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SC Court of Appeals

In the Supreme Court For
the State of South Carolina

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

The Honorable Mikell Scarborough, Master in Equity

Case No.: 2016-CP-10-02955
App. Case No. 2021-000272

TCC OF CHARLESTON, INC.....*Plaintiff/Petitioner,*

v.

Concord and Cumberland, LLC, Concord & Cumberland HPR, Leo Hall, Diane Hall, Bea H. Smith, Margaret C. Pope, William D. Foster, Jr., Gene G. Foster, Mattison J. MacGillivray, Teresa MacGillivray, Pamela L. Vaughn, Nelia A. Patricio, Trustee of the Nelia A. Patricio Revocable Trust Agreement, Stuart D. Reeves, Edward T. Strom, Barbara K. Henderson, James R. Clarke, Paul A. Brim, Robert K. Seidl, Jennifer M. Seidl, Robert Kenneth Seidl, II, M. Bert Storey, Thomas R. Mather, Edward T. Strom, 304 Concord & Cumberland, LLC, Marion M. Simpson f/k/a Marion Moore McDonald Simpson, Kathy Gardner, Gregory J. Gardner, Freeman Waterfront Properties, LLC, Jo-Ann Cooper, Betty Y. Segal, Robert M. Levin, and Bonita K. Levin, Donald D. Leonard, Betty L. Beatty, Mattellen, LLC, and Thomas R. Debnam, Trustee of the Trust Agreement of Thomas R. Debnam.....*Defendants and Respondents.*

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that a Petition for Rehearing was made and finally ruled upon by the Court of Appeals on July 30, 2025. By Order of August 29, 2025, this Court granted an extension of time through September 18, 2025 to file this petition.

INTRODUCTION

It is well settled that the South Carolina Mechanic's Lien Statute (S.C. Code § 29-5-10 *et seq.*) ("the Lien Statute") is to be strictly construed and its provisions strictly adhered to. The question Petitioners ask this Court to take up is whether there are exceptions. Specifically, can the time in which to serve and file a mechanic's lien be extended or truncated by the inclusion of an erroneous date of last work in the statement of account?

Per the terms of the Lien Statute and South Carolina law, a lien is timely if it is served and filed within ninety days of the last date the contractor provided labor or materials to the project.¹ And, under the Lien Statute and South Carolina law, a lien shall not be invalidated because of an error on the statement of account.² The trial court and Subject Opinion rejected both of these provisions of the Lien Statute and South Carolina law, holding Petitioner's lien invalid based on an erroneous date of last work in the statement of account that was incorrectly stated³ as being earlier than it actually was. The trial court held that because the lien had not been filed *and* served on homeowners within ninety days of the erroneous date of last work, it dissolved by operation of

¹ S.C. Code § 29-5-90; *see also, e.g., Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 631 S.E.2d 252 (2006).

² S.C. Code § 29-5-100; *Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020).

³ It is undisputed that the date in the statement of account was earlier than the actual date of last work.

law.⁴ The Court of Appeals affirmed in its July 30, 2025 Order (“the Subject Order”), in substantial part on the basis of a distinguishable North Carolina case.⁵ These holdings are contrary to how courts in this state apply the lien laws and must be reversed.

This Court has not had occasion to decide whether an erroneous date of last work in a statement of account can override the Lien Statute’s requirement that a lien must be filed and served within ninety days *of the last date of work*. Petitioner TCC of Charleston, Inc. (“TCC”) requests that this Court issue a writ of certiorari and decide this question and other appellate issues ruled upon by the Court of Appeals, as set forth below.

