

**RECEIVED**

**Jul 21 2021**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge  
Walton J. McLeod IV, Circuit Court Judge

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Appellate Case No. 2020-001406  
Civil Action No. 2017-CP-32-02204

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ARM Quality Builders, LLC, d/b/a ARM Quality Builders, . . . . . Appellant,

v.

Joseph A. Golson and Lycia B. Golson and Branch Banking Trust Company, . . . . . Respondents,

AND

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

v.

Ahmad Mazloom, . . . . . Third-Party Appellant.

---

**CONSENT APPENDIX TO RECORD ON APPEAL**

---

James Randall Davis  
Davis Frawley, LLC  
P.O. Box 489  
Lexington, S.C. 29071  
*Attorneys for Appellants*

E. Wade Mullins III  
Chelsea J. Clark  
Bruner, Powell, Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, S.C. 29260  
*Attorneys for Respondents*

RECEIVED

Jul 21 2021

CONSENT TO SUPPLEMENT THE RECORD ON APPEAL

SC Court of Appeals

By and through the undersigned counsel, all parties consent to the supplementation of the

Record on Appeal as contained herein, pursuant to Rule 212(b), SCACR.

**DAVIS FRAWLEY, LLC**

*s/ James Randall Davis*

James Randall Davis, Bar No. 1580

Post Office Box 489

Lexington, South Carolina 29071

(803) 359-2512

[randy@oldcourthouse.com](mailto:randy@oldcourthouse.com)

*Attorneys for Appellants*

July 21, 2021

Lexington, South Carolina

**BRUNER POWELL WALL & MULLINS, LLC**

*s/ Chelsea J. Clark*

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*Attorneys for Respondents*

July 21, 2021

Columbia, South Carolina

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**ORIGINAL**

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON ) 2017 JUN 15 FOR THE ELEVENTH JUDICIAL CIRCUIT

ARM Quality Builders LLC d/b/a )  
ARM Quality Builders, )  
 )  
Plaintiff, )

2017 CP 3202204

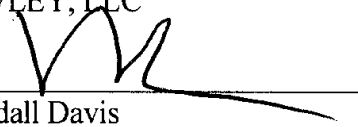
-vs-

Joseph A. Golson and Lycia B. Golson, and )  
Branch Banking and Trust Company, LLC )  
 )  
Defendants. )

**SUMMONS**  
(Non-Jury)  
(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)

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 office at 140 East Main Street, Lexington, South Carolina, 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, judgment by default will be rendered against you for the relief demanded in the Complaint.

DAVIS FRAWLEY, LLC  
BY:   
James Randall Davis  
140 East Main Street  
Post Office Box 489  
Lexington, South Carolina 29071  
ATTORNEYS FOR PLAINTIFF

Lexington, South Carolina  
May 31, 2017

2017-LP-32- 0470

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

**ORIGINAL**

ARM Quality Builders LLC d/b/a )  
ARM Quality Builders, )

2017 JUN 15 PM 1:16

2017 CP 320220 4

Plaintiff, )

-vs-

Joseph A. Golson and Lycia B. Golson, and )  
Branch Banking and Trust Company, LLC )  
 )  
Defendants. )

**COMPLAINT**

(Non-Jury)

(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 Plaintiff, ARM Quality Builders LLC d/b/a ARM Quality Builders, complaining of the above-named Defendants, alleges as follows:

1. The Plaintiff is a Limited Liability Company duly organized and existing under the laws of the State of South Carolina, with its principal place of business in Lexington County, South Carolina.

2. The Defendants Joseph A. Golson and Lycia B. Golson (hereinafter referred to as "Defendants"), are, upon information and belief, citizens and residents of Lexington County, South Carolina.

3. The Defendant Branch Bank and Trust Company, LLC is named as a Defendant herein by virtue of that certain Mortgage given to it by the Defendants on the property subject of this action in the original principal amount of Three Hundred Ninety Five Thousand and no/100 (\$395,000.00) Dollars, dated April 15, 2016 and recorded in the Office of the Register of Deeds for Lexington County on April 19, 2016 in Book 18312 at page 228.

**FOR A FIRST CAUSE OF ACTION  
(Breach of Contract)**

4. Plaintiff incorporates Paragraphs 1 through 3 of the Complaint as if fully set out herein verbatim.

5. Plaintiff and Defendants entered into an arrangement and contract wherein the Plaintiff furnished materials and performed labor used in the erection, alteration, or repair of a building or structure situated on or in otherwise improving the real estate hereinafter described at said Defendants' special instance and request, and by virtue of the authorization by the owner or by virtue of and in agreement with or by consent of the owner of such improvements or by some person or agent having authority from or rightfully acting for such owner in the procuring or furnishing of such labor and material. Such real estate is described as follows:

All that certain piece, parcel or lot or tract of land, with any improvements thereon, lying, being and situate on the Waters of Lake Murray, on the Northern side of a 30-foot street, near the Town of Hilton, in the County of Lexington, State of South Carolina, in the School District No. 5 the same being designated as LOT NUMBER THIRTY-TWO (32) in BLOCK "A" on a Plat of "Lake Point" made by William Wingfield, Reg., Surveyor, dated March 18, 1960, and recorded in the Office of the ROD in Lexington County in Plat Book 47-G at Page 74, and bounded as follows: On the North by Lake Murray, measuring thereon in the aggregate Ninety-Four and 4/10 (94.4') feet; on the East by lot 31, Block "A", measuring thereon One Hundred Twenty (120.0') feet; on the South by said 30-foot Street, measuring thereon One Hundred Thirty (130') feet; and on the West by Lot 33, Block "A", measuring thereon One Hundred Sixty-Four and 1/10 (164.1') feet; be all measurements a little more or less.

DERIVATION: This being the property conveyed to Joseph A. Golson and Lycia B. Golson by Deed of Joseph A. Golson dated April 15, 2016, and recorded in the Office of the Register of Deeds for Lexington County, South Carolina on April 19, 2016 in Book 18312 at Page 225.

TMS # 001630-02-030

6. The Defendants are justly indebted to the Plaintiff for materials furnished and labor performed in the amount of Fifty Five Thousand Eighty-five and 52/100 (\$55,085.52) Dollars principal and interest through February 11, 2017. Despite demand for payment, the Defendants have failed and refused to pay the remaining sum owed for such materials and/or labor performed, no part of which remaining balance has been paid by cash or otherwise. As a result of Defendants' refusal to pay Plaintiff the sum owing to Plaintiff, Defendants have breached their contractual

agreement with Plaintiff. The sum set forth in the Statement of Account is owed to Plaintiff and Plaintiff is entitled to judgment for the same against Defendants.

7. The last date materials were supplied and/or labor furnished on the premises of the Defendants was February 11, 2017. Notice of Mechanic's Lien was filed by the Plaintiff within ninety (90) days after such date, such notice having been recorded in the Office of the Register of Deeds for Lexington County on May 11, 2017. Attached to such Notice of Mechanic's Lien and included as part and parcel of such notice was a Verified Statement of Account owed by the Defendants to the Plaintiff. The Plaintiff has perfected and now has a valid and existing lien upon the described real estate in the amount of Fifty-Five Thousand Eighty-five and 52/100 (\$55,085.52) Dollars plus interest from February 11, 2017.

8. The Plaintiff is entitled to additional sums for reasonable attorney fees, court costs, filing fees, and service of process fees incurred in this action to foreclose such lien.

9. As a consequence of Defendants' failure to pay for the materials and labor constituting breach of contract, the Plaintiff has been damaged.

**FOR A SECOND CAUSE OF ACTION  
(Foreclosure of Mechanic's Lien)**

10. The Plaintiff hereby realleges Paragraphs 1 through 9 of the Complaint as if fully set out herein verbatim.

11. Defendants own the real property, with improvements thereon, located in Lexington County, South Carolina and being more specifically described as set forth hereinabove.

12. The real property and improvements upon which the materials and equipment were installed, labor extended, and the improvements and renovations constructed on the real property is, and at all times herein mentioned, was/is owned by Defendants or their predecessor in interest.

13. On or after February 11, 2017, Plaintiff's materials and labor were last utilized on the project.

14. The subject of this action is real property located in Lexington County, South Carolina.

15. Plaintiff has received no offer of the full amount due and owing to Plaintiff from Defendants.

16. The principal sum stated on the Statement of Account remains owing to Plaintiff by virtue of its contract with Defendants.

17. Plaintiff has performed all of its obligations pursuant to its agreement with Defendants.

18. On May 11, 2017, Plaintiff filed a Notice and Certificate of Mechanic's Lien with the Clerk of Court for Lexington County. Said lien is recorded in Book 19199 at page 295.

19. The Notice and Certificate of Mechanic's Lien was served on the Defendants herein in compliance with *SC Code Ann. §29-5-90*.

20. Six (6) months have not elapsed since the last day that (1) the materials and labor were supplied to and used on the aforesaid property, and (2) construction ceased.

21. The Plaintiff seeks foreclosure of property for the damages it has incurred as set out herein.

22. Plaintiff has properly perfected a mechanic's lien for materials and/or labor furnished to and used on the above-described real property owned by Defendants Moore pursuant to South Carolina Code Ann. § 29-5-10, *et seq.*

23. A Lis Pendens concerning the above-described property is being filed contemporaneously with the filing of the Summons and Complaint.

24. The premises above described should be sold subject to the liens prior to that of Plaintiff and the proceeds of sale should be applied to the discharge of the demands of the Plaintiff as set forth herein, including the sum stated on the Statement of Account, the costs of this action,

interest from the date of the delivery and/or utilization of the materials and labor, prejudgment interest, other contractual remedies, a reasonable sum as attorney's fees for this action, and such other and further relief as is appropriate.

25. Alternatively, the Plaintiff should be awarded judgment against the Defendants.

**FOR A THIRD CAUSE OF ACTION  
(Violation of South Carolina Code §29-6-10, et seq.)**

26. The Plaintiff hereby realleges Paragraphs 1 through 25 of the Complaint as if fully set out herein verbatim.

27. The Plaintiff is a contractor as defined by §29-6-10(1), South Carolina Code Ann. (1991, as amended).

28. Plaintiff has performed in accordance with the provisions of its contract with Defendants of which the other Defendant Branch Banking and Trust Company, LLC had actual knowledge and assisted therein.

29. Defendants have failed to pay Plaintiff within twenty-one (21) days of receipt of Plaintiff's pay request based on work completed.

30. §29-6-50 South Carolina Code Ann. (1991, as amended) requires that the owner pay interest under the circumstances as alleged above on the unpaid balance.

31. The Plaintiff has been damaged as a result of Defendants' failures as set out herein.

**FOR A FOURTH CAUSE OF ACTION  
(Quasi-Contract)**

32. The Plaintiff hereby realleges Paragraphs 1 through 31 of the Complaint as if fully set out herein verbatim.

33. The materials and labor supplied and installed on, or construction and renovation on the property of Defendants were all for said Defendants' benefit and enjoyment.

34. Plaintiff has not been fully paid for these materials and/or labor and construction.

35. The materials, labor and construction rendered to Defendants are valuable.

36. Defendants requested, accepted, used, enjoyed, and continue to use and enjoy, and have the benefit of, the materials, labor, construction and addition.

37. The materials and labor, construction and renovations, were used and continue to be used under such circumstances as would put a reasonable person on notice that they would have to pay for such materials, labor, construction and renovations, and it would be inequitable to retain these benefits without paying the full value of such materials, labor, construction and renovations.

38. Plaintiff requests judgment in the amount stated in the Statement of Account with interest thereon and as otherwise set out herein.

**FOR A FIFTH CAUSE OF ACTION  
(Quantum Meruit)**

39. The Plaintiff hereby realleges Paragraphs 1 through 38 of the Complaint as if fully set out herein verbatim.

40. Plaintiff has supplied and installed valuable equipment, materials and labor to Defendants Moore and said Defendants have failed to pay for said materials and/or labor, construction and addition.

41. The materials, labor, construction and addition were accepted, used and enjoyed by Defendants.

42. Defendants continue to derive benefit from the materials, labor, construction and equipment provided on their behalf. Plaintiff should be paid for the materials, labor, construction and renovation.

43. Defendants received the materials, labor, construction and addition under circumstances which would reasonably notify a person similarly situated that Plaintiff, in performing such services, was expecting to be paid by said Defendants.

44. Defendants' failure to pay the amount due has caused damages to the Plaintiff.

**FOR A SIXTH CAUSE OF ACTION  
(Unjust Enrichment)**

45. The Plaintiff hereby realleges Paragraphs 1 through 44 of the Complaint as if fully set out herein verbatim.

46. The Defendants have received the benefit of the construction, renovations, labor and materials of the Plaintiff without fully paying the contractual price or fair value thereof.

47. The Defendants have therefore been unjustly enriched as set out herein.

WHEREFORE, Plaintiff prays that judgment be rendered against the Defendants, jointly and severally, as follows:

a. Under the First Cause of Action for the sum of Fifty-five Thousand Eighty-five 52/100 (\$55,085.52) Dollars in actual damages, interest, pre-judgment interest on said amount, attorney's fees and costs;

b. Under the Second Cause of Action for the sum of Fifty-five Thousand Eighty-five 52/100 (\$55,085.52) Dollars in actual damages plus interest from February 11, 2017 until the date of judgment and for reasonable attorney's fees, court costs, filing fees, and service of process fees; that the Court issue its Order requiring the real property to be sold at public auction after due advertisement and that the proceeds of such sale be applied to the payment of Plaintiff's lien, attorney's fees, costs of this action, and costs of sale and for such other and further relief as the Court may deem just and appropriate;

c. Under the Third Cause of Action, for the sum of Fifty-five Thousand Eighty-five 52/100 (\$55,085.52) Dollars in actual damages and for pre-judgment interest on said amount;

d. Under the Fourth, Fifth and Sixth Causes of Action, for the sum of Fifty-five Thousand Eighty-five 52/100 (\$55,085.52) Dollars in actual damages and for pre-judgment interest on said amount;

- e. Under all Causes of Action, for costs of this action; and
- f. For such other and further relief as the Court may deem just and proper.

