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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

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

Unpublished Opinion 2024-UP-022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

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

vs.

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

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Ahmad Mazloon.....Third-Party Petitioner

vs.

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

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PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

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Quality Builders LLC d/b/a ARM Quality Builders and Ahmad Mazloom (hereafter "Petitioners") certifies that there was a unpublished opinion of the Court of Appeals in this matter filed January 17, 2024 and the Petition for Rehearing by Petitioner was denied by the Court of Appeals on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

QUESTIONS PRESENTED

I. BY CONCLUDING THAT THE CIRCUIT COURT WAS IN ERROR IN FINDING THAT THE PETITIONERS FAILED TO PROPERLY SERVE THE MECHANIC'S LIEN ON THE RESPONDENTS PURSUANT TO SC CODE ANN. §29-5-90

II. BY CONCLUDING THAT THE CIRCUIT COURT WAS IN ERROR IN GRANTING THE MOTION TO DISMISS MECHANIC'S LIEN AS TO THE TIMELY FILING OF THE 90-DAY STATUTORY FILING PERIOD

III. BY CONCLUDING THAT THE CIRCUIT COURT WAS IN ERROR IN AWARDING THE RESPONDENT ATTORNEY'S FEES BASED ON DISMISSAL OF MECHANIC'S LIEN

IV. BY CONCLUDING THAT THE CIRCUIT COURT WAS IN ERROR IN FINDING THAT PUNITIVE DAMAGES SHOULD BE AWARDED AGAINST THE PETITIONERS AND THIRD-PARTY PETITIONERS

STATEMENT OF THE CASE

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

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

ARGUMENTS

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

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

STATEMENT OF FACTS

The Honorable Clifton Newman ruled in his Order that:

1. A lien claimant is required to serve a copy of the lien on the property owner or the lien is automatically dissolved. *S. C. Code Ann.* § 29-5-90. (R. Vol I, p. 73)

2. In Judge Newman's footnote 3 on page 9 of his Order, he indicates that S.C. Code Ann. §29-5-90 does not specify a manner of service. (R. Vol. I, p. 71)

3. The purpose of requiring service of notice of the mechanic's lien is to advise a property owner of the existence of the lien and to afford him or her an opportunity to investigate the claim and determine its validity. (R. Vol. I, p. 69)

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

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

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

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

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

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

The applicable service statute reads as follows:

> Such a lien shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner or, in the event the owner cannot be found, upon the person in possession and files in the office of the register of deeds or clerk of court of the county in which the building or structure is situated a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien sufficiently accurate for identification, with the name of the owner of the property, if known, which

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Mr. Crolley, who owns A&D Fabrications, indicated in his testimony he could not remember when he worked on the house. (R. Vol. II, p.720). He was not sure what the payment amount was. (R., Vol. II, p. 721). He had no record, no memory of the amount of invoice on the project (R. Vol. II, p. 724). There was an invoice which Crolley wrote on it "ARM", the address of the Respondents Golson's in Chapin where the house was being built and wrote "deck for the porch" but denied he wrote in the figure of $13,000. Respondents' Trial Exhibit 6A, Invoice No. 048852. This payment is marked as "paid". On the cash receipt he indicates it is his handwriting and he did write that which is for $3600 which is the cash payment to him paid on January 29, 2017. (R. Vol II., p. 729 and Respondents' Trial Exhibit 6D, R. Vol. III, p. 1318). He did not know what he has been paid. (R. Vol. II, p. 740). Although, earlier he said $13,000. When you add the checks together that were written to him, they total $13,000 which entered on the invoice. (R. Vol. II, pp. 737-745 and Petitioners' Trial Exhibit 29 showing checks, R. Vol. III, p. 1272).

b. B&R Electric. The owner testified he submitted a written bill for $23,098.51 which has 21 separate entries (Respondents' Trial Exhibit 15A, R. Vol. III, p. 1337). This bill matches up with the three checks that are written to him by the Petitioners ARM which are entered under Petitioners' Exhibit 20, R. Vol. III, p. 1235). He stated he did not receive cash but his invoice matches up with the checks which are in the amount of $18,000, $900 and $4,100 (Petitioners' Trial Exhibit 20, R. Vol. III, p. 1235). He indicated he produced the invoice given to the Petitioner ARM for $23,090.51 given to the Petitioner ARM for the $23,098.51. The date of the invoice is December 30, 2016. He said he produced the $4,100 invoice and gave it to Petitioners ARM (Respondents' Trial Exhibit C, R. Vol. III, p. 772). He testified 39 additional recess lights had to be placed in the house, as requested by the Respondents Golson. (R. Vol. II, pp. 772-785).

