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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Appellate Case No.: 2023- CP – 26-00053

Paint Design, LLC Appellant,

v.

Westgate Myrtle Beach, LLC, a/k/a Westgate Resorts, Ltd. And RNR
Construction, LLC, ...Respondents.

APPELLANT’S RETURN TO RESPONDENTS’ MOTION TO DISMISS ITS APPEAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondent Westgate Myrtle Beach, LLC (“Westgate”) requests this Court to dismiss this appeal. As discussed herein, the trial court’s order denying Appellant’s Motion to Amend its Amended Complaint directly addresses the merits of the quantum meruit cause of action by stating that the amendment would be futile and that the claim would fail as a matter of law. This ruling went directly to the legal merits of the quantum meruit cause of action and the dismissal of Appellant’s Motion was not merely discretionary. Thus, the trial court’s order denying Appellant’s Motion, while interlocutory, is immediately appealable to this Court pursuant to S.C. Code Ann. § 14-3-330(1). Accordingly, this appeal is properly before the Appellate Court.

PROCEDURAL HISTORY

This case arises out of a construction project in Horry County, South Carolina. On or about October 25, 2021, Westgate entered into a general contractor's agreement with Defendant RNR Construction, LLC ("RNR") for the purpose of hiring RNR to furnish labor, materials, equipment and/or other services for the Hotel 2nd Floor Room Conversion project ("Project"). Second Amend. Verified Compl., p.3; ¶ 6. On or about October 22, 2021, RNR entered into a subcontract agreement ("Subcontract") with the Appellant. Id. at p.3; ¶ 7. On January 5, 2023, Appellant filed its original Verified Complaint against Respondent Westgate and RNR. The Appellant then filed an Amended Verified Complaint on March 3, 2023, in which it asserted quantum merit, unjust enrichment, mechanic's lien enforcement, and civil conspiracy causes against RNR and Respondent Westgate. Respondent Westgate subsequently brought another Motion to Dismiss on March 29, 2023. In its Motion to Dismiss, Respondent Westgate argued that Appellant's cause of action for Quantum Meruit must be dismissed because it was not pled in the alternative. The Motion to Dismiss was heard by the trial court on May 9, 2023. On May 10, 2023, the trial court issued a Form 4 Order¹ granting Respondent Westgate's Motion to Dismiss.

On May 22, 2023, the Appellant filed a Motion to Amend² to re-plead its Quantum Meruit cause of action in the alternative.

On June 8, 2023, the trial court entered a more detailed and formal Order ("June 8th Order") which dismissed Appellant's Quantum Meruit cause of action against Respondent Westgate without prejudice. The trial court's Order based the dismissal of this equitable claim on

¹ A copy of May 10, 2023 Form 4 Order denying Appellant's Motion to Amend to re-plead its Quantum Meruit cause of action in the alternative, marked Exhibit A, is attached hereto and incorporated reference.

² A copy of May 22, 2023 Motion to Amend to re-plead its Quantum Meruit cause of action in the alternative, marked Exhibit B, is attached hereto and incorporated reference.

Respondent's argument that Appellant did not plead its Quantum Meruit cause of action in the alternative. Specifically, the June 8th Order provides in pertinent part as follows:

Despite the fact that a claim for unjust enrichment and/or quantum meruit fail where there exists a valid and enforceable contract, courts³ allow quantum meruit claims to continue if plead in the alternative to a claim for breach of contract. Plaintiff did not plead its quantum meruit and/or unjust enrichment claims in the alternative, therefore Plaintiff's claims for quantum meruit and unjust enrichment must be, and are hereby, **DISMISSED WITHOUT PREJUDICE**. (Emphasis added).

June 8th Order Granting Westgate's Motion to Dismiss, p. 3; ¶ 1 (Exhibit C).

On August 14, 2023, the trial court heard Appellant's Motion to Amend to re-plead its Quantum Meruit cause of action in the alternative and took the matter under advisement.

On August 15, 2023, the trial court issued a Form 4 Order⁴ denying Appellant's Motion to Amend to re-plead its Quantum Meruit cause of action in the alternative.

On August 24, 2023, the Appellant filed a Motion for Reconsideration⁵, pursuant to Rules 59(e) and 52, SCRCF, of the trial court's Form 4 Order denying Appellant's Motion to Amend to re-plead its Quantum Meruit cause of action in the alternative.

³ See Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988)("[W]e find in this instance that the breach of contract claim and quantum meruit claim are alternative rather than inconsistent remedies."); Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010) ("While the circuit court did find there was a contract between the two parties in this action, it never awarded damages because of a breach of that contract. Rather, the circuit court chose the theory of quantum meruit as an alternate remedy"). The trial Court followed this holding in its Order dated September 27, 2023 dismissing Appellant's Quantum Meruit Claim without prejudice, stating "courts allow quantum meruit claims to continue if pled in the alternative to a claim for breach of contract." That is precisely what Appellant seeks to do in its Amended Complaint. (Emphasis added).

⁴ A copy of August 15th, 2023 Form 4 Order denying Appellant's Motion to Amend to re-plead its Quantum Meruit cause of action in the alternative, marked Exhibit D, is attached hereto and incorporated reference.

⁵ A copy of August 24th, 2023 Motion for Reconsideration of the Form 4 Order denying Appellant's Motion to Amend to re-plead its Quantum Meruit cause of action in the alternative, marked Exhibit E, is attached hereto and incorporated reference. The trial court never ruled on Exhibit E, but instead just ruled on Appellant's Motion for Reconsideration filed on October 5, 2023 and issued a Form 4 Order.

On September 27, 2023, the trial court issued a more detailed and formal Order (“September 27th Order”) denying the Appellant’s Motion to Amend to re-plead its Quantum Meruit cause of action in the alternative. Specifically, the Order states the legal basis for denying Appellant’s Motion to Amend in pertinent part as follows:

Because an *unjust/quantum merit cause of action would fail as a matter of law, justice does not require the court to allow the Plaintiff to amend its complaint to add an unjust enrichment/quantum meruit cause of action, because doing so would be futile*. Therefore, for the reasons stated above, Plaintiff’s Notice of Motion to Amend its amended Complaint is hereby DENIED. (Emphasis added).

September 27th Order Denying Plaintiff’s Motion to Amend, p. 6; ¶ 2 (Exhibit F).

On October 5, 2023, the Appellant filed a Motion for Reconsideration⁶ of the trial court’s more detailed and formal Order denying Appellant’s Motion to Amend to re-plead its claim for Quantum Meruit in the alternative.

On January 3, 2024, the trial court denied Appellant’s Motion for Reconsideration filed on October 5, 2023 and issued a Form 4 Order⁷ without holding a hearing.

ARGUMENT

I. THE TRIAL COURT’S ORDER DENYING APPELLANT’S MOTION TO AMEND INVOLVES A LEGAL DETERMINATION ON THE MERITS THAT THE APPELLANT’S QUANTUM MERUIT CLAIM IS FUTILE AS A MATTER OF LAW AND IS THEREBY IMMEDIATELY APPEALABLE UNDER SUBSECTION (1) OF THE S. C. CODE ANN. § 14-3-3330(1) AND THE RELEVANT CASE LAW.

⁶ A copy of Motion for Reconsideration of the trial court’s more detailed and formal Order denying Appellant’s Motion to Amend to re-plead its claim for Quantum Meruit in the alternative, marked Exhibit G, is attached hereto and incorporated reference.

⁷ A copy of January 3, 2024 Form 4 Order denying Appellant’s Motion to Amend to re-plead its Quantum Meruit cause of action in the alternative, marked Exhibit H, is attached hereto and incorporated reference.

Respondent Westgate's Motion to Dismiss Appellant's appeal pursuant to Rule 240, SCACR, is without merit and contrary to State law.

The South Carolina Code Ann. § 14-3-330 (1976, as amended) addresses jurisdiction of the Appellate Courts. Section 14-14-3-330 provides in pertinent part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) ***Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas*** and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from (Emphasis added).

As a general rule, only final judgments are appealable. Culbertson v. Clemens, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996). Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final. Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993).

A trial court's order denying a motion to amend a pleading is interlocutory. Baldwin Const. Co., Inc. v. Graham, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004). "Absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in S.C. Code Ann. § 14-3-330." Id. at 230, 593 S.E.2d at 147. S.C. Code Ann. § 14-4-330(1) provides that this Court "**shall review upon appeal: any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas...**" S.C. Code Ann. § 14-3-330. (Emphasis added). An order involves the merits when it "finally determine[s] some substantial matter forming the whole or a part of some cause of action

or defense...” Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). (Emphasis added).

Here, Baldwin is distinguishable from this case in that it was decided pursuant to S.C. Code Ann. § 14-3-330(2), rather than S.C. Code Ann. § 14-3-330(1). Furthermore, the trial court in Baldwin did not rule on the substantive contents of the Appellant’s Motion to Amend an Answer in that case. In this case, the trial court issued an order denying Appellant’s Motion to Amend its Amended Complaint, stating that “*because an unjust enrichment/quantum meruit cause of action would fail as a matter of law, justice does not require the court to allow Plaintiff to amend its complaint to add an unjust enrichment/quantum meruit cause of action, because doing so would be futile.*” See Order Denying Plaintiff’s Motion to Amend, p. 6; ¶ 2, attached hereto as Exhibit F. This order came after a previous order by the same trial court dismissing Appellant’s claims for quantum meruit and/or unjust enrichment without prejudice and citing to the proposition that “courts allow quantum meruit claims to continue if plead in the alternative to a claim for breach of contract.” See Proposed Granting Westgate’s Motion to Dismiss, p. 3; ¶ 2, attached hereto as Exhibit F. (Emphasis added). The trial court’s order denying Appellant’s Motion to Amend its Amended Complaint directly addresses the legal merits of the quantum meruit claim by stating that the amendment would be futile and that the cause of action would fail as a matter of law. See Order Denying Plaintiff’s Motion to Amend, p. 6; ¶ 2, attached hereto as Exhibit F. This statement went directly to the merits of the cause of action and the dismissal of Appellant’s Motion was not merely discretionary. Therefore, the trial court’s order denying Appellant’s Motion to Amend upon legal grounds, while interlocutory, is immediately appealable to this Court pursuant to S.C. Code Ann. § 14-3-330(1). As additional authority for the above principle, please see Sibley v. Young, 26 S.C. 415, 2 S.E. 314, 319 (1887) (Order refusing to allow amendment upon legal

grounds. Although applications to amend pleadings are addressed to the discretion of the trial court, yet where the refusal is based not upon discretion but upon legal grounds, an appeal will lie under this subdivision); Waring v. Miller Batting & Mfg. Co., 36 S.C. 310, 15 S.E. 132, 134 (1892) (While motions for leave to amend are oftentimes addressed to the discretion of the court, yet, *“when they are refused upon erroneous legal grounds, this court unquestionably has the power, and it is its duty, to inquire into and reverse an order refusing a motion to amend on erroneous legal grounds.”*)(citing Sibley v. Young, 26 S. C. 415, 2 S. E. Rep. 314). (Emphasis added). This Court reviews interlocutory orders when they contain other appealable issues. See Hite v. Thomas & Howard Co., 305 S.C. 358, 360, 409 S.E.2d 340, 341 (1991) (“[A]n order that is not directly appealable will nonetheless be considered if there is an appealable issue before the Court and a ruling on appeal will avoid unnecessary litigation.”), *overruled on other grounds by* Huntley v. Young, 319 S.C. 559, 462 S.E.2d 860 (1995); See also Skydive Myrtle Beach, Inc. v. Horry Cnty., No. 2021-000217, 2024 WL 3291602, at *3 (S.C. Ct. App. July 3, 2024) (citing Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 565, 564 S.E.2d 94, 98 (2002) for this principle, “stating the supreme court reviews interlocutory orders when they contain other appealable issues.) *overruled on other grounds by* Hughes ex rel. Est. of Hughes v. Bank of Am. Nat'l Ass'n, 442 S.C. 113, 139-40 n.7, 898 S.E.2d 102, 116 n.7 (2024)”). (internal quotes omitted).

Lastly, Respondent’s reliance on Baldwin, 357 S.C. at 229–30, 593 S.E.2d at 147 for the principle that a denial of a motion to amend an answer is not immediately appealable is misplaced and inconsistent with statutory law and case law for the reasons discussed above. Because the trial court’s refusal to allow the Appellant leave to amend was not based upon discretion, but instead upon the legal ground of futility, an appeal will lie under S. C. Code Ann. § 14-3-330(1), as amended. Accordingly, the Respondent’s Motion to Dismiss Appellant’s Appeal should be denied.

II. APPELLANT'S APPEAL WAS TIMELY FILED AND SHOULD NOT BE DISMISSED WITH PREJUDICE

Appellant files this response to Respondent Westgate's Motion to dismiss simply to refute Respondent's misrepresentation that Appellant has extinguished its opportunity to appeal the trial court's ruling. Respondent has inaccurately set forth the filings and orders of this case. Below is an accurate recitation of the procedural history of this matter.

- January 1, 2023: Appellant filed its Summons & Complaint alleging Quantum Meruit and Unjust Enrichment against Respondent Westgate;
- February 1, 2023: Respondent Westgate filed a Motion to Dismiss Appellant's claims;
- March 3, 2023: Appellant filed an Amended Summons & Complaint alleging Quantum Meruit, Unjust Enrichment, Civil Conspiracy, and Mechanic's Lien Foreclosure against Respondent Westgate;
- March 29, 2023: Respondent Westgate filed a Motion to Dismiss Appellant's Amended Verified Complaint;
- May 10, 2023: The Court issued a Form 4 Order (Exhibit A), which dismissed Appellant's claims of Quantum Meruit, Mechanic's Lien, and Civil Conspiracy and also granted Respondent's Motion to Dismiss Appellant's Amended Verified Complaint;
- May 22, 2023: Appellant filed a Motion to Amend its Verified Complaint (Exhibit B);
- May 22, 2023: Appellant filed a Motion to Reconsider the trial court's Form 4 Order;
- June 8, 2023: The Court issued a formal Order (Exhibit C) which dismissed Appellant's Quantum Meruit and Unjust Enrichment claims without prejudice, dismissed Appellant's Mechanic's Lien Enforcement claim with prejudice, and dismissed Appellant's Civil Conspiracy claim without prejudice;
- June 16, 2023: Appellant filed a Motion to Reconsider based on the trial court's new formal Order;
- July 18, 2023: The trial court issued a Form 4 Order denying Appellant's Motion to Reconsider the dismissal of Appellant's claims;

- August 15, 2023: The trial court issued a Form 4 Order denying Appellant's Motion to Amend its Verified Complaint (Exhibit D);
- August 24, 2023: Appellant filed a Motion to Reconsider the Court's Form 4 Order denying Appellant's Motion to Amend its Verified Complaint Order (Exhibit E);
- September 27, 2023: The trial court issued a formal order denying Appellant's Motion to Amend its Verified Complaint Order (Exhibit F);
- October 5, 2023: Appellant filed a Motion to Reconsider based on the Court's new formal Order (Exhibit G); and
- January 3, 2024: the trial Court denied Appellant's Motion for Reconsideration filed on October 5, 2023 without holding a hearing Order (Exhibit H).

As noted by Respondent, a second Motion for Reconsideration under Rule 59(e) is appropriate if it challenges something that was altered from the original judgment as a result of the initial Motion for Reconsideration. Elam v. South Carolina Department of Transportation, 361 S.C. 9, 14, 602 S.E.2d 772, 775 (2004).

In this case, each time Appellant has filed a Motion for Reconsideration, such Motion was filed in response to the new formal order of the trial court following the Form 4 Order. The Court in Elam further explained, "An appeal may be barred due to untimely service of the notice of appeal when a party – instead of serving a notice of appeal – files a successive Rule 59(e) motion, **where the trial judge's ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment.**" Id. at 778 (emphasis added).

Here, the trial court filed a Form 4 Order on August 15, 2023 denying Appellant's Motion to Amend its Verified Complaint. In response, Appellant's **first** Motion for Reconsideration⁸ was filed on August 24, 2023. Respondent's counsel then prepared a proposed order (**unprompted and**

⁸ In this case, the Court ignored and never ruled on Appellant's (first) Motion to Reconsider the Court's denial of Plaintiff's Motion to Amend its Verified Complaint filed on **August 24, 2023**. Again, the first motion to reconsider dealt with a Form 4 Order filed on **August 15, 2023** denying Appellant's Motion to Amend its Verified Complaint filed on **May 22, 2023**.

without consulting Plaintiff's counsel) to set forth its new arguments as the trial court's basis for its denial of Appellant's Motion to Amend its Verified Complaint filed on May 22, 2023, and submitted the proposed order to the trial court on September 11, 2023. The trial court then adopted Respondent's proposed order and filed the formal order on September 27, 2023, denying Appellant's Motion to Amend its Verified Complaint.

Appellant's **second** Motion for Reconsideration was filed October 5, 2023 to challenge the new formal order and its alterations from the original judgment, which was a one sentence Form 4 Order filed on August 15, 2023.

On January 3, 2024, the trial court denied Appellant's Motion for Reconsideration filed on October 5, 2023 without holding a hearing. In this case, the Court has not ruled on Appellant's Motion to Reconsider the Court's denial of Plaintiff's Motion to Amend its Verified Complaint filed on August 24, 2023.

Based upon the foregoing, the thirty-day timeline to serve a notice of appeal began to run on January 3, 2024 after receipt of written notice of the filing of the order denying Appellant's Motion for Reconsideration filed on October 5, 2023. Appellant filed its notice of Appeal with the Court of Appeals on January 30, 2024. Accordingly, because the Appellant's notice of Appeal was timely filed on January 30, 2024, the Respondent's Motion to Dismiss this appeal should be denied.

CONCLUSION

Respondent's Motion to Dismiss Appellant's Appeal with prejudice should be denied for the following reasons: First, the trial court's order denying Appellant's Motion to Amend based upon the legal ground of futility, while interlocutory, is immediately appealable to this Court pursuant to S.C. Code Ann. § 14-3-330(1). Second, the thirty-day timeline to serve a notice of

appeal began to run on January 3, 2024 after receipt of written notice of the filing of the trial court's order denying Appellant's Motion for Reconsideration filed on October 5, 2023. As such, the Appellant's notice of Appeal was timely filed on January 30, 2024. Third, assuming the Respondent's Motion to Dismiss is granted, it will only be granted without prejudice. This is primarily because the denial of Appellant's Motion to Amend by the trial court "*may be appealed after the case has ended and final judgment entered,*" as an alternative remedy pursuant to the unambiguous language of S. C. Code Ann. § 14-3-330(1), as amended. (Emphasis added).

BELLAMY, RUTENBERT, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

/s/ Howell V Bellamy, III

Howell V. Bellamy, III (SC Bar # 66575)

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Attorney for Plaintiff

Myrtle Beach, South Carolina

August 7, 2024

EXHIBIT A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2600053

Paint Design LLC
PLAINTIFF(S)

Westgate Myrtle Beach LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion/Dismiss Claims is Granted as to the claims of quantum meruit, mechanic's lien, and civil conspiracy.
Defendant's Motion/Dismiss Amended Complaint/Certificate of Service is Granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/10/2023 .

RNR Construction LLC

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Paint Design LLC VS Westgate Myrtle Beach LLC , defendant, et al
Case Number: 2023CP2600053
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2023-CP-26-00053
	)	
Paint Design, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF 'S NOTICE OF MOTION
	)	AND MOTION TO AMEND
Westgate Myrtle Beach, LLC a/k/a	)	ITS AMENDED COMPLAINT
Westgate Resorts, Ltd. and RNR	)	
Construction,	)	
	)	
Defendants.	)	
	)	

TO: DON TERRY, ESQUIRE, AS COUNSEL FOR DEFENDANT WESTGATE MYRTLE BEACH, LLC A/K/A WESTGATE RESORTS, LTD.

YOU WILL PLEASE TAKE NOTICE that Plaintiff, Paint Design, LLC, by and through the undersigned, will move pursuant to Rule 15, SCRCP, and/or any other applicable rule or statute to amend its amended Complaint, to correct any alleged pleading defect to the Quantum Meruit Cause of Action against the Defendant Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd. A copy of the proposed Amended Complaint is attached hereto as **Exhibit A.**

This motion is made upon the grounds of furtherance of justice and there being no prejudice to any other party.

Pursuant to Rule 11(a), SCRCP, the undersigned states that consultation with opposing counsel would serve no useful purpose.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

/s/ Howell V. Bellamy, III
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Attorney for Plaintiff

Myrtle Beach, South Carolina

May 22, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2023-CP-26-00053
	)	
Paint Design, LLC,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF PAINT DESIGN, LLC'S
vs.	)	SECOND AMENDED COMPLAINT
	)	AGAINST DEFENDANTS WESTGATE
Westgate Myrtle Beach, LLC a/k/a	)	MYRTLE BEACH, LLC a/k/a WESTGATE
Westgate Resorts, Ltd. and RNR	)	RESORTS, LTD. and
Construction, LLC,	)	RNR CONSTRUCTION, LLC
	)	
Defendants.	)	
	)	

The Plaintiff Paint Design, LLC, by and through its undersigned attorneys, complaining of the above-captioned Defendants herein, would respectfully allege and show unto this Honorable Court as follows:

JURISDICTION, PARTIES, AND VENUE

1. The Plaintiff, Paint Design, LLC ("Paint Design"), is a limited liability company organized and existing under the laws of the State of South Carolina and having its principal place of business in Horry County, South Carolina and doing business in Horry County, South Carolina as a paint and interior design contractor.
2. Upon information and belief, the Defendant Westgate Myrtle Beach, LLC ("Westgate" or "Defendant"), is a limited liability company organized and existing under the laws of the State of Florida and doing business in Horry County, South Carolina as a timeshare resort company.
3. Upon information and belief, the Defendant Westgate Resorts, Ltd., is a limited partnership organized and existing under the laws of the State of Florida and doing business in Horry County, South Carolina as a timeshare resort company.

4. Upon information and belief, the Defendant, RNR Construction, LLC, is a limited liability company organized and existing under the laws of the State of North Carolina and doing business in Horry County, South Carolina as a general contractor.
5. This Honorable Court has jurisdiction over these parties and the subject matter, and venue is proper in Horry County, South Carolina.

FACTUAL ALLEGATIONS AS TO ALL DEFENDANTS

6. On or about October 25, 2021, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd. ("Project Owner" or "Westgate") entered a prime contract with Defendant RNR Construction, LLC ("General Contractor" or "RNR Construction") for the purpose of hiring said general contractor to furnish labor, materials, equipment and/or other services to the project.
7. On or about October 22, 2021, Defendant RNR Construction entered a subcontract with the Plaintiff Paint Design as permitted by the Project Owner Westgate. Specifically, Paint Design agreed to furnish labor, materials, equipment and/or other services to the project in consideration for the sum of One Hundred Twenty-Six Thousand Nine Hundred Dollars and 00/100ths (\$126,900.00). In accordance with the above, Paint Design was entitled to be paid within ten (10) days following general contractor's receipt of its request for payment on or before 25th of each calendar month. A true and accurate copy of the subcontract agreement is attached hereto as **Exhibit A** and is incorporated herein by reference.
8. Pursuant to the subcontract agreement with Defendant RNR Construction, Paint Design agreed to provide the following scope of work which included:
 - (a) Paint 24 rooms on the 2nd floor being converted to guest rooms;
 - (b) Texture walls of 24 rooms on the 2nd floor being converted to guest rooms;

- (c) Paint 8 rooms between the 3rd and 6th floors being converted to guest rooms; and
 - (d) Texture walls of 8 rooms between the 3rd and 6th floors being converted to guest rooms.
- 9. At all times pertinent hereto, the Defendant Westgate had actual knowledge of the improvements being made to the project property by Paint Design, its agents, employees, and representatives, and consented to such improvements being made pursuant to the terms of the subcontract between the Plaintiff and Defendant RNR Construction. At no time did Defendant Westgate object to Paint Design's scope of work under Exhibit A.
- 10. Between the dates of January 18, 2022, through May 7, 2022, Paint Design at the special insistence and request of the Defendant RNR Construction and including the project owner, furnished equipment, services and labor and/or materials for painting which were actually used in the construction, alteration of improvements of a structure situated on, or otherwise improving the real property described in Paragraph 8 of the Second Amended Complaint.
- 11. On June 23, 2022, Paint Design provided notice to Defendant Westgate with respect to the equipment, services, and labor and/or materials furnished by it including their reasonable value in the principal amount of Seventy-Six Thousand Nine Hundred Dollars and 00/100ths (\$76,900.00). Paint Design's letter to Defendant Westgate placing them on notice is attached hereto as Exhibit B and incorporated herein by reference.
- 12. The record indicates that Paint Design's notice, mechanic's lien, , and certificate were filed on July 8, 2022, in Lien Book 284, at page 1382 in the Office of the Register of Deeds for Horry County, South Carolina, and subsequently filed an Amended Notice and Certificate of Mechanics Lien in Lien Book 284, at page 1678 in the Office of the Register of Deeds for Horry County, South Carolina, on July 19, 2022, being within ninety (90) days of the

last performance of services and/or delivery of labor and/or materials. True and accurate copies of the Notice and Certificate of Mechanics Lien and the Amended Notice and Certificate of Mechanics Lien are attached hereto as Exhibit C-1 and C-2 and are incorporated herein by reference. However, Paint Design's enforcement action is time barred because it failed to foreclose the lien within six months after it had ceased to furnish labor and materials to the project on May 7, 2022.

13. Considering the above, Paint Design has abandoned its mechanic's lien foreclosure action in favor of pursuing its quantum meruit claim against Westgate. *"Some courts addressing quasi-contractual claims have held a subcontractor's failure to [perfect] the statutory remedy of a mechanic's lien precludes a finding the enrichment is unjust."* Columbia Wholesale Co., 312 S.C. at 263, 440 S.E.2d at 131 (citing Lynn v. Miller Lumber Co., 146 Ga.App. 230, 246 S.E.2d 137 (1978); Pay-N-Taket, Inc. v. Crooks, 259 Iowa 719, 145 N.W.2d 621 (1966); Crockett, 455 S.W.2d at 810). *"Other courts have allowed recovery in quantum meruit even where a mechanic's lien was not pursued."* Id. (citing United States v. Ins. Co. of N. Am., 695 F.2d 455 (10th Cir.1982) (applying New Mexico law); G & G Lange Brunner, Inc. v. Davis Constr. Co., 21 Ohio Misc.2d 11, 488 N.E.2d 506 (Ohio Munic.Ct.1984)). The South Carolina Supreme Court has determined, *"Failure to pursue a mechanic's lien, however, will not bar an action for quantum meruit recovery as a matter of law if a plaintiff can otherwise prove circumstances establishing unjust enrichment."* Id. at 263, 440 S.E.2d at 131–32 (citing Gee v. Eberle, 279 Pa. Super. 101, 420 A.2d 1050 (1980); Costanzo, 453 P.2d at 529 (*finding the failure to file mechanic's lien did not bar recovery for unjust enrichment when owner paid no one*)). (Emphasis added).

14. Here, Paint Design's failure to perfect its mechanic's lien in this situation does not bar its action for quantum meruit against Westgate. See Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988) (The Supreme Court found that Franke Associates would be entitled to a quantum meruit recovery despite its failure to foreclose the lien within six months after it ceased to furnish labor and materials to the project).
15. Additionally, "[a] breach of contract claim and quantum meruit claim can be alternative rather than inconsistent remedies." JASDIP Props. SC, LLC v. Estate of Richardson, 395 S.C. 633, 639, 720 S.E.2d 485, 488 (Ct.App.2011) (citing Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988)). In Earthscapes Unlimited, Inc., 390 S.C. at 617, 703 S.E.2d at 225, the supreme court affirmed the circuit court's decision to award damages under the theory of quantum meruit even though the circuit court had found a contract between the parties. The supreme court found, "*While the circuit court did find there was a contract between the two parties in this action, it never awarded damages because of a breach of that contract. Rather, the circuit court chose the theory of quantum meruit as an alternate remedy.*" Id. at 617 n. 4, 703 S.E.2d at 225 n. 4.
16. Notwithstanding, Paint Design is seeking damages under its quantum meruit claim and not its breach of subcontract action against RNR Construction, *which action will be abandoned or withdrawn in the near future*. See Strickland v. Coastal Design Assocs., 294 S.C. 421, 424, 365 S.E.2d 226, 228 (Ct.App.1987) ("The law is well settled in this nation that where an express contract has been rescinded or abandoned, one furnishing labor or materials in part performance may recover in quantum meruit unless the original contract remains in force."); Johnston v. Brown, 290 S.C. 141, 148, 348 S.E.2d 391, 395 (Ct.App.1986), *rev'd on other grounds*, 292 S.C. 478, 357 S.E.2d 450 (1987) ("While a

recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid for the services." (Emphasis added).

17. South Carolina Case law bars recovery under both theories. Here, Paint Design can elect to abandon and/or withdraw its breach of subcontract claim against Defendant RNR construction, who is currently in default; and just proceed under the quantum meruit action against Defendant Westgate. Accordingly, Paint Design's breach of subcontract claim against the Defendant RNR construction does not bar Paint Design's recovery under a quantum meruit against the Defendant Westgate.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract against Defendant RNR Construction, LLC)

18. That the foregoing allegations are incorporated herein by reference as if fully repeated verbatim herein.
19. Defendant, RNR Construction, contracted with and hired Paint Design for the purpose of performing and providing certain equipment, services, labor and/or materials for the construction, erection, or alteration of improvements on the aforesaid real property that is located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina, containing 6.08 acres or 265,043 square feet of land on Block 18 of Yaupon Circle Section of Myrtle Beach, South Carolina, and whose legal description is more particularly described as TMS# 181-14-02-010.
20. Paint Design completed the requested interior painting work as described above in a workmanlike manner and in accordance with the subcontractor's contract documents provided by Defendant RNR Construction.

21. Paint Design has performed all terms and conditions therein by timely furnishing the services, equipment, and labor and materials in accordance with the subcontract agreement of the parties. However, Defendant RNR Construction has failed to pay the final amounts due and owing to Paint Design under Exhibit A.
22. Defendant RNR Construction has breached the terms of the original subcontract by refusing to pay what is now due and owing for the unpaid balance to Paint Design in the principal amount of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00).
23. Paint Design is entitled to a judgment against the Defendant, RNR Construction, for the unpaid balance in the principal amount of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00) together with both contract and prejudgment interest, costs, as allowed by law, and reasonable attorney fees incurred in the prosecution of this action.
24. Moreover, the Paint Design contends it is also entitled to recover incidental and/or consequential damages in this matter including, but not limited to, the damages incurred by it for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business and reputation, and loss of profits including anticipated profits arising directly from the loss of other construction jobs due to lack of capital. In support of the above, Paint Design can: (a) demonstrate the Defendant RNR Construction was on notice of the circumstances giving rise to the above damages at the time of the subcontract, (b) demonstrate the above damages were reasonably foreseeable at the time of the subcontract, and (3) prove, by the preponderance of the evidence, the amount of the above damages.

FOR A SECONUD CAUSE OF ACTION
(Quantum Meruit against Defendant Westgate Myrtle Beach, LLC
a/k/a Westgate Resorts, Ltd.)