DAVIS FRAWLEY, LLC  
140 East Main Street, P.O. Box 489  
Lexington, South Carolina 29071  
(803) 359-2512

BY: 

James Randall Davis  
ATTORNEYS FOR PLAINTIFF

Lexington, South Carolina  
May 31, 2017.

ARM Quality Builders LLC dba ARM Quality Builders

Plaintiff(s) JM 1:16

2017-CP - 32- \_\_\_\_\_

vs.

Jospeh A. Golson and Lycia B. Golson, and Branch Banking and Trust Company, LLC

Defendant(s)

Submitted By: James Randall Davis
Address: 140 E Main Street, Lexington, SC

2017 CP 32 0220 4
SC Bar #: 1580
Telephone #: 803-359-2512
Fax #: 803-359-7478
Other: Nicole@oldcourthouse.com
E-mail: randy@oldcourthouse.com

NOTE: The coversheet 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 coversheet 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 Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Breach of Contract (140)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220)
Torts - Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Sexual Predator (510), Permanent Restraining Order (680)

Submitting Party Signature: [Signature] R. Supp. 1782

Date: June 15, 2017

**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.

**Effective January 1, 2016,** Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

**Pursuant to the ADR Rules, you are required to take the following action(s):**

1. The parties shall select a neutral and file a “Proof of ADR” form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the “Notice of Intent to File Suit” or as the court directs.
4. Cases 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. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. 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 has 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 LEXINGTON )

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

ARM Quality Builders LLC d/b/a )  
ARM Quality Builders, )

Civil Action No.: 2017-CP-32-02204

Plaintiff, )

-vs- )

**BRIEF ON MOTION TO DISMISS  
BY DEFEDANTS GOLSON**

Joseph A. Golson and Lycia B. Golson, and )  
Branch Banking and Trust Company, LLC )

Defendants. )

---

1. Defendants Joseph A. Golson and Lycia B. Golson (hereinafter referred to as “Defendants Golson”) have not cited any particular Rule of the South Carolina Rules of Civil Procedure that they relying on as to their Motion to Dismiss on and would ask for clarification of that of matter.

2. On the issue of perfecting the Plaintiff’s Notice of Mechanic’s Lien and accompanying exhibits, the said documents were filed with the Register of Deeds Office in Lexington County on May 11, 2017, which was within the ninety (90) day period, as required by the statute. A material invoice indicating that material was provided to the project as late as February 16, 2017 (Bates Numbered document ARM124-ARM126).

3. In regards to service of the Notice of Mechanic’s Lien on the Defendants Golson, attempted service was made on two occasions with the latter being May 9, 2017, as indicated in the Affidavits provided by the process server indicating that service was attempted and posting of the Notice of Mechanic’s Lien was placed on the Defendants Golson’s front door of the house. There is no sheriff’s affidavit filed in this case, but it is not necessary because based on the deposition of the Defendant Joseph A. Golson, he testified that he and his family had moved into the house in January 2017 and the Certificate of Occupancy on the house had been issued for

them to live in the house and they had claimed their four (4%) percent legal residence on the house with the County of Lexington Assessor's Office. See pages 33 and 34 of the Deposition of Joseph A. Golson and attached County of Lexington 2017 Tax Bill for the property.

The purpose of the Sheriff's affidavit would be to verify whether the individuals live in Lexington County or not. That verification was proven by the deposition of the Defendant Joseph A. Golson. Also see *SC Code Ann.* §15-67-30 as to the purpose of sheriff verification.

Furthermore, the attorneys for the Defendants were retained by the Defendants Golson prior to the filing of the Notice of Mechanic's Lien, as indicated by the attached documents, including a letter of representation from the Defendant Golson's counsel (see attached e-mail dated April 1, 2017), follow-up letters and e-mails indicating discussion (see attached e-mail dated April 7, 2017 and e-mail dated April 27, 2017) and notification to Defendant Golson's counsel that we would have to file a Notice of Mechanic's Lien (see attached letter dated April 17, 2017) and that the Notice of Mechanic's Lien was sent to the Defendant Golson's counsel on May 15, 2017 (see attached e-mail dated May 15, 2017, with attachments). South Carolina Rules of Civil Procedure, Section 5(a) and 5(b)(1), allows "Notices to be served on the party or their attorneys".

Counsel for the Plaintiff has only found one case dealing with the question of service of the Notice of Mechanic's Lien on the owners of the property and in this case Summary Judgment was denied where there was evidence of mailing the Mechanic's Lien to the homeowners and their denial of the receipt of the same. *Stovall Building Supplies, Inc. v. Mottet*, 305 S.C. 28, 406 S.E.2d 176 (1990). There is no discussion of requirement for the sheriff's affidavit in this case.

4. In regards to monies owed to the Plaintiff, the Affidavit attached to the Notice of Mechanic's Lien indicates what is owed to the Plaintiff which is the sum of \$55,085.52, there were two contracts (see attached Contract to Build and Contract for Services) on this project: (1)

for the costs of the home; and (2) for the services rendered by the Plaintiff as the contractor on the project. Attached are both contracts. The amount owed is to the Plaintiff for his services rendered which would be in compliance with *SC Code Ann. §29-5-10* in addition to the case of *Sentry Engineering Construction, Inc. v. Marina's Cay Development Corp., 287 S.C. 346, 338 S.E.2d 631 (1985)*, would allow the monies owed to the Plaintiff are a component of the allowed Mechanic's Lien damages.

DAVIS FRAWLEY, LLC  
140 East Main Street, P.O. Box 489  
Lexington, South Carolina 29071  
(803) 359-2512

BY: /s/ James Randall Davis  
James Randall Davis, SC Bar No. : 1580

ATTORNEYS FOR PLAINTIFF

Lexington, South Carolina  
September 10, 2018

**COPY**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
ARM Quality Builders LLC d/b/a )  
ARM Quality Builders, )  
 )  
Claimant, )  
 )  
v. )  
 )  
Joseph A. Golson and )  
Lycia B. Golson, )  
 )  
Defendants. )  
\_\_\_\_\_ )

**NOTICE OF CERTIFICATE OF  
MECHANIC'S LIEN**

NOTICE IS HEREBY GIVEN, that ARM Quality Builders LLC d/b/a ARM Quality Builders ("Claimant") is due the principal sum of Fifty-five Thousand Eighty-five and 52/100 (\$55,085.52) Dollars from Joseph A. Golson and Lycia B. Golson, as more fully shown on the attached Statement of Account which is made a party of this Notice and Certificate of Mechanic's Lien as *Exhibit A*, together with interest and attorney's fees as allowed by law.

That said debt is due Claimant for labor performed or furnished, and/or for materials furnished for improvements to the real estate hereinafter described, by virtue of an agreement with, or by consent of Joseph A. Golson and Lycia B. Golson, the owner thereof, or an entity or person(s) authorized by, or rightfully acting for, said owner. That Claimant would show that less than ninety (90) days have elapsed since the last date that labor was performed or furnished and/or materials were furnished on the premises.

That by virtue thereof, by the service and filing of this Notice and Certificate, and pursuant to the provisions of applicable law, Claimant has and claims a lien to secure the payment of the debt so due, together with interest, attorney's fees, and the costs of enforcing said lien upon the following described real estate and all improvements thereon:

*See attached Exhibit B*

*SC License Number of Claimant is 14040.*

The foregoing is true to the knowledge of the undersigned on behalf of Claimant.

DAVIS FRAWLEY, LLC

By: \_\_\_\_\_

James Randall Davis  
140 East Main Street  
Post Office Box 489  
Lexington, South Carolina 29072  
Phone No.: (803) 359-2512

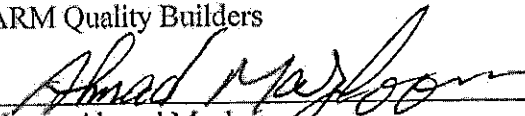
Lexington, South Carolina

May 4, 2017


STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )      VERIFICATION

PERSONALLY appeared before me the undersigned, who, being first duly sworn, deposes and says that he is the authorized agent and owner of ARM Quality Builders LLC d/b/a ARM Quality Builders, the Plaintiff in the foregoing action, and is authorized to make this Affidavit on behalf of said company; that he is familiar with the account forming the basis for the within action and has read the foregoing Notice of Mechanic's Lien and Statement of Account; that all of the matters alleged therein are true of his own knowledge except for those alleged upon opinion and belief, and as to those, he believes them to be true and that no part of said sum due has been paid by discount or otherwise.

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

  
Name: Ahmad Mazloom

SWORN to before me this 4<sup>th</sup>  
day of May, 2017.

  
\_\_\_\_\_  
(L.S.)  
Notary Public of South Carolina  
My commission expires: 7-26-23

JAMES RANDALL DAVIS  
NOTARY PUBLIC  
SOUTH CAROLINA  
MY COMMISSION EXPIRES  
JANUARY 22, 2023

COPY

# EXHIBIT A

207 Libby Ariail Lane, Chapin, SC

Construction Cost ..... \$ 388,998.66

Paid by Joe & Lycia.....\$ 18,247.05

Arm Quality Builders 15% ..... \$ 61,086.86

Total Construction Cost ..... \$ 468,332.57

Received From BB&T & Joe and Lycia..... \$ 413,247.05

Amount Owed to Arm Quality Builders..... \$ 55,085.52

Heated Area .....2,558 sq. ft.

Garage/Storage.....662 sq. ft.

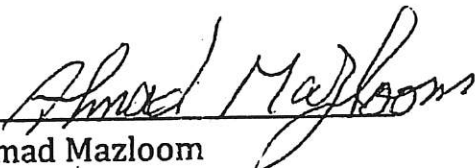
Back Porch.....225 sq. ft.

Front & Side Porch.....105 sq. ft.

Total Square Feet Under Roof.....3,325 sq. ft.

Cost Per Square Foot..... \$ 135.20 sq. ft.

Builder warranties this house fully for the period of one year. The heating and air is warranted for one year labor and 10 years, parts only by the manufacturer.

  
Ahmad Mazloom  
ARM Quality Builders

February 11, 2017

COPY

**EXHIBIT B**

All that certain piece, parcel or lot or tract of land, with any improvements thereon, lying, being and situate on the Waters of Lake Murray, on the Northern side of a 30-foot street, near the Town of Hilton, in the County of Lexington, State of South Carolina, in the School District No. 5 the same being designated as LOT NUMBER THIRTY-TWO (32) in BLOCK "A" on a Plat of "Lake Point" made by William Wingfield, Reg., Surveyor, dated March 18, 1960, and recorded in the Office of the ROD in Lexington County in Plat Book 47-G at Page 74, and bounded as follows: On the North by Lake Murray, measuring thereon in the aggregate Ninety-Four and 4/10 (94.4') feet; on the East by lot 31, Block "A", measuring thereon One Hundred Twenty (120.0') feet; on the South by said 30-foot Street, measuring thereon One Hundred Thirty (130') feet; and on the West by Lot 33, Block "A", measuring thereon One Hundred Sixty-Four and 1/10 (164.1') feet; be all measurements a little more or less.

DERIVATION: This being the property conveyed to Joseph A. Golson and Lycia B. Golson by Deed of Joseph A. Golson dated April 15, 2016, and recorded in the Office of the Register of Deeds for Lexington County, South Carolina on April 19, 2016 in Book 18312 at Page 225.

TMS # 001630-02-030

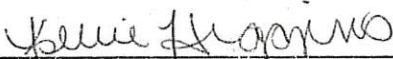
COPY

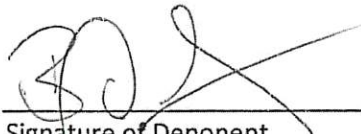
STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
 )  
ARM Quality Builders LLC d/b/a )  
ARM Quality Builders, )  
Claimant )  
 )  
Vs. )  
 )  
Joseph A. Golson and )  
Lycia B. Golson, )  
Defendants )  
\_\_\_\_\_ )

Affidavit Of Non- Service

PERSONALLY, PREPARED BEFORE ME, the undersigned deponent, who being duly sworn says that (s)he attempted to serve the Notice of Certificate of Mechanic's Lien, Verification, Exhibit A and Exhibit B in this action on Joseph A. Golson and Lycia B. Golson by delivery to said parties in Lexington, SC at 207 Libby Ariail Lane Chapin, South Carolina, on May 9, 2017 at 7:21p.m. o'clock; however was unsuccessful due to the residence being unoccupied.

Sworn to and Subscribed before me  
this 11<sup>th</sup> day of May, 2017.

