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**Dec 13 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of  
Appeals

Appellate Case No. 2024-001127

APPEAL FROM BEAUFORT  
COUNTY  
Court of Common Pleas

Marvin H. Dukes III, Master in  
Equity and Special Circuit Court  
Judge

Case No. 2023-CP-07- 01127

Stax Building and Development, LLC

Appellant,

v.

HHI Yacht Club Ventures, LLC

Respondent

---

RECORD ON APPEAL

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Submitted by:

Michael W. Mogil, Esq.  
Mogil Law Firm  
PO Box 5925  
Hilton Head Island, SC 29938  
(843)785-8110  
mmogil@mogillaw.com  
Attorney for Appellant

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
 )  
 STAX BUILDING & DEVELOPMENT, )  
 LLC, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 HHI YACHT CLUB VENTURES, LLC, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE 14TH JUDICIAL CIRCUIT  
 CASE NUMBER: 2023-CP-07-01127

ORDER GRANTING DEFENDANT’S  
 MOTION TO DISMISS MECHANIC’S  
 LIEN (Does Not End Case)

This matter is before me upon Defendant’s Motion to Dismiss Mechanic’s Lien.

The Motion was heard before the undersigned at 2:30 p.m. on November 7, 2023. Arguments were presented by Jason W. Ward, attorney for the Defendant, HHI Yacht Club Ventures, LLC, and Michael Mogil, Esquire, attorney for the Plaintiff, Stax Building & Development, LLC. After hearing arguments from counsel, and careful review and consideration of the subject statute, I find as follows:

**FINDINGS OF FACT**

1. Plaintiff, a licensed builder, filed its initial Notice and Certificate of Lien (“Mechanic’s Lien”) with the Office of the Register of Deeds for Beaufort County, South Carolina, on February 8, 2023, in Book 153 at Page 1828. Said filing did not contain Plaintiff’s contractor license number as required by Section 29-5-15, S.C. Code Ann.

2. Plaintiff, a licensed builder, amended its Mechanic’s Lien by an amendment filed with the Office of the Register of Deeds for Beaufort County, South Carolina, on March 31, 2023, in Book 154 at Page 1314 (“First Amendment”). Said filing did not contain Plaintiff’s contractor

license number as required by Section 29-5-15, S.C. Code Ann.

3. Plaintiff, a licensed builder, amended its Mechanic's Lien again by an amendment filed with the Office of the Register of Deeds for Beaufort County, South Carolina, on June 14, 2023, in Book 157 at Page 426 ("Second Amendment"). Said filing did not contain Plaintiff's contractor license number as required by Section 29-5-15, S.C. Code Ann.

4. Plaintiff, a licensed builder, amended its Mechanic's Lien for a final time by an amendment filed with the Office of the Register of Deeds for Beaufort County, South Carolina, on July 13, 2023, in Book 157 at Page 1200 ("Third Amendment"). Said filing did contain Plaintiff's contractor license number as required by Section 29-5-15, S.C. Code Ann.

5. Plaintiff filed this action on June 14, 2023, and an Amended Complaint on July 18, 2023, seeking, in part, to foreclose the Mechanic's Lien, as amended.

6. Defendant timely answered the Amended Complaint and filed its Motion to Dismiss Mechanic's Lien on September 18, 2023. Plaintiff filed its Memorandum in Opposition to same on November 7, 2023.

#### **ANALYSIS/CONCLUSIONS OF LAW**

1. Defendant's Motion to Dismiss Mechanic's Lien seeks to have the Mechanic's Lien, as amended, dismissed and invalidated as a result of Plaintiff's failure to comply with Section 29-5-15, S.C. Code Ann. (the "Statute"), which is set out below.

SECTION 29-5-15. Filing requirements; penalty for frivolous lien.

(A) To file a mechanics' lien, a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed.

(B) A contractor who files a frivolous lien is subject to a fine up to five thousand dollars, the loss of his registration or contractor license, or both.

HISTORY: 2009 Act No. 40, Section 2, eff June 2, 2009.

2. The Plaintiff, a licensed builder, clearly failed to include its license number on the Mechanic's Lien, First Amendment, and Second Amendment, only including it in the Third Amendment, which was in excess of six (6) months after Plaintiff's last day of work on the subject property.

3. The Statute was amended in 2009 to require a contractor to provide proof of its licensure, and the amendment contains the word "must" two times in setting forth this requirement.

(A) To file a mechanics' lien, a contractor *must* provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor *must* record his contractor license number or registration number on the lien document when the lien document is filed.

Section 29-5-15, S.C. Code Ann. [Emphasis added].

4. While other portions of the mechanic's lien statute allow for information to be amended and/or revised, such as Section 29-5-100, which states, in part, that "No inaccuracy in such statement relating to the property to be covered by the lien, if the property can be reasonably recognized, or in stating the amount due for labor or materials shall invalidate the proceedings", the 2009 amendment to Section 29-5-15 makes clear that the contractor's licensure information must be contained on the lien when filed.

5. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the

court has no right to impose another meaning. *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 54, 742 S.E.2d 359, 360 (2013).

6. The facts in the present matter, together with a plain reading of the Statute, require that this Court grant Defendant’s Motion to Dismiss Mechanic’s Lien.

**CONCLUSION**

I therefore conclude as follows:

Defendant’s Motion to Dismiss Mechanic’s Lien is granted, and Plaintiff shall immediately release and cancel the Mechanic’s Lien and all amendments thereto.

Beaufort, SC  
\_\_\_\_\_, 2024

\_\_\_\_\_  
Marvin H. Dukes, III  
Master-in-Equity for Beaufort County



Beaufort Common Pleas

**Case Caption:** Stax Building And Development Llc VS Hhi Yacht Club Ventures Llc

**Case Number:** 2023CP0701127

**Type:** Order/Dismissal

So Ordered:

s/Marvin H. Dukes III #3069

|  |   |  |
|--|---|--|
| <b>STATE OF SOUTH CAROLINA</b>                   | ) | <b>IN THE COURT OF COMMON PLEAS</b>        |
| <b>COUNTY OF BEAUFORT</b>                        | ) | <b>FOURTEENTH JUDICIAL CIRCUIT</b>         |
|  | ) |  |
|  | ) |  |
| <b>STAX BUILDING &amp; DEVELOPMENT,<br/>LLC,</b> | ) | <b>CIVIL ACTION NO.: 2023-CP-07-001127</b> |
|  | ) |  |
| <b>Plaintiff (s)</b>                             | ) | <b>MEMORANDUM IN OPPOSITION TO</b>         |
|  | ) | <b>MOTION TO DISMISS LIEN</b>              |
|  | ) |  |
| <b>v.</b>  | ) |  |
|  | ) |  |
| <b>HHI YACHT CLUB VENTURES, LLC</b>              | ) |  |
|  | ) |  |
| <b>Defendant(s)</b>                              | ) |  |

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Plaintiff Stax Building and Development, LLC, submits this Memorandum in Opposition to the Motion to Dismiss Lien filed by Defendant, and would respectfully show unto this Honorable Court the following:

Plaintiff is a construction company which built five condominium units in the Yacht Cove community on Hilton Head Island while under contract with the Defendant HHI Yacht Club Ventures, LLC, the owner of the underlying real property. Plaintiff asserts in this suit that it is owed and due \$422,222 in unpaid sums due under its contract, plus fees and costs, as a result of Defendant’s breach. To secure its claim, Plaintiff timely filed a mechanic’s lien against the improved real property on February 8, 2023, which lien is attached as Exhibit A hereto.

Plaintiff subsequently amended its lien as additional sums due were discovered, and then amended and re-filed its lien for a second time by increasing its lien demand and including its builders license number next to its name in the lien text. The current lien of record, amended July 13, 2023, states Plaintiff’s builders license number and is attached hereto as Exhibit B.

Defendant cites Code of Laws Section 29-5-15(A) in support of its Motion to Dismiss the lien. That section requires that a contractor state its license number on its lien. Defendant appears

to argue that because Plaintiff's initial lien did not state its contractor's license number, that lien, and Plaintiff's amended lien should be dismissed. As of the date of hearing, Defendant has not filed a memorandum of law, affidavits or evidence in support of its Motion which was filed September 18, 2023, seven weeks earlier.

