to extend the time to file an affidavit for
17 professional negligence in the case. The motion for
18 extension of time, if you grant it, is going to decide the
19 motion to dismiss.

20 THE COURT: So you want an extension and time to file
21 an affidavit?

22 MR. HALVERSEN: Yes, Your Honor.

23 THE COURT: Why do you need the extension?

24 MR. HALVERSEN: So, Your Honor, this is a -- I
25 represent the plaintiff, who owns a building, and in a

1 different lawsuit a year ago, the contractor sued my client
2 on a nonpayment plan; that was last year. So, and that case
3 has progressed, and we've now sued in this case the
4 architect that designed and contract administration. So
5 there was a potential statute issue, a claim or a defense,
6 arguably, that could have come up this summer on July 27 --
7 or June 27th.

8 Okay. So we filed the summons and complaint against
9 the defendant architect in this case, timely, on June 26th,
10 the day before the statute. I had contacted an expert, and
11 so based on those conversations, I felt I could proceed with
12 the case against the defendant. I did not have the
13 affidavit yet. The statute says you can get -- you don't
14 have to file the affidavit with -- you can have 45 days
15 after it's filed or you can petition the Court for showing a
16 good cause.

17 THE COURT: July, August, September, October, it's been
18 four months. How long does it take to get the affidavit?

19 MR. HALVERSEN: I have the affidavit, Your Honor.

20 THE COURT: Oh, you have the affidavit.

21 MR. HALVERSEN: Yeah, I did, yes, Your Honor. So the
22 45 days expired on August 10th. On August 10th, I filed
23 this motion. Just for whatever reason, it didn't come up
24 until now, but on August 19th, I filed the motion for an
25 extension, and then I actually got the affidavit from my

1 expert on September 7th, so, three weeks later.

2 THE COURT: What's the defendant's position on
3 allowing -- basically, he's allowed asking the Court to
4 extend the time so he can go ahead and file it, since he has
5 it in his possession.

6 MR. STAIR: I understand the rules, of course, but
7 there's a history of that I think is important, and in our
8 motion to dismiss, we lay it out, and actually, we could
9 pull their complaint. It might be helpful if I could show
10 the Court our motion, and I think you'll see some of the
11 chronology involved, because it's a chronology that I think
12 bears on the question of constraints of times as he has a --
13 refers to in cause for extension. And what it shows in
14 their complaint that they filed, they allege on Page 6 of
15 their complaint, which is two to eight to our motion, that
16 they were told by the contractor on August 25, 2014, that
17 the plaintiff had a negative design, and that they were told
18 in May of 2015, that the designs were causing problems. So
19 there's been a long history about it. And so they got to
20 the time of the June 17 --

21 THE COURT: And this is the companion, this other
22 lawsuit you're talking about?

23 MR. HALVERSEN: Yeah.

24 MR. STAIR: Yes, the other lawsuit, and just otherwise
25 new information. The point being is that they knew about it

1 for two and some years by the plaintiff's -- the
2 contractor's contention to do a ledge design, and it didn't
3 get within the period of time, within 10 days of this period
4 running, and they filed the affidavit, or filed the
5 complaint without the affidavit, and my client, Mr. Glick,
6 called him upon receipt of the affidavit, upon receipt of
7 the complaint, and has put in his motion that affidavit that
8 speaks to the issue. He says that, just a deed to our
9 motion says, upon receipt of the complaint, I spoke to
10 Mr. Halversen, this is my client, he called before he called
11 me. The attorney to the plaintiff, the week of August 14,
12 in response to my question of why Glick Boehm was sued.
13 Mr. Halversen responded that he had tried to talk to Mary
14 Ann Kanters, the owner of 480 King Street, out of suing
15 Glick Boehm for over two months. Unfortunately, he was not
16 successful, and Glick Boehm was sued right before the
17 deadline.

18 And so this is a long period of time where they
19 could've gotten an affidavit, had he chosen to do. They
20 waited until the end, and then decided not to file it and to
21 file a complaint, and then they asked for -- tried to take
22 advantage of 45 days. In the 45 days, they did not then get
23 it within that either. And so we have opposed that. And
24 they did put an affidavit in recently where their expert
25 explains that he was retained on July the 17th of 2017,

1 which was 22 days after the period the statute would have
2 run. And it looks like he was able to get his preliminary
3 affidavit together within 51 days when he was retained, and
4 I think probably must have gotten the documents, he could
5 have done it quicker, had he chosen to do so. So it's a lot
6 of times when you got a client who has been alleged with
7 professional malpractice, and he's understandably upset with
8 it.

9 And so the motion requires two things. The motion
10 requires that the inability to file the affidavit originally
11 was because of constraint of time. And I understand that if
12 someone calls a lawyer within 10 days and they can't get an
13 affidavit, I think it's a constraint of time that's
14 envisioned, as distinguished from knowing about something
15 for a good couple of years, not doing anything about it, and
16 deciding at the last minute to file, and then saying I can't
17 get an affidavit.

18 And then the next thing is the extension. They give
19 you 45 days, and have to give the advantage of that. It has
20 to be given for good cause, and I think the affidavit to the
21 facts is going to sustain a good cause. And so that's the
22 basis for our position to both motions; both the affidavit,
23 firstly, there not being any extension.

24 THE COURT: Okay. Mr. Halversen.

25 MR. HALVERSEN: Your Honor, the case that was filed

1 last year, we've been working, I've been working diligently
2 to find an affidavit. I could not find a local expert that
3 wanted to oppose this company. It took me some time. This
4 is why it took me some time into -- from last year to now.
5 The statute, the possible statute running on this summer was
6 just the first time they could ever possibly make a statute
7 argument. It wasn't some outer killer deadline.

8 Just to be bulletproof of my client, I wanted to
9 know, when is the possible last day we need to file this?
10 It happens to be June 26, so that's when we artificially set
11 that as the time frame. So I've been working, trying to
12 find an architect. I met an expert, I eventually found one
13 in June. Before I filed the lawsuit, I contacted him in
14 June, and felt comfortable enough to file the lawsuit at
15 that point. I did not yet have the affidavit. The statute
16 allows for 45 days, so I got him everything. Unfortunately,
17 it was 8,000 documents, Your Honor, that he was provided
18 within that 45 days.

19 THE COURT: Eight thousand documents?

20 MR. HALVERSEN: Eight thousand documents. It's a
21 commercial project, Your Honor. So I can't read a 600-page
22 book over a summer. This, he was tasked with 8,000
23 documents to read in that 45-day-time period. He contacted
24 me before the end of the 45 days. He said, I can't get
25 through all this, and I said, I understand. The statute

1 allows me to petition the Court for an extension of time
2 based on good cause. I think this is good cause. He signed
3 an affidavit saying, yes, I couldn't get through it. I also
4 wanted to see the project physically. He had to travel from
5 Charlotte. He eventually did that in August. So we have
6 been working diligently towards that, and just couldn't come
7 together.

8 And Your Honor, I've got the affidavit. It just so
9 happened that it was three weeks after August 10th on
10 September 7th. The day I got it, I sent it to defense
11 counsel. All I'm asking for is permission now to file it,
12 and they can have need, then, to file an amended pleading.
13 And the irony, Your Honor, is there's no prejudice to
14 granting this motion. They had this affidavit in the time
15 period of which they still could have filed an answer to the
16 complaint.

17 I served the defendant on August 14th. They
18 immediately filed a motion to dismiss. They still had until
19 September 13th, technically, if they waited until the end to
20 file an answer, and they would've already had my affidavit.
21 So there's no prejudice to them in this situation. They
22 could have actually filed an amended answer without needing
23 Court stipulation 30 days after the deadline to answer the
24 complaint. So there's no prejudice, Your Honor.

25 THE COURT: All right. Considering the fact of the

1 8,000 pages, I think that's good cause for the architect to
2 take over a 45-day time period, I find it's good cause, and
3 I'll grant the extension of time requested by the plaintiff,
4 and we'll continue the motion to dismiss by the defendant,
5 if you want to continue, or I assume it's a motion stating
6 that -- I hadn't looked at it, but I assume it's a motion
7 filed, there's a affidavit that asked for it to be
8 dismissed?

9 MR. STAIR: We have not yet -- we filed it because of
10 their failure to file the affidavit, so...

11 THE COURT: You want to withdraw that in light of
12 granting him the time to file the affidavit?

13 MR. STAIR: If you --

14 THE COURT: I'll give him 10 days to file it.

15 MR. STAIR: Yeah, if you give him the 10 days to file
16 it, subject to our reception, we might have appellate
17 purpose of, I don't see coming back arguing after that.

18 THE COURT: All right. Once he gets the file, I'll
19 just dismiss your motion to dismiss without prejudice, so
20 you can bring it again after the pleadings have joined.

21 MR. STAIR: That will be fine, 'cause we may want to
22 pick on the affidavit once it's filed, but we'll do that.

23 THE COURT: I'll do it without prejudice to give you
24 opportunity to do whatever you deem appropriate, okay?

25 MR. STAIR: Totally understand. Thank you, Your Honor.

1 THE COURT: Let me see you second on something out of
2 Isle of Palms, I'm going to ask you about a few --

3 MR. STAIR: Would you like him to prepare the order,
4 that would be fine.

5 THE COURT: I'll get him to do the order.

6 MR. STAIR: Very good. Thank you.

7 (END OF TRANSCRIPT OF RECORD.)

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Charleston)

I, Maria Dempsey, Official Court Reporter for the Ninth
Judicial Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Circuit Court for Charleston County, South
Carolina, on the 17th day of November 2017.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

November 8, 2021

Maria Dempsey, RPR
Official Court Reporter
Charleston County Circuit Court
Ninth Judicial Circuit
Charleston, South Carolina

Exhibit #3

From: Stair, Kent T. <kstair@carlockcopeland.com>
Sent: Tuesday, November 21, 2017 12:28 PM
To: Brent Halversen; Nicholson, J. C. Law Clerk (Jonathan Arndt)
Cc: Sperry, Paul E.; Yoho, J. Andrew; Muller, Megan
Subject: RE: Motion "MENLGT-Motion For Extension of Time by plaintiff, crt/srv" for Case "2017CP1003267- 480 King Street LLC VS Glick Boehm & Associates Inc" was added to a Motions Roster for 11/17/2017 at 10:00 AM
Attachments: Order on Motion for Extension of Time (52.docx)

Mr. Arndt,

I have (in the attached) revised the proposed Order in a couple of relatively minor ways. With those revisions, I think the Order accurately reflects the outcome of the hearing.

Thanks, Kent

Kent T. Stair
Partner
Carlock, Copeland & Stair, LLP
843.266.8224 | f: 843.727.2995 | kstair@carlockcopeland.com
40 Calhoun Street, Suite 400, Charleston, South Carolina 29401

-----Original Message-----

From: Brent Halversen [mailto:Brent@halversenlaw.com]
Sent: Tuesday, November 21, 2017 9:48 AM
To: Nicholson, J. C. Law Clerk (Jonathan Arndt)
Cc: Sperry, Paul E.; Stair, Kent T.; Yoho, J. Andrew

ELECTRONICALLY FILED - 2021 Nov 19 11:47 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003468

Subject: RE: Motion "MENLGT-Motion For Extension of Time by plaintiff, crt/srv" for Case "2017CP1003267- 480 King Street LLC VS Glick Boehm & Associates Inc" was added to a Motions Roster for 11/17/2017 at 10:00 AM

Mr. Arndt,

Judge Nicholson asked me to prepare a proposed Order on Friday on the Plaintiff's Motion for Extension of Time. It is attached to this email. I sent same to counsel for Defendants on Friday and as of this writing they have voiced no objections to the form or content of the Order.