25. That the foregoing allegations are incorporated herein by reference as if fully repeated verbatim herein.
26. “[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy.” QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct.App.2004) (citations and internal quotation marks omitted) (alteration by court). “The terms ‘restitution’ and ‘unjust enrichment’ are modern designations for the older doctrine of quasi-contracts.” Ellis v. Smith Grading & Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct.App.1988).
27. A breach of contract claim and quantum meruit claim can be alternative rather than inconsistent remedies. Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988). In Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010), the supreme court affirmed the circuit court's decision to award damages under the theory of quantum meruit even though the circuit had found there was a contract between the parties. The supreme court found, “While the circuit court did find there was a contract between the two parties in this action, it never awarded damages because of a breach of that contract. Rather, the circuit court chose the theory of quantum meruit as an alternate remedy.” Id. at 617 n. 4, 703 S.E.2d at 225 n. 4.
28. To prevail on a quantum meruit claim, a plaintiff must establish (1) he conferred a benefit upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value. Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 616–17, 703 S.E.2d 221, 225 (2010) (providing the requirements).

29. In the present case, Paint Design conferred a benefit on Westgate's property, including, but not limited to: (a) painting and texturing walls of 24 rooms on the 2nd floor being converted to guest rooms; and (b) painting and texturing walls of 8 rooms between the 3rd and 6th floors being converted to guest rooms. Westgate has realized and benefited financially from the painting and texturing work performed by Paint Design. Finally, it is extremely unjust for Westgate to retain the benefits provided by Paint Design without paying for a fair and reasonable value therefore. By reason of the foregoing, Paint Design has been damaged in the sum of no less than Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00).
30. "Courts addressing a claim of unjust enrichment by a subcontractor against a property owner have typically denied recovery where the owner in fact paid on its contract with the general contractor." Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 262–63, 440 S.E.2d 129, 131 (1994) (citing Cohen v. Delmar Drive-in Theatre, Inc., 84 A.2d 597 (Del.Super.Ct.1951); Guldborg v. Greenfield, 259 Iowa 873, 146 N.W.2d 298 (Iowa 1966); Crockett v. Brady, 455 S.W.2d 807 (Tex.Civ.App.1970)) (comparing Costanzo v. Stewart, 9 Ariz.App. 430, 453 P.2d 526 (1969) (allowing recovery for unjust enrichment when owner assured subcontractor money was escrowed to pay for job and owner did not pay general contractor)).
31. Here, upon information and belief, Westgate had not paid the total contract amount owed to the Defendant RNR Construction prior to receiving notice from Paint Design's legal counsel as shown by Exhibits B and D. Further, Westgate had failed to pay Paint Design its pro rata share of the retainage being held by it as shown on the spreadsheet attached as Exhibit C to the Defendant's notice of Default and Demand to Cure Letter sent to

Defendant RNR Construction. Stated differently, upon information and belief, all retainage under the prime contract had not been paid to the other subcontractors as identified on the spreadsheet (Exhibit C) prior to Paint Design filing this lawsuit on January 5, 2023. Accordingly, for these reasons, the Westgate has been unjustly enriched and Paint Design is entitled to a judgment against Westgate for the unpaid balance in the principal amount of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00), together with prejudgment interest, costs, as allowed by law, including reasonable attorney fees incurred in the prosecution of this action under the equitable theory of Quantum Meruit.

WHEREFORE, having fully set forth its Second Amended Complaint, the Plaintiff Paint Design prays as follows:

- A. For a judgment under the First Cause of Action for Breach of Subcontract Action against Defendant RNR Construction, LLC for the unpaid balance in the principal sum of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00), together with contract and prejudgment interest, and reasonable attorney's fees and costs incurred in this matter as allowed to recover by the prevailing party under the terms of the subcontract between the parties;
- B. In the alternative, for a judgment under the Second Cause of Action for Quantum Meruit against Defendant Westgate for the unpaid balance in the principal sum of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00), together with prejudgment interest, and reasonable attorney's fees and costs incurred in this matter;
- C. For trial by jury on all issues so triable; and
- D. For such other and further relief as this Court may deem just and proper.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

s/ Howell V. Bellamy, III

Howell V. Bellamy, III (SC Bar # 66575)

hbellamyiii@bellamylaw.com

1000 29th Ave. N.

Myrtle Beach, SC 29577

843-448-2400 Phone

843-448-3022 Facsimile

Attorney for Plaintiff

Myrtle Beach, South Carolina

May 15, 2023

EXHIBIT A

RNR Construction, LLC
1011 S. Hamilton
Chapel Hill, NC 27517

SUBCONTRACT

To:

Paint Design LLC
Paint Design LLC
5078 Hwy 319E
Conway, SC 29526

Subcontract #: RR-00010-106

Date: 10/22/2021

Job: RR-00010 WG 2nd Floor Conversion

Job Address:

Description: Paint Services

Scope of Work:

Provide all labor, materials, equipment, and field qualified field supervision to perform the Paint scope of work according to the following:

1. Revised Proposal dated 10/06/2021
2. Project Schedule: See Attached; or Schedule to be Industry Standard Cadence as Directed by RNR Construction Personnel.
3. The person signing this agreement acknowledges the drawings listed, schedule, and attached proposal copy. By signing, subcontractor acknowledges above scope items and pages 1-7 inclusions.

1 Paint Services

\$124,450

Total Subcontract Amount: \$124,450

Inclusions:

Per the Revised Proposal dated 10/06/2021:

Project Schedule: Schedule to be Industry Standard Cadence as Directed by RNR Personnel

Per Plans: DATED: 5/22/2019, 8/22/2019, 9/16/2019, 9/26/2019, 7/26/2021:

A1.2, A1.3, A1.4, A1.5, A1.6, A2.1, A120, A120.2, A130, A140, A202

Exclusions:

Per the Revised Proposal dated 10/06/2021:

Paint Design LLC

Date

RNR Construction, LLC

SUBCONTRACT TERMS & CONDITIONS
(please initial each page & sign on the last page)

This Subcontract is subject to and wholly governed by the terms and conditions indicated below:

1. The Subcontractor shall perform all work in accordance with the current drawings, specifications and any other documents indicated on Page 1 of this document and these Terms and Conditions (collectively referred to as "Contract Documents"). In the event that no contract documents are set forth, the work is to be performed in accordance with these terms and conditions and in a first class, workmanlike manner, consistent with the construction practices prevailing in the area of the project.
 - 1.1 Notwithstanding anything to the contrary in this Agreement, the provisions of the contract documents are intended to define, but not limit the Work to be performed. The tasks, drawings and specifications included in the Agreement are scope documents, which do not necessarily indicate or describe all of the work required for the complete and full performance of the Work. If a conflict occurs between Project documents and field conditions, the more onerous takes precedence. Where there is ambiguity, the Contract Documents shall take precedence and the more onerous shall take precedence. 1.2 It shall be the responsibility of the Subcontractor, prior to the commencement of its work to verify with R and R Construction's Project Manager that its field personnel are in possession of the most current Contract Documents.
2. With respect to the Work to be performed and furnished by the Subcontractor hereunder, the Subcontractor agrees to be bound to R and R Construction, Inc. d/b/a R and R Construction (hereinafter "R and R Construction" or "Contractor" or "R and R Construction") by each and all of the terms and provisions of the General Contract between Owner and R and R Construction and the other contract documents, and to assume toward Contractor all of the duties, obligations and responsibilities that Contractor by those contract documents assumes toward the Owner, and the Subcontractor agrees further that Contractor shall have the same rights and remedies as against the Subcontractor as the Owner under the terms and provisions of the General Contract and the other contract documents has against Contractor with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. The terms and provisions of this Agreement with respect to the Work to be performed and furnished by the Subcontractor hereunder are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of the General Contract and the other contract documents. This Subcontract Agreement, the provisions of the General Contract and the other contract documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of this Subcontract Agreement irreconcilably conflicts with a provision of the General Contract and the other contract documents, the provision imposing the greater duty or obligation on the Subcontractor shall govern.
3. The Subcontractor will furnish all labor, materials, supervision and items required for the proper and complete performance of the work and in compliance in every request with (I) all applicable local, federal and state laws, codes and ordinance, and (II) the regulations of the building in which the work is to be performed.
4. The Subcontractor shall perform the work in a prompt and diligent manner and in accordance with schedules given from time-to-time to Subcontractor. In the event the Subcontractor fails to maintain the schedule, regardless of scope expansion, the Subcontractor, without additional compensation, shall be responsible for all overtime as R and R Construction may direct until the Subcontractor is in compliance with such schedule.
5. The Subcontract amount contained herein shall be inclusive of all material, labor, applicable sales tax, supervision, insurance, delivery, overhead and profit.
6. Payments of the Subcontract amount, including final payment shall be subject to the following: (I) R and R Construction payment requisition procedures, (II) Approval of the work by R and R Construction, (III) Receipt by R and R Construction of satisfactory evidence that all labor, including customary fringe payments and payments due under collective bargaining agreements, and all sub-subcontractors and suppliers have been paid to date and have submitted waivers of lien to the extent paid, (IV) Receipt of payment from the owner, (V) Compliance by Subcontractor with all other Contract Documents, and (VI) Completion of all punch list items.
7. No payments to Subcontractor will be processed until the following materials are provided to R and R Construction: (1) signed Subcontract; (2) Certificate of Insurance; (3) Copy of Permit (when applicable); (4) proof of procurement and delivery of materials and proof that Subcontractor has paid for these materials; and (5) Lien Waiver for Subcontractor and all Sub-Subcontractors and material suppliers.
8. Subcontractor must provide proof of procurement and delivery of materials prior to mobilization (when applicable).
9. Receipt of payment for Subcontractors work from Owner by R and R Construction shall be a condition precedent to the right of the Subcontractor to receive payment from R and R Construction. The Subcontract

SUBCONTRACT TERMS & CONDITIONS

(please initial each page & sign on the last page)

hereby acknowledges that it relies on the payment from the Owner to R and R Construction for payment of its work.

10. R and R Construction may withhold payment because of (I) defective work not remedied, (II) claims filed, or reasonable evidence or probable filing of claims by third parties, (III) failure of Subcontractor to make payment properly to Sub-subcontractors and/or Suppliers, (IV) reasonable evidence the work cannot be completed for the unpaid balance of the Subcontract amount, (V) failure to maintain the schedule, (VI) persistent failure by Subcontractor to carry out the work in accordance with the Contract Documents, (VII) offsets or back charges arising out of any other Subcontract or Purchase Order issued by R and R Construction to Subcontractor, or (VIII) any other conduct by Subcontractor which interferes with R and R Construction or its subcontractors ability to proceed and/or complete the Project.
11. The Subcontractor shall be liable for any damages incurred by R and R Construction as a consequence of the failure by Subcontractor to comply with this Subcontract, including R and R Construction's attorney's fees and costs.
12. The Subcontractor shall furnish all shop drawings and submittals necessary for the performance of the work.
13. Insurance and Indemnification.
The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:
 - 1) Commercial General Liability (CGL) coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
 - a) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
 - b) CGL coverage shall be written on ISO Occurrence form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
 - c) Contractor, Owner and all other parties who Contractor is required to name as additional insureds by any contract, shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG 20 10 11 85 or an endorsement providing equivalent or broader coverage to the additional insureds. The coverage provided to the additional insureds under the policy issued to the Subcontractor shall be at least as broad as the coverage provided to the Subcontractor under the policy. Coverage for the additional insureds shall apply as Primary and non-contributing insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insureds.
 - d) Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.
 - e) CGL coverage shall not have a Residential Exclusion.
 - f) R and R Construction, Inc. and the Owner of the property need be named as additional insured on your CGL.
 - 2) Automobile Liability
 - a) Business Auto Liability with limits of at least \$1,000,000 each accident.
 - b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
 - c) General Contractor, Owner and all other parties required of the General Contractor, shall be included as insureds on the auto policy.
 - 3) Commercial Umbrella
 - a) Umbrella limits must be at least \$5,000,000.
 - b) Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.
 - c) Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Subcontractor.
 - 4) Workers Compensation and Employers Liability
 - a) Employers Liability Insurance limits of at least \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for injury by disease.

SUBCONTRACT TERMS & CONDITIONS

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- b) Where applicable, U.S. Longshore and Harbor workers Compensation Act Endorsement shall be attached to the policy.
- c) Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.
- 5) The subcontractor shall not sublet any part of his work without assuming full responsibility for requiring similar insurance from his subcontractors and shall submit satisfactory evidence to that effect to the Contractor. Each such insurance policy, except the Worker's Compensation Policy, shall include the Owner and the Contractor as an additional insured.

Waiver of Subrogation

Subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or worker's compensation and employers' liability insurance maintained per requirements stated above.

Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement and a copy of the applicable Other Insurance clause that is part of the Subcontractor's Commercial General Liability Policy. These certificates and the insurance policies required shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Contractor. A copy of the entire Commercial General Liability policy shall be submitted to the Contractor when requested.

PLEASE FORWARD THE ENDORSEMENT PAGE FROM YOUR POLICY INCLUDING THE ADDITIONAL INSURED ENDORSEMENT

Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy. These certificates and the insurance policies required shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor.

Section II- Indemnification:

To the fullest extent permitted by law, the Subcontractor agrees to defend, indemnify and hold harmless the Contractor, the owner, and any other party whom the Contractor has agreed to defend, indemnify and hold harmless, as well as each of their officers, directors, partners, agents, servants, employees, successors and assigns ("Indemnitees") from and against any and all claims, damages, losses, costs and expenses of any kind, including but not limited to attorney's fees, incurred by reason of any liability for damage because of bodily injury, including death resulting from such injuries, or property damage to real and personal property of any kind whatsoever, sustained by any person or persons, whether employees of the Subcontractor or otherwise, resulting from, arising out of or occurring in connection with the performance of the work provided for in this contract, together with any change orders or additions to the work included in the contract.

The Subcontractor agrees that the obligation to defend, indemnify and hold harmless, as described above, specifically includes the obligation to defend, indemnify and hold harmless the Indemnitees for the Indemnitees' own negligence or fault, excepting from the foregoing the sole negligence or fault of any Indemnitee if prohibited by law.

The Subcontractor agrees that the obligation to defend commences when a claim is made against an Indemnitee, even if the Subcontractor disputes its obligation to indemnify and hold harmless. The defense shall be provided through counsel chosen by the Indemnitee, and the Subcontractor agrees to pay for the defense of the Indemnitee upon demand.

The obligation to defend, indemnify and hold harmless, as described above, survives completion or acceptance of the work. This indemnification clause supersedes any other indemnification clause in the contract documents, including those that are incorporated by reference, that conflict with it in any way. Subcontractor also agrees to

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(please initial each page & sign on the last page)

contractually bind its subcontractors (if any) to defend, indemnify and hold harmless the Indemnitees to the same extent as the Subcontractor is obligated. This Indemnification clause, irrespective of any other choice of law provision, shall be interpreted according to New Jersey law.

14. The retainage (the "Retainage") shall be the aggregate of the following amounts withheld from each progress payment to the Contractor: an amount equal to ten percent (10.00%) of the value of the Work performed and included in each Requisition to R and R Construction until the final completion of all the Work. The Retainage will be disbursed to Subcontractor upon the satisfactory final completion of the Work, including all Punch List work. If any, as reasonably determined by R and R Construction and/or Owner provided, that: (a) no default is threatened or has occurred and is continuing under the Contract, and (b) Subcontractor executes and delivers all close out documentation required by R and R Construction including, but not limited to, final lien waivers and releases and other documentation required by this Contract. The close out documentation, including the final lien waiver, must be proved to R and R Construction when Subcontract has been paid to 90% of Subcontractor's contract in order to allow R and R Construction to obtain retainage funds to be paid to Subcontractor. R and R Construction shall withhold Retainage from all payments due Subcontractor in the same percentage as Owner withholds from R and R Construction. Subcontractor will be deemed to be paid in full for the Work upon the release of the Retainage.
15. Subcontractor is prohibited from assigning and/or subcontracting any portion of Subcontractor's Work or labor necessary to perform Subcontractor's Work without obtaining written approval from R and R Construction. Should it be discovered that Subcontractor has assigned and/or subcontracted any portion of Subcontractor's work or labor necessary to perform its work without written approval from R and R Construction, Subcontractor will not be entitled to any further payment from R and R Construction. Likewise, Subcontractor may not assign its rights to receive payments from R and R Construction without obtaining written approval from R and R Construction.
16. R and R Construction may, from time to time, whether the Work or any part thereof shall or shall not have been completed, to make changes, additions and/or omissions in the Work as it may deem necessary, upon written order to the Subcontractor. Within three days from the date the Subcontractor becomes aware of a potential Change Order and/or is requested by R and R Construction to provide a change order proposal, Subcontractor must provide a the proposal and provide proper back-up to support the change order proposal. If an appropriate change order is not provided by the Subcontractor within the three-day time period mentioned in the prior sentence, R and R Construction reserves the right to price the work themselves and the Subcontractor is obligated to perform the work at the price determined by R and R Construction. The value of the work to be changed, added or omitted shall be stated in said written order and shall be added to or deducted from the Price. Subcontractor shall not be entitled to any payment from R and R Construction if it proceeds with any changes to Subcontractor's work prior to receiving a change order prepared by R and R Construction and signed by R and R Construction. If R and R Construction and Subcontractor cannot agree upon the cost of any change order work, R and R Construction may issue a change order directive and Subcontractor shall be obligated to proceed with the changed work with the understanding that the amount of the change order will be determined in accordance with the dispute resolution procedures set forth in the Contract. Subcontract agrees that R and R Construction's Project Site Superintendent signing work tickets in the field is NOT authorization for change order work. The Subcontractor further agrees that R and R Construction's Site Superintendents are not authorized to approve additional work. Only R and R Construction's Project Managers can approve change order work and approval from R and R Construction's Project Manager must be in a signed written change order from and must be signed before any change order work begins.
17. The Subcontractor shall, at its own cost and expense, (1) keep the Premises free at all times from all waste materials, packaging materials and other rubbish accumulated in connection with the execution of its Work by collecting and depositing said materials and rubbish in locations or containers as designated by Contractor from which it shall be removed by Contractor from the Premises without charge, (2) clean and remove from its own Work and from all contiguous work of others any soiling, staining, mortar, plaster, concrete or dirt caused by the execution of its Work and make good all defects resulting therefrom (3) at the completion of its Work in each area, perform such cleaning as may be required to leave the area "broom clean", and (4) at the entire completion of its Work, remove all of its tools, equipment, scaffolds, shanties and surplus materials. Should the Subcontractor fail to perform any of the foregoing to Contractor's satisfaction, Contractor shall have the right to perform and complete such work itself or through others and charge the cost thereof to the Subcontractor.

SUBCONTRACT TERMS & CONDITIONS

(please initial each page & sign on the last page)

18. The Subcontractor agrees to indemnify, protect and save harmless Contractor and the Owner from and against any and all construction liens and claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees and disbursements, which Contractor and/or the Owner may sustain or incur in connection therewith as a result of any construction liens.
19. Should the Subcontractor at any time, whether before or after final payment or completion of the Work, refuse or neglect to supply a sufficiency of skilled workers or materials of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any act or omission the stoppage, impede, obstruct, hinder or delay of or interference with or damage to the work of Contractor or of any other contractors or subcontractors on the Project, or fail in the performance of any of the terms and provisions of this Agreement or of the other Contract Documents, or should the Architect, Contractor, Owner or any of its design consultants, determine that the Work or any portion thereof is not being performed in accordance with the Contract Documents, or should there be filed by or against the Subcontractor a petition in bankruptcy or for an arrangement or reorganization, or should the Subcontractor become insolvent or be adjudicated a bankrupt or go into liquidation or dissolution, either voluntarily or involuntarily or under a court order, or make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency, then in any of such events, each of which shall constitute a default hereunder on the Subcontractor's part, Contractor shall have the right, in addition to any other rights and remedies provided by this Agreement and the other Contract Documents or by law, at one time or in phases at Contractor's discretion, after three (3) days written notice to the Subcontractor mailed or delivered to the last known address of the latter, (a) to perform and furnish through itself or through others any such labor or materials for all or any portion of the Work and to deduct the cost thereof from any monies due or to become due to the Subcontractor under this Agreement, (b) to terminate the employment of the Subcontractor for all or any portion of the Work, and/or (c) enter upon the premises and take possession, for the purpose of completing all or any portion of the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon as Contractor may select, all of which the Subcontractor hereby authorizes Contractor to employ and/or communicate with any person or persons in connection with the completion of the Work and/or to provide all the labor, services, materials, equipment and other items required therefor. In case of Contractor taking action under this Article, including termination of the employment of the Subcontractor, the Subcontractor shall not be entitled to receive any further payment under this Agreement until the Work shall be wholly completed to the satisfaction of Contractor, Owner and the Architect and shall have been accepted by them, at which time, if the unpaid balance of the amount to be paid under this Agreement shall exceed the cost and expense incurred by Contractor in completing the Work, such excess shall be paid by Contractor to the Subcontractor; but if such cost and expense shall exceed such unpaid balance, then the Subcontractor and its surety, if any, shall pay the difference to Contractor. Such cost and expense shall include, not only the cost of completing the Work to the satisfaction of Contractor and the Architect and of performing and furnishing all labor, services, materials, equipment, and other items required therefore, but also all losses, damages, costs and expenses, (including legal fees and disbursements incurred in connection with procurement, in defending claims arising from such default and in seeking recovery of all such cost and expense from the Subcontractor and/or its surety), and disbursements sustained, incurred or suffered by reason of or resulting from the Subcontractor's default. Should Contractor take action by effectuating the provisions of this paragraph, and should it subsequently be determined that such action, including a termination effectuated by the terms of this Article, was improper, such termination shall be treated as a termination for convenience. Subcontractor hereby transfers and assigns to Contractor the all rights under agreements that Subcontractor may have with subcontractors to Subcontractor, suppliers and vendors in connection with the Work or the Project, which transfers and assignments may be accepted at Contractor's sole discretion in the event that Contractor has taken action under this Article. Subcontractor agrees to fully cooperate with Contractor in pursuing Contractor's rights hereunder and that Contractor shall not be required to defer or delay action taken pursuant to this Article during the pendency of any review, investigation, evaluation or assessment by Subcontractor or its surety.
20. The Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation or damages for any consequential damages, delay, obstruction, hindrance or interference to the Work except to the limited extent that Contractor has actually recovered corresponding cost reimbursement, compensation or damages from the Owner under the Contract Documents for such delay, obstruction, hindrance or interference, and then only to the extent of the amount, if any, which Contractor on behalf of the Subcontractor, actually received from the Owner on account of such delay, obstruction, hindrance or interference. Notwithstanding any term or provision herein to the contrary, Subcontractor expressly waives and releases all claims or rights to recover lost profit (except for profit on work actually performed), recovery of overhead (including home office

SUBCONTRACT TERMS & CONDITIONS

(please initial each page & sign on the last page)

overhead), and any other indirect damages, costs or expenses in any way arising out of or related to the Agreement, including the breach thereof by Contractor, delays, charges, acceleration, loss of efficiency or productivity disruptions and interferences with the performance of the work.

21. The Agreement and all claims arising therefrom shall be governed by the laws of the state where the Project Site is located, without reference to its conflict of law's provisions.
22. If not resolved by negotiation between the parties, any claim, dispute or other matter in question ("Claim") between R and R Construction and Subcontractor shall be resolved by submission to either a federal or state court of competent jurisdiction and located in the State of New Jersey, wherein exclusive jurisdiction and venue shall lie, unless the Owner is a party to the action and in that case R and R Construction shall have the option to have its dispute with the Subcontractor decided as per the dispute resolution provision in R and R Construction's agreement with the Owner. For purposes of this provision, both R and R Construction and Subcontractor irrevocably submit to the personal jurisdiction of any such court and agree that any Claim arising hereunder may be brought therein and without regard to any forum non convenience or similar considerations. Both parties also hereby waive their right to a trial by jury in the event of any litigation between the parties.
23. The Subcontractor hereby guarantees the Work to the full extent provided in the Plans, Specifications, General Conditions, Special Conditions and other Contract Documents. The Subcontractor shall expeditiously remove, replace and/or repair at its own expense and at the convenience of the Owner any faulty, defective or improper Work, materials or equipment existing or discovered within one (1) year from the date of the acceptance of the Project as a whole by the Architect and the Owner or for such longer period as may be provided in the Plans, Specifications, General Conditions, Special Conditions or other Contract Documents. Without limiting the generality of the foregoing, the Subcontractor warrants to the Owner, the Architect and Contractor, and each of them, that all materials and equipment furnished under this Agreement will be of first class quality and new, unless otherwise required or permitted by the other Contract Documents, that the Work performed pursuant to this Agreement will be free from defects and that the Work will strictly conform with the requirements of the Contract Documents. Work not conforming to such requirements, including substitutions not properly approved and authorized, shall be considered defective. All warranties contained in this Agreement and in the Contract Documents shall be in addition to and not in limitation of all other warranties or remedies required and/or arising pursuant to applicable law. Failure of Subcontractor to honor and satisfy the foregoing within five (5) days after being provided notice from R and R Construction and any other warranties or guarantees required of the Subcontractor under the Contract Documents, shall constitute a default by Subcontractor. In the event any work needs to be corrected or replaced by the Subcontractor during the warranty period, the warranty period shall be extended for one year from the date of repair or replacement by Subcontractor.

Agreed to:

Signature

Date

Name

Title

EXHIBIT B

HOWELL V. BELLAMY, JR.
EDWARD B. BOWERS, JR. *
M. EDWIN HUNDS, JR.
DAVID B. MILLER *
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
MARTIN C. DAWSEY *
ROBERT S. SHELTON *
HOWELL V. BELLAMY, III
GEORGE W. REDMAN, III * ** **
BENJAMIN A. BAROODY * **

* LLM TAXATION
** LICENSED IN SC & NC
+ CERTIFIED MEDIATOR
++ CERTIFIED ARBITRATOR



THE BELLAMY LAW FIRM

OFFICES IN MYRTLE BEACH & PAWLEYS ISLAND

WWW.BELLAMYLAW.COM

PHILLIP H. ALBERGOTTI * **
HAYES K. STANTON * **
KARA J. KEITH **
HOLLY M. LUSK
LAUREN BREARLEY BENTON
JON CRAIG HOWELL, JR.
ZACHARY J. CROWL **
BRICE A. BERTSCHIN
ALLIE BARTH TILLER

RETIRED:
JOHN K. RUTENBERG (1939-2012)
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY
JILL F. GRIFFITH
BRADLEY D. KING

1000 29TH AVENUE NORTH • P.O. BOX 357 • MYRTLE BEACH, SC 29578
TELEPHONE (843) 448-2400 • FACSIMILE (843) 448-3022

Writer's Direct Dial: 843-916-7168
Email: DMiller@BellamyLaw.com

June 23, 2022

NOTICE

Via Electronic Mail

Sherine.Marder@gmlaw.com

Sherine Marder, Esq.
Greenspoon Marder LLP
201 E. Pine St., Ste. 500
Orlando, FL 32801

Re: Our Client: Paint Design, LLC
Project: Westgate, Myrtle Beach, SC / RNR Construction, LLC

Dear Sherine:

I hope this letter finds you well. Westgate has advised our client to have counsel contact you regarding the monies owed to them.

This Notice is given pursuant to S.C. Code Ann. Section 29-5-40 in order to protect the payment status of Paint Design, LLC. As I have been provided your name by Westgate, I am forwarding this Notice to you. If you prefer that I forward it directly to Westgate as Owner, please advise immediately.

Paint Design, LLC is owed \$76,900.00 upon its total subcontract amount of \$126,900.00. As such, Paint Design, LLC is requiring that no further payments be made to RNR Construction, LLC without appropriate protections (direct payment, joint check issued first to us, etc.) being taken.

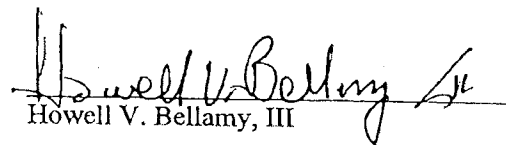
June 23, 2022
Page 2

I look forward to speaking with you as regards resolution of this matter.

Should you have any questions or comments, do not hesitate to give me a call.

Very truly yours,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.


Howell V. Bellamy, III

HVBIII/mee

cc: Thomas Hall

EXHIBIT C

Westgate Resorts, Ltd.
Notice to Owner/Lien Summary
Date:

Project Start Date Sep-21
Estimated Completion Date Apr-22

Subcontractor	Description of Work Performed	Contract Award	RNR says Paid	Subcontractor Payments Received	Subcontractor Owed	Lien Amount	Lien File Date
Palmetto Door Solutions	Provide and install hotel room doors, hinges and latches	\$55,083.16	\$47,025.00	\$27,541.58	\$27,541.58	\$27,541.58	5/10/2022
PMH Architecture	Provide construction drawings & documentation for permits	\$41,600.00	\$0.00	\$0.00	\$41,600.00		
Trinity Contract Flooring	Install flooring, baseboard and floor protection	\$52,702.00	\$45,060.21	\$26,857.95	\$25,844.05		
Grand Stand Marble	Provide quartz countertop	\$6,599.88	\$3,300.00	\$3,300.00	\$3,299.88		
Premiere Communications	Provide Communications install in the Hotel Rooms	\$9,725.74	\$8,314.88	\$0.00	\$9,725.74		
AG&M Active Glass	Glazing/Glass	\$56,094.00	\$47,960.37	\$0.00	\$56,094.00	\$56,094.00	5/31/2022
Billy's Plumbing	Plumbing	\$61,500.00	\$52,582.50	\$0.00	\$61,500.00		
Coastal Surface Solutions	Reglazing Bathtub	\$15,737.00	\$12,850.65	\$0.00	\$15,737.00		
Paint Design	Painting	\$126,900.00	\$106,404.75	\$40,000.00	\$86,900.00		
The Door Guy	Doors	\$16,375.00	\$14,163.08	\$0.00	\$16,375.00		
United Electric	Electrical	\$130,891.00	\$111,911.81	\$37,094.27	\$93,796.73		
L & W Supply	Materials	\$19,664.81	\$19,664.81	\$19,664.81	\$0.00		
		\$592,872.59	\$469,238.06	\$154,458.61	\$438,413.98		
	Cost to fix things remaining and punch items				\$80,000.00		
					\$518,413.98		
	Retainage being Held				\$99,115.09		
	Balance of Contract Work not received from RNR				\$25,754.29		
					\$113,544.60		

EXHIBIT C-1

Lien BK: 284 PG: 1382 Doctype: 015 07/08/2022 at 02:47:15 PM, 1 OF 6
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of
Deeds

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
PAINT DESIGN, LLC	)	
Plaintiff,	)	
vs.	)	NOTICE AND CERTIFICATION OF
WESTGATE MYRTLE BEACH, LLC	)	MECHANIC'S LIEN
a/k/a WESTGATE RESORTS, LTD.	)	
and RNR CONSTRUCTION, LLC	)	
Defendants.	)	

TO: THE LIENEE/DEFENDANTS ABOVE-NAMED

NOTICE IS HEREBY GIVEN that Plaintiff, Paint Design, LLC, is due the sum of Seventy-Six Thousand Nine Hundred and no/100 (\$76,900.00) Dollars from the above Defendants, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd., and RNR Construction, for the cost of labor, materials, equipment and/or other services performed on behalf of the premises described being attached and incorporated by reference as Exhibit "A".

That said debt is due to Paint Design, LLC for labor, materials, equipment and/or other services performed or furnished and actually used in the improvements made to or on the real estate hereinafter described.