Section 29-5-15 (A) instructs that a lienor state its license in the Notice of Lien, but the Code does not state that a lien is unenforceable due to the lienor's failure to state a license number. Nor does the Code state or even suggest that a lien may not be amended to correct a non material omission. In practice, amendments to liens to correct deficiencies are routine.

South Carolina appellate decisions do not reflect an opinion where the Courts dismissed a lien due to failure to state a contractor's license in the text. Indeed, where a contractor possesses a valid contractor's license, but fails due include the license number due to error of counsel or counsel's staff, it is a non material error that does not prejudice the party subject to the lien, or disrupt the judicial process in any manner. The statutory requirement is intended to ensure that only licensed contractors file liens, and not to disqualify liens due to a non-material omission.

In the instant case, Plaintiff Stax Building and Development LLC possessed a valid contractor's license when counsel filed its initial lien in February, 2023. Defendant was aware that Stax possessed a license as it was posted on the building permits for the project and a matter of public record. Defendant had worked with Stax and its principals on numerous jobs prior to the Yacht Cove job. Defendant is not prejudiced in any manner by the omission of Stax' license number stated on the initial lien.

Moreover, Stax, through counsel, has amended its lien to correct any deficiency such that the lien for which Plaintiff seeks enforcement and foreclosure is fully compliant with Section 29-5-15(A). Plaintiff's lien is valid and not frivolous.

Wherefore, for the reasons argued herein, Plaintiff requests that the Honorable Court deny Defendant's Motion, and for other relief as the Court determines is just and proper.

November 6, 2023

Hilton Head Island, SC

Respectfully Submitted,

MOGIL LAW FIRM

/s/ Michael W. Mogil

---

Michael W. Mogil, SC Bar No. 11933  
2 Corpus Christie Place, Suite 303  
Hilton Head Island, SC 29928  
(843) 785-8110  
Email mmogil@mogillaw.com  
Attorney for Plaintiff

|                             |   |                              |
|-----------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA     | ) | IN THE COURT OF COMMON PLEAS |
|                             | ) |                              |
| COUNTY OF BEAUFORT          | ) |                              |
|                             | ) | LIEN NUMBER: _____           |
|                             | ) |                              |
| STAX BUILDING & DEVELOPMENT | ) |                              |
| LLC                         | ) |                              |
| Plaintiff/Lienor,           | ) |                              |
|                             | ) |                              |
| v.                          | ) |                              |
|                             | ) |                              |
| HHI YACHT CLUB VENTURES LLC | ) |                              |
|                             | ) |                              |
| Defendant(s)                | ) |                              |
| _____                       | ) |                              |

NOTICE IS HEREBY GIVEN that as of February 6, 2023, Stax Building & Development, LLC is due the sum of \$252,179.38 for labor and materials supplied to HHI Yacht Club Ventures, LLC for improvements and work performed on and at the subject real property for work concluding within the previous ninety days hereto, and other authorized charges and interest, as set forth in the Verified Statement of Account which is attached hereto and incorporated for all purposes as Exhibit "A", plus additional charges as may accrue, other authorized charges, interest, attorney's fees and costs of collection.

That by virtue of this Notice and Certificate of Lien, Stax Building & Development, LLC has and claims a lien to secure the payment of the debt so due and the costs of enforcing such lien upon the following described subject real property:

ALL those certain pieces, parcels or lots of land situate, lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, known as **LOT NUMBER 401, 508, 507, 506 AND 505 SAILWIND PHASE I, A SECTION OF YACHT COVE**. Said property is shown on the plat thereof prepared by Jerry L. Richardson, S.C.R. L.S. #4784 dated June 9, 1988 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 292.

This being the same property conveyed to HHI Yacht Club Ventures, LLC, a South Carolina Limited Liability Company by Deed of Eric Friedlander dated September 19, 2019 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina In Book 3811 at Page 2280 on November 13, 2019.

Being:

TMS: R520 011 000 018 0401  
TMS: R520 011 000 018 0508  
TMS: R520 011 000 018 0507  
TMS: R520 011 000 018 0506  
TMS: R520 011 000 018 0505

Dated: February 6, 2023

Respectfully Submitted,

Stax Building & Development, LLC

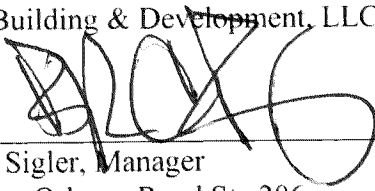
By:   
Brian Sigler, Manager  
56 New Orleans Road Ste 206  
Hilton Head Island, SC 29928

Exhibit "A" to Notice and Certificate of Lien

VERIFIED STATEMENT OF ACCOUNT

CREDITOR: Stax Building & Development LLC

DEBTOR: HHI Yacht Club Ventures, LLC

REAL PROPERTY: 28 Jib Sail Court, 32 Jib Sail Court, 34 Jib Sail Court, 36 Jib Sail Court, 38 Jib Sail Court, Hilton Head Island, SC 29928

AMOUNT DUE: \$252,179.38 .00 plus additional interest, costs and attorney's fees.

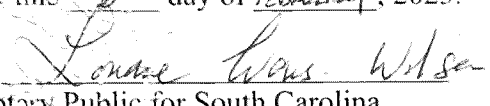
Personally appeared before me the undersigned, Brian Sigler, who, after being duly sworn, swears and affirms the following to be true and correct:

1. That he is the Manager for Stax Building & Development LLC and as such has personal knowledge of the facts set forth herein.
2. That as of February 6, 2023 the amount of \$252,179.38.00 was owed and unpaid for labor and materials supplied to Debtor HHI Yacht Club Ventures, LLC at the Yacht Cove project referenced herein, plus other authorized charges and interest, attorney fees and costs as continue to accrue.
3. The foregoing is a true and accurate statement of the account representing amounts due Stax Building & Development LLC as of the date above referenced and all just credits have been applied.

Stax Building & Development, LLC

By:   
Brian Sigler, Manager

SWORN to and subscribed before me this 6 day of February, 2023.

  
Notary Public for South Carolina  
My Commission Expires: 9/29/27

|                             |   |                              |
|-----------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA     | ) | IN THE COURT OF COMMON PLEAS |
|                             | ) |                              |
| COUNTY OF BEAUFORT          | ) |                              |
|                             | ) | LIEN NUMBER: _____           |
|                             | ) |                              |
| STAX BUILDING & DEVELOPMENT | ) |                              |
| LLC                         | ) | Amended Lien                 |
| Plaintiff/Lienor,           | ) |                              |
|                             | ) |                              |
| v.                          | ) |                              |
|                             | ) |                              |
| HHI YACHT CLUB VENTURES LLC | ) |                              |
|                             | ) |                              |
| Defendant(s)                | ) |                              |
| _____                       | ) |                              |

NOTICE IS HEREBY GIVEN that as of January 12, 2023, Stax Building & Development, LLC, South Carolina general contractor’s license no. 123672, is due the sum of \$ 422,222.78 for labor and materials supplied to HHI Yacht Club Ventures, LLC for improvements and work performed on and at the subject real property for work concluding within the previous ninety days prior to the date of lien filing, and other authorized charges and interest, as set forth in the Verified Statement of Account which is attached hereto and incorporated for all purposes as Exhibit “A”, plus additional charges as may accrue, other authorized charges, interest, attorney’s fees and costs of collection. This Amended Lien amends and updates the lien filed on February 8, 2023 in Records Book 153 at Page 1828-30, as was further amended. The last day of work performed on the subject properties was on or about January 12, 2023.

That by virtue of this Notice and Certificate of Lien, Stax Building & Development, LLC has and claims a lien to secure the payment of the debt so due and the costs of enforcing such lien upon the following described subject real property:

ALL those certain pieces, parcels or lots of land situate, lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, known as **LOT NUMBER 401, 508, 507, 506 AND 505 SAILWIND PHASE I, A SECTION OF YACHT COVE**. Said property is shown on the plat thereof prepared by Jerry L. Richardson, S.C.R. L.S. #4784 dated June 9, 1988 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 292.

