

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No.: 2007-CP-46-00119

J.W. NEAL CONSTRUCTION, LLC,
a South Carolina limited liability company Respondent,

v.

CORNELIA THOMAS, Appellant.

INITIAL BRIEF OF APPELLANTS

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. THE APPEAL IS UNTIMELY AND THIS COURT LACKS JURISDICTION OF THE SAME.
- II. THE ORDER MODIFYING THE ARBITRATION AWARD WAS NOT "INTERLOCUTORY".
- III. THE CLAIM OF A LACK OF LICENSE MUST BE PLEADED AS AN AFFIRMATIVE DEFENSE.
- IV. THE AGREED ARBITRATION RULES DID NOT PRECLUDE A MATHEMATICAL CORRECTION.

STATEMENT OF THE CASE

This Mechanics Lien case was submitted to binding arbitration. On February 25, 2010, the Arbitrator issued his decision awarding J.W. Neal Construction, LLC (hereafter "Neal Construction") \$41,182.00 on his claim, and Cornelia Thomas (hereafter "Thomas") \$43,442.00 on her counterclaim. In accord with the statutes on Mechanics Liens, the Award made Neal Construction responsible for Thomas' attorneys fees and costs as the prevailing party.

By e-mail of March 22, 2010, Neal Construction requested a revision of the Award due to mathematical error. By his e-mail of March 23, 2010, the Arbitrator acknowledged the mathematical error and offered to correct the same. Thomas objected to the correction on notice grounds.

Thomas moved pursuant to S.C. Code § 15-48-120 to confirm the original award. Pursuant to S.C. Code § 15-48-140 and Rule 60(a), S.C.R.C.P., Neal Construction made its Return to that Motion and moved this Court to Modify or Correct the Arbitration Award as to the mathematical error.

By Order filed June 23, 2010, the Honorable S. Jackson Kimball, Special Circuit Court Judge, found Neal Construction's Motion timely and modified the Arbitration Award. The modified Award gave Neal Construction \$78,082.50 and Thomas \$43,442.00 on her counterclaim. It also allowed Neal Construction its attorneys fees as the prevailing party, to be set by the Arbitrator.

By Notice of Appeal dated and mailed July 26, 2010, Thomas appealed the Order filed June 23, 2010. By Order dated September 29, 2010, this Court recited the Thomas' desire to withdraw that appeal and dismissed the same.

In argument on April 19, 2012, Thomas moved to dismiss the Mechanic's Lien and Neal Construction moved to confirm the amended Award and enforce that Lien. By that Motion, Thomas argued that the action was barred by reason of Neal Construction's lapsed contractor's license.

By Order dated June 18, 2012 and filed June 20, 2012, the Circuit Court held that Thomas'

claim of a lack of a proper license was untimely. It further confirmed the earlier Arbitration Award and allowed a foreclosure of the Mechanic's Lien.

Thomas' Notice of Appeal herein was served on July 13, 2012. It recites itself as appealing:

- A) the Order of June 18, 2012;
- B) the Order of June 1, 2010;
- C) the Arbitration Award of February 25, 2010; and
- D) the amended Arbitration Award.

FACTS

By Agreement of the parties, this Mechanics Lien case was dismissed without prejudice and submitted to binding arbitration. With the agreement of the parties by their Counsel, the Circuit Court interpreted the dismissal order as cognizant of its continuing jurisdiction under the Uniform Arbitration Act, S.C. Code § 15-48-10 *et seq.* (West).

After a full hearing of the matter, the Arbitrator issued his decision, awarding J.W. Neal Construction, LLC (hereafter "Neal Construction") \$41,182.00 on his claim, and Cornelia Thomas (hereafter "Thomas") \$43,442.00 on her counterclaim. In accord with the statutes and precedent on Mechanics Liens, the Award also ruled that Neal Construction was responsible for Thomas' attorneys fees and costs as the prevailing party..

The decision of the Arbitrator was dated on its face February 25, 2010. A cover letter of that date transmitting the same to both counsel was placed in evidence. Neither a certificate of service or a proof of mailing exists.

By e-mail dated and sent March 22, 2010, Neal Construction requested a revision of the Award due to a mathematical error. By his e-mail of March 23, 2010, the Arbitrator acknowledged that there was a mathematical error and offered to correct the same. Thomas, by her counsel, objected to the correction on notice grounds, as stated in his e-mails. (All e-mails referenced herein were attached to the Motion pleadings or presented to the Court.)

