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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

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Appellate Case No. 2024-000788
Case No.: 2019-CP-10-01108

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Balfour Beatty Construction, LLC, Appellant,

v.

Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants,

And

Library Associates, LLC, Third-Party Plaintiff,

v.

Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc., Third-Party Defendants.

Of which Library Associates, LLC is the Respondent.

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**RECORD ON APPEAL - VOLUME 49 OF 51**

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James Lynn Werner (S.C. Bar No. 6029)
Katon E. Dawson, Jr. (S.C. Bar No. 101167)
1221 Main Street, Suite 1100
Columbia, SC 29201
(803) 255-8000
jimwerner@parkerpoe.com
katondawson@parkerpoe.com

Thomas C. Hildebrand, Jr. (S.C. Bar No. 2501)
Robert C. Byrd (S.C. Bar No. 1069)
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650
tomhildebrand@parkerpoe.com
bobbybyrd@parkerpoe.com

*Attorneys for Appellant Balfour Beatty Construction, LLC*

Walter H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Bundy McDonald, LLC
1516 Old Trolley Rd 2nd Floor
Summerville, SC 29485-8209
walter@bundymcdonald.com
brent@bundymcdonald.com

and

John P. Linton, Sr.
Mary Kathleen Linton
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
jlinton@duffyandyoung.com
mlinton@duffyandyoung.com

*Attorneys for Library Associates, LLC*

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contract values that the parties . . . agreed to" and that while "pay app 45 wasn't paid . . . there were a couple of OCOs and a couple change orders that were approved late in the game." (Trans. Hadley p. 4194, line 21 – p. 4195, line 10). Pay Applications 44 and 45 specifically included increases for OCOs 020 through 022. (Library Exs. 142 and 143). Based on the foregoing, I find that OCOs 020 through 022 were agreed to by the parties and that the amount of the OCOs should be added to the GMP, which shall be increased to $65,238,466.99, and any cost incurred associated with the OCOs should be added to the Cost of the Work.

**4. Library's Remaining Claims**

Library asserted several claims against Balfour. I first address Library's claim that it incurred damages for unfinished work that it had to complete and to repair defective work. I address each such claim of Library.

**A. Library's Claims for Repairs and Unfinished Work**

**1. Library's repainting claim.**

At the very end of the job Library repainted all of the guest rooms at significant cost and it seeks recovery of those costs from Balfour. A discussion of the painting of the rooms is appropriate. The design documents establish details regarding the sheetrock finish and paint for the guest rooms. The testimony established that sheetrock can be finished to different levels of quality, from 1 to 5. A level 5 finish is a premium finish, and the highest degree of quality in drywall, where an entire wall is skim-coated with joint compound to create a uniformly smooth finish with the least evidence of imperfections. A level 4 finish provides for joint compound at taped joints and at screws or other imperfections but does not involve a full skim-coating of the walled surface. The testimony established that level 4 was specified for the guest room walls. (Trans. Spano p. 163, line 13 – p. 164, line 20; Trans.

Simonton p. 1849, line 21 – p.1851, line 10).

Importantly, the design documents also specified that the paint finish for the guestroom walls be an “eggshell” finish. (Trans. Simonton p. 1928, line 15 – line 23). The Owner’s Representative testified that Balfour painted the guest rooms in accordance with the specifications. (Trans. Clements p. 3464, line 3 – line 18). Although durable, an eggshell paint is not a good selection for walls that have to be touched up as any spot painting does not blend in well. (Trans. Simonton p. 1923, line 18 – p. 1928, line 23). Hotel guest rooms are subject to frequent need for paint touchup because of being bumped by luggage, heavy use and daily cleaning.

The acceptable level of sheetrock finish and painting was determined at an early date when two “model” rooms were completed and approved by the Architect and Owner. (Balfour Ex. 305, J. Clements August 25, 2020 depo. p. 277, line 7 – line 14; Trans. Simonton p. 1872, line 20 – p. 1873, line 17). Michael Bennett observed the mock ups and had no issue with the level of painting. (Balfour Ex. 305, J. Clements October 5, 2020 depo. p. 164, line 8 – line 12). On May 9, 2018 (Balfour Ex. 133) the Architect communicated with Balfour to agree on punch list procedures and specifically agreed that for the guest rooms, the rooms would be “punched” out without using specific artificial light or a flashlight closer than 5 feet. (Trans. Simonton p. 1848, line 10 – p. 1849, line 20).

Painting of all of the guest rooms was completed by approximately May 14, 2018 (Balfour Ex. 27, Task ID: 337346) and thereafter the communications were held between the Architect and Balfour regarding the procedures for the “punch list”. The record established that the guest rooms, to include the sheetrock and paint, were initially punched out by the Architect and were approved. (Balfour Exs. 150, 151 and 312). All of the painting and sheetrock was specifically approved by the Architect. (*Id.*; *see also* Trans. Simonton p.

1866, line 15 – p. 1868, line 21; p. 1870, line 6 – p. 1872, line 19). The contract documents provide that the architect is to be the punch list representative for the owner in accepting the rooms. (Balfour Ex. 56, § 9.8.2 and § 9.8.3; Trans. Clements p. 3248, line 25 – p. 3249 line 13).

After the guest rooms were accepted by the Architect, Balfour asked the Architect to issue a certificate of substantial completion for the guest rooms. (Trans. Simonton p. 1866, line 15 – p. 1868, line 14; Balfour Ex. 303, J. Faulkinberry depo. p. 94, line 11 – p. 95, line 11; p. 98, line 17 – p. 99, line 5). Jennifer Faulkinberry, the architect responsible for the contract administration and for punching out the rooms, agreed that they were complete and agreed to provide a certificate of substantial completion for the rooms. (*Id.*). Before Ms. Faulkinberry issued that certificate, however, Mr. Bennett reviewed some of the rooms and determined that the level of finish was not to his liking and that he wanted the eggshell finish to be replaced with flat paint. (*Id.* at p. 95, line 13 – p. 96, line 11).

While Ms. Faulkinberry was charged with the contract administration and punchlist, as discussed above, she candidly acknowledged that WLA had no involvement with Michael Bennett's decision to repaint all of the rooms.

> Q. It's my understanding that WLA was not involved at all in the repainting that was performed by Library Associates; is that right?
>
> A. WLA was not.
>
> Q. Okay. Were you involved in that process?
>
> A. No.
>
> Q. Do you know why Library Associates did not involve you or Buck Lindsay or WLA in its decision to repaint the hotel?
>
> A. I don't know that they didn't inform us. They may have informed us, but I don't recall that.

Q. Mr. Lindsay indicated that y'all were never asked to serve as the initial decision maker under the contract documents for any dispute relating to the paint; is that correct?

A. I was not consulted on the paint issue. (Balfour Ex. 303, J. Faulkinberry depo. p. 97, line 4 – line 19).

Library's interior designer was also not involved:

Q. What involvement, if any, did you have with the change in the paint texture for all of the guestrooms from an eggshell finish to a satin finish?

A. I did not have involvement in that. That was strictly a decision on the owner's part. When they walked into the rooms and saw that the finish to the Sheetrock that the paint was applied to wasn't – was noticeably telegraphing imperfections, I believe they made the decision to go to a paint finish to help conceal that. (Balfour Ex. 304, W. Faust depo. p. 66, line 16 – p. 67, line 1).

It is telling to note that Library, when it repainted the rooms, did not use the eggshell finish that was originally specified in the drawings, but went with a flat paint that is more appropriate for a hotel room. (Trans. Simonton p. 1923, line 8 – line 17).

After learning of Michael Bennett's dissatisfaction with the painting, Ms. Faulkinberry noted in an internal email to Buck Lindsay that the rooms had been punched and accepted by the architect and although accepted by her, she felt it was virtually impossible to satisfy Michael Bennett. (Balfour Ex. 152). Ms. Faulkinberry stated:

**1. Barbara DiMatteo's team punched all guestrooms twice and their final list is attached. I thought they were thorough.**

**2. Operator (Salamander) also punched the rooms…**

**3. I was about to release the guestrooms in partial Certificate of Substantial Completion when Mike showed up to randomly check some rooms. The attached photos are from room 840 (excuse sloppy writing…in a car). The worst item was the bathroom pocket door, off its track. The remaining offences are very minor, most easily addressable by Salamander. Don't know anyone who can punch 179 rooms to Mike's standard. I suggest he has one of his team members do it.**

**4. BBC has refused to pick up a third round of punch items so Mike may**

**need to bring in his own crew (they're talking to CPI).**

(*Id*.) (emphasis added)

The record established that the rooms were punched to the satisfaction of the Architect and also the consultant specifically retained by the Architect to punch the rooms. Moreover, Library, in support of its claim relative to the painting, introduced virtually no credible demonstrative evidence to establish any defects. Only two photos were introduced (Library Ex. 104) by Library to support its $2+ million repainting claim. Evidence introduced by Balfour established that there were 1,913 walls in the guest rooms, leaving 1,911 for which no physical evidence was introduced to establish any claimed deficiencies. (Trans. Simonton p. 4292, line 13 – line 25). The two photographs, identified by Mr. Clements, were taken of the same location and simply show screw holes in a wall where a mirror, which was missing at the time of the photograph, had been removed. (Trans. Clements p. 3458, line 14 – line 24). No testimony was introduced to establish that the work in the photos was defective or was caused by Balfour.

In fact, Mr. Clements admitted at trial that he had no photographs to present to the Court, that were in compliance with the agreed upon parameters "no flashlights and none less than 5'" that he could identify for the court.

> Q. **Let me ask you this. Is there anything that you -- do you have any photographs or any other documents that you can provide to me to show to the Judge, here today, that would show him from a distance of 5 feet -- as was agreed upon -- the deficiencies in the painting that the owner is saying was not done appropriately, so the Judge can look at those and say, yeah, I can see where that's not appropriate?**
>
> A. **I don't have anything with me, no.**

(Trans Clements p. 3332, line 20 - p. 3333, line 4). (emphasis added)

The two photos were not shown to have been in compliance with the punch

requirements that were offered by Library to substantiate its decision to repaint all of the walls were not authenticated by any witness to accurately represent the visual appearance of the painted wall in a manner that was compliant with the parties' agreement on how conformance with the finish requirements would be judged (with no flashlights and greater than 5" away). This is the physical sum total of evidence proffered to the Court by Library to try to establish that the painting was done inappropriately painted walls were not compliant with the contractually required level of finish, and this Court does not find it persuasive.

As to the painting issue, I find that Library did not meet its burden to prove that the painting or sheetrock were defective or not in compliance with the contract requirements. The two photographs introduced into the evidence did not establish the deficiencies. Moreover, Library did not call as witnesses the very people who it claims were dissatisfied with the painting, namely, Michael Bennett, Buck Lindsay or Jennifer Faulkinberry. Library did not even call the contractors it hired to repaint the walls to testify about any claimed deficiencies. The paint that was used, and the level of finish that was employed were both different from what was required by the contract. Finally, Balfour's witnesses testified that after the rooms were completed, damage was inflicted on a number of the guest rooms by separate contractors hired by the Owner outside of Balfour (and for which the Owner is responsible). (Balfour Ex. 56; Trans. Simonton p. 1861, line 19 – p. 1862, line 23).

For these reasons, I find that Library is not entitled to damages from Balfour, for repainting the walls of the guest rooms, whether as a deduction or as an affirmative claim.

**2. Library's claim for water damage.**

Library sought reimbursement for water damage caused by an overflowing tub in the amount of $13,327. However, the testimony established that the problem was caused by Library's painter, not by Balfour. (Trans. Simonton p. 4281, line 9 – p. 4283, line 5).

Library offered no evidence to controvert the evidence submitted by Balfour. Accordingly, I find that the issue was not related to Balfour, and therefore, I do not award any damages to Library regarding its claim on this issue.

**3. Library's claim for laundry dryer.**

Library also claimed damage for having to outsource laundry services in the amount of $140,193. However, the testimony established that the issue was caused by restricted gas flow to the dryer because of a deficient design. (Trans. Simonton p. 4283, line 6 – p. 4287, line 15). Library offered no evidence to controvert the evidence submitted by Balfour. Accordingly, I find that the issue was not related to Balfour, and therefore, I do not award any damages to Library regarding this issue. (*Id.*)

**4. Library's claim for removal of mock-up sample wall.**

Library claims damages of $7,216 for removal of a mock-up on site. However, Mr. Simonton testified that those costs were associated with having the mock-up transported to Michael Bennett's farm, and was not a demolition cost chargeable to Balfour. (Trans. Simonton p. 4287, line 16 – p. 4290, line 18; *see also* Library Ex. 12). Library offered no evidence to controvert the evidence submitted by Balfour. Accordingly, I find that these costs are not properly chargeable to Balfour, and therefore, I do not award any damages to Library on this claim.

**5. Library's claim for chandelier.**

Library sought $54,062 for replacement of ballroom chandelier crystals. The chandelier was supplied by Library but Mr. Simonton testified that some of the crystals for the chandelier could not be located. (Trans. Simonton p. 4290, line 19 – p. 4292, line 12). Two boxes of chandelier crystals were found, but they did not belong to the chandelier for the Hotel. (*Id.*) There was a reasonable inference that the crystals that were

supposed to be sent for this chandelier in fact went somewhere else. Library offered no evidence to controvert the evidence submitted by Balfour. Accordingly, I find that Library failed to meet its burden of proof on this claim, and as such, I do not find Balfour liable for this claim. (*Id.*)

### B. Library's Remaining Claims

Library filed counterclaims against Balfour for six causes of action, which are:

1. Civil Conspiracy
2. Breach of Contract Accompanied by a Fraudulent Act
3. Indemnification
4. Declaratory Judgment
5. Unfair Trade Practices
6. Breach of contract

I will address the first five of these claims below.

#### 1. Library's Civil Conspiracy Claim

Library bases its claim for civil conspiracy on a joint defense agreement between Balfour and some of its subcontractors[20] (the "Joint Prosecution and Defense Agreement."). In order to establish a civil conspiracy claim, Library must establish the existence of an **unlawful** act or a lawful act by **unlawful** means. *Paradis v. Charleston County School District.* 433 S.C. 562, 861 S.E.2d 774 (S.C. 2021).

South Carolina recognizes the "common interest" doctrine, also commonly referred to as the "joint defense" doctrine. *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 295, 692 S.E.2d 526, 531 (S.C. 2010); *see also Wellin v. Wellin* 211 F.Supp.3d 793, 811 (D.S.C. 2016); *Maseng v. Tuesday Morning, Inc.* 2020 WL 3130261 *3 (D.S.C. 2010). Generally, a common interest agreement must: (1) be set forth in a written agreement, (2) cover all participating clients, attorneys, and set forth the rules that they live by, and

[20] Old North State Masonry, Lithko Contracting, and Watson Electric.

(3) provide that someone who withdraws from the agreement is clearly not a party to the agreement. *See* John Freeman, The Common Interest Rule, 6 S.C. Law. 12 (May/June 1995). At trial, I found that the Joint Prosecution and Defense Agreement satisfies these requirements and, is therefore, a valid common interest agreement.[21] (Trans. p. 5035 line 24 – p. 5044 line 22).

Of particular interest to this Court is that each of the Joint Defense and Prosecution Agreements between Balfour and the respective subcontractors were entered **subsequent** to both the commencement of adverse proceedings and the completion of the project. (Balfour Ex. 209). Mechanic's liens in this matter were filed on December 28, 2016, a mediation occurred on May 30, 2017, and litigation commenced on February 21, 2018. (Lithko Ex. 58; Trans. Anastasi p. 4822, line 11 – p. 4825, line 24; Trans. Rhorer p. 4983, line 12 – 25; Trans. Rhorer p. 5003, line 9 – p. 5005, line 11). All of the Joint Prosecution and Defense Agreements were entered into between 2019 and 2020. (Balfour Ex. 209). No party to the joint defense agreements changed any claims against Balfour following execution of the joint defense agreement, and in fact throughout the litigation a number of subcontractors withdrew from the Joint Defense and Prosecution Agreement. (*Id.*; *see also*, pleadings on file in this matter).

Based on the evidence presented and consistent with the law, I hereby find that the Joint Prosecution and Defense Agreement cannot serve as a basis of liability in this matter. *See Lemelson v. Bendix Corp.* 104 F.R.D. 13, 18 (D. Del. 1984) (joint defense cannot provide basis for liability); *Hise v. Phillip Morris Inc.,* 46 F.Supp.2d 1201, 1206 (N.D. Okla. 1999) (Master Settlement Agreement, which represented joint defense of

[21] Balfour's subcontracts explicitly allow Balfour to pass through its subcontractors' claims due to a lack of privity with Library. (Balfour Ex. 203 at page 10).

litigation, was protected as conduct incidental to litigation); *affd,* No. 99-5113, 2000 WL 192892 (10th Cir. 2000); *Macario v. Pratt & Whitney Canada, Inc.*, No. CIV. A. 90-3906, 1993 WL 39317, at *6 (E.D. Pa. 1993), *aff'd,* 17 F.3d 1430 (3d Cir. 1994) (no basis for civil conspiracy where the existence of a JDA was as a factor). I further find that, even if there were a basis for liability, which the Court rejects, all of the damages that Library alleged it suffered as a result of the alleged civil conspiracy were damages that would have occurred prior to the execution of the Joint Defense and Prosecution Agreement, and Library has presented no evidence to the contrary. Therefore, I find in favor of Balfour, Lithko Contracting, Watson Electric and Old North State Masonry on Library's claim for Civil Conspiracy.

**2. Library's Claim for Breach of Contract Accompanied by a Fraudulent Act**

I find that Library failed to prove that Balfour committed a fraudulent act with fraudulent intent which damaged Library. *Floyd v. Country Squire Mobile Homes*, 336 S.E.2d 502, 503 (S.C. Ct. App. 1985). Library did not present evidence at trial sufficient to prove a fraudulent act or fraudulent intent. Library also failed prove that it reasonably relied on any fraudulent acts to its damage. *Kelly v. Nationwide*, 29 S.E.2d 454 (S.C. 1982).

As such, I find that find in favor of Balfour on Library's claim for breach of contract accompanied by a fraudulent act.

**3. Library's Claims for Indemnification and Declaratory Judgment**

Library's indemnity and declaratory judgment claims are disguised breach of contract claims based on Balfour's alleged failure to bond off its lien and the liens of its subcontractors. However, Balfour was not required to bond off liens when Library was in

"default of the payment of any uncontested amount and such non-payment is the cause for the non-payment to the [s]ub-contractor." (Balfour Ex. 56, § 9.3.1.2).

The record contains several examples of Library's failure to pay undisputed amounts, leading to the filing of liens on the project. (*See e.g.* Balfour Ex. 100 (finding that Balfour was entitled to $72,454 as a result of the structural delay claim); Balfour Ex. 254 (finding that Balfour was entitled to $1,309,866.78); Trans. Brown p. 3774, line 9 – p. 3777, line 6; Ex. 12, tab 259 and 265 (Brown acknowledging RCO 259 and 265 are legitimate change orders to Balfour for which it is entitled to payment); Balfour Ex. 226, tab 22). Library's non-payment was a breach of contract, which excused any obligation on the part of Balfour to bond off a lien. I find that Balfour was not required to bond off the liens of the subcontractors under these circumstances. I further find that Library is barred by estoppel and unclean hands by withholding undisputed amounts from Balfour and demanding damages for Balfour's alleged failure to bond off liens that arose because of Library's non-payment.

The contract also allowed Library to bond off liens after 14 days and deduct the cost to bond the liens from Balfour. (Balfour Ex. 56, § 9.3.1.2). However, Library failed to present any evidence that it bonded off any liens.

In sum, I find in favor of Balfour on Library's claims for Indemnification and Declaratory Judgment.

#### 4. Library's Claim for Violation of the South Carolina Unfair Trade Practices Act.

Library's claim of an Unfair Trade Practices Act ("UTPA") violation is also based on the Joint Prosecution and Defense Agreement as discussed above. I find in favor of Balfour and its subcontractors on the UTPA claim for the reasons I found on the civil

conspiracy and fraud claims. Those agreements post-dated the completion of the project, filing of liens, and the commencement of litigation, did not result in damage and are otherwise not actionable. No evidence was presented that the execution of the Joint Prosecution and Defense Agreements was an unfair or deceptive act which affected the public interest. *Woodson v. DLI Properties, LLC* 753 S.E.2d 428, 435 (2014) (finding that the South Carolina UTPA is not available to redress a private wrong because an unfair or deceptive act that affects only the parties to the transaction). *Key Co., Inc. v. Fameco Distributors, Inc.*, 292 S.C. 524, 526, 357 S.E.2d 4176, 477 (Ct. App. 1987) (holding that a breach of contract does not constitute a violation of the UTPA.); *Omni Outdoor Advert., Inc. v. Columbia Outdoor Advert., Inc.*, 974 F.2d 502, 507–08 (4th Cir. 1992) ("While every private dispute doubtless has remote public ramifications, these cannot be held to satisfy the element of injury to the public interest which is a prerequisite to any recovery under the UTPA. Were the rule otherwise, every ordinary commercial dispute would become a candidate for the extraordinary remedies provided by the Act.")

Ultimately, Library's damages for Balfour's alleged violation of the UTPA are its damages for the alleged breach of contract. Without the contract between Library and Balfour, Library would have no damages. In other words, but for the contract—the commercial transaction between the parties—Library would have no alleged unfair acts or practices to complain of, and thus would not even have the potential to allege a UTPA claim. As Library's UTPA claim stems from the alleged breach of contract and only affects Library, a UTPA claim cannot stand.

I hereby find in favor of Balfour on Library's claim for violation of the South Carolina Unfair Trade Practices Act.

**5. Miscellaneous Issues**

### A. "First Breach" of Contract.

Both Balfour and Library have claimed the other committed the "first breach" of the contract and therefore is barred from recovery. "…[T]he first party to breach cannot later complain of a subsequent breach by the other party." *Xu Dong Sun v. Wang* 2014 WL 2957105 (Ct. App. 2014). *Silver v. Abstract Pools,* (S.C. App. 2008). As an initial point, any assertion by Library that Balfour was the first to breach the contract is unfounded because Balfour completed the contract. Balfour, despite receiving no payment from Library after pay application 42[22] (September 2018), continued to construct the building so that a Certificate of Substantial Completion was issued by the architect on February 15, 2019 (Balfour Ex. 260), and a Certificate of Occupancy was subsequently issued on May 31, 2019. (Balfour Ex. 27). The record established that by January 26, 2019, the hotel was operational and had guests. (Balfour Ex., K. Brown August 4, 2020, depo., p. 100, line 17 – p. 101, line 4). This pivotal fact, that Balfour provided Library with the completed, fully functional hotel that Library has been using to make money since early 2019, preempts Library's claim that Balfour, for whatever reason it might now attempt to articulate, breached the contract somewhere in the past and is due no further money.

This doctrine of substantial performance is well established in South Carolina and precludes a finding that Balfour was the first to breach. Instead, this limits Library's only potential remedy to set-off against the contract price. *See Diamond Swimming Pool Co. v. Broome*, 252 S.C. 379, 384, 166 S.E.2d 308, 311 (S.C. 1969) ("The doctrine of substantial performance was conceived for the case where a plaintiff's partial

[22] While pay application 42 was funded by Library, pay application 42 did not include amounts owed to Balfour for Balfour's delay claim or change orders, as noted in Balfour's conditional partial waiver and release of lien and the delay notification log submitted with pay application 42, for payments due to Balfour from as early as 2015. (Balfour Ex. 289; Balfour Ex. 215).

performance has already given to a defendant substantially all that he bargained for and is of such a nature that it cannot be returned. E.g., 17A C.J.S. Contracts s 508 (1963). Justice can best be achieved in such a case by a setoff against the contract price rather than by denial of recovery of the contract price.") *See also, Murray's Iron Works, Inc. v. Boyce*, 158 Cal. App. 4th 1279, 1292, 71 Cal. Rptr. 3d 317, 325 (Cal. Ct. App. 2008) ("[I]t is settled, especially in the case of building contracts, where the owner has taken possession of the building and is enjoying the fruits of the contractor's work in the performance of the contract, that if there has been a substantial performance thereof by the contractor in good faith, 'here the failure to make full performance can be compensated in damages, to be deducted from the price or allowed as a counterclaim, and the omissions and deviations were not willful or fraudulent, and do not substantially affect the usefulness of the building for the purposes for which it was intended, the contractor may, in an action upon the contract, recover the amount unpaid of his contract price less the amount allowed as damages for the failure in strict performance."); *Quicksilver Resources, Inc. v. Eagle Drilling, L.L.C.*, 2009 WL 1312598, *8 (S.D. Tex. 2009) (citing Williston on Contracts for the proposition that "substantial performance is the antithesis of material breach"); *Bayer Corp. v. DX Terminals, Ltd.*, 214 S.W.3d 586, 599 (Tex. App. 2006) ("The legal doctrine of substantial performance generally permits a party to a contract that breaches nonmaterial terms (but has otherwise substantially performed) to sue the other party to the contract for breach.")

Finally, Library never gave a notice of substantial breach as is identified by Article 14 of the A201. Thus, Library never alleged a "substantial breach" by Balfour such that Library had the ability to terminate the contract. On the other hand, the reverse is evident. Balfour did complete the project and provided Library with a functional hotel, but Library

now wishes to circumvent its obligation to pay Balfour, and to receive the work and material provided by Balfour, with no payment. Library wants to assess retroactive liquidated damages despite no notice to Balfour.

The record establishes that Balfour fulfilled its contract but it has been Library that has breached it in the various particulars noted below. In light of Library's first breach, I find that its claims for delays and repair costs are without merit.

## Discussion

One who first breaches a contract cannot later claim liquidated damages. *See Retailers Service Bureau v. Smith* 165 S.C. 238, 163 S.E.2d 649, 652 (S.C. 1932); *U.S. v. United Engineering & Construction Co.,* 234 U.S. 236 (U.S. 1914):

> We think the better rule is that when the contractor has agreed to do a piece of work within a given time, and the parties have stipulated fixed sum as liquidated damages, not wholly disproportionate to the loss for each day's delay, in order to enforce such payment the other party must not prevent the performance of the contract within the stipulated time; and that where such is the case, and thereafter the work is completed, though delayed by the fault of the contractor, the rule of the original contract cannot be insisted upon, and liquidated damages measured thereby are waived. *Id*. at 242.

*Id*.; *U.S. v. John Kerns Const. Co.,* 140 F.2d 792 (U.S. 1944):

> [t]he law is universally recognized, that where a party to a contract agrees to do something prior to a day certain and in default to pay a sum of money as liquidated damages, if the other party to the contract engages in conduct which prevents the doing of the thing contracted for in the specified time, such action amounts to a waiver of the claim for liquidated damages for delay. *Id.* at p. 795.

*Id*.

There were several material "first breaches" by Library.

### 1. Failure to provide the required representative with actual authority.

As discussed above in Section III, 1., C, the uncontradicted testimony of Michael Bennett, Kim Brown and Jim Clements was that Mr. Clements had no authority on the

project and could not speak for Library on any matters related to design or payment. (Mr. Clements had no authority to sign documents on behalf of the owner). (Balfour Ex. 301, M. Bennett September 26, 2019 depo. p. 121, line 2 – line 21). (Mr. Clements had no authority to address design issues or money issues on the project. (Balfour Ex. 300, K. Brown August 4, 2020 depo. p. 62, line 22 – p. 63, line 1)). (Mr. Clements testimony: "I was the owner's representative, but I did not make any decisions without the owner's approval, so I did not act independently of the owner." (Balfour Ex. 305, J. Clements August 25, 2020 depo. p. 52, line 2 – p. 53, line 3)).

The contract mandates that "[Library] shall designate in writing a representative who shall have express authority to bind [Library] with respect to all matters requiring [Library's] approval or authorization." (Balfour Ex. 56). The contract specifically references, on page 1, that Jim Clements was "[Library]'s Representative for the Project". (Balfour Ex. 56).

Testimony by Balfour's witnesses established that the lack of authority was a significant contributing cause to the delays as all decisions had to go from Clements to Kim Brown and Michael Bennett and then back down, which was often at long intervals of time. (See Library Ex. 101, Balfour Beatty June 16, 2021 depo., p. 630, line 6 – line 22; Trans. Garcia p. 645, line 10 – p. 646, line 11; Trans. Simonton p. 1942, line 14 – p. 1943, line 23; Balfour Ex. 143).

As such, I find that Library breached the contract with Balfour first by designating a representative who did not have express authority to bind Library

**2. Failure to provide 100%+ drawings.**

As discussed above in Section III, C, 1 above, the contract specifically identifies the architect as [Library's] consultant, and a delay caused by an act or omission of [Library's] consultant constitutes a Class 1 delay that allows for the granting of both additional time and

additional compensation to Balfour. (Balfour Ex. 56; A201 §§3.2.5 and 8.3.2.4(a)).

Library contractually agreed to provide 100%+ drawings, which the testimony established would have been drawings without any errors or "busts". (Trans. McAuliffe p. 886, line 12 – p. 888, line 16; Library Ex. 101, Dep. Baumbach p. 154, line 24 – p. 155, line 6). The GMP is based on the 100%+ drawings. (Balfour Ex. 56). Indeed, imprinted on each page of the GMP drawings is a statement that they are "100%+". (Trans. McAuliffe p. 885, line 5 – p. 886, line 15). In addition, Library warranted the adequacy of the plans and specifications. *Hill v. Polar Pantries* 219 S.C. 263, 64 S.E.2d 263 (S.C. 1951); *see also BEI-Beach, LLC v. Christman*, Op.No. 5982 (S.C. Ct. App. filed April 26, 2023).

Despite Library's contractual obligation and implied warranty to provide an appropriate design, the evidence emphatically confirmed that the original drawings labeled "100%+" included numerous and material errors, omissions and deficiencies. (Trans. Clements, p. 3402, line 14 – p. 3403, line 10; Trans. McAuliffe p. 884, line 17 – p. 888, line 9; *see also* Balfour Ex. 54, dated July 5, 2014 - "**UNRESOLVED AND POORLY RESOLVED ISSUES ON FINAL 100% COMPLETE DOCUMENTS")**

I find that Library's failure to provide plans that were 100%+, and failure to disclose its knowledge of deficiencies within the plans, amounts to a breach of contract which occurred upon execution of the GMP addendum on March 16, 2015. (Balfour Ex. 56). It is clear to the Court that this breach was a primary contributor to the delays and cost overruns incurred by Balfour. (*See e.g.*, Trans. Doran p. 732, line 14 – line 18; p. 733, line 25 – p. 756, line 20; p. 763, line 4 –p. 802, line 23; Balfour Ex. 231 (Tab 223); Balfour Ex. 123; Balfour Ex. 82)).

**3. Failure to pay the sixth floor claim.**

Despite design issues from the start, the testimony established that Balfour was in

fact on schedule until the design errors and omissions could no longer be absorbed by Balfour, the subcontractors or the schedule, and the project fell behind schedule. This tipping point was reached when the construction reached the sixth floor. (Trans. Spano p. 243, line 20 – p. 244, line 17).

As discussed in detail above, the sixth floor formal claim commenced with a Notice of Delay sent to Library on July 25, 2016, followed by a second Notification of Delay dated August 8, 2016, notifying Library "[o]f the cost impact and delay to the critical path" because of the problems resulting from the design changes to the sixth floor. (Balfour Ex. 81). Notices of the delay continued to be sent to Library (See, for example, Balfour Ex. 95). In response to that claim, the Architect, by letter dated December 21, 2016, approved a 20-day extension of time, acknowledged "[t]he approved sum is $144,907," and awarded half of the approved sum, $72,454, to Balfour. (Balfour Ex. 103). Despite this finding by the architect, that money was never paid by Library.

I find that Library's failure to pay the claim amount awarded to Balfour by the architect constituted a breach of contract in December 2016.

**4. Failure to pay Builder's Risk Claim.**

Another significant and early breach by Library was its failure to pay Balfour's requested change order number 27 related to a builder's risk claim of $124,089.19. RCO 27 resulted from the 1000-year storm and the cost to return the jobsite to pre-storm conditions. (Trans. Starcevic p. 1164, line 13 – p. 1166, line 5). Library contends this amount was covered by the contingency and replaced by a subsequent RCO 27 executed for a 20-day time extension. (Library Ex. 12; Library Ex. 144).

I first note that Library Ex. 144 states "[t]his proposal covers only the specific work as set fourth(sic) in the attached proposal breakout. Changes in the work and associated price

adjustment other than those noted in our proposal are not included." (Library Ex. 144). The "proposal breakout" does not contain price adjustment or cost information, and therefore I find that those amounts were specifically excluded from the executed RCO 27. (*Id.*)

In regards to Library's contention that the amounts of any builders' risk claim was covered by contingency, I find otherwise.

Section 11.3.1 of the A201 General Conditions required Library to purchase and maintain property insurance written on a builder's risk or equivalent policy for the duration of construction. (Balfour Ex. 56, § 11.3.1). Testimony from Nick Starcevic established that Library did not maintain the contractually required insurance on the project and refused to pay Balfour for the amounts Balfour incurred as a result of the 1000-year storm. (Trans. Starcevic p. 1398, line 5 – p. 1399, line 2). Library contends that Balfour's cost should have been covered by the contingency. However, the contingency provision of the contract, Balfour Ex. 56, Article 2.2.4.2 states that contingency may be used to cover builder's risk insurance deductibles, not the entire amount incurred to repair. As to deductibles, the contract obligated Library to pay deductibles, except where Contractor or Subcontractor's negligence caused the loss, and then exposure to the Contractor was only $10,000.00. (Balfour Ex. 56, Art. 11.3.1.3). Only in the instance where Contractor or Subcontractor was negligent would the contingency be used to pay the deductible. (*Id.*). Since there was no proof of any negligence on the part of Balfour or a subcontractor in regards to the flood, I find that the amounts incurred by Balfour are not covered by the contingency and Balfour is entitled to recover those amounts from Library.

Nick Starcevic's testimony further established that Balfour paid its subcontractors for this amount despite Library's refusal to pay Balfour. (Trans. Starcevic p.1164, line 13 – p. 1166, line 5).

I find that Library's failure to maintain the contractually required insurance was a breach at the time of execution of the contract, and amounts incurred by Balfour were not part of the contingency and therefore should have been covered by Library's contractually required insurance.

**5. Library's failure to pay other undisputed amounts.**

Section 7.1.3. of the A133 requires Library to make payment of the certified amount on a pay application to Balfour not later than the thirtieth day of the following month. (Balfour Ex. 56). One of Library's primary defenses to Balfour's change order and delay claim is that Library only pays certified pay applications that are certified by the Architect. (Trans. Brown p. 3628, line 2 – line 5; p. 3868, line 1 – line 7). Library contends that every pay application that was certified by the Architect has been paid.

All parties agree that pay applications 43, 44, and 45 have not been paid by Library. On October 26, 2018, Balfour submitted pay app 43 to the Architect. (Balfour Ex. 212). On November 8, 2018, pay app 43 was certified by the Architect. (*Id.*). On January 8, 2019, Balfour submitted pay app 44. (Library Ex. 142). On January 28, 2019, Balfour submitted pay application 45. (Balfour Ex. 292). On February 11, 2019, the Architect emailed Balfour and Library stating that, upon review of applications for payment 43, 44, and 45, in the Architect's opinion, Balfour was entitled to $1,309,866.78 at the end of the project. (Balfour Ex. 254). This number accounted for $2,000,000.00 in cost incurred by Library for repainting the guest rooms and $1,400,000.00 for Library's liquidated damages claim but did not include Balfour's outstanding delay claim and RCO claim. (*Id.*). Despite

this finding, Library has not paid Balfour the $1,309,866.78. I find that Library's failure to pay Balfour the $1,309,866.78 was a breach of contract.[23]

In addition, and as discussed in Section III, 4., A., 1., the evidence and testimony reflects that the guest rooms were painted and finished according to the design documents and approved by the Architect. (see generally, section 4.A.1.) Likewise, as discussed in Section III, 1. D. 5, Library has waived its liquidated damages claim. As such, I find Library's decision to withhold this payment from Balfour on these bases was improper and also a breach of contract. (Balfour Ex. 56, §9.5.4).

> The failure to pay an installment of the contract price as provided in a building or construction contract is a substantial breach of the contract, and gives a contractor the right to consider the contract at an end, to cease work, and to recover the value of work already performed.

*Silver v. Abstract Pools,* 658 S.E.2d 539 (S.C. App. 2008), citing *Zemp Constr. Co. v. Harmon Bros. Constr. Co.,* 225 S.C. 361, 366, 82 S.E.2d 531, 533 (1954).

**6. Architect's responses to requests for information.**

The contract provides that the Architect will review submittals from Balfour with "reasonable promptness as to cause no delay in the work…". (Balfour Ex. 56, A201 § 4.2.7). It was subsequently agreed in an OAC meeting that the Architect would respond to RFIs within 7 days and submittals within 15 days. (Balfour Ex. 14).

Balfour's Exhibit 3 is a compilation of RFIs from Balfour to the Architect. That compilation shows that there were 1,224 requests for design clarifications from Balfour to WLA. Even more telling about that compilation is that 439 of the Architect's responses were late and beyond the seven day time period agreed upon. (Balfour Ex. 3). Many of the RFI

[23] See also S.C. Code Ann. 29-6-30 ("[w]hen a contractor or a subcontractor has performed in accordance with the provisions of his contract, the owner shall pay ... within twenty-one days of receipt by the owner of any pay request based upon work completed or service provided under the contract."). The contract did not include the statutory waiver and thus payment was due within 21 day pursuant to South Carolina law.

responses were more than 100 days late, and many still were several hundred days late. Mr. Doran linked information delays to events of delay that impacted the critical path and which delayed Balfour's completion of the project.

The contract provides that the Architect is an agent of Library during construction. (Balfour Ex. 56, § 4.2.1). The contract also provides that Library is liable to Balfour for any delays caused by the Architect. (*Id.* at § 8.3.2.4). Library is also liable for the Architect under a theory of agency. *West v. Service Life & Health Ins. Co.*, 220 S.C. 198, 202, 66 S.E.2d 816, 817 (S.C. 1951).

I find that the Architect's failure to respond to timely respond to requests for information as provided for in the contract and agreed to by the parties is imputed to Library and constitutes a breach of contract.

**B. Why Architect is not a Party**

Of interest to the Court is why the Architect is not a party to this action. As discussed in detail above, Library specifically accused the Architect of causing damages in excess of $1 million because of design deficiencies and noted that it had claims against the Architect's E & O policies. (Balfour Exs. 114 and 267); *see also* Balfour Ex. 117: email from Clements to Lindsay discussing Balfour's delay claim - - "**WLA is advised Library Associates fully intends to hold WLA accountable for the impact of WLA's deficiencies**." (emphasis added) When Michael Bennett was asked why the Architect was not a party to the lawsuit, his response was "I don't really know. That is a good question. I don't know." (Balfour Ex. 301, M. Bennett depo. p. 135, line 2 – line 12).

The project documents include numerous other instances of deficiencies in the Architect's performance including: communications from Library to the Architect advising it of Balfour's delay claims alleged to result from design deficiencies as testified by the

architectural expert retained by Balfour; the architect's failure to coordinate the design documents and then its failure to utilize BIM to correct its coordination errors; the failure to provide Balfour with workable designs; and failures to respond to request for information on a timely basis. It is abundantly clear to the Court that Library had claims against the Architect, and likely the interior designer, but made the tactical decision not to bring those claims against those parties.

While Library had a contract with the Architect, Balfour did not. Moreover, as discussed above (see Section III, 1., C., 1., and 2.) Library is liable to Balfour for the Architect's deficiencies and breaches, both under common law principles (e.g. – the warranty of suitability of the design) and under the contract.

In the final analysis, while neither Library nor Balfour was required to name the Architect as a party, the risk of not doing so falls on the shoulders of the Owner.

**C. Critical Dates Requested by Court**

At trial the court asked that it be provided important dates regarding the disputes. Those dates are noted in Appendix II.

**6. Calculation of the Amount Owed to Balfour**

Generally, the contract entitles Balfour to be paid the Cost of the Work that it incurs together with the Contractor's Fee (the "Contract Sum"), provided the Contract Sum is less than or equal to the GMP, as the GMP is adjusted. (*See* Balfour Ex. 56; Trans. Thompson p. 2425, line 5 – line 13 and p. 4383, line 14 – line 17). The Court applies this approach in terms of the matters in dispute in this action.

**A. Calculation of the Contract Sum**

The Contract Sum is comprised of the Cost of the Work less the agreed upon Audit Adjustments plus the Contractor's Fee. Cost of the Work is comprised of the following

components: Delay Damages in the amount of $3,744,460.44 which were incurred and included in Balfour's final cost report and granted in Section III, 1. F., (Trans. Thompson p. 2415, line 5 – p. 2416, line 19; Trans. Hadley p. 4156, line 14 – line 18 and p. 4165, line 14 – line 18); the OCOs allocated to the subcontractors in the amount of $45,661 granted in Section III, 3.,[24] (Trans. Thompson p. 2404, line 3 – p. 2406, line 2); the RCOs in the amount of $1,562,420 granted in Section III, 2., (Trans. Thompson p. 2406, line 3 – line 10; Trans. Hadley p. 4142, line 1 – line 3; and p. 4165, line 14 – line 18); and the remaining Unpaid Costs and Retainage that Balfour expended to complete the Project less the Audit Adjustments all of which I find are costs that are allowable, recoverable and have been incurred by Balfour. (Trans. Thompson p. 4383, line 14 – line 17).

Balfour's Delay Damages, the OCOs and the RCOs are discussed in the Sections referenced above. The Court discusses its findings of the Unpaid Costs and Retainage, Audit Adjustments and the Contractor's Fee below.

**1. The Unpaid Costs and Retainage**

During Balfour's case-in-chief, Balfour, through Casey Thompson, its Controller, introduced Balfour's Exhibits 329 and 332 which included a tabulation of the Unpaid Costs and Retainage remaining for Balfour and each of the subcontractors. (Trans. Thompson, p. 2403, line 10 – line 19). However, as payments and settlements were being made with several subcontractors throughout the five-week trial, at the end of the trial, Balfour introduced as Balfour's Exhibits 352 and 353, revised copies of Balfour's Exhibits 329 and

[24] After taking into account the cost deductions from the OCOs for the subcontractor related summary judgments and settlements, the following amounts of the OCOs are still payable as follows: (1) $1,995 to Otis Elevator; (2) $12,193 to Precision Walls, Inc.; (3) $20,050 to Robert Thomas; (4) $5,842.90 to Trimark Foodcraft; and (5) $5,580 to Weiman. The costs in the OCO that were incurred by Balfour are included in the Unpaid Costs, and therefore, have not been included in this amount as including them in this OCO amount would result in duplication of those costs.

332, respectively, which included an updated tabulation of the Unpaid Costs and Retainage. (Balfour Ex. 352). Based on the adjustments due to the subcontractor summary judgments, subcontractor settlements, and amounts paid to subcontractors during trial, I find that the Unpaid Costs and Retainage amount of the Cost of the Work is $6,096,032.97 and is comprised of the following: (a) retainage withheld by Library on prior payments in the amount of $1,516,074.74;[25] (b) the subcontractors' summary judgments and associated attorney's fees, costs and prejudgment interest in the respective amounts stated above in Section II, 2. and the aggregate of such summary judgments being $1,959,220.14; (c) the settlements between Balfour and subcontractors as stated in Section II, 1. in the aggregate amount of $1,742,674.07; and, (d) unreimbursed, and miscellaneous costs incurred by Balfour in the amount of $878,064.02.[26]

**2. Audit Adjustments**

In calculating the Cost of the Work, the Court has taken into consideration the adjustment of unallowable costs that were discussed in the Cotton & Company Report. (Balfour's Ex. 350). Notably, Library did not introduce any testimony to explain or justify the $1,170,389 in adjustments that Sam Hadley made to the Job Cost Report. However, through Casey Thompson, Balfour acknowledged that $613,742.12 of the adjustments made by Ms. Hadley and conceded them as unallowable costs to be deducted from the costs shown in Balfour's Job Cost Report and thus from Balfour's Cost of the Work. (Balfour Exs. 330 and

[25] The Retainage amount is calculated by taking the Retainage amount on Balfour Ex. 352 and deducting the amounts associated with the subcontractors that settled with Balfour. The retainage amounts are identified in the table in the Settlement discussion in Section II, 1.

[26] The unreimbursed and miscellaneous costs incurred by Balfour are calculated by deducting the retainage, summary judgment, attorney costs and prejudgment interest amounts, and settlement amounts from the total Unpaid Costs and Retainage amount.

332; Trans. Thompson p. 2421, line 9 – line 14). Accordingly, the Court finds that the Cost of the Work should be reduced by $613,742.12 based on the concessions by Balfour.

### 3. Calculation of the Cost of the Work

The starting point for the Court's calculation of the Cost of the Work is $58,584,622, which is the amount that Balfour had been paid toward the Cost of the Work as of Pay Application 42.[27] (Balfour Exs. 289 and 350). To this amount, the Court adds the Unpaid Costs and Retainage in the amount of $6,096,032.97; the Delay Damages in the amount of $3,744,460.44; the costs of the granted RCOs in the amount of $1,562,420.27; and the amount of the OCOs allocated to the subcontractors, which is the amount of $45,660.90. The sum of these costs is the total Cost of the Work which is $70,033,196.58. From this amount, the conceded Audit Adjustments of $613,742.12 are deducted resulting in a final Cost of the Work (or as Ms. Hadley referred to it, the Eligible Cost of Work) in an amount of $69,419,454.46. It is this amount, $69,419,454.46, that the Court finds to be the adjusted Cost of the Work.

### 4. The Contractor's Fee

Under the Contract as executed originally, the Contractor's Fee was to be 2.5% of the GMP[28], and for all changes in the Work the Balfour was to have received a fee of 2.5% on the net increase in the Cost of the Work added by the change. (Balfour Ex. 56). As

[27] The $58,584,622 is calculated by taking the amount Balfour has been paid to date, to wit, $59,994,390, and reducing the amount that had been allocated to the Contractor's Fee ($1,409,768). The purpose for this reduction is that, at trial, Balfour proved that it had incurred more costs than payments it had received from Library, and as a result, the amounts allocated to Contractor's Fee in pay applications paid by Library were used by Balfour to cover additional general conditions and other added costs which Balfour, in this trial, sought to recover and which Balfour proved entitlement to recover. As Mr. Thompson testified, Balfour was in a net negative cash position on the Project—it was not making any profit. (Trans. Thompson p. 2414, line 14 – line 20). So, the $58,584,622 is the amount Balfour has been paid thus far to reimburse it for its Cost of Work, and to that amount is added the other categories of costs that the Court has found entitlement for Balfour to recover.

[28] Balfour was to be paid a fee of 2.5% ($1,451,902) on the original GMP.

described above, the Contract Sum, is the amount Library is obligated to pay under the Contract and is the aggregate of the following: the reimbursable Cost of the Work; the General Conditions (which were fixed as to the original scope and which are subject to adjustment to reflect changes, including delays and other claims resolved by this Order); mark-ups for insurances (general liability, other insurances and subcontractor default insurance) and, the Contractor's Fee which is calculated on the aggregated Cost of the Work at the rate of 2.5% of the GMP plus 2.5% on net increases to the Cost of the Work by any additive change to the Work. (*Id.*).

The evidence and findings of this Court reflect that due to the Owner changes and delays that Balfour incurred, Balfour was in a negative cash balance on the Project. (Trans. Thompson p. 2414, line 14 – line 20). Balfour's Exhibit 331, and the Cotton & Company Report as discussed below, further evidence this fact as the Eligible Costs of the Work determined by Ms. Hadley exceeded the amount Library had paid to Balfour by almost six million dollars, meaning that the entire amount of Balfour's Fee was eroded because the incurred costs exceeded project revenues.

As noted above, the Contractor's Fee is 2.5% of the Guaranteed Maximum Price plus "2.5% of the net increase in the Cost of the Work added by [a] change." (Balfour Ex. 56 AIA A133 §§ 5.1.1 and 5.1.2). The Contractor's Fee on the original GMP was $1,451,902. The net increase in the Cost of the Work from additive changes was $11,343,388.46.[29] Applying the stated Fee of 2.5% for compensable increases in the Cost of the Work, to the increase in the Cost of the Work ($11,343,388.46), there is additional Fee of $283,584.71

[29] The $11,343,388 is calculated by subtracting $58,076,066, the original Cost of the Work amount from Balfour's Ex. 56, GMP Amendment, § 2.A. GMP Summary, from $69,419,454. the Revised Eligible Cost of the Work.

owed to Balfour, making the revised Contractor's Fee $1,735,486.37[30] When the revised Contractor's Fee is added to the aggregated Cost of the Work, the adjusted Contract Sum becomes $71,154,940.83. Therefore, I find the Contract Sum, which includes the Eligible Costs of the Work and the Contractor's Fee, is $71,154,940.83.

**B. Subcontractor Settlements**

For convenience, I repeat my discussion from above regarding subcontractors, as the subcontractor claims impact the Cost of the Work.

In any event, by the time that the trial was concluded, the claims of many of the subcontractors had been resolved in whole or in part by settlements and/or the granting of summary judgment. After the conclusion of the trial, Balfour reached a settlement with one of its subcontractors, WARCO, and a stipulation of dismissal was filed and placed on the record reflecting that settlement amount. Including the WARCO settlement, the current state of the subcontractor claims is as follows:

During the course of the trial and after the conclusion of the trial Balfour settled with eight subcontractors. The total amount of the settlements equaled $1,742,674.07. The amounts that were assigned to these eight subcontractors in Balfour's Ex. 352 for: (1) any of the Requests for Change Order granted in Appendix I, (2) subcontractor open payables, open balance and retainage; and (3) Owner Change Orders will be deducted from those items. The subcontractors that have reached settlements with Balfour along with the amount of the settlement, the amounts removed from the Requests for Change Order, subcontractor open balance and retainage, and Owner Change Orders are outlined in the table below.

[30] A calculation of the revised Contractor's Fee can be found in Appendix III.

| Subcontractor | Settlement Amount | RCO Amounts Removed | Open Payables, Open Balance and Retainage Removed | Owner Change Order Amounts Removed |
|---|---|---|---|---|
| Quantum Coatings (SBC Group, LLC) | $175,000.00 | $9,507.68 | OB: $116,311.18 R: $49,181.14 | |
| Pleasant Places | $33,253.48 | | | |
| PASCO | $88,000.00 | | OB: $21,630.62 R: $46,815.19 | |
| David Allen Company | $295,592.96 | $115,421.00 | R: $174.637.96 | $13,447.00 |
| Lithko[31] | $375,064.15 | $436,941.04 | R: $375,064.13 | |
| Old North State Masonry[32] | $256,054.09 | | OP: $128,036.04 R: $128,018.05 | |
| Cook & Boardman[33] | $359,709.39 | | OP: $87,052.71[34] R: $58,342.52 | |
| WARCO Construction | $160,000.00 | | | |

As the settlement amounts will or have been paid to the eight subcontractors, it is an amount that Balfour has incurred and thus should be added to the Cost of the Work. (Trans. Thompson p. 4383, line 14 – line 17). The total amount of the settlements equaled $1,742,674.07 and I find that Balfour is entitled to recover those amounts as a Cost of the Work under the contract.

### C. Subcontractor Summary Judgments

[31] Lithko also asserted a delay claim in the amount of $12,459.96.
[32] Old North State Masonry also asserted a delay claim in the amount of $1,097,717.07 which was removed after the settlement with Old North State Masonry.
[33] Cook & Boardman was granted partial summary judgment in the amount of $257,651.39 plus interest and attorney's fees.
[34] The Cook & Boardman amounts were removed in Balfour Ex. 330 when Cook & Boardman was granted partial summary judgment thus there were no amount Retainage, Open Balance or Open Payables in Balfour Ex. 352 to remove.

Prior to the trial, some of the subcontractors filed motions for summary judgment against Balfour for payment for work on the Project. This Court reviewed the subcontractors' motions for summary judgment and granted such motions in whole or in part as indicated below. The sum of the summary judgment amounts along with interest and attorneys' fees is $1,959,220.14. As these amounts are amounts that must be paid to the respective subcontractors, I find that they are eligible Cost of the Work. Relatedly, the subcontractors' respective RCO, open payables, open balance, retainage and OCO amounts, if any, have been removed from the cost calculations as outlined in the table below so there was no duplication of costs to the subcontractors that received summary judgment.

| **Subcontractor** | **Summary Judgment Amount** | **RCO Amounts Removed** | **Open Payables, Open Balance and Retainage Removed** | **Owner Change Order Amounts Removed** |
|---|---|---|---|---|
| Strong Tower Corporation, Inc. d/b/a Koch Corporation (Partial)[35] | $82,859.21 Attorney's Fees and Costs: $65,332.38 Prejudgment Interest: $16,367.53 | | OP: $14,822.54 R: $66,320.02 | |
| Low Country Case & Millwork (Partial)[36] | $369,333.25 Attorney's Fees and | $89,842.73 | OP: $25,039.15 R: $145,474.12 | |

[35] While Strong Tower was only granted partial summary judgment, on September 15, 2021 it filed a Motion to Dismiss to End the Case as to Strong Tower Construction, LLC and to Certify Summary Judgment as the Final Judgement with Respect to Movant. The Court has yet to rule on Strong Tower's Motion, but acknowledges that by its own request Strong Tower seeks to dismiss any remaining claims. As such, the Court dismisses with prejudice any remaining claims asserted by Strong Tower.