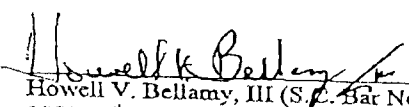
That Paint Design, LLC was hired by the Defendant, RNR Construction, LLC to furnish labor, materials, equipment and/or other services to the property located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina, owned by the Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.

That as shown on the attached Affidavit for Certificate and Statement of Account, the undersigned does hereby certify that labor, materials, equipment and/or other services for improvements have been furnished, used and/or delivered within ninety (90) days of the date hereof.

That Paint Design, LLC has hereby claimed a lien to secure payment of the debt that is due and the cost of enforcing said lien upon the real property and that this Notice of Certification is

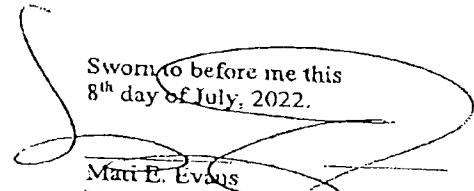
verified as being true and correct by the attached Statement of Account, more fully described in
the Exhibit "B" attached hereto and incorporated by reference.

BELJAMY, RUTENBERG, COPELAND,
EPFS, GRAVELY & BOWERS, P.A.
Attorneys for Lienor


Howell V. Bellamy, III (S.C. Bar No. (66575))
1000 29th Avenue North
P.O. Box 357
Myrtle Beach, SC 29578-0357
(843) 448-2400
(843) 448-3022 (Facsimile)
hbellamyiii@bellamylaw.com

July 8, 2022

Sworn to before me this
8th day of July, 2022.


Mari E. Evans
Notary Public for South Carolina
My Commission Expires: 11/10/2030

"EXHIBIT A"

Block 18 of Yaupon Circle Section, Myrtle Beach South Carolina, containing 6.08 acres
or 265,043 square feet of land.

Beginning at an iron pipe, labeled point of beginning (P.O.B.) at the intersection of the
Eastern Right-of-Way of 6th Avenue South and the Southern Right-of-Way of South Ocean
Boulevard and running along the Right-of-Way of South Ocean Boulevard around a curve
to the right with an arc distance of 125.00 feet, a radius of 1579.53 feet and a chord of N
57°47'31" E, 125.00 feet to an "X" mark in the concrete thence continuing along the same
Right-of-Way N 61°15'58" E for a distance of 295.24 feet to an iron pipe, thence N
61°15'58" E for a distance of 265.63 feet to an iron pipe, thence turning and running along
Withers Swash Canal S 32°45'46" E for a distance of 207.92 feet to a computed point at
the Atlantic Ocean, thence turning and running along the Atlantic Ocean S 15°41'21" W
for a distance of 254.35 feet to a computed point, thence S 34°11'36" W for a distance of
195.22 feet to a computed point at the Eastern Right-of-Way of 6th Avenue South N
43°42'03" W for a distance of 558.74 feet to an iron pipe at the point of beginning.

This being the same property conveyed to Westgate Myrtle Beach, LLC by Deed of MB
Inn, Inc., dated December 2, 2004, and recorded in the Office of the Register of Deeds for
Horry County on December 9, 2004.

TMS #: 181-14-02-010

415 South Ocean Boulevard, Myrtle Beach, South Carolina

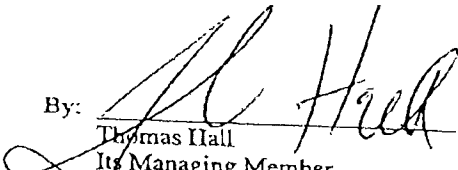
"EXHIBIT B"

VERIFIED STATEMENT OF ACCOUNT

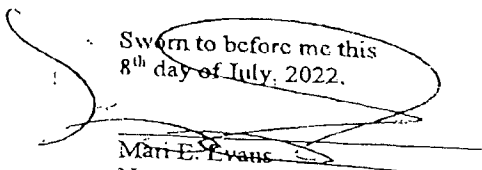
PERSONALLY appeared before me, Thomas Hall, who first being duly sworn and
deposed, states that the foregoing Total Amount Due and Owing is a true and correct statement of
the outstanding account for labor, materials, equipment and/or other services supplied for the
improvement of real estate owned by Westgate Myrtle Beach, LLC.

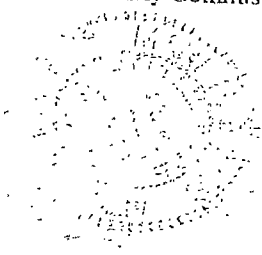
Total Contract Price	\$126,900.00
Credits or Payments Received:	<u>(50,000.00)</u>
Total Amount Due:	<u>\$ 76,900.00</u>

PAINT DESIGN LLC
(Horry County Business License #122131)

By: 
Thomas Hall
Its Managing Member
License No: G122131

Sworn to before me this
8th day of July, 2022.


Mari E. Evans
Notary Public for South Carolina
My Commission Expires: 11/10/2030



STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PAINT DESIGN, LLC)

Plaintiff,)

vs.)

WESTGATE MYRTLE BEACH, LLC)
a/k/a WESTGATE RESORTS, LTD.)
and RNR CONSTRUCTION, LLC)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

AFFIDAVIT OF MECHANIC'S LIEN

PERSONALLY appeared before me, Thomas Hall, the undersigned, who being duly
sworn, deposes and says:

1. I am an authorized agent of Paint Design, LLC and I am familiar with the contract for labor, materials, equipment and/or other services furnished to RNR Construction, LLC, as general contractor, on the project for the Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.
2. Paint Design, LLC was hired by the Defendant, RNR Construction, LLC to furnish labor, materials, equipment and/or other services to the property located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina, owned by the Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.
3. I am familiar with the books and records of Plaintiff, Paint Design, LLC, as they relate to the labor, materials, equipment and/or other services furnished for the improvement of the above-referenced real estate.
4. Paint Design, LLC is owed Seventy-Six Thousand Nine Hundred and no/100 (\$76,900.00) Dollars, together with prejudgment interest, attorney's fees and costs.
5. Your affiant saith nothing further.

Sworn to before me this
8th day of July, 2022.

Mari E. Evans
Notary Public for South Carolina
My Commission Expires: 11/10/2030

Thomas Hall
License No: G122131

Lien BK: 284 PG: 1387 Doctype: 015 07/08/2022 at 02:47:15 PM, 6 OF 6
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of
Deeds

**HORRY COUNTY REGISTER OF DEEDS
TRANSMITTAL SHEET**

**TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470, CONWAY,
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Mechanics Lien

DATE OF INSTRUMENT: .

DOCUMENT SHALL BE RETURNED TO:

NAME: Bellamy Law Firm

ADDRESS:

1000 29th Avenue North
Myrtle Beach, SC 29577

TELEPHONE: (843) 448-2400

FAX: (843) 448-2400

E-MAIL ADDRESS: bvaughn@bellamylaw.com

Related Document
(s):

PURCHASE PRICE / MORTGAGE AMOUNT: \$.

BRIEF PROPERTY DESCRIPTION: Block 18 of Yaupon Circle Section, Myrtle Beach South Carolina, containing 6.08 acres or
265,043 square feet of land

TAX MAP NUMBER (TMS #) 181-14-02-010 / PIN NUMBER: .

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. WESTGATE MYRTLE BEACH, LLC AKA WESTGATE RESORTS, LTD AND RNR CONSTRUCTION, LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. PAINT DESIGN, LLC

EXHIBIT C-2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
PAINT DESIGN, LLC	)	
Plaintiff,	)	
vs.	)	
WESTGATE MYRTLE BEACH, LLC	)	AMENDED NOTICE AND
a/k/a WESTGATE RESORTS, LTD.	)	CERTIFICATION OF
and RNR CONSTRUCTION, LLC	)	MECHANIC'S LIEN
Defendants.	)	

TO: THE LIENEE/DEFENDANTS ABOVE-NAMED

NOTICE IS HEREBY GIVEN that Plaintiff, Paint Design, LLC, is due the sum of Sixty-One Thousand Nine Hundred and no/100 (\$61,900.00) Dollars from the above Defendants, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd., and RNR Construction, for the cost of labor, materials, equipment and/or other services performed on behalf of the premises described being attached and incorporated by reference as Exhibit "A".

That said debt is due to Paint Design, LLC for labor, materials, equipment and/or other services performed or furnished and actually used in the improvements made to or on the real estate hereinafter described.

That Paint Design, LLC was hired by the Defendant, RNR Construction, LLC to furnish labor, materials, equipment and/or other services to the property located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina, owned by the Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.

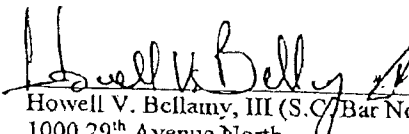
That as shown on the attached Affidavit for Certificate and Statement of Account, the undersigned does hereby certify that labor, materials, equipment and/or other services for improvements have been furnished, used and/or delivered within ninety (90) days of the date hereof.

That Paint Design, LLC has hereby claimed a lien to secure payment of the debt that is due and the cost of enforcing said lien upon the real property and that this Notice of Certification is

verified as being true and correct by the attached Statement of Account, more fully described in
the Exhibit "B" attached hereto and incorporated by reference.

That Thomas Hall, Managing Member of Paint Design, LLC, is authorized to perform work
as a specialty subcontractor in the following classifications: painter/wall paper, License No:
G122131, Registration No: 34548.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Attorneys for Licnor


Howell V. Bellamy, III (S.C. Bar No. (66575)
1000 29th Avenue North
P.O. Box 357
Myrtle Beach, SC 29578-0357
(843) 448-2400
(843) 448-3022 (Facsimile)
hbellamyiii@bellamylaw.com

July 14, 2022

Sworn to before me this
14th day of July, 2022.

Mari E. Evans
Notary Public for South Carolina
My Commission Expires: 11/10/2030



"EXHIBIT A"

Block 18 of Yaupon Circle Section, Myrtle Beach South Carolina, containing 6.08 acres
or 265,043 square feet of land.

Beginning at an iron pipe, labeled point of beginning (P.O.B.) at the intersection of the
Eastern Right-of-Way of 6th Avenue South and the Southern Right-of-Way of South Ocean
Boulevard and running along the Right-of-Way of South Ocean Boulevard around a curve
to the right with an arc distance of 125.00 feet, a radius of 1579.53 feet and a chord of N
57°47'31" E, 125.00 feet to an "X" mark in the concrete thence continuing along the same
Right-of-Way N 61°15'58" E for a distance of 295.24 feet to an iron pipe, thence N
61°15'58" E for a distance of 265.63 feet to an iron pipe, thence turning and running along
Withers Swash Canal S 32°45'46" E for a distance of 207.92 feet to a computed point at
the Atlantic Ocean, thence turning and running along the Atlantic Ocean S15°41'21" W
for a distance of 254.35 feet to a computed point, thence S 34°11'36" W for a distance of
195.22 feet to a computed point at the Eastern Right-of-Way of 6th Avenue South N
43°42'03" W for a distance of 558.74 feet to an iron pipe at the point of beginning.

This being the same property conveyed to Westgate Myrtle Beach, LLC by Deed of MB
Inn, Inc., dated December 2, 2004, and recorded in the Office of the Register of Deeds for
Horry County on December 9, 2004.

TMS #: 181-14-02-010

415 South Ocean Boulevard, Myrtle Beach, South Carolina

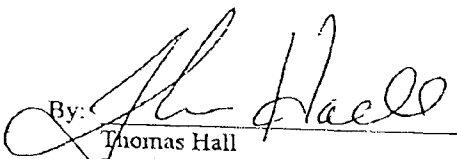
"EXHIBIT B"

AMENDED VERIFIED STATEMENT OF ACCOUNT

PERSONALLY appeared before me, Thomas Hall, who first being duly sworn and
deposed, states that the foregoing Total Amount Due and Owing is a true and correct statement of
the outstanding account for labor, materials, equipment and/or other services supplied for the
improvement of real estate owned by Westgate Myrtle Beach, LLC.

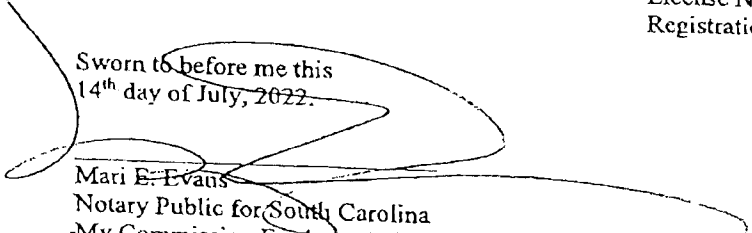
Total Contract Price	\$126,900.00
Credits or Payments Received:	<u>(\$65,000.00)</u>
Total Amount Due:	<u>\$ 61,900.00</u>

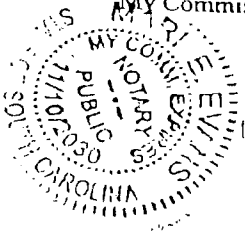
PAINT DESIGN LLC
(Horry County Business License #122131)

By: 

Thomas Hall
Its Managing Member
License No: G122131
Registration No: 34548

Sworn to before me this
14th day of July, 2022.


Mari E. Evans
Notary Public for South Carolina
My Commission Expires: 11/10/2030



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PAINT DESIGN, LLC

Plaintiff,

vs.

WESTGATE MYRTLE BEACH, LLC
a/k/a WESTGATE RESORTS, LTD.
and RNR CONSTRUCTION

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

AMENDED
AFFIDAVIT OF MECHANIC'S LIEN

PERSONALLY appeared before me, Thomas Hall, the undersigned, who being duly sworn, deposes and says:

1. I am an authorized agent of Paint Design, LLC and I am familiar with the contract for labor, materials, equipment and/or other services furnished to RNR Construction, LLC, as general contractor, on the project for the Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.

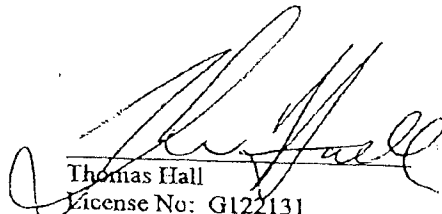
2. Paint Design, LLC was hired by the Defendant, RNR Construction, LLC to furnish labor, materials, equipment and/or other services to the property located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina, owned by the Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.

3. I am familiar with the books and records of Plaintiff, Paint Design, LLC, as they relate to the labor, materials, equipment and/or other services furnished for the improvement of the above-referenced real estate.

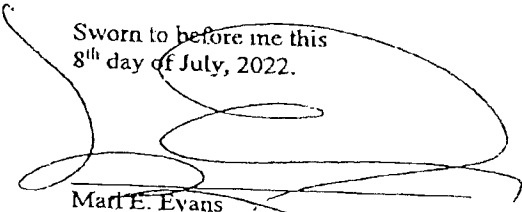
4. Paint Design, LLC is owed Sixty-One Thousand Nine Hundred and no/100 (\$61,900.00) Dollars, together with prejudgment interest, attorney's fees and costs.

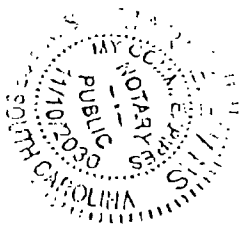
5. I, Thomas Hall, Managing Member of Paint Design, LLC, am authorized to perform work as a specialty subcontractor in the following classifications: painter/wall paper. My business license information is attached hereto as Exhibit "I".

6. Your affiant saith nothing further.


Thomas Hall
License No: G122131
Registration No: 34548

Sworn to before me this
8th day of July, 2022.


Marl E. Evans
Notary Public for South Carolina
My Commission Expires: 11/10/2030



**HORRY COUNTY REGISTER OF DEEDS
TRANSMITTAL SHEET**

**TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY ,
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Mechanics Lien

DATE OF INSTRUMENT: ,

DOCUMENT SHALL BE RETURNED TO:

NAME: Bellamy Law Firm

ADDRESS:

1000 29th Avenue North

Myrtle Beach, SC 29577

TELEPHONE: (843) 448-2400

FAX: (843) 448-2400

E-MAIL ADDRESS: bvaughn@bellamylaw.com

Related Document

(s):

PURCHASE PRICE / MORTGAGE AMOUNT: \$,

**BRIEF PROPERTY DESCRIPTION: Block 18 of Yaupon Circle Section, Myrtle Beach South Carolina, containing 6.08 acres or
265,043 square feet of land.**

TAX MAP NUMBER (TMS #) 181-14-02-010 / PIN NUMBER: ,

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. WESTGATE MYRTLE BEACH, LLC AKA WESTGATE RESORTS, LTD. AND RNR CONSTRUCTION, LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. PAINT DESIGN, LLC

EXHIBIT D

GreenspoonMarder^{LLP}

Sherine Marder, Esq.
Capital Plaza I
201 East Pine Street, Suite 500
Orlando, Florida 32801-2718
Phone: 407.425.6559
Fax: 407.422.6583
Direct Phone: 954.527.6287
Direct Fax: 954.848.3969
Email: sherine.marder@gmlaw.com

June 21, 2022

VIA ELECTRONIC AND CERTIFIED MAIL:

RNR Construction LLC
c/o Theodore Vitale
1011 S. Hamilton Rd.
Chapel Hill, NC 27517
E-Mail: tmvitale@randrcons.com;
tedmvitale@gmail.com; tvitale@petore.com

and

97529 Franklin Ridge
Chapel Hill, NC 27517

and

c/o InCorp Services, Inc., Registered Agent
317 Ruth Vista Road
Lexington, SC 29073

Re: **Notice of Mechanic's Lien; Notice of Default and Demand to Cure
Westgate Myrtle Beach / Our File No.: 00108.3766**

Dear Mr. Vitale:

This office represents the interests of Westgate Resorts, Ltd., a Florida limited partnership, and its related and affiliated resort entities, including Westgate Myrtle Beach, LLC, a Florida limited liability company and developer of Westgate Myrtle Beach Ocean Front, a Timeshare Resort ("Westgate Myrtle Beach") (collectively, "Westgate"). It has come to our attention that RNR Construction LLC ("RNR") has failed to carry out and complete its work under the parties' fully-executed Contract for Construction dated October 25, 2021 bearing Contract # 640756 (the "Contract"). This work specifically includes payment RNR is required to make to subcontractors in accordance with its respective agreements with the subcontractors, as well as completion of the project on the Westgate Myrtle Beach property (the "Work"). Accordingly, this letter serves as Westgate's notice of default and demand under § 2.5 of the Contract that RNR cure its deficiency and carry out its Work.

Atlanta Boca Raton Chicago Denver Ft. Lauderdale Las Vegas Los Angeles Miami Naples
Newark New York Orlando Portland Scottsdale Tallahassee Tampa West Palm Beach

RNR Construction LLC
 June 21, 2022
 Page No. 2

Disturbingly, Westgate has received numerous complaints from subcontractors regarding RNR's failure to pay, with payment demands now being made directly to Westgate. This has culminated in the filing of two (2) mechanic's lien on the Westgate Myrtle Beach property.¹ Copies of the mechanic's liens filed by Palmetto Door Solutions, LLC and Active Glass & Mirror are attached as **Exhibits A and B**, respectively. As you well know, RNR is required to pay all subcontractors for the work they provide no later than seven (7) days after receipt of payment from Westgate. See Contract at § 9.6.2. And although Westgate has long since paid RNR, RNR has inexplicably failed to remit the full and required payments to all the subcontractors who have provided work on the project. As of the date of this letter, Westgate has been made aware of *outstanding payments due and owing to eleven (11) subcontractors (the "Unpaid Subcontractors") totaling \$438,413.98*. A spreadsheet delineating these unpaid amounts owed to the Unpaid Subcontractors is attached as **Exhibit C**.

Demand is hereby made that RNR do the following to cure its deficiency:

1. **Within seven (7) calendar days of your receipt of this letter**, RNR must furnish Westgate with proof of payment for all amounts paid to date to all subcontractors, including the Unpaid Subcontractors;
2. **Within ten (10) calendar days of your receipt of this letter**, RNR must carry out its Work in completing the project on the Westgate Myrtle Beach property;²
3. **Within ten (10) calendar days of your receipt of this letter**, RNR must pay the Unpaid Subcontractors for all amounts due and owing to them totaling \$438,413.98; and
4. **Within fourteen (14) calendar days of your receipt of this letter**, RNR must furnish Westgate with proof of the additional payment made to the Unpaid Subcontractors.

Contact me as soon as possible to confirm that you will resolve this important matter in the time and manner outlined above. Should RNR fail to do all of the above in order to cure its default, Westgate will exercise any and all rights and remedies available at law, in equity, or by contract, including, but not limited to, the following: completing the Work and holding RNR liable for all related costs and expenses for such corrective work; filing a lawsuit against RNR in a court of competent jurisdiction in South Carolina; and filing a complaint against RNR with the Contractor's Licensing Board.

¹ This is the case, despite the fact that the Contract required, and RNR apparently failed, to obtain lien waivers from all subcontractors for progress payments – another basis for RNR's default under the Contract.

² In particular, and as indicated in the Exhibit B spreadsheet, there is a remaining balance of \$25,754.29 representing monies that Westgate paid to RNR for work toward the Westgate Myrtle Beach project that has not been completed.

RNR Construction LLC
June 21, 2022
Page No. 3

Nothing herein is intended to constitute a waiver of any right or remedy available to Westgate at law, in equity, or by contract. To the contrary, the same are expressly reserved and preserved.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Very truly yours,

GREENSPOON MARDER LLP

A handwritten signature in black ink, appearing to read 'SM', is written over the typed name.

Sherine Marder, Esq.

Enclosures as stated.

cc: Client
Lauren Hodgin (lhodgin@randrcons.com)
Luanne Desiderio (ldesiderio@randrcons.com; ldesiderio@charter.net)

EXHIBIT A

Lien BK: 282 PG: 2954 Doctype: 015 05/10/2022 at 03:12:21 PM, 1 OF 5
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of
Deeds

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Palmetto Door Solutions, LLC,

Plaintiff,

vs.

Westgate Myrtle Beach, LLC and RNR
Construction, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

NOTICE OF MECHANIC'S LIEN

YOU ARE HEREBY NOTIFIED THAT Palmetto Door Solutions, LLC, a South Carolina limited liability company, claims an interest by way of a Mechanic's Lien on that certain building, structure, and real property that is, upon information and belief, owned by the Defendant, Westgate Myrtle Beach, LLC. No Contractor's license is required because the Plaintiff does not perform labor but merely sells materials as a distributor. The interest claimed by the Plaintiff arises by way of supplying materials for improvements to the property located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina ("the "Property"). The Plaintiff was retained by the Defendant, RNR Construction, LLC, acting as general contractor on behalf of the Defendant, Westgate Myrtle Beach, LLC, to furnish materials for the improvement of the Property. The full price for the work performed to date is Fifty-Four Thousand Eighty-Nine and 08/100 (\$54,089.08) Dollars of which Twenty-Seven Thousand Five Hundred Forty-One and 58/100 (\$27,541.58) Dollars has been paid. Therefore the balance due to the Plaintiff is Twenty-Seven Thousand Two Hundred Sixty-Seven and 50/100 (\$27,267.50) Dollars. The approximate last date the Plaintiff performed work on said premises was February 16, 2022. The work performed was at the following described property, to-wit:

Block 18 of Yaupon Circle Section, Myrtle Beach, South Carolina, containing
6.08 acres or 265,043 square feet of land.

Lien BK: 282 PG: 2955 Doctype: 015 05/10/2022 at 03:12:21 PM, 2 OF 5
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of
Deeds

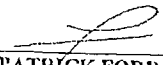
Beginning at an iron pipe, labeled point of beginning (P.O.B.), at the intersection of the Eastern Right-of-Way of 6th Avenue South and the Southern Right-of-Way of South Ocean Boulevard and running along the Right-of-Way of South Ocean Boulevard around a curve to the right with an arc distance of 125.00 feet, a radius of 1579.53 feet and a chord of N 57°47'31" E, 125.00 feet to an "X" mark in the concrete thence continuing along the same Right-of-Way N 61°25'24" E for a distance of 295.24 feet to an iron pipe, thence N 61°15'58" E for a distance of 265.63 feet to an iron pipe, thence turning and running along Withers Swash Canal S 32°45'46" E for a distance of 207.92 feet to a computed point at the Atlantic Ocean, thence turning and running along the Atlantic Ocean S 15°41'21" W for a distance of 254.35 feet to a computed point, thence S 42°40'38" W for a distance of 215.32 feet to a computed point, thence S 34°11'36" W for a distance of 195.22 feet to a computed point at the Eastern Right-of-Way of 6th Avenue South N 43°42'03" W for a distance of 558.74 feet to an iron pipe at the point of beginning.

This being the same property conveyed to Westgate Myrtle Beach, LLC by Deed of MB Inn, Inc., dated December 2, 2004, and recorded in the Office of the Register of Deeds for Horry County on December 9, 2004.

TMS# 181-14-02-010

415 South Ocean Boulevard, Myrtle Beach, South Carolina

Florence, SC
May 10, 2022


PATRICK FORD
S.C. Bar No.: 102521

Finklea, Hendrick & Blake, LLC
814 West Evans Street
Post Office Box 1317
Florence, SC 29503-1317
Phone: (843) 317-4900
Fax: (843) 317-4910
Email: pford@finklealaw.com

Lien BK: 282 PG: 2956 Doctype: 015 05/10/2022 at 03:12:21 PM, 3 OF 5
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of
Deeds

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Palmetto Door Solutions, LLC,

Plaintiff,

vs.

Westgate Myrtle Beach, LLC and RNR
Construction, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

AFFIDAVIT OF MECHANIC'S LIEN

PERSONALLY appeared before me, Randy Vincent, the undersigned, who being duly sworn, deposes and says:

1. I am an authorized agent of Palmetto Door Solutions, LLC and I am familiar with the contract for materials furnished to RNR Construction, LLC, as general contractor, on the project for the Defendant, Westgate Myrtle Beach, LLC.
2. Palmetto Door Solutions, LLC was hired by the Defendant, RNR Construction, LLC to furnish materials to the property located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina, owned by the Defendant, Westgate Myrtle Beach, LLC.
3. I am familiar with the books and records of Palmetto Door Solutions, LLC as they relate to the materials furnished for the improvement of the above referenced real estate.
4. Palmetto Door Solutions, LLC is owed Twenty-Seven Thousand Two Hundred Sixty-seven and 50/100 (\$27,267.50) Dollars, together with prejudgment interest, attorney's fees and the costs.
5. Your affiant saith nothing further.

SWORN TO AND SUBSCRIBED before
this 10th day of May, 2022

Chapin B. Grice
Notary Public for South Carolina

My Commission Expires: 07-08-2025

Printed Name: Chapin B. Grice

Randy Vincent
Randy Vincent

Lien BK: 282 PG: 2957 Doctype: 015 05/10/2022 at 03:12:21 PM, 4 OF 5
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of
Deeds

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Palmetto Door Solutions, LLC,

Plaintiff,

vs.

Westgate Myrtle Beach, LLC and RNR
Construction, LLC,

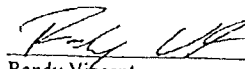
Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

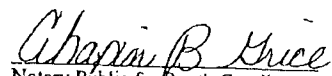
VERIFIED STATEMENT
OF ACCOUNT

Total Due for Labor and/or Materials furnished	\$54,089.08
Payment Received to date	<u>\$27,541.58</u>
Total Amount Due and Owning	\$27,267.50

PERSONALLY appeared before me, Randy Vincent, who first being duly sworn and
deposed, states that the foregoing Total Amount Due and Owning is a true and correct statement
of the outstanding account for labor and/or materials supplied for the improvement of real estate
owned by Westgate Myrtle Beach, LLC.


Randy Vincent

SWORN TO AND SUBSCRIBED before
this 10th day of May, 2022


Notary Public for South Carolina

My Commission Expires: 07-08-2025

Printed Name: Chapin B. Grice

Lien BK: 282 PG: 2958 Doctype: 015 05/10/2022 at 03:12:21 PM, 5 OF 5
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of Deeds

**HORRY COUNTY REGISTER OF DEEDS
TRANSMITTAL SHEET**

TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470, CONWAY,
SOUTH CAROLINA 29526

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Mechanics Lien

DATE OF INSTRUMENT:

DOCUMENT SHALL BE RETURNED TO:

NAME: FHB - Litigation

ADDRESS:

814 W Evans St

Florence, SC 29501-3440

TELEPHONE: (843) 317-4900

FAX: (843) 317-4900

E-MAIL ADDRESS: rjohnstone@simplifile.com

Related Document

(s):

PURCHASE PRICE / MORTGAGE AMOUNT: \$.

BRIEF PROPERTY DESCRIPTION: Block 18 of Yaupon Circle Section, Myrtle Beach, South Carolina, containing 6.08 acres, or 265,043 square feet of land. Beginning at an iron pipe, labeled point of beginning (P.O.B.), at the intersection of the Eastern Right-of-Way of 6th Avenue South and the Southern Right-of-Way of South Ocean Boulevard and running along the Right-of-Way of South Ocean Boulevard around a curve to the right with an arc distance of 125.00 feet, a radius of 1579.53 feet and a chord of N 57°47'31" E, 125.00 feet to an "X" mark in the concrete thence continuing along the same Right-of-Way N 61°25'24" E for a distance of 295.74 feet to an iron pipe, thence N 61°15'58" E for a distance of 265.63 feet to an iron pipe, thence turning and running along Withers Swash Canal S 32°45'46" E for a distance of 207.92 feet to a computed point at the Atlantic Ocean, thence turning and running along the Atlantic Ocean S 15°41'21" W for a distance of 254.35 feet to a computed point, thence S 42°40'38" W for a distance of 215.32 feet to a computed point, thence S 34°11'36" W for a distance of 195.22 feet to a computed point at the Eastern Right-of-Way of 6th Avenue South N 43°42'01" W for a distance of 558.74 feet to an iron pipe at the point of beginning. This being the same property conveyed to Westgate Myrtle Beach, LLC by Deed of MR Inn, Inc., dated December 2, 2004, and recorded in the Office of the Register of Deeds for Horry County on December 9, 2004.

TAX MAP NUMBER (TMS #) 181-14-02-010 / PIN NUMBER:

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. PALMETTO DOOR SOLUTIONS, LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. WESTGATE MYRTLE BEACH, LLC
2. RNR CONSTRUCTION, LLC

EXHIBIT B

Recording requested by (name):

When recorded, mail to (name and address):

Lien BK: 283 PG: 163 Doctype: 015
05/31/2022 at 02:59:45 PM, 1 OF 2Marion D. Foxworth III
Horry County, SC Registrar of Deeds

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MECHANIC'S LIEN

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

1. Active Glass & Mirror (the "Claimant"), located at 8040 Moss Creek Rd, Myrtle Beach, South Carolina 29588, claims a mechanics lien for the labor or services or equipment or materials described herein, furnished for a work of improvement on that certain real property located in the County of Horry, in the State of South Carolina. The complete address of the real property on which this mechanics lien is claimed is: 415 S Ocean Blvd # 2, Myrtle Beach, South Carolina 29577 (the "Property"). The permanent index identification number of the Property is: 505501. The legal description of the Property is:

Westgate Myrtle Beach Oceanfront Resort

2. The labor or services or equipment or materials were furnished by Claimant at the request of: RNR Construction, LLC, located at 1011 S Hamilton Rd, Chapel Hill, North Carolina 27517..

3. The owner of the Property is: Westgate Resorts LTD, located at 415 S Ocean Blvd # 2, Myrtle Beach, South Carolina 29577.

