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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

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

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

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.

FINAL BRIEF OF RESPONDENTS AND THIRD-PARTY RESPONDENTS

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TABLE OF CONTENTS

Table of Authorities……………………………………………………………………………iii

Statement of the Issues on Appeal ……………………………………………………….....1

Statement of the Case………………………………………………………………………...1

Standard of Review ………………………………………………………………………….3

Statement of the Facts………………………………………………………………………..4

Argument ..……………………………………………………………………………………13

I. The Circuit Court Correctly Ruled That ARM Failed to Properly Serve Its Mechanic's Lien upon the Golsons Pursuant to S.C. Code Ann. § 29-5-90...………..13

II. The Circuit Court Correctly Ruled as an Additional Basis for Dismissal of the Lien That the Lien Was Filed after the Expiration of the 90-Day Statutory Filing Period. ……………………………………………………………………………...18

III. The Lower Court Properly Awarded Attorney's Fees as a Result of Its Dismissal of the Mechanic's Lien. ……………………………………………………………21

IV. The Trial Court Correctly Found That ARM Failed to Satisfy Its Burden That the Golsons Breached the Contract. ......…………………………………………………30

V. The Testimony and Documentary Evidence Support the Trial Court's Finding That Appellants Engaged in Fraud.………………………………………………...32

VI. The Trial Court Properly Awarded Punitive Damages.………………………………36

VII. The Trial Court Correctly Concluded That Attorney's Fees Incurred in Defending a Wrongfully Filed Mechanic's Lien Reflected Special Damages. ………39

VIII. The Trial Court Order Does Not Result in a Double Recovery for Respondents.……40

Conclusion 42

TABLE OF AUTHORITIES

Cases

Allegro, Inc. v. Scully, 418 S.C. 24, 791 S.E.2d 140 (2016).. 30

Bank of New York v. Sumter Cty., 387 S.C. 147, 691 S.E.2d 473 (2010).................................... 20

Beacham v. Greenville County, 218 S.C. 181, 62 S.E.2d 92 (1950) 38

BPS, Inc. v. Worthy, 362 S.C. 319,608 S.E.2d 155 (Ct. App. 2005) 41

Butler Contracting, Inc. v. Court St., LLC, 369 S.C. 121, 631 S.E.2d 252 (2006)....................... 14

Carl E. Jones Development, Inc. v. Wilson, 149 Ga. App. 679, 255 S.E.2d 135 (1979)............. 39

Cedar Creek.. 24

Cedar Creek Properties v. Cantelou Assocs., Inc., 320 S.C. 483, 465 S.E.2d 774 (Ct. App. 1995) 23

Clo-Car Trucking Co. v. Cliffture Ests. of S.C., Inc., 282 S.C. 573, 320 S.E.2d 51 (Ct. App. 1984) 14, 15

Conran v. Joe Jenkins Realty, Inc., 263 S.C. 332, 210 S.E.2d 309 (1974) 30

Contract Dev. Corp. v. Beck, 255 Ill. App.3d 660, 627 N.E.2d 760 (Ill. Ct. App. 1994) 39

Crary v. Djebelli, 329 S.C. 385, 496 S.E.2d 21 (1998) 3

Dedes v. Strickland, 307 S.C. 152, 155, 414 S.E.2d 132, 134 (1992) 21

Dixon v. Dixon, 362 S.C. 388, 608 S.E.2d 849 (2005)... 20

EFCO Corp. v. Renaissance on Charleston Harbor, LLC, 370 S.C. 612, 635 S.E.2d 922 (Ct. App. 2006) 24, 26, 27

Eldeco, Inc. v. Charleston County Sch. Dist., 372 S.C. 470, 642 S.E.2d 726 (2007)..................... 3

Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993) 37

Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991)... 36, 37

Gilbert v. Mid-S. Mach. Co., 267 S.C. 211, 227 S.E.2d 189 (1976) 41

Glasscock, Inc. v. U.S. Fid. & Guar. Co., 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001)............ 37

Harkins v. Greenville County, 340 S.C. 606, 533 S.E.2d 886 (2000) 3

Harper v. Ethridge, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986) 40, 41

Hough v. Hough, 312 S.C. 344, 440 S.E.2d 387 (Ct. App. 1994) 32

Huff v. Jennings, 319 S.C. 142, 459 S.E.2d 886 (Ct. App. 1985)... 39

Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997) 26

Keeney's Metal Roofing, Inc. v. Palmieri, 345 S.C. 550, 548 S.E.2d 900 (Ct. App. 2001) .. 23, 24, 25
Kitchen Planners, LLC v. Friedman, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020) 14
Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 232 S.E.2d 20 (1977) 33
Lawlor v. Scheper, 232 S.C. 94, 101 S.E.2d 269 (1957) 41
Madden v. Cox, 284 S.C. 574, 328 S.E.2d 108 (Ct. App. 1985) 40
McGee v. Bruce Hosp. Sys., 321 S.C. 340, 468 S.E.2d 633 (1996)... 36
Moore v. Simpson, 322 S.C. 518, 473 S.E.2d 64 (Ct. App. 1996)... 15
Pac. Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 111 S. Ct. 1032 (1991)... 36
Peteet v. Fogarty, 297 S.C. 226, 375 S.E.2d 527 (Ct. App. 1988) 38
Pye v. Est. of Fox, 369 S.C. 555, 633 S.E.2d 505 (2006) 26
Reed v. Reed, 19 S.C. 548 (1883) 17
Ross v. Med. Univ. of S.C., 328 S.C. 51, 67, 492 S.E.2d 62, 71 (1997) 20
S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc., 324 S.C. 149, 478 S.E.2d 57 (1996).. 37
Save Charleston Foundation v. Murray, 286 S.C. 170, 333 S.E.2d 60 (Ct.App.1985)............... 40
Scott v. Porter, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000) 36
Seabrook Island Prop. Owners' Ass'n v. Berger, 365 S.C. 234, 616 S.E.2d 431 (Ct. App. 2005) 26
Seago v. Horry County, 378 S.C. 414, 663 S.E.2d 38 (2008) 3
Shelley Constr. Co. v. Sea Garden Homes, Inc., 287 S.C. 24, 336 S.E.2d 488 (Ct. App. 1985) 14
South Carolina Fed. Sav. Bank v. Thornton–Crosby Dev. Co., Inc., 310 S.C. 232, 423 S.E.2d 114 (1992) 3
T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 400, 450 S.E.2d 87, 94 (Ct. App. 1994) 23
Utilities Const. Co. v. Wilson, 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996).................... 24, 25, 26
Watson & Howell Builders v. Billingsley, 310 S.C. 39, 425 S.E.2d 43 (Ct. App. 1992).............. 31
Williamson v. Hotel Melrose, 110 S.C. 1, 96 S.E. 407 (1918) 14
Zepsa Const., Inc v. Randazzo, 357 S.C. 32, 591 S.E.2d 29 (Ct. App. 2004) 25

Statutes

S.C. Code Ann § 29510 19

S.C. Code Ann § 29-5-10........ 19, 23, 25

S.C. Code Ann. § 295120 18

S.C. Code Ann. § 29-5-90........ passim

Rules

Rule 4, SCRCP........ 15

Rule 5, SCRCP........ 17

Treatises

17A Am.Jur.2d, *Contracts*, § 508 31

20 S.C. Jur. *Libel and Slander* § 7 39

22 S.C. Jur. *Mechanics' Liens* § 15 15

25 Am. Jur. 2d *Election of Remedies* § 2 41

53 Am.Jur.2d *Mechanics' Liens* § 23 15

53 Am.Jur.2d *Mechanics' Liens* § 18 15

55 Am. Jur. *Proof of Facts* 3d........ 39

Trial Handbook for South Carolina Lawyers, § 37:11 *Election of remedies* (4th ed.) 40

STATEMENT OF THE ISSUES ON APPEAL

I. WHETHER THE CIRCUIT COURT ERRED IN FINDING THAT ARM FAILED TO PROPERLY SERVE ITS MECHANIC'S LIEN UPON THE GOLSONS PURSUANT TO S.C. CODE ANN. § 29-5-90.

II. WHETHER THE CIRCUIT COURT ERRED IN FINDING THAT ARM FAILED TO TIMELY FILE ITS MECHANIC'S LIEN PURSUANT TO S.C. CODE ANN. § 29-5-90.

III. WHETHER THE CIRCUIT COURT ERRED IN AWARDING THE GOLSONS ATTORNEY'S FEES BASED ON THE DISMISSAL OF THE MECHANIC'S LIEN.

IV. WHETHER THE CIRCUIT COURT ERRED BY FINDING THAT ARM WAS NOT OWED $55,084.33 FOR EXTRA-CONTRACTUAL WORK.

V. WHETHER THE CIRCUIT COURT ERRED IN FINDING THAT APPELLANTS' COSTS WERE $284,525.70.

VI. WHETHER THE CIRCUIT COURT ERRED IN AWARDING PUNITIVE DAMAGES TO THE GOLSONS AND AGAINST APPELLANTS.

VII. WHETHER THE CIRCUIT COURT ERRED IN CONCLUDING THAT THE ATTORNEY'S FEE AWARD IS SPECIAL DAMAGES FOR SLANDER OF TITLE.

VIII. WHETHER THE CIRCUIT COURT ERRED BY ENTERING JUDGMENT AGAINST BOTH ARM AND MAZLOOM.

STATEMENT OF THE CASE

This matter is before the Court pursuant to a Notice of Appeal filed October 15, 2020. The case began with a Summons and Complaint filed June 15, 2017 by ARM Quality Builders LLC d/b/a ARM Quality Builders (hereinafter, "ARM"). (R. Supp. pp. 1773–81.) The complaint contained six causes of action in law and equity whereby ARM sought to collect $55,085.52 based on alleged work related to the construction of the home of Joseph A. Golson ("Mr. Golson") and

Lycia B. Golson ("Mrs. Golson") (collectively, "the Golsons" or "Respondents").[1] (*See* R. Supp. P. 1780.) The Golsons answered and counterclaimed on July 28, 2017, asserting breach of contract, negligent misrepresentation, and fraud in the inducement. (R. pp. 153–63.)

The parties engaged in discovery regarding the construction of the Golsons' home and ARM's accounting and records for the project. (*See, e.g.*, R. pp. 1–6 (ordering ARM to comply with certain discovery requests).) On the basis of information gained in discovery, the Golsons moved to amend their answer to add additional counterclaims and to bring in ARM's principal, Ahmad Mazloom ("Mr. Mazloom") (collectively with ARM, "Appellants") as a third-party defendant on May 16, 2018. (R. pp. 236–53.) The Honorable Alex Kinlaw, Jr. granted the motion on July 5, 2018. (R. pp. 7–9.) Appellants answered the claims in the amended answer on August 9, 2018. (R. pp. 254–56.)