[36] While Low Country Case & Millwork, Inc. ("LCCM") was only granted partial summary judgment, on November 17, 2021 it filed a Motion for Voluntary Dismissal of Certain Claims Against Balfour seeking to dismiss its remaining claims of Foreclosure of Mechanic's Lien and Quantum Meruit against Balfour. Thus, this Court grants LCCM's motion to dismiss the claims of Foreclosure of Mechanic's Lien and Quantum

| | | | | |
|---|---|---|---|---|
| | Costs: $95,326.41 | | | |
| Watson Electrical (Partial) | $921,671.39[37] Attorney's Fees and Costs: $253,189.30 Prejudgment Interest: $185,375.89 | $147,070.12 | R: $300,424.75 | $26,779.77 |
| Premier Exteriors | $104,703.51 Attorney's Fees and Costs: $73,250.00 | $27,039.77 | R: $67,272.73 | |

As the summary judgment amounts are amounts that must be paid to the four subcontractors, they are amounts that Balfour has incurred and thus should be added to the Cost of the Work. (Trans. Thompson p. 4383, line 14 – line 17). The sum of the summary judgments is $1,959,220.14 and I find that Balfour is entitled to recover those amounts as a Cost of the Work under the contract.

### D. Sam Hadley's Audit Report and Testimony Supports Balfour's Entitlement to Payment.

Library's auditor and expert witness, Ms. Sam Hadley, offered testimony that supports the Court's finding that Balfour is entitled to payment.[38]

#### 1. Sam Hadley's Audit Report States Balfour Was Entitled to $4,440,640 that was never paid.

During the lawsuit and in response to an expert witness report deadline, Ms. Hadley issued a report that evidences the findings of the audit she performed during the

Meruit with prejudice. Balfour's Motion to Reconsider this Court's Order granting partial summary judgment to LCCM, filed September 20, 2021, is still pending.

[37] On November 23, 2021, Balfour paid Watson Electrical $208,188.73 of the $921,671.39 judgment leaving $713,482.66. (Balfour Ex. 351).

[38] At the outset of this lawsuit, Ms. Hadley was employed by Cotton & Company, LLP, but prior to trial, left Cotton & Company, LLP to join Capital Project Management, Inc., the same firm that employed Library's other expert witness, Mark Boe.

litigation (the "Cotton & Company Report"). (Balfour Ex. 350). Ms. Hadley testified the Cotton & Company Report "contains the results of Cotton and Company's evaluation of the guaranteed maximum price contract between [Library and Balfour]." (Trans. Hadley p. 4145, line 21 – p. 4146, line 4). I find that Schedule B of Balfour's Exhibit 350 evidences that there was a $4,440,640 difference between the amount of the total Eligible Cost of the Work and the amount that Library had paid Balfour ($59,994,390). (Balfour Ex. 350). Based on the Cotton & Company Report, it appears that the $4,440,640 amount would have been payable to Balfour for the work performed on the Project.

**2. Even had Library withheld Liquidated Damages and the "Costs of Repair" Balfour was still entitled to payment.**

Assuming *arguendo* that Library was entitled to reduce the $4,440,640 amount in the Cotton & Company Report for liquidated damages and direct costs Library alleged to have incurred for painting and other alleged repairs, Balfour still should have been paid $571,653. According to the Cotton & Company Report, Ms. Hadley calculated Balfour's Fee on the Eligible Cost of Work at $1,612,223, which would have been the limit on Library's available recovery of liquidated damages given the parties' agreement to limit the recovery of liquidated damages to Balfour's Fee. (Balfour Ex. 56, § 2.3.1.3 and Balfour Ex. 350). Further, the document Library entered at trial indicated that the maximum amount of direct costs of repair that Library incurred was $2,256,764. (Library Ex. 146). When those two numbers are deducted from the payable amount figured from the Cotton & Company Report, Library still would have owed a minimum payment of $571,653. Library made no such payment, which further solidifies the Court's findings that a payment is due Balfour and that Library did not comply with S.C. Code Ann. § 27-1-15.

**3. Sam Hadley agrees that the settlements with the subcontractors are Cost of the Work.**

Ms. Hadley's testimony supports the Court's finding that the Cost of the Work should be increased by the settlements with the subcontractors. In response to a question from Balfour's counsel asking about additional documents that came into existence after March 2019 that were allowed costs of the work, Ms. Hadley testified that "the change order that [Balfour] entered into with the subs, those settlement changed orders, would definitely impact the eligible costs of the work." (Trans. Hadley p. 4157, line 1 – line 18).

**4. Sam Hadley agrees that the GMP and Cost of the Work amounts should be adjusted for RCOs granted by the Court.**

Ms. Hadley's testimony further supports the Court's finding that the Delay Damages granted by the Court in Section III, 1., F., and the RCOs granted by the Court in Section III, 2., increase the GMP and the Cost of the Work. First, as to the Delay Damages, Ms. Hadley agreed that the GMP would need to "be impacted for delays" and that the costs and GMP "will need to be adjusted for delays. (Trans. Hadley p. 4156, line 14 – line 18 and p. 4165, line 14 – line 18). Ms. Hadley further agreed that a RCO "that has yet to be approved by the owner would increase the GMP" and that when the Court decides what the final RCO costs are, the GMP and Cost of the Work "will need to be adjusted." (*See* Trans. Hadley p. 4142, line 1 – line 3 and p. 4165, line 14 – line 18). Thus, the Court finds that Library's auditor and expert witness agrees that the finding by the Court of entitlement to the Delay Costs and RCOs increases both the GMP and the Cost of the Work.

**E. The Adjusted Guaranteed Maximum Price is $71,304,540.**

During trial Balfour introduced Balfour Exhibit 331, which was a calculation by Balfour of the proposed adjusted GMP in the amount of $72,578,876. (Trans. Thompson

p. 2424, line 6 – p. 2425, line 13). As noted in Section I, the original GMP based on the Contract between Library and Balfour was $59,344,747.00 and was increased in the amount of $5,893,719.99 by Owner Change Orders 001 to 022, bringing the adjusted GMP to $65,238,466.99. (*See* Trans. Hadley p., 4194, line 21 – p. 4195, line 10; Library Ex. 143). Additionally, based on the Court's finding of entitlement to the Delay Damages and the RCOs discussed in Sections III., 1., F., and Section III., 2., the amount of the Delay Damages and RCOs shall be added to increase the total GMP. (Trans. Hadley p. 4142, line 1 – line 3; p. 4156, line 14 – line 17 and p. 4165, line 14 – line 18). Based on the addition of the Delay Damages and RCOs, the Court finds that the final adjusted GMP is $71,304,540. A tabulation of the adjusted GMP is in the attached Appendix III.[39]

Now that the Court has determined the GMP, the Court proceeds to determine the amount that is owed to Balfour.

### F. The Amount Owed to Balfour is $11,160,550.

During trial, Balfour introduced Balfour Exhibit 330, which was a calculation by Balfour of its incurred costs for the project totaling $71,884,281. (Trans. Thompson p. 2420, line 9 – p. 2422, line 20). However, as stated in the GMP section above, settlements with certain subcontractors, which resulted in adjustments to the OCO and RCO amounts and removal of the Subcontractor Damages amount, have occurred and result in the need to make adjustments to the Total Eligible Cost of the Work that is stated in Balfour Exhibit 330. As stated above, based on the Court's findings on entitlement and after making the

[39] The GMP tabulation included in the Appendix is derived from Balfour Ex. 331, which was introduced at trial by Casey Thompson, Balfour's Controller, as Balfour's calculation of the adjusted GMP. The Court has made adjustments to this tabulation based on the RCOs for which the Court has found Balfour is entitled to payment. Additionally, the Court has removed the "Subcontractor Damages" line item from Balfour Ex. 331 as those costs are no longer in dispute.

appropriate adjustments due to settlements with certain subcontractors, I find that the Contract Sum is $71,154,940.83.

As the Contract Sum of $71,154,940.83 is less than the adjusted GMP amount of $71,304,540, the amount owed to Balfour is calculated by subtracting the amount paid to Balfour ($59,994,390) from the adjusted Contract Sum. (*See* Balfour Ex. 331; Trans. Thompson p. 2425, line 5 – line 13). Based upon that calculation, Balfour is owed the principal amount of $11,160,550.48 for compensable and unpaid increases to the Contract Sum. A tabulation of the amount due to Balfour is included in the attached Appendix III.

## IV. A FINAL RULING ON THE DAMAGES RELATED TO ALL OF THE CLAIMS

### 1. Amount Owed to Balfour

Balfour has been paid $59,994,390. In accordance with the discussion above, I find that Library breached its contract and Balfour is entitled to receive from Library payment in the amount $11,160,550.48.

South Carolina recognizes that a breach of contract claim and quantum meruit claim can be alternative rather than inconsistent remedies. *Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 328, 734 S.E.2d 177, 181 (S.C. Ct. App. 2012); *see also* Balfour Ex. 56, § 13.4.1 ("Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.").

In order to prevail on a quantum meruit claim, Balfour must establish the following: 1) a benefit conferred by Balfour upon Library; 2) realization of that benefit by Library; and 3) retention of the benefit by Library under circumstances that make it inequitable for Library to retain it without paying its value. *Swanson v. Stratos*, 350 S.C. 116, 121, 564 S.E.2d 117, 119–20 (Ct. App. 2002).

The unpaid amounts discussed at length above represent work actually performed by Balfour and its subcontractors at the hotel for which they have not been paid. Likewise, the numerous RCOs and OCOs 19 - 22 represent work actually performed by Balfour and its subcontractors at the hotel for which they have not been paid. (Balfour Ex. 12; Balfour Ex. 226, tab 19 - 22; see also Balfour Ex. 305, August 26, 2020 Jim Clements depo., p. 332, line 23 – page 333, line 3). In addition, the fact that Balfour expended massive time and resources during the approximately 16 months it worked on the job past the original substantial completion date (as addressed in Balfour's delay claim, above) represents a major benefit provided to Library.

I find that Library has benefited from the work performed by Balfour and its subcontractors, and that Library failed to pay Balfour the value of the work performed by Balfour and its subcontractors at the hotel. I therefore find that Balfour is also entitled to payment from Library, pursuant to its quantum meruit claim, the sum of $11,160,550.00.

**2. Attorney Fees**

**A. Balfour's claim under Section 27-1-15**

Under S.C. Code Ann. § 27-1-15, a contractor who has expended labor, services or materials under a contract for the improvement of real property may make a demand for payment via certified or registered mail. See S.C. Code Ann. § 27-1-15. Upon receipt of the demand, "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 valid, within forty-five days from the date of mailing the demand." *Id*. Failure to make a fair investigation or an otherwise unreasonable refusal to pay the claim or proper portion, results in the party upon whom the demand is made being liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand. *Id*.

On January 29, 2019, Balfour sent Library, via certified mail, a demand for payment of $8,409,658.45 pursuant to § 27-1-15. (Balfour Ex. 126; Trans. Simonton p. 1820, line 17 – p. 1821, line 4 - explaining that the letter was sent on January 29, 2019, and that the January 29, 2018 date shown on the letter was a mistake). The record contains numerous examples of Library's failure to pay undisputed amounts to Balfour, including:

- On February 11, 2019, thirteen days after issuance of the § 27-1-15 letter, **the Architect emailed Balfour and Library stating that, in the Architect's opinion, Balfour was entitled to $1,309,866.78 at the end of the project.** (Balfour Ex. 254). (emphasis added)

- At trial, Kim Brown acknowledged that RCO 259 and RCO 265 (totaling $23,242.62 pre-markup) were legitimate change orders for which Balfour is entitled to payment. (Trans. Brown p. 3774, line 8 – p. 3777, line 6; Balfour Ex. 226, tab 22).

- On December 21, 2016, in response to Balfour's Level 6 Structural Delay Claim, the Architect issued an award finding that Balfour was entitled to $72,454 and an extension to the contract of 20 days. (Balfour Ex. 100; Balfour Ex. 305, August 25, 2020 Jim Clements depo., p. 187, line 18 – p. 189, line 14).

- Library's representative on the project, Jim Clements, acknowledged that Balfour Beatty was entitled to payment for RCO 161. (Balfour Ex. 305, August 26, 2020 Jim Clements depo., p. 337, line 3 – p. 338, line 2; Balfour Ex. 283).

- Library's representative on the project, Jim Clements, acknowledged that Balfour Beatty was entitled to some portion of payment for RCO 159. (Balfour Ex. 12, tab 159; Balfour Ex. 305; August 26, 2020 Jim Clements depo., p. 336, line 12 – line 16).

- At the end of this project, Library did not review the RCOs submitted by Balfour to determine whether Balfour was entitled to them. (Balfour Ex. 305, J. Clements August 25, 2020 depo. p. 341, line 4 – p. 342, line 9).

- The report issued by Sam Hadley, Library's auditor and expert witness, evidenced there was $4,440,640.00 in eligible costs that were payable to Balfour. (Balfour Ex. 350).

Under these circumstances, I find that Library's failure to make any payments

within forty-five days constitutes *prima facie* evidence that Library did not make a fair and reasonable investigation of Balfour's claim. *Eldeco, Inc. v. Skanska USA Bldg., Inc.,* No. CV 2:05-2329-PMD, 2007 WL 9735185, at *3 (D.S.C. Mar. 26, 2007). As such, the Court finds that Balfour has satisfied its initial burden of proving that it made the demand for payment pursuant to § 27-1-15 and that Library did not make a payment after receipt of the demand, thus Balfour has proved it prima facie case. *Id*. The burden then shifts to Library to prove that its failure to make any payment within forty-five days was reasonable. *Id.*

Evidence was presented that Kim Brown, on behalf of Library, wrote a letter to the Architect stating that Library would be making no further payments to Balfour because of alleged damages it had incurred for alleged corrective work and liquidated damages. (Balfour Ex. 255). However, Library claimed unlimited liquidated damages, stating that it would not recognize the contractual cap on such damages. (*Id.*) I find that Library's rejection of the contractually agreed cap was not a fair and reasonable response to Balfour's demand. *Hardaway Concrete Co. v. Hall Contracting Corp.,* 374 S.C. 216, 229 – 30, 647 S.E.2d 488, 495 (Ct. App. 2007)(finding a party's attempt to vary the terms of the contract after the project was completed evidence that the party acted in bad faith and did not make a fair and reasonable investigation under § 27-1-15).

In addition, Bill Bundy, on behalf of Library, issued a letter dated April 19, 2019, denying Balfour's claim in its entirety. (Balfour Ex. 261). While Mr. Bundy's letter makes reference to an analysis performed by Mark Boe, this letter was issued more than forty-five days after January 29, 2019.

Finally, Library, through its witnesses and expert, has acknowledged that Balfour was entitled to at least some portion of the contract balance. (See e.g. Balfour Ex. 350; Trans. Brown p. 3774 line 8 – p. 3777, line 6; Balfour Ex. 226, tab 22); *Eldeco, Inc. v. Skanska*

*USA Bldg., Inc.,* at *3 (D.S.C. Mar. 26, 2007) (evidence that there was entitlement to even a portion of the Contract Balance was sufficient to support a finding that the Contractor violated § 27-1-15).

Therefore, because Library unreasonably failed to pay any portion of Balfour's claim within forty-five days of the demand, I find that Library is liable to Balfour for reasonable attorney's fees and interest at the judgment rate from the date of the demand. *Eldeco, Inc. v. Skanska USA Bldg., Inc.*, at *3.

**B. Balfour as the Prevailing Party Under its Mechanic's Lien**

Where, as here, an action is brought to foreclose on a mechanic's lien, S.C. Code Section 29-5-10 expressly authorizes the recovery of attorneys' fees and costs by the prevailing party. Section 29-5-10(a) provides, in relevant part: "[t]he costs which may arise in *enforcing or* defending against the lien under this chapter, including reasonable attorney's fees, may be recovered by the prevailing party." S.C. Code Ann. § 29-5-10(a) (emphasis added). Therefore, fees and costs are authorized pursuant to statute in this case.

Section 29–5–10(b) outlines a specific procedure which provides for formal offers of settlement, and modifies the common law definition of "prevailing party" to provide that the party whose offer is closer to the verdict reached is considered the prevailing party. S.C. Code Ann. § 29-5-10(b). Prior to trial, Library made a timely and appropriate formal offer of settlement to Balfour of one-hundred dollars ($100.00). See Offer of Settlement filed July 29, 2021. Balfour made a timely and appropriate formal offer of settlement under § 29-5-10 to Library of four million six hundred sixty three thousand one hundred and fifty nine dollars and zero one-hundredths ($4,663,159.00). See Offer of Settlement filed August 6, 2021. Pursuant to the S.C. Code Ann. § 29-5-10, the party whose Offer of

Settlement is closer to the verdict reached is entitled to an award of attorney's fees and costs. The midpoint of the two Offers of Settlement is $2,331,629.50.

I find that Balfour is the prevailing party with regard to its mechanic's lien and is entitled to recover its reasonable attorney's fees and costs incurred in enforcement of its lien. The award in this matter, $11,160,550.48 to Balfour, is closer to Balfour's offer of settlement than to Library's. Therefore, I find that Balfour should be granted an award of costs and attorney's fees to be addressed at a supplemental hearing.

**3. Interest**

**A. Balfour is entitled to interest on the unpaid pay applications at the prejudgment interest rate of 8.75%. § 34-31-20(A).**

The Contract required that Library was to make payment on any Application of Payment that was received by the 30th day of the month by the 30th day of the following month. (Balfour's Ex. 56 at A133 § 7.1.3). Additionally, § 13.6 of the AIA A201 General Conditions stated that "[p]ayments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located." (Balfour's Ex. 56). In South Carolina the legal rate prevailing is 8.75% per annum which is set by statute in S.C. Code Ann. § 34-31-20(A). Thus, for any payment that was not paid by the 30th day of the following month, interest would accumulate on the payment at the rate of 8.75% annually. As this Court has found that Library improperly withheld payment on Applications for Payment 43, 44 and 45, interest shall begin to accrue at the rate of 8.75% per annum from the 30th of the month following the month the Application for Payment was submitted. Application for Payment 43 was submitted on October 26, 2018; thus interest shall begin to accrue from November 30, 2018. (Balfour's Ex. 290). Application for Payment 44 was submitted January 8, 2019;

thus interest shall begin to accrue from February 28, 2019 (as February does not have 30 days). (Library Ex. 142). Application for Payment Number 45 was submitted on January 28, 2019; thus interest shall begin to accrue from February 28, 2019 (as February does not have 30 days). (Balfour's Ex. 292). The interest calculations have been included in the attached Appendix IV.

### B. Balfour is entitled to interest at the judgment rate under S.C. Code Ann. § 27-1-15.

On January 29, 2019, Balfour sent Jim Clements, the Owner's Representative, a demand for payment in the amount of $8,409,658.54, pursuant to by S.C. Code Ann. § 27-1-15. As discussed in Section IV, 2., A. above, the statute required that Library "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." S.C. Code Ann. § 27-1-15 The statute further states, "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." *Id*. Courts interpreting S.C. Code Ann. § 27-1-15 have found that interest should be applied at the prejudgment interest rate of 8.75% per annum from the date of the demand when the payment is demandable and the sum in certain or capable of being reduced to certainty. *See* S.C. Code Ann. § 34-31-20 (A); *Eldeco, Inc. v. Skanska USA Bldg., Inc.*, at *4; *see also First Fed. Sav. & Loan Ass'n of S.C. v. Chrysler Credit Corp.*, 981 F.2d 127, 135 (4th Cir. 1992) (finding it more logical to apply the 8.75% prejudgment interest rate to sums that were ascertainable and certain prior to the litigation despite the specific statutory phrase "interest runs at the rate provided by law for a judgment" which would infer application of the judgment rate).

As I have found that Library did not make a reasonable and fair investigation into the Balfour's demand for payment, I find that Balfour is entitled to interest of $3,213,087.12 on the demand amount of $8,409,654.54 at the judgment rate from the date of the demand through the date of this Order. Together with interest, I find that Balfour is entitled to judgment in the amount of $14,373,637.60. The interest awarded to Balfour is calculated in the attached Appendix IV.

**4. Mechanics Lien**

I find that Balfour has perfected its mechanic's lien and has proven a debt owed from Library for labor performed and furnished and for materials furnished for the hotel. *See* South Carolina Code § 29-5-10, et seq. The total debt owed is $11,160,550.48, together with accrued interest in the amount of $2,060,647.92 as of May 23, 2023 for a total of $13,221,198.40. When a final determination of costs and attorney's fees has been made in a subsequent order, the final amount of Balfour's mechanic's lien that it will be entitled to recover in a foreclosure action will be set.

## V. Conclusion

For the reasons stated above, I find that Balfour is entitled to judgment as follows:

1. I find for Balfour on its Breach of Contract claim in the amount of $11,160,550.48, together with interest in the amount of $3,213,087.12 calculated as of May 23, 2023, pursuant to S.C. Code Ann. 27-1-15 for a sum of $14,373,637.60 and attorneys' fees and cost to be proven at a subsequent hearing.
2. I find for Balfour on its Quantum Meruit claim in the amount of $11,160,550.48.
3. I find for Balfour on its Foreclosure of Mechanic's Lien claim in the amount of $11,160,550.48. together with interest in the amount of $2,060,647.92

calculated as of May 23, 2023 for a sum of $13,221,198.40 and attorneys' fees and cost to be proven at a subsequent hearing.

As discussed in Section III, 4., I find for Balfour on all of Library's causes of action and award no recovery to Library.

This Court's final award and judgment will be entered in a subsequent order following a determination of Balfour's costs and attorneys' fees to be added to the award.

And it is so ORDERED.

The Honorable Mikell R. Scarborough
Charleston County Master-In-Equity

_____, 2023
Charleston, South Carolina

## APPENDIX I

### I. RCO Narrative

Having heard the testimony, I find that the RCOs included within Balfour Ex. 12 and identified below are appropriate and should be awarded to Balfour. I further note that Balfour acknowledged at trial that it is liable to pay much of these RCOs to its subcontractors and vendors, and I have noted for each the amount to be passed on by Balfour to its subcontractors. The Court finds that Balfour is entitled to payment of the below listed RCOs. As a result, the GMP is increased by $2,811,119.73 and the Cost of the Work is increased by $1,562,419.92.

- **RCO 27** resulted from the 1000 year storm and the cost to return the job-site to pre-storm conditions. (Trans. Starcevic p.1164, line 13 – p. 1166 line 5). Testimony further established that Balfour has paid its subcontractor for the amounts owed in RCO 27. (*Id.*) Library contends this amount was covered by the contingency and replaced by a subsequent RCO 27 executed for a twenty day time extension. (Library Ex. 12; Library Ex. 144).

  I first note that Library Ex. 144 states "[t]his proposal covers only the specific work as set fourth(sic) in the attached proposal breakout. Changes in the work and associated price adjustment other than those noted in our proposal are not included." (Library Ex. 144). The "proposal breakout" does not contain price adjustment or cost information and therefore I find that those amounts were specifically excluded from the executed RCO 27. (*Id.*)

  As discussed in Section 5.A.4 above, in regards to Library's contention that the amounts of any builders' risk claim was covered by contingency, I find otherwise.

Section 11.3.1 of the A201 General Conditions required Library to purchase and maintain property insurance written on a builder's risk or equivalent policy for the duration of construction. (Balfour Ex. 56, § 11.3.1). Testimony from Nick Starcevic established that Library did not maintain the contractually required insurance on the project and refused to pay Balfour for the amounts Balfour incurred as a result of the 1000-year storm. (Trans. Starcevic p. 1398, line 5 – p. 1399, line 2). Library contends that Balfour's cost should have been covered by the contingency. However, the contingency provision of the contract, Article 2.2.4.2 states that contingency may be used to cover builder's risk insurance deductibles, not the entire amount incurred to repair. As to deductibles, the contract obligated Library to pay deductibles, except where Contractor or Subcontractor's negligence caused the loos, and then exposure to the Contractor was only $10,000.00. (Balfour Ex. 56, Art. 11.3.1.3). Only in the instance where Contractor or Subcontractor was negligent would the contingency be used to pay the deductible. (*Id.*). Since there was no proof of any negligence on the part of Balfour or a subcontractor in regards to the flood, I find that the amounts incurred by Balfour are not covered by the contingency and Balfour is entitled to recover those amounts from Library.

Nick Starcevic's testimony further established that Balfour paid its subcontractors for this amount despite Library's refusal to pay Balfour. (Trans. Starcevic p.1164, line 13 – p. 1166, line 5).

As such, Balfour is entitled to RCO 27.

- Amount of increase to GMP and Cost of Work - $124,089.19.
  - Balfour - $124,089.19.

- **RCO 75** - After completion of the mock-up, Library issued drawings to Balfour revising the tile. (Trans. Starcevic p. 1168, line 21 – p. 1169, line 18). Library and Balfour agreed that if the mock-up changed, Library would pay Balfour for the changes. (*Id.*) RCO 75 consists of the cost to change the original tile in the mock-up to the tile that was ultimately used in the hotel. (*Id.*) As these changes were driven by Library, I find that Balfour is entitled to RCO 75.
    - Amount of increase to GMP - $5,989.93.
        - David Allen Company - $5,713.00.
        - Balfour - $276.93.
    - Cost of Work - $276.93.
        - Balfour $276.93.
- **RCO 88R1** – RCO 88R1 consist of all of the change orders generated by the concrete subcontractor as a result of changes made by Library. (Trans. Starcevic p. 1170, line 16 – line 24; p. 1178, line 14 – p. 1180, line 1). Therefore, I find that Balfour is entitled to RCO 88R1.
    - Amount of increase to GMP - $56,414.30.
        - Lithko - $53,221.04.
        - Balfour - $3,193.26.
    - Cost of Work increase: - $3,193.26.
        - Balfour - $3,193.26.
- **RCO 103R1** consists of costs incurred for additional plumbing and mechanical work due to Mod 5. (Trans. Starcevic p.1186, line 19 – p.1188, line 22). Mod 5 included a related adjustment of floor heights without additional coordination of the mechanical and plumbing distribution systems. (Balfour Ex. 12, tab 103; Balfour Ex. 275). Thus,

Mod 5 resulted in, among other things, additional dampers, changes to ductwork, relocation of fan cooling units and changes to the chilled water lines. (*Id.*) As these changes and associated costs were done at Library's direction, I find that Balfour is entitled to RCO 103R1.

- Amount of increase to GMP and Cost of Work - $290,257.91.
  - BMCC - $276,838.84.
  - Balfour - $13,419.07.

- **RCO 118** - Library changed the trim for the tubs in the guestroom. (Trans. Starcevic p.1191, line 6 – line 15). The new fixture did not have an integral stop, or shut-off valve, as required by the building code. (*Id.*) As a result, Balfour was required to add stops to accommodate Library's change and is entitled to RCO 118. (*Id.*)
  - Amount of increase to GMP and Cost of Work - $21,036.56
    - BMCC - $20,064.00
    - Balfour - $972.56
- **RCO 122R1** - During construction, Library consolidated the guest rooms on the sixth, seventh, and eighth floors into suites. (Trans. Spano p. 236, line 22 – p.238, line 12). This change significantly impacted the design and construction as the original mechanical design was not compatible with the changes. (Trans. Dooley p. 329, line 7 – p. 331, line 7). Thus, Balfour was unable to construct the project in accordance with the plans provided by Library and was forced to stop work while the Architect revised the plans. (Trans. Spano p. 239, line 4 – p. 240, line 10). As a result, Balfour submitted a formal claim for delay regarding the sixth floor. (Trans. Spano p. 240, line 25 – p. 242, line 11). The guestroom change and other design changes also resulted in delays to seventh, eighth and ninth floors. (Trans. Spano p. 242, line 12 –

p. 243, line 1; Trans. Spano p. 243, line 20 – p. 245, line 1). As a result of the additional cost incurred by Balfour and its subcontractors due to the structural delay, Balfour submitted RCO122 R1. (Balfour Ex. 12, tab 122; Balfour Ex. 123). I find that Balfour is entitled to RCO 122R1.

- Amount of increase to GMP - $1,012,043.00.
  - Lithko - $383,720.00.
  - PASCO - $6,262.00.
  - BMCC - $35,782.00.
  - Watson - $99,008.00.
  - Balfour - $487,321.00.
- Cost of Work - $523,052.00.
  - BMCC - $35,782.00.
  - Balfour - $487,321.00.

- **RCO 159** is for extended Furniture, Fixtures & Equipment (FF&E) storage. – The contract included a responsibility matrix that listed items for which each party was responsible. (Trans. Starcevic p. 1195, line 8 – line 17; Balfour Ex. 56). Library was responsible for buying furniture and delivering it to Balfour. (Trans. Starcevic. p. 1195, line 19 – line 25). After the furniture was delivered, the structural delay (as described in RCO 122R1) occurred. (Trans. Starcevic p. 1196, line 5 – line 18). The structural delay caused Balfour to store the FF&E while the project was delayed. (*Id.*). At trial, Kim Brown testified that items 3 – 18 on the first page of RCO 159 were not performed. (Trans. Brown p. 3651, line 22 – p. 3652, line 22). However, no such testimony was offered regarding the remaining items. Therefore, I find that Balfour is entitled to (1) extended warehousing services, (2) extended product inspections, (3)

current extended storage at 3rd part warehouse, (4) Projected OFCI extended storage, and (5) Demurrage fees. (Balfour Ex. 12; Tab 159; Balfour Ex. 56, § 9.3.2). The sum of these amounts is $223,591.00. As provided for in the contract, Balfour is entitled to $10,287.99 of markup on this amount. Therefore, I award Balfour the amount of $233,878.39 in RCO 159.

- Amount of increase to GMP and Cost of Work - $233,878.39
  - Balfour - $233,878.39.

- **RCO 161** – RCO 161 relates to additional costs incurred due to revisions and changes to the off-site model room. (Trans. Starcevic p. 1199, line 11 – line 17). Library's representative on the project, Jim Clements, acknowledged that Balfour is entitled to RCO 161. (Balfour Ex. 305, August 26, 2020 Jim Clements depo., p. 337, line 3 – p. 338, line 2; Balfour Ex. 283). As such, I find that Balfour is entitled to RCO 161.
  - Amount of increase to GMP and Cost of Work - $17,375.39.
    - Precision Walls - $7,644.00.
    - BMCC - $8,928.61.
    - Balfour - $803.39.
- **RCO 178** – Library furnished some of the decorative light fixtures on the project. (Trans. Starcevic p. 1200, line 7 – line 9). Balfour was responsible for installing the light fixtures supplied by Library. (Trans. Starcevic p. 1200, line 11 – line 12). Balfour informed Library that if Library supplied the light fixtures prior to their installation, Balfour was willing to store them off-site at an additional cost. (Trans. Starcevic p. 1200, line 15 – line 22). In response, Library sent the light fixtures and informed Balfour that it would not pay the additional storage cost. (*Id.*; Trans. Starcevic p. 1200,

line 24 – p. 1201, line 4). I find that Balfour is entitled to RCO 178. (Balfour Ex. 56, § 9.3.2).

- Amount of increase to GMP and Cost of Work $2,245.84.
  - Balfour - $2,245.84.

- **RCO 184** – In preparation for Hurricane Irma, Balfour took steps to project the jobsite, such as installing plywood and sandbags around the property and removing scaffolding. (Trans. Starcevic p. 1201, line 5 – p. 1202, line 7). I find that Balfour is entitled to RCO 184.
  - Amount of increase to GMP $57,467.82 and 1 day time extension.
    - 1 day time extension.
    - Premier Exteriors - $18,810.00.
    - First Choice Glass - $20,486.00.
    - Balfour - $18,171.82.
  - Cost of Work - $38,657.82.
    - First Choice Glass - $20,486.00.
    - Balfour - $18,171.82.
- **RCO 215** – During construction, Library revised the rooftop bar, including changes to the light fixtures. (Trans. Starcevic p. 1211, line 2 – line 9). As a result, the lighting control package was revised to accompany the changed light fixtured. (*Id.* at line 11 – line 14). RCO 215 includes the cost incurred by Balfour as a result of those revisions and Library's engineer recommended payment of RCO 215. (Trans. Starcevic p. 1211, line 20 – line 21). I find that Balfour is entitled to RCO 215.
  - Amount of increase to GMP - $14,937.63.
    - Watson - $13,793.82.

        - Balfour - $1,143.81.
    - Cost of Work - $1,143.81.
        - Balfour - $1,143.81.

- **RCO 221** – During construction, Balfour was required to tint Hope's Windows which was not originally provided for in the contract. (Trans. Starcevic p. 1214, line 23 – p. 1215, line 2). As additional work, I find that Balfour is entitled to RCO 221.
    - Amount of increase to GMP - $846.12.
        - Strong Tower - $807.00.
        - Balfour - $39.12.
    - Cost of Work - $39.12.
        - Balfour - $39.12
- **RCO 223** – During construction, Library directed Balfour to relocate a door frame which changed the layout of the entire room. (Trans. Starcevic p. 1213, line 13 – p. 1214, line 1). RCO 223 is the cost incurred to accommodate Library's change. (Trans. Starcevic p.1214, line 2 – line 5). I find that Balfour is entitled to RCO 223.
    - Amount of increase to GMP and Cost of Work - $3,304.78.
        - Precision Walls – $3,152.00.
        - Balfour - $152.78.
- **RCO 227** – As with RCO 178, Library ordered owner supplied fixtures (mirrors) before they were ready for installation and required Balfour to store them for 49 weeks. (Trans. Starcevic p. 1215, line 6 – 15). The mirrors ended up not being used in the hotel and Library refused to reimburse Balfour for the storage cost. (Trans. Starcevic p. 1215, line 17 – p. 1216 line 9). I find that Balfour is entitled to RCO 227. (Balfour Ex. 56, § 9.3.2).

- Amount of increase to GMP and Cost of Work - $9,169.01.
    - Balfour - $9,169.01.

- **RCO 246R1** – During construction, Library substantially revised the elevator cab, adding millwork, a chandelier, changing the finish of the handrail, and adding casing to the ceiling. (Trans. Starcevic p. 1219, line 3 – line 24). Library disagrees with the electrical portion of RCO 246R1 and contends that Balfour should have caught the conflict with the electrical layout and the escape hatch. (Trans. Starcevic p. 1220, line 2 – line 11). However, consistent with the entire project, the testimony shows that the specifications issued to Balfour were incorrect. (Trans. Starcevic p. 1220, line 20 – line 24). Therefore, I find that Balfour is entitled to RCO 246R1. See *BEI-Beach, LLC v. Christman*, Op.No. 5982 (S.C. Ct. App. filed April 26, 2023) (Howard Adv. Sh. No. 16 at 37)("…if the contractor is bound to build according to plans and specifications prepared by the owner, the contractor will not be responsible for the consequences of defects in the plans and specifications.") quoting *United States v. Spearin*, 248 U.S. 132, 136, 39 S.Ct. 59, 63 L.Ed. 166 (1918).
    - Amount of increase to GMP - $31,157.12.
        - Low Country Case and Millwork - $333.00.
        - Watson - $27,331.51.
        - Balfour - $3,758.61.
    - Cost of Work - $3,758.61.
        - Balfour - $3,758.61.

- **RCO 249** – RCO 249 relates to supplemental instruction 10, which changed the ballroom walls from ceiling blocks to structural studs. (Trans. Starcevic p.1218, line 13 – line 24). In turn, the stucco system changed. (*Id.*). As a change to the contract

that required Balfour to incur additional costs, I find that Balfour is entitled to RCO 249.

  - Amount of increase to GMP - $5,129.09.
    - Premier Exteriors - $4,838.77.
    - Balfour - $290.32.
  - Cost of Work - $290.32.
    - Balfour - $290.32.

- **RCO 250** – Once the terrace glass doors were cut, Library made a change reducing the height of the door. (Trans. Starcevic p. 1221, line 5 – line 9). RCO 250 consist of the additional cost to order different glass doors. (*Id.*) I find that Balfour is entitled to RCO 250.
  - Amount of increase to GMP and Cost of Work- $1,462.80.
    - First Choice - $1,380.00.
    - Balfour - $82.80.
- **RCO 251** – RCO 251 is an accumulation of all of the changes and revisions to the dining room millwork by Mod 1 through Mod 8. (Trans. Starcevic p.1221, lines 13 – line 25). At trial, Kim Brown acknowledged that at least some of the work that was a change that was done but that the RCO was never presented to her. (Trans. Brown p. 3673, line 8 – line 22). However, Nick Starcevic refuted this testimony stating that the parties collectively spent a lot of time was spent reviewing RCO 251. (Trans. Starcevic p. 1222, line 7 – line 10). Accordingly, I find that Balfour is entitled to RCO 251.
  - Amount of increase to GMP - $22,305.58.
    - Low Country Case and Millwork - $21,043.

        - Balfour - $1,262.58.
    - Cost of Work - $1,262.58.
        - Balfour - $1,262.58.

- **RCO 255** – Library requested Balfour add a casing to conceal the pocket door header. (Trans. Starcevic p. 1225, line 21 – line 25). This change was reviewed on-site and a direct request of Michael Bennett. (*Id.*; Trans. Starcevic p.1473, line 1 – line 17).
    - Amount of increase to GMP - $11,879.32.
        - Low Country Case and Millwork - $11,122.00.
        - Balfour - $667.32.
    - Cost of Work - $667.32.
        - Balfour - $667.32.
- **RCO 258** – RCO 258 consist of revisions that made to the mock-up after the Charleston Board of Architectural Review inspection. (Trans. Starcevic p. 1226, line 13 – p. 1228, line 19). In addition, after the mock-up was no longer necessary, Michael Bennett relocated portions of it to his farm. (Trans. Simonton p. 4288, line 1 – p. 4290, line 18; Library Ex. 12). After portions of it were moved, Balfour incurred costs demolishing the remaining parts. (*Id.*) As these costs resulted from changes from the original contract, I find that Balfour is entitled to RCO 258.
    - Amount of increase to GMP - $65,782.09.
        - Quantum - $15,377.58.
        - Gulfstream - $21,336.35.
        - Strong Tower - $9,564.65.
        - Warco - $7,283.00.

        - Premier Exteriors - $3,391.00.
        - Balfour - $8,829.51.
    - Cost of Work - $8,829.51.
        - Balfour - $8,829.51.

- **RCO 260R1** – Library directed Balfour to add a wall covering that was not shown in the drawings. (Trans. Starcevic p. 1229, line 17 – line 23). Therefore, I find that Balfour is entitled to RCO 260R1.
    - Amount of increase to GMP - $5,586.12.
        - Quantum - $5,269.93.
        - Balfour - $316.19.
    - Cost of Work - $316.19.
        - Balfour - $316.19.
- **RCO 262** – The layout of rooms 315, 415, and 515 changed after the rooms had been framed. (Trans. Starcevic p. 1231, line 20 – line 24). As a result, Balfour was required to demo and reframe portions of the room to accommodate the electrical changes. (Trans. Starcevic p. 1231, line 25 – p. 1232, line 8). I find that Balfour is entitled to RCO 262.
    - Amount of increase to GMP - $15,635.00.
        - Precision Walls - $6,483.00.
        - Watson - $8,267.00.
        - Balfour - $885.00.
    - Cost of Work - $7,368.00.
        - Precision Walls - $6,483.00.
        - Balfour - $885.00.

- **RCO 264** – After tv walls were installed in the guestrooms, Library's interior designer requested Balfour relocate the sprinkler heads. (Trans. Starcevic p. 1232, line 13 – p. 1233, line 8). Library contends that Balfour should have accommodated the design and always known to relocate the sprinkler head. (Trans. Starcevic p. 1233, line 12 – line 16). However, at the time of the installation Balfour had not received the FF&E drawings. (*Id.*) Therefore, I find that Balfour is entitled to RCO 264.
    - Amount of increase to GMP - $14,390.21.
        - PASCO - $10,551.67.
        - Precision Walls - $3,024.00.
        - Balfour - $814.54.
    - Cost of Work - $3,838.54.
        - Balfour - $814.54.
        - Precision Walls - $3,024.00.
- **RCO 266** – Library's architect and designer directed Balfour to do miscellaneous framing and rework for purely aesthetic reasons. (Trans. Starcevic p. 1234, line 5 – line 20). As a change, I find that Balfour is entitled to RCO 266.
    - Amount of increase to GMP and Cost of Work - $2,203.74.
        - Precision Walls – $2,079.00.
        - Balfour - $124.74.
- **RCO 267** - RCO 267 relates to changes in the rooftop millwork as a result of Mod 1, through Mod 8. (Trans. Starcevic p.1234, line 25 – p. 1235, line 13). Therefore, I find that Balfour is entitled to RCO 267.
    - Amount of increase to GMP - $7,922.44.
        - Low Country Case and Millwork - $7,474.00.

        - Balfour - $448.44.
    - Cost of Work - $448.44.
        - Balfour - $448.44.

- **RCO 268** – Library added metals, bays, and a mirror to Camellia's Bar via a new drawing issued to Balfour. (Trans. Starcevic p. 1235, line 20 – line 24). Library disagreed stating that the additional cost was part of an allowance. (Trans. Starcevic p. 1235, line 25 – p. 1236, line 10). However, the allowance Library relies on states "the allowance includes MT-03 thru MT-08, GL-02 thru GL-04 as identified on ID-002 drawing." (Library Ex. 12). MT-04 is described as the bar die and MT-08 is described as the back bar display doors. (*Id.*). Thus, the additional work at Camellia's Bar was not included in the allowance and, I find that Balfour is entitled to RCO 268.
    - Amount of increase to GMP- $51,979.21.
        - Low Country Case and Millwork - $6,663.00.
        - SEAS - $37,894.00.
        - First Choice - $3,330.00.
        - Quantum - $1,150.00.
        - BBC Markup - $2,942.21.
    - Cost of Work – $6,272.21.
        - First Choice - $3,330.00.
        - Balfour - $2,942.21.
- **RCO 270** – RCO 270 is a compilation of all of the framing change orders remaining at the end of construction. (Trans. Starcevic p. 1236, line 23 – p. 1237, line 3). As each change order was incurred as a result of work added or changed by Library, I find that Balfour is entitled to RCO 270.

- Amount of increase to GMP and Cost of Work - $49,885.72.
    - Precision Walls - $47,062.00.
    - BBC markup - $2,823.72.

- **RCO 271** - Similar to RCO 270, RCO 271 consists of all of the painting change orders remaining at the end of construction. (Trans. Starcevic p. 1240, line 9 – p. 1241, line 3). Library's representative on the project, Jim Clements, acknowledged Balfour's entitlement to RCO 271. (Balfour Ex. 305, August 26, 2020 J. Clements depo., p. 359 line 2 – line 6). I find that Balfour is entitled to RCO 271.
    - Amount of increase to GMP - $41,394.11.
        - Quantum - $39,051.05.
        - Balfour - $2,343.06.
    - Cost of Work - $2,343.06.
        - Balfour - $2,343.06.
- **RCO 272** – RCO 272 is for three specific items Library added that were not shown on the drawings; (1) gates at the pool terrace, (2) guardrail revisions at stair 1, and (3) guardrail revisions at stair 2. (Trans. Starcevic p. 1241, line 4 – line 18). I find that Balfour is entitled to RCO 272.
    - Amount of increase to GMP and Cost of Work - $19,286.37.
        - Tate Ornamental - $18,194.70.
        - BBC markup - $1,091.67.
- **RCO 273** – Library selected a tile that had a tighter tolerance than what was originally provided for in the GMP drawings. (Trans. Starcevic p. 1241, line 19 – p. 1244 line 9). As a change, Balfour is entitled to RCO 273.
    - Amount of increase to GMP - $111,644.29.

        - David Allen Company - $105,372.00.
        - Balfour - $6,272.29.
    - Cost of Work - $6,272.29.
        - Balfour - $6,272.29.

- **RCO 274** – Initially, Balfour met with Library's architect and went through every guest room to create a punch list. (Trans. Starcevic p. 1244, line 13 – line 15). Balfour executed that punch list and Library's architect signed off on it. (Trans. Starcevic p. 1244, line 16 – line 17). Library's representative reviewed the guest rooms and created a second list. (Trans. Starcevic p. 1244, line 18 – line 20). Balfour executed that punch list. (*Id.*) The first two punch list were completed at no cost. (Trans. Starcevic p. 1244, line 23 – line 24). Then, Library requested Balfour execute a third punch list and directed Balfour to keep time and material cost, which is RCO 274. (Trans. Starcevic p. 1244, line 21 – p. 1245, line 8). As a Library initiated change, I find Balfour is entitled to RCO 274.
    - Amount of increase to GMP – $30,537.68.
        - Quantum - $30,537.68.
    - Cost of Work - $0.00.
- **RCO 275** - Balfour framed and installed drywall in the guestrooms within the permitted tolerance. (Trans. Starcevic p. 1245, line 10 – line 18). Library selected a more decorative fixture after the majority of the walls were framed and the vanities that were subsequently delivered that did not have a tolerance. (Trans. Starcevic p. 1246, line 6 – line 17; Trans. Starcevic p. 1247, line 12 – 1248, line 5). As a result, Balfour had to reframe the opening to accommodate the vanities. (*Id.*) As a Library initiated change, I find Balfour is entitled to RCO 275.

- Amount of increase to GMP - $67,384.91.
    - David Allen Company - $4,336.00.
    - Quantum - $7,649.21.
    - Precision Walls - $24,799.00.
    - BMCC - $23,165.46.
    - Low Country Case and Millwork - $2,196.00.
    - Balfour - $5,239.24.
- Cost of Work - $53,203.70.
    - Precision Walls - $24,799.00.
    - BMCC - $23,165.46.
    - Balfour - $5,239.24.

- **RCO 276** - RCO 276 consists of an accumulation of change orders incurred by the millwork subcontractor as a result of items being installed that were not shown in the drawings. (Trans. Starcevic p. 1248, line 10 – line 18). As a result, I find that Balfour is entitled to RCO 276.
    - Amount of increase to GMP - $38,907.10.
        - Low Country Case and Millwork - $36,253.00.
        - Balfour - $2,654.10 .
    - Cost of Work - $2,654.10.
        - Balfour - $2,654.10.
- **RCO 277** –During construction, stair 3, stair 5, and stair 6 were modified, which resulted in changes to the steel. (Trans. Starcevic p. 1248, line 23 – p.1249, line 14). At trial, Sam Hadley testified that some of the amounts in RCO 277 were previously paid to Balfour. (Trans. Hadley p. 4009, line 9 – line 21). That amount was $6,856.00

identified as line item 10 on the pricing breakdown of RCO 277. That amount has been removed from RCO 277. However, the remaining amounts represent changes and cost incurred as result of those changes. Therefore, I find that Balfour is entitled to RCO 277.

- Amount of increase to GMP and Cost of Work - $131,448.56.
  - MSI - $123,620.00.
  - Balfour - $7,828.56.

- **RCO 278** – After supplemental instruction 10 was issued, which changed the wall from CMU to metal framing, Library's architect failed to revise the window flashing detail in the plans. (Trans. Starcevic p. 1250, line 6 – p. 1251, line 20). As a result, there was a gap in how the wall was flashed which required Balfour to add extra flashing. (*Id.*) I find that Balfour is entitled to RCO 278.
  - Amount of increase to GMP - $8,511.80.
    - Strong Tower - $8,030.00.
    - Balfour - $481.80.
  - Cost of Work - $481.80.
    - Balfour - $481.80.
- **RCO 279** – CCD Jan – March - $228,811.20 – Towards the end of construction, Library directed Balfour to make changes to the project and track time and materials as construction change directives. (Trans. Starcevic p. 1252, line 8 – line 19). Library agreed Balfour was entitled to the change but did not pay for them. (Trans. Starcevic p. 1252, line 18 – p. 1253, line 5). As a result, I find that Balfour is entitled to RCO 279.
  - Amount of GMP Increase - $228,811.20.

- Low Country Case and Millwork - $23,047.36.
- PASCO - $32,542.00.
- BMCC - $50,704.04.
- SEAS - $56,056.40.
- Balfour - $66,461.40.

o Cost of Work - $117,165.44.

- BMCC - $50,704.04.
- Balfour - $66,461.40.

| **RCO Number** | **Amount of GMP Increase** | **Cost of Work Increase** |
|---|---|---|
| 27 | $124,089.19 | $124,089.19 |
| 75 | $5,989.93 | $276.93 |
| 88R1 | $56,414.30 | $3,193.26 |
| 103R1 | $290,257.91 | $290,257.91 |
| 118 | $21,036.56 | $21,036.56 |
| 122R1 | $1,012,043.00 | $523,052.00 |
| 159 | $233,878.39 | $233,878.39 |
| 161 | $17,375.39 | $17,375.39 |
| 178 | $2,245.84 | $2,245.84 |
| 184 | $57,467.82 | $38,657.82 |
| 215 | $14,937.63 | $1,143.81 |
| 221 | $846.12 | $39.12 |
| 223 | $3,304.78 | $3,304.78 |
| 227 | $9,169.01 | $9,169.01 |

| | | |
|---|---|---|
| 246R1 | $31,157.12 | $3,758.61 |
| 249 | $5,129.09 | $290.32 |
| 250 | $1,462.80 | $1,462.80 |
| 251 | $22,305.58 | $1,262.58 |
| 255 | $11,879.32 | $667.32 |
| 258 | $65,782.09 | $8,829.51 |
| 260R1 | $5,586.12 | $316.19 |
| 262 | $15,635.00 | $7,368.00 |
| 264 | $14,390.21 | $3,838.54 |
| 266 | $2,203.74 | $2,203.74 |
| 267 | $7,922.44 | $448.44 |
| 268 | $51,979.21 | $6,272.21 |
| 270 | $49,885.72 | $49,885.72 |
| 271 | $41,394.11 | $2,343.06 |
| 272 | $19,286.37 | $19,286.37 |
| 273 | $111,644.29 | $6,272.29 |
| 274 | $30,537.68 | $0.00 |
| 275 | $67,384.91 | $53,203.70 |
| 276 | $38,907.10 | $2,654.10 |
| 277 | $131,488.56 | $131,488.56 |
| 278 | $8,511.80 | $481.80 |
| 279 | $228,881.20 | $117,165.44 |

| | | |
|---|---|---|
| **Sum** | **$2,811,119.73[40]** | **$1,562,419.92[41]** |

## Conclusion

In conclusion, I find that the GMP is increased by $2,811,119.73 and the Cost of the Work is increased by $1,562,419.92.

[40] Although not discussed in Appendix I, at trial, RCO 244 was shown as a credit of $1,090.21 from Balfour to Library. That credit is accounted for in this calculation.

[41] Likewise, RCO 244 included $240.00 in direct costs incurred by Balfour. Thus, the Cost of Work increase includes the $240.00 in RCO 244. Prior to trial, Library made payments to BMCC and Precision Walls. The Cost of the Work has been reduced to account for those payments.

## II. Important Dates

At trial the court asked that it be provided important dates regarding the disputes. Those dates are as follows:

1. When was initial BAR approval given?

The original GMP mock-up was unanimously approved on December 14, 2016. (Trans. Spano p. 4240, line 15 – p. 4242, line 24; Balfour Ex. 27 – Task ID number 1210).

After initial approval, a number of changes were made to the mock-up and final approval was given on June 27, 2018. (Trans. Spano p. 4242, line 25 – p. 4246, line 9; Balfour Ex. 27, Task ID number 1242; Task ID number 1194).

2. When was the notice to proceed issued?

March 19, 2015. (Balfour Ex. 60).

3. When was ground breaking?

April 30, 2015. (Balfour Ex. 27 - Task ID number 2230.)

4. When were the concrete pours for floors 1-9?

Floor 1: April, 24, 2016. (Balfour Ex. 27 - Task ID: 4534 "POUR @ AREA D LVL 1.").

Floor 2: May 23, 2016. (*Id.*; Task ID: 4854 "POUR @ AREA D LVL 2.")

Floor 3: June 14, 2016, (*Id.*; Task ID: 5174: "POUR @ AREA D LVL 3.")

Floor 4: July 1, 2016. (*Id.*; Task ID: 5494: "POUR @ AREA D LVL 4.")

Floor 5: July 23, 2016. (*Id.*; Task ID: 5824: "POUR @ AREA D LVL 5.")

Floor 6: August 31, 2016. (*Id.;* Task ID: 6134: "POUR @ AREA D LVL 6;" *see also* Balfour Ex. 81; August 8, 2016 notification of delay to Library; Balfour Ex. 85).

Floor 7: September 23, 2016. (*Id.*, Task ID: 6454: "POUR @ AREA D LVL 7.")

Floor 8: October 21, 2016. (*Id.*; Task ID: 6774: "POUR @ AREA D LVL 8.")

Floor 9: November 30, 2016. (*Id.*, Task ID: 7024: "POUR @ AREA D LVL 9;" *see also* Balfour Ex. 109 – discussion of design delays on levels 6 through 9.)

5. When was top out?

November 30, 2016. (Balfour Ex. 27 – Task ID number 1048).

6. When was the crane removed?

February 03, 2017. (Balfour Ex. 27, p.2. “Task ID number 1084 – Tower Crane Removed.”)

7. What was the date of significant completion/substantial completion?

December 28, 2018. (Trans. Doran p. 814, line 5 – line 13; Balfour Ex. 231; Balfour Ex. 333).

8. What was the date of final completion?

January 11, 2019. (Balfour Ex. 27, “Construction” heading.)

9. How many days was the project completion date contractually extended vs how many days Balfour asked for it to be.

There was one formal extension to the contract of 20 days, which extended the completion date to August 19, 2017. (Trans. Simonton p. 1965, line 9 – line 22). Balfour requested an additional day in RCO 184 which was never executed by Library. (Balfour Ex. 12; tab 184)

After the unsuccessful resolution of the structural delay claim, Balfour began reserving its rights to costs and/or time which remain in dispute as a result of changes. (Balfour Ex. 12, tab 103; Library Ex. 101, Dep. Spano p. 80, line 15 – p. 81, line 24; p. 186, line 7 – p. 188, line 11). Balfour is seeking an adjustment to the contract time of 494 days as reflected in Mr. Doran’s delay analysis.

10. When was the CO issued?

The Temporary Certificate of Occupancy was issued on November 21, 2018. (Balfour Ex. 27 - Task ID 1030).

The Certificate of Occupancy was issued on May 31, 2019. (Trans. Doran p. 795, line 4 – line 7; Balfour Ex. 27 - Task ID 1184).

11. When was the Hotel turned over to Library?

Library had beneficial occupancy prior to January 26, 2019. However, on that date the hotel was operational and guests were staying at the hotel. (Balfour Ex. 300, Dep. Of K. Brown, p. 100, line 17 – p. 101 line 4.)

