FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP0401493

T Cox Builders, LLC
PLAINTIFF(S)

Piedmont Vacant Properties LLC et a
DEFENDANT(S)

Submitted by: Jane H. Merrill	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Piedmont Vacant Properties, LLC	T Cox Builders, LLC	$149,939.41
Watson Engineering, Inc.	T Cox Builders, LLC	$149,939.41
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/ Jane H. Merrill
Circuit Court Judge

2794
Judge Code

9/8/25
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Lisa Scott

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

See Attached Order

State of South Carolina, County of Anderson
In the Court of Common Pleas, Tenth Judicial Circuit

T. Cox Builders, LLC, Plaintiff, vs. Piedmont Vacant Properties, LLC and Watson Engineering, Inc., Defendants.	Case No. 2023-CP-04-01493 Order Granting Relief to Defendants & Denying Relief to Plaintiff

Trial Dates	July 8, 9, and 10, 2025
Presiding Judge	Jane H. Merrill
Court Reporter	Lisa Scott
Plaintiff's Attorney	Townes Boyd Johnson, Esq.
Defendants' Attorney	Lauren Vriesinga, Esq.

Plaintiff T. Cox Builders, LLC (Plaintiff) initiated this action against Defendants Piedmont Vacant Properties, LLC (Defendant PVP) and Watson Engineering, Inc. (Defendant WE, and together with Defendant PVP, Defendants) on July 17, 2023. On August 21, 2023, Defendants answered and asserted counterclaims against Plaintiff, which Plaintiff replied to on September 20, 2023. A non-jury trial was held before the undersigned on July 8, 2025, through July 10, 2025, where each party presented evidence.

END OF TRIAL MOTIONS

At the close of the evidence, Plaintiff and Defendants made various motions. It is only necessary to address one, as the other motions will be considered within this order.

Plaintiff's Motion to Stay for Failure to comply with 40-59-810, *et seq.*

At the conclusion of the trial, Plaintiff made a motion to stay pursuant to the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act. S.C. Code Ann. §§ 40-59-810 through 40-59-860. Plaintiff argues Defendants filed their counterclaim without first providing Plaintiff notice and opportunity to cure any defects as required by the Act. [1]

[1] "(A) In an action brought against a contractor or subcontractor arising out of the construction of a dwelling, the claimant must, no later than ninety days before filing the action, serve a written notice of claim on the contractor. The notice of claim must contain the following: (1) a statement that the claimant asserts a construction defect; (2) a description of the claim or claims in reasonable detail sufficient to determine the general nature of the construction *(continued on next page)*

Pursuant to the Act, if the notice is not provided before filing an action in court, "on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article." S.C. Code Ann. § 40-59-830. As a threshold matter, the court finds that Defendants' counterclaims are "actions" as defined in the Act.[2]

In *Grazia v. S.C. State Plastering, LLC*, our highest court determined "[t]hese rights under the Right to Cure Act notice provisions are not new substantive rights, but instead represent an effort by the General Assembly to provide the contractors/ subcontractors a new procedural timeline for asserting existing litigation rights." 390 S.C. 562, 573, 703 S.E.2d 197, 202 (2010). "In other words, the right of entry onto and inspection of the claimant's dwelling is now permitted to occur prior to the filing of the action under the notice provisions of sections 40–59–840 and 850, as opposed to during an action's normal discovery period." 390 S.C. at 573, 703 S.E.2d at 202.

"As the Grazias correctly point out, the Right to Cure Act does not confer any corresponding obligations on the part of the claimant that would not ordinarily be present: the claimant is not required to accept any offer by the contractor/subcontractor to remedy the alleged defect, and he or she is not required to accept an offer of settlement of the claim." 390 S.C. at 573, 703 S.E.2d at 202.

The court further considered "the public policy behind the Right to Cure Act's notice provisions" and determined "the purpose of the Act is to encourage the resolution of these types of claims without using litigation, by providing an environment that codifies a

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defect; and (3) a description of any results of the defect, if known. The contractor or subcontractor shall advise the claimant within fifteen days of receipt of the claim if the construction defect is not sufficiently stated and shall request clarification." S.C. Code Ann. § 40-59-840.

"(A) The contractor or subcontractor has thirty days from service of the notice to inspect, offer to remedy, offer to settle with the claimant, or deny the claim regarding the defects. The claimant shall receive written notice of the contractor's or subcontractor's, as applicable, election under this section. The claimant shall allow inspection of the construction defect at an agreeable time to both parties, if requested under this section. The claimant shall give the contractor and any subcontractors reasonable access to the dwelling for inspection and if repairs have been agreed to by the parties, reasonable access to affect repairs. Failure to respond within thirty days is deemed a denial of the claim. (B) The claimant shall serve a response to the contractor's offer, if any, within ten days of receipt of the offer. (C) If the parties cannot settle the dispute pursuant to this article, the claimant may proceed with a civil action or other remedy provided by contract or by law. (D) Any offers of settlement, repair, or remedy pursuant to this section, are not admissible in an action." S.C. Code Ann. § 40-59-850.

[2] "'Action' means any civil lawsuit or action or arbitration proceeding for damages or indemnity asserting a claim for injury or loss to a dwelling or personal property caused by an alleged defect arising out of or related to the design, construction, condition, or sale of the dwelling or a remodel of a dwelling." S.C. Code Ann. § 40-59-820.

contractor/subcontractor's ability to inspect and offer a remedy or settlement." 390 S.C. at 575, 703 S.E.2d at 203.

For the reasons below, Plaintiff's motion is denied.

Requiring Defendants to comply with the Act does not comport with its purpose "to encourage the resolution of these types of claims without using litigation, by providing an environment that codifies a contractor/subcontractor's ability to inspect and offer a remedy or settlement." 390 S.C. at 575, 703 S.E.2d at 203. In the present matter, Defendants did not initiate a suit, but only engaged in litigation after they were sued by Plaintiff. The purpose of resolving these types of claims before litigation was thwarted by Plaintiff commencing litigation. If the court is incorrect that the Act doesn't apply, the motion to stay is nevertheless denied because it was not timely made.

The statute is silent about when a motion to stay must be made. An order to stay suspends, but does not end, a judicial proceeding. Plaintiff did not file a motion to stay soon after Defendants filed their counterclaim. Instead, Plaintiff waited until the parties engaged in extensive discovery, alternative dispute resolution, and a three-day bench trial before moving to stay the action. Essentially, Plaintiff waited until there was no litigation to stay before making the motion to stay the litigation. By "strategically" waiting until the end of the case to make this motion, Plaintiff requests a stay in name only as the practical effect would be akin to a dismissal of the Defendants' claims. Plaintiff wants the benefit of availing itself of the court system while demanding the court prevent Defendants from availing themselves of the same. Plaintiff chose not to make this motion for almost two years, and the court finds Plaintiff waited too late in the process to make the motion after all evidence was presented during trial.

For these reasons, Plaintiff's motion to stay the litigation is denied.

