

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Mar 13 2024

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Clifton Newman, The Honorable Walton J. McLeod, IV
Lexington County

Unpublished Opinion 2024-UP-022
(S.C.Ct. App. Filed January 17, 2024)

ARM Quality Builders LLC d/b/a ARM Quality Builders.....Petitioner

vs.

Joseph A. Golson and Lycia B. Golson and Branch Banking
and Trust Company.....Respondent

Ahmad Mazloon.....Third-Party Petitioner

vs.

Joseph A Golson and Lycia B. Golson.....Third-Party Respondents

PETITION FOR WRIT OF CERTIORARI

James Randall Davis
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512
Attorney for Petitioner and
Third-Party Petitioner

Other Counsel of Record:
E. Wade Mullins, III, Esquire
Post Office Box 61110
Columbia, SC 29260-1110
(803) 252-7693

Caitlin C. Heyward, Esquire
Columbia, South Carolina 29201
Post Office Box 1389 (29202)
(803) 244-7993
Attorneys for Respondent

The Honorable Clifton Newman
Active/Retired Circuit Court Judge
P O Box 516
Kingstree, SC 29556-0516
cnewmanj@sccourts.org

The Honorable Walton J. McLeod, IV
205 E. Main Street
Lexington, SC 29072
wjmcleodsc@sccourts.org

INDEX

Certificate of Counsel 4
Questions Presented 4
Statement of the Case 4
Arguments..... 6

I. By concluding that the Circuit Court was in error in finding that the
Petitioners failed to properly serve the Mechanic’s Lien on the
Respondents pursuant to SC Code Ann. §29-5-90..... 6

II. By concluding that the Circuit Court was in error in granting the
Motion to Dismiss Mechanic’s Lien as to the timely filing of the
90-day statutory filing period..... 9

III. By concluding that the Circuit Court was in error in awarding
the Respondent Attorney’s Fees based on Dismissal of
Mechanic’s Lien..... 11

IV. By concluding that the Circuit Court was in error in finding that
Punitive Damages should be awarded against the Petitioners..... 14

Conclusion 18

CERTIFICATE OF COUNSEL

Counsel for ARM Quality Builders LLC d/b/a ARM Quality Builders and Ahmad Mazloom (hereafter "Petitioners") certifies that there was a unpublished opinion of the Court of Appeals in this matter filed January 17, 2024 and the Petition for Rehearing by Petitioner was denied by the Court of Appeals on February 12, 2024.

QUESTIONS PRESENTED

- I. BY CONCLUDING THAT THE CIRCUIT COURT WAS IN ERROR IN FINDING THAT THE PETITIONERS FAILED TO PROPERLY SERVE THE MECHANIC'S LIEN ON THE RESPONDENTS PURSUANT TO SC CODE ANN. §29-5-90
- II. BY CONCLUDING THAT THE CIRCUIT COURT WAS IN ERROR IN GRANTING THE MOTION TO DISMISS MECHANIC'S LIEN AS TO THE TIMELY FILING OF THE 90-DAY STATUTORY FILING PERIOD
- III. BY CONCLUDING THAT THE CIRCUIT COURT WAS IN ERROR IN AWARDING THE RESPONDENT ATTORNEY'S FEES BASED ON DISMISSAL OF MECHANIC'S LIEN
- IV. BY CONCLUDING THAT THE CIRCUIT COURT WAS IN ERROR IN FINDING THAT PUNITIVE DAMAGES SHOULD BE AWARDED AGAINST THE PETITIONERS AND THIRD-PARTY PETITIONERS

STATEMENT OF THE CASE

On June 15, 2017, the Petitioners filed a Summons, Complaint and Lis Pendens against the Respondents which alleged Breach of Contract, Foreclosure of Mechanic's Lien, Violation of SC Code Ann. §29-6-10, et seq., quasi-contract, quantum meruit, and unjust enrichment. (R. Vol. I, pp. 136-152) The Respondents filed a timely Answer and Counterclaim. (R. Vol. I, pp. 153-163) On May 16, 2018, the Respondents filed a Motion to Amend their Answer to assert certain counterclaims and Third-Party Complaint. On July 5, 2018 the Court granted the Respondents' Motion to Amend and Third-Party Complaint. (R. Vol I, p. 7) On July 9, 2018, the Respondents filed a Third-Party Summons, Amended Answer and Third-Party Complaint of Respondents Joseph A. Golson and Lycia B. Golson wherein they named Ahmad Mazloom as a Third-Party Respondents. (R. Vol. I, pp. 234-253) Subsequently thereto, the Petitioners filed a timely Answer. (R. Vol I, pp. 254-253). The Petitioners filed a Motion to Dismiss/Dissolve the

