THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Clifton B. Newman
The Honorable Walton J. McLeod IV

Ct. App. Op. No. 2024-UP-022
Appellate Case No.: 2024-000360

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

v.

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

AND

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

v.

Ahmad Mazloom, ……..Third-Party Petitioner.

RESPONDENTS AND THIRD-PARTY RESPONDENTS' RETURN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

This matter concerns the construction of a home for Joesph A. and Lycia B. Golson ("Respondents" or the "Golsons") by ARM Quality Builders, LLC d/b/a ARM Quality Builders ("ARM") and its principal Ahmad Mazloom ("Mr. Mazloom") (collectively with ARM, "Petitioners"). The Golsons have prevailed in this matter both in the trial court and in the Court of Appeals. At this time, Petitioners seek review of the decision of the Court of Appeals. Respondents contend that there exists no reason for the Supreme Court to grant a writ of certiorari in this case.

STATEMENT OF THE CASE

This case was initially filed by ARM on June 15, 2017. (R. Supp. pp. 1773–81.) ARM sought to collect $55,085.52 from the Golsons based on alleged work related to the construction of the Golsons' home. (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. p. 153–63.) After gathering additional information during discovery, the Golsons moved to amend their answer to add additional counterclaims against ARM and to add third-party claims against ARM's principal, Mr. Mazloom. (R. pp. 236–53.) The motion to amend was granted by order on July 5, 2018 and the new claims were answered on August 9, 2018. (R. pp. 7–9; pp. 254–56.)

On August 15, 2018, the Golsons moved to dissolve the mechanic's lien that ARM had filed on their home. (R. pp. 257–58.) After briefing and arguments, the Honorable Clifton B. Newman granted the motion on November 27, 2018. (R. pp. 63–75.) Pursuant to statute, Judge Newman also awarded attorney's fees to the Golsons. (R. pp. 71–74.) That order constitutes the first reviewed by the Court of Appeals. ARM moved for reconsideration. (R. Supp. 1784–86.) Judge Newman denied that motion by order dated May 20, 2019, and set the amount of attorney's fees at $25,000.00. (R. p. 77.) That order constitutes the second reviewed by the Court of Appeals.

ARM again filed for reconsideration and this motion was denied by Judge Newman. (R. pp. 79–80.) That order constitutes the third reviewed by the Court of Appeals.

Ultimately, on December 18–20, 2019, the case was heard as a bench trial by the Honorable Walton J. McLeod IV. ARM continued to assert that it was owed $55,085.82 for work on the Golsons' home. However, the Golsons asserted that they were owned money by Petitioners for, *inter alia*, breach of contract, fake billing, and fraudulent accounting. On August 7, 2020, Judge McLeod entered an order in favor of the Golsons. (R. pp. 84–132.) The trial court awarded $128,721.36 to the Golsons as to ARM and $123,839.45 to the Golsons as to Mr. Mazloom. That order constitutes the fourth reviewed by the Court of Appeals. Petitioners moved for reconsideration, which was denied September 18, 2020. (R. pp. 133–35.) That order constitutes the fifth and final order reviewed by the Court of Appeals.

Petitioners appealed on October 15, 2020. Final briefing at the Court of Appeals was completed in July 2021. The Court of Appeals submitted the case for review without oral arguments in late 2023. The dispositional order of the Court of Appeals was entered on January 17, 2024. *See ARM Quality Builders, LLC, d/b/a, ARM Quality Builders v. Golson, et al.*, Unpub. Op. No. 2024–UP–022 (S.C. Ct. App. filed Jan. 17, 2024) (hereinafter, "Opinion"). The Court of Appeals affirmed the trial courts on all but one issue. There was no dissent in the *per curium* order. A petition for rehearing was filed on February 1, 2024. Rehearing was denied on February 12, 2024. Petitioners filed a petition for writ of certiorari with the Supreme Court on March 13, 2024. This return follows.

STANDARD OF REVIEW

A writ of certiorari is not guaranteed to any litigant, but rather is granted in the sound discretion of the Court only where there exist special and important reasons. Rule 242(b), SCACR. Such reasons may exist where (1) there are novel questions of law, (2) where there was dissent in

the lower court's opinion, (3) where there is conflict created with prior precedent, (4) where there are substantial constitutional issues, or (5) where there is conflict created with federal case law. Rule 242(b)(1)–(5), SCACR. Respondents would submit that none of these considerations apply in this case.