QUESTIONS PRESENTED

1. Whether the Lien Statute’s requirement that a lien be filed and served within ninety days of the actual date of last work may be lengthened or shortened by the inclusion of an erroneous date of last work included in the statement of account accompanying the lien.
2. Whether an erroneous date of last work in the statement of account provides a basis to invalidate a lien in spite of the provision of the Lien Statute that no error in the statement of account shall serve as the basis to invalidate a lien.
3. Whether one circuit court judge can overrule a prior ruling of another circuit court judge who previously decided the same question in the same case.
4. Whether it was error to invalidate a mechanic’s lien on the basis of timeliness of service without permitting Petitioner discovery regarding whether Respondents were out of state or avoided service, either of which may entitle Petitioner to an extension of time in which to serve its lien.
5. Whether it was error to hold that service of a lien upon a Horizontal Property Regime does constitute service on the individual homeowners when the Horizontal Property Regime,

⁴ This is in spite of the provision in the Lien Statute that provides no lien will be invalidated as the result of an error in the statement of account.

⁵ See Subject Order at 13–14 (citing *Strickland v. Gen. Bldg. & Masonry Contractors, Inc.*, 207 S.E.2d 399 (N.C. Ct. App. 1974).

rather than the individual homeowners, was the entity with whom the contractor entered a contract and was responsible, under its own bylaws, for all contracts and liens on the common elements.

6. Whether a party may be deemed a “prevailing party” under the Lien Statute when no effort was made to foreclose the lien against that party.

STATEMENT OF THE CASE⁶

A. The Project

On February 27, 2014, TCC was contracted by Respondent Concord and Cumberland HPR (“the HPR”) to repair construction defects on the exterior of the condominium building located at 175 Concord Street in Charleston, South Carolina. **R. p. 00133** (Contract). Though the exterior common elements were owned by the unit owners and not the HPR, the HPR was listed as the property owner in the contract between the parties. *Id.*

The scope of TCC’s work and its bid to perform the work were based upon an architectural evaluation of the building commissioned by the HPR. Shortly after the notice to proceed issued on July 28, 2014 and demolition began, it became obvious to all involved that the scope of the construction defects was far greater than had been revealed in the architectural evaluation. This included exterior walls that were out of plumb, structural columns that were rusted, improperly attached, cut and dangerously rewelded, structural members that were cut off, and floating stacks of blocks, four-stories high, tied into nothing and held in place by stucco. When all was said and done, 124 Requests for Information, 148 Proposed Change orders, and 10 Owner Change Orders had been issued to account for the additional scope required to repair the building. The time and cost of the project had doubled.

⁶ The facts and procedural history of this matter are lengthy and are well set out in the Court of Appeals’ July 30, 2025 opinion. Accordingly, a truncated version is provided here.

During the project, multiple out-of-scope issues were often discovered in a single location, causing concurrent sources of delay to the in-scope work, and requiring that the delay and cost impact be apportioned between the sources of delay only once the work was complete on each. Given the ubiquity of these out of scope issues, the parties agreed that TCC would bill its out-of-scope work on a time and material (“cost plus”) basis (rather than halt work each time an issue was discovered), and that certain costs would have to be accounted for at the end of the project due to the difficulty in attributing project delays to particular issues when so many concurrent delays existed.

When the HPR encountered funding issues in May and June of 2015, TCC advised the HPR that it could not proceed without adequate assurances of funding. To avoid a shutdown of the project, the parties reached an agreement that included approval of payment requests and assurances by the HPR that TCC would be compensated for its additional work. The agreement was reduced to writing on May 27, 2015. **R. p. 2679.** At a June 25, 2015 meeting between the HPR and TCC, it was agreed that, in order to keep the job moving, costs would continue to be tracked on a cost-plus basis, with some proposed change orders to be resolved in a final accounting at the end of the project. On these assurances, TCC advanced over \$2mm to complete the work. This agreement was further preserved in a June 26, 2015 email from the HPR’s attorney, Chris Ogiba, to TCC’s attorney, Drew Epting. **R. p. 02676.**

The HPR made partial payments on certain of TCC’s proposed change orders; TCC expressly did not waive its entitlement to the remainder of its costs. *E.g.*, **R. p. 02681** (PCO 130, Jan. 26, 2015, TCC Arb. Exh. 73). When the HPR failed to honor its agreement, this suit followed.

