

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable Ellis B. Drew, Jr., Master-in-Equity

Case No.: 2007-CP-04-2785
(Appellate Case No. 2012-213225)

RECEIVED

JUN 03 2013

SC Court of Appeals

Moorhead Construction, Inc. Respondent,

v.

Pendleton Station, LLC, Enterprise Bank of South Carolina,
and Angelo Penza Defendants,

Of whom Enterprise Bank of South Carolina is the Appellant.

**RECORD ON APPEAL
VOLUME I OF II**

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FORM 4
STATE OF SOUTH CAROLINA FILED - CLERK'S OFFICE JUDGMENT IN A CIVIL CASE
COUNTY OF ANDERSON ANDERSON SC
IN THE COURT OF COMMON PLEAS

2012 OCT -4 A 11:16

CASE NO. 2007 CP-04-2785 **2785**



Moorhead Construction, Inc.

COMMON PLEAS AND
GENERAL SESSIONS

Pendleton Station, LLC, Enterprise Bank of SC

and Angelo Penza

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David J. Brousseau	Attorney for : ☒ Plaintiff ☐ Defendant
	☐ 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
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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:

ORDER INFORMATION

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

Order Denying Motion for Reconsideration

INFORMATION FOR THE JUDGMENT 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)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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.

[Signature]
 Circuit Court Judge
 SCRPC Form 4C (12/2011)

3904
 Judge Code

Oct 4, 2012
 Date
 Page 1

For Clerk of Court Office Use Only

This judgment was entered on the 4th day of Oct., 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this 4th day of Oct., 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Carson

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

Moorhead Construction, Inc.,)
Plaintiff,)

vs.)

Pendleton Station, LLC;)
Enterprise Bank of South Carolina; and)
Angelo Penza.)

Defendants.)

ORDER DENYING MOTION FOR
RECONSIDERATION

C/A No 2007-CP-04-2785

A TRUE COPY

OCT - 4 2012

THIS MATTER came before the Court for a hearing on Defendant Enterprise Bank of South Carolina's Motion to Reconsider the Final Order and Judgment issued by this Court on June 13, 2012. Attorneys for all parties were present and ready to proceed. After careful review of the file, memorandum of law and arguments of counsel, I find that the Defendant Enterprise Bank of South Carolina's motion shall be denied. This Court believes that the June 13, 2012 Order and Final Judgment accurately reflects the Court's decision in this matter.

IT IS SO ORDERED this 4th day of Oct., 2012.


Ellis B. Drew, Jr.
Presiding Master-In-Equity

Anderson, South Carolina.

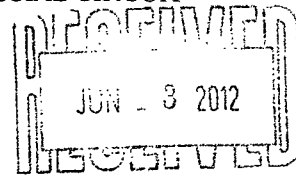
STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

Moorhead Construction, Inc.,)
)
Plaintiff,)

-v-)

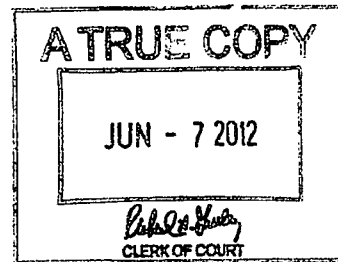
Pendleton Station, LLC;)
Enterprise Bank of South Carolina;)
Diane L. Zellner, Trustee for the Diana L.)
Zellner Revocable Trust UAD;)
Angelo Penza; Bobby Bryant; Ursula)
Lesser; Roger Rowe and Benjamin)
L. Daniel, Sr.)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT



PRE-TRIAL ORDER REGARDING
DISMISSAL OF CERTAIN PARTIES

C/A No :: 2007-CP-04-2785



THIS MATTER came before the Court for a pre-trial conference on December 8, 2011. By way of agreement, the following Defendants were dismissed from this action: a) Diane L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD; b) Bobby Bryant; c) Ursula Lesser; d) Roger Rowe and e) Benjamin L. Daniel, Sr. These parties had previously been named by way of either ownership interest and/or possible other type of interest in and to Tract B of the real property involved in this case. While this case was pending, Enterprise Bank of South Carolina purchased Tract B subject to the claims of Plaintiff. As such, the above named individuals are no longer necessary parties to this action, and are hereby dismissed from the same.

The caption is to be amended to show that the only Defendants now involved in this matter are Pendleton Station, LLC; Enterprise Bank of South Carolina; and Angelo Penza.

IT IS SO ORDERED this 17th day of June, 2012.

Hon. Ellis B. Drew, Jr.
Master-In-Equity

Anderson, South Carolina.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-04-2785

Moorhead Construction, Inc.

Enterprise Bank of South Carolina, Pendleton Station,

LLC; and Angelo Penza

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David J. Brousseau

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ 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
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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) by the Court:☐ Statement of Judgment

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Final Order and Judgment

A TRUE COPY

JUN - 7 2012

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)
Moorhead Construction, Inc.	Enterprise Bank of South Carolina	\$132,654.17
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
See Attached Exhibit A of Final Order and Judgment for full description of the real properties. TMS
Numbers: 063-00-01-006; 040-00-02-005; and 063-00-01-007

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

3004
Judge Code6-7-2012
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2011 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

Karen Lewis

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

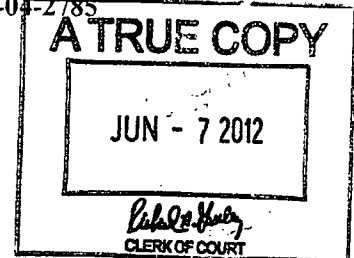
IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

Moorhead Construction, Inc.,)
Plaintiff,)
vs.)

FINAL ORDER AND JUDGMENT

C/A No 2007-CP-04-2785

Pendleton Station, LLC;)
Enterprise Bank of South Carolina; and)
Angelo Penza.)
Defendants.)



THE ABOVE CAPTIONED MATTER came before this Court for a non-jury trial on December 8, 2011 and January 24, 2012. An Order of Reference referring this case to the Master-In-Equity was filed with the Anderson County Clerk of Court's Office on October 28, 2011.

The Plaintiff [hereinafter Moorhead] is represented by David J. Brousseau of the Anderson law firm McIntosh, Sherard, Sullivan & Brousseau. Defendant Enterprise Bank of South Carolina [hereinafter Enterprise Bank] is represented by Thomas E. Dudley, III and M. Stokely Holder of the Greenville law firm Kennison, Dudley & Crawford. Defendant Pendleton Station, LLC [hereinafter Pendleton Station] is represented by James W. Logan, Jr., of the Anderson law firm Logan, Jolly & Smith as well as Stanley E. Barnett of the Charleston law firm Smith, Bundy, Bybee & Barnett. Defendant Angelo Penza is represented by C. Nicholas Lavery of the Clemson law firm Olson, Smith, Jordan & Cox.

At the outset of this litigation, a number of different Defendants were named by virtue of some form of interest they possibly had in the tracts of land involved in this matter. While litigation was pending in this case, Defendant Enterprise Bank purchased whatever interest those parties had subject to the lien in this case. Those Defendants have been dismissed by way of separate order in this matter. The only relevant Defendants are the ones now named herein above.

This case centers around construction services provided by Moorhead on real property described with more particularity in the attached Exhibit A. For ease of reading, the construction project will be referred to herein as either 'the project' or 'the Pendleton Station project.'

Due to the similarity of the factual circumstances, this case was tried at the same time as two (2) other cases; namely, *Miller Construction Company, LLC. vs. Enterprise Bank, et al*, C/A No 2007-

CP-04-2786, and *Craft Construction Company Inc., of Starr vs. Enterprise Bank, et al*, C/A No 2007-CP-04-2784. While these matters were not consolidated, they are all very much related and reference is invited to those files for review of the Final Order and Judgment in each of those cases.

FINDINGS OF FACT & CONCLUSIONS OF LAW

The Pendleton Station project was a real estate development project originally started by a group of investment developers who formed Pendleton Station, LLC. The project was located on real property in the Town of Pendleton, Anderson County, South Carolina. Moorhead provided construction services on the project primarily consisting of horizontal construction services such as utility work, grading, sewer, roads, and water. Moorhead Construction, Inc., held its contract with the developers Pendleton Station, LLC, and subcontracted Miller Construction and Craft Construction to perform some of the above construction services.

Prior to March 5, 2007, Tract A and the 2 acre tract were owned by Pendleton Station, LLC. Tract B was previously owned by the Diana L. Zellner Revocable Trust UAD.

Up until March 5, 2007, Enterprise Bank held a mortgage on Tract A and the 2 acre tract as security for three (3) separate notes from Pendleton Station totaling \$5.5 million.¹ In regards to Tract B, there was at the time of the filing of this mechanic's lien a mortgage recorded in favor of Defendant Angelo Penza. There is currently a foreclosure action pending regarding that particular mortgage where the validity of the mortgage is at issue. Nothing in this Order should be construed as any type of finding regarding the validity of Mr. Penza's mortgage. Additionally, it should be noted that this Court previously determined that Mr. Penza does not have a mortgage interest as to Tract A. He has appealed that determination.

On March 5, 2007, after Enterprise Bank notified Pendleton Station of its default on the above referenced notes, a deed in lieu of foreclosure was recorded with the Anderson County Register of Deeds Office. This deed in lieu of foreclosure was delivered to Enterprise Bank, and conveyed to it Tract A as well as the aforementioned 38 acre tract.

On April 17, 2007, Moorhead filed and served notice of its mechanic's lien in this matter. In the lien, it alleged its last date of work on the job site was March 6, 2007. Further, Moorhead's notice and claim of mechanic's lien alleged it was owed \$401,729.00 for work performed on the project. Subsequently, Moorhead timely filed and served its *lis pendens*, summons and complaint seeking *inter alia*, foreclosure of its mechanic's lien.

¹ Enterprise Bank also had a mortgage on a 38 acre tract of property that was originally included in the mechanic's lien in this matter. The *lis pendens* as to that particular tract was dissolved by way of prior Order in this case granting partial summary judgment as to that tract only.

Subsequent to the mechanic's lien being filed and served, on July 24, 2007, Pendleton Station conveyed to Enterprise Bank the 2 acre tract subject to Moorhead's mechanic's lien. On February 11, 2008, Tract B was conveyed to Enterprise Bank from the Diana Zellner Revocable Trust UAD subject to Moorhead's mechanic's lien.

Pendleton Station admits the existence of its contract with Moorhead to perform these construction services. It further admits that Moorhead is owed the principal amount claimed by the Moorhead and its subcontractors under this contract and that the Plaintiff has a valid and enforceable mechanic's lien as to the real properties included in Exhibit A. Pendleton Station disputes that it breached the contract as it contends that it was forced to abandon the property by virtue of the Enterprise Bank's conduct, and thus lost the ability to continue with the project.

At trial, Enterprise Bank raised three (3) main issues regarding the validity of Moorhead's mechanic's lien. First, Enterprise Bank asserts that Moorhead's last date of work was much earlier than the March 6, 2007 date Moorhead alleges in its notice of mechanic's lien. Secondly, Enterprise Bank argues that in regards to Tract A only, the recording statutes bar the enforcement of the mechanic's lien since the deed in lieu of foreclosure conveying said tract to Enterprise Bank was filed prior to Miller filing its notice of mechanic's lien. Lastly, Enterprise Bank asserts that a portion of the damages requested by Moorhead are not proper damages under the mechanic's lien statute.

Last Date of Work

Kevin Moorhead testified on behalf of Moorhead Construction. Moorhead was contracted by Pendleton Station, LLC, to primarily perform horizontal construction on the project consisting of utilities, sewer, grading, road work and other such construction of that nature. He testified that his last date performing work on the real property was on March 6, 2007. He specifically recalled this date because he and Miller (his subcontractor) were called by DHEC to come to the job site in order to fix a detention pond and silt fence that was failing and casting water into a protected wetlands area. This type of corrective work is contemplated and called for in his contract. Additionally, this Court has found in the *Craft* matter that Craft Construction (another subcontractor of Moorhead) was also on site performing work on the sewer system on March 7, 2007.

Charles Kernaghan was the onsite manager for construction on the project for Pendleton Station when it owned the property, and then was the onsite manager for construction on the project for Enterprise Bank after it took over ownership. Mr. Kernaghan testified that he believed Mr. Moorhead to both be a truthful individual in his dealings with them. He could not recall Moorhead's

last date of work on the project. Greg Dawkins of Dunn & Dunn Engineering was called by Enterprise Bank as a witness. He was not aware of when Moorhead's last date of work was on the project. Further, he testified that the last invoice on a job does not necessarily mean that was the last date of Moorhead's work as corrective work is often necessary on any project. He also testified that he has known Kevin Moorhead for quite some time due to work not only on this project but on prior projects, and knew Mr. Moorhead to be an honest and truthful person in all of his prior dealings with him.

I find the testimony of Mr. Miller, Mr. Moorhead and Mr. Craft to be very credible. I also find that there was no testimony presented that would refute Kevin Moorhead's testimony as to when Moorhead's last date of work was on the project. Accordingly, I find by a preponderance of the evidence that Moorhead's last date of work was March 6, 2007. This would mean that the notice of mechanic's lien was timely filed and served within the ninety (90) days called for by statute. S.C. Code Ann. §29-5-10, et seq (as amended).

*Enterprise Bank's Argument that the Recording of the
Deed In Lieu of Foreclosure Bars Enforcement of Moorhead's Lien as to Tract A*

Enterprise Bank claims that Moorhead's mechanic's lien as to Tract A can not be enforced because at the time Moorhead filed and served its notice of mechanic's lien, Enterprise Bank was the recorded owner of Tract A by virtue of a deed in lieu of foreclosure.

On March 5, 2007, a deed in lieu of foreclosure was filed in the Anderson County Register of Deeds Office. Some time shortly thereafter it was received by Enterprise Bank. Witness Ervin Mathias and Charles Kernaghan both testified that within days of the deed in lieu of foreclosure being recorded, Mr. Mathias appeared in Pendleton with an Enterprise Bank check book and authorization from Enterprise Bank to pay unpaid contractors. He then proceeded to write checks on behalf of Enterprise Bank to many other unpaid contractors. This amount exceeded one million dollars.

Enterprise Bank vice-president David Johns testified that the deed in lieu of foreclosure was unilaterally filed without Enterprise Bank's authority. He further testified that Enterprise Bank was 'forced to accept the deed in lieu of foreclosure.' However, upon further questioning, he admitted that Enterprise Bank did not file anything with either the Clerk of Court's Office (such as a quiet title or declaratory judgment action), nor did it file anything with the Register of Deeds Office signifying to the public that acceptance of the deed in lieu of foreclosure was in question. Ultimately, he admitted that Enterprise Bank accepted the deed in lieu of foreclosure by way of exerting ownership and continued construction and development of the project. He also admitted that Moorhead's work benefitted the property and project.



"In South Carolina, any person to whom a debt is due for labor performed or materials furnished in the erection, alteration or repair of a building or structure upon real estate is given a lien on the property to secure payment of the debt. The lien arises, inchoate, when the labor is performed." *Shelley Construction Company, Inc. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (1985); S.C. Code Ann. §29-5-20 (as amended). The mechanic's lien that arises at the time work is performed dissolves if the contractor fails to file the notice of the mechanic's lien as prescribed in the statutes within ninety (90) days of its last date of work on the real property. S.C. Code Ann. §29-5-90 (as amended).

The recording statutes would only potentially bar the enforcement of a mechanic's lien if the property was purchased by a bona fide purchaser for value without notice of prior claims, and said conveyance was recorded with the Register of Deed's Office prior to the recording of the notice of the mechanic's lien. *The Lite House, Inc. v. J.C. Roy Co., Inc.*, 309 S.C. 50, 419 S.E.2d 817 (Ct. App. 1992). However, acceptance of a deed in lieu of foreclosure does not qualify one as a bona fide purchaser. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006). Additionally, by virtue of the numerous payments to unpaid subcontractors just days after receiving the deed in lieu of foreclosure, Enterprise Bank clearly had notice that there were a number of unpaid contractors on this project.

Ordinarily, when one holds an equitable interest (such as a mortgage) and then becomes the legal title owner, the legal and equitable titles merge and the equitable encumbrance ceases to exist. *First Federal Sav. & Loan Ass'n of South Carolina v. Finn*, 300 S.C. 228, 387 S.E.2d 253 (1998). The burden rests on the party opposing merger to show otherwise; *Id.* see also, *Agnew v. Charlotte, Columbia, and Augusta RR.*, 24 S.C. 18 (1885) and *Thompson v. Hudgens*, 161 S.C. 450, 159 S.E. 807 (1931). This rule is perhaps no more clearly stated than in the case of *Bleckley v. Branyan*, 26 S.C. 424, 2 S.E.2d 319 (1887). There the Supreme Court held:

It must be taken to be settled in that state by a long line of adjudications, both in law and equity, "that a mortgagee who buys the estate under mortgage not under process of foreclosure, extinguishes the debt or claim with him on the property."

2 S.E.2d at 321; see also, 275 S.C. Jur. Mortgages §61 (2007) and 55 Am. Jur. Mortgages § 1340 (2007) ("Ordinarily, a transfer of the interest of the mortgagor in the mortgaged property to the mortgagee operates as a merger of the two estates, which effect a discharge of the mortgage and a satisfaction of the debt.") Therefore, based upon the doctrine of merger, Enterprise Bank was no longer a mortgagee since the mortgage and debt had been satisfied but became the fee simple owner of the property but not as a bona fide purchaser for value without notice of prior claims.

The use of a deed in lieu of foreclosure does present certain advantages to the mortgagee. For example, a deed in lieu of foreclosure allows the lender to avoid the costs and delays that often accompany a formal foreclosure. 2 Law of Real Estate Financing §12:3 (2007). A deed can be quickly drafted at a fairly nominal cost and the lender is able to assume immediate control and use of the property and mitigate any further decline in the value of the collateral. As such, like in this situation, when Enterprise Bank accepted the deed in lieu of foreclosure, it gained these advantages. However as noted above, a mechanic's lien arises and exists when the work is performed. It only dissolves upon the contractor failing to file its lien within the statutory prescribed period of ninety (90) days from its last date of work on the job site. Accordingly, while there are advantages to the mortgagee in the use of a deed in lieu, there is an inherent risk when any mortgagee accepts such a deed as there may be valid liens that exist that have not yet been filed within the ninety (90) day time frame. See *Real Estate Law*, 2nd Ed., Gibson, Karp & Klayman, page 494 (1987) and discussion of facts in *Kirkman v. Parex, Inc.*, 369 S.C. 477, 632 S.E.2d 854 (2006). Enterprise Bank apparently understood this risk as it initially paid many unpaid subcontractors after choosing to accept the deed in lieu of foreclosure. However, for some reason it did not pay Moorhead.

In this case, Enterprise Bank had the option of not accepting the deed in lieu of foreclosure. Enterprise Bank did not return the deed in lieu of foreclosure to Pendleton Station following receipt, nor did it file any type of document with the Register of Deeds to signify to the public that it was not the record title owner as stated in the deed in lieu of foreclosure. Finally, it did not file a quiet title action to set the deed aside, nor did it file a foreclosure action. In short, Enterprise Bank could have taken steps to protect its mortgage interest but chose not to do so. In fact, upon receipt of the deed in lieu of foreclosure, Enterprise Bank accepted the deed and the advantages associated therewith and took immediate control of the property, began using the property and exerting ownership of the property by paying many unpaid subcontractors, putting up a fence to protect its property, and eventually finished construction on the project.

Enterprise Bank made a reasoned choice to accept the deed in lieu of foreclosure. As a consequence, the legal and equitable title merged under the law of South Carolina resulting in the discharge of the mortgage and the extinguishment of the debt and Enterprise Bank has failed to meet its burden to show otherwise as a matter of law. As such, Enterprise Bank was no longer a mortgagee but became the fee simple owner of the property, but not as a bona fide purchaser without notice of prior claims, and its ownership interest was subject to all liens existing against the prior owner, Pendleton Station, LLC, including the liens of the Plaintiff herein.



Amounts Owed to Moorhead (Damages)

Kevin Moorhead testified that Moorhead is owed \$32,985.81 for unpaid and withheld retainage on the project that Moorhead itself performed. Additionally, he testified that Moorhead is owed \$33,642.00 for lost bond premiums due to the fact that the bond was set at the contract amount but the project was stopped quite short of reaching the amount in the contract. Further, he also testified that Moorhead also owes the amounts claimed by Craft Construction and Miller Construction in their cases. Lastly, he also made a claim for lost profits and overhead.

I find by a preponderance of the evidence that Moorhead is entitled \$66,627.81 in damages for the withheld retainage and lost bond premium. I find that Moorhead is not entitled to its lost profits and overhead. See *Zepso Construction, Inc. v. Randazzo*, 357 S.C. 32, 591 S.E.2d 29 (Ct. App. 2004). Additionally, this Court in the *Miller Construction v. Pendleton Station, et al* matter found that Miller Construction was entitled to \$111,103.13 in principal amount owed for unpaid work, and in *Craft Construction v. Pendleton Station, et al*, found that Craft Construction was entitled to \$70,000.00 in principal amount owed for unpaid work. While owed to Moorhead in this claim and I find to be valid, those amounts are to be paid directly to Craft Construction and Miller Construction as provided for in those cases.

S.C. Code Ann. §31-31-20 (as amended) provides in relevant part that when a party has a liquidated sum at the time of demand that party is entitled to prejudgment interest at the rate of 8 3/4% per annum. See Also *GTR Rental, LLC v. Dalcanto*, 547 F.Supp.2d 510 (S.C.D. 2008). Moorhead is entitled to statutory prejudgment interest in this matter. However, the prejudgment interest is to be recalculated to take into account the principal balance this Court has found as being the amount owed to Moorhead. As such, I find that Moorhead is entitled to prejudgment interest in the amount of \$26,234.70. Accordingly, I find that the total principal amount and prejudgment interest owed directly to Moorhead is \$92,862.51.

Attorney's Fees & Costs

S.C. Code Ann. §29-5-20 (as amended) provides that the prevailing party shall be entitled to its reasonable attorney's fees and costs. I find that there was no meaningful offer made under the statute. The term 'prevailing party' is defined as '[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.' *Seckinger v. Vessel Excalibur*, 483 S.E.2d 775, 778, 326 S.C. 382, 388 (Ct. App. 1997).

As referenced above, the Honorable J. Cordell Maddox, Jr. previously granted to Enterprise Bank summary judgment as to a 38 acre tract that was originally included in Moorhead's lien claim. Enterprise Bank argues that it is entitled to a set off for a portion of its fees and costs as to its defense of that particular tract of real property. I find this argument to be without merit. S.C. Code Ann. §29-5-20 (as amended) clearly provides that the determination of the prevailing party is based on one verdict in the action. Furthermore, *Seckinger* clearly defines the prevailing party as the one who prevails on the main issue, even though not to the extent of the original contention. Although, through the pendency of this case, one tract out of four was omitted from the lien. I still find that the lien is valid, and valid as to three (3) of the four (4) tracts originally listed in this action. Accordingly, there is no question that Moorhead prevailed on the main issue in this case. As such, I find that Moorhead is entitled to its attorney's fees and costs.

In addition to this argument, Enterprise Bank also argues that it is the prevailing party in this action since the amount awarded directly to Moorhead is less than one-half of what was claimed as being owed by Moorhead in its pleadings. This argument ignores the fact that the amount Moorhead claimed in its pleadings included the amounts that it owes to Miller Construction and Craft Construction by virtue of its contracts with each of those subcontracting entities. As previously stated herein, this Court has awarded Miller Construction a principal balance of \$111,103.13 and Craft Construction a principal balance of \$70,000.00, plus statutory prejudgment interest on both claims. However, this Court has awarded those amounts directly to Miller Construction and Craft Construction by virtue of separate orders. Those amounts are not to be ignored though in determining who is the prevailing party in this matter. While these are technically three (3) separate cases, they were all tried at the same time and even Enterprise Bank has handled and treated all three (3) cases as one larger case. This results in a total principal balance in this matter being awarded to Moorhead in the amount of \$247,730.94 plus statutory prejudgment interest. This amount is greater than one-half of the difference between the amount Moorhead claimed in its pleadings and the zero amount claimed by Enterprise Bank to be owed to Moorhead.

S.C. Code §29-5-10 (as amended) further provides that the amount of the fee must be determined by the Court. One only need look at the court file to ascertain the contentiousness of this case. Counsel for Moorhead appears before this Court on a regular basis, and is well versed in these matters. He was undoubtedly required to spend numerous hours reviewing documents, exhibits, depositions, preparing witnesses, researching the law and preparing for trial. The Court would point



out that it appears by virtue of its own fee affidavit submitted at the fee hearing, that Enterprise Bank's total attorney's fees were approximately \$108,000.00 in overall defense of all three (3) cases². This further supports how much time was required as well as the contentiousness of this matter. Furthermore, counsel for Moorhead was successful in prosecuting this matter and obtained a favorable result for Moorhead on the validity of Moorhead's mechanic's lien claim. See factors listed in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997).

I find that based upon the contentiousness of this case, the amount of the lien claim, the standing of counsel in the local community, the result obtained at trial, the time that would have had to be spent in preparing this matter for trial, and the other appropriate factors listed above that Moorhead is entitled to \$39,000.00 in attorney's fees plus its costs of \$791.66 in prosecuting this action.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Moorhead Construction, Inc., is entitled to and hereby granted an order finding that its mechanic's lien as to the real properties included in Exhibit A is a valid and enforceable lien.
2. Moorhead Construction, Inc., is entitled to and hereby granted judgment against Enterprise Bank of South Carolina in the amount of Ninety Two Thousand Eight Hundred Sixty Two and 51/100 (\$92,862.51) Dollars.
3. Moorhead Construction, Inc., is entitled to its attorney's fees and costs as ordered herein above. As such, Enterprise Bank of South Carolina shall pay unto counsel for Moorhead Construction, Inc., the sum of Thirty Nine Thousand and 001/100 (\$39,000.00) Dollars in attorney's fees plus its costs of Seven Hundred Ninety One and 66/100 (\$791.66) in prosecuting this action. This Order shall serve as a judgment for Moorhead Construction, Inc., for this amount as well.
4. Accordingly, the total lien amount in favor of Moorhead Construction, Inc., as evidenced by this Order and Judgment against Enterprise Bank of South Carolina and applicable to Tracts A, B, and the two (2) acre tract is One Hundred Thirty Two Thousand Six Hundred Fifty Four and 17/100 (\$132,654.17) Dollars.
5. The mortgages held by Enterprise Bank dated August 10, 2005, September 1, 2008 and December 11, 2008 and recorded in the RMC office for Anderson County in Book 7024 at Page 247, Book 7585 at Page 143 and in book 7760 at Page 194 respectively were discharged by the acceptance by Enterprise Bank of the deed in lieu of foreclosure pursuant to the doctrine of merger and the debt secured by those mortgages were satisfied thereby.

²

The total fees granted to all three (3) Plaintiffs in these matters was \$116,000.00.

6. By acceptance of the deed in lieu of foreclosure, Enterprise Bank became the fee simple owner of the property, but not as a bona fide purchaser without notice of prior claims. Its ownership interest is subject to all liens existing against the prior owner, Pendleton Station, LLC, including the lien of Moorhead Construction, Inc.

7. Due to the outstanding issue of whether Defendant Angelo Penza has a valid and existing mortgage with priority over Moorhead Construction, Inc.'s, mechanic's lien as to Tract B, the Court is not ordering that Moorhead's lien be foreclosed upon at this time.

8. Moorhead Construction, Inc., is entitled to file its Summons and Complaint at any point in time in the future requesting foreclosure on Tracts A, B and the two (2) acre tract as a result of its lien and this Order and Judgment should it desire to do so.

It is so ORDERED this 7th day of June, 2012.


Hon. Ellis B. Drew, Jr.
Master-In-Equity

Anderson, South Carolina.

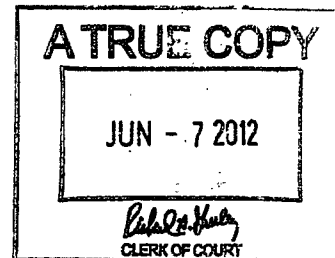


Exhibit A

TRACT A

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "A" on, and as described in, a plate entitled "Closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

LESS UNITS: 1A, 1B, 1C, 2B, 2C, 2D, 2E, 2F, 3A, 3B, 3D, 3E, 4A, 4B, 4C, 4D, 4E, 5A, 6B, 6C, 6D, 6E, 7A, 8A, 8B, 8C, 9A, 9B, 9D, 10B, 11A, 12B, 12C, 12D, 12E, 12F, 12G, 13A, 13B, 14A, 14B, 15A, 16A, 16B, 16C, 16D, 20D, 20E, 20F, 25B, 28D, 35B, 35C

This is the same property conveyed to Enterprise Bank by deed of Pendleton Station, LLC dated March 2, 2007 and recorded on March 5, 2007 at Book 7886, Page 110 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 063-00-01-006

ALSO

2 ACRE TRACT

ALL that certain piece, parcel or lot of land, situate, lying and being in Pendleton Township, County of Anderson, State of South Carolina, and in School District Number Four (4), said tract containing 1.993 acres, more or less, as shown on a plat recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Plat Book 87 at page 390, and also on resurvey made by Clemson Engineering Services, dated July 1, 1993, of record in the aforesaid Office in Plat Slide 399 at page 9-A. The metes and bounds, courses and distances as upon said plat appear which is incorporated herein by reference thereto and made a part hereof.

This is the same property conveyed to Pendleton Station, LLC by deed of Gene K. Altman dated August 16, 2004 and recorded on August 17, 2004 at Book 6323, Page 197 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 040-00-02-005

ALSO

TRACT B

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "B" on, and as described in, a plat entitled "closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina"

by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

This is the same property conveyed to Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD by deed of Coastal Plains Development Co., Inc., dated August 29, 2003 and recorded on August 23, 2003 at Book 5877, Page 145 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 063-00-01-007

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-04-2784

Craft Construction Company, Inc., of Starr

Enterprise Bank of South Carolina, Pendleton Station, LLC; and Angelo Penza

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David J. Brousseau

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ 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
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Final Order and Judgment

A TRUE COPY

JUN - 7 2012

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if 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)
Craft Construction Company, Inc., of Starr	Enterprise Bank of South Carolina	\$130,354.16
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: See Attached Exhibit A of Final Order and Judgment for full description of the real properties. TMS Numbers: 063-00-01-006; 040-00-02-005; and 063-00-01-007

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

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2011 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: *Karen Lee*

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

Craft Construction Company, Inc., of Starr,)

Plaintiff,)

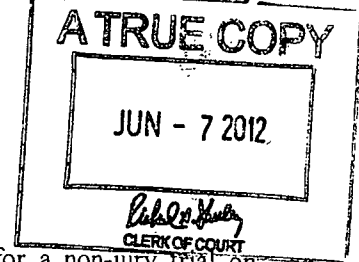
vs.)

Pendleton Station, LLC;)
Enterprise Bank of South Carolina; and)
Angelo Penza.)

Defendants.)

FINAL ORDER AND JUDGMENT

C/A No 2007-CP-04 2784



THE ABOVE CAPTIONED MATTER came before this Court for a non-jury trial on December 8, 2011 and January 24, 2012. An Order of Reference referring this case to the Master-In-Equity was filed with the Anderson County Clerk of Court's Office on October 28, 2011.

The Plaintiff [hereinafter Craft] is represented by David J. Brousseau of the Anderson law firm McIntosh, Sherard, Sullivan & Brousseau. Defendant Enterprise Bank of South Carolina [hereinafter Enterprise Bank] is represented by Thomas E. Dudley, III and M. Stokely Holder of the Greenville law firm Kennison, Dudley & Crawford. Defendant Pendleton Station, LLC [hereinafter Pendleton Station] is represented by James W. Logan, Jr., of the Anderson law firm Logan, Jolly & Smith as well as Stanley E. Barnett of the Charleston law firm Smith, Bundy, Bybee & Barnett. Defendant Angelo Penza is represented by C. Nicholas Lavery of the Clemson law firm Olson, Smith, Jordan & Cox.

At the outset of this litigation, a number of different Defendants were named by virtue of some form of interest they possibly had in the tracts of land involved in this matter. While litigation was pending in this case, Defendant Enterprise Bank purchased whatever interest those parties had subject to the lien in this case. Those Defendants have been dismissed by way of separate order in this matter. The only relevant Defendants are the ones now named herein above.

This case centers around construction services provided by Craft on real property described with more particularity in the attached Exhibit A. For ease of reading the construction project will be referred to herein as either 'the project' or 'the Pendleton Station project.'

Due to the similarity of the factual circumstances, this case was tried at the same time as two (2) other cases; namely, *Moorhead Construction, Inc. vs. Enterprise Bank, et al*, C/A No 2007-CP-04-2785, and *Miller Construction Company, LLC, vs. Enterprise Bank, et al*, C/A No 2007-CP-04-2786. While these matters were not consolidated, they are all very much related and reference is invited to those files for review of the Final Order and Judgment in each of those cases.

FINDINGS OF FACT & CONCLUSIONS OF LAW

The Pendleton Station project was a real estate development project originally started by a group of investment developers who formed Pendleton Station, LLC. The project was located on real property in the Town of Pendleton, Anderson County, South Carolina. Craft provided construction services on the project primarily consisting of water and sewer work. He was a sub-contractor on the job, having his contract with Moorhead Construction, Inc. Moorhead Construction, Inc., held its contract with the developers Pendleton Station, LLC.

Prior to March 5, 2007, Tract A and the 2 acre tract were owned by Pendleton Station, LLC. Tract B was previously owned by the Diana L. Zellner Revocable Trust UAD.

Up until March 5, 2007, Enterprise Bank held a mortgage on Tract A and the 2 acre tract as security for three (3) separate notes from Pendleton Station totaling \$5.5 million.¹ In regards to Tract B, there was at the time of the filing of this mechanic's lien a mortgage recorded in favor of Defendant Angelo Penza. There is currently a foreclosure action pending regarding that particular mortgage where the validity of the mortgage is at issue. Nothing in this Order should be construed as any type of finding regarding the validity of Mr. Penza's mortgage. Additionally, it should be noted that this Court previously determined that Mr. Penza does not have a mortgage interest as to Tract A. He has appealed that determination.

On March 5, 2007, after Enterprise Bank notified Pendleton Station of its default on the above referenced notes, a deed in lieu of foreclosure was recorded with the Anderson County Register of

¹ Enterprise Bank also had a mortgage on a 38 acre tract of property that was originally included in the mechanic's lien in this matter. The *lis pendens* as to that particular tract was dissolved by way of prior Order in this case granting partial summary judgment as to that tract only.



Deeds Office. This deed in lieu of foreclosure was delivered to Enterprise Bank, and conveyed to it Tract A as well as the aforementioned 38 acre tract.

On May 25, 2007, Craft filed and served notice of its mechanic's lien in this matter. In the lien, it alleged its last date of work on the job site was March 6, 2007. Further, Craft's notice and claim of mechanic's lien alleged it was owed \$101, 536.36 for work performed on the project. Subsequently, Craft timely filed and served its *lis pendens*, summons and complaint seeking, *inter alia*, foreclosure of its mechanic's lien.

Subsequent to the mechanic's lien being filed and served, on July 24, 2007, Pendleton Station conveyed to Enterprise Bank the 2 acre tract subject to Craft's mechanic's lien. On February 11, 2008, Tract B was conveyed to Enterprise Bank from the Diana Zellner Revocable Trust UAD subject to Craft's mechanic's lien.

At trial, Enterprise Bank raised three (3) main issues regarding the validity of Craft's mechanic's lien. First, Enterprise Bank asserts that Craft's last date of work was much earlier than the March 6, 2007 date Craft alleges in his notice of mechanic's lien. Secondly, Enterprise Bank argues that in regards to Tract A only, the recording statutes bar the enforcement of the mechanic's lien since the deed in lieu of foreclosure conveying said tract to Enterprise Bank was filed prior to Craft filing its notice of mechanic's lien. Lastly, Enterprise Bank asserts that pursuant to S.C. Code Ann. §29-5-40 (as amended) that Craft is limited in its recovery to the lien amount asserted by its general contractor Moorhead Construction, Inc.

Last Date of Work

Billy Craft testified on behalf of Craft Construction. Craft was subcontracted by Moorhead Construction, Inc., to primarily perform water and sewer work on the project. He testified that his last date performing work on the real property under contract for Moorhead was on March 7, 2007. He testified that his employees were performing work on a force main essential to providing sewer services on the project.

Charles Kernaghan was the onsite manager for construction on the project for Pendleton Station when it owned the property, and then was the onsite manager for construction on the project



for Enterprise Bank after it took over ownership. Mr. Kernaghan testified that he believed Mr. Craft to be a truthful individual in his dealings with them. He could not recall Craft's last date of work on the project. Greg Dawkins of Dunn & Dunn Engineering was called by Enterprise Bank as a witness. He was not aware of when Craft's last date of work was on the project. Further, he testified that the last invoice on a job does not necessarily mean that was the last date of work on any project. He also testified that he has known Billy Craft for quite some time due to work not only on this project but on prior projects, and knew Mr. Craft to be an honest and truthful person in all of his prior dealings with him.

I find the above testimony of Mr. Craft to be very credible. I also find that there was no testimony presented that would refute Mr. Craft's testimony as to when Craft's last date of work was on the project. Accordingly, I find by a preponderance of the evidence that Craft's last date of work under contract for Moorhead was March 7, 2007. This would mean that the notice of mechanic's lien was timely filed and served within the ninety (90) days called for by statute. S.C. Code Ann. §29-5-20 (as amended).

*Enterprise Bank's Argument that the Recording of the
Deed In Lieu of Foreclosure Bars Enforcement of Craft's Lien as to Tract A*

Enterprise Bank claims that Craft's mechanic's lien as to Tract A can not be enforced because at the time Craft filed and served its notice of mechanic's lien, Enterprise Bank was the recorded owner of Tract A by virtue of a deed in lieu of foreclosure.

On March 5, 2007, a deed in lieu of foreclosure was filed in the Anderson County Register of Deeds Office. Some time shortly thereafter it was received by Enterprise Bank. Witness Ervin Mathias and Charles Kernaghan both testified that within days of the deed in lieu of foreclosure being recorded, Mr. Mathias appeared in Pendleton with an Enterprise Bank check book and authorization from Enterprise Bank to pay unpaid contractors. He then proceeded to write checks on behalf of Enterprise Bank to many other unpaid contractors. This amount exceeded one million dollars.

Enterprise Bank vice-president David Johns testified that the deed in lieu of foreclosure was unilaterally filed without Enterprise Bank's authority. He further testified that Enterprise Bank was



'forced to accept the deed in lieu of foreclosure.' However, upon further questioning, he admitted that Enterprise Bank did not file anything with either the Clerk of Court's Office (such as a quiet title or declaratory judgment action), nor did it file anything with the Register of Deeds Office signifying to the public that acceptance of the deed in lieu of foreclosure was in question. Ultimately, he admitted that Enterprise Bank accepted the deed in lieu of foreclosure by way of exerting ownership and continued construction and development of the project. He also admitted that Craft's work benefitted the property and project.

"In South Carolina, any person to whom a debt is due for labor performed or materials furnished in the erection, alteration or repair of a building or structure upon real estate is given a lien on the property to secure payment of the debt. The lien arises, inchoate, when the labor is performed." *Shelley Construction Company, Inc. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (1985); S.C. Code Ann. §29-5-20 (as amended). The mechanic's lien that arises at the time work is performed dissolves if the contractor fails to file the notice of the mechanic's lien as prescribed in the statutes within ninety (90) days of its last date of work on the real property. S.C. Code Ann. §29-5-90 (as amended).

The recording statutes would only potentially bar the enforcement of a mechanic's lien if the property was purchased by a bona fide purchaser for value without notice of prior claims, and said conveyance was recorded with the Register of Deeds Office prior to the recording of the notice of the mechanic's lien. *The Lite House, Inc. v. J.C. Roy Co., Inc.*, 309 S.C. 50, 419 S.E.2d 817 (Ct. App. 1992). However, acceptance of a deed in lieu of foreclosure does not qualify one as a bona fide purchaser. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006). Additionally, by virtue of the numerous payments to unpaid subcontractors just days after receiving the deed in lieu of foreclosure, Enterprise Bank clearly had notice that there were a number of unpaid contractors on this project.

Ordinarily, when one holds an equitable interest (such as a mortgage) and then becomes the legal title owner, the legal and equitable titles merge and the equitable encumbrance ceases to exist. *First Federal Sav. & Loan Ass'n of South Carolina v. Finn*, 300 S.C. 228, 387 S.E.2d 253 (1998). The burden rests on the party opposing merger to show otherwise; *Id.* see also, *Agnew v. Charlotte*,

Columbia, and Augusta RR., 24 S.C. 18 (1885) and *Thompson v. Hudgens*, 161 S.C. 450, 159 S.E. 807 (1931). This rule is perhaps no more clearly stated than in the case of *Bleckley v. Branyan*, 26 S.C. 424, 2 S.E.2d 319 (1887). There the Supreme Court held:

It must be taken to be settled in that state by a long line of adjudications, both in law and equity, "that a mortgagee who buys the estate under mortgage not under process of foreclosure, extinguishes the debt or claim with him on the property."

2 S.E.2d at 321; see also, 275 S.C. Jur. Mortgages §61 (2007) and 55 Am. Jur. Mortgages § 1340 (2007) ("Ordinarily, a transfer of the interest of the mortgagor in the mortgaged property to the mortgagee operates as a merger of the two estates, which effect a discharge of the mortgage and a satisfaction of the debt.") Therefore, based upon the doctrine of merger, Enterprise Bank was no longer a mortgagee since the mortgage and debt had been satisfied but became the fee simple owner of the property but not as a bona fide purchaser for value without notice of prior claims.

The use of a deed in lieu of foreclosure does present certain advantages to the mortgagee. For example, a deed in lieu of foreclosure allows the lender to avoid the costs and delays that often accompany a formal foreclosure. 2 Law of Real Estate Financing §12:3 (2007). A deed can be quickly drafted at a fairly nominal cost and the lender is able to assume immediate control and use of the property and mitigate any further decline in the value of the collateral. As such, like in this situation, when Enterprise Bank accepted the deed in lieu of foreclosure, it gained these advantages. However as noted above, a mechanic's lien arises and exists when the work is performed. It only dissolves upon the contractor failing to file its lien within the statutory prescribed period of ninety (90) days from its last date of work on the job site. Accordingly, while there are advantages to the mortgagee in the use of a deed in lieu, there is an inherent risk when any mortgagee accepts such a deed as there may be valid liens that exist that have not yet been filed within the ninety (90) day time frame. See *Real Estate Law*, 2nd Ed., Gibson, Karp & Klayman, page 494 (1987) and discussion of facts in *Kirkman v. Parex, Inc.*, 369 S.C. 477, 632 S.E.2d 854 (2006). Enterprise Bank apparently understood this risk as it initially paid many unpaid subcontractors after choosing to accept the deed in lieu of foreclosure. However, for some reason they did not pay Craft.



In this case, Enterprise Bank had the option of not accepting the deed in lieu of foreclosure. Enterprise Bank did not return the deed in lieu of foreclosure to Pendleton Station following receipt, nor did it file any type of document with the Register of Deeds to signify to the public that it was not the record title owner as stated in the deed in lieu of foreclosure. Finally, it did not file a quiet title action to set the deed aside, nor did it file a foreclosure action. In short, Enterprise Bank could have taken steps to protect its mortgage interest but chose not to do so. In fact, upon receipt of the deed in lieu of foreclosure, Enterprise Bank accepted the deed and the advantages associated therewith and took immediate control of the property, began using the property and exerting ownership of the property by paying many unpaid subcontractors, putting up a fence to protect its property, and eventually finished construction on the project.

Enterprise Bank made a reasoned choice to accept the deed in lieu of foreclosure. As a consequence, the legal and equitable title merged under the law of South Carolina resulting in the discharge of the mortgage and the extinguishment of the debt and Enterprise Bank has failed to meet its burden to show otherwise as a matter of law. As such, Enterprise Bank was no longer a mortgagee but became the fee simple owner of the property, but not as a bona fide purchaser without notice of prior claims, and its ownership interest was subject to all liens existing against the prior owner, Pendleton Station, LLC, including the liens of the Plaintiff herein.

*Enterprise Bank's Argument that
Craft's Damages are Limited by the Amount Claimed by Moorhead Construction*

Enterprise Bank also argues that Craft's damages are limited by the amount claimed by Moorhead Construction, Inc. in its lien. S.C. Code Ann. §29-5-20 and §29-5-40 (as amended). As referenced herein above, Craft was the subcontractor of Moorhead Construction. Moorhead Construction timely filed a mechanic's lien claiming that it was owed \$401,729.00 for work it performed on this project. Kevin Moorhead testified on behalf of Moorhead Construction, and testified that he believed that the full amount claimed by Craft was included in its lien claim. [See also Final Order from *Moorhead Construction, Inc. vs. Enterprise Bank, et al*, C/A No 2007-CP-04-2785]. Based upon the amounts ordered in this matter, the *Moorhead* matter, and the *Miller* matter, Craft's claim does not exceed the total amount claimed by Moorhead Construction, Inc., from the

owner. Additionally, there was no evidence presented by Enterprise Bank to support its claim on this issue. Lastly, Craft filed this action as a separate action, and complied with the notice requirements of a subcontractor pursuant to S.C. Code Ann. §29-5-20, as Enterprise Bank was notified by Craft within ninety (90) days of its last date of work that it was owed monies for work performed on Enterprise Bank's real property.

Amounts Owed to Craft (Damages)

Billy Craft testified that Craft is owed \$85,499.67 for work it performed on the project. During his testimony, Mr. Craft did struggle to reconcile some of the amounts included in the breakdown of what Craft asserted is owed. However, I find by a preponderance of the evidence that Craft is clearly owed monies on this project. I find by a preponderance of the evidence that this amount is \$70,000.00. This figure is the approximate total of an unpaid invoice for \$46,000.00 and retainage of \$24,000.00.

S.C. Code Ann. §31-31-20 (as amended) provides in relevant part that when a party has a liquidated sum at the time of demand that party is entitled to prejudgment interest at the rate of 8 3/4% per annum. See Also *GTR Rental, LLC v. Dalcanto*, 547 F.Supp.2d 510 (S.C.D. 2008). Craft is entitled to statutory prejudgment interest in this matter. However, the prejudgment interest is to be recalculated to take into account the principal balance this Court has found as being the amount owed to Craft. As such, I find that Craft is entitled to prejudgment interest in the amount of \$27,562.50. Accordingly, I find that the total principal amount and prejudgment interest owed to Craft is \$97,562.50.

Attorney's Fees & Costs

S.C. Code Ann. §29-5-20 (as amended) provides that the prevailing party shall be entitled to its reasonable attorney's fees and costs. I find that there was no meaningful offer made under the statute. The term 'prevailing party' is defined as '[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.' *Seckinger v. Vessel Excalibur*, 483 S.E.2d 775, 778, 326 S.C. 382, 388 (Ct. App. 1997).



As referenced above, the Honorable J. Cordell Maddox, Jr. previously granted to Enterprise Bank summary judgment as to a 38 acre tract that was originally included in Craft's lien claim. Enterprise Bank argues that it is entitled to a set off for a portion of its fees and costs as to its defense of that particular tract of real property. I find this argument to be without merit. S.C. Code Ann. §29-5-20 (as amended) clearly provides that the determination of the prevailing party is based on one verdict in the action. Furthermore, *Seckinger* clearly defines the prevailing party as the one who prevails on the main issue, even though not to the extent of the original contention. Although, through the pendency of this case, one tract out of four was omitted from the lien. I still find that the lien is valid, and valid as to three (3) of the four (4) tracts originally listed in this action. Accordingly, there is no question that Craft prevailed on the main issue in this case. Accordingly, I find that Craft is entitled to its attorney's fees and costs.

S.C. Code §29-5-20 (as amended) further provides that the amount of the fee must be determined by the Court. One only need look at the court file to ascertain the contentiousness of this case. Counsel for Craft appears before this Court on a regular basis, and is well versed in these matters. He was undoubtedly required to spend numerous hours reviewing documents, exhibits, depositions, preparing witnesses, researching the law and preparing for trial. The Court would point out that it appears by virtue of its own fee affidavit submitted at the fee hearing, that Enterprise Bank's total attorney's fees were approximately \$108,000.00 in overall defense of all three (3) cases². This further supports how much time was required as well as the contentiousness of this matter. Furthermore, counsel for Craft was successful in prosecuting this matter and obtained a favorable result for Craft on the validity of Craft's mechanic's lien claim. See factors listed in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997).

I find that based upon the contentiousness of this case, the amount of the lien claim, the standing of counsel in the local community, the result obtained at trial, the time that would have had to be spent in preparing this matter for trial, and the other appropriate factors listed above that Craft is entitled to \$32,000.00 in attorney's fees plus its costs of \$791.66 in prosecuting this action.

²

The total fees granted to all three (3) Plaintiffs in these matter was \$116,000.00.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Craft Construction Company, Inc., of Starr, is entitled to and hereby granted an order finding that its mechanic's lien as to the real properties included in Exhibit A is a valid and enforceable lien for the amounts stated herein.
2. Craft Construction Company, Inc., of Starr, is entitled to and hereby granted judgment against Enterprise Bank of South Carolina in the amount of Ninety Seven Thousand Five Hundred Sixty Two and 50/100 (\$97,562.50) Dollars.
3. Craft Construction Company, Inc., of Starr, is entitled to its attorney's fees and costs as ordered herein above. As such, Enterprise Bank of South Carolina shall pay unto counsel for Craft Construction Company, of Starr, the sum of Thirty Two Thousand and 00/100 (\$32,000.00) Dollars in attorneys fees and Seven Hundred Ninety One and 66/100 (\$791.66) Dollars in costs. This Order shall serve as a judgment for Craft Construction Company, Inc., of Starr, for this amount as well.
4. Accordingly, the total lien amount in favor of Craft Construction Company, Inc., of Starr, as evidenced by this Order and Judgment against Enterprise Bank of South Carolina and applicable to Tracts A, B, and the two (2) acre tract is One Hundred Thirty Thousand Three Hundred Fifty Four and 16/100 (\$130,354.16) Dollars.
5. The mortgages held by Enterprise Bank dated August 10, 2005, September 1, 2008 and December 11, 2008 and recorded in the RMC office for Anderson County in Book 7024 at Page 247, Book 7585 at Page 143 and in book 7760 at Page 194 respectively were discharged by the acceptance by Enterprise Bank of the deed in lieu of foreclosure pursuant to the doctrine of merger and the debt secured by those mortgages were satisfied thereby.
6. By acceptance of the deed in lieu of foreclosure, Enterprise Bank became the fee simple owner of the property, but not as a bona fide purchaser without notice of prior claims. Its ownership interest is subject to all liens existing against the prior owner, Pendleton Station, LLC, including the lien of Craft Construction Company, Inc., of Starr.



7. Due to the outstanding issue of whether Defendant Angelo Penza has a valid and existing mortgage with priority over Craft's mechanic's lien as to Tract B, the Court is not ordering that Craft's lien be foreclosed upon at this time.

8. Craft Construction Company, Inc., of Starr, is entitled to file its Summons and Complaint at any point in time in the future requesting foreclosure on Tracts A, B and the two (2) acre tract as a result of its lien and this Order and Judgment should it desire to do so.

It is so ORDERED this 17th day of June, 2012.


Hon. Ellis B. Drew, Jr.
Master-In-Equity

Anderson, South Carolina.

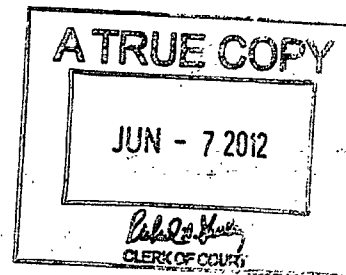


Exhibit A

TRACT A

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, mor or less, shown as Tract "A" on, and as described in, a plate entitled "Closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

LESS UNITS: 1A, 1B, 1C, 2B, 2C, 2D, 2E, 2F, 3A, 3B, 3D, 3E, 4A, 4B, 4C, 4D, 4E, 5A, 6B, 6C, 6D, 6E, 7A, 8A, 8B, 8C, 9A, 9B, 9D, 10B, 11A, 12B, 12C, 12D, 12E, 12F, 12G, 13A, 13B, 14A, 14B, 15A, 16A, 16B, 16C, 16D, 20D, 20E, 20F, 25B, 28D, 35B, 35C

This is the same property conveyed to Enterprise Bank by deed of Pendleton Station, LLC dated March 2, 2007 and recorded on March 5, 2007 at Book 7886, Page 110 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 063-00-01-006

ALSO

2 ACRE TRACT

ALL that certain piece, parcel or lot of land, situate, lying and being in Pendleton Township, County of Anderson, State of South Carolina, and in School District Number Four (4), said tract containing 1.993 acres, mor or less, as shown on a plat recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Plat Book 87 at page 390, and also on resurvey made by Clemson Engineering Services, dated July 1, 1993, of record in the aforesaid Office in Plat Slide 399 at page 9-A. The metes and bounds, courses and distances as upon said plat appear which in incorporated herein by reference thereto and made a part hereof.

This is the same property conveyed to Pendleton Station, LLC by deed of Gene K. Altman dated August 16, 2004 and recorded on August 17, 2004 at Book 6323, Page 197 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 040-00-02-005

ALSO

TRACT B

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "B" on, and as described in, a plat entitled "closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

This is the same property conveyed to Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD by deed of Coastal Plains Development Co., Inc., dated August 29, 2003 and recorded on August 23, 2003 at Book 5877, Page 145 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 063-00-01-007

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-04-2786

Miller Construction Company, LLC

Enterprise Bank of South Carolina; Pendleton Station,

LLC; and Angelo Penza

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David J. Brousseau

Attorney for : ☒ Plaintiff

JUN 13 2012

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

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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Final Order and Judgment

A TRUE COPY

JUN - 7 2012

Richard A. Harty
CLERK OF COURT

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)
Miller Construction Company, LLC	Enterprise Bank of South Carolina	\$199,831.86
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: See Attached Exhibit A of Final Order and Judgment for full description of the real properties. TMS Numbers: 063-00-01-006; 040-00-02-005; and 063-00-01-007

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

304
Judge Code6-7-2012
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2011 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: *Karen Allen*

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10TH) JUDICIAL CIRCUIT

Miller Construction Company, LLC,)
)
Plaintiff,)

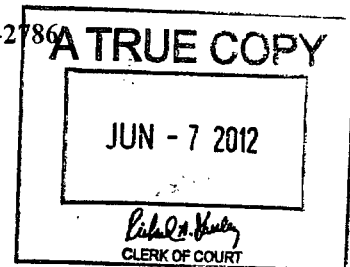
FINAL ORDER AND JUDGMENT

vs.)

C/A No 2007-CP-04-2786

Pendleton Station, LLC;)
Enterprise Bank of South Carolina; and)
Angelo Penza.)

Defendants.)



THE ABOVE CAPTIONED MATTER came before this Court for a non-jury trial on December 8, 2011 and January 24, 2012. An Order of Reference referring this case to the Master-In-Equity was filed with the Anderson County Clerk of Court's Office on October 28, 2011.

The Plaintiff [hereinafter Miller] is represented by David J. Brousseau of the Anderson law firm McIntosh, Sherard, Sullivan & Brousseau. Defendant Enterprise Bank of South Carolina [hereinafter Enterprise Bank] is represented by Thomas E. Dudley, III and M. Stokely Holder of the Greenville law firm Kennison, Dudley & Crawford. Defendant Pendleton Station, LLC [hereinafter Pendleton Station] is represented by James W. Logan, Jr., of the Anderson law firm Logan, Jolly & Smith as well as Stanley E. Barnett of the Charleston law firm Smith, Bundy, Bybee & Barnett. Defendant Angelo Penza is represented by C. Nicholas Lavery of the Clemson law firm Olson, Smith, Jordan & Cox.

At the outset of this litigation, a number of different Defendants were named by virtue of some form of interest they possibly had in the tracts of land involved in this matter. While litigation was pending in this case, Defendant Enterprise Bank purchased whatever interest those parties had subject to the lien in this case. Those Defendants have been dismissed by way of separate order in this matter. The only relevant Defendants are the ones now named herein above.

Final Order.

This case centers around construction services provided by Miller on real property described with more particularity in the attached Exhibit A. For ease of reading, the construction project will be referred to herein as either 'the project' or 'the Pendleton Station project.'

Due to the similarity of the factual circumstances, this case was tried at the same time as two (2) other cases; namely, *Moorhead Construction, Inc. vs. Enterprise Bank, et al*, C/A No 2007-CP-04-2785, and *Craft Construction Company Inc., of Starr vs. Enterprise Bank, et al*, C/A No 2007-CP-04-2784. While these matters were not consolidated, they are all very much related and reference is invited to those files for review of the Final Order and Judgment in each of those cases.

FINDINGS OF FACT & CONCLUSIONS OF LAW

The Pendleton Station project was a real estate development project originally started by a group of investment developers who formed Pendleton Station, LLC. The project was located on real property in the Town of Pendleton, Anderson County, South Carolina. Miller provided construction services on the project primarily consisting of grading, clearing and road work. He was a sub-contractor on the job, having his contract with Moorhead Construction, Inc. Moorhead Construction, Inc., held its contract with the developers Pendleton Station, LLC.

Prior to March 5, 2007, Tract A and the 2 acre tract were owned by Pendleton Station, LLC. Tract B was previously owned by the Diana L. Zellner Revocable Trust UAD.

Up until March 5, 2007, Enterprise Bank held a mortgage on Tract A and the 2 acre tract as security for three (3) separate notes from Pendleton Station totaling \$5.5 million.¹ In regards to Tract B, there was at the time of the filing of this mechanic's lien a mortgage recorded in favor of Defendant Angelo Penza. There is currently a foreclosure action pending regarding that particular mortgage where the validity of the mortgage is at issue. Nothing in this Order should be construed as any type of finding regarding the validity of Mr. Penza's mortgage. Additionally, it should be noted that this Court previously determined that Mr. Penza does not have a mortgage interest as to Tract A. He has appealed that determination.

¹ Enterprise Bank also had a mortgage on a 38 acre tract of property that was originally included in the mechanic's lien in this matter. The *lis pendens* as to that particular tract was dissolved by way of prior Order in this case granting partial summary judgment as to that tract only.

On March 5, 2007, after Enterprise Bank notified Pendleton Station of its default on the above referenced notes, a deed in lieu of foreclosure was recorded with the Anderson County Register of Deeds Office. This deed in lieu of foreclosure was delivered to Enterprise Bank, and conveyed to it Tract A as well as the aforementioned 38 acre tract.

On April 17, 2007, Miller filed and served notice of its mechanic's lien in this matter. In the lien, it alleged its last date of work on the job site was March 6, 2007. Further, Miller's notice and claim of mechanic's lien alleged it was owed \$111,784.00 for work performed on the project. Subsequently, Miller timely filed and served its *lis pendens*, summons and complaint seeking *inter alia*, foreclosure of its mechanic's lien.

Subsequent to the mechanic's lien being filed and served, on July 24, 2007, Pendleton Station conveyed to Enterprise Bank the 2 acre tract subject to Miller's mechanic's lien. On February 11, 2008, Tract B was conveyed to Enterprise Bank from the Diana Zellner Revocable Trust UAD subject to Miller's mechanic's lien.

At trial, Enterprise Bank raised three (3) main issues regarding the validity of Miller's mechanic's lien. First, Enterprise Bank asserts that Miller's last date of work was much earlier than the March 6, 2007 date Miller alleges in his notice of mechanic's lien. Secondly, Enterprise Bank argues that in regards to Tract A only, the recording statutes bar the enforcement of the mechanic's lien since the deed in lieu of foreclosure conveying said tract to Enterprise Bank was filed prior to Miller filing its notice of mechanic's lien. Lastly, Enterprise Bank asserts that pursuant to S.C. Code Ann. §29-5-40 (as amended) that Miller is limited in its recovery to the lien amount asserted by its general contractor Moorhead Construction, Inc.