Brent

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2017-CP-10-3267
480 KING STREET, LLC)	
)	
)	
Plaintiff,	)	<u>ORDER</u>
)	
vs.)	
)	
)	
GLICK/BOEHM & ASSOCIATES, INC.)	
)	
)	
Defendant.)	

THIS CAUSE comes before the Court on Plaintiff 480 King Street, LLC's Motion for Extension of Time filed with this Court on August 10, 2017. The Court heard the arguments of counsel regarding the motion on November 17, 2017 at 10:00 AM. Brent Halversen, Esq. appeared on behalf of the Plaintiff 480 King Street, LLC, and Kent Stair, Esq. appeared on behalf of the Defendant, Glick/Boehm & Associates, Inc.

Plaintiff filed its Complaint in the matter on June 27, 2017. One of the causes of action was for professional negligence against the Defendant. Pursuant to SC Code § 15-36-100(B), the Plaintiff is required to file the affidavit of an expert witness which must specify at least one negligent act or omission. Plaintiff alleged in its Complaint that it could not prepare an affidavit of an expert because of time constraints. Forty-five days after filing the Complaint, the Plaintiff filed a motion to extend the time period for filing the affidavit with this Court. South Carolina law allows for an affidavit to be filed within

45 days after the Complaint is filed, or, the Court may extend this period upon motion after a showing of good cause. The statute states:

The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires.

SC Code § 15-36-100(C)(1)

Plaintiff filed a motion to extend the 45 day period with this Court on August 10, 2017. Plaintiff sought leave of Court to file the affidavit late because it's expert, Louis Hackney P.E., REWC, RRC, CDT, LEED AP, was not able to complete review of the approximately 8,000 documents that had been sent to him prior to expiration of the 45 day period. Mr. Hackney, was able to complete his review of the 8,000 documents and prepared his affidavit on September 7, 2017. According to counsel for Plaintiff, Mr. Halversen, the affidavit was sent to counsel for Defendant, Mr. Stair, the same day it was prepared on September 7, 2017. Plaintiff now seeks leave of Court to file the September 7, 2017 affidavit of Mr. Hackney outside the 45 day period.

The Court finds that good cause exists for Plaintiff to request and be granted extra time to file its affidavit based upon the voluminous amount of documents that had been provided to its expert within the 45 day period referenced in the statute. It appears that it only took Mr. Hackney less than 30 days to prepare and execute his affidavit after Plaintiff filed its motion for extension of time at the end of the 45 day statutory period on August 10, 2017. The Court believes that the request for an extension, given the quantity of materials that had been sent to him, is not an unreasonable request under these circumstances.

The Court finds no prejudice to the Defendant in granting this motion. The only argument presented to the Court by Defendant that might bear on that point would be none has can be found in the record or was presented to the Court at the hearing of this matter Defendant's contention that it was prejudiced by the Plaintiff's filing of the Complaint without the required supporting Affidavit and the Court does not find that argument to give it cause to deny Plaintiff's request. -

Plaintiff may file the September 7, 2017 affidavit of Louis Hackney P.E., REWC, RRC, CDT, LEED AP within ten days of the date of this Order, to wit, November 27, 2017. Upon filing of the affidavit by this date, the Plaintiff will have been deemed to be in compliance with the requirements of SC Code § 15-36-100(B). Defendant will then have 30 days from the date of the filing of the Affidavit to file any motion contesting the sufficiency of the Affidavit.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Extension of Time is **GRANTED**, as stated herein.

This ___ day of November, 2017 at Charleston, South Carolina.

Hon. J.C. Nicholson, Jr.
Circuit Court Judge, Ninth Judicial Circuit

Exhibit #4

ELECTRONICALLY FILED - 2021 Nov 19 11:47 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003468

From: [Brent Halversen](mailto:Brent.Halversen)
To: [Stair, Kent T.](mailto:Stair.Kent.T)
Subject: RE: 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC
Date: Tuesday, March 23, 2021 7:20:00 PM

Kent,

You are free to file your motion. You do not need "Court permission" to file a motion. Happy to discuss further.

Brent

From: Stair, Kent T. <KStair@cskl.law>
Sent: Tuesday, March 23, 2021 7:14 PM
To: Brent Halversen <Brent@halversenlaw.com>; 'Young, Roger Law Clerk (Michael Monastra)' <ryounglc@sccourts.org>; Janet Segell <jsegell@barnwell-whaley.com>
Cc: aimee@kmlawsc.com; brandon@kmlawsc.com; Canaday, Jenifer L. <jcanaday@cskl.law>; mark@kmlawsc.com; K. Michael Barfield <mbarfield@barnwell-whaley.com>; Sperry, Paul E. <psperry@cskl.law>; Schmidt, Robin <rschmidt@cskl.law>; D. Summers Clarke, II <sclarke@barnwell-whaley.com>; Susan B. Hatch <shatch@barnwell-whaley.com>; Caroline Crisler. Leonard <ccleonard@charlestoncounty.org>
Subject: RE: 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

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To: Stair, Kent T. <KStair@cskl.law>; 'Young, Roger Law Clerk (Michael Monastra)' <ryounglc@sccourts.org>; Janet Segell <jsegell@barnwell-whaley.com>
Cc: aimee@kmlawsc.com; brandon@kmlawsc.com; Canaday, Jenifer L. <jcanaday@cskl.law>; mark@kmlawsc.com; K. Michael Barfield <mbarfield@barnwell-whaley.com>; Sperry, Paul E. <psperry@cskl.law>; Schmidt, Robin <rschmidt@cskl.law>; D. Summers Clarke, II <sclarke@barnwell-whaley.com>; Susan B. Hatch <shatch@barnwell-whaley.com>; Caroline Crisler. Leonard <ccleonard@charlestoncounty.org>
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Cc: aimee@kmlawsc.com; brandon@kmlawsc.com; Brent Halversen <Brent@halversenlaw.com>; Canaday, Jenifer L. <jcanaday@cskl.law>; mark@kmlawsc.com; K. Michael Barfield <mbarfield@barnwell-whaley.com>; Sperry, Paul E. <psperry@cskl.law>; Schmidt, Robin <rschmidt@cskl.law>; D. Summers Clarke, II <sclarke@barnwell-whaley.com>; Susan B. Hatch <shatch@barnwell-whaley.com>; Caroline Crisler. Leonard <ccleonard@charlestoncounty.org>
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I will, of course, also be ready to discuss the other issues as they arise tomorrow. Again, I look forward to "seeing" everyone.

Kent Stair (counsel for Defendant, Glick/Boehm & Associates, Inc.)

From: Young, Roger Law Clerk (Michael Monastra) <ryounglc@sccourts.org>
Sent: Tuesday, March 23, 2021 3:09 PM
To: Janet Segell <jsegell@barnwell-whaley.com>
Cc: aimee@kmlawsc.com; brandon@kmlawsc.com; brent@halversenlaw.com; Canaday, Jenifer L. <jcanaday@cskl.law>; Stair, Kent T. <KStair@cskl.law>; mark@kmlawsc.com; K. Michael Barfield

<mbarfield@barnwell-whaley.com>; Sperry, Paul E. <psperry@cskl.law>; Schmidt, Robin <rschmidt@cskl.law>; D. Summers Clarke, II <sclarke@barnwell-whaley.com>; Susan B. Hatch <shatch@barnwell-whaley.com>; Caroline Crisler. Leonard <[ccleonard@charlestoncounty.org](mailto:cleonard@charlestoncounty.org)>
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Are there any Pending motions?
Do any parties have dates of protection?
Has the case been mediated?
Is Discovery complete?
Are you requesting a date certain?
Is the case ready for trial?
If no, why not?

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The link may be found on the court's website <https://sccourts.org/calendar/>.

Michael A. Monastra
Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: Janet Segell <jsegell@barnwell-whaley.com>
Sent: Tuesday, March 23, 2021 11:41 AM
To: Young, Roger Law Clerk (Michael Monastra) <ryounglc@sccourts.org>
Cc: aimée@kmlawsc.com; brandon@kmlawsc.com; brent@halversenlaw.com; jcanaday@cskl.law; Janet Segell <jsegell@barnwell-whaley.com>; kstair@cskl.law; mark@kmlawsc.com; K. Michael Barfield <mbarfield@barnwell-whaley.com>; psperry@cskl.law; rschmidt@cskl.law; D. Summers Clarke, II <sclarke@barnwell-whaley.com>; Susan B. Hatch <shatch@barnwell-whaley.com>
Subject: FW: [EXT] 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

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Morning, Michael. Are we going forward with the status conference tomorrow at 10:00 AM?

From: K. Michael Barfield <mbarfield@barnwell-whaley.com>
Sent: Thursday, March 11, 2021 2:41 PM
To: Young, Roger Law Clerk (Michael Monastra) <ryounglc@sccourts.org>
Cc: Brent Halversen <Brent@halversenlaw.com>; mark@kmlawsc.com; Stair, Kent T. <KStair@cskl.law>; Caroline Crisler. Leonard <[ccleonard@charlestoncounty.org](mailto:cleonard@charlestoncounty.org)>
Subject: RE: [EXT] 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

I am available at that time.

Thanks.

Michael

From: Young, Roger Law Clerk (Michael Monastra) <ryounglc@sccourts.org>
Sent: Thursday, March 11, 2021 2:40 PM
To: K. Michael Barfield <mbarfield@barnwell-whaley.com>
Cc: Brent Halversen <Brent@halversenlaw.com>; mark@kmlawsc.com; Stair, Kent T. <KStair@cskl.law>; Caroline Crisler. Leonard <[ccleonard@charlestoncounty.org](mailto:cleonard@charlestoncounty.org)>
Subject: [EXT] 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

Thank you, Mr. Barfield. Judge Young is available for a status conference via WebEx Wednesday, March 24, 2021 at 10:00 am. Does that work for all parties?

Michael A. Monastra
Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: K. Michael Barfield <mbarfield@barnwell-whaley.com>
Sent: Thursday, March 11, 2021 2:05 PM
To: Young, Roger Law Clerk (Michael Monastra) <ryounglc@sccourts.org>
Cc: Brent Halversen <Brent@halversenlaw.com>; mark@kmlawsc.com; Stair, Kent T. <KStair@cskl.law>
Subject: Case 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC , defendant, et al added to Court Roster for period 2021-03-15 through 2021-03-19.

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Mr. Monastra,

This case arises out of the construction of a building on upper King Street. I represent the plaintiff, Blanchard Construction, who was the general contractor. The case began with the filing of a mechanic's lien by Blanchard against the owner, 480 King Street, LLC. 480 King then counter claimed, alleging deficiencies with the construction. 480 King sued the project architect, Glick Boehm and Associates in a separate action, but the two case have sense been completely consolidated.