QUESTIONS PRESENTED

Petitioners have set forth four questions in its Petition for Writ of Certiorari. Rephrased for clarity, the questions are as follows.

I. **Whether the Court of Appeals properly affirmed the Circuit Court's decision to quash ARM's mechanic's lien for failure to serve, pursuant to S.C. Code Ann. § 29-5-90.**

II. **Whether the Court of Appeals properly affirmed the Circuit Court's decision to dismiss ARM's mechanic's lien as untimely.**

III. **Whether the Court of Appeals properly affirmed the Circuit Court's decision to award attorney's fees based on the dismissal of the mechanic's lien.**

IV. **Whether the Court of Appeals properly affirmed the Circuit Court's award of punitive damages.**

Respondents argue below that the answer to each question is yes—the record of this case contains facts sufficient to support the findings of fact and conclusions of law by the Circuit Court as to the mechanic's lien and punitive damages and the Court of Appeals properly determined that the lower court should be affirmed on those issues.

RETURN ARGUMENT

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

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. The Court of Appeals correctly affirmed. (Opinion, p. 3, ¶ 2.) ARM did not correctly serve its mechanic's lien as required by law. (Opinion, p. 3, ¶ 2 (citing *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C.*, 409 S.C. 331,

342, 762 S.E.2d 561, 566 (2014) (serving the lien is a requirement for enforcement)).) 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.[1] (R. p. 36.) This failure of proper service generally makes the mechanic's lien unenforceable.

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, 279, 851 S.E.2d 724, 731 (Ct.

[1] 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 contemporaneous affidavit has been provided to the court and Respondents. (*See* R. p. 440, ll. 4–18 (Petitioners' counsel describing only the two affidavits discussed here, despite indicating on Petitioners' 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.

App. 2020), aff'd as modified, 440 S.C. 456, 892 S.E.2d 297 (2023) (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 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** or, . . . 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 Petition for Writ of Certiorari, Petitioners state that they "have complied with the statute completely, *with the exception* of the affidavit from the sheriff's department . . . ." (Petition, p. 8 (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. *See* S.C. Code Ann. § 29-5-90 (emphasis added). 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, the lower court had 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). The law on this issue is well established within the plain language of the statute and existing precedent and requires no further parsing. The Court of Appeals properly affirmed the lower court on this issue.

ARM makes one further argument in aid of overturning Judge Newman's well-reasoned order on the mechanic's lien and the affirmation of the Court of Appeals. 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. Petitioners cite to no authority 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.[2] The law at issue is not simply a rule, it is a statute.

Petitioners 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

[2] While regular Rule 5, SCRCP, "service" upon an attorney would not have been sufficient for a mechanic's lien under any scenario, which is more analogous to Rule 4 service, notably, the events at issue here occurred in 2017, years before the public health crisis that led the Supreme Court to allow any service by email.

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, Petitioners 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 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 requires and his orders were properly affirmed.

II. THE CIRCUIT COURT CORRECTLY RULED, AS AN ADDITIONAL BASIS FOR DISMISSAL, THAT THE LIEN WAS FILED AFTER THE EXPIRATION OF THE 90-DAY STATUTORY FILING PERIOD AND THE COURT OF APPEALS CORRECTLY HELD THAT THIS ISSUE WAS NOT PROPERLY PRESERVED FOR REVIEW.

As an initial matter, the Court of Appeals held that because Petitioners did not object when the issue of timeliness was raised by Respondents at the hearing before Judge Newman, the issue

was not properly preserved for review. (Opinion, p. 2, ¶ 1.) Moreover, the Court of Appeals held that because Petitioners did not challenge the merits of the circuit court's findings with regards to the timeliness of the filing of the lien, the circuit court's finding was the law of the case. (*Id.*) Petitioners do not address or challenge the Court of Appeals' findings at all in their Petition for Writ of Certiorari. As such, the Court of Appeals' ruling should remain undisturbed. Further, it should be noted that since proper service was not achieved, the timeliness issue is merely an additional sustaining ground and need not be considered at all.