12. What was the last Balfour performed work on the project?

April 26, 2019. (Trans. Simonton p. 1802, line 4 – line 6; Trans. Doran p.815, line 2 – line 13; Balfour Ex. 231.)

## Appendix III

**III. Cost of the Work, GMP and Contractor's Fee Tabulation Spreadsheet (attached separately)**

## Appendix IV

### IV. Interest Spreadsheet (attached separately)

| Sub-Projects | Cost Amount |
|---|---|
| **000-100: General Conditions** | **6,499,635** |
| | |
| **Primary GMP:** | |
| 200: Allowances/Contingencies | 11,982 |
| 300: Insurance | 683,299 |
| 400: Subcontractor/Vendor Cost | 59,580,540 |
| 980: Preconstruction | 66,779 |
| **Subtotal for Primary GMP** | **60,342,600** |
| | |
| **403-490: Construction Change Directives** | **159,623** |
| | |
| **Non-Billed Codes:** | |
| 500: Builder's Risk Claim | 37,609 |
| 600: Delay Claim | 1,722 |
| **Subtotal for Non-Billed Codes** | **39,330** |
| | |
| **Total in Costs in Balfour's Job Cost Report** | **67,041,188** |
| | |
| **Less Audit Adjustments** | **(613,742)** |
| | |
| **Eligible Cost of the Work in Balfour's Job Cost Report** | **66,427,445** |
| | |
| OCOs--Amount to Subcontractors | 45,661 |
| | |
| RCOs--Amount to Subcontractors | 551,737 |
| | |
| Open Subcontractor Balance | 296,376 |
| | |
| Settlements | |
| Cook & Boardman | 359,709 |
| David Allen Co. | 295,593 |
| Lithko Contracting | 375,064 |
| Old North State Masonry | 256,054 |
| Palmetto Automatic Sprinkler Company | 88,000 |
| Pleasant Places | 33,253 |
| SBC Group (Quantum Coatings) | 175,000 |
| WARCO Construction | 160,000 |
| Less (Settlements): | |
| Retainage | (832,059) |
| Open Payables | (215,089) |
| Amount Paid to PASCO | (19,554) |
| | |
| Summary Judgements | |
| Koch/Strong Tower | 82,859 |
| Low Country | 369,333 |
| Watson | 713,483 |
| Premier Exteriors | 104,704 |
| Less (Summary Judgments): | |
| Retainage | (579,492) |
| Open Payables | (39,862) |
| | |
| SJ Attorneys Fees and Interest | 688,842 |
| | |
| | |
| Subguard on Delay Damages | 45,776 |
| General Liability on Delay Damages | 36,621 |
| | |
| **Total Eligble Cost of the Work** | **69,419,454** |
| | |
| Contractor's Fee | $ 1,735,486.37 |
| | |
| **Contract Sum** | **71,154,941** |
| Current GMP | 71,304,540 |
| **Cost in Excess of Current GMP** | **(149,599)** |

| | |
|---|---|
| **Amount Paid to date to Balfour Beatty** | **59,994,390** |
| **Amount Owed** | **11,160,550** |

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| Description | General Condition | Primary GMP | Total |
|---|---|---|---|
| GMP Per Pay App 45 | 3,261,202 | 60,310,240 | 63,571,442 |
| | | | - |
| | | | - |
| Fee | | 1,600,246 | 1,600,246 |
| | | | |
| Precon | - | 66,779 | 66,779 |
| | | | - |
| **Current GMP** | **3,261,202** | **61,977,265** | **65,238,467** |
| | | | |
| **Adds:** | | | - |
| Extended GCs | 3,238,433 | | 3,238,433 |
| General Trades | | 770,134 | 770,134 |
| Pending RCOs **includes markup | | 2,811,120 | 2,811,120 |
| **Subtotal Adds:** | **3,238,433** | **3,581,254** | **6,819,687** |
| | | | - |
| **Deducts:** | | | - |
| GCs in RCO 122 | (290,353) | | (290,353) |
| Audit Adjustments | | | - |
| Non-Billed Amounts | | (39,330) | (39,330) |
| Labor Burden Adjustment | (103,824) | | (103,824) |
| Safety Cost Adjustment | (312) | | (312) |
| Labor PTO/Benefits Adjustment | (366,205) | | (366,205) |
| Unsupported Transactions | (1,026) | | (1,026) |
| Computer Expenses | (11,987) | | (11,987) |
| Record Retention Charges | (22,820) | | (22,820) |
| Cost Incurred before Start of Construction | (68,238) | | (68,238) |
| **Subtotal Deducts:** | **(864,765)** | **(39,330)** | **(904,095)** |
| | | | - |
| **Net Increase/(Decrease)** | **2,373,668** | **3,541,924** | **5,915,592** |
| | | | - |
| Subguard | 29,671 | 9,135 | 38,806 |
| General Liability | 24,686 | 7,600 | 32,287 |
| Profit & OH | 60,701 | 18,688 | 79,389 |
| | | | - |
| **Proposed GMP** | **5,749,928** | **65,554,612** | **71,304,540** |

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| RCO | Description | Increase to GMP | Increase to Cost of the Work | BBC Direct | BBC Markup | BMCC | Precision Walls | 1st Choice | Tate | MSI |
|---|---|---|---|---|---|---|---|---|---|---|
| 27 | 100 year storm delay (20 days) | $ 124,089.19 | $ 124,089.19 | $118,352.36 | $5,736.83 | | | | | |
| 75 | Interior Mock Up Tile Revisions | $ 5,989.93 | $ 276.93 | | $276.93 | | | | | |
| 88 | Lithko Change Orders | $ 56,414.30 | $ 3,193.26 | | $3,193.26 | | | | | |
| 103 | MOD 5 Mechanical Revisions | $ 290,257.91 | $ 290,257.91 | | $13,419.07 | $276,838.84 | | | | |
| 118 | RFI 451 Added Valves at Guestrooms | $ 21,036.56 | $ 21,036.56 | | $972.56 | $20,064.00 | | | | |
| 122 | Structural Delay Claim | $ 1,012,042.00 | $ 523,052.00 | $440,481.00 | $46,789.00 | $35,782.00 | | | | |
| 159 | FFE Expanded Scope | $ 233,878.39 | $ 233,878.39 | $223,590.40 | $10,287.99 | | | | | |
| 161 | Offsite Mock Up Drywall and Plumbing Reconciliation | $ 17,376.00 | $ 17,376.00 | | $803.39 | $8,928.61 | $7,644.00 | | | |
| 178 | Delivery and Storage for DC-67 | $ 2,245.84 | $ 2,245.84 | $2,142.00 | $103.84 | | | | | |
| 184 | Hurricane Irma Prep and Recovery | $ 57,467.82 | $ 38,657.82 | $15,515.00 | $2,656.82 | | | $20,486.00 | | |
| 215 | Lutron Lighting Control Revision | $ 14,937.63 | $ 1,143.81 | | $1,143.81 | | | | | |
| 221 | Additional Tinting on Hopes Windows | $ 846.12 | $ 39.12 | | $39.12 | | | | | |
| 223 | RFI 1093 - Guestroom 603 TV Wall Conflict | $ 3,304.78 | $ 3,304.78 | | $152.78 | | $3,152.00 | | | |
| 227 | Warehousing - Mirrors | $ 9,169.01 | $ 9,169.01 | $9,169.01 | | | | | | |
| 244 | OFCI DC-41 Fixture Credit | $ (1,090.21) | $ 240.00 | $240.00 | | | | | | |
| 246 | Supplemental Instruction 067 | $ 31,157.12 | $ 3,758.61 | $1,995.00 | $1,763.61 | | | | | |
| 249 | SI #10 Ballroom Wall Change | $ 5,129.09 | $ 290.32 | | $290.32 | | | | | |
| 250 | MOD 7 Terrace Door Change | $ 1,462.80 | $ 1,462.80 | | $82.80 | | | $1,380.00 | | |
| 251 | Dining Room MOD 1-8 Millwork Change Order | $ 22,305.58 | $ 1,262.58 | | $1,262.58 | | | | | |
| 255 | Add Trim to Conceal Pocket Door Header | $ 11,789.32 | $ 667.32 | | $667.32 | | | | | |
| 258 | Additional Mock Up Revisions | $ 65,782.09 | $ 8,829.51 | $5,106.00 | $3,723.51 | | | | | |
| 260 | ASI 52 Added Wallcovering | $ 5,586.12 | $ 316.19 | | $316.19 | | | | | |
| 262 | RFI 1004 TV Wall Revisions | $ 15,635.00 | $ 7,368.00 | | $885.00 | | $6,483.00 | | | |
| 264 | RFI 1180 Sprinkler Heads in TV Walls | $ 14,390.21 | $ 3,838.54 | | $814.54 | | $3,024.00 | | | |
| 266 | Additional Framing and Sheetrock | $ 2,203.74 | $ 2,203.74 | | $124.74 | | $2,079.00 | | | |
| 267 | Rooftop Bar MOD 1-8 Millwork | $ 7,922.44 | $ 448.44 | | $448.44 | | | | | |
| 268 | Allowance Reconciliation - MT-03 & MT-04 | $ 51,979.21 | $ 6,272.21 | | $2,942.21 | | | $3,330.00 | | |
| 270 | Framing and Drywall Change Orders - Precision Walls | $ 49,885.72 | $ 49,885.72 | | $2,823.72 | | $47,062.00 | | | |
| 271 | Painting and Wallcovering Change Orders - Quantum | $ 41,394.11 | $ 2,343.06 | | $2,343.06 | | | | | |
| 272 | Ornamental Metal Change Orders - Tate | $ 19,286.37 | $ 19,286.37 | | $1,091.67 | | | | $18,194.70 | |
| 273 | Tile Change Orders - David Allen | $ 111,644.29 | $ 6,272.29 | | $6,272.29 | | | | | |
| 274 | Salamander Punch List | $ 30,537.68 | $ - | | | | | | | |
| 275 | Guestroom Vanity Rework | $ 67,384.91 | $ 53,203.70 | $1,425.00 | $3,814.24 | $23,165.46 | $24,799.00 | | | |
| 276 | Case and Millwork Change Orders - LCCM | $ 38,907.10 | $ 2,654.10 | | $2,654.10 | | | | | |
| 277 | Structural Steel Change Orders - MSI | $ 131,448.56 | $ 131,448.56 | | $7,828.56 | | | | | $123,620.00 |
| 278 | Hope's Type Q Windows Flashing Revisions - SI 10 | $ 8,511.80 | $ 481.80 | | $481.80 | | | | | |
| 279 | Construction Change Directive - Jan and March | $ 228,811.20 | $117,165.44 | $53,509.82 | $12,951.58 | $50,704.04 | | | | |
| 280 | | | $0.00 | | | | | | | |
| | | | $0.00 | | | | | | | |
| | | | -$125,000.00 | | | -$50,000.00 | -$75,000.00 | | | |
| | Totals | **$ 2,811,119.73** | **$1,562,419.92** | $871,525.59 | $139,157.68 | $365,482.95 | $19,243.00 | $25,196.00 | $18,194.70 | $123,620.00 |

**Sum to Subs** **$551,736.65**

$50,000 Bernhard MCC deduct is due to settlement with Library
$75,000 Precision Walls deduct is due to settlement with Library

**R - 24071**

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# Calculation of Contractor's Fee

## Calculation of Net Increase in the Cost of the Work

| | |
|---|---|
| Original Cost of the Work | $ 58,076,066.00 |
| Revised Eligible Cost of the Work | $ 69,419,454.46 |
| **Net Increase in the Cost of the Work** | **$ 11,343,388.46** |

## Calculation of Revised Contractor's Fee

| | |
|---|---|
| Original Contractor's Fee | $ 1,451,901.66 |
| 2.5% of Net Increase in the Cost of the Work | $ 283,584.71 |
| **Revised Contractor's Fee** | **$ 1,735,486.37** |

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## 2018

| Invoice | Amount | Due Date | Current | Days Past Due | 8.75% per annum | | Total Interest | Compound |
|---|---|---|---|---|---|---|---|---|
| Oct-18 | 556,408.01 | 11/30/2018 | 12/31/2018 | 31 | 0.74% | $ | 4,134.95 | $ 560,542.96 |
| | | | | | | **$** | **4,134.95** | |

## 2019

| Invoice | Amount | Due Date | Current | Days Past Due | 8.75% per annum | | Total Interest | Compound |
|---|---|---|---|---|---|---|---|---|
| Oct-18 | $ 560,542.96 | 1/1/2019 | 12/31/2019 | 365 | 8.75% | $ | 49,047.51 | $ 609,590.47 |
| Nov-18 | $ 1,994,855.31 | 2/28/2019 | 12/31/2019 | 306 | 7.34% | $ | 146,334.93 | $ 2,141,190.24 |
| Dec-18 | $ 2,470,474.72 | 2/28/2019 | 12/31/2019 | 306 | 7.34% | $ | 181,224.55 | $ 2,651,699.27 |
| | | | | | | **$** | **376,606.99** | |

## 2020

| Invoice | Amount | Due Date | Current | Days Past Due | 8.75% per annum | | Total Interest | Compound |
|---|---|---|---|---|---|---|---|---|
| Oct-18 | $ 609,590.47 | 1/1/2020 | 12/31/2019 | 365 | 8.75% | $ | 53,339.17 | $ 662,929.63 |
| Nov-18 | $ 2,141,190.24 | 1/1/2020 | 12/31/2019 | 365 | 8.75% | $ | 187,354.15 | $ 2,328,544.39 |
| Dec-18 | $ 2,651,699.27 | 1/1/2020 | 12/31/2019 | 365 | 8.75% | $ | 232,023.69 | $ 2,883,722.96 |
| | | | | | | **$** | **445,537.30** | |

## 2021

| Invoice | Amount | Due Date | Current | Days Past Due | 8.75% per annum | | Total Interest | Compound |
|---|---|---|---|---|---|---|---|---|
| Oct-18 | $ 628,465.32 | 1/1/2021 | 12/31/2021 | 365 | 8.75% | $ | 54,990.72 | $ 683,456.03 |
| Nov-18 | $ 2,308,904.11 | 1/1/2021 | 12/31/2021 | 365 | 8.75% | $ | 202,029.11 | $ 2,510,933.21 |
| Dec-18 | $ 2,600,022.72 | 1/1/2021 | 12/31/2021 | 365 | 8.75% | $ | 227,501.99 | $ 2,827,524.70 |
| | | | | | | **$** | **484,521.81** | |

## 2022

| Invoice | Amount | Due Date | Current | Days Past Due | 8.25% per annum | | Total Interest | Compound |
|---|---|---|---|---|---|---|---|---|
| Oct-18 | $ 683,456.03 | 1/1/2022 | 12/31/2022 | 365 | 8.75% | $ | 59,802.40 | $ 743,258.43 |
| Nov-18 | $ 2,510,933.21 | 1/1/2022 | 12/31/2022 | 365 | 8.75% | $ | 219,706.66 | $ 2,730,639.87 |
| Dec-18 | $ 2,827,524.70 | 1/1/2022 | 12/31/2022 | 365 | 8.75% | $ | 247,408.41 | $ 3,074,933.11 |
| | | | | | | **$** | **526,917.47** | |

## 2023

| Invoice | Amount | Due Date | Current | Days Past Due | 8.75% per annum | | Total Interest | Compound |
|---|---|---|---|---|---|---|---|---|
| Oct-18 | $ 743,258.43 | 1/1/2023 | 5/23/2023 | 142 | 3.40% | $ | 25,301.33 | $ 768,559.77 |
| Nov-18 | $ 2,730,639.87 | 1/1/2023 | 5/23/2023 | 142 | 3.40% | $ | 92,953.97 | $ 2,823,593.84 |
| Dec-18 | $ 3,074,933.11 | 1/1/2023 | 5/23/2023 | 142 | 3.40% | $ | 104,674.09 | $ 3,179,607.21 |
| | | | | | | **$** | **222,929.40** | |

**TOTAL INTEREST** **$ 2,060,647.92**

| Amount | Due Date | Current | Days Past Due | 8.75% per annum | Total Interest | Compound |
|---|---|---|---|---|---|---|
| $ 8,409,658.54 | 3/15/2019 | 12/31/2019 | 291 | 6.98% | $ 586,660.08 | $ 8,996,318.62 |
| | | | | | **$ 586,660.08** | |

| Amount | Due Date | Current | Days Past Due | 8.75% per annum | Total Interest | Compound |
|---|---|---|---|---|---|---|
| $ 8,996,318.62 | 1/1/2020 | 12/31/2019 | 365 | 8.75% | $ 787,177.88 | $ 9,783,496.50 |
| | | | | | **$ 445,537.30** | |

| Amount | Due Date | Current | Days Past Due | 8.75% per annum | Total Interest | Compound |
|---|---|---|---|---|---|---|
| $ 9,783,496.50 | 1/1/2021 | 12/31/2021 | 365 | 8.75% | $ 856,055.94 | $ 10,639,552.45 |
| | | | | | **$ 856,055.94** | |

| Amount | Due Date | Current | Days Past Due | 8.75% per annum | Total Interest | Compound |
|---|---|---|---|---|---|---|
| $ 10,639,552.45 | 1/1/2022 | 12/31/2022 | 365 | 8.75% | $ 930,960.84 | $ 11,570,513.29 |
| | | | | | **$ 930,960.84** | |

| Amount | Due Date | Current | Days Past Due | 8.75% per annum | Total Interest | Compound |
|---|---|---|---|---|---|---|
| $ 11,570,513.29 | 1/1/2023 | 5/23/2023 | 142 | 3.40% | $ 393,872.95 | $ 11,964,386.24 |
| | | | | | **$ 393,872.95** | |

**Total Interest** **$ 3,213,087.12**

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| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON<br><br>Balfour Beatty Construction, LLC,<br><br>Plaintiff,<br><br>vs.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,<br><br>Defendants.<br><br>Library Associates, LLC<br><br>Third-Party Plaintiff,<br><br>vs.<br><br>Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.<br><br>Third-Party Defendants. | IN THE COURT OF COMMON PLEAS<br><br>CASE NO.: 2019-CP-10-01108<br><br>BALFOUR BEATTY CONSTRUCTION LLC'S MOTION TO REQUIRE LIBRARY ASSOCIATES, LLC TO ELECT A REMEDY |

Plaintiff Balfour Beatty Construction, LLC ("Balfour"), by and through its undersigned counsel, hereby moves the Court for an order requiring Library Associates, LLC to elect a remedy between its cause of action and remedy for Breach of Contract and its cause of action and remedy for Breach of Contract Accompanied by a Fraudulent Act. Both causes of action and remedies were awarded in the two Court orders of October 6, 2023, the Form 4 Order and the more detailed, 46 page order.

This motion is based on the Orders of October 6, 2023, the pleadings, the evidence and testimony presented at trial, the South Carolina Rules of Civil Procedure, the case law of South Carolina, and such other arguments as may be presented to the Court.

Respectfully Submitted,

PARKER POE ADAMS & BERNSTEIN LLP
850 MORRISON DRIVE, SUITE 400
CHARLESTON, SC 29401

By: s/Thomas C. Hildebrand, Jr.
Thomas C. Hildebrand, Jr.
(SC Bar #2501)
843.727.2653 (direct dial)
tomhildebrand@parkerpoe.com

Robert C. Byrd
(SC Bar #1069)
843.727.2665 (direct dial)
bobbybyrd@parkerpoe.com

W. Greyson Land
(SC Bar #104179)
843.727.2642 (direct dial)
greysonland@parkerpoe.com
Attorneys for Plaintiff Balfour Beatty Construction, LLC

October 16, 2023

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| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | NINTH JUDICIAL CIRCUIT |
| COUNTY OF CHARLESTON | ) | CASE NO.: 2019-CP-10-01108 |
| Balfour Beatty Construction, LLC | ) | |
| Plaintiff, | ) | **LIBRARY ASSOCIATES, LLC'S PETITION FOR ATTORNEYS' FEES AND COSTS** |
| v. | ) | |
| Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation. | ) | |
| Defendants. | ) | |
| Library Associates, LLC, | ) | |
| Third-Party Plaintiff, | ) | |
| v. | ) | |
| Lithko Contracting, LLC, Watson Electrical Construction, Co., LLC, Old North State Masonry, LLC, | ) | |
| Third-Party Defendants. | ) | |

Defendant/Third Party Plaintiff Library Associates, LLC ("Owner"), by and through its undersigned attorneys, hereby submits this Petition for Attorneys' Fees and Costs pursuant to the Order of this Court dated October 6, 2023, S.C. Code Ann. §§29-5-10, et seq., and S.C. Code Ann. §15-53-100. Enclosed herewith and incorporated herein are the following documents:

(a) Affidavit of Kimberly Bennett Brown (Exhibit A).

(b) Affidavit of W.H. Bundy, Jr. (Exhibit B).

(c) Affidavit of Sam Hadley (Exhibit C).

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Owner requests that the Court enter an order and additional judgment in this action against Defendants Balfour Beatty Construction, LLC, Lithko Contracting, LLC, Watson Electrical Construction, Co., LLC and Old North State Masonry, LLC pursuant to the Order of this Court dated October 6, 2023, S.C. Code Ann. §§29-5-10, et seq., and S.C. Code Ann. §15-53-100 in the amount of $50,191,574.70.

This Petition will be supplemented due and owing to additional attorneys' fees and costs that have been and will be incurred as and if this action continues into the future. The Owner reserves the right to submit such additional attorneys' fees and costs.

Owner is prepared to submit any requested back up testimony and documentation, both redacted and unredacted, upon the Court's request. Further, this Petition may be further supported by memoranda of law and oral argument upon request of the Court.

Respectfully submitted,

/s M. Brent McDonald
Bundy McDonald, LLC
W.H. Bundy, Jr., Esquire (Bar #1012)
M. Brent McDonald, Esquire (Bar#78057)
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com
Attorneys For Library Associates, LLC.

November 6, 2023

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**STATE OF SOUTH CAROLINA**

**COUNTY OF CHARLESTON**

**Affidavit of Kimberly Bennett Brown**

Personally Appeared before me, the undersigned, who being duly sworn, states as follows:

I, Kimberly Bennett Brown, do hereby swear under penalty of perjury as follows:

1. My name is Kimberly Bennett Brown, and I am an authorized representative of Library Associates, LLC. I am over the age of eighteen and competent to testify as to the matter set forth in this affidavit.

2. I have personal knowledge of the matters set forth herein.

3. Pursuant to the Court's Order of October 6, 2023, I hereby submit the following costs incurred by Library Associates, LLC arising out of mechanic's liens filed against its property.

a. Expert Witness Costs

| | | |
|---|---|---|
| i. | Patrick O'Connor: | $35,788.50 |
| ii. | James Clements: | $61,071.54 |
| iii. | Mark Boe: | $494,244.67 |
| iv. | Sam Hadley: | $655,197.70 |
| v. | Grady Query: | $14,075.00 |
| | Subtotal: | $1,260,377.41 |

b. Legal

| | | |
|---|---|---|
| i. | Bundy McDonald, LLC: | $2,026,278.55 |
| ii. | MetLife: | $330,000.00 |
| iii. | Veritext: | $1,003.79 |
| iv. | Rosen Litigation Tech.: | $6,977.00 |
| | Subtotal: | $2,364,259.34 |

c. Loan Modification:

| | | |
|---|---|---|
| i. | Womble Bond Dickinson: | $26,296.48 |
| ii. | MetLife (Legal): | $25,750.00 |
| iii. | MetLife (Extension Fees): | $216,500.00 |
| | Subtotal: | $268,546.48 |

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d. Costs incurred by inability to refinance construction loan due and owing to the Mechanics Liens. This amount represents the difference between the construction loan interest rate and the permanent interest rate available to Library Associates, LLC in January 2020.

i. 1/2020 through 10/2023: $4,699,260.38

Subtotal: $4,699,260.38

e. Costs to be incurred when refinancing that was not possible due and owing to the Mechanics Liens. This amount represents the difference between the 25 year fully amortized permanent loan interest rate available in January 2020 and the interest rate that would be available to Library Associates, LLC in November of 2023.

i. 11/2023 through 10/2048 $41,599,131.09

Subtotal: $41,599,131.09

4. The total costs to Library Associates, LLC arising out of mechanic's liens filed against its property are in the amount of $50,191,574.70

5. I have the necessary backup knowledge and documentation for the foregoing costs that can be produced both redacted and unredacted at the request of the Court.

FURTHER AFFIANT SAYETH NOT:

Kimberly Bennett Brown

SWORN to and subscribed before
Me this 6 day of Nov, 2023

Notary Public for South Carolina
My Commission Expires: 9/17/2031

LEEANN PURCELL NOTARY PUBLIC SOUTH CAROLINA

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

**AFFIDAVIT OF W.H. BUNDY, JR., ESQ.**

PERSONALLY APPEARED before me the undersigned officer duly authorized by law to administer oaths in the State of South Carolina, William Bundy, Jr. who after being duly sworn, states:

1. My name is Walter H. Bundy, Jr. Esq. I am over the age of eighteen and I am competent in all respects to testify regarding the matters set forth herein. I give this statement voluntarily based on my personal knowledge with the understanding that it is being used to substantiate an award of attorney's fees and costs under applicable South Carolina law.

2. I am the senior partner of Bundy McDonald, LLC.

3. I graduated from the University of South Carolina law school in 1978.

4. I have been licensed to practice law in the State of South Carolina since 1978.

5. Beginning in the early stages of my career, a large component of my practice has involved construction law and actual trials in South Carolina. Over the years, I have tried over 50 cases to verdict.

6. Based on my knowledge and experience in construction law, I have previously been retained and qualified to testify in court as a third-party expert witness on attorney's fees.

7. At all times relevant hereto, I have served as lead counsel for Library Associates, LLC "Library") in the case styled Case NO. 2019-CP-01108 in the Court of Common Pleas, Charleston County, South Carolina.

8. The subject litigation was extremely document intensive. I was required to review tens of thousands of pages of project files. Additionally, I was required to review multiple expert reports and related documents pertaining to delay claims and defective construction.

9. My agreed upon hourly rate for my representation of Library Associates, LLC in this matter is $400.00 per hour. My law partner's, M. Brent McDonald, hourly rate is $300.00 per hour. My Paralegal charged $100.00 per hour.

10. The present total amount of attorneys' fees costs spent in fees and costs in this litigation is $2,026,278.55. If requested by the Court, backup documentation of the total amount claimed can be made available for in camera review.

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11. I am familiar with the factors that a court is required to consider in awarding attorney's fees under South Carolina law. See e.g., *Jackson v. Speed* , 326 S.C. 289, 486 S.E.2d 750 (1997). I offer the following testimony with respect to these factors:

(a) **Nature, extent, and difficulty of the legal services rendered.** This was a large and complex case involving competing claims between the owner, contractor, and numerous subcontractors. Due to the nature of those claims, specialized knowledge of construction law was required. The case was extremely document intensive and there was a significant amount of discovery conducted, including dozens of depositions and over 20 trial days. Similarly, there were a substantial amount of pleadings, motions and correspondence generated in this action.

(b) **Time and labor devoted to the case.** Since the commencement of action in 2019, my law firm has spent hundreds of hours in this matter, (i) analyzing claims made by Balfour Beatty Construction, LLC and its subcontractors (ii) reviewing project documents; (iii) performing legal research; (iv) drafting and reviewing related pleadings, motions, briefs, discovery responses and correspondence; (v) corresponding with all counsel; (vi) participating in discovery; (vii) travelling to and appearing at hearings, status conferences and mediations; (viii) trying the case and (ix) drafting proposed orders. I attempted to perform all of the foregoing tasks in the most efficient and economical manner possible while still maintaining my professional obligations to Library Associated, LLC as its counsel at all times.

(c) **The professional standing of counsel.** I received an undergraduate degree from the University of South Carolina in 1973 and a Juris Doctor from University of South Carolina law school in November 1978.

I have practiced law continuously since that time in South Carolina and began my practice under the tutelage of Gedney Main Howe, Junior. For 25 years, I was a partner in the law firm of Smith, Bundy, Bybee, Barnett, P.C. For the last ten years, I have been the senior partner at Bundy McDonald, LLC. During my 45 years in the practice of law I have maintained a civil trial practice concentrating in the area of construction trials and arbitrations. I have represented and sued, contractors, developers, subcontractors, architects, engineers, surveyors, material suppliers, and virtually every participant in the construction industry.

I have served as a construction arbitrator and special master in construction related disputes. I have held a Martindale-Hubbell, "AV preeminent lawyer" peer review rating, the highest rating in legal ability and ethical standards, for the last 35 years.

I am a fellow in the American College of Trial Lawyers, an invitation only, professional organization established in 1951, that is recognized as the premiere organization of its kind in the United States and Canada (see ACTL.COM).

In the past 45 years I have been involved in construction disputes, ranging anywhere from several hundred thousand dollars to tens of millions of dollars and have arbitrated and tried to conclusion cases with awards and verdicts totaling conservatively $50 million dollars.

I represented City of Charleston in the South Carolina Aquarium case and the South Carolina Highway Department in the Wando River Bridge case. Both of these cases were complicated and complex construction cases involving tens of millions of dollars in dispute and, as such, were similar in size and complexity to this matter. I have handled virtually every kind of construction issue that could possible arise in a construction setting, including but limited to: delay, scheduling, scope of work, payment, change order, termination, suspension and unforeseen subsurface conditions to name a few.

(d) **Contingency of compensation**. My firm is not representing Library Associates, LLC under a contingency fee arrangement. Library has paid all of my firm's invoices to date, except the most recent one which remains outstanding.

(e) **Fee customarily charged in the locality for similar services.** My firm's hourly rates of $400.00/hr. and $300.00/hr is respectively consistent with the typical rate charged by lawyers of similar ability and experience in the Charleston legal market.

(f) **Beneficial result obtained.** My firm obtained a beneficial result for Library Associates, LLC.

12. In sum, and for the reasons set forth above, I believe that an award of attorney's fees and costs to Library Associates, LLC in the amount of $2,026,278.55 is reasonable and legal costs are appropriate in this case.

13. There will be additional attorneys' fees and costs as this matter continues and Library Associates, LLC reserves the right to submit additional amounts for recovery.

FURTHER AFFIANT SAYETH NAUGHT.

W.H. Bundy, Jr. Esq.

Sworn to and subscribed before
me this 6th day of
November, 2023.

Notary Public

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**Affidavit of Sam Hadley, Capital Project Management, Inc.**

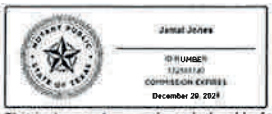
1. I, Sam Hadley am a Vice President at Capital Project Management, Inc. (CPMI), a consulting firm located in Philadelphia, Pennsylvania.
2. Previously, I was a Partner at Cotton & Company, a Certified Public Accounting firm located in Alexandria, Virigina.
3. Cotton & Company was engaged by Library Associates and Bundy McDonald, LLC on March 6, 2019, to provide expert consultant services on matters related to the construction of Hotel Bennett in Charleston, South Carolina.
4. In October 2023, I was asked to provide an affidavit swearing to the invoiced amounts related to my testimony at the hearing for the Hotel Bennett matter, and also confirming that those invoiced amounts were paid.
5. As noted above, I was employed by two different companies during work on the Hotel Bennet project, CPMI, and Cotton & Company. The Attachment below, therefore, identifies which entity produced the invoice to Library Associates.
6. The total amount invoiced was $655,197.70. All invoiced amounts were paid.
7. The amounts and date of each invoice contained in the Attachment below.

Sandra Hadley

Sam Hadley, CPA/CFF, CFE, CGFM

November 4th 2023
~~November 3, 2023~~

State of Texas
County of Harris




Jamal Jones
12/29/2024

This instrument was acknowledged before me by means of an interactive two-way audio and video communication on 11/04/2023 by Sandra Hadley.

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**Affidavit Attachment**

# Hotel Bennett Invoice Log -- Damages

| Invoicing Company | Invoice Date | Invoice No. | Invoice Amount |
|---|---|---|---|
| Cotton | 5/15/2019 | 3000-021-001 | $4,427.00 |
| Cotton | 6/5/2019 | 3000-021-002 | 33,034.92 |
| Cotton | 7/15/2019 | 3000-021-003 | 9,531.00 |
| Cotton | 8/2/2019 | 3000-021-004 | 7,249.00 |
| Cotton | 9/5/2019 | 3000-021-005 | 3,606.71 |
| Cotton | 10/15/2019 | 3000-021-006 | 28,968.00 |
| Cotton | 11/15/2019 | 3000-021-007 | 15,881.30 |
| Cotton | 12/15/2019 | 3000-021-008 | 21,241.00 |
| Cotton | 2/15/2020 | 3000-021-009 | 459.00 |
| Cotton | 4/15/2020 | 3000-021-010 | 16,823.00 |
| Cotton | 6/15/2020 | 3000-021-011 | 1,921.50 |
| Cotton | 7/15/2020 | 3000-021-012 | 17,449.00 |
| Cotton | 8/15/2020 | 3000-021-013 | 32,205.75 |
| Cotton | 9/15/2020 | 3000-021-014 | 46,397.75 |
| Cotton | 10/15/2020 | 3000-021-015 | 7,826.75 |
| Cotton | 11/15/2020 | 3000-021-016 | 25,797.50 |
| Cotton | 12/15/2020 | 3000-021-017 | 43,019.75 |
| Cotton | 1/15/2021 | 3000-021-018 | 59,290.75 |
| Cotton | 2/15/2021 | 3000-021-019 | 4,538.00 |
| Cotton | 3/15/2021 | 3000-021-020 | 4,487.50 |
| Cotton | 4/15/2021 | 3000-021-021 | 2,151.50 |
| Cotton | 5/13/2021 | 3000-021-022 | 5,717.25 |
| Cotton | 6/8/2021 | 3000-021-023 | 13,695.00 |
| Cotton | 7/21/2021 | 3000-021-024 | 17,895.75 |
| Cotton | 8/11/2021 | 3000-021-025 | 23,097.25 |
| Cotton | 9/13/2021 | 3000-021-026 | 34,729.75 |
| Cotton | 10/11/2021 | 3000-021-027 | 77,931.40 |
| Cotton | 11/10/2021 | 3000-021-028 | 60,278.30 |
| Cotton | 12/16/2021 | 3000-021-029 | 31,075.07 |
| CPMI | 2/7/2023 | 230111 | 1,295.00 |
| CPMI | 6/12/2023 | 230510 | 1,601.25 |
| CPMI | 7/17/2023 | 230609 | 1,575.00 |
| | | | **$655,197.70** |

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| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON<br><br>Balfour Beatty Construction, LLC,<br>Plaintiff,<br>vs.<br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,<br><br>Defendants.<br><br>Library Associates, LLC<br>Third-Party Plaintiff,<br>vs.<br>Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.<br><br>Third-Party Defendants. | IN THE COURT OF COMMON PLEAS<br><br>CASE NO.: 2019-CP-10-01108<br><br>PLAINTIFF BALFOUR BEATTY CONSTRUCTION, LLC'S MEMORANDUM IN OPPOSITION TO DEFENDANT LIBRARY ASSOCIATES, LLC'S PETITION FOR ATTORNEYS' FEES AND COSTS |

Plaintiff Balfour Beatty Construction, LLC ("Balfour"), submits this Memorandum in Opposition to Library Associates, LLC's Petition for Attorneys' Fees and Costs ("Petition").

## INTRODUCTION

Library has filed what it calls a Petition for Attorney's Fees and Costs. Presumably, this Petition is in response to the Court's Order which instructed Library

> to submit its attorney's fees and costs petition as the prevailing party against Balfour Beatty Construction, LLC, Lithko Contracting, LLC, Watson Electrical

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> Construction Col., LLC and Old North State Masonry, LLC under the mechanic's lien statute, S.C. Code §29-5-10, *et seq*, within thirty (30) days of the date of this Order.

However, Library did not submit a Petition as instructed by the Court. Rather, Library submitted a Petition asking to recover:

| | | |
|---|---|---|
| a. | Expert Witness Costs | $1,260,377.44 |
| b. | Legal | $2,364,259.34 |
| c. | Loan Modification | $268,546.48 |
| d. | Costs of inability to refinance construction loan | $4,699,260.38 |
| e. | Costs to be incurred [in connection with refinancing] | $41,599,131.09 |
| | Total: | $50,191,574.70 |

This spurious Petition represents unwarranted and unrecoverable claims and must be denied.

In short, contrary to the Court's specific instruction that Library submit a petition for its "attorney's fees and costs" as the prevailing party under the Mechanic's lien statute, Library asks this Court to award it millions of dollars for a variety of claims that are patently not attorney's fees or costs recoverable by it as a prevailing party under the mechanic's lien statute. Furthermore, Library seeks this award on the basis of obscure, inconsistent summary affidavits, and an untimely late production of invoices which does not contain underlying records or supporting documentation for the costs or alleged amounts, which even upon cursory review are unreliable and inadmissible to support an award based on the mechanic's lien statute. Library's Petition must be rejected and denied.

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Furthermore, Balfour has filed its Rule 59(e) Motion addressing a multitude of errors and erroneous findings and conclusions in the Court's Order. When those errors are corrected, the very premise that Library is the prevailing party under the Mechanic's Lien statute will be established to be incorrect. Thus, Library will not be entitled to any award of attorney's fees or costs.

## LEGAL STANDARD

Under South Carolina law, "[a]ttorney's fees are not recoverable unless authorized by contract or statute." *See Jackson v. Speed*, 326 S.C. 289, 307, 486 S.E.2d 750, 759 (1997). Similarly, our Supreme Court has concluded "[c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute." *Oliver v. S.C. Dep't of Highways & Public Transp.*, 309 S.C. 313, 422 S.E.2d 128, 131 (1992) (citation omitted). "The same considerations that apply to awarding attorney's fees also apply to awarding litigation expenses." *Patel v. Patel*, 359 S.C. 515, 533, 599 S.E.2d 114, 123 (2004).

"A party who seeks attorney's fees has the burden to show that request is well-founded and failure to offer any evidence on the issue of attorney's fees precludes an award." *Abbott v. Gore*, 304 S.C. 116, 119, 403 S.E.2d 154, 157 (Ct. App. 1991) (citing *Gainey v. Gainey*, 279 S.C. 68, 70, 301 S.E.2d 763 (1983). "In determining the reasonableness of attorney's fees sought to be recovered under a statute mandating the award of attorney['s] fees, the agreement between the client and his counsel does not control the determination." *See Jackson* at 308, 486 S.E.2d at 759. Instead, the court must independently examine the requested fees and amounts and determine what is truly a reasonable attorney's fee under the attendant circumstances of the case and the scope of the authorizing statute. *See e.g.* at 308, 486 S.E.2d at 760. "Any award is improper in the absence of sufficient evidentiary support on the record for the reasonableness of the work performed and the fees sought" *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993).

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## ARGUMENT

### I. LIBRARY CANNOT RECOVER ATTORNEYS' FEES AND COSTS WHICH WERE NOT INCURRED IN ACTUALLY DEFENDING THE MECHANIC'S LIENS.

In its Order the Court has already decided that the attorney's fees and costs recoverable by Library are only those recoverable under the mechanic's lien statute. In an action to foreclose a mechanic's lien, the award of attorney's fees is governed by S.C. Code Ann. § 29-5-10.

> The costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party. The fee must be determined by the court in which the action is brought but the fee and the court costs may not exceed the amount of the lien.

*Id.* § 29-5-10(a). Under the mechanic's lien statute, "the fees are limited, however, to those *actually* incurred in defending the lien." *EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 620, 635 S.E.2d 922, 926 (Ct. App. 2006). (citing *Cedar Creek Properties v. Cantelou Assocs., Inc.*, 320 S.C. 483, 486–87, 465 S.E.2d 774, 776 (Ct. App. 1995) (stating the amount of attorney fees should be limited to those actions specifically involving the mechanic's lien); *see also Utilities Constr, Co. v. Wilson*,, 321 S.C. 244, 250, 468 S.E.2d 1, 2 (Ct. App. 1996) (holding amount of attorney's fees in mechanic's lien action was excessive where trial court awarded property owner attorney's fees which included fees associated with the underlying contract cause of action; remanding to trial court to enter amount of attorney's fees "based upon time [property owner's counsel] spent in defending the mechanic's lien cause of action only"); *Terlizzi Home Improvement, LLC v. Boheler*, No. 2014-002540, 2017 WL 4786434, at *2 (S.C. Ct. App. July 5, 2017) ("[W]e find the circuit court abused its discretion by awarding attorney's fees for work done outside the scope of defending against the mechanic's lien."); *Se. Realty & Const., Inc. v. Burdge*, No. 2005-UP-622, 2005 WL 7085177, at *4 (S.C. Ct. App. Dec. 9, 2005) (remanding to special

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referee because there was no evidence in the record concerning the amount of attorney's fees specifically incurred in defending against the mechanic's lien action).

Here, in what Library calls "Legal" in its Petition, it is clear that not all of the $2,361,259.34 requested can even remotely qualify as "attorney's fees," let alone attorney's fees specifically related to the defense of the mechanic's lien claims. Within the "Legal" component of the Petition the amounts sought are:

| | | |
|---|---|---|
| i. | Bundy McDonald, LLC | $2,026,278.55 |
| ii. | Metlife: | $ 330,000.00 |
| iii. | Veritext: | $ 1,003.79 |
| iv. | Rosen Litigation Tech.: | $ 6,977.00 |

Here, of the $2,026,278.55 (in what would appear to be attorneys' fees charged by Bundy McDonald) to Library it is evident on the face of the Petition that such amount represents the "total amount" of attorneys' fees and costs "in this litigation."[1] There is no evidence that this amount represents only attorney's fees incurred specifically in defense of the mechanic's lien claim. In fact, as the Court is well aware, this litigation involved far more than the mechanic's lien claim and the multitude of claims and issues included:

- twelve claims asserted by Balfour against Library (including separate claims for breach of contract, quantum meruit, abandonment, waiver and/or estoppel, cardinal change, indemnity, breach of implied warranties, breach of the implied covenant of good faith and fair dealing, first to breach, breach of contract accompanied by a fraudulent act, and mistake)

- six counterclaims asserted by Library against Balfour (including separate claims for breach of contract, breach of contract accompanied by a fraudulent act, indemnification, declaratory judgment, unfair trade practices, and civil conspiracy); and

[1] *See* Affidavit of W.H. Bundy, Jr., Esq., attached to Library's Petition as Exhibit B, at p. 1, ¶ 10 (hereinafter "Bundy Affidavit").

- third-party claims including separate claims for breach of contract asserted by Library against numerous separate parties:

Given the variety and number of claims, and the diversity and number of parties involved in this litigation, the "total" amount of attorneys' fees and costs claimed by Library cannot possibly be limited only to those actually incurred in defending the mechanic's lien cause of action. Indeed, the Bundy Affidavit describes time devoted to reviewing "multiple expert reports and related documents pertaining to ***delay claims*** and ***defective construction***," neither of which specifically involve the mechanic's liens. *See* Bundy Affidavit at p. 1, ¶ 8 (emphasis added). Because the Bundy Affidavit does not allow the Court to determine the amount of fees incurred in *actually* defending against the mechanic's liens, it is insufficient evidence to form the basis or justification for Library's request for attorneys' fees, or for any award by the Court. See Affidavit of Thomas C. Hildebrand, Jr. attached and submitted in support of this opposition. Therefore, Library's Petition must be denied.

## II. LIBRARY HAS FAILED TO CARRY ITS EVIDENTIARY BURDEN TO SUPPORT ITS REQUEST FOR ATTORNEYS' FEES.

On the afternoon of March 5, 2024, while this Memorandum was being prepared, Library for the first time provided any backup documentation or billing records in connection with its Petition. Prior to that time Library failed and refused to provide the actual billing records to support the attorneys' fees and costs claim. This is true despite Library receiving requests for such documentation on multiple occasions beginning on December 6, 2023, and again on February 5, 2024.

Thus, Library asks this Court to award it millions of dollars without adequately providing *any* underlying or supporting documentation of the legal services rendered, or the time spent, in order to allow the Court to determine the issues of reasonableness or a proper award of attorney's fees or costs specifically involving the mechanic's lien claims. "A party who seeks attorney's fees



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has the burden to show [its] request is well-founded and failure to offer any evidence on the issue of attorney's fees precludes an award." *Abbott* at 119, 403 S.E.2d at 157. The party seeking fees "bears the [initial] burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Project Vote/Voting for Am. v. Long*, 887 F. Supp. 2d 704, 709 (E.D. Va. 2012) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)). As explained by the Eastern District of Virginia:

> Proper documentation is the key to ascertaining the number of hours reasonably spent on legal tasks. Indeed, fee claimants must submit documentation that reflects reliable contemporaneous recordation of time spent on legal tasks that are described with reasonable particularity, sufficient to permit the court to weigh the hours claimed and exclude hours that were not reasonably expended. Inadequate documentation includes the practice of grouping, or 'lumping,' several tasks together under a single entry, without specifying the amount of time spent on each particular task. Lumping and other types of inadequate documentation are thus a proper basis for reducing a fee award because they prevent an accurate determination of the reasonableness of the time expended in a case."

*Guidry v. Clar*e, 442 F. Supp. 2d 282, 293–95 (E.D. Va. 2006) (internal quotations and citations omitted); *see also Uhlig, LLC v. Shirley*, 895 F. Supp. 2d 707, 714–15 (D.S.C. 2012) (finding that claimant failed to submit time records in a manner which would allow the court to determine the reasonableness of the time spent on various tasks performed in the course of the litigation).

The recent case of *Pastene v. Long Cove Club of HHI, S.C.*, No. 9:19-CV-1210-RMG-TER, 2022 WL 2500352 (D.S.C. May 17, 2022) is illustrative. In *Pastene*, Plaintiff failed to prosecute his action and respond to discovery, and Defendants sought sanctions that included dismissal and attorneys' fees. In support of their request for fees, Defendants attached invoices that contained a description of the work, date completed, the employee who completed the work, and total amount billed each month. *Id.* at *4. But the court held that such information was inadequate because "the invoices do not include the rate of pay for each employee or the amount of time spent on each task listed, which are the two pieces of evidence upon which an attorney's

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fees award analysis should begin." *Id.* The court held that such information was required to assess the reasonableness of the fees' request. *Id.* The court also criticized "grouping" or "lumping" tasks together under a single entry because it does not provide a sufficient breakdown. *Id.* Accordingly, Magistrate Rogers recommended denying the request for attorney's fees. *Id.* Judge Gergel, on *de novo* review, adopted this recommended ruling, stating that the "Magistrate Judge also correctly determined that Defendants have failed to meet their burden with respect to attorney's fees because the attorneys' invoices do not include the rate of pay for each employee or the amount of time spent on each task." *Pastene v. Long Cove Club of HHI, S.C.*, No. 9:19-CV-01210-RMG, 2022 WL 2115312, at *2 (D.S.C. June 13, 2022); *see also NGM Ins. Co. v. Carolina's Power Wash & Painting, LLC*, C/A No. 2:08-3378-DCN, 2010 WL 3258134, at *4 (D.S.C. July 6, 2010) ("The fee applicant has the burden of proving hours spent and how those hours were allotted to specific tasks."); *Nutramax Lab'ys, Inc. v. Manna Pro Prod., LLC*, No. 0:16-CV-01255-JMC, 2017 WL 6523616, at *4 (D.S.C. Dec. 21, 2017); *J & J Sports Prods., Inc. v. Brazilian Paradise, LLC*, 789 F. Supp. 2d 669, 680 (D.S.C. 2011).

Here, the Petition, including the attached Affidavits, does not afford Balfour or the Court an opportunity to make any assessment of the reasonableness of the amount of time spent on any task. There is no information from which to determine whether there was a duplication of effort, or to evaluate whether the amount of time claimed is otherwise unnecessary or unreasonable. *See Uhlig* at 714–15. For example, the Bundy Affidavit states that "[m]y law firm has spent ***hundreds of hours*** in this matter" *See* Bundy Affidavit at p. 2, ¶ 11 (emphasis added). The Bundy Affidavit further states that the hourly rates charged by Bundy McDonald, LLC in this matter are $400 per hour for Mr. Bundy, $300 per hour for Mr. M. Brent McDonald, and $100 per hour for paralegal time. *See id.* at p. 1, ¶ 9. Taking Mr. Bundy at his word that his firm spent "hundreds of hours," and giving Library the benefit of the doubt that the number of hours is at the furthest reach of

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"hundreds of hours" and is 999 hours, then even at the highest claimed rate of $400.00 per hour, the total fees would only amount to $399,600.00. This proof utterly fails to substantiate or justify the total Bundy McDonald fees of $2,026,278.55. The Court cannot award the amounts sought with such a discrepancy in the evidence.

Further, Library has utterly failed to carry its burden to submit evidence which would allow the court to: (a) apportion the fees incurred in actually defending against the liens; (b) determine the time spent on any single task; or (c) evaluate whether the amount of time claimed is excessive, redundant, or otherwise unnecessary. *See Hensley*, 461 U.S. at 434. Without supporting documentation in the form of sufficiently detailed contemporaneous time records, it is impossible for the Court to determine the reasonableness of Library's request for attorneys' fees.[2] While there has been insufficient opportunity to review and analyze the later supplied billing records, even a cursory review establishes clearly that they reflect numerous activities and substantial time and amounts on activity which does not and cannot relate to the mechanic's lien claim. See Hildebrand Affidavit. Thus, Library's request must be denied.

## III. LIBRARY MAY RECOVER ONLY "COURT COSTS" UNDER THE MECHANIC'S LIEN STATUTE.

"Costs" recoverable in litigation refers to fixed amounts authorized by statute to be taxed for specified services rendered in a case. *Durham Fertilizer Co. v. Glenn*, 48 S. C. 494, 26 S. E. 796 (1897). South Carolina courts will consider the recoverable costs based on general statutes and court rules. *See Black v. Roche Biomedical Lab., Div. of Hoffman-LaRoche, Inc.*, 315 S.C. 223, 433 S.E.2d 21 (Ct. App. 1993), *reh'g denied,* (Aug. 5, 1993); *see also* 56 C.J.S. Mechanics' Liens § 539 ("The amount and items of costs are controlled by general statutes, in the absence of a specification to the contrary.").

[2] Similarly, Balfour is presently unable to lodge specific challenges to Library's counsel's time records, and reserves the right to further challenge such time records if made available.

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Specifically, the mechanic's lien statute provides that:

> "The costs which may arise in enforcing or defending against the lien under this chapter, including ***a reasonable attorney's fee***, may be recovered by the prevailing party. ***The fee*** must be determined by the court in which the action is brought but the fee and ***the court costs*** may not exceed the amount of the lien."

S.C. Code Ann. § 29-5-10(a) (emphasis added). Thus the plain language of the applicable and controlling mechanic's lien statute authorizes only the recovery of (1) "a reasonable attorney's fee" and (2) "the court costs." *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute."). "Court costs" do not include expenditures or costs incurred. What qualifies as a recoverable "court cost" is specifically limited, and have been defined as "the charges or fees taxed by the court, such as filing fees, jury fees, courthouse fees, and reporter fees." *Costs*, Black's Law Dictionary (11th ed. 2019).

In its Petition, Library provides no information about recognized "court costs," either incurred or sought. Rather, Library disingenuously seeks to recover various purported "costs" totaling $48,165,529.62.[3] The bulk of these purported "costs" are actually unallowable damages which Library never sought or proved in the litigation. In reviewing each category of Library's purported costs, the Court must properly determine:

(1) Whether the purported costs are recoverable "court costs" as used in S.C. Code Ann. § 29-5-10(a).

(2) Whether the purported costs were actually incurred in defending the lien. *See EFCO Corp*. at 620, 635 S.E.2d at 926; *Patel* at 533, 599 S.E.2d at 123 ("The same considerations that apply to awarding attorney's fees also apply to awarding litigation expenses.").

(3) Whether the purported costs are substantiated by adequate documentation. "[T]he law is clear that no litigation costs should be awarded in the absence of adequate documentation." *Trimper v. City of Norfolk*, 58 F.3d 68, 77 (4th Cir.1995) (eliminating costs that plaintiff failed to substantiate and rejecting unverified chart of expenses); *see*

[3] *See* Affidavit of Kimberly Bennett Brown, attached to Library's Petition as Exhibit A, (hereinafter "Brown Affidavit").

*Black* at 229, 433 S.E.2d at 25 (finding trial court did not abuse its discretion by declining to award costs without supporting documentation).

**A. Expert witness fees are not recoverable as "court costs" under the mechanic's lien statute.**

Library's Petition expressly seeks award of expert witness costs for (i) Patrick O'Connor in the amount of $35,788.50; (ii) James Clements in the amount of $61,071.54; (iii) Mark Boe in the amount of $494,244.67; (iv) Sam Hadley in the amount of $655,197.70; and (v) Grady Query in the amount of $14,075.00. *See* Brown Affidavit at p. 1, ¶ 3.a.

"Presently no authority exists for the taxation of the costs of expert witnesses as part of the costs in civil litigation in South Carolina state courts." 7 S.C. Jur. Costs § 32. "Fees for expert witnesses, beyond the ordinary fees authorized for witnesses generally, are not taxable as costs unless there is a statute specifically allowing such an expense." *Oliver v. S.C. Dep't of Highways & Pub. Transp.*, 309 S.C. 313, 318–19, 422 S.E.2d 128, 132 (1992) (quoting 20 C.J.S. Costs § 116 (1990)). "[C]osts have always been regarded in this state as in the nature of penalties; hence statutes allowing them are strictly construed, and the party who claims the right to tax them against another must be able to point to some statute which allows him to do so." *Id.* at 318–19, 422 S.E.2d at 131–32 (quoting *South Carolina Public Service Authority v. Spearwant Liquidating Co.*, 201 S.C. 207, 209, 22 S.E.2d 252, 253 (1942)). No such predicate statute or authority exists to justify the award of expert witness fees or costs in this case.