c. Joshua Hall did the interior finish carpentry on the house and he had been working for the Petitioner ARM for 20 years and had no reason to not trust him and he was a good builder. His testimony discussed conflicting invoices but he indicated he could not calculate what the discrepancy was in these invoices. He was not the best bookkeeper. However, he did indicate the proper invoices in this case was 1052 and 1079 and when you add up the checks that are written to him which are checks 800, 807, 824 and 848, they match-up which what he says is the dollar figure on the invoices 1052 and 1079, within $900 (Petitioners' Trial Exhibit 28, R. Vol. III, p. 1269). Also,

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

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

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

1. The actions of the Petitioners in this matter are the following:

   a. The parties were neighbors and had been for years.

   b. Petitioners assisted the Respondents in securing a bank loan by referring them to the bank he used.

   c. Petitioners sent the Respondents to a house designer who minimized his charges because of concern of costs by the Respondents.

   d. Petitioners delayed the finishing of the construction of the house so the Respondents would not have to be charged for the real estate taxes on the house improvement until the year 2017.

   e. Petitioners had never been sued before in all of his years practicing as a licensed contractor. Even the sub-contractors recognized the Petitioners paid their bills to them and one sub-contractor even indicated he had no reason to question the integrity of the Petitioners. These are not indications of anyone attempting to scheme the homeowner.

In Judge McLeod's Order, he stated:

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

Respectfully submitted,

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March 13, 2024

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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.

Appellate Case No. 2020-001406

Appeal From Lexington County
Clifton Newman, Circuit Court Judge
Walton J. McLeod, IV, Circuit Court Judge

Unpublished Opinion No. 2024-UP-022
Submitted November 1, 2023 – Filed January 17, 2024

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

James Randall Davis, of Davis Frawley, LLC, of Lexington, for Appellants.

Edward Wade Mullins, III and Chelsea Jaqueline Clark, both of Bruner Powell Wall & Mullins, LLC, of Columbia, for Respondents.

PER CURIAM: Ahmad Mazloom and his residential home building company, ARM Quality Builders LLC d/b/a ARM Quality Builders (ARM) (collectively, Appellants), appeal the circuit court's orders dissolving ARM's mechanic's lien on a house ARM built for Joseph A. Golson and Lycia B. Golson and granting the Golsons attorney's fees. Appellants also appeal the circuit court's order which (1) denied ARM's claims for breach of contract, quasi-contract, quantum meruit, and unjust enrichment; (2) awarded the Golsons $86,042.50 in actual damages and $42,678.86 in punitive damages against ARM for breach of contract accompanied by a fraudulent act; (3) awarded the Golsons $81,160.59 in actual damages and $42,678.86 against Mazloom personally for fraud; and (4) found ARM liable for slander of title. We affirm in part, reverse in part, and remand.

1. Appellants argue the circuit court erred in granting the Golsons' motion to dissolve the mechanic's lien because Appellants failed to file the notice and certificate of lien within the ninety-day filing period. Appellants assert the circuit court should not have addressed this issue because the Golsons did not raise the issue of the timeliness of the filing of the notice in their motion. Appellants did not object when the Golsons raised the timeliness issue at the hearing; instead they raised their objection for the first time in their motion to alter or amend. Accordingly, because Appellants could have raised this issue earlier, the issue is not properly before this court. *See Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (stating "a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment"). Furthermore, because Appellants did not challenge the merits of the circuit court's finding that Appellants failed to timely file the notice of lien, this finding is now the law of the case. *See Ex parte Morris*, 367 S.C. 56, 65, 624 S.E.2d 649, 653-54 (2006) (holding an "unappealed ruling is the law of the case and requires affirmance").

2. We hold the circuit court did not err in awarding the Golsons attorney's fees based on the dismissal of the mechanic's lien. *See* S.C. Code Ann. § 29-5-10(a)

(2007) (providing that the prevailing party in a mechanic's lien action may recover "the costs which may arise in enforcing or defending against the lien . . . including a reasonable attorney's fee"); S.C. Code Ann. § 29-5-20(A) (2007) ("If the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court."); *Keeney's Metal Roofing, Inc. v. Palmieri*, 345 S.C. 550, 556, 548 S.E.2d 900, 903 (Ct. App. 2001) ("[A] party may recover attorney's fees and costs . . . as a 'prevailing party' even though the party obtained a dismissal via a procedural rule, provided the dismissal was not due to mere technicality."); S.C. Code Ann. § 29-5-90 (2007) (providing a mechanic's lien dissolves unless the person asserting the lien serves on the property owner a statement of the amount due and files a certificate stating that amount with the register or clerk "within ninety days after he ceases to labor on or furnish labor or materials . . . ."); *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C.*, 409 S.C. 331, 342, 762 S.E.2d 561, 566 (2014) ("To perfect and enforce a lien, one must timely complete the following three steps . . . : (1) serve and file a notice or certificate of the lien, (2) commence a lawsuit to enforce the lien, and (3) file a lis pendens."). Section 29-5-90's requirement that the party asserting a lien must timely serve and file a notice or certificate of lien is not a "mere technicality." Instead, it is a fundamental step required to perfect and enforce a mechanic's lien.