After considering the law, evidence presented at trial, the arguments of counsel, and all matters submitted, this Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff is a South Carolina limited liability company that engages in the practice of residential building in Anderson County, South Carolina. Plaintiff's operations are managed by its sole member, Tony C. Cox (Mr. Cox), who testified on behalf of Plaintiff at trial.

2. Defendant PVP is a South Carolina limited liability company duly licensed, organized and existing under the laws of the State of South Carolina. Defendant WE's principal

place of business is in Michigan and it operates in South Carolina. Defendants regular transact business in South Carolina.

3. On May 11, 2021, Plaintiff and Defendant PVP entered into a Fixed Price Contract (Contract) for the construction of a custom-built single-family lake house located at 1011 Port Anne Cove, Anderson, South Carolina 29625 (the Home). (Pl's Ex. 1.)

4. The principle terms of the Contract included the following: (a) Plaintiff would build, construct, and erect the Home in accordance with the plans and specifications attached to the Contract as Exhibit A; (b) no changes would be made to the plans and specifications without an agreement in writing and payment in full prior to execution of any change; (c) Plaintiff warranted the Home shall "be built, erect, and constructed in a good workmanlike manner in accordance with plans and specifications shown on Exhibit A . . . and that all materials shall be of such quality and nature as ordinarily pass in the course of business without objection"; and, (d) Defendant PVP would pay Plaintiff for the building, construction, and erection of the Home for a fixed price of $712,000.00. (*Id.*)

5. The Contract, which Plaintiff drafted, provided payment would be made in accordance with the Draw Schedule attached to the Contract as Exhibit B and excerpted below:

EXHIBIT B

DRAW SCHEDULE

25%- DOWN PAYMENT

10%- FRAMING COMPLETE

10%- ROOF/ ROUGH INS FOR ELECTRIC/ PLUMBING/ HEAT AND AIR

10%- DRYWALL/ TRIM/ 1ST COAT OF PAINT

10%- CABINETS/ HARDWOOD/ TILE

10%- COUNTERTOPS/ FINAL PLUMBING AND ELECTRIC

10%- BRICK

10%- VINYL/ GUTTERS

5%- FINAL/ LAST PAINT/ CARPET

(*Id.*) The Draw Schedule detailed the significant construction milestones to be completed by Plaintiff during the construction of the Home. (*Id.*) These milestones corresponded with a certain payment percentage that was to be paid by Defendant PVP upon Plaintiff's completion of each milestone, which correlated to the percentage of overall project completion. (*Id.*) In addition to completing each construction milestone reflected in the Draw Schedule, the Contract required

Plaintiff to complete the work outlined in Exhibit A of the Contract (the plans and specifications). (*Id*.)

6. No fixed time was set for the completion of the Contract. (*Id*.) However, during the parties' initial conversations, Defendants testified that Plaintiff represented the Home would be constructed within 9–10 months.[3] (Pl's Ex. 3; Defs' Ex. 15.) Plaintiff's representation is consistent with the amount of time it took Plaintiff to construct several other single-family homes in Anderson County during the same timeframe. (Defs' Ex. 13.) Plaintiff, through its principal, Mr. Cox, testified it would take 12 months to complete if Plaintiff picked out all the materials, but would take 18 months if Defendants chose the materials. The court finds 18 months as the reasonable upper limit of the time it would take.

7. Following the execution of the Contract, Plaintiff began construction of the Home and primarily communicated with Tom and Trish Scott, who testified on behalf of the Defendants. Mr. Scott is the General Manager of Defendant WE and has worked for the company for more than thirty-five years.

8. Between May 2021 and October 2022, Plaintiff requested the following draw payments: (a) the down payment in the amount of $178,000.00 ("Draw 1"); (b) the framing draw in the amount of $71,200.00 ("Draw 2"); (c) the roof and mechanical rough-ins draw in the amount of $71,200.00 ("Draw 3"); (d) the brick draw in the amount of $71,200.00 ("Draw 4"); and (e) the drywall/trim/first coat of paint draw in the amount of $71,200.00 ("Draw 5"). (Pl's Ex. 1; Defs' Exs. 1–5, 9.) Plaintiff's construction of the Home and corresponding draw requests did not follow the sequence outlined in the Draw Schedule.

9. It is undisputed that seventeen months elapsed between Plaintiff's payment requests for Draw 1 through Draw 5. (Defs' Exs. 1–6, 9.)

10. It is also undisputed that Plaintiff was compensated in full for Draws 1 through 5, totaling $462,800.00. (Defs' Ex. 9.)

11. Despite Plaintiff being paid in full for Draws 1 through 5, the work completed by Plaintiff in each draw, to varying degrees, was incomplete and/or deficient. (Pl's Exs. 3, 8–11; Defs' Exs. 7, 10, 12, 16.)

[3] Prior to Plaintiff's work on the project, the land at 1011 Port Anne Cove had already been cleared and excavated, and the Home's basement foundation had been poured.

12. At trial, Mr. Scott testified that Defendants paid Plaintiff for Draws 1 through 5, despite the work being incomplete and/or deficient, because Defendants relied on Plaintiff's assurances that the work would be repaired and/or corrected in a timely manner or before the next draw. (Pl's Ex. 3.) Defendants were also trying to keep the project on track, as construction was grossly and inexcusably delayed. (*Id*.)

13. Defendants presented documentary evidence at trial of incomplete and/or deficient work relative to Draws 1 through 5, including the Home's framing (Pl's Exs. 3, 8; Defs' Exs. 7, 12, 16); roof and mechanical rough-ins (Pl's Exs. 3, 8–9, 11; Defs' Exs. 7, 10, 16); exterior brick work (Pl's Exs. 3, 8, 11; Defs' Exs. 7, 9, 10, 12, 6); and interior drywall, trim, and first coat of paint. (Pl's Exs. 3, 8, 11; Defs' Exs. 7, 10, 16.) Defendants also offered expert testimony, without objection from Plaintiff, from Jack Glenn, a licensed residential builder in the State of South Carolina, who has worked in the construction industry for more than twenty years. Mr. Glenn opined that Plaintiff's work for the above items was incomplete and/or deficient, and that it failed to meet applicable building codes, industry standards, and the standard of care.

14. A dispute arose amongst the parties following Plaintiff's request for Draw 6 in the amount of $71,200.00 in late January 2023—more than a year-and-a-half after the Contract was signed. (Pl's Ex. 1–2; Defs' Ex. 18.)

15. Following receipt of Plaintiff's Draw 6 payment request (*id*.), Defendants notified Plaintiff that the Draw 6 project milestones (*i.e*., the vinyl and gutter work) were incomplete and additionally raised the issue of several outstanding items that remained incomplete and/or deficient despite Plaintiff's promises to correct them. (Pl's Ex. 3.)