The managing member of 480 King splits her time between Charleston and Ohio. However, at last word, she has spent the entire pandemic in Ohio. I will let her counsel, Brent Halverson, address how this may impact the logistics of bringing this case to trial.

The discovery process is nearly complete. However, the depositions of several witnesses have proven to be multi-day affairs. At this time, there are at least two key depositions that must be scheduled and completed before trial.

For my part, I believe a status conference would be beneficial to all to determine a timetable for bringing this matter to its conclusion.

Thank you.

Michael

K. MICHAEL BARFIELD



MBarfield@Barnwell-Whaley.com
843-577-7700
Barnwell-Whaley.com

BARNWELL WHALEY PATTERSON & HELMS LLC
211 KING STREET, SUITE 300
CHARLESTON, SC 29401

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**From:** [Brent Halversen](#)  
**To:** [Stair, Kent T.](#); "Young, Roger Law Clerk (Michael Monastra)"; [Janet Segell](#)  
**Cc:** [aimee@kmlawsc.com](#); [brandon@kmlawsc.com](#); [Canaday, Jenifer L.](#); [mark@kmlawsc.com](#); [K. Michael Barfield](#); [Sperry, Paul E.](#); [Schmidt, Robin](#); [D. Summers Clarke, II](#); [Susan B. Hatch](#); [Caroline Crisler, Leonard](#)  
**Subject:** RE: 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC  
**Date:** Tuesday, March 23, 2021 7:17:00 PM

To be clear, your request "for leave of court," is a motion seeking court relief- and – it will be opposed. Again, any request of the court should come in proper channels through regular motion practice – not in tomorrow's status conference.

Brent

---

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Call in number for audio only United States Toll **+1-408-418-9388**

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Michael A. Monastra  
Law Clerk to The Honorable Roger M. Young, Sr.  
100 Broad Street  
Charleston, South Carolina 29401  
Office: (843) 958-2015  
Email: [RYounglc@sccourts.org](mailto:RYounglc@sccourts.org)

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**Sent:** Tuesday, March 23, 2021 11:41 AM  
**To:** Young, Roger Law Clerk (Michael Monastra) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>  
**Cc:** [aimée@kmlawsc.com](mailto:aimée@kmlawsc.com); [brandon@kmlawsc.com](mailto:brandon@kmlawsc.com); [brent@halversenlaw.com](mailto:brent@halversenlaw.com); [jcanaday@cskl.law](mailto:jcanaday@cskl.law); Janet Segell <[jsegell@barnwell-whaley.com](mailto:jsegell@barnwell-whaley.com)>; [kstair@cskl.law](mailto:kstair@cskl.law); [mark@kmlawsc.com](mailto:mark@kmlawsc.com); K. Michael Barfield <[mbarfield@barnwell-whaley.com](mailto:mbarfield@barnwell-whaley.com)>; [psperry@cskl.law](mailto:psperry@cskl.law); [rschmidt@cskl.law](mailto:rschmidt@cskl.law); D. Summers Clarke, II <[sclarke@barnwell-whaley.com](mailto:sclarke@barnwell-whaley.com)>; Susan B. Hatch <[shatch@barnwell-whaley.com](mailto:shatch@barnwell-whaley.com)>  
**Subject:** FW: [EXT] 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

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Morning, Michael. Are we going forward with the status conference tomorrow at 10:00 AM?

---

**From:** K. Michael Barfield <[mbarfield@barnwell-whaley.com](mailto:mbarfield@barnwell-whaley.com)>  
**Sent:** Thursday, March 11, 2021 2:41 PM  
**To:** Young, Roger Law Clerk (Michael Monastra) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>  
**Cc:** Brent Halversen <[Brent@halversenlaw.com](mailto:Brent@halversenlaw.com)>; [mark@kmlawsc.com](mailto:mark@kmlawsc.com); Stair, Kent T. <[KStair@cskl.law](mailto:KStair@cskl.law)>; Caroline Crisler. Leonard <[ccleonard@charlestoncounty.org](mailto:ccleonard@charlestoncounty.org)>  
**Subject:** RE: [EXT] 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

I am available at that time.

Thanks.

Michael

---

**From:** Young, Roger Law Clerk (Michael Monastra) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>  
**Sent:** Thursday, March 11, 2021 2:40 PM  
**To:** K. Michael Barfield <[mbarfield@barnwell-whaley.com](mailto:mbarfield@barnwell-whaley.com)>  
**Cc:** Brent Halversen <[Brent@halversenlaw.com](mailto:Brent@halversenlaw.com)>; [mark@kmlawsc.com](mailto:mark@kmlawsc.com); Stair, Kent T. <[KStair@cskl.law](mailto:KStair@cskl.law)>; Caroline Crisler. Leonard <[ccleonard@charlestoncounty.org](mailto:ccleonard@charlestoncounty.org)>  
**Subject:** [EXT] 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

Thank you, Mr. Barfield. Judge Young is available for a status conference via WebEx Wednesday, March 24, 2021 at 10:00 am. Does that work for all parties?

**Michael A. Monastra**  
Law Clerk to The Honorable Roger M. Young, Sr.  
100 Broad Street  
Charleston, South Carolina 29401  
Office: (843) 958-2015  
Email: [RYounglc@sccourts.org](mailto:RYounglc@sccourts.org)

---

**From:** K. Michael Barfield <[mbarfield@barnwell-whaley.com](mailto:mbarfield@barnwell-whaley.com)>

**Sent:** Thursday, March 11, 2021 2:05 PM

**To:** Young, Roger Law Clerk (Michael Monastra) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>

**Cc:** Brent Halversen <[Brent@halversenlaw.com](mailto:Brent@halversenlaw.com)>; [mark@kmlawsc.com](mailto:mark@kmlawsc.com); Stair, Kent T. <[KStair@cskl.law](mailto:KStair@cskl.law)>

**Subject:** Case 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC , defendant, et al added to Court Roster for period 2021-03-15 through 2021-03-19.

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Mr. Monastra,

This case arises out of the construction of a building on upper King Street. I represent the plaintiff, Blanchard Construction, who was the general contractor. The case began with the filing of a mechanic's lien by Blanchard against the owner, 480 King Street, LLC. 480 King then counter claimed, alleging deficiencies with the construction. 480 King sued the project architect, Glick Boehm and Associates in a separate action, but the two case have sense been completely consolidated.

The managing member of 480 King splits her time between Charleston and Ohio. However, at last word, she has spent the entire pandemic in Ohio. I will let her counsel, Brent Halverson, address how this may impact the logistics of bringing this case to trial.

The discovery process is nearly complete. However, the depositions of several witnesses have proven to be multi-day affairs. At this time, there are at least two key depositions that must be scheduled and completed before trial.

For my part, I believe a status conference would be beneficial to all to determine a timetable for bringing this matter to its conclusion.

Thank you.

Michael

**K. MICHAEL BARFIELD**



[MBarfield@Barnwell-Whaley.com](mailto:MBarfield@Barnwell-Whaley.com)

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|---|---------------------------------|---|----------------------|
| 1 | STATE OF SOUTH CAROLINA |) | IN THE CIRCUIT COURT |
| | COUNTY OF CHARLESTON |) | 2017-CP-10-3267 |
| 2 | |) | |
| | 480 KING STREET, LLC, |) | |
| 3 | |) | |
| | PLAINTIFF, |) | MOTION HEARING |
| 4 | |) | |
| | vs. |) | TRANSCRIPT OF RECORD |
| 5 | |) | |
| | GLICK BOEHM & ASSOCIATES, INC., |) | |
| 6 | |) | |
| | DEFENDANT. |) | |
| 7 | _____ |) | |

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|----|--|----------------------------|
| 10 | | Friday, November 17, 2017 |
| | | Charleston, South Carolina |

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B E F O R E:

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The Honorable J.C. Nicholson, Jr.

14

A P P E A R A N C E S:

16

Brent Souther Halversen, Esquire
Attorney for Plaintiff

17

Kent Taylor Stair, Esquire
Attorney for Defendant

18

19

20

21

22

23

Maria Dempsey, RPR
Official Court Reporter
Charleston County Circuit Court
Ninth Judicial Circuit
Charleston, South Carolina

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E X H I B I T S

(No Exhibits Proffered.)

1 THE COURT: All right. Who's here for the plaintiff?

2 MR. HALVERSEN: Brent Halversen here on behalf of 480

3 King Street, LLC.

4 THE COURT: Mr. Halversen.

5 MR. HALVERSEN: Yes.

6 THE COURT: And who's here for the defendant?

7 MR. STAIR: Kent Stair, defendants, sir.

8 THE COURT: Okay. What is it a motion for, a motion

9 for the defendant or a motion for the plaintiff?

10 MR. HALVERSEN: Yes, Your Honor. I filed a motion for

11 extension of time, and the defendants have filed a motion --

12 or defendant has filed a motion to dismiss.

13 MR. STAIR: Flip flops to the motion --

14 THE COURT: What time do you want to extend it?

15 MR. HALVERSEN: Your Honor, this is for -- I filed a

16 motion to extend the time to file an affidavit for

17 professional negligence in the case. The motion for

18 extension of time, if you grant it, is going to decide the

19 motion to dismiss.

20 THE COURT: So you want an extension and time to file

21 an affidavit?

22 MR. HALVERSEN: Yes, Your Honor.

23 THE COURT: Why do you need the extension?

24 MR. HALVERSEN: So, Your Honor, this is a -- I

25 represent the plaintiff, who owns a building, and in a

1 different lawsuit a year ago, the contractor sued my client
2 on a nonpayment plan; that was last year. So, and that case
3 has progressed, and we've now sued in this case the
4 architect that designed and contract administration. So
5 there was a potential statute issue, a claim or a defense,
6 arguably, that could have come up this summer on July 27 --
7 or June 27th.

8 Okay. So we filed the summons and complaint against
9 the defendant architect in this case, timely, on June 26th,
10 the day before the statute. I had contacted an expert, and
11 so based on those conversations, I felt I could proceed with
12 the case against the defendant. I did not have the
13 affidavit yet. The statute says you can get -- you don't
14 have to file the affidavit with -- you can have 45 days
15 after it's filed or you can petition the Court for showing a
16 good cause.

17 THE COURT: July, August, September, October, it's been
18 four months. How long does it take to get the affidavit?

19 MR. HALVERSEN: I have the affidavit, Your Honor.

20 THE COURT: Oh, you have the affidavit.

21 MR. HALVERSEN: Yeah, I did, yes, Your Honor. So the
22 45 days expired on August 10th. On August 10th, I filed
23 this motion. Just for whatever reason, it didn't come up
24 until now, but on August 19th, I filed the motion for an
25 extension, and then I actually got the affidavit from my

1 expert on September 7th, so, three weeks later.

2 THE COURT: What's the defendant's position on
3 allowing -- basically, he's allowed asking the Court to
4 extend the time so he can go ahead and file it, since he has
5 it in his possession.