In *Oliver*, a motorcycle operator brought action against the South Carolina Department of Highways and Public Transportation (the "Department") arising from injuries sustained in a collision with a parked automobile. *Id.* at 315, 422 S.E.2d at 130. The trial court awarded the motorcycle operator damages and costs, including expert witness fees, and the Department appealed. *Id.* at 316, 422 S.E.2d at 130. On appeal, the motorcycle operator contended that the statutory authority for awarding expert witness fees as costs was provided by S.C. Code Ann. §



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15-37-40 (1976), which refers only generally to the taxing of witness fees as a cost. *Oliver* at 318–19, 422 S.E.2d at 131–32. The Court of Appeals found that section 15-17-40 does not specifically address expert witness fees and, therefore, it was limited by Rule 45, SCRCP, which places a fixed dollar amount on witness fees in the amount of $25.00 per day plus mileage. *Oliver* at 318–19, 422 S.E.2d at 131–32.

The *Oliver* Court noted that "[o]ther statutory provisions which allow the recovery of suit money or reasonable attorney's fees and costs when bringing a specific action are distinguishable and not pertinent to this opinion." *Id.* at 318 n.2, 422 S.E.2d at 131 n.2. Specifically, the Court pointed to S.C. Code Ann. § 39-5-140 (1985), which provides for an award of "reasonable attorney's fees and costs" if the court finds a willful or knowing violation of the South Carolina Unfair Trade Practices Act (SCUTPA), and "suit money" in divorce actions authorized by S.C. Code Ann. § 20-3-120. *Oliver* at 318 n.2, 422 S.E.2d at 131 n.2; *see also Maybank v. BB&T Corp.*, 416 S.C. 541, 582, 787 S.E.2d 498, 519 (2016) (holding that costs arising from UTPA litigation may include expert witness fees).

Here, the mechanic's lien statute provides only for the recovery of a "reasonable attorneys' fee" and "court costs." It does not authorize recovery of other fees or costs, including fees for expert witnesses beyond the ordinary fees authorized for witnesses generally. Moreover, Library was unsuccessful on its SCUTPA claim and, therefore, may not recover expert witness fees under S.C. Code Ann. § 39-5-140. Because Library points to no statute which authorizes the recovery of expert witness fees, Library may recover, at most, $25.00 per day plus mileage for each witness. *See Oliver* at 318–19, 422 S.E.2d at 131–32; *Black* at 230, 433 S.E.2d at 25 ("Because statutes permitting the recovery of costs must be strictly construed, the trial court did not abuse its discretion in refusing to award the costs related to . . . expert witnesses."). Furthermore, recovery of any costs associated with the witnesses is limited to the those witnesses and those appearances

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specifically incurred in defending the mechanic's lien cause of action only. Patrick O'Connor did not testify at trial and was not qualified by this Court as an expert.[4] James Clements was not qualified as an expert witness at trial. Mark Boe was qualified as an expert in "construction project management schedule and delay analysis," *see* Trial Transcript at 2608:19–2609:3, and Grady Query was qualified as a scheduling expert, with some "leeway" to the extent that scheduling involves construction, *see id.* at 2949:21–24. Sam Hadley, on the other hand, was qualified by this Court as an expert in accounting and auditing, construction accounting and auditing, and damage compilation in construction projects. *See* Order at 10. The Court found that she performed "the only audit or accounting that was done on this Project." *See id.* Accordingly, Sam Hadley is the only expert witness in Library's Petition whose fee was incurred in defending the mechanic's lien cause of action. Library's request for expert witness fees should be further reduced to $25.00 plus mileage per day for each day Sam Hadley spent testifying at trial.

Further, the Brown Affidavit fails to itemize or describe the expert witness costs with any detail. "With respect to both attorneys' fees and litigation expenses, the party seeking the award must provide adequate documentation of the requested amounts." *Wolfe v. Routzahn*, 953 F. Supp. 2d 627, 635 (D. Md. 2013) (citing *Hensley*, 461 U.S. at 433). Library has failed to submit any documentation such as invoices or bills to substantiate its request for expert witness fees for Patrick O'Connor, James Clements, Mark Boe, or Grady Query. Although Library submitted an Affidavit of Sam Hadley with a table listing the amount and date of each invoice for Hadley's services,[5] Library has failed to substantiate the table with any of the underlying invoices or any other

[4] During his deposition, Mr. O'Connor testified that he "not familiar with the intricacies of South Carolina mechanic's liens law," and that he was not planning on offering any opinions regarding the validity of any of the subcontractors' mechanic's liens. *See* Dep. of Patrick John O'Conner, Jr., at 75:14–15, 153:17–21.

[5] *See* Affidavit of Sam Hadley, attached to Library's Petition as Exhibit C, at p. 2 (hereinafter "Hadley Affidavit").

verification. Therefore, the Court should deny Library's Petition with respect to expert witness costs.

**B. Library's purported "legal costs" that do not directly relate to the reasonable services of the attorneys specifically involved in the defense of the mechanic's lien claim are not otherwise recoverable as "attorney's fees" or "court costs" under the mechanic's lien statute are not recoverable under the mechanic's lien statute.**

In its Petitions, Library seeks to include under the label of "legal" costs somehow associated with: (i) "MetLife" in the amount of $330,000; (ii) "Veritext" in the amount of $1,003.79; and (iii) "Rosen Litigation Tech." in the amount of $6,977.00. *See* Brown Affidavit at p. 1, ¶ 3.b. The Brown Affidavit fails to itemize or describe these "legal costs" with any detail. Moreover, without supporting documentation the Court cannot verify that the amounts are accurate and reasonable, let alone recoverable as "court costs" under the mechanic's lien statute.

Even if Library had described its purported legal costs with any particularity, other general statutes and court rules limit what may be recovered as "court costs" under the mechanic's lien statute. *See Trimper*, 58 F.3d at 75 (explaining "litigation costs" include litigation expenses such as secretarial costs, copying, telephone costs, and necessary travel, but affirming district court in disallowing such costs where only record of these expenses was an unverified chart with no receipts or bills attached); 56 C.J.S. Mechanics' Liens § 539 ("Costs will not be taxed for unnecessary expenses, unless the court is required to tax them by an affirmative provision of the law."); Rule 54(e), SCRCP (providing a list of taxable costs).

In this case, Library provides no supporting documentation to substantiate or clarify its request. The Court is left to speculate as to exactly how Metlife, Veritext or Rosen qualify as "legal costs" Library may recover.[6] For example, to the extent Library's "Veritext" costs are related to

[6] Similarly, Balfour is presently unable to lodge specific challenges to Library's purported costs without the benefit of knowing what exactly they are, and reserves the right to further challenge such costs if supporting documentation is made available.



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discovery depositions, this Court should deny this request. In *Black*, the Court of Appeals affirmed the trial court's denial of deposition costs. *See* 315 S.C. at 229, 433 S.E.2d at 25. In *Black*, a doctor won a verdict in a medical malpractice action and requested $10,744.46 for "depositions" and "deposition expenses." *See id*. The doctor's affidavit of costs did not reflect any portion of the sum sought for depositions was for "commissioner's compensation" under S.C. Code Ann. § 15-37-40 or witness per diem and mileage expenses under Rule 30(a)(2), SCRCP. *Black* at 229, 433 S.E.2d at 25. The Court affirmed the trial court's denial of depositions costs. *Id.*

Similarly, to the extent Library's "Rosen Litigation Tech." costs are related to the presentation of demonstrative evidence, this Court should deny this request. S.C. Code Ann. § 15-37-40 allows for the recovery of the expense of printing or copying the papers for any hearing when required by a rule of court. *See also* 7 S.C. Jur. Costs § 36 ("It is generally held that the expense of obtaining charts, photographs, models, and other types of demonstrative evidence is not taxable, although there is some authority to tax such expense as a cost if it were ordered by the court."). *Black* at 229, 433 S.E.2d at 25 ("There are no supporting documents in the record, and presumably none were presented to the trial court. It is impossible for this court to determine whether the copying was required by rule of court."); *Hesse-Schnitt, Inc. v. Brahe*, 234 N.Y.S. 535, 537 (Sup. Ct. 1929) (in action to foreclose mechanic's lien, trial transcript not taxable where special referee without showing of its necessity or use). Like the doctor in *Black*, Library's failure to provide supporting documentation makes it impossible to determine whether its purported legal costs were required by a rule of court.

Because the Petition and included Affidavits lacks detail sufficient to determine whether Library's purported "legal costs" are recoverable "court costs" under the mechanic's lien statute, and because Library has failed to substantiate its request for such costs with any supporting documentation, the Court must deny Library's request for "legal costs."



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**C. Library's purported loan modification costs are not recoverable under the mechanic's lien statute.**

Library's Petition includes the following "loan modification" costs: (i) Womble Bond Dickinson in the amount of $26,296.48; (ii) MetLife (Legal) in the amount of $25,750.00; and MetLife (Extension Fees) in the amount of $216,500.00. *See* Brown Affidavit at p. 1, ¶ 3.c.

To the extent that Library seeks legal fees associated with the loan modification, those fees are not recoverable because they were not incurred in actually defending the liens. *See EFCO Corp*. at 620, 635 S.E.2d at 926. Moreover, there is no South Carolina authority which suggests that expenses associated with a loan modification are recoverable as court costs under the mechanic's lien statute, and Library has failed to submit documentation to substantiate this request.

While Library might have attempted to claim and submit evidence of loan modification expenses as consequential damages under some other cause of action, it did not. Moreover, the Court ruled at trial that the mutual waiver of consequential damages found in § 15.1.6 of the A201-2007 between Library and Balfour is valid and enforceable. *See* Trial Transcript at 3801:6–7. Thus, Library is unable to recover such costs and courts from other jurisdictions have found that waivers of consequential damages with language identical to the waiver in this case include a waiver of interest and finance costs. *See, e.g.* 400 15th St., LLC, 960 N.Y.S.2d 341 (N.Y. Sup. Ct. 2010) (finding extended financing costs are consequential damages falling under waiver contained in AIA Document A201-1997); *Bartram, LLC v. C.B. Contractors, LLC*, 2011 WL 1299856, at *3 (N.D. Fla. Mar. 31, 2011) (finding the same). Accordingly, Library is barred from recovering loan modification expenses (damages) despite its disingenuous attempt to label such damages as attorney's fees or "costs."

**D. Library's purported costs "incurred by inability to refinance construction loan" are not recoverable under the mechanic's lien statute.**

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The Brown Affidavit claims that the amount of $4,699,260.38 "represents the difference between the construction loan interest rate available [in October 2023] and the permanent interest rate available to Library Associates, LLC in January 2020." *See* Brown Affidavit at p. 2 ¶ 3.d.

There is no South Carolina authority which suggests that the "costs incurred by inability to refinance" are recoverable as court costs under the mechanic's lien statute. Moreover, Library has failed to submit proof or documentation to substantiate this request. Again, while Library might have attempted to present evidence of such costs or expenses as consequential damages during trial, it did not. Moreover, interest and finance costs would necessarily be construed as consequential damages under some other cause of action,[7] the Court ruled at trial that the mutual waiver of consequential damages found in § 15.1.6 of the A201-2007 between Library and Balfour is valid and enforceable. *See* Trial Transcript at 3801:6–7. Courts from other jurisdictions have found that waivers of consequential damages with language identical to the waiver in this case include interest and finance costs. *See, e.g.* 400 15th St., LLC, 960 N.Y.S.2d 341 (N.Y. Sup. Ct. 2010) (finding extended financing costs are consequential damages falling under waiver contained in AIA Document A201-1997); *Bartram, LLC v. C.B. Contractors, LLC*, 2011 WL 1299856, at *3 (N.D. Fla. Mar. 31, 2011) (finding the same). Accordingly, Library is barred from recovering damages from inability to refinance despite its attempt to label such damages as "costs."

**E. The mechanic's lien statute does not authorize recovery of "[c]osts to be incurred when refinancing that was not possible due and owing to the [m]echanics [l]iens."**

The Brown Affidavit seeks to support award of $41,599,131.09 "as representing the difference between the 25 year fully amortized permanent loan interest rate available in January

[7] *Cf. Oaks at Rivers Edge Prop. Owners Ass'n, Inc. v. Daniel Island Riverside Devs., LLC*, 420 S.C. 424, 435, 803 S.E.2d 475, 481 (Ct. App. 2017) (trial court required condominium owner to elect between damages from inability to refinance or loss of market access); *id.* at 443–44, 803 S.E.2d at 485 (affirming trial court's award of damages for loss of market access).

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2020 and the interest rate that would be available to Library Associates, LLC in November of 2023," for the period of November 2023 through October 2048. *See* Brown Affidavit at p. 2, ¶ 3.e.

As discussed above, there is no authority to support the assertion that the "costs incurred by inability to refinance" are recoverable as court costs under the mechanic's lien statute. Library has failed to establish an entitlement to such amounts (damages) or to submit evidence to substantiate this request. Although Library might have consequential damages under some other cause of action,[8] it did not. Moreover, the Court ruled at trial that the mutual waiver of consequential damages found in § 15.1.6 of the A201-2007 between Library and Balfour is valid and enforceable. *See* Trial Transcript at 3801:6–7. Courts from other jurisdictions have found that waivers of consequential damages with language identical to the waiver in this case include interest and finance costs. *See, e.g.* 400 15th St., LLC, 960 N.Y.S.2d 341 (N.Y. Sup. Ct. 2010) (finding extended financing costs are consequential damages falling under waiver contained in AIA Document A201-1997); *Bartram, LLC v. C.B. Contractors, LLC*, 2011 WL 1299856, at *3 (N.D. Fla. Mar. 31, 2011) (finding the same). Accordingly, Library is barred from recovering damages from inability to refinance despite its attempt to label such damages as "costs."

## IV. LIBRARY CANNOT RECOVER ATTORNEYS' FEES AND COURT COSTS IN EXCESS OF THE LIEN AMOUNT.

Library cannot recover a reasonable attorneys' fee and costs against Balfour in excess of the amount of the lien filed by Balfour, which is $12,066,147.09. *See* S.C. Code Ann. § 29-5-10(a) ("[T]he fee and the court costs may not exceed the amount of the lien."). The Petition seeks such an excess award and must be denied accordingly.

## V. LIBRARY CANNOT RECOVER SAM HADLEY'S EXPERT WITNESS FEE UNDER THE SOUTH CAROLINA UNIFORM DECLARATORY JUDGMENT ACT.

[8] The $41,599,131.09 figure is also entirely speculative in that it ignores Library's ability to refinance if and when the available loan interest rate returns to the January 2020 level at any point over the next 25 years.

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The finding and conclusion by the Court, and the Order that Balfour and others shall pay the costs incurred by Library for the services of Sam Hadley pursuant to S.C. Code Ann. § 15-53-100, or otherwise as court costs is error and is not within the discretion of the Court.

There is no South Carolina authority which suggests that expert witness fees are recoverable as "costs" under the Declaratory Judgment Act.

The Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 to -140 (2005), merely allows a court to make an "award of costs." *Id.* § 15-53-100. As discussed at length above "costs" in the litigation context are well understood and limited. "[F]ees for expert witnesses, beyond the ordinary fees authorized for witnesses generally, are not taxable as costs unless there is a statute specifically allowing such an expense." *Oliver* at 318–19, 422 S.E.2d at 132 (quoting 20 C.J.S. Costs § 116 (1990)). South Carolina has no such statute applicable in this case and it is telling that the Court cited none. There is no South Carolina authority which suggests that expert witness fees are recoverable as "costs" under the Declaratory Judgment Act.

In *Chapin v. Collard*, 29 Wash. 2d 788, 189 P.2d 642 (1948), the Washington Supreme court held that accountant fees were not "costs" within the meaning a Washington statute containing identical language to that in S.C. Code Ann. § 15-53-100. There, Washington's Declaratory Judgment Act provided that "the court may make such award of costs as may seem equitable and just." *Id.* at 795, 189 P.2d at 646. However, the Court held that accountant fees were not "costs" within the meaning of the Declaratory Judgments Act. The appellate court concluded that the trial court had no authority under the Declaratory Judgments Act to award accountant's fees as costs. *Id.* at 795, 189 P.2d at 646. Here, Library is similarly unable to recover its accounting expert witness fees as "costs" under South Carolina's Declaratory Judgment Act.

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## CONCLUSION

For the reasons stated herein, Library's Petition must be denied.

Respectfully Submitted,

PARKER POE ADAMS & BERNSTEIN LLP

By: s/James Lynn Werner
James Lynn Werner, (SC Bar No. 6029)
1221 Main Street, Suite 1100
Columbia, SC 29201
(803) 255-8000
jimwerner@parkerpoe.com

Thomas C. Hildebrand, Jr. (S.C. Bar No. 2501)
Robert C. Byrd (S.C. Bar No. 1069)
W. Greyson Land (S.C. Bar No. 104179)
P. Nicholas Nybo (S.C. Bar No. 105825)
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)
tomhildebrand@parkerpoe.com
bobbybyrd@parkerpoe.com
greysonland@parkerpoe.com
nicknybo@parkerpoe.com

Attorneys for Plaintiff Balfour Beatty Construction, LLC

March 7, 2024
Columbia, SC

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON<br><br>Balfour Beatty Construction, LLC,<br>Plaintiff,<br><br>vs.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,<br><br>Defendants.<br><br>Library Associates, LLC<br>Third-Party Plaintiff,<br><br>vs.<br><br>Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.<br><br>Third-Party Defendants. | IN THE COURT OF COMMON PLEAS<br><br>CASE NO.: 2019-CP-10-01108<br><br>**AFFIDAVIT OF THOMAS C. HILDEBRAND, JR.** |

Personally appears before me, Thomas C. Hildebrand, Jr. who deposes and says that:

1. He is and has been a member of the South Carolina Bar practicing law continuously in Charleston, South Carolina since 1985.

2. He and his law firm have represented the Plaintiff, Balfour Beatty Construction, LLC in the captioned action since the beginning of the litigation and through completion of the trial he was the lead attorney in that effort. He gives this affidavit of his own personal knowledge regarding the litigation and the actions of the parties therein, except where herein stated to be upon information and belief.

3. At the time this case was originally filed, and throughout most of this litigation, Balfour asserted and pursued twelve claims against Library, as follows:

a. Foreclosure of Mechanic's Lien

b. Breach of Contract

c. Quantum Meruit/Quasi Contract

d. Beach of South Carolina Code §27-1-15

e. Abandonment, Waiver and/or Estoppel

f. Cardinal Change

g. Indemnity

h. Breach of the Implied Warranty of the Sufficiency of the Plans, Specifications and Construction Administration Services

i. Breach of the Implied Covenant of Good Faith and Fair Dealing

j. First to Breach

k. Breach of Contract Accompanied by Fraudulent Act

l. Mistake

4. Library, throughout the case and through trial, vigorously defended against each and every one of these claims.

5. In response to Balfour's Complaint, Library filed six counterclaims as follows:

a. Breach of Contract

b. Breach of Contract Accompanied by a Fraudulent Act

c. Indemnification

d. Declaratory Judgment

e. Unfair Trade Practices

f. Civil Conspiracy

6. Library throughout the case and through trial vigorously prosecuted each and every one of their contractors.

7. In addition to the counterclaims against Balfour, Library also filed a third-party complaint and attempted to litigate claims against a related Balfour entity called Balfour Beatty Construction Group, Inc. for declaratory judgment, alleging that that entity was the guarantor of the underlying construction contract and would be liable for any relief awarded Library. (This claim was dismissed at trial by Order of the Court on directed verdict).

8. In addition to the counterclaims against Balfour and the third-party claim against the other Balfour entity. Library also filed and litigated third-party complaints against the following separate entities:

a. Bernhard MMC, LLC

b. Lithko Contracting, LLC f/k/a Lithko Contracting, Inc.

c. Gulfstream Construction Company, Inc.

d. Watson Electrical Construction Co., LLC

e. Premier Exteriors, LLC, Pleasant Places, Inc.

f. Old North State Masonry, LLC.

9. During the pre-trial litigation, a total of 49 depositions were taken in this action. Thirty-three (33) of the depositions were noticed and taken by Library Associates. See list of deponents on attached Exhibit "A". Not all of the witnesses, and not all of the testimony involved or related to the mechanic's lien.

10. Sixteen (16) witnesses testified on the whole variety of claims and defenses live at trial. Not all of these witnesses, and not all of that testimony involved or related to the mechanic's lien.

11. Balfour's mechanic's lien which was at issue in the litigation was not filed until January 25, 2019, and was not amended until July 23, 2019.

12. Upon information and belief, the following liens of subcontractors and materialmen were filed against the property at issue, Hotel Bennett, as shown:

a. Gulf Stream Construction Company, Inc. - filed 2/5/19 for $119,152.17
b. Bernhard MCC, Inc. - filed 2/5/19 for $6,539,992.14
c. Old North State Masonry, LLC - filed 2/12/19 for $1,400,731.94
d. Palmetto Automatic Sprinkler Co., Inc. - filed 2/13/19 for $219,369.93
e. Cook & Boardman, LLC - filed 2/21/19 for $358,796.25
f. Strong Tower Construction, LLC - filed 3/5/19 for $124,080.21
g. Watson Electrical Construction Co., LLC - filed 3/8/19 for $1,859,359
h. Pleasant Places, Inc. - filed 3/20/19 for $33,253.48
i. David Allen Company, Inc. - filed 3/21/19 for $295,592.96
j. Trimark Foodcraft, LLC - filed 3/26/29 for $88,292.17
k. Premier Exteriors, LLC - filed d4/1/19 for $96,867
l. Warco Construction, Inc. - filed 4/12/19 for $237,128.21
m. Quantum Coatings, LLC - filed 4/26/19 for $388,264.15
n. Lowcountry Case & Millworks, Inc. - filed 5/2/19 for $282,160.25

13. During the pendency of this litigation, the following subcontractors and/or material providers to the subject property, Hotel Bennett, filed counterclaims against Library or filed separate lawsuits against Library that were subsequently consolidated into this lawsuit:

a. Bernhard MCC, LLC
b. Gulf Stream Construction Company, Inc.
c. Old North State Masonry, LLC
d. Palmetto Automatic Sprinkler Company, Inc.
e. Cook & Boardman
f. 1st Choice Glass, Inc.
g. Watson Electrical Construction Co., LLC
h. Strong Tower Construction dba Koch Corp.
i. Pleasant Places, LLC
j. Premier Exteriors
k. Trimark Foodcraft, LLC
l. David Allen Company, Inc.
m. Warco Construction, Inc.
n. Quantum Coatings, LLC
o. Lowcountry Case and Millwork
p. Tom Rochester & Associates, Inc. d/b/a Southeastern Architectural Systems
q. Robert Thomas Iron Design, LLC

14. In the Affidavit of W.H. Bundy, Jr. filed in this matter on November 6, 2023, as part of the Petition for attorney's fees and costs, he states that "the present total amount of attorneys' fees costs spent in fees and costs in this litigation is $2,026,278.55." This is the same amount stated in the Affidavit of Kimberly Bennett Brown filed that same date as the attorneys' fees Library seeks against Balfour.

15. The significance of the statement above is that Library's Petition seeks recovery against Balfour of ALL of its fees and costs related to this litigation under the auspices of the mechanic's lien statute. The Order of this Court dated October 6, 2023, directed Library to submit a petition "under the mechanic's lien statute, S.C. Code Section 29-5-10, et. seq. within thirty (30) days of the date of this Order."

16. Despite requests for the documentation to back-up the assertions in these Affidavits beginning in December 2023, not until the afternoon of March 5, 2024, did Library deliver to us 78 billing statements represented to be documents in support of the Library Petition for attorney's

fees and costs. I, therefore, understand that these are the billing statements underlying Library's claimed costs and attorneys' fees.

17. We have not been afforded a fair or reasonable time properly to review and analyze this documentation because of its 11th hour production, or to develop and present a detailed analysis and objection regarding same within the time available under the Court's deadline for the submission of materials prior to the scheduled hearing.

18. However, from a mere cursory review it is clear that Library's Petition does not meet the Court's instructions that the fees and expenses at issue are these recoverable under the South Carolina Mechanic's Lien statute. Therefore, it is clear that Library's Petition is unreliable and inadmissible as the basis for an award of fees or costs in this case.

19. Again, from a mere cursory initial review:

a. Library seeks the recovery of attorney's fees and costs for a 23 month period (November 2016 through January 2019) prior to Balfour's mechanic's lien having even been filed.

b. In the Statement for November, 2021, 252 hours were spent for the explicit purpose of preparing for and participating in the completion of the trial related to independent claims of subcontractors, not Balfour.

c. Library seeks the recovery of its total attorney's fees and costs spent in the litigation, but the billing and time records plainly reflect numerous time entries and hours specifically involving other issues, claims and defenses and not the mechanic's lien foreclosure. Examples are time entries with

specific descriptions such as: research and work on Library's civil conspiracy claim; work on subcontractor claims; research and consideration of how to avoid the contract cap on liquidated damages.

d. Numerous time entries are mere block milling entries with no descriptions of the work or no breakdown of time spent among numerous activities.

20. It is clear that rather than meeting its burden to identify and present the specific recoverable fees and costs, Library is playing a game of "catch me if you can" and attempting to shift the burden and work load to the Court and Balfour.

21. Library has claimed that each and every penny spent from 2016 to the present that might be related to this litigation, a total of $2,026,278.55, is allocable only to Balfour and only to defense of Balfour's mechanic's lien. However, in light of the numerous claims, counterclaims and liens filed against Library by parties other than Balfour, in light of Library's affirmative claims for relief outside of the mechanic's lien, in light of the general and nonspecific time entries, and in light of the noted examples of time entries unrelated to defense of the mechanic's lien, a substantial portion of Library's attorneys' fees are not recoverable under South Carolina's mechanic's lien statute as required by Judge Scarborough's order of October 6, 2023.

21. He reserves the right to continue more complete and detailed analysis and to submit supplemental Affidavits.

Thomas C. Hildebrand, Jr.

SWORN TO AND SUBSCRIBED BEFORE ME
This 7 day of March, 2024

Notary Public for South Carolina

My commission expires: 12/13/2027

LAUREN HEUSS
My Commission Expires
NOTARY
PUBLIC
December 13, 2027
STATE OF SOUTH CAROLINA

## Exhibit A
## Depositions

| Date | Deponent | Noticed by |
|---|---|---|
| 8/21/2019 | 30(b)(6) of Bernhard MMC, LLC | Library |
| 9/26/2019 | Michael Bennett (Day 1) | Balfour |
| 9/27/2019 | Michael Bennett (Day 2) | Balfour |
| 10/29/2019 | Old North State Masonry, LLC | Library |
| 10/29/2019 | Watson Electrical Construction Co. | Library |
| 8/4/2020 | Kim Brown (Day 1) | Balfour |
| 8/5/2020 | Kim Brown (Day 2) | Balfour |
| 8/6/2020 | Kim Brown (Day 3) | Balfour |
| 8/25/2020 | Jim Clements (Day 1) | Balfour |
| 8/26/2020 | Jim Clements (Day 2) | Balfour |
| 9/9/2020 | Buck Lindsay | Balfour |
| 10/5/2020 | Jim Clements (Day 3) | Watson |
| 11/16/2020 | Woody Faust (Design Continuum) | Balfour |
| 11/16/2020 | Karen Jenkins (Design Continuum) | Balfour |
| 11/17/2020 | Jennifer Faulkinberry | Balfour |
| 11/18/2020 | Taylor Walker | Balfour |
| 11/18/2020 | Jim Lord | Balfour |
| 12/7/2020 | Manny Teodoro | Library |
| 12/7/2020 | Keith Rossi | Library |
| 12/8/2020 | Brendan Denney | Library |
| 12/10/2020 | Bob Cotherman | Library |
| 12/11/2020 | Alec Dooley | Library |
| 12/11/2020 | Heath Bradford | Library |
| 12/14/2020 | Nick Starcevik (Day 1) | Library |
| 12/14/2020 | Ryan Ledford | Library |
| 12/15/2020 | Mike Baumbach | Library |
| 12/15/2020 | Steve Zanowski | Library |
| 12/16/2020 | Johnny Eldridge | Library |
| 12/17/2020 | Tim Spano | Library |
| 12/18/2020 | Nick Starcevik (Day 2) | Library |
| 3/11/2021 | Knox Tate (current Balfour employee) | Library |
| 4/26/2021 | Vijay Singh (Videotaped/Remote) | Balfour |
| 4/27/2021 | Patrick J. O'Connor, Jr. (day 1) | Balfour |
| 4/28/2021 | 30(b)(6) of Library Associates (Day 1) | Watson |
| 4/29/2021 | 30(b)(6) of Library Associates (Day 2) | Watson |
| 5/3/2021 | Mark Boe | Balfour |
| 5/5/2021 | Sam Hadley of Cotton & Company (day 1) | Balfour |
| 5/6/2021 | Sam Hadley of Cotton & Company (day 2) | Balfour |
| 5/7/2021 | Ryan Sheppard (BMCC) | Library |
| 5/7/2021 | Paul Amend (BMCC) | Library |

| Date | Deponent | Noticed by |
|---|---|---|
| 6/15/2021 | 30(b)(6) of Balfour Beatty Construction, LLC (day 1) | Library |
| 6/16/2021 | 30(b)(6) of Balfour Beatty Construction, LLC (day 2) | Library |
| 6/23/2021 | Grady Query of Palmetto Scheduling | Balfour |
| 7/6/2021 | Walter H. Bundy, Jr. | Balfour |
| 8/3/2021 | 30(b)(6) of David Allen Company | Library |
| 8/4/2021 | 30(b)(6) of Premier Exteriors | Library |
| 8/5/2021 | 30(b)(6) of Warco Construction | Library |
| 8/6/2021 | 30(b)(6) of Gulf Stream Construction | Library |
| 8/6/2021 | 30(b)(6) of Cook & Boardman | Library |
| 8/9/2021 | 30(b)(6) of Palmetto Automatic Sprinkler Company | Library |
| 8/10/2021 | 30(b)(6) of Lowcountry Case & Mill work | Library |
| 8/10/2021 | 30(b)(6) of Precision Walls | Library |
| 8/11/2021 | 30(b)(6) of Quantum Coatings | Library |
| 8/12/2021 | Kay L. Kendall | Library |
| 8/25/2021 | Joe Annatasi<br>(president and partner of Old North State Masonry) | Library |
| 8/25/2021 | Joe Canitano<br>(vice-president of sales of Old North State Masonry) | Library |
| 8/26/2021 | Dale Winovich (Watson Electrical - Project Manager) | Library |
| 8/27/2021 | 30(b)(6) of Lithko Contracting | Library |

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON<br><br>Balfour Beatty Construction, LLC,<br><br>Plaintiff,<br><br>vs.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,<br><br>Defendants.<br><br>Library Associates, LLC<br><br>Third-Party Plaintiff,<br><br>vs.<br><br>Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.<br><br>Third-Party Defendants. | IN THE COURT OF COMMON PLEAS<br><br>CASE NO.: 2019-CP-10-01108<br><br>BALFOUR BEATTY CONSTRUCTION, LLC'S MEMORANDUM IN SUPPORT OF ITS MOTION TO REQUIRE LIBRARY ASSOCIATES, LLC TO ELECT A REMEDY |

Plaintiff Balfour Beatty Construction, LLC ("Balfour"), submits this Memorandum in Support of its Motion to require Library Associates, LLC to elect a remedy between its causes of action for breach of contract and for breach of contract accompanied by a fraudulent act.

On October 6, 2023, the Court entered two orders: a Form 4 Order granting a judgment in favor of Library Associates, LLC ("Library") in the amount of $3,320,329.00 ("Form 4"), and a more detailed, 46 page order denying Balfour's request for damages and granting a judgment in

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favor of Library in the amount of $3,320,329.00 ("Order"). The Order directs that judgment be entered in favor of Library on its breach of contract cause of action against Balfour in the amount of $3,320,329.00. *See* Order at 45. The Order also directs that judgment be entered in favor of Library on its breach of contract accompanied by a fraudulent act cause of action against Balfour in the amount of $3,320,329.00. *See id.* at 46.

To the extent the Court's Order purports to direct that judgment be entered in favor of Library on both causes of action, Library must elect a remedy. "There is no cause of action distinct from breach of contract for breach of contract accompanied by a fraudulent act." *Smith v. Canal Ins. Co.*, 275 S.C. 256, 260, 269 S.E.2d 348, 350 (1980); *see also Temp. Servs., Inc. v. Am. Int'l Grp., Inc.*, No. 3:08-CV-0271-CMC, 2008 WL 11366365, at *3 (D.S.C. July 8, 2008) (explaining that Plaintiffs' causes of action for breach of contract and breach of contract accompanied by a fraudulent act "are really only a single claim sounding in contract.").

> "The fraudulent act and intent allegations are significant not for purposes of establishing a different cause of action, but for recovery of enhanced (exemplary) damages for the same underlying breach of contract cause of action."

*Temp. Servs., Inc*, 2008 WL 11366365, at *3. "When an identical set of facts entitle the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 56, 691 S.E.2d 135, 153 (2010) (quoting *Save Charleston Found. v. Murray*, 286 S.C. 170, 175, 333 S.E.2d 60, 64 (Ct. App.1985)).

The full field of damages available to Library was encompassed by its claim for breach of contract accompanied by fraudulent act. Moreover, Library's claims for breach of contract and breach of contract accompanied by fraudulent act were based on the same set of facts. Accordingly, to the extent the Court's Order directs that judgment be entered in favor of Library on both its claims for breach of contract and breach of contract accompanied by a fraudulent act, Library must

elect a remedy. *See Encore Tech. Grp., LLC v. Trask*, 436 S.C. 289, 299–303, 871 S.E.2d 608, 614–16 (Ct. App. 2021) (requiring classroom technology company to elect a remedy between its causes of action for breach of contract and breach of contract accompanied by fraudulent act).

Respectfully Submitted,

PARKER POE ADAMS & BERNSTEIN LLP

By: s/James Lynn Werner
James Lynn Werner, (SC Bar No. 6029)
1221 Main Street, Suite 1100
Columbia, SC 29201
(803) 255-8000
jimwerner@parkerpoe.com

Thomas C. Hildebrand, Jr. (S.C. Bar No. 2501)
Robert C. Byrd (S.C. Bar No. 1069)
W. Greyson Land (S.C. Bar No. 104179)
P. Nicholas Nybo (S.C. Bar No. 105825)
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)
tomhildebrand@parkerpoe.com
bobbybyrd@parkerpoe.com
greysonland@parkerpoe.com
nicknybo@parkerpoe.com

Attorneys for Plaintiff Balfour Beatty Construction, LLC

March 7, 2024
Columbia, South Carolina

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON<br><br>Balfour Beatty Construction, LLC,<br><br>Plaintiff,<br><br>vs.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,<br><br>Defendants.<br><br>Library Associates, LLC<br><br>Third-Party Plaintiff,<br><br>vs.<br><br>Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.<br><br>Third-Party Defendants. | IN THE COURT OF COMMON PLEAS<br><br>CASE NO.: 2019-CP-10-01108<br><br>BALFOUR BEATTY CONSTRUCTION, LLC'S MEMORANDUM IN SUPPORT OF MOTION TO ALTER/AMEND THE ORDER GRANTING JUDGMENT TO LIBRARY ASSOCIATES |

Balfour Beatty submits this Memorandum in Support of its Motion to Alter/Amend the Order Granting Judgement to Library Associates in this captioned matter. Said Motion and Balfour's proposed order attached thereto is incorporated herein by reference and no ground or argument set forth in said Motion is waived (each being specifically reserved) by virtue of it not being further elaborated or argued here or in any subsequent hearing.

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For purposes of this Memorandum, the arguments relevant to the Motion set forth herein are the following:

1. The Court erred in its findings and conclusions that Balfour's mechanic's lien claims were untimely or improper.

2. The Court erred in its findings and conclusions that various costs at issue in the claims were not recoverable costs under the Contract between Balfour and Library.

3. The Court erred in finding that Balfour failed to comply with the relevant conditions precedent in the Contract.

4. The Court erred in its findings and conclusions that Library was entitled to a setoff or recovery of $1,483,090.00 for daily liquidated damages.

5. The Court erred in its findings and conclusions that Library was entitled to any setoff or recovery for defective or nonconforming work (paint finish) by Balfour.

6. The Court erred in its findings and conclusions that Balfour breached the Contract with Library and that Library did not breach the Contract.

7. The Court erred in its findings and conclusions that Balfour breached its duties with respect to accounting for costs under the Contract, or Library's auditing of such costs

8. The Court erred in its findings and conclusions that Balfour was liable for a breach of contract accompanied by a fraudulent act, and that any consideration of punitive damages is proper.

9. The Court erred in bifurcating punitive damages after trial had ended.

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## ARGUMENT

### I. BALFOUR PROPERLY AND TIMELY PERFECTED ITS MECHANIC'S LIEN, AND THE LIEN WAS NOT DUPLICATIVE OR EXCESSIVE.

In its Order the Court found that Balfour's mechanic's lien foreclosure action must be dismissed. At various and disparate locations within the Order, the Court said:

- Balfour failed to perfect its mechanic's liens pursuant to S.C. Code Ann. § 29-5-90;
- the mechanic's liens were excessive and duplicative.

Each of these findings or conclusions by the Court are error. None of them are supported by the facts, and they are plainly wrong on the law.

A mechanic's lien arises inchoate in favor of each contractor, subcontractor, material supplier and laborer at the moment each of them performs or supplies the labor or materials to the property. S.C. Code Ann. §§ 29-5-10 and 20; *Williamson v. Hotel Melrose,* 110 S.C. 1, 96 S.E. 407 (1918); *Shelby Construction Co., Inc. v. Sea Garden Homes, Inc.,* 287 S.C. 24, 336 S.E. 2d 488 (Ct. App. 1985); *Lowndes Hill Realty Co. v. Greenville Concrete Co.,* 229 S.C. 619, 93 S.E. 2d 855 (1956).

Once a lien has arisen inchoate, the contractor, subcontractor, material supplier or laborer merely needs to perfect and enforce the lien according to the statutory requirements. Although the Court's Order is vague and ambiguous, it seemingly is premised upon the utterly incorrect proposition that a mechanic's lien filed while the contractor is continuing to work on the property (prior to ultimate completion of the work or cessation of all work on-site) is untimely and invalid. Such a finding or conclusion is rank error.

A contractor may file a lien for amounts owed in connection with labor or materials supplied to the property whenever he has performed work within 90 days of the date he files the lien. The timeliness and validity of the lien is not affected by the fact that the contractor is

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continuing to perform work or to supply labor or materials to the property. *See Preferred Savigns & Loan Assoc., Inc. v. Royal Garden Resort, Inc.* 301 S.C. 1, 389 S.E. 2d 853 (1990); *Wood v. Hardy,* 235 S.C. 131, 110 S.E. 2d 157 (1959). The clear meaning of section 29-5-10 is that the labor contemplated in the filed statement has already been performed within 90 days prior to the filing. *Id.*

The remaining requirement of the lien statute is that the foreclosure suit must be filed based on the date of the filing of the statement of lien. In this case, Balfour plainly satisfied the requirements.

**a. Balfour timely filed and perfected its January 25, 2019, mechanic's lien.**

On January 25, 2019, Balfour filed a Notice and Certificate of Mechanic's Lien in the amount of $8,409,658.54. *See* Library Ex. 44. This Notice and Certificate of Lien reflected the amount Library owed to Balfour for work performed on the project up until that date, even though other work was still ongoing. *See id.* ("The undersigned Petitioner has furnished, within ninety (90) days of the date hereof, labor, services and materials . . . ."). In other words, the labor contemplated in Balfour's notice and certificate of lien was furnished prior to and up until the notice and certificate of lien was filed on January 25, 2019. *See Preferred Sav. & Loan Ass'n, Inc.* at 4, 389 S.E.2d at 854 ("The clear meaning of [section 29-5-90] is that ***the labor contemplated in the filed statement*** has already been performed within 90 days prior to the filing.") (emphasis added). On March 5, 2019, well within six months of January 25, 2019, Balfour timely commenced its action to enforce its mechanic's lien, and filed a notice of *lis pendens*. These filings were timely in accordance within the statute. Accordingly, the Court erroneously found that Balfour failed to perfect its January 25, 2019, mechanic's lien.

**b. Balfour timely filed and perfected its July 23, 2019 amended mechanic's lien.**

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The Court's Order fails to address whether Balfour perfected its amended mechanic's lien filed July 23, 2019. Balfour ceased furnishing labor on the project on April 26, 2019. *See* October 6, 2023 Order, at 6. Balfour filed and served an Amended Notice and Certificate of Mechanic's Lien on July 23, 2019 (in the amount of $12,066,147.07) within 90 days after April 26, 2019. *See* Balfour Ex. 201. Balfour obtained a Court Order granting leave to amend its pleadings and timely filed an amended Summons and Complaint on October 3, 2019, within six months of April 26, 2019.[1] Thus, Balfour timely perfected its amended mechanic's lien.

The Court's findings or conclusions to the contrary are clear error.

**c. The mechanic's liens filed by Balfour were not excessive or duplicative in any improper fashion.**

As described above, Balfour and each of its subcontractors, material suppliers and laborers are imbued with separate mechanic's lien rights. Not surprisingly, and certainly not improperly, if an owner does not make payment for work performed (labor and material supplied) at a project, the general contractor, subcontractor, material supplier and laborer involved in performing that work and supplying the labor and material each have the legal and statutory right to file their liens. Likewise, it is not surprising or improper that the liens or lien amounts will likely be overlapping. What labor and materials are supplied to the job by the general contractor, for which it is entitled to a lien, were very likely supplied to it by subcontractors, material suppliers and laborers, for which each of them is entitled to a lien. Thus, it is clearly within the ambit of the mechanic's lien statutes that the total amount of all liens will be higher than the actual, final aggregate debt.

In part, this is the reason that when an action is commenced to foreclose any lien, all liens will be foreclosed in the same action. At that time, proper allocations can be made and duplication

[1] Balfour was required to file its Amended Summons and Complaint within 92 days of July 23, 2019. *See Preferred Sav. & Loan Ass'n, Inc.* at 5 n.1, 389 S.E.2d at 855 n.1. October 3, 2019 was 72 days after July 23, 2019.

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sorted out and eliminated. However, the overlapping or duplicative liens are not improper or excessive.

The record demonstrates that Balfour filed a lien for the amount it believed, in good faith, that it was owed under the contract. In *Sentry Eng'g & Constr., Inc. v. Mariner's Cay Dev. Corp*., our Supreme Court explained the amounts which may be included in a mechanic's lien:

> Since the statutes provide a lien for labor performed and materials furnished, the question arises, particularly where a contractor works under a cost-plus contract, whether items which are not direct labor or material costs, such as overhead and profit, are lienable. Such items, as such and standing by themselves, are nonlienable, but they become lienable when they are included in a contract price or are reflected in the reasonable value of labor or materials furnished. Thus, the cost or value of labor for which a lien may be claimed is not necessarily confined to the actual wages paid by the employer to the employee actually performing the labor. It may also include costs and expenses of operation in addition to direct wages paid.

287 S.C. 346, 352, 338 S.E.2d 631, 634–35 (1985) (quoting 53 Am.Jur.2d Mechanic's Liens, § 107 (1970)) (emphasis added). See also Zepsa Construction, Inc. v. Randazzo, 357 S.C. 32, 38, 591 S.E.2d 29, 32 (Ct.App.2004) (holding that overhead and profit are proper components of a mechanic's lien if stated as part of the contract price); In re Regional Building System, Inc., 273 B.R. 423, 446 (Bankr. D. Md. 2001), subsequently aff'd, 320 F.3d 482 (4th Cir. 2003) (holding that costs associated with delay claims were recoverable under New York's mechanic's lien statute where the contract provided that the added labor costs of performance are part of the contract price).

At trial, David Simonton testified that the amount of Balfour's January 25, 2019 mechanic's lien in the amount of $8,409,658.54 was determined by him, Nick Starcevic, and Casey Thompson using Balfour's financials, including what Balfour was owed and what labor, materials and bills had been received from subcontractors up to that point. See Trial Transcript at 2232:18–2233:12. Mr. Simonton further testified that Balfour's amended mechanic's lien in the amount of $12,066,147.09 was comprised of "the contract balance, RCOs, executed and unexecuted,

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overages of general conditions, change orders … [and] executed OCOs not funded." *See* Trial Transcript at 2323:2–2324:1. Costs associated with delay claims were also included to the extent that they were provided for in the contract and necessarily incurred in performance of the contract. *See id.* at 2324:2–6. There was no testimony, however, that Balfour inflated the amounts claimed in the lien. And while the parties disagreed as to the amount Balfour was entitled to recover on its mechanic lien claim, there is no evidence that Balfour ever agreed to Library's interpretation of their contract's terms. Rather, the evidence shows only that Balfour "was simply trying to get paid according to its understanding, albeit disputed, of the contract." *See Coker's Mobile Home Plaza, Inc. v. ITT Com. Fin. Corp.*, 900 F.2d 250 (4th Cir. 1990) (citing *Smith v. Canal Ins. Co.*, 275 S.C. 256, 260, 269 S.E.2d 348, 350 (1980)) (finding plaintiff failed to prove fraudulent act element of claim for breach of contract accompanied by fraudulent act).

## II. THE COURT ERRED IN ITS FINDINGS AND CONCLUSIONS THAT VARIOUS COSTS AT ISSUE IN THE CLAIMS WERE NOT RECOVERABLE COSTS UNDER THE CONTRACT BETWEEN BALFOUR AND LIBRARY.

A significant issue in this case was analysis of the "Cost of the Work." That issue directly impacts the amount that Balfour is entitled to be paid under the contract and the Court's analysis of the mechanic's lien claim since Balfour's lien right covers the debt due it for the costs of the labor performed and materials supplied to the Project. When the Court erred—as it did—in the analysis and determination of the "Cost of the Work," it caused an error in the Court's final findings and conclusions and its Order in this case.

### a. The phrase "costs necessarily incurred" does not require that the costs had actually been paid by Balfour.

The essence of the Contract provisions regarding the determination of the "Costs of the Work" are clear. With respect to the "construction phase," "[t]he term cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work." AIA Document A133-2009 § 6.1.1. The term "costs necessarily incurred by the Construction

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Manager" does not mean that such costs must have already been paid by the Construction Manager. To the contrary, costs need not have already been paid by Balfour to qualify as properly recoverable as costs for which Library is obligated to pay under the Contract.

Among the specific "Costs of the Work" recoverable under the Contract are "Subcontract Costs." Library contracted to pay Balfour for the Cost of the Work, which is defined as the "costs necessarily incurred by [Balfour] in the proper performance of the work." Ex. 56; AIA Document A133-2009 § 6.1.1. Cost of the Work is further defined to include "Subcontractor Costs." These are costs due by [Balfour] to subcontractors in accordance with the requirements of the subcontracts. Ex. 56; Document A133 § 6.3.[2]

The phrase "costs necessarily incurred" does not require that the costs were actually paid by Balfour. This issue, and the same *exact* contractual language as the language in this Contract, was addressed in *Cent. Contracting, Inc. v. Kenny Constr. Co.*, No. 11 C 9175, 2015 WL 832267 (N.D. Ill. Feb. 25, 2015). In that case the district court held that "Cost of the Work" does not require that the cost had been actually paid. The primary dispute in *Central* was whether *per diem* payments constituted a "Cost of the Work" under the parties' contract. The Court found that Kenny contracted to pay Central for the "Cost of the Work," which was defined as "costs necessarily incurred by [Central] in the proper performance of the Work." *Id.* at *6. "Cost of the Work" was further defined to include twenty-two specific enumerated items of work or costs, including the cost of field labor and *per diem* allowances. *Id.* Kenny argued that Central failed to pass on the *per diem* payments to its employees and, as a result, did not actually incur the *per diem* payments as costs. *See id.* at *8. The court rejected this argument. The district court held that the subcontract defined "Cost of the Work" as "costs necessarily incurred," not "costs necessarily incurred *and*

[2] Balfour's subcontracts, state that "Contractor will make progress payments to Subcontractor within ten (10) days after Contractor's receipt of payment from Owner for Subcontractor's Work…." *See, e.g.*, Balfour Ex. 203 (representative subcontract).

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*paid*." *Id.* (emphasis in original) (noting that "the parties could have used this kind of language; there are plenty of contracts that do."). The Court explained:

> The Court does not agree with Kenny that the phrase "costs necessarily incurred" can only mean costs actually paid by Central." The plain and ordinary meaning of the word "incur" is "become liable or subject to." Becoming liable for or subject to a debt or expense does not require one to have paid it.

*Id.* at *8 (citations and internal quotations omitted). The Court further noted that it is irrelevant whether a third party is ultimately liable to pay the expense. *Id.* at *8 (citing *Am. Nat'l Bank & Trust Co. v. Steiner*, 603 N.E.2d 8, 11 (Ill. App. Ct. 1991).

When Balfour's subcontractors performed work under the subcontracts, it incurred—that is, became liable for—the costs of the work performed by its subcontractors. In turn, the Contract recognizes that Balfour would submit those costs for reimbursement to Library as part of the Cost of the Work without having yet paid its subcontractors.[3] After Library reimbursed Balfour for Subcontractor Costs in accordance with the Contract, Balfour would pay its subcontractors in accordance with the subcontracts. Library understood this to be the procedure under the contract, *see* Trial Trans. at 3778:5–10, as did Balfour, *see id.* at 1917:7–1918:22. Indeed, the first 42 Pay Applications for this project followed this *exact* procedure. *See id.* at 159:4–24. Although the parties could have defined the Cost of the Work as "costs necessarily incurred *and paid*," they did not. Thus, the phrase "costs necessarily incurred" does not require that the costs had already actually been paid by Balfour.

**b. This Court has already found that subcontractor summary judgment amounts are part of the Cost of the Work.**

In the present case, the Court's existing orders bearing upon the assessment of the "Costs of the Work" are irreconcilable and plainly reflect error by the Court. While the Court found in

[3] *See, e.g.*, AIA Document A201-2007 § 9.6.2 ("The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of work. . . ."); Trial Trans. at 2324:11–2325:3 (discussing Section 9.6.2); 2475:19–2476:16 (same).

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its October 6, 2023, Order that amounts due subcontractors reflected in settlement of subcontractor claims, or amounts awarded to subcontractors in summary judgment rulings on the subcontractor's breach of contract claims, are not recoverable Costs of the Work under Balfour's Contract with Library, the Court separately found in its orders granting summary judgment to the subcontractors that judgment in their favor was proper because those subcontractors performed the work required under the subcontracts and the work was accepted by Balfour and Library.

The Court's findings and conclusions with regard to these subcontractors plainly establishes the Court's error where it then takes the position that these subcontract amounts do not constitute recoverable costs for Balfour under its Contract with Library. These errors with respect to just the amounts in issue for Watson, Premier Exteriors, Low Country, and Strong Tower establish that the Court's errors deprived Balfour of credit for no less than $1,959,220.14 in recoverable costs.

In its various orders granting summary judgment to Balfour's subcontractors on their respective claims for breach of contract, this Court implicitly recognized that the subcontractor summary judgment amounts are part of the Cost of the Work. For example, in its Order granting partial summary judgment to Watson Electrical Construction Co., LLC ("Watson"), the Court stated:

> Watson performed the work it was required to perform under the Subcontract, Watson's work was accepted by BCC and the Owner, and Watson is entitled to judgment as a matter of law against BBC in the amount of $921,671.39 on its breach of contract claim.

*See* Order Granting Watson's Motion for Partial Summary Judgment, at 4–5 (Sep. 13, 2021).[4] The summary judgment amounts are merely the Court's determination of the *amount* due from Balfour

[4] The Orders granting summary judgment to Balfour's other subcontractors are substantially the same in this regard. *See, e.g.,* Order Granting Warco's Motion for Partial Summary Judgment, at 3 (Sep. 13, 2021) ("There Exists no Genuine Issues of Material Fact as to at Least $157,268.04 Being Due and Owing By Balfour to Warco Under the Subcontract."); Order granting Strong Tower's Motion for Partial Summary Judgment, at 6–7 (Sep. 9, 2021) ("There exist no genuine issues of material fact as to at least $82,859.21 owed by BBC to Koch under the parties' contract,

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to its subcontractors for work performed in accordance with the requirements of their respective subcontracts. The amount Balfour owes a subcontractor for work performed pursuant to its subcontract does not lose its status or quality as part of the Cost of the Work simply because the amount is disputed and later determined by the Court on a motion for summary judgment. To hold that the summary judgment amounts are not Costs of the Work is patently inconsistent with this Court's prior rulings, and the Court should alter or amend its Order and Judgment to include all subcontractor summary judgment and settlement amounts as part of the Cost of the Work.

**c. Hadley testified at trial that subcontractor settlement amounts are part of the "Cost of the Work."**

Ms. Hadley's testimony directly contradicts the Court's finding that the Cost of the Work does not include subcontractor settlement amounts. At trial, Hadley specifically testified that a subcontractor settlement amount "will become a cost of the work once its paid." *See* Trial Trans. at 4088:11–19. However, as discussed above, Balfour became liable for the subcontractor settlement amounts upon entering into binding settlement agreements with each settling subcontractor, and it was improper for Hadley to offer an opinion as to whether such payments must actually be made by Balfour to constitute a part of the Cost of the Work. That is the issue of law, contract interpretation, and not a matter for admissible "expert" testimony. The Court's failure to address this issue in its Order, and to award those amounts to Balfour, is error, and the Order and Judgment should be altered or amended accordingly.

## III. THE COURT ERRED IN FINDING THAT BALFOUR FAILED TO COMPLY WITH THE RELEVANT CONDITIONS PRECEDENT IN THE CONTRACT.

entitling Koch to summary judgment on that amount under its breach of contract cause of action."); Order Granting Premier Summary Judgment, at 7 (Dec. 22, 2021) ("Mr. Bremer's Affidavit, including its attachments, and Mr. Clements' deposition testimony evidence Premier's entitlement to payment from BBC under the subcontract in the principal amount of $104,703.51."); Order Granting Low Country's Motion for Partial Summary Judgment, at 1 (Sep. 9, 2021) (same).