Thomas moved pursuant to S.C. Code § 15-48-120 (West) to re-open the case and confirm the original reward. Pursuant to S.C. Code § 15-48-140 (West) and Rule 60(a), S.C.R.C.P., Neal Construction made its Return to that Motion and moved this Court to Modify or Correct the Arbitration Award as to the mathematical error.

By its Order dated June 1, 2010 and filed June 23, 2010,, the Circuit Court adopted the facts above as its findings, and modified the Arbitration Award. The modified Award gave Neal Construction \$78,082.50 and Thomas \$43,442.00 on her counterclaim. It also allowed Neal Construction its attorneys fees.

By Notice of Appeal dated and mailed July 26, 2010, Thomas appealed the Order filed June 23, 2010. By Order dated September 29, 2010, this Court recited the Thomas' desire to withdraw that appeal and dismissed the same.

In argument on April 19, 2012, Thomas moved to dismiss the Mechanic's Lien and Neal Construction moved to confirm the amended Award and enforce that Lien. By that Motion, Thomas argued for the first time that the action was barred by reason of Neal Construction's lapsed contractor's license.

By Order dated June 18, 2012 and filed June 20, 2012, the Circuit Court held that Thomas' claim of a lack of a proper license was untimely. It further confirmed the earlier Arbitration Award and allowed a foreclosure of the Mechanic's Lien.

Thomas' Notice of Appeal herein was served on July 13, 2012. It recites itself as appealing:

- A) the Order of June 18, 2012;
- B) the Order of June 1, 2010;
- C) the Arbitration Award of February 25, 2010; and
- D) the amended Arbitration Award.

ARGUMENT

I. THE APPEAL IS UNTIMELY AND THIS COURT LACKS JURISDICTION OF THE SAME.

By her Notice of Appeal dated and served July 13, 2012, Thomas states her intention of appealing:

1. "the final Order dated June 18, 2012 and the judgment entered thereon";
2. "the Interlocutory Order ... dated June 1, 2010";
3. "the Arbitration Award" dated February 25, 2010; and

4. the Amended Arbitration Award dated June 17, 2010.

This civil action was referred to arbitration. S.C. Code § 15-48-200 (West) sets out the types of orders which may be appealed in an arbitration case. That statute states, in relevant part:

(a) An Appeal may be taken from:

...

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

...

(6) A judgment or decree entered pursuant to the provisions of this Chapter.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

[Paragraphing added.]

The Order filed July 23, 2010 (Order B. above), with the Clerk's certification that the same was served on counsel for Appellant by mailing on that date. [RECORD ON APPEAL, p. __.] There is no denial by the Appellant that her counsel timely received the other Orders, designated as B., C. and D. above, in 2010.

By the Order ("B.") filed June 23, 2010, the Circuit Court amended the earlier Arbitration Award (Order C.) due to an error in calculation. That Order ("B.") clearly modified and corrected the Arbitration Award, as stated on its face, and falls under S.C. Code § 15-48-200(a)(4). As an Order modifying or correcting an Arbitration Award, the Order filed June 23, 2010 was clearly appealable under S.C. Code § 15-48-200 (West).

Rule 203(b)(1), S.C.A.C.R., requires, in relevant part, that:

(1) Appeals From the Court of Common Pleas. A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.

More than thirty (30) days passed since Appellant's receipt of the Order ("B."), dated June 1,

2010 and filed June 23, 2010. Despite the characterization of the present Notice of Appeal in this case, there is nothing “interlocutory” about that Order. Its terms and its effect are clear, and required no further action to bring it into effect.

This Court lacks jurisdiction to hear this appeal, based upon a two-year old order. *See, e.g., Johnson v. Mew*, No. 2012-UP-520 (Ct.App. Sept. 12, 2012).

In addition to the argument above, Neal Construction would note that, not only could Order (“B.”), filed June 23, 2010, have been timely appealed; it in fact was timely appealed by Notice of Appeal and mailing dated July 26, 2010. [RECORD ON APPEAL, p. __.]

That appeal was dismissed by the Motion of Appellant, as shown by the Order of this Court dated September 9, 2010, a copy of which is attached hereto and incorporated herein. [RECORD ON APPEAL, p. __.]