  
Notary Public for South Carolina

  
Signature of Deponent

My Commission expires 8/31/19

Remit To:



WINSUPPLY LEXINGTON SC CO.  
PO BOX 931319  
ATLANTA, GA 31193-1319

Page	Date Printed	Invoice No.
1	2/16/17	337012 00

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AHMAD MAZLOO DBA  
ARM QUALITY BUILDERS  
125 SWEET MELODY LN  
LEXINGTON, SC 29073-7077

CHAPIN

Customer Number 00646-000399	Customer Purchase Order CHAPIN	Salesman 010-PALMETTO WINNE	Type Shipment Stock	Ship VIA	Date Shipped 2/16/17
---------------------------------	-----------------------------------	--------------------------------	------------------------	----------	-------------------------

THANKS FOR MAKING US YOUR CHOICE FOR YOUR PLUMBING NEEDS.

Units Ordered	U/M	Item Description	Units Shipped	S/C	Price	Per	Discount	Extended	Tax
3	EA	14006 781 QT CLR PVC MED CEMEN <<PL32 MEDIUM BODIED>>	3		8.9400		.00	26.82	T
1	EA	QT JIM PR-1L PVC/CPVC PRIMER	1		11.6800		.00	11.68	T
12	EA	78BT 7/8IDX3/8X6' P/PT INSUL I52078	12		.3000		.00	3.60	T
6	EA	58BT 5/8IDX3/8X6' P/PT INSUL I52058	6		.2600		.00	1.56	T
1	EA	62076 HALF KIT ROUGH LN PVC CP	1		8.5300		.00	8.53	T
1	EA	42213 2-3 PVC SHOWER DRAIN	1		10.8700		.00	10.87	T
100	EA	551-2C 1/2 CPVC SIOUX STRAP	100		.1300		.00	13.00	T
100	EA	551-3C 3/4 CPVC SIOUX STRAP	100		.1900		.00	19.00	T
1	EA	3/4X100 28GA GALV HANGER IRON	1		10.0900		.00	10.09	T
100	EA	WP14C-08 1/2 PEX CRIMP RINGS 0650551	100		.1900		.00	19.00	T
100	EA	WP14C-12 3/4 PEX CRIMP RINGS 0650552	100		.2400		.00	24.00	T
5	EA	R10000-PX UNVRSL T/S VLV BDY	5		38.8900		.00	194.45	T
1	EA	39136 IMB 12X 1/4 STND PEX	1		16.3100		.00	16.31	T
1	EA	82056 DUAL DRAIN WMOB 1/2 PEX	1		26.2700		.00	26.27	T
50	EA	PS5816-SN 5X8 SLFNL BOCA PLATE S33-013	50		.7600		.00	38.00	T
2	EA	11909 2 PLASTIC BASE FLASH	2		4.2900		.00	8.58	T
2	EA	WP15P-1208 3/4CX1/2C CPLG 0650661	2		.8100		.00	1.62	T
8	EA	WP15P-12 3/4CX3/4C CPLG 0650662	8		.5300		.00	4.24	T
8	EA	WP15P-08 1/2CX1/2C CPLG 0650660	8		.4300		.00	3.44	T
4	EA	WP18P-08 1/2X1/2X1/2C TEE 0650696	4		.7100		.00	2.84	T
12	EA	WP18P-120808 3/4X1/2X1/2C TEE 0650801	12		1.2400		.00	14.88	T
12	EA	WP18P-121208 3/4X3/4X1/2C TEE 0650699	12		1.0600		.00	12.72	T
8	EA	WP18P-120812 3/4X1/2X3/4C TEE 0650800	8		1.0600		.00	8.48	T
8	EA	WP18P-12 3/4X3/4X3/4C TEE	8		1.0600		.00	8.48	T

Terms: Monthly Service Charge May Be Applied To Past Due Accounts.

Tax Area ID:	Net Sales	-----
-----	Freight	-----
State Tax \$	State Tax	-----
Local Tax \$	Local Tax	-----
	Invoice Amount	-----

CONTINUED ON NEXT PAGE.....



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2	2/16/17	337012 00

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ARM QUALITY BUILDERS  
125 SWEET MELODY LN  
LEXINGTON, SC 29073-7077

CHAPIN

Customer Number	Customer Purchase Order	Salesperson	Type Shipment	Ship VIA	Date shipped
00646-000399	CHAPIN	010-PALMETTO WINNE	Stock		2/16/17

THANKS FOR MAKING US YOUR CHOICE FOR YOUR PLUMBING NEEDS.

Units Ordered	U/M	Item Description	Units Shipped	B/C	Price	Per	Discount	Extended	Tax
6	EA	0650698 WP19P-08 1/2C ELL	6		.5800		.00	3.48	T
2	EA	0650669 WP27P-12 3/4C TEST PLUG	2		.4300		.00	.86	T
8	EA	0650823 WP19P-1212 3/4CX3/4C ELL	8		.8600		.00	6.88	T
6	EA	0650671 WP18P-080812 1/2X1/2X3/4C TEE	6		1.0700		.00	6.42	T
25	EA	0650697 WP27P-08 1/2C TEST PLUG	25		.2900		.00	7.25	T
1	EA	0650822 PC-609 2X60YD BLK DUCT TAPE	1		8.2800		.00	8.28	T
10	EA	JONES STEPHENS #T20-023 103-1B 3/4-1 HOLDRITE STRAP	10		3.1900		.00	31.90	T
12	EA	USES 704 TURNOUT & 104/105 INS SS2X6 2X6 18GA SGL STUD SHOE	12		2.6300		.00	31.56	T
20	EA	S33-021 SP616100 1-1/2X6 SLFNAILRSTUDG	20		.2300		.00	4.60	T
17	EA	704 PEXRITE BEND SUPP 3/8-1/2	17		1.4800		.00	25.16	T
10	EA	T35-001 1-1/2" PVC TEST CAP	10		.7200		.00	7.20	T
1	EA	T35-003 3" PVC TEST CAP	1		.7600		.00	.76	T
4	EA	1/2 BRZ 125 CAP	4		3.2000		.00	12.80	T
5	EA	72300F 1/2CPLG PEX X FIP LF	5		1.8400		.00	9.20	T
5	EA	105244-LF 72101P 1/2FIP X PEX DRP EAR LF	5		3.7500		.00	18.75	T
10	EA	102344-LF 550-PB2 1/2 CTS BEND SUPPORT	10		.8900		.00	8.90	T
1	EA	617 1/2 COPPER END CAP	1		.5200		.00	.52	T
1	EA	707-3-5 1/2 CXFIP DROP ELL	1		5.3200		.00	5.32	T
4	EA	3 PVCDWV COUPLING	4		1.8700		.00	7.48	T
2	EA	2 PVCDWV COUPLING	2		.5500		.00	1.10	T
2	EA	1-1/2 PVCDWV COUPLING	2		.4300		.00	.86	T
4	EA	3 PVCDWV FTG CO +PLUG	4		5.2500		.00	21.00	T
1	EA	2 PVCDWV FTG CO +PLUG	1		2.9800		.00	2.98	T
4	EA	2 PVCDWV HXHXH WYE	4		2.6100		.00	10.44	T
6	EA	3 PVCDWV HXHXH WYE	6		7.0200		.00	42.12	T
10	EA	1-1/2 PVCDWV HXH 90 ELL	10		.8400		.00	8.40	T

Totals: Monthly Service Charge May Be Applied To Past Due Accounts.

Tax Area ID:	Net Sales	-----
-----	Freight	-----
State Tax \$	State Tax	-----
Local Tax \$	Local Tax	-----
	Invoice Amount	-----

CONTINUED ON NEXT PAGE.....



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**Winsupply**WINSUPPLY LEXINGTON SC CO.  
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3	2/16/17	337012 00

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Sold To:

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AHMAD MAZLOO DBA  
ARM QUALITY BUILDERS  
125 SWEET MELODY LN  
LEXINGTON, SC 29073-7077

CHAPIN

Customer Number	Customer Purchase Order	Salesman	Type Shipment	Ship Via	Date Shipped
00646-000399	CHAPIN	010-PALMETTO WINNE	Stock		2/16/17

THANKS FOR MAKING US YOUR CHOICE FOR YOUR PLUMBING NEEDS.

Units Ordered	U/M	Item Description	Units Shipped	B/C	Price	Per	Discount	Extended	Tax
2	EA	1-1/2 PVCDWV FTGXH 22 ST ELL	2		3.4200		.00	6.84	T
2	EA	1-1/2 PVCDWV HXH 22-1/2 ELL	2		1.2000		.00	2.40	T
1	EA	2X1-1/2 PVCDWV COUPLING	1		1.2000		.00	1.20	T
4	EA	1-1/2 PVCDWV HXH 45 ELL	4		.8200		.00	3.28	T
4	EA	1-1/2 PVCDWV FTGXH 45 ST ELL	4		.8600		.00	3.44	T
2	EA	43816 4X3 PVC 45 SWVL CLST FLG	2		9.8500		.00	19.70	T
3	EA	883-PT 3X4 PVC TRK CLOSET FL	3		2.5800		.00	7.74	T
3	EA	3X3X2 PVCDWV HXH HX WYE	3		5.2000		.00	15.60	T
2	EA	3X3X2 PVCDWV SAN TEE	2		4.6100		.00	9.22	T
1	EA	3X2 PVCDWV CROSS	1		11.3000		.00	11.30	T
6	EA	3 PVCDWV HXH 45 ELL	6		3.4500		.00	20.70	T
8	EA	3 PVCDWV FTGXH 45 ST ELL	8		3.2700		.00	26.16	T
2	EA	3 PVCDWV HXH 22-1/2 ELL	2		3.7000		.00	7.40	T
1	EA	2 PVC P-TRAP HXH SOLV WELD	1		3.7600		.00	3.76	T
1	EA	1-1/2 PVC P-TRAP HXH SOLV WELD	1		2.7900		.00	2.79	T
2	EA	3 PVCDWV FTGXH 22 ST ELL	2		5.7400		.00	11.48	T
1	EA	1-1/2 PVCDWV HXH HX SAN TEE	1		1.4500		.00	1.45	T
2	EA	2X1-1/2 PVCDWV CROSS	2		3.4100		.00	6.82	T
3	EA	2X1-1/2X1-1/2 PVCDWV SAN TEE	3		1.8900		.00	5.67	T
2	EA	2 PVCDWV HXH HX SAN TEE	2		2.1400		.00	4.28	T
10	EA	2 PVCDWV FTGXH 45 ST ELL	10		1.2500		.00	12.50	T
12	EA	2 PVCDWV HXH 45 ELL	12		1.1700		.00	14.04	T
2	EA	2 PVCDWV HXH 22-1/2 ELL	2		1.4900		.00	2.98	T
2	EA	2 PVCDWV FTGXH 22 ST ELL	2		3.6500		.00	7.30	T
14	EA	2 PVCDWV HXH 90 ELL	14		1.3200		.00	18.48	T

\*\*\*OUR REMIT ADDRESS HAS CHANGED. EFFECTIVE IMMEDIATELY PLEASE REMIT ALL PAYMENTS TO PO BOX 931319 ATLANTA, GA 31193-1319\*\*\*

All of us at Palmetto Winnelson are truly grateful for your business.

Terms: Monthly Service Charge May Be Applied To Past Due Accounts.  
NET 15TH

Pay full balance by 3/15/17

Tax Area ID:	Net Sales	
SC - 410630000	Freight	999.21
State Tax @ 6.000	State Tax	.00
Local Tax @ 1.000	Local Tax	59.97
	Invoice Amount	9.97
		1,069.15

**Winsupply**

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquiries please call (803) 951-2288.

T&C: You agree that the sale of these products/services is subject to all of our standard terms and conditions of sale located at [www.winsupplyinc.com/terms](http://www.winsupplyinc.com/terms).

R. Supp. 1795

ARM126

370101CHLP : Laser Invoice

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

ARM Quality Builders LLC d/b/a )  
ARM Quality Builders, )

Civil Action No.: 2017-CP-32-02204

Plaintiff, )

-vs-

**AFFIDAVIT OF PROCESS SERVER**

Joseph A. Golson and Lycia B. Golson, and )  
Branch Banking and Trust Company, LLC )

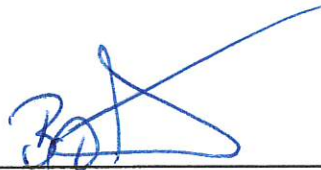
Defendants. )

The undersigned Brian Setree with Setree Investigations, being sworn, deposes and says:

1. I was the process server that provided the attached Affidavit of Service on attempted personal service of Joseph A. Golson and Lycia B. Golson at the address of 207 Libby Ariail Lane ;

2. Having found the Golsons not present at the time of service on the second trip to 207 Libby Ariail Lane (May 19, 2017), I posted the Notice of Mechanic's Lien and ancillary documents described in the Affidavit of Service on the front door of the house by taping those items to the door.

FURTHER, deponent sayeth not.



\_\_\_\_\_  
Brian Setree, Process Server  
Setree Investigations

Sworn to before me this:  
10<sup>th</sup> day of September, 2018

  
\_\_\_\_\_  
Notary Public for South Carolina

Print Name: Sa Bell

My Commission Expires: 7-29-26

1 Q. Okay. And so was any objection to any --  
2 any objection to any disbursement while the  
3 disbursements were being made by the bank?

4 A. No.

5 Q. So you knew the money was being paid to  
6 Mr. Mazloom?

7 A. Yes.

8 Q. And no question was raised about any work  
9 that was being done on the house during that time  
10 frame of disbursements?

11 A. Correct.

12 Q. Okay. At the time when the final  
13 disbursement was made by the bank to Mr. Mazloom,  
14 were you satisfied with his work?