16. At trial, Defendants presented documentary and testimonial evidence from several witnesses, including their expert, Jack Glenn, establishing that Plaintiff failed to complete the vinyl and gutter work at the Home. (Pl's Ex. 3; Defs' Exs. 7, 10, 12, 16.) Further, Mr. Cox conceded the vinyl work was incomplete but claimed the gutter work was complete because only gutters (which were installed at the Home), not downspouts (which were not installed), were specified on the Draw Schedule. (Pl's Exs. 1, 3.) However, Mr. Cox's testimony regarding the gutters is inconsistent with Plaintiff's obligations outlined in Exhibit A of the Contract, which calls for construction of a gutter system (*i.e*., both the gutters and the downspouts). (Pl's Ex. 1.)

17. Defendants notified Plaintiff that payment would be made in full for the sixth draw following completion of the vinyl and gutter work as specified in the Contract. (Pl's Ex. 3.) In

response, Plaintiff e-mailed and texted Defendants on February 16, 2023, acknowledging that only 70% of the Home was constructed, as opposed to 75% (*i.e.*, the percentage of completion corresponding with Draw 6). (Pl's Exs. 1, 3–4.) Plaintiff requested a half draw in the amount of $35,600.00 (5% of the Contract price) instead of the full draw amount of $71,200.00 (10% of the Contract price), despite this payment request being inconsistent with the terms of the Contract. (*Id.*) Notably, Plaintiff conditioned any continued work on the Home on Defendants' payment of the half draw, stating, "I will need this 5% draw as soon as possible so that I can go on to the next phase . . . Let me know as soon as you have the draw so that I can move forward." (Pl's Ex. 4.)

18. On March 9, 2023, Defendants e-mailed Plaintiff, again notifying Plaintiff of work that remained incomplete and/or defective and providing photographs of the same, including photographs of Plaintiff's incomplete vinyl and gutter work. (Defs' Ex. 12.) It was further noted that, by Defendants' estimation, the Home was only 59.7% complete. Plaintiff responded to Defendants that same day, retracting its request for the half draw, demanding payment for Draw 6 in the amount of $71,200.00, and threatening legal action. (Pl's Ex. 3.) Plaintiff's text messages dated March 9, 2023, included the following statements: "I will see you guys in court in a few months… go ahead and get your attorney together," and, "[A]fter your last email, I will not negotiate any further with you guys, I am coning [sic] after my draw that you agreed to pay, I don't deal well with stupid[.]" (Pl's Ex. 3.) At the time of this correspondence, the vinyl and gutter work remained incomplete, as reflected in the photographs taken contemporaneously with Defendants' e-mail of March 9, 2023. (Pl's Ex. 3; Defs' Ex. 12.)

19. At trial, Mr. Cox testified the Draw Schedule did not explicitly require Plaintiff to complete the project milestones reflected in the Draw Schedule to receive payment. Mr. Cox's testimony, however, is inconsistent with Plaintiff's prior invoices for Draws 2 through 5[4]—all prepared by Mr. Cox—which explicitly reference completion of the milestones corresponding with the invoice, to wit:

a. Draw 2: "Framing complete for 1011 Port Anne Cove Custom Home." (Defs' Ex. 2, emphasis added.)
b. Draw 3: "Rough in wiring, heat/air, plumb[ing] complete for Port Anne Custom Home." (Defs' Ex. 3, emphasis added.)

[4] Draw 1 pertained to the down payment.

c. Draw 4: "Finish brick on the exterior of the home." (Defs' Ex. 4, emphasis added.)

d. Draw 5: "Drywall complete, trim installed, first coast of paint." (Defs' Ex. 5, emphasis added.)

20. Following the parties' communications on March 9, 2023, Plaintiff never returned to the Home. (Defs' Exs. 7, 10, 12, 16.) At trial, Plaintiff claimed it was "fired" from the job, but no communications between the parties support this claim. Moreover, Mr. Cox admitted he "left the job" when he testified on July 10, 2025. Defendants testified that Plaintiff was never refused entry or otherwise prevented from completing the work—statements that are consistent with the parties' communications. (Pl's Ex. 3.)

21. Plaintiff last performed work at the Home on February 21, 2023, which Mr. Cox confirmed via text message to Mr. Scott on March 30, 2023: "I already contacted buildings and codes and they are aware I am not on that project doing work as of 2/21[.]" (Pl's Ex. 3; Defs' Ex. 6.) Also on March 30, 2023, Plaintiff, through counsel, sent Defendants a formal demand for payment for Draw 6 in the amount of $71,200.00 pursuant to the provisions of S.C. Code Ann. § 27-1-15. (Pl's Ex. 12.) Plaintiff further threatened to file a mechanic's lien on the Home and pursue civil litigation. (*Id*.) On April 13, 2023, Defendants, through counsel, timely responded to Plaintiff's correspondence, confirming that a thorough investigation of Plaintiff's claim for payment was undertaken by Defendants. (*Id*.) Defendants further identified the myriad reasons for which they disputed Plaintiff's claim. (*Id*.) At trial, Plaintiff did not proffer any evidence to establish that Defendants failed to satisfy the requirements of S.C. Code Ann. § 27-1-15.

22. In April 2023, following Plaintiff's refusal to complete the Draw 6 project milestones unless Defendants made a premature draw payment for $71,200.00, Defendants asked Glenn Construction, LLC ("GC") to prepare a proposal to repair and/or complete certain work for which Plaintiff had already been paid. (Pl's Ex. 8; Defs' Ex. 16.) GC, who was constructing a similar custom-built residence next door, inspected the issues and prepared proposals to repair and/or complete Plaintiff's work. (*Id*.)

23. At trial, Jack and Anna Glenn, the owners and operators of GC, testified on behalf of GC. Mrs. Glenn testified that at the time GC prepared the proposals, she estimated the Home at only 57% completion, which is less than the 75% completion percentage claimed by Plaintiff. (Defs' Ex. 17.) Mrs. Glenn testified this contract included the "simplest" draw schedule she has ever seen working in the industry for approximately twenty years. There were nine draws

compared to their standard contract containing 35 draws. Mrs. Glenn further testified that the final proposal prepared by GC for the Home did not reflect the entirety of the issues ultimately repaired and/or completed by GC, because additional problems with Plaintiff's work were discovered as construction progressed. Mrs. Glenn testified the costs to remedy and/or complete Plaintiff's work were reflected in Defendants' Exhibit No. 9 (collection of invoices totaling $89,261.32), which (1) Defendants paid, and (2) included the cost to repair/complete the clearly identified project milestones corresponding with Draw 6. (Defs' Ex. 9.) Mrs. Glenn also identified photographs of the Home reflecting the Home's condition when GC began and subsequently finished the work to repair and/or complete the work for which Plaintiff was paid by Defendants. (Pl's Ex. 9; Defs' Ex. 12.) These photographs show Plaintiff had neither finished the work in Draw 6, nor had it finished the work corresponding with the prior draws (*e.g.*, the brick masonry, framing, mechanical rough-ins). (*Id.*)

24. Plaintiff testified it typically builds spec homes but "every two or three years" does a custom build.

25. Jack Glenn, Defendants' expert, opined that Plaintiff was not qualified to construct the Home, which was a custom build, because Plaintiff's workmanship was substandard, failed to meet code and industry standards, and fell below the standard of care in residential building. He rated Plaintiff's workmanship as a 2 on a Likert scale (with 10 being the highest rating). Mr. Glenn agreed with Mrs. Glenn's 57% completion percentage and further opined that Plaintiff's delays in constructing the Home were unreasonable. While he agreed the construction of each home is unique, he explained all builders face the same delay issues (*e.g.*, supply chain, materials, laborers, change orders, etc.), but even with these contingencies, Plaintiff's construction timeline was inexcusable. Based on Mr. Glenn's personal observations, one reason the Home took so long to build is because neither Plaintiff nor its subcontractors were regularly at the job site. (Defs' Ex. 14.)