In addition to the argument above, the Respondent maintains that the dismissal of the earlier appeal is *res judicata* as to any issues appealable under the Order (“B.”) filed June 23, 2010.

This Court has held that the language of S.C. Code § 15-48-200 and its accompanying statutes divest the Circuit Court of jurisdiction once arbitration is ordered, with jurisdiction restored when that Court is required to confirm, vacate, modify or correct the arbitrator’s award. *Steinmetz v. American Media Services*, 393 S.C. 72, 73, 709 S.E.2d 708, 709 (Ct.App. 2011). An appeal directly from the arbitration award cannot be made. *Id.*, 393 S.C. at 75, 709 S.E.2d at 709.

Under the ruling of *Steinmetz, supra*, the Arbitration Awards, Orders (“C.”) and (“D.”) above, cannot be appealed. They are subsumed into any confirmatory or amending orders made by the Circuit Court, which can be appealed if such appeal is timely. In the event, the Arbitration Award was amended by the Order (“B.”) filed June 23, 2010. That Order was not timely appealed.

The arguments above leave the Appellant with one appealable Order, (“A.”), dated June 18, 2012, filed June 20, 2012 and referenced in the Appellant’s Notice of Appeal dated and mailed July 13, 2012.

The Appellant’s Amended Brief does not deal with the substance of the June, 2012 Order (“A.”) proper. Rather, it seeks to use that order as a peg to re-argue the issues dealt with in the June, 2010 Order (“B.”) For the reasons stated above, such arguments are not timely and have been waived by the Appellant’s dismissal of her earlier Order.

Finally, the Respondent would point out that the Appellant has not appealed the Order of the Circuit Court dated June 9, 2010 and filed June 11, 2010. [RECORD ON APPEAL, p. __.] This Order remands the matter, after reciting the modification of the Award, to the Arbitrator to determine attorney's fees. Without an appeal of this Order, the appeal of both the June, 2010 Order effecting the modification, and the resulting Amended Award of the Arbitrator reciting the modification and allowing attorney's fees [RECORD ON APPEAL, p. __] is moot.

II. THE ORDER MODIFYING THE ARBITRATION AWARD WAS NOT "INTERLOCUTORY".

The Notice of Appeal herein attempts to deal with the Appellant's two-year delay in filing and pursuing this appeal by characterizing the June, 2010 Order as "interlocutory."

First, it should be noted which orders are appealable in our State. S.C. Code § 14-3-330 (West) specifies those orders:

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;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

[*Id.*; *Paragraphing added.*]

In order to maintain the June, 2010 order as appealable at this time, Thomas evidently intends that it fall within section (1) of the statute above. In that regard, S.C. Code § 15-48-200 (West) deals specifically with appeals from matters in arbitration, and provides:

(a) An appeal may be taken from:

- (1) An order denying an application to compel arbitration made under Section 15-48-20;
- (2) An order granting an application to stay arbitration made under Section 15-48-20(b);
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correcting an award;
- (5) An order vacating an award without directing a rehearing; or
- (6) A judgment or decree entered pursuant to the provisions of this chapter.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

[*Emphasis added.*]

In *Heffner v. Destiny, Inc.*, 321 S.C. 536, 471 S.E.2d 135 (1995), the Supreme Court held that the more specific provisions of S.C. Code § 15-48-200 prevail over the more general appellate provisions of S.C. Code § 14-3-330. Thus, under S.C. Code § 15-48-200(a)(4), which is the controlling statute, the Order of June, 2010, which modified or corrected the Arbitration Award, was immediately appealable. Here, Appellant Thomas seeks to invoke the language of § 14-3-330(1) to allow her to hold her right to an appeal for two years, until after the later Order of June, 2012, granting a judgment.

In *Link v. School District of Pickens County*, 302 S.C. 1, 393 S.E.2d 176 (1990), the Supreme Court dealt with an argument that an intermediate order allowing summary judgment as to one claim necessarily required an appeal of a later, final judgment. The Court rejected this reasoning, stating:

Although the School District did not cite it for support, the case of *Huyler v. Kohn*, 156 S.C. 437, 153 S.E. 460 (1930), appears to buttress its contention. We overrule *Huyler*. A party may be sanctioned under Rule 11, SCRPC, for making frivolous arguments. The rule enunciated in

Huyler and advanced by the School District places parties in a position where they must make an argument appealing an adverse final judgment in order to argue that an earlier intermediate judgment was erroneous. Under *Huyler*, Link would have had to make arguments supporting a reversal of the promissory estoppel judgment, regardless of how frivolous they may be. We hold that such arguments need not be made in order to contest an intermediate judgment or order under § 14-3-330(1).