On August 15, 2018, the Golsons moved to dissolve the mechanic's lien that ARM had filed on their home. (R. p. 257–58.) After briefing and arguments, the motion was ultimately granted by the Honorable Clifton B. Newman on November 27, 2018. (R. pp. 63–75.) Under the statutory scheme for mechanic's liens, Judge Newman also awarded attorney's fees to the Golsons. (R. pp. 71–74.) This is the first order on appeal. ARM moved for reconsideration on December 7, 2018. (R. Supp. 1784–86.) Judge Newman denied the motion for reconsideration by order dated May 20, 2019. (R. pp. 76–78.) The order also set the amount of the award of attorney's fees to the Golsons at $25,000. (R. p. 77.) This is the second order on appeal. ARM filed another motion for reconsideration on the specific issue of the attorney's fees on May 30, 2019. (R. pp.

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[1] The complaint also named the mortgagee of the Golsons' property, Branch Banking and Trust Company, LLC, as a Defendant. The mortgagee has not participated in the case and is therefore not referred to as a respondent. Additionally, Respondents are omitting use of third-party designations, unless specifically needed, to avoid any unnecessary confusion.

419–20.) That motion was denied by order of Judge Newman dated August 16, 2019. (R. pp. 79–80.) This is the third order on appeal.

Ultimately, the case went to bench trial on December 18–20, 2019 before the Honorable Walton J. McLeod IV. (R. p. 84.) ARM asserted that it was owed $55,085.82 for work on the Golsons' home, while the Golsons asserted that they were owed funds by Appellants due to, *inter alia*, breach of contract, fake billing, and fraudulent accounting. By Form 4 dated December 20, 2019, the trial court ordered the parties to obtain the transcript of the trial and then submit proposed orders. (R. pp. 81–83.) On August 7, 2020, Judge McLeod entered an order in favor of the Golsons and against Appellants. (R. pp. 84–132.) Specifically, the court awarded $128,721.36 to the Golsons as to ARM and $123,839.45 to the Golsons as to Mr. Mazloom. (R. p. 130.) This is the fourth order on appeal. Appellants filed a motion for reconsideration on August 17, 2020. (R. pp. 421–25.) The motion was denied by order dated September 18, 2020. (R. pp. 133–35.) This is the fifth and final order on appeal.

STANDARD OF REVIEW

"A cause of action for breach of contract seeking money damages is an action at law." *Eldeco, Inc. v. Charleston County Sch. Dist.*, 372 S.C. 470, 476, 642 S.E.2d 726, 729 (2007) (citing *South Carolina Fed. Sav. Bank v. Thornton–Crosby Dev. Co., Inc.*, 310 S.C. 232, 235, 423 S.E.2d 114, 116 (1992)). "In an action at law tried without a jury, this Court reviews the trial court's decision to correct only errors of law." *Seago v. Horry County*, 378 S.C. 414, 422, 663 S.E.2d 38, 42 (2008) (citing *Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998)). "The trial court's factual findings will not be disturbed on appeal unless there is no evidence in the record that would reasonable support the findings." *Id.* (citing *Harkins v. Greenville County*, 340 S.C. 606, 621, 533 S.E.2d 886, 893 (2000)).

STATEMENT OF THE FACTS

The Project

In late 2015 and early 2016, the Golsons entered into negotiations with Appellants to construct a new custom home at 207 Libby Ariail Lane in Lexington, South Carolina (the "Project"). (R. p. 886, l. 24–p. 887, l. 24.) Mr. Golson testified that during those negotiations, the Golsons and Mr. Mazloom met on several occasions to discuss the Golsons' plans and goals for the Project. (R. p. 893, l. 12–p. 894, l. 3.) Mr. Golson emphasized that one of their main concerns was having a clear understanding of the costs associated with the work. (R. p. 899, l. 19–p. 900, l. 7.) Mr. Golson testified Mr. Mazloom indicated that the maximum price would not exceed $395,000.00. (R. p. 893, l. 22–p. 894, l. 20.)

In February 2016, the Golsons and ARM entered into a written agreement (the "Agreement") whereby ARM agreed to construct a home on the Golsons' property. (R. pp. 1299–1304.) The parties disputed how payment was structured pursuant to the terms of the Agreement. The Golsons contended that the contract was structured as a "cost plus" contract with a guaranteed maximum price whereby they would pay for costs of a construction and a fixed fee of 15% of the costs to the contractor with the total costs and fees not to exceed $395,000.00. (R. p. 894, l. 6–p. 895, l. 15; p. 989, l. 24–p. 990, l. 14.) Meanwhile, ARM offered differing positions as to how the Agreement was structured. Sometimes ARM argued that the Agreement was for a fixed fee of $395,000.00 based upon previously agreed upon specifications and that the cost of the Project would increase if any changes were requested by the homeowners. (R. p. 702, ll. 17–21.) Other times ARM asserted that the Agreement was structured as a cost-plus contract, but with no guaranteed maximum price. (R. p. 614, ll. 4–11; p. 871, ll. 18–25.) Mr. Mazloom opined that any costs incurred over $395,000.00 would automatically be interpreted as an "extra" under the terms

of the contract, regardless of what the charges were for, and regardless of whether the charges were for items already within the scope of the previously agreed upon specifications. (R. p. 618, ll. 9–14.) However, Mr. Mazloom could not explain why it was necessary to keep track of "extras" or reference "extra" costs in the contract if the parties intended there be no set price ceiling over which an item could *be* extra. (R. p. 614, l. 15–p. 616, l. 11.) In a cost-plus contract with no guaranteed maximum price, costs would simply be costs.

The trial court ultimately found that the Agreement was a cost plus a fixed fee of 15% with a guaranteed maximum price of $395,000.00:

> The parties['] Agreement is comprised of a two-page document executed by the parties entitled Contract to Build and a two-page document entitled Contract for Services executed by the parties, both of which are dated February 29, 2016. **Def. Ex. 1.** The Contract for Services provides that the "Builder will construct said home at cost. Builder's fee will be 15% of the cost to build said house." The Contract to Build obligates the Builder to build the home in accordance with the house plans and the specifications attached to and incorporated into the Agreement. The Contract to Build also states that the Golsons would pay $395,000.00 for the construction of the home. While the Court acknowledges that the specific payment structure of the Contract for Services and the Contract to Build may differ or conflict, or at a minimum be interpreted as ambiguous, the Court finds the only rational and reasonable interpretation of the documents as a whole, along with consideration of the entirety of the testimony, is that the Parties' Agreement was structured as a cost plus a fee with a guaranteed maximum price of $395,000.00. As referenced in the specifications attached to the Agreement, if the scope of work of the Project was modified or increased, the guaranteed maximum price could be increased by agreement of the parties. Likewise, if the scope of work was decreased the guaranteed maximum price could be decreased by agreement of the parties.

(R. pp. 89–90, ¶ 15.) That is, the court found that if ARM built the project to the specifications in the contract (the "scope of work") then the Golsons would pay the costs of labor and supplies needed plus a fee consisting of 15% of those expenses so long as the total did not exceed $395,000.00. These terms and the scope of works could be altered by agreement.

Within a few months of signing the Agreement, Mr. Golson testified that Golsons became concerned that the costs associated to complete the work appeared to exceed the maximum costs quoted by Mazloom. He testified Mr. Mazloom repeatedly told him they had nothing to worry about when inquiries were made about the cost of the work. (R. p. 911, l. 18–p. 913, l. 16.) Mr. Golson went so far as to suggest buying his own materials so he could at least know how much they cost. (R. p. 913, l. 20–p. 914, l. 10.)

The parties agree that Project was completed in January 2017 and no further work was done after that time.[2] After the Golsons moved into the home in January, on February 11, 2017, Mr. Mazloom presented the Golsons with a final statement of what he determined was owed on the contract balance. (*See* R. p. 1282; p. 611, ll. 12–15.) Mr. Mazloom asserted he was owed an additional $55,084.53 over and above the maximum price and what he had already been paid. This number was calculated by applying a debit for $388,998.66 in alleged construction costs paid by ARM; a credit for the $395,000.00 total price that had already been paid through progress payments; a credit $18,247.05 for costs covered by the Golsons out of their own pocket; and a further debit from a 15% fee on *all* costs, including those paid by the Golsons themselves. (R. p. 1282; p. 608, l. 13–p. 611, l. 15.)

The Golsons felt this additional fifty-five thousand dollars was neither justified, nor within the terms of the Agreement. Thus, the Golsons requested that Mr. Mazloom provide a full accounting and supporting documentation for the costs incurred. Mr. Mazloom voluntarily

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[2] This date is notable in part because a Winnsupply invoice for various plumbing items, dated February 16, 2017, was included in supporting documentation later provided by ARM. The invoice indicates the plumbing items were shipped on February 16, 2017, but it does not identify a delivery address or other reference for the Project. (R. pp. 1176–78.) The invoice was relied on by Appellants to support the timeliness of the mechanic's lien, despite clearly not fitting with the established timeline.

produced an accounting and documentation on April 17, 2017. (R. pp. 1340–42.) The Golsons continued to dispute the February bill and ARM executed a mechanic's lien against the Golsons' property on May 4, 2017. In June 2017, ARM filed this action for, *inter alia*, breach of contract and foreclosure of the mechanic's lien.

The Mechanic's Lien

On May 11, 2017, ARM recorded the Notice and Certificate of Mechanic's Lien against the Golson's property in the amount of $55,085.52. (R. pp. 17–22.) The recorded lien includes an affidavit of non-service, which indicates an unsuccessful attempt to serve the lien on the Golsons on May 9, 2017. (R. p. 22.) In a later affidavit, executed more than a year later, the process server attested they taped a copy of the lien to the front door of the Golson's home on May 9, 2017. (R. p. 36.) There is no evidence that the lien was properly served on the Golsons.

On May 15, 2017, after the lien was recorded, ARM's counsel emailed a courtesy copy of the lien to the Golsons' counsel. (R. p. 1761.) The email did not include a request that the Golson's counsel accept service of the lien on behalf of the Golsons, and there is no evidence that Counsel agreed to do so. The Golsons both stated by affidavit that they never authorized their counsel, nor any other person or entity, to accept service of the lien on their behalf. (R. p. 270, ¶ 16; p. 286, ¶ 16.)

The mechanic's lien, in its sworn statement of amount due, asserted the same $55,084.53 that Mr. Mazloom had claimed in February 2017. The mechanic's lien was not executed or sent out for any attempt to effect service until May 9, 2017, nor was it recorded until May 11, 2017, despite work ending on the Project in January 2017. Significant discovery was undertaken by Respondents to determine exactly what support there was for the liened amount and when work ceased.