B. The Lien and Arbitration

TCC filed its mechanic’s lien and verified complaint to foreclose on June 6, 2016 and an amended lien and amended verified complaint on June 10, 2016. The amended lien and amended

complaint both incorrectly listed the date of substantial completion as the date of last work, March 17, 2016.⁷ **R. p. 000447** (Amended Lien), **R. p. 000276** (amended complaint), **R. p. 000805** (Griffith Affidavit). The matter was stayed from December 2017 until May 1, 2020 while TCC and the HPR arbitrated and while the HPR asked the arbitration panel to vacate the \$2.15m arbitration award it unanimously⁸ issued in favor of TCC. **R. p. 000003** (Order staying case).

C. Court Proceedings Following Arbitration

After TCC prevailed in arbitration, the HPR filed multiple motions to vacate the arbitration award in circuit court and attempted to appeal the circuit court's denial of the motion to vacate.⁹ While the attempts to vacate the arbitration award remained pending, the HPR refused to allow TCC to move forward with the case as to the individual unit owners or to collect its attorneys' fees as the prevailing party.

Following the lifting of the stay on May 1, 2020, the parties came before the circuit court on (i) TCC's motion to amend its complaint (**R. p. 001830**) and (ii) various other motions relating to foreclosure and attorneys' fees. The circuit court granted TCC's motion to amend its complaint in order to remove March 17, 2016 as the date of last work and referred the remaining motions to the Master in Equity. **R. p. 000041**. TCC filed its second amended complaint on August 24, 2020. **R. p. 000478**.

After referral to the Master, two hearings were conducted on the various motions, and the Master resolved those motions via the following orders:

1. February 16, 2021 order (**R. p. 000083**):

⁷ It is uncontested that this date is incorrect and that TCC remained on the project until at least June 2016. *See infra*. Indeed, a prior ruling by the arbitration panel established the last date of work as January 23, 2017.

⁸ Including the HPR's own party-appointed arbitrator.

⁹ The appeal was dismissed as interlocutory on September 11, 2020.

- a. Denying TCC’s Motion for Attorneys’ Fees (**R. p. 002060**);
 - b. Denying TCC’s Motion to Amend Statement of Account (**R. p. 002081**);
 - c. Denying TCC’s request that confirmation be stayed until TCC’s attorneys’ fees had been awarded, and only *then* confirming the arbitration award (**R. p. 002170**);
 - d. Granting the HPR’s Motion for Summary Judgment (**R. p. 001265**);
 - e. Granting the HPR’s Motion to Dismiss (**R. p. 002062**);
 - f. Granting the HPR’s Motion to Deposit Funds Into Court (**R. p. 001827**);
and
 - g. Finding the HPR and individual homeowners to be the “prevailing party” under the South Carolina Mechanic’s Lien statute (S.C. Code § 29-5-10(a));
2. February 16, 2021 order (**R. p. 000064**) granting Defendant Betty Beatty’s Motion for Partial Summary Judgment (**R. p. 001820**) and awarding fees of \$76,000; and
 3. March 2, 2021 order (**R. p. 000104**) awarding \$250,553.70 in attorneys’ fees to all Defendants other than Ms. Beatty.

TCC timely appealed those three orders on March 11, 2021 and then filed a motion to reconsider under Rules 59(e) and 60, SCRCP on March 12, 2021. **R. p. 002240**. That motion was denied by order of March 26, 2021 (**R. p. 000115**), which TCC timely appealed on March 31, 2021. **R. p. 002704**. The HPR cross-appealed, seeking to have the arbitration award vacated.

D. In the Court of Appeals

Briefing was completed in December 2021, and the Court of Appeals heard argument on June 6, 2024. It issued its opinion on March 19, 2025. Petitions for rehearing followed from all parties, which were resolved by Order of July 30, 2025, at which time the Court of Appeals refiled its opinion with minor revisions.