This being the same property conveyed to HHI Yacht Club Ventures, LLC, a South Carolina Limited Liability Company by Deed of Eric Friedlander dated September 19, 2019 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina In Book 3811 at Page 2280 on November 13, 2019.

Being:

- TMS: R520 011 000 018 0401
- TMS: R520 011 000 018 0508
- TMS: R520 011 000 018 0507
- TMS: R520 011 000 018 0506
- TMS: R520 011 000 018 0505

Dated: July 13, 2023

Respectfully Submitted,

Stax Building & Development, LLC


By:   
\_\_\_\_\_  
Brian Sigler, Manager  
56 New Orleans Road Ste 206  
Hilton Head Island, SC 29928

Exhibit "A" to Notice and Certificate of Lien

VERIFIED STATEMENT OF ACCOUNT

CREDITOR: Stax Building & Development LLC

DEBTOR: HHI Yacht Club Ventures, LLC

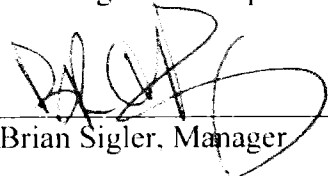
REAL PROPERTY: 28 Jib Sail Court, 32 Jib Sail Court, 34 Jib Sail Court, 36 Jib Sail Court, 38 Jib Sail Court, Hilton Head Island, SC 29928

AMOUNT DUE: \$422,222.78 plus additional interest, costs and attorney's fees.


Personally appeared before me the undersigned, Brian Sigler, who, after being duly sworn, swears and affirms the following to be true and correct:

1. That he is the Manager for Stax Building & Development LLC and as such has personal knowledge of the facts set forth herein.
2. That as of January 12, 2023 the amount of \$422,222.78 was owed and unpaid for labor and materials supplied to Debtor HHI Yacht Club Ventures, LLC at the Yacht Cove project referenced herein, plus other authorized charges and interest, attorney fees and costs as continue to accrue.
3. The last day labor, services and materials were performed on the subject properties was on or about January 12, 2023.
4. The foregoing is a true and accurate statement of the account representing amounts due Stax Building & Development LLC as of the date above referenced and all just credits have been applied.

Stax Building & Development, LLC

By:   
Brian Sigler, Manager

SWORN to and subscribed before me this 13 day of July, 2023.

  
Notary Public for South Carolina  
My Commission Expires: 9/29/27

|  |   |  |
|--|---|--|
| <b>STATE OF SOUTH CAROLINA</b>                   | ) | <b>IN THE COURT OF COMMON PLEAS</b>        |
| <b>COUNTY OF BEAUFORT</b>                        | ) | <b>FOURTEENTH JUDICIAL CIRCUIT</b>         |
|  | ) |  |
|  | ) |  |
| <b>STAX BUILDING &amp; DEVELOPMENT,<br/>LLC,</b> | ) | <b>CIVIL ACTION NO.: 2023-CP-07-001127</b> |
|  | ) |  |
| <b>Plaintiff (s)</b>                             | ) | <b>MEMORANDUM IN SUPPORT OF</b>            |
|  | ) | <b>MOTION TO ALTER, AMEND AND</b>          |
| <b>v.</b>  | ) | <b>RECONSIDER PURSUANT TO SCRPC</b>        |
|  | ) | <b>RULE 59</b>                             |
|  | ) |  |
| <b>HHI YACHT CLUB VENTURES, LLC</b>              | ) |  |
|  | ) |  |
| <b>Defendant(s)</b>                              | ) |  |

---

Plaintiff Stax Building & Development, LLC, through its undersigned counsel, submits this memorandum in further support of its motion to reconsider, alter, and amend its Order granting Defendant’s Motion to Dismiss Lien entered January 26, 2024.

As is set forth in the Order, the basis for the Court’s decision to dismiss the lien of record in this matter was the omission by filing counsel of a South Carolina builder’s license number on the face of the lien as initially filed. As noted in the Order, the alleged defect was eventually corrected by counsel for the Plaintiff by filing an amended lien stating the license number in advance of the filing of this motion.

1. Plaintiff asserts that the result reached by the Court, in dismissing the lien, is not required by the statute or an equitable result under the circumstances. The South Carolina lien statute, Section 29-5-15, as amended in 2009, states “To file a mechanics' lien, a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed.”. At hearing, the Court noted that the statutory instruction using the word “must” and concluded that this

instruction is a mandatory, non-optional requirement. However, the statute does not instruct or require that a lien that missing the license number shall be stricken or dismissed upon challenged. Indeed, one of the purposes, if not the primary purpose, for requiring the contractor's license stated on the face of the lien or ostensibly by separate representation to the Clerk of Court is to ensure that ineligible persons or entities, in this instance being unlicensed persons or entities, would not file improper liens. The statutory requirement was intended to ensure that only licensed contractors file liens, and not to disqualify liens due to a non-material omission.

In the instant case, Plaintiff Stax Building and Development LLC possessed a valid South Carolina commercial contractor's license when counsel filed its initial lien in February, 2023. [Please see Affidavit of Michael W. Mogil filed herein with Exhibits]. Defendant was aware that Stax possessed a commercial buildings license because the license was posted on the building permits for the project, provided to Defendant at its request, provided to the Town of Hilton Head as condition of obtaining the building permit and was also a matter of public record at SC LLR. Defendant and/or its principal worked with Stax and its principals on numerous jobs prior to the Yacht Cove job. Defendant was not prejudiced in any manner by the omission of Stax' license number stated on the initial lien. A copy of the SC LLR site noting the existence of the license since 2021 was attached to the motion filed prior to this memorandum as Exhibit A and to the Affidavit of Michael Mogil filed herewith.

Act 40, 2009 amended the lien statute to include a requirement to include the contractor's license. This requirement was not added to the statute to provide a remedy to dismiss liens for non-paying owners due to a technical mistake by the lienor or counsel.

The legislative history of Act 40, 2009 which amended the lien statute is not completely accessible online. The hyperlinks do not function on the undersigned's computer systems and

counsel's efforts to obtain the records from the local legislative delegation were not successful within the timeframe available to counsel or this motion. The Act is indexed as an Act relating to the inclusion of landscapers into the lien statute framework and the first section of the Act specifically addresses landscapers.

Section 2 of the Act provides:

SECTION 2. Chapter 5, Title 29 of the 1976 Code is amended by adding:

“Section 29-5-15. (A) To file a mechanics' lien, a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed.

(B) A contractor who files a frivolous lien is subject to a fine up to five thousand dollars, the loss of his registration or contractor license, or both.”

Section 3 of the Act further provides:

SECTION 3. Section 29-5-120 of the 1976 Code is amended to read:

“Section 29-5-120. (A) Unless 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 on or furnish labor or material for the building or structure, the lien must be dissolved.

(B) A mechanics' lien and associated bonds may be released by a court order, a written affidavit of the bond holder's attorney, or by a written affidavit from the defendant's attorney stating:

(1) six months has passed since the lien was attached and no suit or notice of pendency has been filed; or

(2) the failure of the filing party to take some other timely action required by this chapter. This affidavit must be in the form approved by the appropriate local office where the mechanics' lien was filed and must reference the lien's recording information.”

Section 4 of the Act further provides:

SECTION 4. Section 40-59-30 of the 1976 Code is amended to read:

“Section 40-59-30. (A) A person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license or registering with the commission is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

(B) Notwithstanding Section 29-5-10, or another provision of law, a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics' lien or bring an

action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this chapter.

(C) Pursuant to Article 5, Chapter 23, Title 1, the commission may petition an administrative law judge to issue a temporary restraining order enjoining a violation of this chapter, pending a full hearing to determine whether the injunction must be made permanent.

It is important to note Section 4 of the Act amends a different section of the Code—the licensing section, and thus is reflective of the legislative intent of the Act. It was designed to address the legally problematic issue of unlicensed contractors operating in South Carolina, and specifically the problem caused by unlicensed contractors filing liens in South Carolina. The undersigned spoke with one of the sponsors of the bill, former State Representative Richard Chalk in Hilton Head. Mr. Chalk did not recall the specifics of the floor debate fifteen years ago and stated his journals were not available. Mr. Chark did reaffirmed that the purpose of the law, to his recollection, was to ensure that only licensed contractors filed liens. He did not remember if there was discussion as to whether stating the license number on the face of lien was essential to enforce the lien or if it was fatal to the lien.