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In its October 6, 2023 Order, the Court found that Balfour failed to comply with the condition precedent of obtaining an initial decision from the Architect prior to commencing the present litigation, and there was nothing to indicate that the condition precedent was excused by Library. This finding was error. The uncontroverted evidence was that Balfour complied with the relevant conditions precedent, or, in the alternative, such conditions precedent must be excused.

**a. The uncontroverted evidence shows that Balfour complied with the conditions precedent.**

Section 4.3.1.2 of the AIA Document A201-2007 states:

> The Contractor ***shall attach to each Application for Payment a schedule of outstanding and unresolved Claims and requests for Change Orders, which shall include Change Orders dealing with a change in scope, requesting an extension of time, or asserting a Claim***. This attachment shall certify that the only outstanding requests for Change Orders, either for a scope change, extension of time, or Claim, shall be those identified in the schedule attached to the Application for Payment. A schedule of outstanding Change Orders and Claims shall be required of each Subcontractor submitting an Application for Payment to the Contractor that is to be included in Contractor's Application for Payment to the Owner. ***For purposes of contract administration, the Owner and Architect shall each rely upon the attached schedule as inclusive of the Claims of which the Contractor is then on notice and for which the Contractor intends to seek compensation.***

As required by the Contract, beginning in December 2015, each of Balfour's conditional partial waiver and release of lien forms specifically identified the Claims for which it was reserving its rights. *See* Balfour Ex. 215. These forms specifically identified RCOs for which Balfour intended to seek recovery and they are the claims for which Balfour sought to recover damages at trial. The RCOs or claims identified to Library by Balfour by the end of the project, included:

> RCO's 18, 49R2, 57, 59, 80, 82, 88, 100R2, 102, 103, 106, 112, 115, 118, 122, 123, 129, 130, 131, 132, 134, 136, 140, 141, 143, 144, 146, 148, 150, 151, 152, 153, 154, 156, 158, 159, 160, 161, 162, 163, 164, 166, 167, 168, 169, 171, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189R1, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 228, 229, 230, 231, 232, 233, 234, 236, 238, 240, 241, 242, 244, 245, 246, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 266, 267, 268, as well as Open and/or Pending Change Orders, Claims, or Delays as identified but not

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> limited to the attached Exhibit "XX" HMS Master Request for Change Order Log dated December 31, 2018.

Balfour Ex. 292, at p. 5; Balfour Ex. 11.

The contract clearly states that, for the purposes of contract administration, Balfour was providing the above referenced schedule of claims so that Library could rely on the schedule as inclusive of Claims for which Balfour intends to seek compensation. However, the Court's ruling completely ignores Section 4.3.1.2 and Balfour's compliance with the same.

Moreover, on March 6, 2019, Balfour submitted a claim to Library's architect, the initial decision maker for Claims under the terms of the contract. Balfour Exhibit 257. On April 24, 2019, the architect responded via email as follows: "The second attachment is my March 15th, 2019 publication of the Certificate of Substantial Completion (with February 15th, 2019 as the date of S/C), ***which in effect discharges our Initial Decision Maker duty on the subject of delays***." Balfour Exhibit 263.

Clearly, Balfour submitted a claim in accordance with the notice requirements of the contract, and yet architect refused to make a decision. Since the architect made it clear that he had discharged his responsibilities under the contract as of April 24, 2019, the Court's finding that "the Architect did not and could not render an initial decision on the 'final claim'" is clearly erroneous, the architect had already declared its responsibilities under the contract "discharged."

Finally, Balfour's claims against Library relate to, and the basis of Balfour's lawsuit is, a mechanic's lien. Importantly, Article 15 and Article 4 of the AIA Document A201-2007 provide: "If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines." *See* AIA Document A201-2007 §§ 4.4.8 & 15.2.8.

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Balfour fully complied with the provisions of the contract. Regardless, the Court's failure to rule on whether Balfour's compliance with these provisions excuses application of the so-called "condition precedent" is material error.

**b. Actual notice excuses strict compliance with a condition precedent.**

The well-established law in South Carolina makes clear that where an owner knows of a claim, the failure of a contractor to follow exact contractual provisions regarding the claim is excused. In *Lazer Const. Co. v. Long*, 296 S.C. 127, 130, 370 S.E.2d 900, 902 (Ct. App. 1988), a contractor sued an owner for the balance due under a Guaranteed Maximum Price construction contract. *Id.* The contract stated that in the absence of a signed written change order, the owner would only pay direct costs exceeding the guaranteed maximum costs. *Id.* at 128–29. The owner argued that the contractor should forfeit all compensation for costs exceeding the guaranteed maximum price that was performed without a written change order per the terms of the contract. *Id.* The Court of Appeals found that "[contractor's] failure to execute change orders for additional work did not necessarily preclude recovery if it could show that [owner] approved the changes." *Id.* The court noted that the owner did not contend the changes were unauthorized and that contractor presented testimony that owner approved the changes and documentation of the list of "authorized extras." The Court of Appeals held that this evidence supports a finding that the owner approved changes in the project which ultimately increased the costs. *Id.* at 130. Importantly, the Court of Appeals also upheld the trial court's jury charge "***that where the owner has actual notice of extra work and permits it to proceed without objection, the notice requirement, if any, may be waived***." *Id.* (emphasis added).

These principles were later applied by the South Carolina Supreme Court in *Smith-Hunter Const. Co., Inc. v. Hopson,* 616 S.E.2d 419 (S.C. 2005), where a contractor relied on its invoices to establish the costs of the work. *Id.* at 421. The owners argued that the invoices were not "change

orders" as contemplated by the contract because they were not signed by both parties and setting forth the resulting adjustment in contract price and completion date. *Id.* at 421 n.1. The South Carolina Supreme Court rejected the owners' argument, stating that the owners "waived those provisions of the contract" when they "***authorized the work done pursuant to the invoices, knew the work was being done, and accepted the benefits of the work***." *Id.* (emphasis added).

As in *Lazer* and *Hopson*, the undisputed evidence is that Library had actual notice of Balfour's claims and authorized and approved the extra work that was the subject Balfour's claims. *See* Balfour Exs. 138 & 141 (Balfour's "Owner - Architect Notification Log" denoting instances where Balfour submitted a notice of delay and/or request for increase in contract time or contract sum to Library); Balfour Ex. 215 (Balfour's conditional partial waiver and release of lien forms which were submitted to Library wherein Balfour specifically denoted the claims for which it was reserving its rights per Section 4.3.1.2); Balfour Exs. 72, 81, 143 (formal notices of delay and time and cost impacts provided from Balfour to Library in accordance with Section 8.3 of the A201-2007); Balfour Ex. 85 (internal project meeting minutes title "Delay Call" wherein Kim Brown informed Mike Bennett that Balfour had sent formal notice of delay to Library); Balfour Ex. 111 (email from Library owner's representative to Kim Brown referencing "growing delay claim from [Balfour]"); Balfour Ex. 305 (testimony from Library's owner representative that it was undisputable that Balfour was providing delay notifications to Library).

The evidence presented at trial was that Library knew the work was being performed and, in fact, accepted the work it now refuses to pay for. Under the clear controlling South Carolina law, Library's actual knowledge of Balfour's claim excused compliance with any condition precedent, which Balfour met. The Court's finding that it "found nothing to indicate that the condition precedent was excused by Owner" was material error.



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## IV. THE COURT ERRED IN ITS FINDINGS AND CONCLUSIONS THAT LIBRARY WAS ENTITLED TO A SETOFF OR RECOVERY OF $1,483,090.00 FOR DAILY LIQUIDATED DAMAGES.

Under the law, there are various types of delay. Delays can be excusable, they can be compensable or non-compensable, and they can be concurrent (a delay occurring at the same time as other independent delays). The type of delay is very important in deciding who, if anyone, has liability for any resulting damages. Obviously, it is similarly important that the cause or causes of delay be identified and analyzed.

### a. Library failed to meet is burden of proving delay.

"The party claiming damages for delay must prove that the delay was the fault of the party against whom the damages are sought." *Structural Sales, Inc. v. Vavrus,* 132 Ill. App. 3d 718, 721, 477 N.E.2d 745, 748 (1985).

At trial, Library presented no competent evidence that Balfour caused, or contributed to delay on the project. At trial, Library's proof of its alleged liquidated damages for delay was simply its contention that the adjusted contractual completion date was August 19, 2017, the date of substantial completion of the Work was February 15, 2019, and therefore, Library was entitled to the contractual liquidated damage rate for every day in between. Such proof is inadequate and cannot form a proper basis for the Court's assessment of delay liquidated damages. This is particularly true when the evidence reflects that the putative expert witness of Library on the scheduling and delay issues expressly admitted that there were multiple causes of delay, including causes for which Library was responsible. *See* Trial Trans. at 2894:15–19, 2631:3–9 ("[I]n a delay analysis, there has to be cause and effect. You have to be able to say, there was – here's the cause of the delay and there's an effect that actually delayed something that was on the critical path. So you have to identify the critical path, and you have to say the specifics that delay it."). No witness for Library performed a delay analysis for the project. *See id.* at 2612:13–15; Balfour Ex. 305,

Dep. of J. Clements of Aug. 25, 2020, at 37:7–38: 12; Trial Trans. at 3058:20–24. Library failed to offer evidence or testimony as to what items were on the critical path, how many days of critical path delay occurred, and who is responsible for those critical path delays.

In essence, Library offered no evidence regarding who delayed the project, how long those delays occurred, whether those delays were excusable or not, compensable or not, or concurrent. Nonetheless, the Court awarded Library delay damages. The Court's findings and conclusions in this regard are clear error.

**b. Library's admissions of delay prevent an assessment of liquidated damages.**

The Court erred in finding that Library was entitled to liquidated damages because Library admitted at trial that it was responsible for at least some portion of the delay. *PCL Const. Servs., Inc. v. United States*, 53 Fed. Cl. 479, 487 (2002).

*PCL Const. Servs.* was a payment dispute between a contractor and the U.S. Government wherein the government contended it was entitled to liquidated damages. *Id.* at 481. At trial, an expert witness for the government conceded that the government contributed to the delay to the project. *Id.* at 488. Fact witnesses also admitted that there was some hinderance by the government, that "the government's response to RFIs was not as fast as [the contractor] requested," and that "[the contractor's] contract completion was delayed, to some extent, by government-directed changes." *Id*. at 487. Finally, the Court noted that the government's expert "failed to analyze exactly how many days of delay were caused because of [the government], how many days were caused by [the contractor], and how many days were concurrent." *Id.* at 491. As a result the court denied the government's delay liquidated damage claim.

The Court of Federal Claims began its analysis of the government's attempt to assess liquidated damages by discussing the following rule: "When performance of the contract is delayed by [an owner] and the contractor, 'the rule of original contract cannot be insisted upon, and



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liquidated damages measured thereby are waived.'" *Id.* (citing *United States v. United Engineering & Construction Co.,* 234 U.S. 236 (1914)) (additional citations omitted). The Court then discussed the modern "rule of apportionment" which allows the apportionment of delay damages where there "is in the proof a clear apportionment of the delay and the expenses attributable to each party." *Id.* citing *Sauer Inc. v. Danzig,* 244 F.3d 1340 (Fed.Cir.2000).

However, the Court reached the ultimate conclusion that "under an analysis of either rule, the government is not entitled to liquidated damages" primarily based on its review of expert testimony, which it held failed to "clearly apportion all of the delay" and the government's concession that it contributed to the delay. *Id.* at 490–92. ("Most strikingly, at the trial, the government's schedule expert determined and established that the government contributed to the delay of [the Project]").

The facts of *PCL Construction*, and the Court of Federal Claims' reasoning, are applicable to this case. Like the government's expert, at trial Library's scheduling expert, Mark Boe, admitted that Library was responsible for delays to the project. Trial Trans. at 2894:15–19. As with the government, Library failed to timely respond to RFIs as provided for in the contract, *see* Balfour Ex. 3 (RFI compilation showing that 439 responses to RFIs were late), and Library's changes contributed immensely to the delay on the project. *See*, *e.g.*, Balfour Ex. 83 (email from Library's owner representative to Kim Brown stating "Chaos has ruled" and that Library and construction would benefit from a design freeze). Notably, Michael Bennett *admitted* that he knew Library had caused issues at the project. See Trial Trans. at 651:18–25. Finally, Library failed to provide *any* delay analysis, and so any apportionment of liquidated damages is inappropriate.

As noted above, Library offered no analysis regarding who delayed the project or how long it was delayed, whether those delays were excusable or not, or compensable or not. Then, Library's own expert admitted that Library contributed to the delay at the project. The Court finding that

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Balfour is liable to Library for delay damages when Library admits that it contributed to the delay and otherwise performed no delay analysis is clear error.

**c. Library waived its right to assess liquidated damages.**

The Court erroneously found that there was no evidence in this case that the Owner intentionally waived any rights. This finding completely contradicts the undisputed evidence and the law.

Where an owner directs the performance of the extra work as to make it impossible for the contractor to have completed such work within the contract period, the legal presumption is that the parties intended that the contractor was to be given a reasonable time within which to perform the extra work regardless of the date fixed for completion of the entire contract. In other words, the law is that the contract completion date is automatically extended by the amount of time required to perform the extra or changed work. *Acting Comptroller Gen. Weitzel to the Sec'y of the Army,* 34 Comp. Gen. 230, 234–35 (Nov. 18, 1954); *see also U.S. Pipeline, Inc. v. N. Nat. Gas Co.,* 303 Neb. 444, 475, 930 N.W.2d 460, 480–81 (2019).

In *U.S. Pipeline*, the construction contract provided that the project would be substantially complete by 2014; however, because of extra work orders by the owner, and other reasons, the project was not completed until February 2015. *Id*. The owner withheld liquidated damages under the contract. *Id*. The trial court found the owner waived is rights to withhold liquidated damages because the owner (1) failed to indicate the liquidated damages clause would be enforced after requesting extra work, and (2) continued to issue changes after the original substantial completion date. *Id*. at 461. The Nebraska Supreme Court affirmed the trial court's finding of waiver, holding that "[a] contractual provision for liquidated damages for delay in performance may be waived." *Id*. at 474. The Nebraska Supreme Court emphasized that by ***requesting extra work, submitting designs after passing of the substantial completion date, and further failing to inform the***

***contractor that it intended to enforce the liquidated damages provision in the contract***, the owner manifested a clear intent to waive the contractual liquidated damages provision. *Id*. at 475 (emphasis added).

The Court's refusal to find that Library waived its right to assess liquidated damages under nearly identical facts is erroneous. It is unquestioned, and undisputed, that Library made numerous changes to the design and required Balfour to perform additional work after the contractual completion date. *See* testimony from Library's scheduling expert Mark Boe *supra*; Balfour Exhibit 231 (Mark Doran delay analysis establishing that over 46 construction change directives were issued to Balfour after the contractual completion date of August 19, 2017); Trial Trans. at 769:8 –770:18 (Library failed to account for a front desk at the hotel until March 2018); Trial Trans. at 770:20–25 (Library did select finishes for the interior of the elevators until June 2018). Finally, Library never informed Balfour that it intended to enforce the liquidated damages provision after requesting Balfour perform extra work.

South Carolina law is clear that an owner's actions may waive provisions in a contract. *Smith-Hunter Const. Co., Inc. v. Hopson,* 616 S.E.2d 419 (S.C. 2005). In *Hopson*, a contractor relied on invoices to establish the costs of the work. *Id.* at 421. The owners argued that the invoices were not "change orders" as contemplated by the contract because they were not signed by both parties and setting forth the resulting adjustment in contract price and completion date. *Id.* at n. 1. The South Carolina Supreme Court rejected the owners' argument, stating that the owners "waived those provisions of the contract" when they "authorized the work done pursuant to the invoices, knew the work was being done, and accepted the benefits of the work." *Id.*

The undisputed evidence leads to only one conclusion—Library directed Balfour to perform extra work, accepted the benefits of Balfour's extra work, and therefore, pursuant to controlling South Carolina law, Library waived its right to assess liquidated damages and to require



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strict compliance with the contract. The Court's finding that Balfour was required to finish the project by the contractual completion date while simultaneously making owner directed changes and owner directed additional work that was not contemplated by the base contract is clear error.

**d. Library is estopped from seeking to enforce the liquidated damages provision.**

An owner who issues changes after the contractual completion date and is silent on its intention to enforce liquidated damages after the passing of the contractual completion date, is equitably estopped from enforcing a liquidated damages clause. *Fortney & Weygandt, Inc. v. Lewiston DMEP IX, LLC*, 2019 ME 175, ¶ 14, 222 A.3d 613 (ME. 2019). In *Lewiston*, the contract contained a date by which each building was to be substantially complete, and a liquidated damage clause that entitled the owner to recover at a specific rate if the buildings were not complete by those dates. *Id.* at 616. None of the buildings were substantially complete by the proscribed date and, as delays rose throughout construction, the contractor sent various notices to the owner of those delays and updated the schedules with dates that indicated construction would not be completed by the substantial completion date. *Id.* Often, the owner did not respond to the notices or updated schedules. *Id.* The Court noted that "even after the contracted substantial completion dates had passed" the owner issued dozens of change orders for the projects, which expanded the scope of the contractor's work. *Id.* at 616. As a result of the owner's silence, the contractor believed that the owner would not assess liquidated damages and continued its work, even though the owner stopped making progress payments towards the end of the job. *Id.* at 617. In addition, based on this same belief, the contractor did not insist that the owner issue a change order extending the contractual completion date as the delay arose. *Id.* Finally, the Court referenced a statement from the owner that the outstanding request for time extensions would be addressed after the project was complete. *Id.*

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On appeal, the owner argued that equitable estoppel could not be applied absent evidence that the owner explicitly told the contractor that liquidated damages would not be assessed. *Id.* at 620. The Maine Supreme Court disagreed, stating that the owner's actions "amounted to misrepresentations about its intent to assess liquidated damages" and affirmed the determination that equitable estoppel barred the owner's liquidated damages claim. *Id.*

*Lewiston* is applicable to this case. The overwhelming evidence at trial was that Balfour sent notices of delay to Library, updated the schedule a number of times to reflect that construction would not be completed until after the contractual completion date, and that Library issued change after change to Balfour after the contractual completion date had passed. *See* Balfour Exs. 26, 72, 81, 143, and 231. In spite of this, Library *intentionally* concealed its intention to assess liquidated damages against Balfour once construction was delayed past the contractual completion date, and, in fact, performed schedule audits during construction that it withheld from Balfour as "attorney client privileged information prepared in anticipation of litigation" so that Balfour would continue to perform work on the project. *See generally* Balfour Ex. 305, at 292:5–12; Balfour Ex. 300, at 207:21–208:15. Importantly, Michael Bennett specifically said that he knew there were a number of outstanding change orders at the project and when the dust settled he would take care of everything. Trial Trans. at 651:1–652:3. As a result of Library's actions, or inactions, Balfour continued working at the project when it otherwise would have stopped if it knew liquidated damages would be assessed. *See generally* Balfour Ex. 305, at 297:4–22; Trial Trans. at 1977: 3–1979:17.

Under South Carolina law, "Equitable estoppel is a means of preventing a party from asserting a legal claim or defense that is contrary or inconsistent with his or her prior action or conduct." *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 601, 799 S.E.2d 912, 916 (2017).

> Elements of equitable estoppel as to the party estopped are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts;

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> (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. Elements of estoppel as to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position.

*Mac Papers, Inc. v. Genesis Press, Inc.,* 426 S.C. 393, 403–04, 826 S.E.2d 874, 880 (Ct. App. 2019). The evidence clearly shows that Balfour met its burden of proving equitable estoppel and the only conclusion is that the Court committed clear error in not ruling that Library was estopped from assessing liquidated damages against Balfour.

**e. Library failed to make a claim for liquidated damages.**

The Contract between Balfour and Library contains various claim and notice provisions. Then provisions are just as much binding on Library as they are Balfour.

Library's failure to comply with the contract's claims provision is fatal to Library's claim for liquidated damages. *RCR Bldg. Corp. v. Pinnacle Hosp. Partners*, No. M2012-00286-COA-R3CV, 2012 WL 5830587, (Tenn. Ct. App. 2012). In *RCR Bldg. Corp. v. Pinnacle Hosp. Partners*, the Tennessee Court of Appeals found that an owner was barred from recovering liquidated damages due to its failure to comply with the contract's Claims procedure, and, therefore, owner was not entitled to deduct $237,000 from the final contract payment owner owed to contractor. *Id.* at *13 (Tenn. Ct. App. Nov. 15, 2012). In deciding that liquidated damages was a claim, the Court of Appeals of Tennessee focused on the contractual definition of claim which turned on whether the owner sought a payment of money when seeking liquidated damages. *Id.* Claim was defined as a "demand ... by one of the parties seeking, as a matter of right, ... payment of money [or] adjustment of the Contract Sum . . . ." *Id.* The Court concluded that since the owner sought a payment of money when it sought to deduct liquidated damages, it fell within the contract's definition of claim. *Id.*

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Similar to *Pinnacle Hospital*, the language of the liquidated damages provision in this contract states that "liquidated damages" are the "sole and exclusive remedy" to the Owner for delayed completion. Balfour Ex. 56. These terms, "damages" and "remedy" are terms tied to a "claim," and the liquidated damages provision is explicitly referenced within the "Claims and Disputes" provision of the contract. *Id*. In addition, the Owner's Representative and the Architect, when advising Balfour of the Owner's liquidated damages in 2019, specifically denotes the liquidated damages as a "claim". Balfour Ex. 254.

In addition, according to this Court "Article 7 of the AIA Document A201-2007 provides that the Contract Sum and Contract Time can only be adjusted by Change Order, Construction Change Directive or minor changes by Architect. *See* October 6, 2023 Order, at 17. The assessment of liquidated damages obviously changes the Contract Sum. As such, Library's claim for liquidated damages is a claim subject to Article 7 and the notice provisions of the contract, with which Library failed to comply. The Court's criticism of Balfour, on the one hand, for not strictly complying with the Contract, while refusing to hold Library accountable to the very same standard is clearly erroneous. The Court's award of liquidated damages to Library must be reversed.

## V. THE COURT ERRED IN ITS FINDINGS AND CONCLUSIONS THAT LIBRARY WAS ENTITLED TO ANY SETOFF OR RECOVERY FOR DEFECTIVE OR NONCONFORMING WORK BY BALFOUR.

The Court's October 6, 2023, Order makes the following findings:

> Contractor was required to promptly, and at its own expense, correct defective work. Section 12.2.1 of the AIA-A201. I find the Contractor breached this provision.
>
> Section 2.4 of the AIA-A201 states, in pertinent part, that "If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents" and the Owner provides notice to the Contractor of such failure, Owner may proceed to perform the work itself. Owner put Contractor on notice of the defective work. Owner then performed the work through other contractors. Owner incurred costs performing work or self-performing work that Contractor was contractually required to perform, but Contractor either failed to perform the work or the work was defective and no it not in compliance with the Contract Documents. This work

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> included warranty work, laundry costs, labor, cleaning fees, repair work, painting work, punch list repair work, fixtures, and pool repairs. Defendant's Exhibit 146B contains proper and complete supporting documentation. The total amount of the Owner supplied work is $2,256,764.00.
>
> I find the Owner was required to perform work that the Contractor failed to perform. I find that the amount of $2,256,764.00 is reasonably supported and directly and proximately caused by the Contractor's failure to perform the contractually agree to work.

Of the $2,256,746.00 the Court awarded to Library, $1,788,724 relates to costs allegedly incurred by Library in connection with repainting the guestrooms at the hotel. The Court's finding that Library was entitled to recover these painting costs was clear error because Library never made a claim or issued a change order for the repainting costs and, moreover, Library failed to carry its burden of proving Balfour's work was defective.

**a. Library did not make a claim or issue a Change Order for the Repainting Costs.**

The Court awarded Library the repainting costs based on Section 2.4 of the AIA Document A201-2007. That section, entitled "OWNERS RIGHT TO CARRY OUT WORK", reads as follows:

> If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. ***In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies***, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure, as well as the Owner's Attorney's Fees and Owner's representative Fees made necessary by such default, neglect and failure as well as the Owner's Attorney's Fees and Owner's representative Fees made necessary by such default, neglect and failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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(emphasis added). According to this Court, "Article 7 of the AIA-A201 provides that the Contract Sum and Contract Time can only be adjusted by Change Order, Construction Change Directive or minor changes by Architect." *See* October 6, 2023 Order, at 17. Library *never* issued a change order to Balfour for the repainting or other repair costs as required by Section 2.4. Based upon the Court's own Order, the repainting costs, or any repair costs, cannot and shall not be awarded to Library without a change order.

The Court's criticism of Balfour for not strictly complying with the Contract while refusing to hold Library accountable to very same standard sets up a double standard that is clearly erroneous. Under the Court's interpretation of Section 4.3.2 of the AIA Document A201-2007, all claims for change orders must be submitted within thirty days after the events giving rise to such claim. *Id.* at 18. Library never made a claim for a back charge or change order related to the repainting or repair costs and, therefore, under the Court's own analysis, the award of these damages to Library is error.

**b. Library failed to carry its burden of proof on entitlement damages for defective or nonconforming work.**

In reaching its conclusion that Library was entitled to damages, the Court ignored the plain language of Section 12.2.1 of the AIA Document A201-2007, which states:

> The Contractor ***shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents***, whether discovered before or after Substantial Completion or Final Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

In order to be entitled to the repainting and repair costs, Library had to prove that the repaired work (1) was rejected by the Architect, or (2) failed to conform to the requirements of the Contract Documents. The clear and undisputed testimony at trial, is that (1) Balfour's work was approved, *multiple times*, by the Architect, and (2) the work complied with the Contract Documents.

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The Contract Documents required the guestrooms to be painted to a Level 4 finish.[5] The Contract Documents also required the guestrooms to have an eggshell paint finish.[6] Therefore, in order to prove entitlement to its repainting costs, Library was required to prove that guestroom drywall and painting performed by Balfour was not equal to a Level 4 finish, was not an eggshell paint finish, not in compliance with the Contract Documents, and was rejected by the Architect.

Library totally failed to satisfy this burden of proof. In fact, the evidence at trial was clear that the drywall finish installed by Balfour was a Level 4 finish. *See* Balfour Ex. 154 (email from project architect Jennifer Faulkinberry to Balfour employee Nick Starcevic discussing the sheetrock as a L4 finish). The evidence at trial is also undisputed that the paint finish installed by Balfour was an eggshell finish. *See* Trial Trans. at 3255:8 (wherein Library's Owner Representative for the project testified that "…[T]hese rooms had an eggshell finish…").

Finally, the overwhelming evidence admitted at trial was that the Architect not only did not reject, but actually approved Balfour's work in the guestrooms. Balfour Ex. 312 (letter from Library's Owner Representative to hotel operator stating "…the guest rooms are complete and available for turnover to Library Associates and Salamander now… The following link will take you to the punch list signed off by the [Architect of Record]."); Balfour Ex. 303, Dep. of J. Faulkinberry, at 95:2–5 (testimony from the project architect that she was prepared to issue a certificate of substantial completion for the guestrooms).

The Contract only required Balfour to remedy, or be liable for the costs to remedy, defective work that was "rejected by the Architect." *See* AIA Document A201-2007 § 12.2.1. The architect did not reject the painting. The *only* reason Library repainted the guestrooms was that Michael Bennett did not like the finish that his architect specified. *See* Balfour Ex. 304, Dep. of

[5] *See* Trial Trans. at 161:13–164:20, 1849:21–1851:10, 2761:20–24.
[6] *See id.* at 1928:15–23.

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W. Faust, at 66:16–67:1 (testimony from the Hotel Bennett interior designer that the decision to repaint the guestrooms was strictly a decision on the owner's part because they did not like the specified paint finish).

Michael Bennett's preference for a different type of paint finish from that specified in the Contract does not serve as a basis for Library to recover its repainting costs under the Contract. The Court committed error in awarding those costs to Library. In fact, the only evidence offered by Library to prove entitlement to its repainting claim were two photographs of the same location that show screw holes in a wall where a mirror, which was missing at the time of the photograph, had been removed. *See* Trial Trans. at 3458:14–24. No testimony was introduced to establish that the work in the photos was defective or was caused by Balfour.

The issue of whether the paint applied in the rooms was at a Level 4 finish, or if it had an eggshell finish are issues amenable only to specialized expertise. The Court or a juror has no basis for evaluating the issue or the evidence otherwise. Thus, to carry its burden of proof, Library was required to admit properly qualified expert testimony on the subject. It did not. Therefore, Library failed to carry its burden and the Court erred in finding in Library's favor on the issues. Without expert testimony no competent evidence was introduced to establish that the work performed by Balfour was defective. Determining whether the walls were not finished in accordance with the specifications is not a matter of common knowledge and, therefore, Library was required to introduce expert testimony to prove that Balfour's work was defective. *Babb v. Lee Cnty. Landfill SC, LLC*, 405 S.C. 129, 153, 747 S.E.2d 468, 481 (2013) ("The general rule in South Carolina is that where a subject is beyond the common knowledge of the jury, expert testimony is required.") Since Library introduced no such testimony it loses on this issue.

Library's other claims for defective or nonconforming work similarly fail. The uncontroverted evidence shows that: (1) Library's claim for water damage caused by an

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overflowing tub in the amount of $13,327.00 was caused by Library's painter, not Balfour, *see* Trial Trans. at 4281:9–4283:5; (2) Library's claim for outsourcing laundry services in the amount of $140,193.00 was caused by restricted gas flow to the dryer because of a deficient design, *see id.* at 4283:6–4287:15; (3) Library's claim for removal of a mock-up sample wall in the amount of $7,216.00 was really for costs associated with transporting it to Michael Bennett's farm, not a demolition cost chargeable to Balfour, *see id.* at 4287:16–4290:18; and (4) Library's claim for replacement of bathroom chandelier crystals in the amount of $54,062 was not attributable to Balfour, *see id.* at 4290:19–4292:12.

Under South Carolina law, Library bears the burden of establishing Balfour's breach of this provision of the Contract by the preponderance of the evidence. *Fuller v. E. Fire & Cas. Ins. Co.,* 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). Library failed to prove that Balfour breached its contract and was entitled to repainting costs, or any other claimed damages for what it maintains was incomplete or defective work, and the Court must reverse its decision to award such damages to Library.

## VI. THE COURT'S FINDING THAT BALFOUR BREACHED THE CONTRACT AND THAT LIBRARY DID NOT BREACH THE CONTRACT IS CLEAR ERROR.

In its October 6, 2023 Order, the Court finds and concludes that Balfour breached fourteen (14) separate provisions of the Contract with Library, but that Library's performance was flawless and it committed no breaches. These findings and conclusions are error and they are unsupported by the evidence. Moreover, in reaching these findings and conclusions, the Court filed even to address critical legal and factual issues. Each of the purported breaches relied on by the Court to justify its finding of a breach of contract by Balfour are immaterial, or were otherwise waived or excused. For example, the Court's finding that Balfour breached the contract by failing to bond off subcontractor liens is wholly immaterial as (1) the contract contemplates this scenario and

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permits Library to bond off said liens and deduct the cost of doing so from Balfour, and (2) Library suffered no damage as a result of the liens not being bonded off.

Another example of the Court's error is the finding that Balfour failed to summarize its cost records and maintain complete "back up documentation." This provision of the contract requires Balfour to submit this information with each application for payment. *See* Balfour Ex. 56, AIA Document A133-2009, at § 7.1.4 (hereinafter "AIA Document A133-2009"). There is no evidence that Balfour did not submit the required cost records with each application for payment. Cost records are attached to each of the pay applications that were introduced into evidence. *See generally* Library Exs. 106 through 143. Regardless, Library failed to show that it was damaged in any way by this alleged failure, and, to the extent Balfour did not comply with this provision, Library excused or otherwise waived non-compliance by paying 42 consecutive pay applications which included the cost information provided by Balfour. *See id.*

Another example of the Court's error is the finding that Balfour failed to summarize its cost records and maintain complete "back up documentation." This provision of the contract requires Balfour to submit this information with each application for payment. *See* A133; § 7.1.4. There is no evidence that Balfour did not submit the required cost records with each application for payment. Indeed Cost records are attached to each of the pay applications that were introduced into evidence such pay applications were processed and paid by Library with complaint or objection. *See generally* Library Exs. 106 through 143. Certainly, Library failed to show that it was damaged in any way by this alleged failure and, to the extent Balfour did not comply with this provision, Library excused or otherwise waived non-compliance by paying 42 consecutive pay applications based on the included cost information provided by Balfour. *See id.*

Finally, the Court erred in finding that Balfour did not provide the required or competent management staff, superintendent, or assistants. The only manpower analysis offered at trial was

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performed by Balfour's expert, Steve Huyghe. Huyghe testified, utilizing a demonstrative chart, that Balfour more than doubled its manpower and supervisory staff on the project. *See* Balfour Ex. 228. Huyghe concluded that this was a result of the countless interior design changes, the lack of timely responses to RFIs, and noted that if anyone was lacking manpower on the job, it was Library and the Architect. *See* Trial Trans., at 1062:4–1064:14.

The Court's Order commits further error by finding that Library did not breach the contract. Library contractually agreed to provide Balfour plans that were "100%+" but provided plans that were utterly defective. The Court erroneously found that Balfour was required to submit evidence of the Architect's malpractice to prevail on its claim against Library for this breach and under the breach of the implied warranty of fitness of plans and specifications. This is clear error. In actuality, Balfour carried its burden of proving that the plans it was provided were defective by introducing evidence that the plans were incomplete and defective at the time they were provided to Balfour by showing there were 1224 RFIs on the job, 22 OCOs, 79 RCOs, 46 CCDs (Construction Change Directives), 81 SIs (Supplemental Instructions from the architect), 8 MODs (major design change compilations) and 8 revisions to the model room plan. (Balfour Exhibit 204). **2023 drawings were impacted by the design changes and issues on this project.** *(Id.*). The overwhelming evidence, and only logical conclusion, is that the plans provided to Balfour, plans that were intended to "include all items necessary for the proper execution and completion of the [Hotel Bennett]," were actually defective. Importantly, Library did not dispute this point at trial and instead attempted to shift blame for the defective drawings to Balfour because of a pre-construction pricing exercise. The contract clearly provides:

> Any design errors or omissions noted by the Contractor during [the pre-construction] review shall be reported promptly to the Architect, <u>but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.</u>

Article 3.2.2, A201. The Court's failure to find that Library did not breach the contract is clear error.

The Court committed further error by failing to address or otherwise acknowledge that Library failed to provide its representative with the contractually required authority and failed to pay undisputed amounts to Balfour. The Court committed clear error in finding for Library on Balfour's causes of action.

## VII. THE COURT ERRED IN ITS FINDINGS AND CONCLUSIONS THAT BALFOUR BREACHED ITS DUTIES WITH RESPECT TO ACCOUNTING FOR COSTS UNDER THE CONTRACT, OR LIBRARY'S AUDITING OF SUCH COSTS.

In various and scattered sections in its October 6, 2023, Order, the Court finds and concludes that Balfour breached its contractual duties with respect to accounting for costs under the Contract. The Court also reportedly concluded that Balfour breached a contractual obligation to submit to on audit. *See* October 6, 2023 Order, at 14–16, 41–42. These findings and conclusions are error.

Specifically, the Court's October 6, 2023, Order finds that Balfour breached its contract with respect to Sections 6.11.1, 7.1.11, and 7.2.2 of the Contract, AIA Document A133-2009. Specifically, the Contract requires Balfour to keep cost records for the work performed, and to provide a report of those costs to Library as requested or at the time for final payment. *See* AIA Document A133-2009 §§ 6.11.1 & 7.2.2.

The evidence at trial establishes that Balfour complied with Section 6.11.1 of the Contract and, in fact, submitted an accounting of costs with each and every payment and application. Moreover, on April 1, 2020, Balfour made the accounting documents requested in Library's auditor's April 22, 2019 letter available. In accordance with the request from Library's auditor, Balfour provided to Library the full and detailed records of accounts and costs as the records were maintained in Balfour's cost accounting system in the normal course of business in electronic



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format. At trial, Casey Thompson testified that in response to Library's auditor's initial request for documents and an accounting of the cost of the work, "[Balfour] provided everything that we had, that we had the ability to provide to Cotton and Company." *See* Trial Trans. at 4335:21–4336:2. He further testified that "[u]ltimately, we wanted to give Cotton and Company everything that we had in our possession, and that's where we left it." *Id.* at 4348:16–21. And "ultimately," that is *exactly* what Balfour did, as "there was nothing that she had requested that was not provided." *Id.* at 4336:9–11. There can be no dispute that Balfour made its cost accounting records available to Library and complied with its contractual obligations under Section 6.11.1.

Further, the Court's Order fails to describe in any way a justification for the conclusion that Balfour failed to comply with the audit provisions of the Contract for over two years. With respect to any audit rights under the Contract, Sections 7.1.11 and 7.2.2 describe the audit process. Section 7.11.1 requires that Balfour make its cost records available to Library upon reasonable advance notice so that Library may review and audit Balfour's records. The Contract imposes a maximum of two audits: one at 50% completion of the project, and the other within 60 days of final completion. *See* Document A133-2009 § 7.1.11.3.[7]

The audit of the final cost of the work was the responsibility of Library. Balfour only needed to make available the accounting report of the costs—which it did. At trial, Mr. Thompson testified that it submitted a final accounting in the form of a complete job cost ledger:

> We provide what's called a detailed job cost ledger along with the support as to substantiate the costs incurred that's listed in the detailed job cost ledger. So what the detailed job cost ledger is, it's an accounting of, out of all of our expenses, that we feel are costs of the work or general conditions.

Trial Trans. at 4343:15–21. When asked by the Court whether Balfour submitted its full accounting records to Hadley, Mr. Thompson testified that Balfour provided the full accounting records,

[7] Library never requested an audit at 50% completion.

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including the cost codes for interpreting the job cost ledger. *See id.* at 4346:18–25. In other words, Balfour provided Library *exactly* what the Contract defines as a final accounting—a complete and full accounting of costs incurred in performance of the Work organized according Balfour's schedule of values and cost codes. *See* AIA Document A133-2009 § 7.2. Hadley even acknowledged at trial that she received Balfour's job cost report, *see* Trial Trans. at 4199:14–21, and her attempt to alter the contractual definition of "final accounting" is immaterial and improper testimony outside the purview of an expert witness. Once Balfour submitted its job cost ledger, it was then the responsibility of Library and its auditors to review and report in writing on the final cost accounting. *See* AIA Document A133-2009 § 7.2.2.

Finally, the conclusion in the October 6, 2023, Order that Balfour breached the Contract by failing to perform the accounting and audit provisions of the Contract ignores the Court's prior finding that Balfour did, in fact, comply with its obligations under Sections 6.11.1 and 7.1.11.[8] The fact remains that Balfour unequivocally complied with Sections 6.11.1, 7.1.11, and 7.2.1.2 of the Contract with Library. Therefore, the Court's findings and conclusions that Balfour breached these contractual provisions are error, and the Order and Judgment should be altered or amended accordingly.

## VIII. THE COURT ERRED IN ITS FINDINGS AND CONCLUSIONS THAT BALFOUR IS LIABLE FOR A BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT, AND THAT ANY CONSIDERATION OF PUNITIVE DAMAGES IS PROPER

In considering Library's alleged cause of action for breach of contract accompanied by a fraudulent act, the Court generally recognized the essential elements necessary for Library to establish such a claim. In order to prevail on a claim for breach of contract accompanied by a fraudulent act, Library was required to establish three elements: (1) a breach of contract; (2)

[8] *See* Order Granting Pl.'s Motion to Vacate the August 7, 2020 Order and Rule to Show Cause (Sep. 10, 2020).

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fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. *Conner v. City of Forest Acres*, 348 S.C. 454, 465–66, 560 S.E.2d 606, 612 (2002). However, although correctly acknowledging the elements which Library was required to establish, the Court found in Library's favor despite never finding a fraudulent act accompanying the purported breach of contract. Thus, the Order on this cause of action was error.

Mere breach of a contract, even if willful or with fraudulent purpose, normally is not sufficient to establish an actionable breach of contract accompanies by a fraudulent act. *Floyd v. Country Squire Homes, Inc.,* 287 S.C. 51, 53, 336 S.E. 2d 502, 503 (Ct. App. 1985). It is the accompanying fraudulent act that is necessary to complete a cause of action. *Id.*

What constitutes a "fraudulent act" is no mystery in the law. A "fraudulent act" is a false representation made to induce another party to reasonably rely upon it and to change its position based on such reasonable reliance to its detriment and damage. *See Rutledge v. St. Paul Fire & Marine Ins. Co.*, 286 S.C. 360, 365, 334 S.E.2d 131, 135 (Ct. App. 1985); *Kelly v. Nationwide Mut. Ins. Co.*, 278 S.C. 488, 489, 298 S.E.2d 454, 455 (1982); *Vann v. Nationwide Ins. Co.*, 257 S.C. 217, 185 S.E.2d 363 (1971).

In other words, in addition to proving that Balfour had committed an actual, actionable breach of the contract with Library, Library was required to prove that Balfour had a fraudulent intent in both the making of the contract and in the breach and that the breach was accompanied by a fraudulent act by Balfour. *Save Charleston Foundation v. Murray,* 286 S.C. 170, 181, 333 S.E. 2d 60, 67 (Ct. App. 1985). The fraudulent act in issue must be connected with the breach in question both in time and character. *Floyd at* 54, 336 S.E. 2d at 504. In its Order, the Court identified no such fraudulent act.

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While courts have acknowledged that the proof of fraud need not follow the rigid nine element test of a common law fraud cause of action, the proof must still establish the *sine qua non* of fraud, which is that the party being charged with fraud makes a misrepresentation which it intends the claimant to rely upon and that the claimant does reasonably rely upon it to change its position to its detriment and damage. *Vann, Rutledge, and Kelly, supra.* The mere violation of a contract will not support an allegation of fraud. *Calder v. Com. Cas. Ins. Co.*, 182 S.C. 240, 188 S.E. 864, 866 (1936). Furthermore, where the evidence does not reflect a change of position by the claimant because of any alleged fraudulent act, there was no actionable fraudulent act.

Finally, the standard of proof necessary to establish a fraudulent act is "clear and convincing" evidence and not merely a preponderance of the evidence. *Osborn v. Univ. Med. Assocs. of Med. Univ. of S.C.*, 278 F. Supp. 2d 720, 740 (D.S.C. 2003) (citing *Vann v. Nationwide Ins. Co.*, 257 S.C. 217, 185 S.E.2d 363, 364 (1971)). In this case, the Court's Order, however, contains no finding that Balfour's breach of contract was accompanied by a fraudulent act. Therefore, Library has failed to prove the requisite elements of its claim for breach of contract accompanied by a fraudulent act, and the Order and Judgment should be amended accordingly.

**a. The Court's Order does not find a fraudulent act accompanying the breach.**

In its October 6, 2023 Order, the Court found, the applicable breach of contract by Balfour was its "failure to perform its own accounting and repeated obfuscation of the audit process." *See* October 6, 2023 Order, at 43. However, the Court found and identified no fraudulent act accompanying such a breach. *See id.* at 43–44.

**b. Balfour's filing its mechanic's lien does not constitute a fraudulent act.**

To the extent the Court's Order may be construed as concluding that Balfour's filing "duplicative and excessive liens" constitutes a fraudulent act accompanying the breach, this finding and conclusion is erroneous. Balfour filing its mechanics lien was not, an act that was

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dishonest or amounted to unfair dealing. There is no evidence to support a finding that Balfour filed its mechanic's lien with an intent to deceive Library, and certainly there is no evidence that Balfour's lien claim induced or caused Library to change its position to its detriment in any way.

i. South Carolina law authorizes Balfour and its subcontractors to file contemporaneous liens for the same claim.

South Carolina law allows for the filing of a mechanic's lien by both a general contractor like Balfour, *see* S.C. Code Ann. § 29-5-10, and its subcontractors, *see id.* § 29-5-20. By authorizing both the general contractor and its subcontractors to file mechanic's liens, South Carolina law implicitly recognizes that there may be several contemporaneous liens for the same claim as where the general contractor has filed a lien for work performed by its subcontractors, and its subcontractors have also filed liens for work included in the general contractors lien. The mechanic's lien statutes expressly gives both Balfour and its subcontractors these lien rights. Their exercise of these statutory rights cannot be the basics for a fraud claim.

South Carolina law contemplates the situation where, as here, Balfour filed a lien for work performed by its subcontractors, and its subcontractors filed contemporaneous liens for work included in Balfour's lien. These facts are not sufficient evidence upon which to find a fraudulent act.

ii. There is no evidence that Balfour filed its mechanic's lien with an intent to deceive.

In its Order, the Court speculated that the "only purpose" of filing duplicative and excessive liens "would be to attempt to force an [o]wner into submission." *See* October 6, 2023 Order, at 43. The record, however, is completely devoid of evidence to support this finding. The Court's speculations about intent is certainly not enough to meet the burden of clear and convincing evidence. In fact, the record shows Library was not forced into submission, did not pay the lien

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claims, and did not change its position detrimentally. The elements of a fraudulent act are non-existent.

In *D.R. Horton, Inc. v. Wescott Land Co., LLC*, our Court of Appeals addressed an argument nearly identical to that asserted by Library in holding that the filing of multiple lis pendens, did not constitute a fraudulent act. 398 S.C. 528, 730 S.E.2d 340 (Ct. App. 2012), *aff'd in part as modified, vacated in part on other grounds,* 410 S.C. 319, 764 S.E.2d 701 (2014). In that case, Wescott, a developer, entered into a contract to sell Horton certain property. *Id.* at 534, 730 S.E.2d at 343. Under the agreement, Wescott was required to meet certain conditions precedent pertaining to development of the lots and to provide documentation and certification of these conditions precedent prior to closing on the lots. *Id.* at 534–35, 730 S.E.2d at 343. A dispute arose as to whether certain conditions precedent required by the contract had been satisfied. *Id.* at 536, 730 S.E.2d at 344. While the parties continued to negotiate the terms and schedule of the transaction, Horton filed a lis pendens on the property naming Wescott as the defendant, but never perfected it by filing an action. *Id.* at 538, 730 S.E.2d at 345. After repeated breakdowns in negotiations, however, Horton filed a second lis pendens on the property and a breach of contract action against Wescott. *Id.* at 539, 730 S.E.2d at 344–46. Wescott filed an answer and multiple counterclaims, including a counterclaim for breach of contract accompanied by a fraudulent act. *Id.* at 540, 730 S.E.2d at 346. The trial court granted summary judgment to Horton on Wescott's counterclaim for breach of contract accompanied by a fraudulent act, and Wescott appealed. *Id.*

On appeal, Wescott made arguments similar to those asserted by Library in this case—that the filing of successive lis pendens for the purpose of forcing Wescott to bend to Horton's will and to prevent third parties from acquiring the property was, in itself, a fraudulent act accompanying Horton's breach. *See id.* at 555, 730 S.E.2d at 354. The Court of Appeals, however, found that Wescott failed to present any evidence that Horton committed a fraudulent act accompanying its

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alleged breach of contract. *Id.* at 556, 764 S.E.2d at 701. "Even if we were to assume these [facts] qualify as evidence of Horton's fraudulent intent in breaching the contract, they are not evidence of an independent fraudulent act which accompanied the breach." *Id.* Further, the Court found there was no evidence that Horton had any fraudulent intent in filing the lis pendens or that the act of filing the lis pendens was dishonest or amounted to unfair dealing. *Id.*

Here, Balfour's filing its mechanics lien was not an act that was dishonest or amounted to unfair dealing, just as the filing of the successive lis pendens in *D.R. Horton* was not. Despite Library's contention that Balfour filed its mechanic's liens with the purpose of forcing it into submission, there is no evidence that Balfour made a deliberate decision to file an excessive or inflated lien with this purpose. There is no such evidence to support a finding that Balfour's filing its mechanic's lien constitutes a fraudulent act, and Library's claim must fail.

Although Balfour did not succeed on its lien claim at trial, an unsuccessful lien claim does not mandate a conclusion that the lien was deliberately or fraudulently exaggerated. Rather, "[i]n most cases, 'the intent to defraud is shown by executed documents that on their face overstate the amount ***due in combination with some other evidence of record from which intent could be inferred.***'" *Cordeck Sales, Inc. v. Constr. Sys., Inc.*, 887 N.E.2d 474, 513 (Ill. App. 2008) (*quoting Peter J. Hartmann Co. v. Capitol Bank & Trust* Co., 353 Ill.App.3d 700, 708 (2004)) (emphasis in original). In other words, Library must point to some other evidence of Balfour's intent to deceive aside from the lien claim itself. *See id.* at 511.

For example, in *Gator Boring & Trenching, Inc. v. Westra Construction Corp.*, a Florida appellate court reversed the trial court's finding that a subcontractor's mechanic's lien was fraudulent as a matter of law where the record showed that the amount of the claim was hotly contested and complex, but was a genuine dispute. 210 So. 3d 175 (Fla. Dist. Ct. App. 2016). In that case, a subcontractor recorded a lien for $889,792.70, $676,556.90 of which was for costs

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associated with an alleged changed conditions claim. *See id.* at 183–84. The defendants filed a motion for partial summary judgment, arguing that the subcontractor was not contractually allowed to recover for alleged changed conditions and that the lien was therefore exaggerated and fraudulent. *Id.* The trial court granted the motion for summary judgment, but the appellate court reversed. *Id.* According to the appellate court, "[t]he reasoning that [the subcontractor]'s lien was fraudulent as a matter of law simply because it lost on its changed conditions claim is erroneous." *Id.* The appellate court noted that the changed conditions claim was a hotly contested and complex issue that required discovery, research, argument, and the involvement of counsel from the beginning:

> The record and the parties' briefs reflect that [subcontractor]'s claim that it was entitled to recover additional monies ... as a result of the changed site conditions was a hotly contested and complex issue involving the legal construction of [the] subcontract and other documents as well as an analysis of the law concerning the assumption of the risk for differing site conditions .... [T]he parties engaged in substantial discovery and legal analysis before [defendants] filed their motion for partial summary judgment concerning [subcontractor]'s entitlement to payment on its changed site conditions claim .... The parties' pleadings reflect that they had a genuine dispute about [subcontractor]'s entitlement to payment on its changed conditions claim, for which [it] was represented by counsel. In addition, the record on appeal reflects that [subcontractor]'s claim of lien was, in fact, prepared by [its] counsel.

*Id.* at 183–84.

Similarly, in *Weaver v. Acampora* the court held that the property owners failed to show that a contractor intentionally or deliberately exaggerated its lien, but rather that the discrepancy in the lien amount was "merely an honest disagreement as to value." 642 N.Y.S.2d 339 (N.Y. App. Div. 1996). In *Weaver*, the contractor recorded and pursued a mechanic's lien claim, which included change orders. The trial court determined that the contractor was entitled to recover only a portion of its lien claim. On appeal, the owners argued that the trial court erred in refusing to find that the contractor had willfully exaggerated its lien "by significantly overcharging for some additional work ...." The appellate court in New York disagreed:

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> While the Supreme Court found that the actual cost of implementing defendants' change orders was somewhat less than that claimed by plaintiff, the value of the changes was the subject of conflicting testimony, and we cannot say that it was unreasonable for the court to conclude that defendants failed to show that the discrepancy was the result of an intentional or deliberate overstatement, rather than merely an honest disagreement as to value.

*Id.* at 351.

Here, as in *Gator Boring* and *Weaver*, the value of Balfour's lien claim was a fiercely contested and complex issue which required the involvement of counsel from its inception. The evidence and extensive conflicting testimony presented at trial reflects a genuine dispute existed as to the value of Balfour's lien claim. But there is no evidence, let alone clear and convincing evidence, which shows that this dispute was the result of an intentional or deliberate exaggeration by Balfour, rather than merely an honest disagreement as to value.

## IX. THE COURT ERRED IN BIFURCATING PUNITIVE DAMAGES AFTER TRIAL HAD ENDED.

In its October 6, 2023, Order, the Court concluded that "[a] hearing on punitive damages will be set by future Order of this Court." The Order provides no other guidance regarding the purpose or scope of this future hearing or what about "punitive damages" will be addressed. The only other provision of the Order relevant to these issues is the Court's statement on page 44 of the Order that:

> This Court, therefore, orders a bifurcated hearing on punitive damages pursuant to S.C. Sections 15-32-510 *et seq.* for contractor's breach of contract accompanied by a fraudulent act.

Of course, this statement and the Court's Order were issued nearly 22 months after the completion of trial and the close of the record in the case. To the time of the Order, the Record on the case reflects there was no Motion filed seeking a bifurcation of the case on the issue of punitive damages and, naturally, there was no order throughout the case imposing a bifurcation. For the first time, nearly 22 months after the trial was ended and the evidence closed, the Court concluded it may

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bifurcate the issue of punitive damages and presumably reopen the record on that issue. Such a position by the Court is error.

First, the issue of whether a breach of contract accompanied by a fraudulent act by Balfour is the subject of Balfour's Rule 59 Motion. Without a valid and final finding against Balfour on that cause of action, no basis for any award of punitive damages exists (or can exist) in this case.

Second, the Court's determination and Order that bifurcation of any punitive damage issue is proper under S.C. Code Ann. § 15-32-510 is error. That statutory section and authority expressly applies only in jury trials and only upon request by the Defendant against whom punitive damages are sought. Neither of these circumstances or conditions exist in this case.