ARGUMENT

The Lien Statute, which must be strictly applied by the courts, provides that the deadline to file and serve a mechanic's lien is ninety days after the date labor or materials were last provided to the project. That date is critical, as liens not filed and served within the specified time dissolve as a matter of law; the time period cannot be extended or truncated. There is no dispute that TCC provided labor through at least June 9, 2016.¹⁰

Nevertheless, the trial court found that the lien had not been timely served and had therefore dissolved based upon an erroneous date of last work of March 17, 2016 included in the statement of account accompanying TCC's lien. Accordingly, the trial court held that the HPR and the individual unit owners were the "prevailing party" with respect to the lien claim and awarded them attorneys' fees under the Lien Statute. The Court of Appeals affirmed this holding.

This Court has not had occasion to determine whether parties may extend or shorten the period within which to serve and file a lien in derogation of the timeline provided in the Lien Statute. TCC petitions this Court to issue a writ of *certiorari* and decide this novel question of law (*infra*, Part I).

In addition, TCC contends the trial court and Court of Appeals plainly erred in the following respects:

1. Invalidating a lien on the basis of an error in the statement of account;
2. Permitting one circuit court judge to overrule another by ruling differently on the same issue in the same case;

¹⁰ The record actually reflects that TCC provided labor and materials at the site through January 23, 2017 in connection with its work on the Stone Tower, another portion of the building outside of the originally intended scope that required repair and for which TCC obtained an award in the arbitration. TCC therefore contends that this actual last date of work is *res judicata* based on the arbitrators' award.

3. Finding that, under the particular circumstances of this case, service of the lien on the HOA did not constitute sufficient service of the homeowners;
4. Denying discovery to TCC to determine whether particular homeowners were out of state or avoiding service, which would toll the time within which to serve the lien;
5. Finding the HPR to be the “prevailing party” for purposes of the mechanic’s lien statute despite TCC not attempting to foreclose on the HPR.

TCC thus requests this Court grant certiorari with respect to these questions also (*infra*. Parts II-V).

I. The Provisions of the Lien Statute Must Be Strictly Applied.

South Carolina courts strictly construe the terms and requirements of the Lien Statute. *E.g.*, *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., LLC*, 409 S.C. 331, 340, 762 S.E.2d 561, 565 (2014) (“In South Carolina, mechanics’ liens are purely statutory and may be acquired and enforced only in accordance with the terms and conditions set forth in the statutes creating them.”).

Strictly applying the terms of the statute, TCC’s lien was timely served, and its dissolution was erroneous.

A. Timeliness of a Lien’s Service Is Determined Based Upon the Actual Date of Last Work.

When determining the date by which a mechanic’s lien must be served and filed, the relevant date is the date of last work: “To perfect a mechanic’s lien, a claimant must ‘serve and record a certificate of lien *within ninety days after he ceases to furnish labor or materials.*’” *Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 277, 851 S.E.2d 724, 730 (Ct. App. 2020) (quoting *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 27, 336 S.E.2d 488, 490 (Ct. App. 1985) (emphases in original)).

It is an unremarkable proposition that a contractor cannot *extend* the time in which to file

and serve a lien by stating he was onsite later than he actually was. It should therefore be equally unremarkable that a contractor's mistaken inclusion of a date that is *earlier* than the last date of work cannot shorten the time. The only date that is material under the Lien Statute is the actual date of last work.

The trial court's error is not harmless error. Service of the lien was accomplished on the vast majority of homeowners within three months of June 9, 2016, a date on which TCC was uncontestedly onsite performing the work of the original contract.¹¹ The remaining homeowners were non-residents,¹² and in South Carolina, service deadlines may be tolled when the party to be served is out of the state or otherwise avoiding service.¹³ *See* S.C. Code § 15-3-30 (noting the exception to the running of the statute of limitations when the defendant is out of the state); *Hooper v. Ebenezer Senior Servs. & Rehab Ctr.*, 386 S.C. 108, 115–17, 687 S.E.2d 29, 32–33 (2009) (noting equitable tolling may be applied wherever justified by the circumstances).