It is also important to note that Section 4 (B) of the Act states that a contractor may not file a mechanics lien without a license. It does not state that a lien that does not state the license number is uncurable or fatal to the enforcement of the lien.

2. The statute does not impose a time limit for the contractor to file separate proof of licensure to the Clerk of Court or Register of Deeds, if such proof is not on the face of the lien. In the case subjudice, the record reflects that upon learning of the requirement, Plaintiff caused an amended lien to be filed which states the current and applicable builder's license. Thus, the last amended lien filed in the matter satisfies the second procedure stated in the statute by informing the Clerk

of Court or Register of Deeds that the contractor was licensed at the time of filing of the amended lien and was licensed at the time of the initial lien.

At hearing, Defendant argued that the amendment provisions of the statute, and specifically Section 29-5-100 should be interpreted as permitting an amendment to a lien to narrowly include only instances where the amendment or correction relates to the description of the property subject to the lien description. Defendant argues that this is the only stated reason a lien can be amended. This interpretation is in conflict with lien practice in South Carolina, where liens are regularly amended to correct dates, lien amounts, property descriptions, other substantive and typographical errors and in this case, to add the contractor's license to the face of lien. The Order denying the Motion would impose a requirement that a lien could only be amended after the ninety (90) day filing window to correct the legal description stated on the lien. This requirement, and interpretation is not found in the statute and contravenes lien practice statewide.

The lien statute does not specifically instruct a process for timing of amended liens. Thus the lien statute does not expressly require that non material omissions, technical omissions or scrivener's errors be remedied within the initial ninety day window after the work was last performed. Indeed, a construction of the statute that both limits amendments in scope and requires all amendments, be they substantive or technical, to be filed within the initial ninety day window after work was last performed would essentially bar amendments since many liens are filed near or at the 90 day deadline due to marketplace realities. Generally, construction contractors do not file liens unless work is not timely paid and is past due, and collect sums due through demand and negotiation before resorting to the legal process. A construction of the statute that voids amendments made after the ninety day window would ultimately cause contractors to file liens as

soon as they complete work, without regard to timely payment. This result would both significantly increase the cost of construction, by requiring contractors to file and amend all liens almost immediately after work was performed, and would burden owners with numerous liens creating clouds on title which would ultimately be cleared, at considerable expense, once payment was made in the regular course.

The Order granting the Motion to Dismiss the lien focused on doctrine of statutory construction which generally dictates that if a statute states a rule clearly and unambiguously, it should be interpreted as written. With regard the South Carolina amended lien statute, however, there is no clear and unambiguous instruction on whether a lien is defective if it fails to state the valid and current contractor's license on the face of the lien, and there is no clear and unambiguous instruction that a lien cannot be amended to correct a technical defect after the ninety day period.

Indeed, applying the same rules of construction employed in the Order, it is noted that Section 29-5-90 provides specifically for dissolution of a lien, but only in instances where the statement of account is not timely filed within ninety days. The legislature and statute created a specific section in 29-5-90 to instruct the specific and unique instance(s) when a lien is dissolved, and that section does not reflect the instance of a technical omission such as the contractor's license. The statute does not require dissolution or dismissal in that instance which is the instance before the Court. Reading the statute narrowly, as Defendant argues, does not lead to a result dismissing Plaintiff's lien because the statute states when a lien should be dissolved or dismissed, and that situation is not the situation where a lien omits an otherwise valid contractor's license.

3. A review of liens filed in Beaufort County since the Act 40 statute amendment in 2009 reflects a large number of liens, and possibly a majority of liens filed and enforced, that do not

include a contractor's license on the face of the lien. As of the date of the hearing in this matter, there was no reported judicial decision whereby South Carolina courts had ruled against enforcement of a lien, or upheld the dismissal of a lien, due to the omission of the contractor's license alone. Counsel proffers that a significant number of attorneys and filing parties in Beaufort are not aware of this requirement. The Order granting the Motion to Dismiss Lien due the omission of a valid and current license alone, even after a corrective amendment, reaches an unexpected and unfair result.

4. Foreclosure in South Carolina is an action in equity and the within suit is a lien foreclosure action. Thus, the Court has discretion in this matter to evaluate the parties' positions and reach a result that balances the equities. In the instant matter, the statute states that a lienor must state its South Carolina license on or in its filed lien. It does not, however, state that the lien should be dismissed, or is unenforceable, if the license is omitted. Further, the statute does not state that the lien cannot be amended to correct this initial error, before or after ninety days. Thus, the statute is ambiguous regarding its application to the facts of this case, and the Court has equitable jurisdiction to interpret the state in a manner that balances the equities and attempts to reach a fair result. In the instant case, there is no harm or prejudice to the Defendant if the lien is held to be enforceable, after the amendment, and the case is permitted to proceed on the merits of the contract claims. However, the Court's ruling presents significant potential prejudice to the Plaintiff whose suit is against a corporate party whom could readily sell or convert the property subject to the lien prior to adjudication of the underlying suit, leaving the Plaintiff with limited and complicated collection remedies to collect on funds generated by Plaintiff's expended labor and improvements were it to prevail on the merits.

WHEREFORE, Plaintiff respectfully requests that the Honorable Court reconsider, alter and amend its Order granting the Motion to Dismiss Lien, and for such other relief as the Honorable Court deems just and proper.

April 24, 2024

Hilton Head Island, SC

Respectfully Submitted,

Mogil Law Firm

/s/ Michael W. Mogil

Michael W. Mogil, SC Bar No. 11933

2 Corpus Christie Place, Ste. 103

Hilton Head Island, SC 29928

(843) 785-8110

mmogil@mogillaw.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
 )  
 STAX BUILDING & DEVELOPMENT, )  
 LLC, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 HHI YACHT CLUB VENTURES, LLC, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE 14TH JUDICIAL CIRCUIT  
 CASE NUMBER: 2023-CP-07-01127

ORDER DENYING PLAINTIFF'S  
 MOTION TO ALTER, AMEND AND  
 RECONSIDER

This matter is before me upon Plaintiff's *Motion to Alter, Amend and Reconsider Pursuant to SCRPC Rule 59*, filed on February 5, 2024. Said Motion was in response to this Court's *Order Granting Defendant's Motion to Dismiss Mechanic's Lien* filed on January 25, 2024.

The Motion was heard virtually before the undersigned at 2:30 p.m. on March 21, 2024. Arguments were presented by Michael Mogil, Esquire, attorney for the Plaintiff, Stax Building & Development, LLC, and Jason W. Ward, attorney for the Defendant, HHI Yacht Club Ventures, LLC. After hearing arguments from counsel, and careful review and consideration of the subject statute, and all filings contained in the record, I hereby deny Defendant's Motion to Alter, Amend and Reconsider.

**IT IS THEREFORE ORDERED.**

Beaufort, SC  
 \_\_\_\_\_, 2024

\_\_\_\_\_  
 Marvin H. Dukes, III  
 Master-in-Equity for Beaufort County



Beaufort Common Pleas

**Case Caption:** Stax Building And Development Llc VS Hhi Yacht Club Ventures Llc

**Case Number:** 2023CP0701127

**Type:** Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

**STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT**

) **IN THE COURT OF COMMON PLEAS**  
) **FOURTEENTH JUDICIAL CIRCUIT**  
)  
)

**STAX BUILDING & DEVELOPMENT,  
LLC,**

) **CIVIL ACTION NO.: 2023-CP-07-001127**  
)

**Plaintiff (s)**

) **AFFIDAVIT OF MICHAEL W. MOGIL**  
)  
)

**v.**

**HHI YACHT CLUB VENTURES, LLC**

**Defendant(s)**

TO THE DEFENDANTS ABOVE NAMED AND THE HONORABLE COURT:

Personally appeared and sworn to this 11<sup>th</sup> of March, 2024, came Michael W. Mogil, who did depose and state:

1. I am counsel for the Plaintiff Stax Building and Development, LLC.
2. The underlying lawsuit in this matter seeks foreclosure of a lien filed to secure payment for work and labor performed to improve the Defendant's real property, being five condominium units in Yacht Cove, Hilton Head Island, South Carolina. The suit alleges causes of action for foreclosure, breach of contract, and unjust enrichment.
3. I prepared and filed the initial lien in this matter on February 8, 2023, attached hereto as Exhibit A. Prior to filing the lien, in addition to preparing the verified statement of account attached to the lien, I investigated and confirmed that Stax possessed a valid and current contractors license, being cognizant of legal precedent that requires a contractor filing a mechanics lien to possess a current license. A copy of the proof licensure is attached hereto as Exhibit B.