26. Defendants offered similar testimony regarding the cause of the delays. Mr. Scott testified that while it took Plaintiff twenty months to reach less than 60% project completion, it took GC only eleven months to construct the home at 1013 Port Anne Cove, a substantially similar build on the lot adjacent to the Home with a larger scope of work (*i.e.*, clearing the lot and pouring the basement foundation). (Defs' Ex. 14.) During those eleven months, Mr. Scott observed that GC and/or its subcontractors worked on 1013 Port Anne Cove on an almost daily basis; GC

scheduled multiple trades to undertake their scope of work during the same time, such that their work was overlapping; and the subcontractor crews consisted of multiple individuals. (Pl's Ex. 3; Defs' Ex. 14.) These observations lied in stark contrast to Mr. Scott's observations of Plaintiff's construction of the Home, where weeks went by without Plaintiff performing any work; work was taken out of order, therefore preventing subcontractors from completing their scopes of work without needing to come back after another trade performed its work (*e.g.*, framing, masonry, gutters); work was performed by only one subcontractor at a given time; and subcontractor "crews" consisted usually of one person, never more than two. (Pl's Ex. 1; Defs' Ex. 6, 14.)

27. Indeed, the issues with the construction delays caused by Plaintiff's nonperformance grew to be such an issue that Mr. Scott created a calendar documenting the number of days—usually weeks—where neither Plaintiff nor its subcontractors were on site and no work was performed. (Defs' Ex. 6.) The parties' text message communications corroborate the information contained in Mr. Scott's calendar and evidence that Defendants (1) repeatedly communicated their timeliness concerns, and (2) expected the Home to be constructed within a reasonable time:

a. Mr. Scott to Mr. Cox on 5/13/22: "Happy anniversary. It's been one year." (Pl's Ex. 3 at p. 30.)
b. Mr. Scott to Mr. Cox on 9/14/22: "There goes another entire month of nothing!???; "Absolutely nothing for over four weeks!" (*Id*. at p. 53.)
c. Mr. Scott to Mr. Cox on 12/2/22: "When are you going to have my house done?; "You need to hire someone that knows how to schedule a custom home build!"; "Absolutely nothing has been done in 4 weeks!" (*Id.* at p. 67.)
d. Mr. Scott to Mr. Cox on 12/15/22: "When are you going to have my house done?" (*Id*. at p. 70.)
e. Mr. Scott to Mr. Cox on 12/16/22: "The neighbor is going to have his house done before you're done." (*Id*. at p. 71.)
f. Mr. Scott to Mr. Cox on 1/3/23: "Next week will be 5 months since the drywall has been completed. This is when you said the house would be done. How much longer now? . . . I need to know when you are going to have my house done!" (*Id*. at p. 80.)

g. Mr. Scott to Mr. Cox on 1/30/23: "You've held up this build all along the way. You've been working on this house for over 20 months and you didn't even do the clearing, excavating and basement foundation." (*Id*. at p. 112.)

28. The text messages between Mr. Scott and Mr. Cox also make clear that Defendants regularly sought updates from Plaintiff on issues involving scheduling, purchasing, inspections, project progression, and timelines, and that Defendants promptly responded to Plaintiff's requests for homeowner selections. (*Id*.) Additionally, the text messages show that Defendants routinely updated Plaintiff on the progress of the build (including issues with construction with which Plaintiff was unaware) and even offered to help Plaintiff contact and schedule its subcontractors' work. (*Id*.)

29. At trial, Plaintiff's undisputed testimony showed the Contract did not include a fixed deadline for completion. Nonetheless, Plaintiff made representations that the Home would be completed within 9–10 months, then by Summer of 2023, and then between 3–5 months after the drywall was completed. (Pl's Ex. 3; Defs' Exs. 6, 15.) While Plaintiff testified the construction delays were caused by contingencies outside of Plaintiff's control—including the weather, subcontractor availability, supply chain issues, and homeowner selection delays—the testimonial and documentary evidence make clear the delays were caused by Plaintiff's lack of involvement in the project, its inability to coordinate the work of its various subcontractors, and its failure to diligently pursue completion of the work and otherwise keep the project on track. Plaintiff alleged COVID as the cause of its delays, but the court finds this testimony without supporting evidence is not credible. Plaintiff did not present any compelling evidence to corroborate its claim that the delays in construction were reasonable or credible.[5]

30. As a result of Plaintiff's representations as to when the Home would be completed, which Defendants relied upon, and the ensuing construction delays, Defendants sustained consequential damages consisting of rental expenses, loss of use and enjoyment, increased financing costs, and increased labor and material costs. At trial, Mr. and Mrs. Scott testified

[5] Plaintiff did not proffer any evidence to substantiate its excuses about the construction delays, including, for example, proof of unusually severe weather based on historical data for the area; testimony from subcontractors regarding scheduling and availability; documentation showing materials were delayed, back ordered, changed, or cancelled; or evidence that the delays were caused by Defendants, such as a lack of communication, delayed decision-making or approvals, interference with Plaintiff's performance, or multiple changes to the scope of work.

Defendants alleged their consequential delay damages totaled $95,925.89. (Pl's Ex. 3 at p. 112; Defs' Ex. 15.)

31. On July 17, 2023, Plaintiff filed this action against Defendants, asserting claims for breach of contract, quantum meruit, account stated, and non-compliance with S.C. Code Ann. § 21-1-15. (Pl's Compl.) Plaintiff's Complaint was not verified and did not attach a verified copy of any "account" to the pleading. (*Id*.) Further, Plaintiff's Complaint prayed for actual damages in the amount of $92,000.00, whereas Plaintiff's Section 27-1-15 correspondence asserted Plaintiff's claim totaled $71,200.00, and Plaintiff's e-mail of February 16, 2023, claimed Plaintiff was owed $35,600.00. (Pl's Compl.; Pl's Exs. 4, 12.)