6 MR. STAIR: I understand the rules, of course, but
7 there's a history of that I think is important, and in our
8 motion to dismiss, we lay it out, and actually, we could
9 pull their complaint. It might be helpful if I could show
10 the Court our motion, and I think you'll see some of the
11 chronology involved, because it's a chronology that I think
12 bears on the question of constraints of times as he has a --
13 refers to in cause for extension. And what it shows in
14 their complaint that they filed, they allege on Page 6 of
15 their complaint, which is two to eight to our motion, that
16 they were told by the contractor on August 25, 2014, that
17 the plaintiff had a negative design, and that they were told
18 in May of 2015, that the designs were causing problems. So
19 there's been a long history about it. And so they got to
20 the time of the June 17 --

21 THE COURT: And this is the companion, this other
22 lawsuit you're talking about?

23 MR. HALVERSEN: Yeah.

24 MR. STAIR: Yes, the other lawsuit, and just otherwise
25 new information. The point being is that they knew about it

1 for two and some years by the plaintiff's -- the
2 contractor's contention to do a ledge design, and it didn't
3 get within the period of time, within 10 days of this period
4 running, and they filed the affidavit, or filed the
5 complaint without the affidavit, and my client, Mr. Glick,
6 called him upon receipt of the affidavit, upon receipt of
7 the complaint, and has put in his motion that affidavit that
8 speaks to the issue. He says that, just a deed to our
9 motion says, upon receipt of the complaint, I spoke to
10 Mr. Halversen, this is my client, he called before he called
11 me. The attorney to the plaintiff, the week of August 14,
12 in response to my question of why Glick Boehm was sued.
13 Mr. Halversen responded that he had tried to talk to Mary
14 Ann Kanters, the owner of 480 King Street, out of suing
15 Glick Boehm for over two months. Unfortunately, he was not
16 successful, and Glick Boehm was sued right before the
17 deadline.

18 And so this is a long period of time where they
19 could've gotten an affidavit, had he chosen to do. They
20 waited until the end, and then decided not to file it and to
21 file a complaint, and then they asked for -- tried to take
22 advantage of 45 days. In the 45 days, they did not then get
23 it within that either. And so we have opposed that. And
24 they did put an affidavit in recently where their expert
25 explains that he was retained on July the 17th of 2017,

1 which was 22 days after the period the statute would have
2 run. And it looks like he was able to get his preliminary
3 affidavit together within 51 days when he was retained, and
4 I think probably must have gotten the documents, he could
5 have done it quicker, had he chosen to do so. So it's a lot
6 of times when you got a client who has been alleged with
7 professional malpractice, and he's understandably upset with
8 it.

9 And so the motion requires two things. The motion
10 requires that the inability to file the affidavit originally
11 was because of constraint of time. And I understand that if
12 someone calls a lawyer within 10 days and they can't get an
13 affidavit, I think it's a constraint of time that's
14 envisioned, as distinguished from knowing about something
15 for a good couple of years, not doing anything about it, and
16 deciding at the last minute to file, and then saying I can't
17 get an affidavit.

18 And then the next thing is the extension. They give
19 you 45 days, and have to give the advantage of that. It has
20 to be given for good cause, and I think the affidavit to the
21 facts is going to sustain a good cause. And so that's the
22 basis for our position to both motions; both the affidavit,
23 firstly, there not being any extension.

24 THE COURT: Okay. Mr. Halversen.

25 MR. HALVERSEN: Your Honor, the case that was filed

1 last year, we've been working, I've been working diligently
2 to find an affidavit. I could not find a local expert that
3 wanted to oppose this company. It took me some time. This
4 is why it took me some time into -- from last year to now.
5 The statute, the possible statute running on this summer was
6 just the first time they could ever possibly make a statute
7 argument. It wasn't some outer killer deadline.

8 Just to be bulletproof of my client, I wanted to
9 know, when is the possible last day we need to file this?
10 It happens to be June 26, so that's when we artificially set
11 that as the time frame. So I've been working, trying to
12 find an architect. I met an expert, I eventually found one
13 in June. Before I filed the lawsuit, I contacted him in
14 June, and felt comfortable enough to file the lawsuit at
15 that point. I did not yet have the affidavit. The statute
16 allows for 45 days, so I got him everything. Unfortunately,
17 it was 8,000 documents, Your Honor, that he was provided
18 within that 45 days.

19 THE COURT: Eight thousand documents?

20 MR. HALVERSEN: Eight thousand documents. It's a
21 commercial project, Your Honor. So I can't read a 600-page
22 book over a summer. This, he was tasked with 8,000
23 documents to read in that 45-day-time period. He contacted
24 me before the end of the 45 days. He said, I can't get
25 through all this, and I said, I understand. The statute

1 allows me to petition the Court for an extension of time
2 based on good cause. I think this is good cause. He signed
3 an affidavit saying, yes, I couldn't get through it. I also
4 wanted to see the project physically. He had to travel from
5 Charlotte. He eventually did that in August. So we have
6 been working diligently towards that, and just couldn't come
7 together.

8 And Your Honor, I've got the affidavit. It just so
9 happened that it was three weeks after August 10th on
10 September 7th. The day I got it, I sent it to defense
11 counsel. All I'm asking for is permission now to file it,
12 and they can have need, then, to file an amended pleading.
13 And the irony, Your Honor, is there's no prejudice to
14 granting this motion. They had this affidavit in the time
15 period of which they still could have filed an answer to the
16 complaint.

17 I served the defendant on August 14th. They
18 immediately filed a motion to dismiss. They still had until
19 September 13th, technically, if they waited until the end to
20 file an answer, and they would've already had my affidavit.
21 So there's no prejudice to them in this situation. They
22 could have actually filed an amended answer without needing
23 Court stipulation 30 days after the deadline to answer the
24 complaint. So there's no prejudice, Your Honor.

25 THE COURT: All right. Considering the fact of the

1 8,000 pages, I think that's good cause for the architect to
2 take over a 45-day time period, I find it's good cause, and
3 I'll grant the extension of time requested by the plaintiff,
4 and we'll continue the motion to dismiss by the defendant,
5 if you want to continue, or I assume it's a motion stating
6 that -- I hadn't looked at it, but I assume it's a motion
7 filed, there's a affidavit that asked for it to be
8 dismissed?

9 MR. STAIR: We have not yet -- we filed it because of
10 their failure to file the affidavit, so...

11 THE COURT: You want to withdraw that in light of
12 granting him the time to file the affidavit?

13 MR. STAIR: If you --

14 THE COURT: I'll give him 10 days to file it.

15 MR. STAIR: Yeah, if you give him the 10 days to file
16 it, subject to our reception, we might have appellate
17 purpose of, I don't see coming back arguing after that.

18 THE COURT: All right. Once he gets the file, I'll
19 just dismiss your motion to dismiss without prejudice, so
20 you can bring it again after the pleadings have joined.

21 MR. STAIR: That will be fine, 'cause we may want to
22 pick on the affidavit once it's filed, but we'll do that.

23 THE COURT: I'll do it without prejudice to give you
24 opportunity to do whatever you deem appropriate, okay?

25 MR. STAIR: Totally understand. Thank you, Your Honor.

1 THE COURT: Let me see you second on something out of
2 Isle of Palms, I'm going to ask you about a few --

3 MR. STAIR: Would you like him to prepare the order,
4 that would be fine.

5 THE COURT: I'll get him to do the order.

6 MR. STAIR: Very good. Thank you.

7 (END OF TRANSCRIPT OF RECORD.)

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State of South Carolina)
County of Charleston)

In Circuit Court of the
Ninth Judicial Circuit
2016-CP-10-03468

CHARLES BLANCHARD)
CONSTRUCTION CORP., INC.,)
Plaintiff,)
vs.)
480 KING STREET, LLC,)
Defendants.)

Transcript of Record

480 KING STREET, LLC)
Plaintiff,)
vs.)
GLICK/BOEHM & ASSOCIATES, INC.)
Defendant.)

Charleston, South Carolina
December 2, 2021
Webex

B E F O R E:

The Honorable Jennifer B. McCoy

A P P E A R A N C E S:

Mr. Ken Stair, Esquire
Attorney for Appellant

Mr. Brent Halverson, Esquire
Attorney for Respondent Glick/Boehm & Associates, Inc.

DCRP
Court Reporter

Transcribed by:
Lisa Carter

I N D E X

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WITNESSES

PAGE

(NO WITNESSES INTRODUCED DURING HEARING)

(NO EXHIBITS INTRODUCED DURING HEARING)

1 THE COURT: Okay. I think this is your motion Mr.
2 Stair I've taken an opportunity to review it, as well as
3 your memoranda prior to the hearing today. Happy to hear
4 from you first.

5 MR. STAIR: All right. Very good. Judge, what I'd
6 like to do is just give you kind of an overview and if
7 you've read it, I'll try not to beat it to death, but the
8 case has some history to it. It was filed as a an
9 architectural malpractice case, and it was filed without an
10 affidavit and we moved to dismiss because of that reason.
11 And they were in a period of time where they needed to file
12 a motion to leave, for a request to leave to amend and file
13 their affidavit. They filed that motion. It was heard and
14 that was granted. And in the order granting it, it has been
15 noted in documents there is an indication that we would
16 have 30 days in which to contest sufficiency of it and we
17 chose to do so at that time. And so we got it and when we
18 got it we looked at it and we concluded that the affidavit
19 appeared to be addressing the standard of care of an
20 architect. And while I have some questions, very serious
21 question about whether an engineer can state an expert
22 opinion against an architect because he stated on his face
23 with the affidavit an apparent intention to do so. We left
24 that for another day at that time. We then took the
25 engineer's deposition and in the deposition he made it very

1 clear he was not stating an opinion against the architect
2 utilizing the architectural standard of care. And I was
3 really surprised, if you will, to hear the experts say that
4 and I'll review his testimony in a minute on that point.
5 But he repeated himself and said that he was not stating an
6 opinion as to the standard of care of an architect. And of
7 course, this case is against nobody but an architect. And I
8 think under that circumstance I rethought where we were and
9 I felt it was appropriate at this time then to file this
10 motion. Realizing the judge had said there was a 30 day
11 period in which I should do that if I wanted to contest it.
12 When the case came up on the status conference, I filed a
13 request for leave to file the motion. I did not file the
14 motion. And I certainly recognize what the order said. And
15 so what I wanted to do is go to the court at that time and
16 say, here's why I want to do it now recognizing what the
17 court order says I don't want to fly at the base of it and
18 disregard the court order, but because of the changing
19 circumstance of the testimony that had intervened well
20 after the 30 days period of time had occurred, I wanted to
21 do that and we were going to hear that in front of Judge
22 Young and I was going to explain why I was doing it now and
23 did not do it earlier. But necessity was taken away when
24 Mr. Halverson sent it to my filing the motion and said we
25 could go ahead and file it. Now, I do not contend by