4. Two additional amended liens were filed after Stax determined that the amount due and owing increased for its work was higher than originally stated.

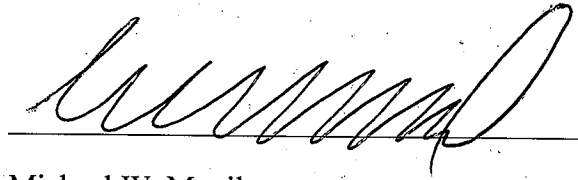
5. Neither the initial lien filed or the first two amended liens stated the contractor's license because I was not aware of a legal requirement that the license number itself be stated on the face of the lien. I have filed many liens, probably in excess of fifty liens, over my career and have not in the regular course stated a contractor's or builder's license number on the face of the lien. I have not experienced a lien being dismissed or challenged for failure to state a license number when the contractor in fact possessed a valid license. Moreover, in my practice I have reviewed hundreds of liens filed by other attorneys and parties, most of which did not state a license number on the face of the lien.

6. In or around June, 2023, a colleague made me aware of a case in Charleston whereby a lien was challenged by a Defendant party on a number of grounds, one of which was that the lien failed to state the contractor's license on its face. The case was not an appellate case, and I do not believe it is a reported case, but after learning of the doctrine and case, I re-reviewed the lien statute and read that that statute states that the contractor should insert its license number in its lien documents. The statute does not state by its terms that a lien is unenforceable without the license number stated.

7. As a result, I prepared and filed an Amended Lien that states Stax contractor's license number on its face. The Amended Lien was filed on July 13, 2023, a copy of which is attached as Exhibit C hereto.

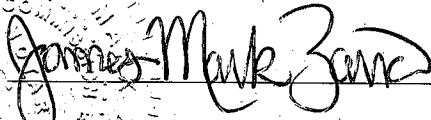
8. The subject Motion to Dismiss lien in this case was filed after I filed the Amended Lien stating Stax contractor's license.

9. Affiant further sayeth not.



Michael W. Mogil

Sworn to before me this 11th day of March, 2024



Notary Public for South Carolina

**JAMES MARK ZARRA**  
Notary Public-State of South Carolina  
My Commission Expires  
November 21, 2024

My Commission Expires: 11-21-2024

030

Print this page

### Board: Commercial Contractors

#### STAX BUILDING AND DEVELOPMENT LLC

55 NEW ORLEANS RD UNIT 206  
HILTON HEAD , SC 29928  
(843)715-8010

**License number:** 123672  
**License type:** GENERAL CONTRACTOR  
**Status:** ACTIVE  
**Expiration:** 10/31/2024  
**First Issuance Date:** 07/23/2021  
**Classification:**  
Building-BD4

**Qualified By:** Financial Statement  
**President / Owner:** BRIAN SIGLER

[Click here for Classification definitions and licensee's contract dollar limit](#)

**Supervised By**  
**SIGLER BRIAN (CQG)**

[File a Complaint against this licensee](#)

#### Board Public Action History:

View Orders

View Other License for this Person

No Orders Found

ELECTRONICALLY FILED - 2024 Mar 11 4:31 PM - BEAUFORT - COMMON PLEAS - CASE#2023CP0701127



TO MINOR(S) OVER FOURTEEN YEARS OF AGE, TO PERSONS WHOM RESIDE WITH MINOR DEFENDANTS NAMED HEREIN WHOM ARE UNDER FOURTEEN YEARS OF AGE AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian or guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment, if necessary, will be made by the Plaintiff.

/s/ Michael W. Mogil

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MOGIL LAW FIRM  
Michael W. Mogil, SC Bar 11933  
2 Corpus Christie, Ste. 303  
Hilton Head Island, SC 29928  
(843) 785-8110

Attorney for Plaintiff

Dated this 17th day of July, 2023  
Hilton Head Island, South Carolina



4. Stax commenced its work shortly thereafter. The parties modified the Building Agreement from time to time, both with orders, amendments and also with verbal instruction as is standard in the industry and as was common course in their prior dealings. The parties, and their principals, worked together on other projects for seven or more years before the Yacht Cove project.

5. On January 12, 2023, HHIYCV sent a termination letter of the contract to Stax without cause after refusing to pay Stax's latest invoice.

6. As of the date it last worked on the project, and after accounting for all payments made by Defendant, Stax is owed the sum of \$314,725.95 for unpaid labor, materials and services supplied by Stax to Defendant at the subject property.

7. This Amended Complaint amends and relates back to the Complaint filed June 14, 2023 in this matter.

For a First Cause of Action

(Foreclosure of a Mechanic's Lien)

8. Plaintiffs restate the factual averments and allegations set forth in paragraphs 1 through 6 as though fully restated herein.

9. That pursuant to Section 29-5-10 et seq. of the South Carolina Code of Laws this cause of action is for foreclosure of a mechanic's lien.

10. The last day that Stax performed labor or supplied materials to Defendant was January 12, 2023.

11. Thereafter, on February 8, 2023 Plaintiff filed a Mechanic's Lien in the Office of the Register of Deeds for Beaufort County, as recorded in Book 153 at Page 1828-30. Thereafter, the Mechanic's Lien was amended to reflect additional labor and materials supplied to Defendant, by

Amended Lien filed on June 14, 2023 and recorded in Book 257 at Page 426 and as further Amended and filed on July 13, 2023 in Book 157 at Page 1200 and attached hereto as Exhibit B.

12. The initial mechanic's lien and amended liens were served on Robert Going, Esq. as registered agent for the Defendant.

13. That as of the date hereof, there remains due and owing to Plaintiff the sum of \$422,222.78 for actual labor and materials supplied to Defendant, together with additional damages, attorney fees and sums due as will be proven at trial.

14. Plaintiff is entitled to a judgment of foreclosure in the amount of \$422,222.78 for actual labor and materials supplied to Defendant, together with additional damages, attorney fees and sums due as will be proven at trial.

For a Second Cause of Action

(Breach of Contract)

15. Plaintiff restates the factual averments and allegations set forth in paragraphs 1 through 14 as though fully restated herein.

16. Stax entered into a contract with Defendant and performed its obligations under the contract, referred to as the Building Agreement attached as Exhibit A. The Building Agreement was amended by mutual agreement of the parties as the job progressed, as is and was the historical course of dealings between the parties.

17. Defendant breached its obligations under the contract by failing to timely make payment for sums due Stax for Stax' labor and materials and supervision supplied to the work.

18. The Contract price for Stax work, inclusive of amendments, change orders and extras, was \$1,605,135.56.

19. Defendant has paid Stax approximately \$942,142.45 for its work and materials through January 12, 2023.

20. That as of the date hereof, there remains due and owing to Stax under the contract the sum of \$662,993.11 for actual labor and materials supplied to Defendant, together with additional damages, attorney fees and sums due as will be proven at trial and Plaintiff seeks a judgment in this amount for breach of contract.

For a Third Cause of Action

(Unjust enrichment/Quantum Meruit)

21. Plaintiff re-alleges the allegations and averments of paragraphs 1 through 14 as though fully restated herein.

22. Stax provided non gratuitous labor, materials and services to Defendant, which benefitted Defendant and improved Defendant's property through and including the date hereof in the amount of \$422,222.78, together with additional damages, attorney fees and sums due as will be proven at trial.