4. On 01/31/2022, the Claimant entered into a written contract to patio door & storefront replacement on said Property (the "Contract") for the original total sum of \$56,094.00, which became due and payable on 04/08/2022, the date of completion of the build and/or project services.

5. After deducting all just credits and offsets, the sum of \$56,094.00 is due to Claimant for the labor or services or equipment or materials provided.

Active Glass & Mirror
8040 Moss Creek Rd
Myrtle Beach South Carolina 29588

Contractors

Lett

G205470

(Signature)

Jack Frazer
Contract sales Manager

(Date)

5/31/2022

NOTARY ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

)
) ss.
)

The Affiant, Active Glass & Mirror, being duly sworn, on oath deposes and says that s/he is the Claimant and that s/he has read the foregoing claim for the lien and knows the contents thereof, and that all statements therein contained are true and correct to the best of his/her belief and knowledge.

Subscribed and sworn to before me on May 31, 2022

Doris E. Duell
(Notary Printed Name)

My commission expires on: _____

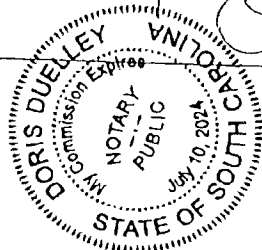


EXHIBIT C

Westgate Resorts, Ltd.
Notice to Owner/Lien Summary
Date:

Project Start Date Sep-21
Estimated Completion Date Apr-22

Subcontractor	Describe Work Performed	Contracted Amount	RNR says Paid	Subcontractor Payments	Subcontractor Balance	Unpaid Amount	Due Date
Palmetto Door Solutions	Provide and install hotel room doors, hinges and latches	\$55,083.16	\$47,025.00	\$27,541.58	\$27,541.58	\$27,541.58	5/10/2022
PMH Architecture	Provide construction drawings & documentation for permits	\$41,600.00	\$0.00	\$0.00	\$41,600.00		
Trinity Contract Flooring	Install flooring, baseboard and floor protection	\$52,702.00	\$45,060.21	\$26,857.95	\$25,844.05		
Grand Stand Marble	Provide quartz countertop	\$6,599.88	\$3,300.00	\$3,300.00	\$3,299.88		
Premiere Communications	Provide Communications install in the Hotel Rooms	\$9,725.74	\$8,314.88	\$0.00	\$9,725.74		
AG&M Active Glass	Glazing/Glass	\$56,094.00	\$47,960.37	\$0.00	\$56,094.00	\$56,094.00	5/31/2022
Billy's Plumbing	Plumbing	\$61,500.00	\$52,582.50	\$0.00	\$61,500.00		
Coastal Surface Solutions	Reglazing Bathtub	\$15,737.00	\$12,850.65	\$0.00	\$15,737.00		
Paint Design	Painting	\$126,900.00	\$106,404.75	\$40,000.00	\$86,900.00		
The Door Guy	Doors	\$16,375.00	\$14,163.08	\$0.00	\$16,375.00		
United Electric	Electrical	\$130,891.00	\$111,911.81	\$37,094.27	\$93,796.73		
L & W Supply	Materials	\$19,664.81	\$19,664.81	\$19,664.81	\$0.00		
		\$592,872.59	\$469,238.06	\$154,458.61	\$338,439.98		
	Cost to fix things remaining and punch items				\$80,000.00		
					\$518,413.98		
	Retainage being Held				\$99,115.09		
	Balance of Contract Work not received from RNR				\$25,754.29		
					\$945,113.36		

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2023-CP-26-00053

Paint Design, LLC,

Plaintiff,

vs.

Westgate Myrtle Beach, LLC a/k/a Westgate
Resorts, Ltd.; and RNR Construction, LLC,

Defendants.

**PROPOSED ORDER GRANTING
WESTGATE MYRTLE BEACH, LLC
A/K/A WESTGATE RESORTS, LTD'S
MOTION TO DISMISS**

THIS CAUSE having come before the Court on May 9, 2023, before the undersigned Honorable Judge for the Fifteenth Judicial Circuit, upon Defendant Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.'s ("Westgate") Motion to Dismiss, Westgate's Motion is hereby **GRANTED**, and Plaintiff's claims against Westgate are hereby **DISMISSED** for the reasons stated herein.

I. FACTS ALLEGED BY PLAINTIFF

On or about October 25, 2021, Westgate entered into a general contractor's agreement with Defendant RNR Construction, LLC ("RNR") for the purpose of hiring RNR to furnish labor, materials, equipment and/or other services for the Hotel 2nd Floor Room Conversion project ("Project"). Amended Verified Complaint at ¶ 6. On or about October 22, 2021, RNR entered into a subcontract agreement ("Subcontract") with the Plaintiff. Id. at ¶ 7. Between the dates of January 18, 2022 through May 7, 2022, the Plaintiff furnished equipment, services and labor and/or materials which were actually used on the Project. See Id. at ¶ 10. On July 8, 2022, Plaintiff filed a mechanic's lien on Westgate's property. See Id. at ¶ 14. On January 4, 2023, Plaintiff filed a Lis Pendens with this Court. See Id. at ¶ 15. On January 5, 2023, Plaintiff filed

its original Complaint, in which it included quantum meruit and unjust enrichment causes of action against Westgate. See Verified Complaint. On March 3, 2023, Plaintiff filed its Amended Verified Complaint, in which it asserted quantum meruit, unjust enrichment, mechanic's lien enforcement, and civil conspiracy causes of action against Westgate. See Amended Verified Complaint.

In support of its civil conspiracy cause of action, Plaintiff alleges:

- a. Defendants, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd. and RNR Construction, LLC, were aware of the outstanding debt owed by RNR Construction, LLC to Plaintiff in June of 2022 as evidenced by the Defendant Westgate's Notice of Default and Demand to Cure letter to Defendant RNR dated June 21, 2022 as well as Plaintiff's subsequent Notice letter, pursuant to S.C. Code Ann. § 29-5-40, to the Defendants dated June 23, 2022 attached hereto as **Exhibits E and B** respectively. Id. at ¶ 37.
- b. Notwithstanding the above, Defendant Westgate hired another contractor, Contract Exteriors of Myrtle Beach, LLC, to make changes to the rooms that were previously completed by Defendant RNR Construction, LLC and had received Certificate of Occupancies ("CO") by the City of Myrtle Beach before June 2022. Id. at ¶ 38.
- c. Upon information and belief, in violation of S.C. Code Ann. § 29-5-40, the subcontractors, United Electric, Trinity Contract Flooring, and Premiere Communications, in concert with the Defendant Westgate entered in a tacit agreement to come back onto the Project to perform additional work in order to receive payment for previous work performed on the Project as shown by subcontractor lien summary spreadsheet listed as Exhibit C and attached to **Exhibit E.** Id. at ¶ 39.
- d. Upon information and belief, Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd., along with the following subcontractors, United Electric, Trinity Contract Flooring, and Premiere Communications, have combined together for the exclusive purpose of injuring the Plaintiff's business interest as evidenced by their failure to pay any part of the Plaintiff's debt owed under the Mechanics' liens Statute and the common law. Stated differently, the Defendant Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd., has unlawfully paid all of the Project's retainage of \$99,115.09 to United Electric, Trinity Contract Flooring, and Premiere Communications, while excluding the Plaintiff from any pro rata payments after having received statutory notice of its debt on June 23, 2022 in accordance with S.C. Code Ann. § 29-5-40. Id. at ¶ 40.
- e. As a result of such overt act and actions as described, the Plaintiff has suffered substantial damages, including but not limited to, loss of income resulting in the amount of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00) as well as other consequential damages to be proven trial, together with prejudgment interest, and reasonable attorney's fees and costs incurred in this matter. Id. at ¶ 41.

II. CONCLUSIONS OF LAW

a. Plaintiff's Quantum Meruit and Unjust Enrichment Claims

In South Carolina, quantum meruit and unjust enrichment are the same claims. See Webb v. First Federal Savings & Loan Ass'n of Anderson, 300 S.C. 507388 S.E.2d 823, 827 (Ct.App. 1989). When there exists a valid and enforceable written contract, a claim for unjust enrichment and/or quantum meruit fails as a matter of law. See Johnston v Brown, 292 S.C. 478, 357 S.E.2d 450 (1987). See also Gantt v. Morgan, 199 S.C. 138, 18 S.E.2d 672 (1942). Despite the fact that a claim for unjust enrichment and/or quantum meruit fail where there exists a valid and enforceable contract, courts allow quantum meruit claims to continue if plead in the alternative to a claim for breach of contract. Plaintiff did not plead its quantum meruit and/or unjust enrichment claims in the alternative, therefore Plaintiff's claims for quantum meruit and unjust enrichment must be, and are hereby, **DISMISSED WITHOUT PREJUDICE**.

b. Plaintiff's Mechanic's Lien Enforcement Claim

South Carolina Code § 29-5-20, gives subcontractors such as Plaintiff, a mechanic's lien on real property. S.C. Code § 29-5-20. To perfect its mechanic's lien, a subcontractor must file and serve its lien "within ninety days after it ceases to labor on or furnish labor or materials for [the] building or structure." S.C. Code § 29-5-90. Thereafter, "[u]nless a suit for enforcing the lien is commenced and notice of pendency of the action is filed within six months after the person desiring to avail himself of it ceases to labor or furnish labor or material for the building or structure, the lien must be dissolved." S.C. Code § 29-5-120. The petition shall contain a brief statement of the contract on which it is founded and of the amount due thereon, with a description of the premises subject to the lien and all other material facts and circumstances, and

shall pray that the premises may be sold and the proceeds of the sale applied to the discharge of the demand. S.C. Code § 29-5-160.

Plaintiff ceased to labor on, or furnish labor or materials to, the Project on May 7, 2022.¹ To avoid dissolution of its lien, Plaintiff was required to file a suit and notice of pendency by November 7, 2022. Plaintiff filed its Lis Pendens on January 4, 2023, and its Verified Complaint suit on January 5, 2022, more than six months after May 7, 2022. Furthermore, the Verified Complaint did not include a prayer that the premises be sold and the proceeds of the sale applied to discharge the demand. Therefore, because Plaintiff failed to file a notice of pendency and a suit within six months of May 7, 2022, Plaintiff mechanic's lien is hereby dissolved, and Plaintiff's fifth cause of action, Mechanic's Lien Foreclosure, is hereby **DISMISSED WITH PREJUDICE**.²

c. Plaintiff's Civil Conspiracy Claim Against Westgate

"[A] plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774 (S.C. 2021).

In the present case, in support of its civil conspiracy claim, Plaintiff sets forth several allegations. First, Plaintiff alleges that Westgate hired Contract Exteriors of Myrtle Beach, LLC to make changes to rooms that were previously completed by Defendant RNR. An agreement between two parties to make changes to rooms is not a combination or agreement to commit an

¹ Plaintiff's counsel conceded during the hearing that May 7, 2022 was the last day that Plaintiff provided labor or materials to the Project.

² Even if Plaintiff provided labor or materials to the property within six months before January 5, 2023, Plaintiff failed to include the required prayer for relief in the Verified Complaint.

unlawful act or a lawful action by unlawful means. Therefore, this allegation, when viewed in the light most favorable to Plaintiff, are insufficient to constitute a cause of action of civil conspiracy.

Thereafter, in Paragraphs 39, 40, and 41 of the Amended Verified Complaint, Plaintiff alleges that Westgate and others combined or agreed together to avoid paying a pro rata share, of funds held by Westgate to Plaintiff as required by S.C. Code § 29-5-40. Because Plaintiff's mechanic's lien is dissolved as a result of Plaintiff's failure to timely file this suit, and failure to timely file a Lis Pendens, Plaintiff did not have any rights under S.C. Code § 29-5-40. Therefore, Plaintiff had no right to payment of a pro rata share of funds under § 29-5-40, and no agreement between Westgate and others could exclude Plaintiff from receipt of a pro rata share of funds it is not entitled to receive. Therefore, when viewed in the light most favorable to Plaintiff, the allegations of Paragraphs 39, 40, and 41 do not alleged facts sufficient to constitute a cause of action of civil conspiracy.

Furthermore, Plaintiff appears to allege that Westgate's counsel's letter, and attachments thereto, dated June 21, 2022, in which Westgate declared Defendant RNR in default under the Prime Contract for, among other things, failing to pay subcontractors, is evidence of a conspiracy between Westgate and others. Plaintiff alleges that as of June 21, 2022, Westgate was aware that RNR owed money to Plaintiff. Plaintiff also alleges that Westgate was aware Plaintiff was owed money by RNR, because Plaintiff sent a letter dated June 23, 2022 to Westgate. Viewing these facts in the light most favorable to Plaintiff, these allegations insufficient to constitute a cause of action of civil conspiracy. Westgate's counsel's letter is clearly dated prior to Plaintiff's letter, and the allegations fail to identify any agreement between Westgate and any other person to commit an unlawful act or lawful action by unlawful means.

For these reasons, Plaintiff's Fourth Cause of Action, Civil Conspiracy, is hereby
DISMISSED WITHOUT PREJUDICE.

THEREFORE, Having reviewed the Complaint, Amended Complaint, and Plaintiff's Memorandum in Opposition to Westgate's Motion to Dismiss, and heard the arguments of counsel, this Court concludes that both Plaintiff's Verified Complaint and Plaintiff's Verified Amended Complaint fail to state facts sufficient to constitute a cause of action against Defendant Westgate, therefore Defendant Westgate's Motion to Dismiss is hereby **GRANTED.**

IT IS HEREBY ORDERED that Plaintiff's claims against Defendant Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd. of quantum meruit, unjust enrichment, and civil conspiracy be **DISMISSED WITHOUT PREJUDICE**, and the Plaintiff's mechanic's lien enforcement action is **DISMISSED WITH PREJUDICE**, and Plaintiff's Mechanic's Lien against Westgate's property is hereby **DISSOLVED.**

_____, 2023
Horry County, South Carolina

The Honorable William H. Seals Jr.
Presiding Judge for the Fifteenth Judicial Circuit



Horry Common Pleas

Case Caption: Paint Design LLC VS Westgate Myrtle Beach LLC , defendant, et al
Case Number: 2023CP2600053
Type: Order/Dismissal

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

EXHIBIT D

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2600053

Paint Design LLC
PLAINTIFF(S)

Westgate Myrtle Beach LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion/Alter and/or Amend is respectfully denied.

Defendant's Motion/Attorney's Fees is granted in the amount of \$6,995.00.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/15/2023 .

RNR Construction LLC

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Horry Common Pleas

Case Caption: Paint Design LLC VS Westgate Myrtle Beach LLC , defendant, et al
Case Number: 2023CP2600053
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

EXHIBIT E

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Paint Design, LLC,)

Plaintiff,)

vs.)

Westgate Myrtle Beach, LLC a/k/a)

Westgate Resorts, Ltd. and RNR)

Construction, LLC,)

Defendants.)
_____)IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2023-CP-26-00053**PLAINTIFF PAINT DESIGN, LLC'S
MOTION TO RECONSIDER
PURSUANT TO RULE 59, SCRPC**

Plaintiff, Paint Design, LLC (hereinafter "Paint Design"), moves the Court pursuant to Rules 59(e) and 52, SCRPC, for reconsideration of the Court's Form 4 Order Denying Plaintiff's Motion to Alter and/or Amend its Complaint to plead its Quantum Meruit cause of action in the alternative dated August 15, 2023¹. Paint Design requests the Court withdraw or vacate the Order and issue an Order which grants Plaintiff's Motion to Alter or Amend its pleadings.

Paint Design requests the Court reconsider its Order on the grounds that it believes the Court overlooked or misapprehended important issues of law and to preserve for appellate review certain issues raised by Paint Design which the Court's Order does not address. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("A party *may* wish to file [a Rule 59(e) motion] when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.").

¹ Plaintiff incorporates its Memorandum in Support of its Motion to Amend Complaint to plead its Quantum Meruit cause of action in the alternative as well as transcript of the hearing as part of its Motion to Reconsider pursuant to Rules 59(e) and 52, SCRPC.

BACKGROUND

Plaintiff brought this action on January 5, 2023. Plaintiff then filed an Amended Complaint on March 3, 2023. Defendant Westgate subsequently brought a Motion to Dismiss. In its Motion to Dismiss, Defendant Westgate argued that Plaintiff's cause of action for Quantum Meruit must be dismissed because it was not pled in the alternative. The Motion to Dismiss was heard by the Honorable William H. Seals, Jr. on May 9, 2023. On June 8, 2023, the Court entered an Order which dismissed Plaintiff's Quantum Meruit cause of action against Defendant Westgate without prejudice.² The Court's Order based the dismissal of this claim on Defendant's argument that Plaintiff did not plead its Quantum Meruit cause of action in the alternative. On May 22, 2023, the Plaintiff filed a Motion to Amend its Complaint to plead its Quantum Meruit cause of action in the alternative. On August 14, 2023, the Honorable William H. Seals, Jr. heard Plaintiff's Motion to Amend its Complaint to plead its Quantum Meruit cause of action in the alternative and took the matter under advisement.

On August 15, 2023, the Honorable William H. Seals, Jr. issued a Form 4 Order³ denying Plaintiff's Motion to Alter and/or Amend its Complaint to plead its Quantum Meruit cause of action in the alternative.

STANDARD OF REVIEW

² A copy of the Order which dismissed Plaintiff's Quantum Meruit cause of action against Defendant Westgate without prejudice, marked **Exhibit A**, is attached hereto, and incorporated by reference.

³ A copy of the Form 4 Order denying Plaintiff's Motion to Alter and/or Amend its Complaint to plead its Quantum Meruit cause of action in the alternative as instructed by the Court, marked **Exhibit B**, is attached hereto and incorporated by reference.

A party may amend its pleading by leave of court, which shall be freely given when justice so requires and does not prejudice any other party. Rule 15, SCRCP. Rule 15(a) sets forth the criteria for amendment of pleadings. In addressing a motion to amend the pleadings, the Court is required to consider the standard of Rule 15(a) and not its perception of the merits of an amended claim. Patton v. Miller, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017), reh'g denied (Sept. 27, 2017) (citing Tanner v. Florence Cty. Treasurer, 336 S.C. 552, 558-60, 521 S.E.2d 153, 156-57 (1999)). "[Rule 15] strongly favors amendments and the court is encouraged to freely grant leave to amend." Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005). "Rule 15(a) is substantially the same as the Federal Rule, Rule 15(a), SCRCP notes, and the Supreme Court of the United States has referred to the Rule's 'freely given' provision as a 'mandate' that 'is to be heeded.'" Patton v. Miller, 420 S.C. at 490 (quoting Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222, 226 (1962)).

ARGUMENT

I. The Court erred to the extent it found that granting Plaintiff's motion to amend its Complaint, pursuant to the criteria of Rule 15(a) and the applicable case law, prejudiced Defendant Westgate.

"The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." Pool v. Pool, 329 S.C. 324, 328-29 (1998) (citing Soil & Material Eng'rs, Inc. v. Folly Assocs., 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App. 1987)). Courts have found that such prejudice exists when a proposed amendment is offered shortly before or during trial. See Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 754 S.E.2d 714 (Ct. App. 2014); See also Johnson v. Oroweat Foods Co., 785 F.2d 503, 510 (4th Cir. 1986). Otherwise, amendments should be allowed to promote justice. See generally South Carolina State Highway Dept. v. Rural Land Co., 250 S.C. 12, 22-23, 156 S.E.2d 333, 338 (1967).

Westgate has not and cannot establish prejudice under Rule 15, SCRCP, which is its burden to prove.⁴ See Patton v. Miller, at 493 (holding the circuit court erred in not allowing the amendment because the record contained no basis for a conclusion the defendants would have been prejudiced by allowing the amendment). The type of prejudice contemplated by Rule 15, SCRCP, is not that Defendant Westgate must continue to defend a claim with which it disagrees.⁵ See Patton v. Miller, at 491 ("The prejudice contemplated in Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim"). "Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend." Patton v. Miller, 420 S.C. at 491.

Here, Plaintiff simply seeks to amend its Complaint so that it may plead its Quantum Meruit cause of action in the alternative as instructed by the Court. This claim was already included in Plaintiff's original pleading so Westgate will not suffer any prejudice. Defendant Westgate claims that it will be prejudiced by having to spend money to defend this cause of action. As set forth above, this is not the type of prejudice envisioned by Rule 15, SCRCP. Since no prejudice exists in this case which would preclude the amendment, the Court should have granted the Plaintiff's amendment for the reasons set forth above.

Based upon the foregoing reasons, the Court erred in denying the Plaintiff's motion to amend its Complaint to the extent it found Defendant Westgate was prejudiced by the proposed

⁴ "The burden is ... on the party opposing the motion to show how it is prejudiced." Stanley v. Kirkpatrick, 357 S.C. 169, 175, 592 S.E.2d 296, 298 (2004).

⁵ See (Westgate's Memorandum in Opposition to the Plaintiff's Notice of Motion and Motion to Amend its Amended Complaint, p. 4, ¶ 4, last sentence: "Westgate will be prejudiced by the fact that it must that it must spend money to defend a claim that necessarily fails as a matter of law"). (Emphasis added).

amendment. Accordingly, the Court should have granted Plaintiff's motion to amend its Complaint to plead its Quantum Meruit cause of action in the alternative as instructed by the Court.

II. The Court erred to the extent it found that the Plaintiff's cause of action for Quantum Meruit fails as a matter of law based upon the South Carolina Court of Appeals case of Nutt Corporation v. Howell Road, LLC, 396 S.C. 323, 721 S.E.2d 447 (Ct. App. 2011).

Westgate further contends that the amendment should not be granted because the Quantum Meruit claim fails as a matter of law. While it is not appropriate to address the merits of the Amended Complaint at this time,⁶ the Quantum Meruit claim does not fail as a matter of law. Westgate's arguments to this affect attempt to misdirect the Court. Westgate points to the South Carolina Court of Appeals case of Nutt Corporation v. Howell Road, LLC, 396 S.C. 323, 721 S.E.2d 447 (Ct. App. 2011) for the proposition that since Plaintiff failed to perfect its Mechanic's Lien, its equitable claims are barred. This is not the law in South Carolina and the facts Westgate relies on are distinguishable from the case at hand.

In Nutt Corporation, an engineering company in direct privity with a landowner sought to place an equitable lien against the landowner's property for amounts owed to the engineering company for its services. The Court ultimately held that the engineering company had an adequate remedy at law against the landowner precluding the equitable lien. The case at hand is factually distinguishable from the Nutt Corporation case in several respects. First, unlike the engineering company in Nutt Corporation, Plaintiff is not in direct privity with Westgate. The engineering company could have pursued a breach of contract action in Nutt Corporation against the landowner based on their direct privity. Here, no contract existed between Plaintiff and Westgate. The only

⁶ See Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 183, 826 S.E.2d 585, 589 (2019).

privity that exists is between Plaintiff and Defendant RNR Construction, LLC and Plaintiff is pursuing a claim against RNR Construction based on that privity.

Second, in Nutt Corporation, the engineering company did not plead its equitable cause of action as an alternate remedy to a cause of action at law. Here, Plaintiff has brought the only action at law available against Defendant RNR Construction, LLC and is seeking to plead its equitable claim in the alternative. Contrary to Westgate's contention that an equitable claim cannot be maintained when an adequate remedy at law is available, the Supreme Court has held that breach of contract claims and quantum meruit claims can be alternative rather than inconsistent remedies. See Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988); Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010). The Circuit Court followed this holding in its Order dismissing Plaintiff's Quantum Meruit Claim without prejudice, stating "courts allow quantum meruit claims to continue if pled in the alternative to a claim for breach of contract." That is precisely what Plaintiff seeks to do in its Amended Complaint.

Finally, the fact that the claims of the engineering company in Nutt Corporation were barred by the statute of limitations is distinguishable from failing to perfect a Mechanic's Lien foreclosure. Unlike in Nutt Corporation, the statute of limitations is not at issue. While Plaintiff did miss the filing deadline on its Mechanic's Lien cause of action, South Carolina law is clear that "Failure to pursue a mechanic's lien, however, will not bar an action for quantum meruit recovery as a matter of law if a plaintiff can otherwise prove circumstances establishing unjust enrichment." Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259, 263, 440 S.E.2d 129, 131 (1994). In Columbia Wholesale, the Supreme Court examined cases from across the country addressing the issue of whether a subcontractor can recover against an owner in quantum meruit.

The court concluded that the focus is on whether the enrichment to the owner is unjust and found that failure to pursue a mechanic's lien was not a bar to recovery for unjust enrichment. To the extent Westgate argues that the Court should ignore the law set forth by the Supreme Court in Columbia Wholesale and instead interpret Nutt Corporation as contrary law and controlling, Plaintiff points to Art. V § 9 of the Constitution of the State of South Carolina which states that "The decisions of the Supreme Court shall bind the Court of Appeals as precedents." S.C. Const. Art. V, § 9.

Furthermore, the Supreme Court's holding in Columbia Wholesale is consistent with other cases in South Carolina such as Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988) and Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 734 S.E.2d 177 177 (Ct. App. 2012). In Franke Assocs., the Supreme Court found that Franke Associates would be entitled to a quantum meruit recovery despite its failure to timely file and serve notice of its mechanic's lien. In Williams Carpet, the Respondent argued that the Appellant should be barred from recovering under the theory of quantum meruit because Appellant did not pursue a mechanic's lien. The Court disagreed. Citing the Supreme Court's holding in Columbia Wholesale, the Court of Appeals reiterated that failure to pursue a mechanic's lien will not bar an action for quantum meruit recovery as a matter of law if a plaintiff can otherwise prove circumstances establishing unjust enrichment. Like the Appellant in Williams Carpet, Plaintiff's failure to foreclose the mechanic's lien does not bar it from recovering under its quantum meruit cause of action.

Based upon the foregoing reasons, the Court erred in denying the Plaintiff's motion to amend its Complaint because the Plaintiff's cause of action for Quantum Meruit does not fail as a matter of law.

WHEREFORE, the Plaintiff Paint Design respectfully requests that this Honorable Court:

- a. Reconsider its Order denying the Plaintiff's Motion to Alter and/or Amend its Complaint;
- b. Withdraw and/or vacate its Order in whole or in part;
- c. Issue an Order granting Plaintiff's Motion to Alter and/or Amend its Complaint; and
- d. Consider any other relief that the Court deems just and proper under the circumstances and facts of this case.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

s/ Howell V. Bellamy, III

Howell V. Bellamy, III (SC Bar # 66575)

hbellamyiii@bellamylaw.com

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Myrtle Beach, SC 29577

843-448-2400 Phone

843-448-3022 Facsimile

Attorney for Plaintiff

Myrtle Beach, South Carolina

August 24, 2023

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2023-CP-26-00053

Paint Design, LLC,

Plaintiff,

vs.

Westgate Myrtle Beach, LLC a/k/a Westgate
Resorts, Ltd.; and RNR Construction, LLC,

Defendants.

**PROPOSED ORDER GRANTING
WESTGATE MYRTLE BEACH, LLC
A/K/A WESTGATE RESORTS, LTD.'S
MOTION TO DISMISS**

THIS CAUSE having come before the Court on May 9, 2023, before the undersigned Honorable Judge for the Fifteenth Judicial Circuit, upon Defendant Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.'s ("Westgate") Motion to Dismiss, Westgate's Motion is hereby **GRANTED**, and Plaintiff's claims against Westgate are hereby **DISMISSED** for the reasons stated herein.

I. FACTS ALLEGED BY PLAINTIFF

On or about October 25, 2021, Westgate entered into a general contractor's agreement with Defendant RNR Construction, LLC ("RNR") for the purpose of hiring RNR to furnish labor, materials, equipment and/or other services for the Hotel 2nd Floor Room Conversion project ("Project"). Amended Verified Complaint at ¶ 6. On or about October 22, 2021, RNR entered into a subcontract agreement ("Subcontract") with the Plaintiff. Id. at ¶ 7. Between the dates of January 18, 2022 through May 7, 2022, the Plaintiff furnished equipment, services and labor and/or materials which were actually used on the Project. See Id. at ¶ 10. On July 8, 2022, Plaintiff filed a mechanic's lien on Westgate's property. See Id. at ¶ 14. On January 4, 2023, Plaintiff filed a Lis Pendens with this Court. See Id. at ¶ 15. On January 5, 2023, Plaintiff filed

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its original Complaint, in which it included quantum meruit and unjust enrichment causes of action against Westgate. See Verified Complaint. On March 3, 2023, Plaintiff filed its Amended Verified Complaint, in which it asserted quantum meruit, unjust enrichment, mechanic's lien enforcement, and civil conspiracy causes of action against Westgate. See Amended Verified Complaint.

In support of its civil conspiracy cause of action, Plaintiff alleges:

- a. Defendants, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd. and RNR Construction, LLC, were aware of the outstanding debt owed by RNR Construction, LLC to Plaintiff in June of 2022 as evidenced by the Defendant Westgate's Notice of Default and Demand to Cure letter to Defendant RNR dated June 21, 2022 as well as Plaintiff's subsequent Notice letter, pursuant to S.C. Code Ann. § 29-5-40, to the Defendants dated June 23, 2022 attached hereto as **Exhibits E and B** respectively. Id. at ¶ 37.
- b. Notwithstanding the above, Defendant Westgate hired another contractor, Contract Exteriors of Myrtle Beach, LLC, to make changes to the rooms that were previously completed by Defendant RNR Construction, LLC and had received Certificate of Occupancies ("CO") by the City of Myrtle Beach before June 2022. Id. at ¶ 38.
- c. Upon information and belief, in violation of S.C. Code Ann. § 29-5-40, the subcontractors, United Electric, Trinity Contract Flooring, and Premiere Communications, in concert with the Defendant Westgate entered in a tacit agreement to come back onto the Project to perform additional work in order to receive payment for previous work performed on the Project as shown by subcontractor lien summary spreadsheet listed as Exhibit C and attached to **Exhibit E.** Id. at ¶ 39.
- d. Upon information and belief, Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd., along with the following subcontractors, United Electric, Trinity Contract Flooring, and Premiere Communications, have combined together for the exclusive purpose of injuring the Plaintiff's business interest as evidenced by their failure to pay any part of the Plaintiff's debt owed under the Mechanics' liens Statute and the common law. Stated differently, the Defendant Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd., has unlawfully paid all of the Project's retainage of \$99,115.09 to United Electric, Trinity Contract Flooring, and Premiere Communications, while excluding the Plaintiff from any pro rata payments after having received statutory notice of its debt on June 23, 2022 in accordance with S.C. Code Ann. § 29-5-40. Id. at ¶ 40.
- e. As a result of such overt act and actions as described, the Plaintiff has suffered substantial damages, including but not limited to, loss of income resulting in the amount of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00) as well as other consequential damages to be proven trial, together with prejudgment interest, and reasonable attorney's fees and costs incurred in this matter. Id. at ¶ 41.