3. We hold the circuit court did not err by finding the Golsons did not owe Appellants $55,084.33 for extracontractual work and Appellants' proven project costs were only $284,525.70. Appellants did not provide evidence to prove the court's factual findings were made in error. *See 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 th[e appellate c]ourt that the lower court was in error."); *see also Okatie River, L.L.C. v. Se. Site Prep, L.L.C.*, 353 S.C. 327, 338, 577 S.E.2d 468, 474 (Ct. App. 2003) ("Credibility determinations regarding testimony are a matter for the finder of fact, who has the opportunity to observe the witnesses, and those determinations are entitled to great deference on appeal.").

4. We hold the circuit court did not err by finding there was clear and convincing evidence of fraud. The Golsons presented sufficient evidence to support a fraud claim. *Id.* at 338, 577 S.E.2d at 474 ("Credibility determinations regarding testimony are a matter for the finder of fact, who has the opportunity to observe the witnesses, and those determinations are entitled to great deference on appeal.").

5. We hold the circuit court did not err by awarding the Golsons punitive damages. The court's findings of facts were sufficient to support the award of punitive

damages. *See Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 149, 494 S.E.2d 449, 458 (Ct. App. 1997) ("The trial judge is vested with considerable discretion over the amount of a punitive damages award, and this [c]ourt's review is limited to correction of errors of law."); *Scott v. Porter*, 340 S.C. 158, 172, 530 S.E.2d 389, 396 (Ct. App. 2000) (stating that in considering an award of punitive damages, the circuit court should consider the following factors "(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) 'other factors' deemed appropriate" (quoting *Gamble v. Stevenson*, 305 S.C. 104, 111-12, 406 S.E.2d 350, 354 (1991))); *id.* ("The trial judge is not required to make findings of fact for each factor to uphold a punitive damages award.").

6. We find no merit in Appellants' argument that the circuit court erred by allowing the attorney's fees awarded under the mechanic's lien to be special damages in the slander of title action. As stated above, we affirm the circuit court's award of attorney's fees in the mechanic's lien action. Appellants' further argument concerning the slander of title action is conclusory, and therefore, abandoned. *See State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority."); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

7. We hold that under the doctrine of election of remedies the circuit court erred by permitting double recovery for damages against Appellants. *See Brown v. Felkel*, 320 S.C. 292, 294, 465 S.E.2d 93, 95 (Ct. App. 1995) ("The doctrine of election of remedies involves a choice between two or more different and coexisting modes of procedure and relief afforded by law for the same injury."); *id.* ("Its purpose is to prevent double redress for a single wrong."); *id.* ("When one set of facts entitles the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both."); *id.* ("The invocation of one remedy constitutes an election of remedies that will bar another remedy consistent therewith where the suit upon the remedy first invoked reached the stage of final adjudication."). The Golsons' breach of contract and fraud claim arise from the same facts; thus, the circuit court awarding them damages for both causes of action resulted in a double recovery. *See id.* at 296,

465 S.E.2d at 96 (holding that allowing a plaintiff "to recover on a tort claim arising out of the identical facts upon which he has already received a judgment based on contract would result in double recovery"). We therefore remand for the Golsons to elect their remedy.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.[1]

WILLIAMS, C.J., and HEWITT and VERDIN, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

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

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Ahmad Mazloom, Third-Party Appellant.

Appellate Case No. 2020-001406

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. Bruce Williams C.J.

J.

Bakhtiar H. Verdin J.

Columbia, South Carolina

cc:
Chelsea Jaqueline Clark, Esquire
Edward Wade Mullins, III, Esquire
James Randall Davis, Esquire
The Honorable Walton J. McLeod, IV
The Honorable Clifton Newman

FILED
Feb 12 2024

RECEIVED
Mar 13 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

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

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

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

vs.

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

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Ahmad Mazloon.....Third-Party Petitioner

vs.

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

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PROOF OF SERVICE

I hereby certify that I have served the **PETITION FOR WRIT OF CERTIORARI** on the Respondent, by emailing and mailing a copy of the same on the 13th day of March, 2021, to the following:

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RE: ARM Quality Builders LLC d/b/a ARM Quality Builders v. Joseph A. Golson and Lycia B. Golson and Branch Banking and Trust Company; Ahman Mazloom v. Joseph A. Golson and Lycia B. Golson
Our File No. 30909

Dear Parties:

Enclosed, please find a copy of the Petition for Writ of Certiorari and Exhibits which I am hereby serving you by mail.

Yours very truly,

James Randall Davis