23. Despite benefitting from the work done by Stax, HHIYCV has failed to pay Stax and has been unjustly enriched by the amount of non-payment, together with additional damages as will be proven at trial. Accordingly, Stax seeks a judgment in the amount of \$422,222.78 together with additional damages for unjust enrichment as a cause of action in equity as provided for by South Carolina law.

WHEREFORE, Plaintiff requests that this Honorable Court issue as its Order and Judgment as follows:

- a. For Judgment of foreclosure in amount of \$422,222.78 in favor of Plaintiff and against Defendant for actual damages incurred under Plaintiff's first cause of action for foreclosure of its lien, and for consequential damages, attorney fees and costs in an amount to be proven at trial.
- b. For money Judgment in amount of \$662,993.11 in favor of Plaintiff and against Defendant for actual damages incurred under Plaintiff's second cause of action for breach of contract, and for consequential damages, attorney fees and costs and additional damages in an amount to be proven at trial.
- c. For money Judgment in amount of \$662,993.11 in favor of Plaintiff and against Defendant for actual damages incurred under Plaintiff's third cause of action for unjust enrichment, together with additional damages in an amount to be proven at trial.
- d. For such other relief as the Honorable Court deems just and proper.

July 17, 2023

Hilton Head Island, SC

Respectfully Submitted,

MOGIL LAW FIRM

/s/ Michael W. Mogil

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Michael W. Mogil, SC Bar No. 11933  
2 Corpus Christie Place, Suite 303  
Hilton Head Island, SC 29928  
(843) 785-8110  
Email mmogil@mogillaw.com  
Attorney for Plaintiff

**STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT**

) **IN THE COURT OF COMMON PLEAS**  
) **FOURTEENTH JUDICIAL CIRCUIT**  
)  
)

**STAX BUILDING & DEVELOPMENT,  
LLC,**

) **CIVIL ACTION NO.: 2023-CP-07-**  
)  
)

**Plaintiff (s)**

) **SUMMONS**  
)  
)

**v.**

**HHI YACHT CLUB VENTURES, LLC**

)  
)  
)

**Defendant(s)**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at the Mogil Law Firm, 2 Corpus Christie Place, Ste. 103, Hilton Head Island, South Carolina, 29928, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint, including the rendering of judgment by default against you.

YOU WILL ALSO TAKE NOTICE that the Plaintiff may move for an order of reference or that the Court may issue a general order of reference of this action to a master or special referee, pursuant to Rule 53, South Carolina Rules of Civil Procedure.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, TO PERSONS WHOM RESIDE WITH MINOR DEFENDANTS NAMED HEREIN WHOM ARE UNDER FOURTEEN YEARS OF AGE AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian or guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment, if necessary, will be made by the Plaintiff.

/s/ Michael W. Mogil

---

MOGIL LAW FIRM  
Michael W. Mogil, SC Bar 11933  
2 Corpus Christie, Ste. 303  
Hilton Head Island, SC 29928  
(843) 785-8110

Attorney for Plaintiff

Dated this 14th day of June, 2023  
Hilton Head Island, South Carolina



the industry and as was common course in their prior dealings. The parties, and their principals, worked together on other projects for seven or more years before the Yacht Cove project.

5. On January 12, 2023, HHIYCV sent a termination letter of the contract to Stax without cause after refusing to pay Stax's latest invoice.

6. As of the date it last worked on the project, and after accounting for all payments made by Defendant, Stax is owed the sum of \$314,725.95 for unpaid labor, materials and services supplied by Stax to Defendant at the subject property.

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11. Thereafter, on February 8, 2023 Plaintiff filed a Mechanic's Lien in the Office of the Register of Deeds for Beaufort County, as recorded in Book 153 at Page 1828-30. Thereafter, the Mechanic's Lien was amended to reflect additional labor and materials supplied to Defendant, by Amended Lien filed on June 14, 2023 and recorded in Book 257 at Page 426 and attached hereto as Exhibit B.

12. The initial mechanic's lien and amended lien were served on Robert Going, Esq. as registered agent for the Defendant.

13. That as of the date hereof, there remains due and owing to Plaintiff the sum of \$422,222.78 for actual labor and materials supplied to Defendant, together with additional damages, attorney fees and sums due as will be proven at trial.

14. Plaintiff is entitled to a judgment of foreclosure in the amount of \$422,222.78 for actual labor and materials supplied to Defendant, together with additional damages, attorney fees and sums due as will be proven at trial.

For a Second Cause of Action

(Breach of Contract)

15. Plaintiff restates the factual averments and allegations set forth in paragraphs 1 through 14 as though fully restated herein.

16. Stax entered into a contract with Defendant and performed its obligations under the contract, referred to as the Building Agreement attached as Exhibit A. The Building Agreement was amended by mutual agreement of the parties as the job progressed, as is and was the historical course of dealings between the parties.

17. Defendant breached its obligations under the contract by failing to timely make payment for sums due Stax for Stax' labor and materials and supervision supplied to the work.

18. The Contract price for Stax work, inclusive of amendments, change orders and extras, was \$1,605,135.56.

19. Defendant has paid Stax approximately \$942,142.45 for its work and materials through January 12, 2023.

20. That as of the date hereof, there remains due and owing to Stax under the contract the sum of \$662,993.11 for actual labor and materials supplied to Defendant, together with additional

damages, attorney fees and sums due as will be proven at trial and Plaintiff seeks a judgment in this amount for breach of contract.

For a Third Cause of Action

(Unjust enrichment/Quantum Meruit)

21. Plaintiff re-alleges the allegations and averments of paragraphs 1 through 14 as though fully restated herein.

22. Stax provided non gratuitous labor, materials and services to Defendant, which benefitted Defendant and improved Defendant's property through and including the date hereof in the amount of \$422,222.78, together with additional damages, attorney fees and sums due as will be proven at trial.

23. Despite benefitting from the work done by Stax, HHIYCV has failed to pay Stax and has been unjustly enriched by the amount of non-payment, together with additional damages as will be proven at trial. Accordingly, Stax seeks a judgment in the amount of \$422,222.78 together with additional damages for unjust enrichment as a cause of action in equity as provided for by South Carolina law.

WHEREFORE, Plaintiff requests that this Honorable Court issue as its Order and Judgment as follows:

- a. For Judgment of foreclosure in amount of \$422,222.78 in favor of Plaintiff and against Defendant for actual damages incurred under Plaintiff's first cause of action for foreclosure of its lien, and for consequential damages, attorney fees and costs in an amount to be proven at trial.
- b. For money Judgment in amount of \$662,993.11 in favor of Plaintiff and against Defendant for actual damages incurred under Plaintiff's second cause of action for breach of contract, and for

consequential damages, attorney fees and costs and additional damages in an amount to be proven at trial.

c. For money Judgment in amount of \$662,993.11 in favor of Plaintiff and against Defendant for actual damages incurred under Plaintiff's third cause of action for unjust enrichment, together with additional damages in an amount to be proven at trial.

d. For such other relief as the Honorable Court deems just and proper.

June 14, 2023

Hilton Head Island, SC

Respectfully Submitted,

MOGIL LAW FIRM

/s/ Michael W. Mogil

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Michael W. Mogil, SC Bar No. 11933  
2 Corpus Christie Place, Suite 303  
Hilton Head Island, SC 29928  
(843) 785-8110  
Email mmogil@mogillaw.com  
Attorney for Plaintiff



STAX Building &amp; Development

## Yacht Cove Building Agreement

This agreement is made this July 26th, 2022, by and between STAX Building & Development, hereto forward "Contractor", and HHI Yacht Club Ventures LLC, hereto forward "Owner", for the performance the work identified in Article III, "Scope of Work", in accordance with the terms described herein.

### ARTICLE I: Contract Sum

Owner agrees to pay Contractor the sum of one-million, three-hundred-sixty-nine thousand, eight-hundred-thirteen dollars and sixty-four cents (\$1,369,813.64), according to the milestones of completion and payment amounts specified in Article II, "Schedule of Payments". Contractor shall invoice Owner according to the Schedule of Payments. Owner shall make payment to Contractor via wire transfer within three (3) business days of receipt of each invoice.