[302 S.C. at 7, 393 S.E.2d at 179.]

In short, the Order of June, 2010 was immediately appealable. Because it was appealable at that time, Thomas cannot wait for the issuance of a judgment two years later and thus claim that she had, in effect, that entire time in which to file an appeal. The Order of June, 2010 was, in fact, timely appealed: that appeal was dropped. [RECORD ON APPEAL, p. ____.] In the absence of a timely appeal, the issues resolved by the June, 2010 Order are now *res judicata*, the law of the case.

III. THE CLAIM OF A LACK OF LICENSE MUST BE PLEADED AS AN AFFIRMATIVE DEFENSE.

Assuming that the issue of a lack of license is reachable by this Court, the Respondent argues as follows:

In this case, Thomas raised Neal Construction's temporary lack of a contractor's license for the first time by its Motion dated February 3, 2012 and heard in April, 2012, two years after the Arbitration Award was made and modified by the Order of the Circuit Court. [RECORD ON APPEAL, p. ____.] The Supreme Court faced a similar fact situation in *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 703 S.E.2d 221 (2010); that decision states, in relevant part:

As noted above, the circuit court held Respondent had a valid and subsisting mechanic's lien on Appellants' property . . . Appellants then submitted a Rule 59(e) motion to reconsider, arguing that the circuit court should dismiss Respondent's claims because Respondent did not have a license required by sections 40-11-20, -30 and -370 of the South Carolina Code. Hence, Respondent could not pursue a claim at law or in equity. Appellants never made a motion to amend their pleadings to incorporate the arguments presented in their Rule 59(e) motion.

A party in replying to a preceding pleading shall affirmatively set forth his or her

defenses. Rule 8(c), SCRCP. " Every defense, in law or fact, to a cause of action in any pleading ... shall be asserted in the responsive pleading thereto..." Rule 12(b), SCRCP; *see also Strickland v. Strickland*, 375 S.C. 76, 85. 650 S.E.2d 465, 470 (2007) ("[A]ffirmative defenses to a cause of action in any pleading must generally be asserted in a party's responsive pleading."). " Statutory prohibition is in the nature of an affirmative defense precluding enforcement of a contract and should be pled." *Madren v. Bradford*, 378 S.C. 187, 193, 661 S.E.2d 390, 393 (Ct.App.2008) (citing *Costa and Sons Constr. Co. v. Long*, 306 S.C. 465, 469, 412 S.E.2d 450, 453 (Ct.App.1991)); *see also Skiba [v. Gessner]*, 74 S.C. [208,] 210, 648 S.E.2d [605,] 606 (noting that section 40-11-370 is an affirmative defense)." The failure to plead an affirmative defense is deemed a waiver of the right to assert it." *Whitehead v. State*, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002). Rule 15(b), SCRCP provides an exception to the [390 S.C. 616] waiver rule by permitting a party to amend his or her pleadings to conform to the evidence. *Madren*, 378 S.C. at 193, 661 S.E.2d at 393. [Id., 390 S.C. 614-615, 703 S.E.2d at 224-225; matter in brackets added for clarity.]

In *Earthscapes Unlimited*, as in *Costa and Sons Constr. Co.*, *supra*, decided by this Court, there was an attempt to act within the time limits of case in chief, *i.e.*, by a Rule 59 Motion, and to thus raise the issue of a lack of license. In both cases, our Appellate Courts rejected the right to raise such a claim after litigation. In this case, the attempt came more than two years after the arbitration award and amendment thereof by the Circuit Court. There is, to Respondent's knowledge, no authority contrary to the cited decisions in *Earthscapes Unlimited* and *Costa and Sons Constr. Co.* The claim of a lack of contractor's license was, and is, untimely.