The Fees Award

Following this fact-gathering, Respondents moved to dissolve the mechanic's lien in 2018. By Order dated November 27, 2018, Judge Newman dissolved the lien and dismissed ARM's foreclosure action because ARM failed to properly serve or timely file the lien accordance with S.C. Code Ann. § 29-5-10. (R. pp. 63–75.) The lower court determined that the Golsons, as prevailing parties, were entitled to an award of attorney's fees pursuant to S.C. Code Ann. § 29-5-10 and requested the parties to brief the issue. (*See* R. pp. 73–75.)

At the time the parties briefed the issue, Respondents had incurred $34,097.00 in attorney's fees specifically related to mechanic's lien issues, as well as $4,924.81 in costs. (R. p. 305, ¶¶ 4–5.) In addition to an affidavit, Respondents submitted a detailed fee report showing the time entries for the attorney's fees. The report was submitted *in camera* because of potential attorney-client and work product privilege issues. The submissions of Respondents showed that the Golsons prepared several defenses to the mechanic's lien. The defenses included arguments and evidence that the lien was not properly served, was record out of time, and asserted construction costs and fees that were in breach of the contract and fraudulent.

Discovering the truth about costs and fees asserted in the sworn statement of account for the lien required completing five depositions and issuing at least twenty-one subpoenas, including subpoenas to several subcontractors, material suppliers, and for ARM's bank records. Actually obtaining the testimony and documents required, *inter alia*, defending against ARM's motion to quash the subpoenas to its subcontractors, as well as fighting for months to get Mr. Mazloom to sit for a deposition. [*See* R. pp. 164–65; R. pp. 335–40 (containing three deposition notices for ARM stretching over several months).) The subpoenas and other discovery responses

eventually resulted in the production of thousands of pages of documents, which had to be reviewed and analyzed. This included comparing all of ARM's documentation with that of its bank and subcontractors and re-creating all calculations. After completion of this work, Respondents were prepared to show that the sworn statement attached to the lien amounted to fraud. Two days after Mr. Mazloom finally set for a deposition on August 13, 2018 and confirmed that he completed work in January 2017, Respondents filed their motion to dissolve the mechanic's lien. After Judge Newman reviewed all the time entries, the amended affidavit of fees and costs, and the arguments of the parties, he awarded Respondents $25,000.00 in fees. (R. p. 77.)

Appellants' Claims

After the mechanic's lien was dissolved, ARM sought the same funds through its breach of contract claim. Plaintiff's Exhibit 34 is a summary of ARM's claim. (R. p. 1282.) Appellants assert this money is owed despite the amount being in excess of the maximum contract price of $395,000.00, which had already been paid. Appellants assert that the total construction costs (including supplies and labor) are $388,998.66 paid by ARM and $18,247.05 paid by the Golsons out of their own pocket. ARM seeks to charge a 15% contractor's fee on both the costs ARM allegedly paid and the costs paid directly by the Golsons in a bid to control outlays, separate and apart from the main budget.

At the time ARM started asserting an extra fifty-five thousand dollars, the Golsons had paid out their full bank loan at $395,000.00, in addition to the $18,247.05 in other costs. This is a total of $413,247.05. After crediting the Golsons for their out-of-pocket costs, but adding a 15% fee to all costs, whether incurred by ARM or not, ARM reached a total of $468,332.57. The amount asserted by ARM is the difference between these two figures. ARM entered exhibits 1–29 at trial in support of these purported costs. (R. pp. 1101–1275.) Plaintiff's Exhibit 33 is a copy

of the specifications list from the Agreement with handwritten annotations itemizing what ARM claims was "extra" work.[3] (R. pp. 1280–81; pp. 500–01; 506–20.) These "extras" were asserted despite their being no written change orders altering the scope of work or contract price. (*See* R. p. 630, ll. 3–17; p. 873, ll. 5–20 (Mr. Mazloom acknowledging that there were no written change orders).) Even if there was an agreement to add "extras," ARM provided no evidence showing a cost differential between the item ARM agreed to provide on the specifications list and the supposed substituted or upgraded line items. (R. p. 618, l. 15–p. 622, l. 5.) The trial court ultimately found that ARM failed to meet its burden of proof for any costs over the $395,000.00 price ceiling for extra or upgraded work. (R. pp. 121–22.)

Respondents' Claims

At trial the Golsons successfully rebutted ARM's claims and then went on to prove their own. Specifically, the Golsons asserted that Appellants fraudulently overbilled them using inflated or falsified documentation. The Golsons claimed that the actual costs incurred on the Project by ARM were less than $395,000.00 and Respondents are entitled to damages for breach of contract and fraud. The parties stipulated that Mr. Mazloom submitted his accounting and supporting documents to the Golsons on April 17, 2017. (*See* R. pp. 1344–1486.)

Additional joint exhibits include twelve signed checks made payable to ARM's subcontractors. (*See* R. pp. 1723–35.) ARM's bank statements from the relevant period shows the checks were never actually submitted for payment and were essentially fake; Mr. Mazloom's explanation is that these are "reminder checks" for the IRS. (*See* R. pp. 1487–1722; p. 649, ll. 3–5 (testimony regarding a "reminder check").) There was nothing about the checks that

[3] The handwriting was added by Mr. Mazloom's daughter after ARM initiated this litigation and does not evidence any agreement or change order approved by the Golsons. (*See* R. p. 629, ll. 10–12.)

distinguished them as being for the "IRS Record." (*See* R. pp. 1723–35; p. 565, l. 15–p. 566, l. 20.) Mr. Mazloom provided no credible explanation as to why it was necessary to sign the checks to prove to the IRS that subcontractors were paid in cash. (*See* R. p. 644, ll. 4–21.) Months after litigation commenced, on March 19, 2018, Mr. Mazloom also come forward with "cash receipts" to support his cost accounting for the first time. (*See* R. p. 1736–46.) The twelve purported cash payments to subcontractors totaled $57,812.58. (*See* R. p. 695, l. 2.) Mr. Mazloom testified that he used cash from his personal money from his personal safe to make these payments. He further testified that ARM pays him back for cash payments, but only if the homeowner pays ARM. (R. p. 694, l. 18–p. 696, l. 16.) Mr. Mazloom could provide no documents, such as a loan, formalizing this purported arrangement.

At trial, Respondents offered the testimony of four of ARM's subcontractors. Collectively, these four subcontractors all established that Mr. Mazloom did not pay them in cash; that he pressured them into providing fake cash receipts or used their form to fake a document; and that the amounts Mr. Mazloom purported to have paid in his accounting to the Golsons was not the amounts that the subcontractors had actually charged or been paid. (*See* R. pp. 93–101 (containing detailed factual findings with citations to trial transcript and exhibits).)

The trial court performed a detailed analysis of the evidence submitted relating to properly allocable costs on the Project and considered the testimony of a number of ARM's subcontractors. In so doing, the court found that a substantial amount of the ARM alleged costs were not credible for various reasons, including (1) costs were not properly allocable to the Project; (2) the costs were fabricated either through manipulated invoices or fraudulently claimed cash receipts or (3) there was a lack of credible proof that the costs were actually incurred. These conclusions were

supported by the exhibits admitted at trial as well as the testimony of ARM's own subcontractors.

The trial court made the following findings regarding the alleged construction costs:

Sub/Supplier	**Amount Claimed by Plaintiff**	**Amount Proven By Plaintiff**	**Unproven amount of Plaintiff's claim**
Undisputed Subcontractor Costs	$105,116.68	$105,116.68	
Winnsupply	$4,329.40	$1,397.54	$2,931.86
A&D Fabrication (Rick Crolley)	$13,000.00	$9,400.00	$3,600.00
White Knoll Heating and Air (Josh Joyner)	$25,000.00	$19,500.00	$5,500.00
B&R Electric (Bubba Morrell)	$23,000.00	$18,000.00	$5,000.00
Double R. Cabinetry (Josh Hall)	$13,999.00	$11,750.00	$2,249.00
RNG Contracting (Nerry Rodas)	$148,000.00	$92,746.48	$55,253.52
J&M Huerta (Jamie Huerta)	$22,483.56	$15,215.00	$7,268.56
Eagle Excavating (Jim Pasko)	$5,150.00	$ -	$5,150.00
Harvey Wise	$12,586.50	$ -	$12,586.50
Proctor Foundation and Concrete (Marc Proctor)	$10,000.00	$9,000.00	$1,000.00
Vacuum Center (Tony Bearden)	$2,800.00	$2,400.00	$400.00
Billy Kelly	$2,400.00	$ -	$2,400.00
TOTAL	**$387,865.14**	**$284,525.70**	**$103,339.44**

(R. at 117.) As such, the trial court concluded that ARM had $284,525.70 in actual project costs and that the maximum amount the Golsons were required to pay ARM for the Project was $327,204.56. This amount consisted of total proven costs of $284,525.70 plus at 15% fee of $42,678.86. The parties stipulated that the Golsons paid ARM $395,000.00 and contributed

$18,247.05 in out-of-pocket material costs, for a total of $413,247.05. Because ARM only established that it earned $327,204.56 for its project costs and fee, the trial court properly found that ARM was not entitled to any additional costs with respect to its claim for breach of contract.

The trial court concluded that Appellants' misrepresentations were fraudulent in nature. Thus, $86,042.50 was awarded against ARM for overpayment under the Golsons' claim for breach of contract accompanied by fraudulent act. The same damages, minus $5,000.00 specifically attributable to ARM, or $81,160.59, were awarded against Mr. Mazloom for fraud. As punitive damages for the fraudulent nature of Appellants' claims, the trial court awarded punitive damages exactly equivalent to the properly owning 15% fee ARM should have earned on the project, $42,678.86. The circuit court rulings in this case contained exhaustive findings, multiple citations to the evidence, accurate conclusions of law, and just and fair decisions.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY RULED THAT ARM FAILED TO PROPERLY SERVE ITS MECHANIC'S LIEN UPON THE GOLSONS PURSUANT TO S.C. CODE ANN. § 29-5-90.

ARM did not correctly serve its mechanic's lien as required by law. Judge Newman rightly found that the mechanic's lien should be dissolved and dismissed for failure to comply with S.C. Code Ann. § 29-5-90. It is undisputed that neither of the Golsons, nor any other "person in possession" of the real property, were properly served with the lien. At best, the mechanic's lien was merely taped to the door of the Golsons' home.[4] (R. p. 36.) This failure of proper service generally makes the mechanic's lien unenforceable.