32. At trial, Plaintiff testified its damages consisted of the Draw 6 amount of $71,200.00, plus $20,800.00 arising from four Change Orders that were all handwritten by Cox, unsigned by Defendants, and bore the same date of February 20, 2023. (Pl's Ex. 5.) Defendants disputed the validity of the Change Orders and testified the Change Orders did not comply with the terms of the Contract, which provides: "[N]o changes would be made to the plans and specifications without an agreement in writing and payment in full prior to execution of change." (Pl's Ex. 1.) Plaintiff presented no evidence to establish that: (1) the amounts reflected in the Change Orders were true and accurate (*i.e*., supported by subcontractor or supplier invoices); (2) the labor and expenses reflected in the Change Orders were incurred by Plaintiff[6]; and (3) the labor and materials reflected in the Change Orders fell outside the scope of work outlined in the Contract. Further, Plaintiff did not present any evidence at trial as to the value of any benefit conferred to the owner[7] of the Home arising from the alleged work performed and/or materials supplied by Plaintiff that went unpaid.

33. On August 21, 2023, Defendants answered Plaintiff's Complaint, denying the allegations therein and counterclaiming for breach of contract, breach of the implied covenant of good faith and fair dealing, negligence, and promissory estoppel. Plaintiff filed a reply to Defendants' counterclaims on September 20, 2023.

CONCLUSIONS OF LAW

Burden of Proof

[6] The Court notes that one of the invoices corresponding with the Change Order in the amount of $10,920.50 reflects that Plaintiff's other company, Anderson Discount, invoiced for the work, not Plaintiff.
[7] Plaintiff failed to present evidence establishing the record owner of the Home.

34. The party asserting a claim bears the burden of proof by a preponderance of the evidence standard. *Menne v. Keowee Key Prop. Owners' Ass'n*, 368 S.C. 557, 564, 629 S.E.2d 690, 694 (Ct. App. 2006).

35. "When a defendant interposes an affirmative defense, he becomes as to that matter the actor in the suit, and the burden of proof rests upon him to establish his affirmative defenses by the preponderance of the evidence." *Cole v. S.C. Elec. & Gas, Inc.*, 355 S.C. 183, 195 (Ct. App. 2003) (quoting *Lorick & Lowrance, Inc. v. Julius H. Walker & Co.*, 153 S.C. 309, 318, 150 S.E. 789, 792 (1929)). Similarly, South Carolina law holds that a defendant who asserts that its non-performance under a contract is excusable or justified bears the burden of proving its excuse for the breach. *Cox v. First Provident Corp.*, 240 S.C. 130, 135, 125 S.E.2d 1, 3 (1962).

The Parties' Breach of Contract Claims

34. Plaintiff brought a cause of action against Defendant PVP for breach of contract, claiming damages in the amount of $92,000.00, including attorney's fees, costs, and interest. Plaintiff claims Defendant PVP was obligated to pay the sixth draw in the amount of $71,200.00 and four Change Orders totaling $20,800.00. Plaintiff contends that Defendant PVP's "failure to pay Plaintiff constitutes a breach of the agreement between the parties." (Pl's Compl. ¶ 16.) In support of its argument, Plaintiff relies on the language of the Draw Schedule, which states, in relevant part: "10%—vinyl/gutters." According to Plaintiff, payment for the sixth draw was due because Plaintiff completed the work corresponding with the draw. Regarding the Change Orders, Plaintiff claims the parties verbally agreed that Defendants would pay for the labor and materials reflected in the Change Orders.

35. At trial, Defendants testified Plaintiff failed to fulfill its contractual obligations before demanding payment because the Draw 6 project milestones were incomplete. Further, Plaintiff held all continued work on the Home hostage unless and until Defendants tendered payment to Plaintiff, which was not yet due and owing. Defendants denied agreeing to the Change Orders and to pay the amounts reflected therein, noting none of the Change Orders were signed by Defendants. In their breach of contract counterclaim, Defendants claimed Plaintiff breached the Contract by demanding payment for work prior to fulfilling its obligations to complete project milestones in a workmanlike manner; by failing to complete its work within a reasonable time; and by withholding and conditioning continued performance under the Contract upon receipt of premature payment—all of which caused Defendants to suffer actual and consequential damages.

36. "The elements for breach of contract are the existence of a contract, its breach, and damages caused by such breach." *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491–92, 732 S.E.2d 205, 209 (Ct. App. 2012). "The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and proximate result of such breach." *Id*.

37. Based on the facts set forth herein, the Court concludes that Plaintiff failed to prove that Defendants breached the Contract by a preponderance of the evidence.

38. In reaching this conclusion, the Court concludes the Contract's payment terms are ambiguous because the Draw Schedule is unclear about (i) whether the project milestones identified in the Draw Schedule required completion before payment; (ii) whether payment for each draw corresponded only with the work specified on the Draw Schedule or included work specified in the Plans and Specifications (the latter of which Plaintiff was also contractually obligated to complete); and (iii) whether the project milestones intended to correspond with percentages of overall construction completion. *See Hawkins v. Greenwood Dev. Corp*., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997) ("A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business.").

39. In determining the parties' intent regarding the draw payments, the Court finds the language contained in Plaintiff's invoices for the previous draws evidences the parties' intent that Plaintiff was required to *complete* the project milestones corresponding with each draw before requesting, and being entitled to, payment. *See Ebert v. Ebert*, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct. App. 1995) ("When an agreement is ambiguous, the court should seek to determine the parties' intent."); *see also Myrtle Beach Lumber Co. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981) ("Any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the ambiguous language."); *Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977) ("[I]f a contract is ambiguous, parol evidence is admissible to ascertain the true meaning of the contract and the intent of the parties."). At trial, Defendants established Plaintiff failed to complete the project milestones associated with Draw 6, proving Plaintiff sought payment *before* fulfilling its contractual obligations to complete its work in a workmanlike manner.

40. Regarding the Change Orders, the Court finds Plaintiff failed to comply with the plain language of the Contract, which required "an agreement in writing and payment in full prior to execution of any change" to the plans and specifications. Additionally, the Court finds Plaintiff failed to prove there was a meeting of the minds for Plaintiff to undertake the work identified in the Change Orders for the amounts specified in the Change Orders. (Pl's Ex. 1). Notably, the Change Orders were not signed by Defendants, and Defendants disputed their validity. The Court also finds the Change Orders lack credibility, as they are each dated February 20, 2023—a time in which significant tension existed between the parties—and they either: (1) lack supporting invoices from suppliers and/or subcontractors to prove Plaintiff completed the work reflected in the Change Orders for the amounts stated therein; (2) illustrate Plaintiff's other company, Anderson Discount, invoiced for the work; or (3) fall within the scope of work outlined in the Contract (*i.e.*, the work in the basement and allowances for electrical/lighting work).