IV. THE AGREED ARBITRATION RULES DID NOT PRECLUDE A MATHEMATICAL CORRECTION.

Assuming the issue of timeliness in Neal Construction's request for a mathematical correction of the first Arbitration Award is reachable, the Respondent argues as follows:

Thomas argues that Neal Construction was "on notice" of the first Arbitration Award as of the date of mailing, which it assumes to have been February 25, 2010. Thomas therefore denies Neal Construction's timely compliance with the twenty (20) day deadline set in the American Arbitration Rules 45 and 46. The claimed untimely act was requesting a mathematical correction out of time.

The Respondent would first note that there is nothing on record in this action, and nothing was presented to the Circuit Court, proving the date of delivery of the first Arbitration Award. In its June, 2010 Order, the Circuit Court found as follows:

The decision of the Arbitrator is dated on its face February 25, 2010. A cover letter of that date transmitting the same to both counsel was introduced. Neither a certificate of service or a proof of mailing exists.

By e-mail dated and sent March 22, 2010, the Plaintiff requested a revision of the Award due to a mathematical error. By his e-mail of March 23, 2010, the Arbitrator acknowledged that there was a mathematical error and offered to correct the same. Defendant, by her counsel, objected to the correction on notice grounds, as stated in his e-mails. All e-mails referenced herein were attached to the Motion pleadings or presented to the Court.

[RECORD ON APPEAL, Order filed June 23, 2012, p. ____.]

In the absence of proof of the date of delivery, the argument as to time is settled by the findings of the Court below.

In the alternative, Neal Construction would note that the Arbitrator acknowledged his mathematical error and offered to correct the Award. While Thomas asserts that the Arbitrator was without power to so act, the grounds it asserts are that the Arbitrator was deprived of jurisdiction upon her filing of a motion to confirm the original order. That Motion, however, was dated March 31, 2010. The Arbitrator's acknowledgment of a mistake occurred prior to that filing, as recited in the June, 2010 order, on March 23, 2010.

In order to prevail on this argument, Thomas must thus contend a) that she had the power to prevent a correction of the first Award by the filing of a Motion, and b) that the Circuit Court was deprived of its statutory right to make (or acknowledge) the needed correction by reason of the Arbitration Rules to which the parties agreed.¹

Neal Construction argues that the agreement of counsel as to particular arbitration rules cannot – and did not – limit and shorten the time available under South Carolina statutes for certain acts by the Circuit Court. Neither can that agreement deprive the Circuit Court of its duty to examine the

¹ Respondent would note that even the cited arguments of the Appellant are themselves grounded upon upon the claim of untimeliness in Respondent's request for modification. Again, that untimeliness is unproven, and the Circuit Court has settled this issue.

Arbitration Award before confirmation. Even if all of Thomas' arguments on point are accepted, the Circuit Court must have the authority to correct an obvious mathematical error brought to its attention.

The Respondent further pleads the language of American Arbitration Association Rule R-46, which provides, in addition to the language cited by Thomas, as follows:

Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator . . . to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within 20 days after transmittal by the AAA to the arbitrator of the request and any response thereto.

[*Id.*, COMMERCIAL ARBITRATION RULES AND MEDIATION PROCEDURES, eff. Sept. 1, 2007; *emphasis added.*]

In short, the Rules on which the Appellant relies to make her argument allow a twenty (20) day period in which the Arbitrator is allowed to act. The Appellant thus argues that Respondent Neal Construction is bound by the Arbitration Rules, except when she chooses to preclude the same by motion to the Circuit Court. If this principle is true, it applies also to the Respondent. He also can agree to the Arbitration Rules, but still invoke its rights under the statutes dealing with arbitration.

The Respondent further argues that depriving the Arbitrator of the right to make a mathematical correction by the simple filing of a motion violates the basic rules of equity and due process. There is nothing in the cited Arbitration Rules that prevents the Arbitrator from making a correction of his own volition. [RECORD ON APPEAL, p. ____.] More specifically, it violates the intent of the cited Arbitration Rule R-46, which intends that the party objecting so state to the Arbitrator, who will decide on the modification requested.

In the alternative, the Arbitrator had the authority to correct his mathematical error and modify the award after the matter was returned to him by the Court, as allowed under those rules, as quoted above. The Order of the Circuit Court returned the Award to the Arbitrator for the award of attorney's fees. (This is the Order ("D.") referenced in the Notice of Appeal; RECORD ON APPEAL, p. ____.) In its award of attorney's fees, the Arbitrator acted within the scope of Rule R-46 and made an amendment of the first Arbitration Award itself.