Mechanics Lien filed by the Petitioners by Motion dated August 15, 2018. (R. Vol. I, pp. 257-264) On September 10, 2018, the Petitioners filed an Affidavit of Attorney's Fees with supporting Affidavits of Joseph A. Golson and Lycia B. Golson which were filed on September 13, 2018. (R. Vol. I, pp. 264-267) On November 27, 2018, The Honorable Clifton B. Newman issued his Order on the said Motions granting the motion to dissolve the mechanic's lien and dismissal of the mechanic's lien foreclosure cause of action. (R. Vol. I, pp. 63-75) On December 7, 2018, the Petitioners filed a Motion to Reconsider pursuant to SCRCP Rule 52(b) and 59(h). On May 20, 2019, the Court issued its Order denying Petitioners' Motion to Reconsider. (R. Vol. I, pp.76-78) In The Honorable Clifton B. Newman's Order of November 27, 2018, he determined "Respondents are entitled to an award of attorney's fees as the prevailing party." (R. Vol. I, p. 73, lines 6-7) On May 30, 2019, the Petitioners filed a Motion to Reconsider the attorney's fees awarded in the amount of \$25,000 to the Respondents in this action. On August 16, 2019, the Court denied said Motion to Reconsider but stated no grounds for said denial. (R. Vol. I, p. 81) On December 18-20, 2019 a non-jury bench trial was held in this matter and on August 7, 2020, The Honorable Walton J. McLeod issued his Order awarding judgment against the Petitioners. (R. Vol. II and III, p. 456-1100; R. Vol. I, pp. 130-132) Thereafter, on August 17, 2020 the Petitioners filed a motion to reconsider the Order of The Honorable Walton J. McLeod (R. Vol. I, pp. 130-132) and Judge McLeod filed his Order denying the same on September 18, 2020. R. Vol. I, pp. 133-135) Thereafter, the Petitioners filed its Notice of Appeal to appeal this matter to the South Carolina Court of Appeals on October 15, 2020. Thereafter, the Court of Appeals issued its decision on January 17, 2024. The attorney for the Petitioners filed a Motion to Rehearing on February 1, 2024 and the Court of Appeals denied the same by Order issued February 12, 2024.

ARGUMENTS

Pursuant to Rule 242(b)(1) and (b)(3), SCAR, the Petitioner respectfully moves for a Writ of Certiorari and for this Court to review and reverse the Court of Appeals' Unpublished Opinion No. 2024-UP-022, which affirmed, reversed in part and remanded the Circuit Court's decision and ruling on several issues. Review should be granted in that under Rule 242(b1) there is a novel issue of law in that the Mechanic's Lien in this case should not have been dismissed based on a "mere technicality" on the issue of the service of the Mechanic's Lien filings and under pursuant to Rule 242(b)(3), the decision of the Court of Appeals is in conflict with decisions of the Supreme Court on what an Order should reflect as to how calculation of attorney's fees should be determined and what attorney's fees are directly related to the Mechanic's Lien issue. Also, the decision of the Court of Appeals is in conflict with the decisions of the Supreme Court in regards to necessary findings by the Court in establishing the amount of punitive damages.

I. Whether by concluding that the Circuit Court was in error in finding that the Petitioners failed to properly serve the Mechanic's Lien on the Respondents pursuant to SC Code Ann. §29-5-90.

STATEMENT OF FACTS

The Honorable Clifton Newman ruled in his Order that:

1. A lien claimant is required to serve a copy of the lien on the property owner or the lien is automatically dissolved. *S. C. Code Ann.* § 29-5-90. (R. Vol I, p. 73)
2. In Judge Newman's footnote 3 on page 9 of his Order, he indicates that S.C. Code Ann. §29-5-90 does not specify a manner of service. (R. Vol. I, p. 71)
3. The purpose of requiring service of notice of the mechanic's lien is to advise a property owner of the existence of the lien and to afford him or her an opportunity to investigate the claim and determine its validity. (R. Vol. I, p. 69)

4. Because lien statutes are in derogation of common law, they should be construed against lien claimants. (R. Vol. I, p. 67)

5. Respondents retained E. Wade Mullins for the purpose of facilitating a pre-litigation resolution between the parties. (R. Vol. I, p. 64)

The Honorable Clifton Newman's Order should be reversed for the following reasons.