15 A. That is -- yes.

16 Q. Okay. When did y'all move into the house? ✓

17 A. In 2017.

18 Q. Do you have a memory of what month it was?

19 A. Well, it's an odd story. It took a long  
20 time. We finally actually were able to sleep in  
21 there sort of --

22 Q. Say that again. I apologize. I didn't  
23 hear what you just said.

24 A. I said we -- anyway, we moved in the house  
25 2017.

1 Q. Moved in 2017?

2 A. It was finished, yes --

3 Q. Yeah.

4 A. -- when we were allowed to do it.

5 Q. What does that mean?

6 A. Well, we had to get a certificate of  
7 occupancy.

8 Q. Sure. You know about what month that was,  
9 not the certificate of occupancy, but the month you  
10 moved in in 2017?

11 A. January.

12 Q. Of 2018?

13 A. No. We went -- building was -- no, it was  
14 2017.

15 Q. Okay.

16 A. 20 -- no.

17 Q. If you finished the house in 2017, I was  
18 looking for the date you think you moved -- the  
19 month you moved into the house if you moved in in  
20 2017.

21 A. Well, became -- from December 16th -- I  
22 mean, December 31st, November -- I mean, year 2016,  
23 the house was completed after that and now we're in  
24 2017 --

25 Q. Yeah.

**COUNTY OF LEXINGTON, SOUTH CAROLINA**

Current Tax Year					Previous Tax Year				
Classification	Acres/Lots	Taxable Value	X Ratio	= Assessment	Acres/Lots	Taxable Value	X Ratio	= Assessment	
Owner Occupied	1	172,346	.04	6,890	1	212,275	.04	8,490	
Other Property		0		0		0		0	
Market Value Ag.		0		0		0		0	
Use Value Ag.		0		0		0		0	

Owner Name-----: GOLSON, JOSEPH A & LYCIA B  
 Mailing Address-----: PO BOX 296  
 December 31, 2016 Owner: GOLSON, JOSEPH A & LYCIA B  
 Legal Description-----: LAKE POINT LOT 32 BLK A  
 Legal Description Cont-----:  
 Property Location-----: 207 LIBBY ARIAIL LN

Bill Number-----: 2017-091475-107  
 TMS Number-----: 001630-02-030  
 Tax Year-----: 2017  
 Tax District-----: School District Five  
 Property Type-----: Real Estate  
 Legal Residence-----: Yes

Current Tax Year						Previous Tax Year					
2017 Assessment: 6,890		Homestead Assessment: 0		Tax Relief: 0		2016 Assessment: 8,490		H/S: 0		Tax Relief: 0	
Taxing Agency	2017 Millage	2017 Taxes	Homestead Exempt	Tax Credits	Net Taxes	2016 Millage	2016 Taxes	Homestead Exempt	Tax Credits	Net Taxes	
<b>SCHOOL</b>											
School 5 Operations	256.900	1,770.04	0.00	0.00	1,770.04	251.500	2,135.24	0.00	0.00	2,135.24	
School Tax Credit	0.000	0.00		-1,770.04	-1,770.04	0.000	0.00		-2,135.24	-2,135.24	
School 5 Bonds	54.000	377.57	0.00	-244.74	132.83	54.800	465.25	0.00	-273.84	191.41	
Subtotal School	311.700	2,147.61	0.00	-2,014.78	132.83	306.300	2,600.49	0.00	-2,409.08	191.41	
Percent Of Total Bill	71.91%				13.67%	71.51%				15.60%	
<b>COUNTY</b>											
County Ordinary	24.186	166.64	0.00	0.00	166.64	25.218	214.10	0.00	0.00	214.10	
Law Enforcement	33.503	230.84	0.00	0.00	230.84	33.040	280.31	0.00	0.00	280.31	
Fire Service Operation	19.043	131.21	0.00	0.00	131.21	17.675	150.06	0.00	0.00	150.06	
Indigent Care	0.500	3.45	0.00	0.00	3.45	0.883	7.59	0.00	0.00	7.59	
Library Operations	6.180	42.58	0.00	0.00	42.58	6.180	52.47	0.00	0.00	52.47	
Solid Waste	7.877	54.27	0.00	0.00	54.27	7.877	66.88	0.00	0.00	66.88	
County Notes & Bonds	3.400	23.43	0.00	0.00	23.43	4.100	34.81	0.00	0.00	34.81	
Subtotal County	94.669	652.42	0.00	0.00	652.42	94.873	806.33	0.00	0.00	806.33	
Percent Of Total Bill	21.85%				67.15%	22.17%				65.70%	
<b>AGENCY</b>											
Irmo/Chapin Rec Ops	13.354	92.01	0.00	0.00	92.01	13.354	113.38	0.00	0.00	113.38	
Irmo/Chapin Rec Bonds	7.250	49.95	0.00	0.00	49.95	7.250	61.55	0.00	0.00	61.55	
Midland Tech Operation	2.956	20.37	0.00	0.00	20.37	2.956	25.10	0.00	0.00	25.10	
Midland Tech Capital	1.397	9.63	0.00	0.00	9.63	1.397	11.86	0.00	0.00	11.86	
Riverbank Park Bonds	1.000	6.89	0.00	0.00	6.89	1.000	8.49	0.00	0.00	8.49	
Riverbank Park Oper.	1.088	7.50	0.00	0.00	7.50	1.088	9.24	0.00	0.00	9.24	
Subtotal Agency	27.045	186.35	0.00	0.00	186.35	27.045	229.52	0.00	0.00	229.52	
Percent Of Total Bill	6.24%				19.18%	6.32%				10.70%	
<b>BILLING TOTALS</b>	<b>433.434</b>	<b>2,986.38</b>	<b>0.00</b>	<b>-2,014.78</b>	<b>971.60</b>	<b>428.318</b>	<b>3,636.44</b>	<b>0.00</b>	<b>-2,409.08</b>	<b>1,227.36</b>	

A mortgage company and/or tax service has requested and been provided with your property tax information.

You may qualify for the Homestead Exemption if you meet any one of the following requirements: Over age 65, certified as 100% disabled or certified as legally blind. Property must be the full time legal residence of applicant and applicant must have been a SC resident for one full calendar year. For more information, visit us at [www.lex-co.sc.gov/auditor](http://www.lex-co.sc.gov/auditor) or contact the Lexington County Auditors Office at (803)785-8181.

Credit card payments are accepted at the counter and online at [www.lex-co.sc.gov](http://www.lex-co.sc.gov). Electronic checks accepted online only. Convenience fees apply to all tax payments made with a credit card or electronic check.

↓ Detach Here

Detach Here ↓

Rev: 10/31/2017  
 Printed: 09/10/2018

**COUNTY OF LEXINGTON, SOUTH CAROLINA**

\*\*\*OFFICIAL RECEIPT UPON VALIDATION\*\*\*

**Bill Number 2017-091475-107**

**Pay This Amount**

TMS#-----: 001630-02-030  
 Type-----: Real Estate  
 Tax Year-----: 2017  
 District-----: School District Five  
 Description-----: LAKE POINT LOT 32 BLK A  
 Description Cont-----:  
 Land-----: 6,270  
 Improvement-----: 620  
 Total Assessment: 6,890  
 L/R: Yes H/S: No

<b>Due Date for Payment: 01/16/2018</b>	<b>971.60</b>
3% Penalty from 01/17/2018 Thru 02/01/2018	1,000.75
10% Penalty from 02/02/2018 Thru 03/16/2018	1,068.76
15% Penalty & Cost from 03/17/2018 Thru 04/30/2018	1,147.34
Additional Execution Cost After 04/30/2018	1,167.34
Additional Execution Cost After 07/31/2018	1,217.34

Bill Sent To Mortgage Company. Verify With Lendor Before Making Payment. If No Escrow, You Must Pay This Bill.  
 Return this portion with payment and make checks payable to: County of Lexington

GOLSON, JOSEPH A & LYCIA B  
 PO BOX 296  
 CHAPIN SC 29036-7332

**PAID**

Paid on: 12/13/2017  
 Amount Paid: 971.60

**SECTION 15-67-30.** Propriety of service by publication; personal service out of State shall be sufficient.

When any action is commenced to determine adverse claims, publication of the summons may be made and service upon parties outside of the State and unknown claimants obtained in the following manner. When the sheriff of the county in which the action is brought shall have duly determined that the defendant cannot be found therein, and an affidavit of the plaintiff or his attorney shall have been filed with the clerk stating that a cause of action exists to determine adverse claims to certain property within the county, and that he believes the defendant or defendants, naming them, is not a resident of the State or cannot be found therein and either (a) that he has mailed a copy of the summons, by registered mail, to the defendant at his place of residence or (b) that such residence is not known to him, service of the summons may be made upon the defendant by three weeks' public notice thereof in the manner provided by law for publication of summons in civil actions. Personal service of such summons without the State, made after order for publication, proved by the affidavit of the person making such service made before an authorized officer having a seal, shall have the same effect as the publication of the summons herein provided.

HISTORY: 1962 Code Section 10-2403; 1952 Code Section 10-2403; 1942 Code Section 879; 1932 Code Section 879; Civ. P. '22 Section 827; 1916 (29) 928.

## Nicole Price

---

**From:** Randy Davis  
**Sent:** Monday, April 3, 2017 11:08 AM  
**To:** Nicole Price  
**Subject:** FW: Golson v. Ahmad Mazloom and ARM Quality Builders

---

**From:** Wade Mullins [<mailto:wmullins@brunerpowell.com>]  
**Sent:** Saturday, April 01, 2017 11:29 AM  
**To:** Randy Davis  
**Subject:** Golson v. Ahmad Mazloom and ARM Quality Builders

Randy – I represent the Golsos in connection with the Cost-Plus a Fee Contract that your client entered into with the Golsos. I was out of town last week. I had drafted a letter to your client but when I heard that you had forwarded a letter to the Golsos I asked my office to hold the letter. I understand that your client is claiming that he is due \$55,085.52 for the Project. I have had an opportunity to review this matter with my clients. They have become concerned with the means and methods in which the billing has occurred in this case. I understand their concerns and believe they are well-founded. These concerns continue to exist primarily as a result of the lack of information relating to the costs on this project. As I am sure you would agree, in a cost plus a fee contract structure, it is important for the contractor to maintain good records to support its claim for costs incurred in connection with the project. It is also customary and we are hereby requesting a complete accounting of all costs associated with this project. The information provided this far is insufficient. I can assure you that my clients would like to resolve this matter amicably. However, they will not be in a position to respond in any way to the claim for additional monies due until such time as a complete accounting has been provided. I am happy to discuss this matter further with you next week to clarify any questions that you may have. I look forward to working through this with you to a mutually acceptable resolution. Wade

E. Wade Mullins III

### **BRUNERPOWELL**

BRUNER, POWELL, WALL & MULLINS, LLC  
P.O. Box 61110 (29260-1110)  
1735 St. Julian Place, Suite 200  
Columbia, SC 29204  
(office) 803-252-7693  
(fax) 803-254-5719  
[www.brunerpowell.com](http://www.brunerpowell.com)

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**Nicole Price**

---

**From:** Nicole Price  
**Sent:** Friday, April 7, 2017 10:31 AM  
**To:** wmullins@brunerpowell.com  
**Cc:** ahmadmazloom45@yahoo.com  
**Subject:** Golson - ARM Quality Builders

Confirming my telephone message yesterday, I can have Mr. Mazloom's file here showing in the invoices and payment records for your or paralegal review. Please advise if you wish to review these documents. Just for your information, one of your clients had reviewed it previously but we certainly understand your desire for the review.

Yours very truly,

James Randall Davis

Davis|Frawley

Post Office Box 489 (29071)  
140 East Main Street (29072)  
Lexington, South Carolina  
Tel: (803) 359-2512  
Fax: (803) 359-7478  
E-mail: [nicole@oldcourthouse.com](mailto:nicole@oldcourthouse.com)

\*\*\*\*\*

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James Randall Davis  
Patrick J. Frawley  
Jeff M. Anderson  
John J. McCauley ◊  
Carey M. Ayer Δ  
Ryan M. Wingard  
Evan M. Gessner

Davis | Frawley <sup>LLC</sup>  
Attorneys at Law

Of Counsel  
Robert K. Bouknight  
George S. Nicholson, Jr.

Francis C. Jones  
(1919 – 1968)  
Hubert E. Long  
(1921 – 2000)

Since 1961

◊ American Board of Trial Advocates  
Δ Certified Circuit Court Mediator

April 17, 2017

**VIA HAND DELIVERY**

E. Wade Mullins, Esquire  
1735 St. Julian Place, Suite 200  
Columbia, SC 29204

RE: Joseph A. and Lycia B. Golson  
Our File No.: 30909


Dear Wade:

Enclosed, please find a copy of invoices and checks on the transaction that my client had with your clients. There is a summary sheet on the front page. Please review the invoices and checks and give me a call.

Also, I need to protect Mr. Mazloom in regards to a Notice of Mechanic's Lien on this property.

We hope to hear from you before the end of the month.

Yours very truly,

  
James Randall Davis

cc: Ahmad Mazloom

## Nicole Price

---

**From:** Nicole Price  
**Sent:** Thursday, April 27, 2017 3:08 PM  
**To:** wmullins@brunerpowell.com  
**Subject:** Golson - ARM Quality Builders

My client called and I am just checking on the status of this matter. Please let me know. Thanks.