Again in the alternative, the Arbitrator is granted the authority, under the Arbitration Rules to

allow an extension of time. Rule R-38 provides, in relevant part:

The . . . Arbitrator may for good cause extend any period of time established by these rules, except the time for making the award.

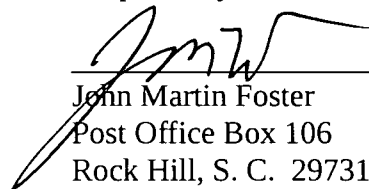
[*Id.*, COMMERCIAL ARBITRATION RULES AND MEDIATION PROCEDURES, eff. Sept. 1, 2007; *emphasis added.*]

If it is granted that a delay occurred on Neal Construction's part in requesting a modification, the Arbitrator effectively allowed an extension by his acknowledgment of the mathematical error and willingness to make a correction.

CONCLUSION

The appeal of Thomas of Orders in excess of two years age is void for lack of jurisdiction in this Court. The attempt to remedy this defect by characterizing those Orders as “interlocutory” is defeated by the specific language of S.C. Code § 15-48-200 which made those Orders appealable. The claim of a lack of contractor's license is precluded by its having been raised out of time. The Arbitrator and the Circuit Court had authority to make the mathematical correction which the Appellant challenges.

Respectfully submitted,



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September 6, 2013

Rock Hill, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No.: 2007-CP-46-00119

J.W. NEAL CONSTRUCTION, LLC,
a South Carolina limited liability company Respondent,

v.

CORNELIA THOMAS, Appellant.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

The Respondent proposes the following be included in the Record on Appeal:

- 1 Summons and Complaint;
- 2 Answer and Counterclaim;
- 3 Reply;
- 4 Contract;
- 5 Notice of Right to Cure letter;
- 6 Mechanics Lien;
- 7 Arbitration Agreement;
- 8 COMMERCIAL ARBITRATION RULES AND MEDIATION PROCEDURES of the American

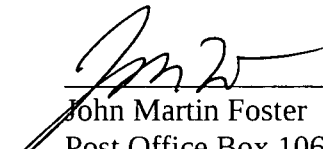
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- Arbitration Association, eff. Sept. 1, 2007;
- 9 Arbitration Award dated February 25, 2010;
 - 10 E-mails relevant to first unmodified Arbitration Award;
 - 11 Motion to Re-Open Case and Confirm Arbitration Award;
 - 12 Return to Motion to Re-Open Case and Confirm Award and Motion to Correct and Modify Award, dated May 10, 2010, and filed May 11, 2010;
 - 13 Motion for Attorney's Fees and Costs, dated June 7, 2010 and filed June 8, 2010;
 - 14 Order of Judge Kimball dated June 1, 2010 and filed June 23, 2010;
 - 15 Order of Judge Kimball dated June 9, 2010 and filed June 11, 2010, remanding the matter to the Arbitrator for determination of attorney's fees;
 - 16 Amended Arbitration Award dated June 17, 2010 and filed June 24, 2010;
 - 17 Notice of Appeal as to Order filed June 23, 2010, with Proof of Service, Notice of Appeal and Proof of Service dated July 26, 2010;
 - 18 Order of Dismissal and Remittitur of appeal above, filed September 9, 2010;
 - 19 Motion to Dismiss Mechanics' Lien dated February 3, 2012;
 - 20 Motion to Confirm Arbitration Award dated April 3, 2012 and filed April 4, 2012;
 - 21 Order dated June 18, 2012 and filed June 20, 2012; and
 - 22 Notice of Appeal and Proof of Service, dated July 13, 2012.

I certify that this designation contains no matter which is irrelevant to this appeal.



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Attorney for Respondent

September 6, 2013

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PROOF OF SERVICE

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I certify that I have served the Initial Brief of Appellants and Designation of Matter to Be Included in the Record on Appeal, dated September 6, 2013, on the following counsel of record:

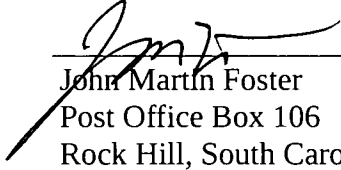
Herbert W. Hamilton
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Attorneys for Appellant

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by

leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.

September 6, 2013



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