Last Date of Work

Mike Miller testified on behalf of Miller Construction. Miller was subcontracted by Moorhead Construction, Inc., to primarily perform grading, clearing and road work on the project. He testified that his last date performing work on the real property under contract for Moorhead was on March 6, 2007. He specifically recalled this date because he was called by DHEC to come to the job site in order to fix a detention pond and silt fence that was failing and casting water into a protected wetlands area. He recalled being very worried about this issue, and that DHEC would 'take his license' away

and fine him a significant amount of money if the pond was not immediately fixed. This type of corrective work is contemplated and called for in his contract. Kevin Moorhead of Moorhead Construction, Inc., also testified that he recalled this incident with DHEC, and was also present at the job site on the same date out of the same concerns voiced by Mr. Miller. Additionally, it should also be noted that Miller was again on site in April of 2007 at the request of Enterprise Bank to perform some additional work for Enterprise Bank on the site².

Charles Kernaghan was the onsite manager for construction on the project for Pendleton Station when it owned the property, and then was the onsite manager for construction on the project for Enterprise Bank after it took over ownership. Mr. Kernaghan testified that he believed Mr. Miller and Mr. Moorhead to both be truthful individuals in his dealings with them. He could not recall Miller's last date of work on the project. Greg Dawkins of Dunn & Dunn Engineering was called by Enterprise Bank as a witness. He was not aware of when Miller's last date of work was on the project. Further, he testified that the last invoice on a job does not necessarily mean that was the last date of Miller's work as corrective work is often necessary on any project. He also testified that he has known Mike Miller for quite some time due to work not only on this project but on prior projects, and knew Mr. Miller to be an honest and truthful person in all of his prior dealings with him.

I find the above testimony of Mr. Miller and Mr. Moorhead to be very credible. I also find that there was no testimony presented that would refute Mike Miller's testimony as to when Miller's last date of work was on the project. Accordingly, I find by a preponderance of the evidence that Miller's last date of work under contract for Moorhead was March 6, 2007. This would mean that the notice of mechanic's lien was timely filed and served within the ninety (90) days called for by statute. S.C. Code Ann. §29-5-20 (as amended).

*Enterprise Bank's Argument that the Recording of the
Deed In Lieu of Foreclosure Bars Enforcement of Miller's Lien as to Tract A*

Enterprise Bank claims that Miller's mechanic's lien as to Tract A can not be enforced because at the time Miller filed and served its notice of mechanic's lien, Enterprise Bank was the recorded owner of Tract A by virtue of a deed in lieu of foreclosure.

² Miller was paid by Enterprise Bank for that particular additional work.
Final Order,

On March 5, 2007, a deed in lieu of foreclosure was filed in the Anderson County Register of Deeds Office. Some time shortly thereafter it was received by Enterprise Bank. Witness Ervin Mathias and Charles Kernaghan both testified that within days of the deed in lieu of foreclosure being recorded, Mr. Mathias appeared in Pendleton with an Enterprise Bank check book and authorization from Enterprise Bank to pay unpaid contractors. He then proceeded to write checks on behalf of Enterprise Bank to many other unpaid contractors. This amount exceeded one million dollars.

Enterprise Bank vice-president David Johns testified that the deed in lieu of foreclosure was unilaterally filed without Enterprise Bank's authority. He further testified that Enterprise Bank was 'forced to accept the deed in lieu of foreclosure.' However, upon further questioning, he admitted that Enterprise Bank did not file anything with either the Clerk of Court's Office (such as a quiet title or declaratory judgment action), nor did it file anything with the Register of Deeds Office signifying to the public that acceptance of the deed in lieu of foreclosure was in question. Ultimately, he admitted that Enterprise Bank accepted the deed in lieu of foreclosure by way of exerting ownership and continued construction and development of the project. He also admitted that Miller's work benefitted the property and project.

"In South Carolina, any person to whom a debt is due for labor performed or materials furnished in the erection, alteration or repair of a building or structure upon real estate is given a lien on the property to secure payment of the debt. The lien arises, inchoate, when the labor is performed." *Shelley Construction Company, Inc. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (1985); S.C. Code Ann. §29-5-20 (as amended). The mechanic's lien that arises at the time work is performed dissolves if the contractor fails to file the notice of the mechanic's lien as prescribed in the statutes within ninety (90) days of its last date of work on the real property. S.C. Code Ann. §29-5-90 (as amended).

The recording statutes would only potentially bar the enforcement of a mechanic's lien if the property was purchased by a bona fide purchaser for value without notice of prior claims, and said conveyance was recorded with the Register of Deed's Office prior to the recording of the notice of the mechanic's lien. *The Lite House, Inc. v. J.C. Roy Co., Inc.*, 309 S.C. 50, 419 S.E.2d 817 (Ct. App. 1992). However, acceptance of a deed in lieu of foreclosure does not qualify one as a bona fide

purchaser. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006). Additionally, by virtue of the numerous payments to unpaid subcontractors just days after receiving the deed in lieu of foreclosure, Enterprise Bank clearly had notice that there were a number of unpaid contractors on this project.

Ordinarily, when one holds an equitable interest (such as a mortgage) and then becomes the legal title owner, the legal and equitable titles merge and the equitable encumbrance ceases to exist. *First Federal Sav. & Loan Ass'n of South Carolina v. Finn*, 300 S.C. 228, 387 S.E.2d 253 (1998). The burden rests on the party opposing merger to show otherwise; *Id.* see also, *Agnew v. Charlotte, Columbia, and Augusta RR.*, 24 S.C. 18 (1885) and *Thompson v. Hudgens*, 161 S.C. 450, 159 S.E. 807 (1931). This rule is perhaps no more clearly stated than in the case of *Bleckley v. Branyan*, 26 S.C. 424, 2 S.E.2d 319 (1887). There the Supreme Court held:

It must be taken to be settled in that state by a long line of adjudications, both in law and equity, "that a mortgagee who buys the estate under mortgage not under process of foreclosure, extinguishes the debt or claim with him on the property."

2 S.E.2d at 321; see also, 275 S.C. Jur. Mortgages §61 (2007) and 55 Am. Jur. Mortgages § 1340 (2007) ("Ordinarily, a transfer of the interest of the mortgagor in the mortgaged property to the mortgagee operates as a merger of the two estates, which effect a discharge of the mortgage and a satisfaction of the debt.") Therefore, based upon the doctrine of merger, Enterprise Bank was no longer a mortgagee since the mortgage and debt had been satisfied, but became the fee simple owner of the property but not as a bona fide purchaser for value without notice of prior claims.

The use of a deed in lieu of foreclosure does present certain advantages to the mortgagee. For example, a deed in lieu of foreclosure allows the lender to avoid the costs and delays that often accompany a formal foreclosure. 2 Law of Real Estate Financing §12:3 (2007). A deed can be quickly drafted at a fairly nominal cost and the lender is able to assume immediate control and use of the property and mitigate any further decline in the value of the collateral. As such, like in this situation, when Enterprise Bank accepted the deed in lieu of foreclosure, it gained these advantages. However as noted above, a mechanic's lien arises and exists when the work is performed. It only dissolves upon the contractor failing to file its lien within the statutory prescribed period of ninety (90) days from its last date of work on the job site. Accordingly, while there are advantages to the

mortgagee in the use of a deed in lieu, there is an inherent risk when any mortgagee accepts such a deed as there may be valid liens that exist that have not yet been filed within the ninety (90) day time frame. See *Real Estate Law*, 2nd Ed., Gibson, Karp & Klayman, page 494 (1987) and discussion of facts in *Kirkman v. Parex, Inc.*, 369 S.C. 477, 632 S.E.2d 854 (2006). Enterprise Bank apparently understood this risk as it initially paid many unpaid subcontractors after choosing to accept the deed in lieu of foreclosure. However, for some reason they did not pay Miller.

In this case, Enterprise Bank had the option of not accepting the deed in lieu of foreclosure. Enterprise Bank did not return the deed in lieu of foreclosure to Pendleton Station following receipt, nor did it file any type of document with the Register of Deeds to signify to the public that it was not the record title owner as stated in the deed in lieu of foreclosure. Finally, it did not file a quiet title action to set the deed aside, nor did it file a foreclosure action. In short, Enterprise Bank could have taken steps to protect its mortgage interest but chose not to do so. In fact, upon receipt of the deed in lieu of foreclosure, Enterprise Bank accepted the deed and the advantages associated therewith and took immediate control of the property, began using the property and exerting ownership of the property by paying many unpaid subcontractors, putting up a fence to protect its property, and eventually finished construction on the project.

Enterprise Bank made a reasoned choice to accept the deed in lieu of foreclosure. As a consequence, the legal and equitable title merged under the law of South Carolina resulting in the discharge of the mortgage and the extinguishment of the debt and Enterprise Bank has failed to meet its burden to show otherwise as a matter of law. As such, Enterprise Bank was no longer a mortgagee but became the fee simple owner of the property, but not as a bona fide purchaser without notice of prior claims, and its ownership interest was subject to all liens existing against the prior owner, Pendleton Station, LLC, including the liens of the Plaintiff herein.

*Enterprise Bank's Argument that
Miller's Damages are Limited by the Amount Claimed by Moorhead Construction*

Enterprise Bank also argues that Miller's damages are limited by the amount claimed by Moorhead Construction, Inc. in its lien. S.C. Code Ann. §29-5-20 and §29-5-40 (as amended). As referenced herein above, Miller was the subcontractor of Moorhead Construction. Moorhead

Construction timely filed a mechanic's lien claiming that it was owed \$401,729.00 for work it performed on this project. Kevin Moorhead testified on behalf of Moorhead Construction, and testified that 100% of the amount it would owe to Miller was included in its lien claim. [See also Final Order from *Moorhead Construction, Inc. vs. Enterprise Bank, et al*, C/A No 2007-CP-04-2785]. Based upon the amounts ordered in this matter, the *Moorhead* matter, and the *Craft* matter, Miller's claim does not exceed the total amount claimed by Moorhead Construction, Inc., from the owner. Additionally, there was no evidence presented by Enterprise Bank to support its claim on this issue. Lastly, Miller filed this action as a separate action, and complied with the notice requirements of a subcontractor pursuant to S.C. Code Ann. §29-5-20, as Enterprise Bank was notified by Miller well within ninety (90) days of its last date of work that it was owed monies for work performed on Enterprise Bank's real property.

Amounts Owed to Miller (Damages)

Mike Miller testified that Miller is owed \$41,651.30 in unpaid invoices on the project. Additionally, he testified that Miller is owed \$69,451.83 for unpaid and withheld retainage. This amount totals \$111,103.13 owed to Miller for its construction services on this project. Mike Miller's testimony regarding what was owed to Miller was not refuted by any other party, and I find his testimony to be credible on this issue. As such, I find by a preponderance of the evidence that the principal balance owed to Miller on this project is \$111,103.13.

S.C. Code Ann. §31-31-20 (as amended) provides in relevant part that when a party has a liquidated sum at the time of demand that party is entitled to prejudgment interest at the rate of 8 3/4% per annum. See Also *GTR Rental, LLC v. Dalcanto*, 547 F.Supp.2d 510 (S.C.D. 2008). Miller is entitled to statutory prejudgment interest in this matter. An exhibit evidencing the calculation of prejudgment interest was entered into evidence in proper form. As such, I find that Miller is entitled to prejudgment interest in the amount of \$42,936.89. Accordingly, the total principal amount and prejudgment interest owed to Miller is \$154,040.02.

Attorney's Fees & Costs

S.C. Code Ann. §29-5-20 (as amended) provides that the prevailing party shall be entitled to its reasonable attorney's fees and costs. I find that there was no meaningful offer made under the

statute. The term 'prevailing party' is defined as '[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.' *Seckinger v. Vessel Excalibur*, 483 S.E.2d 775, 778, 326 S.C. 382, 388 (Ct. App. 1997).

As referenced above, the Honorable J. Cordell Maddox, Jr. previously granted to Enterprise Bank summary judgment as to a 38 acre tract that was originally included in Miller's lien claim. Enterprise Bank argues that it is entitled to a set off for a portion of its fees and costs as to its defense of that particular tract of real property. I find this argument to be without merit. S.C. Code Ann. §29-5-20 (as amended) clearly provides that the determination of the prevailing party is based on one verdict in the action. Furthermore, *Seckinger* clearly defines the prevailing party as the one who prevails on the main issue, even though not to the extent of the original contention. Although, through the pendency of this case, one tract out of four was omitted from the lien. I still find that the lien is valid, and valid as to three (3) of the four (4) tracts originally listed in this action. Accordingly, there is no question that Miller prevailed on the main issue in this case. Accordingly, I find that Miller is entitled to its attorney's fees and costs.

S.C. Code §29-5-20 (as amended) further provides that the amount of the fee must be determined by the Court. One only need look at the court file to ascertain the contentiousness of this case. Counsel for Miller appears before this Court on a regular basis, and is well versed in these matters. He was undoubtedly required to spend numerous hours reviewing documents, exhibits, depositions, preparing witnesses, researching the law and preparing for trial. The Court would point out that it appears by virtue of its own fee affidavit submitted at the fee hearing, that Enterprise Bank's total attorney's fees were approximately \$108,000.00 in overall defense of all three (3) cases³. This further supports how much time was required as well as the contentiousness of this matter. Furthermore, counsel for Miller was successful in prosecuting this matter and obtained a favorable result for Miller on the validity of Miller's mechanic's lien claim. See factors listed in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997).

I find that based upon the contentiousness of this case, the amount of the lien claim, the standing of counsel in the local community, the result obtained at trial, the time that would have had to be spent in preparing this matter for trial, and the other appropriate factors listed above that Miller is entitled to \$45,000.00 in attorney's fees plus its costs of \$791.66 in prosecuting this action.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Miller Construction Company, LLC, is entitled to and hereby granted an order finding that its mechanic's lien as to the real properties included in Exhibit A is a valid and enforceable lien.
2. Miller Construction Company, LLC, is entitled to and hereby granted judgment against Enterprise Bank of South Carolina in the amount of One Hundred Fifty Four Thousand Forty and 20/100 (\$154,040.20) Dollars.
3. Miller Construction Company, LLC, is entitled to its attorney's fees and costs as ordered herein above. As such, Enterprise Bank of South Carolina shall pay unto counsel for Miller Construction Company, LLC, the sum of Forty Five Thousand and 00/100 (\$45,000.00) Dollars in attorneys fees and Seven Hundred Ninety One and 66/100 (\$791.66) Dollars in costs. This Order shall serve as a judgment for Miller Construction Company, LLC, for this amount as well.
4. Accordingly, the total lien amount in favor of Miller Construction Company, LLC, as evidenced by this Order and Judgment against Enterprise Bank of South Carolina and applicable to Tracts A, B, and the two (2) acre tract is One Hundred Ninety Nine Thousand Eight Hundred Thirty One and 86/100 (\$199,831.86) Dollars.
5. The mortgages held by Enterprise Bank dated August 10, 2005, September 1, 2008 and December 11, 2008 and recorded in the RMC office for Anderson County in Book 7024 at Page 247, Book 7585 at Page 143 and in book 7760 at Page 194 respectively were discharged by the acceptance by Enterprise Bank of the deed in lieu of foreclosure pursuant to the doctrine of merger and the debt secured by those mortgages were satisfied thereby.
6. By acceptance of the deed in lieu of foreclosure, Enterprise Bank became the fee simple owner of the property, but not as a bona fide purchaser without notice of prior claims. Its ownership interest is subject to all liens existing against the prior owner, Pendleton Station, LLC, including the lien of Miller Construction Company, LLC.

7. Due to the outstanding issue of whether Defendant Angelo Penza has a valid and existing mortgage with priority over Miller Construction Company LLC's mechanic's lien as to Tract B, the Court is not ordering that Miller's lien be foreclosed upon at this time.

8. Miller Construction Company, LLC is entitled to file its Summons and Complaint at any point in time in the future requesting foreclosure on Tracts A, B and the two (2) acre tract as a result of its lien and this Order and Judgment should it desire to do so.

It is so ORDERED this 7th day of June, 2012.


Hon. Ellis B. Drew, Jr.
Master-In-Equity

Anderson, South Carolina.

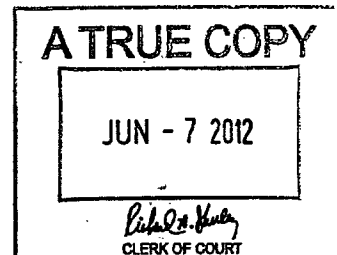


Exhibit A

TRACT A

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "A" on, and as described in, a plat entitled "Closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

LESS UNITS: 1A, 1B, 1C, 2B, 2C, 2D, 2E, 2F, 3A, 3B, 3D, 3E, 4A, 4B, 4C, 4D, 4E, 5A, 6B, 6C, 6D, 6E, 7A, 8A, 8B, 8C, 9A, 9B, 9D, 10B, 11A, 12B, 12C, 12D, 12E, 12F, 12G, 13A, 13B, 14A, 14B, 15A, 16A, 16B, 16C, 16D, 20D, 20E, 20F, 25B, 28D, 35B, 35C

This is the same property conveyed to Enterprise Bank by deed of Pendleton Station, LLC dated March 2, 2007 and recorded on March 5, 2007 at Book 7886, Page 110 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 063-00-01-006

ALSO

2 ACRE TRACT

ALL that certain piece, parcel or lot of land, situate, lying and being in Pendleton Township, County of Anderson, State of South Carolina, and in School District Number Four (4), said tract containing 1.993 acres, more or less, as shown on a plat recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Plat Book 87 at page 390, and also on resurvey made by Clemson Engineering Services, dated July 1, 1993, of record in the aforesaid Office in Plat Slide 399 at page 9-A. The metes and bounds, courses and distances as upon said plat appear which in incorporated herein by reference thereto and made a part hereof.

This is the same property conveyed to Pendleton Station, LLC by deed of Gene K. Altman dated August 16, 2004 and recorded on August 17, 2004 at Book 6323, Page 197 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 040-00-02-005

ALSO

TRACT B

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "B" on, and as described in, a plat entitled "closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina"

by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

This is the same property conveyed to Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD by deed of Coastal Plains Development Co., Inc., dated August 29, 2003 and recorded on August 23, 2003 at Book 5877, Page 145 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 063-00-01-007

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-01-2785

Moorhead Construction, Inc.,

Pendleton Station et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David J. Brousseau

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ 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
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Order of Reference by Consent of the Parties

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)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 26th day of Oct, 2011 and a copy mailed first class or placed in the appropriate attorney's box on this 27th day of Oct, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

MOTION FOR

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Moorhead Construction, Inc.,

Plaintiff,

-v-

Pendleton Station, LLC et al,

Defendants.

CA No. 2007-DR-04-2785

ORDER OF REFERENCE

A TRUE COPY

OCT 26 2011

CLERK OF COURT

It appears that pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, that the parties consent to this matter being referred to the Master-in-Equity.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the civil action identified as 2007-CP-04-2785, *Moorhead Construction v Pendleton Station, LLC, et al*, is hereby referred to the Honorable Ellis B. Drew, Jr., Master-In-Equity for Anderson County, South Carolina, to take testimony and evidence regarding the above captioned matter.

PRESIDING JUDGE, 10th JUDICIAL CIRCUIT

Dated: 10/26, 2011

WE SO MOVE AND CONSENT:

David J. Brousseau, Esquire
McIntosh, Sherard, Sullivan & Brousseau
Post Office Box 197
Anderson, South Carolina 29622
(864) 225-0001
Attorney's for the Plaintiff

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Thomas E. Dudley, III, Esquire
Kenison, Dudley & Crawford, LLC
704 E. McAbee Avenue
Greenville, South Carolina 29601
(864) 242-4899
Attorney for Enterprise Bank



James W. Logan, Jr., Esquire
Logan, Jolly and Smith
Post Office Box 259
Anderson, South Carolina 29622
(864) 226-1910
Attorney for Pendleton Station and
Ben Daniel

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D.

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

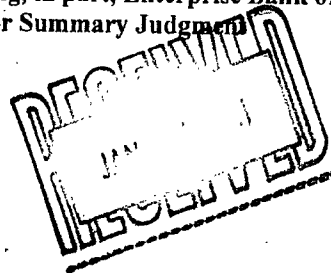
IN THE COURT OF COMMON PLEAS
TENTH (10th) JUDICIAL CIRCUIT

**Order Granting, in part, and Denying, in part, Enterprise Bank of South
Carolina's Motions for Summary Judgment**

Miller Construction Company, LLC,)
Plaintiff,)

v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)



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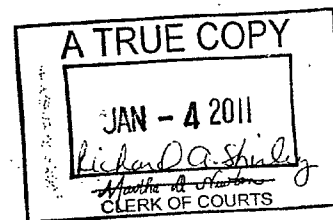
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C.A. No. 2007-CP-04-2786

Moorhead Construction, Inc.,)
Plaintiff,)

v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)



C.A. No. 2007-CP-04-2785

Craft Construction Company, Inc. of Starr,)
Plaintiff,)

v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

C.A. No. 2007-CP-04-2784

THIS MATTER comes before the Court upon Motions for Summary Judgment filed by Defendant Enterprise Bank of South Carolina [hereinafter Enterprise Bank] against all three (3) Plaintiffs in each of the three (3) above captioned cases. The relevant parties for these motions were Enterprise Bank, Craft Construction Company, Inc. of Starr, Miller Construction Company, LLC, and Moorhead Construction, Inc. Each of Enterprise Bank's Motions for Summary Judgment concern all three (3) causes of action filed by each Plaintiff in each of their respective lawsuits. These three causes of action were the same in each of the three different lawsuits: (1) Foreclosure of Mechanic's Lien; (2) Breach of Contract; and (3) Unjust Enrichment. Because the facts and circumstances surrounding these three cases and all of the causes of action are so similar, the Court held one hearing for the motions. The Clerk of Court is directed to file this Order in all three (3) case files.

Enterprise Bank submitted a brief to the Court and to the Plaintiffs prior to the hearing. The Plaintiffs did not submit a brief prior to the hearing; however, the Court allowed the Plaintiffs additional time after the hearing to submit a brief in support of their defense. The Court, in turn, allowed Enterprise Bank to submit a reply brief.

Standard of Review

Rule 56(c), S.C.R.C.P. provides that a motion for summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Further, "when a motion for summary judgment is made, an adverse party may not rest upon the mere allegations or denials of his pleadings, but must set forth specific facts showing there is a genuine issue of material fact

for trial." *Charping v. J.P. Scurry & Co., Inc.*, 296 S.C. 312, 372 S.E.2d 120, 122 (Ct. App., 1988).

In resolving a motion for summary judgment, the court must consider all the evidence properly before it. *Saluda Motor Lines v. Crouch*, 386 S.E.2d at 292. The existence of some factual dispute is not enough to deny summary judgment; the disputed facts must be material. *Id.* Furthermore, as Justice Littlejohn has explained, while the evidence must be viewed in the light most favorable to the nonmoving party, a party opposing summary judgment is not entitled to every conceivable inference from the facts, but only every reasonable inference. *Trotter v. First Federal Savings and Loan Ass'n*, 298 S.C. 85, 378 S.E.2d 267, 268 (Ct. App., 1989).

Findings of Fact

In early 2005, Plaintiff Moorhead Construction, Inc. [hereinafter Moorhead] contracted with Defendant Pendleton Station, LLC, [hereinafter Pendleton Station] to perform horizontal utility construction services on Phase IA of a project in Pendleton, South Carolina, called Pendleton Station [hereinafter 'the project']. Phase IA of the project was to be constructed on a two acre tract of land (the "2 Acre Tract") and two adjacent 31 acre tracts of land known respectively as "Tract A" and "Tract B".¹

Also in early 2005, Moorhead subcontracted Miller Construction, LLC (hereinafter Miller) to perform, *inter alia*, grading work on Phase IA of the project. Moorhead also subcontracted Craft Construction Co., Inc., of Starr [hereinafter Craft] in early 2005 to perform, *inter alia*, water and sewer line work on Phase IA of the project.

In August of 2005, Enterprise Bank loaned monies to Pendleton Station for the horizontal development of Phase IA. Enterprise Bank obtained a mortgage on Tract A as security for its

¹ Pendleton Station's master development plan included a subsequent Phase IB which was to be constructed on the northern portion of Tract A and a small portion of Tract B. In addition, the master plan included an even later Phase II which was to be constructed on the 38 Acre Tract (described below).

loan. In late December 2005, Pendleton Station acquired an adjacent 38 acre tract of land, which was to be developed in Phase II of the project (the "38 Acre Tract"). Upon acquisition of the 38 Acre Tract, Pendleton Station mortgaged this 38 Acre Tract to Enterprise Bank as additional security for the earlier August loan made by Enterprise Bank to Pendleton Station. In September of 2006, Enterprise Bank agreed to make an additional loan to Pendleton Station for the purpose of completing the horizontal development of Phase IA. This additional loan was also secured by a mortgage on the 38 Acre Tract from Pendleton Station to Enterprise Bank.

In January 2007, Pendleton Station allegedly defaulted on the loans to Enterprise Bank and never completed Phase IA of the project. On March 5, 2007, Pendleton Station deeded the property it owned to Enterprise Bank in lieu of foreclosure. On April 17 2007, Miller and Moorhead filed Mechanic's Liens against the 2 Acre Tract, Tract A, Tract B and the 38 Acre Tract. Enterprise Bank subsequently brought suit against Pendleton Station, et al. on May 11, 2007 for, *inter alia*, the difference between the value of the property deeded and the debt outstanding on the loans². Craft then filed Mechanic's Liens on May 25, 2007 against the 2 Acre Tract, Tract A, Tract B and the 38 Acre Tract. In August, 2007, the Plaintiffs filed each of the underlying lawsuits.

Claims for Foreclosure of Mechanic's Liens

Plaintiffs' Mechanic's Liens on 2 Acre Tract, Tract A and Tract B

Viewing the evidence in a light most favorable to the Plaintiffs, issues of fact exists as to whether the Plaintiffs' Mechanic's Liens as against the 2 Acre Tract, Tract A and Tract B should be foreclosed in accordance with S.C. Code § 29-5-10, *et seq.* Therefore, Enterprise Bank's Motions for Summary Judgment against the Plaintiffs as against the Plaintiffs' causes of action

² Enterprise Bank alleges that this difference is in excess of a millions dollars.

for foreclosure of their Mechanic's Liens on only the 2 Acre Tract, Tract A and Tract B are hereby denied.

Plaintiff's Mechanic's Liens on the 38 Acre Tract

Miller, Moorhead and Craft each filed a Mechanic's Lien against the 38 Acre Tract. As outlined in S.C. Code § 29-5-10, *et seq.*, the fundamental basis giving rise to a mechanic's lien is that the alleged unpaid labor and/or materials furnished be "*actually used in the erection, alteration, or repair*" of the *liened real estate*. S.C. Code § 29-5-10 (emphasis supplied).

Counsel for Plaintiffs admits that Craft's Rule 30(b)(6), SCRCF, deponent, William F. Craft, testified that Craft did not perform work on the 38 Acre Tract. Miller's Rule 30(b)(6), SCRCF, deponent, George Miller, testified that Miller had performed the majority of its work on Phase IA. Mr. Miller testified that Miller also performed some clearing work on Phase IB, which was just on the other side of Town Creek, which is a tributary where a bridge was built by Pendleton Station. Moorhead's Rule 30(b)(6), SCRCF, deponent, Keven Moorhead, testified that Moorhead only performed work on Phase IA and a small portion of Phase IB just on the other side of Town Creek.

Counsel for Miller, Moorhead and Craft indicated that each of the Plaintiffs were under the assumption that Town Creek was the boundary between the southern portion of the 38 Acre Tract and the northern boundary of Tracts A and B. The evidence produced by Enterprise Bank, which includes, without limitation, the above referenced testimony of the Plaintiffs' themselves, affidavit testimony from one of the project managers as to the actual construction that took place as well as the actual plats and actual plans that show the project overlaid on all of the referenced tracts of property, makes it abundantly clear that no work was ever completed on the 38 Acre Tract by Pendleton Station, the Plaintiffs, or anyone else. This evidence shows that the above

referenced creek-side work is, in fact, acres away from any portion of the 38 Acre Tract. The evidence also shows that there was never a contract signed between anyone for any work to be completed on the 38 Acre Tract. The Plaintiffs have not put forth any evidence to prove that they completed work on the 38 Acre Tract.

The well-established standard of review governing motions for summary judgment cannot be ignored. "The purpose of summary judgment is to obviate delay where there is no material issue of fact involved." *Manley v. Manley*, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Ct. App. 1987). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." *Shupe v. Settle*, 315 S.C. 510, 516-17, 445 S.E.2d 651, 655 (Ct. App. 1994).

In the case of *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 154-155, 226 S.E.2d 703, 704 - 705 (1976), the South Carolina Supreme Court was unequivocal in its holding:

If a material issue of fact can be created by a denial based on ignorance of the facts and neglecting to pursue discovery, the office of summary judgment would be mummified. Parties would be subjected to the burden of a trial merely because formal and pretended averments can not be separated from genuine factual controversies. Yet, the purpose of summary judgment was to expedite disposition of cases not requiring the services of a fact finder.

Motions for summary judgment, rather than succoring dilatory exploitations, impose additional demands upon counsel. 'The tools and devices of discovery are more than options and opportunities. Rule 56 (our Circuit Court Rule 44) expressly exacts them by negative compulsion on pain of judicial denouement-saying in effect, 'Meet these affidavit facts or judicially die.' Diligence in opposing a motion for summary judgment is required, for such a motion with supporting logistics and gear does not lose its thrust by an opponent's complacency.'

Bankers Trust, 267 S.C. at 154-155, 226 S.E.2d at 704 - 705 (internal citations omitted).

Despite more than three years passing since the Plaintiffs filed the underlying lawsuit, the Plaintiffs have not provided any evidence to prove that they completed any work on the 38 Acre

Tract. Therefore, Enterprise Bank's Motion for Summary Judgment as to each of the Plaintiffs' causes of action for Foreclosure of Mechanic's Lien as to the 38 Acre Tract is hereby granted.

Breach of Contract Claims

Enterprise Bank filed the underlying Motions for Summary Judgment on December 2, 2009 wherein it specifically stated that the Motions included the Plaintiffs' respective Breach of Contract claims. After briefing the Breach of Contract issue prior to the subject hearing, arguing the issue at the hearing and briefing the issue again after the hearing, the Plaintiffs only now concede that the Breach of Contract claims raised in the pleadings do not apply to Enterprise Bank³. In now agreeing that Enterprise Bank should be awarded summary judgment on the Breach of Contract claims, counsel for the Plaintiffs admits that those causes of action were instead intended for Defendant Pendleton Station, LLC. Therefore, summary judgment is granted in favor of Enterprise Bank on each of the Plaintiffs' causes of action for Breach of Contract.

Quantum Meruit Claims

"Absent an express contract, recovery under *quantum meruit* is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." *Columbia Wholesale Company, Inc., v. Scudder May*, 440 S.E.2d 129, 130 (1994); *Ells v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 366 S.E.2d 12 (Ct App 1988).

Viewing the evidence in a light most favorable to the Plaintiffs, issues of fact exists as to: (1) whether a benefit was conferred upon Enterprise Bank by the Plaintiffs, (2) whether

³ It appears from the Complaints filed by the Plaintiffs that the Breach of Contract claims were against all "Defendants", including Enterprise Bank.

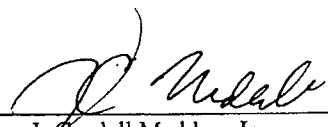
Enterprise Bank realized such a benefit, and (3) whether Enterprise Bank has retained such a benefit under conditions that make it unjust for Enterprise Bank to retain the benefit without paying its value. Therefore, Enterprise Bank's Motions for Summary Judgment against the Plaintiffs as against the Plaintiffs' causes of action for *Quantum Meruit* are hereby denied.

Conclusion

ACCORDINGLY, Defendant Enterprise Bank of South Carolina's Motions for Summary Judgment as to each of the Plaintiffs' Breach of Contract claims are **granted**. Defendant Enterprise Bank of South Carolina's Motions for Summary Judgment as to each of the Plaintiffs' claims for Foreclosure of their Mechanic's Liens as to only the 38 Acre Tract are **granted**.

However, Defendant Enterprise Bank of South Carolina's Motions for Summary Judgment as to each of the Plaintiffs' claims for Foreclosure of Mechanic's Liens as to Tract A, Tract B and the 2 Acre Tract are **denied**. Defendant Enterprise Bank of South Carolina's Motions for Summary Judgment as to each of the Plaintiffs' *Quantum Meruit* claims are **denied**.

IT IS SO ORDERED this 31st day of December, 2010.



Hon. J. Cordell Maddox, Jr.
Presiding Circuit Court Judge
Tenth (10th) Judicial Circuit

Anderson, South Carolina

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT
Enterprise Bank of South Carolina,) C.A. No.: 2007-CP-04-1439

Plaintiff,

vs.

Benjamin L. Daniel, Sr., Benjamin L. Daniel, Jr., Thomas M. Daniel, Elizabeth Daniel, William R. Spence Pendleton Station, LLC, Coastal Plains Development Co., Inc., Engineered Concrete Structures, Inc., Engineered Concrete Products, Inc., a Delaware Corporation, Entasis Design, PLLC, Carolina Concrete Homes, Inc., Benjamin L. Daniel Sr. Revocable Living Trust, and Marie R. Daniel Revocable Living Trust

Defendants.

Benjamin L. Daniel, Sr. and Elizabeth Daniel,

Third Party Plaintiffs,

vs.

Ervin M. Mathias, Brooks Harvey, David Johns and William J. Cutchin,

Third Party Defendants.

ORDER

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MAY 13 2008

Clerk of Court

This matter came before me on the 6th day of February, 2008 pursuant to Defendant's Motion for Partial Summary Judgment and Plaintiff's Motion for Warrant of Attachment. The Plaintiff was represented by Tomas E. Dudley, Esquire, and M. Stokely Holder, Esquire, of Kenison, Dudley & Crawford, LLC, and Defendants/Third Party Plaintiffs were

represented by James W. Logan, Jr., Esquire, of Logan, Jolly & Smith, LLP, and Stanley E. Barnett, Esquire, of Smith Bundy, Bybee & Barnett, PC.

FACTUAL AND PROCEDURAL BACKGROUND

This case was filed by Plaintiff, Enterprise Bank of South Carolina ("Enterprise") alleging in part that Defendant, Pendleton Station, LLC ("Pendleton") borrowed money from Enterprise and that such funds had not been repaid. Based on allegations that Benjamin Daniel, Sr., a personal guarantor of the loan to Pendleton, had represented that he owned interests in certain property, Enterprise filed a Lis Pendens of those properties. Enterprise has also alleged that Benjamin Daniel, Sr., Thomas Daniel, Elizabeth Daniel, Coastal Plains Development Co., Inc., Engineered Concrete Products, Inc., Engineered Concrete Structures, Inc., and Carolina Concrete Homes, Inc. have received funds loaned to Pendleton by Enterprise and has placed a Lis Pendens on properties owned by some of these companies and individuals.

Pendleton and the above-named Defendants as well as the owners of two properties on which Enterprise has filed Lis Pendens, the Marie Daniel Revocable Living Trust and the Benjamin Daniel, Sr. Revocable Living Trust have moved for Summary Judgment as to the claims that Enterprise is entitled to maintain a Lis Pendens on any of these properties.

Enterprise has moved for a Warrant of Attachment to be placed on property located at 145 Memes Way, Berkeley County, South Carolina; 112 Cainhoy Landing Road, Berkeley County, South Carolina; 3 Cross Lane, Charleston County, South Carolina; 1725 Chatelain Way, Charleston County, South Carolina; and 108 Live Oak Drive, Charleston County, South Carolina.

STANDARD OF REVIEW FOR SUMMARY JUDGMENT

South Carolina Rules of Civil Procedure, Rule 56, provides that summary judgment:

"shall be rendered ... if the pleadings, depositions, answers to interrogatories, and admissions on file, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law."

"Summary Judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Marietta Garage, Inc. v South Carolina Dept. of Public Safety, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999), citing Staubes v. City of Folly Beach, 331 S.C. 192, 500 S.E.2d 160 (Ct. App. 1998). Even where there is no dispute as to evidentiary fact, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Etheredge v. Richland School District, 330 S.C. 447, 449 S.E.2d 238 (Ct. App. 1998).

Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial. *Id.* At the summary judgment stage of the proceedings, it is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied. Tanner v. Florence City-County Bldg. Com'n, 333 S.C. 549, 511 S.E.2d 369 (Ct. App. 1999). It is not for the Court to weigh the evidence, as such is strictly the province of the jury.

South Carolina case law is clear that "the Court must view the facts and inferences therefrom in the light most favorable to the nonmoving party." Bravis v. Dunbar, 316 S.C. 263, 449 S.E.2d 495 (Ct. App. 1994). See also Etheredge v. Richland School District, *supra*; City of Columbia v. Town of Irmo, 316 S.C. 193, 447 S.E.2d 855 (1994); Thomas v. Waters, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994); State Farm Fire & Casualty Co. v. Breazell, 324 S.C. 228, 478 S.E.2d 831 (1996). All ambiguities, conclusions, and inferences must be construed strongly against the movant, and the party seeking summary judgment has the burden of clearly

establishing the absence of a genuine issue of material fact. Etheredge v. Richland School District, *supra*.

DISCUSSION

Having carefully considered the pleadings, the parties' positions, the arguments of counsel, all memoranda submitted, the attachments contained in the pleadings and the memoranda, the undisputed facts and all applicable law, this Court makes the following Findings of Fact and Conclusions of Law:

1. Defendant's Motion for Partial Summary Judgment is denied. The Court is of the opinion that there is a factual dispute as to whether the deed in lieu of foreclosure extinguished the underlying debt. "Ordinarily, when equitable and legal titles unite in the same person, merger occurs and the equitable encumbrance ceases to exist." First Federal Sav. and Loan Ass'n of South Carolina v. Finn, 300 S.C. 228, 387 S.E.2d 253 (1989), *citing Thompson v. Hudgens*, 161 S.C. 450, 159 S.E. 807 (1931). "The burden rests on the party opposing merger to prove a contrary intention existing at the time the two interests came together." *Id.* "An intention to prevent merger may be implied from facts indicating merger would be opposed to the interests of the person in whom the legal and equitable interests became united and that such an intention existed at the time of the merger." First Federal Sav. and Loan Ass'n of South Carolina v. Finn, *supra*, *citing McCreary v. Coggeshall*, 74 S.C. 42, 53 S.E. 978 (1906). Viewing the facts in the light most favorable to the nonmoving party, Defendants' Motion for Partial Summary Judgment is hereby denied.

2. The Court finds that William H. Larkin is qualified as a Certified Fraud Examiner. Based on Larkin's affidavit, as well as memoranda submitted by counsel to the

parties, the Court believes that Larkin did not unlawfully practice accounting, but merely examined and traced account records.

3. Plaintiff's Motion for Warrant of Attachment is hereby denied. The Court firmly believes that Plaintiff has met the statutory requirements for Warrant of Attachment, codified at South Carolina Code § 15-19-10, *et seq.*; however, the purpose of Warrant of Attachment generally is to take a defendant's property into legal custody so that it may be applied to the Plaintiff's debt, when established. Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc., 361 S.C. 117, 603 S.E.2d 905 (2004). Certified Fraud Examiner William H. Larkin was able to trace funds from Enterprise which were used to purchase or improve real property located at 108 Live Oak Drive, Charleston County, South Carolina, and 1725 Chatelain Way, Charleston County, South Carolina. However, Midland Mortgage Corporation holds a note and mortgage on 108 Live Oak Drive for \$990,000.00. Bank of America holds two mortgages on 1725 Chatelain Way, one for \$173,000.00 and one for \$40,000. Defendant Elizabeth Daniel defaulted on her note and mortgage, and Bank of America is currently prosecuting a foreclosure action against Elizabeth Daniel on the Chatelain Way property. Because both properties in which the Court was inclined to grant Plaintiff's Motion for Warrant of Attachment are encumbered by mortgages, one of which is in foreclosure, the purpose behind Warrant of Attachment cannot be satisfied. Therefore, Plaintiff's Motion for Warrant of Attachment is denied.

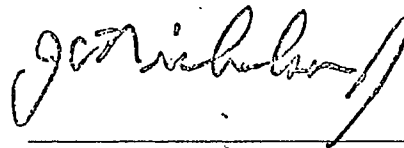
4. The Court is willing to reconsider its position if Plaintiff is able to trace any funds from Enterprise which were used to purchase or improve real property located at 145 Memes Way, Berkeley County, South Carolina; 112 Cainhoy Landing Road, Berkeley County, South Carolina; and 3 Cross Lane, Charleston County, South Carolina, and which would satisfy the spirit of Warrant of Attachment.

CONCLUSION

Viewing the facts and evidence in this matter is a light most favorable to the Plaintiff, this Court finds that a factual dispute exists as to whether Enterprise intended for the deed in lieu of foreclosure to extinguish the underlying debt. Factual determinations are within the province of the jury. Therefore, Defendant's Motion for Partial Summary Judgment is hereby **DENIED**.

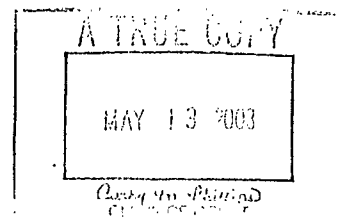
After careful review of the pleadings, applicable case law, code sections, and having received oral argument and memoranda of all parties, the Court believes that the purpose behind Warrant of Attachment cannot be fulfilled because there are no assets in the Live Oak Drive and Chatelain Way properties which could satisfy a judgment should Plaintiff receive one. Therefore, Plaintiff's Motion for Warrant of Attachment is hereby **DENIED**.

IT IS SO ORDERED!



J.C. Nicholson, Jr.,
Judge, 10th Judicial Circuit

_____, 2008
Anderson, South Carolina.



STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

CERTIFIED TRUE COPY
 Of Original Filed In This Office
 DATE 4-17-07
 REGISTER OF DEEDS
 ANDERSON COUNTY, SC

Moorhead Construction, Inc.,)
)
 Plaintiff.)
)
 -v-)
)
 Pendleton Station, LLC;)
 Enterprise Bank;)
 Diane L. Zellner, Trustee for the Diana L.)
 Zellner Revocable Trust UAD;)
 Angelo Penza; Bobby Bryant; Ursula)
 Lesser; Roger Rowe and Benjamin)
 L. Daniel.)
)
 Defendants.)
)

**CERTIFICATE OF CLAIM
 OF MECHANIC'S LIEN AND
 STATEMENT OF ACCOUNT**

TO: WHOMSOEVER THESE PRESENTS MAY CONCERN:

PERSONALLY appeared before me, KEVIN MOORHEAD, of Moorhead Construction, Inc., who first being duly sworn states that, "he is an officer with Moorhead Construction, Inc., with its principal place of business in Anderson County, South Carolina. That during the period of time prior to and ending on March 6, 2007, at the request of the above-captioned Defendants [hereinafter referred to as "Owners"], and under contract with same; and further with the express and/or implied permission and knowledge of Owners; did furnish labor, materials and/or services and improvements for Owners, to the real property located in Anderson County, South Carolina, described with particularity in Exhibits 'A', 'B' and 'C'.

The labor, services and materials were furnished and actually used for the improvement of the property described in Exhibits 'A', 'B' and 'C' and the Plaintiff herein has notified the Owners

and services furnished by Plaintiff to Owners herein and not paid for is the sum of
Four Hundred One Thousand Seven Hundred Twenty Nine and --/100 (\$ 401,729.00)
Dollars, together with attorney's fees, interest and costs as provided for by law, with all just credits
given.

A verified statement of account in the amount due thereon for materials and services actually
furnished to the Defendants is attached hereto as Exhibit 'D', and is incorporated herein by
reference."

Dated: April 16, 2007.



Kevin Moorhead, in his/her capacity as officer of
Moorhead Construction, Inc.

SWORN TO ME before this
the 16 day of April, 2007.



Notary Public for South Carolina

My Commission expires: 4/7/2013

Please Return to
Attorney for Plaintiff:

David J. Brousseau, Esq.
McIntosh, Sherard & Sullivan
Post Office Box 197
Anderson, South Carolina 29622

EXHIBIT 'A'

Current Owner: Enterprise Bank; by way of deed in lieu of foreclosure from Pendleton Station, LLC (Book 7886 at Page 110)

PARCEL 1

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate lying and being on Cherry Street Extension (S-4-115) a 66 foot right-of-way, in the Township of Pendleton, City of Pendleton, County of Anderson, State of South Carolina containing 38.61 acres and being more fully shown and delineated on a plat prepared at the request of Coastal Plains Development, LLC of property owned by Clint Wright, et al., prepared by Marathon Engineering, LLC, dated December 2, 2005 and recorded December 5, 2005 in the office of the Register of Deeds for Anderson County in Book S1577, at page 2, said property having such metes and bounds as shown on said plat and incorporated herein.

This is the same property conveyed to Enterprise Bank by deed of Pendleton Station, LLC dated March 2, 2007 and recorded on March 5, 2007 at Book 7886, Page 110 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 062-00-08-009

ALSO:

PARCEL 2

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "A" on, and as described in, a plat entitled "Closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

LESS UNITS: 1A, 1B, 1C, 2B, 2D, 2E, 2F, 3A, 3B, 3D, 3E, 4A, 4B, 4C, 4D, 4E, 5A, 6B, 6C, 6D, 6E, 7A, 8A, 8B, 8C, 9A, 9B, 9D, 10B, 11A, 12B, 12C, 12D, 12E, 12F, 12G, 13A, 13B, 14A, 14B, 15A, 16A, 16B, 16C, 16D, 20D, 20E, 20F, 25B, 28D, 35B, 35C

This is the same property conveyed to Enterprise Bank by deed of Pendleton Station, LLC dated March 2, 2007 and recorded on March 5, 2007 at Book 7886, Page 110 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 063-00-01-006

EXHIBIT 'B'

Current Owner: Pendleton Station, LLC; by way of deed from Gene K. Altman (Book 6323 at Page 196)

ALL that certain piece, parcel or lot of land, situate, lying and being in Pendleton Township, County of Anderson, State of South Carolina, and in School District Number Four (4), said tract containing 1.993 acres, mor or less, as shown on a plat recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Plat Book 87 at page 390, and also on resurvey made by Clemson Engineering Services, dated July 1, 1993, of record in the aforesaid Office in Plat Slide 399 at page 9-A. The metes and bounds, courses and distances as upon said plat appear which is incorporated herein by reference thereto and made a part hereof.

This is the same property conveyed to Pendleton Station, LLC by deed of Gene K. Altman dated August 16, 2004 and recorded on August 17, 2004 at Book 6323, Page 197 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 040-00-02-005

EXHIBIT 'C'

Current Owner: Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD; by way of deed from Coastal Plains Development Co., Inc., (Book 5877 at Page 144)

Current Mortgagee(s): Angelo Penza, Bobby Bryant, Ursula Lesser, Roger Rowe and Benjamin L. Daniel, Sr.; by way of recorded mortgage (Book 6429 at Page 306) with corrective re-record (Book 7024 at Page 256)

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "B" on, and as described in, a plat entitled "closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

This is the same property conveyed to Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD by deed of Coastal Plains Development Co., Inc., dated August 29, 2003 and recorded on August 23, 2003 at Book 5877, Page 145 in the Register of Deeds Office of Anderson County, South Carolina.

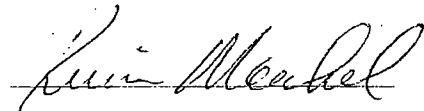
TMS#: 063-00-01-007

EXHIBIT 'D'

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON) **VERIFIED STATEMENT OF ACCOUNT**

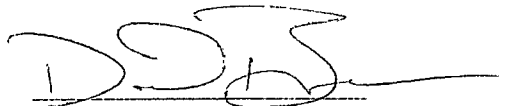
PERSONALLY APPEARED before me the undersigned, who being duly sworn states.

1. That at present the Defendants have not paid the amount due and owing Moorhead Construction, Inc., for materials and labor furnished at the real property described in Exhibit 'A', 'B' and 'C', said amount being Four Hundred One Thousand Seven Hundred Twenty Nine and —/100 (\$ 401,729.00) Dollars. The same being with all credits for payments received on account for the same to date.
2. That credit has been given for all payments and all lawful efforts to which said account is entitled."



Kevin Moorhead, Officer
In his/her capacity as officer of
Moorhead Construction, Inc.

SWORN TO ME before this the
14 day of April, 2007.



Notary Public for South Carolina
My Commission expires: 4/7/2013

030000600 4/17/2007 03:56:34 PM
FILED, RECORDED, INDEXED
Bk: 00030 Pg: 00278 Pages: 006
Rec Fee: 12.00 St Fee:
Co Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

Miller Construction Company, LLC,)
)
 Plaintiff.)

-v-)

Pendleton Station, LLC;)
 Enterprise Bank;)
 Diane L. Zellner, Trustee for the Diana L.)
 Zellner Revocable Trust UAD;)
 Angelo Penza; Bobby Bryant; Ursula)
 Lesser; Roger Rowe and Benjamin)
 L. Daniel,)

Defendants.)

**CERTIFICATE OF CLAIM
 OF MECHANIC'S LIEN AND
 STATEMENT OF ACCOUNT**

CERTIFIED TRUE COPY
 Of Original Filed In This Office
 DATE 4-17-07
 REGISTER OF DEEDS
 ANDERSON COUNTY, SC

TO: WHOMSOEVER THESE PRESENTS MAY CONCERN:

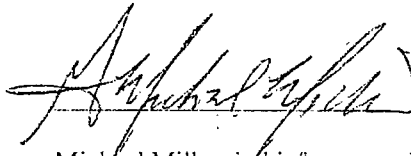
PERSONALLY appeared before me, MICHAEL MILLER, of Miller Construction Company, LLC, who first being duly sworn states that, "he is an officer with Miller Construction Company, LLC, with its principal place of business in Anderson County, South Carolina. That during the period of time prior to and ending on March 6, 2007, and at the request of the above-captioned Defendants [hereinafter referred to as "Owners"], and under contract with same; and further with the express and/or implied permission and knowledge of Owners; did furnish labor, materials and/or services and improvements for Owners, to the real property located in Anderson County, South Carolina, described with particularity in Exhibits 'A', 'B' and 'C'.

The labor, services and materials were furnished and actually used for the improvement of the property described in Exhibits 'A', 'B' and 'C' and the Plaintiff herein has notified the Owners of the labor, materials and services and the value thereof; that the actual value of said labor, materials

of the labor, materials and services and the value thereof; that the actual value of said labor, materials and services furnished by Plaintiff to Owners herein and not paid for is the sum of One Hundred Eleven Thousand Seven Hundred Eighty Four and $\frac{1}{100}$ (\$ 111,784.00) Dollars, together with attorney's fees, interest and costs as provided for by law, with all just credits given.

A verified statement of account in the amount due thereon for materials and services actually furnished to the Defendants is attached hereto as Exhibit "D", and is incorporated herein by reference.

Dated: April 16, 2007.



Michael Miller, in his/her capacity as officer of
Miller Construction Company, LLC

SWORN TO ME before this
the 16 day of April, 2007.



Notary Public for South Carolina

My Commission expires: 4/7/2013

Please Return to
Attorney for Plaintiff: David J. Brousseau, Esq.
McIntosh, Sherard & Sullivan
Post Office Box 197
Anderson, South Carolina 29622

EXHIBIT 'A'

Current Owner: Enterprise Bank; by way of deed in lieu of foreclosure from Pendleton Station, LLC (Book 7886 at Page 110)

PARCEL 1

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situated lying and being on Cherry Street Extension (S-4-115) a 66 foot right-of-way, in the Township of Pendleton, City of Pendleton, County of Anderson, State of South Carolina containing 38.61 acres and being more fully shown and delineated on a plat prepared at the request of Coastal Plains Development, LLC of property owned by Clint Wright, et al., prepared by Marathon Engineering, LLC, dated December 2, 2005 and recorded December 5, 2005 in the office of the Register of Deeds for Anderson County in Book S1577, at page 2, said property having such metes and bounds as shown on said plat and incorporated herein.

This is the same property conveyed to Enterprise Bank by deed of Pendleton Station, LLC dated March 2, 2007 and recorded on March 5, 2007 at Book 7886, Page 110 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 062-00-08-009

ALSO:

PARCEL 2

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situated lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "A" on, and as described in, a plate entitled "Closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

LESS UNITS: 1A, 1B, 1C, 2B, 2D, 2E, 2F, 3A, 3B, 3D, 3E, 4A, 4B, 4C, 4D, 4E, 5A, 6B, 6C, 6D, 6E, 7A, 8A, 8B, 8C, 9A, 9B, 9D, 10B, 11A, 12B, 12C, 12D, 12E, 12F, 12G, 13A, 13B, 14A, 14B, 15A, 16A, 16B, 16C, 16D, 20D, 20E, 20F, 25B, 28D, 35B, 35C

This is the same property conveyed to Enterprise Bank by deed of Pendleton Station, LLC dated March 2, 2007 and recorded on March 5, 2007 at Book 7886, Page 110 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 063-00-01-006

EXHIBIT 'B'

Current Owner: Pendleton Station, LLC; by way of deed from Gene K. Altman (Book 6323 at Page 196)

ALL that certain piece, parcel or lot of land, situate, lying and being in Pendleton Township, County of Anderson, State of South Carolina, and in School District Number Four (4), said tract containing 1.993 acres, mor or less, as shown on a plat recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Plat Book 87 at page 390, and also on resurvey made by Clemson Engineering Services, dated July 1, 1993, of record in the aforesaid Office in Plat Slide 399 at page 9-A. The metes and bounds, courses and distances as upon said plat appear which is incorporated herein by reference thereto and made a part hereof.

This is the same property conveyed to Pendleton Station, LLC by deed of Gene K. Altman dated August 16, 2004 and recorded on August 17, 2004 at Book 6323, Page 197 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 040-00-02-005

EXHIBIT "C"

Current Owner: Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD; by way of deed from Coastal Plains Development Co., Inc., (Book 5877 at Page 144)

Current Mortgagee(s): Angelo Penza, Bobby Bryant, Ursula Lesser, Roger Rowe and Benjamin L. Daniel, Sr.; by way of recorded mortgage (Book 6429 at Page 306) with corrective re-record (Book 7024 at Page 256)

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situated, lying and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "B" on, and as described in, a plat entitled "closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in: Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

This is the same property conveyed to Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD by deed of Coastal Plains Development Co., Inc., dated August 29, 2003 and recorded on August 23, 2003 at Book 5877, Page 145 in the Register of Deeds Office of Anderson County, South Carolina.

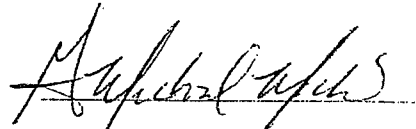
TMS#: 063-00-01-007

EXHIBIT 'D'

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON) **VERIFIED STATEMENT OF ACCOUNT**

PERSONALLY APPEARED before me the undersigned, who being duly sworn states,

1. That at present the Defendants have not paid the amount due and owing Miller Construction Company, LLC, for materials and labor furnished at the real property described in Exhibit 'A', 'B' and 'C'. said amount being One Hundred Eleven Thousand Seven Hundred Eighty and 4/100 (\$ 111,784.00) Dollars. The same being with all credits for payments received on account for the same to date.
2. That credit has been given for all payments and all lawful efforts to which said account is entitled."



Michael Miller, Officer
In his/her capacity as officer of Miller
Construction Company, LLC

SWORN TO ME before this the
16 day of April, 2007.



Notary Public for South Carolina
My Commission expires: 4/17/2013

030000601 4/17/2007 04:07:14 PM
FILED, RECORDED, INDEXED
Bk: 00030 Pg: 00284 Pages:006
Rec Fee: 12.00 St Fee:
Co Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

Craft Construction Company, Inc., of Starr.)

Plaintiff,)

-v-)

Pendleton Station, LLC;)

Enterprise Bank;)

Diane L. Zellner, Trustee for the Diana L.)

Zellner Revocable Trust UAD;)

Angelo Penza; Bobby Bryant; Ursula)

Lesser; Roger Rowe and Benjamin)

L. Daniel,)

Defendants.)

**CERTIFICATE OF CLAIM
OF MECHANIC'S LIEN AND
STATEMENT OF ACCOUNT**

CERTIFIED TRUE COPY
Of Original Filed In This Office
DATE 5-25-2007
REGISTER OF DEEDS
ANDERSON COUNTY, SC

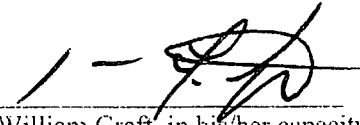
TO: WHOMSOEVER THESE PRESENTS MAY CONCERN:

PERSONALLY appeared before me, William Craft, of Craft Construction Company, Inc. of Starr [hereinafter Craft Construction], who first being duly sworn states that, "he is an officer with Craft Construction, with its principal place of business in Anderson County, South Carolina. That during the period of time prior to and ending on March 6, 2007, at the request of the above-captioned Defendants [hereinafter referred to as "Owners"], and under contract with same; and further with the express and/or implied permission and knowledge of Owners; did furnish labor, materials and/or services and improvements for Owners, to the real property located in Anderson County, South Carolina, described with particularity in Exhibits 'A', 'B' and 'C'.

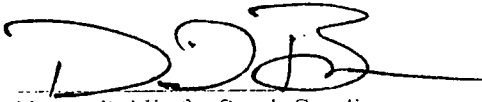
The labor, services and materials were furnished and actually used for the improvement of the property described in Exhibits 'A', 'B' and 'C' and the Plaintiff herein has notified the Owners of the labor, materials and services and the value thereof; that the actual value of said labor, materials and services furnished by Plaintiff to Owners herein and not paid for is the sum of One Hundred One Thousand Five Hundred Thirty Six and 36/100 (\$101,536.36) Dollars, together with attorney's fees, interest and costs as provided for by law, with all just credits given.

A verified statement of account in the amount due thereon for materials and services actually furnished to the Defendants is attached hereto as Exhibit 'D', and is incorporated herein by reference."

Dated: May 21, 2007.


William Craft, in his/her capacity as officer of
Craft Construction Co., Inc. of Starr

SWORN TO ME before this
the 21 day of May, 2007.


Notary Public for South Carolina

My Commission expires: 4/7/2013

Please Return to
Attorney for Plaintiff:

David J. Brousseau, Esq.
McIntosh, Sherard & Sullivan
Post Office Box 197
Anderson, South Carolina 29622

EXHIBIT 'A'

Current Owner: Enterprise Bank; by way of deed in lieu of foreclosure from Pendleton Station, LLC (Book 7886 at Page 110)

PARCEL 1

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being on Cherry Street Extension (S-4-115) a 66 foot right-of-way, in the Township of Pendleton, City of Pendleton, County of Anderson, State of South Carolina containing 38.61 acres and being more fully shown and delineated on a plat prepared at the request of Coastal Plains Development, LLC of property owned by Clint Wright, et al., prepared by Marathon Engineering, LLC, dated December 2, 2005 and recorded December 5, 2005 in the office of the Register of Deeds for Anderson County in Book S1577, at page 2, said property having such metes and bounds as shown on said plat and incorporated herein.

This is the same property conveyed to Enterprise Bank by deed of Pendleton Station, LLC dated March 2, 2007 and recorded on March 5, 2007 at Book 7886, Page 110 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 062-00-08-009

ALSO:

PARCEL 2

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "A" on, and as described in, a plat entitled "Closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

LESS UNITS: 1A, 1B, 1C, 2B, 2D, 2E, 2F, 3A, 3B, 3D, 3E, 4A, 4B, 4C, 4D, 4E, 5A, 6B, 6C, 6D, 6E, 7A, 8A, 8B, 8C, 9A, 9B, 9D, 10B, 11A, 12B, 12C, 12D, 12E, 12F, 12G, 13A, 13B, 14A, 14B, 15A, 16A, 16B, 16C, 16D, 20D, 20E, 20F, 25B, 28D, 35B, 35C

This is the same property conveyed to Enterprise Bank by deed of Pendleton Station, LLC dated March 2, 2007 and recorded on March 5, 2007 at Book 7886, Page 110 in the Register of Deeds Office of Anderson County, South Carolina

TMS#: 063-00-01-006

EXHIBIT 'B'

Current Owner: Pendleton Station, LLC; by way of deed from Gene K. Altman (Book 6323 at Page 196)

ALL that certain piece, parcel or lot of land, situate, lying and being in Pendleton Township, County of Anderson, State of South Carolina, and in School District Number Four (4), said tract containing 1.993 acres, mor or less, as shown on a plat recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Plat Book 87 at page 390, and also on resurvey made by Clemson Engineering Services, dated July 1, 1993, of record in the aforesaid Office in Plat Slide 399 at page 9-A. The metes and bounds, courses and distances as upon said plat appear which in incorporated herein by reference thereto and made a part hereof.