1 consenting, he was consenting at all to the merits of the
2 motion. I will say, though, I was surprised when he filed
3 his response to my motion and indicated that we were out of
4 time to do so. That was what the whole purpose of having
5 it addressed at the status conference was. And I think it
6 really is a motion that could and should, it should be
7 heard by this court. I would have addressed it earlier at
8 the status conference had I been given the opportunity to
9 so, there was not. And so I think we are in time to argue
10 this motion and it's an important motion because of the
11 facts subsequent to the 30 day period have shown that what
12 is shown on the face of the affidavit is not what comes out
13 of the mouth of the affiant where the affiant is put under
14 oath to testify. And so that's the basis of it. And once
15 that was done I then, I contacted plaintiff's counsel and
16 said your expert, it states in his affidavit, he's stating
17 an opinion about the architect, states in his deposition he
18 has no intention of stating a standard of care opinion
19 against an architect, I think you should dismiss the motion
20 and dismiss the case. They chose not to and so in addition
21 to the motion to dismiss we are asking for sanctions. So
22 that's the overview of it. And what I will do is look at
23 some of the papers that have been filed to try to put a
24 little meat on the bones, but I'll try to not make it too
25 fat. And so if someone here will help me figure out how to

1 show something other than my face on the screen and so
2 documents I'll move to that ---

3 (Whereupon, someone was talking to Mr. Stair)

4 MR. STAIR: Okay. Sharing permission, I am told
5 has to be turned on by somebody other than me.

6 THE COURT: My clerk will do that so let's -- she
7 can do that.

8 (Whereupon, the clerk is trying to share documents on
9 Webex)

10 MR. STAIR: So this is not per se in the papers,
11 but I just start out the motion, obviously, comes from the
12 statute that was intended to control, if you will,
13 frivolous proceedings as a part of the Tort Reform Act and
14 some years ago. And the first part I highlighted this, but
15 I understand it didn't come off of it but put this of
16 bracketed out here, but the point to start with Mr.
17 Halverson actually quotes this part in his brief too, "the
18 expert witness means an expert who is qualified as to the
19 acceptable conduct of the professional whose conduct is at
20 issue." And so what that tells me and I think should tell
21 anyone thinking sensibly about the statute is whatever the
22 expert says the expert must say it about the conduct of the
23 professional whose conduct is at issue and in this case,
24 the professional is an architect. And so I think built
25 into this is a clear indication that when the expert

1 witness speaks it needs to speak in terms of the
2 architectural standard of care, since that is the one
3 that's an issue. Let's see this statute, of course, this
4 part of it is the one that says, "if you don't do it your
5 case is dismissed." So there's nothing greatly
6 enlightening about that, other than you have to show it
7 again, a negligent act against professional, against who
8 negligence is charged and that necessarily assumes and
9 requires a standard of care opinion as to that
10 professional, not to some other group of people.

11 Section G is where the people who get the benefit of
12 this statute is laid out, and it lists them in alphabetical
13 order. And the first group are architects. Architects are
14 people, who as you know, are licensed and registered under
15 a set of laws that deal with architects, standards deal
16 with architects. They don't deal with attorneys, they don't
17 deal with accountants, they don't deal with chiropractors.
18 And I put a line here because a group they don't deal with
19 is design professionals, which is what in the end, Mr., the
20 expert attempted to try to say that's really what he was
21 talking about, but there is no such group as design
22 professionals. There is a group of architects and there's a
23 group of engineers. And so an architect who is being sued
24 needs to have someone qualified, state an opinion as to the
25 standard of care for the architect, not a medical doctor,

1 not a pharmacist, not an engineer or a design professional.
2 It needs to be in terms of the standard of care of an
3 architect. But here comes our motion and I'll, again, not
4 repeated all, I'll go straight to the exhibit and this is
5 the affidavit of Mr. Hackney. And, of course, he knows he's
6 an engineer and he's not an architect, but he states in the
7 beginning he is an engineer. And then he has a variety of
8 thoughts about all that went wrong out there but then he
9 gets to, as Mr. Halverson and his paper said is that really
10 the opinion, he state and it says, "based on the
11 information I've received and reviewed, so forth, it is my
12 professional opinion to a reasonable degree of professional
13 certainty that the architect deviated from the standard of
14 care in failing to properly complete contract
15 administration services." Again, when I read that, I was
16 not unaware, of course, that Mr. Hackney was an engineer,
17 but he was stating an opinion as I read it about the
18 architectural standard of care because he says the
19 architect is the person that violates the standard of care
20 and I naturally assumed that he was talking about the
21 standard of care applicable to the architect. We took his
22 deposition and it was, by covid, was delayed to some
23 degree and other circumstance, but we finally got it. And
24 so in the course of the questioning, I asked him the
25 question, and based on what I had heard to this point, felt

1 somewhat competent in stating it in this fairly aggressive
2 way, if you will, asserted point, you do not intend in this
3 case to offer a professional opinion about the standard of
4 care of an architect, do you? And he said, no. And that,
5 of course, is the only standard of care that is important
6 in this case and the expert witness who opined in an
7 affidavit is now stating he does not intend to state an
8 opinion as to the standard of care of an architect. We ran
9 out of time that day. And we came back giving him a chance
10 to see if he changed his mind. I asked him I said, "Do you
11 recall telling me when we were together last that you were
12 not going to offer an opinion about the standard of care of
13 the architect in this case?" And he said, "Yes." "I said
14 does that remain during your intention?" And he said,
15 "Yes." And then on down, "I said, when he said when he,
16 Mr. Halverson, the plaintiff's lawyer, when he asked you to
17 sign the affidavit, did you tell him that you would not
18 offer an opinion about the standard of care of an architect
19 in the?" And he said, "I don't recall the specific
20 conversations about the standard of care at that point in
21 time." I said, "by signing the affidavit, though, you did
22 not intend to offer an opinion about the standard of care
23 of an architect, did you?" And he said, "No." And then he
24 went on to explain that what he really meant to say was
25 something with standard of care of a designed professional,

1 and so forth. And so, again, the point is that there is no
2 such thing as a designed professional recognized by law.
3 That is a generic term that people use to folks who design
4 things maybe, but it's not someone who is entitled to a
5 specific standard of care to be applied against him as
6 distinguished from an architect. "And, of course, Mr. Glick
7 is an architect?" "Correct." "You're an engineer?" I
8 am", and so forth. And so back to our motion, our motion
9 is it's now apparent, but it was not apparent within that
10 30 day period that he did not express nor does he intend to
11 express an opinion about the standard of care of an
12 architect, which is the only standard of care that matters
13 and so forth.

14 Given these, we now formally contest the sufficiency
15 of the affidavit. And I noted in the thing, we were going
16 to seek leave, going to file it, but we, it was consented.
17 And then, as we say, given the fact that the affidavit
18 expressly purely stated in the opinion that's caused us to
19 participate in the lawsuit at a great cost and their
20 refusal to dismiss it now we'd move for sanctions. And so
21 that's the essence of the motion. And I think the rest of
22 is just the repetition of the same. And so we asked that
23 it be dismissed. And we asked that we've been given
24 sanctions, attorneys fees in the like for having to do
25 something when in the beginning there was a misstatement as

1 to the intention of the affidavit that has caused us to
2 incur a lot of expense.

3 They filed an opposition which I'm sure Mr. Halverson
4 will address and I'll just thumb through it quickly and see
5 if there's anything that hasn't been discussed. They do say
6 here that, in a footnote, that they anticipate we will
7 attempt to argue that they have consented to the relief
8 sought in this motion to dismiss. Well, I do not attempt
9 or intend to argue. They have consented to the relief
10 sought.

11 THE COURT: Mmm, hmm.

12 MR. STAIR: I do intent to say, though, that they
13 have consented to the motion being filed and heard on the
14 merits because there was a time and a place where we were
15 to address, is it untimely to do it? And they did not, at
16 that time, contest that and I do think they have consented
17 to the filing of the motion without this discussion of
18 whether it is timely or not. After I was telling Judge
19 Young's clerk what our intention at the hearing would be
20 that was all rendered moot when Mr. Halverson said you are
21 free to file your motion. You do not need the court's
22 permission to file a motion. I'm happy to discuss further.
23 And that's all I wanted to hear. Can I file this motion
24 without being burdened by having to show you now Exhibit 4
25 in this footnote and try to argue why we should be arguing

1 what I think is something that not only should be argued it
2 should be granted if the case should be dismissed.

3 Let's see. Then -- let's see, so, again, here's where
4 Mr. Halverson is saying that Mr. Hackney gets around to
5 finally stating his opinion. And it's the one I stated and
6 again and again, th problem is, is the architect. It's
7 certainly led me to believe that they were stating an
8 opinion as to the standard of care of an architect and
9 that's what kept us from filing the motion now, um, then
10 that we have filed that.

11 Let's see - and I beat that one to death. Let's see,
12 we came back and file something and I'm not going to beat
13 that one to death again since you read it. But again, as I
14 stated, the problem is that we were misled when the expert
15 appeared to state in his affidavit an intention to state a
16 standard of care of an architect. And then when the truth
17 became known, he expressly said he was not going to express
18 and he said that on two occasions having time to sleep
19 about it and in between it think about it. And so I just
20 cited this case which is not an architectural case, it's a
21 professional case, but it stands for the simple and I
22 think, obvious, the standard, that the standard of care the
23 plaintiff must prove is it professional failed to conform
24 to the generally recognized accepted practices in his
25 profession. So that's the critical thing. It's not in some

1 made up group of people who are not protected by license
2 laws or governed by licensing and registration laws is an
3 architect is judged by architectural standard of care, an
4 engineer is judged by engineering standard of care,
5 podiatrist are judged by their standard of care and that's
6 what's missing here. We now know the affidavit that was
7 required to get this case to the courthouse does not state
8 an opinion that the architect being accused of negligence
9 violated the standard of care applicable to an architect.
10 And I think that brings me to my conclusion, we think the
11 motion should be granted, obviously, we think it should be
12 heard. We think it should be granted and we are not at all
13 embarrassed to be asking for motions for sanctions and so
14 forth with the attorneys fees we've incurred fighting
15 against the case that really never should have made it out
16 of blocks.

17 And so that's our motion and we very much appreciate
18 the court's consideration.

19 THE COURT: Sure. All right. Mr. Halverson, I'll
20 be happy to hear from you.

21 MR. HALVERSON: Thank you, judge. Did you receive our
22 memorandum and responses Mr. Stair's motion?

23 THE COURT: I did. I reviewed yours as well prior
24 to the hearing that I have ---

25 MR. HALVERSON: Okay ---

1 THE COURT: --- it on my screen too.

2 THE COURT: I couldn't hear, judge.

3 THE COURT: I have right in front of me on my
4 screen. If I make funny faces don't take it personally. I
5 think I make faces when I read. So, yeah, I have it right
6 here on my screen. MR. HALVERSON: Oh, okay. I
7 just couldn't hear you.

8 MR. STAIR: Can I ask a question? Was there a
9 second -- did you file a second one, Brent or just the
10 first one?

11 MR. HALVERSON: No, just one memo.

12 MR. STAIR: Okay. Okay. Okay. I got it, then.

13 MR. HALVERSON: Yeah.

14 MR. STAIR: I'm sorry.

15 MR. HALVERSON: So, judge, I would just -- I'm not
16 going to belabor the points I've made in the memo, but I
17 will just start off with saying, a big picture view of what
18 Mr. Stair has presented to you and what I interpret the
19 statutes to say which I'll walk through very quickly. But
20 the big picture view is my expert is an engineer. He is now
21 required to be an architect in order to be critical of the
22 services that the architect render. And the services that
23 this architect rendered that are at issue in this case, our
24 construction based services and contract administration
25 services. Nowhere in Mr. Hackney's affidavit did he ever

1 say, and he's very careful when what he testified or put in
2 his affidavit, which was that he was critical only of Mr.
3 Glick, who is an architect, of his construction based
4 services and his contracts or administration services.
5 Nowhere in the affidavit does he said that he was critical
6 of the architectural standards of care or, for instances,
7 having a design defect. That's not in his affidavit. It was
8 never in his deposition testimony. The affidavit ---

9 THE COURT: Let me stop you right there. Let me ask
10 you a question. Just playing devil's advocate, under that
11 logic, could I have a nurse file an affidavit against the
12 doctor as it would pertained to, I don't know, his
13 administrative duties?