TCC asks this Court to issue a writ of *certiorari* and clarify that a lien is timely if filed and served within ninety days of the last date of work, and that the time cannot be extended or shortened by the inclusion of an erroneous date in the lien or related filings.

¹¹ The record also establishes TCC's actual date of last work as January 23, 2017, for work on the Stone Tower (*e.g.*, **R. p. 002694** (proposed change order for Stone Tower work), **R. p. 002695** (time sheets), **R. p. 002697** (arbitration summary exhibit), payment for which was also included in the arbitration award. The HPR contends this was not part of the original contract and therefore not relevant to the timeliness analysis. TCC disagrees.

¹² Upon information and belief. TCC served discovery to establish the residence of the individual homeowners and when they were in or out of state, but no responses have been received to date. Dissolving TCC's mechanic's lien without permitting this discovery to take place was further error. *Infra* Part III.

¹³ The record also reflects that homeowners actively avoided service, including changing the building door code after being alerted of the imminent service of the lien. *See infra* Part III.

B. An Error in the Statement of Account Cannot Be the Basis to Invalidate a Lien.

The mechanic's lien law expressly states that an inaccuracy in the statement of account cannot form the basis for invalidating a lien. S.C. Code § 29-5-100 ("Proceedings not invalidated by inaccuracy of statement of account"). This is necessarily true as to matters that are not required to be included in the statement of account in the first place. The only items required to be included in a statement of account are (i) "a just and true account of the amount due to him" and (ii) "a description of the property intended to be covered by the lien." S.C. Code § 29-5-90. Therefore, an error in the statement of account as to the date of last work is not a basis to invalidate an otherwise valid lien.

By ruling a lien dissolved solely on the basis of an erroneous last date in a statement of account was plain error.

II. The Master Was Bound by the Prior Circuit Court Ruling that the Erroneous Date of Last Work Was Not Binding.

It is well-settled that a prior ruling by the lower court cannot be reversed by a different lower court judge in the same case between the same parties. *E.g., Wilkinson v. Wilkinson*, 192 S.C. 497, 7 S.E.2d 447, 449 (1940) (affirming the trial court's order, including that "[t]he proposition is certainly not open to debate that one circuit judge may not reverse another and that the order of a circuit judge made in the due course of the case stands as the law thereof unless and until reversed by the Supreme Court."); *Matheson v. McCormac*, 187 S.C. 260, 196 S.E. 883, 884 (1938) ("That a decree from which no appeal is taken becomes the law of the case in all subsequent proceedings involving the same parties and the same subject matter is the well-settled law in this state, and it is therefore unnecessary to enter upon any extended discussion of this postulate.")

Here, TCC sought and was granted leave from the circuit court to amend its pleading to remove the reference to March 17, 2016, because that was the date of substantial completion. **R.**

p. 001830 (Motion to Amend), **R. p. 000805** (Affidavit of J.D. Griffith). The HPR opposed the request, arguing that TCC was bound by the erroneous date of work set forth in the pleadings:

In its amendment, TCC proposes to delete its alleged date of “final completion” of the construction project, an allegation upon which they proceeded to arbitrate and have obtained an award. TCC is bound to this date of final completion by judicial estoppel and cannot retract it now in order to assert a different date as to the individual unit owners.

R. p. 002033 (HPR Reply at 6). In granting the amendment, Judge McCoy rejected the HPR’s argument that TCC was bound by an erroneous statement of the date of last work. This ruling became the law of the case and was therefore binding on the Master in Equity.

Nevertheless, the Master denied TCC’s motion to amend its statement of account,¹⁴ though the amendment was sought for the very same purpose, overruling Judge McCoy and finding TCC *was* bound by the erroneous date of last work. This was plain error.