[4] The affidavit of non-service recorded with the mechanic's lien indicates that the server attempted service on May 9, 2017 at "7:21p.m. o'clock" but found no one home. (R. p. 22.) A second affidavit was executed and presented to the lower court and Respondents' counsel on September 10, 2018, more than a year after the original affidavit of non-service. The later affidavit states that the process service made a "second trip" on May 9, 2017 and "posted the Notice of Mechanic's Lien and ancillary documents . . . by taping those items to the door." (R. p. 36.) Only one

However, when the owner or person in possession of the property cannot be located after diligent search, the statute allows for an affidavit of due diligence executed by the sheriff or their deputy to substitute for proper service. *See* S.C. Code Ann. § 29-5-90. ARM did not obtain such an affidavit in this case. ARM contends that there was no need to obtain an affidavit from the sheriff because knowing the Golsons were living at the property equates to "locating" the Golsons and that is sufficient for purposes of the statute. This interpretation contorts the language of the law.

Mechanic's liens do not arise from common law, but rather are a statutory remedy. Because the remedy is purely statutory, the requirements of the statutory scheme must be strictly followed. *See Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 276, 851 S.E.2d 724, 729 (Ct. App. 2020), pet. for certiorari pending (citing *Butler Contracting, Inc. v. Court St., LLC*, 369 S.C. 121, 130, 631 S.E.2d 252, 257 (2006)); *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 27, 336 S.E.2d 488, 490 (Ct. App. 1985). Complying with the plain language of the statute has long been held to be a necessity. *See Clo-Car Trucking Co. v. Clifflure Ests. of S.C., Inc.*, 282 S.C. 573, 576, 320 S.E.2d 51, 53 (Ct. App. 1984) (holding that the court must abide by the plain language of the mechanic's lien statute); *see also Williamson v. Hotel Melrose*, 110 S.C. 1, 96 S.E. 407, 415 (1918) ("He who sets up such a lien must bring himself fairly within the expressed

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contemporaneous affidavit has been provided to the court and Respondents. (*See* R. p. 440, ll. 4–18 (Appellants' counsel describing only the two affidavits discussed here, despite indicating on Appellants' designation of matter that there are "affidavits" plural dated May 9, 2017).) The second affidavit—executed more than a year later—combined with the contemporaneous affidavit of non-service suggests that, if there were two trips, they were both made between 7:21pm and midnight of May 9, 2017. However, affidavits of the Golsons e-filed with the lower court on September 13, 2018 state that the Golsons were never served with the mechanic's lien and have no knowledge of it being taped to their door. (R. p. 270, ¶¶ 14–15; p. 286, ¶¶ 14–15.) In either event, there was no proper service, so the issue of how many times service was not accomplished is immaterial.

intention of the lawmakers."). Importantly, a "'claim may not be sustained when that can be done only by a forced and unnatural interpretation of the language of the statute.'" *Clo-Car Trucking*, at 576, 320 S.E.2d at 53 (quoting 53 Am.Jur.2d *Mechanics' Liens* § 18 at 535 and § 23 at 542 (1970)).

ARM's contention that a lien claimant is not required to file an affidavit of the sheriff because there was no issue as to the "location" of the Golsons is illogical and a distortion of the statute. The purpose of service is to provide notice. *See Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996) (citing Rule 4, SCRCP) (service assures the defendant of reasonable notice). A filed mechanic's lien clouds title to real property and affects the owner's rights. Under no circumstances is a lien valid if it is not served on the owner or filed after obtaining a sheriff's affidavit within the statutory period. *See* 22 S.C. Jur. *Mechanics' Liens* § 15 ("In the event that the person asserting the lien does not serve on the owner and file the statement of account within 90 days of the last date of work, the lien is dissolved by operation of law."). The law is clear.

> [A] lien shall be dissolved unless the person desiring to avail himself thereof, within ninety days . . . **serves upon the owner** <u>or</u>, . . . in the event neither the owner nor the person in possession can be located after diligent search, and this fact is *verified by affidavit of the sheriff or his deputy*, **the lien may be preserved** by filing the statement together **with the affidavit**.

S.C. Code Ann. § 29-5-90 (emphases added).

The statute provides two choices: proper service or affidavit of due diligence. There is no middle ground where knowing where to serve the owner, but not actually serving them is acceptable. Indeed, in their brief Appellants state that they "have complied with the statute completely, *with the exception* of the affidavit from the sheriff's department . . . ." (App. In. Br. at p. 5 (emphasis added).) Nevertheless, ARM alleges the Court may disregard S.C. Code Ann.

§ 29-5-90 if the owner is a resident of the county where the property is located. ARM's contention is that a diligent search and sheriff's affidavit would be useless because the subject property is identified as the Golsons' primary residence on their property tax bill, thereby making it "clear" to Plaintiff that Defendants reside in Lexington County.

This illogical contention makes the notice requirement about the claimant and not the property owner, which defeats the purpose of service. Nothing in the statute is targeted at identification or verification of an owner's residency. The statute requires the sheriff verify the fact that "the owner *cannot be located* after diligent search" if service cannot be effected. To accept ARM's argument would require the Court to accept a manufactured and extra-statutory exception to the law that has never been recognized in South Carolina. This exception would defeat the entire purpose and obvious public policy of S.C. Code Ann. § 29-5-90, which is aimed at ensuring that the property owner gets notice, or, at the very least, the lien claimant made every possible effort, including engaging the sheriff, to achieve notice. Whether or not the lien claimant figures out where the property owner lives is immaterial and certainly not sufficient for strict compliance with the rules of this statutory remedy.

Based on the plain language in the statute and the indisputable fact that no proper service was achieved and no sheriff's affidavit was obtained, there is no option but to dissolve the mechanic's lien. Where a lien claimant fails to comply with S.C. Code Ann. § 29-5-90, the statute mandates that the lien "*shall be dissolved*." S.C. Code Ann. § 29-5-90 (emphasis added). However, ARM makes one further argument in aid of overturning Judge Newman's well-reasoned order on the mechanic's lien. ARM argues that neither proper service, nor a sheriff's affidavit was needed because counsel for ARM emailed the lien to counsel for the Golsons.

Appellants cite to no authority in their brief for the proposition that emailing a lien to an attorney is a substitution for strict compliance with the statute where there is no acceptance of service, or even a certificate of service.[5] Appellants merely assert that attorneys are agents for their clients. While this may be true, that agency status is not unlimited. Further, the agency relationship would still require *acceptance* of service by the agent. *See Reed v. Reed*, 19 S.C. 548, 551 (1883) (holding that a defendant has every right to require proper service and an acceptance of service by an attorney not authorized to make it is not binding upon the defendant). There is nothing in the record evincing acceptance of service by Respondents' counsel and Respondents have attested they did not give their counsel authority to accept service of the mechanic's lien. (R. p. 270, ¶ 16; R. p. 286, ¶ 16.) Respondents do not dispute that a copy of the lien was emailed to their attorney. However, if simply emailing a copy of a mechanic's lien or summons and complaint to an attorney without an acceptance was sufficient service, there would be no purpose to any of the service of process requirements present throughout the legal system and specifically in S.C. Code Ann. § 29-5-90.

In their memorandum to the lower court, Appellants argued that Rule 5, SCRCP, made it sufficient to simply email a copy of the lien to Respondents' counsel. (R. p. 362.) This is a remarkable stretch, given that it ignores Rule 4, SCRCP, but more importantly, it ignores that suit was not filed until June 15, 2017. (R. Supp. 1773–83.) There were no parties or their counsel to be served under Rule 5, because there was no personal jurisdiction and no lawsuit. Under the

[5] While regular Rule 5, SCRCP, "service" upon an attorney of a post-appearance filing by email would not have been sufficient for a mechanic's lien under any scenario, notably, the events at issue here occurred in 2017, well before the current public health crisis led our appellate courts to even allow e-service to AIS email addresses with certificates of service under temporary procedural orders.

statutory scheme the lien must be served and recorded before a suit foreclosing on that lien can be filed. *See* S.C. Code Ann. § 29-5-120(A) (referring to filing suit to enforce an existing lien).

Public policy and case law demands strict compliance with the mechanic's lien statutes. Mechanic's liens are a very strong remedy that jeopardize the rights of property owners. For those reasons, a contractor has to be licensed to obtain a lien and a contractor must strictly comply with the law's requirements, including the requirement the lien be properly served or a sheriff's affidavit showing due diligence must be obtained. Put simply, ARM completely failed to meet those requirements and now seeks to carve out non-existent exceptions to perfectly plain statutory requirements. The law does not allow for such exceptions; rather, the law states that failure to comply with the service requirements *must* result in dissolution and dismissal of the lien. Judge Newman ruled as the law intended and should be affirmed.

II. THE CIRCUIT COURT CORRECTLY RULED AS AN ADDITIONAL BASIS FOR DISMISSAL OF THE LIEN THAT THE LIEN WAS FILED AFTER THE EXPIRATION OF THE 90-DAY STATUTORY FILING PERIOD.

ARM attempted to foreclose on a mechanic's lien that was filed well after the strict statutory deadline. ARM now attempts to escape that fact by arguing that it was not on notice that Respondents' intended to attack the lien at the hearing on their motion to dismiss or dissolve the mechanic's lien. This argument is unsupported by the record and fails for several reasons.[6]

Respondents made no secret of their conclusion that ARM's mechanic's lien was not enforceable pursuant to state law. For instance, in their original answer, filed July 28, 2017, the Golsons stated, "Defendants . . . specifically assert that Plaintiff has failed to comply with the

[6] This argument pertains to a secondary ground to the lower court's ruling on the mechanic's lien. If this Court affirms Judge Newman's order in regards to failure of proper service, as discussed above, this issue need not be reached. The converse is true as well; if the court affirms that the lien was filed after the ninety-day window, it need not reach the service issue. Notably, Appellants have not challenged the merits of Judge Newman's conclusions on the ninety-day issue, only the notice of the issue.

requirements of S.C. Code Ann § 29-5-10, *et seq.* with regards to perfecting its lien and said lien is dissolved as a matter of law." (R. p. 154, ¶ 7; *see also* pp. 154–58, ¶ 12, 18, and 41; pp. 237–41, ¶¶ 7, 12, 18, 41, and 43.) By the time that the Golsons filed their motion to dissolve the mechanic's lien, they had already taken the deposition of Mr. Mazloom and questioned him specifically on the issue of the lien and ARM's last date of work on the property. (*See* R. p. 371, at Tr. p. 43, l. 24–p. 44, l. 1 (stating that the last work was done "[i]n January 2017").)