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TMS#: 040-00-02-005

EXHIBIT 'C'

Current Owner: Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD; by way of deed from Coastal Plains Development Co., Inc., (Book 5877 at Page 144)

Current Mortgagee(s): Angelo Penza, Bobby Bryant, Ursula Lesser, Roger Rowe and Benjamin L. Daniel, Sr.; by way of recorded mortgage (Book 6429 at Page 306) with corrective re-record (Book 7024 at Page 256)

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "B" on, and as described in, a plat entitled "closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

This is the same property conveyed to Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD by deed of Coastal Plains Development Co., Inc., dated August 29, 2003 and recorded on August 23, 2003 at Book 5877, Page 145 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 063-00-01-007

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
Ca No 2007-CP-04- 2785

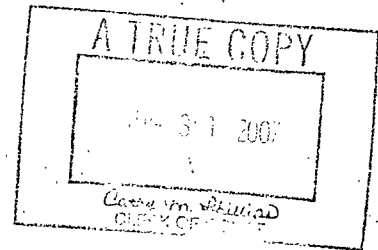
Moorhead Construction, Inc.,)
Plaintiff,)

-v-)

Pendleton Station, LLC;)
Enterprise Bank of South Carolina;)
Diane L. Zellner, Trustee for the Diana L.)
Zellner Revocable Trust UAD;)
Angelo Penza; Bobby Bryant; Ursula)
Lesser; Roger Rowe and Benjamin)
L. Daniel, Sr.)

Defendants.)

COMPLAINT



The Plaintiff, complaining of the above-named Defendants, would respectfully allege and show unto the Court that:

FACTS APPLICABLE TO ALL CAUSES OF ACTION

I

Plaintiff is a South Carolina corporation, organized and existing under the laws of the State of South Carolina with its principal place of business in the County of Anderson.

II

Upon information and belief, Defendant Pendleton Station, LLC, [hereinafter PENDLETON STATION] is a limited liability company organized and existing under the laws of the State of South Carolina, doing business in Anderson County, South Carolina, and is the owner of real property described further herein in Exhibit C, situate in the County of Anderson, State of South Carolina.

III

Upon information and belief, Defendant Enterprise Bank of South Carolina, [hereinafter ENTERPRISE BANK], is a corporation and banking institution, organized and existing under the laws of the State of South Carolina, doing business in the County of Anderson, State of South Carolina, and is the owner of real property described further herein in Exhibit A, situate in the County of Anderson, State of South Carolina.

IV

Upon information and belief, Diane L. Zellner is a citizen and resident of South Carolina and trustee of the Diana L. Zellner Revocable Trust UAD, [hereinafter ZELLNER], and is the owner, as trustee, of real property described further herein in Exhibit C, situate in the County of Anderson, State of South Carolina.

V

Upon information and belief, Angelo Penza is a citizen and resident of Pennsylvania, transacted business in South Carolina and is mortgagee of real property described further herein in Exhibit B, situate in the County of Anderson, State of South Carolina.

VI

Upon information and belief, Ursula Lesser, Roger Rowe, Bobby Bryant and Benjamin L. Daniel, Sr., are citizens and residents of South Carolina and mortgagees of real property described further herein in Exhibit B, situate in the County of Anderson, State of South Carolina.

VII

The group of persons referred to above in Paragraph V and VI, are hereinafter collectively referred to as MORTGAGEES OF TRACT B.

VIII

The real property which is the subject of this action is situate in the County of Anderson, State of South Carolina and is more particularly described in Exhibits A, B and C as attached and incorporated into this Complaint.

IX

This Court has jurisdiction over all parties, matters and things herein.

X

As Background, Plaintiff is informed and believes, that PENDLETON STATION, or its alter-egos and/or subsidiaries, originally purchased the real property described with particularity in Exhibits A, B, and C to develop as multi-unit housing buildings and lots in order to market and sell such units and lots to investors. The overriding theme being that the investors would then market to Clemson University students to lease as living residences during the school year.

XI

Plaintiff is informed and believes that ENTERPRISE BANK and MORTGAGEES OF TRACT B helped finance the project by providing loans to PENDLETON STATION. It is

Plaintiff's belief that ENTERPRISE BANK had during the project secured its loans by way of mortgage on the real property described with particularity in Exhibit A. Further, that MORTGAGEES OF TRACT B had during the project secured their loan by way of mortgage on the real property described with particularity in Exhibit B. Plaintiff is informed and believes that the property described with particularity in Exhibit C is unencumbered by mortgage.

XII

Plaintiff is informed and believes that PENDLETON STATION, and/or its alter-egos or subsidiaries, began this project without receiving prior approval from the Town of Pendleton of a variance to a zoning ordinance which makes it unlawful for more than one unrelated party to reside in a housing unit. This zoning ordinance makes the project useless for the intended purpose as stated in Paragraph X above.

FOR A FIRST (1ST) CAUSE OF ACTION

(Foreclosure of Mechanic's Lien)

XIII

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XIV

Plaintiff did furnish labor, materials and/or other type of construction services at the above-described real property at the request of and under contract with and with the express or implied permission of Defendants and/or their alter-egos or subsidiaries. As result of Defendants' failure and refusal to pay monies due Plaintiff, it caused a Certificate of Claim of Mechanic's Lien and Statement of Account to be timely filed on or around April 17, 2007, a copy of which is attached hereto as Exhibit "D" and incorporated fully as if repeated verbatim herein.

XV

Defendants have refused and continue to refuse to pay Plaintiff the monies it is due. The monies due are capable of being ascertained and/or calculated, entitling Plaintiff to pre-judgment interest.

XVI

As to the real property described with particularity in Exhibit "A," the current owner of record is ENTERPRISE BANK by way of deed in lieu of foreclosure filed in Deed Book 7886 at Page 110 in the Anderson County Register of Deeds on March 5, 2007.

XVII

As to the real property described with particularity in Exhibit "B," the current owner of record is PENDLETON STATION by way of deed filed in Deed Book 6323 at Page 197 in the Anderson County Register of Deeds on August 17, 2004. Plaintiff is informed and believes that there is no recorded mortgage concerning the real property described in Exhibit "B."

XVIII

As to the real property described with particularity in Exhibit "C," the current owner of record is ZELLNER, by way of deed filed in Deed Book 5877 at Page 145 in the Anderson County Register of Deeds on August 23, 2003. Plaintiff is informed and believes MORTGAGEES OF TRACT B have a recorded mortgage in Deed Book 6429 at Page 306, with a corrective re-record located in Deed Book 7024 at Page 256 in the Anderson County Register of Deeds.

XIX

Plaintiff's last date of work on the real property was on or around March 6, 2007.

XX

Plaintiff filed and served its Certificate of Claim of Mechanic's Lien and Statement of Account within ninety (90) days of its last work and commenced this action within one hundred eighty (180) days of its last work. [See Exhibit "D"]

XXI

The value of the labor, materials and services furnished by Plaintiff to Defendants, after credits being given, is Four Hundred One Thousand Seven Hundred Twenty Nine and 00/100 (\$401,729.00) Dollars. No part of this sum has been paid as of this filing.

XXII

Plaintiff is informed and believes that it is entitled to have liens against or the interests in the property described above determined by this Court, and to have the property sold, subject to recorded mortgages that may have priority over said liens, and the proceeds applied first to the costs and expenses of this action, together with attorney's fees for Plaintiff's attorney, then to the payment of the lien due Plaintiff as determined by this Court, and the balance, if any, to be held subject to further Order of this Court.

XXIII

In the event there is insufficient proceeds to pay Plaintiff, then for Judgment against Defendants PENDLETON STATION, ENTERPRISE BANK, AND ZELLNER, jointly and

severally, in the amount of Four Hundred One Thousand Seven Hundred Twenty Nine and 00/100 (\$401,729.00) Dollars, together with attorney's fees, interest and costs as provided by law.

WHEREFORE, Plaintiff prays:

- 1) That the subject property be sold under the order and direction of this Court after due advertisement;
- 2) That this Court determine the priority of the liens affecting the subject property; that the proceeds of sale be applied to the payment of the costs and expenses of this action, including a reasonable attorney's fee for Plaintiff's attorney, and that the balance be applied to the lien due Plaintiff as determined by this Court; and the balance, if any, be held subject to further Order of this Court;
- 3) In the event there is insufficient proceeds to pay Plaintiff's lien, then for judgment against the Defendants, Pendleton Station, LLC, Enterprise Bank of South Carolina and Diana L. Zellner as Trustee of the Diana L. Zellner Revocable Trust UAD, jointly and severally, for Four Hundred One Thousand Seven Hundred Twenty Nine and 00/100 (\$401,729.00) Dollars together with attorney's fees and costs as provided by law; and
- 4) For such other and further relief as to the Court may seem just proper.

FOR A SECOND CAUSE OF ACTION

[Breach of Contract]

XXIV

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XXV

In consideration of the labor, materials and services provided by Plaintiff, the Defendants either through their alter-egos, subsidiaries and the like agreed to pay monies in a timely manner as contemplated by the parties. The parties' agreement is an enforceable contract.

XXVI

Plaintiff would show that Defendants by their actions breached their agreement with Plaintiff by not paying Plaintiff for its work on the subject property.

XXVII

Defendants' actions constitute breach of contract.

XXVIII

As a direct and consequent result of Defendants' breach, Plaintiff has been damaged in the amount of Four Hundred One Thousand Seven Hundred Twenty Nine and 00/100 (\$401,729.00) Dollars , plus prejudgment interest, attorneys' fees and costs.

XXIX

Plaintiff is informed and believes that it is entitled to judgment against Defendants, jointly and severally, for its aforesaid actual damages.

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, for their actual, compensatory and incidental damages, for pre-judgment interest, for attorneys' fees and costs, and for such other and further costs as to this Court are just and proper.

**FOR A THIRD CAUSE OF ACTION
[Unjust Enrichment]**

XXX

All of the allegations set forth above are re-alleged and incorporated herein as fully and completely as if set forth verbatim.

XXXI

The labor, materials and services furnished by Plaintiff at Defendants' instance and request and for its use and benefit, have a reasonable fair market value of Four Hundred One Thousand Seven Hundred Twenty Nine and 00/100 (\$401,729.00) Dollars, plus pre-judgment interest. These amounts remain unpaid.

XXXII

Despite Plaintiff's reasonable expectation to be fully paid by Defendants for the labor, materials and services during and since the furnishing and delivery of the same to Defendants, the Defendants have failed and refused to pay for the labor, materials and services.

XXXIII

Defendants received the labor, materials and services with knowledge or reason to know that Plaintiff expected to be fully paid for same.

XXXIV

Plaintiff has made demand of Defendants to pay, however, Defendants have failed and continue to refuse to do so.

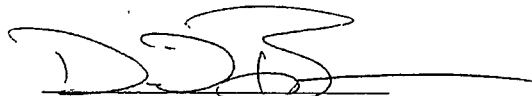
XXXV

As a result of Defendants' failure to pay, they have been unjustly enriched and Plaintiff has been proximately damaged in the amount of Four Hundred One Thousand Seven Hundred Twenty Nine and 00/100 (\$401,729.00) Dollars , plus pre-judgment interest.

XXXVI

Plaintiff is entitled to recover its above stated damages from Defendants in quantum meruit.

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, in the amount of Four Hundred One Thousand Seven Hundred Twenty Nine and 00/100 (\$401,729.00) Dollars , for pre-judgment interest, for the costs of this action, and for such other and further relief as to this Court is just and proper.



David J. Brousseau
McIntosh, Sherard & Sullivan
P. O. Box 197
Anderson, SC 29622
(864) 225-0001 FAX (864) 225-0004
Attorney for Plaintiff

August 20, 2007



EXHIBIT 'A'

Current Owner: Enterprise Bank; by way of deed in lieu of foreclosure from Pendleton Station, LLC (Book 7886 at Page 110)

PARCEL 1

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being on Cherry Street Extension (S-4-115) a 66 foot right-of-way, in the Township of Pendleton, City of Pendleton, County of Anderson, State of South Carolina containing 38.61 acres and being more fully shown and delineated on a plat prepared at the request of Coastal Plains Development, LLC of property owned by Clint Wright, et al., prepared by Marathon Engineering, LLC, dated December 2, 2005 and recorded December 5, 2005 in the office of the Register of Deeds for Anderson County in Book S1577, at page 2, said property having such metes and bounds as shown on said plat and incorporated herein.

This is the same property conveyed to Enterprise Bank by deed of Pendleton Station, LLC dated March 2, 2007 and recorded on March 5, 2007 at Book 7886, Page 110 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 062-00-08-009

ALSO:

PARCEL 2

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "A" on, and as described in, a plate entitled "Closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

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TMS#: 063-00-01-006

Moorhead Const, Inc. vs. Enterprise Bank, et al,
Statement on Account of Mechanic's Lien, Page 3

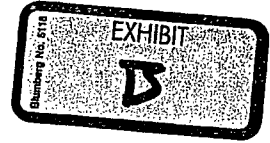


EXHIBIT 'B'

Current Owner: Pendleton Station, LLC; by way of deed from Gene K. Altman (Book 6323 at Page 196)

ALL that certain piece, parcel or lot of land, situate, lying and being in Pendleton Township, County of Anderson, State of South Carolina, and in School District Number Four (4), said tract containing 1.993 acres, mor or less, as shown on a plat recorded in the Office of the Clerk of Court for Anderson County, South Carolina in Plat Book 87 at page 390, and also on resurvey made by Clemson Engineering Services, dated July 1, 1993, of record in the aforesaid Office in Plat Slide 399 at page 9-A. The metes and bounds, courses and distances as upon said plat appear which is incorporated herein by reference thereto and made a part hereof.

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TMS#: 040-00-02-005



EXHIBIT 'C'

Current Owner: Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD; by way of deed from Coastal Plains Development Co., Inc., (Book 5877 at Page 144)

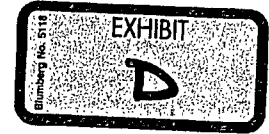
Current Mortgagee(s): Angelo Penza, Bobby Bryant, Ursula Lesser, Roger Rowe and Benjamin L. Daniel, Sr.; by way of recorded mortgage (Book 6429 at Page 306) with corrective re-record (Book 7024 at Page 256)

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "B" on, and as described in, a plat entitled "Closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

This is the same property conveyed to Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD by deed of Coastal Plains Development Co., Inc., dated August 29, 2003 and recorded on August 23, 2003 at Book 5877, Page 145 in the Register of Deeds Office of Anderson County, South Carolina.

TMS#: 063-00-01-007

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)



Moorhead Construction, Inc.,)
Plaintiff,)

-v-)

Pendleton Station, LLC;)
Enterprise Bank;)
Diane L. Zellner, Trustee for the Diana L.)
Zellner Revocable Trust UAD;)
Angelo Penza; Bobby Bryant; Ursula)
Lesser; Roger Rowe and Benjamin)
L. Daniel,)
Defendants.)

**CERTIFICATE OF CLAIM
OF MECHANIC'S LIEN AND
STATEMENT OF ACCOUNT**

TO: WHOMSOEVER THESE PRESENTS MAY CONCERN:

PERSONALLY appeared before me. KEVIN MOORHEAD, of Moorhead Construction, Inc., who first being duly sworn states that, "he is an officer with Moorhead Construction, Inc., with its principal place of business in Anderson County, South Carolina. That during the period of time prior to and ending on March 6, 2007, at the request of the above-captioned Defendants [hereinafter referred to as "Owners"], and under contract with same; and further with the express and/or implied permission and knowledge of Owners; did furnish labor, materials and/or services and improvements for Owners, to the real property located in Anderson County, South Carolina, described with particularity in Exhibits 'A', 'B' and 'C'.

The labor, services and materials were furnished and actually used for the improvement of the property described in Exhibits 'A', 'B' and 'C' and the Plaintiff herein has notified the Owners

and services furnished by Plaintiff to Owners herein and not paid for is the sum of

Four Hundred One Thousand Seven Hundred Twenty Nine and -/100 (\$ 401,729.00)

Dollars, together with attorney's fees, interest and costs as provided for by law, with all just credits given.

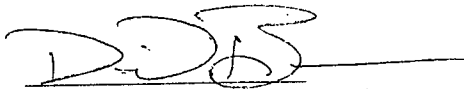
A verified statement of account in the amount due thereon for materials and services actually furnished to the Defendants is attached hereto as Exhibit 'D', and is incorporated herein by reference."

Dated: April 16, 2007.



Kevin Moorhead, in his/her capacity as officer of
Moorhead Construction, Inc.

SWORN TO ME before this
the 16 day of April, 2007.



Notary Public for South Carolina

My Commission expires: 4/7/2013

Please Return to
Attorney for Plaintiff:

David J. Brousseau, Esq.
McIntosh, Sherard & Sullivan
Post Office Box 197
Anderson, South Carolina 29622

EXHIBIT 'A'

Current Owner: Enterprise Bank; by way of deed in lieu of foreclosure from Pendleton Station, LLC (Book 7886 at Page 110)

PARCEL 1

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying and being on Cherry Street Extension (S-4-115) a 66 foot right-of-way, in the Township of Pendleton, City of Pendleton, County of Anderson, State of South Carolina containing 38.61 acres and being more fully shown and delineated on a plat prepared at the request of Coastal Plains Development, LLC of property owned by Clint Wright, et al., prepared by Marathon Engineering, LLC, dated December 2, 2005 and recorded December 5, 2005 in the office of the Register of Deeds for Anderson County in Book S1577, at page 2, said property having such metes and bounds as shown on said plat and incorporated herein.

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TMS#: 062-00-08-009

ALSO:

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TMS#: 063-00-01-006

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TMS#: 040-00-02-005

EXHIBIT 'C'

Current Owner: Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD; by way of deed from Coastal Plains Development Co., Inc., (Book 5877 at Page 144)

Current Mortgage(s): Angelo Penza, Bobby Bryant, Ursula Lesser, Roger Rowe and Benjamin L. Daniel, Sr.; by way of recorded mortgage (Book 6429 at Page 306) with corrective re-record (Book 7024 at Page 256)

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TMS#: 063-00-01-007

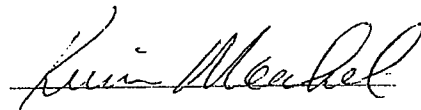
EXHIBIT 'D'

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

VERIFIED STATEMENT OF ACCOUNT

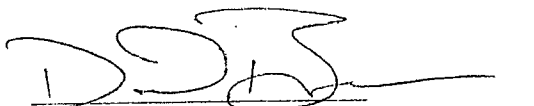
PERSONALLY APPEARED before me the undersigned, who being duly sworn states.

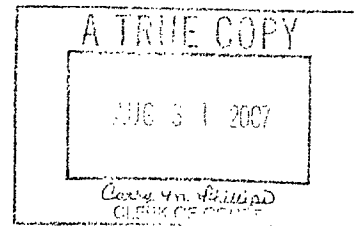
- "1. That at present the Defendants have not paid the amount due and owing Moorhead Construction, Inc., for materials and labor furnished at the real property described in Exhibit 'A', 'B' and 'C', said amount being Four Hundred One Thousand Seven Hundred Twenty Nine and —/100 (\$ 401,729.00) Dollars. The same being with all credits for payments received on account for the same to date.
2. That credit has been given for all payments and all lawful efforts to which said account is entitled."



Kevin Moorhead, Officer
In his/her capacity as officer of
Moorhead Construction, Inc.

SWORN TO ME before this the
14 day of April, 2007.


Notary Public for South Carolina
My Commission expires: 4/7/2013



030000600 4/17/2007 03:56:34 PM
FILED, RECORDED, INDEXED
Bk: 00030 Pg: 00278 Pages:006
Rec Fee: 12.00 St Fee:
Co Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Enterprise Bank of South Carolina,

Plaintiff(s)

vs.

Benjamin L. Daniel, Sr., et al.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2007 - CP - 04 - 1439

(Please Print)

Submitted By: Thomas E. Dudley, III

Address: 704 East McBee Avenue
Greenville, SC 29601

SC Bar #: 66154

Telephone #: (864) 242-4899

Fax #: (864) 242-4844

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions**
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799)

- Administrative Law/Relief**
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

- Special/Complex /Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Other (699)

Submitting Party Signature: _____

Date: May 10, 2007

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville, and Anderson****

**** Contact Respective County Clerk of Court for modified ADR Program Rules**

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Enterprise Bank of South Carolina,)

C.A. No.: 2007-CP-04- 1439

Plaintiff,)

vs.)

**SUMMONS
(Jury Trial)**

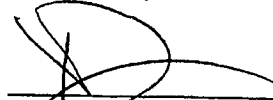
Benjamin L. Daniel, Sr., Benjamin L.
Daniel, Jr., Thomas M. Daniel,
Elizabeth Daniel, William R. Spence,
Pendleton Station, LLC, Coastal Plains
Development Co., Inc., Engineered
Concrete Structures, Inc., Engineered
Concrete Products, Inc., a Delaware
Corporation and Entasis Design, PLLC,)

Defendants.)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY summoned and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their offices, 704 East McBee Avenue, Greenville, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,



Thomas E. Dudley, III (SC Bar # 66154)
M. Stokely Holder (SC Bar #7 3892)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899

Attorneys for Plaintiff

May 10, 2007
Greenville, SC

A TRUE COPY

MAY 11 2007

Carry M. Phillips
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Enterprise Bank of South Carolina,)

C.A. No. 2007-CP-04- 1439

Plaintiff,)

vs.)

COMPLAINT

Benjamin L. Daniel, Sr. Benjamin L.)

Daniel, Jr., Thomas M. Daniel,)

Elizabeth Daniel, William R. Spence,)

Pendleton Station, LLC, Coastal Plains)

Development Co., Inc., Engineered)

Concrete Structures, Inc., Engineered)

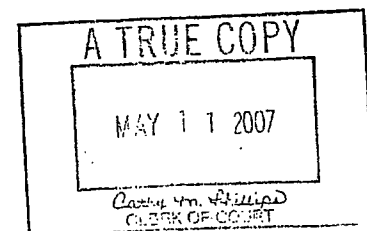
Concrete Products, Inc., a Delaware)

Corporation, and Entasis Design, PLLC,)

Defendants.)

COMES NOW, the Plaintiff, Enterprise Bank of South Carolina ("Enterprise Bank"), complaining of the Defendants, Benjamin L. Daniel, Sr. ("B. Daniel Sr."), Benjamin L. Daniel, Jr. ("B. Daniel Jr."), Thomas M. Daniel ("T. Daniel"), Elizabeth Daniel ("E. Daniel"), William R. Spence ("Spence"), Pendleton Station, LLC, Coastal Plains Development Co., Inc. ("Coastal Plains Development"), Engineered Concrete Structures, Inc. ("E.C. Structures"), Engineered Concrete Products, Inc., a Delaware Corporation ("E.C. Products"), and Entasis Design, PLLC ("Entasis") and would show the following:

1. Enterprise Bank is a South Carolina corporation duly licensed, organized and existing under the laws of the State of South Carolina and, at all times mentioned herein, was transacting business in South Carolina, providing financing to Pendleton Station, LLC for the project known as the Pendleton Station Development ("Project") located in the Town of Pendleton, in Anderson County, South Carolina.



2. Upon information and belief, B. Daniel Sr. is a citizen and resident of the County of Berkeley, State of South Carolina. Upon further information and belief, B. Daniel Sr. is a principal owner and officer of Defendants Pendleton Station, LLC, E.C. Structures, and Coastal Plains Development and was acting as the agent of, on behalf of, and under the authority of Pendleton Station, LLC, E.C. Structures, and Coastal Plains Development on the Project as he was engaged in the management of the Project.

3. Upon information and belief, B Daniel Jr. is the son of B. Daniel Sr. and a citizen and resident of the County of Charleston, State of South Carolina. Upon further information and belief, B. Daniel Jr. is a principal owner and officer of Defendant E.C. Products and was acting as the agent of, on behalf of, and under the authority of E.C. Products on the Project.

4. Upon information and belief, T. Daniel is the son of B. Daniel Sr. and a citizen and resident of the County of Charleston, State of South Carolina. Upon further information and belief, T. Daniel is a principal owner and officer of Defendants E.C. Structures and E.C. Products and was acting as the agent of, on behalf of, and under the authority of E.C. Structures and E.C. Products on the Project.

5. Upon information and belief, E. Daniel is the daughter of B. Daniel Sr. and a citizen and resident of the County of Berkeley, State of South Carolina. Upon further information and belief, E. Daniel is a principal owner and/or officer of Defendants E.C. Structures and E.C. Products and was acting as the agent of, on behalf of, and under the authority of E.C. Structures, Inc. and E.C. Products on the Project. Upon further information and belief, E. Daniel was in a management position for Coastal Plains Development and for Pendleton Station, LLC, and directed when payments were made on behalf of Coastal Plains Development, Pendleton Station, LLC, E.C. Structures, and E.C. Products.

6. Upon information and belief, E. Daniel was responsible for the accounting and paying of bills for Pendleton Station, LLC.

7. Upon information and belief, Spence is a citizen and resident of North Carolina and a resident of the County of Charleston, State of South Carolina. Upon further information and belief, Spence is the chief operating officer of Pendleton Station, LLC and Coastal Plains Development and was acting as the agent of, on behalf of, and under the authority of Pendleton Station, LLC and Coastal Plains Development on the Project.

8. Upon information and belief, Pendleton Station, LLC is a South Carolina corporation duly licensed, organized and existing under the laws of the State of South Carolina and, at all times mentioned herein, was transacting business in Anderson County, South Carolina. Pendleton Station, LLC was the alleged owner/developer of the property associated with the Project. The description of said property is attached hereto and referenced herein as "Exhibit A". Upon information and belief, Pendleton Station, LLC is owned by Coastal Plains Development and an individual named Angelou Penza. Upon information and belief, Pendleton Station, LLC contracted with E.C. Structures whereby E.C. Structures would be the general contractor on the Project, and Pendleton Station, LLC contracted with Entasis whereby Entasis would be the architect on the Project. Upon further information and belief, Pendleton Station, LLC was controlled by B. Daniel Sr. and E. Daniel.

9. Upon information and belief, Coastal Plains Development is a South Carolina corporation duly licensed, organized and existing under the laws of the State of South Carolina and, at all times mentioned herein, was transacting business in Anderson County, South Carolina. Upon information and belief, B. Daniel Sr. is the owner, officer, and agent of Coastal Plains Development. Upon information and belief, Coastal Plains Development is an owner of

Pendleton Station, LLC. Upon further information and belief, Coastal Plains Development was controlled by B. Daniel Sr. and E. Daniel.

10. Upon information and belief, E.C. Structures is a South Carolina corporation duly organized and existing under the laws of the State of South Carolina and, at all times mentioned herein, was transacting business in Anderson County, South Carolina. Upon information and belief, T. Daniel and E. Daniel are owners, officers, and agents of E.C. Structures. Upon information and belief, E.C. Structures contracted with Pendleton Station, LLC whereby E.C. Structures would be the general contractor associated with the Project, as they also contracted with the supplier, E.C. Products.

11. Upon information and belief, E.C. Products is a Delaware corporation duly organized and existing under the laws of the State of Delaware and, at all times mentioned herein, was transacting business in Anderson County, South Carolina. Upon information and belief, B. Daniel Jr., T. Daniel, and E. Daniel are owners, officers, and agents of E.C. Products. E.C. Products contracted with E.C. Structures whereby E.C. Products would be a supplier associated with the Project.

12. Upon information and belief, Entasis is a North Carolina corporation duly licensed, organized and existing under the laws of the State of North Carolina and, at all times mentioned herein, was transacting business in Anderson County, South Carolina. Entasis contracted with Pendleton Station, LLC whereby Entasis would be the architect/designer associated with the Project.

FACTUAL BACKGROUND

13. Prior to August 2004, Coastal Plains Development acquired title to real property near Pendleton, SC. Coastal Plains Development acquired a 31 acre tract (subsequently known

as Tract A). Coastal Plains Development also acquired another 31 acre tract that borders Tract A (this tract was subsequently referred to as Tract B). In August, 2004, Pendleton Station, LLC acquired a 2 acre tract that adjoined Tract A. The above described property was a part of the Project. In December, 2005, Pendleton Station, LLC acquired a 38 acre tract that adjoined Tracts A&B.

14. Pendleton Station, LLC engaged Entasis to design the Pendleton Station development, including the layout, building elevations, the design of the structures, and administration of the construction of the units on the Project.

15. Prior to August 2005, Pendleton Station, LLC submitted to the Town of Pendleton a request to annex into the Town and to zone Pendleton Station as a Planned Unit Development including mixed uses of both commercial and residential. After several meetings, the Town accepted annexation of the property and designated Pendleton Station a Planned Unit Development.

16. While the development process was continuing, B. Daniel Sr., on behalf of Pendleton Station, LLC, engaged Brooks Harvey ("B. Harvey") to create Coastal Plains Real Estate to market Pendleton Station. B. Harvey and Coastal Plains Real Estate contacted investment counselors Mike Molineaux and Billy Cannon to assist in marketing Pendleton Station. Mike Molineaux and Billy Cannon gave recommendations to investors in California to invest by purchasing units in the Pendleton Station development.

17. In the sales contracts between the purchasers of the units, Pendleton Station, LLC agreed to contract with E.C. Structures for E.C. Structures to build units consistent with the Entasis design.

18. Prior to August, 2005, B. Daniel Sr. and B. Harvey approached Enterprise Bank about financing the project. B. Daniel Sr. had met Ervin Mathias, a long time customer of Enterprise Bank. B. Daniel Sr. agreed to bring Ervin Mathias on as a part owner of Pendleton Station, LLC and pay him to oversee the Pendleton Station development. This was important to Enterprise Bank because it had no prior dealings with B. Daniel Sr. Knowing that Ervin Mathias would be guarantying the loans to Pendleton Station, LLC and involved in the operation of the project, Enterprise Bank agreed to a 3 million dollar line of credit to Pendleton Station, LLC. B. Daniel Sr. submitted the Entasis design, marketing materials, and an income projection from an accountant. It was represented to Enterprise Bank that a number of units had been pre-sold. Enterprise Bank hired an independent appraiser to evaluate the Project. That appraiser indicated that there were no problems with zoning and that the completed Project would be valued more than the anticipated loan. Based on Ervin Mathias' involvement and the appraisal, Enterprise Bank made the loan. It was represented that Pendleton Station, LLC would give Enterprise Bank a mortgage on all three parcels of real estate it owned that comprised the Project. However, Enterprise Bank only received a mortgage on Tract A.

19. The units in Pendleton Station were built using Eco-Block. E.C. Products, owned by B. Daniel Jr., T. Daniel and E. Daniel, was a distributor of Eco-Block. E.C. Products sold Eco-Block to E.C. Structures who then used them to construct the units. E.C. Products charged a commercially unreasonable mark up on the Eco-Block to E.C. Structures, who then marked the price up for sale to Pendleton Station, LLC.

20. During the course of construction of the infrastructure and the units, Pendleton Station, LLC, E.C. Structures and E.C. Products used various bank accounts to pay for each others building supplies, labor and other overhead. E. Daniel would direct which bank account

would pay which bills with complete disregard of corporate formalities or separateness. B. Daniel Sr., B. Daniel, Jr., T. Daniel and E. Daniel operated Pendleton Station, LLC, Coastal Plains Development, E.C. Products and E.C. Structures as if they were sole proprietorships commingling funds and payments.

21. Unknown to Enterprise Bank, B. Daniel Sr. and T. Daniel had been denied approval to construct 6 bedroom units by the Town of Pendleton. This caused two problems. One, units had been presold as 6 bedroom units with a 6 bedroom furniture package. Two, the Bank loaned money with the understanding that some of the units had 6 bedrooms. This materially effected the collateral pledged to the Bank.

22. Also unknown to Enterprise Bank, the Town of Pendleton had an Ordinance that limited the number of unrelated persons residing in a single dwelling unit. Pendleton Station, LLC and Coastal Plains Development had been marketing the units to purchasers to rent to Clemson University students. The Town of Pendleton's Ordinance would render the marketing of the units to Clemson University students unviable.

23. B. Daniel Sr. and Pendleton Station, LLC specifically gave marketing material to Enterprise Bank showing that the targeted market for rental of the units was Clemson University students.

24. Prior to seeking the loan from Enterprise Bank, B. Daniel Sr. and T. Daniel sought a variance from the Town of Pendleton on the issue limiting how many unrelated people could occupy a dwelling unit. The Town of Pendleton denied the variance, yet B. Daniel Sr. and T. Daniel never disclosed this information to Enterprise Bank or to prospective buyers.

25. The Project never got off to the right start. The buildings were being installed prior to the road being finished. This delayed the infrastructure from being finished. It also put the Project at risk because no inspection would be completed until the site work was finished.

26. Originally, the Project was to be completed by August 2006 for rental to Clemson University students. That deadline passed and Pendleton Station, LLC approached Enterprise Bank requesting more money. Enterprise Bank made a second loan to Pendleton Station, LLC for 2 million dollars on September 1, 2006. Pendleton Station, LLC pledged the 38 acre tract as collateral. The completion deadline for the Project was moved to December 2006.

27. Upon information and belief, during construction of the units and throughout the course of the Project, Entasis, the project Architect, approved pay requests by Pendleton Station, LLC/E.C. Structures for construction of the units, certifying that certain work was complete. Pendleton Station, LLC/E.C. Structures would request payment representing work in place. Apparently, Entasis was not conducting physical inspections to verify the representations of Pendleton Station, LLC/E.C. Structures that certain work was in place; yet, Entasis would still certify pay requests to Enterprise Bank. Units were not as completed as Entasis certified to Enterprise Bank they were. Enterprise Bank advanced funds in reliance of the Pendleton Station, LLC's/E.C. Structures' pay request as certified by Entasis.

28. During December 2006, B. Daniel Sr. and Pendleton Station, LLC approached Enterprise Bank's agent about needing more funding. Enterprise Bank reluctantly agreed to another loan for an additional \$500,000.00. Enterprise Bank only received a second mortgage on Tract A and the 38 acre tract, both of which were already pledged for the prior 5 million dollar loan to Pendleton Station, LLC.

29. At the end of December 2006, Spence, the C.F.O. of Pendleton Station, LLC, pledged a residential lot as collateral for yet another loan from Enterprise Bank to Pendleton Station, LLC. Enterprise Bank understood that B. Daniel Sr. had transferred this lot to Spence in order for Spence to collateralize the loan to Pendleton Station, LLC. At this point, Enterprise Bank would not loan any additional funds to Pendleton Station, LLC unless it received additional collateral and had other guarantees.

30. In January 2007, Enterprise Bank had a conversation with the owner of Pendleton Station, LLC about the late construction of the Project and Pendleton Station, LLC's request for more money, despite the most recent loans. On January 25, 2007, Enterprise Bank declared all loans to Pendleton Station, LLC in default (said notice of default is attached hereto as "**Exhibit B**" and further incorporated herein by reference).

31. B. Daniels Sr. and Spence brought a document to Enterprise Bank on February 6, 2007 to show how Pendleton Station, LLC had spent the money it had borrowed from Enterprise Bank. When Enterprise Bank first reviewed this document, it was shocked to learn that 1.5 million dollars of the 5.7 million dollars it had loaned to Pendleton Station, LLC had not been used for the development of the Project as specifically represented, but invested in a corporation that allegedly owned a Mexican gambling boat. This document also referenced that Pendleton Station, LLC had paid Ervin Mathias \$500,000.00. When asked, Ervin Mathias denied ever receiving that amount of money from Pendleton Station, LLC. Ervin Mathias did acknowledge that the representation of funds paid Ervin Mathias was false, casting doubt on the balance of the figures on the document.

32. Enterprise Bank declared Pendleton Station, LLC in default on the loans and threatened foreclosure. Sometime in February 2007, the principals of Pendleton Station, LLC

made several offers to tender deeds in lieu of foreclosure if Enterprise Bank would agree to release the individual guarantors. Enterprise Bank rejected said proposals.

33. On March 2, 2007, without Enterprise Bank's prior knowledge, Pendleton Station, LLC caused deeds in lieu of foreclosure to be filed, deeding its interest to Enterprise Bank for Tract A and the 38 acre tract, excepting the units sold to purchasers.

34. Upon receipt of copies of the filed deeds in lieu of foreclosure, Enterprise Bank paid 1.2 million dollars to subcontractors and suppliers that were threatening to file liens against the property. This indicated that Enterprise Bank needed to look more closely at the actual work in place on the Project.

35. Enterprise Bank then hired an engineering firm to determine the status of completion on the Project. The engineer's review discovered that the majority of the units under construction were not as complete as had been represented by Pendleton Station, LLC/E.C. Structures and as certified by Entasis. In fact, construction hadn't even begun on some units despite the fact that Enterprise Bank disbursed loan funds for these units based on the representations of Pendleton Station, LLC/E.C. Structures and certification of Entasis that certain construction had already been completed on these units.

36. In March 2007, Enterprise Bank first learned of the Town Ordinance that limited the number of unrelated people occupying a dwelling unit and the reduced size of units on the building permit. This significantly devalued the collateral.

FOR A FIRST CAUSE OF ACTION
(Breach of Promissory Notes-Pendleton Station, LLC)

37. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

38. The three (3) Promissory Notes, attached hereto as "Exhibit C" and further incorporated herein by reference, entered into by Enterprise Bank and Pendleton Station, LLC, whereby Enterprise Bank agreed to loan monies to Pendleton Station, LLC specifically for Pendleton Station, LLC to use for the development of Pendleton Station upon the affirmation that Pendleton Station, LLC would repay Enterprise Bank those monies together with an agreed upon interest rate, each constituted a contract and Enterprise Bank has fully performed its obligations under the contracts with Pendleton Station, LLC.

39. Pendleton Station, LLC has not applied the monies received pursuant to the contracts towards the development of Pendleton Station and in fact misappropriated the loan funds to projects and personal ventures having nothing to do with Pendleton Station, LLC. Further, the project was significantly behind schedule.

40. This misapplication of the loan disbursements and failure to timely complete the Project constitutes a breach of each of the aforementioned contracts between the parties. As a result of Pendleton Station LLC's breach of these contracts, Enterprise Bank has been damaged, for which it hereby sues together with attorneys' fees, costs, and interest in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION

(Breach of Contract/Third Party Beneficiary-Pendleton Station, LLC, E.C. Structures)

41. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

42. E.C. Structures contracted with Pendleton Station, LLC whereby E.C. Structures would be the general contractor on the Project and would provide labor and materials for the benefit and use of Pendleton Station, LLC. Enterprise Bank was the third party beneficiary of

these contracts in that Enterprise Bank advanced monies on construction loans to Pendleton Station, LLC and unit owners for E.C. Structures to build units that were collateral for Enterprise Bank's loans.

43. E.C. Structures breached the agreement by not timely completing the units, in diverting funds, in failing to pay subcontractors and suppliers, and in misrepresenting the actual completion stage of the units in order to receive draws on the construction loans.

44. As a result of E.C. Structure's breach, Enterprise Bank has been damaged, for which it hereby sues together with attorneys' fees, costs, and interest in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION
(Breach of Personal Guarantees-B. Daniel Sr.)

45. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

46. In connection with the first of the three aforementioned Promissory Notes between Enterprise Bank and Pendleton Station, LLC, which was executed on August 10, 2005, B. Daniel Sr. signed a Personal Guaranty on a 3 million dollar loan, attached hereto as "Exhibit D" and further incorporated herein by reference, in which B. Daniel Sr. personally guaranteed the prompt and satisfactory performance by Pendleton Station, LLC of the above referenced Promissory Note.

47. In connection with the second of the three aforementioned Promissory Notes between Enterprise Bank and Pendleton Station, LLC, which was executed on September 1, 2006, B. Daniel Sr. signed another Personal Guaranty of a 2 million dollar loan, attached hereto as "Exhibit E" and further incorporated herein by reference, in which B. Daniel Sr. personally

guaranteed the prompt and satisfactory performance by Pendleton Station, LLC of the above referenced Promissory Note.

48. In connection with the last of the three aforementioned Promissory Notes between Enterprise Bank and Pendleton Station, LLC, which was executed on December 11, 2006, B. Daniel Sr. signed a third Personal Guaranty on a \$500,000.00 loan, attached hereto as "Exhibit F" and further incorporated herein by reference, in which B. Daniel Sr. personally guaranteed the prompt and satisfactory performance by Pendleton Station, LLC of the above referenced Promissory Note.

49. Each of the above Personal Guarantees further state that if Pendleton Station, LLC defaults in its performance of the corresponding Promissory Note, then B. Daniel Sr. will personally pay Enterprise Bank all damages, expenses and costs, including attorneys' fees caused by such defaults.

50. Because Pendleton Station, LLC breached the Promissory Notes and has failed to pay Enterprise Bank the debts owed, B. Daniel Sr., pursuant to each of the Personal Guarantees, is personally liable for such debts.

51. Enterprise Bank has not received full payment on this balance from either Pendleton Station, LLC or from B. Daniel Sr. and now hereby sues B. Daniel Sr. for the outstanding balance, together with attorneys' fees, costs and interest in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION

(Fraud—Pendleton Station, LLC, B. Daniel Sr., T. Daniel, E. Daniel, Spence)

52. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

53. Pendleton Station, LLC, solely and/or through its agents, B. Daniel Sr., T. Daniel, E. Daniel and Spence, impliedly and/or expressly represented to Enterprise Bank that certain construction work had been completed on the Project, and further Pendleton Station, LLC through its agents, B. Daniel Sr., T. Daniel, and E. Daniel misrepresented the effect of the Town of Pendleton's Ordinance on the Project. B. Daniel Sr. and Spence misrepresented to Enterprise Bank how loan proceeds had been spent. Said representations were made with the intention Enterprise Bank would rely upon them. These representations were false in that Pendleton Station, LLC did not and have not completed the construction on the Project that they represented to Enterprise Bank had been completed on the Project. Further, the Town of Pendleton's Ordinance significantly affected the marketing and value of the Project.

54. Said representations were material in that the representations induced Enterprise Bank to act by disbursing monies for the construction that Pendleton Station, LLC had falsely represented as being complete and Enterprise Bank was never made aware of the Ordinance in place by the Town of Pendleton.

55. Pendleton Station, LLC knew said representations were false when the same were made. Enterprise Bank reasonably relied on the representations of Pendleton Station, LLC. As a direct and proximate result of the false representations made by Pendleton Station, LLC, Enterprise Bank transacted with Pendleton Station, LLC by disbursing monies to Pendleton Station, LLC. As more fully stated herein, the construction work represented by Pendleton Station, LLC as being complete was incomplete and has never been completed, damaging Enterprise Bank. Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation
(Pendleton Station, LLC, B. Daniel Sr., T. Daniel, E. Daniel, Spence)

56. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

57. Alternatively, Pendleton Station, LLC, through its agents B. Daniel Sr., T. Daniel, E. Daniel and Spence, knew its representations to Enterprise Bank were false and/or Pendleton Station, LLC's representations were made with reckless disregard as to their truth or falsity. Pendleton Station, LLC's failure to inform Enterprise Bank of its true intentions was negligent and with reckless disregard to the truth upon which Enterprise Bank was relying. The false representations were concerning the Ordinance and the construction draws.

58. Pendleton Station, LLC intended Enterprise Bank to rely upon said representations.

59. Enterprise Bank did not know said representations were false.

60. Enterprise Bank has the right to rely upon and, in fact, did rely upon the truth of said representations.

61. As a direct and proximate result, Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR A SIXTH CAUSE OF ACTION
(Constructive Fraud-Pendleton Station, LLC, B. Daniel Sr., T. Daniel, E. Daniel, Spence)

62. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

63. Alternatively, Pendleton Station LLC, through its agents B. Daniel Sr., T. Daniel, E. Daniel and Spence, knew its representations to Enterprise Bank were false and/or Pendleton

Station, LLC's representations were made with reckless disregard as to their truth or falsity. Pendleton Station, LLC's failure to inform Enterprise Bank of its true intentions was negligent and with reckless disregard to the truth upon which Enterprise Bank was relying.

64. Pendleton Station, LLC intended Enterprise Bank to rely upon said representations.

65. Enterprise Bank did not know said representations were false.

66. Enterprise Bank has the right to rely upon and, in fact, did rely upon the truth of said representations.

67. As a direct and proximate result, Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR AN SEVENTH CAUSE OF ACTION
(Fraud—E.C. Structures, B. Daniel Sr., T. Daniel, E. Daniel)

68. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

69. E.C. Structures, solely and/or through its agents, B. Daniel Sr., T. Daniel and E. Daniel, impliedly and/or expressly represented to Enterprise Bank that certain construction work had been completed on the Project, and further E.C. Structures through its agents, B. Daniel Sr., T. Daniel and E. Daniel, misrepresented the effect of the Town of Pendleton's Ordinance on the Project. Said representations were made with the intention Enterprise Bank would rely upon them. These representations were false in that E.C. Structures did not and have not completed the construction on the Project that they represented to Enterprise Bank had been completed on the Project.

70. Said representations were material in that the representations induced Enterprise Bank to act by disbursing monies for the construction that E.C. Structures had falsely represented as being complete.

71. E.C. Structures knew said representations were false when the same were made. Enterprise Bank reasonably relied on the representations of E.C. Structures. As a direct and proximate result of the false representations made by E.C. Structures, Enterprise Bank transacted with E.C. Structures by disbursing monies to E.C. Structures. As more fully stated herein, the construction work represented by E.C. Structures as being complete was incomplete and has never been completed, damaging Enterprise Bank. Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR AN EIGHTH CAUSE OF ACTION

(Negligent Misrepresentation—E.C. Structures, B. Daniel Sr., T. Daniel, E. Daniel)

72. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

73. Alternatively, E.C. Structures, through its agents B. Daniel Sr., T. Daniel and E. Daniel, knew its representations to Enterprise Bank were false and/or E.C. Structures' representations were made with reckless disregard as to their truth or falsity. E.C. Structures' failure to inform Enterprise Bank of its true intentions was negligent and with reckless disregard to the truth upon which Enterprise Bank was relying.

74. E.C. Structures intended Enterprise Bank to rely upon said representations.

75. Enterprise Bank did not know said representations were false.

76. Enterprise Bank has the right to rely upon and, in fact, did rely upon the truth of said representations.

77. As a direct and proximate result, Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR A NINTH CAUSE OF ACTION

(Constructive Fraud-E.C. Structures, B. Daniel Sr., T. Daniel, E. Daniel)

78. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

79. Alternatively, E.C. Structures knew, through its agents B. Daniel Sr., T. Daniel and E. Daniel, its representations to Enterprise Bank were false and/or E.C. Structures' representations were made with reckless disregard as to their truth or falsity. E.C. Structures' failure to inform Enterprise Bank of its true intentions was negligent and with reckless disregard to the truth upon which Enterprise Bank was relying.

80. E.C. Structures intended Enterprise Bank to rely upon said representations.

81. Enterprise Bank did not know said representations were false.

82. Enterprise Bank has the right to rely upon and, in fact, did rely upon the truth of said representations.

83. As a direct and proximate result, Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR A TENTH CAUSE OF ACTION

(Unfair Trade Practices-Pendleton Station LLC, B. Daniel Sr., T. Daniel, E. Daniel)

84. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

85. Said actions by Pendleton Station, LLC constitute unfair or deceptive acts or practices in the conduct of trade/commerce and are unlawful as set forth by S.C. Code of Law §39-5-20, et seq.

86. The actions of Pendleton Station, LLC affect the public interest because such actions of Pendleton Station, LLC are capable of repetition in the deception and defrauding of others, and said actions affect the public's interest.

87. The actions constituting unfair and deceptive trade practice include the allegations contained in this complaint, as well as the following:

- a) fraudulently misrepresenting the status of the work on the Project;
- b) misrepresenting the effect of the Town of Pendleton's Ordinance on the Project; and
- c) misappropriating funds it represented would be used for the Project for other personal projects.

88. The actions of Pendleton Station, LLC were willful, within the meaning and interest of the S.C. Code §39-5-140, entitling Plaintiffs to treble damages and reasonable attorneys' fees.

FOR AN ELEVENTH CAUSE OF ACTION
(Negligence—Pendleton Station, LLC)

89. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

90. Pendleton Station, LLC owed a duty to Enterprise Bank to use the money loaned to Pendleton Station, LLC for the development of the Project.

91. Pendleton Station, LLC was negligent, willful, wanton and reckless in using the money that Enterprise Bank loaned to Pendleton Station, LLC, which combined and contributed as a proximate cause of Enterprise Bank's damages. Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR A TWELFTH CAUSE OF ACTION
(Declaratory Judgment-Pendleton Station, LLC)

92. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

93. Upon information and belief, B. Daniel Sr. and E. Daniel controlled Pendleton Station, LLC at all pertinent times mentioned herein.

94. Upon information and belief, B. Daniel Sr. and E. Daniel had such control of Pendleton Station, LLC with respect to the Project that they completely dominated Pendleton Station, LLC, not only completely dominating Pendleton Station, LLC's finances, but also the policy and business practice of Pendleton Station, LLC with respect to the Project, so that Pendleton Station, LLC was merely the instrument of B. Daniel Sr. and E. Daniel.

95. Upon information and belief, B. Daniel Sr. and E. Daniel used such control to commit fraud, to perpetrate the violation of a positive legal duty owed to Enterprise Bank, and to engage in such dishonest, wrongful and unjust acts upon, and in contravention of, Enterprise Bank's legal rights.

96. Upon information and belief, B. Daniel Sr. and E. Daniel breached their positive legal duty and this breach, coupled with their aforesaid control of Pendleton Station, LLC with respect to the Project, proximately caused damages to Enterprise Bank.

97. Upon information and belief, B. Daniel Sr. and E. Daniel exercised such control over Pendleton Station, LLC that Pendleton Station, LLC was merely an instrument of B. Daniel Sr. and E. Daniel.

98. Upon information and belief, B. Daniel Sr. and E. Daniel knew that the monies provided by Enterprise Bank to Pendleton Station, LLC were to be used solely on the Project, but

B. Daniel Sr. and E. Daniel allowed Pendleton Station, LLC to continue to operate, merely as a vehicle to fraudulently further their own interests to the detriment of Enterprise Bank.

99. Upon information and belief, B. Daniel Sr. and E. Daniel caused the commingling of Pendleton Station LLC's finances with loan monies received from Enterprise Bank for the Project, resulting in the siphoning and diversion of those loan monies for the personal benefit of B. Daniel Sr. and E. Daniel, and to Enterprise Bank's detriment.

100. Upon information and belief, Pendleton Station, LLC did not have a functioning corporate structure, was incapable of making independent decisions, and did not follow the corporate formalities applicable to a South Carolina corporation at all pertinent times herein.

101. Upon information and belief, Pendleton Station, LLC was insolvent prior to, and/or during construction of the Project. Further, Pendleton Station, LLC did not have sufficient assets to fulfill its obligations to Enterprise Bank or if it did, Pendleton Station, LLC, by the acts of B. Daniel Sr. and E. Daniel, misused monies loaned by Enterprise Bank for the Project to the detriment of Enterprise Bank.

102. Upon information and belief, Pendleton Station, LLC was grossly undercapitalized prior to and during construction of the Project.

103. Upon information and belief, B. Daniel Sr. and E. Daniel transferred, diverted and siphoned the monies loaned by Enterprise Bank in an effort to use such funds for the personal use of B. Daniel Sr. and/or E. Daniel and/or for the use of the other businesses they own or are associated with.

104. Upon information and belief, B. Daniel Sr. and E. Daniel received and used said monies from Enterprise Bank with full awareness as to the fraudulent and unjust nature of the transfer of the funds.

105. Upon information and belief, Pendleton Station, LLC was operated merely as an instrumentality for the operations of B. Daniel Sr. and E. Daniel.

106. Based on the foregoing it would be inequitable, unjust and fundamentally unfair for B. Daniel Sr. and/or E. Daniel to use the corporate shield of another entity (Pendleton Station, LLC) in order to benefit personally from perpetrating the violation of its positive legal duties in contravention of Enterprise Bank's legal rights and in violation of their fiduciary obligation to Enterprise Bank.

107. A justiciable controversy exists as to (1) whether B. Daniel and E. Daniel exerted complete control over Pendleton Station, LLC with respect to the Project such that Pendleton Station, LLC had at the time no separate mind, will or existence of its own; (2) whether B. Daniel Sr. and/or E. Daniel used such control to commit fraud or wrong upon Enterprise Bank; (3) whether the aforesaid control and breach of duty proximately caused the damages complained of; and (4) whether B. Daniel Sr. and E. Daniel are estopped from asserting the defense of the corporate shield and are personally liable to Enterprise Bank.

FOR A THIRTEENTH CAUSE OF ACTION
(Declaratory Judgment-Coastal Plains Development)

108. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

109. Upon information and belief, B. Daniel Sr. and E. Daniel controlled Coastal Plains Development at all pertinent times mentioned herein.

110. Upon information and belief, B. Daniel Sr. and E. Daniel had such control of Coastal Plains Development with respect to the Project that they completely dominated Coastal Plains Development, not only completely dominating Coastal Plains Development's finances,

but also the policy and business practice of Coastal Plains Development with respect to the Project, so that Coastal Plains Development was merely the instrument of B. Daniel Sr. and E. Daniel.

111. Upon information and belief, B. Daniel Sr. and E. Daniel used such control to commit fraud, to perpetrate the violation of a positive legal duty owed to Enterprise Bank, and to engage in such dishonest, wrongful and unjust acts upon, and in contravention of, Enterprise Bank's legal rights.

112. Upon information and belief, B. Daniel Sr. and E. Daniel breached their positive legal duty and this breach, coupled with their aforesaid control of Coastal Plains Development with respect to the Project, proximately caused damages to Enterprise Bank.

113. Upon information and belief, B. Daniel Sr. and E. Daniel exercised such control over Coastal Plains Development that Coastal Plains Development was merely an instrument of B. Daniel, Sr. and E. Daniel.

114. Upon information and belief, B. Daniel Sr. and E. Daniel knew that the monies provided by Enterprise Bank were to be used solely on the Project, but B. Daniel, Sr. and E. Daniel allowed Coastal Plains Development to use these monies to continue to operate, merely as a vehicle to fraudulently further their own interests to the detriment of Enterprise Bank.

115. Upon information and belief, B. Daniel Sr. and E. Daniel caused the commingling of Coastal Plains Development's finances with monies received for the Project, resulting in the siphoning and diversion of those monies for the personal benefit of B. Daniel, Sr. and E. Daniel and to Enterprise Bank's detriment.

116. Upon information and belief, Coastal Plains Development did not have a

functioning corporate structure, was incapable of making independent decisions, and did not follow the corporate formalities applicable to a South Carolina corporation at all pertinent times herein.

117. Upon information and belief, Coastal Plains Development was insolvent prior to, and/or during construction of the Project. Further, Coastal Plains Development did not have sufficient assets to fulfill its obligations on the Project or if it did, Coastal Plains Development, by the acts of B. Daniel Sr. and E. Daniel, misused the monies intended for the Project to the detriment of Enterprise Bank.

118. Upon information and belief, Coastal Plains Development was grossly undercapitalized prior to and during construction of the Project.

119. Upon information and belief, B. Daniel Sr. and E. Daniel transferred, diverted and siphoned the assets of Coastal Plains Development, including the monies loaned by Enterprise Bank for the Project, in an effort to use such funds for the personal use of B. Daniel Sr. and/or E. Daniel and/or for the use of the other businesses they own or are associated with.

120. Upon information and belief, B. Daniel Sr. and E. Daniel received and used said monies from Enterprise Bank with full awareness as to the fraudulent and unjust nature of the transfer of the funds.

121. Upon information and belief, Coastal Plains Development was operated merely as an instrumentality for the operations of B. Daniel Sr. and E. Daniel.

122. Based on the foregoing it would be inequitable, unjust and fundamentally unfair for B. Daniel Sr. and E. Daniel to use the corporate shield of another entity (Coastal Plains Development) in order to benefit personally from perpetrating the violation of their positive legal duties in contravention of Enterprise Bank's legal rights and in violation of their fiduciary

obligation to Enterprise Bank.

123. A justiciable controversy exists as to (1) whether B. Daniel Sr. and E. Daniel exerted complete control over Coastal Plains Development with respect to the Project such that Coastal Plains Development had at the time no separate mind, will or existence of its own; (2) whether B. Daniel Sr. and/or E. Daniel used such control to commit fraud or wrong upon Enterprise Bank; (3) whether the aforesaid control and breach of duty proximately caused the damages complained of; and (4) whether B. Daniel Sr. and E. Daniel are estopped from asserting the defense of the corporate shield and are personally liable to Enterprise Bank.

FOR A FOURTEENTH CAUSE OF ACTION

(Declaratory Judgment-E.C. Structures, B. Daniel Sr., T. Daniel, E. Daniel)

124. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

125. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel controlled E.C. Structures at all pertinent times mentioned herein.

126. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel had such control of E.C. Structures with respect to the Project that they completely dominated E.C. Structures, not only completely dominating E.C. Structures' finances, but also the policy and business practice of E.C. Structures with respect to the Project, so that E.C. Structures was merely the instrument of B. Daniel Sr., E. Daniel and T. Daniel.

127. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel used such control to commit fraud, to perpetrate the violation of a positive legal duty owed to Enterprise Bank, and to engage in such dishonest, wrongful and unjust acts upon, and in contravention of, Enterprise Bank's legal rights.

128. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel breached their positive legal duty and this breach, coupled with their aforesaid control of E.C. Structures with respect to the Project, proximately caused damages to Enterprise Bank.

129. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel exercised such control over E.C. Structures that E.C. Structures was merely an instrument of B. Daniel Sr., E. Daniel and T. Daniel.

130. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel knew that the monies provided by Enterprise Bank were to be used solely on the Project, but B. Daniel Sr., E. Daniel and T. Daniel allowed E.C. Structures to use these monies to continue to operate, merely as a vehicle to fraudulently further their own interests to the detriment of Enterprise Bank.

131. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel caused the commingling of E.C. Structures' finances with monies received for the Project, resulting in the siphoning and diversion of those monies for the personal benefit of B. Daniel Sr., E. Daniel and T. Daniel and to Enterprise Bank's detriment.

132. Upon information and belief, E.C. Structures did not have a functioning corporate structure, was incapable of making independent decisions, and did not follow the corporate formalities applicable to a South Carolina corporation at all pertinent times herein.

133. Upon information and belief, E.C. Structures was insolvent prior to, and/or during construction of the Project. Further, E.C. Structures did not have sufficient assets to fulfill its obligations on the Project or if it did, E.C. Structures, by the acts of B. Daniel Sr., E. Daniel and T. Daniel, misused the monies intended for the Project to the detriment of Enterprise Bank.

134. Upon information and belief, E.C. Structures was grossly undercapitalized prior to and during construction of the Project.

135. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel transferred, diverted and siphoned the assets of E.C. Structures, including the monies loaned by Enterprise Bank for the Project, in an effort to use such funds for the personal use of B. Daniel Sr., E. Daniel and/or T. Daniel and/or for the use of the other businesses they own or are associated with.

136. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel received and used said monies from Enterprise Bank with full awareness as to the fraudulent and unjust nature of the transfer of the funds and with full awareness as to the combination upon agreement with others of the fraudulent and unjust nature of the transfer of the funds.

137. Upon information and belief, E.C. Structures was operated merely as an instrumentality for the operations of B. Daniel Sr., E. Daniel and T. Daniel.

138. Based on the foregoing it would be inequitable, unjust and fundamentally unfair for B. Daniel Sr., E. Daniel and T. Daniel to use the corporate shield of another entity (E.C. Structures) in order to benefit personally from perpetrating the violation of their positive legal duties in contravention of Enterprise Bank's legal rights and in violation of their fiduciary obligation to Enterprise Bank.

139. A justiciable controversy exists as to (1) whether B. Daniel Sr., E. Daniel and T. Daniel exerted complete control over E.C. Structures with respect to the Project such that E.C. Structures had at the time no separate mind, will or existence of its own; (2) whether B. Daniel Sr., E. Daniel and/or T. Daniel used such control to commit fraud or wrong upon Enterprise Bank; (3) whether the aforesaid control and breach of duty proximately caused the damages complained of; and (4) whether B. Daniel Sr., E. Daniel and T. Daniel are estopped from asserting the defense of the corporate shield and are personally liable to Enterprise Bank.

FOR A FIFTEENTH CAUSE OF ACTION
(Declaratory Judgment-E.C. Products)

140. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

141. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel controlled E.C. Products at all pertinent times mentioned herein.