III. TCC Was Entitled to Discovery to Determine Whether the Lien Service Deadline Should Be Equitably Tolled.

TCC sought discovery from the HPR and the individual homeowners regarding their residency status, when they became aware of TCC’s lien, and their activities to avoid being served with the lien. Included in TCC’s discovery were requests that Respondents:

7. Identify where you were residing during the period of June through September, 2016;
8. Identify all dates you were out of state during the period of June through September, 2016; and
9. Identify your state of primary residence in 2015 and 2016.

R. p. 001989 (May 22, 2020 Interrogatories). These were requested because the time for service is equitably tolled by a party being out the state or avoiding service. S.C. Code § 15-3-30 (noting

¹⁴ This motion was filed before the Master in Equity, as lien matters are within the jurisdiction of the Master. Rule 53(b), S.C.R.C.P.; Rule 71(a), S.C.R.C.P.

the exception to the running of the statute of limitations when the defendant is out of the state); *Hooper v. Ebenezer Senior Servs. & Rehab Ctr.*, 386 S.C. 108, 115–17, 687 S.E.2d 29, 32–33 (2009) (noting equitable tolling may be applied wherever justified by the circumstances).

While this discovery remained pending and unanswered, the trial court found that the homeowners had not been timely served and that the lien was dissolved. The trial court erred in preventing TCC from discovering this information, which in turn denied TCC another avenue for demonstrating timely service. This is especially troubling, as TCC’s process server, Mr. Gamble, submitted an affidavit that efforts were made by the homeowners to avoid service. **R. p. 002009** (Gamble Affidavit); *infra* Part IV.B.

IV. Under the Circumstances of This Case, Service on the HPR Should Suffice as Service on the Homeowners.

It is uncontested that this suit was served upon counsel for the HPR¹⁵ no later than June 15, 2016. **R. p. 002493** (Epting Affidavit). This was natural, as the contract between the parties for work on the building’s common elements lists *the HPR* as the property owner, not the individual owners. **R. p. 000133** (contract). That the HPR was the proper party to serve with the lien is also borne out by the HPR’s bylaws and master deed, which:

- (i) authorize the HPR to enter into contracts on behalf of the individual homeowners (**R. p. 000486** (Master Deed) at §§ 2.3, 3.6(a), and 8.1, **R. p. 001947** (Bylaws § 7.2(e)), and
- (ii) *require* the HPR to discharge liens against the common elements. **R. p. 001946** (Bylaws § 7.1(c)).

For these reasons, and those that follow, the unit owners were served on June 16, 2016 as a matter of law.

¹⁵ Who also represents 34 of the 35 homeowners.

A. Statutory Intent

The Horizontal Property Act¹⁶ states that a lien cannot lie against a horizontal property regime, but rather only against individual units. S.C. Code § 27-31-230(a). Based on this statute, the HPR argues each individual homeowner must be served for the lien to be effective against that owner's proportional share of the common elements.

This was not the purpose of the statute. As noted by this Court:

[M]ore importantly, the purpose of the first sentence is to prevent an individual condominium owner or in this case, the developer, from encumbering the interests of others by giving a lien against the whole property once the master deed is filed.

Resolution Tr. Corp. v. Eagle Lake & Golf Condos., 310 S.C. 473, 476–77, 427 S.E.2d 646, 648 (1993). What the statute did *not* intend was to require a contractor—engaged by a horizontal property regime to perform work on the building's common areas and representing itself as the owner—to serve each individual homeowner (in some buildings, there can be hundreds, if not thousands of unit owners), many of whom do not live in their units, in order to protect its lien rights.

B. Service on All Owners

The efforts to serve the individual homeowners in this case perfectly illustrate why the imposition of such a requirement is not proper. TCC sought to serve the individual unit owners beginning on June 10, 2016, when the amended mechanic's lien and suit to foreclose were given to Mr. John Gamble, a process server. **R. p. 002434** (Gross Affidavit at ¶ 2.b). On June 11 or June 12, Mr. Gamble attempted service of the unit owners at their units, but found that the building was locked and secured by a door code. *Id.* (at ¶ 2.c). It transpired that numerous unit-owners did not

¹⁶ S.C. Code § 27-31-10 *et seq.*

reside in their units. *Id.* (at ¶ 2.d).