Third, "[s]ound judicial practice requires that, so far as practicable, the trial court's decision to bifurcate proceedings occur prior to trial." *Helminski v. Ayerst Laboratories*, 766 F.2d 208, 213 n.3. (6th Cir. 1985). However, "even in those cases in which a court bifurcated the proceeding after trial had begun, ***such bifurcation was ordered before the trial had ended***. *State v. Comcast Cable Commc'ns Mgmt., LLC,* 16 Wash. App. 2d 664, 681, 482 P. 3d 925, 935 (2021) (emphasis added).[9] Ordering bifurcation nearly 22 months after the trial ended cannot be described as satisfying the Rule 42(b), SCRCP standard, or as convenient or conducive to expedition and judicial economy. Library could have presented evidence relevant to punitive damages during trial but chose not to, whether for tactical or other reasons. It would be inappropriate, unfair, and highly prejudicial to Balfour to give Library a second bite at the apple by allowing it to reopen the case,

[9] *See Bridgeport Music, Inc. v. Justin Combs Pub.*, 507 F.3d 470 (6th Cir. 2007) (finding that the district court did not abuse its discretion in bifurcating trial into liability and punitive damages phases during the defendants' case-in-chief); *Smith v. Celotex Corp.*, Nos. 86–3663(L), 86–3664, 1988 WL 124993, at *2 (4th Cir. Nov. 23, 1988) (upholding trial judge's decision to bifurcate trial five days after opening statements had been made where plaintiffs failed to show any resulting prejudice); *Helminski* at 212–13 (finding that the district court did not abuse its discretion in bifurcating the issues of liability and damages towards the close of the plaintiffs' proofs).

the evidence, or the arguments and present additional evidence regarding punitive damages nearly 22 months after the conclusion of trial.

It was error for the Court to Order bifurcation of punitive damages after the conclusion of trial, and the Court should alter or amend its Order accordingly.

## CONCLUSION

For the foregoing reasons, Balfour respectfully requests that the Court should grant Balfour's Motion to Alter/Amend the Order Granting Judgement to Library Associates.

Respectfully Submitted,

PARKER POE ADAMS & BERNSTEIN LLP

By: s/James Lynn Werner
James Lynn Werner, (SC Bar No. 6029)
1221 Main Street, Suite 1100
Columbia, SC 29201
(803) 255-8000
jimwerner@parkerpoe.com

Thomas C. Hildebrand, Jr. (S.C. Bar No. 2501)
Robert C. Byrd (S.C. Bar No. 1069)
W. Greyson Land (S.C. Bar No. 104179)
P. Nicholas Nybo (S.C. Bar No. 105825)
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)
tomhildebrand@parkerpoe.com
bobbybyrd@parkerpoe.com
greysonland@parkerpoe.com
nicknybo@parkerpoe.com

Attorneys for Plaintiff Balfour Beatty Construction, LLC

March 7, 2024
Columbia, South Carolina



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| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | NINTH JUDICIAL CIRCUIT |
| COUNTY OF CHARLESTON | ) | CASE NO.: 2019-CP-10-01108 |
| Balfour Beatty Construction, LLC<br><br>Plaintiff,<br><br>v.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation.<br><br>Defendants. | ) | **LIBRARY ASSOCIATES, LLC'S MEMORANDUM IN SUPPORT OF ITS PETITION FOR ATTORNEY'S FEES AND COSTS AND PURSUANT TOTHE DECLARATORY JUDGEMENT ACT, ADDITIONAL INTEREST PAYMENTS, PAST AND FUTURE, AS DIRECT COSTS INCURRED AND FOR PREJUDGMENT INTERENST AS PROVIDED BY LAW; AND IN SUPPORT OF PENDING RULE 52(B) AND 59(E) MOTIONS TO ALTER OR AMEND AND MAKE ADDITONAL FINDINGS** |
| Library Associates, LLC,<br><br>Third-Party Plaintiff,<br><br>v.<br><br>Lithko Contracting, LLC, Watson Electrical Construction, Co., LLC, Old North State Masonry, LLC,<br><br>Third-Party Defendants. | ) | |

Defendant/Third-Party Plaintiff Library Associates, LLC, by and through its undersigned

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attorneys, respectively submits its Memorandum in Support of its Petition for Attorney's Fees and Costs. In support thereof, Library Associates, LLC would rely on its arguments set forth in its Rule 52(b) and 59(e), SCRCP, Motion to Make Alter or Amend and Make Additional Findings, filed October 16, 2023, and would additionally show as follows:

## PROCEDURAL HISTORY

This case arises out of the construction of a luxury hotel in Charleston, South Carolina. The contract entered into by Balfour Beatty Construction, LLC ("Contractor") and Library Associates, LLC ("Owner"), was a cost-plus contract with a guaranteed maximum. Throughout the course of the project, over $26,341,655.00 of mechanics liens were filed on Owner's property and various claims were thereafter asserted against Owner. The mechanics liens and compulsory claims were extensively litigated for years, and, on October 16, 2023, the Court issued a comprehensive and thorough Order in favor of Owner. As to the mechanics liens, such were dismissed and, pursuant to S.C. Code Ann. Section 29-5-10, the Court declared Owner entitled to attorney's fees and costs. Contractor's claims (breach of contract; quantum meruit/quasi contract; S.C. Code Ann. Section 27-1-15 claim; waiver; indemnity; breach of warranty of plans and specifications; first to breach; and breach of contract accompanied by a fraudulent act), all were dismissed against Owner as the Court found each cause of action meritless.

As a direct result of Contractor's claims against Owner, it was forced to pursue counterclaims against Contractor and Third-Party Defendants Lithko Contracting, LLC, Watson Electrical Construction, Co. LLC, and Old North State Masonry, LLC, ("Subcontractors") and was successful in this regard. As to Owner's breach of contract claim, the Court ordered that Contractor breached various provisions of the contract by and between Owner and Contractor in the following ways:

a. Contractor "accepted the relationship of trust and confidence" and "covenant[ed] with the Owner to cooperate with the Architect and exercise [Contractor's] skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish and supply at all times an adequate

supply of workers and materials; and to perform the work in an expeditious and economical manner consistent with the Owner's interests. Section 1.2 of the AIAA133.

b. Contractor was to be "solely responsible for the acts and omissions of its subcontractors." Section 2.1.6 of the AIA-A133. Contractor was to make the Owner an intended third party beneficiary of "all agreements" between Contractor and subcontractors. Id. I find that Contractor breached this provision.

c. Contractor is solely responsible for scheduling, phasing and coordination of the work. Section 2.3.1.4 of the AIA-A133; Section 3.10 of the AIA-A201. I find that Contractor breached this provision.

d. Contractor "shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes." I find Contractor breached this provision.

e. Contractor was required to account for back charges to be assessed between its subcontractors for the benefit of the Owner. Section 6.7.3 of the AIA-A133. I find Contractor breached this provision.

f. Contractor was required to keep "full and detailed accounting records" and to "substantiate all costs incurred." Section 6.11.1 of the AIA-A133. I find the Contractor breached this provision.

g. Contractor was required to submit to an audit of its books and records. Sections 6.11.1 and 7.1.11 of the AIA-A133. I find the Contractor breached this provision. Contractor as required to summarize its cost records and maintain complete "back up documentation." Section 7.1.4 of the AIA-A133. I find the Contractor breached this provision.

h. Contractor was required to submit a final accounting for the Project. Section 7.2 of the AIA-A133. I find the Contractor breached this provision.

i. Contractor was required to provide all "management staff with whatever additional supervisory personnel are required to ensure that the Work will be completed by the Contractual date of Substantial Completion. Section 3.3.4 of the AIA-A201.

j. Contractor was required to employ a competent superintendent and necessary assistants. Section 3.9.1 of the AIA-A201.

k. Contractor was required to be solely responsible for all of the scheduling requirements. Section 3.10.1 of the AIA-A201. I find Contractors breached these provisions.

l. Contractor was required to bond-off subcontractor liens. Section 9.3.1.2 of the AIAA201. I find Contractor breached this provision.



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m. Contractor was required to promptly, and at its own expense, correct defective work. Section 12.2.1 of the AIA-A201. I find the Contractor breached this provision.

Based on the above breaches, the Court awarded Owner $2,256,764.00 in damages. As to Owner's breach of contract accompanied by fraudulent act claim, the Court likewise found in favor of Owner and deferred ordering punitive damages until a future date. In addition to the attorney's fees and punitive damages, the Court awarded Contractor and Subcontracts to pay all expert fees incurred by Owner as a result of the present litigation, pursuant to S.C. Code Ann. Section 15-53-100.[1]

At the conclusion of the Court's Order, Owner was required to submit a Petition for Attorney's Fees and Costs, which was timely filed on November 21, 2023. Included in its Petition was a request for an additional judgment of $50,191,574.70 pursuant to S.C. Code Ann. Section 15-53-100. Incorporated in its Petition, were the following affidavits evidencing costs and fees associated with the present litigation:

a. Affidavit of Attorney's Fees and Costs in the amount of $2,026,278.55;

b. Affidavit of Sam Hadley for expert accounting services in furtherance of the litigation in the amount of $655,197.70;

c. Affidavit of Kimberly Bennett Brown attesting to costs of additional interest payments; and

d. Other costs set forth in the Affidavit of Kimberly Bennett Brown related to additional legal expenses, expert fees, and loan modifications.

In addition to the above affidavits, Owner hereby incorporates and submits the affidavit of its expert, Mavin D. Infinger, Esquire, to offer opinion as to the reasonableness and scope of Owner's attorney's fees and costs related to the present litigation as well as offer expert testimony related to the additional costs incurred by Owner. For the reasons set forth herein and based on the various affidavits submitted to

[1] Attorney's fees and expert witness fees will continue and will be supplemented at the conclusion of the hearing on punitive damages to be set for some future date by the Court.

the Court, Owner respectfully requests the Court order payment to Owner. As more fully set forth both below, and in its various supporting affidavits, such costs are fair, equitable, founded in statutory authority, and within the sound discretion of the Court to award.

## LEGAL ARGUMENT

### A. Attorney's Fees and Costs Should be Awarded as Such Costs were Born by Owner Through the Pendency of the Extensive and Heavily Litigated Same Controversy.

S.C. Code Ann. Section 29-5-20(A) creates the right to attorney's fees in the present circumstances. The affidavit of William H. Bundy, Jr., was submitted and attests that $2,026,278.55 was billed, and paid for, by Owner in furtherance of the present litigation. The Affidavit of William H. Bundy, Jr. advised that attorney billing statements would be made available to the Court for in camera inspection upon request. The Court requested these statements today and they have been furnished to the Court. In an effort of complete transparency, undersigned counsel even previously produced all unredacted statements, although no adverse party requested the Court to require production.

In further support of Owner's request for attorney's fees, the affidavit of Marvin D. Infinger, Esquire is included alongside this Memorandum and details additional costs owed to Owner arising from attorney's fees related to the present litigation. More specifically, while Attorney Infinger supports the award of attorney's fees, he opines that the billable rate is below the average customary rate and thus converts the fees to the more reasonable amount of $3,546,389.01 based on customary practices. Contractor and Subcontractor should not enjoy the benefit of a below-market rate founded on a longstanding attorney-client relationship between Owner and its attorneys when assessing renumeration. Rather, Contractor and Subcontractor should be required to pay all fees at the usual customary cost.

In addition to the cost revision, Attorney Infinger utilizes a lodestar calculated fee to enhance the costs given the complexity of the case and the extraordinary resulting outcome. "In some cases of exceptional success, an enhanced attorneys' fees award may be justified by using a lodestar multiplier."



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Maybank v. BB&T Corp., 416 S.C. 541, 787 S.E.2d 498 (2016).[2] "A lodestar figure for attorneys' fees is designed to reflect the reasonable time and effort involved in litigating a case, and is calculated by multiplying a reasonable hourly rate by the reasonable time expended." Id., see also Blum v. Stenson, 465 U.S. at 897 (1984) (recognizing that an enhanced lodestar award may be justified "in some cases of exceptional success"); see also Hyatt v. Apfel, 195 F.3d 188, 192 (4th Cir.1999) (affirming a multiplier of 1.333 applied to a lodestar calculation of attorneys' fees to be paid by the defendant government entity on account of the "exceptional results" obtained by plaintiffs' counsel); Edmonds v. U.S., 658 F.Supp. 1126 (D.S.C.1987) (applying a multiplier of 1.15 to 1.25 to the lodestar fees for the plaintiffs' various attorneys to account for the "exceptional circumstances" surrounding the amount of money involved and the results obtained in the case).

In Maybank, the Supreme Court enhanced the lodestar fee by 50% given the complexity of the case and the resulting outcome. While Maybank and the present case are factually very different, their complexity and extraordinary outcome are parallel. The present litigation was immeasurably extensive and resulted in a multi-week trial and roughly 4,500 pages of trial transcript. One would be hard pressed to find a case more fitting for use of a lodestar figure, especially when viewing the causes of action in which it was successful. As such, in accordance with Maybank, Owner requests an enhanced fee by 50%. It is anticipated opposing counsel may argue that certain costs should be rejected or reduced as they were spent in pursuit of Owner's counterclaims. However, at most, a minimum reduction should apply as is consistent with well-established case law. By way of another example in Maybank v. BB&T Corp., the

[2] Award of $2,654,295 in attorneys' fees to investor under the Unfair Trade Practices Act (UTPA), based on lodestar multiplier, was not excessive, in investor's action against investment adviser arising out of provision of investment advice, where matter was heavily litigated for several years and produced more than 60,000 pages of documentation, adviser filed numerous motions, and counsel was experienced and achieved beneficial results for investor on five causes of action. Maybank v. BB&T Corp., 416 S.C. 541, 787 S.E.2d 498 (2016).

Supreme Court found a twenty percent fee reduction appropriate when the prevailing party was successful on its UTPA claim. 416 S.C. 541, 580, 787 S.E.2d 498, 518 (2016). In Maybank however, the prevailing party was the plaintiff and pursued eleven causes of action against the defendant. Id. Similarly, in Sauders v. S.C. Pub. Serv. Auth., US District Judge P. Michael Duffy both utilized a lodestar calculation and applied a reduction of 10% after a showing of some unrelated and unreasonably high costs. No. C.A. 2:03-0934-23, 2011 WL 1236163, at *12 (D.S.C. Mar. 30, 2011).

In the present situation, Contractor pursued and filed the subject litigation against Owner and thus drove the need for costs. Owner's counterclaims were pursued only in response to the improperly filed mechanics liens – without the liens there would have been no need for litigation which is in direct contrast to Maybank. The counterclaims were closely related to the defense of the mechanics liens such that only one true controversy existed. Thus, Owner is entitled to its full accounting of attorney's fees and costs as they were borne only as a result of the mechanics liens; liens which had a devastating financial impact on Owner and should never have been filed. Utilizing the increased customary rate alongside the lodestar multiplier, Owner respectfully requests the Court award $5,319,583.52 in attorney's fees and costs as such is an appropriate measure in a case as heavily litigated as the present one and thereafter apply pre-judgment interest as provided by law. Calculations are provided in a supplemental affidavit of Kimberly Bennett Brown.

**B. Under the Declaratory Judgments Act, the Court Should Award Costs to Owner Related to Its Continued Payment of Excessive Interest Payments as a Result of the Mechanics Liens.**

The Declaratory Judgments Act, S.C. Code Ann. Section 15-53-20, provides that "the court may make such award of costs as may seem equitable and just." S.C. Code Section 15-53-100. The Declaratory Judgments Act is remedial as well as liberally construed and administered. S. C. Code Ann. Section 15-53-130. "The decision to grant a declaratory judgment is a matter [that] rests in the sound discretion of the trial court and will not be disturbed absent a clear showing of abuse." Eargle v. Horry Cty., 344 S.C.



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449, 453, 545 S.E.2d 276, 279 (2001) (quoting Garris v. Governing Bd. of S.C. Reinsurance Facility, 319 S.C. 388, 390, 461 S.E.2d 819, 820 (1995)).

Section 15-53-100 of the Declaratory Judgments Act was designed to remediate the exact type of harm suffered by Owner and allows the Court wide discretion to award costs as may seem equitable and just. There is no restriction on the type of costs. Rather, the effect of the statute is intended to allow the court to make a decision that is fair and equitable based on the circumstances then and there prevailing. "Equity strives to do justice; it is not a rigid concept, but, instead, is determined on a case-by-case basis according to concepts of justice and fairness. Equitable doctrines are grounded in fairness and justice, and their application implies the occurrence of atypical circumstances." 30A C.J.S. Equity § 99.

In assessing costs and other relief under the Declaratory Judgments Act, courts have routinely been afforded wide discretion and inherent authority to order relief in supplemental proceedings, even when such relief falls outside the complaint. By way of example in Ultra Res., Inc. v. Hartman, the Supreme Court of Wyoming upheld the district court's order retaining jurisdiction to revise its order and even award supplemental relief. In support thereof, the Wyoming Supreme Court relied heavily on the inherent power of a court to both enforce and interpret its own judgment under the Declaratory Judgments Act. 2015 WY 40, ¶ 4, 346 P.3d 880, 885 (Wyo. 2015). Similarly, in Goodover v. Lindsey's Inc., the Supreme Court of Montana affirmed an award of damages in excess of those requested in the complaint in a declaratory judgment action to quiet title. 255 Mont. 430, 843 P.2d 765 (1992). The Supreme Court of Montana affirmed the district court's decision to retain jurisdiction to grant relief necessary to both enforce its judgment and earlier orders and award monetary damages not contemplated in the complaint. Id. The basis for this decision was that the Supreme Court found it necessary to provide complete relief to the aggrieved parties. Id.



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It is anticipated Contractor will urge the Court to deny the requested relief citing that such relief constitutes consequential damages which are excluded under the contract by and between Owner and Contractor. This argument fails for a myriad of reasons. First, the Supreme Court has held contracts unenforceable when fraudulent conduct is involved. In Maybank v. BB&T the Supreme Court indicated as follows:

> In general, we refuse to enforce contracts based on fraudulent conduct because a party should not retain the benefits of an agreement that he knowingly and *intentionally* entered into though deceptive means. . . . Moreover, beyond the patent unfairness inherent in enforcing a contract induced through intentional fraud, giving legal effect to such a contract violates a fundamental principle of contract law: there must be a meeting of the minds. By its very nature, there can be no union of purpose where one party is intentionally deceiving the other through fraud.

416 S.C. 541, 577–78, 787 S.E.2d 498, 517 (2016); see, e.g., Roopchan v. ADT Sec. Sys., Inc., 781 F.Supp.2d 636, 660 (E.D. Tenn. 2011) ("Courts will enforce exculpatory clauses unless there is 'fraud, misrepresentation or violations of the Tennessee Consumer Protection Act.'" (citation omitted)); J.A. Jones Constr. Co. v. City of Dover, 372 A.2d 540, 545 (Del. Super. Ct. 1977) ("Even if a contract purports to give a general exoneration from 'damages,' it will not protect a party from a claim involving its own fraud or bad faith."); Houghland v. Sec. Alarms & Servs., Inc., 755 S.W.2d 769, 773 (Tenn. 1988) (holding exculpatory "clauses do not ordinarily protect against liability for fraud or intentional misrepresentation"). In the present situation, the Court has found that Contractor engaged in fraudulent behavior such that an award of punitive damages was appropriate. To allow Contractor to engage in fraudulent conduct with respect to contractual relations and thereafter hide under the same contract would be in direct contravention of the Declaratory Judgments Act as such conduct is both unjust and inequitable.

Contractor's arguments related to consequential damages likewise fail as such relief is not sought under the contract. Rather, the requested costs are sought as relief under the Declaratory Judgments Act

– an Act which acts to remediate harm suffered by a party and allows the Court wide discretion when awarding such relief. In assessing whether this relief can be sought when other causes of action may exist, the Supreme Court in Bank of Augusta v. Satcher Motor Co. found as follows:

> It is contended however that under the facts alleged the plaintiff had available other remedies for the assertion of its rights and therefore an action for declaratory judgment was not proper. While it is true that the plaintiff had available other remedies, this fact alone would not bar an action for declaratory relief. . . . In the cited case it was pointed out that the statutes make the granting of a declaratory judgment a matter resting in the sound discretion of the trial court to be reasonably exercised in furtherance of the purposes of the statute; and the fact that other remedies are available does not preclude the granting of a declaratory judgment, but are factors to be considered by the court in the exercise of its discretion.

249 S.C. 53, 58–59, 152 S.E.2d 676, 678–79 (1967). As demonstrated by the above language, while the existence of another cause of action may be a factor in determining whether to afford relief under the Declaratory Judgments Act, it cannot be the sole factor.

In the present case, the existence of an alternative method of recovery does not outweigh the overwhelming evidence in support of awarding relief under the Declaratory Judgments Act. The Affidavit of Kimberly Bennett Brown plainly and clearly shows catastrophic harm suffered directly as a result of the filing of the mechanics liens – liens which this Court has already ruled should have never been filed as there was no legitimate basis for their filing other than to "force [] Owner into submission" and "to avoid, for as long as possible, the discovery that Contractor's claim was not $22,452,287.00 or any of the iterations of Contractor's spreadsheets." The loss of financing opportunities arose solely from inappropriate mechanics liens which were wrongfully filed such that this Court awarded punitive damages as a remedy. Owner's expert, Attorney Infinger, likewise opines as to the requested relief with supporting law, fact, and opinion. Thus, under S.C. Code Section 15-53-100, Owner respectfully requests the Court utilize its discretion in awarding such costs.



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### C. Under Owner's Request to Alter or Amend, the Court Should Allow It to Proceed With its Proof of Lost Profits and All Consequential Damages.

Based on the Maybank decision, discussed supra, Owner request that it be able to pursue its claims for loss of profits and consequential damages under breach of contract accompanied by fraudulent act, civil conspiracy, and Unfair Trade Practices. Owner requests the Court enter an appropriate order altering and amending its prior Order to permit civil conspiracy and Unfair Trade Practices to be pursued for the full relief to which they would normally be entitled. Quite obviously, the contractual limitational remedies do not apply when fraud and fraudulent intent has been proven as has been previously found by the Court. Owner also requests that its breach of contract accompanied by fraudulent act cause of action proceed, not only for punitive damages, but for the full relief, loss of profits, and other consequential damages Owner is entitled to based on the odious, fraudulent and mallified conduct of Contractor.

## CONCLUSION

For the reasons stated herein, Library Associates, LLC respectfully requests the Court utilize its wide judicial discretion and award Library Associates, LLC the requested relief – relief only sought as a result of the harm suffered. Such request is founded on statutory authority, supporting case law, numerous affidavits, and principles of equity and fairness.

*[Signature Page to Follow]*



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Respectfully Submitted,

/s M. Brent McDonald
Bundy McDonald, LLC
W.H. Bundy, Jr., Esquire (Bar #1012)
M. Brent McDonald, Esquire (Bar#78057)
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

and

/s John P. Linton
John P. Linton (Bar # 3346)
Mary K. Linton (Bar # 102815)
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
jlinton@duffyandyoun.com
mlinton@duffyandyoun.com

Attorneys For Library Associates, LLC

March 7, 2024
Charleston, South Carolina



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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON | ) | IN THE COURT OF COMMON PLEAS<br>NINTH JUDICIAL CIRCUIT<br>CASE NO. 2019-CP-10-01108 |
| Balfour Beatty Construction, LLC,<br><br>Plaintiff,<br><br>v.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,<br><br>Defendants. | ) | AFFIDAVIT OF MARVIN D. INFINGER |
| Library Associates, LLC,<br><br>Third-Party Plaintiff,<br><br>v.<br><br>Lithko Contracting, LLC, Watson Electrical Construction Co., LLC, Old North State Masonry, LLC,<br><br>Third-Party Defendants. | ) | |

PERSONALLY APPEARED BEFORE ME MARVIN D. INFINGER, who being sworn, deposes and says:

**EDUCATION**

- B.A. in history from the University of South Carolina 1974;
- J.D. University of South Carolina School of Law 1977;

**PROFESSIONAL**

**HISTORY**

- Law clerk to the Honorable Robert W. Hemphill 1977 – 78;
- Sinkler Gibbs & Simons and following iterations 1978 – 2009;



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- Nexsen Pruet 2010 – 2019;
- Barnwell Whaley Patterson & Helms 2020 to present;

**PROFESSIONAL AND CIVIC UNDERTAKINGS**

- Member, Ninth Circuit Resolution of Fee Disputes Board;
- Bridge the Gap faculty;
- Chair, Advisory Committee for the District of South Carolina, which developed for the district a plan mandated by the Civil Justice Reform Act of 1990 enacted by Congress;
- Commissioner, the Board of Commissioners for Attorney Grievances and Discipline;
- Commissioner, State Ethics Commission;
- Member, ABA Standing Committee on Public Education;
- Member, ABA Silver Gavel Awards Committee;
- Past President, Charleston County Bar Association;

**PROFESSIONAL ORGANIZATION/ASSOCIATIONS PAST AND PRESENT**

- ABA
- American College of Trial Lawyers
- American Board of Trial Advocates
- Maritime Law Association of the United States
- Southeastern Admiralty Law Institute
- Charleston Maritime Law Institute
- Fourth Circuit Judicial Conference

**PAST RECOGNITIONS**

- Lawyer of the Year for Charleston named by Best Lawyers in America:
  - Bet the Company litigation
  - Intellectual Property litigation



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- Maritime Law
- Municipal Corporate litigation

- Super Lawyers Commercial Litigation

**OPINION ON THE REASONABLENESS OF BUNDY McDONALD ATTORNEY'S FEE APPLICATION**

Bill Bundy's Affidavit in Support of Attorney's Fees has been reviewed and the undersigned opines that the fees are below the customary range and therefore reasonable as adjusted below to a reasonable degree of legal certainty based on the following:

**NATURE, EXTENT AND DIFFICULTY OF CASE/TIME AND LABOR DEVOTED TO CASE**

In addition to Mr. Bundy's description in his Affidavit the following is noted: A close look at the Order issued in this case as well as the collateral efforts to obtain contractor documents generally described in the Order, efforts to have the Court dismiss or diminish liens, to have the Court issue Rules to Show Cause for the production of documents from the Contractor, to pursue Petitions for Contempt for Failure to do so, to make attempts to overcome being cut off from Contractor's digital document repository; to have made heroic efforts allowing maintenance of financing with lender without a declaration of default or a demand by lender to be assigned the contract, created an extremely complex dispute as expressed by Judge Scarborough in his remarks following the close of the main case,[1] which would become in the concrete 4,500 + pages of trial transcript. In addition, thousands of pages of bulk claims documents were submitted by Plaintiffs, not before, but during the trial after Court Orders to produce the same. All of this resulted in a stew of complexity requiring tremendous time, energy, labor, and attempted unraveling of tardily received information. Moreover, this litigation at present has been active for years and the trial went five weeks.[2]

[1] "There's a lot of stuff here." Tr. p. 4505

[2] Approximately 6000 hours in lawyer time were spent defending the action. Such amounts of time expended surely resulted in lost representation opportunities to Smith McDonald, another factor sometimes considered in attorney fee awards.

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## PROFESSIONAL STANDING OF COUNSEL

Mr. Bundy's professional standing is that of a lawyer who possesses ability, tenacity, legal intelligence, trial skills, thoroughness, and excellence at the extreme upper levels of the profession. This is a conclusion of outstanding members of our State Bar.

## CUSTOMARY HOURLY FEE

Mr. Bundy's and McDonald's hourly rate for a case of such complexity handled by lawyers of such high standing is below the customary hourly rate charged for such complex, extensive litigation.[3] A more customary rate is $600 for Mr. Bundy and $450 for Mr. McDonald, an increase of 50% rendering a reasonable fee of 3,546,389.01 which still is on the low end of reasonableness and which more accurately reflects the attorney's effort value.[4, 5] At the actual charged rates of $400 and $300 per hour, total invoices paid starting January, 2019 totaled $2,138,982.30.

## BENEFICIAL RESULT

The result obtained is extraordinary having complete success in defeating claims by contractor at one time pressed to be in excess of $22 Million Dollars and mechanics liens at one time encumbering Defendant's property to the tune of $26 Million Dollars. That said in winning all out Library Associates is or will be out of approximately $50 Million Dollars as a result of Plaintiff's actions which the Court has found to be unwarranted. In addition, an award on counterclaims of over $3 Million Dollars was obtained by Plaintiff through the efforts of Bundy.

## LODE STAR ENHANCEMENT

In matters where such complexity and such extraordinarily beneficial results are obtained a lode star calculated fee may be enhanced. Maybank v BB&T involved similar causes of action and similar

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[3] Consultation with leading litigators in the area established hourly rates of between $550-875 per hour in complicated litigation matters, as well as speaking to Mr. Bundy's standing as noted above.

[4] A factor often considered is the length and depth of relationship with the client. Bundy has represented Bennett interests in his projects for decades and this relationship allowed to a great degree the beneficial result.

[5] Fifteen years ago, in 2008 the Supreme Court found up to $600 per hour a reasonable hourly rate in complex litigation. Layman v State, 376 S.C. 434, 658 S.E.2d 320.

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complexity to this action. There our Supreme Court upheld enhanced a lode star fee by 50% because of the exceptional efforts and outcome, which is appropriate here. An enhancement of 50% brings the total reasonable attorney fee to $5,319,583.52. If the Court chooses as a baseline the $2,138,982.30 actually paid, the 50% enhancement renders an enhanced fee of $3,208,473.45.

**THE ANTICIPATED ARGUMENT THAT THE MECHANICS LIEN AND CONTRACT CLAIM ARE IN DICHOTOMY REQUIRING AN APPORTIONMENT BETWEEN MECHANICS LIEN FEES RECOVERABLE BY STATUTE AND K CLAIMS.**

Establishment of division between non-recoverable fees allocated to the contract claim and mechanics lien claim foreclosure action is flawed. Plaintiffs submitted, proposed order to the Court provides for recovery of the exact principal amount owed, to the penny, $11,160,550.48 on its breach of contract claim, its foreclosure of mechanics lien claim and its quantum meruit claim. No other conclusion can be reached than that the same proof was offered to support Plaintiffs' contract claim and mechanics lien foreclosure. Thus, attorney fees should be recovered in their entirety, as Owner is a prevailing party under the Mechanics Lien Statute, based on the same proof offered to support Contractor's contract claim.

**COUNTERCLAIMS**

The counterclaims are inexorably linked to the common evidence presented by Plaintiff in an attempt to establish its contract and mechanics lien claims. The same proof offered by Defendant to counter these claims was offered by Defendant to support its defense. Only proof of delay days multiplied by daily liquidated damages and proof of the costs to complete were added evidence.[6]

**THIRD-PARTY CLAIMS**

Third-Party Plaintiff prevailed against subcontractors remaining in the suit on mechanics lien foreclosure actions. Prevailing was made possible by torturous and time-consuming efforts by Defendant

[6] See Order at p. 42 alluding to 20 plus pages of transcript and Defendant's exhibit 146B as proving the completion of work costs. If there is to be a reduction by the Court, it is my opinion that it should be no more than the 3% applied by the Honorable P. Michael Duffy, for claims brought ancillarily in the Sauder v. South Carolina Public Service Auth. Inverse condemnation action, where just compensation was awarded to the tune of $219,000,000 (+). The Court reduced the attorney fees by 3%, a reduction based on no exact facts – but on his discretion as an adjustment, based on causes of action not recovered upon.

dissecting evidence offered by Plaintiff and proving there was no evidence with a hint of probative value which support the liens, thus no reduction in fees is justified.[7]

**OPINION ON DECLARATORY JUDGMENT**
**ADDITIONAL ASSESSMENTS AGAINST PLAINTIFF**

A. FOUNDATION

This analysis starts with these harsh facts:

1. In winning this case Defendant is only harmed to the tune of $50 Million as opposed to $72 Million (Plaintiff's initial claim); as opposed to $76 Million (zenith of mechanic liens); as opposed to $63 Million (final claim and lien amounts plus interest in the evolution of morphing amounts). So in winning Owner simply lessens its mid to high-mid eight figure losses.

2. These Court determinations:

a) "I find contractor's failure to perform its own accounting and repeated obfuscation of the accounting and audit process constituted not only a breach of the contract but that it was accompanied by a fraudulent act. I find that the true purpose of trying to avoid the audit was not for the reasons stated by contractor in Defendant's Exhibit 50, but instead to avoid, for as long as possible, the discovery that contractor's claim was not $22,452,287 or any iterations of contractor's spreadsheets… .

"What was the purpose of filing duplicative and excessive liens? What is the legitimate purpose of refusing to do an accounting or allow one's books and records to be audited? The Court concludes that there is not a legitimate one. The only purpose would be to force an owner into submission." pp. 43-44.

b. "I find and do declare, pursuant to S.C. Code Section 15-53-30 and -40 based on the accounting work and audit performed by Hadley, the mechanics liens filed by contractor and subcontractors Lithco, Watson and ONSM are or were duplicative and excessive. The only remaining mechanics lien is the contractor's lien which is dismissed pursuant to the Court's ruling herein; p. 44.

[7] If a reduction were to be made no more than 10% should be considered – i.e., the number of pages of transcript dedicated to the Third-Party claims – roughly 500 pages which is 10% of the total transcript.



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advantage of among the lowest loan rates in modern history. To effectuate the Court's declaration dismissing the mechanics liens these past and present costs are awardable in the Court's discretion to prevent a pyrrhic victory for Owner and an affront to the Court's determination of fraudulent and deceitful conduct by Contractor against Owner to its $50 Million detriment.

OPINION

Relief for the incurred expert witness costs, loan modification costs, and costs of inability of owner to obtain historically low loan rates are appropriate.

1. Under the further relief provision of the DJA as discussed above.

2. The award of costs provision of the DJA whenever it seems equitable and just. This provision is purely equitable. The chancery courts were empowered to promote remedies equitable and just where legal forms of action provided none.

Equitable relief is exquisitely flexible. "Costs" under this DJA section are not defined. "Costs" under this DJA provision are not limited by its terms to court costs, past costs or future costs, but only to "costs" as may seem equitable and just. These amounts are "costs" incurred by owner or "costs" to be incurred by owner as that term is ordinarily understood. In this context, noting that the DJA is to be liberally construed, and that equitable relief is founded on principles of what is equitable and just, an award of these costs "seems" to be just that, equitable and just.

3. SCRCP 54(c)

"1" & "2" above are bolstered by this rule of Court which provides in part, "…every final judgment shall grant the relief to which the party in whose favor it is rendered in entitled, even if the party has not demanded such in his pleading."

**CONSEQUENTIAL DAMAGES LIMITATION**

It is anticipated that Contractor will argue that all or part of the claimed "costs" sought to be awarded under the "Further Relief and/or Costs" section of the DJA are actually consequential damages which are



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disclaimed in the General Conditions to the contract between the parties. My opinion as to this position is as follows:

1. The direct cause of the "consequential damages" were the fraudulent acts and unfair and deceptive conduct of Contractor as adjudicated by the Court. Hence the provision is not enforceable as Contractor shall have used acts of fraud and deceit to "consequentially" damage Owner and then shield itself from the loss by the contractual term. In these circumstances, the fraud and deceit render the provision unenforceable.

2. The DJA under its further relief and costs sections are statutory provisions which in the sordid set of circumstances would elevate a contractual provision, over application of the statute allowing relief by the Court to effectuate its declaration and preclude the Court from dispensing equity and justice. In these circumstances the statute controls the contract.

All opinions herein are stated to a reasonable degree of legal certainty.

Marvin D. Infinger

STATE OF SOUTH CAROLINA )
COUNTY OF CHARLESTON )

SWORN TO AND SUBSCRIBED BY ME
THIS 7th DAY OF MARCH 2024.

Notary Public
My Commission Expires: 2/23/31

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# LIBRARY ASSOCIATES

## COST INCURRED DUE TO MECHANICS LIEN

| | Paid | Interest | Total | |
|---|---|---|---|---|
| **Expert Witness** | | | | |
| Patrick O'Connor | $ 35,788.50 | $ 6,646.26 | $ 42,434.76 | |
| James Clements | $ 61,071.14 | $ 17,122.54 | $ 78,193.68 | |
| mark Boe | $ 494,244.67 | $ 132,184.83 | $ 626,429.50 | |
| Sam Hadley | $ 655,197.70 | $ 172,429.55 | $ 827,627.25 | |
| Grady Query | $ 14,075.00 | $ - | $ 14,075.00 | NOTE - Waiting on Payment date from Brent as it was paid Bundy Mcdonald Office |
| **Legal** | | | | |
| Bundy McDonald | $ 2,026,278.55 | $ 442,160.50 | $ 2,468,439.05 | |
| MetLife | $ 330,000.00 | $ 97,368.32 | $ 427,368.32 | |
| Veritext | $ 1,003.79 | $ 210.56 | $ 1,214.35 | |
| Rosen Litigation Tech | $ 6,977.00 | $ 2,684.47 | $ 9,661.47 | |
| **Loan Modification** | | | | |
| Womble Bond Dickinson | $ 26,296.48 | $ 8,203.62 | $ 34,500.10 | |
| MetLife(Legal) | $ 25,750.00 | $ 5,010.87 | $ 30,760.87 | |
| MetLife(extension Fees) | $ 216,500.00 | $ 26,240.65 | $ 242,740.65 | |
| | **$ 3,893,182.83** | **$ 910,262.19** | **$ 4,803,445.02** | |

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON<br><br>Balfour Beatty Construction, LLC,<br><br>Plaintiff,<br><br>vs.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,<br><br>Defendants.<br><br>Library Associates, LLC<br><br>Third-Party Plaintiff,<br><br>vs.<br><br>Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.<br><br>Third-Party Defendants. | IN THE COURT OF COMMON PLEAS<br><br>CASE NO.: 2019-CP-10-01108<br><br>BALFOUR BEATTY CONSTRUCTION LLC'S AMENDED MOTION TO REQUIRE LIBRARY ASSOCIATES, LLC TO ELECT A REMEDY |

Plaintiff Balfour Beatty Construction, LLC ("Balfour"), by and through its undersigned counsel, hereby moves the Court for an order requiring Library Associates, LLC to elect a remedy between its cause of action and remedy for Breach of Contract, its cause of action and remedy for Breach of Contract Accompanied by a Fraudulent Act, and its cause of action and remedy for Declaratory Judgment. The three causes of action

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and remedies were awarded in the two Court orders of October 6, 2023, the Form 4 Order and the more detailed, 46 page order.

"A defendant may raise the issue of election of remedies at any stage of the case. Indeed, to carry out the doctrine's purpose, the trial judge should on his own motion request election if he lets both causes of action go to the jury." 397 S.E.2nd 774 (S.C. App 1990)

This motion is based on the Orders of October 6, 2023, the pleadings, the evidence and testimony presented at trial, the South Carolina Rules of Civil Procedure, the case law of South Carolina, and such other arguments as may be presented to the Court.

Respectfully Submitted,

PARKER POE ADAMS & BERNSTEIN LLP
850 MORRISON DRIVE, SUITE 400
CHARLESTON, SC 29401

By: s/Thomas C. Hildebrand, Jr.
Thomas C. Hildebrand, Jr. (S.C. Bar No. 2501)
Robert C. Byrd (S.C. Bar No. 1069)
W. Greyson Land (S.C. Bar No. 104179)
P. Nicholas Nybo (S.C. Bar No. 105825)
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)
tomhildebrand@parkerpoe.com
bobbybyrd@parkerpoe.com
greysonland@parkerpoe.com
nicknybo@parkerpoe.com

James Lynn Werner, (SC Bar No. 6029)
1221 Main Street, Suite 1100
Columbia, SC 29201
(803) 255-8000
jimwerner@parkerpoe.com

Attorneys for Plaintiff Balfour Beatty Construction, LLC

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| STATE OF SOUTH CAROLINA<br>COUNTY OF CHARLESTON | IN THE COURT OF COMMON PLEAS<br><br>CASE NO.: 2019-CP-10-01108 |
| Balfour Beatty Construction, LLC,<br><br>Plaintiff,<br><br>vs.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,<br><br>Defendants. | |
| Library Associates, LLC<br><br>Third-Party Plaintiff,<br><br>vs.<br><br>Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.<br><br>Third-Party Defendants. | BALFOUR BEATTY CONSTRUCTION, LLC'S MEMORANDUM IN RESPONSE TO LIBRARY ASSOCIATES, LLC'S MEMORANDUM IN SUPPORT OF ITS PETITION FOR ATTORNEY'S FEES AND PURSUANT TO THE DECLARATORY JUDGMENT ACT, ADDITIONAL INTEREST PAYMENTS, PAST AND FUTURE, AS DIRECT COSTS INCURRED AND FOR PREJUDGMENT INTERESTS AS PROVIDED BY LAW; AND IN SUPPORT OF PENDING RULE 52(B) AND RULE 59(E) MOTIONS TO ALTER OR AMEND AND MAKE ADDITIONAL FINDINGS |

In response and reply to Library Associates, LLC's ("Library") Memorandum in Support of Its Petition for Attorney's Fees and Pursuant to the Declaratory Judgment Act, Additional Interest Payments, Past and Future, as Direct Costs Incurred and for Prejudgment Interest and In

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Support of Pending Rule 52(B) and Rule 59(E) Motions to Alter or Amend ("March 7 Memorandum"), Balfour Beatty Construction, LLC ("Balfour") states:

1. Library cannot supplement or amend its Motion to Alter/Amend dated October 16, 2023, including without limitation by presenting or arguing different or additional matters in its March 7 Memorandum.

2. Library cannot amend or alter its Petition for Attorney's fees and costs filed November 6, 2023, by way of arguments or documents submitted with the March 7 Memorandum.

    a. **Library's claim in its March 7 Memorandum that it is entitled to an "enhanced" award of legal fees and costs (in an amount greater than was actually incurred and greater than the amount presented in the Petition previously filed pursuant to the Order of the Court) is both untimely and wholly without merit and, therefore, must be disregarded and denied.**

    b. **The court must disregard (and strike) the Affdiavit of Marvin D. Infinger submitted in support of the March 7 Memorandum because it was untimely and represents an impermissible and inadmissible expert opinion offered to suggest legal conclusions and interpretations to the Court which are not within the province of an expert witness.**

3. Library's argument in its March 7 Memorandum that an award of costs or fees (other than the "Hadley fees") are recoverable under S.C. Code Ann. § 15-53-100 was not preserved, is not timely and must be disregarded and denied.

4. Library's attempt in its March 7 Memorandum to alter or amend the Court's prior decision that the waiver of consequential damages provision in the Contract was valid and enforceable, and forecloses Library's claims for consequential damages such as lost revenue, incorrect financing costs, diminution in value, etc., must be disregarded and denied because it was not preserved for further review in the Motion to Alter/Amend.

5. Library's argument in its March 7 Memorandum that the mutual waiver of consequential damages in the Contract should be voided because of fraud was not an issue raised by Library in the pleadings, or at trial, or in its October 16 Motion to Alter/Amend and, therefore, it must be disregarded and denied as an issue not preserved.

## INTRODUCTION

It is abundantly clear from review of Library's March 7 Memorandum that Library continues to ignore this Court's simple instructions in its October 6 Order to submit a petition for

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"attorney's fees and costs". Instead of filing a proper and timely Motion to Alter/Amend, and following the Court's instructions, Library has instead embarked on a circuitous journey attempting to convince the Court that additional expenditures, both actual and imaginary, claimed by Library somehow meet the well-established definitions of "attorney's fees and costs" in South Carolina, when they clearly do not. Balfour respectfully requests that the Court deny Library's request for fees and costs as untimely, unfounded, and in direct contravention of the Court's prior instructions. Balfour further requests that the Court strike and disregard the Infinger Affidavit on the grounds set forth herein.

## ARGUMENT

### 1. LIBRARY DID NOT FILE A PROPER MOTION TO ALTER/AMEND UNDER RULES 52 OR 59 AND IT CANNOT SUPPLEMENT, ALTER OR AMEND THAT MOTION NOW.

Library's original Motion to Alter/Amend dated October 16, 2023, contained no specific or particular issue to be addressed or relief to be sought. That original motion did not satisfy the requirements of Rule 7(b)(1), SCRCP. The motion provided no particularity or clarity to either the Court or Balfour in order to assess and respond to the motion. That lack of particularity rendered the original Library motion inadequate. *Camp v. Camp,* 386 S.C. 571, 689 S.E. 2d 634 (2010). Library cannot cure that lack of particularity and specificity by its subsequent arguments and submissions, including those set forth in the March 7 Memorandum. *Martinez v. Trainor,* 556 F 2d, 818 (7th Cir. 1977). "If a party could file a skeleton motion and later fill it in, the purpose of the time limitation [related to Rule 59(e)] would be defeated." *Id.* Thus, Library's attempt to raise a variety of new issues and identify with greater particularity the additional relief it seeks through its March 7 Memorandum is ineffective and cannot be allowed.

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**2. LIBRARY'S EFFORT TO OBTAIN AN AWARD OF HADLEY'S FEES AS "COSTS" RECOVERABLE PURSUANT TO S.C. CODE ANN. § 15-53-100 IS BOTH UNTIMELY AND MERITLESS.**

The Court's October 6, 2023 Order and Judgment found that Hadley's fees were appropriate "costs" awardable pursuant to the Declaratory Judgment Act, S.C. Code Ann. § 15-53-100. More importantly, Hadley's fees were the only "costs" awarded by the Court in its Order and Judgment pursuant to S.C. Code Ann. § 15-53-100.

Library's failure to file a timely motion asking the Court to alter or amend its Order and Judgment with respect to its award of costs under Section 15-53-100 is fatal to Library's efforts to now argue that other, additional damages in the guise of "costs" should be awarded pursuant to Section 15-53-100. Respectfully, the Court is without jurisdiction to award any additional purported "costs" under Section 15-53-100, and certainly no others witness fees for costs beyond those of Hadley who was the only one mentioned in the Order.

A trial court does not have the power to alter or amend its final order after ten days have passes and no Rule 59(e) motion has been filed. *Overland, Inc. v. Nance*, 423 S.C. 253, 256–57, 815 S.E.2d 431, 433 (2018). The failure to serve a Rule 59(e) motion within ten days of receipt of notice of entry of a final order converts the order into a final judgment, and the objecting party's only recourse is to file an appeal. *Id*.

Because Library failed to timely move this Court to alter or amend its October 6, 2023 Order and Judgment with respect to the award of costs under Section 15-53-100, the Court is no longer has jurisdiction to award any additional purported "costs" now claimed by Library under the same statute.

**a. Library's claim in its March 7 Memorandum that it is entitled to an "enhanced" award of legal fees and costs (in an amount greater than was actually incurred and greater than the amount presented in the Petition previously filed pursuant to the Order of the Court) is both**

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**untimely and wholly without merit and, therefore, must be disregarded and denied.**

The Court's October 6, 2023 Order and Judgment specifically ordered Library's counsel to file his petition for legal fees and costs by no later than November 6, 2023. When Library's counsel filed his Petition for legal fees and costs on November 6, 2023, it was accompanied by an Affidavit from counsel stating that the total fees and expenses incurred and paid by Library totaled $2,026,278.55. While the Petition also sought other, additional damages that can only be characterized as consequential damages relating to interest and financing, the Petition was very clear about the amount of attorney's fees being requested.

On March 7, 2024, Library's counsel filed its memorandum with the Court in which it argued, for the first time, that Library was entitled to an "enhanced" award of legal fees in an amount 50% higher than the $2,026,278.55 attorneys fee figure set forth in the Petition for legal fees filed on November 6, 2023. This request for an award of significantly "enhanced" fees is both inconsistent with what was filed on November 6, 2023 and, moreover, violates the clear instruction of the Court that Library submit its fee petition by no later than November 6, 2023.

As a result, the request for additional, "enhanced" legal fees contained in the Memorandum filed by Library on March 7 is untimely, prejudicial, and should be rejected by the Court out of hand. Moreover, Library's request for "enhanced" fees finds no support under South Carolina law.

In an action to foreclose a mechanic's lien, the award of attorney's fees is governed by S.C. Code Ann. § 29-5-10. Under this statute, a party who successfully defends against a mechanic's lien claim is entitled to recover its attorney fees. However, the fees are limited to those actually incurred in defending the lien, and any attempt by Library to recover legal fees and costs in an amount greater than what was actually expended finds no support in South Carolina law, regardless of the theory on which Library relies. *See EFCO Corp. v. Renaissance on Charleston Harbor,*

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*LLC*, 370 S.C. 612, 620, 635 S.E.2d 922, 926 (Ct. App. 2006); *Se. Realty & Const., Inc. v. Burdge*, No. 2005-UP-622, 2005 WL 7085177, at *4 (S.C. Ct. App. Dec. 9, 2005); *Cedar Creek Properties v. Cantelou Assocs., Inc.*, 320 S.C. 483, 486–87, 465 S.E.2d 774, 776 (Ct. App. 1995) (all holding that attorney's fees could not be awarded because there was no evidence in the record concerning the amount of attorney's fees actually incurred by the prevailing party).

In *Terlizzi Home Improvement, LLC v. Boheler*, No. 2014-002540, 2017 WL 4786434 (S.C. Ct. App. July 5, 2017), the Court of Appeals found that the circuit court abused its discretion by awarding attorney's fees for work done outside the scope of defending against the mechanic's lien. No. 2014-002540, 2017 WL 4786434, at *2 (S.C. Ct. App. July 5, 2017):

> "As a general rule, attorney's fees are not recoverable unless authorized by contract or statute." Id. at 553–54, 548 S.E.2d at 902. Here, the authorizing statutes allow attorney's fees "which may arise in enforcing or defending ***against the lien***." S.C. Code Ann. § 29–5–10(a) (emphasis added). Accordingly, attorney's fees are available for ***only those fees incurred by Respondents in defending against the lien.*** *See Utils. Constr. Co.*, 321 S.C. at 250, 468 S.E.2d at 4 (finding the circuit court abused its discretion by awarding attorney's fees for defending against breach of contract and unjust enrichment causes of action included in the mechanic's lien foreclosure action).

*Terlizzi* at *2 (emphasis in original and emphasis added). In reversing the circuit court, the Court of Appeals remanded this issue to the lower court to exclude fees outside the scope of defending against the mechanic's lien and make specific findings of fact regarding the reasonableness of the attorney's fees. *Id.*

Moreover, there is simply no basis in South Carolina law for awarding greater than the fees and costs actually incurred in defending against a mechanic's lien. The affidavit submitted by Library's trial attorney attested that $2,026,278.55 was billed and paid for by his client in this case. While Balfour disputes that all of the fees and costs claimed by to have been incurred by Library's trial counsel are in fact recoverable, awarding more than what counsel admits was incurred and paid by his client would be manifest error.

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In arguing that the Court should award more than the amount of fees and costs actually incurred and paid to Library's trial counsel, Library relies primarily on *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016). However, such reliance is clearly misplaced.

First, *Maybank* was not a case decided under the mechanic's lien statute. It was instead a case brought pursuant to the South Carolina Unfair Trade Practices Act.

Second, because *Maybank* was decided under the UTPA, it involved more than a private construction contract dispute between two sophisticated commercial parties. In order to constitute an unfair trade practice under the UTPA, the conduct must necessarily impact the public interest. Library was unsuccessful on the UTPA claim it asserted in this case and, therefore, is not entitled to the same considerations as the plaintiffs in *Maybank*.

Furthermore, any reliance on the Declaratory Judgments Act is similarly misplaced. First, the Declaratory Judgments Act does not include an attorneys fee provision, and most courts have failed to read one into such statutes under an expanded definition of recoverable "costs." *See Swaps, LLC v. ASL Properties, Inc.*, 250 N.C. App. 264, 264–68, 791 S.E.2d 711, 712–14 (2016) (holding that because an identical costs provision in North Carolina's Declaratory Judgments Act does not expressly include attorneys' fees in the definition of "costs," an award of attorneys' fees was not permitted); *Nat'l Union Fire Ins. Co. of Pittsburgh, P.A. v. Dixon*, 141 Idaho 537, 112 P.3d 825, 830 (2005) (same holding); *Trs. of Ind. Univ. v. Buxbaum*, 315 Mont. 210, 69 P.3d 663, 670 (2003) (same holding); *Pub. Entity Pool v. Score*, 658 N.W.2d 64, 68 (S.D. 2003) (same holding); *Soundgarden v. Eikenberry*, 123 Wash.2d 750, 871 P.2d 1050, 1064 (1994) (same holding); *Kremers–Urban Co. v. Am. Emp'rs Ins. Co.*, 119 Wis.2d 722, 351 N.W.2d 156, 168 (1984) (same holding). Only exception to this rule appears to be in the limited situation where an insurance company brings a declaratory judgment action against the insured to determine coverage and the insured prevails. *See Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 243 S.E.2d 443 (1978).

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*Compare*, *Geico Marine Ins. Co. v. Carnes*, No. GJH-19-1457, 2021 WL 75134, at *4 n.4 (D. Md. Jan. 8, 2021) (applying South Carolina law) ("Plaintiff does not cite South Carolina legal authority, and this Court is not aware of any, supporting an insurer's request for costs and attorney's fees where the insurer prevails.") (emphasis added).

There is simply no basis under South Carolina law for increasing the amount of legal fees to be awarded to the prevailing party under the mechanic's lien statute. To recognize one here would not only be contrary to the mechanic's lien statute and well-settled case law applying the statute, it would open the floodgates of the assertion of similarly claims anytime a statute or a contractual provision permits the recovery of reasonable attorney's fees.

**b. The court must disregard (and strike) the Affdiavit of Marvin D. Infinger submitted in support of the March 7 Memorandum because it was untimely and represents an impermissible and inadmissible expert opinion offered to suggest legal conclusions and interpretations to the Court which are not within the province of an expert witness.**

Attached as an exhibit to Library's Memorandum Relating to Fees and Costs was an affidavit from Marvin D. Infinger, proffered by Library in support of its Petition for "enhanced" fees and costs. The affidavit from Mr. Infinger should be stricken and wholly disregarded by the Court for two simple reasons: First, the Infinger Affidavit is itself untimely; and second, the affidavit is improper because it offers an opinion purporting to interpret the law applicable to this case.

As stated above, Library was specifically ordered by the Court to file its petition for legal fees and costs by no later than November 6, 2023. When Library's counsel filed his Petition for legal fees and costs on that date, it was accompanied by an Affidavit from counsel stating that the fees and expenses incurred and paid by Library totaled $2,026,278.55.