By the time the Motion to Dismiss/Dissolve Mechanic's Lien was filed on August 15, 2018, Appellants had been on notice of Respondents' issues with the lien for *more than a year*. The motion itself, which was clearly targeted at the validity of the lien, stated that ARM could not "satisfy the statutory requirement necessary for asserting and claiming a lien . . . ." (R. p. 258.) One of the most notorious statutory requirements for a mechanic's lien is that it be served and filed within ninety days. *See* S.C. Code Ann. § 29-5-90. Indeed, that requirement is intertwined in the *same sentence* as the requirement for service discussed above. That specific code section was also cited in an email to the court and opposing counsel prior to the hearing of the motion on September 10, 2018. (R. p. 357.) Under these circumstances, it is unreasonable to suggest that ARM was not on notice of the subject-matter of the motion to dissolve the mechanic's lien.

In fact, Appellants demonstrated their understanding of the matter in contest by addressing the timeliness of the lien in their brief, submitted to the court before the hearing. ARM stated that it's lien "was [filed] within the ninety (90) day period as required by the statute." (R. p. 361, ¶ 2.) ARM cited to a "material invoice indicating that material was provided to the project as late as February 16, 2017." (R. p. 361, ¶ 2 (citation to bates label omitted).) ARM attached the purported material invoices in support of its brief. (R. Supp. pp. 1793–95.) ARM then went on to argue directly on the merits of the timeliness issue during the motion hearing September 10, 2018 without

ever once suggesting that it was not on notice of the issue of timeliness. (*See* R. p. 439, ll. 12–23 (counsel opening his argument with a discussion of timeliness on the merits).) ARM's failure to raise this notice issue at the hearing suggests both that it had sufficient notice and that the issue is waived under appellate preservation rules. *See Bank of New York v. Sumter Cty.*, 387 S.C. 147, 159, 691 S.E.2d 473, 479 (2010) (citing *Dixon v. Dixon*, 362 S.C. 388, 608 S.E.2d 849 (2005)) ("It is axiomatic that an issue cannot be raised for the first time in a post-trial motion.").

In order to review all perspectives, the lower court specifically asked each party to submit a proposed order including their own view of the issues. (*See* R. p. 451, l. 24-p. 452, l. 1 (". . . I'm considering each person's proposed order independently and [I'm giving] you an opportunity to critique, respond, say anything you want about the other's proposal.").) ARM submitted its proposed order by email on September 21, 2018. (R. p. 10.) ARM's proposed order contained no reference to any lack of notice of the grounds for Respondents' motion, but rather squarely addressed the ninety-day issue. (*See* R. pp. 12–14.) Indeed, even if notice before the hearing was somehow limited, which is denied, the lower court gave all parties a chance to provide further evidence and argument after the hearing, including, but not limited to, the proposed orders. These additional opportunities to be heard remedy any short notice. *See Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 67, 492 S.E.2d 62, 71 (1997) (noting that a procedural due process issue may be cured by subsequent opportunities to be heard). ARM took advantage of that opportunity by drafting a letter to Judge Newman dated October 9, 2018. This letter, provided approximately one month after the motion hearing, appears to be the first time the issue of notice was raised by ARM. (*See* R. p. 1768.) All of these chances to provide further argument were in addition to the opportunity to file a motion for reconsideration, which ARM also did. (*See* R. Supp. 1828–33.)

Even assuming *arguendo* that ARM did raise the issue at the motion hearing and was given short notice, it can show no prejudice. In a 1992 case, our Supreme Court found in favor of a party that did not receive timely notice of a motion hearing. *See Dedes v. Strickland*, 307 S.C. 152, 155, 414 S.E.2d 132, 134 (1992). However, before ruling in the complaining party's favor, the Supreme Court first found prejudice because the party was "wrongfully denied the opportunity to submit affidavits, documents or testimony opposing respondent's motion for summary judgment, and that the rights of the appellant were prejudiced thereby." *Id.* In this case, there was no prejudice. ARM was allowed to argue, to present evidence, to submit affidavits, to brief the issues, to submit a proposed order, to critique opposing counsel's proposed order, and to file a motion for reconsideration.

Under such circumstances, no prejudice against ARM could be found. ARM has not made an argument that the lower court's ruling was in error on the merits of the timeliness issue, because it cannot. ARM failed to raise the issue of notice at the motion hearing, which prevents preservation of the issue on appeal. ARM had sufficient notice of the issues raised by the motion based on the pleadings of the Golson's and the motion itself. ARM tacitly acknowledged this notice by squarely addressing the ninety-day issue at the top of its argument at the motion hearing. Lastly, ARM had every opportunity to provide any other information or arguments it believed were necessary to the court. For all these reasons, Judge Newman rightly ruled on the issue of timeliness, secondary to lack of service, and rightly ruled that ARM failed to serve and file its lien within the deadline set by statute.

III. THE LOWER COURT PROPERLY AWARDED ATTORNEY'S FEES AS A RESULT OF ITS DISMISSAL OF THE MECHANIC'S LIEN.

ARM filed a mechanic's lien riddled with issues. The mechanic's lien had not been properly served; it had not been timely filed; and it claimed funds not duly owed. The Golsons

ultimately prevailed in dissolving the mechanic's lien on the first two grounds; however, the Golsons diligently prepared their case so that if the court determined that the lien was viable, they could still contest the validity of the costs claimed. Under statutory and case law, the Golsons are entitled to payment of their attorney's fees for all of this work as the prevailing parties. Now, Appellants seek to avoid those fees based on a myopic interpretation of the law.

Initially, Respondents note that ARM failed to preserve the issue of whether the Golsons are prevailing parties for this Court's review. Appellants cannot now criticize the lower court's decision to award fees to the Golsons; they can only argue the amount. On November 27, 2018, Judge Newman entered an order determining that the Golsons are entitled to an award of attorney's fees because they are the prevailing party. (R. pp. 71–73.) The court made the specific determination that an award must be made; the court held over only the question of the reasonableness and amount of fees so that the parties could submit additional information on that point. (*See* R. p. 73.)

On December 7, 2018, Appellants filed a motion to reconsider the court's November order. That motion addresses only the ninety-day timeliness issue and the service issue. (*See* R. Supp. Pp. 1829–33.) Nowhere in the motion do Appellants contend that an award of attorney's fees to the prevailing parties is incorrect based on a "mere technicality" or any other theory. Indeed, even in Appellants' October 9, 2018 letter to the lower court, Appellants only contend that the amount of fees should be considered in light of the other causes of action in the case, not whether there should be no award.[7] (R. p. 1771.) For this reason, the issue of whether there should be an award (or whether the Golsons are prevailing parties) is not preserved for review.

[7] The letter also briefly asserts that the issue of fees was not addressed at the motion hearing on September 10, 2018. (R. p. 1771.) However, the transcript of the hearing includes counsel for Respondents' assertion that fees should be awarded under the relevant mechanic's lien statute and

ARM raised the issue of whether the Golsons were prevailing parties for the first time on December 20, 2018, in its "Brief on Attorney's Fees." (*See generally* R. pp. 382–84.) If this issue is properly preserved, the lower court should be affirmed. The Golsons are prevailing parties entitled as a matter of law to an award of attorney's fees. The Golsons successfully defended against a mechanic's lien being prosecuted against them despite the fact that it failed as a matter of law. Unfortunately, it took a great deal of effort to gain the information necessary to show that ARM had failed to properly serve the lien, to timely file the lien, or to correctly support the lien with valid documentation. The dissolution of the lien was on no "mere technicality;" the dissolution occurred because the lien was shown to fail as a matter of law once the full facts were gathered.

Section 29-5-10(a) mandates the award of costs, including reasonable attorney's fees, to the prevailing party who sought to enforce or defend a lien. *See* S.C. Code Ann. § 29-5-10(a); *see also T.W. Morton Builders, Inc. v. von Buedingen*, 316 S.C. 388, 400, 450 S.E.2d 87, 94 (Ct. App. 1994) (holding that despite use of the word "may" the award is mandatory); *Cedar Creek Properties v. Cantelou Assocs., Inc.*, 320 S.C. 483, 486–87, 465 S.E.2d 774, 776 (Ct. App. 1995) (restating the holding in *T.W. Morton*).

The prevailing party is still entitled to the mandatory award when the lien is dismissed, dissolved, or even withdrawn. *See Keeney's Metal Roofing, Inc. v. Palmieri*, 345 S.C. 550, 553–55, 548 S.E.2d 900, 902–03 (Ct. App. 2001) (holding prevailing party entitled to fees after succeeding on a Rule 12(b)(6) motion and reciting other such awards). The *Keeney's* case catalogues numerous circumstances where fees were properly awarded including the *Cedar Creek*

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reflect that an affidavit of attorney's fees had been filed. (R. p. 438, l. 20–p. 439, l. 8; *see also* p. 443, ll. 6–7 ("The award of attorney's fees is also statutory.").)

case where the claimant who filed the lien ultimately withdrew the lien voluntarily. *Id.* at 554, 548 S.E.2d at 902 (citing *Cedar Creek*, at 486, 465 S.E.2d at 776). In that case, the Court reasoned that even though the lien was eventually cancelled, the property owners were still the prevailing parties because they had to seek judicial review of the lien and otherwise defend against its cloud on their title before the lien was voluntarily withdrawn. *See Cedar Creek*, at 486, 465 S.E.2d at 776. In a footnote, this Court recognized that to hold otherwise, and disregard the award of fees, would allow a party to file frivolous liens and cloud title without the possibility of real consequences so long as the lien was withdrawn prior to trial. *Id.* at 486 n.1, 465 S.E.2d at 776 n.1.

Although the *Keeney's* case does recognize a "mere technicality" argument, it does not find that dismissal as a matter of law falls under that standard. *Keeney's*, at 555, 548 S.E.2d at 902–03. Indeed, the case law supports the award of fees to the prevailing parties and does not suggest that circumstances like those in this case could ever be attributed to just "mere technicality." *See, e.g.*, *EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 619–20, 635 S.E.2d 922, 926 (Ct. App. 2006) (affirming award on motion finding that lien foreclosure action was not timely filed); *Utilities Const. Co. v. Wilson*, 321 S.C. 244, 249–50, 468 S.E.2d 1, 3–4 (Ct. App. 1996) (awarding fees after lien claimant failed as a matter of law to prove its right to foreclose). Respondents have not located a single appellate case where an award was denied based on "mere technicality."

In this case, there is no "mere technicality." Appellants lost the motion to dissolve and dismiss the lien as a matter of law because ARM failed to properly serve the lien, failed to get a sheriff's affidavit, and failed to timely serve and file the lien. Appellants sought to enforce the lien for more than a year and never withdrew it despite evident deficiencies. In order to dissolve the lien, Respondents had to seek a judicial determination. Judge Newman ultimately determined

that the lien failed as a matter of law. All of these circumstances meet or exceed the standard for the award of fees to a prevailing party in S.C. Code Ann. § 29-5-10(a) and in our case law. Indeed, the circumstances in this case are exactly those the Legislature has sought to remedy with the award of fees. *Utilities Const. Co.*, at 248, 468 S.E.2d at 2–3 (". . . we recently held the Legislature also intended to afford a property owner a remedy where a mechanic attempts to enforce a defective or wrongful mechanic's lien"). Under our statutes, case law, and public policy, the Golsons are prevailing parties entitled to an award of fees for winning their motion to dissolve the lien claimant's cloud on their property title.