14 MR. HALVERSON: That's a great question, Your Honor. So
15 if you look at 15-36-100 Sub (B), it says, "except as
16 provided in Section 15-79- 125," and so that's the medical
17 malpractice statute ---

18 THE COURT: Okay. Well, I picked a bad example.
19 All right, let's say something else, you know -- you know,
20 what I'm talking about, I mean, there's a reason the
21 legislature laid out specific professions for which you
22 must submit an affidavit stating the deviation of the
23 standard of care from that particular profession.

24 MR. HALVERSON: That's right, Your Honor. So I'll walk
25 through that and the statutory regime addresses it. In (B)

1 it says, "you have to have an affidavit of an expert
2 witness that must specify one act, one act of negligence."
3 Then you move to the definition of expert witness, which is
4 in Subsection (A), that says, "expert witness means an
5 expert who is qualified as to the acceptable conduct of the
6 professional whose conduct is at issue" and then it jumps
7 to "and who" and then it says, "someone is licensed by an
8 appropriate regulatory agency to practice his profession
9 and the location in which the expert practices or teaches"
10 that would mean that Mr. Hackney in this incident would
11 have to be a licensed professional. And then it says, "and
12 too, is board certified in the area of practice or
13 specialties in which the opinion on the standard of care is
14 offered." That would mean he would have to be an architect
15 which he is not and that -- Sub (D) it says, "so you can be
16 board certified as an architect or be engaged in the
17 practice of architectural capacity, three of the last five
18 years." So that is, you have to be in the same subject
19 arena as the, as the field you're giving your opinion. In
20 Subsections (A) (1) or (A) (2), (A) (3) is the catch all,
21 (A) (3) says, "an individual who is not covered by (A) (1) or
22 (A) (2) that has scientific, technical or other specialized
23 knowledge, which may assist the trier of fact in
24 understanding the evidence and determining a fact or issue
25 in a case by reason of the individual's study, experience,

1 or both. However, an affidavit filed pursuant to
2 Subsection (B) by an expert qualified under this subsection
3 must contain an explanation of the expert's credentials and
4 why the expert is qualified to conduct the review required
5 by Subsection (B). So this is the subsection that applies
6 to Mr. Hackney. So Subsection (3) requires two things: the
7 first question is, does he have scientific, technical or
8 other specialized knowledge which may assist the trier of
9 fact in understanding the evidence and determining a fact
10 or issue in the case by reason of the individual's study
11 experience or both? Second requirement is, that you have,
12 the expert has to put that information in the affidavit, an
13 explanation of his credential and why the expert is
14 qualified to conduct the review. And if you look at Mr.
15 Hackney's affidavit, Paragraph 4 and Paragraph 5, he says,
16 What is science, scientific, technical or other specialized
17 knowledge, basically specialized knowledge in this case,
18 that he has and how his credentials give him the
19 opportunity to render an opinion on this subject. And so he
20 says in, of course, Paragraph 4 and 5, what his experience
21 is ---

22 (Whereupon, interruption my WebEx)

23 MR. HALVERSON: --- contract administration services,
24 and then his opinion is very clear. He says in Paragraph 5,
25 I've reviewed all this stuff, all the drawings and he says,

1 "in addition to an architect's contract with 480 King
2 Street it included contract administration services. And
3 then in Paragraph 10, his opinion is that the architect
4 deviated from the standard of care, not in doing design,
5 Your Honor, not in doing design work, possibly, which could
6 implicate the need for having an architect to be critical
7 of another architect, but under Subsection (A) (3) he is
8 giving the opinion only as the construction based services.
9 Your honor, and Mr. Hackney was very clear. He testified
10 as an architect, they can perform contract administration
11 services, an engineer can perform contract administration
12 services. Mr. Hackney has qualification as to -- so does
13 Mr. Glick. So Mr. Glick can sign an affidavit, as I'm sure
14 he has, saying that an engineer deviated from the standard
15 of care in performing construction administration services.
16 Mr. Stair's argument is solely focused on the word
17 architect. It is not about the title of the person that's
18 giving the opinion it's about as Subsection (A) says in the
19 statute, it says - the definition of an expert witness - it
20 says, "an expert witness means an expert who is qualified
21 as to the acceptable conduct of the professional whose
22 conduct is at issue. And the acceptable conduct of a
23 professional, he happens to be an architect, that's true.
24 But the services that were provided that Mr. Hackney ---
25 (Whereupon, interruption my WebEx)

1 MR. HALVERSON: --- is the contract administration. So
2 we believe under Section (A) (3) the affidavit on its face
3 qualifies, and Mr. Hackney was very careful in putting in
4 his affidavit the requirements of (A) (3). Now, I would
5 just briefly like to address the procedural argument about
6 what Mr. Stair represented to you about why wasn't, why he
7 didn't attack this affidavit in the 30 days? He requested
8 in his affidavit, in the order that Judge Nicholson signed,
9 Mr. Stair requested 30 days to contest the sufficiency of
10 the affidavit. That was his request. I didn't have any
11 problems with it. He put it in there and there was no
12 challenge to it at all, until we were about to have a
13 status conference with Judge Young, and I think it might
14 have actually been before you or there were a couple of
15 status conferences that got continued, but Mr. Stair said,
16 hey, I want to file, you know, this motion and he wanted to
17 request leave at a status conference to file this motion.
18 And I said, I don't consent to the relief you're talking
19 about and it's not proper to be on the status conference
20 and asking a Judge Cole (ph), who is again not gonna have
21 any idea about what this case is about and not have any
22 briefs whether he can file a motion. And the reason why
23 Judge Nicholson put in his order that it had to be filed in 30
24 days from, in 2017. So, of course, as Mr. Stair had gone on
25 a status conferences and said to, Your Honor, judge I'd

1 like permission to file a motion. And I said, no, I object,
2 Your Honor, I won't let him do that. You'd look at me like
3 I had three heads on. So I said, Ken you can file whatever
4 motion you want. Okay. I don't consent to the relief
5 you're talking about. And, obviously, violative of Judge
6 Nicholson's order. So I don't even think I can consent to
7 changing what's in Judge Nicholson's order which was
8 mandatory that he had to file this in 30 days. And Mr.
9 Stair says the reason why is because when I looked at the
10 affidavit, it looked to me like he was criticizing an
11 architect. That's not what it says. If you look closely and
12 read it closely Mr. Hackney is very careful in his word
13 selection that he is only criticizing Mr. Glick, who
14 happens to be an architect, about the services he provided
15 and doing the contract administration. So that's how we got
16 to -- and so then three and half years later he files a
17 motion saying, "Why I didn't know until I took the
18 deposition." But what he said his deposition was perfectly
19 consistent. It's cited in, um, Mr. Mr. Stair's memo on Page
20 5, he says, um, he says, "I feel comfortable talking about
21 the standard of care that a professional would provide in
22 either giving or completing construction administration
23 services, whether that be an architect or an engineer.
24 Those services are similar across the board of
25 professionals and I feel confident and comfortable talking

1 about it." So just because one professional performs the
2 same service doesn't mean you have to be in that profession
3 in order to be critical of it. So, Your Honor, that's our
4 position. We believe ---

5 THE COURT: I disagree. I disagree with you. I
6 understand your, your logic. But respectfully, I have to go
7 back to the statute. I have to go back to legislative
8 intent. I don't get to, you know, legislate from the bench,
9 I have to go by what's in the black and white statute.

10 MR. STAIR: And, we, Your Honor, we ---

11 THE COURT: It clearly delineate, let me talk, it
12 clearly delineates profession. And from there under that
13 professional umbrella, then someone can speak to whether or
14 not someone deviated the standard of care. You know, I
15 understand that sometimes, you know, duties overlap between
16 professions. I understand your argument completely. Okay.
17 I'm not saying that it's not a cogent argument. I just
18 don't find it comports with our law in South Carolina.
19 Okay. So respectfully, you know, I'm happy to hear
20 something else -- again, I've read all of your briefs are.
21 They are all fully incorporated for purposes of the record.
22 I'm granting the motion to dismiss. I think that allowing
23 him to testify as to whether or not an architect reaches
24 standard of care, with any job that architect reformed,
25 it's frankly flies in the face of the statute. Now, I'm

1 not going to grant the second part of the motions which is
2 for sanctions because, you know, whether or not it's drug
3 out whose fault that was I don't find that to be clear and
4 convincing to that. So I'm not going to grant sanctions. I
5 will grant the motion to dismiss. I'm gonna ask Mr. Stair
6 to draft a formal proposed order within the next 10 days
7 and get that e-filed. All right.

8 MR. STAIR: I will do that. Thank you, Judge.

9 THE COURT: Thank y'all very much. Have a great
10 afternoon.

11 MR. HALVERSON: Thank you for your time.

12 THE COURT: Yep.

13 (CONCLUSION OF THE HEARING ON DECEMBER 2, 2021)
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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Ninth Circuit of the Circuit Court for Charleston County, South Carolina, on the 2nd day of December, 2021. DCRP monitored this hearing.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

s/ Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

January 29, 2021

2017-CP-10-3267

STATE OF NORTH CAROLINA)
) AFFIDAVIT OF LOUIS A. HACKNEY
COUNTY OF MECKLENBURG)

PERSONALLY APPEARED BEFORE ME, Louis A. Hackney, P.E., REWC, RRC, CDT, LEED AP, who being duly sworn does state as follows:

1. I am over eighteen years of age and in all other respects am competent to execute this Affidavit.

2. The matters set forth in this Affidavit are based on my personal knowledge and observations, as well as my professional education, training, and experience as an engineer.

3. I am a Professional Engineer and am registered in the State of South Carolina. I also hold registrations as a Professional Engineer in North Carolina, Florida, Louisiana, Ohio and Mississippi.

4. As a Professional Engineer, I am routinely responsible for property condition assessments, structural and nonstructural failure analysis, building envelope evaluations, damage assessments, and engineering investigations of both new and existing construction involving numerous types of structures. I also have experience performing contract administration services and preparing planning reports, designs, specifications, cost opinions, and contract documents for new construction and repair projects.

5. I have experience investigating and assessing the design and construction of commercial buildings in Charleston, South Carolina and my investigation of the 480 King Stair Tower is ongoing. I have examined the plans and construction documents of the 480 King Stair Tower building to investigate the nature of the construction and the deficiencies and damage associated therewith. I further reviewed the architectural drawings for the 480 King Stair Tower prepared by Glick/Boehm & Associates, Inc.

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY [Signature]

("Architect") in addition to the Architect's contract with 480 King Street, LLC, which included contract administration services.