Yours very truly,

James Randall Davis

Davis|Frawley

Post Office Box 489 (29071)  
140 East Main Street (29072)  
Lexington, South Carolina  
Tel: (803) 359-2512  
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---

**From:** Nicole Price  
**Sent:** Friday, April 07, 2017 10:31 AM  
**To:** 'wmullins@brunerpowell.com'  
**Cc:** 'ahmadmazloom45@yahoo.com'  
**Subject:** Golson - ARM Quality Builders

Confirming my telephone message yesterday, I can have Mr. Mazloom's file here showing in the invoices and payment records for your or paralegal review. Please advise if you wish to review these documents. Just for your information, one of your clients had reviewed it previously but we certainly understand your desire for the review.

Yours very truly,

James Randall Davis

Davis|Frawley

Post Office Box 489 (29071)  
140 East Main Street (29072)  
Lexington, South Carolina  
Tel: (803) 359-2512

**Nicole Price**

---

**From:** Nicole Price  
**Sent:** Monday, May 15, 2017 12:26 PM  
**To:** wnullins@brunerpowell.com  
**Subject:** Mechanic's Lien - Golson  
**Attachments:** 2017\_05\_12\_08\_34\_20.pdf

Please see the attached which was filed Thursday.

Sincerely,  
*Nicole T. Price*  
Nicole T. Price  
Paralegal

Davis|Frawley

Post Office Box 489 (29071)  
140 East Main Street (29072)  
Lexington, South Carolina  
Tel: (803) 359-2512  
Fax: (803) 359-7478  
E-mail: [nicole@oldcourthouse.com](mailto:nicole@oldcourthouse.com)

\*\*\*\*\*

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COPY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
ARM Quality Builders LLC d/b/a )  
ARM Quality Builders, )  
 )  
Claimant, )  
 )  
v. )  
 )  
Joseph A. Golson and )  
Lycia B. Golson, )  
 )  
Defendants. )  
\_\_\_\_\_ )

NOTICE OF CERTIFICATE OF  
MECHANIC'S LIEN

NOTICE IS HEREBY GIVEN, that ARM Quality Builders LLC d/b/a ARM Quality Builders ("Claimant") is due the principal sum of Fifty-five Thousand Eighty-five and 52/100 (\$55,085.52) Dollars from Joseph A. Golson and Lycia B. Golson, as more fully shown on the attached Statement of Account which is made a party of this Notice and Certificate of Mechanic's Lien as *Exhibit A*, together with interest and attorney's fees as allowed by law.

That said debt is due Claimant for labor performed or furnished, and/or for materials furnished for improvements to the real estate hereinafter described, by virtue of an agreement with, or by consent of Joseph A. Golson and Lycia B. Golson, the owner thereof, or an entity or person(s) authorized by, or rightfully acting for, said owner. That Claimant would show that less than ninety (90) days have elapsed since the last date that labor was performed or furnished and/or materials were furnished on the premises.

That by virtue thereof, by the service and filing of this Notice and Certificate, and pursuant to the provisions of applicable law, Claimant has and claims a lien to secure the payment of the debt so due, together with interest, attorney's fees, and the costs of enforcing said lien upon the following described real estate and all improvements thereon:

*See attached Exhibit B*

*SC License Number of Claimant is 14040.*

The foregoing is true to the knowledge of the undersigned on behalf of Claimant.

DAVIS FRAWLEY, LLC

By: \_\_\_\_\_

James Randall Davis  
140 East Main Street  
Post Office Box 489  
Lexington, South Carolina 29072  
Phone No.: (803) 359-2512

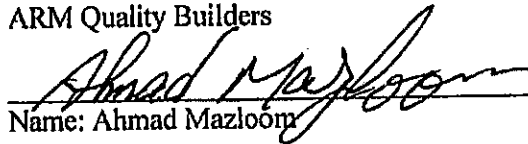
Lexington, South Carolina

May 4, 2017


STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON ) VERIFICATION

PERSONALLY appeared before me the undersigned, who, being first duly sworn, deposes and says that he is the authorized agent and owner of ARM Quality Builders LLC d/b/a ARM Quality Builders, the Plaintiff in the foregoing action, and is authorized to make this Affidavit on behalf of said company; that he is familiar with the account forming the basis for the within action and has read the foregoing Notice of Mechanic's Lien and Statement of Account; that all of the matters alleged therein are true of his own knowledge except for those alleged upon opinion and belief, and as to those, he believes them to be true and that no part of said sum due has been paid by discount or otherwise.

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

  
Name: Ahmad Mazloom

SWORN to before me this 4<sup>th</sup>  
day of May, 2017.

  
\_\_\_\_\_  
(L.S.)  
Notary Public of South Carolina  
My commission expires: 2-2-2023

JAMES RANDALL DAVIS  
NOTARY PUBLIC  
SOUTH CAROLINA  
MY COMMISSION EXPIRES  
JANUARY 22, 2023

COPIES

# EXHIBIT A

207 Libby Ariail Lane, Chapin, SC

Construction Cost ..... \$ 388,998.66

Paid by Joe & Lycia.....\$ 18,247.05

Arm Quality Builders 15% ..... \$ 61,086.86

Total Construction Cost ..... \$ 468,332.57

Received From BB&T & Joe and Lycia..... \$ 413,247.05

Amount Owed to Arm Quality Builders..... \$ 55,085.52

Heated Area .....2,558 sq. ft.

Garage/Storage.....662 sq. ft.

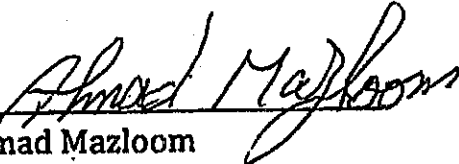
Back Porch.....225 sq. ft.

Front & Side Porch.....105 sq. ft.

Total Square Feet Under Roof.....3,325 sq. ft.

Cost Per Square Foot..... \$ 135.20 sq. ft.

Builder warranties this house fully for the period of one year. The heating and air is warranted for one year labor and 10 years, parts only by the manufacturer.

  
Ahmad Mazloom  
ARM Quality Builders

February 11, 2017

COPY

**EXHIBIT B**

All that certain piece, parcel or lot or tract of land, with any improvements thereon, lying, being and situate on the Waters of Lake Murray, on the Northern side of a 30-foot street, near the Town of Hilton, in the County of Lexington, State of South Carolina, in the School District No. 5 the same being designated as LOT NUMBER THIRTY-TWO (32) in BLOCK "A" on a Plat of "Lake Point" made by William Wingfield, Reg., Surveyor, dated March 18, 1960, and recorded in the Office of the ROD in Lexington County in Plat Book 47-G at Page 74, and bounded as follows: On the North by Lake Murray, measuring thereon in the aggregate Ninety-Four and 4/10 (94.4') feet; on the East by lot 31, Block "A", measuring thereon One Hundred Twenty (120.0') feet; on the South by said 30-foot Street, measuring thereon One Hundred Thirty (130') feet; and on the West by Lot 33, Block "A", measuring thereon One Hundred Sixty-Four and 1/10 (164.1') feet; be all measurements a little more or less.

DERIVATION: This being the property conveyed to Joseph A. Golson and Lycia B. Golson by Deed of Joseph A. Golson dated April 15, 2016, and recorded in the Office of the Register of Deeds for Lexington County, South Carolina on April 19, 2016 in Book 18312 at Page 225.

TMS # 001630-02-030

COPY

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
ARM Quality Builders LLC d/b/a )  
ARM Quality Builders, )  
Claimant )  
Vs. )  
Joseph A. Golson and )  
Lycia B. Golson, )  
Defendants )

Affidavit Of Non- Service

PERSONALLY, PREPARED BEFORE ME, the undersigned deponent, who being duly sworn says that (s)he attempted to serve the Notice of Certificate of Mechanic's Lien, Verification, Exhibit A and Exhibit B In this action on Joseph A. Golson and Lycia B. Golson by delivery to said parties in Lexington, SC at 207 Libby Ariail Lane Chapin, South Carolina, on May 9, 2017 at 7:21p.m. o'clock; however was unsuccessful due to the residence being unoccupied.

Sworn to and Subscribed before me  
this 11<sup>th</sup> day of May, 2017.

Yennie Higgins  
Notary Public for South Carolina

[Signature]  
Signature of Deponent

My Commission expires 8/31/19

**RULE 5**  
**SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS**

**(a) Service: When Required.** Unless otherwise ordered by the court because of numerous defendants or other reasons, all (1) written orders; (2) pleadings subsequent to the original summons and complaint, which includes answers, counterclaims, cross claims, replies and amended complaints; (3) written motions, other than ones which may be heard *ex parte*; (4) written notices; (5) discovery requests and responses; (6) appearances; (7) demands; (8) offers of judgment; (9) designations of record or case; (10) grounds or exceptions on appeal; and (11) other similar papers shall be served upon each of the parties of record. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default.

**Note:**

This Rule 5(a) is substantially the same as Federal Rule, and restates Code §§ 15-9-910 and 15-9-970 with no change in practice.

**Note to 2005 Amendment:**

This amendment to subsection (a) makes explicit that all major documents and papers, including, but not limited to, pleadings and amended pleadings, discovery requests and responses, motions and similar papers are to be served on every party of record. The amendment also adds the word "grounds" in subsection (a)(10).

**(b)(1) Same: How Made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.

**(b)(2) Service on Sunday.** Civil process may be served on Sundays, provided that no person may be served going to or from or attending a regularly or specially scheduled church or religious service on Sunday.

**Note:**

This Rule 5(b)(1) is the same as Federal Rule 5(b) and substantially restates Code §§ 15-9-920, 15-9-930, 15-9-980 and 15-9-990; with no resulting change in State practice. Rule 5(b)(2) is the same as Code § 15-9-1010, except permitting subpoenas to be served on Sunday.

**Note to 2001 Amendment:**

Rule 5(b)(2) is rewritten to reflect the enactment of S.C. Code Ann. § 15-9-17, 2000 S.C. Acts No. 360, which allows for the service of process on Sundays with the stated exceptions.

**(b)(3) Service of Proposed Orders and Other Papers.** Any party providing a proposed order, proposed findings of fact or conclusions of law, or proposed judgment or other paper to the court for its consideration in any pending matter shall serve the same on all counsel of record at the same time and

by the same means.

**Note to 1994 Amendment:**

Rule 5(b)(3) clarifies the intent of Rule 5(a) and requires that proposed orders, findings of fact and conclusions of law and other materials provided to the court are to be served on all counsel of record. The material is to be provided to all other counsel at the same time and by the same means as they are provided to the court. Thus opposing counsel will have the opportunity to review and comment on the proposed order before it is signed. The rule does not require the court to delay entering any proposed order.

**(c) Same: Numerous Defendants.** In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleadings and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

**Note:**

This Rule 5(c) is the same as the Federal Rule. It has no parallel in State practice, but is a needed addition.

**(d) Filing.** All papers required to be served upon a party except as provided in Rule 26(g)(1), shall be filed with the court within five (5) days after service thereof. The summons and complaint shall be filed before service. Proof of service shall be filed within ten (10) days after service of the summons and complaint. Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party. Upon failure of a party to file other pleadings, motions, or papers, the court may permit filing or proceed as though the same had not been served.

**Note:**

This Rule 5(d) encompasses present Circuit Rule 68 and former Rule 75, as well as Code § 15-9-1000. It is a more concise statement, and provides more specific sanctions in the court's discretion.

**Note to 1993 Amendment:**

Rule 5(d) was amended to add language permitting the court to dismiss an action on its own initiative if it has been filed but not served upon the defendant. The prior rule required a motion by a party.

**(e) Filing With the Court Defined.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. Upon any trial or hearing, the clerk shall furnish the original record in the action to the judge, who shall return same to the clerk immediately upon completion of such trial or hearing. Copies of the record may be furnished instead of the original by permission of the judge. Upon change of venue the original record shall be transferred to the clerk of court to which the action is transferred.

**Note:**

This Rule 5(e) is the same as the Federal Rule. It restates and clarifies present Circuit Rules 32 and 67.

Last amended by order dated April 27, 2005

305 S.C. 28 (1990)

406 S.E.2d 176

**STOVALL BUILDING SUPPLIES, INC., Respondent**

v.

**Raymond F. MOTTET, Mildred L. Mottet, Oconee Savings and Loan Association, "Ole" Norm's, Inc., of which Raymond F. Mottet and Mildred L. Mottet, Appellants. And STOVALL BUILDING SUPPLIES, INC., Respondent**

v.

**Arthur MAGUIRE, Muriel A. Maguire, "Ole" Norm's, Inc., and Oconee Savings and Loan Association, of which Arthur Maguire and Muriel A. Maguire, Appellants. And STOVALL BUILDING SUPPLIES, INC., Respondent**

v.

**Frank C. KENYON, Madeline M. Kenyon, George E. Spears, Virginia C. Spears, Oconee Savings and Loan Association, of which Frank C. Kenyon and Madeline M. Kenyon, Appellants, and STOVALL BUILDING SUPPLIES, INC., Respondent**

v.

**FORDCO, INC., Appellant.**

1574

**Court of Appeals of South Carolina.**

Heard September 10, 1990.

Decided November 26, 1990.

Cert. Denied August 6, 1991.

30 \*29 \*30 *Lowell W. Ross, of Ross, Stoudemire & Awde, Seneca, for appellants.*

*Steven C. Kirven, of Watkins, Vandiver, Kirven, Gable & Gray, Anderson, for respondent.*

Heard Sept. 10, 1990.

Decided Nov. 26, 1990.