Appellants next attack the amount of fees awarded as being outside of the of the dissolution of the lien. This argument takes an incorrect view of Respondents' work on this case. For Appellants to succeed on this argument they must show that Judge Newman's award was an abuse of discretion. However, the lower court did not abuse its discretion in awarding $25,000.00 in fees to Respondents. Case law provides that the "determination as to the amount of attorney's fees that should be awarded under the mechanics lien statute is addressed to the sound discretion of the trial court." *Zepsa Const., Inc v. Randazzo*, 357 S.C. 32, 40, 591 S.E.2d 29, 33 (Ct. App. 2004) (quoting *Keeney's* at 553, 548 S.E.2d at 901) (internal punctuation omitted). "The court's decision regarding such a matter will not be disturbed absent an abuse of discretion." *Id.* In this case, the lower court carefully considered the amount of fees requested, including reviewing affidavits and separate briefing on the issue. (*See generally* R. pp. 265–67; pp. 304–06; pp. 315–21; pp. 382–86; and pp. 390–401.) After specifically reviewing those submissions and the fee transaction report submitted *in camera*, the lower court made its award separate and subsequent to its original determination that an award should be entered. (*See* R. pp. 76–78.) A further motion to reconsider exclusively about the fee amount was also considered and denied. (*See* R. pp. 419–20; pp. 79–80.)

In setting the amount of fees, Judge Newman rightly considered the significant work Respondents' counsel performed in defending and preparing to defend against the mechanic's lien on multiple grounds. Appellants' contention is that the court erred in "awarding attorney's fees for work done outside the scope of defending against the mechanic's lien." (In. App. Br. at p. 10.) Appellants cite to the traditional six factors our courts consider for purposes of attorney's fee awards: (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 240, 616 S.E.2d 431, 434–35 (Ct. App. 2005) (citations omitted); *see also EFCO Corp.*, at 621, 635 S.E.2d at 926 (citing *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) (stating the same factors in a mechanic's lien context with slight variation in phrasing). Appellants do not specify under which factors they believe the lower court erred. For purposes of this argument, Respondents assume the factors at issue are the nature or extent of the services rendered and the time and labor devoted to defending the lien.[8]

Two cases are instructive in analyzing the scope of the attorney's fee award mandated by the mechanic's lien statute. In the first case, this Court remanded a case for a determination of the actual fees related to work on mechanic's lien where the lower court made an award of "total fee for services rendered through trial." *Utilities Const. Co.*, at 250, 468 S.E.2d at 4 (internal punctuation omitted). The award in that case is distinguishable from the one at bar. In this case,

[8] To the extent Appellants intended to put forth any other arguments related to these factors, such as objections related to customary rates or the professional standing of counsel, Respondents would assert those arguments are unpreserved as not having been raised to and ruled on by the court below. *See Pye v. Est. of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) (citations omitted).

the fees award occurred well before trial, was not based solely on an affidavit of fees, and was, in point of fact, smaller than the amount requested by nearly ten thousand dollars. The lower court reviewed and referenced the fee transaction report submitted *in camera* in his order. (*See* R. p. 77.) That report allowed the judge to see and consider each and every individual time entry for which fees were claimed. (*See generally* Fee Transaction Report (*in camera*).) Thus, the lower court's ruling does not suffer from the same issues as the one in the *Utilities* case.

In the second relevant case, the lien was dispensed with on summary judgment and the court awarded fees of approximately ten thousand dollars at that time. *EFCO Corp.*, at 616, 635 S.E.2d at 924. This court affirmed the award, noting that the circuit court had been able to review "a detailed time sheet outlining the time spent on, and the tasks performed for, this case." *Id.* at 621, 635 S.E.2d at 927. Similarly, in this case the lien was resolved prior to trial and the fee award did not include time for trying the other causes of action in this case. The court was also able to review a detailed time report showing the nature and scope of the work performed. Thus, neither *EFCO* nor *Utilities* support Appellants' contention that Respondents are not entitled to the fees awarded to them.

There are several specific reasons related to this case demonstrating why significant work was completed in advance of the motion to dissolve and dismiss the lien that falls within the scope of the attorney's fee award. The first relates to Appellants' contention that discovery falls outside defending the mechanic's lien. Respondents began preparing from the inception of this case to defend against the mechanic's lien on all possible fronts, both because of the monetary consequences and because of their later-proven conviction that the money was not owed. The discovery in this case included locating and subpoenaing the subcontractors used by Appellants in order to determine the veracity of the statement of account required to be included with the lien.

Further, once inconsistencies became apparent, certain subcontractors were deposed in relation to the accounting issues (later determined by the trial court to be a result of fraud). Preparing to litigate the lien's statement of account was not optional, nor was it outside the scope of defending against the lien. The fact that the lien was ultimately disposed of on different grounds does not negate the work that had already been completed by the time the motion was granted.

Notably, discovery issues were rife in this case and included many attempts to depose Mr. Mazloom before until obtaining his testimony more than a year into litigation. (*See* R. pp. 335–40 (containing three deposition notices for ARM stretching over several months).) Respondents had to continue preparing all lines of defense against the lien before they had the testimony proving it was filed out of time. (*See* R. p. 371, at Tr. p. 43, l. 24–p. 44, l. 1.) The majority of the discovery conducted to the point of the motion related to a full payment defense of the lien. This included taking depositions, obtaining and reviewing subcontractor documents, and obtaining and reviewing Appellants' documents. Because Appellants sought to quash subpoenas and otherwise did not assist in gathering the appropriate documentation of ARM's claims, this discovery was costly.[9] (*See, e.g.*, R. pp. 164–65; pp. 221–22; and pp. 1–6.) Indeed, the full facts related to service of the lien were not available until Appellants filed an affidavit of their process server executed on the day of the motion hearing about the lien. (R. pp. 36.) That motion hearing occurred more than a year into the case and much work necessarily had to be completed before that time in order to prepare for trial. It is immaterial that the lien was dissolved earlier than trial; the preparation still had to be done.

[9] Mr. Mazloom has also filed a *pro se* suit against First Citizens Bank for "negligently" producing bank records presumably in relation to a subpoena issued in this case. *See Ahmad Mazloom v. First Citizens Bank*, Case No. 2020-CP-32-03441 (S.C. Ct. of Commons Pleas filed Oct. 12, 2020).

It is also immaterial that some of the evidence adduced prior to the motion to dissolve the lien was granted could also be used in prosecuting or defending other claims. It only matters that the work was necessary to the defense of the lien in the first instance. Quite naturally, ARM's lien claim and its breach of contract claim were materially similar in terms of the related documents and testimony. Concomitantly, other causes of action, including Respondents' claim for breach of contract with fraud, also flowed from the same facts and evidence. Because of this, some of the work conducted to defend against the lien will accordingly be completely intertwined with development of other aspects of the case since all claims arose from the same set of operative facts as the mechanic's lien foreclosure action. However, the work would have been completed regardless of the other claims, just for purposes of defending the lien, if that was the only cause of action. Because the work had to be done to defend against the lien, the fees for that work are properly awarded under the mechanic's lien statute.

Importantly, not all fees to date were submitted to the lower court for the award. Additionally, the lower court did not award all fees requested. Rather, affidavits and a detailed fee report were submitted to the court for the specific fees attributable to the defense. After review, the lower court deemed approximately two-thirds of the fees awardable. In contrast to the affidavit in the *Utilities* case, the sworn statement submitted to the lower court in this matter states, "All of the attorneys' fees and costs stated herein [are] for work done within the scope of defending against the Mechanic's Lien." (R. pp. 305, ¶ 7.) Appellants' contention that certain work, such as issuing subpoenas, is not within the scope of the defending the lien is not enough to show the lower court abused its discretion in awarding fees. Appellants should not be allowed to avoid a statutorily mandated fee award simply because they asserted other causes of action based on the same facts. Further, Appellants should not be allowed to evade public policy and avoid the consequences of

filing an unenforceable lien against the Golsons' home. For these reasons, Judge Newman's order awarding fees of $25,000.00 should be affirmed.

IV. THE TRIAL COURT CORRECTLY FOUND THAT ARM FAILED TO SATISFY ITS BURDEN THAT THE GOLSONS BREACHED THE CONTRACT.

Appellants next argue the rather contradictory position that the Golsons both beached the construction contract by not paying an additional fifty-five thousand dollars *and* that the same work for which the fifty-five thousand is allegedly owed is "extra contractual." These contentions fail because the contract between the parties contained a fix maximum price. Additionally, ARM presented no change orders and could not credibly prove the extra costs.

Notably, Appellants had the burden to prove their case at trial and they now have the burden to show why the trial court should be reversed. *See Allegro, Inc. v. Scully*, 418 S.C. 24, 34, 791 S.E.2d 140, 145 (2016) ("In an action for breach of contract, the burden is on the plaintiff to prove the contract, its breach, and the damages caused by such breach."); *Conran v. Joe Jenkins Realty, Inc.*, 263 S.C. 332, 334, 210 S.E.2d 309, 310 (1974) ("The burden of proof is on the appellant to convince this Court that the lower court was in error."). Appellants did not and have not met that burden.

Appellants argue as an initial matter that the trial judge misconstrued the nature of the contract between the parties. To the extent that argument is properly preserved, there are two primary reasons why this argument must fail.[10] First, the trial court correctly found that the contract was a cost-plus agreement with a fixed maximum price of $395,000.00 based in part on the plain language of the contract. (*See* R. p. 1301, ¶ 2 ("The Homeowners agree to pay $395,000.00 to Builder for the aforementioned residential home."); p. 1299, ¶ 1 ("Builder's fee

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[10] Respondents note that the trial court found that Appellants asserted contradictory positions on this issue. (*See* R. pp. 88–89, ¶¶ 12–14.)

will be 15% of the cost to build said house.").) Additionally, the contract references the attached specifications, which provide that if the scope of work of the Project was modified or increased, the guaranteed maximum price could be increased by agreement of the parties. (*See* R. p. 1304.) Likewise, if the scope of work was decreased the guaranteed maximum price could be decreased by agreement of the parties. Such additions or deletions to the scope of work are known as change orders. Appellants did not submit any change orders showing an alteration to the scope of work or the maximum price of the contract. Thus, under the written contract, Respondents did not breach the contract by failing to pay additional money. Appellants also provided no evidence of any additional contract or agreement separate from the construction contact that would require payment for "extra contractual" work. After all, a party pressing a claim for breach of contract must have a contract to show a breach.