6. Based on my investigation and analysis to date, it is my opinion that elements of the building's envelope has been compromised by design and construction deficiencies.

7. Specifically, there are numerous construction deficiencies that require repair including, but not limited to:

- a. Water intrusion through the building envelope which is/was occurring at the slab on grade level;
- b. Water intrusion through the building envelope which is/was occurring through the roof system;
- c. Water intrusion through the building envelope which is/was occurring through the window systems;
- d. Water intrusion through missing or inadequate building envelope flashings;

8. Based on my investigation and analysis to date, it is my opinion that that there was information missing from the plans that resulted in construction errors, additional cost, and delays.

9. Based on my investigation and analysis to date, it is my opinion that there was incorrect information contained within the project specifications that resulted in construction errors, additional cost, and delays.

10. Based on the information that I have received and reviewed to date, it is my professional opinion, to a reasonable degree of professional certainty, that the Architect deviated from the standard of care in failing to properly complete contract administration services as part of its contractual duties so as to prevent the aforementioned improper and code violating construction methods to occur and this deviation from the standard of care caused damage to 480 King Street, LLC in that it will have to expend funds to repair these items, or incurred damages from past remediations and associated delay costs.

11. I reserve the right to supplement or amend this Affidavit and I or my professional opinion upon receipt of additional documents or information pertaining to this matter.

FURTHER AFFIANT SAYETH NOT.

By: Louis A. Hackney
Louis A. Hackney

SWORN to before me this
7th day of September, 2017

Regina M. Oenbrink
Notary Public for Mecklenburg County, NC
My Commission Expires: March 20, 2021

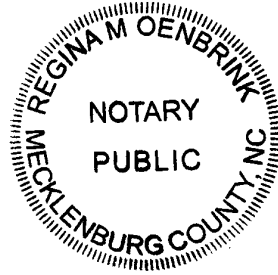


Exhibit #4

ELECTRONICALLY FILED - 2021 Nov 19 11:47 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003468

From: [Brent Halversen](mailto:Brent.Halversen)
To: [Stair, Kent T.](mailto:Stair,Kent.T)
Subject: RE: 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC
Date: Tuesday, March 23, 2021 7:20:00 PM

Kent,

You are free to file your motion. You do not need "Court permission" to file a motion. Happy to discuss further.

Brent

From: Stair, Kent T. <KStair@cskl.law>
Sent: Tuesday, March 23, 2021 7:14 PM
To: Brent Halversen <Brent@halversenlaw.com>; 'Young, Roger Law Clerk (Michael Monastra)' <ryounglc@sccourts.org>; Janet Segell <jsegell@barnwell-whaley.com>
Cc: aimee@kmlawsc.com; brandon@kmlawsc.com; Canaday, Jenifer L. <jcanaday@cskl.law>; mark@kmlawsc.com; K. Michael Barfield <mbarfield@barnwell-whaley.com>; Sperry, Paul E. <psperry@cskl.law>; Schmidt, Robin <rschmidt@cskl.law>; D. Summers Clarke, II <sclarke@barnwell-whaley.com>; Susan B. Hatch <shatch@barnwell-whaley.com>; Caroline Crisler. Leonard <cleonard@charlestoncounty.org>
Subject: RE: 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

To be very clear, **I do not have a motion pending** that I will seek to argue tomorrow or upon which I expect there to be any "adjudication". **I am simply seeking leave of Court to file a motion** that will be heard, in due course and under conventional circumstances, at a later time. The reason(s) I am requesting leave to file the motion rather than just going ahead and filing it, are set forth in the "Request" I previously filed and sent to the Court. The only "ruling" I will seek tomorrow will be whether or not I can file the motion. If the answer is "yes", I will file a motion to be heard at a later date; if the answer is "no", I won't file anything further.

Thanks,
Kent

From: Brent Halversen <Brent@halversenlaw.com>
Sent: Tuesday, March 23, 2021 6:07 PM
To: Stair, Kent T. <KStair@cskl.law>; 'Young, Roger Law Clerk (Michael Monastra)' <ryounglc@sccourts.org>; Janet Segell <jsegell@barnwell-whaley.com>
Cc: aimee@kmlawsc.com; brandon@kmlawsc.com; Canaday, Jenifer L. <jcanaday@cskl.law>; mark@kmlawsc.com; K. Michael Barfield <mbarfield@barnwell-whaley.com>; Sperry, Paul E. <psperry@cskl.law>; Schmidt, Robin <rschmidt@cskl.law>; D. Summers Clarke, II <sclarke@barnwell-whaley.com>; Susan B. Hatch <shatch@barnwell-whaley.com>; Caroline Crisler. Leonard <cleonard@charlestoncounty.org>
Subject: RE: 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

I am not prepared to argue/defend Mr. Stair's motion tomorrow. Of course, he is free to discuss pending motions, I just for the record am saying that no adjudication of Mr. Stair's motion should be decided tomorrow since we are just convening on this status conference. See everyone tomorrow.

Brent

From: Stair, Kent T. <KStair@cskl.law>
Sent: Tuesday, March 23, 2021 5:05 PM
To: 'Young, Roger Law Clerk (Michael Monastra)' <ryounglc@sccourts.org>; Janet Segell <jsegell@barnwell-whaley.com>
Cc: aimee@kmlawsc.com; brandon@kmlawsc.com; Brent Halversen <Brent@halversenlaw.com>; Canaday, Jenifer L. <jcanaday@cskl.law>; mark@kmlawsc.com; K. Michael Barfield <mbarfield@barnwell-whaley.com>; Sperry, Paul E. <psperry@cskl.law>; Schmidt, Robin <rschmidt@cskl.law>; D. Summers Clarke, II <sclarke@barnwell-whaley.com>; Susan B. Hatch <shatch@barnwell-whaley.com>; Caroline Crisler. Leonard <ccleonard@charlestoncounty.org>
Subject: RE: 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

I look forward to discussing all of the issues below with everyone at tomorrow's hearing. In advance of the hearing, I thought it would be helpful to bring two things to everyone's attention:

1. Prior to the prior status conference in this case (held 9/17/20), I filed and was prepared to discuss the attached Request for Leave to file Motion to Dismiss and Motion for Sanctions, but the Court's agenda that day did not include addressing such things. I would like to discuss it tomorrow and I wanted to alert everyone to that desire. Also, given the somewhat unusual nature of the "Request", I thought it worthwhile to provide the Court with a courtesy copy.
2. The second question raised below reminded me that I have not sought protection for my long-standing family vacation planned for September 11 – 21, 2021. I'm in the process of preparing a formal request for protection for this and other cases, but wanted to provide those dates to everyone to determine whether anyone will have an any objection to my protection during that period of time.

I will, of course, also be ready to discuss the other issues as they arise tomorrow. Again, I look forward to "seeing" everyone.

Kent Stair (counsel for Defendant, Glick/Boehm & Associates, Inc.)

From: Young, Roger Law Clerk (Michael Monastra) <ryounglc@sccourts.org>
Sent: Tuesday, March 23, 2021 3:09 PM
To: Janet Segell <jsegell@barnwell-whaley.com>
Cc: aimee@kmlawsc.com; brandon@kmlawsc.com; brent@halversenlaw.com; Canaday, Jenifer L. <jcanaday@cskl.law>; Stair, Kent T. <KStair@cskl.law>; mark@kmlawsc.com; K. Michael Barfield

<mbarfield@barnwell-whaley.com>; Sperry, Paul E. <psperry@cskl.law>; Schmidt, Robin <rschmidt@cskl.law>; D. Summers Clarke, II <sclarke@barnwell-whaley.com>; Susan B. Hatch <shatch@barnwell-whaley.com>; Caroline Crisler. Leonard <[ccleonard@charlestoncounty.org](mailto:cleonard@charlestoncounty.org)>
Subject: 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

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Good Afternoon,

In preparation for the status conference tomorrow, please be prepared to discuss the following topics:

Are there any Pending motions?
Do any parties have dates of protection?
Has the case been mediated?
Is Discovery complete?
Are you requesting a date certain?
Is the case ready for trial?
If no, why not?

The videoconference hearing in the above referenced matter is scheduled for Wednesday, March 24, 2021 at 10:00 am via WebEx Events virtual courtroom. Click the link listed below to access the hearing. You will be prompted to enter your first name, last name and email address. Once the information is entered, the microphone will be muted and you will enter the videoconference. If you would like to appear on screen and/or participate, click the Participants icon at the bottom of your screen. Then click the hand icon at the bottom right to "Raise" or "Lower" your hand. This will notify the court you wish to appear on screen. The courtroom will be open thirty minutes before the hearing. If you have questions and/or issues accessing the virtual courtroom please contact Cisco WebEx support: 1-866-229-3239.

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The link may be found on the court's website <https://sccourts.org/calendar/>.

Michael A. Monastra
Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: Janet Segell <jsegell@barnwell-whaley.com>
Sent: Tuesday, March 23, 2021 11:41 AM
To: Young, Roger Law Clerk (Michael Monastra) <ryounglc@sccourts.org>
Cc: aimée@kmlawsc.com; brandon@kmlawsc.com; brent@halversenlaw.com; jcanaday@cskl.law; Janet Segell <jsegell@barnwell-whaley.com>; kstair@cskl.law; mark@kmlawsc.com; K. Michael Barfield <mbarfield@barnwell-whaley.com>; psperry@cskl.law; rschmidt@cskl.law; D. Summers Clarke, II <sclarke@barnwell-whaley.com>; Susan B. Hatch <shatch@barnwell-whaley.com>
Subject: FW: [EXT] 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

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Morning, Michael. Are we going forward with the status conference tomorrow at 10:00 AM?

From: K. Michael Barfield <mbarfield@barnwell-whaley.com>
Sent: Thursday, March 11, 2021 2:41 PM
To: Young, Roger Law Clerk (Michael Monastra) <ryounglc@sccourts.org>
Cc: Brent Halversen <Brent@halversenlaw.com>; mark@kmlawsc.com; Stair, Kent T. <KStair@cskl.law>; Caroline Crisler. Leonard <[ccleonard@charlestoncounty.org](mailto:cleonard@charlestoncounty.org)>
Subject: RE: [EXT] 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

I am available at that time.

Thanks.

Michael

From: Young, Roger Law Clerk (Michael Monastra) <ryounglc@sccourts.org>
Sent: Thursday, March 11, 2021 2:40 PM
To: K. Michael Barfield <mbarfield@barnwell-whaley.com>
Cc: Brent Halversen <Brent@halversenlaw.com>; mark@kmlawsc.com; Stair, Kent T. <KStair@cskl.law>; Caroline Crisler. Leonard <[ccleonard@charlestoncounty.org](mailto:cleonard@charlestoncounty.org)>
Subject: [EXT] 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

Thank you, Mr. Barfield. Judge Young is available for a status conference via WebEx Wednesday, March 24, 2021 at 10:00 am. Does that work for all parties?