41. As to Defendants' breach of contract claim, the Court concludes Plaintiff breached the Contract by a preponderance of the evidence by failing to perform the work within a reasonable time; by failing to complete the work in a workmanlike manner; and by breaching the implied covenant of good faith and fair dealing.[8]

42. While the Contract did not include a fixed construction deadline, Plaintiff had a duty to construct the Home within a reasonable time. *Drews Co. v. Ledwith-Wolfe Associates, Inc.*, 296 S.C. 207, 209, 371 S.E.2d 532, 533 (1988) ("Where a contract sets no date for performance, time is not of the essence of the contract and *it must be performed within a reasonable time*.") (emphasis added). At trial, Defendants presented testimonial and documentary evidence establishing that Plaintiff's construction timeline and delays were unreasonable. Defendants' expert testified that a 20-month timeframe to reach 57% project completion was not customary and, frankly, inexcusable. Defendants testified that Plaintiff was rarely on site and weeks often went by with no work being performed on the Home. Defendants' testimony was supported by the parties' communications and Mr. Scott's detailed calendar. Regarding Plaintiff's excuses for the delays, the Court finds they lack merit. Plaintiff was able to construct multiple single-family homes during the same timeframe within 9–16 months; the next-door home was

[8] The implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract. *Rotec Servs. v. Encompass Servs.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). Accordingly, the Court analyzes Defendants' claim for breach of the implied covenant of good faith and fair dealing under the umbrella of Defendants' breach of contract claim.

constructed in under a year by a builder facing the same construction contingencies in the same market; and there was no evidence to support Plaintiff's claim that Defendants or any third-parties were the cause of, or contributed to, the delays. From the evidence, the Court concludes Plaintiff's habitual non-performance and poor project management caused the delays in the construction of the Home. The court finds 18 months is a reasonable time for the Home to be constructed.

43. Additionally, the Court finds Plaintiff breached its duty to construct the Home "in a good workmanlike manner," as expressly warranted by Plaintiff in the Contract. (Pl's Ex. 1.) Defendants' expert testified that Plaintiff's workmanship was substandard, failed to meet code and industry standards, and fell below the standard of care in residential building. Defendants presented multiple photographs illustrating the poor workmanship, including, *inter alia*, shoddy framing, leaking windows, roof leaks with rusty nails and missing caulk, inferior carpentry and masonry work, and defective materials (*e.g.*, the window mullions). Plaintiff did not offer any defenses to these workmanship issues other than to claim the work was not yet complete, primarily because of supply chain issues related to COVID, and Plaintiff did not have an opportunity to repair these items[9]—defenses which run contrary to the evidence. Indeed, a cursory review of the parties' communications demonstrates Defendants routinely notified Plaintiff of these issues, yet Plaintiff failed to correct them. (Pl's Ex. 3.)

44. Lastly, the Court finds Plaintiff breached its duty of good faith and fair dealing by routinely demanding premature draw requests for work that was incomplete and/or defective, conditioning continued performance on payment that was not yet due, and by failing to diligently pursue the completion of its work. *See Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850 (1992) ("Under South Carolina law, there exists in every contract an implied covenant of good faith and fair dealing."). The evidence shows a lack of good faith effort on the part of Plaintiff to construct the Home in a timely manner with the level of skill and professionalism required of a licensed builder, in addition to a dearth of communication on the part of Plaintiff showing an honest and sincere effort to address the issues brought to Plaintiff's attention.

45. Having found that Defendants proved Plaintiff breached the Contract by a preponderance of the evidence and that Plaintiff failed to prove any affirmative defenses excusing its breaches by a preponderance of the evidence, the Court concludes Defendants have proven

[9] Regarding Plaintiff's right to cure argument pursuant to S.C. Code Ann. §§ 40-59-810 *et seq*., the Court stated its findings at the outset of its order.

actual damages to repair and complete the work for which Plaintiff was paid in the amount of $89,261.32 and consequential damages in the amount of $60,678.09.[10] *See S.C. Fin. Corp. of Anderson v. West Side Fin. Co*., 236 S.C. 109, 113 S.E.2d 329 (1960) ("The proper measure of damages for breach of contract is loss actually suffered by contractee as result of breach."); *Maro v. Lewis*, 389 S.C. 216, 222, 697 S.E.2d 684, 688 (Ct. App. 2010) (same). Plaintiff did not contest or otherwise proffer evidence disproving Defendants' methodology of calculating direct and consequential damages, leaving the Court to conclude that these damages are reasonable and mitigated by Defendants' diligent pursuit to engage another contractor to repair and complete the work arising from Plaintiff's non-performance and project abandonment.

Plaintiff's Quantum Meruit Claim

46. As an alternative remedy to its breach of contract claim against Defendant PVP, Plaintiff asserted a claim for quantum meruit against Defendant WE. *See Adams v. Grant*, 292 S.C. 581, 586, 358 S.E.2d 142, 144 (Ct. App. 1986) ("Where a plaintiff presents two causes of action because he is uncertain of which he will be able to prove, but seeks a single recovery, he will not be required to elect.").

47. Quantum meruit is an equitable doctrine to allow recovery for unjust enrichment. *See Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). "A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another." *Dema v. Tenet Physician Servs.-Hilton Head, Inc*., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). "Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." *Id*.

48. To prevail on a quantum meruit claim, the plaintiff must establish the following elements: 1) a benefit conferred by the plaintiff upon the defendant; 2) realization of that benefit by the defendant; and 3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value. *Myrtle Beach Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 8–9, 532 S.E.2d 868, 872 (2000).

[10] A reasonable time to complete a custom built home, such as the Home in this matter is 18 months. The contract was signed on May 11, 2021, and November 12, 2022, is the date after eighteen months have run. The court finds the consequential damages include rental costs of $10,627.20 (from November 12, 2022, until February 28, 2023) and $10,500.00 (from March 23, 2023, until October 2023; the Defendants did not present evidence of the rental costs from March 1, 2023, until March 22, 2023), increased financing costs of $37,200.89, and increased material costs of $2,350.00. The court finds loss of use costs are speculative, so it declines to award them.

49. "While a recovery may be had in quantum meruit for services fully performed under an express contract, the plaintiff's recovery is limited to the amount the parties agreed should be paid for the services." *Johnston v. Brown*, 290 S.C. 141, 148, 348 S.E.2d 391, 395 (Ct. App. 1986), *rev'd on other grounds*, 292 S.C. 478, 357 S.E.2d 450 (1987) (footnote omitted).

50. Here, it is undisputed that a valid contract exists between Plaintiff and Defendant PVP that covers the issue of compensation for the services and materials rendered by Plaintiff, thereby barring Plaintiff's quantum meruit claim.

51. Plaintiff's quantum meruit claim is additionally barred because it failed to establish that Defendant WE was the record owner of the Home and that Defendant WE was unjustly enriched. Plaintiff testified that it performed labor and supplied materials to the Home in the amount of $92,000.00, such that Defendant WE was unjustly enriched in this amount. However, the value of labor and materials is the not the proper measure of damages in a claim for unjust enrichment. *See Stringer Oil Co. v. Bobo*, 320 S.C. 369, 373, 465 S.E.2d 366, 369 (Ct. App. 1995) (citing *Brumby v. Smith & Plaster Co. of Ga*., 123 Ga. App. 443, 181 S.E.2d 303 (Ga. 1971) (holding "value" for purposes of the quantum meruit remedy means value to the owner rather than cost to the workman of producing the result); *Remediation Services, Inc. v. Georgia-Pacific Corp*., 209 Ga. App. 427, 433 S.E.2d 631 (Ga. 1993) (holding the "reasonable value" which plaintiff may recover in quantum meruit is not the value of labor but the value of the benefit resulting therefrom). Because Plaintiff did not establish the "value" of the benefit conferred to the Home's owner arising from the improvements, it failed to establish an essential element of its claim for quantum meruit.