### ARTICLE II: Schedule of Payments

| <u>Milestones Lot 401</u>  | <u>Amount</u>  |
|--|----------------|
| Upon completion of framing and window installation                     | \$35,044.10    |
| Upon completion of rough mechanical and roof installation              | \$35,044.10    |
| Upon completion of drywall installation & finishing                    | \$35,044.10    |
| Upon installation of cabinetry & interior trim                         | \$35,044.10    |
| Upon completion of flooring, countertops, and paint                    | \$35,044.10    |
| Upon substantial completion  | \$35,044.10    |
| Upon completion of punch list and issuance of Certificate of Occupancy | \$13,698.13    |
| TOTAL  | \$223,962.73 ✓ |

| <u>Milestones Lots 505-508</u>   | <u>Amount</u>                            |
|--|--|
| <del>Outstanding balance</del>   | <del>-\$62,076.00 (PAID 7/25/2022)</del> |
| Upon completion of drywall installation & finishing                    | \$94,745.59                              |
| Upon installation of cabinetry & interior trim                         | \$94,745.59                              |
| Upon completion of flooring, countertops, and paint                    | \$94,745.59                              |
| Upon substantial completion  | \$94,745.59                              |
| Upon completion of punch list and issuance of Certificate of Occupancy | \$54,792.55                              |
| TOTAL  | \$433,774.91 ✓                           |

### ARTICLE III: Scope of Work

The Scope of Work shall consist of the new construction of five (5) town houses on Owner's undeveloped Lots 401, 505, 506, 507, and 508 Jib Sail, per the Proposal, and plans by Bruinier & Associates (dated 12/2019), additional plans and information by DR Design & Consulting (dated 12/8/2021 for Lot 401 and 12/2/2021 for Lots 505 through 508), and revised roof framing details and calculations by H2 Engineering (dated 3/20/2022).



#### **ARTICLE IV: Schedule of Completion**

Work shall commence within 10 days of Contractor's receipt of building permits. Contractor shall achieve substantial completion of Lots 505, 506, 507, and 508 on or before February 1st, 2023, and Lot 401 on or before March 1st, 2023. "Substantial completion" is defined as, "that point where what was constructed is fit for occupancy and ready to be used for its intended purpose." Owner shall provide Contractor with reasonable access to jobsite during Contractor's normal business hours. Contractor shall not be responsible for delays due to: inability to access jobsite, delays in material selections, strikes, material or labor shortages, acts of God, or unusually inclement weather.

#### **ARTICLE V: Change Orders**

Any changes made following the execution of this contract must be made in writing and agreed to by both Contractor and Owner. Change Orders are to be construed as additions to the contract, and do not nullify the contract. Any adjustments to the Scope of Work, Contract Sum, and/or Schedule of Completion as a result of a change shall be set forth on a written Change Order. Change Orders, including those arising from variances in actual costs versus allowances given, and including both increases and decreases in the Contract Sum, shall be based upon actual cost, plus 10% profit and 10% overhead.

#### **ARTICLE VI: Warranty**

Contractor warrants its work for a period of one (1) year from the date of issuance of a Certificate of Occupancy against deficiencies and defects in materials and/or workmanship, according to the "South Carolina Residential Construction Standards", adopted February 18, 1998, by the Residential Builders Commission of the South Carolina Department of Labor, Licensing, and Regulation, and agrees to satisfy same without cost to Owner. Contractor further warrants its work for a period of ten (10) years against structural defect or failure.

#### **ARTICLE VII: Special Provisions**

Below are a list of exhibits, drawings, and attachments which are made a part of this contract:

- Proposal
- Plans by Bruinier & Associates (dated 12/2019)
- Additional plans and information by DR Design & Consulting (dated 12/8/2021 for Lot 401 and 12/2/2021 for Lots 505 through 508)
- Revised roof framing details and calculations by H2 Engineering (dated 3/20/2022)

#### **ARTICLE VIII: Severability**

Should any provision of this Agreement be determined to be void, invalid, unenforceable, or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.



STAX Building & Development

ELECTRONICALLY FILED - 2023 Jun 14 12:47 PM - BEAUFORT - COMMON PLEAS - CASE#2023CP0701127

**ARTICLE IX: Governing Law & Assignment**

This Agreement will be construed, interpreted, and applied according to the law of the state of South Carolina. This Agreement shall not be assigned without the written consent of all parties.

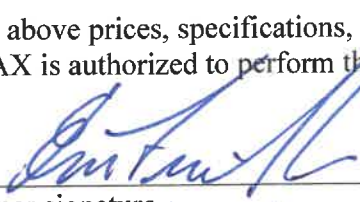
Respectfully submitted:

  
STAX Building & Development

Date: July 26, 2022

**ARTICLE X: Acceptance of Agreement**

The above prices, specifications, terms, and conditions are satisfactory and are hereby accepted by Owner. STAX is authorized to perform the work as specified. Payment will be made as outlined above.

  
Owner signature

Date: 7/26/2022

  
STAX Building & Development

Date: July 26, 2022

7/25/2022  
PAID TO DATE IS 712,076



STAX Building & Development

## **Yacht Cove Lot 505, 506, 507, 508, 401 Jib Sail Ct Proposal**

### **Project Management**

- Work with Community Development Department to acquire all necessary permits for project
- Work with Owner to manage construction details and material selections
- Provide site supervision during the construction process to manage trades and monitor safety
- Install protective materials to maintain a safe work area for trades and guests during construction
- Dispose of all waste
- Provide daily and final cleanup
- Based on plans provided by DR Design & Consulting

### **Scope of Work**

#### **1. Foundation**

- a) 3KSi concrete, steel-reinforced unless otherwise specified
- b) Broom finish driveway and rear patio

#### **2. Framing**

- a) 2x6 exterior walls at first and second floors
- b) 16" TJI engineered floor system at 16" O.C. at second floor subfloor
- c) 7/16" OSB wall and roof sheathing unless otherwise specified
- d) Steel connectors and strapping per engineering plan
- e) Provide wood blocking where needed to support drywall, trim, and cabinetry
- f) Install 30lb felt over roof sheathing
- g) Envelope house will be Tyvek or #30 Felt

#### **3. Roof**

- a) Roofing shall be 50-year asphalt shingles
- b) Include flashing for roof-to-deck transitions and all roof-to-wall transitions (including chimney)
- c) Accent roof at front elevation to be 5V Metal

#### **4. Windows & Doors**

- a) Windows shall be impact-rated vinyl clad casement & FG units, low-E glass, white, simulated divided lites
- b) Windows shall be nailfin-type installation
- c) Windows shall be installed over 12mil vinyl flashing (Wascoseal or equivalent) with silicone sealant at nailfin
- d) Windows shall be counterflashed using adhesive-backed asphalt flashing ("Peel & Seal")
- e) Doors shall be ply gem sliding glass door units
- f) Overhead doors at Garage shall be 9x7 and stamped steel with windows in top panel

#### **5. Plumbing**

- a) All pressurized water lines shall be PEX
- b) All DWV lines shall be Schedule 40 PVC
- c) Expanding foam draft blocking per fire code
- d) Fixtures included per selections



## 6. Electrical

- a) 200A meter and service
- b) GFCI breakers per code
- c) AFCI breakers at all circuits not GFCI protected
- d) White toggle switches & standard receptacles
- e) A minimum of 50% of light bulbs shall be high-efficiency per energy code
- f) All bath fan/light units shall be Broan 744 recessed unit (or equivalent)
- g) Expanding foam draft blocking per fire code
- h) Fixtures included per selections

## 7. HVAC & Venting

- a) Bryant 14 SEER forced air heating & cooling system
- b) 2.5-ton system (2 Zones)
- c) Ductwork shall be located in second floor subfloor system wherever possible, and elsewhere as needed
- d) Vent bath exhaust fans, dryer, and hood at kitchen to exterior
- e) Expanding foam draft blocking per fire code