1. Judge Newman does not cite any South Carolina case which indicates that not providing the affidavit of the sheriff or his deputy is a fatal defect in service.

2. Judge Newman acknowledges that the statute does not specify the manner of service on the property owner. (R. Vol. I, p. 71, footnote 3)

3. *Clo-Car Trucking Co., Inc. v. Cliffloe Estates of South Carolina, Inc.*, 282 S.C. 573, 575-76, 320 S.E.2d 51, 53 (Ct. App. 1984), states "we believe the rule in this State is that mechanic's lien statutes, being remedial, are to be given a liberal construction" and "[E]ven though [we] follow[] the view that the mechanic's lien law is to be construed in a most liberal and comprehensive manner in favor of lien claimants, a claim may not be sustained when that can be done only by a forced and unnatural interpretation of the language of the statute...." The Courts have also ruled "Minor imperfections and mistakes in the complaint or petition to foreclose a lien do not affect its validity." *Wood v. Hardy*, 235 S.C 131, 110 S.E.2d 157 (1959). (R. Vol. I, p. 3)

The applicable service statute reads as follows:

Such a 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 statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien sufficiently accurate for identification, with the name of the owner of the property, if known, which

certificate shall be subscribed and sworn to by the person claiming the lien or by someone in his behalf and shall be recorded in a book kept for the purpose by the register or clerk who shall be entitled to the same fees therefor as for recording mortgages of equal length. Provided, that in the event neither the owner nor the person in possession can be located after diligent search, and this fact is verified by affidavit of the sheriff or his deputy, the lien may be preserved by filing the statement together with the affidavit. The delivery on the register or clerk for filing, as provided in this section, shall be and constitute the delivery contemplated with regard to such liens in Title 30 of this Code. (R. Vol. I, p. 4)

Firstly, Respondents have complied with the statute completely, with the exception of the affidavit from the sheriff's department, as discussed below. The process server for the Petitioners went to Respondents' residence on two occasions, not one as the Court indicates, and the process server by sworn statement, indicated he taped notice of the Mechanic's Lien on the front door of the Respondents' residence.

The above underlined portion of the statute in question is the "underlined" portion. Petitioners argue that the reading of the underlined portion of the statute indicates that if you cannot locate the property owner, after a diligent search, you can utilize the affidavit from the sheriff or a deputy. There was no issue as to the location of the Respondents at the time of the service based on the deposition of the Respondent Joseph Golson indicating that they had moved into the residence in 2017 and the 2017 Lexington County Tax Bill showed that the Respondents were the owners of this property. (R. Vol. IV, p. 1756)

Respondents, at the time of the service, retained an attorney who was acting on their behalf and full disclosure of the lien was given to him a few days after the attempted service on the Respondents. The retaining of counsel for the Respondents was done prior to the attempted service date of May 9, 2017. Although mechanic's liens are purely statutory, and the requirements of the statute must be strictly followed, our courts have recognized that the laws of agency apply to the statutes controlling the creation and perfection of mechanic's lien. *Hodge v.*

First Federal Sav. And Loan Ass'n, 267 S.C. 270, 274-75, 227 S.E.2d 310, 312 (1976). Attorneys are recognized in this State as agents for their clients. *DeBerry v. McCain*, 275 S.C. 569, 274 S.E.2d 293 (1981).

II. Whether by concluding that the Circuit Court was in error in granting the Motion to Dismiss Mechanic's Lien as to timely filing of the 90-day statutory filing period.

The Respondents' Motion to Dismiss did not raise an issue as to whether the mechanic's lien was filed after the expiration of the ninety (90) day statutory filing period. Reviewing the second page of the Respondents' Motion indicates that it is based on the Affidavit of Non-Service filed with the Notice of Mechanic's Lien by the Petitioners, no money was owed to the Petitioners and that Petitioners did not satisfy the requirements of SC Code Ann. §29-5-10 which deals with those type materials and labor that you can file for a Mechanic's Lien.