52. Finally, the Court finds the third element of Plaintiff's claim for quantum meruit ("retention of the benefit . . . under circumstances that make it inequitable for him to retain it") bars recovery. Specifically, the Court concludes that Plaintiff is estopped from seeking recovery against Defendant WE because Plaintiff acted with unclean hands by (1) demanding and accepting compensation for work it failed to complete and/or constructed in a deficient manner; (2) demanding a premature sixth draw request for incomplete and/or deficient work; and (3) misrepresenting the percentage of work completed on the project. *See First Union Nat. Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998) ("The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant."). Contrary to Plaintiff's allegations, the evidence shows Defendants were not unjustly enriched but rather sustained damages by having to

engage another contractor to complete work that was incomplete or deficient, or both. *See Ingram v. Kasey's Assocs*., 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000) ("We rely on the equity maxim: 'He who seeks equity must do equity.'").

53. Based on the forgoing, the Court finds Plaintiff failed to establish by a preponderance of the evidence a claim for quantum meruit.

Plaintiff's Account Stated Claim

54. Plaintiff also asserted an account stated cause of action against Defendants.

55. The essential elements of an account stated are "(1) that the account is actually stated, and (2) that the parties either expressly or impliedly agreed that it is a true statement and is due to be paid then or at some other specified time." *S. Welding Works, Inc. v. K & S Constr. Co.*, 286 S.C. 158, 164, 332 S.E.2d 102, 106 (Ct. App. 1985); *Portfolio Recovery Assocs., LLC v. Campney*, 441 S.C. 36, 48, 892 S.E.2d 321, 327 (Ct. App. 2023), *reh'g denied* (Sept. 15, 2023), *cert. granted* (Oct. 3, 2024), *cert. dismissed as improvidently granted,* 445 S.C. 564, 915 S.E.2d 512 (2025); *Wakefield v. Spoon,* 100 S.C. 100, 84 S.E. 418 (1915)). Further, Rule 9 of the South Carolina Rules of Civil Procedure requires that, "[i]n an action on an account[,] the pleader shall attach a verified copy of the account to the pleading, or if the items of the account are set forth in the pleading, it must be verified." *See* Rule 9(i), SCRCP.

56. In *S. Welding Works*, the Court held:

> Although Southern pleaded an account stated, it apparently failed to prove the elements of an account stated at trial. The essential elements of an account stated are (1) that the account is actually stated; and (2) that the parties either expressly or impliedly agreed that it is a true statement and is due to be paid then or at some other specified time. Southern proved the account was actually stated. However, in its answer K & S specifically denied the parties ever agreed it was a true account. Consequently, the burden was on Southern to prove agreement to the account as stated. In the record before us there is no evidence that K & S expressly or impliedly agreed there was at any specified time due to Southern the sum of money specified in the account.

286 S.C. at 164; 332 S.E.2d at 106.

57. Here, Plaintiff pleaded an account stated cause of action but failed to comply with the requirements of Rule 9(i), SCRCP. Plaintiff did not attach a verified copy of the account and/or verifying its Complaint. Additionally, at trial, Plaintiff did not present any evidence of an account stated, nor is there any evidence in the record showing Defendants agreed that an account was a

true statement or that it was due and owing at a specified time. In fact, these allegations were expressly denied.

58. Contrary to Plaintiff's claim of an account stated, the evidence showed Plaintiff made several demands for inconsistent payment amounts. For example, Plaintiff claimed it was owed $35,600.00 in February 2023, then $71,200.00 in March 2023, and finally $92,000.00 in July 2023—though the work Plaintiff performed had not changed. Plaintiff presented no evidence showing that Defendants agreed to pay any of these claims at any specified time, either expressly or impliedly.

59. Based on the forgoing, the Court finds that Plaintiff failed to meet its burden in proving by a preponderance of the evidence a claim for account stated.

Plaintiff's S.C. Code Ann. § 27-1-15 Claim

60. Plaintiff's fourth cause of action seeks attorneys' fees and interest pursuant to S.C. Code Ann. § 27-1-15, which provides as follows:

> Whenever a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within forty-five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand.

61. At trial, Plaintiff presented evidence that it sent a one-and-a-half page demand to Defendants pursuant to S.C. Code Ann. § 27-1-15 on March 30, 2023, wherein Plaintiff asserted without supporting documentation that Defendants owed Plaintiff $71,200.00. (Pl's Ex. 12.) In response, Defendants timely sent a 23-page letter with multiple attachments on April 13, 2023, wherein Defendants disputed, in writing, any amount owed to Plaintiff and confirmed that a thorough investigation was undertaken. Additionally, Defendants provided at least four separate grounds upon which they disputed Plaintiff's claims and provided ample evidentiary support, including a detailed draw schedule, repair list, and photographs of incomplete and defective work at the Home. (*Id.*)

62. At trial, Defendants denied owing Plaintiff any of the amounts allegedly owed, and Plaintiff failed to present any evidence to show that Defendants failed to perform an investigation

to determine what amount was owed to Plaintiff or that Defendants otherwise unreasonably refused to pay the claim. The party seeking the award of attorney fees and interest under the statute has the initial burden of presenting prima facie evidence that Defendants did not make a fair and reasonable investigation. *Moore Elec. Supply, Inc. v. Ward*, 316 S.C. 367, 374, 450 S.E.2d 96, 100 (Ct. App. 1994). Plaintiff did not meet the initial burden to demonstrate that Defendants failed to make a fair and reasonable investigation. Plaintiff's Exhibit 12 includes a copy of the demand letter from Plaintiff to Defendants and the response from Defendants to Plaintiff. Plaintiff's Exhibit 12 demonstrates the opposite of what Plaintiff must show, as Defendants clearly made a fair and reasonable investigation into Plaintiff's claims. Having decided the first issue, the court must also consider whether Defendants "otherwise unreasonably refuses to pay the claim or proper portion." S.C. Code Ann. § 27-1-15. Considering the court's ruling on the breach of contract causes of action, the court finds Defendants were not unreasonable in refusing to the pay any part of Plaintiff's claim.