To the extent this Court is inclined to consider Petitioners arguments, the lower court correctly found that the lien was untimely. Notably, Petitioners cannot genuinely dispute that the filing was untimely, and thus argue that ARM was not aware that timeliness would be challenged when Respondents filed to quash the lien. This is absurd and unsupported by the record. Respondents made no secret of their conclusion that ARM's mechanic's lien was not enforceable. For instance, in their original answer, filed July 28, 2017, the Golsons stated, "Defendants . . . specifically assert that Plaintiff has failed to comply with the 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, Petitioners 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, Petitioners 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. (*See* R. p. 439, ll. 12–23 (counsel opening his argument with a discussion of timeliness on the merits).) ARM did not object until later and the Court of Appeals correctly concluded that the issue of whether ARM was on notice was not properly raised and preserved. *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.").

Indeed, 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.) 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.)

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. Subsequently, the Court of Appeals correctly affirmed on the basis of failure to preserve the issue.

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

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 were entitled to payment of their attorney's fees for all of this work as the prevailing parties. Thus, Judge Newman awarded fees and the Court of Appeals affirmed. (Opinion, p. 2–3, ¶ 2.) Yet Petitioners still seek to avoid those fees based on a myopic interpretation of the law.

The Golsons are prevailing parties and were 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. Just as the Court of Appeals found, the dissolution of the lien was on no "mere technicality." (Opinion, p. 3, ¶ 2.)

Rather, 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* 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."

Even so, in this case, there is without doubt no "mere technicality." Petitioners 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. Petitioners 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 and were entitled to an award of fees for winning their motion to dissolve the lien claimant's cloud on their property title.

Petitioners 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 Petitioners to succeed on this argument they would have to 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, as shown by the affirmation of the Court of Appeals. 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. Petitioners' contention is that the court erred in "awarding attorney's fees for work done outside the scope of defending against the mechanic's lien." (Petition, p. 12.) Petitioners 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). However, Petitioners 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.[3]

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, the Court of Appeals 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, the fees award was made 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.[4] 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. The appellate 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

[3] To the extent Petitioners 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).

[4] Because the Court of Appeals does not allow for *in camera* filing, a redacted copy of the fees report was filed as an appendix to the Record on Appeal. (*See* R. Supp 1834–46.)

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 Petitioners' 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 Petitioners' 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 Petitioners 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 Petitioners' documents. Because Petitioners sought to quash subpoenas and otherwise did not assist in gathering the appropriate documentation of ARM's claims, this discovery was costly.[5] (*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 Petitioners filed an affidavit of their process server executed on the day of the motion hearing about the lien. (R. p. 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.

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.

[5] 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).

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.) Petitioners' 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. Petitioners 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, Petitioners 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 was correctly affirmed and needs no further review.

IV. THE COURT OF APPEALS CORRECTLY AFFIRMED THE TRIAL COURT'S AWARD OF PUNITIVE DAMAGES.

The trial court found clear and convincing evidence in the testimony and documents admitted that Petitioners engaged in fraud. There are numerous instances in the record of fraudulent or fabricated invoices, which not only directly undermine Petitioners' 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 Petitioners provided in support their fifty-five-thousand-dollar claim were shown to suffer from manipulations intentionally made to deceive the Golsons (and presumably the finder of fact, since Petitioners initiated the lawsuit). To support the trumped-up charges, Petitioners 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 Petitioners 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 trial court found credible, supported a finding that Petitioners inflated the cost of Mr. Crolley's work by $3,600.00. (R. p. 95, ¶ 50.) Because of Mr. Crolley's testimony, the credibility of both Petitioners' documentary evidence and testimony was undercut.

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 Petitioners 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 Petitioners' 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 trial court found credible, supported a finding that Petitioners inflated the cost of Mr. Morrell's work by approximately $5,000.00. (*See* R. p. 97, ¶¶ 65–66.) Because of Mr. Morrell's testimony, the credibility of both Petitioners' documentary evidence and testimony was undercut.