II. CONCLUSIONS OF LAW

a. Plaintiff's Quantum Meruit and Unjust Enrichment Claims

In South Carolina, quantum meruit and unjust enrichment are the same claims. See Webb v. First Federal Savings & Loan Ass'n of Anderson, 300 S.C. 507388 S.E.2d 823, 827 (Ct.App. 1989). When there exists a valid and enforceable written contract, a claim for unjust enrichment and/or quantum meruit fails as a matter of law. See Johnston v Brown, 292 S.C. 478, 357 S.E.2d 450 (1987). See also Gantt v. Morgan, 199 S.C. 138, 18 S.E.2d 672 (1942). Despite the fact that a claim for unjust enrichment and/or quantum meruit fail where there exists a valid and enforceable contract, courts allow quantum meruit claims to continue if plead in the alternative to a claim for breach of contract. Plaintiff did not plead its quantum meruit and/or unjust enrichment claims in the alternative, therefore Plaintiff's claims for quantum meruit and unjust enrichment must be, and are hereby, **DISMISSED WITHOUT PREJUDICE**.

b. Plaintiff's Mechanic's Lien Enforcement Claim

South Carolina Code § 29-5-20, gives subcontractors such as Plaintiff, a mechanic's lien on real property. S.C. Code § 29-5-20. To perfect its mechanic's lien, a subcontractor must file and serve its lien "within ninety days after it ceases to labor on or furnish labor or materials for [the] building or structure." S.C. Code § 29-5-90. Thereafter, "[u]nless a suit for enforcing the lien is commenced and notice of pendency of the action is filed within six months after the person desiring to avail himself of it ceases to labor or furnish labor or material for the building or structure, the lien must be dissolved." S.C. Code § 29-5-120. The petition shall contain a brief statement of the contract on which it is founded and of the amount due thereon, with a description of the premises subject to the lien and all other material facts and circumstances, and

shall pray that the premises may be sold and the proceeds of the sale applied to the discharge of the demand. S.C. Code § 29-5-160.

Plaintiff ceased to labor on, or furnish labor or materials to, the Project on May 7, 2022.¹ To avoid dissolution of its lien, Plaintiff was required to file a suit and notice of pendency by November 7, 2022. Plaintiff filed its Lis Pendens on January 4, 2023, and its Verified Complaint suit on January 5, 2022, more than six months after May 7, 2022. Furthermore, the Verified Complaint did not include a prayer that the premises be sold and the proceeds of the sale applied to discharge the demand. Therefore, because Plaintiff failed to file a notice of pendency and a suit within six months of May 7, 2022, Plaintiff mechanic's lien is hereby dissolved, and Plaintiff's fifth cause of action, Mechanic's Lien Foreclosure, is hereby **DISMISSED WITH PREJUDICE**.²

c. Plaintiff's Civil Conspiracy Claim Against Westgate

"[A] plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774 (S.C. 2021).

In the present case, in support of its civil conspiracy claim, Plaintiff sets forth several allegations. First, Plaintiff alleges that Westgate hired Contract Exteriors of Myrtle Beach, LLC to make changes to rooms that were previously completed by Defendant RNR. An agreement between two parties to make changes to rooms is not a combination or agreement to commit an

¹ Plaintiff's counsel conceded during the hearing that May 7, 2022 was the last day that Plaintiff provided labor or materials to the Project.

² Even if Plaintiff provided labor or materials to the property within six months before January 5, 2023, Plaintiff failed to include the required prayer for relief in the Verified Complaint.

unlawful act or a lawful action by unlawful means. Therefore, this allegation, when viewed in the light most favorable to Plaintiff, are insufficient to constitute a cause of action of civil conspiracy.

Thereafter, in Paragraphs 39, 40, and 41 of the Amended Verified Complaint, Plaintiff alleges that Westgate and others combined or agreed together to avoid paying a pro rata share, of funds held by Westgate to Plaintiff as required by S.C. Code § 29-5-40. Because Plaintiff's mechanic's lien is dissolved as a result of Plaintiff's failure to timely file this suit, and failure to timely file a Lis Pendens, Plaintiff did not have any rights under S.C. Code § 29-5-40. Therefore, Plaintiff had no right to payment of a pro rata share of funds under § 29-5-40, and no agreement between Westgate and others could exclude Plaintiff from receipt of a pro rata share of funds it is not entitled to receive. Therefore, when viewed in the light most favorable to Plaintiff, the allegations of Paragraphs 39, 40, and 41 do not alleged facts sufficient to constitute a cause of action of civil conspiracy.

Furthermore, Plaintiff appears to allege that Westgate's counsel's letter, and attachments thereto, dated June 21, 2022, in which Westgate declared Defendant RNR in default under the Prime Contract for, among other things, failing to pay subcontractors, is evidence of a conspiracy between Westgate and others. Plaintiff alleges that as of June 21, 2022, Westgate was aware that RNR owed money to Plaintiff. Plaintiff also alleges that Westgate was aware Plaintiff was owed money by RNR, because Plaintiff sent a letter dated June 23, 2022 to Westgate. Viewing these facts in the light most favorable to Plaintiff, these allegations insufficient to constitute a cause of action of civil conspiracy. Westgate's counsel's letter is clearly dated prior to Plaintiff's letter, and the allegations fail to identify any agreement between Westgate and any other person to commit an unlawful act or lawful action by unlawful means.

For these reasons, Plaintiff's Fourth Cause of Action, Civil Conspiracy, is hereby **DISMISSED WITHOUT PREJUDICE**.

THEREFORE, Having reviewed the Complaint, Amended Complaint, and Plaintiff's Memorandum in Opposition to Westgate's Motion to Dismiss, and heard the arguments of counsel, this Court concludes that both Plaintiff's Verified Complaint and Plaintiff's Verified Amended Complaint fail to state facts sufficient to constitute a cause of action against Defendant Westgate, therefore Defendant Westgate's Motion to Dismiss is hereby **GRANTED**.

IT IS HEREBY ORDERED that Plaintiff's claims against Defendant Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd. of quantum meruit, unjust enrichment, and civil conspiracy be **DISMISSED WITHOUT PREJUDICE**, and the Plaintiff's mechanic's lien enforcement action is **DISMISSED WITH PREJUDICE**, and Plaintiff's Mechanic's Lien against Westgate's property is hereby **DISSOLVED**.

_____, 2023
Horry County, South Carolina

The Honorable William H. Seals Jr.
Presiding Judge for the Fifteenth Judicial Circuit



Horry Common Pleas

Case Caption: Paint Design LLC VS Westgate Myrtle Beach LLC , defendant, et al
Case Number: 2023CP2600053
Type: Order/Dismissal

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2600053

Paint Design LLC
PLAINTIFF(S)

Westgate Myrtle Beach LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Motion/Alter and/or Amend is respectfully denied.

Defendant's Motion/Attorney's Fees is granted in the amount of \$6,995.00.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/15/2023 .

RNR Construction LLC

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2023 Aug 24 11:43 AM - HOBBS - COMMON PLEAS - CASE#2023CP2600053

EXHIBIT F

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2023-CP-26-00053

Paint Design, LLC,

Plaintiff,

vs.

Westgate Myrtle Beach, LLC a/k/a Westgate
Resorts, Ltd.; and RNR Construction, LLC,

Defendants.

**ORDER DENYING PLAINTIFF PAINT
DESIGN, LLC'S NOTICE OF MOTION
AND MOTION TO AMEND ITS
AMENDED COMPLAINT**

THIS CAUSE having come before the Court on August 14, 2023, before the undersigned Honorable Judge for the Fifteenth Judicial Circuit, upon Plaintiff Paint Design, LLC's ("Plaintiff") Notice of Motion and Motion to Amend its Amended Complaint, Plaintiff's Motion is hereby **DENIED**.

I. PROCEDURE HISTORY AND FACTS ALLEGED BY PLAINTIFF

On January 5, 2023, Plaintiff filed a Verified Complaint in this civil action. On February 1, 2023, Defendant Westgate Myrtle Beach, LLC (Westgate") filed a Motion to Dismiss. On March 3, 2023, Plaintiff filed an Amended Verified Complaint. The pertinent allegations of Plaintiff's Amended Verified Complaint are as follows. On or about October 25, 2021, Westgate entered into a general contractor's agreement with Defendant RNR Construction, LLC ("RNR") for the purpose of hiring RNR to furnish labor, materials, equipment and/or other services for the Hotel 2nd Floor Room Conversion project ("Project"). Amended Verified Complaint at ¶ 6. On or about October 22, 2021, RNR entered into a subcontract agreement ("Subcontract") with the Plaintiff. Id. at ¶ 7. A true and accurate copy of the subcontract agreement is attached hereto as **Exhibit A** and incorporated herein by reference. Id. Between the dates of January 18, 2022

through May 7, 2022, the Plaintiff furnished equipment, services labor and/or materials which were actually used on the Project. See Id. at ¶ 10. On July 8, 2022, Plaintiff filed a mechanic's lien on Westgate's property. See Id. at ¶ 14. On January 4, 2023, Plaintiff filed a Lis Pendens with this Court. See Id. at ¶ 15.

In its Amended Verified Complaint, Plaintiff asserted, among other claims, quantum meruit, unjust enrichment, and mechanic's lien foreclosure causes of action against Westgate, as well as a breach of contract cause of action against Defendant RNR Construction, LLC. See Amended Verified Complaint. On March 29, 2023, Westgate filed a Motion to Dismiss all Plaintiff's claims against Westgate. See Motion to Dismiss. Westgate's Motion to Dismiss was heard by the Honorable William H. Seals Jr. on May 9, 2023. On May 10, 2023, this Court issued an Order granting Westgate's Motion to Dismiss. See Form 4 Order. On June 8, 2023, this Court entered a more detailed Order granting Westgate's Motion to Dismiss. Prior to issuance of this Court's Order granting Defendant Westgate's Motion to Dismiss, on May 22, 2023, Plaintiff filed a Motion to Reconsider Pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure. This Court denied Plaintiff's Motion to Reconsider. On May 22, 2023, Plaintiff also filed Plaintiff's Notice of Motion and Motion to Amend its Amended Complaint ("MFLTA"). In its MFLTA, Plaintiff sought to amend its complaint again to include a single claim against Defendant Westgate on a quantum meruit/unjust enrichment theory. This Court heard arguments on the MFLTA on August 14, 2023. On August 15, 2023, this Court issued a Form 4 Order denying Plaintiff's MFLTA.

II. STANDARD, ANALYSIS, AND CONCLUSIONS OF LAW

The standard that this Court must consider when determining whether to grant a motion for leave to amend a complaint, is that amendment should be allowed "when justice so requires

and does not prejudice any other party.” (*emphasis added.*) South Carolina Rules of Civil Procedure, Rule 15. This Court concludes that justice does not require that Plaintiff be granted leave to amend its Amended Complaint to include a quantum meruit cause of action against Defendant Westgate.

In South Carolina, quantum meruit and unjust enrichment are the same claims. See Webb v. First Federal Savings & Loan Ass’n of Anderson, 300 S.C. 507388 S.E.2d 823, 827 (Ct.App. 1989). When there exists a valid and enforceable written contract, a claim for unjust enrichment/quantum meruit fails as a matter of law. See Johnston v Brown, 292 S.C. 478, 357 S.E.2d 450 (1987). See also Gantt v. Morgan, 199 S.C. 138, 18 S.E.2d 672 (1942). Despite the fact that a claim for unjust enrichment/quantum meruit fails where there exists a valid and enforceable contract, some courts have allowed unjust enrichment/quantum meruit claims to continue if plead in the alternative to a claim for breach of contract.

Rule 8 of the South Carolina Rules of Civil Procedure states in pertinent part, “[r]elief in the alternative or of several different types may be demanded.” SCRCP, Rule 8. Pleading a claim for quantum meruit relief in the alternative to a breach of contract claim requires more than simply using the words “in the alternative.” Several cases have allowed breach of contract and quantum meruit as alternative claims. For example, in Harmon & Bore, Inc. v Jenkins, the court held that the Plaintiff need not elect between a remedy under quantum meruit or express contract because “[t]he two actions are included[,] because of an obvious uncertainty...as to which cause of action Harmon would be able to prove or recover on” and further stating that, “[t]he plaintiff may be required to elect between causes of action prior to trial if the complaint states distinct causes which are so inherently repugnant that the assertion of one necessarily constitutes an election and precludes an assertion of the other. See Harmon & Bore, Inc. v Jenkins, 282 S.C. 189, 198, 318

S.E.2d 371, 376 (Ct. App. 1984) (internal citations omitted) (emphasis added).

Similarly, in H.G. Hall Const. Co. v. J.E.P. Enterprises, the court held that, “in cases where the complaint states different causes of action, but only one recovery is sought, and the causes are so stated because of an uncertainty as to which the evidence may establish or on which it may appear that plaintiff is entitled to recover, no election is required.” H.G. Hall Const. Co. v. J.E.P. Enterprises, 283 S.C. 196, 321 S.E.2d 267 (Ct. App. 1984). The Court of Appeals in both Hall and Harmon, make clear that alternative claims are allowed when there is “uncertainty as to which [remedy] the evidence may establish[.]” and that where one claim is repugnant to the existence of an alternative claim, facts must be plead showing there is an “uncertainty as to which cause of action [Plaintiff] would be able to prove or recover on..”

Through its Motion, Memorandum of Law and at the hearing, Plaintiff argued that South Carolina law requires the court to grant its Motion because Defendant Westgate would not be prejudiced, and that courts allow pleading quantum meruit claims to breach of contract claims in the alternative. Plaintiff also argued that its breach of contract cause of action is related to a contract with Defendant RNR, not with Defendant Westgate, therefore seeking a remedy in quantum meruit against Defendant Westgate is permissible.

On the other hand, Defendant Westgate, through its Memorandum of Law and at the hearing, argued that it would be prejudiced, and that justice does not require that Plaintiff’s Motion be granted because Plaintiff cannot plead an unjust enrichment/quantum meruit claim in the alternative because the claim is repugnant to Plaintiff’s breach of contract claim, and allowing the amendment is futile.

The cases allowing unjust enrichment/quantum meruit causes of action to proceed in the alternative to a breach of contract cause of action are distinguishable from the present case. In

support of Plaintiff's argument that courts allow quantum meruit claims to proceed in the alternative to breach of contract claims, Plaintiff cites Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 734 S.E.2d 177 177 (Ct. App. 2012). In Williams Carpet, Plaintiff plead breach of contract and quantum meruit, but Plaintiff dismissed its breach of contract cause of action after jury selection. Id. This Court finds that Williams Carpet is both instructive and distinguishable from the present case. The Court of Appeals noted in Williams Carpet that "[i]f the tasks the plaintiff is seeking compensation for under a quantum meruit theory are encompassed within the terms of an express contract which has not been abandoned or rescinded, the plaintiff may not recover under quantum meruit." Id. In this case, Plaintiff is seeking the same recovery under its breach of contract cause of action as it attempts to seek under a quantum meruit cause of action against Westgate. Therefore, Plaintiff clearly asserts that it is seeking compensation under a quantum meruit theory that is encompassed within the terms of an express contract which has not been abandoned or rescinded. As a result, the law is clear that Plaintiff cannot recover in quantum meruit.

Williams' Carpet is distinguishable from the present case because,

Williams Carpet abandoned its breach of contract claim without any objection from Skelly and instead proceeded only under the quantum meruit theory. The jury never considered whether Skelly and Williams Carpet formed a contract. Because a finding was never made on whether there was an express contract, Williams Carpet could pursue recovery under quantum meruit. Id.

In this case, Plaintiff has not abandoned its breach of contract claim, and Defendant Westgate has repeatedly raised the existence of an express contract as a defense to a quantum meruit claim. Additionally, Plaintiff, in its Verified Amended Complaint, swore to the existence of a written contract, and swore that a true and accurate copy of the written contract is attached to the Verified Amended Complaint as an exhibit. A written contract between Plaintiff and

Defendant RNR is attached to the Verified Amended Complaint. Defendant RNR, the party against which the existence of the written contract is plead, has failed to file a responsive pleading, and by default has admitted to the allegations of Plaintiff's Verified Amended Complaint. Plaintiff is bound by the sworn allegations included in its Verified Amended Complaint, including its sworn allegation of the existence of a written contract. On the other hand, Plaintiff has not alleged any facts showing, or from which this Court could infer, that the existence of an express written contract is in question. When there exists a valid and enforceable written contract, a claim for unjust enrichment/quantum meruit fails as a matter of law. See Johnston v Brown, 292 S.C. 478, 357 S.E.2d 450 (1987). See also Gantt v. Morgan, 199 S.C. 138, 18 S.E.2d 672 (1942). Therefore, there is no uncertainty in this case that Plaintiff and Defendant RNR entered into an express written contract relating to the work Plaintiff performed on the Project, under which Plaintiff has a remedy. As a result, the law is clear that Plaintiff cannot assert an alternative claim in unjust enrichment/quantum meruit, because the existence of an express contract is repugnant to an unjust enrichment/quantum meruit cause of action.

Because an unjust enrichment/quantum meruit cause of action would fail as a matter of law, justice does not require the court to allow Plaintiff to amend its complaint to add an unjust enrichment/quantum meruit cause of action, because doing so would be futile. Therefore, for the reasons stated above, Plaintiff's Notice of Motion and Motion to Amend its Amended Complaint is hereby **DENIED**.

THEREFORE, having reviewed the Verified Complaint, Amended Verified Complaint, and the parties' Memorandum in Support and in Opposition to Plaintiff's Notice of Motion and Motion to Amend its Amended Complaint, as well as other filings in this case, and having heard

EXHIBIT G

STATE OF SOUTH CAROLINA
COUNTY OF Horry
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2600053

Paint Design LLC
PLAINTIFF(S)

Westgate Myrtle Beach LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

After very careful and deliberate consideration, Judge Seals is hereby denying the Paint Design LLC's Motion to Reconsider that was filed on October 5, 2023.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/03/2024 .

RNR Construction LLC

RECEIVED
Jan 30 2024
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

EXHIBIT H

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2023-CP-26-00053
	)	
Paint Design, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF PAINT DESIGN, LLC'S
	)	MOTION TO RECONSIDER
Westgate Myrtle Beach, LLC a/k/a	)	PURSUANT TO RULES 52 AND 59, SCRCP
Westgate Resorts, Ltd. and RNR	)	
Construction, LLC,	)	
	)	
Defendants.	)	
	)	

Plaintiff, Paint Design, LLC (hereinafter "Paint Design"), moves the Court pursuant to Rule 59(e), SCRCP, for reconsideration of the Court's Order Denying Plaintiff's Motion to Alter and/or Amend its Complaint to plead its Quantum Meruit cause of action in the alternative dated August 15, 2023¹. Paint Design requests the Court withdraw or vacate the Order and issue an Order which grants Plaintiff's Motion to Alter or Amend its pleadings.

Paint Design requests the Court reconsider its Order on the grounds that it believes the Court overlooked or misapprehended important issues of law and to preserve for appellate review certain issues raised by Paint Design which the Court's Order does not address. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("A party may wish to file [a Rule 59(e) motion] when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.").

¹ Plaintiff incorporates its Motion, its Second Amended Complaint, and its Memorandum in Support of its Motion to Amend Complaint to plead its Quantum Meruit cause of action in the alternative as well as transcript of the hearing as part of its Motion to Reconsider pursuant to Rules 59(e), SCRCP.

BACKGROUND

Plaintiff brought this action on January 5, 2023. Plaintiff then filed an Amended Complaint on March 3, 2023. Defendant Westgate subsequently brought a Motion to Dismiss. In its Motion to Dismiss, Defendant Westgate argued that Plaintiff's cause of action for Quantum Meruit must be dismissed because it was not pled in the alternative. The Motion to Dismiss was heard by the Honorable William H. Seals, Jr. on May 9, 2023. On June 8, 2023, the Court entered an Order which dismissed Plaintiff's Quantum Meruit cause of action against Defendant Westgate without prejudice.² The Court's Order based the dismissal of this claim on Defendant's argument that Plaintiff did not plead its Quantum Meruit cause of action in the alternative. On May 22, 2023, Plaintiff filed a Motion to Amend its Complaint to plead its Quantum Meruit cause of action in the alternative.³ On August 14, 2023, the Honorable William H. Seals, Jr. heard Plaintiff's Motion to Amend its Complaint to plead its Quantum Meruit cause of action in the alternative and took the matter under advisement.

On August 15, 2023, the Honorable William H. Seals, Jr. issued a Form 4 Order denying Plaintiff's Motion to Alter and/or Amend its Complaint to plead its Quantum Meruit cause of action in the alternative. On September 27, 2023, the Court issued a formal Order denying Plaintiff's Motion to Alter and/or Amend its Complaint to plead its Quantum Meruit cause of action.

STANDARD OF REVIEW

A party may amend its pleading by leave of court, which shall be freely given when justice so requires and does not prejudice any other party. Rule 15, SCRPC. Rule 15(a) sets forth the

² A copy of the Order which dismissed Plaintiffs Quantum Meruit cause of action against Defendant Westgate without prejudice, marked **Exhibit A**, is attached hereto, and incorporated by reference.

³ See proposed Second Amended Complaint, pp. 7-11, ¶¶ 25 through 31 attached hereto as **Exhibit B** and incorporated by reference.

criteria for amendment of pleadings. In addressing a motion to amend the pleadings, the Court is required to consider the standard of Rule 15(a) and not its perception of the merits of an amended claim. Patton v. Miller, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017), reh'g denied (Sept. 27, 2017) (citing Tanner v. Florence Cty. Treasurer, 336 S.C. 552, 558-60, 521 S.E.2d 153, 156-57 (1999)). "[Rule 15] strongly favors amendments and the court is encouraged to freely grant leave to amend." Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005). "Rule 15(a) is substantially the same as the Federal Rule, Rule 15(a), SCRCR notes, and the Supreme Court of the United States has referred to the Rule's 'freely given' provision as a 'mandate' that 'is to be heeded.'" Patton v. Miller, 420 S.C. at 490 (quoting Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222, 226 (1962)).

ARGUMENT

I. The Court erred to the extent it found that granting Plaintiff's motion to amend its Complaint, pursuant to the criteria of Rule 15(a) and the applicable case law, prejudiced Defendant Westgate.

"The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." Pool v. Pool, 329 S.C. 324, 328-29 (1998) (citing Soil & Material Eng'rs, Inc. v. Folly Assocs., 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App. 1987)). Courts have found that such prejudice exists when a proposed amendment is offered shortly before or during trial. See Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 754 S.E.2d 714 (Ct. App. 2014); see also Johnson v. Oroweat Foods Co., 785 F.2d 503, 510 (4th Cir. 1986). Otherwise, amendments should be allowed to promote justice. See generally South Carolina State Highway Dept. v. Rural Land Co., 250 S.C. 12, 22-23, 156 S.E.2d 333, 338 (1967).

Westgate has not and cannot establish prejudice under Rule 15, SCRCP, which is its burden to prove.⁴ See Patton v. Miller, at 493 (holding the circuit court erred in not allowing the amendment because the record contained no basis for a conclusion the defendants would have been prejudiced by allowing the amendment). The type of prejudice contemplated by Rule 15, SCRCP, is not that Defendant Westgate must continue to defend a claim with which it disagrees.⁵ See Patton v. Miller, at 491 (“The prejudice contemplated in Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim”). “Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.” Patton v. Miller, 420 S.C. at 491. Here, Plaintiff simply seeks to amend its Complaint so that it may plead its Quantum Meruit cause of action in the alternative as instructed by the Court. This claim was already included in Plaintiff’s original pleading so Westgate will not suffer any prejudice. Defendant Westgate claims that it will be prejudiced by having to spend money to defend this cause of action. As set forth above, this is not the type of prejudice envisioned by Rule 15, SCRCP. Since no prejudice exists in this case which would preclude the amendment, the Court should have granted the Plaintiff’s amendment for the reasons set forth above.

Furthermore, the Court’s Order did not analyze whether Defendant Westgate would be prejudiced by the amendment. In Patton v. Miller, 420 S.C. 471, 804 S.E.2d 252 (2017), a similar

⁴ “The burden is ... on the party opposing the motion to show how it is prejudiced.” Stanley v. Kirkpatrick, 357 S.C. 169, 175, 592 S.E.2d 296, 298 (2004).

⁵ See (Westgate’s Memorandum in Opposition to the Plaintiffs Notice of Motion and Motion to Amend its Amended Complaint, p. 4, 4, last sentence: “Westgate will be prejudiced by the fact that it must spend money to defend a claim that necessarily fails as a matter of law”). (Emphasis added).

matter was addressed, and the Supreme Court analyzed the trial court's decision to deny a Motion to Amend. In its opinion, the Supreme Court explained:

In this case, the circuit court never considered Rule 15(a). While we have consistently held that a circuit court's ruling on a Rule 15 motion to amend is within its discretion, a court's failure to exercise its discretion is itself an abuse of discretion. State v. Hawes, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) (quoting Samples v. Mitchell, 329 S.C. 105, 114, 495 S.E.2d 213, 218 (Ct. App. 1997)). Under Rule 15(a), the circuit court should have considered whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it. Id. at 262.

Similarly, in this case, the Court has not conducted an analysis under Rule 15(a) to determine whether Defendant Westgate is prejudiced by the Amendment. This may be due to the fact that in its Memorandum in Opposition to Plaintiff's Previous Motion to Reconsider, Defendant Westgate conceded that it would not suffer any prejudice from the amendment. Just as in Patton, the record contains no basis for a finding of prejudice under Rule 15(a) because Defendant Westgate has conceded the issue and this Court has not conducted a prejudice analysis. See Id. The Supreme Court in Patton ultimately held that "Because the record contains no basis for a conclusion the defendants would have been prejudiced by allowing Patton to amend her complaint, we find the circuit court erred in not allowing the amendment." Id. at 263. Similarly, in this matter, the Court erred in not allowing Plaintiff's amendment.

Based upon the foregoing reasons, the Court erred in denying the Plaintiff's motion to amend its Complaint to the extent it found Defendant Westgate was prejudiced by the proposed amendment. Accordingly, the Court should have granted Plaintiff's motion to amend its Complaint to plead its Quantum Meruit cause of action in the alternative as instructed by the Court.

II. The Court erred in finding that Plaintiff's cause of action for Quantum Meruit fails as a matter of law and that the Amendment is futile.

While it is not appropriate to address the merits of the Amended Complaint at this time,⁶ the Quantum Meruit claim does not fail as a matter of law. The Court's findings to this effect do not accurately interpret the law in South Carolina. The facts and law that the Court rely upon are distinguishable from the case at hand and incongruous with the law as set forth by the Supreme Court of South Carolina.

The Supreme Court has held that breach of contract claims and quantum meruit claims can be alternative rather than inconsistent remedies. See Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988); Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010). The Circuit Court followed this holding in its Order **(Exhibit A)** dismissing Plaintiff's Quantum Meruit Claim without prejudice, stating "courts allow quantum meruit claims to continue if pled in the alternative to a claim for breach of contract." That is precisely what Plaintiff seeks to do in its Amended Complaint.

Since Westgate has conceded it would not suffer prejudice, the only basis to deny the amendment would be if the amendment is clearly futile. It is not.

In rare cases a trial court may deny a motion to amend if the amendment would be clearly futile. Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019). If a proposed amendment is not clearly futile, then denial of leave to amend is improper. Id.

The Court's Order states that pleading a claim for quantum meruit relief in the alternative to a breach of contract claim and/or a mechanic's lien enforcement action requires more than simply using the words "in the alternative," and that it requires pleading inconsistent facts resulting

⁶ See Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 183, 826 S.E.2d 585, 589 (2019).

from Plaintiff's uncertainty about what evidence will prove. These assertions are not supported by South Carolina rules, statutes, or case law. Instead, Rule 8, SCRCF plainly states that relief in the alternative or of several different types may be demanded. The Rule requires nothing more. To deny Plaintiff any recovery against Defendant Westgate based on the manner in which Plaintiff pleads "in the alternative" is contrary to South Carolina law. The South Carolina Supreme Court has stated "The ... Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." Patton v. Miller, 420 S.C. 471, 493, 804 S.E.2d 252, 263 (2017).

Furthermore, in each case cited by the Court's Order, the contract which exists to potentially preclude the quantum meruit recovery exists between the plaintiff and that specific defendant. That is not the case here. There exists no contract between Plaintiff and Defendant Westgate. The Court's Order holds that since a contract exists between Plaintiff and Defendant RNR Construction, Westgate is insulated from any remedy against it for the enrichment it has unjustly received. This is contrary to South Carolina law. See Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988); Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010); Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 734 S.E.2d 177 177 (Ct. App. 2012); Gillins v. Celadon Trucking Servs., Inc., No. 2:16-CV-00795-DCN, 2016 WL 4455018 (D.S.C. Aug. 24, 2016) (finding that Defendant's argument that a claim of breach of contract and a claim for quantum meruit, or unjust enrichment, are mutually exclusive of one another is without merit); Cap. Corp. of Am., Inc. v. Teays River Invs., LLC, No. CV 6:11-2796-HMH, 2012 WL 13006190 (D.S.C. Feb. 1, 2012) ("Defendant maintains that it is undisputed that a contract existed among the parties, and therefore, Plaintiffs are unable

to plead unjust enrichment as an alternative theory of relief. South Carolina courts, however, have expressly rejected this proposition, holding that plaintiffs may pursue a claim for unjust enrichment notwithstanding the existence of a contract between parties.”⁷ In JASDIP Properties SC, LLC v. Estate of Richardson, 395 S.C. 633, 720 S.E.2d 485 (Ct. App. 2011), the Court of Appeals held that “a breach of contract claim and quantum meruit claim can be alternative rather than inconsistent remedies” Id. at 488. This Court’s holdings, instead, are more akin to the Dissent in JASDIP. The existence of a contract with RNR Construction cannot preclude an equitable remedy against Westgate when Westgate has also been unjustly enriched by Plaintiff to Plaintiff’s detriment.

The only way that Westgate could show that a quantum meruit claim against Westgate would be futile⁸ is if Westgate could show that it had paid its general contractor, RNR Construction, in full. This is the only way by which Plaintiff could not pursue legal or equitable recourse against Westgate. There is no evidence in the record to support this and therefore, the Amendment is not clearly futile. Justice requires Plaintiff be granted leave to amend.

III. The Court erred in its interpretation and reliance upon a Court of Appeals Opinion contrary to Supreme Court Opinions.

The Court’s Order relies upon the Court of Appeals Opinion of Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 734 S.E.2d 177 (Ct. App. 2012) to support its refusal to allow Plaintiff to plead quantum meruit in the alternative to breach of contract. To the extent that

⁷ Attached hereto as **Exhibit C** and incorporated herein by reference is a Table comparing and contrasting cases cited by Defendant Westgate and Plaintiff in these proceedings which show support in South Carolina case law for Plaintiff to pursue its recovery against Defendant Westgate through Quantum Meruit.

⁸ See Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 262–63, 440 S.E.2d 129, 131 (1994) (“Courts addressing a claim of unjust enrichment by a subcontractor against a property owner have typically denied recovery where the owner in fact paid on its contract with the general contractor”).

this Court found that its citation to Williams Carpet supports its holding, Plaintiff respectfully asks the Court to reconsider as the Court's interpretation and reliance upon Williams Carpet⁹ in this matter is inconsistent with the unanimous decisions of the Supreme Court to the extent that it would exclude a quantum meruit cause of action which is pled in the alternative to a breach of contract action. It is well established that "The decisions of the Supreme Court bind the Court of Appeals as precedents." Daniels v. City of Goose Creek, 314 S.C. 494, 501, 431 S.E.2d 256, 260 (1993); S.C. Const. Art. V, § 9. The Court of Appeals nor the Circuit Court can modify or limit established Supreme Court Opinions. See Id.

The Court's interpretation and reliance upon Williams Carpet contradicts the Supreme Court Opinions of Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259, 440 S.E.2d 129 (1994); Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 368 S.E.2d 462 (1988); and Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 703 S.E.2d 221 (2010).

In Columbia Wholesale, the Supreme Court examined cases from across the country addressing the issue of whether a subcontractor can recover against an owner in quantum meruit. The Court concluded simply that "Courts addressing the issue whether a subcontractor can recover against an owner in quantum meruit focus on whether the enrichment to the owner is *unjust*." Columbia Wholesale Co., Inc., 440 S.E.2d at 130. In the matter at hand, the enrichment to the owner is clearly unjust.