Cert. Denied Aug. 6, 1991.

GARDNER, Judge:

31 Here we have consolidated appeals from orders in four cases. We shall address the cases respectively as (1) the Mottets' \*31 case, (2) the Maguires' case, (3) the Kenyons' case and (4) the Fordco case. The appealed order in the first three cases granted summary judgment foreclosing alleged mechanic's liens. The appealed order in the Fordco case granted summary judgment foreclosing a statutory lien on funds in the hands of Fordco, a contractor. We affirm in part, reverse in part and remand for trial.

Certain facts apply to all four cases. The actions arose out of the construction of eight houses in the Keowee Key subdivision of Oconee County. In each case, the construction contract was between the owner and Fordco, Inc. Fordco subcontracted major portions of each home to Randy Talley d/b/a Edifice Builders (Talley). Talley purchased materials and services from Stovall Building Supplies, Inc. (Stovall) and a number of other suppliers.

Talley abandoned the jobs in January 1988; leaving owing to various suppliers, including Stovall, approximately \$144,731.70. Of that amount Stovall claimed \$79,390.11 including (1) \$26,197.82 on a house constructed for Raymond F. Mottet and Mildred L. Mottet (the Mottets), (2) \$22,257.51 on a house constructed for Arthur Maguire and Muriel A. Maguire (the Maguires) and (3) \$12,627.84 on a house constructed for Frank C. Kenyon and Madeline M. Kenyon (the Kenyons).

**R. Supp. 1814**

Stovall brought separate actions against the owners to foreclose mechanic's liens pursuant to S.C. Code Ann. § 29-5-10 *et seq.* (1976). Fordco later posted letters of credit in an amount equal to one and one-third times the amounts claimed by Stovall. This was done to release the owner's property under the mechanic's lien statute's "bonding off" provisions. As noted summary judgment was granted in each of the three cases.

Stovall's suit against Fordco alleges a statutory lien on the funds paid Fordco by the Mottets, the Maguires, the Kenyons and five other owners for whom Fordco had built houses in the Keowee Key subdivision. The complaint alleges the separate accounts and the amounts, but does not allege a separate lien for each account. The trial judge, by the appealed order, did not award judgment against Fordco respecting each contract, but lumped them all together in awarding judgment in the amount of \$79,390.11. The appealed order contains no discussion as to the proportion that Fordco's indebtedness to \*32 Stovall bears to the indebtedness owed other materialmen, mechanics, subcontractors, etc.

Each of the appealed orders granted judgment in favor of Stovall. We address each case separately.

## I.

The trial judge by the appealed order foreclosed an alleged mechanic's lien on the Mottets' home. We reverse because Stovall did not notify the Mottets of its mechanic's lien claim before they paid Fordco in full. S.C. Code Ann. § 29-5-40 (1976) provides, in pertinent part, that a mechanic's lien will not attach to the owner's property unless the owner is given notice of the claim of a materialman who contracted with a person other than the owner<sup>[1]</sup> prior to the payment in full of the amount owed the contractor. In addition, the materialman's lien is limited to the amount the owner owes the contractor at the time the materialman gives notice. See Wood v. Hardy, 235 S.C. 131, 110 S.E. (2d) 157 (1959); Lowndes Hill Realty Co. v. Greenville Concrete Co., 229 S.C. 619, 93 S.E. (2d) 855 (1956).

Stovall last supplied materials on the Mottets job on December 4, 1987. The Mottets paid Fordco in full on December 31, 1987. Stovall did not notify the Mottets of its mechanic's lien claim until early in 1988; § 29-5-40, therefore, negates Stovall's claim of a mechanic's lien against the Mottets. For this reason, we reverse the appealed order in the Mottets' case.

## II.

We also reverse the order granting summary judgment in the Maguires' case. The facts, however, in the Maguires' case are in dispute.

The awarding of summary judgment, although justified in some instances, is a somewhat anticipatory method of resolving a lawsuit, and thus, in reviewing a summary judgment, all evidence and reasonable inferences are construed in a light most favorable to the party opposing the motion. Marchant v. Lorain Div. of Koehring, 272 S.C. 243, \*33 251 S.E. (2d) 189 (1979). When there is a dispute as to the conclusions or inferences to be drawn from evidentiary facts, summary judgment should not be granted, even though there is no dispute as to evidentiary facts themselves. Hamilton v. Miller, 301 S.C. 45, 389 S.E. (2d) 652 (1990). Summary judgment is only appropriate when no genuine issue of material fact is involved and inquiry into facts is not desirable to clarify application of the law. Lattie v. SHS Enterprises, Inc., 300 S.C. 417, 389 S.E. (2d) 300 (Ct. App. 1990).

The Maguires lived with Mrs. Maguire's sister in another house in the Keowee Key subdivision until they moved into their own home on February 26, 1988. On February 12, 1988, Stovall had attempted to serve the Maguires by serving a copy of the "Notice and Certificate of Mechanic's Lien" on a Sentry security guard at the entrance of Keowee Key subdivision. We reject Stovall's contention that this constituted service on the Maguires. The security guard was not a responsible person living in the Maguires' home.

Stovall also attempted to serve the Maguires on February 24, 1988, by mail addressed to their home in the Keowee Key subdivision. Mrs. Maguire testified that neither she nor her husband received any notice from Stovall prior to February 27, 1988, the day after they moved into their own home in the Keowee Key subdivision. Fordco was paid in full on February 24, 1988. There is, therefore, an issue of fact as to whether Stovall notified the Maguires of its mechanic's liens claim prior to the time the Maguires paid Fordco in full. Because there is a dispute as to this fact, § 29-5-40 might be applicable to the Maguires' case. Accordingly, we hold that the trial judge erred in granting summary judgment in the Maguires' case; the appealed order is reversed and remanded for further proceedings.

### III.

34 The trial judge also erred in granting summary judgment in the Kenyons' case insofar as the judgment awarded attorney fees. Liability in the Kenyons' case is admitted except as to the attorney fees. The record contains no testimony concerning the attorney fees other than an affidavit \*34 furnished by Stovall's attorney, and there is a material issue of fact as to whether the affidavit was served on the Kenyons prior to the hearing and the issuance of the order.<sup>[2]</sup> Accordingly, the Kenyons' order is reversed insofar as it awards attorney fees and remanded for further proceedings.

### IV.

The order granting summary judgment against Fordco is based upon S.C. Code Ann. § 29-7-10 (Supp. 1989) as amended which provides in pertinent part:

Any contractor in the erection, alteration or repairing of buildings in this State shall pay all laborers, subcontractors and materialmen for their lawful services and material furnished out of the money received for the erection, alteration or repairs of buildings upon which such laborers, subcontractors and materialmen are *employed or interested* and such laborers, as well as all subcontractors and persons who shall furnish material for any such building, shall have a first lien on the money received by such contractor for the erection, alteration or repair of such building *in proportion to the amount of their respective claims.* ... (Emphasis ours.)

The appealed order makes no finding of Stovall's proportionate share of the funds held by Fordco in each of the various accounts. A casual review of computer printouts of record reflects that the judgment entered in Stovall's favor against Fordco exceeds the total of the proportionate amounts owed Stovall in the various accounts. For this reason, the order granting summary judgment against Fordco in favor of Stovall is reversed and the case is remanded for further proceedings.

35 There is another reason, compelling we believe, which requires further development of the facts in this case. Fordco argues that Stovall contracted with Talley, \*35 looked to Talley for payment and made no claim against Fordco until Talley abandoned the job. Fordco argues that Stovall thereby waived its claim against Fordco. This being true, argues Fordco, Stovall has no claim on the funds paid Fordco before Stovall gave notice that it was looking to Fordco for payment. The question of waiver<sup>[3]</sup> is a matter for the jury or fact finder. For this additional reason, we reverse the order granting summary judgment and remand for trial.

## CONCLUSION

For the reasons stated, we affirm that part of the Kenyons' case not pertaining to attorney fees; we reverse that part of the Kenyons' case pertaining to attorney fees and remand for trial. As to the three remaining appealed orders, we reverse and remand for further proceedings in accordance with this decision.

Affirmed in part, reversed in part and remanded.

GOOLSBY, J., and LITTLEJOHN, Acting Judge, concur.

[1] Stovall contracted with Talley and not with the owners, the Mottets.

[2] The Kenyons allege that the attorney fees were the result of affidavits Stovall submitted to the court that the Kenyons never saw. If true, this is *ex parte* communication between a lawyer and a judge and is forbidden by Rule 3.5 of the S.C. Rules of Professional Conduct and SC Code of Judicial Conduct, Canon 3 A(4).

[3] A waiver is an intentional relinquishment of a known right. It may be either express or implied. An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable. Summary judgment should be denied where the facts, although not in dispute, are nonetheless subject to conflicting inferences. Lyles v. BMI, Inc., 292 S.C. 153, 158-159, 355 S.E. (2d) 282, 285 (Ct. App. 1987).

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**R. Supp. 1816**



**Title 29 - Mortgages and Other Liens****CHAPTER 5****Mechanics' Liens****SECTION 29-5-10.** Lien of person furnishing labor and materials for buildings or structures; offers of settlement.

(a) A person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate or the boring and equipping of wells, by virtue of an agreement with, or by consent of, the owner of the building or structure, or a person having authority from, or rightfully acting for, the owner in procuring or furnishing the labor or materials shall have a lien upon the building or structure and upon the interest of the owner of the building or structure in the lot of land upon which it is situated to secure the payment of the debt due to him. The costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party. The fee must be determined by the court in which the action is brought but the fee and the court costs may not exceed the amount of the lien. As used in this section, labor performed or furnished in the erection, alteration, or repair of any building or structure upon any real estate includes the preparation of plans, specifications, and design drawings and the work of making the real estate suitable as a site for the building or structure. The work is considered to include, but not be limited to, the grading, bulldozing, leveling, excavating, and filling of land (including the furnishing of fill soil), the grading and paving of curbs and sidewalks and all asphalt paving, the construction of ditches and other drainage facilities, and the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes, and the disposal of any construction and demolition debris, as defined in Section 44-96-40(6), including final disposal by a construction and demolition landfill. Any private security guard services provided by any person at the site of the building or structure during its erection, alteration, or repair is considered to be labor performed or furnished within the meaning of this section. As used in this section, materials furnished and actually used include tools, appliances, machinery, or equipment supplied for use on the building or structure to the extent of their reasonable rental value during their actual use. "Person" as used in this section means any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or other entity. For purposes of this section, the term "materials" includes flooring, floor coverings, and wall coverings.

(b) Not less than fifteen days before the first term of court at which the trial is set, either party may file and serve on the other party an offer of settlement, and within ten days thereafter the party served may respond by filing and serving his offer of settlement. The offer shall state that it is made under this section and specify the amount, exclusive of interest and costs, which the party serving the offer is willing to agree constitutes a settlement of the lien. If the action is not reached for trial, then not less than fifteen days before the next term of court and subsequent terms of court at which the trial is set, either party may file and serve on the other party an offer of settlement or an amendment of a prior offer of settlement and, within ten days after that, the party served may respond by filing and serving his offer or amended offer of settlement. The offer or amended offer supersedes any offer previously made under this section by the same party.

An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer, five days before the commencement of the term.

If the offer is rejected, it may not be referred to for any purpose at the trial, but may be considered solely for the purpose of awarding costs and litigation expenses under this section.

For purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. One verdict assumes some entitlement to the mechanic's lien and the consideration of compulsory counterclaims. The party whose offer is closer to the verdict reached is considered the prevailing party in the action. If the difference between both offers and the verdict is equal, neither party is considered to be the prevailing party for purposes of determining the award of costs and attorney's fees.

If the plaintiff makes no written offer of settlement, the amount prayed for in his complaint is considered to be his final offer of settlement.

If the defendant makes no written offer of settlement, the value of his counterclaim is considered to be his negative offer of settlement. If the defendant has not asserted a counterclaim, his offer of settlement is considered to be zero.

HISTORY: 1962 Code Section 45-251; 1952 Code Section 45-251; 1942 Code Section 8727; 1932 Code Section 8727; Civ. C. '22 Section 5639; Civ. C. '12 Section 4113; Civ. C. '02 Section 3008; G.S. 2350; R. S. 2456; 1816 (6) 32; 1869 (14) 220; 1922 (32) 944; 1973 (58) 80; 1974 (58) 2183; 1976 Act No. 524, Section 1; 1986 Act No. 408, Section 1; 1990 Act No. 374, Section 2; 1999 Act No. 83, Section 1; 2003 Act No. 51, Section 22.

Ahmad Mazloom  
Licensed Builder

Tel. (803) 513-8352  
Fax (803) 359-6065

**STATE OF SOUTH CAROLINA )**

)

**CONTRACT TO BUILD**

**COUNTY OF LEXINGTON )**

**AGREEMENT** made this 29<sup>th</sup> day of February 2016, between Ahmad Mazloom (ARM Quality Builders), hereinafter "Builder" and Joseph Aaron Golson and Lycia B. Golson, hereinafter "Homeowners".