Petitioners, prior to the Motion to Dismiss being heard, indicated that they were relying on Petitioners' Notice of Mechanic's Lien and documents attached thereto as well as the Affidavit of Non-Service and SC Code Ann. §29-5-10. Petitioners provided their Brief and accompanying material to the Court prior to the Motion being heard. Respondents' Motion to Dismiss that if they were going to provide any supporting affidavits, etc., it would be served pursuant to Rule 56, prior to the hearing, which no additional materials were provided prior to the hearing.

Petitioners filed a Brief, with accompanying documents, in response to Respondents' supporting material. Documents submitted by the Petitioners included the following: (1) Notice of Mechanic's Lien which has been referenced above along with Verification signed by the owner of the Petitioners company, Amhad Mazloom, indicating that the document attached to the Verification showed a balance of money owed to the Petitioners in the amount \$55,085.52, dated February 11, 2017 (R. Vol. I, pp. 136-152,); (2) Notice of Mechanic's Lien was the legal

description for the Respondents' property which has a property address of 207 Libby Ariail Lane, Chapin, SC; (3) an Affidavit of Non-Service dated May 11, 2017 signed by a Brian Setree, a process server, indicating that an attempted service of the Notice of Certificate of Mechanic's Lien, Exhibits A and B, on the Respondents, on May 11, 2017, but was unsuccessful due to the residence being unoccupied (R. Vol I, p. 1767); (4) an Affidavit from the same process server indicating that he had attempted serve on the Respondents at their home place on two different occasions and on the last occasion, May 9, 2017, he had posted the Notice of Mechanic's Lien and ancillary documents on the front door of the house by taping the items to the door; (5) pages of the deposition of the Respondent, Joseph A. Golson were provided which indicates that Mr. Golson had testified in his deposition that he and his wife had moved into the residence in January 2017 and that address was their residence and that they had claimed this property as their legal residence for tax purposes with the County of Lexington and a Certificate of Occupancy had been issued for them to move into the house in January 2017 (R. Vol. IV, pp. 1747-1755); (6) the legal residence document from Lexington County for the Respondents' house for the year 2017 (R. Vol. IV, p. 1756); and (7) documentation that on May 15, 2017, copies of the Notice of Mechanic's Lien document and accompanying documentation was sent to counsel for the Respondents which counsel had been retained by the Respondents on this specific issue (R. Vol. IV, pp. 1761-1766).

No additional information was requested by the Court on this matter and if any additional information was sent, it was not on a motion basis or with the Court's consent.

An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The

requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. SCRCF Rule 7(b)(1).

Petitioners contends that the Motion to Dismiss should be limited to those matters which are actually presented in the Motion to Dismiss and not matters that were beyond documentation filed with the Court.

III. Whether by concluding that the Circuit Court was in error in awarding the Respondent's attorney's fees based on Dismissal of Mechanic's Lien.

On May 20, 2019, The Honorable Clifton Newman issued his Order granting the Respondents attorney's fees in the amount of \$25,000.00. (R. Vol. I, pp. 76-78). The Order states "The Court, having considered the Amended Affidavit of Attorney's Fees and Costs of Respondents Joseph A. Golson and Lycia B. Golson, the Fee Transaction Report, and the nature and extent of the professional services rendered, awards counsel for the Respondents attorney's fees in the amount of \$25,000." (R. Vol I, p. 77)

In *Keeney's Metal Roofing, Inc. v. Palmieri*, 345 S.C. 550, 548 S.E.2d 900 (2001), the Court held "a party may recover attorney's fees and costs under § 29-5-20(A) as a 'prevailing party' even though the party obtained a dismissal via a procedural rule, provided the dismissal was not due to [a] mere technicality." See also, *EFCO v. Renaissance of Charleston Harbor, LLC*, 370 S.C. 612, 635 S.E.2d 922.

Also, it was noted in *Keeney* that "although Petitioners were dismissed pursuant to a procedural rule, the dismissal was not on a mere technicality. Instead, Petitioners prevailed because, as a matter of law, they could not be held liable for the damages Keeney sought under any circumstance.

For legal and factual reasons hereinafter stated, Petitioners believes that this case falls within the "technicality" provision of the prevailing party rule. See Argument I above.

“As a general rule, attorney’s fees are not recoverable unless authorized by contract or statute.” Id. At 553-54, 548 S.E.2d at 902. Accordingly, attorney’s fees are available for only those fees incurred by Respondents in defending against the lien. See *Utilities Const. Co., Inc. v. Wilson*, 468 S.E.2d 1 (Ct. App. 1996) (finding the circuit court abuse its discretion by awarding attorney’s fees for defending against breach of contract and unjust enrichment causes of action included in the mechanic’s lien foreclosure action).