142. Upon information and belief, B. Daniel, Jr., E. Daniel and T. Daniel had such control of E.C. Products with respect to the Project that they completely dominated E.C. Products, not only completely dominating E.C. Products' finances, but also the policy and business practice of E.C. Products with respect to the Project, so that E.C. Products was merely the instrument of B. Daniel Jr., E. Daniel and T. Daniel.

143. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel used such control to commit fraud, to perpetrate the violation of a positive legal duty owed to Enterprise Bank, and to engage in such dishonest, wrongful and unjust acts upon, and in contravention of, Enterprise Bank's legal rights.

144. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel breached their positive legal duty and this breach, coupled with their aforesaid control of E.C. Products with respect to the Project, proximately caused damages to Enterprise Bank.

145. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel exercised such control over E.C. Products that E.C. Products was merely an instrument of B. Daniel Jr., E. Daniel and T. Daniel.

146. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel knew that the monies provided by Enterprise Bank were to be used solely on the Project, but B. Daniel Jr., E.

Daniel and T. Daniel allowed E.C. Products to use these monies to continue to operate, merely as a vehicle to fraudulently further their own interests to the detriment of Enterprise Bank.

147. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel caused the commingling of E.C. Products' finances with monies received for the Project, resulting in the siphoning and diversion of those monies for the personal benefit of B. Daniel Jr., E. Daniel and T. Daniel and to Enterprise Bank's detriment.

148. Upon information and belief, E.C. Products did not have a functioning corporate structure, was incapable of making independent decisions, and did not follow the corporate formalities applicable to a South Carolina corporation at all pertinent times herein.

149. Upon information and belief, E.C. Products was insolvent prior to, and/or during construction of the Project. Further, E.C. Products did not have sufficient assets to fulfill its obligations on the Project or if it did, E.C. Products, by the acts of B. Daniel Jr., E. Daniel and T. Daniel, misused the monies intended for the Project to the detriment of Enterprise Bank.

150. Upon information and belief, E.C. Products was grossly undercapitalized prior to and during construction of the Project.

151. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel transferred, Diverted, and siphoned the assets of E.C. Products, including the monies loaned by Enterprise Bank for the Project, in an effort to use such funds for the personal use of B. Daniel Jr., E. Daniel and/or T. Daniel and/or for the use of the other businesses they own or are associated with.

152. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel received and used said monies from Enterprise Bank with full awareness as to the fraudulent and unjust nature of the transfer of the funds.

153. Upon information and belief, EC Products was operated merely as an

instrumentality for the operations of B. Daniel, Jr., E. Daniel and T. Daniel.

154. Based on the foregoing it would be inequitable, unjust and fundamentally unfair for B. Daniel Jr., E. Daniel and T. Daniel to use the corporate shield of another entity (E.C. Products) in order to benefit personally from perpetrating the violation of their positive legal duties in contravention of Enterprise Bank's legal rights and in violation of their fiduciary obligation to Enterprise Bank.

155. A justiciable controversy exists as to (1) whether B. Daniel Jr., E. Daniel and T. Daniel exerted complete control over E.C. Products with respect to the Project such that E.C. Products had at the time no separate mind, will or existence of its own; (2) whether B. Daniel Jr., E. Daniel and/or T. Daniel used such control to commit fraud or wrong upon Enterprise Bank; (3) whether the aforesaid control and breach of duty proximately caused the damages complained of; and (4) whether B. Daniel Sr., E. Daniel and T. Daniel are estopped from asserting the defense of the corporate shield and are personally liable to Enterprise Bank.

FOR A SIXTEENTH CAUSE OF ACTION
(Negligent Misrepresentation-Entasis)

156. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

157. Entasis knew its representations to Enterprise Bank were false and/or Entasis' representations were made with reckless disregard as to their truth or falsity. Entasis' failure to inform Enterprise Bank of its true intentions was negligent and with reckless disregard to the truth upon which Enterprise Bank was relying.

158. Entasis intended Enterprise Bank to rely upon said representations.

159. Enterprise Bank did not know said representations were false.

160. Enterprise Bank has the right to rely upon and, in fact, did rely upon the truth of said representations.

161. As a direct and proximate result, Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR A SEVENTEENTH CAUSE OF ACTION
(Negligence-Entasis)

162. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

163. Entasis owed a duty to Enterprise Bank to certify pay applications as to work completed on the Project and to do so correctly.

164. Entasis was negligent, willful, wanton and reckless in doing so, which combined and contributed as a proximate cause of Enterprise Bank's damages. Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

WHEREFORE, Enterprise Bank of South Carolina prays for the following relief:

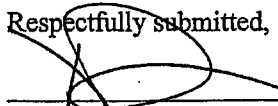
- a) Judgment against Pendleton Station, LLC for the First Cause of Action in an amount to be determined by a jury, together with interest at the legal rate as determined and disbursements of this action, and for attorney's fees and costs;
- b) Judgment against Engineered Concrete Structures, Inc. for the Second Cause of Action in an amount to be determined by a jury, together with interest at the legal rate as determined and disbursements of this action, and for attorney's fees and costs;
- c) Judgment against Benjamin L. Daniel, Sr. for the Third Cause of Action in the amount owed on the loans, together with interest at the legal rate as determined and disbursements of this action, and for attorney's fees and costs;
- d) Judgment against Pendleton Station, LLC, Benjamin L. Daniel, Sr., Thomas M. Daniel, Elizabeth Daniel and William R. Spence for the Fourth Cause of Action

for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;

- e) Judgment against Pendleton Station, LLC, Benjamin L. Daniel, Sr., Thomas M. Daniel, Elizabeth Daniel and William R. Spence for the Fifth Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- f) Judgment against Pendleton Station, LLC, Benjamin L. Daniel, Sr., Thomas M. Daniel, Elizabeth Daniel and William R. Spence for the Sixth Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- g) Judgment against Engineered Concrete Structures, Inc., Benjamin L. Daniel Sr., Thomas M. Daniel and Elizabeth Daniel for the Seventh Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- h) Judgment against Engineered Concrete Structures, Inc., Benjamin L. Daniel Sr., Thomas M. Daniel and Elizabeth Daniel for the Eighth Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- i) Judgment against Engineered Concrete Structures, Inc., Benjamin L. Daniel, Sr., Thomas M. Daniel and Elizabeth Daniel for the Ninth Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- j) Judgment against Pendleton Station, LLC, Benjamin L. Daniel, Sr., Thomas M. Daniel and Elizabeth Daniel for the Tenth Cause of Action for an award of treble damages and attorney's fees;
- k) Judgment against Pendleton Station, LLC for the Eleventh Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- l) Judgment against Pendleton Station, LLC, Benjamin L. Daniel, Sr. and Elizabeth Daniel for the Twelfth Cause of Action in an amount to be determined by the jury, together with interest at the legal rate as determined and disbursements of this action, and for attorney's fees and costs;
- m) Judgment against Coastal Plains Development Co., Inc., Benjamin L. Daniel, Sr. and Elizabeth Daniel for the Thirteenth Cause of Action in an amount to be determined by the jury, together with interest at the legal rate as determined and disbursements of this action, and for attorney's fees and costs;

- n) Judgment against Engineered Concrete Structures, Inc., Benjamin L. Daniel, Sr., Thomas M. Daniel and Elizabeth Daniel for the Fourteenth Cause of Action in an amount to be determined by the jury, together with interest at the legal rate as determined and disbursements of this action, and for attorney's fees and costs;
- o) Judgment against Engineered Concrete Products, Inc. for the Fifteenth Cause of Action in an amount to be determined by the jury, together with interest at the legal rate as determined and disbursements of this action, and for attorney's fees
- p) Judgment against Entasis Design, PLLC for the Sixteenth Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- q) Judgment against Entasis Design, PLLC for the Seventeenth Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- r) For an award of attorneys' fees;
- s) For an award of the costs of this action; and
- t) For such other and further relief that this Court deems just and proper.

Respectfully submitted,


Thomas E. Dudley, III (SC Bar # 66154)
M. Stokely Holder (SC Bar # 73892)
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Attorneys for Plaintiff
Enterprise Bank of South Carolina

May 10, 2007
Greenville, SC

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Enterprise Bank of South Carolina,)

C.A. No. 2007-CP-04-1439

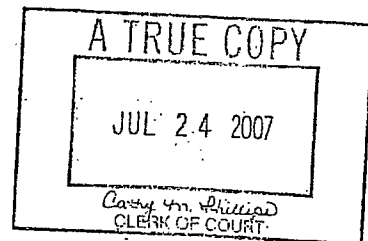
Plaintiff,)

vs.)

Benjamin L. Daniel, Sr. Benjamin L.)
Daniel, Jr., Thomas M. Daniel,)
Elizabeth Daniel, William R. Spence,)
Pendleton Station, LLC, Coastal Plains)
Development Co., Inc., Engineered)
Concrete Structures, Inc., Engineered)
Concrete Products, Inc., a Delaware)
Corporation, Entasis Design, PLLC,)
Carolina Concrete Homes, Inc.,)
Benjamin L. Daniel Sr. Revocable)
Living Trust and Marie R. Daniel)
Revocable Living Trust,)

AMENDED COMPLAINT

Defendants.)



COMES NOW, the Plaintiff, Enterprise Bank of South Carolina ("Enterprise Bank"), complaining of the Defendants, Benjamin L. Daniel, Sr. ("B. Daniel Sr."), Benjamin L. Daniel, Jr. ("B. Daniel Jr."), Thomas M. Daniel ("T. Daniel"), Elizabeth Daniel ("E. Daniel"), William R. Spence ("Spence"), Pendleton Station, LLC, Coastal Plains Development Co., Inc. ("Coastal Plains Development"), Engineered Concrete Structures, Inc. ("E.C. Structures"), Engineered Concrete Products, Inc., a Delaware Corporation ("E.C. Products"), Entasis Design, PLLC ("Entasis"), Carolina Concrete Homes, Inc. ("Carolina Concrete Homes"), Benjamin L. Daniel Sr. Revocable Living Trust and Marie R. Daniel Revocable Living Trust and would show the following:

1. Enterprise Bank is a South Carolina corporation duly licensed, organized and existing under the laws of the State of South Carolina and, at all times mentioned herein, was transacting business in South Carolina, providing financing to Pendleton Station, LLC for the

project known as the Pendleton Station Development ("Project") located in the Town of Pendleton, in Anderson County, South Carolina.

2. Upon information and belief, B. Daniel Sr. is a citizen and resident of the County of Berkeley, State of South Carolina. Upon further information and belief, B. Daniel Sr. is a principal owner and officer of Defendants Pendleton Station, LLC, E.C. Structures, and Coastal Plains Development and was acting as the agent of, on behalf of, and under the authority of Pendleton Station, LLC, E.C. Structures, and Coastal Plains Development on the Project as he was engaged in the management of the Project.

3. Upon information and belief, B Daniel Jr. is the son of B. Daniel Sr. and a citizen and resident of the County of Charleston, State of South Carolina. Upon further information and belief, B. Daniel Jr. is a principal owner and officer of Defendant E.C. Products and was acting as the agent of, on behalf of, and under the authority of E.C. Products on the Project.

4. Upon information and belief, T. Daniel is the son of B. Daniel Sr. and a citizen and resident of the County of Charleston, State of South Carolina. Upon further information and belief, T. Daniel is a principal owner and officer of Defendants E.C. Structures, E.C. Products and Carolina Concrete Homes and was acting as the agent of, on behalf of, and under the authority of E.C. Structures, E.C. Products and Carolina Concrete Homes on the Project and on various transactions concerning the funds loaned to Pendleton Station, LLC by Enterprise Bank.

5. Upon information and belief, E. Daniel is the daughter of B. Daniel Sr. and a citizen and resident of the County of Berkeley, State of South Carolina. Upon further information and belief, E. Daniel is a principal owner and/or officer of Defendants E.C. Structures and E.C. Products and was acting as the agent of, on behalf of, and under the authority of E.C. Structures, Inc. and E.C. Products on the Project. Upon further information and belief, E. Daniel was in a

management position for Coastal Plains Development and for Pendleton Station, LLC, and directed when and where payments were made on behalf of Coastal Plains Development, Pendleton Station, LLC, E.C. Structures, and E.C. Products.

6. Upon information and belief, E. Daniel was responsible for the accounting and paying of bills for Pendleton Station, LLC.

7. Upon information and belief, Spence is a citizen and resident of North Carolina and a resident of the County of Charleston, State of South Carolina. Upon further information and belief, Spence is the chief operating officer of Pendleton Station, LLC and Coastal Plains Development and was acting as the agent of, on behalf of, and under the authority of Pendleton Station, LLC and Coastal Plains Development on the Project.

8. Upon information and belief, Pendleton Station, LLC is a South Carolina limited liability company duly licensed, organized and existing under the laws of the State of South Carolina and, at all times mentioned herein, was transacting business in Anderson County, South Carolina. Upon further information and belief, Pendleton Station, LLC was controlled by B. Daniel Sr. and E. Daniel.

9. Pendleton Station, LLC was the alleged owner/developer of the property associated with the Project. The description of said property is attached hereto and referenced herein as "Exhibit A". Upon information and belief, Pendleton Station, LLC is owned by Coastal Plains Development and an individual named Angelou Penza.

10. Upon information and belief, Pendleton Station, LLC contracted with E.C. Structures whereby E.C. Structures would be the general contractor on the Project. Also, upon information and belief, Pendleton Station, LLC contracted with Entasis whereby Entasis would be the architect on the Project.

11. Upon information and belief, Coastal Plains Development is a South Carolina corporation duly licensed, organized and existing under the laws of the State of South Carolina and, at all times mentioned herein, was transacting business in Anderson County, South Carolina. Upon information and belief, B. Daniel Sr. is the owner, officer, and agent of Coastal Plains Development. Upon information and belief, Coastal Plains Development is an owner of Pendleton Station, LLC. Upon further information and belief, Coastal Plains Development was controlled by B. Daniel Sr. and E. Daniel.

12. Upon information and belief, E.C. Structures is a South Carolina corporation duly organized and existing under the laws of the State of South Carolina and, at all times mentioned herein, was transacting business in Anderson County, South Carolina. Upon information and belief, T. Daniel and E. Daniel are owners, officers, and agents of E.C. Structures.

13. Upon information and belief, E.C. Structures contracted with Pendleton Station, LLC whereby E.C. Structures would be the general contractor associated with the Project, as E.C. Structures also contracted with the supplier, E.C. Products.

14. Upon information and belief, E.C. Products is a foreign corporation duly organized and existing under the laws of the State of Delaware and, at all times mentioned herein, was transacting business in Anderson County, South Carolina. Upon information and belief, B. Daniel Jr., T. Daniel, and E. Daniel are owners, officers, and agents of E.C. Products. Upon further information and belief, E.C. Products contracted with E.C. Structures whereby E.C. Products would be a supplier associated with the Project.

15. Upon information and belief, Entasis is a foreign corporation duly licensed, organized and existing under the laws of the State of North Carolina and, at all times mentioned

herein, was transacting business in Anderson County, South Carolina. Upon information and belief, Entasis contracted with Pendleton Station, LLC whereby Entasis would be the architect/designer associated with the Project.

16. Upon information and belief, Carolina Concrete Homes is a South Carolina corporation duly licensed, organized and existing under the laws of the State of South Carolina and, at all times mentioned herein, was transacting business in Berkeley County and Charleston County, South Carolina. Upon information and belief, T. Daniel is an owner, officer, and agent of Carolina Concrete Homes.

17. Upon information and belief, the Benjamin L. Daniel Revocable Living Trust is a trust whereby the trust was created in South Carolina by B. Daniel, Sr., as the settlor, and is held in trust by B. Daniel, Sr., as the trustee, for the benefit of B. Daniel, Sr., as the beneficiary and includes, as part of the trust corpus, personal assets of B. Daniel, Sr.

18. Upon information and belief, the Marie R. Daniel Revocable Living Trust is a trust whereby the trust was created in South Carolina by B. Daniel, Sr., as the settlor, and is held in trust by B. Daniel, Sr., as the trustee, for the benefit of B. Daniel, Sr., as the beneficiary and includes, as part of the trust corpus, personal assets of B. Daniel, Sr. such as the residence of B. Daniel, Sr. Upon further information and belief, the purpose of this trust is to wrongfully conceal the assets of B. Daniel, Sr., including property located in South Carolina, from the creditors of B. Daniel, Sr.

FACTUAL BACKGROUND

19. Prior to August 2004, Coastal Plains Development acquired title to real property near Pendleton, SC. Coastal Plains Development acquired a 31 acre tract, subsequently known as Tract A. Coastal Plains Development also acquired another 31 acre tract that borders Tract A,

this tract was subsequently referred to as Tract B. In August 2004, Pendleton Station, LLC acquired a 2 acre tract (the "2 Acre Tract") that adjoined Tract A (Tract A, Tract B, and the 2 Acre Tract are more fully described in "Exhibit A", which is attached hereto and incorporated herein by reference). The 3 above described tracts of property, Tract A, Tract B and the 2 Acre Tract, comprised the real estate for which Phase I of Pendleton Station (the "Project") was to be constructed. In December 2005, Pendleton Station, LLC acquired a 38 acre tract (the "38 Acre Tract") that adjoined Tracts A&B (The 38 Acre Tract is more fully described in "Exhibit B", which is attached hereto and incorporated herein by reference).

20. Pendleton Station, LLC engaged Entasis to design the Pendleton Station Development, including, but not limited to, the layout, the building elevations, the design of the structures, and the administration of the construction of the units on the Project.

21. Prior to August 2005, Pendleton Station, LLC submitted to the Town of Pendleton a request to annex into the Town and to zone Pendleton Station as a Planned Unit Development including mixed uses of both commercial and residential. After several meetings, the Town accepted annexation of the property and designated Pendleton Station a Planned Unit Development.

22. While the development process was continuing, B. Daniel Sr., on behalf of Pendleton Station, LLC, engaged Brooks Harvey ("B. Harvey") to create Coastal Plains Real Estate Co., Inc. to market Pendleton Station. B. Harvey and Coastal Plains Real Estate contacted investment counselors Mike Molineaux and Billy Cannon to assist in marketing Pendleton Station. Mike Molineaux and Billy Cannon gave recommendations to investors in California to invest by purchasing units in the Pendleton Station development.

23. In the sales contracts between the purchasers of the units, Pendleton Station, LLC agreed to contract with E.C. Structures for E.C. Structures to build units consistent with the Entasis design.

24. Prior to August, 2005, B. Daniel Sr. and B. Harvey approached Enterprise Bank about financing the Project; specifically, a 3 Million Dollar line of credit. Enterprise Bank had no prior dealings with B. Daniel, Sr. As such, after meeting Ervin Mathias, a long-time customer of Enterprise Bank, B. Daniel, Sr. agreed to bring Ervin Mathias on as a part owner of Pendleton Station, LLC, and to pay him to oversee the Pendleton Station Development. B. Daniel, Sr., agreed to bring Ervin Mathias on in this capacity to help induce Enterprise Bank to loan money on the Project.

25. In order to further persuade Enterprise Bank to loan money for the Pendleton Station development, B. Daniel, Sr. provided Enterprise Bank the "Personal Financial Statement of Benjamin Louis Daniel As of January 31, 2005," which represented a total Net Worth of \$8,016,000.00 (said Personal Financial Statement is attached hereto and incorporated herein by reference as "**Exhibit C**").

26. B. Daniel Sr. further provided Enterprise Bank the Entasis architectural design of the Development, marketing materials, and an income projection from an accountant. These documents represented that a number of units within the Development had been pre-sold.

27. Prior to August 10, 2005, it was represented to Enterprise Bank by the Defendants, as well as the Defendants' attorney (who facilitated the closing), that Pendleton Station, LLC would, in exchange for the initial loan from Enterprise Bank, give Enterprise Bank a mortgage on all three parcels of real estate that comprised all of the real estate associated with the Project, which Pendleton Station, LLC purported to own (Tract A, Tract B and the 2 Acre

Tract). This was the understanding of Enterprise Bank, Pendleton Station, LLC and Pendleton Station, LLC's attorney.

28. Enterprise Bank then hired an independent appraiser to evaluate the Project. That appraiser indicated that there were no problems with zoning and that the completed Project would be valued more than the anticipated loan.

29. Based on Ervin Mathias' involvement, the aforementioned Personal Financial Statement of B. Daniel, Sr., the Entasis architectural design of the development, marketing materials associated with the development, an income projection for the Project from an accountant, the understanding of all parties involved that all 3 tracts of property associated with the Project would be mortgaged to Enterprise Bank, and the appraisal obtained by Enterprise Bank, Enterprise Bank made the loan.

30. The units in Pendleton Station were built using Eco-Block. E.C. Products, owned by B. Daniel Jr., T. Daniel and E. Daniel, was a distributor of Eco-Block. E.C. Products sold Eco-Block to E.C. Structures who then used them to construct the units. E.C. Products charged a commercially unreasonable mark up on the Eco-Block to E.C. Structures, who then marked the price up for sale to Pendleton Station, LLC. Considering the percentage completion of the Project in relation to the amount of money drawn on the construction loans, these early, obese charges resulted in an unbalanced amount of money charged against the unit construction loans than otherwise should have been charged at the time. As a result, Pendleton Station, LLC used the excessive charges by E.C. Structures to draw more on the construction loans than they otherwise should have. Upon information and belief, the excess money received by Pendleton Station, LLC from these excessive construction loan draws was never applied to the Project and has not been returned to Enterprise Bank.

31. During the course of construction of the infrastructure and the units, Pendleton Station, LLC, E.C. Structures and E.C. Products commingled funds using various bank accounts to pay for each others' building supplies, labor and other overhead. E. Daniel, who had a vested interest in each separate entity, would direct which company bank account would pay which bills with complete disregard of corporate formalities or separateness.

32. B. Daniel Sr., B. Daniel, Jr., T. Daniel and E. Daniel operated Pendleton Station, LLC, Coastal Plains Development, E.C. Products and E.C. Structures as if they were sole proprietorships commingling funds and payments.

33. Unknown to Enterprise Bank, B. Daniel Sr. and T. Daniel had been denied approval to construct 6 bedroom units by the Town of Pendleton. This materially affected the collateral pledged to Enterprise Bank as numerous units had been presold as 6 bedroom units with 6 bedroom furniture packages and the Bank loaned money with the understanding that some of the units had 6 bedrooms.

34. Also unknown to Enterprise Bank, the Town of Pendleton had an Ordinance that limited the number of unrelated persons residing in a single dwelling unit. Pendleton Station, LLC and Coastal Plains Development had been marketing the units to purchasers to rent to Clemson University students. The Town of Pendleton's Ordinance renders the marketing of the units to Clemson University students unviable.

35. B. Daniel Sr. and Pendleton Station, LLC specifically gave marketing material to Enterprise Bank showing that the targeted market for rental of the units was Clemson University students.

36. Prior to seeking the loan from Enterprise Bank, B. Daniel Sr. and T. Daniel sought a variance from the Town of Pendleton on the issue limiting how many unrelated people

could occupy a dwelling unit. The Town of Pendleton denied the variance; however, B. Daniel Sr. and T. Daniel, while seeking the loans from Enterprise Bank, never disclosed this information to Enterprise Bank or to prospective buyers.

37. The Project never got off to the right start. The buildings were being installed prior to the road being finished. This delayed the infrastructure from being finished. It also put the Project at risk because no inspection would be completed until the site work was finished.

38. Originally, the Project was to be completed by August 2006 for rental to Clemson University students. That deadline passed and Pendleton Station, LLC approached Enterprise Bank requesting more money. Enterprise Bank made a second loan to Pendleton Station, LLC for 2 million dollars on September 1, 2006. Pendleton Station, LLC pledged the 38 Acre Tract as collateral for this loan (said property is more fully described in "Exhibit B", which is attached hereto and incorporated herein by reference). After the 2 Million Dollar loan was made, the completion deadline for the Project was moved to December 2006.

39. Material to Enterprise Bank's decision to enter the second loan agreement with Pendleton Station, LLC was the "Personal Financial Statement of Benjamin Louis Daniel As of July 31, 2006," which represented a total Net Worth of \$30,446,000.00 (said Personal Financial Statement is attached hereto and incorporated herein by reference as "Exhibit D"). In this Personal Financial Statement, B. Daniel, Sr. included the Marie R. Daniel Revocable Living Trust as an asset he personally controlled. This trust owns B. Daniel Sr.'s personal residence, which is located at 112 Cainhoy Landing Road, Berkeley County, Parcel # 2630005007 (said property is more fully described in "Exhibit E", which is attached hereto and incorporated herein by reference).

40. Upon information and belief, during construction of the units and throughout the course of the Project, Entasis, the Project Architect, approved pay requests by Pendleton Station, LLC and by E.C. Structures for construction of the units, certifying that certain work was complete. Pendleton Station, LLC and E.C. Structures would request payment representing work in place. Upon information and belief, Entasis was not conducting physical inspections to verify the representations of Pendleton Station, LLC and E.C. Structures that certain work was in place; yet, Entasis would still certify pay requests to Enterprise Bank. Units were not as completed as Entasis certified to Enterprise Bank they were. Enterprise Bank advanced funds in reliance on Pendleton Station, LLC's and E.C. Structures' pay requests as certified by Entasis.

41. During December 2006, B. Daniel Sr. and Pendleton Station, LLC approached Enterprise Bank's agent about needing more funding. Enterprise Bank reluctantly agreed to another loan for an additional \$500,000.00. Enterprise Bank received a second mortgage on Tract A and the 38 Acre Tract, both of which were already pledged for the prior loans to Pendleton Station, LLC (Tract A being pledged for the 3 Million Dollar loan and the 38 Acre Tract being pledged for the 2 Million Dollar loan).

42. At the end of December 2006, Spence, the Chief Financial Officer of Pendleton Station, LLC, pledged a residential lot as collateral for yet another loan of approximately \$220,000.00 from Enterprise Bank. It was understood that these loan proceeds would go to Pendleton Station, LLC. Enterprise Bank understood that B. Daniel Sr. had transferred this lot to Spence in order for Spence to collateralize the loan to Pendleton Station, LLC.

43. In January 2007, Enterprise Bank had a conversation with the owner of Pendleton Station, LLC about the late construction of the Project and Pendleton Station, LLC's request for more money, despite the most recent loans. On January 25, 2007, Enterprise Bank declared all

loans to Pendleton Station, LLC in default (said notice of default is attached hereto as "Exhibit F" and further incorporated herein by reference).

44. B. Daniels Sr. and Spence brought a document to Enterprise Bank on February 6, 2007 to show how Pendleton Station, LLC had spent the money it had borrowed from Enterprise Bank. When Enterprise Bank first reviewed this document, it was shocked to learn that 1.5 Million Dollars of the 5.7 Million Dollars it had loaned to Pendleton Station, LLC had not been used for the development of the Project as specifically represented, but, instead, was invested in a corporation that allegedly owned a Mexican gambling boat. This document also referenced that Pendleton Station, LLC had paid Ervin Mathias \$585,000.00 for his involvement on the Project. When asked, Ervin Mathias denied ever receiving that amount of money from Pendleton Station, LLC. This acknowledgment of Ervin Mathias casted further doubt on the balance of the figures on the document.

45. Enterprise Bank declared Pendleton Station, LLC in default on the loans and threatened foreclosure. In February 2007, the principals of Pendleton Station, LLC made several offers to tender deeds in lieu of foreclosure if Enterprise Bank would agree to release the individual guarantors. Upon information and belief, each of the said offers included the transfer of Tract B where Project construction had taken place (construction on Tract B consisted of one unit building, significant site work, a pump station, and detention pond) as well as the 2 Acre Tract (construction on the 2 Acre Tract consisted of several unit buildings and the entrance to the Development). The offers of Pendleton Station, LLC included these two tracts even though, unbeknownst to Enterprise Bank at the time and in contravention of the prior agreement between Enterprise Bank, Pendleton Station, LLC and Pendleton Station, LLC's attorney, Enterprise Bank did not receive mortgages on these 2 tracts of property (contrary to the prior agreement,

they were not pledged as collateral for the mortgages given to Enterprise Bank for the loans provided to Pendleton Station, LLC). Enterprise Bank rejected all of Pendleton Station, LLC's offers and proposals because of the inclusion of certain waivers of mortgagor liability.

46. On March 2, 2007, without Enterprise Bank's prior knowledge, Pendleton Station, LLC caused deeds in lieu of foreclosure to be filed, deeding its interest to Enterprise Bank for Tract A and the 38 acre tract, excepting the units sold to purchasers.

47. Upon receipt of copies of the filed deeds in lieu of foreclosure, Enterprise Bank was thrust into the position of having to decide what to do with the Project. Essentially, Pendleton Station, LLC and E.C. Structures had dumped the Project on the Bank. Upon information and belief, E.C. Structures did not pay a number of its subcontractors and suppliers for labor and materials supplied on the Project. Upon information and belief, once Pendleton Station, LLC and E.C. Structures jettisoned the Project on Enterprise Bank, Pendleton Station, LLC and E.C. Structures directed said subcontractors and suppliers to contact Enterprise Bank for payment. Numerous subcontractors and suppliers began contacting Enterprise Bank requesting payment and threatening to file liens on the property. After reviewing the claims of the several subcontractors and suppliers, Enterprise Bank paid 1.2 Million Dollars to those subcontractors and suppliers that were owed money for labor and materials provided on the Project. Once Enterprise Bank had to pay such a large sum to suppliers and subcontractors, it became apparent that Enterprise Bank needed to further investigate the allocation of monies that had already been provided to Pendleton Station, LLC, and its principals.

48. Enterprise Bank then hired an engineering firm to determine the status of completion on the Project.

49. Before Enterprise Bank obtained the results of the engineer's review of the Project, Enterprise Bank learned that, contrary to prior representations of Pendleton Station, LLC and Pendleton Station, LLC's attorney and the understanding of all parties that the initial mortgage included the 3 tracts of property associated with the Project (Tract A, Tract B and the 2 Acre Tract- property comprising Phase I of the development), the mortgage only included Tract A. It is important to note that the 38 Acre Tract also deeded to the bank in lieu of foreclosure, which was mortgaged by Pendleton Station, LLC for the 2 Million Dollar loan and the \$500,000.00 loan, was not part of Phase I of the Development. No development had taken place on it and no development was planned to take place on it during Phase I.

50. The engineer's review discovered that the majority of the units under construction were not as complete as had been represented by Pendleton Station, LLC and/or by E.C. Structures and as further certified by Entasis. In fact, construction hadn't even begun on some units despite the fact that Enterprise Bank disbursed loan funds for these units based on the representations of Pendleton Station, LLC and/or E.C. Structures and the certification of Entasis that certain construction had already been completed on these units.

51. In March 2007, Enterprise Bank first learned of the Town Ordinance that limited the number of unrelated people occupying a dwelling unit and the reduced size of units on the building permit. This significantly devalued the collateral.

52. On or about April, 2007, Enterprise Bank became aware of numerous companies the Defendants owned. Upon further inquiry into the public records of certain counties spanning three states, Enterprise Bank began to realize the vast amount of real property and motor vehicles the Defendants own or have owned.

53. Upon information and belief, the real property discovered to be owned or formerly owned by Defendants is located primarily in the Charleston County and Berkeley County area.

54. Upon information and belief, much of the real property owned or once owned by the Defendants has been transferred numerous times amongst themselves, often for nominal amounts. Many of these property transfers, mortgages (including construction loans), and satisfactions of mortgages have taken place since Enterprise Bank began loaning Pendleton Station, LLC and its associates money for the development of Pendleton Station.

55. Upon information and belief, the Defendants have wrongfully diverted and applied the monies loaned to them by Enterprise Bank towards purposes other than the development of Pendleton Station. Upon information and belief, these mis-applications of funds include, but are not limited to, purchases of real property, improvements to real property, and mortgages on real property.

56. Upon information and belief, the Defendants continue to make property transfers in an attempt to further conceal assets that have been wrongfully procured using the monies loaned to them by Enterprise Bank. Upon information and belief, due to the multitude of companies the Defendants own or have owned, the numerous properties the Defendants own or have owned, and the numerous transactions the Defendants continue to make, the Defendants intend to further hide assets that they have wrongfully procured.

57. Upon information and belief, according to the engineer's analysis of work in place on the Project and the documentation made available to Enterprise Bank, there remains at least 5 Million Dollars unaccounted for of those monies loaned by Enterprise Bank on the Project.

58. According to the engineer's analysis, of the money Enterprise Bank advanced to Pendleton Station, LLC on the individual unit construction loans, the Defendants received at least 2.5 Million Dollars more than the amount they actually used for the construction of the individual units. This money has not been returned to Enterprise Bank or otherwise used for construction on the Project. Because of the unbalanced draws received at the beginning of the Project by Pendleton Station, LLC, the balance of the funds available under the construction loans is not sufficient to finish the Project.

59. Of the 5.72 Million Dollars advanced to Pendleton Station, LLC by Enterprise Bank for the development (i.e. site work) of Pendleton Station, the Defendants received at least 2.72 Million Dollars more than the amount they actually used for the development of the Project. This money has not been paid or returned to Enterprise Bank or otherwise used for the development of Pendleton Station.

FOR A FIRST CAUSE OF ACTION
(Breach of Promissory Notes-Pendleton Station, LLC)

60. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

61. The three (3) Promissory Notes, attached hereto as "Exhibit G" and further incorporated herein by reference, entered into by Enterprise Bank and Pendleton Station, LLC, each constituted a separate contract.

62. Each of the Promissory Notes attached as Exhibit G were entered into by the parties based upon the following: Enterprise Bank agreed to loan monies to Pendleton Station, LLC, specifically for Pendleton Station, LLC, to use for the development of the Pendleton

Station Project in return for Pendleton Station, LLC's, promise to repay Enterprise Bank, over a set period of time, the equivalent of the monies loaned plus an agreed upon interest rate.

63. Enterprise Bank has fully performed its contractual obligations as set forth in each Promissory Note in **Exhibit G**.

64. Upon information and belief, Pendleton Station, LLC, has not, and did not, apply the monies received towards the development of Pendleton Station. Furthermore, upon information and belief, Pendleton Station, LLC, has actually misappropriated the loan funds from the Pendleton Station Project to projects and to individual, personal ventures having nothing to do with Pendleton Station, LLC. Further, the Project was significantly behind schedule.

65. This misapplication of the loan disbursements and failure to timely complete the Project constitutes a breach of each of the aforementioned contracts between the parties. As a result of Pendleton Station LLC's breach of these contracts, Enterprise Bank has been damaged, for which it hereby sues together with attorneys' fees, costs, and interest in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION

(Breach of Contract/Third Party Beneficiary-Pendleton Station, LLC, E.C. Structures)

66. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

67. E.C. Structures contracted with Pendleton Station, LLC whereby E.C. Structures would be the general contractor on the Project and would provide labor and materials for the benefit and use of Pendleton Station, LLC.

68. Enterprise Bank was the third party beneficiary of these contracts in that Enterprise Bank advanced monies on construction loans to Pendleton Station, LLC, on behalf of unit owners, for E.C. Structures to build units that were subsequently collateral for Enterprise Bank's loans.

69. E.C. Structures breaches of the agreement, include, but are not limited to, the following: not timely completing the units, diverting funds specifically allocated for the Project away from the Project, failing to pay subcontractors and suppliers, and misrepresenting the actual completion stage of the units in order to receive further draws on the construction loans.

70. As a result of E.C. Structure's breach, Enterprise Bank has been damaged as a third-party beneficiary, for which it hereby sues together with attorneys' fees, costs, and interest in an amount to be determined by a jury.

FOR A THIRD CAUSE OF ACTION
(Breach of Personal Guarantees-B. Daniel Sr.)

71. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

72. The first of the three aforementioned Promissory Notes between Enterprise Bank and Pendleton Station, LLC, was executed on August 10, 2005, in the amount of Three Million Dollars and 00/100 (\$3,000,000.00).

73. In conjunction with this first Promissory Note, B. Daniel, Sr., signed a Personal Guaranty for the underlying Three Million Dollars and 00/100 (\$3,000,000.00) loan. By doing so, B. Daniel, Sr., personally guaranteed the prompt and satisfactory performance of Pendleton Station, LLC, on the first Promissory Note. A true and correct copy of the Personal Guaranty is attached hereto and incorporated herein by reference as "Exhibit H".

74. The second of the three aforementioned Promissory Notes between Enterprise Bank and Pendleton Station, LLC, was executed on September 1, 2006, in the amount of Two Million Dollars and 00/100 (\$2,000,000.00).

75. In conjunction with the second Promissory Note, B. Daniel, Sr., signed another Personal Guaranty, this time in the amount of Two Million Dollars and 00/100 (\$2,000,000.00), for the corresponding, underlying loan. By doing so, B. Daniel, Sr., personally guaranteed the prompt and satisfactory performance of Pendleton Station, LLC, on the second Promissory Note. A true and correct copy of the Personal Guaranty is attached hereto and incorporated herein by reference as "Exhibit I".

76. The third and final Promissory Notes between Enterprise Bank and Pendleton Station, LLC, was executed on December 11, 2006, in the amount of Five Hundred Thousand Dollars and 00/100 (\$500,000.00).

77. In conjunction with the final Promissory Note, B. Daniel, Sr., signed yet another Personal Guaranty, this time in the amount of Five Hundred Thousand Dollars and 00/100 (\$500,000.00), for the corresponding, underlying loan. By doing so, B. Daniel, Sr., personally guaranteed the prompt and satisfactory performance of Pendleton Station, LLC, on the third Promissory Note. A true and correct copy of the Personal Guaranty is attached hereto and incorporated herein by reference as "Exhibit J".

78. Each of the above Personal Guarantees further state that if Pendleton Station, LLC, defaults in its performance of the corresponding Promissory Note, then B. Daniel, Sr., will personally pay Enterprise Bank all damages, expenses and costs, including attorneys' fees caused by such defaults.

79. Because Pendleton Station, LLC, breached each of the Promissory Notes and has failed to pay Enterprise Bank the debts owed, B. Daniel, Sr., pursuant to each of the Personal Guarantees, is personally liable for such debts.

80. Enterprise Bank has not received full payment on any of these balances from either Pendleton Station, LLC, or from B. Daniel, Sr., and now hereby sues B. Daniel, Sr., for the total outstanding balance of the Promissory Notes, together with attorneys' fees, costs and interest in an amount to be determined by a jury.

FOR A FOURTH CAUSE OF ACTION

(Fraud-Pendleton Station, LLC; B. Daniel Sr., T. Daniel, E. Daniel, Spence)

81. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

82. Pendleton Station, LLC, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, impliedly and/or expressly represented, or misrepresented, to Enterprise Bank the following: that certain construction work had been completed on the Project when it had not been completed, that certain loan funds had been allocated to certain costs when they had not been allocated in such a manner, that certain suppliers and subcontractors had been paid when they had not been paid, and that the Town of Pendleton's Ordinance concerning the number of unrelated individuals that may live in a "unit" had no adverse bearing on the Project and/or its completion when in fact it would and did.

83. Said representations were made with the intention that Enterprise Bank would rely upon them. These representations were false in that construction on the Project was not and is not completed to the same level as represented to Enterprise Bank, in that loan funds from Enterprise Bank were not and have not been allocated as represented, in that certain suppliers

and subcontractors have were not paid as represented, and in that the Town of Pendleton's Ordinance did and does currently detrimentally affect the Project and its completion.

84. Said representations were material in that the representations induced Enterprise Bank to act by disbursing monies for the construction that Pendleton Station, LLC, had falsely represented as being complete. Furthermore, the representations were material in that Enterprise Bank was never made aware of the Ordinance in place by the Town of Pendleton.

85. Pendleton Station, LLC, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, knew said representations were false when the same were made and/or had a reckless disregard of the truth of falsity of the representations.

86. Pendleton Station, LLC, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, fully intended that the false representations be acted upon by Enterprise Bank.

87. Enterprise Bank was completely ignorant of the falsity of the representations.

88. Enterprise Bank reasonably relied on these representations and had a right to rely on the representations.

89. As a direct and proximate result of the false representations made by Pendleton Station, LLC, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, Enterprise Bank continued to transact business with Pendleton Station, LLC, by disbursing monies to Pendleton Station, LLC. As more fully stated herein, the construction work represented as being complete was not complete, and has never been completed, damaging Enterprise Bank. Also, false representations of funds being paid to suppliers and subcontractors that were never actually paid to these entities have damaged Enterprise Bank in that Enterprise Bank has since paid these debts. Furthermore, the false representations of the materiality of the

Town of Pendleton's Ordinance regarding the number of individuals that may live in a "unit" has damaged Enterprise Bank in that portions of the Pendleton Station Project may not now be completed as originally contemplated while others portions may have to be reconstructed further damaging Enterprise Bank. As such, Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation
(Pendleton Station, LLC, B. Daniel Sr., T. Daniel, E. Daniel, Spence)

90. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

91. Pendleton Station, LLC, through its agents B. Daniel, Sr., T. Daniel, E. Daniel and Spence, made the abovementioned false representations to Enterprise Bank and knew these representations were false and/or these representations were made with reckless disregard as to their truth or falsity. The failure of Pendleton Station, LLC, through its agents B. Daniel, Sr., T. Daniel, E. Daniel and Spence to inform Enterprise Bank of the true intentions was negligent and was with reckless disregard to the truth upon which Enterprise Bank was relying.

92. Pendleton Station, LLC, through its agents B. Daniel, Sr., T. Daniel, E. Daniel and Spence, had a pecuniary interest in making these false representations to Enterprise Bank which was inducing Enterprise Bank to continue to provide financial support.

93. Pendleton Station, LLC, through its agents B. Daniel, Sr., T. Daniel, E. Daniel and Spence, owed a duty of care to Enterprise Bank to insure that Enterprise Bank was apprised of truthful and accurate information with regards to the percentage of completion of the project, with regards to the allocation of funds and payments, and with regards to the material affect of the Ordinance of the Town of Pendleton.

94. Pendleton Station, LLC, through its agents B. Daniel, Sr., T. Daniel, E. Daniel and Spence, breached this duty of care by not providing Enterprise Bank with truthful, accurate information.

95. Enterprise Bank had no knowledge that the false representations were indeed false and subsequently relied upon the representations accordingly.

96. As a direct and proximate result of its reliance on said false representations, Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR A SIXTH CAUSE OF ACTION

(Constructive Fraud-Pendleton Station, LLC, B. Daniel Sr., T. Daniel, E. Daniel, Spence)

97. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

98. Pendleton Station, LLC, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, impliedly and/or expressly represented, or misrepresented, to Enterprise Bank the following: that certain construction work had been completed on the Project when it had not been completed, that certain loan funds had been allocated to certain costs when they had not been allocated in such a manner, that certain suppliers and subcontractors had been paid when they had not been paid, and that the Town of Pendleton's Ordinance concerning the number of unrelated individuals that may live in a "unit" had no adverse bearing on the Project and/or its completion when in fact it would and did.

99. Said representations were false in that construction on the Project was not and is not completed to the same level as represented to Enterprise Bank, in that loan funds from Enterprise Bank were not and have not been allocated as represented, in that certain suppliers

and subcontractors have were not paid as represented, and in that the Town of Pendleton's Ordinance did and does currently detrimentally affect the Project and its completion.

100. Pendleton Station, LLC, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, knew or should have known of the falsity of the representations.

101. Said representations were material in that the representations induced Enterprise Bank to act by disbursing monies for the construction that Pendleton Station, LLC, had falsely represented as being complete. Furthermore, the representations were material in that Enterprise Bank was never made aware of the Ordinance in place by the Town of Pendleton.

102. Pendleton Station, LLC, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, fully intended that the false representations be acted upon by Enterprise Bank.

103. Enterprise Bank was completely ignorant of the falsity of the representations.

104. Enterprise Bank reasonably relied on these representations and had a right to rely on the representations.

105. As a direct and proximate result of the false representations made by Pendleton Station, LLC, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, Enterprise Bank continued to transact business with Pendleton Station, LLC, by disbursing monies to Pendleton Station, LLC. As more fully stated herein, the construction work represented as being complete was not complete, and has never been completed, damaging Enterprise Bank. Also, false representations of funds being paid to suppliers and subcontractors that were never actually paid to these entities have damaged Enterprise Bank in that Enterprise Bank has since paid these debts. Furthermore, the false representations of the materiality of the Town of Pendleton's Ordinance regarding the number of individuals that may live in a "unit" has

damaged Enterprise Bank in that portions of the Pendleton Station Project may not now be completed as originally contemplated while others portions may have to be reconstructed further damaging Enterprise Bank. As such, Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR AN SEVENTH CAUSE OF ACTION
(Fraud—E.C. Structures, B. Daniel Sr., T. Daniel, E. Daniel)

106. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

107. E.C. Structures, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, impliedly and/or expressly represented, or misrepresented, to Enterprise Bank the following: that certain construction work had been completed on the Project when it had not been completed, that certain loan funds had been allocated to certain costs when they had not been allocated in such a manner, that certain suppliers and subcontractors had been paid when they had not been paid.

108. Said representations were made with the intention that Enterprise Bank would rely upon them. These representations were false in that construction on the Project was not and is not completed to the same level as represented to Enterprise Bank, in that loan funds from Enterprise Bank were not and have not been allocated as represented, in that certain suppliers and subcontractors have were not paid as represented.

109. Said representations were material in that the representations induced Enterprise Bank to act by disbursing monies for the construction that E.C. Structures, had falsely represented as being complete.

110. E.C. Structures, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, knew said representations were false when the same were made and/or had a reckless disregard of the truth of falsity of the representations.

111. E.C. Structures, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, fully intended that the false representations be acted upon by Enterprise Bank.

112. Enterprise Bank was completely ignorant of the falsity of the representations.

113.. Enterprise Bank reasonably relied on these representations and had a right to rely on the representations.

114. As a direct and proximate result of the false representations made by E.C. Structures, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, Enterprise Bank continued to transact business with E.C. Structures, by disbursing monies to E.C. Structures. As more fully stated herein, the construction work represented as being complete was not complete, and has never been completed, damaging Enterprise Bank. Also, false representations of funds being paid to suppliers and subcontractors that were never actually paid to these entities have damaged Enterprise Bank in that Enterprise Bank has since paid these debts. As such, Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR AN EIGHTH CAUSE OF ACTION

(Negligent Misrepresentation—E.C. Structures, B. Daniel Sr., T. Daniel, E. Daniel)

115. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

116. E.C. Structures, through its agents B. Daniel, Sr., T. Daniel, E. Daniel and Spence, made the abovementioned false representations to Enterprise Bank and knew these representations were false and/or these representations were made with reckless disregard as to their truth or falsity. The failure of E.C. Structures, through its agents B. Daniel, Sr., T. Daniel, E. Daniel and Spence to inform Enterprise Bank of the true intentions was negligent and was with reckless disregard to the truth upon which Enterprise Bank was relying.

117. E.C. Structures, through its agents B. Daniel, Sr., T. Daniel, E. Daniel and Spence, had a pecuniary interest in making these false representations to Enterprise Bank which was inducing Enterprise Bank to continue to provide financial support.

118. E.C. Structures, through its agents B. Daniel, Sr., T. Daniel, E. Daniel and Spence, owed a duty of care to Enterprise Bank to insure that Enterprise Bank was apprised of truthful and accurate information with regards to the percentage of completion of the project, with regards to the allocation of funds and payments.

119. E.C. Structures, through its agents B. Daniel, Sr., T. Daniel, E. Daniel and Spence, breached this duty of care by not providing Enterprise Bank with truthful, accurate information.

120. Enterprise Bank had no knowledge that the false representations were indeed false and subsequently relied upon the representations accordingly.

121. As a direct and proximate result of its reliance on said false representations, Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR A NINTH CAUSE OF ACTION
(Constructive Fraud-E.C. Structures, B. Daniel Sr., T. Daniel, E. Daniel)

122. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

123. Alternatively, E.C. Structures, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, impliedly and/or expressly represented, or misrepresented, to Enterprise Bank the following: that certain construction work had been completed on the Project when it had not been completed, that certain loan funds had been allocated to certain costs when they had not been allocated in such a manner, that certain suppliers and subcontractors had been paid when they had not been paid.

124. Said representations were false in that construction on the Project was not and is not completed to the same level as represented to Enterprise Bank, in that loan funds from Enterprise Bank were not and have not been allocated as represented, in that certain suppliers and subcontractors have were not paid as represented.

125. E.C. Structures, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, knew or should have known of the falsity of the representations.

126. Said representations were material in that the representations induced Enterprise Bank to act by disbursing monies for the construction that E.C. Structures, had falsely represented as being complete.

127. E.C. Structures, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, fully intended that the false representations be acted upon by Enterprise Bank.

128. Enterprise Bank was completely ignorant of the falsity of the representations.

129. Enterprise Bank reasonably relied on these representations and had a right to rely on the representations.

130. As a direct and proximate result of the false representations made by E.C. Structures, solely and/or through its agents, B. Daniel, Sr., T. Daniel, E. Daniel and Spence, Enterprise Bank continued to transact business with E.C. Structures, by disbursing monies to E.C. Structures. As more fully stated herein, the construction work represented as being complete was not complete, and has never been completed, damaging Enterprise Bank. Also, false representations of funds being paid to suppliers and subcontractors that were never actually paid to these entities have damaged Enterprise Bank in that Enterprise Bank has since paid these debts. As such, Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury

FOR A TENTH CAUSE OF ACTION

(Unfair Trade Practices-Pendleton Station LLC, B. Daniel Sr., T. Daniel, E. Daniel)

131. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

132. The actions or practice enumerated in the above causes of action by Pendleton Station, LLC, by B. Daniel, Sr., by T. Daniel, and by E. Daniel constitute unfair or deceptive acts or practices in the conduct of trade/commerce and are unlawful as set forth by S.C. Code of Law §39-5-20, et seq.

133.. The actions of Pendleton Station, LLC, B. Daniel, Sr., T. Daniel, and E. Daniel affect the public interest because their actions are capable of repetition in the deception and the defrauding of others, and said actions affect the public's interest.

134. The actions constituting unfair and deceptive trade practice include, but are not limited to, the allegations contained in this complaint, as well as the following:

- a) fraudulently misrepresenting the status of the work on the Project;
- b) misrepresenting the effect of the Town of Pendleton's Ordinance on the Project;
- c) misappropriating funds it represented would be used for the Project for other personal projects; and
- d) misrepresenting to Enterprise Bank when, where and how the Enterprise Bank loan monies had been spent.

135. The actions of Pendleton Station, LLC, B. Daniel, Sr., T. Daniel, and E. Daniel were willful, within the meaning and interest of the S.C. Code §39-5-140, entitling Plaintiff to treble damages and reasonable attorneys' fees.

FOR AN ELEVENTH CAUSE OF ACTION
(Unfair Trade Practices – Pendleton Station, LLC, E.C. Structures and E.C. Products)

136. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

137. Pendleton Station, LLC, contracted with E.C. Structures to perform work on the Project.

138. E.C. Structures contracted with E.C. Products to have E.C. Products supply material to the project.

139. Upon information and belief, Pendleton Station, LLC, E.C. Structures, and E.C. Products all have overlapping officers, principals, and/or owners.

140. Upon information and belief, E.C. Products marked up its materials above the industry standard while also front-end loading the costs associated with its contract.

141. Upon information and belief, E.C. Structures also marked up its labor and E.C. Products' subsequent materials above the industry standard while also front-end loading the costs associated with its contract.

142. Upon information and belief, the inflated costs associated with E.C. Products and E.C. Structures were passed through to Pendleton Station, LLC, which also marked up its costs and front-end loaded its costs when submitting its expenses to Enterprise Bank.

143. Upon information and belief, by marking up costs above the industry standard and by passing these costs through to Enterprise Bank while also front-end loading the expenses of the project, Pendleton Station, LLC, E.C. Structures, and E.C. Products submitted loan requests to, and received funds from, Enterprise Bank greater than the value of what was actually utilized at various stages during construction,

144. The actions of Pendleton Station, LLC, E.C. Structures, and E.C. Products affect the public interest because their actions are capable of repetition in the deception and the defrauding of others, and said actions affect the public's interest.

145. The actions of Pendleton Station, LLC, E.C. Structures, and E.C. Products were willful, within the meaning and interest of the S.C. Code §39-5-140.

146. As a direct and proximate result of the actions of, E.C. Structures, and E.C. Products, Enterprise Bank loaned and paid funds greater than the actual value of the work and materials incorporated into the Project thus far. As such, the violation of S.C. Code §39-5-140 entitles Plaintiff to treble damages and reasonable attorneys' fees.

FOR A TWELFTH CAUSE OF ACTION
(Negligence-Pendleton Station, LLC)

147. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

148. Pendleton Station, LLC owed a duty to Enterprise Bank to use the money loaned to Pendleton Station, LLC for the development of the Project.

149. Pendleton Station, LLC was negligent, willful, wanton and reckless in using the money that Enterprise Bank loaned to Pendleton Station, LLC, which combined and contributed as a proximate cause of Enterprise Bank's damages. Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR A THIRTEENTH CAUSE OF ACTION
(Declaratory Judgment-Pendleton Station, LLC)

150. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

151. Upon information and belief, B. Daniel Sr. and E. Daniel controlled Pendleton Station, LLC at all pertinent times mentioned herein.

152. Upon information and belief, B. Daniel Sr. and E. Daniel had such control of Pendleton Station, LLC with respect to the Project that they completely dominated Pendleton Station, LLC, not only completely dominating Pendleton Station, LLC's finances, but also the policy and business practice of Pendleton Station, LLC with respect to the Project, so that Pendleton Station, LLC was merely the instrument of B. Daniel Sr. and E. Daniel.

153. Upon information and belief, B. Daniel Sr. and E. Daniel used such control to commit fraud, to perpetrate the violation of a positive legal duty owed to Enterprise Bank, and to

engage in such dishonest, wrongful and unjust acts upon, and in contravention of, Enterprise Bank's legal rights.

154. Upon information and belief, B. Daniel Sr. and E. Daniel breached their positive legal duty and this breach, coupled with their aforesaid control of Pendleton Station, LLC with respect to the Project, proximately caused damages to Enterprise Bank.

155. Upon information and belief, B. Daniel Sr. and E. Daniel exercised such control over Pendleton Station, LLC that Pendleton Station, LLC was merely an instrument of B. Daniel Sr. and E. Daniel.

156. Upon information and belief, B. Daniel Sr. and E. Daniel knew that the monies provided by Enterprise Bank to Pendleton Station, LLC were to be used solely on the Project, but B. Daniel Sr. and E. Daniel allowed Pendleton Station, LLC to continue to operate, merely as a vehicle to fraudulently further their own interests to the detriment of Enterprise Bank.

157. Upon information and belief, B. Daniel Sr. and E. Daniel caused the commingling of Pendleton Station LLC's finances with loan monies received from Enterprise Bank for the Project, resulting in the siphoning and diversion of those loan monies for the personal benefit of B. Daniel Sr. and E. Daniel, and to Enterprise Bank's detriment.

158. Upon information and belief, Pendleton Station, LLC did not have a functioning corporate structure, was incapable of making independent decisions, and did not follow the corporate formalities applicable to a South Carolina corporation at all pertinent times herein.

159. Upon information and belief, Pendleton Station, LLC was insolvent prior to, and/or during construction of the Project. Further, Pendleton Station, LLC did not have sufficient assets to fulfill its obligations to Enterprise Bank or if it did, Pendleton Station, LLC, by the acts of B. Daniel Sr. and E. Daniel, misused monies loaned by Enterprise Bank for the

Project to the detriment of Enterprise Bank.

160. Upon information and belief, Pendleton Station, LLC was grossly undercapitalized prior to and during construction of the Project.

161. Upon information and belief, B. Daniel Sr. and E. Daniel transferred, diverted and siphoned the monies loaned by Enterprise Bank in an effort to use such funds for the personal use of B. Daniel Sr. and/or E. Daniel and/or for the use of the other businesses they own or are associated with.

162. Upon information and belief, B. Daniel Sr. and E. Daniel received and used said monies from Enterprise Bank with full awareness as to the fraudulent and unjust nature of the transfer of the funds.

163. Upon information and belief, Pendleton Station, LLC was operated merely as an instrumentality for the operations of B. Daniel Sr. and E. Daniel.

164. Based on the foregoing it would be inequitable, unjust and fundamentally unfair for B. Daniel Sr. and/or E. Daniel to use the corporate shield of another entity (Pendleton Station, LLC) in order to benefit personally from perpetrating the violation of its positive legal duties in contravention of Enterprise Bank's legal rights and in violation of their fiduciary obligation to Enterprise Bank.

165. A justiciable controversy exists as to (1) whether B. Daniel and E. Daniel exerted complete control over Pendleton Station, LLC with respect to the Project such that Pendleton Station, LLC had at the time no separate mind, will or existence of its own; (2) whether B. Daniel Sr. and/or E. Daniel used such control to commit fraud or wrong upon Enterprise Bank; (3) whether the aforesaid control and breach of duty proximately caused the damages complained of; and (4) whether B. Daniel Sr. and E. Daniel are estopped from asserting the

defense of the corporate shield and are personally liable to Enterprise Bank.

FOR A FOURTEENTH CAUSE OF ACTION
(Declaratory Judgment-Coastal Plains Development)

166. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

167. Upon information and belief, B. Daniel Sr. and E. Daniel controlled Coastal Plains Development at all pertinent times mentioned herein.

168. Upon information and belief, B. Daniel Sr. and E. Daniel had such control of Coastal Plains Development with respect to the Project that they completely dominated Coastal Plains Development, not only completely dominating Coastal Plains Development's finances, but also the policy and business practice of Coastal Plains Development with respect to the Project, so that Coastal Plains Development was merely the instrument of B. Daniel Sr. and E. Daniel.

169. Upon information and belief, B. Daniel Sr. and E. Daniel used such control to commit fraud, to perpetrate the violation of a positive legal duty owed to Enterprise Bank, and to engage in such dishonest, wrongful and unjust acts upon, and in contravention of, Enterprise Bank's legal rights.

170. Upon information and belief, B. Daniel Sr. and E. Daniel breached their positive legal duty and this breach, coupled with their aforesaid control of Coastal Plains Development with respect to the Project, proximately caused damages to Enterprise Bank.

171. Upon information and belief, B. Daniel Sr. and E. Daniel exercised such control over Coastal Plains Development that Coastal Plains Development was merely an instrument of B. Daniel, Sr. and E. Daniel.

172. Upon information and belief, B. Daniel Sr. and E. Daniel knew that the monies provided by Enterprise Bank were to be used solely on the Project, but B. Daniel, Sr. and E. Daniel allowed Coastal Plains Development to use these monies to continue to operate, merely as a vehicle to fraudulently further their own interests to the detriment of Enterprise Bank.

173. Upon information and belief, B. Daniel Sr. and E. Daniel caused the commingling of Coastal Plains Development's finances with monies received for the Project, resulting in the siphoning and diversion of those monies for the personal benefit of B. Daniel, Sr. and E. Daniel and to Enterprise Bank's detriment.

174. Upon information and belief, Coastal Plains Development did not have a functioning corporate structure, was incapable of making independent decisions, and did not follow the corporate formalities applicable to a South Carolina corporation at all pertinent times herein.

175. Upon information and belief, Coastal Plains Development was insolvent prior to, and/or during construction of the Project. Further, Coastal Plains Development did not have sufficient assets to fulfill its obligations on the Project or if it did, Coastal Plains Development, by the acts of B. Daniel Sr. and E. Daniel, misused the monies intended for the Project to the detriment of Enterprise Bank.

176. Upon information and belief, Coastal Plains Development was grossly undercapitalized prior to and during construction of the Project.

177. Upon information and belief, B. Daniel Sr. and E. Daniel transferred, diverted and siphoned the assets of Coastal Plains Development, including the monies loaned by Enterprise Bank for the Project, in an effort to use such funds for the personal use of B. Daniel Sr. and/or E. Daniel and/or for the use of the other businesses they own or are associated with.

178. Upon information and belief, B. Daniel Sr. and E. Daniel received and used said monies from Enterprise Bank with full awareness as to the fraudulent and unjust nature of the transfer of the funds.

179. Upon information and belief, Coastal Plains Development was operated merely as an instrumentality for the operations of B. Daniel Sr. and E. Daniel.

180. Based on the foregoing it would be inequitable, unjust and fundamentally unfair for B. Daniel Sr. and E. Daniel to use the corporate shield of another entity (Coastal Plains Development) in order to benefit personally from perpetrating the violation of their positive legal duties in contravention of Enterprise Bank's legal rights and in violation of their fiduciary obligation to Enterprise Bank.