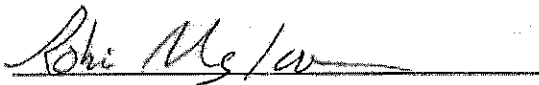
1. Builder agrees to build a residential home for the above Homeowners according to plans and specifications on property located in Lexington County, South Carolina and described as Lot #32 (207 Libby Ariail Lane, Chapin, SC 29036), subject to all easements and covenants of record (provided they do not make the title marketable) and to all governmental statutes, ordinances, rules and regulations.
2. The Homeowners agree to pay \$395,000.00 to Builder for the aforementioned residential home. Builder agrees to construct the dwelling in a workmanlike manner. Builder also agrees to supervise construction. The Builder shall order all materials, labor, public water, septic tank, tools, equipment, light power, transportation and other facilities necessary for the execution and completion of the work. Said price does not include landscaping. The Builder may substitute materials of equal or greater quality than specified or of good quality if availability of materials is limited by national shortage or governmental control.
3. Upon signing this agreement and following the acquisition of said lot, construction of the residential home will commence. After construction begins, it is to be completed within 180 days of start-up unless construction is delayed through no fault of the builder, including but not limited to strikes, accidents, weather conditions, or delays beyond the control of the builder.
4. The Homeowners shall at all times have access to the property and the right to inspect the work provided that no subcontractors are working on the premises.

Homeowner accepts full responsibility for any injuries should they occur while on construction site and not hold Builder responsible for such injuries.

5. Distribution of funds will be according to BB&T's documented schedule.
6. Builder offers full warranty for one year after occupancy begins. ( i.e. appliances, heating/air, electrical, plumbing, vinyl, etc.)
7. Before occupancy begins, Homeowners and Builder will have a walk-thru whereby any items needing attention before occupancy occurs must be completed.
8. The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors, and assigns of the respective parties.

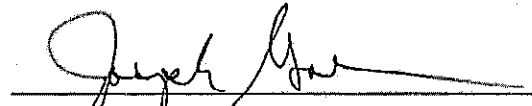
**WITNESS** the parties hereby by their hands and seals the day and year first written.

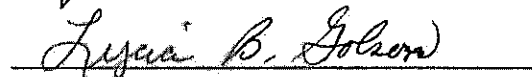
In the presence of:

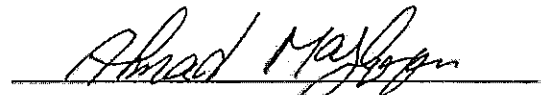
  
WITNESS AS TO HOMEOWNER

  
WITNESS AS TO HOMEOWNER

  
WITNESS AS TO BUILDER

  
Joseph Aaron Golson

  
Lycia B. Golson

  
Ahmad Mazloom (ARM Quality Builders)

CONTRACT FOR SERVICES

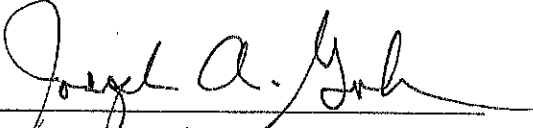
This Contract for Services is made effective as of February 29, 2016 by and between Joseph A. Golson and Lycia B. Golson, of 624 Rockwood Rd., Columbia, SC 29209 and Ahmad Mazloom (ARM Quality Builders) of 117 Cannon Trail Ct., Lexington, SC 29073.

1. DESCRIPTION OF SERVICES. Beginning upon availability of funds, Ahmad Mazloom of ARM Quality Builders will provide to Joseph and Lycia Golson the following services:

Building the residential home on Lot 32, 207 Libby Ariail Lane, Chapin, SC 29036 according to plan specifications in a timely manner. Home to be completed within 180 days of start-up unless construction is delayed through no fault of the builder, including but not limited to strikes, accidents, weather conditions, or delays beyond the control of the builder. Builder will construct said home at cost. Builder's fee will be 15% of the cost to build said house. A joint checking account will be opened in a designated bank with accessibility to the Builder. Builder will use said account to purchase building materials, labor, permits, etc. to complete construction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

Service Recipients:

  
\_\_\_\_\_  
Joseph A. Golson

  
\_\_\_\_\_  
Lycia B. Golson

Service Provider:

*Ahmad Mazloom*  
Ahmad Mazloom (ARM Quality Builders)

287 S.C. 346 (1985)

338 S.E.2d 631

**SENTRY ENGINEERING AND CONSTRUCTION, INC., Respondent,**

v.

**MARINER'S CAY DEVELOPMENT CORPORATION, Eastern Indemnity Company of Maryland, Jim Oswald, David Hartley, Tri-State Coatings, Inc., and Ben Peters Brick, Inc., Of Whom Mariner's Cay Development Corporation and Eastern Indemnity Company of Maryland are Appellants.****MARINER'S CAY DEVELOPMENT CORPORATION, Appellant,**

v.

**SENTRY ENGINEERING & CONSTRUCTION CO., INC.; Rightway Drywall; Jim Oswald, d/b/a Oswald Wholesale Lumber; Tri-State Coating, Inc.; Sandpiper Utilities, Inc.; O'Dea Construction; Lakewood Construction Co.; Laverne Locklair; David Holland; Miles Gannt & John Gray Construction Co.; Fiberglass Insulators; Atlas Electric Co.; James M. Babcock; American Equipment Company, Inc.; K & S Construction Company, Inc., Lawrence D. Kay; Landscaping & Design, Inc., d/b/a Garden Center, Inc.; Bill Mitchell; Ben Peters Brick, Inc.; Rhodes-Buck Building Supply, Inc.; Spartanburg Screens; McKinney Wholesale Plymart; Wickes Lumber; Wickes-Component Division; Charleston Lumber; C & S Door; McCoy Lumber; Interior Stairs; Miami-Carey-Fidelity; Pennco Windows; General Electric; Boro Wood Products; Hertz Rentals; Limehouse Crane Rentals; M & M Oil Co.; Renfrow Distributors Sani-Serva; Dorothy Clifton; O. L. Thompson Construction Company; Jennings Concrete Company; Mike Carroll; Henry Summers; Max Dupree; Carolina Carpets; Southeastern Liteweight Concrete Products; Good Earth Landscaping; Eden Roofing; Rast — T.V.; Boston Charleston; Sanders Brothers; Meeco Marina; Southeastern Marble; Delph Context; M & M Plumbing, Inc.; John Strickland; Swimming Pools of Spartanburg, Inc.; and Southern Fence Company, Inc., d/b/a Lowcountry Fence Company, Of Whom Sentry Engineering and Construction Co., Inc. is Respondent.**22423

Supreme Court of South Carolina.

Heard September 23, 1985.

Decided December 11, 1985.

348 \*347 \*348 *Frank S. Potts of Lewis, Lewis, Bruce & Truslow, Columbia, for appellants.**Henry W. Brown of Quinn, Brown, Stanton & Boyle, Columbia, for respondent.*

Heard Sept. 23, 1985.

Decided Dec. 11, 1985.

CHANDLER, Justice:

This action arises out of a breach of contract for condominium construction.

We affirm.

Appellant-Developer (MCDC) and Respondent-Builder (Sentry) executed a "Standard Form of Agreement Between Owner and Contractor" (Base Agreement) providing for the cost of construction. Concurrently, the parties executed a separate document entitled "Agreement for Profit and Overhead" (Side Agreement) for additional compensation above construction cost.

**R. Supp. 1823**

As the project neared completion, Sentry became concerned about payment. It filed a mechanic's lien for balances due under both Agreements and for change orders, to which MCDC filed an appropriate bond with Appellant Eastern Indemnity Company of Maryland as surety. Sentry exercised its contractual right of arbitration, filing a claim with the American Arbitration Association (AAA) in the amount of its mechanic's lien. Simultaneously, Sentry filed a petition in Circuit Court to foreclose its lien.

349 \*349 The Circuit Court rejected MCDC's objection to arbitration and ordered arbitration of all claims arising out of the contract documents. Rights were reserved to the parties to seek statutory relief after the filing of the AAA decision. Sentry then amended its arbitration demand to include claims for damages based on wrongful termination. Sentry also petitioned the Circuit Court for an injunction permitting it access to the site to correct deficiencies in the roof.

The AAA found Sentry entitled to \$503,271.00. Pursuant to Sentry's motions, the Circuit Court adopted the AAA award as a judgment, granted Sentry summary judgment on its mechanic's lien foreclosure petition, assessed interest and awarded Sentry a reasonable attorney's fee of \$80,000.00. The total judgment was \$622,425.00.

MCDC asserts error in (1) ordering arbitration of the Side Agreement, (2) confirmation of the AAA award as a mechanic's lien judgment, (3) assessment of interest and (4) the award of attorney's fees.

## ISSUES

MCDC contends that the Circuit Judge erred in holding:

- (1) that the separate documents, one for construction costs and the other for profit, comprised a single unified agreement;
- (2) that Sentry, by seeking Circuit Court relief, did not waive, but retained, its right to arbitration;
- (3) that profit and overhead are components of "debt", as contemplated by the mechanic's lien statute, S.C. Code Ann. Sec. 29-5-10 (Supp. 1984);
- (4) that the arbitration award was convertible into a mechanic's lien judgment;
- (5) that Sentry was entitled to interest;
- (6) that Sentry was entitled to attorney's fees.

## I. UNIFIED OR SEPARATE AGREEMENT?

The Base Agreement provided specifically for arbitration, to which the Side Agreement was silent. MCDC contends that the two documents constituted separate contracts, so that Sentry was entitled to arbitration of the Base Agreement dispute only. We disagree.

350 \*350 In Klutts Resort Realty, v. Down 'Round Development Corp., 268 S.C. 80, 232 S.E. (2d) 20 (1977), this Court held

The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the *same time*, by the *same parties*, for the *same purpose* and in the course of the *same transaction*, the courts will consider and construe the instruments together. The theory is that the instruments are effectively *one instrument* or contract. [Emphasis supplied.]

268 S.C. at 88, 232 S.E. (2d) at 24.

The Circuit Court found as a fact that the two documents comprised a single, integrated agreement. We agree.

This litigation involves a breach of contract and the enforcement of a statutory lien. Both are actions at law. Moore v. Crowley & Associates, Inc., 254 S.C. 170, 174 S.E. (2d) 340 (1970) (breach of contract); Raines v. Sanders, 134 S.C. 284, 132 S.E. (2d) 581 (1926) (mechanic's lien). In a non-jury case the findings of fact will not be disturbed unless found to be without reasonable evidentiary support. Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E. (2d) 773 (1976).

The Side Agreement, by reference, incorporates the Base Agreement and its general conditions. A modification is defined in the Base Agreement as a written amendment signed by both parties. The Side Agreement meets this definition. Thus, each incorporates the other. This reasonably supports the Circuit Judge's finding of a single, integrated contract subject to arbitration.

The two documents refer to different components of the contract's price term: payment for actual work and payment for profit. Under the *Klutts* test, the purpose of both is the same: *compensation for project construction*. The Circuit Court correctly ordered that Sentry's claims under both documents be decided by arbitration.

351 Additionally, S.C. Code Ann. Sections 15-48-130 (Supp. 1984) and 15-48-140 (Supp. 1984) provide the exclusive procedures for vacating or modifying awards where arbitrators exceed their powers or award upon a matter not properly submitted to them. MCDC filed no motion to vacate or modify within 90 days of delivery of a \*351 copy of the award. Consequently, the award became the law of the case.

## II. WAIVER OF RIGHT TO ARBITRATE

MCDC asserts Sentry's acts in filing a petition for a prohibitory injunction allowing it to complete roof work are inconsistent with a right to arbitrate. It argues further that the prejudice resulting to it by Sentry's action constituted a waiver of arbitration. Sentry counters that the petition for injunction did not seek to litigate any issue raised by arbitration, but was simply an attempt to correct work complained of by MCDC.

Federal decisions require a showing of prejudice when waiver is asserted. *Carcich v. Rederi A/B Nordie*, 389 F. (2d) 692, 696 (2d Cir.1968) holds that it is not inconsistency, but the presence or absence of prejudice which is determinative. In this context prejudice is undue burden on the objecting party, brought about by delay in the other party's making its demand for arbitration. *Batson Yarn and Fabrics Machinery Group, Inc. v. Saurer-Alma GmbH-Allgauer Maschinenbau*, 311 F. Supp. 68 (D.S.C. 1970); *Episcopal Housing Corp. v. Federal Ins. Co.*, 269 S.C. 631, 239 S.E. (2d) 647 (1977). MCDC shows no prejudice by delay, only the inconvenience of litigating the petition for injunction.

"[W]aiver may not be inferred from the fact that a party does not rely exclusively on the arbitration provisions of a contract, but attempts to meet all issues raised in litigation between it and another party to the agreement." *Germany v. River Terminal Ry. Co.*, 477 F. (2d) 546, 547 (6th Cir.1973).

Sentry at all times sought to enforce its right to arbitrate under the contract; it is clear it had no intention to waive the right, and no waiver is shown.

## III. PROFIT AS A COMPONENT OF MECHANIC'S LIEN

In the arbitration procedure Sentry claimed the balance due for profit under the Side Agreement. The Circuit Court adopted the AAA award as a mechanic's lien judgment. MCDC asserts that profit and overhead are not proper components of a mechanic's lien. We disagree.

352 \*352 The parties by express contractual provisions fixed the compensation for full performance. Overhead and profit under the Side Agreement were components of the contract price.

S.C. Code Ann. Section 29-5-10 (Supp. 1984) provides,

Any person to whom a *debt* is due for labor performed or furnished or for materials furnished and actually used ... by virtue of an *agreement* ... shall have a lien... [Emphasis supplied].