Our Court has found an abuse of discretion as to the amount of the attorney fee award and remand to the trial court for the entry of an award based upon the time Wilson's counsel spent in defending the mechanic's lien cause of action only. *Utilities Const. Co., Inc. v. Wilson*, 468 S.E.2d 1 (Ct. App. 1996).

The circuit court abused its discretion by awarding attorney’s fees for work done outside the scope of defending against the mechanic’s lien. See *Keeney’s Metal Roofing, Inc. v. Palmieri*, 345 S.C. 550, 553, 548 S.E.2d 900, 901 (Ct. App. 2001).

Cedar Creek Props., 320 S.C. at 487, 465 S.E.2d at 776 (stating the amount of attorney fees should be limited to those actions specifically involving the mechanic's lien).

When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor set forth in *Collins v. Collins*, 239 S.C. 170, 122 S.E.2d 1 (1961)]." *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993). There are six factors to consider in determining an award of attorney’s fees; 1) nature, extent, and difficulty of the legal services rendered, 2) time and labor devoted to the case, 3) professional standing of counsel, 4) contingency of compensation, 5) fee customarily charged in the locality for similar services, and 6) beneficial results obtained. On

appeal an award of attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 616 S.E.2d 431 (Ct. App. 2005).

This case was filed on June 15, 2017. Petitioners had the following causes of action: Breach of Contract; Foreclosure of Mechanic's Lien; Violation of South Carolina Code §29-6-10, et seq.; Quasi-Contract; Quantum Meruit; and Unjust Enrichment. The amount in controversy was \$55,000.00, plus attorney's fees and interest. There were interrogatories and request to produce in this case by both parties, including Petitioners' discovery response which included the material and labor invoices on this matter which contained 219 pages. A total of 19-20 subpoenas were issued by the Respondent on the subcontractors in this matter requesting they produce the items. This is a summary of the activity in this case. None of that activity related to the issues that were presented by the Respondents' Motion to Dismiss which dealt with proper service on the Respondents.

The only time there was any discussion in regards to the alleged untimely nature of Notice of Mechanic's Lien being filed and the service of the Respondents was in the Petitioners' deposition but only covered 3 or 4 pages of that deposition, at the most out of a 210 page deposition. Any attorney's fee awarded should be limited to any time that was spent only on the issue of the proper service on the Respondents and the timeliness of filing of the mechanic's lien which Petitioners' position is that matter was not presented to the Court for consideration by the Respondents. The discovery in this case and the subpoenas and deposition only related to legitimacy of the material and labor invoices and alleged workmanship issues on the built home and not as to the service on Respondents or the filing of the mechanic's lien.

The Order referenced above, failed to specify specific findings as to the factors considered in granting the Respondent attorney's fees in the amount of \$25,000.00. An Order

for award of attorney fees must contain specific findings regarding the factors considered in granting the award. *Voelker v. Hillcock*, 288 S.C. 622, 344 S.E.2d 177 (Ct. App. 1986).

IV. Whether by concluding that the Circuit Court was in error in finding that Punitive Damages should be awarded against the Petitioners and Third-Party Petitioners.

A large majority of the claims by the Petitioners that were denied by Judge McLeod relates to cash payments that were made to subcontractors. The Court found that these checks were fraudulent. Petitioners argue that there is not clear and convincing evidence of fraud with these checks.

Respondent's Trial Exhibit 4 (R. Vol. III, p. 1305) is a list of checks prepared by ARM which was to confirm cash payments made to the subcontractors on this project and those cash payments are attached to Petitioners' Trial Exhibits 18, 20, 27, 28 and 29 (R. Vol III. pp. 1223, 1235, 1253,1269, 1272). Mr. Mazloom testified that each time he made a cash payment to a materialman or subcontractor he would make a notation in his records and would execute a signed check for his tax records to have written confirmation of what cash payments were being made to the materialmen, labor men or subcontractors. (R. Vol II, pp 110-111). Petitioners also secured cash receipts from materialmen and subcontractors which are denoted under Respondent's Trial Exhibit 5 (R. Vol. III, p. 1306) and these receipts are further evidenced of the legitimacy of the checks under Respondent's Trial Exhibit 4 (R. Vol III, p 1305). Respondents also entered into evidence Petitioners' Exhibits 1-29 (R. Vol. III, pp. 1101-1272) which were a listing of all of Petitioners' invoices for the sub-contractors and materialmen. Petitioners listed at least three sources of documented evidence to prove its losses included the Petitioners' invoices, sub-contractor invoices, cash receipts and checks prepared by the Petitioners' for verification of the cash payments.