63. Accordingly, the Court finds Plaintiff failed to establish Defendants' non-compliance with S.C. Code Ann. § 27-1-15.

Defendants' Negligence Claim

64. Defendants asserted a cause of action against Plaintiff for negligence and gross negligence. *See Carroll v. Isle of Palms Pest Control, Inc.*, 918 S.E.2d 532, 537 (S.C. 2025), *reh'g denied* (Aug. 11, 2025). ("Adhering to our precedent, we also reaffirm that the economic loss rule does not apply in the context of the sale or construction of a residential home."); *Kennedy v. Columbia Lumber & Mfg. Co*., 299 S.C. 335, 345–46, 384 S.E.2d 730, 737 (1989) ("If a builder performs construction in such a way that he violates a contractual duty only, then his liability is only contractual. If he acts in a way as to violate a legal duty, however, his liability is both in contract and in tort."); *Dixon v. Texas Co*., 222 S.C. 385, 389, 72 S.E.2d 897, 899 (1952) ("[W]here there is no duty except such as the contract creates, the plaintiff's remedy is for breach of contract, but when the breach of duty alleged arises out of a liability independent[] of the personal obligation undertaken by contract, it is a tort.").

65. A plaintiff, to establish a cause of action for negligence, must prove the following four elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; (3) resulting in damages to the plaintiff; and (4) damages proximately resulted from the breach of duty. *Thomasko v. Poole*, 349 S.C. 7, 11–12, 561 S.E.2d 597, 599

(2002). "An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998).

66. Regarding the duty element, "a builder who undertakes to supervise the construction of a building is under the duty to exercise reasonable care." *Pope v. Heritage Cmtys., Inc*., 395 S.C. 404, 433, 717 S.E.2d 765, 780 (Ct. App. 2011). Also, "a violation of a building code violates a legal duty for which a builder can be held liable in tort for proximately caused losses." *Kennedy*, 299 S.C. at 346, 384 S.E.2d at 737. There is also a "legal duty on builders to undertake construction commensurate with industry standards." *Id*.

67. Having carefully considered these contentions along with the evidence as a whole, the Court concludes Plaintiff breached its duties to Defendants, resulting in actual and consequential damages.

68. There is considerable testimony in the record establishing deficiencies and substandard workmanship in the construction of the Home, including testimony from Defendants' expert, a licensed residential builder with decades of experience in the industry. Further, there is substantial evidence proving these deficiencies resulted from Plaintiff's willful misconduct and conscious failure to exercise due care, including: (1) Plaintiff's misrepresentations about its qualifications to construct a custom-built home and to competently oversee the performance and workmanship of its subcontractors, and (2) Plaintiff consistently cutting corners and failing to correct deficiencies, following notice of the same, resulting in code violations and obvious substandard craftsmanship across multiple aspects of the project.

69. The Court concludes Plaintiff's breaches proximately caused actual damages to Defendants in the amount of $89,261.32, the cost incurred by Defendants to engage another contractor to repair and complete the work for which Plaintiff had been paid. *See Kincaid v. Landing Dev. Corp*., 289 S.C. 89, 94, 344 S.E.2d 869, 873 (Ct. App. 1986) (noting the "trial judge correctly charged the jury the applicable measure of damages could be shown by cost of repairs" in negligence claim against builder). Further, the Court concludes Defendants sustained consequential damages in the amount of $60,678.09, consisting of rental costs, increased labor and

material costs, and increased financing costs caused by Plaintiff's failure to diligently pursue the completion of its work—damages which the Court finds reasonable and foreseeable.[11]

70. As to the issue of punitive damages, the Court concludes, after consideration of the factors sets forth in S.C. Code Ann. § 15-32-520, that punitive damages in the amount of $25,000.00, or any other amount, are not warranted due to Plaintiff's misconduct. The Court is mindful that the privilege to practice residential building in the State of South Carolina is a regulated profession, one which requires its practitioners to possess a degree of skill, competence, professionalism, and integrity to safeguard the public from misconduct and ineptitude. Even so, there is not clear and convincing evidence that Plaintiff's conduct rose to the standard of gross negligence required to award punitive damages. Therefore, punitive damages are denied.

Defendants' Promissory Estoppel Claim

72. "In order to recover under a theory of promissory estoppel, a claimant must demonstrate: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) the reliance was expected and foreseeable; and (4) injury in reliance on the promise." *Satcher v. Satcher*, 351 S.C. 477, 483–84 570 S.E.2d 535, 538 (Ct. App. 2002). "The applicability of the doctrine of promissory estoppel depends on whether the refusal to apply it would virtually sanction the perpetration of fraud or would result in other injustice." *Citizens Bank v. Gregory's Warehouse, Inc*., 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988).

73. "Unlike a contract which requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor from making an inconsistent disposition of the property." *Satcher*, 351 S.C. at 484, 570 S.E.2d at 538–39.

74. Defendants contend they sustained injury in reliance on Plaintiff's clear and unambiguous promises to repair and finish work for which Plaintiff was paid in full and in reliance on Plaintiff's clear and unambiguous promises that it would complete the Home within 9–10 months, then by Summer 2022, and then within 3–5 months from the installation of the drywall.

[11] A reasonable time to complete a custom built home, such as the Home in this matter is 18 months. The contract was signed on May 11, 2021, and November 12, 2022, is the date after eighteen months have run. The court finds the consequential damages include rental costs of $10,627.20 (from November 12, 2022, until February 28, 2023) and $10,500.00 (from March 23, 2023, until October 2023; the Defendants did not present evidence of the rental costs from March 1, 2023, until March 22, 2023), increased financing costs of $37,200.89, and increased material costs of $2,350.00. The court finds loss of use costs are speculative, so it declines to award them.

75. "Promissory estoppel is a quasi-contract remedy." *A&P Enters., LLC v. SP Grocery of Lynchburg, LLC*, 422 S.C. 579, 587–88, 812 S.E.2d 759, 763 (Ct. App. 2018) (citing *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015)). "Unlike a contract which requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor from making an inconsistent disposition of the property." *A&P Enters., LLC v. SP Grocery of Lynchburg, LLC*, 422 S.C. 579, 587–88, 812 S.E.2d 759, 763 (Ct. App. 2018) (citing *Satcher v. Satcher*, 351 S.C. 477, 483–84, 570 S.E.2d 535, 538 (Ct. App. 2002).

76. Quasi-contractual remedies, such as promissory estoppel, are inapplicable when the parties are bound by an express contract. *See generally Rodarte v. Univ. of S.C.*, 419 S.C. 592, 604, 799 S.E.2d 912, 918 (2017); *Thomerson v. DeVito*, 430 S.C. 246, 259, 844 S.E.2d 378, 385 (2020). There is no dispute the parties are bound by a valid written contract, and therefore, it is not proper for this court to determine the promissory estoppel claim made by Defendants, and it is dismissed.

ORDER

THEREFORE, it is ordered that judgment be entered in the favor of Defendants on their causes of action for breach of contract and negligence in the amount of $149,939.41.

AND IT IS SO ORDERED.

s/ Jane H. Merrill
Jane H. Merrill
Circuit Court Judge

Greenwood, South Carolina
September 8, 2025

Anderson Common Pleas

Case Caption: T Cox Builders Llc VS Piedmont Vacant Properties Llc , defendant, et al

Case Number: 2023CP0401493

Type: Order/Form 4

So Ordered

Jane H. Merrill