181. A justiciable controversy exists as to (1) whether B. Daniel Sr. and E. Daniel exerted complete control over Coastal Plains Development with respect to the Project such that Coastal Plains Development had at the time no separate mind, will or existence of its own; (2) whether B. Daniel Sr. and/or E. Daniel used such control to commit fraud or wrong upon Enterprise Bank; (3) whether the aforesaid control and breach of duty proximately caused the damages complained of; and (4) whether B. Daniel Sr. and E. Daniel are estopped from asserting the defense of the corporate shield and are personally liable to Enterprise Bank.

FOR A FIFTEENTH CAUSE OF ACTION
(Declaratory Judgment-E.C. Structures, B. Daniel Sr., T. Daniel, E. Daniel)

182. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

183. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel controlled E.C. Structures at all pertinent times mentioned herein.

184. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel had such control of E.C. Structures with respect to the Project that they completely dominated E.C. Structures, not only completely dominating E.C. Structures' finances, but also the policy and business practice of E.C. Structures with respect to the Project, so that E.C. Structures was merely the instrument of B. Daniel Sr., E. Daniel and T. Daniel.

185. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel used such control to commit fraud, to perpetrate the violation of a positive legal duty owed to Enterprise Bank, and to engage in such dishonest, wrongful and unjust acts upon, and in contravention of, Enterprise Bank's legal rights.

186. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel breached their positive legal duty and this breach, coupled with their aforesaid control of E.C. Structures with respect to the Project, proximately caused damages to Enterprise Bank.

187. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel exercised such control over E.C. Structures that E.C. Structures was merely an instrument of B. Daniel Sr., E. Daniel and T. Daniel.

188. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel knew that the monies provided by Enterprise Bank were to be used solely on the Project, but B. Daniel Sr., E. Daniel and T. Daniel allowed E.C. Structures to use these monies to continue to operate, merely as a vehicle to fraudulently further their own interests to the detriment of Enterprise Bank.

189. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel caused the commingling of E.C. Structures' finances with monies received for the Project, resulting in the siphoning and diversion of those monies for the personal benefit of B. Daniel Sr., E. Daniel and T. Daniel and to Enterprise Bank's detriment.

190. Upon information and belief, E.C. Structures did not have a functioning corporate structure, was incapable of making independent decisions, and did not follow the corporate formalities applicable to a South Carolina corporation at all pertinent times herein.

191. Upon information and belief, E.C. Structures was insolvent prior to, and/or during construction of the Project. Further, E.C. Structures did not have sufficient assets to fulfill its obligations on the Project or if it did, E.C. Structures, by the acts of B. Daniel Sr., E. Daniel and T. Daniel, misused the monies intended for the Project to the detriment of Enterprise Bank.

192. Upon information and belief, E.C. Structures was grossly undercapitalized prior to and during construction of the Project.

193. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel transferred, diverted and siphoned the assets of E.C. Structures, including the monies loaned by Enterprise Bank for the Project, in an effort to use such funds for the personal use of B. Daniel Sr., E. Daniel and/or T. Daniel and/or for the use of the other businesses they own or are associated with.

194. Upon information and belief, B. Daniel Sr., E. Daniel and T. Daniel received and used said monies from Enterprise Bank with full awareness as to the fraudulent and unjust nature of the transfer of the funds and with full awareness as to the combination upon agreement with others of the fraudulent and unjust nature of the transfer of the funds.

195. Upon information and belief, E.C. Structures was operated merely as an instrumentality for the operations of B. Daniel Sr., E. Daniel and T. Daniel.

196. Based on the foregoing it would be inequitable, unjust and fundamentally unfair for B. Daniel Sr., E. Daniel and T. Daniel to use the corporate shield of another entity (E.C. Structures) in order to benefit personally from perpetrating the violation of their positive legal

duties in contravention of Enterprise Bank's legal rights and in violation of their fiduciary obligation to Enterprise Bank.

197. A justiciable controversy exists as to (1) whether B. Daniel Sr., E. Daniel and T. Daniel exerted complete control over E.C. Structures with respect to the Project such that E.C. Structures had at the time no separate mind, will or existence of its own; (2) whether B. Daniel Sr., E. Daniel and/or T. Daniel used such control to commit fraud or wrong upon Enterprise Bank; (3) whether the aforesaid control and breach of duty proximately caused the damages complained of; and (4) whether B. Daniel Sr., E. Daniel and T. Daniel are estopped from asserting the defense of the corporate shield and are personally liable to Enterprise Bank.

FOR A SIXTEENTH CAUSE OF ACTION
(Declaratory Judgment-E.C. Products)

198. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

199. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel controlled E.C. Products at all pertinent times mentioned herein.

200. Upon information and belief, B. Daniel, Jr., E. Daniel and T. Daniel had such control of E.C. Products with respect to the Project that they completely dominated E.C. Products, not only completely dominating E.C. Products' finances, but also the policy and business practice of E.C. Products with respect to the Project, so that E.C. Products was merely the instrument of B. Daniel Jr., E. Daniel and T. Daniel.

201. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel used such

control to commit fraud, to perpetrate the violation of a positive legal duty owed to Enterprise Bank, and to engage in such dishonest, wrongful and unjust acts upon, and in contravention of, Enterprise Bank's legal rights.

202. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel breached their positive legal duty and this breach, coupled with their aforesaid control of E.C. Products with respect to the Project, proximately caused damages to Enterprise Bank.

203. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel exercised such control over E.C. Products that E.C. Products was merely an instrument of B. Daniel Jr., E. Daniel and T. Daniel.

204. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel knew that the monies provided by Enterprise Bank were to be used solely on the Project, but B. Daniel Jr., E. Daniel and T. Daniel allowed E.C. Products to use these monies to continue to operate, merely as a vehicle to fraudulently further their own interests to the detriment of Enterprise Bank.

205. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel caused the commingling of E.C. Products' finances with monies received for the Project, resulting in the siphoning and diversion of those monies for the personal benefit of B. Daniel Jr., E. Daniel and T. Daniel and to Enterprise Bank's detriment.

206. Upon information and belief, E.C. Products did not have a functioning corporate structure, was incapable of making independent decisions, and did not follow the corporate formalities applicable to a South Carolina corporation at all pertinent times herein.

207. Upon information and belief, E.C. Products was insolvent prior to, and/or during construction of the Project. Further, E.C. Products did not have sufficient assets to fulfill its obligations on the Project or if it did, E.C. Products, by the acts of B. Daniel Jr., E. Daniel and T.

Daniel, misused the monies intended for the Project to the detriment of Enterprise Bank.

208. Upon information and belief, E.C. Products was grossly undercapitalized prior to and during construction of the Project.

209. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel transferred, Diverted, and siphoned the assets of E.C. Products, including the monies loaned by Enterprise Bank for the Project, in an effort to use such funds for the personal use of B. Daniel Jr., E. Daniel and/or T. Daniel and/or for the use of the other businesses they own or are associated with.

210. Upon information and belief, B. Daniel Jr., E. Daniel and T. Daniel received and used said monies from Enterprise Bank with full awareness as to the fraudulent and unjust nature of the transfer of the funds.

211. Upon information and belief, EC Products was operated merely as an instrumentality for the operations of B. Daniel, Jr., E. Daniel and T. Daniel.

212. Based on the foregoing it would be inequitable, unjust and fundamentally unfair for B. Daniel Jr., E. Daniel and T. Daniel to use the corporate shield of another entity (E.C. Products) in order to benefit personally from perpetrating the violation of their positive legal duties in contravention of Enterprise Bank's legal rights and in violation of their fiduciary obligation to Enterprise Bank.

213. A justiciable controversy exists as to (1) whether B. Daniel Jr., E. Daniel and T. Daniel exerted complete control over E.C. Products with respect to the Project such that E.C. Products had at the time no separate mind, will or existence of its own; (2) whether B. Daniel Jr., E. Daniel and/or T. Daniel used such control to commit fraud or wrong upon Enterprise Bank; (3) whether the aforesaid control and breach of duty proximately caused the damages complained of; and (4) whether B. Daniel Sr., E. Daniel and T. Daniel are estopped from

asserting the defense of the corporate shield and are personally liable to Enterprise Bank.

FOR A SEVENTEENTH CAUSE OF ACTION
(Declaratory Judgment-Carolina Concrete Homes, Inc.)

214. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

215. Upon information and belief, T. Daniel controlled Carolina Concrete Homes at all pertinent times mentioned herein.

216. Upon information and belief, T. Daniel had such control of Carolina Concrete Homes that they completely dominated Carolina Concrete Homes, not only completely dominating Carolina Concrete Homes' finances, but also the policy and business practice of Carolina Concrete Homes, so that Carolina Concrete Homes was merely the instrument of T. Daniel.

217. Upon information and belief, T. Daniel used such control to commit fraud, to perpetrate the violation of a positive legal duty owed to Enterprise Bank, and to engage in such dishonest, wrongful and unjust acts upon, and in contravention of, Enterprise Bank's legal rights.

218. Upon information and belief, T. Daniel breached his positive legal duty and this breach, coupled with his aforesaid control of Carolina Concrete Homes, proximately caused damages to Enterprise Bank.

219. Upon information and belief, T. Daniel exercised such control over Carolina Concrete Homes that Carolina Concrete Homes was merely an instrument of T. Daniel.

220. Upon information and belief, T. Daniel knew that the monies provided by Enterprise Bank were to be used solely on the Project, but T. Daniel allowed Carolina Concrete Homes to use these monies to continue to operate, merely as a vehicle to fraudulently further its

own interests to the detriment of Enterprise Bank.

221. Upon information and belief, T. Daniel caused the commingling of Carolina Concrete Homes' finances with monies received for the Project, resulting in the siphoning and diversion of those monies for the personal benefit of T. Daniel and to Enterprise Bank's detriment.

222. Upon information and belief, Carolina Concrete Homes did not have a functioning corporate structure, was incapable of making independent decisions, and did not follow the corporate formalities applicable to a South Carolina corporation at all pertinent times herein.

223. Upon information and belief, Carolina Concrete Homes was insolvent prior to, and/or during construction of the Project. Further, Carolina Concrete Homes, by the acts of T. Daniel, misused the monies intended for the Project to the detriment of Enterprise Bank.

224. Upon information and belief, Carolina Concrete Homes was grossly undercapitalized prior to and during construction of the Project.

225. Upon information and belief, T. Daniel transferred, diverted, and siphoned the assets of Carolina Concrete Homes, including the monies loaned by Enterprise Bank for the Project, in an effort to use such funds for the personal use of T. Daniel and/or for the use of the other businesses he owns or is associated with.

226. Upon information and belief, T. Daniel received and used said monies from Enterprise Bank with full awareness as to the fraudulent and unjust nature of the transfer of the funds.

227. Upon information and belief, Carolina Concrete Homes was operated merely as an instrumentality for the operations of T. Daniel.

228. Based on the foregoing it would be inequitable, unjust and fundamentally unfair for T. Daniel to use the corporate shield of another entity (Carolina Concrete Homes) in order to benefit personally from perpetrating the violation of his positive legal duties in contravention of Enterprise Bank's legal rights and in violation of his fiduciary obligation to Enterprise Bank.

229. A justiciable controversy exists as to (1) whether T. Daniel exerted complete control over Carolina Concrete Homes such that Carolina Concrete Homes had at the time no separate mind, will or existence of its own; (2) whether T. Daniel used such control to commit fraud or wrong upon Enterprise Bank; (3) whether the aforesaid control and breach of duty proximately caused the damages complained of; and (4) whether T. Daniel is estopped from asserting the defense of the corporate shield and is personally liable to Enterprise Bank.

FOR AN EIGHTEENTH CAUSE OF ACTION
(Declaratory Judgment (Reformation of Mortgage)- Pendleton Station, LLC, B. Daniel, Sr., E. Daniel)

230. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

231. Prior to August 10, 2005, Pendleton Station, LLC and Ben Daniel, Sr. represented to Enterprise Bank that, in exchange for a 3 Million Dollar loan from Enterprise Bank to Pendleton Station, LLC, Pendleton Station, LLC would provide a mortgage to Enterprise Bank that would include the 3 tracts of property that comprised the real estate for which Enterprise Bank would be lending money to Pendleton Station, LLC in order for Pendleton Station, LLC to develop Phase I of Pendleton Station. Said 3 tracts of property of the Project, which represents Phase I of the development, consists of Tract A, Tract B and the 2 Acre Tract of property adjacent to Tract A (said tracts of property are more fully described in "**Exhibit A**", which is

attached hereto and incorporated herein by reference).

232. Upon information and belief, Enterprise Bank, Pendleton Station, LLC and Pendleton Station, LLC's attorney understood and agreed that Enterprise Bank, in exchange for the 3 Million Dollar loan, would be provided a mortgage from Pendleton Station, LLC that would include the 3 aforementioned properties.

233. Enterprise Bank relied on said representation and agreement and Pendleton Station, LLC and Pendleton Station, LLC's attorney agreed and understood that Enterprise Bank was relying on this representation. The representations and agreement Enterprise Bank relied on altered Enterprise Bank's position materially; Enterprise Bank would not have loaned Pendleton Station, LLC 3 Million Dollars if Pendleton Station, LLC were not to have agreed to provide Enterprise Bank a mortgage for all 3 tracts of property.

234. On August 10, 2005, said mortgage agreement was memorialized; however, the mortgage did not include all of the 3 aforementioned tracts of property (said mortgage is attached hereto and incorporated herein by reference as "Exhibit K"). In contravention of the previous agreement and understanding of the parties, the mortgage only included Tract A of the aforementioned 3 tracts of property.

235. After Pendleton Station, LLC caused the deeds in lieu of foreclosure to be filed, Enterprise Bank realized that the aforementioned mortgage did not include all of the property that the parties agreed and understood would be included in the mortgage. The mortgage did not conform to the intention of the parties.

236. This mutual mistake or fraudulent act committed by Pendleton Station, LLC requires the reformation of the mortgage contract to reflect the true intentions of the parties. Fraud, injustice, and hardship will result if the contract is not reformed.

237. The mortgage contract should be reformed to include the property description of Tract B and the 2 Acre Tract.

FOR A NINETEENTH CAUSE OF ACTION
**(Declaratory Judgment (Specific Performance)- Pendleton Station, LLC, B. Daniel, Sr.,
E. Daniel)**

238. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

239. Upon reformation of the aforementioned mortgage agreement, this Court should require Pendleton Station, LLC to deed Enterprise Bank the tracts of property that are to be included in the reformed contract. This is the same property that was to be included in the original memorialized mortgage agreement, but, through either the mutual mistake of the parties or the fraudulent act of Pendleton Station, LLC, this property was not included. This is also the same property that was material to the foreclosure negotiations between Enterprise Bank and Pendleton Station, LLC. Upon information and belief, if the exception of the relevant tracts of property were due to the mistake of Pendleton Station, LLC and Pendleton Station, LLC's attorney, then they believed that the excepted property had already been deeded to Enterprise Bank when Pendleton Station, LLC caused the prior deeds in lieu of foreclosure to be filed.

240. Fraud, injustice, and hardship will result if the relevant tracts of property are not deeded to Enterprise Bank. Judicial economy is best served in this case if specific performance is granted. Otherwise, a foreclosure action would have to be prosecuted despite the clear intention of Pendleton Station, LLC to not only include the relevant property in the mortgage agreement, but to include the property in the deeds in lieu of foreclosure, as evidenced by the negotiations Pendleton Station, LLC and its attorney had with Enterprise Bank prior to the deed in lieu of foreclosure being filed.

FOR A TWENTIETH CAUSE OF ACTION
(Declaratory Judgment- Marie R. Daniel Revocable Living Trust)

241. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

242. Upon information and belief, the Marie R. Daniel Revocable Living Trust was created for the purpose of being a revocable trust.

243. Upon information and belief, the settlor of the Marie R. Daniel Revocable Living Trust is Defendant B. Daniel, Sr.

244. Upon information and belief, the trustee of the Marie R. Daniel Revocable Living Trust is Defendant B. Daniel, Sr. as evidenced by the "Personal Financial Statement of Benjamin Louis Daniel As of July 31, 2006," which represented a total Net Worth of \$30,446,000.00 and included the Marie R. Daniel Revocable Living Trust as an asset B. Daniel, Sr. personally controlled. This trust owns B. Daniel Sr.'s personal residence, which is located at 112 Cainhoy Landing Road, Berkeley County, Parcel # 2630005007 (said property is more fully described in "Exhibit E", which is attached hereto and incorporated herein by reference).

245. Upon information and belief, the beneficiary of the Marie R. Daniel Revocable Living Trust is B. Daniel, Sr.

246. As a result of B. Daniel, Sr. being the settlor, the trustee and the beneficiary of the Marie R. Daniel Revocable Living Trust, the trust is invalid and the trust property is subject to creditors of B. Daniel, Sr., including Enterprise Bank.

247. A justiciable controversy exists as to whether the trust property of the Marie R. Daniel Revocable Living Trust is subject to the creditors of B. Daniel, Sr., including Enterprise Bank.

FOR A TWENTY-FIRST CAUSE OF ACTION
(Declaratory Judgment- Benjamin L. Daniel, Sr. Revocable Living Trust)

248. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

249. Upon information and belief, the Benjamin L. Daniel, Sr. Revocable Living Trust was created for the purpose of being a revocable trust.

250. Upon information and belief, the settlor of the Benjamin L. Daniel, Sr. Revocable Living Trust is Defendant B. Daniel, Sr.

251. Upon information and belief, the trustee of the Benjamin L. Daniel, Sr. Revocable Living Trust is Defendant B. Daniel, Sr.

252. Upon information and belief, the beneficiary of the Benjamin L. Daniel, Sr. Revocable Living Trust is B. Daniel, Sr.

253. As a result of B. Daniel, Sr. being the settlor, the trustee and the beneficiary of the Benjamin L. Daniel, Sr. Revocable Living Trust, the trust is invalid and the trust property is subject to creditors of B. Daniel, Sr., including Enterprise Bank.

254. A justiciable controversy exists as to whether the trust property of the Benjamin L. Daniel, Sr. Revocable Living Trust is subject to the creditors of B. Daniel, Sr., including Enterprise Bank.

FOR A TWENTY-SECOND CAUSE OF ACTION
(Negligent Misrepresentation-Entasis)

255. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

256. Entasis knew its representations to Enterprise Bank were false and/or Entasis' representations were made with reckless disregard as to their truth or falsity. Entasis' failure to

inform Enterprise Bank of its true intentions was negligent and with reckless disregard to the truth upon which Enterprise Bank was relying.

257. Entasis intended Enterprise Bank to rely upon said representations.

258. Enterprise Bank did not know said representations were false.

259. Enterprise Bank has the right to rely upon and, in fact, did rely upon the truth of said representations.

260. As a direct and proximate result, Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR A TWENTY-THIRD CAUSE OF ACTION
(Negligence-Entasis)

261. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

262. Entasis owed a duty to Enterprise Bank to certify pay applications as to work completed on the Project and to do so correctly.

263. Entasis was negligent, willful, wanton and reckless in doing so, which combined and contributed as a proximate cause of Enterprise Bank's damages. Enterprise Bank is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

FOR A TWENTY-FOURTH CAUSE OF ACTION
(Constructive Trust- 145 Memes Way, Berkeley County, SC or Proceeds from the Sale of this Property,
Constructive Trust- 112 Cainhoy Landing Rd., Berkeley County, SC or Proceeds from the Sale of this Property,
Constructive Trust -3 Cross Lane, Charleston County, SC or Proceeds from the Sale of this Property)

264. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

265. The following pieces of real estate were listed on the "Personal Financial Statement of Benjamin Louis Daniel As of July 31, 2006":

- a. 145 Memes Way, Berkeley County, SC
- b. 112 Cainhoy Landing Rd., Berkeley County, SC
- c. 3 Cross Lane, Charleston County, SC

Enterprise Bank has caused Lis Pendens to be filed against these properties. Said Lis Pendens and a description of said properties are attached hereto and incorporated herein by reference as "Exhibit L".

266. Said Personal Financial Statement was provided by B. Daniel, Sr. to Enterprise Bank in order to prove the net worth of B. Daniel, Sr. so that Enterprise Bank would rely thereon and act upon the veracity of the Personal Financial Statement. Enterprise Bank did rely on the Personal Financial Statement as being a true and correct representation of B. Daniel, Sr.'s net worth. In relying thereon, Enterprise Bank loaned monies to B. Daniel, Sr.'s company, Pendleton Station, LLC, for development of the Pendleton Station Project.

267. Upon information and belief, as evidenced below, B. Daniel, Sr. is the owner of the aforementioned properties and has wrongfully diverted and applied the funds loaned to him by Enterprise Bank. Upon information and belief, instead of applying the funds for the purpose of developing Pendleton Station, B. Daniel, Sr. caused the monies to be wrongfully diverted and applied for the acquisition of these properties and/or for improvements thereon:

- a. 145 Memes Way, Berkeley County, SC: In B. Daniel, Sr.'s Personal Financial Statement, he listed this property as his personal asset and worth \$2.95 Million.

He represented in his Financial Statement that it was mortgaged for \$950,000.00. This property is known as Lot 6B, which was originally part of a larger lot, Lot 6. Lot 6 was sold to Defendant Coastal Plains Development, which is B. Daniel, Sr.'s company, on 4/8/05 for \$155,000.00. On the same day, 4/8/05, Coastal Plains Development, Co. sold half of Lot 6, Lot 6B, to James J. Monaghan for \$360,000.00. On 4/4/06, Monaghan sold half of Lot 6B to B. Daniel, Sr. for \$5 and then quit-claimed the remaining half of Lot 6B to B. Daniel, Sr. for \$10 on 8/22/06. Upon information and belief, B. Daniel, Sr. loaned \$2 Million to himself through Defendant Benjamin L. Daniel, Sr. Revocable Living Trust on 1/16/07, receiving a mortgage on this property. As the aforementioned transactions occurred after Enterprise Bank began loaning monies to Pendleton Station, LLC, upon information and belief, this money and/or other funds used by B. Daniel, Sr. for the acquisition and construction of improvements on this property were the monies loaned to Pendleton Station, LLC for the development of Pendleton Station and were wrongfully diverted and applied to this property. Upon information and belief, this property is currently for sale for \$4.5 Million. Upon information and belief, due to the aforementioned monies applied to this property, due to the fact that this property is also listed on B. Daniel's Personal Financial Statement, due to the fact that this property is currently for sale for \$4.5 Million, and due to the fact that B. Daniel, Sr. and the other Defendants have shown a propensity to hide and/or dispose their assets in an effort to avoid their creditors, Enterprise Bank seeks the imposition of a constructive trust on this property or for the proceeds from the sale of this property.

b. 112 Cainhoy Landing Rd., Berkeley County, SC: In B. Daniel, Sr.'s

Personal Financial Statement, he listed this property as his personal asset and worth \$2.5 Million. He represented in his Financial Statement that it was mortgaged for \$710,000.00. This property is titled in the name of Defendant Marie R. Daniel Revocable Living Trust; however, upon information and belief, B. Daniel, Sr. has an ownership interest in the property and the property is titled in Defendant Marie R. Daniel Revocable Living Trust only for the purpose of avoiding B. Daniel, Sr.'s creditors. Upon information and belief, this property is currently for sale for \$4.2 Million. Upon information and belief, funds used by B. Daniel, Sr. for the construction of improvements on this property were the monies loaned to Pendleton Station, LLC for the development of Pendleton Station and were wrongfully diverted and applied to this property. Upon information and belief, due to the aforementioned monies applied to this property, due to monies being applied to this property after Enterprise Bank began loaning monies to Pendleton Station and such loan monies being largely unaccounted for, due to the fact that this property is also listed on B. Daniel's Personal Financial Statement, due to the fact that this property is currently for sale, and due to the fact that B. Daniel, Sr. and the other Defendants have shown a propensity to hide and/or dispose their assets in an effort to avoid their creditors, Enterprise Bank seeks the imposition of a constructive trust on this property or for the proceeds from the sale of this property.

c. 3 Cross Lane, Charleston County, SC: In B. Daniel, Sr.'s

Personal Financial Statement, he listed this property as his personal asset and worth \$2.485 Million. He represented in his Financial Statement that it was mortgaged for \$1.6 Million. This property was sold to Defendant Carolina Concrete Homes, Inc. on 12/3/04 for \$349,000.00. This property was then sold to B. Daniel, Sr. on 6/18/06 for \$5. Upon

information and belief, funds used by B. Daniel, Sr. for the acquisition and/or construction of improvements on this property were the monies loaned to Pendleton Station, LLC for the development of Pendleton Station and were wrongfully diverted and applied to this property. Upon information and belief, due to the aforementioned monies applied to this property, due to monies being applied to this property after Enterprise Bank began loaning monies to Pendleton Station and such loan monies being largely unaccounted for, due to the fact that this property is also listed on B. Daniel's Personal Financial Statement, and due to the fact that B. Daniel, Sr. and the other Defendants have shown a propensity to hide and/or dispose their assets in an effort to avoid their creditors, Enterprise Bank seeks the imposition of a constructive trust on this property or for the proceeds from the sale of this property.

FOR A TWENTY-FIFTH CAUSE OF ACTION
(Constructive Trust- 1725 Chatelain Way, Charleston County, SC or Proceeds from the Sale of this Property)

268. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

269. Enterprise Bank has caused Lis Pendens to be filed against this property, 1725 Chatelain Way. Said Lis Pendens and a description of this property is attached hereto and incorporated herein by reference as "Exhibit M".

270. E. Daniel purchased this property on 11/12/05 for \$216,990. Upon information and belief, E. Daniel is the owner of the aforementioned property and has wrongfully diverted and applied the funds loaned to Pendleton Station, LLC by Enterprise Bank. Instead of applying the funds for the purpose of developing Pendleton Station, E. Daniel caused the monies to be

wrongfully diverted and applied for the acquisition of the aforementioned property and/or for improvements made thereon.

271. Due to the nature of the aforementioned transaction, including the fact that monies applied to this property were applied after Enterprise Bank began loaning monies to Pendleton Station and such loan monies are largely unaccounted for and since the Defendants have shown a propensity to hide and/or dispose their assets in an effort to avoid their creditors, Enterprise Bank seeks the imposition of a constructive trust on this property or for the proceeds from the sale of this property.

FOR A TWENTY-SIXTH CAUSE OF ACTION

(Constructive Trust- 108 Live Oak Dr., Charleston County, SC or Proceeds from the Sale of this Property,

Constructive Trust -137 Memes Way, Berkeley County, SC or Proceeds from the Sale of this Property)

272. Enterprise Bank incorporates the facts and allegations contained in the preceding paragraphs, to the extent consistent herewith, as if fully restated herein.

273. Enterprise Bank has caused Lis Pendens to be filed against these properties, 108 Live Oak Drive and 145 Memes Way. Said Lis Pendens and a description of these properties are attached hereto and incorporated herein by reference as "**Exhibit N**".

274. As the following reflects, each of these properties is owned by Defendant Carolina Concrete Homes:

a. 137 Memes Way, Berkeley County: This property is known as Lot 6A, which was originally part of a larger lot, Lot 6. Lot 6 was sold to Defendant Coastal Plains Development, which is B. Daniel, Sr.'s company, on 4/8/05 for \$155,000.00. This property, Lot 6A, was then sold to E. Daniel on 10/26/05 for \$5 (deed was recorded on

2/15/06). This property was then sold to Carolina Concrete Homes on 2/17/06 for \$300,000.00. On the same day, it was mortgaged for \$860,000.00. Upon information and belief, this property is currently for sale for \$3.5 Million.

b. 108 Live Oak Drive, Charleston County: This property was bought by Carolina Concrete Homes on 4/24/06 for \$475,000.00. Upon information and belief, this property is currently for sale for \$1.95 Million.

275. Due to the nature of the aforementioned transactions concerning these two properties, including the fact that monies applied to this property were applied after Enterprise Bank began loaning monies to Pendleton Station and such loan monies are largely unaccounted for, due to the fact that these properties are currently for sale, and since the Defendants have shown a propensity to hide and/or dispose their assets in an effort to avoid their creditors, Enterprise Bank seeks the imposition of a constructive trust on this property or for the proceeds from the sale of this property.

WHEREFORE, Enterprise Bank of South Carolina prays for the following relief:

- a) Judgment against Pendleton Station, LLC for the First Cause of Action in an amount to be determined by a jury, together with interest at the legal rate as determined and disbursements of this action, and for attorney's fees and costs;
- b) Judgment against Engineered Concrete Structures, Inc. for the Second Cause of Action in an amount to be determined by a jury, together with interest at the legal rate as determined and disbursements of this action, and for attorney's fees and costs;
- c) Judgment against Benjamin L. Daniel, Sr. for the Third Cause of Action in the amount owed on the loans, together with interest at the legal rate as determined and disbursements of this action, and for attorney's fees and costs;
- d) Judgment against Pendleton Station, LLC, Benjamin L. Daniel, Sr., Thomas M. Daniel, Elizabeth Daniel and William R. Spence for the Fourth Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;

- e) Judgment against Pendleton Station, LLC, Benjamin L. Daniel, Sr., Thomas M. Daniel, Elizabeth Daniel and William R. Spence for the Fifth Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- f) Judgment against Pendleton Station, LLC, Benjamin L. Daniel, Sr., Thomas M. Daniel, Elizabeth Daniel and William R. Spence for the Sixth Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- g) Judgment against Engineered Concrete Structures, Inc., Benjamin L. Daniel Sr., Thomas M. Daniel and Elizabeth Daniel for the Seventh Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- h) Judgment against Engineered Concrete Structures, Inc., Benjamin L. Daniel Sr., Thomas M. Daniel and Elizabeth Daniel for the Eighth Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- i) Judgment against Engineered Concrete Structures, Inc., Benjamin L. Daniel, Sr., Thomas M. Daniel and Elizabeth Daniel for the Ninth Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- j) Judgment against Pendleton Station, LLC, Benjamin L. Daniel, Sr., Thomas M. Daniel and Elizabeth Daniel for the Tenth Cause of Action for an award of treble damages and attorney's fees;
- k) Judgment against Pendleton Station, LLC, Engineered Concrete Structures, Inc. and Engineered Concrete Products, Inc. for the Eleventh Cause of Action for an award of treble damages and attorney's fees;
- l) Judgment against Pendleton Station, LLC for the Twelfth Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- m) A judicial declaration from this Court of the rights, legal status and obligations of the parties and a declaration of the legal rights of the Plaintiff concerning Pendleton Station, LLC, Benjamin L. Daniel, Sr. and Elizabeth Daniel as outlined in the Twelfth Cause of Action;
- n) A judicial declaration from this Court of the rights, legal status and obligations of the parties and a declaration of the legal rights of the Plaintiff concerning Coastal

Plains Development Co., Inc., Benjamin L. Daniel, Sr. and Elizabeth Daniel as outlined in the Thirteenth Cause of Action;

- o) A judicial declaration from this Court of the rights, legal status and obligations of the parties and a declaration of the legal rights of the Plaintiff concerning Engineered Concrete Structures, Inc., Benjamin L. Daniel, Sr., Thomas M. Daniel and Elizabeth Daniel as outlined in the Fourteenth Cause of Action;
- p) A judicial declaration from this Court of the rights, legal status and obligations of the parties and a declaration of the legal rights of the Plaintiff concerning Engineered Concrete Products, Inc. as outlined in the Fifteenth Cause of Action;
- q) A judicial declaration from this Court of the rights, legal status and obligations of the parties and a declaration of the legal rights of the Plaintiff concerning Carolina Concrete Homes, Inc. as outlined in the Seventeenth Cause of Action;
- r) A judicial declaration from this Court of the rights, legal status and obligations of the parties and a declaration of the legal rights of the Plaintiff concerning the reformation of the August 10, 2005 Mortgage between Pendleton Station, LLC and Enterprise Bank as outlined in the Eighteenth Cause of Action;
- s) A judicial declaration from this Court of the rights, legal status and obligations of the parties and a declaration of the legal rights of the Plaintiff concerning the specific performance of deeding the property included in the reformed mortgage from Pendleton Station, LLC to Enterprise Bank as outlined in the Nineteenth Cause of Action;
- t) A judicial declaration from this Court of the rights, legal status and obligations of the parties and a declaration of the legal rights of the Plaintiff concerning the Marie R. Daniel Revocable Living Trust as outlined in the Twentieth Cause of Action;
- u) A judicial declaration from this Court of the rights, legal status and obligations of the parties and a declaration of the legal rights of the Plaintiff concerning the Benjamin L. Daniel, Sr. Revocable Living Trust as outlined in the Twenty-First Cause of Action;
- v) Judgment against Entasis Design, PLLC for the Twenty-Second Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;
- w) Judgment against Entasis Design, PLLC for the Twenty-Third Cause of Action for an award of actual, consequential, special and punitive damages in an amount to be determined by a jury;

- x) Judgment against Benjamin L. Daniel, Sr. for the Twenty-Fourth Cause of Action imposing a Constructive Trust on the subject properties or the proceeds from the sale of the subject properties with the physical address of 145 Memes Way (Berkeley County), 112 Cainhoy Landing Rd. (Berkeley County), and 3 Cross Lane (Charleston County);
- y) Judgment against Elizabeth Daniel for the Twenty-Fifth Cause of Action imposing a Constructive Trust on the subject property or the proceeds from the sale of the subject property with the physical address of 1725 Chatelain Way (Charleston County);
- z) Judgment against Carolina Concrete Homes for the Twenty-Sixth Cause of Action imposing a Constructive Trust on the subject properties or the proceeds from the sale of the subject properties with the physical address of 137 Memes Way (Berkeley County) and 108 Live Oak Drive (Charleston County);
- aa) For an award of attorneys' fees;
- bb) For an award of the costs of this action; and
- cc) For such other and further relief that this Court deems just and proper.

Respectfully submitted,



Thomas E. Dudley, III (SC Bar # 66154)
M. Stokely Holder (SC Bar # 73892)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899
(864) 242-4844 – facsimile
Attorneys for Plaintiff
Enterprise Bank of South Carolina

July 23, 2007
Greenville, SC

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
CASE NO. 2007-CP-04-1439

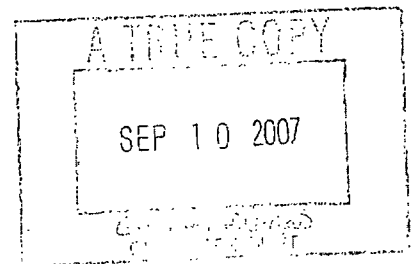
Enterprise Bank of South Carolina,
Plaintiff,

vs.

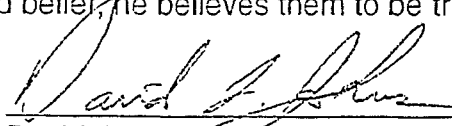
Benjamin L. Daniel, Sr., Benjamin L.
Daniel, Jr., Thomas M. Daniel,
Elizabeth Daniel, William R. Spence,
Pendleton Station, LLC, Coastal Plains
Development Co., Inc., Engineered
Concrete Structures, Inc., Engineered
Concrete Products, Inc., a Delaware
Corporation, Entasis Design, PLLC,
Carolina Concrete Homes, Inc.,
Benjamin L. Daniel Sr. Revocable
Living Trust, and Marie R. Daniel
Revocable Living Trust,

Defendants.

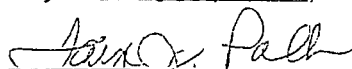
**VERIFICATION
OF AMENDED COMPLAINT**



PERSONALLY APPEARED before me David Johns who, after being duly sworn, states that he is the Senior Vice President of Enterprise Bank of South Carolina, the Plaintiff in this action; that he has read the statements contained in the foregoing Amended Complaint, and the same are true and correct of his own knowledge, and as to those statements made upon information and belief, he believes them to be true.


David Johns, Senior Vice President
Enterprise Bank of South Carolina

Sworn to before me this 29
day of AUGUST, 2007.


Notary Public, State of SC
My Commission Expires: 2-23-2015

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

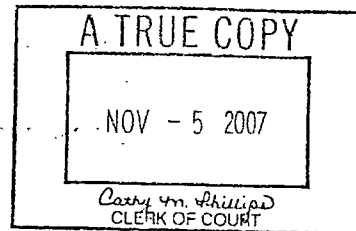
IN THE COURT OF COMMON PLEAS

Moorhead Construction, Inc.,)
Plaintiff,)
v.)

C.A. No. 2007-CP-04-2785

Pendleton Station, LLC,)
Enterprise Bank of South Carolina,)
Diana L. Zellner, Trustee for the)
Diana L. Zellner Revocable Trust UAD,)
Angelo Penza, Bobby Bryant,)
Ursula Lesser, Roger Rowe)
and Benjamin L. Daniel, Sr.,)
Defendants.)

**ANSWER OF DEFENDANT
ENTERPRISE BANK**



TO: DAVID J. BROUSSEAU, ATTORNEY FOR PLAINTIFF:

Defendant, Enterprise Bank of South Carolina ("Enterprise") hereby answers the Complaint of Plaintiff as follows.

Each and every allegation not specifically admitted, modified, or explained is denied and strict proof demanded thereof.

Defendant Enterprise incorporates herein by reference the allegations contained its Summons and Complaint against Co-Defendants Pendleton Station, LLC and Benjamin L. Daniel, Sr., among others, filed with the Court for Anderson County on May 11, 2007 under Civil Action Number 2007-CP-04-1439.

FOR A FIRST DEFENSE

1. Defendant Enterprise admits, upon information and belief, the allegations contained in paragraph 1 of Plaintiff's Complaint.

2. Defendant Enterprise admits only so much of the allegations contained in paragraph 2 of Plaintiff's Complaint in that Pendleton Station is a limited liability company doing business in Anderson County, South Carolina. Defendant Enterprise

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denies the remaining allegations contained in paragraph 2.

3. Defendant Enterprise admits the allegations contained in paragraph 3 of Plaintiff's Complaint.

4. Defendant Enterprise admits the allegations contained in paragraph 4 of Plaintiff's Complaint.

5. Defendant Enterprise admits, upon information and belief, only so much of the allegations contained in paragraph 5 of Plaintiff's Complaint in that Penza has a residence in Pennsylvania. As to the remaining allegations contained in paragraph 5, Defendant Enterprise is without sufficient information or knowledge to admit or deny same and therefore denies same.

6. Defendant Enterprise admits, upon information and belief, only so much of the allegations contained in paragraph 6 of Plaintiff's Complaint in that Lesser, Rowe, Bryant and Daniel are residents of South Carolina. As to the remaining allegations contained in paragraph 6, Defendant Enterprise is without sufficient information or knowledge to admit or deny same and therefore denies same.

7. Paragraph 7 of Plaintiff's Complaint does not require an answer of Defendant Enterprise.

8. Defendant Enterprise admits the allegations contained in paragraph 8 of Plaintiff's Complaint.

9. Defendant Enterprise admits the allegations contained in paragraph 9 of Plaintiff's Complaint.

10. Defendant Enterprise admits, upon information and belief, only so much of the allegations contained in paragraph 10 of Plaintiff's Complaint in that Pendleton

Station originally purchased the real property and develop and sell. As to the remaining allegations contained in paragraph 10, Defendant Enterprise is without sufficient information or knowledge to admit or deny same and therefore denies same.

11. Defendant Enterprise admits only so much of the allegations contained in paragraph 11 of Plaintiff's Complaint in that Enterprise helped finance the project by providing loans to Pendleton Station, which was secured with a mortgage on the real property described in Exhibit A. As to the remaining allegations contained in paragraph 11, Defendant Enterprise is without sufficient information or knowledge to admit or deny same and therefore denies same.

12. Defendant Enterprise denies that portion of the allegations contained in paragraph 12 of Plaintiff's Complaint in that the zoning ordinance made it unlawful for more than one unrelated party to reside in a housing unit. As to the remaining allegations contained in paragraph 12, Defendant Enterprise is without sufficient information or knowledge to admit or deny same and therefore denies same.

13. Paragraph 13 does not require a response from Defendant Enterprise, but Defendant Enterprise re-affirms and incorporates herein all answers as set forth above.

14. Defendant Enterprise denies the allegations contained in paragraph 14 of Plaintiff's Complaint. Defendant Enterprise would state that it did not request of Plaintiff, nor enter any contract with Plaintiff, for any work on the project.

15. Defendant Enterprise admits only so much of the allegations contained in paragraph 15 of Plaintiff's Complaint in that it has not paid Plaintiff because it did not have a contract with Plaintiff or in any way request work from Plaintiff.

16. Defendant Enterprise admits the allegations contained in paragraph 16 of

Plaintiff's Complaint.

17. Defendant Enterprise denies the allegations contained in paragraph 17 of Plaintiff's Complaint.

18. Defendant Enterprise admits the allegations contained in paragraph 18 of Plaintiff's Complaint.

19. Defendant Enterprise is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 19 of Plaintiff's Complaint and therefore denies same.

20. Defendant Enterprise is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 20 of Plaintiff's Complaint and therefore denies same.

21. Defendant Enterprise is without sufficient information or knowledge to admit or deny the allegations contained in paragraph 21 of Plaintiff's Complaint and therefore denies same.

22. Defendant Enterprise denies the allegations contained in paragraph 22 of Plaintiff's Complaint.

23. Defendant Enterprise denies the allegations contained in paragraph 23 of Plaintiff's Complaint.

24. Paragraph 24 does not require a response from Defendant Enterprise, but Defendant Enterprise re-affirms and incorporates herein all answers as set forth above.

25. Defendant Enterprise denies the allegations contained in paragraph 25 of Plaintiff's Complaint as Defendant Enterprise did not enter a contract with Plaintiff.

26. Defendant Enterprise denies the allegations contained in paragraph 26 of

Plaintiff's Complaint as Defendant Enterprise did not enter a contract with Plaintiff.

27. Defendant Enterprise denies the allegations contained in paragraph 27 of Plaintiff's Complaint as Defendant Enterprise did not enter a contract with Plaintiff.

28. Defendant Enterprise denies the allegations contained in paragraph 28 of Plaintiff's Complaint as Defendant Enterprise did not enter a contract with Plaintiff.

29. Defendant Enterprise denies the allegations contained in paragraph 29 of Plaintiff's Complaint as Defendant Enterprise did not enter a contract with Plaintiff.

30. Paragraph 30 does not require a response from Defendant Enterprise, but Defendant Enterprise re-affirms and incorporates herein all answers as set forth above.

31. Defendant Enterprise denies the allegations contained in paragraph 31 of Plaintiff's Complaint as Defendant Enterprise did not enter a contract with Plaintiff.

32. Defendant Enterprise denies the allegations contained in paragraph 32 of Plaintiff's Complaint as Defendant Enterprise did not enter a contract with Plaintiff.

33. Defendant Enterprise denies the allegations contained in paragraph 33 of Plaintiff's Complaint as Defendant Enterprise did not enter a contract with Plaintiff.

34. Defendant Enterprise denies the allegations contained in paragraph 34 of Plaintiff's Complaint as Defendant Enterprise did not enter a contract with Plaintiff.

35. Defendant Enterprise denies the allegations contained in paragraph 35 of Plaintiff's Complaint as Defendant Enterprise did not enter a contract with Plaintiff.

36. Defendant Enterprise denies the allegations contained in paragraph 36 of Plaintiff's Complaint as Defendant Enterprise did not enter a contract with Plaintiff.

FOR A SECOND DEFENSE

37. Defendant Enterprise incorporates herein by reference the allegations of

the preceding paragraphs consistent herewith.

38. Defendant Enterprise requests the Court determine the priority of the foreclosure actions against the property and direct the proceeds of the foreclosure accordingly.

FOR A THIRD DEFENSE

39. Defendant Enterprise incorporates herein by reference the allegations of the preceding paragraphs consistent herewith.

40. Defendant Enterprise would allege that Plaintiff's lien includes amounts not for labor and materials supplied on the Pendleton Station project and therefore is not valid.

FOR A FOURTH DEFENSE

41. Defendant Enterprise incorporates herein by reference the allegations of the preceding paragraphs consistent herewith.

42. Defendant Enterprise would show that as to the work performed on Tract B, Plaintiff's lien must fail because it did not have the consent of the owner, Zellner Trust, to perform the work.

FOR A FIFTH DEFENSE

43. Defendant Enterprise incorporates herein by reference the allegations of the preceding paragraphs consistent herewith.

44. Defendant Enterprise would allege that Plaintiff did not assert its lien until after title was transferred on Tract A to Defendant Enterprise and it is therefore wrongful as to the parcel.

FOR A SIXTH DEFENSE

45. Defendant Enterprise incorporates herein by reference the allegations of the preceding paragraphs consistent herewith.

46. Defendant Enterprise would allege that Plaintiff's lien is junior to the prior recorded mortgage on Tract A of Defendant Enterprise.

FOR A SEVENTH DEFENSE

47. Defendant Enterprise incorporates herein by reference the allegations of the preceding paragraphs consistent herewith.

48. Defendant Enterprise would allege that a portion of Plaintiff's work was not in compliance with the civil drawings and will have to be redone. Defendant Enterprise is entitled to offset for these costs.

WHEREFORE, having answered the Complaint of Plaintiff, Defendant Enterprise Bank of South Carolina prays for the following relief:

1. That priority based on the filing of the foreclosure actions be determined by this Court; and
2. For such other and further relief as the Court deems just and proper.

Respectfully submitted,



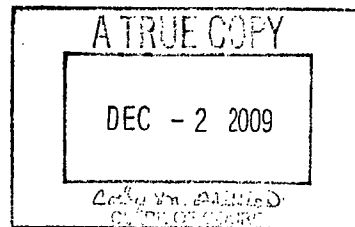
Thomas E. Dudley, III (S.C. Bar #66154)
M. Stokely Holder (S.C. Bar # 73892)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899

Attorney for Defendant
Enterprise Bank of South Carolina

October 31, 2007
Greenville, SC

MOTION FEE PAID

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS
Moorhead Construction, Inc.,) C.A. No. 2007-CP-04-2785
Plaintiff,)
v.) DEFENDANT ENTERPRISE BANK
Pendleton Station, LLC, Enterprise Bank) OF SOUTH CAROLINA'S
of South Carolina, Diane L. Zellner,) MOTION FOR SUMMARY
Trustee for the Diana L. Zellner) JUDGMENT
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)



TO: DAVID J. BROUSSEAU, ATTORNEY FOR PLAINTIFF:

YOU WILL HEREBY TAKE NOTICE that Defendant Enterprise Bank of South Carolina ("Enterprise Bank"), by and through its undersigned counsel, hereby moves this Court pursuant to South Carolina Rules of Civil Procedure Rule 56, for entry of an Order granting summary judgment in its favor on Plaintiff's claim(s) against Enterprise Bank, at such time and place as the Court may determine prior to the trial of this case.

Summary Judgment is appropriate with regard to the Plaintiff's First Cause of Action, Foreclosure of Mechanic's Lien, because there is no genuine issue of material fact as to the evidence heretofore provided, which, from all reasonable inferences drawn therefrom, proves that Plaintiff has not met the legal requirements necessary to substantiate the foreclosure of its Mechanic's Lien. Therefore, Enterprise Bank is entitled to Summary Judgment in its favor as to Plaintiff's first cause of action, to have the Lis Pendens cancelled, and to have the mechanic's lien deemed invalid and cancelled of record.

Summary Judgment is appropriate with regard to the Plaintiff's Second and Third Causes of Action, Breach of Contract and Unjust Enrichment, respectively, because there is no genuine issue of material fact as to the evidence heretofore provided, which, from all reasonable

references drawn therefrom, proves that Plaintiff did not contract with Enterprise Bank and that Plaintiff did not provide labor, materials or services at the instance or request of Enterprise Bank.

This Motion is based upon the pleadings, discovery, the applicable Rules of Civil Procedure and their related authority, and upon such supporting memorandum and affidavits as may submitted in connection herewith prior to the hearing of this Motion.

Pursuant to Rule 11, SCRPC, counsel for Enterprise Bank hereby certifies that it has in good faith conferred with counsel for Plaintiff in an effort to resolve this matter without court action, to no avail.

Respectfully submitted,



Thomas E. Dudley, III (SC Bar #66154)
M. Stokely Holder (SC Bar # 73892)
KENISON DUDLEY & CRAWFORD, LLC
704 E. McBee Ave.
Greenville, SC 29601
Phone: (864) 242-4899
Fax: (864) 242-4844
Attorneys for the Defendant
Enterprise Bank of South Carolina

November 30, 2009
Greenville, SC

MOTION FEE PAID

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Moorhead Construction, Inc.

☐ Plaintiff

v.

Pendleton Station, Llc, Et Al. (Enterprise Bank)

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2007-CP-04-2785

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
David J. Brousseau, Bar No.

Address:

P.O. Box 197, Anderson, SC 29622

phone: 864-225-0001 fax: 864-225-0004

e-mail: other:

Defendant's Attorney:

Thomas E. Dudley (For Enterprise Bank), Bar No.
66154

Address:

704 East McBee Avenue, Greenville, SC 29601

phone: 864-242-4899 fax: 864-242-4844

e-mail: SEE ATTACHED LIST other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Summary Judgment

Estimated Time Needed: 30 min Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

11/30/09

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ EXEMPT:

☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

CG Cooksby

Date Filed: 12-2-09

☒ MOTION FEE COLLECTED: 25.00

☐ CONTESTED - AMOUNT DUE:

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

In Re: Moorhead Construction, Inc. v. Pendleton Station, LLC, et al.
C.A. No.: 2007-CP-04-2785

List of Other Defense Counsel:

ATTORNEY FOR PENDLETON STATION, LLC and BENJAMIN L. DANIEL, SR.
(Cross-Claiming Defendants)

James W. Logan, Jr.
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622
864-226-1910
864-226-1931 - facsimile

ATTORNEY FOR ANGELO PENZA:

Christopher G. Olson
Olson, Smith, Jordan & Cox, P.A.
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Clemson, SC 29633
864-654-3680
864-654-3696 - facsimile

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS
)
Miller Construction Company, LLC,) C.A. No. 2007-CP-04-2786
Plaintiff,)

v.)
)
Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

**DEFENDANT ENTERPRISE BANK
OF SOUTH CAROLINA'S
MEMORANDUM IN SUPPORT OF
ITS MOTION FOR SUMMARY
JUDGMENT**

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS
)

Moorhead Construction, Inc.,) C.A. No. 2007-CP-04-2785
Plaintiff,)

v.)
)
Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

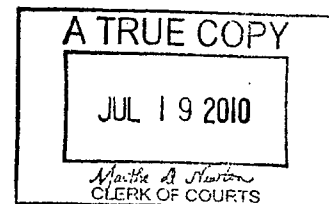
**DEFENDANT ENTERPRISE BANK
OF SOUTH CAROLINA'S
MEMORANDUM IN SUPPORT OF
ITS MOTION FOR SUMMARY
JUDGMENT**

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS
)

Craft Construction Company, Inc. of Starr,) C.A. No. 2007-CP-04-2784
Plaintiff,)

v.)
)
Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

**DEFENDANT ENTERPRISE BANK
OF SOUTH CAROLINA'S
MEMORANDUM IN SUPPORT OF
ITS MOTION FOR SUMMARY
JUDGMENT**



COMES NOW Defendant, Enterprise Bank of South Carolina ("Enterprise Bank"), by and through its counsel, and files this Memorandum in Support of its Motion for Summary Judgment as to each of the above enumerated Plaintiffs' Causes of Action, as there exists no genuine issue of material fact.

INTRODUCTION AND BACKGROUND¹

The three claims at issue here (Foreclosure of Mechanic's Lien, Breach of Contract and Unjust Enrichment) surround the Plaintiffs' alleged construction work on a project known as Pendleton Station (the "Project"), located in the Town of Pendleton, Anderson County, South Carolina. Enterprise Bank was the primary lender for the Project.

Beginning in August, 2005, in exchange for a development line of credit loan totaling over \$3 Million to developer Pendleton Station, LLC ("PSL"), Enterprise Bank obtained (or was supposed to obtain) a first mortgage on the property that was to be a part of the Project that Defendant PSL was supposed to develop. The pieces of property are commonly referred to as "Tract A", "Tract B", and "The 2 Acre Tract"². The loan monies were to be used for the horizontal development (infrastructure) of the Project. These Plaintiffs performed infrastructure

¹ For a more complete summary of the facts surrounding the Project out of which this dispute arose, Enterprise Bank incorporates herein the facts and claims outlined in its Verified, Amended Complaint in the case known as *Enterprise Bank of South Carolina v. Pendleton Station, LLC, et al.*, filed in the Anderson County Court of Common Pleas (C.A. No.: 2007-CP-04-1439).

² The substantial balance of the construction completed was on Tract A and The 2 Acre Tract. *See Verified, Amended Complaint, Enterprise Bank of South Carolina v. Pendleton Station, LLC, et al.*, filed in the Anderson County Court of Common Pleas (C.A. No.: 2007-CP-04-1439). Only a portion of a building and some site work was completed on Tract B. *Id.* As intended, no construction took place on The 38 Acre Tract, which was adjacent to the northern portion of Tract A and Tract B, as The 38 Acre Tract was not purchased by PSL until almost seven (7) months after these Plaintiffs signed contracts. *Id.* A map is attached hereto for your reference as Exhibit A indicating the different tracts of property and the intended phases of work.

Enterprise Bank was supposed to get a mortgage on Tract B and The 2 Acre Tract. *Id.* Apparently in recognition of this, PSL deeded The 2 Acre Tract to Enterprise Bank via Quitclaim Deed on July 24, 2007. *See Exhibit C.* In order to be able to complete the project for the 61 units under construction, Enterprise Bank had to negotiate a purchase of Tract B from Defendant Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Living Trust UAD ("Zellner") on February 11, 2008. (See a copy of said deed which is attached hereto and incorporated herein by reference as Exhibit B).

work for the developer in the form of grading, water and sewer lines. In December, 2005, after these Plaintiffs had signed contracts and began working, PSL acquired a 38 acre tract that was adjacent to Tract A and Tract B (a copy of said deed is attached hereto as **Exhibit C**).

After Defendant Pendleton Station, LLC struggled to make progress on the infrastructure and 61 townhome units, Enterprise Bank made two (2) more lines of credit loans to PSL in September and December 2006, which totaled \$2.5 Million. In January, 2007, PSL defaulted on all of the mortgages, leaving over \$5.5 Million due and owing Enterprise Bank on the lines of credit. They had also ceased work on the vertical (units) construction because they had not paid subcontractors. PSL unilaterally deeded Tract A and The 38 Acre Tract to Enterprise Bank in lieu of foreclosure on March 5, 2007 (Later, PSL deeded The 2 Acre Tract to Enterprise Bank on July 24, 2007 via Quitclaim Deed)³. (A copy of said deeds are attached hereto and incorporated herein by reference as **Exhibit C**). Prior to March 5, 2007, Enterprise Bank had loaned monies to PSL for PSL's stated purpose of completing the infrastructure on the Project by using this money to pay the contractors who PSL had contracted with to perform such work. *See Verified, Amended Complaint, Enterprise Bank of South Carolina v. Pendleton Station, LLC, et al., filed in the Anderson County Court of Common Pleas (C.A. No.: 2007-CP-04-1439)*. After PSL defaulted on its loans with Enterprise Bank (by not completing the project on time and not repaying the loans in a timely manner) and after PSL deeded Tract A and The 38 Acre Tract to Enterprise Bank, Enterprise Bank learned for the first time that PSL had not paid many of its contractors for the work performed on the Project. *Id.* At this time, the Project was far from

³ Although Enterprise Bank has given credit to PSL for the full value of the properties PSL deeded to Enterprise Bank based on an appraisal commissioned by Enterprise Bank in 2007, Enterprise Bank has never cancelled or otherwise declared the mortgages satisfied because the value of the property deeded to Enterprise Bank is far less than the outstanding debt remaining on the mortgages and associated notes (the outstanding debt forms the basis of one of the many claims Enterprise Bank has heretofore brought against PSL). *See also Verified, Amended Complaint, Enterprise Bank of South Carolina v. Pendleton Station, LLC, et al, supra.*

complete. *Id.* (A copy of a photograph of the project is attached hereto and incorporated herein as **Exhibit D**).

In early 2005, PSL contracted with a 'Moorhead Construction, Inc.' ("Moorhead") to perform infrastructure work as the General Contractor on Phase IA and Phase IB of the Project.⁴ *See Depo. of Moorhead, p. 32; see also a copy of said contract attached hereto as Exhibit F.* Moorhead, in turn, entered into sub-contracts with Craft Construction Company, Inc. of Starr ("Craft") and Miller Construction Company, LLC ("Miller") to perform some of such work on Phases IA and IB. *See Exhibit F attached hereto; see Depo. of Miller, Exhibit 8; Depo. of Moorhead, Exhibit 6; Depo. of Craft, Exhibit 5.* Upon Craft and Miller's completion of work, they would make request for payment to Moorhead. *Id.* Moorhead, in-turn, would apply for payment to PSL via Dunn & Associates Engineering ("Dunn"), who was hired by PSL to, among other things, certify the pay applications submitted by Moorhead. *Id.* Once Dunn certified the pay applications, PSL was to pay Moorhead the certified amounts using the Enterprise Bank loan monies. *See Verified, Amended Complaint in Enterprise Bank of South Carolina v. Pendleton Station, LLC, et al. supra.*

The only work ever completed by Moorhead, Miller and Craft took place on Phase IA and a small portion of Phase IB across the creek from the buildings constructed on Phase IA. *See Depo. of Miller, p. 30; Depo. of Moorhead pp. 15-16; Depo. of Craft pp. 31-32.* It is undisputed that no work was completed on The 38 Acre Tract by anyone at anytime. In fact, these contracts could not have included the 38 acre tract since it was not owned by PSL at the time of the contracts. *See Verified, Amended Complaint in Enterprise Bank of South Carolina v. Pendleton*

⁴ Phase IA was comprised of The 2 Acre Tract, the southern portion of Tract A, and a very small section of the southern portion of Tract B. Phase IB was to be comprised of the northern portion of Tract A and a small portion of Tract B. None of Phase IA or Phase IB was on the 38 acre tract because it was not purchased until months after construction began.

Station, LLC, et al. supra.; See also contracts for only Phase IA and IA; Depo. of Miller, Exhibit 8; Depo. of Moorhead, Exhibit 6; Depo. of Craft, Exhibit 5. Yet, after PSL defaulted on the mortgages and after PSL deeded Tract A and The 38 Acre Tract to Enterprise Bank, each of the Plaintiffs filed the subject mechanic's liens against The 38 Acre Tract, as well as Tract A and The 2 Acre Tract. See *Each of the Plaintiff's Complaints*. Prior to and at the time of the deed in lieu of foreclosure being filed in favor of Enterprise Bank, Enterprise Bank did not have notice of any of the Plaintiff's claims, as Enterprise Bank was unaware at this time that PSL had not paid its contractors the monies that Enterprise Bank had loaned PSL- monies that PSL never repaid Enterprise Bank. See Depo. of Miller, p. 11, l. 3-5; Depo. of Moorhead, p. 25, l. 5-9; Depo. of Craft, p. 34, l. 3-6; See also Verified, Amended Complaint in Enterprise Bank of South Carolina v. Pendleton Station, LLC, et al. supra.

It is important to point out that between 2005 and 2006, individual unit owners bought lots on Tract A and the 2 Acre Tract from Pendleton Station, LLC. *Id.* Pursuant to these unit owners' construction contracts with PSL and PSL's family-affiliated contracting companies, these unit owners obtained construction loans from Enterprise Bank in exchange for the mortgages they provided Enterprise Bank. *Id.* In other litigation, most of these individual unit owners have deeded their individual units to Enterprise Bank because PSL and its family-affiliated contractors never finished the units as they had contracted. Thus, Enterprise Bank now holds title and/or the first mortgage on The 2 Acre Tract, Tract A, The 38 Acre Tract, Tract B and the 61 townhome units. At a significant loss⁵, Enterprise Bank has been thrust into the

⁵ Immediately after receiving the filed deed in lieu of foreclosure, Enterprise Bank obtained a report from an engineer that inspected the property and estimated the value of vertical work in place on the townhouses. Enterprise Bank realized at that time that the value of work in place on the vertical construction of the Project was \$2.72 Million less than what Enterprise Bank had loaned to PSL, despite an Architect certifying pay requests that the work

unenviable position of finishing the development and trying to sell the development in a very depressed market. *Id.*

Since being deeded the Project, Enterprise Bank had to determine whether to complete the Project or sell it as is at a considerable loss⁶. Enterprise Bank had to consider the 50+ landowners that had construction loans with Enterprise Bank in making this decision. Enterprise Bank, unaware of the pending crash of the financial and housing markets, chose to complete the Project. Since March of 2007, Enterprise Bank has paid millions of (more) dollars towards the work it had to contract for to complete Phase IA of the Project, which has included work that PSL had previously contracted for and work that PSL had been paid for with Enterprise Bank's loan monies yet had failed to pay its contractors and failed to repay Enterprise Bank. See Verified, Amended Complaint in Enterprise Bank of South Carolina v. Pendleton Station, LLC, et al. *supra*. So, Enterprise Bank has had to pay twice for much of the work completed on Phase IA of the Project. *Id.*

Phase IA of the Project now complete, the Lis Pendens that Miller, Moorhead and Craft have each filed on Tract A, Tract B, The 38 Acre Tract and The 2 Acre Tract have prevented Enterprise Bank from transferring clear title to potential purchasers.