⁹ However, "*if the tasks the plaintiff is seeking compensation for under a quantum meruit theory are encompassed within the terms of an express contract which has not been abandoned or rescinded, the plaintiff may not recover under quantum meruit.*" Swanson, 350 S.C. at 122, 564 S.E.2d at 120." Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 328, 734 S.E.2d 177, 181 (Ct. App. 2012). Swanson is a Court of Appeals Opinion. Compare, "Johnston v. Brown, 290 S.C. 141, 148, 348 S.E.2d 391, 395 (Ct.App.1986), *rev'd on other grounds*, 292 S.C. 478, 357 S.E.2d 450 (1987) (*While a recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid for the services.*" (citations omitted), quoting from Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 328–29, 734 S.E.2d 177, 182 (Ct. App. 2012).

In Franke Assocs. the Supreme Court held that the Plaintiff could proceed on its causes of action for breach of contract and quantum meruit and should not have been forced to elect between these theories of recovery because the claims were alternative rather than inconsistent remedies. Franke Assocs. by Simmons, 368 S.E.2d at 465. In analyzing the Supreme Court's Opinion in Franke Assocs., the United States District Court in Arkansas stated, "There is no inherent inconsistency in alleging alternative claims of breach of contract and quantum meruit under the same factual circumstances." Pioneer Civ. Constr., LLC v. Ingevity Arkansas, LLC, No. 1:22-CV-1034, 2023 WL 2353146 (W.D. Ark. Mar. 3, 2023) (citing Franke Assocs. by Simmons, 368 S.E.2d at 464-65). "That Defendants will not be able to recover under both this claim and their alleged breach of contract claim does not make their pleading of both claims impermissible." Id.

In Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010), the Supreme Court affirmed the Circuit Court's decision to award damages under the theory of quantum meruit even though the Circuit Court had found there was a contract between the parties. The Supreme Court held, "While the circuit court did find there was a contract between the two parties in this action, it never awarded damages because of a breach of that contract. Rather the circuit court chose the theory of quantum meruit as an alternate remedy." Id.

To the extent the Court's Order ignores the law set forth by the unanimous decisions of Supreme Court cited above and instead interprets Williams Carpet as contrary law and controlling, this Court has erred. As Chief Justice Toal states in her treatise on South Carolina appellate practice, "the Court of Appeals is an error-correction court, whereas the Supreme Court is a law-giving court. The decisions of the Supreme Court bind the Court of Appeals." Toal, Vafai & Muckenfuss, *Appellate Practice in South Carolina*, at 12 (2d ed.2002). *See also* S.C. Const., art. V. § 9 (establishing the jurisdiction of the court of appeals and explaining the binding effect of

supreme court opinions); Daniels v. City of Goose Creek, 314 S.C. 494, 498, 431 S.E.2d 256, 260 (Ct.App.2003) (holding that any modification of supreme court case law must be undertaken by the supreme court).

It is also important to note that Paint Design (“subcontractor”) and Westgate (“Owner”) in the case at hand are not in direct privity like the parties in Williams Carpet 400 S.C. at 324, 734 S.E.2d at 179 (“Williams Carpet sued Ruonala and Company, Skelly, and M.S. Industries for breach of contract, quantum meruit, negligent misrepresentation, and violations of the Unfair Trade Practices Act. At trial, just after the selection of the jury, Williams Carpet dismissed its breach of contract claim, without objection”).

IV. The Court erred in requiring Plaintiff to proceed only on its breach of contract action rather than permitting an election of remedies at the time of trial.

The Court’s Order requires Plaintiff to elect, prior to the submission of the case to the jury, between the remedies for breach of contract and quantum meruit. This is clear error in contradiction of the Supreme Court Opinion of Franke Assocs. (“Next, appellant argues that the trial court erred by requiring them to elect, prior to the submission of the case to the jury, between the remedies for breach of contract and quantum meruit. We agree.”) Franke Assocs. by Simmons, 368 S.E.2d at 463. “If a party pleads different causes of action but seeks only one recovery, he need not elect between causes of action.” Id. at 464.

WHEREFORE, the Plaintiff Paint Design respectfully requests that this Honorable Court:

- a. Reconsider its Order denying the Plaintiff’s Motion to Alter and/or Amend its Complaint;
- b. Withdraw and/or vacate its Order in whole or in part;
- c. If this court should find that Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 734 S.E.2d 177 177 (Ct. App. 2012) is on point, however, the Plaintiff would respectfully ask the Court to conclude that that decision is inconsistent with prior decisions of the Supreme Court to the extent that it would permit a landowner, who

has been unjustly enriched, not to pay a non-privity subcontractor under quantum meruit, where the general contractor has failed to pay the subcontractor and now is in default. Of course, the decisions of the Supreme Court bind this Court as precedents. S.C. Const. Art. V, § 9. Thus, any modification or limiting of the supreme court's unanimous decisions in the cases of Franke Assocs. by Simmons, Earthscapes Unlimited, Inc., and Columbia Wholesale Co., Inc. must be done by the Supreme Court;

- d. Issue an Order granting Plaintiff's Motion to Alter and/or Amend its Complaint; and
- e. Consider any other relief that the Court deems just and proper under the circumstances and facts of this case.

BELLAMY, RUTENBERT, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

/s/ Howell V Bellamy, III

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Attorney for Plaintiff

Myrtle Beach, South Carolina
October 5, 2023

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2023-CP-26-00053

Paint Design, LLC,

Plaintiff,

vs.

Westgate Myrtle Beach, LLC a/k/a Westgate
Resorts, Ltd.; and RNR Construction, LLC,

Defendants.

**PROPOSED ORDER GRANTING
WESTGATE MYRTLE BEACH, LLC
A/K/A WESTGATE RESORTS, LTD.'S
MOTION TO DISMISS**

THIS CAUSE having come before the Court on May 9, 2023, before the undersigned Honorable Judge for the Fifteenth Judicial Circuit, upon Defendant Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.'s ("Westgate") Motion to Dismiss, Westgate's Motion is hereby **GRANTED**, and Plaintiff's claims against Westgate are hereby **DISMISSED** for the reasons stated herein.

I. FACTS ALLEGED BY PLAINTIFF

On or about October 25, 2021, Westgate entered into a general contractor's agreement with Defendant RNR Construction, LLC ("RNR") for the purpose of hiring RNR to furnish labor, materials, equipment and/or other services for the Hotel 2nd Floor Room Conversion project ("Project"). Amended Verified Complaint at ¶ 6. On or about October 22, 2021, RNR entered into a subcontract agreement ("Subcontract") with the Plaintiff. Id. at ¶ 7. Between the dates of January 18, 2022 through May 7, 2022, the Plaintiff furnished equipment, services and labor and/or materials which were actually used on the Project. See Id. at ¶ 10. On July 8, 2022, Plaintiff filed a mechanic's lien on Westgate's property. See Id. at ¶ 14. On January 4, 2023, Plaintiff filed a Lis Pendens with this Court. See Id. at ¶ 15. On January 5, 2023, Plaintiff filed

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its original Complaint, in which it included quantum meruit and unjust enrichment causes of action against Westgate. See Verified Complaint. On March 3, 2023, Plaintiff filed its Amended Verified Complaint, in which it asserted quantum meruit, unjust enrichment, mechanic's lien enforcement, and civil conspiracy causes of action against Westgate. See Amended Verified Complaint.

In support of its civil conspiracy cause of action, Plaintiff alleges:

- a. Defendants, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd. and RNR Construction, LLC, were aware of the outstanding debt owed by RNR Construction, LLC to Plaintiff in June of 2022 as evidenced by the Defendant Westgate's Notice of Default and Demand to Cure letter to Defendant RNR dated June 21, 2022 as well as Plaintiff's subsequent Notice letter, pursuant to S.C. Code Ann. § 29-5-40, to the Defendants dated June 23, 2022 attached hereto as **Exhibits E and B** respectively. Id. at ¶ 37.
- b. Notwithstanding the above, Defendant Westgate hired another contractor, Contract Exteriors of Myrtle Beach, LLC, to make changes to the rooms that were previously completed by Defendant RNR Construction, LLC and had received Certificate of Occupancies ("CO") by the City of Myrtle Beach before June 2022. Id. at ¶ 38.
- c. Upon information and belief, in violation of S.C. Code Ann. § 29-5-40, the subcontractors, United Electric, Trinity Contract Flooring, and Premiere Communications, in concert with the Defendant Westgate entered in a tacit agreement to come back onto the Project to perform additional work in order to receive payment for previous work performed on the Project as shown by subcontractor lien summary spreadsheet listed as Exhibit C and attached to **Exhibit E**. Id. at ¶ 39.
- d. Upon information and belief, Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd., along with the following subcontractors, United Electric, Trinity Contract Flooring, and Premiere Communications, have combined together for the exclusive purpose of injuring the Plaintiff's business interest as evidenced by their failure to pay any part of the Plaintiff's debt owed under the Mechanics' liens Statute and the common law. Stated differently, the Defendant Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd., has unlawfully paid all of the Project's retainage of \$99,115.09 to United Electric, Trinity Contract Flooring, and Premiere Communications, while excluding the Plaintiff from any pro rata payments after having received statutory notice of its debt on June 23, 2022 in accordance with S.C. Code Ann. § 29-5-40. Id. at ¶ 40.
- e. As a result of such overt act and actions as described, the Plaintiff has suffered substantial damages, including but not limited to, loss of income resulting in the amount of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00) as well as other consequential damages to be proven trial, together with prejudgment interest, and reasonable attorney's fees and costs incurred in this matter. Id. at ¶ 41.

II. CONCLUSIONS OF LAW

a. Plaintiff's Quantum Meruit and Unjust Enrichment Claims

In South Carolina, quantum meruit and unjust enrichment are the same claims. See Webb v. First Federal Savings & Loan Ass'n of Anderson, 300 S.C. 507, 388 S.E.2d 823, 827 (Ct.App. 1989). When there exists a valid and enforceable written contract, a claim for unjust enrichment and/or quantum meruit fails as a matter of law. See Johnston v Brown, 292 S.C. 478, 357 S.E.2d 450 (1987). See also Gantt v. Morgan, 199 S.C. 138, 18 S.E.2d 672 (1942). Despite the fact that a claim for unjust enrichment and/or quantum meruit fail where there exists a valid and enforceable contract, courts allow quantum meruit claims to continue if plead in the alternative to a claim for breach of contract. Plaintiff did not plead its quantum meruit and/or unjust enrichment claims in the alternative, therefore Plaintiff's claims for quantum meruit and unjust enrichment must be, and are hereby, **DISMISSED WITHOUT PREJUDICE**.

b. Plaintiff's Mechanic's Lien Enforcement Claim

South Carolina Code § 29-5-20, gives subcontractors such as Plaintiff, a mechanic's lien on real property. S.C. Code § 29-5-20. To perfect its mechanic's lien, a subcontractor must file and serve its lien "within ninety days after it ceases to labor on or furnish labor or materials for [the] building or structure." S.C. Code § 29-5-90. Thereafter, "[u]nless a suit for enforcing the lien is commenced and notice of pendency of the action is filed within six months after the person desiring to avail himself of it ceases to labor or furnish labor or material for the building or structure, the lien must be dissolved." S.C. Code § 29-5-120. The petition shall contain a brief statement of the contract on which it is founded and of the amount due thereon, with a description of the premises subject to the lien and all other material facts and circumstances, and

shall pray that the premises may be sold and the proceeds of the sale applied to the discharge of the demand. S.C. Code § 29-5-160.

Plaintiff ceased to labor on, or furnish labor or materials to, the Project on May 7, 2022.¹ To avoid dissolution of its lien, Plaintiff was required to file a suit and notice of pendency by November 7, 2022. Plaintiff filed its Lis Pendens on January 4, 2023, and its Verified Complaint suit on January 5, 2022, more than six months after May 7, 2022. Furthermore, the Verified Complaint did not include a prayer that the premises be sold and the proceeds of the sale applied to discharge the demand. Therefore, because Plaintiff failed to file a notice of pendency and a suit within six months of May 7, 2022, Plaintiff mechanic's lien is hereby dissolved, and Plaintiff's fifth cause of action, Mechanic's Lien Foreclosure, is hereby **DISMISSED WITH PREJUDICE**.²

c. Plaintiff's Civil Conspiracy Claim Against Westgate

"[A] plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774 (S.C. 2021).

In the present case, in support of its civil conspiracy claim, Plaintiff sets forth several allegations. First, Plaintiff alleges that Westgate hired Contract Exteriors of Myrtle Beach, LLC to make changes to rooms that were previously completed by Defendant RNR. An agreement between two parties to make changes to rooms is not a combination or agreement to commit an

¹ Plaintiff's counsel conceded during the hearing that May 7, 2022 was the last day that Plaintiff provided labor or materials to the Project.

² Even if Plaintiff provided labor or materials to the property within six months before January 5, 2023, Plaintiff failed to include the required prayer for relief in the Verified Complaint.

unlawful act or a lawful action by unlawful means. Therefore, this allegation, when viewed in the light most favorable to Plaintiff, are insufficient to constitute a cause of action of civil conspiracy.

Thereafter, in Paragraphs 39, 40, and 41 of the Amended Verified Complaint, Plaintiff alleges that Westgate and others combined or agreed together to avoid paying a pro rata share, of funds held by Westgate to Plaintiff as required by S.C. Code § 29-5-40. Because Plaintiff's mechanic's lien is dissolved as a result of Plaintiff's failure to timely file this suit, and failure to timely file a Lis Pendens, Plaintiff did not have any rights under S.C. Code § 29-5-40. Therefore, Plaintiff had no right to payment of a pro rata share of funds under § 29-5-40, and no agreement between Westgate and others could exclude Plaintiff from receipt of a pro rata share of funds it is not entitled to receive. Therefore, when viewed in the light most favorable to Plaintiff, the allegations of Paragraphs 39, 40, and 41 do not alleged facts sufficient to constitute a cause of action of civil conspiracy.

Furthermore, Plaintiff appears to allege that Westgate's counsel's letter, and attachments thereto, dated June 21, 2022, in which Westgate declared Defendant RNR in default under the Prime Contract for, among other things, failing to pay subcontractors, is evidence of a conspiracy between Westgate and others. Plaintiff alleges that as of June 21, 2022, Westgate was aware that RNR owed money to Plaintiff. Plaintiff also alleges that Westgate was aware Plaintiff was owed money by RNR, because Plaintiff sent a letter dated June 23, 2022 to Westgate. Viewing these facts in the light most favorable to Plaintiff, these allegations insufficient to constitute a cause of action of civil conspiracy. Westgate's counsel's letter is clearly dated prior to Plaintiff's letter, and the allegations fail to identify any agreement between Westgate and any other person to commit an unlawful act or lawful action by unlawful means.

For these reasons, Plaintiff's Fourth Cause of Action, Civil Conspiracy, is hereby **DISMISSED WITHOUT PREJUDICE**.

THEREFORE, Having reviewed the Complaint, Amended Complaint, and Plaintiff's Memorandum in Opposition to Westgate's Motion to Dismiss, and heard the arguments of counsel, this Court concludes that both Plaintiff's Verified Complaint and Plaintiff's Verified Amended Complaint fail to state facts sufficient to constitute a cause of action against Defendant Westgate, therefore Defendant Westgate's Motion to Dismiss is hereby **GRANTED**.

IT IS HEREBY ORDERED that Plaintiff's claims against Defendant Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd. of quantum meruit, unjust enrichment, and civil conspiracy be **DISMISSED WITHOUT PREJUDICE**, and the Plaintiff's mechanic's lien enforcement action is **DISMISSED WITH PREJUDICE**, and Plaintiff's Mechanic's Lien against Westgate's property is hereby **DISSOLVED**.

_____, 2023
Horry County, South Carolina

The Honorable William H. Seals Jr.
Presiding Judge for the Fifteenth Judicial Circuit



Horry Common Pleas

Case Caption: Paint Design LLC VS Westgate Myrtle Beach LLC , defendant, et al
Case Number: 2023CP2600053
Type: Order/Dismissal

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 2023-CP-26-00053
	)	
Paint Design, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF PAINT DESIGN, LLC'S
	)	SECOND AMENDED COMPLAINT
	)	AGAINST DEFENDANTS WESTGATE
Westgate Myrtle Beach, LLC a/k/a	)	MYRTLE BEACH, LLC a/k/a WESTGATE
Westgate Resorts, Ltd. and RNR	)	RESORTS, LTD. and
Construction, LLC,	)	RNR CONSTRUCTION, LLC
	)	
Defendants.	)	
	)	

The Plaintiff Paint Design, LLC, by and through its undersigned attorneys, complaining of the above-captioned Defendants herein, would respectfully allege and show unto this Honorable Court as follows:

JURISDICTION, PARTIES, AND VENUE

1. The Plaintiff, Paint Design, LLC ("Paint Design"), is a limited liability company organized and existing under the laws of the State of South Carolina and having its principal place of business in Horry County, South Carolina and doing business in Horry County, South Carolina as a paint and interior design contractor.
2. Upon information and belief, the Defendant Westgate Myrtle Beach, LLC ("Westgate" or "Defendant"), is a limited liability company organized and existing under the laws of the State of Florida and doing business in Horry County, South Carolina as a timeshare resort company.
3. Upon information and belief, the Defendant Westgate Resorts, Ltd., is a limited partnership organized and existing under the laws of the State of Florida and doing business in Horry County, South Carolina as a timeshare resort company.

4. Upon information and belief, the Defendant, RNR Construction, LLC, is a limited liability company organized and existing under the laws of the State of North Carolina and doing business in Horry County, South Carolina as a general contractor.
5. This Honorable Court has jurisdiction over these parties and the subject matter, and venue is proper in Horry County, South Carolina.

FACTUAL ALLEGATIONS AS TO ALL DEFENDANTS

6. On or about October 25, 2021, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd. ("Project Owner" or "Westgate") entered a prime contract with Defendant RNR Construction, LLC ("General Contractor" or "RNR Construction") for the purpose of hiring said general contractor to furnish labor, materials, equipment and/or other services to the project.
7. On or about October 22, 2021, Defendant RNR Construction entered a subcontract with the Plaintiff Paint Design as permitted by the Project Owner Westgate. Specifically, Paint Design agreed to furnish labor, materials, equipment and/or other services to the project in consideration for the sum of One Hundred Twenty-Six Thousand Nine Hundred Dollars and 00/100ths (\$126,900.00). In accordance with the above, Paint Design was entitled to be paid within ten (10) days following general contractor's receipt of its request for payment on or before 25th of each calendar month. A true and accurate copy of the subcontract agreement is attached hereto as **Exhibit A** and is incorporated herein by reference.
8. Pursuant to the subcontract agreement with Defendant RNR Construction, Paint Design agreed to provide the following scope of work which included:
 - (a) Paint 24 rooms on the 2nd floor being converted to guest rooms;
 - (b) Texture walls of 24 rooms on the 2nd floor being converted to guest rooms;

- (c) Paint 8 rooms between the 3rd and 6th floors being converted to guest rooms; and
- (d) Texture walls of 8 rooms between the 3rd and 6th floors being converted to guest rooms.

9. At all times pertinent hereto, the Defendant Westgate had actual knowledge of the improvements being made to the project property by Paint Design, its agents, employees, and representatives, and consented to such improvements being made pursuant to the terms of the subcontract between the Plaintiff and Defendant RNR Construction. At no time did Defendant Westgate object to Paint Design's scope of work under Exhibit A.
10. Between the dates of January 18, 2022, through May 7, 2022, Paint Design at the special insistence and request of the Defendant RNR Construction and including the project owner, furnished equipment, services and labor and/or materials for painting which were actually used in the construction, alteration of improvements of a structure situated on, or otherwise improving the real property described in Paragraph 8 of the Second Amended Complaint.
11. On June 23, 2022, Paint Design provided notice to Defendant Westgate with respect to the equipment, services, and labor and/or materials furnished by it including their reasonable value in the principal amount of Seventy-Six Thousand Nine Hundred Dollars and 00/100ths (\$76,900.00). Paint Design's letter to Defendant Westgate placing them on notice is attached hereto as Exhibit B and incorporated herein by reference.
12. The record indicates that Paint Design's notice, mechanic's lien, , and certificate were filed on July 8, 2022, in Lien Book 284, at page 1382 in the Office of the Register of Deeds for Horry County, South Carolina, and subsequently filed an Amended Notice and Certificate of Mechanics Lien in Lien Book 284, at page 1678 in the Office of the Register of Deeds for Horry County, South Carolina, on July 19, 2022, being within ninety (90) days of the

last performance of services and/or delivery of labor and/or materials. True and accurate copies of the Notice and Certificate of Mechanics Lien and the Amended Notice and Certificate of Mechanics Lien are attached hereto as Exhibit C-1 and C-2 and are incorporated herein by reference. However, Paint Design's enforcement action is time barred because it failed to foreclose the lien within six months after it had ceased to furnish labor and materials to the project on May 7, 2022.

13. Considering the above, Paint Design has abandoned its mechanic's lien foreclosure action in favor of pursuing its quantum meruit claim against Westgate. *"Some courts addressing quasi-contractual claims have held a subcontractor's failure to [perfect] the statutory remedy of a mechanic's lien precludes a finding the enrichment is unjust."* Columbia Wholesale Co., 312 S.C. at 263, 440 S.E.2d at 131 (citing Lynn v. Miller Lumber Co., 146 Ga.App. 230, 246 S.E.2d 137 (1978); Pay-N-Taket, Inc. v. Crooks, 259 Iowa 719, 145 N.W.2d 621 (1966); Crockett, 455 S.W.2d at 810). *"Other courts have allowed recovery in quantum meruit even where a mechanic's lien was not pursued."* Id. (citing United States v. Ins. Co. of N. Am., 695 F.2d 455 (10th Cir.1982) (applying New Mexico law); G & G Lange Brunner, Inc. v. Davis Constr. Co., 21 Ohio Misc.2d 11, 488 N.E.2d 506 (Ohio Munic.Ct.1984)). The South Carolina Supreme Court has determined, *"Failure to pursue a mechanic's lien, however, will not bar an action for quantum meruit recovery as a matter of law if a plaintiff can otherwise prove circumstances establishing unjust enrichment."* Id. at 263, 440 S.E.2d at 131–32 (citing Gee v. Eberle, 279 Pa. Super. 101, 420 A.2d 1050 (1980); Costanzo, 453 P.2d at 529 (*finding the failure to file mechanic's lien did not bar recovery for unjust enrichment when owner paid no one*)). (Emphasis added).

14. Here, Paint Design's failure to perfect its mechanic's lien in this situation does not bar its action for quantum meruit against Westgate. See Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988) (The Supreme Court found that Franke Associates would be entitled to a quantum meruit recovery despite its failure to foreclose the lien within six months after it ceased to furnish labor and materials to the project).
15. Additionally, "[a] breach of contract claim and quantum meruit claim can be alternative rather than inconsistent remedies." JASDIP Props. SC, LLC v. Estate of Richardson, 395 S.C. 633, 639, 720 S.E.2d 485, 488 (Ct.App.2011) (citing Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988)). In Earthscapes Unlimited, Inc., 390 S.C. at 617, 703 S.E.2d at 225, the supreme court affirmed the circuit court's decision to award damages under the theory of quantum meruit even though the circuit court had found a contract between the parties. The supreme court found, "*While the circuit court did find there was a contract between the two parties in this action, it never awarded damages because of a breach of that contract. Rather, the circuit court chose the theory of quantum meruit as an alternate remedy.*" Id. at 617 n. 4, 703 S.E.2d at 225 n. 4.
16. Notwithstanding, Paint Design is seeking damages under its quantum meruit claim and not its breach of subcontract action against RNR Construction, *which action will be abandoned or withdrawn in the near future*. See Strickland v. Coastal Design Assocs., 294 S.C. 421, 424, 365 S.E.2d 226, 228 (Ct.App.1987) ("The law is well settled in this nation that where an express contract has been rescinded or abandoned, one furnishing labor or materials in part performance may recover in quantum meruit unless the original contract remains in force."); Johnston v. Brown, 290 S.C. 141, 148, 348 S.E.2d 391, 395 (Ct.App.1986), *rev'd on other grounds*, 292 S.C. 478, 357 S.E.2d 450 (1987) ("While a

recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid for the services." (Emphasis added).

17. South Carolina Case law bars recovery under both theories. Here, Paint Design can elect to abandon and/or withdraw its breach of subcontract claim against Defendant RNR construction, who is currently in default; and just proceed under the quantum meruit action against Defendant Westgate. Accordingly, Paint Design's breach of subcontract claim against the Defendant RNR construction does not bar Paint Design's recovery under a quantum meruit against the Defendant Westgate.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract against Defendant RNR Construction, LLC)

18. That the foregoing allegations are incorporated herein by reference as if fully repeated verbatim herein.
19. Defendant, RNR Construction, contracted with and hired Paint Design for the purpose of performing and providing certain equipment, services, labor and/or materials for the construction, erection, or alteration of improvements on the aforesaid real property that is located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina, containing 6.08 acres or 265,043 square feet of land on Block 18 of Yaupon Circle Section of Myrtle Beach, South Carolina, and whose legal description is more particularly described as TMS# 181-14-02-010.
20. Paint Design completed the requested interior painting work as described above in a workmanlike manner and in accordance with the subcontractor's contract documents provided by Defendant RNR Construction.

21. Paint Design has performed all terms and conditions therein by timely furnishing the services, equipment, and labor and materials in accordance with the subcontract agreement of the parties. However, Defendant RNR Construction has failed to pay the final amounts due and owing to Paint Design under Exhibit A.
22. Defendant RNR Construction has breached the terms of the original subcontract by refusing to pay what is now due and owing for the unpaid balance to Paint Design in the principal amount of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00).
23. Paint Design is entitled to a judgment against the Defendant, RNR Construction, for the unpaid balance in the principal amount of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00) together with both contract and prejudgment interest, costs, as allowed by law, and reasonable attorney fees incurred in the prosecution of this action.
24. Moreover, the Paint Design contends it is also entitled to recover incidental and/or consequential damages in this matter including, but not limited to, the damages incurred by it for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business and reputation, and loss of profits including anticipated profits arising directly from the loss of other construction jobs due to lack of capital. In support of the above, Paint Design can: (a) demonstrate the Defendant RNR Construction was on notice of the circumstances giving rise to the above damages at the time of the subcontract, (b) demonstrate the above damages were reasonably foreseeable at the time of the subcontract, and (3) prove, by the preponderance of the evidence, the amount of the above damages.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit against Defendant Westgate Myrtle Beach, LLC
a/k/a Westgate Resorts, Ltd.)

25. That the foregoing allegations are incorporated herein by reference as if fully repeated verbatim herein.
26. “[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy.” QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct.App.2004) (citations and internal quotation marks omitted) (alteration by court). “The terms ‘restitution’ and ‘unjust enrichment’ are modern designations for the older doctrine of quasi-contracts.” Ellis v. Smith Grading & Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct.App.1988).
27. A breach of contract claim and quantum meruit claim can be alternative rather than inconsistent remedies. Franke Assocs. by Simmons v. Russell, 295 S.C. 327, 332, 368 S.E.2d 462, 465 (1988). In Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010), the supreme court affirmed the circuit court's decision to award damages under the theory of quantum meruit even though the circuit had found there was a contract between the parties. The supreme court found, “While the circuit court did find there was a contract between the two parties in this action, it never awarded damages because of a breach of that contract. Rather, the circuit court chose the theory of quantum meruit as an alternate remedy.” Id. at 617 n. 4, 703 S.E.2d at 225 n. 4.
28. To prevail on a quantum meruit claim, a plaintiff must establish (1) he conferred a benefit upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value. Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 616–17, 703 S.E.2d 221, 225 (2010) (providing the requirements).

29. In the present case, Paint Design conferred a benefit on Westgate's property, including, but not limited to: (a) painting and texturing walls of 24 rooms on the 2nd floor being converted to guest rooms; and (b) painting and texturing walls of 8 rooms between the 3rd and 6th floors being converted to guest rooms. Westgate has realized and benefited financially from the painting and texturing work performed by Paint Design. Finally, it is extremely unjust for Westgate to retain the benefits provided by Paint Design without paying for a fair and reasonable value therefore. By reason of the foregoing, Paint Design has been damaged in the sum of no less than Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00).
30. "Courts addressing a claim of unjust enrichment by a subcontractor against a property owner have typically denied recovery where the owner in fact paid on its contract with the general contractor." Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 262–63, 440 S.E.2d 129, 131 (1994) (citing Cohen v. Delmar Drive-in Theatre, Inc., 84 A.2d 597 (Del.Super.Ct.1951); Guldborg v. Greenfield, 259 Iowa 873, 146 N.W.2d 298 (Iowa 1966); Crockett v. Brady, 455 S.W.2d 807 (Tex.Civ.App.1970)) (comparing Costanzo v. Stewart, 9 Ariz.App. 430, 453 P.2d 526 (1969) (allowing recovery for unjust enrichment when owner assured subcontractor money was escrowed to pay for job and owner did not pay general contractor)).
31. Here, upon information and belief, Westgate had not paid the total contract amount owed to the Defendant RNR Construction prior to receiving notice from Paint Design's legal counsel as shown by Exhibits B and D. Further, Westgate had failed to pay Paint Design its pro rata share of the retainage being held by it as shown on the spreadsheet attached as Exhibit C to the Defendant's notice of Default and Demand to Cure Letter sent to

Defendant RNR Construction. Stated differently, upon information and belief, all retainage under the prime contract had not been paid to the other subcontractors as identified on the spreadsheet (Exhibit C) prior to Paint Design filing this lawsuit on January 5, 2023. Accordingly, for these reasons, the Westgate has been unjustly enriched and Paint Design is entitled to a judgment against Westgate for the unpaid balance in the principal amount of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00), together with prejudgment interest, costs, as allowed by law, including reasonable attorney fees incurred in the prosecution of this action under the equitable theory of Quantum Meruit.

WHEREFORE, having fully set forth its Second Amended Complaint, the Plaintiff Paint Design prays as follows:

- A. For a judgment under the First Cause of Action for Breach of Subcontract Action against Defendant RNR Construction, LLC for the unpaid balance in the principal sum of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00), together with contract and prejudgment interest, and reasonable attorney's fees and costs incurred in this matter as allowed to recover by the prevailing party under the terms of the subcontract between the parties;
- B. In the alternative, for a judgment under the Second Cause of Action for Quantum Meruit against Defendant Westgate for the unpaid balance in the principal sum of Eighteen Thousand Nine Hundred Dollars and 00/100ths (\$18,900.00), together with prejudgment interest, and reasonable attorney's fees and costs incurred in this matter;
- C. For trial by jury on all issues so triable; and
- D. For such other and further relief as this Court may deem just and proper.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

s/ Howell V. Bellamy, III

Howell V. Bellamy, III (SC Bar # 66575)
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1000 29th Ave. N.
Myrtle Beach, SC 29577
843-448-2400 Phone
843-448-3022 Facsimile

Attorney for Plaintiff

Myrtle Beach, South Carolina

May 15, 2023

EXHIBIT A

RNR Construction, LLC
1011 S. Hamilton
Chapel Hill, NC 27517

SUBCONTRACT

To:

Paint Design LLC
Paint Design LLC
5078 Hwy 319E
Conway, SC 29526

Subcontract #: RR-00010-106

Date: 10/22/2021

Job: RR-00010-WG 2nd Floor Conversion

Job Address:

Description: Paint Services

Scope of Work:

Provide all labor, materials, equipment, and field qualified field supervision to perform the Paint scope of work according to the following:

1. Revised Proposal dated 10/06/2021
2. Project Schedule: See Attached; or Schedule to be Industry Standard Cadence as Directed by RNR Construction Personnel.
3. The person signing this agreement acknowledges the drawings listed, schedule, and attached proposal copy. By signing, subcontractor acknowledges above scope items and pages 1-7 Inclusions.