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On March 7, 2024, Library filed a Memorandum with the Court in which it now seeks a significantly higher award of attorney's fees based on a "lodestar" theory not previously mentioned in its Petition for legal fees. This request for "enhanced" legal fees violates the Court's October 6 Order, is inconsistent with what was filed with the Court on November 6, 2023, and is therefore untimely. It is simply too late to advance a new theory for recovering fees when the Court's October 6 Order set a hard and fast deadline of November 6, 2023 for Library's submission.

Rule 6(d), SCRCP clearly and unambiguously states that "[w]hen a motion is to be supported by affidavit, the affidavit *shall be* served with the motion." Accordingly, not only should the request for "enhanced" fees have been submitted by no later than November 6, 2023, any affidavit supporting such a request must have been filed at the same time. The Infinger Affidavit filed on March 7, 2024 is therefore untimely and should be stricken.

Moreover, it would be inappropriate for the Court to consider, much less give any weight to, the Infinger Affidavit because it is nothing more than an attempt to "educate" the Court about the applicable law. The well-settled law in South Carolina is that an opinion offering an interpretation of the law applicable to the facts of a particular case is inadmissible. Rule 702, SCRE; *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003); *O'Quinn v. Beach Associates*, 272 S.C. 95, 106-107, 249 S.E.2d 734,739-740 (1978). "The touchstone of [Rule 702] is whether the testimony will assist the jury. Focusing on that criterion, we have held that it does not help the jury for an expert to give testimony that 'states a legal standard or draws a legal conclusion by applying law to the facts.'" *U.S. v. Offill*, 666 F.3d 168, 175 (4th Cir. 2011) (quoting *U.S. v. McIver*, 470 F.3d 550, 562 (4th Cir. 2006)).

The case law is replete with instances in which so-called "experts" have not been permitted to offer an opinion about the law, including how to interpret a contractual provision. *See, e.g.*, *Hamilton v. Reg'l Med. Ctr.*, 440 S.C. 605, 633, 891 S.E.2d 682, 697 (Ct. App. 2023), *reh'g denied*

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(trial court did not abuse its discretion by preventing the hospital from asking its expert witness, a nurse, whether the hospital committed gross negligence, because the "expert" would have been required to form an inadmissible legal conclusion); *Forest Creek Assoc. v. McLean Savs. And Loan Ass'n.* 831 F.2d 1238, 1242 (4th Cir. 1987) (improper for a court to rely on expert testimony for the purposes of interpreting certain terms and/or clauses of a contract); *Brewer v. Lincoln Nat'l Life Ins. Co.* 921 F.2d 150, 154 (8th Cir. 1990) (improper and unfair for experts to define terms specifically written for and targeted toward lay persons); *Piankatank River Golf Club, Inc. v. Selective Way Ins. Co.,* 2009WL1321512 (E.D.V.A.) (court to relying on expert testimony for purposes of interpreting certain terms/clauses of contract improper).

The issue before the Court on which Mr. Infinger seeks to opine is a purely legal one. It does not involve some highly technical, scientific process that is beyond the understanding of most lawyers or judges. The judge and the lawyers of record are all fully capable of reading and understanding the cases that have discussed the issues before this Court, and furthermore capable of making their respective arguments to the Court. The opinions of Mr. Infinger are nothing more than misguided legal conclusions about *he* believes is the law. Accordingly, the Infinger Affidavit should be stricken by the Court and disregarded in its entirety.

The Affidavit of Marvin Infinger submitted by Library as part of its March 7 Memorandum is untimely, improper and inadmissible and it must be disregarded and stricken pursuant to Balfour's Motion to Strike filed concurrently herewith.

**3. LIBRARY FAILED TO TIMELY MOVE THE COURT TO ALTER OR AMEND ITS FINDING THAT THE CONSEQUENTIAL DAMAGES WAIVER IN THE AIA DOCUMENT A201-2007 § 15.1.6 IS VALID AND UNENFORCEABLE.**

During the course of the trial, the Court expressly found that the mutual waiver of consequential damages found in Section 15.1.6 of the AIA Document A201-2007 between Library

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and Balfour was valid and enforceable. *See* Trial Trans. at 3801:6–7. Moreover, the Court's October 6, 2023 Order and Judgment did nothing to change that ruling.

To the extent Library believed the Court's ruling on the mutual waiver of consequential damages was in error, it was incumbent on Library was required to move the Court for a ruling on that issue within ten days. *See Goddard v. Fairways Dev. Gen. Partnership*, 310 S.C. 408, 426 S.E.2d 828 (Ct.App.1993); *Overland, Inc. v. Nance*, 423 S.C. 253, 256–57, 815 S.E.2d 431, 433 (2018). Where an issue is raised in the trial court but not ruled upon by the trial judge, the objecting party has an obligation to move the trial court to amend the judgment. *Talley v South Carolina Higher Education Tuition Grants Committee*, 289 S.C. 483, 347 S.E.2d 99 (1986).

Library failed to timely move the Court to address its ruling on the waiver, and, therefore, Library's request that the Court find the contractual provision unenforceable is untimely and improper.

**4. LIBRARY'S ARGUMENT THAT THE MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES CONTAINED IN THE PARTY'S CONTRACT SHOULD BE VOIDED FOR FRAUD IS WITHOUT MERIT.**

In addition to being untimely, Library's argument that the mutual waiver of consequential damages should be voided for fraud is simply without merit. The mutual waiver of consequential damages found in AIA Document A201-2007, and expressly incorporated into the construction contract between Library and Balfour, is a standard contractual provision published by the American Institute of Architects. Moreover, it is a provision that is widely accepted and routinely incorporated into commercial construction contracts. *See* 6 Bruner & O'Connor Construction Law § 19:55, at n.3.

This mutual waiver of consequential damages is routinely enforced by the courts. *See Bartram, LLC v. C.B. Contractors*, LLC, 2011 WL 1299856 (N.D. Fla. 2011) (construing a clause waiving consequential damages as barring an owner's post-construction claim to recover damages

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for lost revenue, increased finance costs, and diminution in value, and rejecting the owner's argument that the clause only applied to damages during construction); *Guideone Ins. Co. v. U.S. Water Systems Inc.*, 950 N.E.2d 1236, 74 U.C.C. Rep. Serv. 2d 806 (Ind. Ct. App. 2011) (enforcing a consequential damage waiver in a supplier's warranty pursuant to the Indiana Uniform Commercial Code); *McCollough Enterprises, LLC v. Marvin Windows & Doors*, 2010 WL 5014670 (S.D. Ala. 2010) (enforcing a window manufacturer's limitation on consequential damages after ruling that it was not unconscionable); *Potomac Constructors, LLC v. EFCO Corp.*, 530 F. Supp. 2d 731, 65 U.C.C. Rep. Serv. 2d 287 (D. Md. 2008) (enforcing a clause that excluded recovery of consequential damages in purchaser order under Maryland law).

Any reliance by Library on *Maybank v. BB&T Corp.*, 416 S.C. 541, 577, 787 S.E.2d 498, 517 (2016) is simply misplaced. This Court never found that the contract between Library and Balfour was induced by fraud. To the contrary, the Court found that the contract between the parties is valid and enforceable, and its award of damages to Library is based on the Court's finding that the parties' valid and enforceable contract had been breached. In order to make the argument Library now makes, it was incumbent on Library to assert an entirely different theory in the case than it in fact pursued.

Because the Court made no finding that Balfour fraudulently induced Library to enter the construction contract, and because Library failed to make a timely Rule 59(e) Motion on the issue of consequential damages, Library is prohibited from seeking such relief now.

## CONCLUSION

Balfour respectfully urges the Court to disregard the untimely request by Library for "enhanced" attorney's fees and, further, to strike and disregard the Affidavit submitted from Marvin D. Infinger as both untimely and improperly offering an interpretation of the law.

Respectfully Submitted,

PARKER POE ADAMS & BERNSTEIN LLP

By: s/James Lynn Werner
James Lynn Werner, (SC Bar No. 6029)
1221 Main Street, Suite 1100
Columbia, SC 29201
(803) 255-8000
jimwerner@parkerpoe.com

Thomas C. Hildebrand, Jr. (S.C. Bar No. 2501)
Robert C. Byrd (S.C. Bar No. 1069)
W. Greyson Land (S.C. Bar No. 104179)
P. Nicholas Nybo (S.C. Bar No. 105825)
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)
tomhildebrand@parkerpoe.com
bobbybyrd@parkerpoe.com
greysonland@parkerpoe.com
nicknybo@parkerpoe.com

March 11, 2024
Columbia, South Carolina

*Attorneys for Plaintiff Balfour Beatty Construction, LLC*

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| STATE OF SOUTH CAROLINA<br>COUNTY OF CHARLESTON | IN THE COURT OF COMMON PLEAS<br><br>CASE NO.: 2019-CP-10-01108 |
| Balfour Beatty Construction, LLC,<br><br>Plaintiff,<br><br>vs.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,<br><br>Defendants.<br><br>Library Associates, LLC<br><br>Third-Party Plaintiff,<br><br>vs.<br><br>Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.<br><br>Third-Party Defendants. | **BALFOUR BEATTY CONSTRUCTION, LLC'S MOTION TO STRIKE AFFIDAVIT OF MARVIN D. INFINGER** |

Balfour Beatty Construction, LLC ("Balfour") hereby moves the Court, pursuant to Rule 7, SCRCP, for an Order striking the Affidavit of Marvin Infinger submitted by Library as part of

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its March 7, 2024, on the grounds that it is untimely, improper and inadmissible and it must, therefore, be disregarded and stricken.[1]

## BACKGROUND

This matter was tried before the Court on non-consecutive days beginning on September 13, 2021, and concluding on December 3, 2021. On October 6, 2023, the Court issued an order setting forth its findings of facts and conclusions of law. The Court's October 6, 2023, order (the "October 6, 2023, Order") instructed Library to submit its petition for attorneys' fees and costs within thirty (30) days of the date of the order. (Order p. 46).

On November 6, 2023, Library filed its Petition for Attorneys' Fees and Costs. Library filed affidavits executed by Kimberly Bennett Brown, W.H. Bundy, Jr. and Sam Hadley in support of its Petition. Library did not file or serve the Affidavit of Marvin Infinger in support of its Petition on November 6, 2023.

On March 7, 2024, Library filed a Memorandum in Support of its Petition for Attorneys' Fees and Costs in which it seeks a significantly higher award of attorneys' fees than those requested in its November 6, 2023, Petition. Specifically, Library now seeks an award of attorneys' fees based on the application of the "lodestar" method—a theory not previously raised by Library in its Petition. Library filed the Affidavit of Marvin Infinger in support of its March 7, 2024, Memorandum.

The Affidavit of Marvin Infinger should be stricken from the record because (1) it was not filed timely with Library's Petition for Attorneys' Fees, and (2) the Affidavit of Marvin Infinger contains inadmissible conclusions of law.

[1] The undersigned further certifies, pursuant to Rule 11, SCRCP, that consultation with Library's counsel would serve no useful purpose.

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## ARGUMENTS

### I. The affidavit of Affidavit of Marvin Infinger should be stricken because it was not filed timely with Library's Petition for Attorneys' Fees.

The October 6, 2023, Order required Library to file its Petition for Attorneys' Fees and Costs within thirty (30) days of the entry of that order. Library filed a Petition for Attorneys' Fees on November 6, 2023. Library did not submit the Affidavit of Marvin Infinger in support of its Petition, nor did it request an award of attorneys' fees based on a "lodestar" theory.

The Memorandum filed by Library on March 7, 2024, requests "enhanced" legal fees—which were not requested in its November 6, 2023, Petition and Library supported its request with the Affidavit of Marvin Infinger. Library's new request for "enhanced" legal fees and the Affidavit of Marvin Infinger are both untimely and inconsistent with the October 6, 2023, Order's requirement that Library submit a petition for attorneys' fees and costs on or before November 6, 2023. It is simply too late to advance a new theory for recovering attorneys' fees when the Court's October 6, 2023, Order set a deadline of November 6, 2023, for Library's submission.

Rule 6(d), SCRCP clearly and unambiguously states that "[w]hen a motion is to be supported by affidavit, the affidavit *shall be* served with the motion." Pursuant to Rule 6(d), SCRCP, Library was obligated to file the Affidavit of Marvin Infinger on November 6, 2023—it did not. Therefore, not only should the request for "enhanced" fees have been submitted by no later than November 6, 2023, any affidavit supporting such request must have been filed with the Petition. Accordingly, the Affidavit of Marvin Infinger is untimely and should be stricken from the record.

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## II. The Affidavit of Marvin Infinger must be stricken because it is contains inadmissible conclusions of law.

It is well-settled that expert testimony on issues of law are inadmissible. *See Dawkins v. Fields*, 354 S.C. 58, 65–66, 580 S.E.2d 433, 437 (2003) (holding the trial court properly refused to consider an expert's affidavit because it contained legal arguments and opinions on the ultimate issue); *O'Quinn v. Beach Assocs.,* 272 S.C. 95, 106–07, 249 S.E.2d 734, 739–40 (1978) (holding the trial court properly excluded the testimony offered to establish a conclusion of law because such conclusions are within the exclusive province of the trial court); Rule 702, SCRE. Moreover, courts have repeatedly held that that "experts" are not permitted to offer opinions about the law—including how to interpret a contractual provision. *See*, *e.g.*, *Hamilton v. Reg'l Med. Ctr.*, 440 S.C. 605, 633, 891 S.E.2d 682, 697 (Ct. App. 2023), *reh'g denied* (holding the trial court did not abuse its discretion by barring questions asking for an expert to form a legal conclusion because such testimony is inadmissible); *Forrest Creek Assocs., Ltd. v. McLean Sav. & Loan Ass'n*, 831 F.2d 1238, 1242 (4th Cir. 1987) (affirming the district court's decision to exclude expert testimony regarding the interpretation of a contract); *Piankatank River Golf Club, Inc. v. Selective Way Ins. Co.*, No. CIV.A. 3:08CV606, 2009 WL 1321512, at *4 (E.D. Va. May 11, 2009) (stating that "'[e]xpert opinions which express a legal conclusion are not admissible'" and that it is "improper for a court to rely on expert testimony for the purposes of interpreting certain terms and/or clauses of a contract"). When an affidavit offers inadmissible legal conclusion the proper course of action is for the Court to strike the affidavit. *See Dawkins v. Fields*, 354 S.C. 58, 66–67, 580 S.E.2d 433, 437 (2003); *Clifton v. Nationstar Mortg., LLC*, No. 3:12-CV-02074-MBS, 2015 WL 1549108, at *4 (D.S.C. Apr. 6, 2015) (striking portions of an affidavit because it contained inadmissible legal conclusions).

In *Dawkins*, the South Carolina Supreme Court held that the affidavit of the plaintiff shareholders' expert that was filed in opposition to the defendant's motion for summary judgment

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was properly excluded from the record because an overwhelming majority of the affidavit consisted of inadmissible legal conclusions. The Court in *Dawkins*, stated that while the affidavit "arguably offered some helpful, factual information, the overwhelming majority of the affidavit [was] simply legal argument as to why summary judgment should be denied." *Dawkins*, 354 S.C. at 66–67, 580 S.E.2d at 437. Therefore, the Court held that the trial court correctly refused to consider the affidavit.

In *Clifton*, the defendant submitted an affidavit and a declaration in support of a motion for summary judgment. The Court struck the portions of the affidavit submitted by the defendant that included the affiant's conclusions and opinions as to the meaning and interpretation of certain business records. The court also struck the portions of the declaration because it contained inadmissible legal conclusions on the issue of whether there was a "material breach" of a settlement agreement. *Clifton*, 2015 WL 1549108, at *3.

Similar to the affidavits and declarations at issue in *Dawkins* and *Clifton*, the Affidavit of Marvin Infinger contains inadmissible legal conclusions. Specifically, Mr. Infinger's affidavit contains nothing more than his unhelpful and misguided legal conclusions regarding the interpretation of a contract. Like the courts in *Dawkins* and *Clifton*, the Court should strike Mr. Infinger's affidavit on the grounds that it contains inadmissible conclusions of law that are not appropriate for inclusion in the record of this case.

## CONCLUSION

For the reasons set forth herein, the Affidavit of Marvin Infinger should be stricken from the record of this case on the grounds that it is untimely, improper and inadmissible.

Respectfully Submitted,

PARKER POE ADAMS & BERNSTEIN LLP

By: s/James Lynn Werner
James Lynn Werner, (SC Bar No. 6029)
1221 Main Street, Suite 1100
Columbia, SC 29201
(803) 255-8000
jimwerner@parkerpoe.com

Thomas C. Hildebrand, Jr. (S.C. Bar No. 2501)
Robert C. Byrd (S.C. Bar No. 1069)
W. Greyson Land (S.C. Bar No. 104179)
P. Nicholas Nybo (S.C. Bar No. 105825)
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)
tomhildebrand@parkerpoe.com
bobbybyrd@parkerpoe.com
greysonland@parkerpoe.com
nicknybo@parkerpoe.com

March 11, 2024
Columbia, South Carolina

*Attorneys for Plaintiff Balfour Beatty Construction, LLC*

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON | IN THE COURT OF COMMON PLEAS<br>NINTH JUDICIAL CIRCUIT<br>CASE NO.: 2019-CP-10-01108 |
| Balfour Beatty Construction, LLC<br><br>Plaintiff,<br><br>v.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation.<br><br>Defendants. | **LIBRARY ASSOCIATES, LLC'S REPLY TO BALFOUR BEATTY CONSTRUCTION, LLC'S MEMORANDUM IN OPPOSITION TO ITS PETITION FOR ATTORNEY'S FEES AND COSTS** |
| Library Associates, LLC,<br><br>Third-Party Plaintiff,<br><br>v.<br><br>Lithko Contracting, LLC, Watson Electrical Construction, Co., LLC, Old North State Masonry, LLC,<br><br>Third-Party Defendants. | |

Library Associates, LLC ("Owner") continues to rely on its arguments set forth in its Petition for

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Attorney's Fees and Costs and its Rule 52(b) and 59(e), SCRCP, Motion to Make Alter or Amend and Make Additional Findings and attaches its supplemental Affidavit of Marvin D. Infinger.

Owner is entitled to reasonable and just attorney's fees from this time-consuming litigation, manufactured by Contractor's obstreperous litigation tactics. Owner is also entitled to both an enhanced rate and an enhanced lodestar as a result of this extraordinary lawsuit derived from Contractor's fraudulent filings. The simplicity of this litigation is that it arose from the inappropriate, unlawful, and now determined by the Court, odious and wrongful mechanics liens claims. The defense of such liens necessitated counterclaims arising from the fraudulent conduct of Contractor and the devastating financial costs incurred, and continuing to be incurred, by Owner.

The present situation is akin to the Maybank decision. There, Appellants asserted identical arguments to that of Contractor, which were rejected by a unanimous South Carolina Supreme Court. Most notably, the Appellants argued that the subject affidavit of attorney's fees and costs was inadequate and lacked necessary details to ascertain and delineate the work completed in furtherance of the claim. Maybank v. BB&T Corp., 416 S.C. 541, 580, 787 S.E.2d 498, 518 (2016). The Supreme Court found that "all of Maybank's claims shared the same common facts and required combined efforts throughout the litigation process." Id. Thus, a reduction of twenty percent was found to be reasonable. Id.

In the present case, Owner's claims were solely pursued because of the improperly filed mechanics liens. In Maybank the party challenging the fees had a colorable claim for reduction of fees. Here, Owner did not initiate the subject suit. Rather, the resulting longstanding litigation was pursued and controlled by Contractor. The pursuit and defense of each claim is so similar that all fees were born under the same common theory. Thus, at most, a minor percentage of the reduction of fees should be awarded.

Like Maybank, the present case is also akin to Sauders v. S.C. Pub. Serv. Auth. in that "the overwhelming amount of attorney fee time claimed is for legal services that are so intertwined. . . that segregation of time is unnecessary." No. C.A. 2:03-0934-23, 2011 WL 1236163, at *12 (D.S.C. Mar. 30,

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2011). In Sauders, the Court found a reduction of ten percent appropriate. In the present case, should the Court believe a reduction necessary, which Owner steadfastly denies, the proper remedy would be a minimal percentage reduction rather than a dissection of counsel's billing statements. That said, given the nature of this particular case and the control of the litigation by Contractor, Owner would request all incurred attorney's fees be awarded with both a rate enhancement and a lodestar enhancement as such were incurred in the common factual and legal pursuit of the defense of the mechanics liens.

Regarding the fees of Sam Hadley, such were ordered by the Court under S.C. Code Ann. § 15-53-100. Contractor argues these fees are excluded under the South Carolina Declaratory Judgments Act but fails to cite any South Carolina authority defining "costs" as contemplated by the Act. The reason for this omission is due to South Carolina's wide adoption and expansion of the Act. In support thereof, the Act expressly states that such is both remedial and liberally construed and administered. S. C. Code Ann. Section 15-53-130.[1] In awarding Sam Hadley's fees, the Court was, and still retains, judicial discretion to render this decision and, absent a clear showing of abuse, such an award will be upheld on appeal.

Under the Declaratory Judgments Act, Owner requests the Court grant it equitable relief in the form of all costs borne by Owner as a result of the filing of the frivolous mechanics liens – liens the Court has found were pursued with fraudulent intent. Such costs are set forth in the Affidavit of Kimberly Bennett Brown. Contrary to Contractor's belief, these costs are well pled and set forth throughout various affidavits in the record. Many other jurisdictions have utilized this approach to afford relief to parties when such was necessary. See e.g., Paduch v. City of Johnson City, 896 S.W.2d 767, 771 (Tenn.1995) (the further relief authorized by the Uniform Declaratory Judgment Act, codified as Chapter 14 of Title 29 of the Tennessee Code Annotated, may include the award of damages wherever such an award is necessary and proper); Goodover v. Lindey's Inc., 255 Mont. 430, 437–39, 843 P.2d 765, 770 (1992)

[1] Owner recognizes and reserves its right to pursue additional causes of action to allow for the recovery of both Hadley's fees as well as any other relief requested by Owner both incidental to the continuing jurisdiction of the Court and for separate claims for numerous torts which obviously can be pursued.

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(Uniform Declaratory Judgments Act enables the trial court to retain jurisdiction and to grant further relief as it deems necessary and proper to enforce the declaratory judgment; court is not bound by relief requested in the complaint but may order any relief needed to effectuate the judgment); Agricultural Services, Inc. v. City of Gooding, 120 Idaho 627, 628, 818 P.2d 331, 332 (1991) (party to a declaratory judgment action may properly seek damages or other monetary relief to which he may be entitled; once a court has determined the merits of the controversy and has issued a judgment, the court can proceed to enforce that judgment with such orders as are necessary); Dry Canyon Farms, Inc. v. U.S. Nat. Bank of Oregon, 96 Or. App. 190, 192–95, 772 P.2d 1343, 1344–45 (1989) (bank which obtained declaratory judgment establishing that it had a valid security interest in cash proceeds of a crop in possession of a corporation, was not foreclosed from obtaining damages on a request for supplemental relief by its failure to claim such damages in its original declaratory proceeding); Satterfield v. Layton, 669 S.W.2d 287, 289 (Mo.Ct.App.1984) (trial court may give money judgment when such is warranted in declaratory judgment action).

In sum, the approximate twenty-four million dollars of mechanics liens, rejected by this Court as being fraudulent and designed to achieve ulterior purposes, completely justifies the request for attorney's fees and Sam Hadley's costs. Under the Declaratory Judgments Act, Owner requests the Court award additional relief as set forth in its numerous supporting documentations contained in the record. Included alongside this reply is the supplemental Affidavit of Marvin Infinger and, if requested by the Court, a supplemental Affidavit of Kimberly Bennett Brown will be provided which converts Owner's cost of increased interest to present day value and offers a solution to ensure a mitigation of costs. She will also be available for examination if the Court prefers. The call to duty of the Court is to achieve a result that is fair, equitable, and accounts for the significant harm suffered by Owner.

Owner reserves the right to include its claims for relief and costs under other various legal theories which are appropriate pursuant to the Court's current jurisdiction or as independent causes of action.

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## CONCLUSION

Justice denied is justice delayed. Contractor has exploited the delay of this action for too many years. Let it not be said the Court has no power to insist upon justice today and release Library Associates, LLC from several more years of litigation for the obvious tortious interference with its contractual rights, tortious interference with its prospective advantage, and outrageous conduct of Contractor. The most compelling reason for the creation of a court of equity is to foster justice and supplement the inadequacies of a court of law.

Respectfully Submitted,

/s John P. Linton
John P. Linton (Bar # 3346)
Mary K. Linton (Bar # 102815)
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
jlinton@duffyandyoun.com
mlinton@duffyandyoun.com

and

Bundy McDonald, LLC
W.H. Bundy, Jr., Esquire (Bar #1012)
M. Brent McDonald, Esquire (Bar#78057)
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

Attorneys For Library Associates, LLC

March 11, 2024
Charleston, South Carolina

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| | |
|---|---|
| STATE OF SOUTH CAROLINA )<br>)<br>COUNTY OF CHARLESTON ) | IN THE COURT OF COMMON PLEAS<br>NINTH JUDICIAL CIRCUIT<br>CASE NO. 2019-CP-10-01108 |
| Balfour Beatty Construction, LLC, )<br>)<br>Plaintiff, )<br>)<br>v. )<br>)<br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, )<br>)<br>Defendants. ) | REVISED AFFIDAVIT OF MARVIN D. INFINGER[1] |
| Library Associates, LLC, )<br>)<br>Third-Party Plaintiff, )<br>)<br>v. )<br>)<br>Lithko Contracting, LLC, Watson Electrical Construction Co., LLC, Old North State Masonry, LLC, )<br>)<br>Third-Party Defendants. ) | |

PERSONALLY APPEARED BEFORE ME MARVIN D. INFINGER, who being sworn, deposes and says:

**EDUCATION**

- B.A. in history from the University of South Carolina 1974;
- J.D. University of South Carolina School of Law 1977;

[1] This revised affidavit is submitted to correct an error in arithmetic to that of March 7, 2023. In calculating the figures contained under the heading "Customary Hourly Fee" and "Lode Star Enhancement," I used Exhibit A, here attached. Exhibit A included additions to the original amount of attorney fees submitted by Ms. Brown of $2,026,278.55. The additional statements bring the total attorney fees to $2,138,982.30. I totaled the pre-2019 invoices and intended to subtract them from the $2,138,982.30, but failed to do so. Correcting the oversight by subtracting $57,193.75 (pre-2019 statement amounts) from the $2,138.982.30 renders the starting point for fees paid less pre-2019 statements to be $2,081,788.55. This affidavit reflects this correction.

## PROFESSIONAL

## HISTORY

- Law clerk to the Honorable Robert W. Hemphill 1977 – 78;
- Sinkler Gibbs & Simons and following iterations 1978 – 2009;
- Nexsen Pruet 2010 – 2019;
- Barnwell Whaley Patterson & Helms 2020 to present;

## PROFESSIONAL AND CIVIC UNDERTAKINGS

- Member, Ninth Circuit Resolution of Fee Disputes Board;
- Bridge the Gap faculty;
- Chair, Advisory Committee for the District of South Carolina, which developed for the district a plan mandated by the Civil Justice Reform Act of 1990 enacted by Congress;
- Commissioner, the Board of Commissioners for Attorney Grievances and Discipline;
- Commissioner, State Ethics Commission;
- Member, ABA Standing Committee on Public Education;
- Member, ABA Silver Gavel Awards Committee;
- Past President, Charleston County Bar Association;

## PROFESSIONAL ORGANIZATION/ASSOCIATIONS PAST AND PRESENT

- ABA
- American College of Trial Lawyers
- American Board of Trial Advocates
- Maritime Law Association of the United States
- Southeastern Admiralty Law Institute
- Charleston Maritime Law Institute
- Fourth Circuit Judicial Conference



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## PAST RECOGNITIONS

- Lawyer of the Year for Charleston named by Best Lawyers in America:
  - Bet the Company litigation
  - Intellectual Property litigation
  - Maritime Law
  - Municipal Corporate litigation
- Super Lawyers Commercial Litigation

## OPINION ON THE REASONABLENESS OF BUNDY McDONALD ATTORNEY'S FEE APPLICATION

Bill Bundy's Affidavit in Support of Attorney's Fees has been reviewed and the undersigned opines that the fees are below the customary range and therefore reasonable as adjusted below to a reasonable degree of legal certainty based on the following:

## NATURE, EXTENT AND DIFFICULTY OF CASE/TIME AND LABOR DEVOTED TO CASE

In addition to Mr. Bundy's description in his Affidavit the following is noted: A close look at the Order issued in this case as well as the collateral efforts to obtain contractor documents generally described in the Order, efforts to have the Court dismiss or diminish liens, to have the Court issue Rules to Show Cause for the production of documents from the Contractor, to pursue Petitions for Contempt for Failure to do so, to make attempts to overcome being cut off from Contractor's digital document repository; to have made heroic efforts allowing maintenance of financing with lender without a declaration of default or a demand by lender to be assigned the contract, created an extremely complex dispute as expressed by Judge Scarborough in his remarks following the close of the main case,[2] which would become in the concrete 4,500 + pages of trial transcript. In addition, thousands of pages of bulk claims documents were submitted by Plaintiffs, not before, but during the trial after Court Orders to produce the same. All of this resulted in

[2] "There's a lot of stuff here." Tr. p. 4505

a stew of complexity requiring tremendous time, energy, labor, and attempted unraveling of tardily received information. Moreover, this litigation at present has been active for years and the trial went five weeks.[3]

**PROFESSIONAL STANDING OF COUNSEL**

Mr. Bundy's professional standing is that of a lawyer who possesses ability, tenacity, legal intelligence, trial skills, thoroughness, and excellence at the extreme upper levels of the profession. This is a conclusion of outstanding members of our State Bar.

**CUSTOMARY HOURLY FEE**

Mr. Bundy's and McDonald's hourly rate for a case of such complexity handled by lawyers of such high standing is below the customary hourly rate charged for such complex, extensive litigation.[4] A more customary rate is $600 for Mr. Bundy and $450 for Mr. McDonald, an increase of 50% rendering a reasonable fee of $3,122,682.82 which still is on the low end of reasonableness and which more accurately reflects the attorney's effort value.[5, 6] At the actual charged rates of $400 and $300 per hour, total invoices paid starting January, 2019 totaled $2,081,788.55.

**BENEFICIAL RESULT**

The result obtained is extraordinary having complete success in defeating claims by contractor at one time pressed to be in excess of $22 Million Dollars and mechanics liens at one time encumbering Defendant's property to the tune of $26 Million Dollars. That said in winning all out Library Associates is or will be out of approximately $50 Million Dollars as a result of Plaintiff's actions which the Court has found to be unwarranted. In addition, an award on counterclaims of over $3 Million Dollars was obtained by Plaintiff through the efforts of Bundy.

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[3] Approximately 6000 hours in lawyer time were spent defending the action. Such amounts of time expended surely resulted in lost representation opportunities to Smith McDonald, another factor sometimes considered in attorney fee awards.

[4] Consultation with leading litigators in the area established hourly rates of between $550-875 per hour in complicated litigation matters, as well as speaking to Mr. Bundy's standing as noted above.

[5] A factor often considered is the length and depth of relationship with the client. Bundy has represented Bennett interests in his projects for decades and this relationship allowed to a great degree the beneficial result.

[6] Fifteen years ago, in 2008 the Supreme Court found up to $600 per hour a reasonable hourly rate in complex litigation. Layman v State, 376 S.C. 434, 658 S.E.2d 320.



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**LODE STAR ENHANCEMENT**

In matters where such complexity and such extraordinarily beneficial results are obtained a lode star calculated fee may be enhanced. Maybank v BB&T involved similar causes of action and similar complexity to this action. There our Supreme Court upheld enhanced a lode star fee by 50% because of the exceptional efforts and outcome, which is appropriate here. An enhancement of 50% brings the total reasonable attorney fee to $4,684,024.24. If the Court chooses as a baseline the $2,081,788.55 actually paid, the 50% enhancement renders an enhanced fee of $3,122,682.82.

**THE ANTICIPATED ARGUMENT THAT THE MECHANICS LIEN AND CONTRACT CLAIM ARE IN DICHOTOMY REQUIRING AN APPORTIONMENT BETWEEN MECHANICS LIEN FEES RECOVERABLE BY STATUTE AND K CLAIMS.**

Establishment of division between non-recoverable fees allocated to the contract claim and mechanics lien claim foreclosure action is flawed. Plaintiffs submitted, proposed order to the Court provides for recovery of the exact principal amount owed, to the penny, $11,160,550.48 on its breach of contract claim, its foreclosure of mechanics lien claim and its quantum meruit claim. No other conclusion can be reached than that the same proof was offered to support Plaintiffs' contract claim and mechanics lien foreclosure. Thus, attorney fees should be recovered in their entirety, as Owner is a prevailing party under the Mechanics Lien Statute, based on the same proof offered to support Contractor's contract claim.

**COUNTERCLAIMS**

The counterclaims are inexorably linked to the common evidence presented by Plaintiff in an attempt to establish its contract and mechanics lien claims. The same proof offered by Defendant to counter these claims was offered by Defendant to support its defense. Only proof of delay days multiplied by daily liquidated damages and proof of the costs to complete were added evidence.[7]

[7] See Order at p. 42 alluding to 20 plus pages of transcript and Defendant's exhibit 146B as proving the completion of work costs. If there is to be a reduction by the Court, it is my opinion that it should be no more than the 3% applied by the Honorable P. Michael Duffy, for claims brought ancillarily in the Sauder v. South Carolina Public Service Auth. Inverse condemnation action, where just compensation was awarded to the tune of $219,000,000 (+). The Court reduced the attorney fees by 3%, a reduction based on no exact facts – but on his discretion as an adjustment, based on causes of action not recovered upon.

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**THIRD-PARTY CLAIMS**

Third-Party Plaintiff prevailed against subcontractors remaining in the suit on mechanics lien foreclosure actions. Prevailing was made possible by torturous and time-consuming efforts by Defendant dissecting evidence offered by Plaintiff and proving there was no evidence with a hint of probative value which support the liens, thus no reduction in fees is justified.[8]

**OPINION ON DECLARATORY JUDGMENT**
**ADDITIONAL ASSESSMENTS AGAINST PLAINTIFF**

A. FOUNDATION

This analysis starts with these harsh facts:

1. In winning this case Defendant is only harmed to the tune of $50 Million as opposed to $72 Million (Plaintiff's initial claim); as opposed to $76 Million (zenith of mechanic liens); as opposed to $63 Million (final claim and lien amounts plus interest in the evolution of morphing amounts). So in winning Owner simply lessens its mid to high-mid eight figure losses.

2. These Court determinations:

a) "I find contractor's failure to perform its own accounting and repeated obfuscation of the accounting and audit process constituted not only a breach of the contract but that it was accompanied by a fraudulent act. I find that the true purpose of trying to avoid the audit was not for the reasons stated by contractor in Defendant's Exhibit 50, but instead to avoid, for as long as possible, the discovery that contractor's claim was not $22,452,287 or any iterations of contractor's spreadsheets. . . .

"What was the purpose of filing duplicative and excessive liens? What is the legitimate purpose of refusing to do an accounting or allow one's books and records to be audited? The Court concludes that there is not a legitimate one. The only purpose would be to force an owner into submission." pp. 43-44.

[8] If a reduction were to be made no more than 10% should be considered – i.e., the number of pages of transcript dedicated to the Third-Party claims – roughly 500 pages which is 10% of the total transcript.

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b. "I find and do declare, pursuant to S.C. Code Section 15-53-30 and -40 based on the accounting work and audit performed by Hadley, the mechanics liens filed by contractor and subcontractors Lithco, Watson and ONSM are or were duplicative and excessive. The only remaining mechanics lien is the contractor's lien which is dismissed pursuant to the Court's ruling herein; p. 44.

c. "I find that Contractor engaged in acts which were unfair and deceptive in trade or commerce." p. 45.

B. OPINION AS TO ADDITIONAL ASSESSMENTS/RELIEF GIVEN "A" ABOVE

S.C. has adopted the "Uniform Declaratory Judgment Act," S.C. Code §15-53-10 et seq.

(i) Its provisions are to be construed liberally, §15-53-130;

(ii) Further relief based on the declaratory judgment or decree may be had whenever necessary or proper, §15-53-120;

(iii) The Court may award costs as may seem equitable and just, §15-53-100.

**FURTHER RELIEF UNDER DECLARATORY JUDGMENT ACT**

The declaratory judgment act allows for further relief where necessary or proper to be granted by the Court following its declaration in order to effectuate the judgment or decree. Further relief is not bound to the relief requested in the Complaint. "Further relief" has been uniformly interpreted as coercive or executory relief, including damages relief, and other monetary relief, so as to make their declarations effective.

The Master here found that the avoidance of audits by Contractor was to conceal the fact that its claims and mechanic liens were valueless and as such constituted fraudulent acts. The Court also found the Contractor to have engaged in "unfair and deceptive conduct of trade or commerce." The Court thus entered a declaration that the mechanics liens were duplicative and excessive, and baseless and dismissed the mechanics lien actions.

The acts of fraud and deception directly lead to delay in an "attempt to force an Owner into submission." This attempt failed but it has cost or shall cost Owner $50 Million. Failure to grant Owner

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further relief, would render the Court's declaration weak and ineffective. Failure to award the incurred and to be incurred finance costs and other costs in Owner's application would be to declare Owner the winner, but cost Owner tens of millions of dollars, exceeding by a factor of 2 ($26 Million) the amounts which baselessly encumbered the Owner's property with mechanics liens leading to missed opportunity to take advantage of among the lowest loan rates in modern history. To effectuate the Court's declaration dismissing the mechanics liens these past and present costs are awardable in the Court's discretion to prevent a pyrrhic victory for Owner and an affront to the Court's determination of fraudulent and deceitful conduct by Contractor against Owner to its $50 Million detriment.

OPINION

Relief for the incurred expert witness costs, loan modification costs, and costs of inability of owner to obtain historically low loan rates are appropriate.

1. Under the further relief provision of the DJA as discussed above.

2. The award of costs provision of the DJA whenever it seems equitable and just. This provision is purely equitable. The chancery courts were empowered to promote remedies equitable and just where legal forms of action provided none.

Equitable relief is exquisitely flexible. "Costs" under this DJA section are not defined. "Costs" under this DJA provision are not limited by its terms to court costs, past costs or future costs, but only to "costs" as may seem equitable and just. These amounts are "costs" incurred by owner or "costs" to be incurred by owner as that term is ordinarily understood. In this context, noting that the DJA is to be liberally construed, and that equitable relief is founded on principles of what is equitable and just, an award of these costs "seems" to be just that, equitable and just.

3. SCRCP 54(c)

"1" & "2" above are bolstered by this rule of Court which provides in part, "…every final judgment shall grant the relief to which the party in whose favor it is rendered in entitled, even if the party has not demanded such in his pleading."

## CONSEQUENTIAL DAMAGES LIMITATION

It is anticipated that Contractor will argue that all or part of the claimed "costs" sought to be awarded under the "Further Relief and/or Costs" section of the DJA are actually consequential damages which are disclaimed in the General Conditions to the contract between the parties. My opinion as to this position is as follows:

1. The direct cause of the "consequential damages" were the fraudulent acts and unfair and deceptive conduct of Contractor as adjudicated by the Court. Hence the provision is not enforceable as Contractor shall have used acts of fraud and deceit to "consequentially" damage Owner and then shield itself from the loss by the contractual term. In these circumstances, the fraud and deceit render the provision unenforceable.

2. The DJA under its further relief and costs sections are statutory provisions which in the sordid set of circumstances would elevate a contractual provision, over application of the statute allowing relief by the Court to effectuate its declaration and preclude the Court from dispensing equity and justice. In these circumstances the statute controls the contract.

All opinions herein are stated to a reasonable degree of legal certainty.

Marvin D. Infinger

STATE OF SOUTH CAROLINA )
COUNTY OF CHARLESTON )

SWORN TO AND SUBSCRIBED BY ME
THIS 11th DAY OF MARCH 2024.

Notary Public
My Commission Expires: 2/23/31



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# BUNDY MCDONALD

# SUMMARY OF INVOICES

| INVOICE DATE | AMOUNT |
|---|---|
| 1. November 10, 2016 | $9,952.00 |
| 2. December 7, 2016 | $2,870.00 |
| 3. April 5, 2017 | $2,655.50 |
| 4. May 4, 2017 | $2,200.00 |
| 5. June 2, 2017 | $6,536.25 |
| 6. August 3, 2017 | $1,040.00 |
| 7. October 4, 2017 | $700.00 |
| 8. November 6, 2017 | $200.00 |
| 9. February 19, 2018 | $920.00 |
| 10. March 21, 2018 | $640.00 |
| 11. April 10, 2018 | $2,720.00 |
| 12. May 11, 2018 | $4,080.00 |
| 13. June 25, 2018 | $5,080.00 |
| 14. July 27, 2018 | $5,840.00 |
| 15. August 23, 2018 | $3,750.00 |
| 16. September 26, 2018 | $540.00 |
| 17. October 23, 2018 | $30.00 |
| 18. November 7, 2018 | $510.00 |
| 19. December 28, 2018 | $420.00 |
| 20. May 11, 2018 | $670.00 |
| 21. June 25, 2018 | $4,580.00 |

EXHIBIT
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A

| | |
|---|---|
| 22. July 27, 2018 | $1,085.00 |
| 23. August 23, 2018 | $70.00 |
| 24. October 9, 2018 | $105.00 |
| 25. January 17, 2019 | $1,650.00 |
| 26. February 15, 2019 | $5,570.00 |
| 27. March 15, 2019 | $12,710.00 |
| 28. April 5, 2019 | $19,840.00 |
| 29. May 22, 2019 | $18,820.00 |
| 30. June 7, 2019 | $33,474.95 |
| 31. July 26, 2019 | $24,851.04 |
| 32. August 29, 2019 | $22,160.00 |
| 33. September 25, 2019 | $24,136.00 |
| 34. October 30, 2019 | $39,005.75 |
| 35. November 15, 2019 | $55,215.00 |
| 36. December 19, 2019 | $16,980.00 |
| 37. January 15, 2020 | $6,992.85 |
| 38. February 6, 2020 | $17,207.95 |
| 39. March 23, 2020 | $11,063.98 |
| 40. April 24, 2020 | $16,503.25 |
| 41. May 19, 2020 | $11,900.00 |
| 42. June 4, 2020 | $7,955.90 |
| 43. July 22, 2020 | $5,870.00 |
| 44. August 6, 2020 | $18,332.00 |
| 45. September 3, 2020 | $59,132.74 |
| 46. October 23, 2020 | $15,750.30 |
| 47. November 19, 2020 | $29,803.45 |
| 48. December 23, 2020 | $34,638.90 |

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| | |
|---|---|
| 49. January 25, 2021 | $100,124.15 |
| 50. February 23, 2021 | $35,630.00 |
| 51. March 19, 2021 | $29,071.74 |
| 52. April 20, 2021 | $30,951.78 |
| 53. May 27, 2021 | $36,770.00 |
| 54. June 21, 2021 | $47,080.00 |
| 55. July 25, 2021 | $59,999.08 |
| 56. August 26, 2021 | $53,527.86 |
| 57. September 10, 2021 | $135,409.08 |
| 58. October 7, 2021 | $201,424.32 |
| 59. November 16, 2021 | $176,871.02 |
| 60. December 16, 2021 | $118,087.25 |
| 61. January 21, 2022 | $47,900.00 |
| 62. May 6, 2022 | $19,682.00 |
| 63. June 24, 2022 | $3,600.00 |
| 64. July 6, 2022 | $1,590.00 |
| 65. August 19, 2022 | $9,238.55 |
| 66. October 10, 2022 | $44,917.30 |
| 67. December 1, 2022 | $54,614.00 |
| 68. February 2, 2023 | $105,973.86 |
| 69. March 27, 2023 | $26,800.00 |
| 70. April 20, 2023 | $30,487.50 |
| **Total:** | **$1,936,507.30** |
| **Additional Bills:** | |
| 71. May 21, 2019 | $3,750.00 |
| 72. May 21, 2019 | $30.00 |
| 73. May 21, 2019 | $420.00 |



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| | |
|---|---|
| 74. May 24, 2023 | $57,637.50 |
| 75. June 2023 | $26,450.00 |
| 76. June 9, 2023 | $84,587.50 |
| 77. October 2023 | $21,500.00 |
| 78. November 2023 | $8,100.00 |
| **New Total:** | **$2,138,982.30** |

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| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON | IN THE COURT OF COMMON PLEAS<br><br>CASE NO.: 2019-CP-10-01108 |
| Balfour Beatty Construction, LLC,<br>Plaintiff,<br><br>vs.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,<br><br>Defendants.<br><br>Library Associates, LLC<br>Third-Party Plaintiff,<br><br>vs.<br><br>Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.<br><br>Third-Party Defendants. | **AFFIDAVIT OF FRANKLIN E. WORRELL** |

Personally appears before me, Franklin E. Worrell. who deposes and says that:

1. He is a Certified Public Accountant (CPA), Certified in Financial Forensics (CFF), and a Anti-Money Laundering Specialist.

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2. He spent 28 years as a federal investigator, working for the Federal Bureau of Investigation (FBI), the United States Treasury (UST), and the Special Inspector General for the Troubled Asset Relief Program (SIGTARP).

3. He is the founding partner of Quick Group, LLC, full-service licensed private investigative firm based in Charleston, South Carolina that conducts complex financial investigations, forensic accounting, and investigative research for the legal community, businesses, and individuals.

4. He was engaged on behalf of Balfour Beatty Construction LLC ("Balfour") to review and analyze the Petition for Attorneys' Fees and Costs submitted by Library Associates, LLC ("Library") and the billing records of Bundy McDonald, LLC ("Bundy") submitted in connection therewith to assist in determining whether from the face of the billing records and the time entries and descriptions therein the legal fees and costs reflected therein which could be seen to reasonably relate to the defense by Library of the mechanic's lien foreclosure claim by Balfour in Case No.: 2019-CP-10-01108.

5. He reviewed the following Bundy invoices and the time entries reflected therein:

| Invoice Date | Invoice Number | Invoice Amount | Costs | Attorney Fees |
|---|---|---|---|---|
| 2/15/2019 | 10560 | 5,570 | 0 | 5,570 |
| 3/15/2019 | 10583 | 12,710 | 0 | 12,710 |
| 4/5/2019 | 10605 | 19,840 | 0 | 19,840 |
| 5/22/2019 | 10628 | 18,820 | 0 | 18,820 |
| 6/7/2019 | 10653 | 33,475 | 2,685 | 30,790 |
| 7/26/2019 | 10678 | 24,851 | 811 | 24,040 |
| 8/29/2019 | 10697 | 22,160 | 0 | 22,160 |
| 9/25/2019 | 10713 | 24,136 | 376 | 23,760 |
| 10/30/2019 | 10731 | 39,006 | 136 | 38,870 |
| 11/15/2019 | 10751 | 55,215 | 425 | 54,790 |
| 12/19/2019 | 10772 | 16,980 | 0 | 16,980 |
| 1/15/2020 | 10810 | 6,993 | 293 | 6,700 |
| 2/6/2020 | 10828 | 17,208 | 4,598 | 12,610 |
| 3/23/2020 | 10841 | 11,064 | 124 | 10,940 |

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| | | | | |
|---|---|---|---|---|
| 4/24/2020 | 10849 | 16,503 | 133 | 16,370 |
| 5/19/2020 | 10852 | 11,900 | 0 | 11,900 |
| 6/4/2020 | 10857 | 7,956 | 446 | 7,510 |
| 7/22/2020 | 10872 | 5,870 | 0 | 5,870 |
| 8/6/2020 | 10900 | 18,332 | 192 | 18,140 |
| 9/3/2020 | 10907 | 59,133 | 3,613 | 55,520 |
| 10/23/2020 | 10912 | 15,750 | 70 | 15,680 |
| 11/19/2020 | 10916 | 29,803 | 443 | 29,360 |
| 12/23/2020 | 10919 | 34,639 | 2,739 | 31,900 |
| 1/25/2021 | 10922 | 100,124 | 26,474 | 73,650 |
| 2/23/2021 | 10931 | 35,630 | 0 | 35,630 |
| 3/19/2021 | 10938 | 29,072 | 32 | 29,040 |
| 4/20/2021 | 10940 | 30,952 | 4,432 | 26,520 |
| 5/27/2021 | 10941 | 36,770 | 0 | 36,770 |
| 6/21/2021 | 10942 | 47,080 | 0 | 47,080 |
| 7/25/2021 | 10948 | 59,999 | 12,049 | 47,950 |
| 8/26/2021 | 10955 | 53,528 | 14,878 | 38,650 |
| 9/10/2021 | 10956 | 135,409 | 18,569 | 116,840 |
| 10/7/2021 | 10957 | 201,424 | 41,484 | 159,940 |
| 11/16/2021 | 10958 | 176,871 | 58,411 | 118,460 |
| 12/16/2021 | 10960 | 118,087 | 4,937 | 113,150 |
| 1/21/2022 | 10962 | 47,900 | 0 | 47,900 |
| 5/6/2022 | 10970 | 19,682 | 12,172 | 7,510 |
| 6/24/2022 | 10981 | 3,600 | 0 | 3,600 |
| 7/6/2022 | 10987 | 1,590 | 0 | 1,590 |
| 8/19/2022 | 10992 | 9,239 | 7,789 | 1,450 |
| 10/10/2022 | 10996 | 44,917 | 11,462 | 33,455 |
| 12/1/2022 | 11002 | 54,614 | 6,069 | 48,545 |
| 2/2/2023 | 11009 | 105,974 | 8,099 | 97,875 |
| 3/27/2023 | 11020 | 26,800 | 0 | 26,800 |
| 4/20/2023 | 11029 | 30,488 | 0 | 30,488 |
| 5/20/2023 | 11037 | 57,638 | 0 | 57,638 |
| 6/9/2023 | 11041 | 84,588 | 0 | 84,588 |
| Jun-23 | 11042 | 26,450 | 0 | 26,450 |
| Oct-23 | 11043 | 21,500 | 0 | 21,500 |
| Nov-23 | 11044 | 8,100 | 0 | 8,100 |
| | | **$2,075,940** | **$243,941** | **$1,831,999** |

6. He gives this affidavit of his own personal knowledge regarding his review and analysis of the Bundy invoices and time entries therein.

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7. Between January 2019 (the month when the Balfour lien was first asserted and filed) and November 2023, there were approximately 50 Bundy invoices containing over 1,500 separate billing entries within the invoices.

8. In conducting his analysis, and based on his specific review of each time entry, he categorized time entries into five separate categories.

9. The first category, Group 1, consists of time entries that reflect in the description of the activities no relevance to the litigation in Case No.: 2019-CP-10-01108 or to Balfour's mechanic's lien in that case. These time entries, on their face, describe work on matters altogether separate from the litigation and trial in issue. The sum of Group 1 is $15,160.00. The 22 time entries within Group 1 make up 0.83% of the total amount of attorney's fees sought by Library. The following are examples of entries within Group 1:

   a. "6/23/2021 - Prepared for and attended Bennett Hospitality motion to dismiss car complaint; worked on ONSM claim" - 8.00 hrs.- $2,400.00.

   b. "6/23/2022 - Worked on parking garage lease to prepare for call" - 1.00 hr. - $300.00.

   c. "4/6/2020 - Telephone conference with MBM re: Letter to Insurance Adjuster" - 0.50 hr. - $200.00.

10. The second category, Group 2, consists of time entries where the activity description contains little to no detail about what work was performed and which do not allow an allocation or determination of how the activity described in the time entry relates to the defense of Balfour's mechanic's lien. The sum of Group 2 is $790,738.00. The 602 time entries within Group 2 make up 43.16% of the total amount of attorney's fees sought by Library. The following are examples of entries within Group 2:

   a. "3/17/2020 - Telephone conference with MBM re: Strategy" - 2.70 hrs. - $1,080.00.

b. "8/26/2020 - Worked on memorandum" - 3.00 hrs.- $1,200.00.

c. "9/27/2021 - Telephone conference with MBM; Telephone conference with client" - 2.00 hrs.- $800.00.

d. "2/3/2023 - Worked on proposed order" - 2.00 hrs.- $600.00.

11. The third category, Group 3, consists of "block" time entries that contain a description of multiple distinct activities all grouped within a single cumulative time entry. Some of the activity descriptions may, to some extent, relate to the defense of the mechanic's lien but others clearly do not, such that a determination of how much of the time entry relates to the defense of Balfour's mechanic's lien is impossible. The sum of Group 3 is $276,370.00. The 244 time entries within within Group 3 make up 15.09% of the total amount of attorney's fees sought by Library. The following are examples of entries within Group 3:

a. "1/30/2019 - Telephone Conference with Clement re: change order for owners work correcting deficiencies; Telephone Conference with WHB re: bond requirements; reviewed Contract re: Bond requirements; Telephone Conference with WHB re: bank and lien strategy; drafted language for letter to Architect re: claim; Telephone Conference with WHB re: language for letter" - 2.50 hrs.- $750.00.

b. "8/1/2019 - Finalized Precision Wall's settlement; cont. to work on responsive pleadings; reviewed stipulation of dismissal; reviewed Sub lien analysis from Cotton" - 1.70 hrs.- $510.00.

c. "11/15/2019 - Prepared for call with Sam and Jason; Cont. organizing chart for ONSM docs; pulled waterproofing allegations for Clement call" - 2.00 hrs.- $600.00.



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d. "11/3/2020 - Telephone conference with Kim re: discovery and info for Sam; Telephone conference with WHB re: depositions; reviewed answers and counterclaims; finalized discovery responses to BMCC" - 1.50 hrs.- $450.00.