SUMMARY JUDGMENT STANDARD

Rule 56(c), S.C.R.C.P. provides that a motion for summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and

was complete. See also Verified, Amended Complaint, Enterprise Bank of South Carolina v. Pendleton Station, LLC, et al. *supra*.

⁶ The appraisal Enterprise Bank obtained in 2007 indicated that the value of Tract A and The 38 Acre Tract, which included the horizontal construction and 7 units that PSL built without loans, was only \$1.7 Million. (A copy of the cover of said appraisal is attached hereto and incorporated herein as Exhibit E).

the moving party is entitled to judgment as a matter of law." Further, "when a motion for summary judgment is made, an adverse party may not rest upon the mere allegations or denials of his pleadings, but must set forth specific facts showing there is a genuine issue of material fact for trial." Charping v. J.P. Scurry & Co., Inc., 296 S.C. 312, 372 S.E.2d 120, 122 (Ct. App., 1988).

In resolving a motion for summary judgment, the court must consider all the evidence properly before it. Saluda Motor Lines v. Crouch, 386 S.E.2d at 292. The existence of some factual dispute is not enough to deny summary judgment; the disputed facts must be material. Id. Furthermore, as Justice Littlejohn has explained, while the evidence must be viewed in the light most favorable to the nonmoving party, a party opposing summary judgment is not entitled to every conceivable inference from the facts, but only every reasonable inference. Trotter v. First Federal Savings and Loan Ass'n, 298 S.C. 85, 378 S.E.2d 267, 268 (Ct. App., 1989).

When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. USAA Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008), rehearing denied. "The purpose of summary judgment is to obviate delay where there is no material issue of fact involved." Manley v. Manley, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Ct. App. 1987). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Shupe v. Settle, 315 S.C. 510, 516-17, 445 S.E.2d 651, 655 (Ct. App. 1994).

In the case of Bankers Trust of South Carolina v. Benson, 267 S.C. 152, 154-155, 226 S.E.2d 703, 704 - 705 (1976), the South Carolina Supreme Court was unequivocal in its holding:

If a material issue of fact can be created by a denial based on ignorance of the facts and neglecting to pursue discovery, the office of summary judgment would be mummified. Parties would be subjected to the burden of a trial merely because formal and pretended

averments can not be separated from genuine factual controversies. Yet, the purpose of summary judgment was to expedite disposition of cases not requiring the services of a fact finder.

Motions for summary judgment, rather than succoring dilatory exploitations, impose additional demands upon counsel. 'The tools and devices of discovery are more than options and opportunities. Rule 56 (our Circuit Court Rule 44) expressly exacts them by negative compulsion on pain of judicial denouement-saying in effect, 'Meet these affidavit facts or judicially die.' Diligence in opposing a motion for summary judgment is required, for such a motion with supporting logistics and gear does not lose its thrust by an opponent's complacency.'

Bankers Trust, 267 S.C. at 154-155, 226 S.E.2d at 704 - 705 (internal citations omitted).

LEGAL ANALYSIS IN LIGHT OF THE UNDISPUTED FACTS

A. Each of the Plaintiff's Causes of Action for Breach of Contract against Enterprise Bank Must Fail as a Matter of Law Because There Exists No Genuine Issue of Material Fact Which Could in Anyway Establish that a Contract Existed Between Enterprise Bank and any of the Plaintiffs.

In each of the Plaintiff's Rule 30(b)(6), SCRPC deposition testimony, the Plaintiffs admitted under oath that none of them had a contract with Enterprise Bank for the work and damages they have each sued for under their Breach of Contract claims. *See Depo. of Moorhead, p. 13, l. 17-19; Depo. of Miller, p. 8, l. 25 - p. 9, l. 5; Depo. of Craft, p. 16, l. 17-15.* (Copies of the deposition excerpts cited herein are attached hereto and incorporated herein as **Exhibit F.**) The Plaintiffs cannot point to one shred of evidence to prove otherwise. It is undisputed that any work completed by the Plaintiffs for which they seek payment was performed pursuant to the contracts that they had with others, i.e. Moorhead entered into a contract with PSL, Craft entered into a contract with Moorhead, and Miller entered into a contract with Moorhead. All of the evidence produced in this matter supports this position. Therefore, each of the Plaintiff's claims for Breach of Contract as against Enterprise Bank must fail as a matter of law.

B. Each of the Plaintiff's Causes of Action for Unjust Enrichment against

**Enterprise Bank Must Fail as a Matter of Law Because There Exists No
Genuine Issue of Material Fact Which Could in Anyway Establish the
Essential Elements of the Quasi-Contract Claim of Unjust Enrichment.**

It is the well established law in South Carolina that in order to recover under a quasi-contract claim such as Unjust Enrichment, a party must show: (1) that a benefit was conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) **retention by defendant of the benefit under conditions that make it inequitable for him to retain it without paying its value.** *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 474, 366 S.E.2d 12, 15 (S.C. Ct. App. 1988)(emphasis added); *Webb v. First Federal Savings and Loan Ass'n.*, 300 S.C. 507, 388 S.E. 2d 823 (Ct.App.1989); *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994).

Moreover, the Courts of several states, including South Carolina, have held, in denying a contractor's claim for unjust enrichment as against an owner or lending institution, that the analysis of whether a subcontractor can recover under an unjust enrichment claim must focus on whether the enrichment to the owner is unjust. *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994); citing 62 *A.L.R.3d* 288 (1975). See e.g., *County Asphalt Paving Co., Inc. v. Mosley Const., Inc.*, 239 S.W.3d 704 (Mo.Ct.App.2007); *SLR Plumbing and Sewer, Inc. v. Turk*, 757 N.E.2d 193 (Ind.Ct.App.2001); *Joest Vibratech, Inc. v. N. Star Steel Co.*, 109 F.Supp.2d 746 (N.D.Ohio 2000); *Moore v. Henley*, 969 S.W.2d 266 (Mo.Ct.App.1998); *Breckenridge Mat. Co. v. Allied Home Corp.*, 950 S.W.2d 340 (Mo.Ct.App.1997); *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 440 S.E.2d 129 (S.C.1994); *Sundance Mech. & Util. Corp. v. Atlas*, 118 N.M. 250, 880 P.2d 861 (1994); *Seegers v. Sprague*, 70 Wis.2d 997, 236 N.W.2d 227 (1975); *Rogers v. Whitson*, 228 Cal.Ct.App.2d 662, 39 Cal.Rptr. 849 (Dist.1 1964); *Cohen v. Delmar Drive-In Theatre*, 46 Del.

427, 84 A.2d 597 (Del.Super.Ct.1951). In the Georgia case of *Reid v. Saul*, 246 S.E.2d 121, 146 Ga.App. 264 (1978), the Court held that where the lender was not a party to the subcontracts and retained no rights and undertook no duties for the benefit of the subcontractors in its agreement with the borrower-developer to which the subcontractors were not privy, the lender could not be held liable on a theory of unjust enrichment. *Id.* In denying the contractor's claims, the Court held that the property for which the contractor performed work was foreclosed on pursuant to a loan agreement that the contractor was not privy, and the unpaid contractors now seek to find some way to proceed against the deep pocket of the lender. *Id.* This line of case law makes clear that there is simply no duty imposed on a lender to "look out for" contractors in the position of Plaintiffs, such that no claim for unjust enrichment or third party beneficiary will stand. *Id.*

Those States supporting the rational referenced above have found that **"where the project is not completed, the partially constructed building is worth substantially less than the total cost of the labor and materials which have already been incorporated in the project. Under such circumstances it cannot be said that the lender has been unjustly enriched and therefore no equitable lien arises."** 3 *Bruner & O'Connor Construction Law* § 8:149; citing *Town Concrete Pipe of Washington, Inc. v. Redford*, 43 Wash. App. 493, 717 P.2d 1384, 1388 (Div. 1 1986)(where the project is incomplete at the time of foreclosure, more must be shown to support the conclusion that the foreclosing lender is being unjustly enriched. If the lender has already disbursed funds for the work done by the unpaid contractor, the courts generally do not find unjust enrichment. **While the lender may have been enriched, it is not unjust under the circumstances since he has already paid for the benefits through the disbursal of funds**)(emphasis added).

In the case at hand, it is undisputed that the Plaintiffs each performed work under a contract with someone other than Enterprise Bank. Craft and Miller were to be paid by Moorhead, but both have chosen not to sue Moorhead or bring a payment bond claim against Moorhead's bond. Moorhead was to be paid pursuant to its general contract with the owner, PSL. It is also undisputed that PSL was advanced more than \$5.5 Million in loan monies by Enterprise Bank on the lines of credit towards the infrastructure work that Moorhead had contracted with PSL to complete. See Verified, Amended Complaint in Enterprise Bank of South Carolina v. Pendleton Station, LLC, et al. *supra*. Also undisputed is the fact that PSL wrongfully used the loan proceeds for purposes other than the infrastructure work, in that PSL never paid Miller, Moorhead or Craft in full for their work under PSL. *Id.* PSL did not repay Enterprise Bank for the lines of credit, and PSL still owes Enterprise Bank for that amount (\$5.5 Million) and more, which is less than the appraisal of \$1.7 Million. *Id.* Only upon PSL's default under its loan agreements with Enterprise Bank did Enterprise Bank come into possession of the Project. *Id.* Yet, in coming into possession of said property, Enterprise Bank has given credit to PSL for the full value of said property as against the debt that remains due and owing Enterprise Bank by PSL. It is further undisputed that the value of the Project is grossly outweighed by the amount of outstanding debt owing to Enterprise Bank by PSL (for which Enterprise Bank has sued PSL). *Id.*

Thus, it would be absolutely unconscionable for any reasonable person to conclude that Enterprise Bank has been unjustly enriched or that any of the Plaintiff's claims for unjust enrichment satisfy the elements set forth in *Ellis v. Smith Grading & Paving, Inc., supra*. As evidenced by Enterprise Bank's lawsuit against PSL, the undisputed fact remains that Enterprise

Bank got far less in the value of the property when PSL filed the deed in lieu of foreclosure as compared to the value of what Enterprise Bank loaned to PSL to improve this very property.

The evidence gathered to date, and all reasonable inferences to be drawn therefrom, make it abundantly clear that the Plaintiffs did not contract with Enterprise Bank nor did the Plaintiffs provide labor, materials or services at the instance, request, or upon the knowledge of Enterprise Bank. While Enterprise Bank may have been enriched by the Plaintiffs' work on the property it received, it was not unjust in that Enterprise Bank's loans far exceeded the value it received in the deeds of lieu. Each of the Plaintiffs' claims against Enterprise Bank for Unjust Enrichment must fail.

C. No Work was Ever Performed on The 38 Acre Tract by Anyone, So the Subject Mechanic's Liens are Improper as to The 38 Acre Tract; There Being No Genuine Issue of Material Fact to Prove Otherwise, each of the Plaintiff's Causes of Action to Foreclose said Mechanic's Liens Must Fail as a Matter of Law.

Each of the Plaintiffs' Mechanic's Liens were filed against the 38 Acre Tract, *inter alia*. However, each of the Plaintiffs have testified under oath that they did not perform any work on The 38 Acre Tract. *See Exhibit F*. This is supported by the fact that The 38 Acre Tract wasn't owned by PSL when the Plaintiffs entered the contracts to perform the work at issue. The record is clear that Phases IA and IB of the Project (the only phases for which the Plaintiffs had contracted to perform work on) were comprised of only The 2 Acre Tract, Tracts A and Tract B, not The 38 Acre Tract. *See attached maps*. Therefore, the Plaintiffs' Mechanic's Liens are improper as against The 38 Acre Tract, and should be stricken as a matter of law. Further, in accordance with S.C. Code Ann. § 29-5-10, Enterprise Bank shall be deemed the prevailing party with respect to the liens on this property. *S.C. Code Ann. § 29-5-10*. As the prevailing party, S.C. Code Ann. § 29-5-10 makes clear that Enterprise Bank shall be awarded the costs it

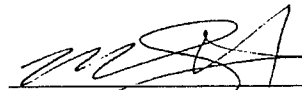
incurred in association with its defense against the lien on this property, including a reasonable attorney's fee. *Id.*; See also *T.W. Morton Builders, Inc. v. von Buedingen*, 316 S.C. 388, 450 S.E.2d 87 (Ct.App. 1994)(holding the provision in § 29-5-10 which states the prevailing party in a mechanic's lien action "may" recover attorney fees is to be interpreted as mandatory).

CONCLUSION

All of the evidence in this case, including the testimony and documents of the Plaintiffs, as well as all notions of reason make clear that: (1) each of the Plaintiffs' Breach of Contract claims against Enterprise Bank must fail because the Plaintiffs, themselves, each admit that there never existed a contract between any of the Plaintiffs and Enterprise Bank; (2) each of the Plaintiffs' Unjust Enrichment claims against Enterprise Bank must fail in light of the undisputed facts which cannot, in any realm of logic and reason, satisfy the well established elements of a quasi-contract as set forth by the Courts of this State; and (3) each of the Plaintiffs' Mechanic's Lien fails as a matter of law because they do not meet the requirements set forth in S.C. Code Ann. § 29-5-10. Therefore, Defendant Enterprise Bank respectfully requests that this Honorable Court enter summary judgment in its favor and for such other and further relief as the Court deems just and proper, including attorneys' fees and costs for the Mechanic's Lien Foreclosure causes of action as noted above.

Respectfully submitted,

July 16, 2010
Greenville, SC



Thomas E. Dudley, III (SC Bar #66154)
M. Stokely Holder (SC Bar # 73892)
KENISON DUDLEY & CRAWFORD, LLC
704 E. McBee Ave.
Greenville, SC 29601
Phone: (864) 242-4899

Fax: (864) 242-4844
Attorneys for the Defendant
Enterprise Bank of South Carolina

38 ACRE TRACT

NO.	DESCRIPTION	DATE
1	...	...
2	...	...
3	...	...
4	...	...
5	...	...
6	...	...
7	...	...
8	...	...
9	...	...
10	...	...

NO.	DESCRIPTION	DATE
1	...	...
2	...	...
3	...	...
4	...	...
5	...	...
6	...	...
7	...	...
8	...	...
9	...	...
10	...	...

THIS IS CREEK WHERE
BRIDGE IS
LOCATED

PHASE IA

PHASE IB

2 ACRE TRACT

TRACT A

TRACT B

CHERRY STREET EXT.
S-115

VILLAGES AT TOWN CREEK LLC
DA 0330001008
DB 8030-254
1,555,873 S.F.
30.9 AC. ±

VILLAGES AT TOWN CREEK LLC
DA 0330001009
DB 8030-264
1,445,200 S.F.
33.27 AC. ±

ENTERPRISE BANK OF S.C.
DA 0330001007
DB 0503-185
1,383,825 S.F.
31.31 AC. ±

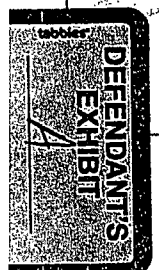
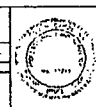
LEBANON ROAD
S-25

RESTINGHOUSE
ROAD
S-1055

THIS IS A COMPILED MAP AND DOES NOT
REPRESENT A FINAL SURVEY AND IS UNRELIABLE
FOR FILING OR RECORDATION



COMPILED PROPERTY MAP
VILLAGES AT TOWN CREEK LLC
AND/OR CANYON SOUTH CAROLINA
DA 0330001008 DB 8030-254
DA 0330001009 DB 8030-264
DA 0330001007 DB 0503-185
PRECISION
LAND SURVEYING, INC.
201 PARKWAY EAST, SUITE 100, OF 100A
GREENVILLE, SOUTH CAROLINA 29615-4272
TEL: 864-427-2847 FAX: 864-427-1848



Grantee's Address: Post Office Box 8, Ehrhardt, SC 29801

STATE OF SOUTH CAROLINA)
) QUIT-CLAIM DEED
COUNTY OF ANDERSON)

KNOW ALL MEN BY THESE PRESENTS, that **Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD**, said trust being more correctly named Diana L. Zellner Revocable Trust UAD June 6, 2000 (hereinafter referred to as "Grantor"), for and in consideration of the sum of **Four Hundred Thousand and No/100ths (\$400,000.00) Dollars** and no other consideration, the receipt of which is hereby acknowledged, has granted, bargained, sold, released and quit-claimed, and by these presents do grant, bargain, sell, release and quit-claim unto **Enterprise Bank of South Carolina**, its successors and/or assigns, forever, all of Grantor's right, title and interest in and to the following described real property:

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "B" on, and as described in, a plat entitled "Closing Survey for Coastal Plains Development Company, LLC, Anderson County, South Carolina," by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219, dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina, in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

This is the same property conveyed to Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD, by deed of Coastal Plains Development Co., Inc., dated August 29, 2003, recorded on November 26, 2003 in the Office of the Register of Deeds for Anderson County, South Carolina, in Deed Book 5877 at Page 144.

Tax Map # 063-00-01-001 AND 062-00-08-003

TOGETHER with, all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining;

TO HAVE AND TO HOLD, all and singular, the premises before-mentioned unto the said Grantee, its heirs and assigns, forever, so that neither the said Grantor, nor her heirs, successors and/or assigns, claiming under her, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

Chas 499



WITNESS the Hand and Seal of the Grantor this 11th day of February, 2008.

Signed, Sealed and Delivered
In the Presence of:

Diana L. Zellner, Trustee for the
Diana L. Zellner Revocable Trust UAD
a/k/a Diana L. Zellner-Revocable-Trust
UAD June 6, 2000

Elaine H. Fowler
Amy E. Strickland

By: Diana Zellner
Its: Trustee

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) SS

ACKNOWLEDGEMENT

I, Amelia E. Strickland, Notary Public for the State of South Carolina, do hereby certify that the above named Grantor personally appeared before me this 11th day of February, 2008, and acknowledged the due execution of the foregoing instrument.

Amelia E. Strickland
Notary Public for South Carolina

My Commission Expires: 1-23-2017

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 31.31 Acres, Tract B, Pendleton Township, Plat Bk 1401 Pg 3
bearing Anderson County Tax Map Number 063-00-01-001 & 062-00-08-003, was transferred
by Diana L. Zellner, Trustee for the Diana L. Zellner Revocable Trust UAD to
Enterprise Bank of South Carolina on February, 2008

3. Check one of the following: The deed is

- (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) _____ exempt from the deed recording fee because (See Information section of affidavit): _____

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$400,000.00
- (b) _____ The fee is computed on the fair market value of the realty which is _____
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, @ the amount of the outstanding balance of this lien or encumbrance is: _____

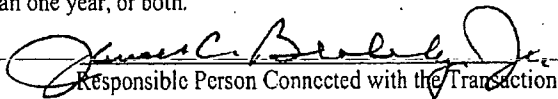
6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$400,000.00
- (b) Place the amount listed in item 5 above here: 0.00
- (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$400,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____

8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney at Law

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Responsible Person Connected with the Transaction

SWORN to before me this 12th
day of February, 2008

James C. Blakely, Jr.

Print or Type Name Here

Notary Public for South Carolina
My Commission Expires: 6-8-15

INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, a value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A family partnership is a partnership whose partners are all members of the same family. A family trust is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed—pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

080004135 2/15/2008 Bk: 08503 Pg: 00170

MAIL TO
J. Blakely, Jr.
204 E. McDuffie Ave.
Greenville, SC 29601

080004135 2/15/2008 03:41:04 PM
FILED, RECORDED, INDEXED
Bk: 08503 Pg: 00166 Pages: 005
Rec Fee: 10.00 St Fee: 1040.00
Co Fee: 440.00
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

THIS DEED MEETS THE STATUTORY
REQUIREMENTS NECESSARY FOR RECORDING,
BUT MAY NOT BE SUFFICIENT TO PROPERLY
TRANSFER TITLE ON COUNTY TAX RECORDS.
ALL RIGHTS, RESPONSIBILITIES, AND
OBLIGATIONS ULTIMATELY REMAIN WITH
THE GRANTOR.

cc: Kenison Ruedberg-Crawford

Env.
RETURN TO: KENISON, DUDLEY & Crawford, llc
704 E. McBee Avenue
Greenville, SC 29601
Attn.: Thomas E. Dudley, III

(Title Not Examined and Not Certified)
STATE OF SOUTH CAROLINA) QUITCLAIM
COUNTY OF ANDERSON) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that PENDLETON STATION, LLC, (hereinafter termed "Grantor") for and in consideration of the sum of FIVE AND NO/100 (\$5.00) DOLLARS, to Grantor paid at and before the sealing of these presents by ENTERPRISE BANK OF SOUTH CAROLINA (hereinafter termed "Grantee") has remised, released and forever quit claim, and by these presents does remise, release and forever quit claim unto ENTERPRISE BANK OF SOUTH CAROLINA, its successors and assigns forever all its interest, if any, in and to, the following described property, to wit:

All that certain piece, parcel or lot of land, situate, lying and being in Pendleton Township, County of Anderson, State of South Carolina, and in School District Number Four (4), said tract containing 1.993 acres, more or less, as shown on plat recorded in the RMC Office for Anderson County in Plat Book 87 at Page 390, and also on resurvey made by Clemson Engineering Services, dated July 1, 1993 of record in the aforesaid office in Plat Slide 399 at Page 9-A. The metes and bounds, courses and distances as upon said plat appear which is incorporated herein by reference thereto and made a part hereof.

Being the same property conveyed to Pendleton Station, LLC by deed of Gene K. Altman, dated August 16, 2004 and recorded in the RMC Office for Anderson County in Book 6323, Page 196.

Grantee's Address: P.O. Box 8, Earhardt, SC 29081

TMS # 040-00-02-005

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND HOLD, all and singular the premises before mentioned unto the Grantee, ENTERPRISE BANK OF SOUTH CAROLINA, its successors and assigns forever, so that neither it, the said Grantor, nor its successors and assigns, nor any other person or persons, claiming under it or them, shall at anytime hereafter, by any way or means, have claim or demand any right or title to the aforesaid premises or appurtenances or any part or parcel thereof, forever.



WITNESS the Grantor's Hand and Seal this 24 day of
July, 2007.

Signed, Sealed and Delivered
in the presence of:

Meredith Vane

PENDLETON STATION, LLC

[Signature]

BY: Managing Agent
ITS:

Heather R. Kearson

STATE OF SC

COUNTY OF Berkeley

ACKNOWLEDGEMENT

PERSONALLY appeared before me Heather R. Kearson,
the undersigned Notary Public, Grantor who upon oath acknowledged
that she signed the within Title to Real Estate this 24 day of
July, 2007.

Heather R. Kearson
Notary Public for SC
My Commission Expires: 2/4/15

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
 2. The property being transferred is located in Anderson County, Tax Map Number 040-00-02-005, and was transferred by Pendleton Station, LLC to Enterprise Bank of South Carolina on , 2007.

3. Check one of the Following: The Deed is

- (a) Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 (b) Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 (c) ✓ Exempt from the deed recording fee because (See Information section of this affidavit);

 #1
 (If exempt, please skip items 4-7, and go on to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase realty? Check Yes or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$
 (b) The fee is computed on the fair market value of the realty which is
 (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is

5. Check Yes or No XX to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: N/A.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$
 (b) Place the amount listed in item 5 above here: \$
 (If no amount is listed, place zero here.)
 (c) Subtract line 6(b) from line 6(a) and place result here: \$

7. The deed recording fee due is based on the amount listed on line 6(c) above and the deed recording fee due is: \$

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Pendleton Station, LLC.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 24 day of July, 2007

Heather Pearson
 Notary Public for South Carolina
 My Commission Expires: 2/4/15

Benjamin C. Daniel Sr.
 Responsible Person Connected with the Transaction

Print or type the above name here

070023731 7/26/2007 Bk: 08158 Pg: 00074

070023731 7/26/2007 03:17:00 PM
FILED, RECORDED, INDEXED
Bk: 08158 Pg: 00071 Pages:004
Rec Fee: 10.00 St Fee: EXEMPT
Co Fee: EXEMPT
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

THIS DEED MEETS THE STATUTORY
REQUIREMENTS NECESSARY FOR RECORDING,
BUT MAY NOT BE SUFFICIENT TO PROPERLY
TRANSFER TITLE ON COUNTY TAX RECORDS.
ALL RIGHTS, RESPONSIBILITIES AND
OBLIGATIONS ULTIMATELY REMAIN WITH
THE GRANTOR.

After Recording, Please Return to:

William J. Cutchin
CUTCHIN LAW FIRM, PC
985-B Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF ANDERSON) *Prepared Without Title Search*

KNOW ALL MEN BY THESE PRESENTS, THAT WE, **Pendleton Station, LLC**, by its **authorized representative**, in the State aforesaid, for and in consideration of the sum of Five Dollars and No Cents (\$5.00) and other good consideration, to us in hand paid at and before the sealing of these presents by **Enterprise Bank**, in the State aforesaid, for which the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these Presents do grant, bargain, sell, and release unto the said **Enterprise Bank**, its heirs and assigns, forever, in fee simple, the following described real property to wit:

See Schedule "A" attached hereto and incorporated by reference herein.

TOGETHER with all and singular, the Rights, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **Enterprise Bank** its Heirs, Successors, and Assigns forever.

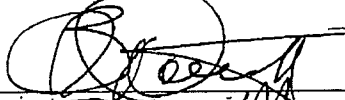
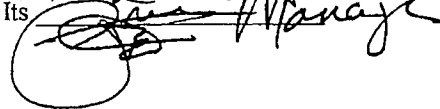
AND we do hereby bind our Administrators, Successors, and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said **Enterprise Bank**, its Heirs and Assigns, against our Heirs, Successors, and Assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

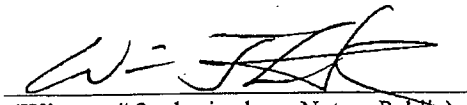
WITNESS our Hand and Seal by our representative, this 2nd day of March in the year of our Lord Two Thousand Seven (2007) and in the Two Hundred Thirtieth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

PENDLETON STATION, LLC


(Witness # 1)

By: 
Its  Manager


(Witness # 2 who is also a Notary Public)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

PROBATE

PERSONALLY appeared before me Angel M. Marshall (Printed Name of Witness #1) and made oath that (s)he saw the within named **Pendleton Station, LLC**, by its authorized representative, sign, seal, and as its act and deed, deliver the within written Deed, and that (s)he with William T. Chelton (Printed Name of Witness #2 who is also a Notary Public) witnessed the execution thereof.


Witness # 1

SWORN TO before me, this
March 2, 2007.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/4/09

Schedule A

**Legal Description
(Deed)**

PARCEL 1

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being on Cherry Street Extension (S-4-115) a 66 foot right-of-way, in the Township of Pendleton, City of Pendleton, County of Anderson, State of South Carolina containing 38.61 acres and being more fully shown and delineated on a plat prepared at the request of Coastal Plains Development, LLC of property owned by Clint Wright, et al., prepared by Marathon Engineering, LLC, dated December 2, 2005 and recorded December 5, 2005 in the office of the Register of Deeds for Anderson County in Book S1577, at page 2, said property having such metes and bounds as shown on said plat and incorporated herein.

This is the same property conveyed to Grantor by deed of Clint Wright, Jr., Lorri Wright and David W. Hanger dated December 15, 2005 and recorded on December 16, 2005 at Book 07113, Page 00310 in the RMC Office of Anderson County.

TMS #062-00-08-009

ALSO

PARCEL 2

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in Pendleton Township, Anderson County, State of South Carolina, containing approximately 31.31 acres, more or less, shown as Tract "A" on, and as described in, a plat entitled "Closing Survey for Coastal Plains Development Company, LLC Anderson County, South Carolina" by Precision Land Surveying, Inc., Richard Bruce Cook, II, PLS No. 17219 dated August 12, 2003 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 1401 at Page 3, and having the metes and bounds, courses and distances as upon said plat appear and being incorporated herein by reference thereto.

LESS UNITS 1A, 1B, 1C, 2B, 2C, 2D, 2E, 2F, 3A, 3B, 3D, 3E, 4A, 4B, 4C, 4D, 4E, 5A, 6B, 6C, 6D, 6E, 7A, 7C, 7D, 8A, 8B, 8C, 9A, 9B, 9D, 10B, 11A, 11B, 12B, 12C, 12D, 12E, 12F, 12G, 13A, 13B, 14A, 14B, 15A, 15B, 16A, 16B, 16C, 16D, 20D, 20E, 20F, 25B, 28D, 35B, 35C.

This is the same property conveyed to Grantor by deed of Coastal Plains Development Co., Inc. dated August 10, 2004 and recorded on October 25, 2004 at Book 6429, Page 302 in the RMC Office of Anderson County.

TMS # 063-00-01-006

Grantee's address: PO Box 8, Ehrhardt, SC 29081

AFFIDAVIT

STATE OF SOUTH CAROLINA)

) Date of Transfer of Title

COUNTY OF ANDERSON)

) March 2, 2007

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by **Pendleton Station, LLC, by its authorized representative, to Enterprise Bank, ON March 2, 2007.**
3. Check one of the following: The DEED is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) XX EXEMPT from the deed recording fee because (exemption# 13) (Explanation if required) Deed in Lieu of Foreclosure (If exempt, please skip items 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) _____ The fee is computed on consideration paid or to be paid in money or money's worth in the amount of \$5.00.
 - (b) _____ The fee is computed on the fair market value of the realty which is \$ _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
5. Check YES _____ or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____
6. The DEED Recording Fee is computed as follows:
 - (a) _____ the amount listed in item 4 above.
 - (b) _____ the amount listed in item 5 above (no amount place zero)
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative .
8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Check one:

☐ Grantee☐ Grantor☒ Legal Representative connected with this transactionSworn to before me this
March 2, 2007

Notary Public for South Carolina
My Commission Expires: 2/25/11

070007083 3/05/2007 03:19:23 PM
 FILED, RECORDED, INDEXED
 Bk: 07886 Pg: 00110 Pages: 004
 Rec Fee: 10.00 St Fee: EXEMPT
 Co Fee: EXEMPT
 REGISTER OF DEEDS, ANDERSON CO, SC
 Shirley McElhannon

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

**TITLE TO REAL ESTATE
GENERAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS that the undersigned Clint Wright, Jr., Lorri Wright, and David W. Hanger (collectively, hereinafter referred to as the "Grantor"), in consideration of the sum of Five Dollars and 00/100 Dollars (\$5.00) and other valuable consideration, to them well and truly paid at and before the sealing and delivery hereof (the receipt and legal sufficiency of which are hereby acknowledged) by **Pendleton Station, LLC**, a South Carolina limited liability company (hereinafter referred to as the "Grantee"), whose mailing address is as hereinafter set forth, has granted, bargained, sold, aliened, conveyed and released, and by these presents does grant, bargain, sell, alien, convey, and release unto Grantee, all that tract or parcel of land with all improvements thereon lying (the "Premises") described as follows:

DESCRIPTION OF PREMISES CONVEYED: As set forth on Exhibit "A" attached hereto and incorporated herein by reference.

GRANTEE'S MAILING ADDRESS: For purposes of this deed the Grantee's mailing address is:

451 Jessen Lane
Charleston, South Carolina 29492

TOGETHER WITH ALL AND SINGULAR the rights, members, hereditaments and appurtenances to the said Premises belonging, or in anywise incident or appertaining.

THIS CONVEYANCE IS FURTHER MADE SUBJECT TO THE FOLLOWING (the "Permitted Exceptions"):

(i) all conditions, covenants, easements, restrictions, and rights of way indicated by instruments, including plats, of record; and

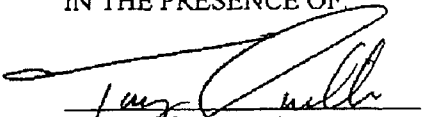
(ii) all applicable zoning and other land use regulations or restrictions of any political subdivision in which the subject property is situate.

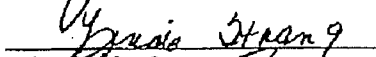
SUBJECT TO THE PERMITTED EXCEPTIONS, TO HAVE AND TO HOLD, all and singular the Premises before mentioned unto the said Grantee, its successors and assigns, forever.

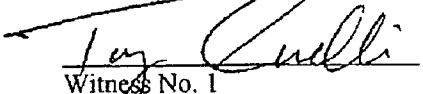
AND SUBJECT TO THE PERMITTED EXCEPTIONS, the said Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said Premises unto the said Grantee, its successors and assigns, against itself, its successors and assigns, and all other persons whomsoever, lawfully claiming, or to claim, the same or any part thereof.

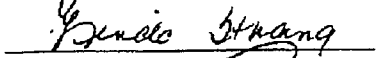
WITNESS my hand and seal this 15th day of December, 2005.

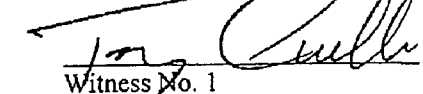
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

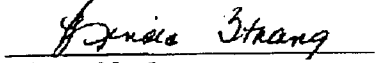

Witness No. 1


Witness No. 2

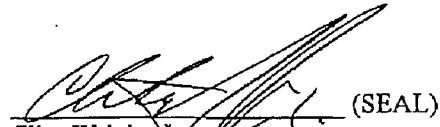

Witness No. 1

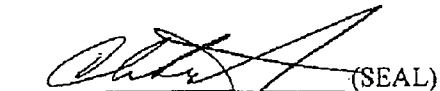

Witness No. 2

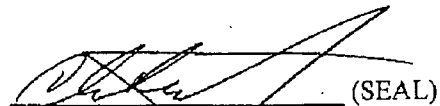

Witness No. 1


Witness No. 2

GRANTOR:


Clint Wright, Jr. (SEAL)


Lorri Wright by Clint Wright, Jr. by
Power of Attorney dated December 8, 2005


David W. Hanger by Clint Wright, Jr. by
Power of Attorney dated December 12, 2005

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg) ACKNOWLEDGMENT

I, Linda Strang, a notary public for South Carolina, do hereby certify that Clint Wright, Jr., an individual resident of the State of South Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where official seal is required by law) official seal this 15 day of Dec, 2005.

Linda Strang (SEAL)
Signature of Notary Public

My Commission Expires: 1-15-07

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg) ACKNOWLEDGMENT

I, Linda Strang, a notary public for South Carolina, do hereby certify that Lorri Wright by Clint Wright, Jr. by Power of Attorney dated December 8, 2005, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where official seal is required by law) official seal this 15 day of Dec, 2005.

Linda Strang (SEAL)
Signature of Notary Public

My Commission Expires: 1-15-07

STATE OF SOUTH CAROLINA)
)
COUNTY OF Greenville) ACKNOWLEDGMENT

I, Cinda Strong, a notary public for South Carolina, do hereby certify that David W. Hanger by Clint Wright, Jr. by Power of Attorney dated December 12, 2005 personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal (where official seal is required by law) official seal this 15 day of Dec., 2005.

Cinda Strong (SEAL)
Signature of Notary Public

My Commission Expires: 1-15-07

THIS INSTRUMENT HAS BEEN PREPARED BY AND UPON RECORDATION IS TO BE RETURNED TO:

Nexsen Pruet, LLC
P.O. Drawer 10648
Greenville, South Carolina 29601
Attn: Real Estate Department, Brian Price

EXHIBIT-A

Legal Description:

ALL that certain piece, parcel or lot of land, together with improvements thereon, if any, situate, lying and being on Cherry Street Extension (S-4-115) a 66 foot right-of-way, in the Township of Pendleton, City of Pendleton, County of Anderson, State of South Carolina containing 38.61 acres and being more fully shown and delineated on a plat prepared at the request of Coastal Plains Development, LLC of property owned by Clint Wright, et al., prepared by Marathon Engineering, LLC, dated December 2, 2005 and recorded December 5, 2005 in the Office of the Register of Deeds for Anderson County in Book S1577, at page 2, said property having such metes and bounds as shown on said plat and incorporated herein.

DERIVATION: Deed to Clint Wright, Jr., Lorri Wright and David W. Hanger from Jerry A. Meehan dated July 19, 1996 and recorded September 17, 1996 in the Office of the Register of Deeds for Anderson County in Book 2444, at page 308.

TAX MAP NO.: 62-00-08-009

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

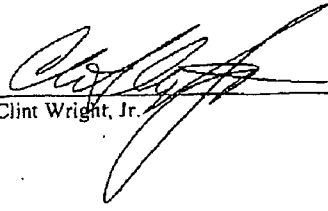
AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in the County of Anderson, bearing Anderson County Tax Map Number 62-00-08-009 and was transferred by Clint Wright, Jr. Lorri Wright, and David W. Hanger to Pendleton Station, LLC on December 15, 2005.
3. Check one of the following: The deed is
 - (a) XXX subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit): (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.) _____
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) XXX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$390,000.00.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes _____ or No X to the following: A lien or encumbrance on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is _____.
6. The deed recording fee is computed as follows:

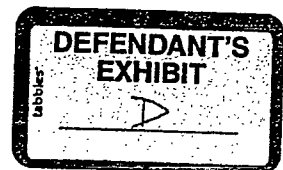
(a) XXX	Place the amount listed in item 4 above here:	\$390,000.00
(b) XXX	Place the amount listed in item 5 above here:	\$0
	(If no amount is listed, place zero here.)	
(c) XXX	Subtract Line 6(b) from Line 6(a) and place result here:	\$390,000.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$1,443.00.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

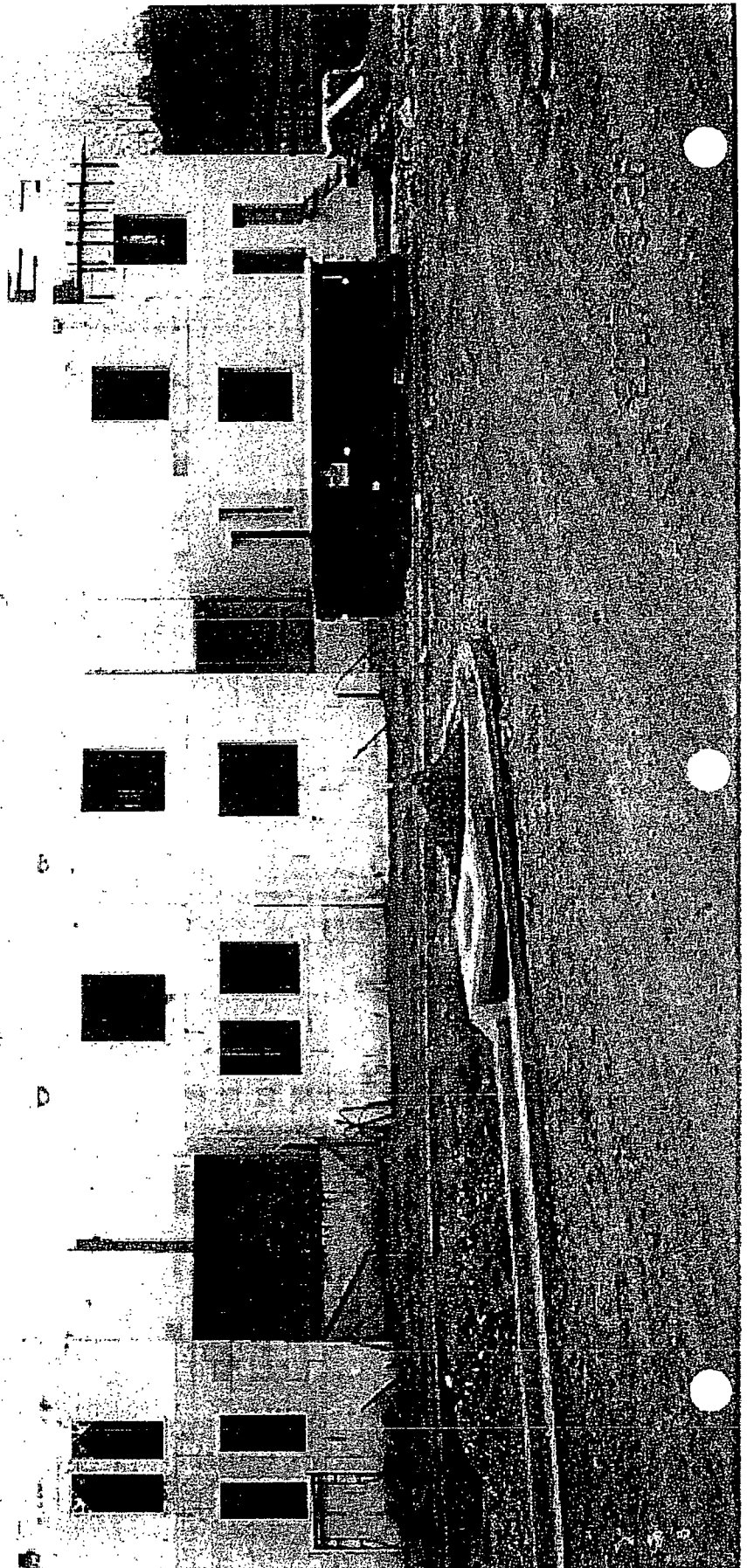
Sworn to before me this 15
day of Dec, 2005
Notary Public for SC
My Commission Expires: 1-15-07

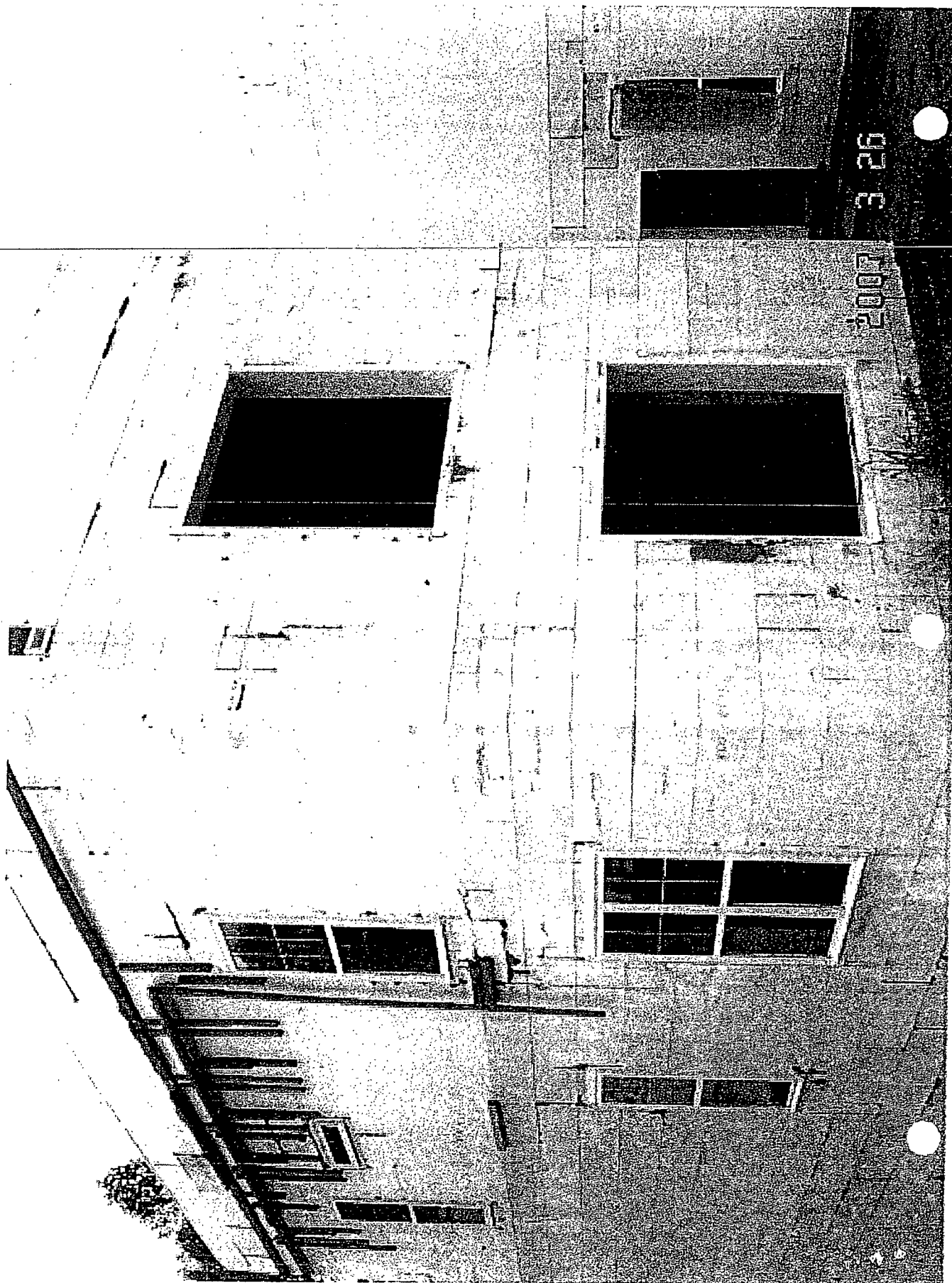

Clint Wright, Jr.

NPGVL1:243643.1-DE-(BTP) 038228-00008

050040814 12/16/2005 01:27:46 PM
 FILED, RECORDED, INDEXED
 Bk: 07113 Pg: 00310 Pages: 006
 Rec Fee: 11.00 St Fee: 1014.00
 Co Fee: 429.00
 REGISTER OF DEEDS, ANDERSON CO, SC
 Shiley McElhannon









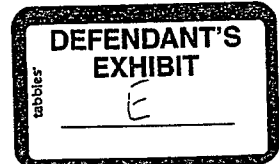
STONE & ASSOCIATES, INC.

219 EAST WASHINGTON STREET • SUITE B • GREENVILLE, S.C. 29601
TEL (864) 232-3051 • FAX (864) 232-3053 • E-MAIL: cstone@stoneandassoc.com

October 3, 2007

M. Stokely Holder, Esq.
KENISON, DUDLEY & CRAWFORD, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601

Subject: TRACT A
PENDLETON STATION
7 EXISTING RESIDENTIAL TOWNHOME UNITS, PHASE 1-A
(UNITS 6A, 7B, 9C, 10A, 12A, 18A & 18B) &
EXCESS VACANT LAND (18.49 Acres), PHASE 1-B
Off Illusion Street, Pendleton, Anderson County, South Carolina 29670
TRACT B
VACANT LAND (38.61 Acres), Cherry Street Extension
Near Pendleton, Anderson County, South Carolina 29670



Dear Mr. Holder:

In accordance with your request, we have personally inspected the above referenced tracts and have prepared an Appraisal. We are submitting a Self-Contained Appraisal Report with applicable exhibits and addenda that explain and demonstrate the process used in completing this assignment.

Subject TRACT A is identified in two parts: 1) the 7 partially-constructed townhome units 6A, 7B, 9C, 10A, 12A, 18A and 18B along the partially completed interior roads (off Illusion Street) within the mixed-use development of PENDLETON STATION – Phase 1-A; and 2) Excess Vacant Land containing approximately 18.49 acres, on which site improvements and infrastructure are partially-completed for PENDLETON STATION's proposed Phase 1-B. The Phase 1-B tract is located on the north side of the existing culvert and has road frontage along the partially-completed spine road (Illusion Street) within the partially-completed, PENDLETON STATION development. Both Phase 1-A and Phase 1-B are zoned PD-MU, Planned Development, Mixed-Use by the Town of Pendleton, Anderson County, South Carolina.

Subject TRACT B contains approximately 38.61 acres and has frontage along the southern side of Cherry Street Extension, outside the township of Pendleton, in Anderson County, South Carolina.

Mr. Holder
October 3, 2007
Page Two

Subject TRACT B contains approximately 38.61 acres and has frontage along the southern side of Cherry Street Extension, outside the township of Pendleton, in Anderson County, South Carolina.

As stated herein in Condition No. 22 on Page 7 of this appraisal report, "***despite the pending* status of the current variance regarding zoning of the subject tracts, we have been asked to assume the hypothetical condition that the subject's 7 four- and six-bedroom townhome units partially-constructed on Phase 1-A of TRACT A within this PENDLETON STATION development are conforming existing uses***". Based on the above-referenced hypothetical condition, the purpose of this appraisal is to estimate the Market Value "As Is" of the Fee Simple Estate of subject TRACT A's 7 partially-constructed residential condominium units (UNITS 6A, 7B, 9C, 10A, 12A, 18A & 18B) - Phase 1-A, subject TRACT A's Excess Land (18.49 acres) - Phase 1-B, and subject TRACT B's Vacant Land (38.61 acres) as of May 28, 2007.

Market Value and Fee Simple Estate are further defined and qualified in the following appraisal report.

After analyzing the subject TRACTS and their market, and the various factors entering into the appraisal analysis, including the Assumptions and Limiting Conditions contained in the attached report, the following values were determined in our analysis:

TRACT A		
<u>PHASE 1-A</u>	<u>UNIT#</u>	<u>"AS IS" VALUE\$</u>
	6A	\$100,000
	7B	\$95,000
	9C	\$120,000
	10A	\$85,000
	12A	\$105,000
	18A	\$65,000
	18B	\$65,000

TRACT A		
<u>PHASE 1-B</u>	<u>ACRES</u>	<u>"AS IS" VALUE\$</u>
Excess Land	18.49	\$650,000

TRACT B		
	<u>ACRES</u>	<u>"AS IS" VALUE\$</u>
Vacant Land	38.61	\$480,000

Mr. Holder
October 3, 2007
Page Three

In this assignment, the existence of hazardous waste material, which may or may not be present on or in the subject tracts, was not observed by us. We have no knowledge of the existence of such materials on or near the subject tracts; however, we are not qualified to detect such substances. The presence of such material may have an effect on the value or use of the subject tracts. It is assumed that there are no hazardous material spills resulting from underground storage tanks or other causes associated with the subject tracts.

Full compliance with all environmental laws is assumed. The client is urged to retain an expert in this field, if further clarification is desired. We wish to clearly emphasize that the detection of any such hazardous materials are beyond the scope of this valuation analysis. Furthermore, it is assumed that the presence of any hazardous materials, gases or toxic substances that would cause a loss in value is assumed not to exist on the property.

The value estimate assumes no impact on value because of "Section 404 - Wetlands" as defined by the US Army Corp. of Engineers. We have found no evidence of wetlands; however, we are unqualified in this field and urge the client to seek the advice of an expert to determine any potential impact of wetlands on the above referenced tracts.

This appraisal has been made in conformity with the Uniform Standards of Professional Appraisal Practices (USPAP) adopted by the Appraisal Standards Board for the Appraisal Foundation.

We certify that we have the experience and knowledge to competently complete an appraisal of this type, and have made other appraisals of similar properties in the past. We further certify that the subject tracts were inspected by Charles B. Stone, MAI and J. Melissa Smith.

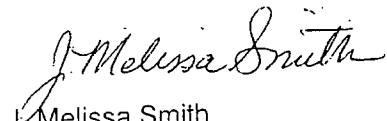
This appraisal assignment was not conditional upon the production of a specified value, or a value within a given range. Future employment prospects are not dependent upon a specified value. Employment and the payment of the fee are not based on whether a loan application is approved or disapproved.

Mr. Holder
October 3, 2007
Page Four

We appreciate the opportunity to be of service. If you have any questions, or require any additional information, please feel free to contact us anytime.

Respectfully submitted,

STONE & ASSOCIATES, INC.



J. Melissa Smith
State Certified General Real Estate Appraiser
SC Certificate No. CG 3103



Charles B. Stone, MAI
State Certified General Real Estate Appraiser
SC Certificate No. CG188

Exam
Exam
Reex
Reex
Cert

APPEAR
DAVID
McINTO
Post O
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hereby

Miller
V5.
pendlet
Carolyn
Trustee
Revocab
Bobby B
Roger R
DE
DATE TA
TIME BE
LOCATION
REPORT

STATE OF
COUNTY:

**DEFENDANT'S
EXHIBIT**
F-1

Q. All right. Now, you admit that Miller

248

Construction Company, L.L.C. never had a contract with Enterprise Bank of South Carolina prior to the Deeds in Lieu of Foreclosure from Pendleton Station to Enterprise Bank, right?

A. That's correct.

Q. And during -- you had a contract -- Miller Construction Company, L.L.C. had a contract with Moorhead Construction for grading, among other things?

A. That is correct.

Q. During the course of the project, you were asked by Pendleton Station through Engineered Concrete Structures to perform certain work that was outside of your scope of the Moorhead contract, correct?

A. Correct.

Q. You submitted purchase orders directly to Engineered Concrete Structures for that work, correct?

A. Correct.

Q. You have been paid a hundred percent of that work, that purchase order work, directly to Engineered Concrete Structures, right?

A. Can you give me a second to think?

Q. Sure.

1 project. I want to use kind of March 5th as
2 that timeline.

3 Prior to March 5th, 2007, you did not speak to
4 anyone directly with Enterprise Bank, did you?

5 A. No, sir.

6 Q. And prior to March 5th, 2007, you had no
7 written communication with Enterprise Bank, did
8 you?

9 A. No, sir.

10 Q. Okay. And your Mechanic's Lien -- the ones
11 with the blue exhibit markers on them are for
12 the court reporter. We need to make sure she
13 gets those.

14 On your Mechanic's Lien, in the first paragraph
15 you reference March 6th, 2007 as a date of work
16 that you were performing work on.

17 You didn't do any work on the Pendleton Station
18 project on March 6th, 2007, did you?

19 A. Yes, sir, I did.

20 Q. What did you do?

21 A. I was checking silt fence on the project, which
22 was original contract.

23 Q. And you have produced all documentation related
24 to your work on the Pendleton Station project
25 before Enterprise Bank got involved, right?

1 non-payment for work on Pendleton Station with
2 anybody from Enterprise Bank prior to March
3 5th, 2007?

4 A. I don't know.

5 Q. All right. You didn't have any prior to the
6 bank getting the Deeds in Lieu of Foreclosure,
7 you had no discussions with anybody at
8 Enterprise Bank, did you?

9 A. Not that I recall.

10 Q. That's normal.
11 When you have a contract with an owner, you
12 normally don't have any contact with its
13 lender, do you?

14 A. No.

15 Q. All right. And that was the case on this?
16 You did have conversations with Enterprise Bank
17 and Ervin Mathias after the bank was given the
18 Deeds in Lieu of Foreclosure, right?

19 A. Right.

20 Q. Y'all talked about not only work related to the
21 sediment ponds and worried about DHEC, there
22 were discussions about whether or not Moorhead
23 would negotiate to come back on the project
24 after it was paid 125,000 dollars settlement
5 that Pendleton Station had not paid it?

1 Q. I'm going to try to cover, so we at least get
2 something done today, but what I'm probably going
3 to do is not do the full deposition that I
4 intended to because I need that information, or I
5 need you at least to say, "I've looked for it and
6 I can't find it."

7 A. okay.

8 Q. or, "I've taken my computer and he tried to
9 retrieve it and it's not there," so I at least
10 know what you have that we can talk about. So let
11 me take -- let's go off the record for a few
12 minutes and let me take a minute to look at this
13 to see what we can at least get accomplished this
14 morning. All right?

15 (BREAK; OFF THE RECORD)

16 EXAMINATION RESUMED BY MR. DUDLEY:

17 Q. Mr. Craft, you only had a contract with Moorhead
18 Construction, right?

19 A. Correct.

20 Q. You never had a contract with Enterprise Bank?

21 A. No.

22 Q. The first time you learned Enterprise Bank was
23 involved in Pendleton Station was after the deed
24 in lieu of foreclosure had been transferred?

25 A. Yeah.

1 Q. And did you do any work for Pendleton Station or
2 at Pendleton Station after the bank took over the
3 project?

4 A. I don't know when they took over the project.

5 Q. March 5, 2007 deeds in lieu of foreclosure were
6 filed and said, "Here bank, here's your project."
7 So that's March 5, 2007. I understand you knew
8 that Mike Miller went out and did some grading
9 work for them on some retention ponds after the
10 bank got involved. Were you aware of that?

11 A. I have no idea what Mike and them did now.

12 Q. But do you know after Ervin Mathias came on the
13 project and said, "I'm here for Enterprise Bank,"
14 did you do any work out there on the Pendleton
15 Station project for the bank?

16 A. Not as I know of.

17 Q. Did you ever get paid from Enterprise Bank for any
18 work you did after the project was --

19 A. Nope.

20 Q. You do not have any -- you never provided any
21 written notice to Enterprise Bank that you were
22 working on that project, did you, prior to the
23 deed in lieu of foreclosure?

24 A. I have -- like I said, I don't know exactly what
all has took place. I know I talked to Charlie --

foreclosure?

A. Yes, I believe so.

Q. But before the bank got deeds in lieu of foreclosure and was out on the project, you didn't have any discussions with the bank, did you?

A. No.

Q. And I've looked through all your documents. I didn't see any letters, faxes, or e-mails complaining to Moorhead Construction about not getting paid for the sanitary sewer work on the project. Did I miss something?

A. I -- no. I never did it in writing, but I did -- if I'm thinking correctly, I did say something to Kevin Moorhead a couple times about needing to be paid.

Q. And I want to make sure. You have provided to your attorney all the documents that you could find related to your work on this project --

A. Yes, I have.

Q. -- and your company's work on the project?

A. Far as I know, I did.

Q. So if something else is out there, you have not been able to find it?

A. No.

Q. And you have not sued -- well, let me ask you

1 Q. You own Marathon Engineering?

2 A. Yeah.

3 Q. With regards to Miller Construction, it's my
4 understanding from Mr. Miller's deposition that
5 he's known you since the early '90s and y'all
6 have done a lot of business together?

7 A. Yes, sir.

8 Q. He considers you to be a personal friend.
9 Do you share that?

10 A. Yes, sir.

11 Q. Mr. Craft, Billy Craft, how long have you known
12 him and how long has Moorhead Construction done
13 business with him?

14 A. I've probably known him 20 years and that's --
15 we've been doing business that long.

16 Q. All right. With regards to the Pendleton
17 Station project, Moorhead Construction never
18 had a contract with Enterprise Bank, did they?

19 A. No, sir.

20 Q. And prior to this Mechanic's Lien being filed,
21 there was no written notice to Enterprise Bank
22 of any past due amounts that were owed it by
23 Pendleton Station, were there?

24 A. Can you ask that again?

25 Q. Sure. Prior to your filing of the Mechanic's

Q. Sometime.

MR. DUDLEY:

I'm going to mark the next two exhibits together. Not together. I'm just going to get them marked.

(Exhibit Numbers 5 and 6 marked for identification.)

EXAMINATION RESUMED BY MR. DUDLEY:

Q. If you will go ahead and start looking at Exhibit 5 and Exhibit 6. Let me know when you've had an opportunity to look at Exhibits 5 and 6.

A. All right.

Q. I'll preface this by it doesn't take much to confuse me, but I'm confused by the dates of this, and I need your clarification. Exhibit 5 is dated September 6th, 2005, and purports to be a proposal, but it's dated September of '05, but Exhibit 6, which is I believe -- is this your contract with Pendleton Station, Moorhead's contract with Pendleton Station? It's dated March 2nd, 2005.

Do you know, is the September date just wrong or is it for some kind of additional work? Perhaps Exhibit 5 is just change order work.

A. Yeah, that's change order work.

DON MOORHEAD CONSTRUCTION, INC.
1513 Anderson Street
Belton, SC 29627
Phone 864-338-0888—Fax 864-338-1444

SUBCONTRACT NO. 201
DATE: 2/15/05

Project: Pendleton Station
Engineer: Dunn & Associates
Owner: Pendleton Station, LLC

THIS AGREEMENT, made this 18th day of April 2005, by and between

DON MOORHEAD CONSTRUCTION, INC.

A Corporation of the State of South Carolina, hereinafter called contractor, and

Craft Construction

Hereinafter called Subcontractor.