Ten days later, on June 22, 2016, Mr. Gamble was finally able to obtain the door code and enter the building to serve those individual unit owners residing in the building. **R. p. 002009** (Gamble Affidavit at ¶ 3). However, when he returned the following day to serve additional unit owners, the door code had been changed in an attempt to avoid service. *Id.* (at ¶ 5).

The burden on a contractor to serve notices of a mechanic's lien (i) on owners who may not live at the property in question or even in the state (ii) within ninety days of last work prevents a contractor from enforcing its lien rights.

V. The HPR Cannot Be the “Prevailing Party” for Purposes of the Statute Because TCC Never Sought to Foreclose Against the HPR.

It is undisputed that TCC did not seek to foreclose its lien upon the HPR in arbitration. Indeed, the HPR repeatedly acknowledged that the only cause of action before the arbitration panel was TCC's breach of contract claim against the HPR. Following the arbitration, TCC sought to foreclose its lien against the individual homeowners only.

A. Foreclosure Action Stayed Until May 1, 2020

TCC's foreclosure cause of action was stayed in the trial court pending arbitration. **R. p. 000003** (Judge Young Order Staying Case). After the arbitration, TCC moved to lift the stay so it could proceed in the foreclosure action *against the individual homeowners* only. The stay was ultimately lifted on May 1, 2020.

B. After May 1, 2020, Foreclosure was Sought Against the Homeowners Only

After the stay was lifted, TCC made no effort to foreclose upon the HPR as the owner of the real property. As stated in TCC's June 12, 2019 Motion to Lift the Stay:

Plaintiff seeks to lift the stay so as to proceed to confirm the award
and pursue its claims against the individual defendants.

R. p. 002178 (Exh. B to Omnibus response) (emphasis added). Nevertheless, the trial court found

that the HPR was the “prevailing party” for purposes of the lien foreclosure claim and awarded the HPR a quarter of a million dollars in attorneys’ fees.

This was error, and the Court of Appeals affirmance of the HPR as the prevailing party on a claim not pursued against the HPR was likewise error.

CONCLUSION

TCC petitioned the Court of Appeals for rehearing *en banc*, contending errors in the Subject Opinion including:

1. That, because the relevant date for whether a lien is timely served is the actual last date of work, TCC cannot be bound by an erroneous date in the statement of account.
2. That the South Carolina Mechanic’s Lien Statute (S.C. Code § 29-5-10 *et seq.*, “the Statute”) prohibits invalidating a lien based on an error in the statement of account. *Id.* at § 29-5-100.
3. That an uncontestedly erroneous date in the statement of account cannot be the basis for invalidating a lien.
4. That an erroneous date in the statement of account cannot be dispositive, there being no requirement in the Statute that a statement of account include the date of last work.
5. That one circuit court judge cannot overrule another.
6. That a circuit court had already ruled TCC was *not* bound by the erroneous date of last work when the Master ruled to the contrary. The Master is bound by the ruling of the circuit court and cannot overrule it.
7. That the *Kitchen Planners* and *Strickland* cases are materially distinguishable from this case.
8. That service of the lien upon the HPR, as the party with whom TCC contracted, who held itself out as the “owner” of the common elements, and who the master deed obligates to contract for repairs to and discharge liens on the common elements, properly constitutes service of the individual unit Owners.
9. That additional discovery is necessary to establish whether TCC’s lien was timely served.

TCC Petition for Rehearing (Apr. 3, 2025) at 2. TCC requests this Court issue a writ of certiorari and resolve these issues.

This 18th day of September, 2025
Canaan, New York

Respectfully submitted:

EPTING & RANNIK, LLC

/s/ Jaan Rannik

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