Michael A. Monastra
Law Clerk to The Honorable Roger M. Young, Sr.
100 Broad Street
Charleston, South Carolina 29401
Office: (843) 958-2015
Email: RYounglc@sccourts.org

From: K. Michael Barfield <mbarfield@barnwell-whaley.com>

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To: Young, Roger Law Clerk (Michael Monastra) <ryounglc@sccourts.org>

Cc: Brent Halversen <Brent@halversenlaw.com>; mark@kmlawsc.com; Stair, Kent T. <KStair@cskl.law>

Subject: Case 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC , defendant, et al added to Court Roster for period 2021-03-15 through 2021-03-19.

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Mr. Monastra,

This case arises out of the construction of a building on upper King Street. I represent the plaintiff, Blanchard Construction, who was the general contractor. The case began with the filing of a mechanic's lien by Blanchard against the owner, 480 King Street, LLC. 480 King then counter claimed, alleging deficiencies with the construction. 480 King sued the project architect, Glick Boehm and Associates in a separate action, but the two case have sense been completely consolidated.

The managing member of 480 King splits her time between Charleston and Ohio. However, at last word, she has spent the entire pandemic in Ohio. I will let her counsel, Brent Halverson, address how this may impact the logistics of bringing this case to trial.

The discovery process is nearly complete. However, the depositions of several witnesses have proven to be multi-day affairs. At this time, there are at least two key depositions that must be scheduled and completed before trial.

For my part, I believe a status conference would be beneficial to all to determine a timetable for bringing this matter to its conclusion.

Thank you.

Michael

K. MICHAEL BARFIELD



MBarfield@Barnwell-Whaley.com

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211 KING STREET, SUITE 300
CHARLESTON, SC 29401

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**From:** [Brent Halversen](#)  
**To:** [Stair, Kent T.](#); "Young, Roger Law Clerk (Michael Monastra)"; [Janet Segell](#)  
**Cc:** [aimee@kmlawsc.com](#); [brandon@kmlawsc.com](#); [Canaday, Jenifer L.](#); [mark@kmlawsc.com](#); [K. Michael Barfield](#); [Sperry, Paul E.](#); [Schmidt, Robin](#); [D. Summers Clarke, II](#); [Susan B. Hatch](#); [Caroline Crisler, Leonard](#)  
**Subject:** RE: 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC  
**Date:** Tuesday, March 23, 2021 7:17:00 PM

To be clear, your request "for leave of court," is a motion seeking court relief- and – it will be opposed. Again, any request of the court should come in proper channels through regular motion practice – not in tomorrow's status conference.

Brent

---

**From:** Stair, Kent T. <[KStair@cskl.law](mailto:KStair@cskl.law)>  
**Sent:** Tuesday, March 23, 2021 7:14 PM  
**To:** Brent Halversen <[Brent@halversenlaw.com](mailto:Brent@halversenlaw.com)>; 'Young, Roger Law Clerk (Michael Monastra)' <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>; Janet Segell <[jsegell@barnwell-whaley.com](mailto:jsegell@barnwell-whaley.com)>  
**Cc:** [aimee@kmlawsc.com](mailto:aimee@kmlawsc.com); [brandon@kmlawsc.com](mailto:brandon@kmlawsc.com); [Canaday, Jenifer L. <jcanaday@cskl.law>](mailto:Canaday, Jenifer L. <jcanaday@cskl.law>); [mark@kmlawsc.com](mailto:mark@kmlawsc.com); [K. Michael Barfield <mbarfield@barnwell-whaley.com>](mailto:K. Michael Barfield <mbarfield@barnwell-whaley.com>); [Sperry, Paul E. <psperry@cskl.law>](mailto:Sperry, Paul E. <psperry@cskl.law>); [Schmidt, Robin <rschmidt@cskl.law>](mailto:Schmidt, Robin <rschmidt@cskl.law>); [D. Summers Clarke, II <sclarke@barnwell-whaley.com>](mailto:D. Summers Clarke, II <sclarke@barnwell-whaley.com>); [Susan B. Hatch <shatch@barnwell-whaley.com>](mailto:Susan B. Hatch <shatch@barnwell-whaley.com>); [Caroline Crisler, Leonard <ccleonard@charlestoncounty.org>](mailto:Caroline Crisler, Leonard <ccleonard@charlestoncounty.org>)  
**Subject:** RE: 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

To be very clear, **I do not have a motion pending** that I will seek to argue tomorrow or upon which I expect there to be any "adjudication". **I am simply seeking leave of Court to file a motion** that will be heard, in due course and under conventional circumstances, at a later time. The reason(s) I am requesting leave to file the motion rather than just going ahead and filing it, are set forth in the "Request" I previously filed and sent to the Court. The only "ruling" I will seek tomorrow will be whether or not I can file the motion. If the answer is "yes", I will file a motion to be heard at a later date; if the answer is "no", I won't file anything further.

Thanks,  
 Kent

**From:** Brent Halversen <[Brent@halversenlaw.com](mailto:Brent@halversenlaw.com)>  
**Sent:** Tuesday, March 23, 2021 6:07 PM  
**To:** Stair, Kent T. <[KStair@cskl.law](mailto:KStair@cskl.law)>; 'Young, Roger Law Clerk (Michael Monastra)' <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>; Janet Segell <[jsegell@barnwell-whaley.com](mailto:jsegell@barnwell-whaley.com)>  
**Cc:** [aimee@kmlawsc.com](mailto:aimee@kmlawsc.com); [brandon@kmlawsc.com](mailto:brandon@kmlawsc.com); [Canaday, Jenifer L. <jcanaday@cskl.law>](mailto:Canaday, Jenifer L. <jcanaday@cskl.law>); [mark@kmlawsc.com](mailto:mark@kmlawsc.com); [K. Michael Barfield <mbarfield@barnwell-whaley.com>](mailto:K. Michael Barfield <mbarfield@barnwell-whaley.com>); [Sperry, Paul E. <psperry@cskl.law>](mailto:Sperry, Paul E. <psperry@cskl.law>); [Schmidt, Robin <rschmidt@cskl.law>](mailto:Schmidt, Robin <rschmidt@cskl.law>); [D. Summers Clarke, II <sclarke@barnwell-whaley.com>](mailto:D. Summers Clarke, II <sclarke@barnwell-whaley.com>); [Susan B. Hatch <shatch@barnwell-whaley.com>](mailto:Susan B. Hatch <shatch@barnwell-whaley.com>); [Caroline Crisler, Leonard <ccleonard@charlestoncounty.org>](mailto:Caroline Crisler, Leonard <ccleonard@charlestoncounty.org>)  
**Subject:** RE: 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

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I am not prepared to argue/defend Mr. Stair's motion tomorrow. Of course, he is free to discuss pending motions, I just for the record am saying that no adjudication of Mr. Stair's motion should be decided tomorrow since we are just convening on this status conference. See everyone tomorrow.

Brent

---

**From:** Stair, Kent T. <[KStair@cskl.law](mailto:KStair@cskl.law)>  
**Sent:** Tuesday, March 23, 2021 5:05 PM  
**To:** 'Young, Roger Law Clerk (Michael Monastra)' <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>; Janet Segell <[jsegell@barnwell-whaley.com](mailto:jsegell@barnwell-whaley.com)>  
**Cc:** [aimee@kmlawsc.com](mailto:aimee@kmlawsc.com); [brandon@kmlawsc.com](mailto:brandon@kmlawsc.com); Brent Halversen <[Brent@halversenlaw.com](mailto:Brent@halversenlaw.com)>; Canaday, Jenifer L. <[jcanaday@cskl.law](mailto:jcanaday@cskl.law)>; [mark@kmlawsc.com](mailto:mark@kmlawsc.com); K. Michael Barfield <[mbarfield@barnwell-whaley.com](mailto:mbarfield@barnwell-whaley.com)>; Sperry, Paul E. <[psperry@cskl.law](mailto:psperry@cskl.law)>; Schmidt, Robin <[rschmidt@cskl.law](mailto:rschmidt@cskl.law)>; D. Summers Clarke, II <[sclarke@barnwell-whaley.com](mailto:sclarke@barnwell-whaley.com)>; Susan B. Hatch <[shatch@barnwell-whaley.com](mailto:shatch@barnwell-whaley.com)>; Caroline Crisler. Leonard <[ccleonard@charlestoncounty.org](mailto:ccleonard@charlestoncounty.org)>  
**Subject:** RE: 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

I look forward to discussing all of the issues below with everyone at tomorrow's hearing. In advance of the hearing, I thought it would be helpful to bring two things to everyone's attention:

1. Prior to the prior status conference in this case (held 9/17/20), I filed and was prepared to discuss the attached Request for Leave to file Motion to Dismiss and Motion for Sanctions, but the Court's agenda that day did not include addressing such things. I would like to discuss it tomorrow and I wanted to alert everyone to that desire. Also, given the somewhat unusual nature of the "Request", I thought it worthwhile to provide the Court with a courtesy copy.
2. The second question raised below reminded me that I have not sought protection for my long-standing family vacation planned for September 11 – 21, 2021. I'm in the process of preparing a formal request for protection for this and other cases, but wanted to provide those dates to everyone to determine whether anyone will have an any objection to my protection during that period of time.

I will, of course, also be ready to discuss the other issues as they arise tomorrow. Again, I look forward to "seeing" everyone.

Kent Stair (counsel for Defendant, Glick/Boehm & Associates, Inc.)

---

**From:** Young, Roger Law Clerk (Michael Monastra) <[ryounglc@sccourts.org](mailto:ryounglc@sccourts.org)>  
**Sent:** Tuesday, March 23, 2021 3:09 PM  
**To:** Janet Segell <[jsegell@barnwell-whaley.com](mailto:jsegell@barnwell-whaley.com)>  
**Cc:** [aimee@kmlawsc.com](mailto:aimee@kmlawsc.com); [brandon@kmlawsc.com](mailto:brandon@kmlawsc.com); [brent@halversenlaw.com](mailto:brent@halversenlaw.com); Canaday, Jenifer L. <[jcanaday@cskl.law](mailto:jcanaday@cskl.law)>; Stair, Kent T. <[KStair@cskl.law](mailto:KStair@cskl.law)>; [mark@kmlawsc.com](mailto:mark@kmlawsc.com); K. Michael Barfield

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**Subject:** FW: [EXT] 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC

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Morning, Michael. Are we going forward with the status conference tomorrow at 10:00 AM?

---

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I am available at that time.

Thanks.

Michael

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**Michael A. Monastra**  
Law Clerk to The Honorable Roger M. Young, Sr.  
100 Broad Street  
Charleston, South Carolina 29401  
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**Subject:** Case 2016CP1003468- Charles Blanchard Construction Corp Inc VS 480 King Street LLC , defendant, et al added to Court Roster for period 2021-03-15 through 2021-03-19.

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Thank you.

Michael

**K. MICHAEL BARFIELD**



[MBarfield@Barnwell-Whaley.com](mailto:MBarfield@Barnwell-Whaley.com)

843-577-7700

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211 KING STREET, SUITE 300  
CHARLESTON, SC 29401

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Jul 06 2022

SC Court of Appeals

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.

s/Jesse Sanchez

Jesse Sanchez (SC Bar No. 101906)

The Law Office of Jesse Sanchez, LLC 98

1/2 Broad Street, Suite B

Charleston, South Carolina 29401

(843) 814-8181

Attorney for Appellant

July 6, 2022

Charleston, South Carolina