Ultimately, however, the issue of the type of contract is not nearly so important as the conduct of Appellants. As this court opined in 1992, a homeowner has the right to expect honesty and integrity when entering a cost-plus agreement.

> An agreement to do work on a cost-plus basis does not mean that one has the right to expend any amount of money he may see fit upon the work, regardless of the propriety, necessity, or honesty of the expenditure, and then compel repayment by the other party, who has confided in his integrity, ability, and industry. Indeed, in any cost-plus contract there is an implicit understanding between the parties that the cost must be reasonable and proper.

Watson & Howell Builders v. Billingsley, 310 S.C. 39, 41, 425 S.E.2d 43, 44 (Ct. App. 1992) (quoting 17A Am.Jur.2d, *Contracts*, § 508 (1991)). In this case, Appellants entirely failed to live up to these obligations by submitting false or fabricated documentation in support of the claim for an additional fifty-five thousand dollars.

The trial court analyzed all of the alleged costs submitted by Appellants, making no distinction or determination as to whether it is "extra-contractual costs" or not, and concluded that ARM did not satisfy its burden of proving that it incurred costs allocable to the Golson Project that exceeded the maximum amount in the contract, which the Golsons already paid. (*See* R. p. 288 (document signed by Mr. Mazloom acknowledging contribution of $18,247.05 in materials from the Golsons and payments from the Golsons in the amount of $413,247.05).) This conclusion was in part because Respondents proved that the accounting upon which Appellants based their claim for fifty-five thousand dollars was riddled with inflated numbers, false receipts, and fraudulent invoices.

V. THE TESTIMONY AND DOCUMENTARY EVIDENCE SUPPORT THE TRIAL COURT'S FINDING THAT APPELLANTS ENGAGED IN FRAUD.

Appellants argue that they met their burden of proof for additional costs by presenting fake "IRS reminder checks" for cash payments made to subcontractors. Not only did Appellants fail to prove these costs, the testimony of multiple subcontractors overwhelmingly showed that Appellants were engaging in outright fraud and that their contentions of extra payments for the Golson Project lacked all credibility.

The trial court found clear and convincing evidence in the testimony and documents admitted that Appellants engaged in fraud. There are numerous instances in the record of fraudulent or fabricated invoices, which not only directly undermine Appellants' claim, but also undermine the credibility of Mr. Mazloom's testimony. Given that Mr. Mazloom's testimony was the primary evidence offered in support of ARM's breach of contract claim, his credibility was critical. As has been well-established, the trial court was in the best position to observe and rule on Mr. Mazloom's credibility. *See, e.g.*, *Hough v. Hough*, 312 S.C. 344, 351, 440 S.E.2d 387, 391 (Ct. App. 1994) (citing *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 232

S.E.2d 20 (1977) ("Particularly where evidence is disputed, we normally adhere to findings of the trial judge who saw and heard the witnesses and was in a superior position to judge their credibility.").

The documents which Appellants have provided in support their fifty-five-thousand-dollar claim has been shown to suffer from manipulations intentionally made to deceive the Golsons (and presumably the finder of fact, since Appellants filed this suit). To support the trumped-up charges, Appellants provided fake checks that looked real and were signed but were never tendered for payment. Multiple ARM subcontractors gave testimony at trial supporting the finding that Appellants made concerted efforts to obtain and produce false invoice and payment records.

Subcontractor Richard Crolley ("Mr. Crolley") of A&D Fabrications testified that Mr. Mazloom always paid him by check, undermining Mr. Mazloom's evidence of cash payment. (R. p. 94, ¶ 41 (citing the trial transcript).) Mr. Crolley testified that an invoice submitted by Mr. Mazloom to the Golsons for Mr. Crolley's work was not authentic and had not been created by him, undermining Mr. Mazloom's assertion of costs reflected on the fabricated invoice. [R. p. 94, ¶ 44 (citing the trial transcript).) Mr. Crolley testified that Mr. Mazloom kept showing up at his shop before Mr. Crolley's deposition until Mr. Crolley finally wrote a fake cash receipt, again undermining Mr. Mazloom's assertion of a charge paid by cash. (R. p. 95, ¶¶ 45–46 (citing the trial transcript and Def. Ex. 6D).) Mr. Crolley's testimony, which the court found credible, supported a finding that Appellants inflated the cost of Mr. Crolley's work by $3,600.00.[11] (R. p. 95, ¶ 50.) Because of Mr. Crolley's testimony, the credibility of both Appellants' documentary evidence and testimony is undercut.

[11] Appellants are still asserting the inflated cost in their argument, listing $13,000.00 for A&D Fabrications as opposed to the $9,400.00 supported by the evidence. (*See* App. In. Br. at p. 15.)

Subcontractor Bubba Morrell ("Mr. Morrell") of B&R Electric similarly testified that he received only one check payment for $18,000.00 for his work on the Golson home, undermining Mr. Mazloom's testimony that Appellants incurred costs of $23,098.51 on the project. (R. p. 96, ¶ 55 (citing the trial transcript and Def. Ex. 25).) Mr. Morrell testified that he too provided fake documentation at the insistence of Mr. Mazloom, further undermining Mr. Mazloom's testimony and evidence. (R. p. 96, ¶ 55 (citing the trial transcript, Def. Ex. 15A).) Mr. Morrell testified that he did not receive payment from the two other checks proffered by Mr. Mazloom as evidence of his costs, again undermining the credibility of Appellants' accounting. (R. p. 96, ¶¶ 57–58 (citing the trial transcript, Jnt. Ex's. 1 and 3; Def. Ex. 15A).) Mr. Morrell's testimony, which the court found credible, supported a finding that Appellants inflated the cost of Mr. Morrell's work by approximately $5,000.00.[12] (*See* R. p. 97, ¶¶ 65–66.) Because of Mr. Morrell's testimony, the credibility of both Appellants' documentary evidence and testimony is undercut.

Subcontractor Joshua Hall ("Mr. Hall") of Double R. Cabinetry testified that he never received a cash payment for the Project, again undermining Appellants' continued assertions of cash payments. (R. p. 99, ¶ 76 (citing the trial transcript).) Indeed, Mr. Hall testified about text messages with Mr. Mazloom which show Mr. Mazloom seeking a cash payment receipt, despite the fact that he only paid Mr. Hall by check. (R. p. 100, ¶ 80 (citing Def. Ex. 7E).) Mr. Hall also testified that Mr. Mazloom had him create inflated invoices to provide to the Golsons rather than using the authentic invoices, once again undermining any remaining shred of Appellants' credibility. (R. p. 98, ¶¶ 71–72 (citing the trial transcript and Def. Ex. 7B).) Mr. Hall's testimony, which the court found credible, supported a finding that Appellants inflated the cost of Mr. Hall's

[12] Appellants are still asserting the inflated cost in their argument, listing $23,000.00 for B&R Electric as opposed to the $18,000.00 supported by the evidence. (*See* App. In. Br. at p. 15.)

work by $2,249.00.[13] (R. p. 100, ¶ 83.) Because of Mr. Hall's testimony, the credibility of Appellants' documentary evidence and testimony is undercut.

Subcontractor Josh Joyner ("Mr. Joyner") of White Knoll Heating and Air also testified that Mr. Mazloom asked him to provide an inflated invoice, further undermining the legitimacy of Appellants' accounting and assertions. (R. p. 101, ¶ 91 (citing the trial transcript).) Regarding yet another fraudulent document, Mr. Joyner testified that he did not create the cash receipt provided by Mr. Mazloom. (R. p. 101, ¶ 93 (citing the trial transcript at Def. Ex. 8D).) Like the other subcontractors, Mr. Joyner testified he was never paid in cash, again undermining the genuineness of Mr. Mazloom's testimony about all the cash payments he purports to have made. (R. p. 101, ¶ 92 (citing the trial transcript).) Mr. Joyner's testimony, which the court found credible, supported a finding that Appellants inflated the cost of Mr. Joyner's work by $5,500.00.[14]

After considering the testimony and evidence offered by Appellants' subcontractors, it is impossible to give any credence to Appellants' assertion of additional costs. When probed, invoices turn out to be fake, checks turn out to be "reminder" notes to self, and receipts turn out to be forced forgeries. Not only is there ample evidence to support the trial court's rulings on these issues, it would amount to abuse of discretion for the court to conclude that Appellants were owed money based on the connived evidence Appellants offered. Appellants did not offer third-party corroboration, but were universally scorned by those whose work formed the basis for Appellants' claims. For all these reasons, the trial court's ruling on the nature and legitimacy of Appellants "costs" should be affirmed.

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[13] Appellants are still asserting the inflated cost in their argument, listing $13,999.00 for Joshua Hall as opposed to the $11,750.00 supported by the evidence. (*See* App. In. Br. at p. 15.)

[14] Appellants are still asserting the inflated cost in their argument, listing $25,000.00 for White Knoll Heating & Cooling, Inc. as opposed to the $19,500.00 supported by the evidence. (*See* App. In. Br. at p. 15.)

VI. THE TRIAL COURT PROPERLY AWARDED PUNITIVE DAMAGES.

Appellants argue that the trial court erred in awarding punitive damages because the final order "does not indicate that [Judge McLeod] reviewed the *Gamble* factors[15] in the decision he gave for punitive damages and do not factor in a substantial number of those factors." (App. In. Br. at p. 20.) Appellants' arguments are misplaced. As made clear in the *Porter* case, the trial judge is not required to make findings of fact for each factor to uphold a punitive damages award. *Porter*, at 172, 530 S.E.2d at 396 (citing *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996)) ("The trial judge is not required to make findings of fact for each factor to uphold a punitive damages award."). Indeed, this same principle is stated in Appellants' Brief. (App. In. Br. at p. 20.)

Moreover, the courts in *Gamble* and *Porter* were examining the propriety of punitive damages awarded by a jury. *Gamble* established the post-trial process established whereby the trial judge was vested with authority to review the propriety of a jury's award of punitive damages to ensure compliance with due process rights. *See Gamble*, 305 S.C. at 110, 406 S.E.2d at 353. The issue was brought to the fore by the United States Supreme Court's opinion in the *Haslip* case where the jury awarded punitive damages that were two hundred times the out-of-pocket expenses of the plaintiff. *Id.* The award was still affirmed. *Id.* In this case, there is no concern about an "unbridled" jury award because this case was decided by bench trial. Indeed, even in light of the *Gamble* line of cases, our courts still hold to the proposition that "the trial judge is vested with

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[15] The following factors may be used by trial courts in assessing a punitive damages award: "(1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) as noted in *Haslip*, 'other factors' deemed appropriate." *See Gamble v. Stevenson*, 305 S.C. 104, 111–12, 406 S.E.2d 350, 354 (1991) (citing *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 111 S. Ct. 1032 (1991)); *see also Scott v. Porter*, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000).

considerable discretion over the amount of a punitive damage award, and that [the appellate court's] review is limited to correction of errors of law." *S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc.*, 324 S.C. 149, 153, 478 S.E.2d 57, 59 (1996).