In *Williamson v. Hotel Melrose*, 110 S.C. 1, 96 S.E. 407 (1918), this Court upheld a contractor's mechanic's lien for "oversight" and supervisory services. The general rule on whether overhead and profit are lienable is stated in 53 Am. Jur. 2d *Mechanic's Liens*, Section 107 (1970):

Since the statutes provide a lien for labor performed and materials furnished, the question arises, particularly where a contractor works under a cost-plus contract, whether items which are not direct labor or material costs, such as overhead and profit, are lienable. Such items, as such and standing by themselves, are

nonlienable, but they become lienable when they are included in a contract price or are reflected in the reasonable value of labor or materials furnished. Thus, the cost or value of labor for which a lien may be claimed is not necessarily confined to the actual wages paid by the employer to the employee actually performing the labor. It may also include costs and expenses of operation in addition to direct wages paid.

We hold that overhead and profit, when stated as part of the contract price, are proper components of a mechanic's lien.

#### IV. CONVERSION OF ARBITRATION AWARD INTO MECHANIC'S LIEN

353 Sentry's amended demand for arbitration included a claim for "Payment of the balance due claimant under the contract documents plus *damages*, based on a *wrongful termination*, in the amount of \$720,000.00." [Emphasis supplied.] The AAA found Sentry's termination to be \*353 unwarranted. Its lump sum award is unallocated. The Circuit Court granted Sentry's motion for summary judgment to foreclose its mechanic's lien through this award.

MCDC correctly asserts that, under authority of *Sea Pines Co. v. Kiawah Island Co., Inc.*, 268 S.C. 153, 232 S.E. (2d) 501 (1977), the mechanic's lien statute may not be used as a vehicle for collecting damages for breach of contract. However, reliance upon *Sea Pines* here is misplaced.

Sentry's amended arbitration demand, admittedly, added a claim for damages "based on a wrongful termination." MCDC contends that this added claim, coupled with failure of the AAA award to allocate between such damages and money amounts collectible under the mechanic's lien statute, mandates a finding, as a matter of law, that the award included some amount for breach of contract damages. We disagree.

Unfortunately, the record is void of any AAA proceedings to indicate what evidence was there presented. We are left, as was the Circuit Court, to a review of the meager record before us in ruling upon MCDC's contention.

At the hearing for summary judgment, each party presented an affidavit relative to what claims were represented in the award. These two affidavits constitute the entire record before us on this issue.

MCDC's affidavit cites Sentry's amended demand for breach of contract damages but contains no statement that any amounts for such damages were ever submitted to AAA by Sentry.

Sentry's affidavit, on the other hand, directly addresses this issue. Paragraph three states that "All claims presented to the arbitration panel by Sentry in the proceeding represented by the award dated July 15, 1983, were claims for compensation for work performed on the Mariner's Cay Project." [Emphasis supplied.]

Paragraph four then sets out, specifically, the dollar amounts representing claims actually presented to the arbitration panel by Sentry. All amounts were for work performed, none for breach of contract.

In short, MCDC's affidavit is merely conclusory. In no way does it contradict the statements in Sentry's affidavit that the amounts claimed were for work performed only.

354 \*354 We hold that, on the evidence before it, the Circuit Court ruled correctly that no material fact was in issue and, accordingly, properly granted summary judgment.

#### V. INTEREST

MCDC asserts that it was error to assess interest for the period after which it made a tender in the amount of the AAA award. Sentry counters that a dispute arose as to whether acceptance would require it to give up its claim for attorney's fees. No money was ever paid.

This Court held in *Ruscon Construction Company of Florida v. Beaufort-Jasper Water Authority*, 259 S.C. 314, 191 S.E. (2d) 715 (1972) that only tenders in money, in the proper amount due, and *without conditions annexed to their acceptance*, stop the running of interest. In *Ruscon*, the contractor believed in good faith that acceptance would compromise its claim for indemnification. Its good faith refusal did not preclude assessment of interest. Because Sentry's fear of compromised position was reasonable, its refusal was in good faith. Accrual of interest from the date of the AAA award to the date of judgment was proper.

## VI. ATTORNEY'S FEES

The Circuit Court granted Sentry's request for reasonable attorney's fees of \$80,000.00 to foreclose its lien, allocating \$70,000.00 for time spent in litigation before the arbitration panel and \$10,000.00 for time spent in Circuit Court. MCDCC contests the right to recover fees under the mechanic's lien statute regarding costs, S.C. Code Ann. Section 29-5-410 (1976), where liability is based on an arbitration proceeding.

Article 7.6.1 of the general provisions of the contract provides

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

355 In a case with similar facts, the Court in *Harris v. Dyer*, 292 Or. 233, 637 P. (2d) 918 (1981), examined the right to attorney's fees for time spent in arbitration and circuit court to foreclose a mechanic's lien under a contract provision identical to Article 7.6.1. The Court noted that one of the standard remedies that must have been contemplated in this provision is the security of a lien and eventual foreclosure, a procedure which gives the prevailing party a right to attorney's fees. The Court held the contract reserved the right to attorney's fees for time spent in arbitration as a component of a lien foreclosure proceeding, stating

It does not seem the most likely reading of this reservation of rights that it meant to sacrifice attorney fees which the law allows when all phases of the foreclosure remedy are litigated in court. Rather, it seems more consonant with the apparent objective of including a reservation of rights to read art. 7.6.1 as disavowing such a limitation on the otherwise available right to attorney fees.

637 P. (2d) at 921.

A provision of the State Arbitration Act, S.C. Code Ann. Section 15-48-220 (Supp. 1984), provides that a party may proceed with arbitration and perfect concurrently its mechanic's lien rights. In this we perceive a legislative intent to promote arbitration of contract disputes. To deny fees where liability is arbitrated would discourage arbitration.

We agree with the reasoning in *Harris* and hold that where a contract providing for arbitration includes a reservation of rights and the lienor must bring a foreclosure action to enforce an arbitration award, an award of attorney's fees is proper under S.C. Code Ann. Section 29-5-410 (1976).

Affirmed.

NESS, C.J., and GREGORY, HARWELL and FINNEY, JJ., concur.

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF LEXINGTON ) Case No.: 2017-CP-32-02204

ARM Quality Builders LLC d/b/a,  
ARM Quality Builders,

Plaintiff(s),

v.

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

Defendants(s).

Joseph A. Golson and Lycia B. Golson,

Third-Party Plaintiffs

v.

Ahmad Mazloom,

Third-Party Defendant

**NOTICE OF MOTION  
AND MOTION TO RECONSIDER  
PURSUANT TO SCRCP RULE 52(b) AND  
RULE 59(h)**

TO: CAITLIN C. HEYWARD, ESQUIRE, and E. WADE MULLINS, III, ESQUIRE,  
ATTORNEYS FOR DEFENDANTS JOSEPH A. GOLSON and LYCIA B. GOLSON:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through its undersigned attorney, will move before The Honorable Clifton B. Newman for an Order reconsidering the Order Granting Motion to Dissolve Mechanic’s Lien and Dismissal of Mechanic’s Lien Foreclosure Cause of Action entered on November 27, 2018. The undersigned would ask the Court to reverse its decision dismissing the mechanic’s lien cause of action. This Motion is made on the following grounds.

### 90 DAY FILING REQUIREMENT

1. The Court, in its Order on page 1, states “Defendants moved to dissolve Plaintiffs’ mechanic’s lien and for an award of attorneys’ fees on the grounds that (1) the Mechanic’s Lien was filed after the expiration of the 90-day statutory filing period, and (2) Plaintiff failed to properly serve the Mechanic’s Lien on Defendants as required by S.C. Code Ann. §29-5-90.” The actual grounds for Defendants’ Motion were (1) the lien claimant ARM Quality Builders LLC the property owners, Defendants Joseph A. Golson and Lycia B. Golson, as evidenced by the affidavit of non-service included on the last page of **Exhibit A**, (2) there is no money owed to ARM Quality Builders LLC and (3) ARM Quality Builders cannot satisfy the statutory requirement necessary for asserting and claiming a lien within the parameters of S.C. Code §29-5-10.

Defendants’ 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 Defendants’ Motion indicates that it is based on the Affidavit of Non-Service filed with the Notice of Mechanic’s Lien by the Plaintiff, no money was owed to the Plaintiff and that Plaintiff 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. Defendants, prior to the Motion to Dismiss being heard, indicated that they were relying on Plaintiff’s Notice of Mechanic’s Lien and documents attached thereto as well as the Affidavit of Non-Service and *SC Code Ann. §29-5-10*.

2. Rule 12(b) of the South Carolina Rules of Civil Procedure lists eight defenses and the pleader has the option of raising them by motion before the first answer or in the first responsive pleading. Unasserted defenses based on challenges to personal jurisdiction, venue,

service of process, insufficiency of process and other action is pending are waived if they are not included in the Rule 12(b) Motion. *Garner v. Houck*, 312 S.C. 481, 435 S.E.2d 847 (1993). No 12(b) motion or affirmative defense was ever raised on the issue of service of process.

### SERVICE ON DEFENDANTS

The Court ruled on page 3 of its Order, the following: “To be valid, a mechanic’s lien must be perfected and enforced in compliance with the Mechanic’s Lien Statutes. In order to perfect and enforce a mechanic’s lien, it must be both served on the owner of the property and filed within 90 days of the last date of work or it is dissolved, and a suit to foreclose a dissolved lien cannot be maintained.”

The Court also ruled on page 5 of its Order “A court does not have equitable powers to reform an erroneous filing to give a claimant rights under an improperly filed lien. Because lien statutes are in derogation of common law, they should be construed against lien claimants.”

Plaintiff disagrees with these legal conclusions by the Court in that there is no case cited by the Court on the issue of whether the failure to get the affidavit from the sheriff’s department, which is referenced in *SC Code Ann. §29-5-90*, is a fatal defect in regards to not complying with the mechanic’s lien statute. If the Court considers the question of proper service a legal conclusion, Plaintiff would cite the following cases indicating that it’s service was proper under the statute.

Plaintiff cites *Clo-Car Trucking Co. v. CLIFFLURE ESTATES*, 282 S.C. 573, 320 S.E.2d 51 (Ct. App. 1984), for Plaintiff to allege non-perfection of its lien. However, *Clo-Car* 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).

There are two cases on this issue that are favorable to the Plaintiff and they are: The question of service of the Notice of Mechanic’s Lien on the owners of the property and in this case Summary Judgment was denied where there was evidence of mailing the Mechanic’s Lien to the homeowners and their denial of the receipt of the same. *Stovall Building Supplies, Inc. v. Mottet*, 305 S.C. 28, 406 S.E.2d 176 (1990). There is no discussion of requirement for the sheriff’s affidavit in this case; and Construction contractors with mechanic’s lien did not need to notify party who was selling property on installment contract of lien, since purchaser, rather than vendor, was equitable owner. *Southern Pole Bldgs., Inc. v. Williams*, 289 S.C. 521, 347 S.E.2d 121 (1986).

Plaintiff has complied with the statute completely with the exception of the affidavit from the sheriff’s department. The Court, in its ruling on page 7, indicated the following in its Order: “The purpose of requiring service of notice of the mechanic’s lien is to advise a property owner of the existence of the line and to afford him or her an opportunity to investigate the claim and determine its validity.”

In regards to service of the Notice of Mechanic’s Lien on the Defendants Golson, attempted service was made on two occasions with the latter being May 9, 2017 (although the Court found as a finding it was only attempted service as indicated on page 9 of its Order), as indicated in the Affidavits provided by the process server indicating that service was attempted and posting of the Notice of Mechanic’s Lien was placed on the Defendants Golson’s front door

of the house. In his deposition, Defendant Joseph A. Golson, he testified that he and his family had moved into the house in January 2017 and the Certificate of Occupancy on the house had been issued for them to live in the house and they had claimed their four (4%) percent legal residence on the house with the County of Lexington Assessor's Office. Clearly, there is no issue as to the whereabouts of the Defendants and the attempted service at the address at 207 Libby Airial Lane in Chapin, South Carolina, was their home.

Furthermore, the attorneys for the Defendants were retained by the Defendants Golson prior to the filing of the Notice of Mechanic's Lien, as indicated by the attached documents, including a letter of representation from the Defendant Golson's counsel (see attached e-mail dated April 1, 2017), follow-up letters and e-mails indicating discussion (see attached e-mail dated April 7, 2017 and e-mail dated April 27, 2017) and notification to Defendant Golson's counsel that we would have to file a Notice of Mechanic's Lien (see attached letter dated April 17, 2017) and that the Notice of Mechanic's Lien was sent to the Defendant Golson's counsel on May 15, 2017 (see attached e-mail dated May 15, 2017, with attachments).

The Court found that a copy of the Mechanic's Lien is not attached to the Complaint. Plaintiff would clarify this by indicating that the Mechanic's Lien's filing was referenced in the Plaintiff's Complaint.

If the Court considers the issue of service on the Defendants, including the affidavit from the sheriff's department as a factual issue, Plaintiff would contend that there is a material issue of fact as to whether proper service was rendered and the Summary Judgment should be denied based on the following citations. Plaintiff's position is that based on the service attempted by the Plaintiff on Defendants would satisfy the Court's ruling on page 7 of its Order dealing with purpose of service of notice requirement. All ambiguities, conclusions, and inferences arising

from the evidence must be construed most strongly against the moving party. Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (Ct.App.2003); Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct.App.2001). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000); Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004).

Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004); Hawkins, 358 S.C. at 289, 594 S.E.2d at 561-62; Murray v. Holnam, Inc., 344 S.C. 129, 542 S.E.2d 743 (Ct.App.2001).

Respectfully submitted,

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