WITNESSETH, That the Contractor and Subcontractor agrees as follows:

The Subcontractor is to furnish all necessary supervision, material, labor and incidental material, tools, equipment, power, transportation, hauling, unloading, hardware, and all other incidentals necessary to complete all sewer and water lines per plans by Dunn & Associates.

The Subcontractor is bound by all portions of the contract documents and agrees to install project accordingly and to the requirements of local municipalities.

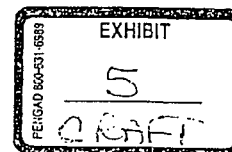
The Contractor agrees to pay the Subcontractor for performance of this work as described upon approval of quantities by engineer.

Sanitary Sewer
Based on following Unit Prices

This agreement constitutes the entire contract between the parties hereto and any changes thereto must be in writing.

Terms are a mutually agreed percentage based on work performed during a monthly period, balance on acceptance by the Owner. Payment to the Subcontractor will be made on the next weekly payment cycle following receipt by the Contractor of payment from Owner. Invoices must be received by the 20th of the month to be included in the monthly pay request. Retainage in the amount of 10% will be held until completion of the project and until payment is received by the Contractor from the Owner.

PLEASE READ REVERSE SIDE



MOORHEAD 063

drawings: If, in the execution of this contract, Manufacturer's detail working drawings are required, the subcontractor shall furnish and have these approved before starting work.

All measurements are to be obtained by the Subcontractor, who assumes responsibility for the correctness of those measurements unless the Contractor assumes this responsibility.

The quality of workmanship and material shall be in strict accordance with the plans and specifications which the Subcontractor has examined.

The Subcontractor agrees to remove from the building and site any trash or debris caused by him from his work. If this is not done promptly, the Contractor may remove same at the expense of the Subcontractor.

In the event of the absence of this agreement, the Subcontractor shall work in such places and employ as many skilled mechanics and laborers as the Contractor may direct, and shall not be excused or delay any of the other part, or parts of the work, or the completion of the work, and that there will be no charge made for this extra effort in co-ordinating his work with the balance of the job.

If the Subcontractor fails, at any time, to comply strictly with the above conditions and/or to furnish satisfactory material and/or sufficient labor in accordance therewith and such failure continues to exist for a period of three (3) days, then the Contractor, in the opinion of the Architect or Contractor is material and harmful to the carrying out of the work, then the Contractor may take the work out of the hands of the Subcontractor and may complete the work, retaining any money that may be due to the Subcontractor at that time which may be used by the Contractor in defraying expenses of carrying out the contract and if the amount retained is not sufficient to cover this expense, the Contractor shall be paid to the Contractor by the Subcontractor. The Contractor, in the event of the Subcontractor being used on the job and use same for the completion of the work of the Subcontractor, without any payment for the use of same.

The Subcontractor is to furnish, at the beginning of his work, a certificate of insurance which shall be in the form of the Workmen's Compensation and Public Liability Insurance and otherwise it will be carried by the Contractor at the expense of the Subcontractor.

The time and time of payment to be the same as shown in specifications and general contract, and otherwise stated.

The Contractor reserves the right to request an affidavit before each payment, together with the names of all parties furnishing material and labor on this contract, and the amount of money in favor of each party. The Contractor reserves the right to ascertain from each party the correct outstanding amounts, and the liability of same and to retain, in whole or in part, the amount due the Subcontractor, a sufficient amount to protect the Contractor against non-payment.

The Contractor agrees to assist the Subcontractor in every way possible, in the execution of the contract, but in no way is the Contractor obligated to furnish any labor, material, tools, or pay monies for advance payments, or freight to the Subcontractor unless the same is provided for by this contract. A charge for the above items, if furnished, will be 10% plus 15% basis.

The Subcontractor agrees to submit to the Contractor applications for payments in such form as to enable the Contractor to apply to Owner for payments under articles of conditions, and upon receipt of monies from said Owner, Subcontractor will receive same.

The Subcontractor agrees to be bound to the Contractor by the terms of the general contract conditions, drawings and specifications and to assume toward the Contractor, and the Contractor, and their officers, representatives, agents, and employees, the same responsibilities that the Contractor, by those documents, assumes toward the Owner. The Subcontractor shall indemnify and hold harmless the Owner, Contractor, and the Contractor, and their officers, representatives, agents, and employees, from all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Subcontractor, anyone directly or indirectly employed by the Subcontractor, or anyone for whose acts the Subcontractor may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Subcontractor, anyone directly or indirectly employed by the Subcontractor, or anyone for whose acts the Subcontractor may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the Owner, the Engineer, or the Contractor, or any of their officers, representatives, agents, or employees by anyone directly or indirectly employed by the Subcontractor, or anyone for whose acts the Subcontractor may be liable, the indemnification obligation of the Subcontractor under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Subcontractor under Workmen's Compensation Act, disability benefit acts, or other employee benefit acts. The Subcontractor agrees to indemnify and save harmless the Contractor, Engineer, and Owner of said building or buildings against all damages which they or either of them may sustain by reason of anything to be supplied hereunder being covered by a patent not owned by the Subcontractor. The Subcontractor agrees to defend, at his expense, any action brought against the Contractor, Engineer, or Owner founded upon the above.

13. The Subcontractor agrees to make all claims for extras, for extensions of time, and for damages for delays, or otherwise, to the Contractor in the manner provided in the general conditions for like claims by the Contractor upon the Owner except that the time for making claims for extras is one (1) week.

14. The Contractor and the Subcontractor agree that in the matter of arbitration between them, their rights and obligations and all procedure shall be analogous to those set forth in the General Contract.

15. Nothing in this contract shall create any obligation on the part of the Owner to pay to, or see to the payment of any sums to any Subcontractor.

16. It is agreed that the Subcontractor is an independent contractor.

17. No Assignment of this Contract can be made to any bank or persons, except by approval of Don Moorhead Construction, Inc. and then the Assignment will be made only to extend of credit balance due to Subcontractor at the end of the job.

18. The contract price named herein includes any and all Federal, State, or Municipal Taxes now levied or in force, or that might be imposed during the life of this contract, on any and all tangible personal property sold or transferred to the Contractor under this contract, and the Subcontractor agrees to pay such tax or taxes on all such property, the cost of which is included in the contract price named herein.

19. It is understood that the Subcontractor is to pay and hereby accepts exclusive liability for any tax, assessment, or contribution for Unemployment Insurance or Social Security Benefits levied by the Federal or any State Government on the salaries or wages of all persons employed by the Subcontractor, and the Subcontractor hereby agrees to comply with all rules, regulations and requirements of the Federal and/or State Commission having jurisdiction thereover, in order to relieve the Contractor of this liability.

20. The parties to this contract agree to abide by the Construction Safety Act of 1959 and the Occupational Safety and Health Act of 1970 and be responsible for the acts of their employees.

21. Qualifications, limitations, etc., contained in quotations or other documents do not apply to this Subcontract unless they are specifically listed on the face of this Subcontract.

22. The Policy of Don Moorhead Construction, Inc. that equal employment shall be afforded to all qualified persons with no regard to creed, race, natural origin, sex or color. This applies to hiring, promotion, transfer, or termination of our employees and it is our intent to cooperate with Executive Order 11246, as amended. This policy extends to every phase of employee recruitment, such as employment agencies, labor organizations and advertising.

Each Subcontractor, by signing this contract, agrees that they understand this program and will take affirmative action to assist the company in the implementation of this program.

WITNESSED:

DON MOORHEAD CONSTRUCTION, INC.

Don Moorhead

DON MOORHEAD CONSTRUCTION, INC.

By *Don Moorhead*

SUBCONTRACTOR

Crest Construction Co., Inc.

By *[Signature]*

MOORHEAD 064

9:29 AM

Craft Sewer

4/20/2005

Moorhead Construction, Inc.
1513 Anderson Street
Belton, South Carolina 29627

Project: Pendleton Station
Owner: Pendleton Station, LLC
Engineer: Dunn & Associates
Bid Date: 1/10/05
Bid Time: 2:00

Description	1 A	1 B	Unit	1 A	1 A	1 B	Total Cost
	Quantity	Quantity		Unit Cost	Total	Total	
1. Manholes							
a. 0-6	1	4 ea	\$	990.00	\$ 990.00	\$ 3,960.00	\$ 4,950.00
b. 6-8	15	6 ea	\$	1,210.00	\$ 18,150.00	\$ 8,050.00	\$ 24,200.00
c. 8-10	8	6 ea	\$	1,485.00	\$ 11,880.00	\$ 8,910.00	\$ 20,790.00
d. 10-12	1	2 ea	\$	1,704.00	\$ 1,704.00	\$ 3,408.00	\$ 5,112.00
e. 12-14	2	2 ea	\$	1,980.00	\$ 3,960.00	\$ 3,960.00	\$ 7,920.00
f. 14-16	0	1 ea	\$	2,200.00	\$ -	\$ 2,200.00	\$ 2,200.00
2. 8" Diameter PVC							
a. 0-6	879	882 lf	\$	11.14	\$ 9,792.06	\$ 9,825.48	\$ 19,617.54
b. 6-8	2027	1859 lf	\$	14.14	\$ 28,661.78	\$ 26,288.26	\$ 54,949.04
c. 8-10	672	432 lf	\$	17.14	\$ 11,518.08	\$ 7,404.48	\$ 18,922.56
d. 10-12	502	335 lf	\$	21.14	\$ 10,612.28	\$ 7,081.90	\$ 17,694.18
e. 12-14	138	248 lf	\$	25.15	\$ 3,470.70	\$ 6,186.80	\$ 9,657.60
f. 14-16	57	49 lf	\$	29.14	\$ 1,660.98	\$ 1,427.86	\$ 3,088.84
g. 16-18	56	38 lf	\$	33.14	\$ 1,855.84	\$ 1,193.04	\$ 3,048.88
3. 4" Sewer Service	119	115 ea	\$	461.23	\$ 54,886.37	\$ 53,041.45	\$ 107,927.82
4. Rock Excavation	100	100 cy	\$	50.00	\$ 5,000.00	\$ 5,000.00	\$ 10,000.00
5. Forcemain							
a. 6" DIP	1650	0 lf	\$	14.38	\$ 23,727.00	\$ -	\$ 23,727.00
b. Pump Station	1	0 ls	\$	86,500.00	\$ 86,500.00	\$ -	\$ 86,500.00
c. Road Bore 12"	79	0 lf	\$	69.00	\$ 5,451.00	\$ -	\$ 5,451.00
d. Connect to Existing MH	1	0 ls	\$	950.00	\$ 950.00	\$ -	\$ 950.00
							\$ 426,705.48

MOORHEAD 065

1. In the execution of this contract, Manufacturer's detail working drawings shall be furnished and have these approved before starting work. The Subcontractor shall furnish and have these approved before starting work.

2. The Subcontractor shall be bound to the Contractor by the terms of the general conditions, drawings and specifications and to assume toward the Contractor, its agents, representatives, agents, and employees, and the Contractor, and their officers, representatives, agents, and employees, the liability of claims, damages, losses, and expenses, including attorney's fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Subcontractor, anyone directly or indirectly employed by the Subcontractor, or anyone for whose acts the Subcontractor may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

3. In any and all claims against the Owner, the Engineer, or the Contractor, or any of their officers, representatives, agents, or employees by anyone directly or indirectly employed by the Subcontractor, or anyone for whose acts the Subcontractor may be liable, the indemnification obligation of the Subcontractor under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Subcontractor under Workmen's Compensation Acts, disability benefit acts, or other employee benefit acts. The Subcontractor agrees to indemnify and save harmless the Contractor, Engineer, and Owner of said building or buildings against all damages which they or either of them may sustain by reason of anything to be supplied hereunder being covered by a patent not owned by the Subcontractor. The Subcontractor agrees to defend, at its expense, any action brought against the Contractor, Engineer, or Owner founded upon the above.

4. The Subcontractor agrees to make all claims for extra, for extensions of time, and for damages for delays, or otherwise, to the Contractor in the manner provided in the general conditions for the claims by the Contractor upon the Owner except that the time for making claims for extras is one (1) week.

5. The Contractor and the Subcontractor agree that — in the matter of arbitration between them, their rights and obligations and all procedure shall be analogous to those set forth in the General Contract.

6. Nothing in this contract shall create any obligation on the part of the Owner to pay to, or see to the payment of any sums to any Subcontractor.

7. It is agreed that the Subcontractor is an independent contractor.

8. No Assignment of this Contract can be made to any bank or persons, except by approval of Don Moorhead Construction, Inc. and then the Assignment will be made only to extent of credit balance due to Subcontractor at the end of the job.

9. The contract price named herein includes any and all Federal, State, or Municipal Taxes now levied or in force, or that might be imposed during the life of this contract, on any and all tangible personal property sold or transferred to the Contractor under this contract, and the Subcontractor agrees to pay such tax or taxes on all such property, the cost of which is included in the contract price named herein.

10. It is understood that the Subcontractor is to pay and hereby accepts exclusive liability for any tax, assessment, or contribution for Unemployment Insurance or Social Security Benefits levied by the Federal or any State Government on the salaries or wages of all persons employed by the Subcontractor; and the Subcontractor hereby agrees to comply with all rules, regulations and requirements of the Federal and/or State Commission having jurisdiction thereover, in order to restore the Contractor of this liability.

11. The parties to this contract agree to abide by the Construction Safety Act of 1959 and the Occupational Safety and Health Act of 1970 and be responsible for the acts of their employees.

12. Qualifications, limitations, etc. contained in quotations or other documents do not apply to this Subcontract unless they are specifically listed on the face of this Subcontract.

13. The Policy of Don Moorhead Construction, Inc. that equal employment shall be afforded to all qualified persons with no regard to creed, race, natural origin, sex or color. This applies to hiring, promotion, transfer, or termination of our employees and it is our intent to cooperate with Executive Order 11246, as amended. This policy extends to every phase of employee recruitment, such as employment agencies, labor organizations and advertising.

Each Subcontractor, by signing this contract, agrees that they understand this program and will take affirmative action to assist the company in the implementation of this program.

ACCEPTED:
DON MOORHEAD CONSTRUCTION, INC.
BY _____
SUBCONTRACTOR
CRAFT Construction Co., Inc.
BY _____

DON MOORHEAD CONSTRUCTION, INC.

By _____
SUBCONTRACTOR
CRAFT Construction Co., Inc.
BY _____

MOORHEAD 066

Dunn & Associates Engineering, Inc.

P.O. Box 1120
Anderson, SC 29622-1120
Phone (864) 222-0339
Fax (864) 222-0833

Date: 5-26-05

Job: Contract with Moorhead

Project: Pendleton Station

Fax to: Elizabeth Daniel

Of: Pendleton Station, LLC

Fax #: 843-971-1059

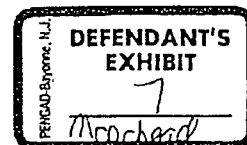
From: Greg Dawkins

Number of Pages (inclusive): 13

Comments: Here is the contract between Pendleton Station and Moorhead Construction as requested. Let us know if there is anything else.

Greg

Important: This transmission (including all attached pages) is intended only for the use of the named addressee(s) and may contain information that is privileged or exempt from disclosure under applicable law. If you are not a named addressee, you are hereby notified that any use, dissemination, distribution, or copying of this transmission is strictly prohibited. If you received this transmission in error or fax is not received in entirety or is illegible, please destroy all copies and notify us immediately at 864-222-0339.



PAGE 1/1

DUNNASSOC

8642220833

05/26/2005 12:04

NOTICE TO PROCEED

TO: Mr. Kevin Moorhead
Moorhead Construction, Inc.
1513 Anderson Street
Belton, South Carolina 29627

DATE: March 2, 2005

PROJECT: Pendleton Station-Phase I

You are hereby notified to commence Work in accordance with the Agreement dated March 2, 2005 on or before March 9, 2005, and to complete the Work within _____ consecutive calendar days. The date of completion and readiness for final payment is _____, 20____.

See ENCL 1

Pendleton Station
(Owner)

By: Thomas Daniel

Title: Principal

ACCEPTANCE OF NOTICE

Receipt of this Notice to Proceed is acknowledged by:

Moorhead Construction, Inc.
(Contractor)

By: Kevin Moorhead

Title: VP

Date: 3/8/05

Special Stipulation:

10. Official notice to proceed shall be established within 10 days of this agreement.
(2) Both parties acknowledge this "Construction Leader" has not been determined as that Construction Company will not be until March 005.

3/8/05 RD

Kim 3/8/05

005504

85/26/2005 12:04 0642220833

NOTICE OF AWARD

TO: Moorehead Construction, Inc. PROJECT: Pendleton Station Phase I
1513 Anderson Street
South Carolina, 29627

The Owner has considered the Bid submitted by you on January 10, 2005 for the project listed above and as described in the Bidding Documents.

You are hereby notified that your Bid has been accepted in the amount of \$ 2,164,257.39.

You must comply with the following conditions within 7 calendar days from the date of this Notice:

1. Fully execute 3 counterparts of the Agreement and deliver to the Owner;
2. Deliver 3 copies of the Certificates of Insurance to the Owner.

Failure to comply with these conditions within the time specified will entitle Owner to consider your Bid in default and to annul this Notice of Award.

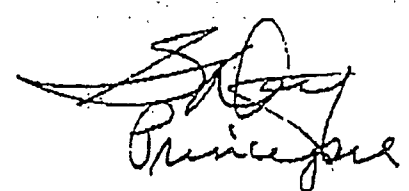
You are required to return an acknowledged copy of this Notice of Award to the Owner.

Dated this 2 day of March, 2005.

Pendleton Station, L.L.C.
(Owner)

By: Thomas Daniel

Title: Principal



ACCEPTANCE OF NOTICE

Receipt of the Notice of Award is hereby acknowledged by Moorehead Construction, Inc.
(Firm or Corporation Name)

On the 2 day of March, 2005.

By: Kenn Moorehead

Title: VP

00510-1

2/8/05

Kenn 2/8/05

DLNNVASSDC

8642228833

05/26/2005 12:04

AGREEMENT

THIS AGREEMENT is dated as of the 2 day of March in the year 2005 by and between Pendleton Station, L.L.C. (hereinafter called Owner) and Moorhead Construction, Inc. (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents and generally described as follows:
Completion of all necessary road grading, storm sewer systems, potable water systems, sanitary sewer systems, and all other general grading.

Article 2. ENGINEER

The Project has been designed by Dunn & Associates Engineering, Inc. who is hereinafter called Engineer and who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES

1. The Work will be completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within a specified period of time as determined by the owner and developer. See Notice to Proceed for contract start/stop dates.

2. Liquidated Damages: Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$ 0.0192% of contract price per day for each day that expires after the time specified in paragraph 3.1 until the Work is complete and ready for final payment.

Article 4. CONTRACT PRICE

Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount equal to the amount indicated in the Bid Form.

As provided in paragraph 11.9 of the General Conditions, estimated quantities are not guaranteed, and determinations of quantities and classification are to be made by Engineer as provided in paragraph 9.10 of the General Conditions. All quantities have been computed as provided in paragraph 11.9.2 of the General Conditions.

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Article 5. PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

- 5.1 Progress Payments; Retainage: Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 25th of each month during construction as provided in paragraph 5.1.1 below. All such payments will be measured by the schedule of values established in paragraph 2.9 of the General Conditions and in the case of Unit Price Work based on the number of units completed, or in the event there is no schedule of values, as provided in the General Requirements.

- 5.1.1 Prior to completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with paragraph 14.7 of the General Conditions.

90% of Work completed (with the balance being retainage) if Work has been 50% completed as determined by Engineer.

90% (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.2 of the General Conditions).

- 5.2 Final Payment: Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by the Engineer as provided in said paragraph 14.13.

Article 6. CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- 7.1 Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- 7.2 Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.
- 7.3 Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, performance and furnishing of the Work.
- 7.4 Contractor is aware of the general nature of work to be performed by Owner and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.5 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 7.6 Contractor has given Engineer written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

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Article 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between Owner and Contractor concerning the Work consists of the following:

- 8.1 This Agreement.
- 8.2 Notice of Award.
- 8.3 Notice to Proceed.
- 8.4 General Conditions.
- 8.5 Supplementary Conditions.
- 8.6 Specifications.
- 8.7 Drawings as identified in the List of Drawings.
- 8.8 Addenda. (If applicable.)
- 8.9 Contractor's Bid.
- 8.10 Change Orders delivered after execution of this Agreement.

Article 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to Owner, Contractor, and Engineer.

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MOORHEAD 040

This Agreement will be effective on March 2, 2005.

Owner: Pendleton Station, L.L.C.

Contractor: Moorhead Construction, Inc.

By: [Signature]
(Signature)

By:

[Signature]
(Signature)

Benjamin L. [Signature]
(Please print name)

Kevin Moorhead
(Please print name)

3/8/05

(SEAL)

(CORPORATE SEAL)

Attest: _____

Attest: _____

Address for giving notices:

Address for giving notices:

Construction Fee - LLC

[Signature]

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3/8/05

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MOORHEAD 041

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Miller Construction Company, LLC,)
Plaintiff,)

C.A. No. 2007-CP-04-2786

v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Moorhead Construction, Inc.,)
Plaintiff,)

C.A. No. 2007-CP-04-2785

v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Craft Construction Company, Inc. of Starr,)
Plaintiff,)

C.A. No. 2007-CP-04-2784

v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

AFFIDAVIT OF ERVIN MATHIAS



PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, Ervin Mathias, who after first being duly sworn, states:

1. My name is Ervin Mathias, and I am competent in all respects to testify regarding the matters set forth herein. I am currently an employee of The Villages at Town Creek, LLC, an affiliate of Enterprise Bank of South Carolina ("Enterprise Bank"). I have personal knowledge of the facts stated herein and know them to be true. I give this Affidavit voluntarily in support of Plaintiff's claims.

2. I am a resident of Allendale County, South Carolina.

3. I was hired by Enterprise Bank of South Carolina to work on the Pendleton Station Project in March 2007 after the property associated with the Project was deeded to Enterprise Bank in lieu of foreclosure.

4. Prior to being hired by Enterprise Bank of South Carolina, I was never on-site at the Project to oversee the project and to protect Enterprise Bank's loan investment to Pendleton Station.

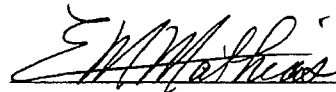
5. Prior to being hired by Enterprise Bank of South Carolina, I was not made aware of the potential claims of contractors and suppliers on the Project regarding non-payment by the owner.

6. After I was hired by Enterprise Bank to work on the Project and prior to obtaining legal advice, I paid approximately \$1.2 Million to subcontractors and suppliers that were threatening to file liens against the property. None of these payments were made prior to the deed in lieu of foreclosure.

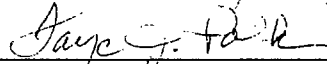
7. Charlie Kernaghan was not hired by Enterprise Bank until I was hired by the Bank, which was after the deed in lieu of foreclosure was filed.

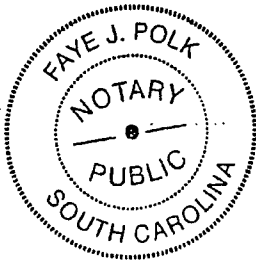
8. Absolutely no work had been completed on 'the 38 Acre Tract' prior to the date when I was hired by Enterprise Bank. In fact, only within the past year was the first work ever completed on the 38 Acre Tract.

AFFIANT FURTHER SAYETH NAUGHT.


Ervin Mathias

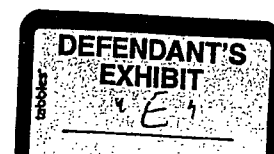
Sworn to and subscribed before
me this 24 day of August, 2010.


Notary Public, State of South Carolina
My Commission Expires: 2-23-2015



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
Miller Construction Company, LLC,	)	C.A. No. 2007-CP-04-2786
Plaintiff,	)	
v.	)	
	)	
Pendleton Station, LLC, Enterprise Bank	)	
of South Carolina, Diane L. Zellner,	)	
Trustee for the Diana L. Zellner	)	
Revocable Trust UAD, Angelo Penza,	)	
Bobby Bryant, Ursula Lesser, Roger	)	
Rowe and Benjamin L. Daniel, Sr.,	)	
Defendants.	)	
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
Moorhead Construction, Inc.,	)	C.A. No. 2007-CP-04-2785
Plaintiff,	)	
v.	)	
	)	
Pendleton Station, LLC, Enterprise Bank	)	
of South Carolina, Diane L. Zellner,	)	
Trustee for the Diana L. Zellner	)	
Revocable Trust UAD, Angelo Penza,	)	
Bobby Bryant, Ursula Lesser, Roger	)	
Rowe and Benjamin L. Daniel, Sr.,	)	
Defendants.	)	
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
Craft Construction Company, Inc. of Starr,	)	C.A. No. 2007-CP-04-2784
Plaintiff,	)	
v.	)	
	)	
Pendleton Station, LLC, Enterprise Bank	)	
of South Carolina, Diane L. Zellner,	)	
Trustee for the Diana L. Zellner	)	
Revocable Trust UAD, Angelo Penza,	)	
Bobby Bryant, Ursula Lesser, Roger	)	
Rowe and Benjamin L. Daniel, Sr.,	)	
Defendants.	)	

AFFIDAVIT OF CHARLES A. KERNAGHAN



PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, Charles A. Kernaghan, who after first being duly sworn, states:

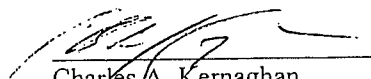
1. My name is Charles A. Kernaghan and I am competent in all respects to testify regarding the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true. I give this Affidavit voluntarily.
2. I am a resident of Pickens County, South Carolina.
3. I was hired by Enterprise Bank of South Carolina to work on the Pendleton Station Project in March 2007 after the property associated with the Project was deeded to Enterprise Bank in lieu of foreclosure.
4. Prior to being hired by Enterprise Bank of South Carolina, I was working for Pendleton Station, LLC with the title of Project Manager, despite the fact that Benjamin L. Daniel, Sr. and Elizabeth Daniel retained all of the authority and all of the control with respect to the construction of the Project, as well as all other aspects of the Project. It is my belief that Benjamin L. Daniel, Sr. and Elizabeth Daniel purposefully limited the amount of knowledge and information I gained with respect to all aspects of the Project, including the issues related to the payment of construction-related services. This included Benjamin L. Daniel, Sr.'s demands that I not speak with anyone affiliated with Enterprise Bank regarding any aspect of the Project.
5. Prior to being hired by Enterprise Bank of South Carolina, I was never an agent of Enterprise Bank and I was never on-site at the Project to oversee the Project for the benefit of Enterprise Bank's loan investment to Pendleton Station.
6. Prior to being hired by Enterprise Bank of South Carolina, I never witnessed Ervin Mathias being on-site to oversee the Project for the benefit of Enterprise Bank's loan investment to Pendleton Station.

7. After I was hired by Enterprise Bank to work on the Project and prior to obtaining legal advice, Enterprise Bank paid approximately \$1.2 Million to subcontractors and suppliers that were threatening to file liens against the property. None of these payments were made prior to the deed in lieu of foreclosure.

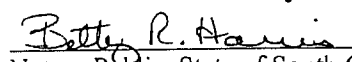
7. I was not hired by Enterprise Bank until Ervin Mathias was hired by the Bank, which was after the deed in lieu of foreclosure was filed.

8. Absolutely no work had been completed on 'the 38 Acre Tract' during my employment with Pendleton Station, LLC, absolutely no work was completed on this property up to and including the date when I was hired by Enterprise Bank, and absolutely no work was completed on this 38 Acre Tract of property up to and including my last date of work for Enterprise Bank, which was early 2010. Further, this tract of property was not even purchased by Pendleton Station, LLC until after each of the above referenced Plaintiffs' contracts were signed, as I attended the closing of this property when it was sold to Pendleton Station, LLC. None of the Plaintiffs' contracts include any work to be performed on this property. The plans for Phase 1-B of the Project do not include any portion of this 38 Acre Tract of property. The clearing performed by Plaintiff Miller was no where close to this 38 Acre Tract of property. And, the ponds, bridge and creek that the Plaintiffs did work on or around are located no where close to this property.

AFFIANT FURTHER SAYETH NAUGHT.


Charles A. Kernaghan

Sworn to and subscribed before
me this 26th day of August, 2010.


Notary Public, State of South Carolina
My Commission Expires: February 20 2011

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Miller Construction Company, LLC,)
Plaintiff,)

C.A. No. 2007-CP-04-2786

v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Moorhead Construction, Inc.,)
Plaintiff,)

C.A. No. 2007-CP-04-2785

v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

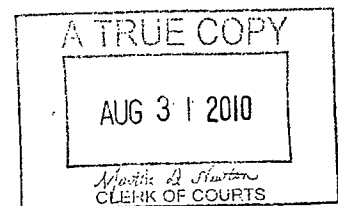
IN THE COURT OF COMMON PLEAS

Craft Construction Company, Inc. of Starr,)
Plaintiff,)

C.A. No. 2007-CP-04-2784

v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)



**DEFENDANT ENTERPRISE BANK OF SOUTH CAROLINA'S REPLY
MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant, Enterprise Bank of South Carolina ("Enterprise Bank"), by and through its counsel, and files this Reply Memorandum in Support of its Motion for Summary Judgment as to each of the Plaintiffs' Causes of Action.

Introduction

Enterprise Bank submits this memorandum in an effort to clarify the many misleading and unsupported statements of fact and misguided points of law provided by the Plaintiffs in their attempt to avoid Summary Judgment.

From the outset, however, it is important to point out that the Plaintiffs have not in any way disputed Enterprise Bank's Motion for Summary Judgment as to each of the Plaintiffs' Breach of Contract claims. In addition, it is important to point out that Plaintiff Craft Construction Company, Inc. of Starr ("Craft") has essentially consented to Enterprise Bank's Motion for Summary Judgment as to Plaintiff Craft's Mechanic's Lien on the 38 Acre Tract. *See Pg. 10, Plaintiffs' Brief* ("Based upon his testimony at his deposition, it is undisputed that Plaintiff Craft did not perform work on the 38 acre tract."). As to Plaintiffs' claim for Unjust Enrichment, the clarification below establishes that claim must fail as unsupported.

Unjust Enrichment Claims

In support of their desperate attempts to maintain a claim for unjust enrichment against the "deep pockets" they perceive of Enterprise Bank rather than solely against the truly responsible party Pendleton Station, LLC, the Plaintiffs have completely misinterpreted and misapplied the well established case law of this State on the equitable issue that is before this Court.

It is not disputed that Enterprise Bank advanced money to Pendleton Station, LLC for the work Plaintiffs were performing on the project. In fact, all lines of credit for Pendleton Station,

LLC to develop the infrastructure were maxed out when Pendleton Station, LLC transferred the deed in lieu of foreclosure. This shows Enterprise Bank paid for Plaintiffs work on the project. Further, Enterprise Bank had the property that was transferred in the deed in lieu of foreclosure appraised and gave Pendleton Station, LLC credit for the value against the debt. Enterprise Bank gave value for the work Plaintiffs performed in this credit too. Enterprise Bank was **not** unjustly enriched by Plaintiffs' work on the project.

In the Plaintiffs' *Brief in Support of Denial of Enterprise Bank's Motion for Summary Judgment* ("Plaintiffs' Brief"), they correctly cite the third element they must satisfy in order for their claim against Enterprise Bank to prevail, "retention by the defendant of the benefit under conditions that make it unjust for him to retain it **without paying its value.**" *Columbia Wholesale Company, Inc. v. Scudder May*, 440 S.E.2d 129, 130 (1994); *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 366 S.E.2d 12 (Ct.App. 1988)." *Plaintiffs' Brief*, pg. 4(emphasis added). However, when the Plaintiffs tried to centralize this element, they subtly included their own additional requirement to this line of case law, perhaps in recognition of the completely inequitable nature of their claim. The Plaintiffs provided the following: "The issue becomes whether or not Enterprise Bank's retention of Plaintiffs' unpaid work is unjust without paying Plaintiffs for its value." *Plaintiffs' Brief*, pg. 5(emphasis added). This is an incorrect statement of the law.

Despite the subsequent un-cited and unsupported positions the Plaintiffs offered to bolster their equally unsupported legal theory, the Plaintiffs cannot point to any case law in support of their claim that a subsequent owner (especially a lender who already paid the prior owner for the very work at issue) such as Enterprise Bank should pay (**twice**) for work under a theory of unjust enrichment. As the case law of this State makes clear, there is an element which

requires a showing that the Defendant has not paid for the value of the work; however, this element does not include a showing that the Defendant has not paid the claimant, as the Plaintiffs suggest. *Ellis, supra*. This is evident from the long line of case law in this State and others (which the Plaintiffs acknowledge in their *Brief*) involving claims made against an owner who has already paid the general contractor for the subcontractor's work which is at issue. *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 440 S.E.2d 129 (1994), citing *Cohen v. Delmar Drive-in Theatre, Inc.*, 46 Del. 427, 84 A.2d 597 (1951); *Guldborg v. Greenfield*, 259 Iowa 873, 146 N.W.2d 298 (1966); *Crockett v. Brady*, 455 S.W.2d 807 (Tex.Civ.App.1970); cf. *Costanzo v. Stewart*, 9 Ariz.App. 430, 453 P.2d 526 (1969); *Bishop v. Flood*, 133 Ga.App. 804, 212 S.E.2d 443 (1975); *Reid v. Saul*, 146 Ga.App.264, 246 S.E.2d 121 (1978); *Stewart Brothers, Inc. v. General Improvement Corp.*, 143 Ga.App. 258, 238 S.E.2d 259 (1977). In those cases, the Courts have unanimously denied the plaintiff's claim against the owner, even though the owner did not pay the claimant. *Id.* The logic behind this unanimous equitable holding is that it would be inapposite for a Court of equity to require someone to pay twice for the work at issue, no matter how unfair it is that the person with whom the claimant contracted has not made payment to the claimant. *Id.*

Despite this reasoning, the Plaintiffs have attempted to make another distinction between the above referenced line of cases and the case at hand. The Plaintiffs suggest that Enterprise Bank, regardless of whether they have paid for the work at issue, should still pay the Plaintiffs. *Plaintiffs' Brief*, pg. 7. The Plaintiffs base this flawed reasoning on the misplaced premise that Enterprise Bank, although they were not the owner of the property when Enterprise Bank paid Pendleton Station, LLC for the Plaintiffs' work, "voluntarily chose to step into the shoes of the owner and not pursue foreclosure proceedings" and that their taking a deed in lieu of foreclosure

instead of going through formal foreclosure proceedings puts them in the same position with the same obligations of Pendleton Station, LLC. *Id.* However, this position ignores the fact that as the lender, Enterprise Bank's contractual obligations with Pendleton Station, LLC are separate and apart from any obligation Pendleton Station, LLC had with Plaintiffs. It further ignores the fact that through Enterprise Bank's separate obligations, they paid Pendleton Station, LLC monies with the understanding that the monies would be repaid to Enterprise Bank plus interest, that the monies would be used to improve the property, that the monies would be secured by a mortgage on the property, and that the mortgage could be foreclosed if the monies were not repaid. *See Verified Amended Complaint in EBSC v. Pendleton Station, LLC, et al. lawsuit.* Enterprise Bank is seeking a judgment against Pendleton Station, LLC for the unpaid loans. Because it received a deed in lieu foreclosure, Enterprise Bank is under a duty imposed by law to provide a credit to the debtor/Pendleton Station, LLC in case the property was, as here, transferred via foreclosure, much like the funds at a foreclosure sale reduce the debt. It is undisputed that Enterprise Bank has provided this credit, which it based on an appraisal it obtained after the property was deeded in lieu of foreclosure. Plaintiffs could have discovered it had they served discovery. Logically, this credit is equivalent to Enterprise Bank paying Pendleton Station, LLC for the work of the Plaintiffs. Thus, Enterprise Bank has already paid for the work of the Plaintiffs (both in regards to loaning the money and in providing the aforementioned credit to Pendleton Station, LLC). Therefore, the Plaintiffs' position fails again in light of the logic behind the unanimous equitable holdings disallowing claims that would make someone pay twice for the work at issue, no matter how unfair it is that the person with whom the claimant contracted has not made payment to the claimant.

The fact remains that the Plaintiffs in these cases cannot in any way show that Enterprise Bank has not already paid once for this work. The record in the case cited by the Plaintiffs, "*Enterprise Bank of South Carolina v. Benjamin L. Daniel, et al*", makes it abundantly clear that Enterprise Bank already loaned Pendleton Station, LLC money for this work and Pendleton Station, LLC never repaid Enterprise Bank. The record also makes clear that Enterprise Bank, in accepting the deed in lieu of foreclosure, gave Pendleton Station, LLC credit for this work against the debt which Pendleton Station, LLC still owes Enterprise Bank. According to the Plaintiffs' misplaced line of reasoning, a Court will be required to order a *subsequent* homeowner to pay a contractor and/or subcontractor (who lacked an express contract with the *prior* owner) for the work such subcontractor previously provided for the benefit of the *prior* homeowner, despite the fact that the *subsequent* homeowner already paid the *prior* homeowner for the value of the contractor's work via the purchase price- meaning the subsequent homeowner would have to pay twice. Similarly, if the Plaintiffs' reasoning were upheld by the Court, a subcontractor would be successful in filing an unjust enrichment claim against an owner who has already paid the contract price in full to the general contractor- meaning the owner would have to pay twice.

In the *Plaintiffs' Brief*, despite confusing the facts of this case through wholly unrelated analogies and completely irrelative diagrams, they could not have made their mistaken interpretation of South Carolina law any more clear, not to mention their intentions of looking to the deep pockets of Enterprise Bank instead of the truly culpable Pendleton Station, LLC:

In this case, Moorhead Construction had a contract with Pendleton Station, LLC, to provide construction services. (Miller and Craft are subcontractors of Moorhead). It is undisputed that the owner, Pendleton Station, LLC, did not pay Moorhead Construction the full contract amount it owed for the work performed on the project. To date, Pendleton Station, LLC, still owes Moorhead

Construction under its contractual obligation for the construction services it provided (inclusive of Miller and Craft's claims as subcontractors of Moorhead). In other words, if this was a case of Pendleton Station, LLC, still owning and developing the property, there is no question that the Plaintiffs' claims for unjust enrichment would be viable claims.

Plaintiffs' Brief, p. 5.

Notwithstanding the inaccuracy of the Plaintiffs' comprehension of unjust enrichment, which is evidenced by their position that Plaintiff Moorhead Construction could have a claim for unjust enrichment against Pendleton Station, LLC when the existence of an express contract governs their payment responsibilities ("In this case, Moorhead Construction had a contract with Pendleton Station, LLC"), the Plaintiffs attempt at simplification was another veiled effort to equate mere ownership of the property at issue with the satisfaction of the "retention" requirement enumerated in the above referenced, governing law. *Id.* However, in doing so, the Plaintiffs clumsily contradict the very point they are trying to prove; instead, providing the very basis for Enterprise Bank's defense as discussed above: "In other words, if this was a case of Pendleton Station, LLC, still owning and developing the property, there is no question that the Plaintiffs' claims for unjust enrichment would be viable claims." *Plaintiffs' Brief, pg. 5.* Plaintiffs cannot point to any authority which would preclude them from successfully prosecuting a claim for unjust enrichment against Pendleton Station, LLC (because none exist). Of course, the Plaintiffs' desire to reach the perceived 'deep pockets' of Enterprise Bank instead of pursuing the truly culpable party must be the influence guiding their misplaced logic.

Whatever the Plaintiffs' motives, the reason why no such case law exists is because courts of equity will not impose on a subsequent owner the obligations owed by the previous owner, especially when, as is the case here, the subsequent owner has already paid the obligor/prior owner for the work at issue! In other words, this is why there exists, contrary to the

Plaintiffs' obvious desires, no qualification of the payee in the third element of unjust enrichment as noted in *Ellis*. *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 474, 366 S.E.2d 12, 15 (S.C. Ct. App. 1988). The well established case law of this State, as cited by the Plaintiffs, makes it plainly clear how unconscionable it would be for a Court of equity to fall prey to this line of reasoning and completely ignore the value paid for such ownership. The Plaintiffs themselves acknowledge this in their brief: "Plaintiffs ... acknowledge that when an owner pays the contract price in full to a general contractor, with whom owner contracted, that a subcontractor's claims for unjust enrichment should fail." *Plaintiffs' Brief*, pg. 5(emphasis in original).

The remains of the Plaintiffs' argument center around their misplaced logic regarding the manner in which Enterprise Bank became the subsequent owner of the property at issue. The Plaintiffs' first attempt, in futility, to make a distinction between a lender receiving title to property via foreclosure proceedings and a subsequent owner who was not an earlier lender focuses on the illustration provided by Enterprise Bank during oral arguments. In shedding light on the logic behind this State's case law on unsuccessful unjust enrichment claims such as the one here, Enterprise Bank offered the oft used analogy of an owner paying a general contractor who, in turn, fails to pay his subcontractors (this is the same analogy used by Plaintiffs, as cited above; see *Plaintiffs' Brief*, pg. 5). As the Plaintiffs correctly note in their brief, a claim for unjust enrichment by the subcontractors will not lie in this scenario because of the fact that the owner has already paid for the benefit. See *Columbia Wholesale Co., Inc.*, *supra*. The common-sense premise behind this equitable theory is that the owner should not have to pay twice for the work. *Id.*

Enterprise Bank's use of this analogy is entirely appropriate considering that it is undisputed that Enterprise Bank has already paid once for the work at issue here. So, the parallels between the two scenarios cannot go unnoticed or unappreciated. In the Plaintiffs' bizarre attempt to show that Enterprise Bank's "argument is flawed and ignores the obvious; Enterprise Bank was not the owner of the project when it loaned monies to the owner", the Plaintiffs cannot point to any authority which supports their position. *Plaintiffs' Brief*, pg. 5. It is Enterprise Bank's position that such a void in authority is directly related to the common sense notions of fairness which govern these issues. Again, it is anything but equitable to force a subsequent owner who has paid a prior owner consideration for the value of work in place to then be liable (again) for the (same) work that the prior owner contracted for. *See Columbia Wholesale Co., Inc., supra*.

The Plaintiffs are apparently under the assumption that any claim for unjust enrichment they might have against Pendleton Station, LLC has somehow been cut off due to the transfer of the property to Enterprise Bank. In an effort to further support this misguided and entirely unsupported position, the Plaintiffs argue that Enterprise Bank's acceptance of a deed in lieu of foreclosure was improper. Yet, out of all of the diagrams and associated supposition and speculation presented by the Plaintiffs, they have failed to cite any authority for their position:

The difference is all of those cases from other jurisdictions and this particular case is that in the above cited cases **the lender actually foreclosed upon the property through formal foreclosure proceedings and the issue of unjust enrichment was raised by the contractors after the public foreclosure sale of the property**. In other words, in the above-cited cases, the lender stayed in its role as a lender and never assumed an ownership role in the property until after a formal hearing and public sale. Anyone, including the unpaid contractors, could have intervened in those foreclosure proceedings to determine priority and claims. Additionally, any of those contractors could have bid on the foreclosed property at the public sale in order to protect any interest they felt they had. In this case,

Plaintiffs were not afforded that opportunity to be heard due to Enterprise Bank voluntarily and privately accepting a deed in lieu of foreclosure.

In this particular case, Enterprise Bank voluntarily chose to step into the shoes of the owner and not pursue foreclosure proceedings. ...By accepting a deed in lieu of foreclosure, Enterprise Bank is now estopped from asserting the protections it would have been afforded had it proceeded with formal foreclosure proceedings.

See Plaintiffs' Brief, pg. 7(emphasis in original).

For starters, the case law in this State is unequivocal in holding not only that a bank such as Enterprise Bank has the right to accept a deed in lieu of foreclosure, but that it would defy logic and public policy to require banks to foreclose instead of accepting deeds in lieu of foreclosure. The Supreme Court of this State has made this clear: "To require every lender to foreclose in order to shield itself from liability instead of taking a deed in lieu would be unduly burdensome on the state's judicial and administrative machinery." *Kennedy v. Columbia Lumber & Mfg Co., Inc.*, 299 S.C. 335, 384 S.E.2d 730 (1989). Despite the above cited law of this State, the Plaintiffs have taken the outrageous (and entirely unsupported) position that Enterprise Bank, by accepting the deed in lieu of foreclosure, is now "estopped from asserting the protections it would have been afforded had it proceeded with formal foreclosure proceedings." *See Plaintiffs' Brief, pg. 7*.

Secondly, as in those cases where a general contractor is paid monies from the owner without paying the subcontractor and in those cases of a previous owner not paying a subcontractor before the prior owner sells the improved property to a subsequent homeowner, even though the claimant would not have a claim against such owner and such subsequent owner the claimant would still have a claim (whether for unjust enrichment or breach of contract, depending on whether an express contract exists) against such general contractor and such prior owner even after the improved property has been transferred because the benefit of the services

becomes the monies paid rather than the work in place. *See Columbia Wholesale Co., Inc., supra*. So, as is the case here, the claimant's cause of action is not cut-off against those that are truly culpable merely because the improved property has been transferred to someone who has paid value for it. *Id.*

Thirdly, the manner in which the property is transferred has no bearing on this logic, so long as the transferee has paid value for the claimant's work. This is what the Plaintiffs fail to comprehend here. As long as the foreclosing party/transferee has paid value for the claimant's work, the actual means for which foreclosure is obtained has absolutely no bearing on the validity of a contractor's claim for unjust enrichment. The Plaintiffs attempt at proving that the use of this logic creates unusually inequitable results is also misplaced.

The Plaintiffs suggest that they were further hurt because they could have intervened in foreclosure proceedings and could have bid on the foreclosed property despite the fact that, as the Plaintiffs have made clear, none of the contractors in the cited cases chose to do so. In the spirit of supposition initiated by the Plaintiffs (as if the above cited law in South Carolina regarding a bank's right to accept a deed in lieu is not enough), it is appropriate to consider the practicalities involved in a contractor's decision on the timing of filing its claim for unjust enrichment when foreclosure is imminent. These same decisions were certainly considered by the contractors in the cases cited. Through notions of common sense, these contractors likely acknowledged the fact that the debt associated with a senior mortgage lien holder (whose collateral is the incomplete property at issue) is almost always greater than the value of any judgment lien that a subcontractor could obtain against an owner's property based on a claim of unjust enrichment, especially when the very property (and presumably defunct owner) is facing foreclosure. In addition, these contractors very likely figured (in absence of the current line of

case law we have the fortune of relying upon, which completely undermines their motives) that it would be in their best interest to wait until the 'deep pockets' of the bank obtained title to the property so they could bring their claim for unjust enrichment against them. Surely the contractors realized in making this decision that it would simply be nonsensical to spend the time and money to obtain a judgment lien that would be subsumed in a later foreclosure of the senior lien. Well, unfortunately for both those contractors and the Plaintiffs here, Enterprise Bank, as evidenced by the cases they have cited, has not found any court in any jurisdiction that has ruled in favor of claims for unjust enrichment against a bank in this scenario, or any similar scenario.

Moreover, in this particular case, it would be disingenuous to suggest that any of the Plaintiffs would recover a dime if they were able to intervene in a foreclosure action instituted by Enterprise Bank on this property. To claim otherwise would imply that the Plaintiffs would be willing to bid more than the outstanding debt owed to Enterprise Bank, which stands at more than \$4 Million on the lines of credit alone.¹ So, it is without merit to suggest that Enterprise Bank was using the deed in lieu of foreclosure as some kind of "sword" to deny the "Plaintiffs' rights to notice and opportunity to be heard on their claims".² See *Plaintiffs' Brief*, pg. 6-7.

Further still, the most important distinction between the Plaintiffs' position and reality, is that it does not matter at all whatsoever when the property was transferred to Enterprise Bank or whether it was via a deed in lieu of foreclosure or through formal foreclosure proceedings. The Plaintiffs could never have a valid claim against Enterprise Bank for unjust enrichment because,

¹ It is undisputed that: (1) Enterprise Bank's mortgage is still of record and in effect as against Pendleton Station, LLC; (2) that the value of the property deeded in lieu of foreclosure is far outweighed by the debt secured by said mortgage (as evidenced by the appraisal obtained by Enterprise Bank and comprised of only 10 units under construction, undeveloped land, and common areas); and (3) Enterprise Bank is suing Pendleton Station, LLC on this deficiency. See *Enterprise Bank of South Carolina v. Benjamin L. Daniel, Sr.*

² As discussed below (even though notice of Plaintiffs' claims is completely irrelevant to the unjust enrichment claims), the Plaintiffs have completely failed to prove that Enterprise Bank was ever on notice of the Plaintiffs' claims before the deed in lieu of foreclosure was unilaterally filed by Pendleton Station, LLC.

as addressed *ad naseum* herein, Enterprise Bank has already paid for the work- much like an owner who has already paid a general contractor for the work of a sub and much like a subsequent homeowner paying a prior homeowner for the unpaid work of a contractor that worked for the prior owner. All of the courts that have ruled on these issues have been unequivocal in holding that equity and logic will not allow otherwise.

Apparently in support of its position that Enterprise Bank, “by accepting a deed in lieu of foreclosure, ... is now estopped from asserting the protections it would have been afforded had it proceeded with formal foreclosure proceedings,” the Plaintiffs curiously only cite a portion of a secondary source:

‘The purchaser at a foreclosure sale takes title free of such liens, but a mortgagee who acquires title to real estate by deed in lieu of foreclosure is subject to these interests.’ *Real Estate Law, 2nd Ed.*, Gibson, Karp & Klayman, page 494 (1987).

Plaintiffs’ Brief, pg. 7. What the Plaintiffs fail to provide is the preceding sentence or context for which this cite was pulled. The Plaintiffs failure to define what “such liens” and “these interests” are calls into question the point they are trying to make. Being left only to guess at what they are referencing, surely the Plaintiffs are not claiming that an unjust enrichment claim filed after a deed in lieu of foreclosure is a “lien”. There is simply no authority to support this position. Whatever the case may be, the context for which this cite is found in the *Plaintiffs’ Brief* is equally confusing.

The Plaintiffs make the following unsupported claims within the same context in their Brief:

In this case, Plaintiffs were not afforded that opportunity to be heard due to Enterprise Bank voluntarily and privately accepting a deed in lieu of foreclosure.³

³ It remains clear in all of the evidence produced by Enterprise Bank that Pendleton Station, LLC unilaterally filed the deed in lieu of foreclosure much to the surprise of Enterprise Bank. However, even if that was not the case and, for arguments sake, if you assume Enterprise Bank was fully aware of the impending deed in lieu being filed, the

In this particular case, Enterprise Bank voluntarily chose to step into the shoes of the owner and not pursue foreclosure proceedings. ... *It is Plaintiffs' position that in so doing it does not matter how much money Enterprise Bank states it loaned to the owner. The only thing that matters is whether or not the owner (Pendleton Station) paid the contract price to Moorhead Construction in full; which did not happen. From that standpoint, it is unjust for the owner to retain the use and benefit of Plaintiffs' work without paying just compensation for it.*

Plaintiffs' Brief, pg. 7 (emphasis supplied). Enterprise Bank agrees with the majority of the above emphasized text. Enterprise Bank agrees that it does not matter, for purposes of this issue, how much money it loaned to Pendleton Station, LLC *in excess of the amount of money it loaned for the work done by the Plaintiffs, the work that is at issue here.* It being absolutely undisputed that Enterprise Bank loaned Pendleton Station, LLC money for the Plaintiffs' work (and then some), Enterprise Bank agrees with the fact that Pendleton Station, LLC, in receiving credit from Enterprise Bank in amount equal to the value of Plaintiffs' improvement to the property, has retained the use and benefit of Plaintiffs' work without paying the Plaintiffs just compensation for it. And, Enterprise Bank agrees that it is unjust for Pendleton Station, LLC to get away with that, which is precisely why the Plaintiffs' claim is not proper as against Enterprise Bank, as evidenced by all of the case law that has been cited by the parties on this issue.

In conclusion, the Plaintiffs cannot escape Summary Judgment by merely confusing the issue at hand with wholly unsupported supposition and opinion. All of the case law on this issue and every angle of logic and common sense leads to dismissal of this claim as against Enterprise Bank. The true culprit (Pendleton Station, LLC), however, should – as the law makes clear –

Plaintiffs cannot point to any authority that would have required Enterprise Bank to include parties for which it was not in contractual privity with in any discussions it would have with Pendleton Station, LLC, especially when, as is the case here, no evidence has been produced to show that Enterprise Bank was even on notice of any claim these other parties might have had.

have to answer to this claim, which the Plaintiffs have also filed against Pendleton Station, LLC⁴. See *Plaintiffs' Complaints*. It remains abundantly clear that the Plaintiffs, as much as they desperately desire to reach the perceived 'deep pockets' of Enterprise Bank, cannot satisfy the elements of a claim for unjust enrichment against Enterprise Bank. As discussed *supra*, the Plaintiffs have failed completely in proving that Enterprise Bank has failed to pay for the value of the Plaintiffs' work, which is an essential element as dictated by the South Carolina Supreme Court. *Ellis, supra*.

Mechanic's Lien Claims

1. Tract B – 38 Acres

The law in South Carolina is clear that the Plaintiffs' mechanics liens will fail unless they can prove, *inter alia*, that: (1) Enterprise Bank was not a bona fide purchaser for value, without notice of Plaintiffs' claims prior to the deed in lieu being filed; and (2) the mechanics liens are filed on property for which the Plaintiffs actually performed work. In reviewing the Plaintiffs' Brief and in hearing the Plaintiffs' oral arguments, it is imperative to consider the evidentiary support, or utter lack thereof, which the Plaintiffs have offered for their position. It has been well established in South Carolina jurisprudence that a Plaintiff has the burden of proof and, for purposes of defending a motion for summary judgment, cannot merely rest on their pleadings.⁵ As addressed herein below, it remains Enterprise Bank's position that it did not have notice of the Plaintiffs' claims prior to the deed in lieu being filed, and the Plaintiffs have still failed to produce any credible **evidence** which could in any way show otherwise. In addition, it remains

⁴ It is important to point out the fundamental notion that the Plaintiffs could never recover against both Enterprise Bank and Pendleton Station, LLC for their claim of unjust enrichment. Yet, the Plaintiffs have filed a claim against both parties. It is Enterprise Bank's position that this is further evidence of the Plaintiffs' desperate attempts to reach the perceived 'deep pockets' of Enterprise Bank, grounds (or lack thereof) for doing so notwithstanding.

⁵ *Charing v. J.P. Scurry & Co., Inc.*, 296 S.C. 312, 372 S.E.2d 120, 122 (Ct. App., 1988) ("when a motion for summary judgment is made, an adverse party may not rest upon the mere allegations or denials of his pleadings, but must set forth specific facts showing there is a genuine issue of material fact for trial.")

Enterprise Bank's position that no one, including the Plaintiffs, performed any work on the 38 Acre Tract, and the Plaintiffs have still failed to produce any evidence which could in any way prove otherwise.

2. Other Inaccuracies on the Record

There are several inaccuracies included in the Plaintiffs' recitation of "facts" that need to be addressed from the outset. In the Plaintiffs' brief, it is alleged on multiple occasions that "[t]hroughout the course of the project, Enterprise Bank had a person named Ervin Mathias on-site to oversee the project and allegedly protect Enterprise Bank's loan investment to Pendleton Station." In an attempt to support this assertion, the Plaintiffs' cite a paragraph out of Enterprise Bank's Complaint in the *Enterprise Bank of South Carolina v. Benjamin L. Daniel, Sr., et al.* matter. However, this particular paragraph, as clearly evidenced within the context for which it was cited, simply speaks to those facts and circumstances which gave rise to the construction being financed by Enterprise Bank before this construction even began. As evidenced by the testimony cited herein, everyone with knowledge of these circumstances, including all parties to the *Enterprise Bank of South Carolina v. Benjamin L. Daniel, Sr., et al.* matter, knows and understands that Ervin Mathias was never on-site to oversee the project during the construction that is at issue. See *Ervin Mathias Depo.*, p. 143 attached hereto as **Exhibit "A"**; *Brooks Harvey Depo.*, p. 183-185 attached hereto as **Exhibit "B"**; *Benjamin L. Daniel, Sr. Depo.*, p. 350-351 attached hereto as **Exhibit "C"**; see also *Affidavit of Ervin Mathias*, attached hereto as **Exhibit "D"**. Although Benjamin L. Daniel, Sr. and his partner, Brooks Harvey, do not agree on whom of the two told Ervin Mathias that he was not needed on the Project, there is absolutely no dispute over whether or not Ervin Mathias was ever on-site to "oversee the project and allegedly protect Enterprise Bank's loan investment to Pendleton Station." *Id.* The undisputed fact

remains that he simply never was. *Id.* To suggest otherwise is simply disingenuous, or either a glaring example of the type of discovery neglect which the South Carolina Supreme Court addressed in the case of *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 154-155, 226 S.E.2d 703, 704 - 705 (1976)(if a material issue of fact can be created by a denial based on ignorance of the facts and neglecting to pursue discovery, the office of summary judgment would be mummified and Parties would be subjected to the burden of a trial merely because formal and pretended averments can not be separated from genuine factual controversies).

In addition, the Plaintiffs make the following claim in an apparent attempt to prove that Enterprise Bank was on notice of the Plaintiffs' claims prior to the deed in lieu being filed:

In its Complaint against Pendleton Station, LLC, Enterprise Bank admits that it paid 1.2 Million dollars worth of lien claims, and that **it needed to look more closely** at what work had been done. In other words, Enterprise Bank admits in a separate lawsuit that it was on at least inquiry notice of unpaid claims of contractors if not actual notice.

...
Interestingly, Enterprise Bank has paid many other unpaid contractors, subcontractors and suppliers; just not these particular three (3) contractors. The following is from Enterprise Bank's filed Complaint against Pendleton Station, LLC, in a separate lawsuit:

"34. Upon receipt of copies of the filed deed in lieu of foreclosure, Enterprise Bank paid 1.2 million dollars to subcontractors and suppliers that were threatening to file liens against the property. This indicated that Enterprise Bank needed to look more closely at the actual work in place on the Project." (Emphasis Added).

Plaintiffs' Brief, pg. 3, 8 (emphasis in original). However, as Enterprise Bank's Complaint and Amended Verified Complaint in the *Enterprise Bank of South Carolina v. Benjamin L. Daniel, Sr., et al.* matter make abundantly clear, this all occurred after the deed in lieu of foreclosure was filed. See also *Affidavit of Ervin Mathias*, and *Affidavit of Charlie Kernaghan attached hereto as Exhibit "E"*. On an elementary level, this is evidenced by the preface provided in the paragraph cited by the Plaintiffs, "Upon receipt of copies of the filed deed in lieu of foreclosure".

On an equally fundamental level, the Amended Verified Complaint filed by Enterprise Bank in this same case provides the following:

47. Upon receipt of copies of the filed deeds in lieu of foreclosure, Enterprise Bank was thrust into the position of having to decide what to do with the Project. Essentially, Pendleton Station, LLC and E.C. Structures had dumped the Project on the Bank. Upon information and belief, E.C. Structures did not pay a number of its subcontractors and suppliers for labor and materials supplied on the Project. Upon information and belief, once Pendleton Station, LLC and E.C. Structures jettisoned the Project on Enterprise Bank, Pendleton Station, LLC and E.C. Structures directed said subcontractors and suppliers to contact Enterprise Bank for payment. Numerous subcontractors and suppliers began contacting Enterprise Bank requesting payment and threatening to file liens on the property. After reviewing the claims of the several subcontractors and suppliers, Enterprise Bank paid 1.2 Million Dollars to those subcontractors and suppliers that were owed money for labor and materials provided on the Project. Once Enterprise Bank had to pay such a large sum to suppliers and subcontractors, it became apparent that Enterprise Bank needed to further investigate the allocation of monies that had already been provided to Pendleton Station, LLC, and its principals.

See Enterprise Bank Verified Amended Complaint in the Enterprise Bank of South Carolina v. Benjamin L. Daniel, Sr., et al. lawsuit. Notwithstanding the lack of any evidence produced by Plaintiffs to support their claim that Enterprise Bank was on notice of the Plaintiffs' claims, it is absolutely undisputed that Enterprise Bank did not pay any contractors that performed work for Pendleton Station, LLC until after the deed in lieu of foreclosure was filed.⁶ *Id.* Again, this is clearly the type of discovery neglect which the South Carolina Supreme Court addressed in the case of *Bankers Trust of South Carolina, supra*. Had the Plaintiffs done any discovery in these cases, to include sending any discovery requests to Enterprise Bank, or deposing anyone associated with Enterprise Bank (including any of the above named who have given affidavits in support of Enterprise Bank's Motion), then perhaps the Plaintiffs would understand the completely inaccurate 'factual' recitations they have so clumsily provided.