1 Paint Services

\$124,450

Total Subcontract Amount:

\$124,450

Inclusions:

Per the Revised Proposal dated 10/06/2021

Project Schedule: Schedule to be Industry Standard Cadence as Directed by RNR Personnel

Per Plans: DATED: 5/22/2019, 8/22/2019, 9/16/2019, 9/26/2019, 7/26/2021

A1.2, A1.3, A1.4, A1.5, A1.6, A2.1, A120, A120.2, A130, A140, A202

Exclusions:

Per the Revised Proposal dated 10/06/2021

Paint Design LLC

Date

RNR Construction, LLC

ELECTRONICALLY FILED 2023 OCT 05 5:26 PM AMHORY-COMMONPLEAS CASE#2023SCRP2000533

SUBCONTRACT TERMS & CONDITIONS
(please initial each page & sign on the last page)

This Subcontract is subject to and wholly governed by the terms and conditions indicated below:

1. The Subcontractor shall perform all work in accordance with the current drawings, specifications and any other documents indicated on Page 1 of this document and these Terms and Conditions (collectively referred to as "Contract Documents"). In the event that no contract documents are set forth, the work is to be performed in accordance with these terms and conditions and in a first class, workmanlike manner, consistent with the construction practices prevailing in the area of the project.
 - 1.1 Notwithstanding anything to the contrary in this Agreement, the provisions of the contract documents are intended to define, but not limit the Work to be performed. The tasks, drawings and specifications included in the Agreement are scope documents, which do not necessarily indicate or describe all of the work required for the complete and full performance of the Work. If a conflict occurs between Project documents and field conditions, the more onerous takes precedence. Where there is ambiguity, the Contract Documents shall take precedence and the more onerous shall take precedence. 1.2 It shall be the responsibility of the Subcontractor, prior to the commencement of its work to verify with R and R Construction Project Manager that its field personnel are in possession of the most current Contract Documents.
2. With respect to the Work to be performed and furnished by the Subcontractor hereunder, the Subcontractor agrees to be bound to R and R Construction, Inc. d/b/a R and R Construction (hereinafter "R and R Construction" or "Contractor" or "R and R Construction") by each and all of the terms and provisions of the General Contract between Owner and R and R Construction and the other contract documents, and to assume toward Contractor all of the duties, obligations and responsibilities that Contractor by those contract documents assumes toward the Owner, and the Subcontractor agrees further that Contractor shall have the same rights and remedies as against the Subcontractor as the Owner under the terms and provisions of the General Contract and the other contract documents has against Contractor with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. The terms and provisions of this Agreement with respect to the Work to be performed and furnished by the Subcontractor hereunder are intended to be and shall be in addition to and not in substitution for any of the terms and provisions of the General Contract and the other contract documents. This Subcontract Agreement, the provisions of the General Contract and the other contract documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If, however, any provision of this Subcontract Agreement irreconcilably conflicts with a provision of the General Contract and the other contract documents, the provision imposing the greater duty or obligation on the Subcontractor shall govern.
3. The Subcontractor will furnish all labor, materials, supervision and items required for the proper and complete performance of the work and in compliance in every request with (I) all applicable local, federal and state laws, codes and ordinance, and (II) the regulations of the building in which the work is to be performed.
4. The Subcontractor shall perform the work in a prompt and diligent manner and in accordance with schedules given from time-to-time to Subcontractor. In the event the Subcontractor fails to maintain the schedule, regardless of scope expansion, the Subcontractor, without additional compensation, shall be responsible for all overtime as R and R Construction may direct until the Subcontractor is in compliance with such schedule.
5. The Subcontract amount contained herein shall be inclusive of all material, labor, applicable sales tax, supervision, insurance delivery, overhead and profit.
6. Payments of the Subcontract amount, including final payment shall be subject to the following: (I) R and R Construction payment requisition procedures, (II) Approval of the work by R and R Construction, (III) Receipt by R and R Construction of satisfactory evidence that all labor, including customary fringe payments and payments due under collective bargaining agreements, and all sub-subcontractors and suppliers have been paid to date and have submitted waivers of lien to the extent paid, (IV) Receipt of payment from the owner, (V) Compliance by Subcontractor with all other Contract Documents, and (VI) Completion of all punch list items.
7. No payments to Subcontractor will be processed until the following materials are provided to R and R Construction: (1) signed Subcontract; (2) Certificate of Insurance; (3) Copy of Permit (when applicable); (4) proof of procurement and delivery of materials and proof that Subcontractor has paid for these materials; and (5) Lien Waiver for Subcontractor and all Sub-Subcontractors and material suppliers.
8. Subcontractor must provide proof of procurement and delivery of materials prior to mobilization (when applicable).
9. Receipt of payment for Subcontractors work from Owner by R and R Construction shall be a condition precedent to the right of the Subcontractor to receive payment from R and R Construction. The Subcontract

SUBCONTRACT TERMS & CONDITIONS

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hereby acknowledges that it relies on the payment from the Owner to R and R Construction for payment of its work.

10. R and R Construction may withhold payment because of (I) defective work not remedied, (II) claims filed, or reasonable evidence or probable filing of claims by third parties, (III) failure of Subcontractor to make payment properly to Sub-subcontractors and/or Suppliers, (IV) reasonable evidence the work cannot be completed for the unpaid balance of the Subcontract amount, (V) failure to maintain the schedule, (VI) persistent failure by Subcontractor to carry out the work in accordance with the Contract Documents, (VII) offsets or back charges arising out of any other Subcontract or Purchase Order Issued by R and R Construction to Subcontractor, or (VIII) any other conduct by Subcontractor which interferes with R and R Construction or its subcontractors ability to proceed and/or complete the Project.
11. The Subcontractor shall be liable for any damages incurred by R and R Construction as a consequence of the failure by Subcontractor to comply with this Subcontract, including R and R Construction' attorney's fees and costs.
12. The Subcontractor shall furnish all shop drawings and submittals necessary for the performance of the work.
13. Insurance and Indemnification.
The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:
 - 1) Commercial General Liability (CGL) coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
 - a) If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
 - b) CGL coverage shall be written on ISO Occurrence form CG 00 01 1093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
 - c) Contractor, Owner and all other parties who Contractor is required to name as additional insureds by any contract, shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG 20 10 11 85 or an endorsement providing equivalent or broader coverage to the additional insureds. The coverage provided to the additional insureds under the policy issued to the Subcontractor shall be at least as broad as the coverage provided to the Subcontractor under the policy. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insureds.
 - d) Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work.
 - e) CGL coverage shall not have a Residential Exclusion.
 - f) R and R Construction, Inc. and the Owner of the property need be named as additional insured on your COI.
 - 2) Automobile Liability
 - a) Business Auto Liability with limits of at least \$1,000,000 each accident.
 - b) Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
 - c) General Contractor, Owner and all other parties required of the General Contractor, shall be included as insureds on the auto policy.
 - 3) Commercial Umbrella
 - a) Umbrella limits must be at least \$5,000,000.
 - b) Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.
 - c) Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Subcontractor.
 - 4) Workers Compensation and Employers Liability
 - a) Employers Liability Insurance limits of at least \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for injury by disease.

SUBCONTRACT TERMS & CONDITIONS

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- b) Where applicable, U.S. Longshore and Harbor Workers Compensation Act Endorsement shall be attached to the policy.
- c) Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.
- 5) The subcontractor shall not sublet any part of his work without assuming full responsibility for requiring similar insurance from his subcontractors and shall submit satisfactory evidence to that effect to the Contractor. Each such insurance policy, except the Worker's Compensation Policy, shall include the Owner and the Contractor as an additional insured.

Waiver of Subrogation

Subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or worker's compensation and employers' liability insurance maintained per requirements stated above.

Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement and a copy of the applicable Other Insurance clause that is part of the Subcontractor's Commercial General Liability Policy. These certificates and the insurance policies required shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Contractor. A copy of the entire Commercial General Liability policy shall be submitted to the Contractor when requested.

PLEASE FORWARD THE ENDORSEMENT PAGE FROM YOUR POLICY INCLUDING THE ADDITIONAL INSURED ENDORSEMENT

Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy. These certificates and the insurance policies required shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor.

Section II- Indemnification:

To the fullest extent permitted by law, the Subcontractor agrees to defend, indemnify and hold harmless the Contractor, the owner, and any other party whom the Contractor has agreed to defend, indemnify and hold harmless, as well as each of their officers, directors, partners, agents, servants, employees, successors and assigns ("Indemnitees") from and against any and all claims, damages, losses, costs and expenses of any kind, including but not limited to attorney's fees, incurred by reason of any liability for damage because of bodily injury, including death resulting from such injuries, or property damage to real and personal property of any kind whatsoever, sustained by any person or persons, whether employees of the Subcontractor or otherwise, resulting from, arising out of or occurring in connection with the performance of the work provided for in this contract, together with any change orders or additions to the work included in the contract.

The Subcontractor agrees that the obligation to defend, indemnify and hold harmless, as described above, specifically includes the obligation to defend, indemnify and hold harmless the Indemnitees for the Indemnitees' own negligence or fault, excepting from the foregoing the sole negligence or fault of any Indemnitee if prohibited by law.

The Subcontractor agrees that the obligation to defend commences when a claim is made against an Indemnitee, even if the Subcontractor disputes its obligation to indemnify and hold harmless. The defense shall be provided through counsel chosen by the Indemnitee, and the Subcontractor agrees to pay for the defense of the Indemnitee upon demand.

The obligation to defend, indemnify and hold harmless, as described above, survives completion or acceptance of the work. This indemnification clause supersedes any other indemnification clause in the contract documents, including those that are incorporated by reference, that conflict with it in any way. Subcontractor also agrees to

SUBCONTRACT TERMS & CONDITIONS

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contractually bind its subcontractors (if any) to defend, indemnify and hold harmless the Indemnitees to the same extent as the Subcontractor is obligated. This Indemnification clause, irrespective of any other choice of law provision, shall be interpreted according to New Jersey law.

14. The retainage (the "Retainage") shall be the aggregate of the following amounts withheld from each progress payment to the Contractor: an amount equal to ten percent (10.00%) of the value of the Work performed and included in each Requisition to R and R Construction until the final completion of all the Work. The Retainage will be disbursed to Subcontractor upon the satisfactory final completion of the Work, including all Punch List work, if any, as reasonably determined by R and R Construction and/or Owner provided, that: (a) no default is threatened or has occurred and is continuing under the Contract, and (b) Subcontractor executes and delivers all close out documentation required by R and R Construction including, but not limited to, final lien waivers and releases and other documentation required by this Contract. The close out documentation, including the final lien waiver, must be proved to R and R Construction when Subcontract has been paid to 90% of Subcontractor's contract in order to allow R and R Construction to obtain retainage funds to be paid to Subcontractor. R and R Construction shall withhold Retainage from all payments due Subcontractor in the same percentage as Owner withholds from R and R Construction. Subcontractor will be deemed to be paid in full for the Work upon the release of the Retainage.
15. Subcontractor is prohibited from assigning and/or subcontracting any portion of Subcontractor's Work or labor necessary to perform Subcontractor's Work without obtaining written approval from R and R Construction. Should it be discovered that Subcontractor has assigned and/or subcontracted any portion of Subcontractor's work or labor necessary to perform its work without written approval from R and R Construction, Subcontractor will not be entitled to any further payment from R and R Construction. Likewise, Subcontractor may not assign its rights to receive payments from R and R Construction without obtaining written approval from R and R Construction.
16. R and R Construction may, from time to time, whether the Work or any part thereof shall or shall not have been completed, to make changes, additions and/or omissions in the Work as it may deem necessary, upon written order to the Subcontractor. Within three days from the date the Subcontractor becomes aware of a potential Change Order and/or is requested by R and R Construction to provide a change order proposal, Subcontractor must provide a the proposal and provide proper back-up to support the change order proposal. If an appropriate change order is not provided by the Subcontractor within the three-day time period mentioned in the prior sentence, R and R Construction reserves the right to price the work themselves and the Subcontractor is obligated to perform the work at the price determined by R and R Construction. The value of the work to be changed, added or omitted shall be stated in said written order and shall be added to or deducted from the Price. Subcontractor shall not be entitled to any payment from R and R Construction if it proceeds with any changes to Subcontractor's work prior to receiving a change order prepared by R and R Construction and signed by R and R Construction. If R and R Construction and Subcontractor cannot agree upon the cost of any change order work, R and R Construction may issue a change order directive and Subcontractor shall be obligated to proceed with the changed work with the understanding that the amount of the change order will be determined in accordance with the dispute resolution procedures set forth in the Contract. Subcontract agrees that R and R Construction's Project Site Superintendent signing work tickets in the field is NOT authorization for change order work. The Subcontractor further agrees that R and R Construction's Site Superintendents are not authorized to approve additional work. Only R and R Construction's Project Managers can approve change order work and approval from R and R Construction's Project Manager must be in a signed written change order from and must be signed before any change order work begins.
17. The Subcontractor shall, at its own cost and expense, (1) keep the Premises free at all times from all waste materials, packaging materials and other rubbish accumulated in connection with the execution of its Work by collecting and depositing said materials and rubbish in locations or containers as designated by Contractor from which it shall be removed by Contractor from the Premises without charge, (2) clean and remove from its own Work and from all contiguous work of others any soiling, staining, mortar, plaster, concrete or dirt caused by the execution of its Work and make good all defects resulting therefrom (3) at the completion of its Work in each area, perform such cleaning as may be required to leave the area "broom clean", and (4) at the entire completion of its Work, remove all of its tools, equipment, scaffolds, shanties and surplus materials. Should the Subcontractor fail to perform any of the foregoing to Contractor's satisfaction, Contractor shall have the right to perform and complete such work itself or through others and charge the cost thereof to the Subcontractor.

SUBCONTRACT TERMS & CONDITIONS

(please initial each page & sign on the last page)

18. The Subcontractor agrees to indemnify, protect and save harmless Contractor and the Owner from and against any and all construction liens and claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including legal fees and disbursements, which Contractor and/or the Owner may sustain or incur in connection therewith as a result of any construction liens.
19. Should the Subcontractor at any time, whether before or after final payment or completion of the Work, refuse or neglect to supply a sufficiency of skilled workers or materials of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any act or omission the stoppage, impede, obstruct, hinder or delay of or interference with or damage to the work of Contractor or of any other contractors or subcontractors on the Project, or fail in the performance of any of the terms and provisions of this Agreement or of the other Contract Documents, or should the Architect, Contractor, Owner or any of its design consultants, determine that the Work or any portion thereof is not being performed in accordance with the Contract Documents, or should there be filed by or against the Subcontractor a petition in bankruptcy or for an arrangement or reorganization, or should the Subcontractor become insolvent or be adjudicated a bankrupt or go into liquidation or dissolution, either voluntarily or involuntarily or under a court order, or make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency, then in any of such events, each of which shall constitute a default hereunder on the Subcontractor's part, Contractor shall have the right, in addition to any other rights and remedies provided by this Agreement and the other Contract Documents or by law, at one time or in phases at Contractor's discretion, after three (3) days written notice to the Subcontractor mailed or delivered to the last known address of the latter, (a) to perform and furnish through itself or through others any such labor or materials for all or any portion of the Work and to deduct the cost thereof from any monies due or to become due to the Subcontractor under this Agreement, (b) to terminate the employment of the Subcontractor for all or any portion of the Work, and/or (c) enter upon the premises and take possession, for the purpose of completing all or any portion of the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon as Contractor may select, all of which the Subcontractor hereby authorizes Contractor to employ and/or communicate with any person or persons in connection with the completion of the Work and/or to provide all the labor, services, materials, equipment and other items required therefor. In case of Contractor taking action under this Article, including termination of the employment of the Subcontractor, the Subcontractor shall not be entitled to receive any further payment under this Agreement until the Work shall be wholly completed to the satisfaction of Contractor, Owner and the Architect and shall have been accepted by them, at which time, if the unpaid balance of the amount to be paid under this Agreement shall exceed the cost and expense incurred by Contractor in completing the Work, such excess shall be paid by Contractor to the Subcontractor; but if such cost and expense shall exceed such unpaid balance, then the Subcontractor and its surety, if any, shall pay the difference to Contractor. Such cost and expense shall include, not only the cost of completing the Work to the satisfaction of Contractor and the Architect and of performing and furnishing all labor, services, materials, equipment, and other items required therefore, but also all losses, damages, costs and expenses, (including legal fees and disbursements incurred in connection with procurement, in defending claims arising from such default and in seeking recovery of all such cost and expense from the Subcontractor and/or its surety), and disbursements sustained, incurred or suffered by reason of or resulting from the Subcontractor's default. Should Contractor take action by effectuating the provisions of this paragraph, and should it subsequently be determined that such action, including a termination effectuated by the terms of this Article, was improper, such termination shall be treated as a termination for convenience. Subcontractor hereby transfers and assigns to Contractor the all rights under agreements that Subcontractor may have with subcontractors to Subcontractor, suppliers and vendors in connection with the Work or the Project, which transfers and assignments may be accepted at Contractor's sole discretion in the event that Contractor has taken action under this Article. Subcontractor agrees to fully cooperate with Contractor in pursuing Contractor's rights hereunder and that Contractor shall not be required to defer or delay action taken pursuant to this Article during the pendency of any review, investigation, evaluation or assessment by Subcontractor or its surety.
20. The Subcontractor agrees that it shall not be entitled to nor claim any cost reimbursement, compensation or damages for any consequential damages, delay, obstruction, hindrance or interference to the Work except to the limited extent that Contractor has actually recovered corresponding cost reimbursement, compensation or damages from the Owner under the Contract Documents for such delay, obstruction, hindrance or interference, and then only to the extent of the amount, if any, which Contractor on behalf of the Subcontractor, actually received from the Owner on account of such delay, obstruction, hindrance or interference. Notwithstanding any term or provision herein to the contrary, Subcontractor expressly waives and releases all claims or rights to recover lost profit (except for profit on work actually performed), recovery of overhead (including home office

SUBCONTRACT TERMS & CONDITIONS

(please initial each page & sign on the last page)

overhead), and any other indirect damages, costs or expenses in any way arising out of or related to the Agreement, including the breach thereof by Contractor, delays, charges, acceleration, loss of efficiency or productivity disruptions and interferences with the performance of the work.

21. The Agreement and all claims arising therefrom shall be governed by the laws of the state where the Project Site is located, without reference to its conflict of law's provisions.
22. If not resolved by negotiation between the parties, any claim, dispute or other matter in question ("Claim") between R and R Construction and Subcontractor shall be resolved by submission to either a federal or state court of competent jurisdiction and located in the State of New Jersey, wherein exclusive jurisdiction and venue shall lie, unless the Owner is a party to the action and in that case R and R Construction shall have the option to have its dispute with the Subcontractor decided as per the dispute resolution provision in R and R Construction's agreement with the Owner. For purposes of this provision, both R and R Construction and Subcontractor irrevocably submit to the personal jurisdiction of any such court and agree that any Claim arising hereunder may be brought therein and without regard to any forum non convenienc or similar considerations. Both parties also hereby waive their right to a trial by jury in the event of any litigation between the parties.
23. The Subcontractor hereby guarantees the Work to the full extent provided in the Plans, Specifications, General Conditions, Special Conditions and other Contract Documents. The Subcontractor shall expeditiously remove, replace and/or repair at its own expense and at the convenience of the Owner any faulty, defective or improper Work, materials or equipment existing or discovered within one (1) year from the date of the acceptance of the Project as a whole by the Architect and the Owner or for such longer period as may be provided in the Plans, Specifications, General Conditions, Special Conditions or other Contract Documents. Without limiting the generality of the foregoing, the Subcontractor warrants to the Owner, the Architect and Contractor, and each of them, that all materials and equipment furnished under this Agreement will be of first-class quality and new, unless otherwise required or permitted by the other Contract Documents, that the Work performed pursuant to this Agreement will be free from defects and that the Work will strictly conform with the requirements of the Contract Documents. Work not conforming to such requirements, including substitutions not properly approved and authorized, shall be considered defective. All warranties contained in this Agreement and in the Contract Documents shall be in addition to and not in limitation of all other warranties or remedies required and/or arising pursuant to applicable law. Failure of Subcontractor to honor and satisfy the foregoing within five (5) days after being provided notice from R and R Construction and any other warranties or guarantees required of the Subcontractor under the Contract Documents, shall constitute a default by Subcontractor. In the event any work needs to be corrected or replaced by the Subcontractor during the warranty period, the warranty period shall be extended for one year from the date of repair or replacement by Subcontractor.

Agreed to:

Signature

Date

Name

Title

EXHIBIT B

HOWELL V. BELLAMY, JR.
EDWARD B. BOWERS, JR.*
M. EDWIN HINDS, JR.
DAVID B. MILLER†
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
MARTIN C. DAWSEY*
ROBERT S. SHELTON*
HOWELL V. BELLAMY, III
GEORGE W. REDMAN, III* ** ††
BENJAMIN A. BAROODY* **

* LLMTAXATION
** LICENSED IN SC & NC
† CERTIFIED MEDIATOR
†† CERTIFIED ARBITRATOR



THE BELLAMY LAW FIRM

OFFICES IN MYRTLE BEACH & PAWLEYS ISLAND

WWW.BELLAMYLAW.COM

PHILLIP H. ALBERGOTTI* **
HAYES K. STANTON* **
KARA J. KEITH**
HOLLY M. LUSK
LAUREN DREARLEY BENTON
JON CRAIG HOWELL, JR.
ZACHARY J. CROWL**
BRICE A. BERTSCHIN
ALLIE BARKHILLER

RETIRED:
JOHN K. RUTENBERG (1939-2012)
JOHN E. COPELAND
CLAUDE M. EPTS, JR.
DAVID R. GRAVELY
JILL F. GRIFFITH
BRADLEY D. KING

1000 29TH AVENUE NORTH • P.O. BOX 357 • MYRTLE BEACH, SC 29578
TELEPHONE (843) 448-2400 • FACSIMILE (843) 448-3022

Writer's Direct Dial: 843-916-7168
Email: DMiller@BellamyLaw.com

June 23, 2022

NOTICE

Via Electronic Mail

Sherine.Marder@zmlaw.com

Sherine Marder, Esq.
Greenspoon Marder LLP
201 E. Pine St., Ste. 500
Orlando, FL 32801

Re: Our Client: Paint Design, LLC
Project: Westgate, Myrtle Beach, SC / RNR Construction, LLC

Dear Sherine:

I hope this letter finds you well. Westgate has advised our client to have counsel contact you regarding the monies owed to them.

This Notice is given pursuant to S.C. Code Ann. Section 29-5-40 in order to protect the payment status of Paint Design, LLC. As I have been provided your name by Westgate, I am forwarding this Notice to you. If you prefer that I forward it directly to Westgate as Owner, please advise immediately.

Paint Design, LLC is owed \$76,900.00 upon its total subcontract amount of \$126,900.00. As such, Paint Design, LLC is requiring that no further payments be made to RNR Construction, LLC without appropriate protections (direct payment, joint check issued first to us, etc.) being taken.

ELECTRONICALLY FILED 2022 JUN 23 PM 4:00 RNR CONSTRUCTION, LLC CASE# 2022CP2600053

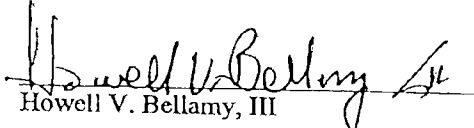
June 23, 2022
Page 2

I look forward to speaking with you as regards resolution of this matter.

Should you have any questions or comments, do not hesitate to give me a call.

Very truly yours,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.


Howell V. Bellamy, III

HVBIII/mec

cc: Thomas Hall

ELECTRONICALLY FILED - 2023 Oct 05 5:26 PM HOBRY - COMMON PLEAS - CASE#2023CP2600053
ELECTRONICALLY FILED - 2023 May 22 3:27 AM HOBRY - COMMON PLEAS - CASE#2023CP2600053

EXHIBIT C

Westgate Resorts, Ltd.

Project Start Date Sep-21

Notice to Owner/Lien Summary

Estimated Completion Date Apr-22

Date:

Subcontractor	Description of Work Performed	Contract Award	RNR Pays	Subcontractor Payments Received	Subcontractor Owed	Lien Amount	Lien File Date
Palmetto Door Solutions	Provide and install hotel room doors, hinges and latches	\$55,083.16	\$47,025.00	\$27,541.58	\$27,541.58	\$27,541.58	5/10/2022
PMH Architecture	Provide construction drawings & documentation for permits	\$41,600.00	\$0.00	\$0.00	\$41,600.00		
Trinity Contract Flooring	Install flooring, baseboard and floor protection	\$52,702.00	\$45,060.21	\$26,857.95	\$25,844.05		
Grand Stand Marble	Provide quartz countertop	\$6,599.88	\$3,300.00	\$3,300.00	\$3,299.88		
Premiere Communications	Provide Communications install in the Hotel Rooms	\$9,725.74	\$8,314.88	\$0.00	\$9,725.74		
AG&M Active Glass	Glazing/Glass	\$56,094.00	\$47,960.37	\$0.00	\$56,094.00	\$56,094.00	5/31/2022
Billy's Plumbing	Plumbing	\$61,500.00	\$52,582.50	\$0.00	\$61,500.00		
Coastal Surface Solutions	Reglazing Bathtub	\$15,737.00	\$12,850.65	\$0.00	\$15,737.00		
Paint Design	Painting	\$126,900.00	\$106,404.75	\$40,000.00	\$86,900.00		
The Door Guy	Doors	\$16,375.00	\$14,163.08	\$0.00	\$16,375.00		
United Electric	Electrical	\$130,891.00	\$111,911.81	\$37,094.27	\$93,796.73		
L & W Supply	Materials	\$19,664.81	\$19,664.81	\$19,664.81	\$0.00		
		\$592,872.59	\$469,238.06	\$154,458.61	\$438,413.98		
	Cost to fix things remaining and punch items				\$80,000.00		
					\$518,413.98		
	Retainage being Held				\$99,115.09		
	Balance of Contract Work not received from RNR				\$25,754.29		
					\$313,544.60		

EXHIBIT C-1

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PAINT DESIGN, LLC)

Plaintiff,)

vs.)

WESTGATE MYRTLE BEACH, LLC)
a/k/a WESTGATE RESORTS, LTD.)
and RNR CONSTRUCTION, LLC)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

NOTICE AND CERTIFICATION OF
MECHANIC'S LIEN

TO: THE LIENEE/DEFENDANTS ABOVE-NAMED

NOTICE IS HEREBY GIVEN that Plaintiff, Paint Design, LLC, is due the sum of Seventy-Six Thousand Nine Hundred and no/100 (\$76,900.00) Dollars from the above Defendants, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd., and RNR Construction, for the cost of labor, materials, equipment and/or other services performed on behalf of the premises described being attached and incorporated by reference as Exhibit "A".

That said debt is due to Paint Design, LLC for labor, materials, equipment and/or other services performed or furnished and actually used in the improvements made to or on the real estate hereinafter described.

That Paint Design, LLC was hired by the Defendant, RNR Construction, LLC to furnish labor, materials, equipment and/or other services to the property located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina, owned by the Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.

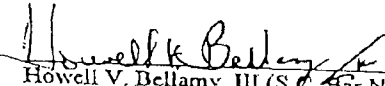
That as shown on the attached Affidavit for Certificate and Statement of Account, the undersigned does hereby certify that labor, materials, equipment and/or other services for improvements have been furnished, used and/or delivered within ninety (90) days of the date hereof.

That Paint Design, LLC has hereby claimed a lien to secure payment of the debt that is due and the cost of enforcing said lien upon the real property and that this Notice of Certification is

Lien BK: 284 PG: 1383 Doctype: 015 07/08/2022 at 02:47:15 PM, 2 OF 6
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of
Deeds

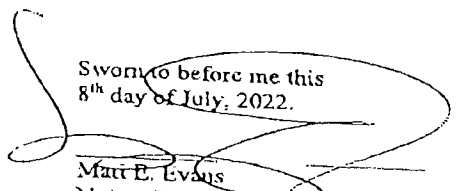
verified as being true and correct by the attached Statement of Account, more fully described in
the Exhibit "B" attached hereto and incorporated by reference.

BELLAMY, RUTENBERG, COPELAND,
EPFS, GRAVELY & BOWERS, P.A.
Attorneys for Lienor


Howell V. Bellamy, III (S.C. Bar No. (66575))
1000 29th Avenue North
P.O. Box 357
Myrtle Beach, SC 29578-0357
(843) 448-2400
(843) 448-3022 (Facsimile)
hbellamyiii@bellamylaw.com

July 8, 2022

Sworn to before me this
8th day of July, 2022.


Matt E. Evans
Notary Public for South Carolina
My Commission Expires: 11/10/2030

ELECTRONICALLY FILED - 2023 OCT 05 5:26 PM - Horry County - COMMON PLEAS - CASE#2023CP2600053

"EXHIBIT A"

Block 18 of Yaupon Circle Section, Myrtle Beach South Carolina, containing 6.08 acres
or 265,043 square feet of land.

Beginning at an iron pipe, labeled point of beginning (P.O.B.) at the intersection of the
Eastern Right-of-Way of 6th Avenue South and the Southern Right-of-Way of South Ocean
Boulevard and running along the Right-of-Way of South Ocean Boulevard around a curve
to the right with an arc distance of 125.00 feet, a radius of 1579.53 feet and a chord of N
57°47'31" E, 125.00 feet to an "X" mark in the concrete thence continuing along the same
Right-of-Way N 61°15'58" E for a distance of 295.24 feet to an iron pipe, thence N
61°15'58" E for a distance of 265.63 feet to an iron pipe, thence turning and running along
Withers Swash Canal S 32°45'46" E for a distance of 207.92 feet to a computed point at
the Atlantic Ocean, thence turning and running along the Atlantic Ocean S 15°41'21" W
for a distance of 254.35 feet to a computed point, thence S 34°11'36" W for a distance of
195.22 feet to a computed point at the Eastern Right-of-Way of 6th Avenue South N
43°42'03" W for a distance of 558.74 feet to an iron pipe at the point of beginning.

This being the same property conveyed to Westgate Myrtle Beach, LLC by Deed of MB
Inn, Inc., dated December 2, 2004, and recorded in the Office of the Register of Deeds for
Horry County on December 9, 2004.

TMS #: 181-14-02-010

415 South Ocean Boulevard, Myrtle Beach, South Carolina

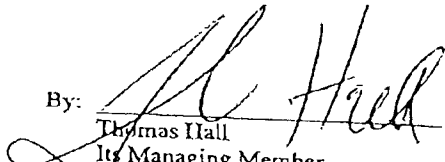
"EXHIBIT B"

VERIFIED STATEMENT OF ACCOUNT

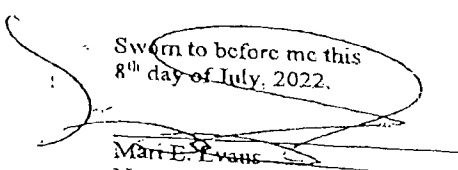
PERSONALLY appeared before me, Thomas Hall, who first being duly sworn and
deposed, states that the foregoing Total Amount Due and Owing is a true and correct statement of
the outstanding account for labor, materials, equipment and/or other services supplied for the
improvement of real estate owned by Westgate Myrtle Beach, LLC.