The Court put unduly weight on the testimony of four sub-contractors to prove fraud. Petitioners here do a summary of statement of these sub-contractors. Petitioners contend that their testimony shows as follows:

- a. Mr. Crolley, who owns A&D Fabrications, indicated in his testimony he could not remember when he worked on the house. (R. Vol. II, p.720). He was not sure what the payment amount was. (R., Vol. II, p. 721). He had no record, no memory of the amount of invoice on the project (R. Vol. II, p. 724). There was an invoice which Crolley wrote on it "ARM", the address of the Respondents Golson's in Chapin where the house was being built and wrote "deck for the porch" but denied he wrote in the figure of \$13,000. Respondents' Trial Exhibit 6A, Invoice No. 048852. This payment is marked as "paid". On the cash receipt he indicates it is his handwriting and he did write that which is for \$3600 which is the cash payment to him paid on January 29, 2017. (R. Vol II., p. 729 and Respondents' Trial Exhibit 6D, R. Vol. III, p. 1318). He did not know what he has been paid. (R. Vol. II, p. 740). Although, earlier he said \$13,000. When you add the checks together that were written to him, they total \$13,000 which entered on the invoice. (R. Vol. II, pp. 737-745 and Petitioners' Trial Exhibit 29 showing checks, R. Vol. III, p. 1272).
- b. B&R Electric. The owner testified he submitted a written bill for \$23,098.51 which has 21 separate entries (Respondents' Trial Exhibit 15A, R. Vol. III, p. 1337). This bill matches up with the three checks that are written to him by the Petitioners ARM which are entered under Petitioners' Exhibit 20, R. Vol. III, p. 1235). He stated he did not receive cash but his invoice matches up with the checks which are in the amount of \$18,000, \$900 and \$4,100 (Petitioners' Trial Exhibit 20, R. Vol. III, p. 1235). He indicated he produced the invoice given to the Petitioner ARM for \$23,090.51 given to the Petitioner ARM for the \$23,098.51. The date of the invoice is December 30, 2016. He said he produced the \$4,100 invoice and gave it to Petitioners ARM (Respondents' Trial Exhibit C, R. Vol. III, p. 772). He testified 39 additional recess lights had to be placed in the house, as requested by the Respondents Golson. (R. Vol. II, pp. 772-785).
- c. Joshua Hall did the interior finish carpentry on the house and he had been working for the Petitioner ARM for 20 years and had no reason to not trust him and he was a good builder. His testimony discussed conflicting invoices but he indicated he could not calculate what the discrepancy was in these invoices. He was not the best bookkeeper. However, he did indicate the proper invoices in this case was 1052 and 1079 and when you add up the checks that are written to him which are checks 800, 807, 824 and 848, they match-up which what he says is the dollar figure on the invoices 1052 and 1079, within \$900 (Petitioners' Trial Exhibit 28, R. Vol. III, p. 1269). Also,

he testified he had traveled to obtain wood product to match-up with the cabinetry that was being moved from the Respondents Golson's house in Columbia to be placed in their new house because it had been built by Mrs. Golson's parents. This was a day trip to the upper part of the state and would have to be cut to have completed cabinetry in the kitchen (R. Vol. II, pp. 814-826).

- d. White Knoll Heating & Air's representative, Josh Joyner, submitted an invoice of \$25,000. He said he was actually paid \$19,500 but he could not produce the invoice on that. The checks that are written to him which are number 768, 799, 811 and 847 total what his invoice was in the amount of \$25,000. He denied he received cash payments. (R., Vol. II, pp. 832-840).

Furthermore, Petitioners would ask the Court to consider, in regards to the question of fraud, the following:

1. The actions of the Petitioners in this matter are the following:
 - a. The parties were neighbors and had been for years.
 - b. Petitioners assisted the Respondents in securing a bank loan by referring them to the bank he used.
 - c. Petitioners sent the Respondents to a house designer who minimized his charges because of concern of costs by the Respondents.
 - d. Petitioners delayed the finishing of the construction of the house so the Respondents would not have to be charged for the real estate taxes on the house improvement until the year 2017.
 - e. Petitioners had never been sued before in all of his years practicing as a licensed contractor. Even the sub-contractors recognized the Petitioners paid their bills to them and one sub-contractor even indicated he had no reason to question the integrity of the Petitioners. These are not indications of anyone attempting to scheme the homeowner.