## 8. Gas

- a) No Gas

## 9. Siding & Trim

- a) Cornice shall consist of 1x8/1x4 smooth metal fascia
- b) Porch ceilings shall be Vinyl
- c) Corner trim, water table, foundation reticulation, and window & door trim shall be Vinyl
- d) Siding shall 4" spacing Vinyl
- e) Exterior railings shall be Vinyl
- f) Exterior doors shall have 2x pressure-treated threshold braces installed under them
- g) Provide plywood storm protection and fasteners per engineering requirements

## 10. Insulation

- a) R-19 Batt in ceilings
- b) R-19 fiberglass batt insulation at exterior walls
- c) R-30 fiberglass batt insulation at subfloors

## 11. Drywall & Paint

- a) ½" drywall ceilings and walls
- b) Moisture-resistant (purple board) behind sink bases, toilets, and over showers & tubs
- c) Level 4 finish & prime walls
- d) Caulk drywall to HVAC vents to inhibit condensation and thermal leaks per energy code
- e) Paint interior walls and ceilings, minimum 2 coats, Sherwin-Williams ProMar 400 flat latex (or equivalent)
- f) Paint interior trim, minimum 2 coats, Sherwin-Williams ProMar 400 alkyd enamel satin (or equivalent)
- g) Stain oak railings and newels, Sherwin-Williams Wood Classics oil-based interior stain (or equivalent)
- h) Varnish oak railings and newels, minimum 2 coats, Minwax Polycrylic water-based varnish (or equivalent)
- i) Prime exterior wood surfaces, 1 coat, in oil-based exterior primer
- j) Paint exterior wood and Hardie surfaces, minimum 2 coats, Sherwin-Williams A-100 exterior latex satin (or equivalent)

**12. Interior Trim & Doors**

- a) Logan 2-panel smooth interior doors, 8', brushed nickel hinges
- b) Window & door casing MDF 1x Craftsmen Style
- c) Door hardware to be Schlage lever style
- d) stain-grade oak
- e) 4094 primed newels
- f) 5060 primed balusters

**13. Cabinetry & Countertops**

- a) Cabinet & countertop. White Shaker Style, soft close hinges, and level 1 quartz tops

**14. Tile**

- a) Showers shall have wall tile to ceiling with deco strip
- b) Tile shall be installed over ½" backer board sealed with Red Guard
- c) Grout shall be mildew-resistant
- d) All linear joints between perpendicular tile planes shall be caulked with grout-matched caulking
- e) \$3.50/SQFT material allowance

**15. Flooring**

- a) LVP flooring at Common Area
- b) Tile at Master Bathroom, Bath 1, Bath 2, Bath 3
- c) Carpet at Master Closet, Bedroom 1, Club Room, Hall, Bedroom 2, and Bedroom 3
- d) \$4/SQFT material allowance for LVP
- e) \$22/YD material allowance for carpet and pad installed
- f) 8lb carpet pad

**16. Shelving & Bath Accessories**

- a) All closets shall have wire shelving

**17. Glass**

- a) 3/8" tempered frameless glass shower enclosure
- b) ¼" plate glass bath mirrors

**18. Appliances**

- a) By Owner

**Owner Provided**

- Plans and drafting
- ARB Fees
- Appliances 5 refrigerators, 5 microwaves, 5 stoves, 5 dishwashers
- Driveway
- Tree removal
- Pavement work per agreement with Yacht Cove POA

|                             |   |                              |
|-----------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA     | ) | IN THE COURT OF COMMON PLEAS |
|                             | ) |                              |
| COUNTY OF BEAUFORT          | ) |                              |
|                             | ) | LIEN NUMBER: _____           |
|                             | ) |                              |
| STAX BUILDING & DEVELOPMENT | ) |                              |
| LLC                         | ) | Amended Lien                 |
| Plaintiff/Lienor,           | ) |                              |
|                             | ) |                              |
| v.                          | ) |                              |
|                             | ) |                              |
| HHI YACHT CLUB VENTURES LLC | ) |                              |
|                             | ) |                              |
| Defendant(s)                | ) |                              |
| _____                       | ) |                              |

NOTICE IS HEREBY GIVEN that as of January 12, 2023, Stax Building & Development, LLC is due the sum of \$ 422,222.78 for labor and materials supplied to HHI Yacht Club Ventures, LLC for improvements and work performed on and at the subject real property for work concluding within the previous ninety days prior to the date of lien filing, and other authorized charges and interest, as set forth in the Verified Statement of Account which is attached hereto and incorporated for all purposes as Exhibit "A", plus additional charges as may accrue, other authorized charges, interest, attorney's fees and costs of collection. This Amended Lien amends and updates the lien filed on February 8, 2023 in Records Book 153 at Page 1828-30. The last day of work performed on the subject properties was on or about January 12, 2023.

That by virtue of this Notice and Certificate of Lien, Stax Building & Development, LLC has and claims a lien to secure the payment of the debt so due and the costs of enforcing such lien upon the following described subject real property:

ALL those certain pieces, parcels or lots of land situate, lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, known as **LOT NUMBER 401, 508, 507, 506 AND 505 SAILWIND PHASE I, A SECTION OF YACHT COVE**. Said property is shown on the plat thereof prepared by Jerry L. Richardson, S.C.R. L.S. #4784 dated June 9, 1988 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 35 at Page 292.

This being the same property conveyed to HHI Yacht Club Ventures, LLC, a South Carolina Limited Liability Company by Deed of Eric Friedlander dated September 19, 2019 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina In Book 3811 at Page 2280 on November 13, 2019.

Being:

TMS: R520 011 000 018 0401  
TMS: R520 011 000 018 0508  
TMS: R520 011 000 018 0507  
TMS: R520 011 000 018 0506  
TMS: R520 011 000 018 0505

Dated: June 12, 2023

Respectfully Submitted,

Stax Building & Development, LLC

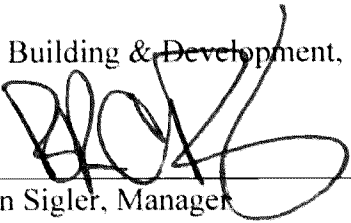
By:   
Brian Sigler, Manager  
56 New Orleans Road Ste 206  
Hilton Head Island, SC 29928

Exhibit "A" to Notice and Certificate of Lien

VERIFIED STATEMENT OF ACCOUNT

CREDITOR: Stax Building & Development LLC

DEBTOR: HHI Yacht Club Ventures, LLC

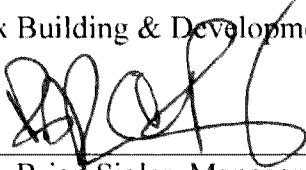
REAL PROPERTY: 28 Jib Sail Court, 32 Jib Sail Court, 34 Jib Sail Court, 36 Jib Sail Court, 38 Jib Sail Court, Hilton Head Island, SC 29928

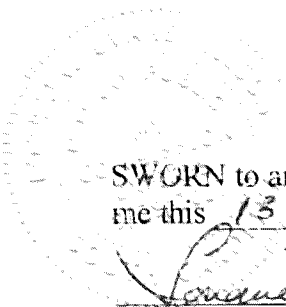
AMOUNT DUE: \$422,222.78 plus additional interest, costs and attorney's fees.

Personally appeared before me the undersigned, Brian Sigler, who, after being duly sworn, swears and affirms the following to be true and correct:

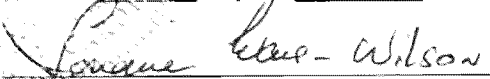
1. That he is the Manager for Stax Building & Development LLC and as such has personal knowledge of the facts set forth herein.
2. That as of January 12, 2023 the amount of \$422,222.78 was owed and unpaid for labor and materials supplied to Debtor HHI Yacht Club Ventures, LLC at the Yacht Cove project referenced herein, plus other authorized charges and interest, attorney fees and costs as continue to accrue.
3. The last day labor, services and materials were performed on the subject properties was on or about January 12, 2023.
4. The foregoing is a true and accurate statement of the account representing amounts due Stax Building & Development LLC as of the date above referenced and all just credits have been applied.

Stax Building & Development, LLC

By:   
Brian Sigler, Manager



SWORN to and subscribed before me this 13 day of JUNE, 2023.

  
Notary Public for South Carolina  
My Commission Expires: 9/29/27