Total Contract Price	\$126,900.00
Credits or Payments Received:	(<u>50,000.00</u>)
Total Amount Due:	<u>\$ 76,900.00</u>

PAINT DESIGN LLC
(Horry County Business License #122131)

By: 
Thomas Hall
Its Managing Member
License No: G122131

Sworn to before me this
8th day of July, 2022.


Mari E. Evans
Notary Public for South Carolina
My Commission Expires: 11/10/2030



STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PAINT DESIGN, LLC)

Plaintiff,)

vs.)

WESTGATE MYRTLE BEACH, LLC)
a/k/a WESTGATE RESORTS, LTD.)
and RNR CONSTRUCTION, LLC)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

AFFIDAVIT OF MECHANIC'S LIEN

PERSONALLY appeared before me, Thomas Hall, the undersigned, who being duly
sworn, deposes and says:

1. I am an authorized agent of Paint Design, LLC and I am familiar with the contract for labor, materials, equipment and/or other services furnished to RNR Construction, LLC, as general contractor, on the project for the Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.
2. Paint Design, LLC was hired by the Defendant, RNR Construction, LLC to furnish labor, materials, equipment and/or other services to the property located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina, owned by the Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.
3. I am familiar with the books and records of Plaintiff, Paint Design, LLC, as they relate to the labor, materials, equipment and/or other services furnished for the improvement of the above-referenced real estate.
4. Paint Design, LLC is owed Seventy-Six Thousand Nine Hundred and no/100 (\$76,900.00) Dollars, together with prejudgment interest, attorney's fees and costs.
5. Your affiant saith nothing further.

Sworn to before me this
8th day of July, 2022.

Mari E. Evans
Notary Public for South Carolina
My Commission Expires: 11/10/2030

Thomas Hall
License No: G122131

Lien BK: 284 PG: 1387 Doctype: 015 07/08/2022 at 02:47:15 PM, 6 OF 6
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of
Deeds

HORRY COUNTY REGISTER OF DEEDS
TRANSMITTAL SHEET

TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470, CONWAY,
SOUTH CAROLINA 29526

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Mechanics Lien

DATE OF INSTRUMENT:

DOCUMENT SHALL BE RETURNED TO:

NAME: Bellamy Law Firm

ADDRESS:

1000 29th Avenue North

Myrtle Beach, SC 29577

TELEPHONE: (843) 448-2400

FAX: (843) 448-2400

E-MAIL ADDRESS: bvaughn@bellamylaw.com

Related Document

(s):

PURCHASE PRICE / MORTGAGE AMOUNT: 5.

BRIEF PROPERTY DESCRIPTION: Block 18 of Yaupon Circle Section, Myrtle Beach, South Carolina, containing 6.08 acres or
265,043 square feet of land

TAX MAP NUMBER (TMS #) 181-14-02-010 / PIN NUMBER:

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. WESTGATE MYRTLE BEACH, LLC AKA WESTGATE RESORTS, LTD AND RNR CONSTRUCTION, LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. PAINT DESIGN, LLC

ELECTRONICALLY FILED 2023 MAY 5 2 36 PM Horry County Common Pleas Case #2023CP280053

EXHIBIT C-2

Lien BK: 284 PG: 1678 Doctype: 015 07/19/2022 at 03:38:36 PM, 1 OF 7
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of Deeds

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
PAINT DESIGN, LLC	)	
Plaintiff,	)	
vs.	)	AMENDED NOTICE AND
WESTGATE MYRTLE BEACH, LLC	)	CERTIFICATION OF
a/k/a WESTGATE RESORTS, LTD.	)	MECHANIC'S LIEN
and RNR CONSTRUCTION, LLC	)	
Defendants.	)	

TO: THE LIENEE/DEFENDANTS ABOVE-NAMED

NOTICE IS HEREBY GIVEN that Plaintiff, Paint Design, LLC, is due the sum of Sixty-One Thousand Nine Hundred and no/100 (\$61,900.00) Dollars from the above Defendants, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd., and RNR Construction, for the cost of labor, materials, equipment and/or other services performed on behalf of the premises described being attached and incorporated by reference as Exhibit "A".

That said debt is due to Paint Design, LLC for labor, materials, equipment and/or other services performed or furnished and actually used in the improvements made to or on the real estate hereinafter described.

That Paint Design, LLC was hired by the Defendant, RNR Construction, LLC to furnish labor, materials, equipment and/or other services to the property located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina, owned by the Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.

That as shown on the attached Affidavit for Certificate and Statement of Account, the undersigned does hereby certify that labor, materials, equipment and/or other services for improvements have been furnished, used and/or delivered within ninety (90) days of the date hereof.

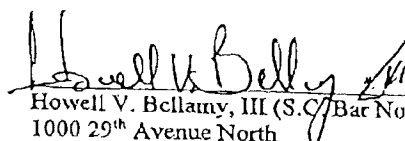
That Paint Design, LLC has hereby claimed a lien to secure payment of the debt that is due and the cost of enforcing said lien upon the real property and that this Notice of Certification is

Lien BK: 284 PG: 1679 Doctype: 015 07/19/2022 at 03:38:36 PM, 2 OF 7
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of Deeds

verified as being true and correct by the attached Statement of Account, more fully described in the Exhibit "B" attached hereto and incorporated by reference.

That Thomas Hall, Managing Member of Paint Design, LLC, is authorized to perform work as a specialty subcontractor in the following classifications: painter/wall paper, License No: G122131, Registration No: 34548.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
Attorneys for Licnor


Howell V. Bellamy, III (S.C. Bar No. (66575))
1000 29th Avenue North
P.O. Box 357
Myrtle Beach, SC 29578-0357
(843) 448-2400
(843) 448-3022 (Facsimile)
hbellamyiii@bellamylaw.com

July 14, 2022

Sworn to before me this
14th day of July, 2022.

Mari E. Evans
Notary Public for South Carolina
My Commission Expires: 11/10/2030



"EXHIBIT A"

Block 18 of Yaupon Circle Section, Myrtle Beach South Carolina, containing 6.08 acres
or 265,043 square feet of land.

Beginning at an iron pipe, labeled point of beginning (P.O.B.) at the intersection of the
Eastern Right-of-Way of 6th Avenue South and the Southern Right-of-Way of South Ocean
Boulevard and running along the Right-of-Way of South Ocean Boulevard around a curve
to the right with an arc distance of 125.00 feet, a radius of 1579.53 feet and a chord of N
57°47'31" E, 125.00 feet to an "X" mark in the concrete thence continuing along the same
Right-of-Way N 61°15'58" E for a distance of 295.24 feet to an iron pipe, thence N
61°15'58" E for a distance of 265.63 feet to an iron pipe, thence turning and running along
Withers Swash Canal S 32°45'46" E for a distance of 207.92 feet to a computed point at
the Atlantic Ocean, thence turning and running along the Atlantic Ocean S15°41'21" W
for a distance of 254.35 feet to a computed point, thence S 34°11'36" W for a distance of
195.22 feet to a computed point at the Eastern Right-of-Way of 6th Avenue South N
43°42'03" W for a distance of 558.74 feet to an iron pipe at the point of beginning.

This being the same property conveyed to Westgate Myrtle Beach, LLC by Deed of MB
Inn, Inc., dated December 2, 2004, and recorded in the Office of the Register of Deeds for
Horry County on December 9, 2004.

TMS #: 181-14-02-010

415 South Ocean Boulevard, Myrtle Beach, South Carolina

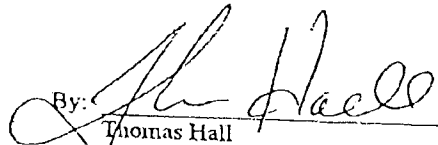
"EXHIBIT B"

AMENDED VERIFIED STATEMENT OF ACCOUNT

PERSONALLY appeared before me, Thomas Hall, who first being duly sworn and deposed, states that the foregoing Total Amount Due and Owing is a true and correct statement of the outstanding account for labor, materials, equipment and/or other services supplied for the improvement of real estate owned by Westgate Myrtle Beach, LLC.

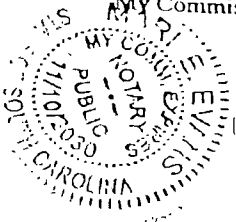
Total Contract Price	\$126,900.00
Credits or Payments Received:	<u>(\$65,000.00)</u>
Total Amount Due:	<u>\$ 61,900.00</u>

PAINT DESIGN LLC
(Horry County Business License #122131)

By: 
Thomas Hall
Its Managing Member
License No: G122131
Registration No: 34548

Sworn to before me this
14th day of July, 2022.

Mari E. Evans
Notary Public for South Carolina
My Commission Expires: 11/10/2030



STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PAINT DESIGN, LLC)

Plaintiff,)

vs.)

WESTGATE MYRTLE BEACH, LLC)
a/k/a WESTGATE RESORTS, LTD.)
and RNR CONSTRUCTION)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

AMENDED
AFFIDAVIT OF MECHANIC'S LIEN

PERSONALLY appeared before me, Thomas Hall, the undersigned, who being duly sworn, deposes and says:

1. I am an authorized agent of Paint Design, LLC and I am familiar with the contract for labor, materials, equipment and/or other services furnished to RNR Construction, LLC, as general contractor, on the project for the Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.

2. Paint Design, LLC was hired by the Defendant, RNR Construction, LLC to furnish labor, materials, equipment and/or other services to the property located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina, owned by the Defendant, Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.

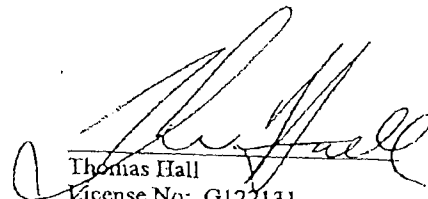
3. I am familiar with the books and records of Plaintiff, Paint Design, LLC, as they relate to the labor, materials, equipment and/or other services furnished for the improvement of the above-referenced real estate.

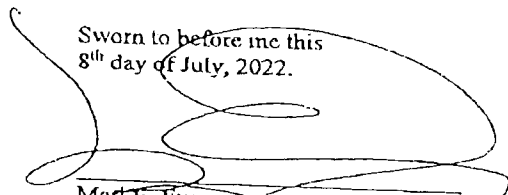
4. Paint Design, LLC is owed Sixty-One Thousand Nine Hundred and no/100 (\$61,900.00) Dollars, together with prejudgment interest, attorney's fees and costs.

5. I, Thomas Hall, Managing Member of Paint Design, LLC, am authorized to perform work as a specialty subcontractor in the following classifications: painter/wall paper. My business license information is attached hereto as Exhibit "I".

Lien BK: 284 PG: 1683 Doctype: 015 07/19/2022 at 03:38:36 PM, 6 OF 7
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of
Deeds

6. Your affiant saith nothing further.


Thomas Hall
License No: G122131
Registration No: 34548

Sworn to before me this
8th day of July, 2022.

Mari E. Evans
Notary Public for South Carolina
My Commission Expires: 11/10/2030



ELECTRONICALLY FILED 2023 07 19 05:26 PM Horry County Common Pleas Case #2023 CP 280053

Lien BK: 284 PG: 1684 Doctype: 015 07/19/2022 at 03:38:36 PM, 7 OF 7
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of
Deeds

HORRY COUNTY REGISTER OF DEEDS
TRANSMITTAL SHEET

TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470, CONWAY,
SOUTH CAROLINA 29526

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Mechanics Lien

DATE OF INSTRUMENT: .

DOCUMENT SHALL BE RETURNED TO:

NAME: Bellamy Law Firm

ADDRESS:
1000 29th Avenue North
Myrtle Beach, SC 29577

TELEPHONE: (843) 448-2400

FAX: (843) 448-2400

E-MAIL ADDRESS: bvaughn@bellamylaw.com

Related Document

(s):

PURCHASE PRICE / MORTGAGE AMOUNT: 5.

BRIEF PROPERTY DESCRIPTION: Block 18 of Yaupon Circle Section, Myrtle Beach South Carolina, containing 6.08 acres or
265,043 square feet of land.

TAX MAP NUMBER (TMS #) 181-14-02-010 / PIN NUMBER: .

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. WESTGATE MYRTLE BEACH, LLC AKA WESTGATE RESORTS, LTD. AND RNR CONSTRUCTION, LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. PAINT DESIGN, LLC

ELECTRONICALLY FILED 2023 OCT 05 5:26 PM AT HORRY COUNTY CLERK'S OFFICE CASE#2023CP2600053

EXHIBIT D

Greenspoon Marder LLP

Sherine Marder, Esq.
Capital Plaza I
201 East Pine Street, Suite 500
Orlando, Florida 32801-2718
Phone: 407.425.6559
Fax: 407.422.6583
Direct Phone: 954.527.6287
Direct Fax: 954.848.3969
Email: sherine.marder@gmlaw.com

June 21, 2022

VIA ELECTRONIC AND CERTIFIED MAIL:

RNR Construction LLC
c/o Theodore Vitale
1011 S. Hamilton Rd.
Chapel Hill, NC 27517
E-Mail: tmvitale@randrcons.com;
tedmvitale@gmail.com; tvitale@petore.com

and

97529 Franklin Ridge
Chapel Hill, NC 27517

and

c/o InCorp Services, Inc., Registered Agent
317 Ruth Vista Road
Lexington, SC 29073

Re: **Notice of Mechanic's Lien; Notice of Default and Demand to Cure**
Westgate Myrtle Beach / Our File No.: 00108.3766

Dear Mr. Vitale:

This office represents the interests of Westgate Resorts, Ltd., a Florida limited partnership, and its related and affiliated resort entities, including Westgate Myrtle Beach, LLC, a Florida limited liability company and developer of Westgate Myrtle Beach Ocean Front, a Timeshare Resort ("Westgate Myrtle Beach") (collectively, "Westgate"). It has come to our attention that RNR Construction LLC ("RNR") has failed to carry out and complete its work under the parties' fully-executed Contract for Construction dated October 25, 2021 bearing Contract # 640756 (the "Contract"). This work specifically includes payment RNR is required to make to subcontractors in accordance with its respective agreements with the subcontractors, as well as completion of the project on the Westgate Myrtle Beach property (the "Work"). Accordingly, this letter serves as Westgate's notice of default and demand under § 2.5 of the Contract that RNR cure its deficiency and carry out its Work.

Atlanta Boca Raton Chicago Denver Ft. Lauderdale Las Vegas Los Angeles Miami Naples
Newark New York Orlando Portland Scottsdale Tallahassee Tampa West Palm Beach

ELECTRONICALLY FILED 2023 JUN 22 5:26 PM HARRIS-COMMON PLEAS CASE#2023CP260053

RNR Construction LLC
 June 21, 2022
 Page No. 2

Disturbingly, Westgate has received numerous complaints from subcontractors regarding RNR's failure to pay, with payment demands now being made directly to Westgate. This has culminated in the filing of two (2) mechanic's lien on the Westgate Myrtle Beach property.¹ Copies of the mechanic's liens filed by Palmetto Door Solutions, LLC and Active Glass & Mirror are attached as Exhibits A and B, respectively. As you well know, RNR is required to pay all subcontractors for the work they provide no later than seven (7) days after receipt of payment from Westgate. See Contract at § 9.6.2. And although Westgate has long since paid RNR, RNR has inexplicably failed to remit the full and required payments to all the subcontractors who have provided work on the project. As of the date of this letter, Westgate has been made aware of *outstanding payments due and owing to eleven (11) subcontractors (the "Unpaid Subcontractors") totaling \$438,413.98*. A spreadsheet delineating these unpaid amounts owed to the Unpaid Subcontractors is attached as Exhibit C.

Demand is hereby made that RNR do the following to cure its deficiency:

1. Within seven (7) calendar days of your receipt of this letter, RNR must furnish Westgate with proof of payment for all amounts paid to date to all subcontractors, including the Unpaid Subcontractors;
2. Within ten (10) calendar days of your receipt of this letter, RNR must carry out its Work in completing the project on the Westgate Myrtle Beach property;²
3. Within ten (10) calendar days of your receipt of this letter, RNR must pay the Unpaid Subcontractors for all amounts due and owing to them totaling \$438,413.98; and
4. Within fourteen (14) calendar days of your receipt of this letter, RNR must furnish Westgate with proof of the additional payment made to the Unpaid Subcontractors.

Contact me as soon as possible to confirm that you will resolve this important matter in the time and manner outlined above. Should RNR fail to do all of the above in order to cure its default, Westgate will exercise any and all rights and remedies available at law, in equity, or by contract, including, but not limited to, the following: completing the Work and holding RNR liable for all related costs and expenses for such corrective work; filing a lawsuit against RNR in a court of competent jurisdiction in South Carolina; and filing a complaint against RNR with the Contractor's Licensing Board.

¹ This is the case, despite the fact that the Contract required, and RNR apparently failed, to obtain lien waivers from all subcontractors for progress payments – another basis for RNR's default under the Contract.

² In particular, and as indicated in the Exhibit B spreadsheet, there is a remaining balance of \$25,754.29 representing monies that Westgate paid to RNR for work toward the Westgate Myrtle Beach project that has not been completed.

RNR Construction LLC
June 21, 2022
Page No. 3

Nothing herein is intended to constitute a waiver of any right or remedy available to Westgate at law, in equity, or by contract. To the contrary, the same are expressly reserved and preserved.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Very truly yours,

GREENSPOON MARDER LLP



Sherine Marder, Esq.

Enclosures as stated.

cc: Client
Lauren Hodgins (lhodgin@randrcons.com)
Luanne Desiderio (ldesiderio@randrcons.com; ldesiderio@charter.net)

ELECTRONICALLY FILED 2023 JUN 21 5:26 PM AMERICAN COMMONS LEAS CASE#2023CP2600053

EXHIBIT A

Lien BK: 282 PG: 2954 Doctype: 015 05/10/2022 at 03:12:21 PM, 1 OF 5
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of Deeds

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Palmetto Door Solutions, LLC,

Plaintiff,

vs.

Westgate Myrtle Beach, LLC and RNR
Construction, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

NOTICE OF MECHANIC'S LIEN

YOU ARE HEREBY NOTIFIED THAT Palmetto Door Solutions, LLC, a South Carolina limited liability company, claims an interest by way of a Mechanic's Lien on that certain building, structure, and real property that is, upon information and belief, owned by the Defendant, Westgate Myrtle Beach, LLC. No Contractor's license is required because the Plaintiff does not perform labor but merely sells materials as a distributor. The interest claimed by the Plaintiff arises by way of supplying materials for improvements to the property located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina ("the "Property"). The Plaintiff was retained by the Defendant, RNR Construction, LLC, acting as general contractor on behalf of the Defendant, Westgate Myrtle Beach, LLC, to furnish materials for the improvement of the Property. The full price for the work performed to date is Fifty-Four Thousand Eighty-Nine and 08/100 (\$54,089.08) Dollars of which Twenty-Seven Thousand Five Hundred Forty-One and 58/100 (\$27,541.58) Dollars has been paid. Therefore the balance due to the Plaintiff is Twenty-Seven Thousand Two Hundred Sixty-Seven and 50/100 (\$27,267.50) Dollars. The approximate last date the Plaintiff performed work on said premises was February 16, 2022. The work performed was at the following described property, to-wit:

Block 18 of Yaupon Circle Section, Myrtle Beach, South Carolina, containing 6.08 acres or 265,043 square feet of land.

Lien BK: 202 PG: 2955 Doctype: 015 05/10/2022 at 03:12:21 PM, 2 OF 5
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of Deeds

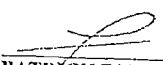
Beginning at an iron pipe, labeled point of beginning (P.O.B.), at the intersection of the Eastern Right-of-Way of 6th Avenue South and the Southern Right-of-Way of South Ocean Boulevard and running along the Right-of-Way of South Ocean Boulevard around a curve to the right with an arc distance of 125.00 feet, a radius of 1579.53 feet and a chord of N 57°47'31" E, 125.00 feet to an "X" mark in the concrete thence continuing along the same Right-of-Way N 61°25'24" E for a distance of 295.24 feet to an iron pipe, thence N 61°15'58" E for a distance of 265.63 feet to an iron pipe, thence turning and running along Withers Swash Canal S 32°45'46" E for a distance of 207.92 feet to a computed point at the Atlantic Ocean, thence turning and running along the Atlantic Ocean S 15°41'21" W for a distance of 254.35 feet to a computed point, thence S 42°40'38" W for a distance of 215.32 feet to a computed point, thence S 34°11'36" W for a distance of 195.22 feet to a computed point at the Eastern Right-of-Way of 6th Avenue South N 43°42'03" W for a distance of 558.74 feet to an iron pipe at the point of beginning.

This being the same property conveyed to Westgate Myrtle Beach, LLC by Deed of MB Inn, Inc., dated December 2, 2004, and recorded in the Office of the Register of Deeds for Horry County on December 9, 2004.

TMS# 181-14-02-010

415 South Ocean Boulevard, Myrtle Beach, South Carolina

Florence, SC
May 10, 2022


PATRICK FORD
S.C. Bar No.: 102521

Finklea, Hendrick & Blake, LLC
814 West Evans Street
Post Office Box 1317
Florence, SC 29503-1317
Phone: (843) 317-4900
Fax: (843) 317-4910
Email: pford@finkicalaw.com

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Palmetto Door Solutions, LLC,

Plaintiff,

vs.

Westgate Myrtle Beach, LLC and RNR
Construction, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

AFFIDAVIT OF MECHANIC'S LIEN

PERSONALLY appeared before me, Randy Vincent, the undersigned, who being duly sworn, deposes and says:

1. I am an authorized agent of Palmetto Door Solutions, LLC and I am familiar with the contract for materials furnished to RNR Construction, LLC, as general contractor, on the project for the Defendant, Westgate Myrtle Beach, LLC.
2. Palmetto Door Solutions, LLC was hired by the Defendant, RNR Construction, LLC to furnish materials to the property located at 415 South Ocean Boulevard, Myrtle Beach, South Carolina, owned by the Defendant, Westgate Myrtle Beach, LLC.
3. I am familiar with the books and records of Palmetto Door Solutions, LLC as they relate to the materials furnished for the improvement of the above referenced real estate.
4. Palmetto Door Solutions, LLC is owed Twenty-Seven Thousand Two Hundred Sixty-seven and 50/100 (\$27,267.50) Dollars, together with prejudgment interest, attorney's fees and the costs.
5. Your affiant saith nothing further.

SWORN TO AND SUBSCRIBED before
this 10th day of May, 2022

Chapin B. Grice

Notary Public for South Carolina

My Commission Expires: 07-08-2025

Printed Name: Chapin B. Grice

Randy Vincent

Randy Vincent

Lien BK: 262 PG: 2957 Doctype: 015 05/10/2022 at 03:12:21 PM, 4 OF 5
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of
Deeds

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Palmetto Door Solutions, LLC,

Plaintiff,

vs.

Westgate Myrtle Beach, LLC and RNR
Construction, LLC,

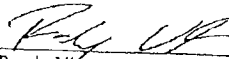
Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

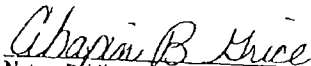
VERIFIED STATEMENT
OF ACCOUNT

Total Due for Labor and/or Materials furnished	\$54,089.08
Payment Received to date	<u>\$27,541.58</u>
Total Amount Due and Owing	\$27,267.50

PERSONALLY appeared before me, Randy Vincent, who first being duly sworn and
deposed, states that the foregoing Total Amount Due and Owing is a true and correct statement
of the outstanding account for labor and/or materials supplied for the improvement of real estate
owned by Westgate Myrtle Beach, LLC.


Randy Vincent

SWORN TO AND SUBSCRIBED before
this 10th day of May, 2022


Notary Public for South Carolina
My Commission Expires: 07-08-2025
Printed Name: Chapin B. Grice

Lien BK: 282 PG: 2958 Doctype: 015 05/10/2022 at 03:12:21 PM, 5 OF 5
ELECTRONICALLY RECORDED Marion D. Foxworth III, Horry County, SC Registrar of
Deeds

HORRY COUNTY REGISTER OF DEEDS
TRANSMITTAL SHEET

TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470, CONWAY,
SOUTH CAROLINA 29526

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Mechanics Lien

DATE OF INSTRUMENT:

DOCUMENT SHALL BE RETURNED TO:

NAME: FHR - Litigation

ADDRESS:
814 W Evans St
Florence, SC 29501-3440

TELEPHONE: (843) 317-4900

FAX: (843) 317-4900

E-MAIL ADDRESS: rdj@stone.com

Related Document

(s):

PURCHASE PRICE / MORTGAGE AMOUNT: \$.

BRIEF PROPERTY DESCRIPTION: Block 18 of Yaupon Circle Section, Myrtle Beach, South Carolina, containing 6.08 acres, or 265,041 square feet of land. Beginning at an iron pipe, labeled point of beginning (P.O.B.), at the intersection of the Eastern Right-of-Way of 6th Avenue South and the Southern Right-of-Way of South Ocean Boulevard and running along the Right-of-Way of South Ocean Boulevard around a curve to the right with an arc distance of 125.00 feet, a radius of 1579.51 feet and a chord of N 57°47'31" E, 125.00 feet to an "X" mark in the concrete, thence continuing along the same Right-of-Way N 61°25'24" E for a distance of 295.74 feet to an iron pipe, thence N 61°15'58" E for a distance of 265.61 feet to an iron pipe, thence turning and running along Withers Swash Canal S 32°45'46" E for a distance of 207.92 feet to a computed point at the Atlantic Ocean, thence turning and running along the Atlantic Ocean S 15°41'21" W for a distance of 254.35 feet to a computed point, thence S 42°40'38" W for a distance of 215.32 feet to a computed point, thence S 34°11'36" W for a distance of 195.72 feet to a computed point at the Eastern Right-of-Way of 6th Avenue South N 43°42'01" W for a distance of 558.74 feet to an iron pipe at the point of beginning. This being the same property conveyed to Westgate Myrtle Beach, LLC by Deed of MB Iron, Inc., dated December 2, 2004, and recorded in the Office of the Register of Deeds for Horry County on December 9, 2004.

TAX MAP NUMBER (TMS #) 181-14-02-010 / PIN NUMBER: .

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

FULL BUSINESS NAME

1. PALMETTO DOOR SOLUTIONS, LLC

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. WESTGATE MYRTLE BEACH, LLC

2. RNR CONSTRUCTION, LLC

EXHIBIT B

Recording requested by (name):

When recorded, mail to (name and address):

Lien BK: 283 PG: 163 Doctype: 015
05/31/2022 at 02:59:45 PM, 1 OF 2

Marion D. Foxworth III
Horry County, SC Registrar of Deeds

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MECHANIC'S LIEN

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

1. Active Glass & Mirror (the "Claimant"), located at 8040 Moss Creek Rd, Myrtle Beach, South Carolina 29588, claims a mechanics lien for the labor or services or equipment or materials described herein, furnished for a work of improvement on that certain real property located in the County of Horry, in the State of South Carolina. The complete address of the real property on which this mechanics lien is claimed is: 415 S Ocean Blvd # 2, Myrtle Beach, South Carolina 29577 (the "Property"). The permanent index identification number of the Property is: 505501. The legal description of the Property is:

Westgate Myrtle Beach Oceanfront Resort

2. The labor or services or equipment or materials were furnished by Claimant at the request of: RNR Construction, LLC, located at 1011 S Hamilton Rd, Chapel Hill, North Carolina 27517..

3. The owner of the Property is: Westgate Resorts LTD, located at 415 S Ocean Blvd # 2, Myrtle Beach, South Carolina 29577.

4. On 01/31/2022, the Claimant entered into a written contract to patio door & storefront replacement on said Property (the "Contract") for the original total sum of \$56,094.00, which became due and payable on 04/08/2022, the date of completion of the build and/or project services.

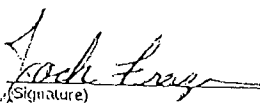
5. After deducting all just credits and offsets, the sum of \$56,094.00 is due to Claimant for the labor or services or equipment or materials provided.

Active Glass & Mirror
8040 Moss Creek Rd
Myrtle Beach South Carolina 29588

CONTRACTOR

Loc #

G205470


(Signature)

Jack Frazer
Contract sales Manager

5/31/2022
(Date)

NOTARY ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

)
) ss.
)

The Affiant, Active Glass & Mirror, being duly sworn, on oath deposes and says that s/he is the Claimant and that s/he has read the foregoing claim for the lien and knows the contents thereof, and that all statements therein contained are true and correct to the best of his/her belief and knowledge.

Subscribed and sworn to before me on May 31, 2022

Doris E. Duell
(Notary Printed Name)

My commission expires on:

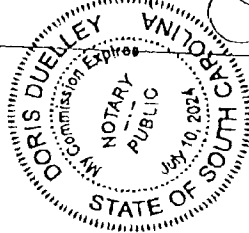


EXHIBIT C

Westgate Resorts, Ltd.
 Notice to Owner/Lien Summary
 Date: _____

Project Start Date Sep-21
 Estimated Completion Date Apr-22

Contractor	Description of Work performed	Contract Amount	Amount Paid	Subcontractor	Subcontractor Amount	Deferral Date
Palmetto Door Solutions	Provide and install hotel room doors , hinges and latches	\$55,083.16	\$47,025.00	\$27,541.58	\$27,541.58	5/10/2022
PMH Architecture	Provide construction drawings & documentation for permits	\$41,600.00	\$0.00	\$0.00	\$41,600.00	
Trinity Contract Flooring	Install flooring, baseboard and floor protection	\$52,702.00	\$45,060.21	\$26,857.95	\$25,844.05	
Grand Stand Marble	Provide quartz countertop	\$6,599.88	\$3,300.00	\$3,300.00	\$3,299.88	
Premiere Communications	Provide Communications install in the Hotel Rooms	\$9,725.74	\$8,314.88	\$0.00	\$9,725.74	
AG&M Active Glass	Glazing/Glass	\$56,094.00	\$47,960.37	\$0.00	\$56,094.00	5/31/2022
Billy's Plumbing	Plumbing	\$61,500.00	\$52,582.50	\$0.00	\$61,500.00	
Coastal Surface Solutions	Reglazing Bathub	\$15,737.00	\$12,850.65	\$0.00	\$15,737.00	
Paint Design	Painting	\$126,900.00	\$106,404.75	\$40,000.00	\$86,900.00	
The Door Guy	Doors	\$16,375.00	\$14,163.08	\$0.00	\$16,375.00	
United Electric	Electrical	\$130,891.00	\$111,911.81	\$37,094.27	\$93,796.73	
L & W Supply	Materials	\$19,664.81	\$19,664.81	\$19,664.81	\$0.00	
		\$592,872.59	\$469,238.06	\$154,458.61	\$438,413.98	
	Cost to fix things remaining and punch items				\$80,000.00	
					\$518,413.98	
	Retainage being Held				\$99,115.09	
	Balance of Contract Work not received from RNR				\$25,754.29	
					\$313,544.60	

EXHIBIT C

Case	Case # 2023-04
Court	Circuit Court
Parties	NEP HLA
Details of the Case	En (N dir (H an the for en) its Co file act Co: ass acti con sou