Subcontractor Joshua Hall ("Mr. Hall") of Double R. Cabinetry testified that he never received a cash payment for the Project, again undermining Petitioners' 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 Petitioners' credibility. (R. p. 98, ¶¶ 71–72 (citing the trial transcript and Def. Ex. 7B).) Mr. Hall's testimony, which the trial court found credible, supported a finding that Petitioners inflated the cost of Mr. Hall's work by $2,249.00. (R. p. 100, ¶ 83.) Because of Mr. Hall's testimony, the credibility of Petitioners' documentary evidence and testimony was 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 Petitioners' 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 purported to have made. (R. p. 101, ¶ 92 (citing the trial transcript).) Mr. Joyner's testimony, which the trial court found credible, supported a finding that Petitioners inflated the cost of Mr. Joyner's work by $5,500.00. Because of Mr. Joyner's testimony, the credibility of Petitioners' documentary evidence and testimony was undercut.

After considering the testimony and evidence offered by Petitioners' subcontractors, it is impossible to give any credence to Petitioners' assertion of additional costs. The trial court certainly did not give undue weight when the witnesses were four to one and the one had a financial stake in the outcome. When probed, invoices turn out to be fake, checks turn out to be "reminder" notes to self, and receipts turn out to be coerced forgeries. Not only was there ample evidence to support the trial court's rulings on these issues, it would have amounted to abuse of discretion for the trial court to conclude that Petitioners were owed money based on the connived evidence Petitioners offered. Petitioners did not offer third-party corroboration, but were instead universally scorned by those whose work formed the basis for Petitioners' claims.

Petitioners argue that the trial court erred in awarding punitive damages because the final order "does not indicate that [Judge McLeod] reviewed the *Gamble* factors[6] in the decision he gave for punitive damages and do not factor in a substantial number of those factors." (Petition, p. 17.) Petitioners' arguments are misplaced. The trial judge is not required to make findings of

[6] 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).

fact for each factor to uphold a punitive damages award. *Scott v. Porter*, 340 S.C. 158, 172, 530 S.E.2d 389, 396 (Ct. App. 2000) (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.").

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. Our courts still hold to the proposition that "the trial judge is vested with 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.[7] As to Petitioners' degree of culpability, the

[7] Petitioners' 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."). Petitioners 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.

trial court made numerous findings regarding Petitioners' fraudulently activity as set forth above. All available evidence attributes the fraud to Petitioners and there is no evidence of anyone other than Petitioners 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, Petitioners had a high degree of culpability. Additionally, the duration of Petitioners' conduct was over multiple years. The fraudulent documents were presented to the Golsons prior to filing suit (to support the mechanic's lien sworn statement of account) and Petitioners' have refused to concede the fraud to this day. Petitioners' 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.

Petitioners 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 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 Petitioners received for exclusively the Golson Project. (*See* R. p. 127.) While neither Respondents, nor the trial court can prognosticate Petitioners' future behavior, clearly the punitive damages were meant to deter similar behavior with other construction projects. *See Mazloom v. Mazloom*, 382 S.C. 307, 324, 675 S.E.2d 746, 755 (Ct. App. 2009), aff'd, 392 S.C. 403, 709 S.E.2d 661 (2011) (citing *Clark v. Cantrell*, 339 S.C. 369, 378–79, 529 S.E.2d 528, 533 (2000)) ("An award of punitive damages can serve two purposes: (1) punishing the wrongdoers and deterring them and others from engaging in similar reckless, willful, wanton, or malicious conduct; and (2) vindicating a private right of the injured party by requiring the wrongdoers to pay

money to that party."). 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 Petitioners' conduct and the form of deterrence. Additionally, the court clearly considered Petitioners' ability to pay, since the award was based directly on Petitioners' 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. Indeed, Judge McLeod's award in this case was well within the bounds of the Supreme Court's recent decision on the due process of punitive awards. *See O'Shields and Whitley, a Partnership d/b/a O&W Cars v. Columbia Automotive, LLC d/b/a Midlands Honda*, Op. No. 28194 (S.C. Sup. Ct. filed Feb. 28, 2024) (Howard Adv. Sh. No. 8 at 150). There was 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 was correctly affirmed by the Court of Appeals.

CONCLUSION

Petitioners have failed to raise any matter of special importance sufficient to merit the issuance of a writ of certiorari to the Court of Appeals and Respondents request that the petition be denied.

Respectfully submitted,

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