Nevertheless, when applying the *Gamble* factors, the final order and record in this case support the trial court's award of punitive damages.[16] As to Appellants' degree of culpability, the trial court made numerous findings regarding Appellants' fraudulently activity, many of which are discussed *supra* in Argument V. All available evidence attributes the fraud to Appellants and there is no evidence of anyone other than Appellants orchestrating the fraud. While the subcontractors participated to the extent of helping create some of the fake paperwork, they expressed remorse and were not the ones to supply the fake paperwork to the Golsons or the court as part of the greater scheme. Thus, Appellants have a high degree of culpability. Additionally, the duration of Appellants' conduct has been years. The fraudulent documents were presented to the Golsons prior to filing suit (to support the mechanic's lien sworn statement of account) and Appellants' have refused to concede the fraud to this day. Appellants' knowledge of the fraud is indisputable, since Mr. Mazloom actively sought fake documents from subcontractors and presented checks he knew were not real as evidence of his costs to the Golsons and the court.

Appellants made every effort to conceal the fraudulent nature of the trumped-up costs by, *inter alia*, appearing at a subcontractors' shop multiple time before a deposition and by seeking to

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[16] Appellants' argument fails to assert which factors were not reviewed, or what evidence is lacking. For this reason, Respondents analyze each factor, but note for the record that conclusory arguments are generally not sufficient to support preservation of an argument. *See Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (citing *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993)) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."). Appellants have failed to provide authority for the contention that the court's order must reflect individual analysis of each factor and have made only a conclusory statement about the alleged error of the trial court.

quash subpoenas issued to the subcontractors for the real documents and their honest testimony. While the evidence in this case is confined primarily to the facts surrounding the Golson Project, and thus does not substantially address past conduct, the court allowed for that by confining the punitive to the fee Appellants received for exclusively the Golson Project. (*See* R. p. 127.) While neither Respondents, nor the trial court can prognosticate Appellants' future behavior, clearly the punitive damages were meant to deter similar behavior with other construction projects. Because Mr. Mazloom is a residential builder, opportunities for fraud in the future exactly like the fraud in this case will be available. By tying the award to the fee earned for the construction of the house, the trial court emphasized that fraud in the course of working with homeowners cannot and should not be a profitable enterprise.

There can be no doubt that the punitive damages award is reasonably related to the fraudulent conduct and the damages likely to result from such conduct if it is repeated. There is an exceptionally apparent nexus between Appellants conduct and the form of deterrence. Additionally, the court clearly considered Appellants' ability to pay, since the award was based directly on Appellants' income for the subject project. Disgorgement of a professional's fees is in itself a measure of damages in some cases and certainly is not an abuse of due process. *See Peteet v. Fogarty*, 297 S.C. 226, 229, 375 S.E.2d 527, 528–29 (Ct. App. 1988) (referencing *Beacham v. Greenville County*, 218 S.C. 181, 62 S.E.2d 92 (1950)) ("where an architect is employed to prepare plans for a building to cost no more than a certain sum, or on condition that the building can be erected for a certain sum, the architect is not entitled to compensation unless the building can be constructed for the stipulated amount").

In this case, the trial court's award of punitive damages was eminently reasonable and tied directly to the facts of the case. There is no error of law in not making express findings on each

of the *Gamble* factors, as stated by case law and particularly where there is no jury. Nonetheless, the final order and record are replete with evidence supporting the award. For all these reasons, Judge McLeod's punitive damages award should be affirmed.

VII. THE TRIAL COURT CORRECTLY CONCLUDED THAT ATTORNEY'S FEES INCURRED IN DEFENDING A WRONGFULLY FILED MECHANIC'S LIEN REFLECTED SPECIAL DAMAGES.

Appellants erroneously contend that the trial court failed to cite any South Carolina authority for its conclusion that wrongfully filing a mechanic's lien is actionable under a slander of title claim.[17] The trial court cites the seminal case of *Huff v. Jennings*, 319 S.C. 142, 459 S.E.2d 886 (Ct. App. 1985), in support of its conclusion that the evidence supports a finding for slander of title. *Huff* considered a statutory lien for attorney's fees against the real property of a client and specifically found that wrongfully recording an unsupportable lien against the property of another is generally actionable as slander of title. Indeed, the *Huff* case is cited in American Jurisprudence for that proposition. *See* 55 Am. Jur. *Proof of Facts* 3d 509, n.62 (Feb. 2021). The case is also cited in South Carolina Jurisprudence in a section specifically on damages. *See* 20 S.C. Jur. *Libel and Slander* § 7 (Feb. 2021). The *Huff* case itself cited several cases in support of the holding from other jurisdictions, including *Contract Development Corporation v. Beck*, 255 Ill. App.3d 660, 627 N.E.2d 760 (Ill. Ct. App. 1994), which held the wrongful filing of a mechanic's lien was actionable as slander of title. Similarly, the trial court cited *Carl E. Jones Development, Inc. v. Wilson*, 149 Ga. App. 679, 255 S.E.2d 135 (1979), for its persuasive authority. For these reasons,

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[17] Notably, Appellants do not contend that there is no South Carolina authority. Moreover, Appellants' argument is remarkably short and conclusory and contains no citation to law at all, much less for their apparent proposition that a correct ruling without a citation would be reversible error even if true, which is denied. *See Glasscock, Inc.*, at 81, 557 S.E.2d at 691 (citing *Fields*, at 106, 439 S.E.2d at 285) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

the trial court's findings and conclusions of law on the issue of special damages for slander of title are fully supported by South Carolina precedent.

VIII. THE TRIAL COURT ORDER DOES NOT RESULT IN A DOUBLE RECOVERY FOR RESPONDENTS.

Appellants argue that the trial court allowed for double recovery against them because the court relied on the same facts in entering judgment against two defendants. Appellants misconstrue the nature of the election of remedies doctrine in making this argument. Moreover, they misconstrue the intent of the trial court, which expressly stated that it was seeking to avoid a double recovery. (*See* R. p. 125 (" . . . in order to avoid double recovery, the Court declines to issue an award for damages against ARM for fraud").)

The doctrine of election of remedies exists to prevent double recovery. *See Harper v. Ethridge*, 290 S.C. 112, 121, 348 S.E.2d 374, 379 (Ct. App. 1986) (citing *Save Charleston Foundation v. Murray*, 286 S.C. 170, 333 S.E.2d 60 (Ct.App.1985)) ("Since the basic purpose of election of remedies is to prevent double recovery for a single wrong, application of the doctrine should normally be confined to cases where double compensation of the plaintiff is threatened."). The concept of double recovery concerns a situation where a plaintiff attempts to "stack damages." Trial Handbook for South Carolina Lawyers, § 37:11 *Election of remedies* (4th ed.) (citing *Madden v. Cox*, 284 S.C. 574, 328 S.E.2d 108 (Ct. App. 1985)) ("The party, however, would be limited to one recovery, that is, the jury would not be allowed to 'stack the damages.'"). That is, if a plaintiff is harmed once but sues someone under two different legal theories so as to be awarded damages for the same harm twice. That has not happened here.

Appellants argue the trial court allowed for a double recovery because the findings of facts relied upon in concluding ARM breached its contract are the same as those relied upon for the judgment against Mr. Mazloom. Clearly, Mr. Mazloom can be liable for any fraud or deceptive

acts he participated in or directed. *See BPS, Inc. v. Worthy*, 362 S.C. 319, 327, 608 S.E.2d 155, 160 (Ct. App. 2005) (explaining that director or officer of corporation can be held personally liable for wrongful acts where they commit or participate in them). It is also clear that liability can attach to both ARM and Mr. Mazloom individually as a result of such fraud or deceptive acts. *See Gilbert v. Mid-S. Mach. Co.*, 267 S.C. 211, 221, 227 S.E.2d 189, 193 (1976) (citing *Lawlor v. Scheper*, 232 S.C. 94, 101 S.E.2d 269 (1957)). There is ample evidence presented and cited to in the record of Mr. Mazloom directly engaging in fraudulent and deceptive acts giving rise to individual liability. Election of remedies applies only when there is inconsistency. *See Harper*, at 120–21, 348 S.E.2d at 379; *see also* 25 Am. Jur. 2d *Election of Remedies* § 2 ("A claim for relief in tort and a claim for relief in contract are not 'remedies' to which the election-of-remedies doctrine applies.").

In this case, the trial court made a deliberate effort to identify and avoid the prospect of a double recovery. The same consistent remedy was applied once to Mr. Mazloom and once to ARM. That is both ARM and Mr. Mazloom are collectively liable for the same $81,160.59 in actual damages, plus punitive damages, and ARM is solely responsible for an extra $5,000.00.[18] As such, the judgment against Mazloom would be joint and concurrent with the judgment against ARM and no potential for double recovery exists.

By comparison, it would have been double recovery if the trial court had entered judgment against ARM for eighty thousand dollars under breach of contract and eighty thousand dollars under fraud resulting in a judgment of one hundred sixty thousand dollars in actual damages. The

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[18] For purposes of clarity, Respondents stipulate that they are only seeking to collect the $81,160.59 in actual damages and $42,678.86 in punitive damages one time. That is, either Mr. Mazloom or ARM could pay the $123,839.45 amount and would satisfy that judgment debt as to both Appellants. There would be only a single recovery. Of course, ARM is solely liable for paying the additional $5,000.00 awarded under breach of contract.

trial court expressly avoided that situation. Appellants are simply responsible for paying the damages one time and that is not the sort of double recovery that triggers an election of remedy analysis. After all, there is only one remedy that has been applied. Appellants' only complaint is that the remedy was justly applied to both of them and that the law dictates that Mr. Mazloom cannot hide his egregious acts behind a corporate shield. For these reasons, Appellants' argument fails and the trial court should be affirmed.

CONCLUSION

Appellants have committed numerous bad acts and failed to prosecute their case with proper procedure or to prove their case on the merits. Both circuit court judges ruled as the law and evidence require and should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

Pursuant to Rule 211(a), SCACR, the undersigned hereby certifies that this final brief comports with the requirements of Rule 211(b), SCACR.

s/ Chelsea J. Clark (102211)

Columbia, South Carolina
July 21, 2021