In Judge McLeod's Order, he stated:

“Furthermore, the Court finds that Mazloom’s conduct is so reprehensible as to warrant the imposition of further sanctions achieve punishment or deterrence. *Magnolia North Property Owners Ass’n., Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012). The comprehensive, concerted and complex scheme of fraudulent activity engaged in by Mazloom was willful, wanton and reckless, which merits an award of punitive damages. *Sample v. Gulf Ref. Co.*, 183 S.C. 399, 410, 191 S.E. 209, 241 (1973). The Court awards the Golsons punitive damages against Mazloom for \$42,678.86, which equates to the fee earned as a result of the actual proven cost of the work.” (R. Vol. I, p. 127)

In South Carolina, punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future. Moreover, they serve as a vindication of private rights when it is proved that such have been wantonly, willfully or maliciously violated. Lastly, punitive damages may be awarded only upon a finding of actual damages. *Scott v. Porter*, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000).

In order to receive an award of punitive damages, the Petitioner has the burden of proving by clear and convincing evidence the Respondent's misconduct was willful, wanton, or in reckless disregard of the Petitioner's rights. *Scott v. Porter*, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000).

The Gamble factors for awarding punitive damages are: (1) Respondent's degree of culpability; (2) duration of the conduct; (3) Respondent's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the Respondent or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) Respondent's ability to pay; and finally, (8) other factors deemed appropriate. The trial judge is not required to make findings of fact for each factor to uphold a punitive damages award. *Scott v. Porter*, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000).

In *Scott v. Porter*, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000), the Court determined “In examining the record, we find the trial judge properly reviewed the punitive damage awards using the *Gamble* factors. The trial judge stated:

Specifically, the Court finds that the Respondent has the ability to pay, that the Respondent's degree of culpability was very high, if not 100 percent, that the Respondent was aware of her actions. There is no evidence of any past conduct, however the Court feels that this award of punitive damages is likely to deter others from this type of conduct in the future. The Court further finds that the award of punitive damages is reasonably related to the injuries suffered in this particular case.”

Judge McLeod’s Order granting the punitive damages does not indicate that he reviewed the *Gamble* factors in the decision he gave for punitive damages and do not factor in a substantial number of those factors.

CONCLUSION

Petitioners respectfully submit that the Record on Appeal does not evidence any waiver by the Petitioners as to the issue of timeliness of the mechanic’s lien. Transcript of the motion hearing dated September 10, 2018 which is in the Record on Appeal, Volume II, beginning at page 434. Petitioners would further assert that in Petitioners’ motion to reconsider Judge Newman’s Order arising out of the hearing on September 10, 2018, that on page 8 of Petitioners’ Brief, Petitioners indicate that on a motion application, it shall be in writing and shall state with particularity the grounds therefore and that would be the relief that the moving party could seek and only that. Respondent’s motion specifically did not raise an issue of timeliness. See SC Rules of Civil Procedure Rule 7(b)(1).

Petitioners would respectively assert that this Court overlooked the question as to whether the issue with the service of Petitioners’ mechanic’s lien being dismissed was due to a mere technicality and, therefore, no attorney’s fees should be awarded. This argument is cited on

page 9 of Petitioners' Brief citing *EFCO v. Renaissance of Charleston Harbor, LLC*, 370 S.C. 612, 635 S.E.2d 922.

Petitioners would respectfully submit that Court overlooked the issue of attorney's fees for dismissal of the mechanic's lien should be limited to those attorney's fees that were specifically related to the validity of the mechanic's lien and that document's validity. *Keeney's Metal Roofing, Inc. v. Palmieri*, 345 S.C. 550, 553, 548 S.E.2d 900, 901 (Ct. App. 2001).

Petitioners respectfully submits that the Court did not indicate whether the circuit court had complied with the need for specific findings of fact as to the six factors in determining punitive damages. *Collins v. Collins*, 239 S.C. 170, 122 S.E.2d 1 (1961). This question was raised in Petitioners' Brief.

Respectfully submitted,



James Randall Davis
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512
Attorney for Petitioner

March 13, 2024