⁶ It is important to point out that Enterprise Bank paid these contractors prior to the legal advice it sought thereafter.

Further still, the Plaintiffs, in their repeated attempts in futility to prove Enterprise Bank was on notice of the Plaintiffs' claims prior to the deed in lieu, have attempted not only to use the misleading information referenced above, but they have also made a wholly unsupported implication that Charlie Kernaghan was an agent of the bank before the deed in lieu of foreclosure was filed. *See Plaintiffs' Brief*. Again, if the Plaintiffs were to have done any discovery in these cases (which have now been pending for 3 years!), they would have easily determined that Charlie Kernaghan was never even contacted by Enterprise Bank until after the deed in lieu was filed. *See Affidavit of Charlie Kernaghan*. In fact, evidencing the lengths at which Pendleton Station, LLC went to prevent Enterprise Bank from discovering the failure of Pendleton Station, LLC to pay its contractors, the agents of Pendleton Station, LLC instructed Charlie Kernaghan to not discuss any aspect of the project with anyone from Enterprise Bank. *Id.*

The Plaintiffs (exclusive of Craft) maintain that their liens on the 38 Acre Tract should not be dismissed pursuant to Enterprise Bank's Motion. In support of this position, the Plaintiffs cannot point to any evidence. Instead, the Plaintiffs simply state:

...it is unclear and there exists an issue of material fact as to whether or not work was performed by Miller ['and Moorhead via Miller's subcontract'] on this particular tract of land. Mike Miller testified that in regards to Phase 1-B, that Miller Construction cleared that side, put ponds on that side and graded a bridge over the creek. ... What is unclear is how far did Miller go in performing that work, and whether that work ended up consisting of work on the 38 acre tract. Taking the evidence, and any inferences drawn therefrom, in a light most favorable to the Plaintiffs, summary judgment as to the lien on the 38 acre tract is premature at this time.

Plaintiffs' Brief, pg. 10. For starters, it is absolutely outrageous for the Plaintiffs to make the claim that summary judgment is "premature" at this time, as though the Plaintiffs have not had enough time in the last 3 years since they filed their actions to even determine what property they performed their work on. Enterprise Bank has made it abundantly clear that: (1) this tract of

property was not even purchased by Pendleton Station, LLC until after the Plaintiffs' contracts were signed; (2) the Plaintiffs' contract do not include any work to be performed on this property; (3) the plans for Phase 1-B, as referenced by Miller, do not include any portion of this tract of property; (4) the clearing referenced by Miller was no where close to this property; and (5) the ponds, bridge and creek are also no where close to this property. *See Affidavit of Charlie Kernaghan*. A simple review of the public record makes this obvious.

It remains without merit to suggest that the Plaintiffs performed work on this property, and it remains without merit to claim, upon contest of their position, that the Plaintiffs have not had enough time (within the 3 years since these cases have been pending) to conclusively prove otherwise. As the Supreme Court of this State made plainly clear in the *Bankers Trust* case, "Diligence in opposing a motion for summary judgment is required, for such a motion with supporting logistics and gear does not lose its thrust by an opponent's complacence. ... If a material issue of fact can be created by a denial based on ignorance of the facts and neglecting to pursue discovery, the office of summary judgment would be mummified." *Bankers Trust*, 267 S.C. at 154-155, 226 S.E.2d at 704 - 705 (internal citations omitted).

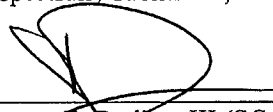
The simple fact remains, the Plaintiffs cannot point to any evidence to support their wholly unfounded claims that Enterprise Bank was on notice of the Plaintiffs' mechanic's lien claims, the effect of which is lethal to their claims. Moreover, the Plaintiffs cannot point to any evidence to support their entirely frivolous claim that they performed work on the 38 Acre Tract, the effect of which is fatal to their claims with respect to this tract of property.

Conclusion

All of the evidence in this matter makes clear that: (1) each of the Plaintiffs' Breach of Contract claims against Enterprise Bank must fail because the Plaintiffs, themselves, each admit

that there never existed a contract between any of the Plaintiffs and Enterprise Bank; (2) each of the Plaintiffs' Unjust Enrichment claims against Enterprise Bank must fail in light of the undisputed facts which cannot, in any realm of logic and reason, satisfy the well established elements of an unjust enrichment claim as set forth by the Supreme Court of this State; and (3) each of the Plaintiffs' Mechanic's Lien fails as a matter of law because they do not meet the requirements set forth in S.C. Code Ann. § 29-5-10. Therefore, Defendant Enterprise Bank respectfully requests that this Honorable Court enter summary judgment in its favor and for such other and further relief as the Court deems just and proper, including attorneys' fees and costs for the Mechanic's Lien Foreclosure causes of action as noted above.

Respectfully submitted,



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Enterprise Bank of South Carolina

August 30, 2010
Greenville, SC

1 and what you saw at the project?

2 A Well, I did, but it was only that one
3 visit. And I was dismissed and told I would no
4 longer be needed on that project. Mr. Daniel said
5 he had all the help he needed and he didn't need
6 anymore more help specifically from me or my son on
7 that project in Lake Murray.

8 Q You were told that by Mr. Daniel?

9 A By Mr. Daniel twice, at my hunting lodge
10 at a meeting there -- I have to get the exact date.
11 He followed up with the exact same comment in the
12 boardroom of the bank in front of Mr. Johns and
13 Mr. Varn later the same day. Bill Spence was also
14 present at that meeting.

15 Q That was in March of '06?

16 A I think that's correct. I'd have to look
17 up the exact date.

18 Q So the bank was aware because that
19 conversation -- one of those conversations occurred
20 at the bank's office; is that right?

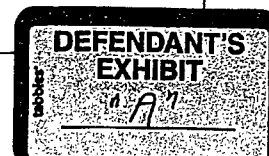
21 A That's correct.

22 Q So the bank was aware of those comments?

23 A That's correct.

24 Q Otherwise you would have shared that with
25 them as well?

A. William Roberts, Jr. & Associates (800) 743-DEPO



1 Ervin was rather perturbed.

2 Q I'll come back to Lake Murray and the club
3 at Plantation Point.

4 A Well, that precipitated this memo.

5 Q I understand. If you look at the second
6 page, and it's Bates number 36, underneath the
7 numbers it says Brooks agreed to pay you \$250,000
8 over a 12-month period as a fee for your efforts on
9 behalf of Enterprise Bank.

10 A Let's stop right there.

11 Q Is that consistent with your agreement
12 with Ervin Mathias?

13 A No. It was Ben and Brooks. I didn't have
14 the authority to pay dink to anybody.

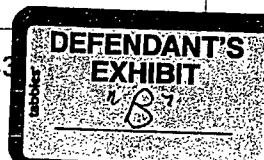
15 Q So when it says Brooks agreed?

16 A It's Ben and Brooks.

17 Q What he has written in that sentence after
18 Brooks agreed is consistent with what your agreement
19 was with Ervin Mathias?

20 A This all came about because of Miles
21 Loadholt and the awful meeting with Ervin and Ben
22 and myself in Ben's office in which Ervin was a
23 little bit more than irate relative to a \$250,000
24 payment made to our company for Lake Murray.

25 Q I'll get to that. I hear you. I just



Brooks Harvey - June 2, 2009

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1 wanted to make sure that that -- Ben Daniel wrote
2 that letter and signed it, didn't he?

3 A Yes.

4 Q There's nothing in that letter where he
5 disputes that the agreement was y'all were to pay --
6 Pendleton Station was to pay Ervin Mathias \$250,000?

7 A To me it is. It says Brooks agreed. Ben
8 and I agreed. Yeah, he's disputing every aspect
9 about it in this memo.

10 Q Let's look at Exhibit 4 to Ervin Mathias's
11 deposition. It's a fax from Bill Cutchin's
12 letterhead from August 5, 2005 to David Johns at
13 Enterprise Bank. Do you remember getting a copy of
14 this letter?

15 I will tell you there's a subsequent
16 e-mail from Bill Cutchin correcting a portion of
17 that letter. I will show you that next. Look at
18 Exhibit 3 to David Johns' deposition. That is a
19 letter dated I think the next day or later that day,
20 August 5, where there was a clarification asking to
21 clarify.

22 A Okay.

23 Q Is that, what Mr. Cutchin wrote,
24 consistent with what Ben and Brooks agreed to with
25 regards to Ervin Mathias's role in Pendleton

1 Station?

2 A Correct.

3 Q Who directed Bill Cutchin to draft that?

4 A He's referencing I did, so I assume I did.

5 Q Did you have discussions with Ben Daniel
6 about that prior to it going out?

7 A Of course I did.

8 Q Look at Exhibit 5. Actually, a better one
9 is David Johns' Exhibit 4. It's another e-mail from
10 Bill Cutchin to David Johns, and he is saying he was
11 directed by you, Brooks Harvey, to send the fax, and
12 it lists like a term sheet, if you will. Can you
13 tell me, is that something that you directed Bill
14 Cutchin to send to David Johns?

15 A Yes.

16 Q Was Ben Daniel aware of it?

17 A Of course he was.

18 Q How much property was the bank getting
19 collateral on?

20 A It was a line of credit for \$3 million.

21 Q What was the collateral?

22 A First mortgage on approximately 62.62
23 acres of land in Anderson County where Pendleton
24 Station townhouses are to be constructed.

25 Q Do you know whether or not the mitigation

Transcript of Benjamin L. Daniel, Sr.

1 with or very closely behind it, and so it probably
2 fell by the wayside.

3 Q. You understood that Mr. Johns felt that it
4 was important that Mr. Mathias was going to have
5 some kind of involvement in the Pendleton Station
6 because he made the statement to you that we don't
7 lend money to people we don't know.

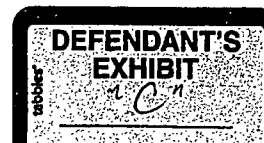
8 A. He did make that statement.

9 Q. And so you understood that Mr. Mathias being
10 involved in Pendleton Station was important to the
11 bank.

12 A. It was always understood that once
113 Enterprise became involved, the design was that
14 Ervin was to replace Mr. Penza, and that's the part
15 that is the end result of -- and that's probably
16 why I don't remember these details.

17 Q. Now, in your previous testimony before we
18 took a break, you indicated that there was certain
19 money that was going to be needed for the line of
20 credit to pay Mr. Penza. Do you remember that?

21 A. Well, it -- the only way that Mr. Penza
22 could be paid -- because we knew it wasn't going to
23 be 500,000 -- was if we had more money than we
24 needed on the front end to take him out and effect
225 the change because that money he had to be paid to



1 go away.

2 Q. Why did you need to make him go away?

3 A. We didn't.

4 Q. That wasn't something that needed to be
5 done, it was something that --

6 A. It was -- I was just very reluctant to give
7 up any more of the project, and so if we could
8 replace one with the other, then it made all the
9 sense in the world.

10 Q. You didn't -- you had your 80 percent
11 interest through Coastal Plains Development, and
12 instead of giving Mr. Mathias a part of your 80
13 percent, you wanted to --

14 A. Replace Mr. Penza.

15 Q. Okay. Now I understand that. Okay. And
16 you never wrote Enterprise Bank telling them that
17 Ervin Mathias was not going to have an ownership
18 interest in Pendleton Station, did you?

19 A. Never in writing, no.

20 Q. And it wasn't until February of '06 that you
21 finally wrote Mr. Mathias saying we don't -- we
22 don't need you to manage the project like we
23 originally thought.

24 A. Well, I never represented that to him and
25 he'll tell you that.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)

IN THE COURT OF COMMON PLEAS

Miller Construction Company, LLC,)
Plaintiff,)
v.)
)

C.A. No. 2007-CP-04-2786

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)

IN THE COURT OF COMMON PLEAS

Moorhead Construction, Inc.,)
Plaintiff,)
v.)
)

C.A. No. 2007-CP-04-2785

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)

IN THE COURT OF COMMON PLEAS

Craft Construction Company, Inc. of Starr,)
Plaintiff,)
v.)
)

C.A. No. 2007-CP-04-2784

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

AFFIDAVIT OF ERVIN MATHIAS



PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, Ervin Mathias, who after first being duly sworn, states:

1. My name is Ervin Mathias, and I am competent in all respects to testify regarding the matters set forth herein. I am currently an employee of The Villages at Town Creek, LLC, an affiliate of Enterprise Bank of South Carolina ("Enterprise Bank"). I have personal knowledge of the facts stated herein and know them to be true. I give this Affidavit voluntarily in support of Plaintiff's claims.

2. I am a resident of Allendale County, South Carolina.

3. I was hired by Enterprise Bank of South Carolina to work on the Pendleton Station Project in March 2007 after the property associated with the Project was deeded to Enterprise Bank in lieu of foreclosure.

4. Prior to being hired by Enterprise Bank of South Carolina, I was never on-site at the Project to oversee the project and to protect Enterprise Bank's loan investment to Pendleton Station.

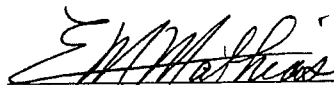
5. Prior to being hired by Enterprise Bank of South Carolina, I was not made aware of the potential claims of contractors and suppliers on the Project regarding non-payment by the owner.

6. After I was hired by Enterprise Bank to work on the Project and prior to obtaining legal advice, I paid approximately \$1.2 Million to subcontractors and suppliers that were threatening to file liens against the property. None of these payments were made prior to the deed in lieu of foreclosure.

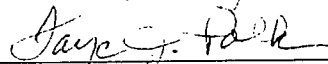
7. Charlie Kernaghan was not hired by Enterprise Bank until I was hired by the Bank, which was after the deed in lieu of foreclosure was filed.

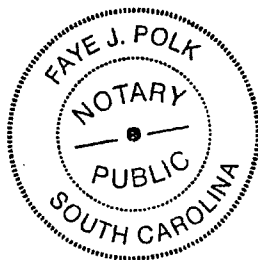
8. Absolutely no work had been completed on 'the 38 Acre Tract' prior to the date when I was hired by Enterprise Bank. In fact, only within the past year was the first work ever completed on the 38 Acre Tract.

AFFIANT FURTHER SAYETH NAUGHT.


Ervin Mathias

Sworn to and subscribed before
me this 10 day of August, 2010.


Notary Public, State of South Carolina
My Commission Expires: 2-23-2015



STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Miller Construction Company, LLC,)
Plaintiff,)
v.)

C.A. No. 2007-CP-04-2786

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Moorhead Construction, Inc.,)
Plaintiff,)
v.)

C.A. No. 2007-CP-04-2785

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Craft Construction Company, Inc. of Starr,)
Plaintiff,)
v.)

C.A. No. 2007-CP-04-2784

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

AFFIDAVIT OF CHARLES A. KERNAGHAN



PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, Charles A. Kernaghan, who after first being duly sworn, states:

1. My name is Charles A. Kernaghan and I am competent in all respects to testify regarding the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true. I give this Affidavit voluntarily.

2. I am a resident of Pickens County, South Carolina.

3. I was hired by Enterprise Bank of South Carolina to work on the Pendleton Station Project in March 2007 after the property associated with the Project was deeded to Enterprise Bank in lieu of foreclosure.

4. Prior to being hired by Enterprise Bank of South Carolina, I was working for Pendleton Station, LLC with the title of Project Manager, despite the fact that Benjamin L. Daniel, Sr. and Elizabeth Daniel retained all of the authority and all of the control with respect to the construction of the Project, as well as all other aspects of the Project. It is my belief that Benjamin L. Daniel, Sr. and Elizabeth Daniel purposefully limited the amount of knowledge and information I gained with respect to all aspects of the Project, including the issues related to the payment of construction-related services. This included Benjamin L. Daniel, Sr.'s demands that I not speak with anyone affiliated with Enterprise Bank regarding any aspect of the Project.

5. Prior to being hired by Enterprise Bank of South Carolina, I was never an agent of Enterprise Bank and I was never on-site at the Project to oversee the Project for the benefit of Enterprise Bank's loan investment to Pendleton Station.

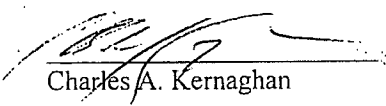
6. Prior to being hired by Enterprise Bank of South Carolina, I never witnessed Ervin Mathias being on-site to oversee the Project for the benefit of Enterprise Bank's loan investment to Pendleton Station.

7. After I was hired by Enterprise Bank to work on the Project and prior to obtaining legal advice, Enterprise Bank paid approximately \$1.2 Million to subcontractors and suppliers that were threatening to file liens against the property. None of these payments were made prior to the deed in lieu of foreclosure.

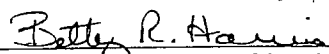
7. I was not hired by Enterprise Bank until Ervin Mathias was hired by the Bank, which was after the deed in lieu of foreclosure was filed.

8. Absolutely no work had been completed on 'the 38 Acre Tract' during my employment with Pendleton Station, LLC, absolutely no work was completed on this property up to and including the date when I was hired by Enterprise Bank, and absolutely no work was completed on this 38 Acre Tract of property up to and including my last date of work for Enterprise Bank, which was early 2010. Further, this tract of property was not even purchased by Pendleton Station, LLC until after each of the above referenced Plaintiffs' contracts were signed, as I attended the closing of this property when it was sold to Pendleton Station, LLC. None of the Plaintiffs' contracts include any work to be performed on this property. The plans for Phase 1-B of the Project do not include any portion of this 38 Acre Tract of property. The clearing performed by Plaintiff Miller was no where close to this 38 Acre Tract of property. And, the ponds, bridge and creek that the Plaintiffs did work on or around are located no where close to this property.

AFFIANT FURTHER SAYETH NAUGHT.


Charles A. Kernaghan

Sworn to and subscribed before
me this 26th day of August, 2010.


Notary Public, State of South Carolina
My Commission Expires: February 20 2011

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Miller Construction Company, Inc.)

☐ Plaintiff)

v.)

Pendleton Station, LLC, Et Al. (Enterprise Bank))

☒ Defendant.)

MOTION FEE PAID

IN THE COURT OF COMMON PLEAS

CASE NO.

2007-CP-04-2786

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
David J. Brousseau, Bar No.
Address:
P.O. Box 197, Anderson, SC 29622
phone: 864-225-0001 fax: 864-225-0004
e-mail: other:

Defendant's Attorney:
Thomas E. Dudley (For Enterprise Bank), Bar No.
66154
Address:
704 East McBee Avenue, Greenville, SC 29601
phone: 864-242-4899 fax: 864-242-4844
e-mail: SEE ATTACHED LIST other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Award of Costs and Attorneys' Fees

Estimated Time Needed: 30 minutes Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: 25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

CGoolsby

Date Filed:

TRUE COPY

- ☒ MOTION FEE COLLECTED: 25.00
☐ CONTESTED - AMOUNT DUE: _____

OCT - 7 2011

Richard A. Dudley
CLERK OF COURT

SCCA/233 (11-03)

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

In Re: Miller Construction Company, LLC v. Pendleton Station, LLC, et al.
C.A. No.: 2007-CP-04-2786

List of Other Defense Counsel:

ATTORNEY FOR PENDLETON STATION, LLC and BENJAMIN L. DANIEL, SR.
(Cross-Claiming Defendants)

James W. Logan, Jr.
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622
864-226-1910
864-226-1931 - facsimile

ATTORNEY FOR ANGELO PENZA:

Christopher G. Olson
Olson, Smith, Jordan & Cox, P.A.
P.O. Box 1633
Clemson, SC 29633
864-654-3680
864-654-3696 - facsimile

MOTION FEE PAID

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

Moorhead Construction, Inc.)

CASE NO.

☐ Plaintiff)

2007-CP-04-2785

v.)

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Pendleton Station, LLC, Et Al (Enterprise Bank))

☒ Defendant.)

Plaintiff's Attorney:

David J. Brousseau, Bar No.

Address:

P.O. Box 197, Anderson, SC 29622

phone: 864-225-0001 fax: 864-225-0004

e-mail: other:

Defendant's Attorney:

Thomas E. Dudley (For Enterprise Bank), Bar No.

66154

Address:

704 East McBee Avenue, Greenville, SC 29601

phone: 864-242-4899 fax: 864-242-4844

e-mail: SEE ATTACHED LIST other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion for Award of Costs and Attorneys' Fees

Estimated Time Needed: 30 min Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: 25.00**

☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: C. Goolsby

Date Filed:

TRUE COPY

OCT - 7 2011

☒ **MOTION FEE COLLECTED: 25.00**

☐ **CONTESTED - AMOUNT DUE:**

Richard A. Dudley
CLERK OF COURT

SCCA/233 (11-03)

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

In Re: Moorhead Construction, Inc. v. Pendleton Station, LLC, et al.
C.A. No.: 2007-CP-04-2785

List of Other Defense Counsel:

ATTORNEY FOR PENDLETON STATION, LLC and BENJAMIN L. DANIEL, SR.
(Cross-Claiming Defendants)

James W. Logan, Jr.
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622
864-226-1910
864-226-1931 - facsimile

ATTORNEY FOR ANGELO PENZA:

Christopher G. Olson
Olson, Smith, Jordan & Cox, P.A.
P.O. Box 1633
Clemson, SC 29633
864-654-3680
864-654-3696 - facsimile

MOTION FEE PAID

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Craft Construction Company, Inc., of Starr,
☐ Plaintiff)

v.)

Pendleton Station, Llc, Et Al. (Enterprise Bank)
☒ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2007-CP-04-2784

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: David J. Brousseau, Bar No. Address: P.O. Box 197, Anderson, SC 29622 phone: 864-225-0001 fax: 864-225-0004 e-mail: other:		Defendant's Attorney: Thomas E. Dudley (For Enterprise Bank), Bar No. 66154 Address: 704 East McBee Avenue, Greenville, SC 29601 phone: 864-242-4899 fax: 864-242-4844 e-mail: SEE ATTACHED LIST other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion for Award of Costs and Attorneys' Fees Estimated Time Needed: 30 min Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☐ Defendant		Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
Collected by: <u>C Gookby</u>		CLERK'S VERIFICATION Date Filed: TRUE COPY OCT - 7 2011 <u>P. R. H. H. H.</u> CLERK OF COURT	
☒ MOTION FEE COLLECTED: <u>25.00</u> ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

In Re: Craft Construction Company, Inc., of Starr v. Pendleton Station, LLC, et al.
C.A. No.: 2007-CP-04-2784

List of Other Defense Counsel:

ATTORNEY FOR PENDLETON STATION, LLC and BENJAMIN L. DANIEL, SR.
(Cross-Claiming Defendants)

James W. Logan, Jr.
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622
864-226-1910
864-226-1931 - facsimile

ATTORNEY FOR ANGELO PENZA:

Christopher G. Olson
Olson, Smith, Jordan & Cox, P.A.
P.O. Box 1633
Clemson, SC 29633
864-654-3680
864-654-3696 - facsimile

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Miller Construction Company, LLC,)
Plaintiff,)

C.A. No. 2007-CP-04-2786

v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

Moorhead Construction, Inc.,)
Plaintiff,)

C.A. No. 2007-CP-04-2785

v.)

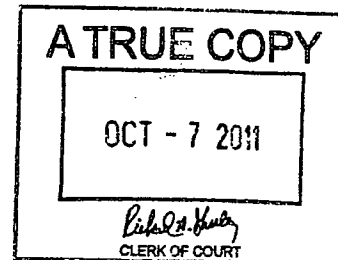
Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

Craft Construction Company, Inc. of Starr,)
Plaintiff,)

C.A. No. 2007-CP-04-2784

v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)



MOTION FOR AWARD OF COSTS AND ATTORNEYS' FEES IN ACCORDANCE
WITH S.C. CODE § 29-5-10

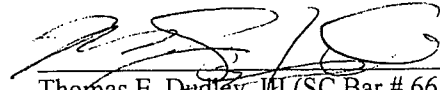
TO: DAVID J. BROUSSEAU, ATTORNEY FOR PLAINTIFFS:

YOU WILL HEREBY TAKE NOTICE that Defendant Enterprise Bank of South Carolina ("Enterprise Bank") by and through its undersigned counsel, will move on the tenth (10th) day hereafter, or as soon thereafter as counsel might be heard, for an award of costs and attorneys' fees in accordance with S.C. Code § 29-5-10, pertaining to the previous Order of the Court finding that Enterprise Bank was the prevailing party on the Mechanic's Lien Foreclosure actions filed by each of the above named Plaintiffs (in each of the above described actions) against the property known as "The 38 Acre Tract" (See Exhibit "1").

S.C. Code § 29-5-10 provides that the prevailing party shall be awarded the costs, including attorneys' fees, it incurred in association with its successful defense against a mechanic's lien. The Court having previously ruled that Enterprise Bank was the prevailing party with respect to the above referenced liens filed by the above named Plaintiffs, Enterprise Bank hereby moves the Court for an order in its favor against the above named Plaintiffs in an amount reflective of the costs and attorneys fees incurred by Enterprise Bank to that date for its defense of said liens.

In accordance to S.C.R.C.P. 11(a), counsel for Enterprise Bank asserts that prior to filing this motion it has communicated with opposing counsel and has attempted in good faith to resolve the matter contained herein, to no avail. Enterprise Bank's Motion is supported by the South Carolina Rules of Civil Procedure and a forthcoming affidavit, together with any legal memoranda and arguments as counsel for Enterprise Bank may present to the Court at or prior to the hearing on this motion.

Respectfully submitted this 5th day of October, 2011.



Thomas E. Dudley, III (SC Bar # 66154)
M. Stokely Holder (SC Bar # 73892)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899
(864) 242-4844 – facsimile
Attorneys for Defendant
Enterprise Bank of South Carolina

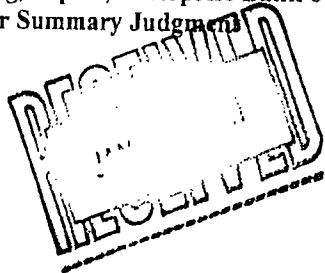
STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
TENTH (10th) JUDICIAL CIRCUIT

Order Granting, in part, and Denying, in part, Enterprise Bank of South
Carolina's Motions for Summary Judgment

Miller Construction Company, LLC,)
Plaintiff,)
v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

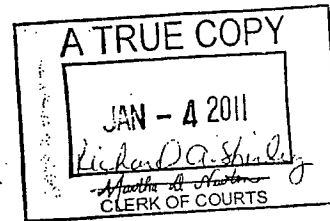


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GENERAL SESSIONS

C.A. No. 2007-CP-04-2786

Moorhead Construction, Inc.,)
Plaintiff,)
v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

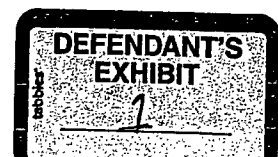


C.A. No. 2007-CP-04-2785

Craft Construction Company, Inc. of Starr,)
Plaintiff,)
v.)

Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger)
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

C.A. No. 2007-CP-04-2784



THIS MATTER comes before the Court upon Motions for Summary Judgment filed by Defendant Enterprise Bank of South Carolina [hereinafter Enterprise Bank] against all three (3) Plaintiffs in each of the three (3) above captioned cases. The relevant parties for these motions were Enterprise Bank, Craft Construction Company, Inc. of Starr, Miller Construction Company, LLC, and Moorhead Construction, Inc. Each of Enterprise Bank's Motions for Summary Judgment concern all three (3) causes of action filed by each Plaintiff in each of their respective lawsuits. These three causes of action were the same in each of the three different lawsuits: (1) Foreclosure of Mechanic's Lien; (2) Breach of Contract; and (3) Unjust Enrichment. Because the facts and circumstances surrounding these three cases and all of the causes of action are so similar, the Court held one hearing for the motions. The Clerk of Court is directed to file this Order in all three (3) case files.

Enterprise Bank submitted a brief to the Court and to the Plaintiffs prior to the hearing. The Plaintiffs did not submit a brief prior to the hearing; however, the Court allowed the Plaintiffs additional time after the hearing to submit a brief in support of their defense. The Court, in turn, allowed Enterprise Bank to submit a reply brief.

Standard of Review

Rule 56(c), S.C.R.C.P. provides that a motion for summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Further, "when a motion for summary judgment is made, an adverse party may not rest upon the mere allegations or denials of his pleadings, but must set forth specific facts showing there is a genuine issue of material fact

for trial." *Charping v. J.P. Scurry & Co., Inc.*, 296 S.C. 312, 372 S.E.2d 120, 122 (Ct. App., 1988).

In resolving a motion for summary judgment, the court must consider all the evidence properly before it. *Saluda Motor Lines v. Crouch*, 386 S.E.2d at 292. The existence of some factual dispute is not enough to deny summary judgment; the disputed facts must be material. *Id.* Furthermore, as Justice Littlejohn has explained, while the evidence must be viewed in the light most favorable to the nonmoving party, a party opposing summary judgment is not entitled to every conceivable inference from the facts, but only every reasonable inference. *Trotter v. First Federal Savings and Loan Ass'n*, 298 S.C. 85, 378 S.E.2d 267, 268 (Ct. App., 1989).

Findings of Fact

In early 2005, Plaintiff Moorhead Construction, Inc. [hereinafter Moorhead] contracted with Defendant Pendleton Station, LLC, [hereinafter Pendleton Station] to perform horizontal utility construction services on Phase IA of a project in Pendleton, South Carolina, called Pendleton Station [hereinafter 'the project']. Phase IA of the project was to be constructed on a two acre tract of land (the "2 Acre Tract") and two adjacent 31 acre tracts of land known respectively as "Tract A" and "Tract B".¹

Also in early 2005, Moorhead subcontracted Miller Construction, LLC (hereinafter Miller) to perform, *inter alia*, grading work on Phase IA of the project. Moorhead also subcontracted Craft Construction Co., Inc., of Starr [hereinafter Craft] in early 2005 to perform, *inter alia*, water and sewer line work on Phase IA of the project.

In August of 2005, Enterprise Bank loaned monies to Pendleton Station for the horizontal development of Phase IA. Enterprise Bank obtained a mortgage on Tract A as security for its

¹ Pendleton Station's master development plan included a subsequent Phase IB which was to be constructed on the northern portion of Tract A and a small portion of Tract B. In addition, the master plan included an even later Phase II which was to be constructed on the 38 Acre Tract (described below).

loan. In late December 2005, Pendleton Station acquired an adjacent 38 acre tract of land, which was to be developed in Phase II of the project (the "38 Acre Tract"). Upon acquisition of the 38 Acre Tract, Pendleton Station mortgaged this 38 Acre Tract to Enterprise Bank as additional security for the earlier August loan made by Enterprise Bank to Pendleton Station. In September of 2006, Enterprise Bank agreed to make an additional loan to Pendleton Station for the purpose of completing the horizontal development of Phase IA. This additional loan was also secured by a mortgage on the 38 Acre Tract from Pendleton Station to Enterprise Bank.

In January 2007, Pendleton Station allegedly defaulted on the loans to Enterprise Bank and never completed Phase IA of the project. On March 5, 2007, Pendleton Station deeded the property it owned to Enterprise Bank in lieu of foreclosure. On April 17 2007, Miller and Moorhead filed Mechanic's Liens against the 2 Acre Tract, Tract A, Tract B and the 38 Acre Tract. Enterprise Bank subsequently brought suit against Pendleton Station, et al. on May 11, 2007 for, *inter alia*, the difference between the value of the property deeded and the debt outstanding on the loans². Craft then filed Mechanic's Liens on May 25, 2007 against the 2 Acre Tract, Tract A, Tract B and the 38 Acre Tract. In August, 2007, the Plaintiffs filed each of the underlying lawsuits.

Claims for Foreclosure of Mechanic's Liens

Plaintiffs' Mechanic's Liens on 2 Acre Tract, Tract A and Tract B

Viewing the evidence in a light most favorable to the Plaintiffs, issues of fact exists as to whether the Plaintiffs' Mechanic's Liens as against the 2 Acre Tract, Tract A and Tract B should be foreclosed in accordance with S.C. Code § 29-5-10, *et seq.* Therefore, Enterprise Bank's Motions for Summary Judgment against the Plaintiffs as against the Plaintiffs' causes of action

² Enterprise Bank alleges that this difference is in excess of a millions dollars.

for foreclosure of their Mechanic's Liens on only the 2 Acre Tract, Tract A and Tract B are hereby denied.

Plaintiff's Mechanic's Liens on the 38 Acre Tract

Miller, Moorhead and Craft each filed a Mechanic's Lien against the 38 Acre Tract. As outlined in S.C. Code § 29-5-10, *et seq.*, the fundamental basis giving rise to a mechanic's lien is that the alleged unpaid labor and/or materials furnished be "*actually used in the erection, alteration, or repair*" of the *liened real estate*. S.C. Code § 29-5-10 (emphasis supplied).

Counsel for Plaintiffs admits that Craft's Rule 30(b)(6), SCRCF, deponent, William F. Craft, testified that Craft did not perform work on the 38 Acre Tract. Miller's Rule 30(b)(6), SCRCF, deponent, George Miller, testified that Miller had performed the majority of its work on Phase IA. Mr. Miller testified that Miller also performed some clearing work on Phase IB, which was just on the other side of Town Creek, which is a tributary where a bridge was built by Pendleton Station. Moorhead's Rule 30(b)(6), SCRCF, deponent, Keven Moorhead, testified that Moorhead only performed work on Phase IA and a small portion of Phase IB just on the other side of Town Creek.

Counsel for Miller, Moorhead and Craft indicated that each of the Plaintiffs were under the assumption that Town Creek was the boundary between the southern portion of the 38 Acre Tract and the northern boundary of Tracts A and B. The evidence produced by Enterprise Bank, which includes, without limitation, the above referenced testimony of the Plaintiffs' themselves, affidavit testimony from one of the project managers as to the actual construction that took place as well as the actual plats and actual plans that show the project overlaid on all of the referenced tracts of property, makes it abundantly clear that no work was ever completed on the 38 Acre Tract by Pendleton Station, the Plaintiffs, or anyone else. This evidence shows that the above

referenced creek-side work is, in fact, acres away from any portion of the 38 Acre Tract. The evidence also shows that there was never a contract signed between anyone for any work to be completed on the 38 Acre Tract. The Plaintiffs have not put forth any evidence to prove that they completed work on the 38 Acre Tract.

The well-established standard of review governing motions for summary judgment cannot be ignored. "The purpose of summary judgment is to obviate delay where there is no material issue of fact involved." *Manley v. Manley*, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Ct. App. 1987). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." *Shupe v. Settle*, 315 S.C. 510, 516-17, 445 S.E.2d 651, 655 (Ct. App. 1994).

In the case of *Bankers Trust of South Carolina v. Benson*, 267 S.C. 152, 154-155, 226 S.E.2d 703, 704 - 705 (1976), the South Carolina Supreme Court was unequivocal in its holding:

If a material issue of fact can be created by a denial based on ignorance of the facts and neglecting to pursue discovery, the office of summary judgment would be mummified. Parties would be subjected to the burden of a trial merely because formal and pretended averments can not be separated from genuine factual controversies. Yet, the purpose of summary judgment was to expedite disposition of cases not requiring the services of a fact finder.

Motions for summary judgment, rather than succoring dilatory exploitations, impose additional demands upon counsel. 'The tools and devices of discovery are more than options and opportunities. Rule 56 (our Circuit Court Rule 44) expressly exacts them by negative compulsion on pain of judicial denouement-saying in effect, 'Meet these affidavit facts or judicially die.' Diligence in opposing a motion for summary judgment is required, for such a motion with supporting logistics and gear does not lose its thrust by an opponent's complacency.'

Bankers Trust, 267 S.C. at 154-155, 226 S.E.2d at 704 - 705 (internal citations omitted).

Despite more than three years passing since the Plaintiffs filed the underlying lawsuit, the Plaintiffs have not provided any evidence to prove that they completed any work on the 38 Acre

Tract. Therefore, Enterprise Bank's Motion for Summary Judgment as to each of the Plaintiffs' causes of action for Foreclosure of Mechanic's Lien as to the 38 Acre Tract is hereby granted.

Breach of Contract Claims

Enterprise Bank filed the underlying Motions for Summary Judgment on December 2, 2009 wherein it specifically stated that the Motions included the Plaintiffs' respective Breach of Contract claims. After briefing the Breach of Contract issue prior to the subject hearing, arguing the issue at the hearing and briefing the issue again after the hearing, the Plaintiffs only now concede that the Breach of Contract claims raised in the pleadings do not apply to Enterprise Bank³. In now agreeing that Enterprise Bank should be awarded summary judgment on the Breach of Contract claims, counsel for the Plaintiffs admits that those causes of action were instead intended for Defendant Pendleton Station, LLC. Therefore, summary judgment is granted in favor of Enterprise Bank on each of the Plaintiffs' causes of action for Breach of Contract.

Quantum Meruit Claims

"Absent an express contract, recovery under *quantum meruit* is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." *Columbia Wholesale Company, Inc., v. Scudder May*, 440 S.E.2d 129, 130 (1994); *Ells v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 366 S.E.2d 12 (Ct App 1988).

Viewing the evidence in a light most favorable to the Plaintiffs, issues of fact exists as to: (1) whether a benefit was conferred upon Enterprise Bank by the Plaintiffs, (2) whether

³ It appears from the Complaints filed by the Plaintiffs that the Breach of Contract claims were against all "Defendants", including Enterprise Bank.

Enterprise Bank realized such a benefit, and (3) whether Enterprise Bank has retained such a benefit under conditions that make it unjust for Enterprise Bank to retain the benefit without paying its value. Therefore, Enterprise Bank's Motions for Summary Judgment against the Plaintiffs as against the Plaintiffs' causes of action for *Quantum Meruit* are hereby denied.

Conclusion

ACCORDINGLY, Defendant Enterprise Bank of South Carolina's Motions for Summary Judgment as to each of the Plaintiffs' Breach of Contract claims are **granted**. Defendant Enterprise Bank of South Carolina's Motions for Summary Judgment as to each of the Plaintiffs' claims for Foreclosure of their Mechanic's Liens as to only the 38 Acre Tract are **granted**.

However, Defendant Enterprise Bank of South Carolina's Motions for Summary Judgment as to each of the Plaintiffs' claims for Foreclosure of Mechanic's Liens as to Tract A, Tract B and the 2 Acre Tract are **denied**. Defendant Enterprise Bank of South Carolina's Motions for Summary Judgment as to each of the Plaintiffs' *Quantum Meruit* claims are **denied**.

IT IS SO ORDERED this 31st day of December, 2010.



Hon. J. Cordell Maddox, Jr.
Presiding Circuit Court Judge
Tenth (10th) Judicial Circuit

Anderson, South Carolina

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GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON) IN THE COURT OF COMMON PLEAS
) TENTH (10th) JUDICIAL CIRCUIT

**Defendant Enterprise Bank of South Carolina's
Pre-trial Memorandum**

Miller Construction Company, LLC,)
Plaintiff,)
v.)
)
Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger) C.A. No. 2007-CP-04-2786
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

Moorhead Construction, Inc.,)
Plaintiff,)
v.)
)
Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger) C.A. No. 2007-CP-04-2785
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

Craft Construction Company, Inc. of Starr,)
Plaintiff,)
v.)
)
Pendleton Station, LLC, Enterprise Bank)
of South Carolina, Diane L. Zellner,)
Trustee for the Diana L. Zellner)
Revocable Trust UAD, Angelo Penza,)
Bobby Bryant, Ursula Lesser, Roger) C.A. No. 2007-CP-04-2784
Rowe and Benjamin L. Daniel, Sr.,)
Defendants.)

Court's Previous Findings of Fact

In the Order signed by the Court on January 4, 2011, the Court made the following findings of fact.

In early 2005, Plaintiff Moorhead Construction, Inc. (hereinafter "Moorhead") contracted with Defendant Pendleton Station, LLC, (hereinafter "Pendleton Station") to perform horizontal utility construction services on Phase IA of a project in Pendleton, South Carolina, called Pendleton Station (hereinafter the "Project"). Phase IA of the project was to be constructed on a two acre tract of land (the "2 Acre Tract") and two adjacent 31 acre tracts of land known respectively as "Tract A" and "Tract B".¹

Also in early 2005, Moorhead subcontracted Miller Construction, LLC (hereinafter "Miller") to perform, *inter alia*, grading work on Phase IA of the project. Moorhead also subcontracted Craft Construction Co., Inc., of Starr "hereinafter Craft" in early 2005 to perform, *inter alia*, water and sewer line work on Phase IA of the project.

In August of 2005, Enterprise Bank loaned monies to Pendleton Station for the horizontal development of Phase IA. Enterprise Bank obtained a mortgage on Tract A as security for its loan. In late December 2005, Pendleton Station acquired an adjacent 38 acre tract of land, which was to be developed in Phase II of the project (the "38 Acre Tract"). Upon acquisition of the 38 Acre Tract, Pendleton Station mortgaged this 38 Acre Tract to Enterprise Bank as additional security for the earlier August loan made by Enterprise Bank to Pendleton Station. In September of 2006, Enterprise Bank agreed to make an additional loan to Pendleton Station for the purpose of completing the horizontal development of Phase IA. This additional loan was also secured by a mortgage on the 38 Acre Tract from Pendleton Station to Enterprise Bank.

In January 2007, Pendleton Station allegedly defaulted on the loans to Enterprise Bank and never completed Phase IA of the project. On March 5, 2007, Pendleton Station deeded the property it owned to Enterprise Bank in lieu of foreclosure. On April 17 2007, Miller and Moorhead filed Mechanic's Liens against the 2 Acre Tract, Tract A, Tract B and the 38 Acre Tract. Enterprise Bank subsequently brought suit against Pendleton Station, et al. on May 11, 2007 for, *inter alia*, the difference between the value of the property deeded and the debt outstanding on the loans². Craft then filed Mechanic's Liens on May 25, 2007 against the 2 Acre Tract, Tract A, Tract B and the 38 Acre Tract. In August, 2007, the Plaintiffs filed each of the underlying lawsuits.

¹ Pendleton Station's master development plan included a subsequent Phase IB which was to be constructed on the northern portion of Tract A and a small portion of Tract B. In addition, the master plan included an even later Phase II which was to be constructed on the 38 Acre Tract (described below).

² Enterprise Bank alleges that this difference is in excess of a millions dollars.

Order, January 1, 2011.

Enterprise Bank of South Carolina has already been damaged by the true culprits here, Pendleton Station, LLC and its associates, in the amount of at least \$15 Million on the project at issue.

Claims Remaining

I. Plaintiffs' Mechanic's Liens on 2 Acre Tract, Tract A and Tract B

The Court earlier held that issues of fact exists as to whether the Plaintiffs' Mechanic's Liens as against the 2 Acre Tract, Tract A and Tract B should be foreclosed in accordance with S.C. Code § 29-5-10, *et seq.* The primary issues of fact regarding these lien claims, described further herein below, are: (A) the timing of each lien; and (B) the amount of each lien.

A. The Timing of Each Mechanic's Lien.

(i) S.C. Code Ann. § 29-5-90. S.C. Code Ann. § 29-5-20 provides that a mechanic's lien "shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner or, in the event the owner cannot be found, upon the person in possession and files in the office of the register of deeds or clerk of court of the county in which the building or structure is situated..." a proper mechanic's lien. The Plaintiffs cannot show that they performed work on the Project in accordance with the contracts at issue within 90 days prior to filing their respective liens.

(ii) S.C. Code Ann. § 30-7-10. S.C. Code § 30-7-10 provides in pertinent part:

... all statutory liens on buildings and lands for materials or labor furnished on them ... shall be valid so as to affect the rights of subsequent ... purchasers for valuable consideration without notice only from the day and hour when they are

recorded in the office of the register of mesne conveyances or clerk of court of the county in which the property affected is situated But in case of a subsequent purchaser of real estate ... for valuable consideration without notice, the instrument evidencing such subsequent conveyance ... must be filed for record in order for its holder to claim under this section as a subsequent ... the priority shall be determined by the time of filing for record.

Assuming, *arguendo*, that the Court finds the Plaintiffs' liens were timely in accordance with S.C. Code Ann. § 29-5-20, the Plaintiffs' liens do not have priority over the previously filed deed to Enterprise Bank. Based merely on the Plaintiffs' position regarding Enterprise Bank's alleged "enrichment" from the Plaintiffs' work on the property along with the undisputed fact that Enterprise Bank gave credit to the prior owner for the value of the property deeded, the Plaintiffs have essentially admitted that the Bank received the deed in exchange for valuable consideration.

Moreover, the Plaintiffs cannot show that Enterprise Bank had knowledge of the Plaintiffs alleged unpaid work prior to the deed at issue being filed. In light of the Plaintiffs failure to perform any discovery in this case, they have recently embarked on a desperate cobbling of unsupported facts from other cases in an attempt to support their claims. Unfortunately, as in those other cases, no matter how far those alleged 'facts' are stretched or how often those alleged 'facts' are misrepresented, the Plaintiffs will fail in actually proving those 'facts' before this Court. Enterprise Bank welcomes the opportunity to clarify the many misrepresented facts in its effort to prevent any further unwarranted damage that has already innocently befallen upon it due to the fraudulent acts of Pendleton Station, LLC and those associated therewith.

B. The Amount of Each Lien.

(i) S.C. Code Ann. § 29-5-10. Under S.C. Code Ann. § 29-5-10, any person to whom a debt is due for labor performed or materials furnished in the erection, alteration or

repair of a building or structure upon real estate is given a lien on the property to secure payment of the debt. *S.C. Code Ann. § 29-5-10*. Moreover, as the South Carolina Supreme Court held in *Sea Pines Co. v. Kiawah Island Co., Inc.*, 268 S.C. 153, 159, 232 S.E.2d 501, 503 (1977), “a mechanic's lien under the statute is not a vehicle for collecting damages for breach of contract. The statute, by its own terms, secures a debt ‘for labor performed or furnished or for materials furnished and actually used.’”

Our Supreme Court has held “that overhead and profit, when stated as part of the contract price, are proper components of a mechanic's lien.” *Zepa Construction, Inc. v. Randazzo*, 357 S.C. 32, 591 S.E.2d 29 (2004); quoting *Sentry Eng'g & Constr., Inc. v. Mariner's Cay Dev. Corp.*, 287 S.C. 346, 338 S.E.2d 631 (1985). However, as the *Zepa* Court qualified, “[s]uch items, as such and standing by themselves, are nonlienable, but they become lienable when they are included in a contract”. *Zepa, supra*; quoting *Sentry* at 352, 338 S.E.2d at 634 (quoting 53 Am.Jur.2d *Mechanics' Liens* § 107 (1970)). So, under the mechanic's lien statute, contract damages such as overhead and profit are only recoverable “in the limited situation where the terms of overhead and profit are agreed upon by the parties and are subsequently embodied within a contract.” *Zepa, supra*.

In the case at hand, the contract between the general contractor (Moorehead) and the owner does not include overhead and profit. Yet, the Plaintiffs' liens include exorbitant amounts for lost profit and overhead. In accordance with the well established mechanic's lien law in this State, the Plaintiffs' liens must be reduced in, at least, the amount of those amounts sought for lost profit, overhead, and such other non-contract related items.

(ii) S.C. Code Ann. § 29-5-20. S.C. Code Ann. § 29-5-20 provides in pertinent part: “In no event shall the aggregate amount of any liens filed by a sub-subcontractor

or supplier exceed the amount due by the contractor to the subcontractor to whom the subcontractor or supplier has supplied labor, material, or services...". Moorehead, the general contractor in the case at hand, cannot prove that it was owed nearly the amount it claims in its mechanic's lien. The actual amount, if any, owed to Moorehead at the time of its lien is far less than the amounts claimed due by its subcontractors Miller and Craft. Thus, the monies claimed under the respective mechanic's liens, must be limited to the amount, if any, owed by the owner to Moorehead.

(iii) S.C. Code Ann. § 29-5-10. S.C. Code Ann. § 29-5-10 provides that the prevailing party shall be awarded the costs, including attorneys' fees, it incurred in association with its successful defense against a mechanic's lien. S.C. Code Ann. § 29-5-10 further provides, in pertinent part: "For purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. One verdict assumes some entitlement to the mechanic's lien and the consideration of compulsory counterclaims. The party whose offer is closer to the verdict reached is considered the prevailing party in the action." Considering the amount, if any, due to the general contractor by the owner which, assuming arguendo, could somehow be attributed by the Court to Enterprise Bank, this amount will be so diminutive in comparison to the incredibly inflated amounts claimed due by the Plaintiffs that Enterprise Bank will be the prevailing party. And, in light of the fact that Enterprise Bank has been further prejudiced in this set of circumstances by being the only party (essentially forced to) conduct discovery, which was substantial, the vast amount of fees and costs paid by Enterprise Bank will equal or exceed the amounts, if any, found due under the mechanic's lien.

II. Plaintiffs' Quantum Meruit Claims

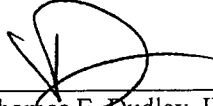
Please see Enterprise Bank's Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, which is being filed contemporaneously herewith, and is incorporated herein by reference.

As discussed therein, the Plaintiffs cannot satisfy any of the elements required in South Carolina regarding claims of Unjust Enrichment/Quantum Meruit: (1) that they conferred a non-gratuitous benefit on Enterprise Bank; (2) that Enterprise Bank realized some value from the benefit; and (3) that it would be inequitable for Enterprise Bank to retain the benefit without paying its value: *Niggel Associates, Inc. v. Polo's of North Myrtle Beach, Inc.*, 296 S.C. 530, 374 S.E. 2d 507 (Ct.App. 1988); *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 366 S.E.2d 12 (Ct.App. 1988); *Columbia Wholesale Company, Inc., v. Scudder May*, 440 S.E.2d 129, 130 (1994)("Absent an express contract, recovery under *quantum meruit* is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.").

Conclusion

As the actual facts are proven at trial, and as the same are applied to the actual law at issue, a verdict against Enterprise Bank of South Carolina adding to the more than \$15 Million for which Enterprise Bank has already been damaged by the fraudulent acts of others will not be proper in this case.

Respectfully submitted,



Thomas E. Dudley, III (SC Bar #66154)
M. Stokely Holder (SC Bar # 73892)
KENISON DUDLEY & CRAWFORD, LLC
704 E. McBee Avenue
Greenville, SC 29601
Phone: (864) 242-4899
Fax: (864) 242-4844

October 25, 2011
Greenville, SC

Attorneys for the Defendant
Enterprise Bank of South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Miller Construction Company, LLC,)
Plaintiff,)
v.)

C.A. No. 2007-CP-04-2786

Pendleton Station, LLC, Enterprise Bank of)
South Carolina, Diane L. Zellner, Trustee)
for the Diana L. Zellner Revocable Trust)
UAD, Angelo Penza, Bobby Bryant, Ursula)
Lesser, Roger Rowe and Benjamin L.)
Daniel, Sr.,)
Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Moorhead Construction, Inc.,)
Plaintiff,)
v.)

C.A. No. 2007-CP-04-2785

Pendleton Station, LLC, Enterprise Bank of)
South Carolina, Diane L. Zellner, Trustee)
for the Diana L. Zellner Revocable Trust)
UAD, Angelo Penza, Bobby Bryant, Ursula)
Lesser, Roger Rowe and Benjamin L.)
Daniel, Sr.,)
Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

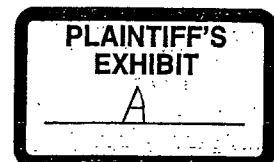
IN THE COURT OF COMMON PLEAS

Craft Construction Company, Inc. of Starr)
Plaintiff,)
v.)

C.A. No. 2007-CP-04-2784

Pendleton Station, LLC, Enterprise Bank of)
South Carolina, Diane L. Zellner, Trustee)
for the Diana L. Zellner Revocable Trust)
UAD, Angelo Penza, Bobby Bryant, Ursula)
Lesser, Roger Rowe and Benjamin L.)
Daniel, Sr.,)
Defendants.)

AFFIDAVIT FOR AWARD OF ATTORNEYS' FEES & COSTS



Personally appeared before me, Thomas E. Dudley, III, who being duly sworn, deposes and says as follows:

1. I am the primary attorney for the Defendant Enterprise Bank of South Carolina in the above-referenced actions and make this Affidavit in support of an Award for Attorneys' Fees.

2. In March, 2007, my firm, Kenison & Dudley, LLC was engaged by Enterprise Bank of South Carolina to represent it in connection with a project known as Pendleton Station in Anderson County. This representation was to be on an hourly rate of \$250.00-\$155.00 for attorneys and \$105.00 for paralegals.

3. In further support of this petition, I would further state that I was admitted to the Bar of the State of South Carolina in May 1993 and the North Carolina Bar in 1994. I have devoted a significant percentage of my practice to the handling of construction and business related disputes.

4. These cases required significant outside research to fully and adequately present it.

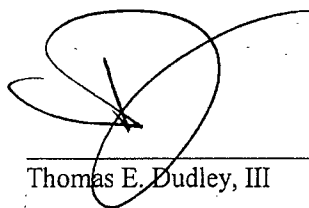
5. In further support of this petition for recovery of fees, I would state that the attorneys' fees are customary in the Upstate for construction disputes.

6. I incorporate herein Appellate Rule 407 of the Rules of the South Carolina Supreme Court which contains Rule 1.5 concerning attorney's fees. I further make this Affidavit and I rely upon the discretion of this Court in the determination of the amount of fees and the Court's knowledge of the litigation between the parties.

7. Enterprise Bank was the prevailing party on the Mechanic's Lien Foreclosure actions filed by each of the above named Plaintiffs against the property known as the "38 Acre Tract". Pursuant to S.C. Code § 29-5-10, the prevailing party shall be awarded the costs, including attorneys' fees, it incurred in association with its successful defense against a mechanic's lien. The Court previously ruled that Enterprise Bank was the prevailing party with respect to the above referenced liens filed by the above named Plaintiffs.

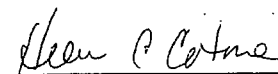
8. The attorneys' fees and costs from March 2007 up to and including January 2011 (the date of the Court's Order) is \$68,031.55. The undersigned feels as the Court Order only dealt with 38 acres of the 102 acre property known as Pendleton Station, therefore, the attorneys' fees and costs should only deal with that portion of the property. As such, the undersigned submits that the total fees and costs now due would be \$25,345.09, which represents (38/102 acres) 37.25% of the \$68,031.55 incurred during the referenced dates, or \$8,357.53 on each of the above three referenced matters.

9. Based not only upon the time necessarily devoted to these cases, but also upon the criteria which have been held to be relevant in setting of attorney fees and costs, the undersigned, on behalf of his client, requests the Court review this matter, together with this Affidavit, and grant judgment in favor of Enterprise Bank in the sum of \$8,357.53 in each of the above three referenced matters, or whatever sum as may be determined by the Court as reasonable attorneys' fees and costs, and that the Plaintiffs, above named, be required to pay same within a reasonable time as may be determined by the Court.



Thomas E. Dudley, III

Sworn to and subscribed before me
this 24 day of JANUARY, 2012.



Notary Public, State of South Carolina
My commission expires: 1-29-2017

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Moorhead Construction, Inc.)

☐ Plaintiff)

v.)

Pendleton Station, Llc, Et Al. (Enterprise Bank))

☒ Defendant.)

MOTION FEE PAID

IN THE COURT OF COMMON PLEAS

CASE NO.
2007-CP-04-2785

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
David J. Brousseau, Bar No.
Address:
P.O. Box 197, Anderson, SC 29622
phone: 864-225-0001 fax: 864-225-0004
e-mail: other:

Defendant's Attorney:
Thomas E. Dudley (For Enterprise Bank), Bar No.
66154
Address:
704 East McBee Avenue, Greenville, SC 29601
phone: 864-242-4899 fax: 864-242-4844
e-mail: SEE ATTACHED LIST other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Reconsideration

Estimated Time Needed: 30 min Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: 25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

Date Filed:

TRUE COPY

JUN 26 2012

Richard A. Dudley
CLERK OF COURT

SCCA/233 (11-03)

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

In Re: Moorhead Construction, Inc. v. Pendleton Station, LLC, et al.
C.A. No.: 2007-CP-04-2785

List of Other Defense Counsel:

ATTORNEY FOR PENDLETON STATION, LLC and BENJAMIN L. DANIEL, SR.

James W. Logan, Jr.
Logan, Jolly & Smith, LLP
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Anderson, SC 29622
864-226-1910
864-226-1931 - facsimile

ATTORNEY FOR ANGELO PENZA:

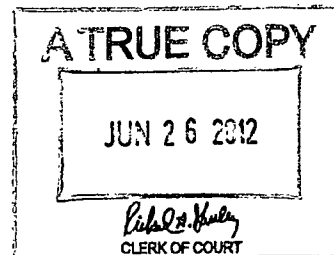
Christopher G. Olson
Olson, Smith, Jordan & Cox, P.A.
P.O. Box 1633
Clemson, SC 29633
864-654-3680
864-654-3696 - facsimile

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH (10 TH) JUDICIAL CIRCUIT
Moorhead Construction, Inc.	)	C.A. No 2007-CP-04-2785
	)	
Plaintiff,	)	DEFENDANT ENTERPRISE BANK OF
	)	SOUTH CAROLINA'S
vs.	)	MOTION TO RECONSIDER
	)	PURSUANT TO RULE 59(e), S.C. R. Civ. P.
Pendleton Station, LLC;	)	
Enterprise Bank of South Carolina; and	)	
Angelo Penza,	)	
	)	
Defendants.	)	

Pursuant to Rule 59(e), S.C. R. Civ. P., Defendant, Enterprise Bank of South Carolina ("Enterprise Bank"), hereby moves this Court to alter or amend its rulings in its Order dated June 7, 2012 (the "Order"). Enterprise Bank received a copy of the Order on June 13, 2012.

In support of this Motion, Enterprise Bank respectfully requests the Court reconsider its Order as to the following:

1. Enterprise Bank respectfully requests the Court alter or amend its Order regarding the personal judgment entered against Enterprise Bank, and the basis thereof.
2. Enterprise Bank respectfully requests the Court alter or amend its Order regarding the Plaintiff's right to a mechanic's lien against Enterprise Bank in light of S.C. Code Ann. § 29-5-10, *et seq.*
3. Enterprise Bank respectfully requests the Court alter or amend its Order regarding the Plaintiff's right to a mechanic's lien against Enterprise Bank in light of S.C. Code Ann. § 29-5-40.



4. Enterprise Bank respectfully requests the Court alter or amend its Order regarding the Plaintiff's right to a mechanic's lien against Enterprise Bank on Tract A in light of S.C. Code Ann. § 30-7-10.

5. Enterprise Bank respectfully requests the Court alter or amend its Order regarding the force of Plaintiff's lien against existing recorded mortgage of Plaintiff.

6. Enterprise Bank respectfully requests the Court alter or amend its Order regarding the inclusion of the amount of \$33,642.00 in its award to the Plaintiff under the Plaintiff's mechanic's lien foreclosure claim.

7. Enterprise Bank respectfully requests the Court alter or amend its Order regarding the 'prevailing party' analysis provided by the Court.

8. Enterprise Bank respectfully requests the Court alter or amend its Order regarding the attorney's fees of \$39,000.00 awarded to Plaintiff.

9. Enterprise Bank respectfully requests the Court alter or amend its Order regarding its award of pre-judgment interest charged to Enterprise Bank.

10. Enterprise Bank respectfully requests the Court alter or amend its Order regarding the doctrine of merger.

11. Enterprise Bank respectfully requests the Court alter or amend its Order to properly apply this State's equitable tenets that are relevant here.

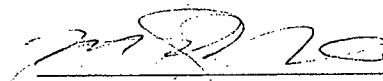
12. Enterprise Bank respectfully requests the Court alter or amend its Order regarding the findings of fact and legal analysis provided therein.

This Motion is based upon the pleadings, discovery, the applicable Rules of Civil Procedure and their related authority, applicable common law and statutory law of this State, and

upon such supporting memorandum and affidavits as may submitted in connection herewith prior to the hearing of this Motion.

Pursuant to Rule 11, SCRCP, counsel for Enterprise Bank hereby certifies that consultation with counsel for Plaintiff would serve no useful purpose.

Respectfully submitted,



Thomas E. Dudley, III (SC Bar #66154)
M. Stokely Holder (SC Bar # 73892)
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Greenville, SC 29601
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Attorneys for the Defendant
Enterprise Bank of South Carolina

June 22-2012
Greenville, SC