12. The fourth category, Group 4, consists of time entries that relate to other issues in Case No.: 2019-CP-10-01108, but which on the face of the activity description are not related to Library's defense of Balfour's mechanic's lien. The sum of Group 4 is $101,818.00. The 124 time entries within Group 4 make up 5.56% of the total amount of attorney's fees sought by Library. The following are examples of entries within Group 4:

a. "4/8/2019 - Telephone Conference with Kim re: shutters" - 0.30 hr.- $90.00.

b. " 6/5/2019 - Met with MBM re: Pay when paid defense" - 0.30 hr.- $120.00.

c. "10/29/2020 - Telephone Conference with MBM re: actual delays" - 4.00 hrs.- $1,200.00.

d. 6/1/2023 - 06/20/2023 - "Worked to prepare 59 (e) motion," "Status meeting with M.B.M. to prepare motion," "59 (e) research, " "Worked to prepare 59 (e) motion Sam's responses," "Worked to prepare 59 (e) motion Sam's responses and T/C with Sam; met with WHB re: Sam's responses," "Status meeting with M.B.M. to discuss research" - 38 entries for a total of 85 hrs.- $26,450.00.

13. The fifth category, Group 5, consists of time entries for activities that relate to or include time spent on the clams involving the subcontractors, such as the defense of a subcontractor's mechanic's lien or Library's pursuit of claims against a subcontractor. The sum of Group 5 is $180,620.00. The 208 time entries within Group 5 make up 9.86% of the total amount of attorney's fees sought by Library. The following are examples of entries within Group 5:



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a. "7/8/2019 - Telephone conference with Joey Floyd regarding possible settlement." 1.0 hr.- $400.00.

b. "10/29/2019 - Prepare for and attend depositions of ONSM and Watson" - 10.00 hrs.- $4,000.00.

c. "5/7/2021 - Prepared for and took BMCC depositions" - 10.50 hrs.- $4,200.00.

d. "11/11/2021 - Prepared for completion of trial and subcontractor trials" - 8.00 hrs.- $3,200.00.

14. The sum of the fees associated with the activities and time entries for Groups 1 - 5, which cannot be accurately or reliably linked to work undertaken or attorney's fees incurred in the defense of the Balfour mechanic's lien claim is $1,364,706.00.

15. The amount of attorney's fees reflected in Groups 1-5, which are attorney time entries that do not allow a reliable basis to conclude the activity, the time and the fees were incurred in the actual defense of the Balfour mechanic's lien claim represent 74.49% of the total attorney's fees claimed by Library in its Petition.

Franklin E. Worrell

Franklin E. Worrell

SWORN TO AND SUBSCRIBED BEFORE ME
This 28th day of March, 2024

Celeste M. Mallett

Notary Public for South Carolina

My commission expires: March 26, 2028

CELESTE M. MALLETT NOTARY PUBLIC SOUTH CAROLINA

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| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON | IN THE COURT OF COMMON PLEAS<br><br>CASE NO.: 2019-CP-10-01108 |
| Balfour Beatty Construction, LLC,<br>Plaintiff,<br><br>vs.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation,<br><br>Defendants. | |
| Library Associates, LLC<br>Third-Party Plaintiff,<br><br>vs.<br><br>Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc.<br><br>Third-Party Defendants. | BALFOUR BEATTY CONSTRUCTION, LLC'S MOTION IN LIMINE REGARDING HEARING ON PUNITIVE DAMAGES |

Defendant Balfour Beatty Construction, LLC ("Balfour"), moves *in limine* with respect to the so-called "bifurcated hearing on punitive damages" to exclude:

1. Additional evidence, including exhibits and testimony from witnesses which was not disclosed prior to the trial, which was not presented prior to the close of the trial on December 3, 2021.

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2. Evidence not specifically relating to the conduct of Balfour Beatty Construction, LLC.

3. Evidence of other conduct, punitive damage awards, civil fines or criminal penalties against Balfour Beatty Construction LLC unless such matters were the result of the same act or course of conduct complained of by Library in the case at bar.

## BACKGROUND

The captioned action was tried before the Court for 23 days over the period of time spanning from September 13, 2021 to December 3, 2021. During the entire duration of that trial, there was no motion by either side to bifurcate the trial on any issue, and there was no order (or pronouncement) by the Court that any issue or party of the trial was bifurcated. In other words, the case was tried by both parties to the Court in the plain and ordinary context that all issues and evidence were required to be submitted in full prior to the conclusion of the trial and the close of the Record.

Never until issuance and entry of the Court's Order and Judgment in the case on October 6, 2023, was there any indication that the issue of punitive damages was somehow being bifurcated. In that October 6, 2023, Order, for the first time, the Court said:

> This Court, therefore, orders a bifurcated hearing on punitive damages pursuant to S.C. Section 15-32-510 et seq. for contractor's breach of contract accompanied by a fraudulent act.

[Order at p.44] The Court also said, for the first time:

> A hearing on punitive damages will be set by future Order of this Court.

[Order at p.46]

While the Court has now scheduled the hearing on the punitive damage issue to occur on April 2, the court has provided no direction regarding the scope, conduct or procedure for the Hearing. No limitations or requirements applicable and appropriate to a trial, *ie.,* disclosure of witnesses, identification of proposed exhibits, etc. have been imposed by the Court, or provided by Library. Seemingly, the hearing is to be conducted in ambush style.

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The only pre-hearing indication of Library's plan for the hearing is from a rant by Library's counsel during the hearing on March 13, 2024, covering the various Rule 59(e) motions filed by numerous parties. During that hearing, counsel for Library said he was providing a "preview" for the punitive damages hearing when he ranted:

> This is a black swan. They ran into a - you know what a black swan is? This is a black swan. Balfour Beatty ran into a black swan. This is how they do business worldwide. They have been convicted of criminal - they have been convicted of crimes, okay, for stealing money up at an Air Force base. This is who these people are. That's who they have always been.

[March 13, 2024, Hearing Transcript at p. 49]

## ARGUMENT

### 1. LIBRARY MAY NOT INTRODUCE ADDITIONAL EVIDENCE WHICH WAS NOT DISCLOSED PRIOR TO AND/OR PRESENTED AT TRIAL.[1]

Balfour incorporates its Rule 59(e) Motion and arguments regarding the error and impropriety of this so-called "bifurcated hearing on punitive damages," and Balfour renews its objections to these proceedings and hearing. The Court ordered a bifurcated hearing on punitive damages for the first time nearly 22 months after the completion of trial and the close of the Record in the case. To the time of the Order, the Record in the case reflects there was no motion seeking a bifurcation of the case on the issue of punitive damages and, naturally, there was no order throughout the case imposing a bifurcation. Thus, throughout the trial of the case Library was required to address all of the issues raised by the pleadings and to present all of its evidence. For the Court to relieve Library now from its failure to meet its burden at trial, in an Order issued nearly 22 months after the close of that trial, is rank error.

[1] This argument was raised in Balfour Beatty Construction, LLC's Memorandum in Support of its Motion to Alter/Amend the Order Granting Judgment to Library Associates, filed Mar. 7, 2024, which Balfour fully incorporates by reference herein.

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With no bifurcation order in place during the trial, Library could and should have presented evidence relevant to punitive damages during trial. Given its choice, or failure to do so, it would be highly inappropriate, unfair, and prejudicial to Balfour to give Library a second bite at the apple now by allowing it to reopen the case, the evidence, or the arguments regarding punitive damages.

**2. LIBRARY MAY NOT INTRODUCE EVIDENCE OF UNRELATED INCIDENTS, ACTIONS OR PROCEEDINGS WHICH DID NOT INVOLVE BALFOUR BEATTY CONSTRUCTION, LLC.**

By statute, S.C. CODE ANN. § 15-32-520(E), South Carolina has established what factors and what evidence are relevant and material to a consideration of punitive damages; defining, therefore, what evidence is admissible. That statute provides for the consideration of admissible evidence on the issue of punitive damages only to include relevant evidence specifically about the party, Balfour Beatty Construction, LLC, from whom the damages are sought. Each and every consideration recognized in § 15-32-520(E) is expressly conditioned on that evidence being specific to "the defendant [party against whom the punitive damages are alleged]." Thus, evidence about the conduct of other entities is neither relevant, nor admissible.

**3. EVIDENCE OF OTHER CONDUCT, PUNITIVE DAMAGES AWARDS, CIVIL FINES OR CRIMINAL PENALTIES AGAINST BALFOUR BEATTY CONSTRUCTION, LLC UNLESS SUCH MATTERS WERE THE RESULT OF THE SAME ACT OR COURSE OF CONDUCT COMPLAINED OF BY LIBRARY IN THE CASE AT BAR.**

As it relates to evidence of other incidents not directly at issue in this case, or other incidents of punitive damage awards, criminal penalties or civil fines, in order to be admitted as evidence relevant and material to any consideration of an award of punitive damages in this case, Library must lay a sufficient factual foundation for the Court to determine that other incidents, conduct, awards, fines, or penalties involved Balfour Beatty Construction, LLC, and not some other entity. Furthermore, those incidents, etc. must be substantially similar to the incident at issue

in this case or must arise from conduct which was substantially similar. Section 15-32-520(E) provides:

- the awards of punitive damages *against the defendant* in any state or federal court action *alleging harm from the same act or course of conduct complained of by the plaintiff*;
- any criminal penalties *imposed on the defendant* as a *result of the same act or course of conduct complained of by the plaintiff*;
- the amount of any civil fines *assessed against the defendant* as *a result of the same act or course of conduct complained of by the plaintiff*.

This evidentiary standard for consideration of a punitive damage award is consistent with, and no different from the general standard for admissibility. Evidence of similar accidents, transactions, or happenings is admissible in South Carolina only when a special relation exists between the events and the party that would tend to prove or disprove some fact in dispute. *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 483, 609 S.E.2d 286, 300 (2005). "This rule, which governs the admissibility of prior accidents, transactions, or happenings, is based on relevancy, logic, and common sense." *Id.* (internal quotation marks omitted). In order to admit evidence, the proponent of the evidence must present a factual foundation for the Court to determine that the other incidents were substantially similar to the incident at issue. *See id.* Evidence of other incidents is inadmissible if not pertinent to the specific issues or conduct in this case. Such evidence of other incidents may be admitted only upon a showing of substantial identity of circumstances, and reasonable proximity in time, to those in the present case. *See Burbach v. Investors Mgmt. Corp. Int'l*, 326 S.C. 492, 501, 484 S.E.2d 119, 123 (Ct. App. 1997) (Goolsby, J., dissenting) (quoting *Martin v. Amusements of Am., Inc.*, 38 N.C.App. 130, 247 S.E.2d 639, 642 (1978).

Other unrelated incidents which involve the conduct of a different entity, and not the specific party in this case, have no probative value with respect to the conduct of Balfour Beatty Construction, LLC. *See Vincent v. Louis Marx & Co.*, 874 F.2d 36, 43 (1st Cir. 1989) ("Prior accidents involving another actor are simply too multifaceted to be useful to the factfinder.");



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*Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516, 526 (10th Cir. 1979) (in action to recover for personal injuries sustained by plaintiff player when struck on back of head by defendant player during course of game, evidence of acts which occurred in other games and between other teams and players was without relevance); *Davis v. Siemens Medical Solutions USA, Inc.*, 279 Fed. Appx. 378, 380 (6th Cir. 2008) (evidence that another manager had mistreated plaintiff and other employees was not admissible to show that the different manager involved in the situation at issue in trial had acted similarly).

The incident alluded to by Library's counsel during the March 13, 2024, hearing did not involve Balfour Beatty Construction, LLC. Balfour Beatty Construction, LLC was not convicted of any crime for stealing money at any Air Force base. Library has not, and cannot establish a sufficient factual foundation to show that any other incident involving some other Balfour Beatty entity occurred under substantially similar circumstances to those involved in the case at bar. There exists no justifiable basis for disregarding the legal distinction between Balfour Beatty Construction, LLC and any other Balfour Beatty entity. Library has not, and cannot establish any overlap in leadership or management between the two distinct Balfour entities, or that the employees involved in this case were involved in any way whatsoever with the operations of the other Balfour Beatty entities, *Cf. Johnson v. Sam Eng. Grading, Inc.*, 412 S.C. 433, 452–53, 772 S.E.2d 544, 554 (Ct. App. 2015) (admitting evidence of past similar incidents on the issue of punitive damages in the limited situation where *the same driver, equipment, and spotter* were always used).

Accordingly, evidence of other incidents which involved conduct by other entities (not specifically Balfour Beatty Construction, LLC) is of no relevance or consequence, and is not material to the determination of whether to award punitive damages against Balfour Beatty Construction, LLC in this case. Therefore, such evidence is not admissible and must be excluded.

Respectfully Submitted,

PARKER POE ADAMS & BERNSTEIN LLP

By: s/James Lynn Werner
James Lynn Werner, (SC Bar No. 6029)
1221 Main Street, Suite 1100
Columbia, SC 29201
(803) 255-8000
jimwerner@parkerpoe.com

Thomas C. Hildebrand, Jr. (S.C. Bar No. 2501)
Robert C. Byrd (S.C. Bar No. 1069)
W. Greyson Land (S.C. Bar No. 104179)
P. Nicholas Nybo (S.C. Bar No. 105825)
850 Morrison Drive, Suite 400
Charleston, SC 29403
(843) 727- 2650 (Office)
tomhildebrand@parkerpoe.com
bobbybyrd@parkerpoe.com
greysonland@parkerpoe.com
nicknybo@parkerpoe.com

Attorneys for Plaintiff Balfour Beatty Construction, LLC

April 1, 2024
Columbia, South Carolina

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DUFFY & YOUNG LLC
96 BROAD STREET, CHARLESTON SC 29401
telephone 843-720-2044 facsimile 843-720-2047
ATTORNEYS AT LAW

April 10, 2024

Ms. Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, South Carolina 29401

**RE: Balfour Beatty Construction, LLC, et al v. Library Associates, LLC, et al; Case No.: 2019-CP-10-01108**

Dear Ms. Armstrong:

The attached exhibits pertain to the hearing dated March 13, 2024 in reference to the above-listed matter.

Very truly yours,

Mary K. Linton

mlinton@duffyandyoung.com
WWW.DUFFYANDYOUNG.COM



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| | | |
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| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | NINTH JUDICIAL CIRCUIT |
| COUNTY OF CHARLESTON | ) | CASE NO.: 2019-CP-10-01108 |
| Balfour Beatty Construction, LLC<br><br>Plaintiff,<br><br>v.<br><br>Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation.<br><br>Defendants. | ) | **LIBRARY ASSOCIATES, LLC'S PETITION FOR ATTORNEYS' FEES AND COSTS** |
| Library Associates, LLC,<br><br>Third-Party Plaintiff,<br><br>v.<br><br>Lithko Contracting, LLC, Watson Electrical Construction, Co., LLC, Old North State Masonry, LLC,<br><br>Third-Party Defendants. | ) | |

Defendant/Third Party Plaintiff Library Associates, LLC ("Owner"), by and through its undersigned attorneys, hereby submits this Petition for Attorneys' Fees and Costs pursuant to the Order of this Court dated October 6, 2023, S.C. Code Ann. §§29-5-10, et seq., and S.C. Code Ann. §15-53-100. Enclosed herewith and incorporated herein are the following documents:

(a) Affidavit of Kimberly Bennett Brown (Exhibit A).

(b) Affidavit of W.H. Bundy, Jr. (Exhibit B).

(c) Affidavit of Sam Hadley (Exhibit C).

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Owner requests that the Court enter an order and additional judgment in this action against Defendants Balfour Beatty Construction, LLC, Lithko Contracting, LLC, Watson Electrical Construction, Co., LLC and Old North State Masonry, LLC pursuant to the Order of this Court dated October 6, 2023, S.C. Code Ann. §§29-5-10, et seq., and S.C. Code Ann. §15-53-100 in the amount of $50,191,574.70.

This Petition will be supplemented due and owing to additional attorneys' fees and costs that have been and will be incurred as and if this action continues into the future. The Owner reserves the right to submit such additional attorneys' fees and costs.

Owner is prepared to submit any requested back up testimony and documentation, both redacted and unredacted, upon the Court's request. Further, this Petition may be further supported by memoranda of law and oral argument upon request of the Court.

Respectfully submitted,

/s M. Brent McDonald
Bundy McDonald, LLC
W.H. Bundy, Jr., Esquire (Bar #1012)
M. Brent McDonald, Esquire (Bar#78057)
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com
Attorneys For Library Associates, LLC.

November 6, 2023

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**STATE OF SOUTH CAROLINA**

**COUNTY OF CHARLESTON**

**Affidavit of Kimberly Bennett Brown**

Personally Appeared before me, the undersigned, who being duly sworn, states as follows:

I, Kimberly Bennett Brown, do hereby swear under penalty of perjury as follows:

1. My name is Kimberly Bennett Brown, and I am an authorized representative of Library Associates, LLC. I am over the age of eighteen and competent to testify as to the matter set forth in this affidavit.

2. I have personal knowledge of the matters set forth herein.

3. Pursuant to the Court's Order of October 6, 2023, I hereby submit the following costs incurred by Library Associates, LLC arising out of mechanic's liens filed against its property.

   a. Expert Witness Costs
      i. Patrick O'Connor: $35,788.50
      ii. James Clements: $61,071.54
      iii. Mark Boe: $494,244.67
      iv. Sam Hadley: $655,197.70
      v. Grady Query: $14,075.00

      Subtotal: $1,260,377.41

   b. Legal
      i. Bundy McDonald, LLC: $2,026,278.55
      ii. MetLife: $330,000.00
      iii. Veritext: $1,003.79
      iv. Rosen Litigation Tech.: $6,977.00

      Subtotal: $2,364,259.34

   c. Loan Modification:
      i. Womble Bond Dickinson: $26,296.48
      ii. MetLife (Legal): $25,750.00
      iii. MetLife (Extension Fees): $216,500.00

      Subtotal: $268,546.48

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d. Costs incurred by inability to refinance construction loan due and owing to the Mechanics Liens. This amount represents the difference between the construction loan interest rate and the permanent interest rate available to Library Associates, LLC in January 2020.

i. 1/2020 through 10/2023: $4,699,260.38

Subtotal: $4,699,260.38

e. Costs to be incurred when refinancing that was not possible due and owing to the Mechanics Liens. This amount represents the difference between the 25 year fully amortized permanent loan interest rate available in January 2020 and the interest rate that would be available to Library Associates, LLC in November of 2023.

i. 11/2023 through 10/2048 $41,599,131.09

Subtotal: $41,599,131.09

4. The total costs to Library Associates, LLC arising out of mechanic's liens filed against its property are in the amount of $50,191,574.70

5. I have the necessary backup knowledge and documentation for the foregoing costs that can be produced both redacted and unredacted at the request of the Court.

FURTHER AFFIANT SAYETH NOT:

Kimberly Bennett Brown

SWORN to and subscribed before
Me this 6 day of Nov, 2023

LEEANN PURCELL NOTARY PUBLIC SOUTH CAROLINA

Notary Public for South Carolina
My Commission Expires: 9/17/2031

ELECTRONICALLY FILED - 2023 Nov 06 1:58 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

**AFFIDAVIT OF W.H. BUNDY, JR., ESQ.**

PERSONALLY APPEARED before me the undersigned officer duly authorized by law to administer oaths in the State of South Carolina, William Bundy, Jr. who after being duly sworn, states:

1. My name is Walter H. Bundy, Jr. Esq. I am over the age of eighteen and I am competent in all respects to testify regarding the matters set forth herein. I give this statement voluntarily based on my personal knowledge with the understanding that it is being used to substantiate an award of attorney's fees and costs under applicable South Carolina law.

2. I am the senior partner of Bundy McDonald, LLC.

3. I graduated from the University of South Carolina law school in 1978.

4. I have been licensed to practice law in the State of South Carolina since 1978.

5. Beginning in the early stages of my career, a large component of my practice has involved construction law and actual trials in South Carolina. Over the years, I have tried over 50 cases to verdict.

6. Based on my knowledge and experience in construction law, I have previously been retained and qualified to testify in court as a third-party expert witness on attorney's fees.

7. At all times relevant hereto, I have served as lead counsel for Library Associates, LLC "Library") in the case styled Case NO. 2019-CP-01108 in the Court of Common Pleas, Charleston County, South Carolina.

8. The subject litigation was extremely document intensive. I was required to review tens of thousands of pages of project files.. Additionally, I was required to review multiple expert reports and related documents pertaining to delay claims and defective construction.

9. My agreed upon hourly rate for my representation of Library Associates, LLC in this matter is $400.00 per hour. My law partner's, M. Brent McDonald, hourly rate is $300.00 per hour. My Paralegal charged $100.00 per hour.

10. The present total amount of attorneys' fees costs spent in fees and costs in this litigation is $2,026,278.55. If requested by the Court, backup documentation of the total amount claimed can be made available for in camera review.

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11. I am familiar with the factors that a court is required to consider in awarding attorney's fees under South Carolina law. See e.g., *Jackson v. Speed* , 326 S.C. 289, 486 S.E.2d 750 (1997). I offer the following testimony with respect to these factors:

(a) **Nature, extent, and difficulty of the legal services rendered.** This was a large and complex case involving competing claims between the owner, contractor, and numerous subcontractors. Due to the nature of those claims, specialized knowledge of construction law was required. The case was extremely document intensive and there was a significant amount of discovery conducted, including dozens of depositions and over 20 trial days. Similarly, there were a substantial amount of pleadings, motions and correspondence generated in this action.

(b) **Time and labor devoted to the case.** Since the commencement of action in 2019, my law firm has spent hundreds of hours in this matter, (i) analyzing claims made by Balfour Beatty Construction, LLC and its subcontractors (ii) reviewing project documents; (iii) performing legal research; (iv) drafting and reviewing related pleadings, motions, briefs, discovery responses and correspondence; (v) corresponding with all counsel; (vi) participating in discovery; (vii) travelling to and appearing at hearings, status conferences and mediations; (viii) trying the case and (ix) drafting proposed orders. I attempted to perform all of the foregoing tasks in the most efficient and economical manner possible while still maintaining my professional obligations to Library Associated, LLC as its counsel at all times.

(c) **The professional standing of counsel.** I received an undergraduate degree from the University of South Carolina in 1973 and a Juris Doctor from University of South Carolina law school in November 1978.

I have practiced law continuously since that time in South Carolina and began my practice under the tutelage of Gedney Main Howe, Junior. For 25 years, I was a partner in the law firm of Smith, Bundy, Bybee, Barnett, P.C. For the last ten years, I have been the senior partner at Bundy McDonald, LLC. During my 45 years in the practice of law I have maintained a civil trial practice concentrating in the area of construction trials and arbitrations. I have represented and sued, contractors, developers, subcontractors, architects, engineers, surveyors, material suppliers, and virtually every participant in the construction industry.

I have served as a construction arbitrator and special master in construction related disputes. I have held a Martindale-Hubbell, "AV preeminent lawyer" peer review rating, the highest rating in legal ability and ethical standards, for the last 35 years.

I am a fellow in the American College of Trial Lawyers, an invitation only, professional organization established in 1951, that is recognized as the premiere organization of its kind in the United States and Canada (see ACTL.COM).

In the past 45 years I have been involved in construction disputes, ranging anywhere from several hundred thousand dollars to tens of millions of dollars and have arbitrated and tried to conclusion cases with awards and verdicts totaling conservatively $50 million dollars.

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I represented City of Charleston in the South Carolina Aquarium case and the South Carolina Highway Department in the Wando River Bridge case. Both of these cases were complicated and complex construction cases involving tens of millions of dollars in dispute and, as such, were similar in size and complexity to this matter. I have handled virtually every kind of construction issue that could possible arise in a construction setting, including but limited to: delay, scheduling, scope of work, payment, change order, termination, suspension and unforeseen subsurface conditions to name a few.

(d) **Contingency of compensation.** My firm is not representing Library Associates, LLC under a contingency fee arrangement. Library has paid all of my firm's invoices to date, except the most recent one which remains outstanding.

(e) **Fee customarily charged in the locality for similar services.** My firm's hourly rates of $400.00/hr. and $300.00/hr is respectively consistent with the typical rate charged by lawyers of similar ability and experience in the Charleston legal market.

(f) **Beneficial result obtained.** My firm obtained a beneficial result for Library Associates, LLC.

12. In sum, and for the reasons set forth above, I believe that an award of attorney's fees and costs to Library Associates, LLC in the amount of $2,026,278.55 is reasonable and legal costs are appropriate in this case.

13. There will be additional attorneys' fees and costs as this matter continues and Library Associates, LLC reserves the right to submit additional amounts for recovery.

FURTHER AFFIANT SAYETH NAUGHT.

W.H. Bundy, Jr. Esq.

Sworn to and subscribed before
me this 6th day of
November, 2023.

Notary Public

ELECTRONICALLY FILED - 2023 Nov 06 1:58 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1001108

## Affidavit of Sam Hadley, Capital Project Management, Inc.

1. I, Sam Hadley am a Vice President at Capital Project Management, Inc. (CPMI), a consulting firm located in Philadelphia, Pennsylvania.
2. Previously, I was a Partner at Cotton & Company, a Certified Public Accounting firm located in Alexandria, Virigina.
3. Cotton & Company was engaged by Library Associates and Bundy McDonald, LLC on March 6, 2019, to provide expert consultant services on matters related to the construction of Hotel Bennett in Charleston, South Carolina.
4. In October 2023, I was asked to provide an affidavit swearing to the invoiced amounts related to my testimony at the hearing for the Hotel Bennett matter, and also confirming that those invoiced amounts were paid.
5. As noted above, I was employed by two different companies during work on the Hotel Bennet project, CPMI, and Cotton & Company. The Attachment below, therefore, identifies which entity produced the invoice to Library Associates.
6. The total amount invoiced was $655,197.70. All invoiced amounts were paid.
7. The amounts and date of each invoice contained in the Attachment below.

Sandra Hadley

Sam Hadley, CPA/CFF, CFE, CGFM

November 4th 2023
~~November 3, 2023~~

State of Texas
County of Harris

Jamal Jones
12/29/2024

This instrument was acknowledged before me by means of an interactive two-way audio and video communication on 11/04/2023 by Sandra Hadley.

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**Affidavit Attachment**

# Hotel Bennett Invoice Log -- Damages

| Invoicing Company | Invoice Date | Invoice No. | Invoice Amount |
|---|---|---|---|
| Cotton | 5/15/2019 | 3000-021-001 | $4,427.00 |
| Cotton | 6/5/2019 | 3000-021-002 | 33,034.92 |
| Cotton | 7/15/2019 | 3000-021-003 | 9,531.00 |
| Cotton | 8/2/2019 | 3000-021-004 | 7,249.00 |
| Cotton | 9/5/2019 | 3000-021-005 | 3,606.71 |
| Cotton | 10/15/2019 | 3000-021-006 | 28,968.00 |
| Cotton | 11/15/2019 | 3000-021-007 | 15,881.30 |
| Cotton | 12/15/2019 | 3000-021-008 | 21,241.00 |
| Cotton | 2/15/2020 | 3000-021-009 | 459.00 |
| Cotton | 4/15/2020 | 3000-021-010 | 16,823.00 |
| Cotton | 6/15/2020 | 3000-021-011 | 1,921.50 |
| Cotton | 7/15/2020 | 3000-021-012 | 17,449.00 |
| Cotton | 8/15/2020 | 3000-021-013 | 32,205.75 |
| Cotton | 9/15/2020 | 3000-021-014 | 46,397.75 |
| Cotton | 10/15/2020 | 3000-021-015 | 7,826.75 |
| Cotton | 11/15/2020 | 3000-021-016 | 25,797.50 |
| Cotton | 12/15/2020 | 3000-021-017 | 43,019.75 |
| Cotton | 1/15/2021 | 3000-021-018 | 59,290.75 |
| Cotton | 2/15/2021 | 3000-021-019 | 4,538.00 |
| Cotton | 3/15/2021 | 3000-021-020 | 4,487.50 |
| Cotton | 4/15/2021 | 3000-021-021 | 2,151.50 |
| Cotton | 5/13/2021 | 3000-021-022 | 5,717.25 |
| Cotton | 6/8/2021 | 3000-021-023 | 13,695.00 |
| Cotton | 7/21/2021 | 3000-021-024 | 17,895.75 |
| Cotton | 8/11/2021 | 3000-021-025 | 23,097.25 |
| Cotton | 9/13/2021 | 3000-021-026 | 34,729.75 |
| Cotton | 10/11/2021 | 3000-021-027 | 77,931.40 |
| Cotton | 11/10/2021 | 3000-021-028 | 60,278.30 |
| Cotton | 12/16/2021 | 3000-021-029 | 31,075.07 |
| CPMI | 2/7/2023 | 230111 | 1,295.00 |
| CPMI | 6/12/2023 | 230510 | 1,601.25 |
| CPMI | 7/17/2023 | 230609 | 1,575.00 |
| | | | **$655,197.70** |

# LIBRARY ASSOCIATES
## COST INCURRED DUE TO MECHANICS LIEN

| Expert Witness | Paid | Prejudgment Interest | Total |
|---|---|---|---|
| Patrick O'Connor | $ 35,788.50 | $ 6,646.26 | $ 42,434.76 |
| James Clements | $ 61,071.14 | $ 17,122.54 | $ 78,193.68 |
| mark Boe | $ 494,244.67 | $ 132,184.83 | $ 626,429.50 |
| Sam Hadley | $ 655,197.70 | $ 172,429.55 | $ 827,627.25 |
| Grady Query | $ 14,075.00 | $ 2,899.71 | $ 16,974.71 |
| **Legal** | | | |
| Bundy McDonald | $ 2,026,278.55 | $ 442,160.50 | $ 2,468,439.05 |
| MetLife | $ 330,000.00 | $ 97,368.32 | $ 427,368.32 |
| Veritext | $ 1,003.79 | $ 210.56 | $ 1,214.35 |
| Rosen Litigation Tech | $ 6,977.00 | $ 2,684.47 | $ 9,661.47 |
| **Loan Modification** | | | |
| Womble Bond Dickinson | $ 26,296.48 | $ 8,203.62 | $ 34,500.10 |
| MetLife(Legal) | $ 25,750.00 | $ 5,010.87 | $ 30,760.87 |
| MetLife(extension Fees) | $ 216,500.00 | $ 26,240.65 | $ 242,740.65 |
| | **$ 3,893,182.83** | **$ 913,161.90** | **$ 4,806,344.73** |

8066.86 JCB

34363.34 JCB

4,806,207.97 KB

R - 24247

PATRICK O'CONNOR

| Type | Num | Date | Amount | # Days from Payment Date To March 13, 2024 | @8.75% per annum | Total Interest | Total Bill Plus Interest |
|---|---|---|---|---|---|---|---|
| Bill Pmt -Check | 21456 | 05/20/2022 | $24,898.50 | 663 | 0.0875 | $ 3,957.33 | $ 28,855.83 |
| Bill Pmt -Check | 1058 | 05/18/2021 | $10,890.00 | 1030 | 0.0875 | $ 2,688.93 | $ 13,578.93 |
| | | | $ 35,788.50 | | | $ 6,646.26 | $ 42,434.76 |

R - 24248

JIM CLEMENTS

| Type | Num | Date | Amount | # Days From Payment Date To March 13, 2024 | @8.75% per annum | Total Interest | Total Bill Plus Interest |
|---|---|---|---|---|---|---|---|
| Bill Pmt -Check | 1087 | 11/05/2021 | $ 9,604.92 | 859 | 0.0875 | $ 1,977.89 | $ 11,582.81 |
| Bill Pmt -Check | 1079 | 09/02/2021 | $ 570.00 | 923 | 0.0875 | $ 126.12 | $ 696.12 |
| Bill Pmt -Check | 1069 | 07/08/2021 | $ 1,330.00 | 979 | 0.0875 | $ 312.14 | $ 1,642.14 |
| Bill Pmt -Check | 1063 | 6/3/2021 | $ 2,945.00 | 1014 | 0.0875 | $ 715.88 | $ 3,660.88 |
| Bill Pmt -Check | 1056 | 5/11/2021 | $ 12,814.23 | 1037 | 0.0875 | $ 3,185.56 | $ 15,999.79 |
| Bill Pmt -Check | 21429 | 3/11/2021 | $ 3,530.89 | 1098 | 0.0875 | $ 929.40 | $ 4,460.29 |
| Bill Pmt -Check | 21426 | 3/2/2021 | $ 8,692.50 | 1107 | 0.0875 | $ 2,306.79 | $ 10,999.29 |
| Bill Pmt -Check | 21418 | 1/27/2021 | $ 3,040.00 | 1141 | 0.0875 | $ 831.52 | $ 3,871.52 |
| Bill Pmt -Check | 1052 | 12/10/2020 | $ 760.00 | 1189 | 0.0875 | $ 216.63 | $ 976.63 |
| Bill Pmt -Check | 1050 | 11/12/2020 | $ 2,589.42 | 1217 | 0.0875 | $ 755.45 | $ 3,344.87 |
| Bill Pmt -Check | 1044 | 9/21/2020 | $ 3,230.00 | 1269 | 0.0875 | $ 982.61 | $ 4,212.61 |
| Bill Pmt -Check | 1028 | 2/26/2020 | $ 1,253.86 | 1477 | 0.0875 | $ 443.96 | $ 1,697.82 |
| Bill Pmt -Check | 1021 | 1/15/2020 | $ 2,482.70 | 1520 | 0.0875 | $ 904.66 | $ 3,387.36 |
| Bill Pmt -Check | 21362 | 8/8/2019 | $ 2,005.12 | 1679 | 0.0875 | $ 807.06 | $ 2,812.18 |
| Bill Pmt -Check | 21321 | 5/8/2019 | $ 6,222.50 | 1761 | 0.0875 | $ 2,626.88 | $ 8,849.38 |
| | | | $ 61,071.14 | | | $ 17,122.54 | $ 78,193.68 |

R - 24249

MARK BOE

| Type | Num | Date | Amount | # Days from Payment Date To March 13, 2024 | @8.75% per annum | Total Interest | Total Bill Plus Interest |
|---|---|---|---|---|---|---|---|
| Bill Pmt -Check | 21445 | 3/24/2022 | $ 29,774.94 | 720 | 0.0875 | $ 5,139.24 | $ 34,914.18 |
| Bill Pmt -Check | 1089 | 11/10/2021 | $ 89,320.00 | 854 | 0.0875 | $ 18,286.13 | $ 107,606.13 |
| Bill Pmt -Check | 1077 | 08/19/2021 | $ 37,431.25 | 937 | 0.0875 | $ 8,407.93 | $ 45,839.18 |
| Bill Pmt -Check | 1071 | 7/15/2021 | $ 18,695.00 | 972 | 0.0875 | $ 4,356.19 | $ 23,051.19 |
| Bill Pmt -Check | 1066 | 6/8/2021 | $ 7,705.00 | 1009 | 0.0875 | $ 1,863.71 | $ 9,568.71 |
| Bill Pmt -Check | 1060 | 5/19/2021 | $ 1,045.00 | 1029 | 0.0875 | $ 257.78 | $ 1,302.78 |
| Bill Pmt -Check | 21433 | 4/26/2021 | $ 147,200.00 | 1052 | 0.0875 | $ 37,122.63 | $ 184,322.63 |
| Bill Pmt -Check | 21427 | 3/3/2021 | $ 32,357.50 | 1106 | 0.0875 | $ 8,579.17 | $ 40,936.67 |
| Bill Pmt -Check | 1053 | 12/17/2020 | $ 46,202.50 | 1182 | 0.0875 | $ 13,091.76 | $ 59,294.26 |
| Bill Pmt -Check | 1041 | 8/26/2020 | $ 2,475.00 | 1295 | 0.0875 | $ 768.35 | $ 3,243.35 |
| Bill Pmt -Check | 1012 | 6/17/2019 | $ 40,512.50 | 1731 | 0.0875 | $ 16,811.30 | $ 57,323.80 |
| Bill Pmt -Check | 1008 | 5/21/2019 | $ 41,525.98 | 1758 | 0.0875 | $ 17,500.64 | $ 59,026.62 |
| | | | $ 494,244.67 | | | $132,184.83 | $ 626,429.50 |

R - 24250

SAM HADLEY

| Type | Num | Date | Amount | # Days from Payment Date To March 13, 2024 | @8.75% per annum | Total Interest | Total Bill Plus Interest |
|---|---|---|---|---|---|---|---|
| Bill Pmt -Check | 21526 | 10/12/2023 | $ 1,295.00 | 153 | 0.0875 | $ 47.50 | $ 1,342.50 |
| Bill Pmt -Check | 21514 | 7/20/2023 | $ 1,575.00 | 237 | 0.0875 | $ 89.48 | $ 1,664.48 |
| Bill Pmt -Check | 21510 | 6/14/2023 | $ 1,601.25 | 273 | 0.0875 | $ 104.79 | $ 1,706.04 |
| Bill Pmt -Check | 21446 | 3/24/2022 | $ 91,353.37 | 720 | 0.0875 | $ 15,767.84 | $ 107,121.21 |
| Bill Pmt -Check | 1090 | 11/10/2021 | $ 110,054.15 | 854 | 0.0875 | $ 22,530.95 | $ 132,585.10 |
| Bill Pmt -Check | 1084 | 10/20/2021 | $ 34,729.75 | 875 | 0.0875 | $ 7,284.92 | $ 42,014.67 |
| Bill Pmt -Check | 1074 | 7/28/2021 | $ 17,895.75 | 959 | 0.0875 | $ 4,114.18 | $ 22,009.93 |
| Bill Pmt -Check | 1067 | 6/8/2021 | $ 13,695.00 | 1009 | 0.0875 | $ 3,312.60 | $ 17,007.60 |
| Bill Pmt -Check | 1057 | 5/18/2021 | $ 67,159.50 | 1030 | 0.0875 | $ 16,582.88 | $ 83,742.38 |
| Bill Pmt -Check | 21419 | 2/10/2021 | $ 80,022.00 | 1127 | 0.0875 | $ 21,619.64 | $ 101,641.64 |
| Bill Pmt -Check | 1054 | 12/17/2020 | $ 43,019.75 | 1182 | 0.0875 | $ 12,189.91 | $ 55,209.66 |
| Bill Pmt -Check | 1042 | 8/26/2020 | $ 32,205.75 | 1295 | 0.0875 | $ 9,998.12 | $ 42,203.87 |
| Bill Pmt -Check | 1039 | 8/13/2020 | $ 17,449.00 | 1308 | 0.0875 | $ 5,471.34 | $ 22,920.34 |
| Bill Pmt -Check | 1035 | 6/23/2020 | $ 18,744.50 | 1359 | 0.0875 | $ 6,106.73 | $ 24,851.23 |
| Bill Pmt -Check | 1032 | 6/4/2020 | $ 21,241.00 | 1378 | 0.0875 | $ 7,016.80 | $ 28,257.80 |
| Bill Pmt -Check | 1027 | 2/26/2020 | $ 459.00 | 1477 | 0.0875 | $ 162.52 | $ 621.52 |
| Bill Pmt -Check | 1025 | 2/10/2020 | $ 38,499.00 | 1493 | 0.0875 | $ 13,779.21 | $ 52,278.21 |
| Bill Pmt -Check | 1020 | 1/15/2020 | $ 15,881.30 | 1519 | 0.0875 | $ 5,783.08 | $ 21,664.38 |
| Bill Pmt -Check | 1016 | 9/16/2019 | $ 3,606.71 | 1640 | 0.0875 | $ 1,417.98 | $ 5,024.69 |
| Bill Pmt -Check | 1015 | 8/7/2019 | $ 7,249.00 | 1980 | 0.0875 | $ 3,440.79 | $ 10,689.79 |
| Bill Pmt -Check | 1011 | 6/10/2019 | $ 37,461.92 | 1738 | 0.0875 | $ 15,608.28 | $ 53,070.20 |
| | | | $ 655,197.70 | | | $ 172,429.55 | $ 827,627.25 |

R - 24251

GRADY QUERY

| Type | Num | Date | Amount | # Days from Payment Date To March 13, 2024 | @8.75% per annum | Total Interest | Total Bill Plus Interest |
|---|---|---|---|---|---|---|---|
| Bill Pmt -Check | BM | 1/21/22 | $ 950.00 | 782 | 0.0875 | $ 178.09 | $ 1,128.09 |
| Bill Pmt -Check | BM | 12/20/21 | $ 850.00 | 814 | 0.0875 | $ 165.87 | $ 1,015.87 |
| Bill Pmt -Check | BM | 11/17/21 | $ 4,600.00 | 847 | 0.0875 | $ 934.02 | $ 5,534.02 |
| Bill Pmt -Check | BM | 10/20/21 | $ 7,200.00 | 874 | 0.0875 | $ 1,508.55 | $ 8,708.55 |
| Bill Pmt -Check | BM | 6/23/2021 | $ 475.00 | 994 | 0.0875 | $ 113.19 | $ 588.19 |
| | | | $ 14,075.00 | | | $ 2,899.71 | $ 16,974.71 |

R - 24252

BUNDY MCDONALD

| Type | Num | Date | Amount | # Days from Payment Date To March 13, 2024 | @8.75% per annum | Total Interest | Total Bill Plus Interest |
|---|---|---|---|---|---|---|---|
| **Bill Pmt -Check** | **21509** | **06/09/2023** | **$ 84,587.50** | 278 | 0.0875 | $ 5,637.24 | $ 90,224.74 |
| Bill Pmt -Check | 21505 | 05/25/2023 | $ 88,125.00 | 293 | 0.0875 | $ 6,189.88 | $ 94,314.88 |
| Bill Pmt -Check | 21500 | 03/29/2023 | $ 26,800.00 | 350 | 0.0875 | $ 2,248.63 | $ 29,048.63 |
| Bill Pmt -Check | 21489 | 02/08/2023 | $ 105,973.86 | 399 | 0.0875 | $ 10,136.47 | $ 116,110.33 |
| Bill Pmt -Check | 21485 | 12/28/2022 | $ 99,531.30 | 441 | 0.0875 | $ 10,522.37 | $ 110,053.67 |
| Bill Pmt -Check | 21468 | 08/23/2022 | $ 30,510.55 | 568 | 0.0875 | $ 4,154.45 | $ 34,665.00 |
| Bill Pmt -Check | 21462 | 07/01/2022 | $ 3,600.00 | 621 | 0.0875 | $ 535.93 | $ 4,135.93 |
| Bill Pmt -Check | 21454 | 05/19/2022 | $ 47,900.00 | 664 | 0.0875 | $ 7,624.63 | $ 55,524.63 |
| Bill Pmt -Check | 1097 | 12/29/2021 | $ 294,958.27 | 805 | 0.0875 | $ 56,920.89 | $ 351,879.16 |
| Bill Pmt -Check | 1088 | 11/10/2021 | $ 201,424.32 | 854 | 0.0875 | $ 41,236.80 | $ 242,661.12 |
| Bill Pmt -Check | 1081 | 09/20/2021 | $ 248,936.02 | 905 | 0.0875 | $ 54,007.18 | $ 302,943.20 |
| Bill Pmt -Check | 1072 | 07/22/2021 | $ 279,627.67 | 965 | 0.0875 | $ 64,687.84 | $ 344,315.51 |
| Bill Pmt -Check | 1059 | 05/19/2021 | $ 34,638.90 | 1029 | 0.0875 | $ 8,544.66 | $ 43,183.56 |
| Bill Pmt -Check | 21425 | 02/18/2021 | $ 29,803.45 | 1119 | 0.0875 | $ 7,994.88 | $ 37,798.33 |
| Bill Pmt -Check | 1051 | 12/10/2020 | $ 15,750.30 | 1189 | 0.0875 | $ 4,489.37 | $ 20,239.67 |
| Bill Pmt -Check | 1049 | 11/12/2020 | $ 59,132.74 | 1217 | 0.0875 | $ 17,251.77 | $ 76,384.51 |
| Bill Pmt -Check | 1040 | 08/26/2020 | $ 18,332.00 | 1295 | 0.0875 | $ 5,691.08 | $ 24,023.08 |
| Bill Pmt -Check | 1038 | 08/13/2020 | $ 13,825.90 | 1308 | 0.0875 | $ 4,335.27 | $ 18,161.17 |
| Bill Pmt -Check | 1033 | 06/04/2020 | $ 56,675.18 | 1378 | 0.0875 | $ 18,722.22 | $ 75,397.40 |
| Bill Pmt -Check | 1026 | 02/26/2020 | $ 6,992.85 | 1477 | 0.0875 | $ 2,476.00 | $ 9,468.85 |
| Bill Pmt -Check | 1024 | 01/29/2020 | $ 72,195.00 | 1505 | 0.0875 | $ 26,047.07 | $ 98,242.07 |
| Bill Pmt -Check | 1019 | 10/31/2019 | $ 85,301.75 | 1595 | 0.0875 | $ 32,616.23 | $ 117,917.98 |
| Bill Pmt -Check | 1014 | 08/07/2019 | $ 58,325.99 | 1680 | 0.0875 | $ 23,490.19 | $ 81,816.18 |
| Bill Pmt -Check | 1010 | 06/10/2019 | $ 18,820.00 | 1738 | 0.0875 | $ 7,841.24 | $ 26,661.24 |
| Bill Pmt -Check | 1009 | 05/21/2019 | $ 44,510.00 | 1758 | 0.0875 | $ 18,758.22 | $ 63,268.22 |
| | | | $ 2,026,278.55 | | | $ 442,160.50 | $ 2,468,439.05 |

R - 24253

METLIFE

| Type | Num | Date | Amount | # Days from Payment Date To March 13, 2024 | @8.75% per annum | Total Interest | Total Bill Plus Interest |
|---|---|---|---|---|---|---|---|
| Bill Pmt -wire | EFT | 6/28/2023 | $ 25,000.00 | 259 | 0.0875 | $ 1,552.23 | $ 26,552.23 |
| Bill Pmt -wire | EFT | 12/16/2021 | $ 30,000.00 | 818 | 0.0875 | $ 5,882.88 | $ 35,882.88 |
| Bill Pmt -wire | EFT | 09/21/2021 | $ 50,000.00 | 904 | 0.0875 | $ 10,835.62 | $ 60,835.62 |
| Bill Pmt -wire | EFT | 5/7/2021 | $ 50,000.00 | 1041 | 0.0875 | $ 12,477.74 | $ 62,477.74 |
| Bill Pmt -wire | EFT | 11/11/2020 | $ 50,000.00 | 1218 | 0.0875 | $ 14,599.32 | $ 64,599.32 |
| Bill Pmt -wire | EFT | 6/12/2019 | $ 125,000.00 | 1736 | 0.0875 | $ 52,020.55 | $ 177,020.55 |
| | | | $ 330,000.00 | | | $ 97,368.32 | $ 427,368.32 |

R - 24254

VERITEXT

| Type | Num | Date | Amount | # Days from Payment Date To March 13, 2024 | @8.75% per annum | Total Interest | Total Bill Plus Interest |
|---|---|---|---|---|---|---|---|
| Bill Pmt -Check | 1086 | 10/20/2021 | $ 1,003.79 | 875 | 0.0875 | $ 210.56 | $ 1,214.35 |
| | | | $ 1,003.79 | | | $ 210.56 | $ 1,214.35 |

R - 24255

ROSEN LITIGATION TECH

| Type | Num | Date | Amount | # Days from Payment Date To March 13, 2024 | @8.75% per annum | Total Interest | Total Bill Plus Interest |
|---|---|---|---|---|---|---|---|
| Bill Pmt -Check | 1018 | 10/21/2019 | $ 6,977.00 | 1605 | 0.0875 | $ 2,684.47 | $ 9,661.47 |
| | | | $ 6,977.00 | | | $ 2,684.47 | $ 9,661.47 |

R - 24256

## WOMBLE BOND DICKINSON

Loan Modification

| Type | Num | Date | Amount | # Days from Payment Date To March 13, 2024 | @8.75% per annum | Total Interest | Total Bill Plus Interest |
|---|---|---|---|---|---|---|---|
| Bill Pmt -Check | 21498 | 3/23/2023 | $ 3,154.95 | 356 | 0.0875 | $ 269.25 | $ 3,424.20 |
| Bill Pmt -Check | 21483 | 12/19/2022 | $ 3,806.83 | 450 | 0.0875 | $ 410.67 | $ 4,217.50 |
| Bill Pmt -Check | 1096 | 12/17/2021 | $ 391.50 | 817 | 0.0875 | $ 76.68 | $ 468.18 |
| Bill Pmt -Check | 1046 | 9/30/2020 | $ 826.50 | 1260 | 0.0875 | $ 249.65 | $ 1,076.15 |
| Bill Pmt -Check | 1047 | 9/30/2020 | $ 150.00 | 1260 | 0.0875 | $ 45.31 | $ 195.31 |
| Bill Pmt -Check | 21396 | 12/30/2019 | $ 5,048.50 | 1535 | 0.0875 | $ 1,857.74 | $ 6,906.24 |
| Bill Pmt -Check | 1017 | 9/19/2019 | $ 2,788.00 | 1637 | 0.0875 | $ 1,094.10 | $ 3,882.10 |
| Bill Pmt -Check | 1013 | 7/2/2019 | $ 6,604.00 | 1716 | 0.0875 | $ 2,716.69 | $ 9,320.69 |
| Bill Pmt -Check | 21330 | 5/24/2019 | $ 3,526.20 | 1755 | 0.0875 | $ 1,483.54 | $ 5,009.74 |
| | | | $ 26,296.48 | | | $ 8,203.62 | $ 34,500.10 |

R - 24257

## METLIFE -LEGAL

Loan Modification

| Type | Num | Date | Amount | PAID TO | # Days from Payment Date To March 13, 2024 | @8.75% per annum | Total Interest | Total Bill Plus Interest |
|---|---|---|---|---|---|---|---|---|
| Bill Pmt -check | 21493 | 02/23/2023 | $ 2,000.00 | Bulst Byars & Taylor | 384 | 0.0875 | $ 184.11 | $ 2,184.11 |
| Bill Pmt -wire | EFT | 2/23/2023 | $ 4,500.00 | Holland & Knight | 384 | 0.0875 | $ 414.25 | $ 4,914.25 |
| Bill Pmt -wire | EFT | 3/1/2022 | $ 4,500.00 | Holland & Knight | 743 | 0.0875 | $ 801.52 | $ 5,301.52 |
| Bill Pmt -wire | EFT | 3/1/2022 | $ 2,000.00 | Bulst Byars & Taylor | 743 | 0.0875 | $ 356.23 | $ 2,356.23 |
| Bill Pmt -wire | EFT | 3/1/2022 | $ 500.00 | doreen latimer | 743 | 0.0875 | $ 89.06 | $ 589.06 |
| Bill Pmt -wire | EFT | 3/31/2021 | $ 5,900.00 | Holland & Knight | 1078 | 0.0875 | $ 1,524.71 | $ 7,424.71 |
| Bill Pmt -wire | EFT | 3/31/2021 | $ 6,250.00 | womble bond dickinson | 1078 | 0.0875 | $ 1,615.15 | $ 7,865.15 |
| Bill Pmt -wire | EFT | 3/31/2021 | $ 100.00 | doreen latimer | 1078 | 0.0875 | $ 25.84 | $ 125.84 |
| | | | $ 25,750.00 | | | | $ 5,010.87 | $ 30,760.87 |

R - 24258

# METLIFE EXTENSION FEES

Loan Modification

| Type | Num | Date | Amount | # Days from Payment Date To March 13, 2024 | @8.75% per annum | Total Interest | Total Bill Plus Interest |
|---|---|---|---|---|---|---|---|
| Bill Pmt -Wire | | 2/23/2023 | $ 166,500.00 | 384 | 0.0875 | $ 15,327.12 | $ 181,827.12 |
| Bill Pmt -Wire | | 03/01/2022 | $ 25,000.00 | 743 | 0.0875 | $ 4,452.91 | $ 29,452.91 |
| Bill Pmt -Wire | | 03/31/2021 | $ 25,000.00 | 1078 | 0.0875 | $ 6,460.62 | $ 31,460.62 |
| | | | $ 216,500.00 | | | $ 26,240.65 | $ 242,740.65 |

R - 24259

EXHIBIT
3

# Summary of Hours

## Bundy McDonald

## 2019 – 2023

## Library Associates

| YEAR | HOURS |
|---|---|
| 2019 | 861.15 |
| 2020 | 682.05 |
| 2021 | 2,925.50 |
| 2022 | 515.20 |
| 2023 | 1,198.20 |
| TOTAL | 6,182.10 |

# Summary of Hours

# Bundy McDonald

# January – December 2019

| Bill Date Month and Year | HOURS |
|---|---|
| 1. January 17, 2019 | 4.7 |
| 2. February 15, 2019 | 16.20 |
| 3. March 15, 2019 | 37.70 |
| 4. April 5, 2019 | 60.30 |
| 5. May 22, 2019 | 59.20 |
| 6. June 7, 2019 | 99.20 |
| 7. July 26, 2019 | 78.75 |
| 8. August 29, 2019 | 75.50 |
| 9. September 25, 2019 | 79.00 |
| 10. October 30, 2019 | 123.60 |
| 11. November 15, 2019 | 172.20 |
| 12. December 19, 2019 | 54.80 |
| **2019 Total Hours** | **861.15** |

# Summary of Hours

# Bundy McDonald

# January – December 2020

| Bill Date Month and Year | HOURS |
|---|---|
| 1. January 15, 2020 | 22.00 |
| 2. February 6, 2020 | 38.80 |
| 3. March 23, 2020 | 31.30 |
| 4. April 24, 2020 | 49.30 |
| 5. May 19, 2020 | 37.00 |
| 6. June 4, 2020 | 24.30 |
| 7. July 22, 2020 | 23.10 |
| 8. August 6, 2020 | 51.55 |
| 9. September 3, 2020 | 164.80 |
| 10. October 23, 2020 | 45.70 |
| 11. November 19, 2020 | 88.60 |
| 12. December 23, 2020 | 105.60 |
| **2020 Total Hours** | **682.05** |

# Summary of Hours

# Bundy McDonald

# January – December 2021

| Bill Date Month and Year | HOURS |
|---|---|
| 1. January 25, 2021 | 214.50 |
| 2. February 23, 2021 | 136.80 |
| 3. March 19, 2021 | 94.40 |
| 4. April 20, 2021 | 89.80 |
| 5. May 27, 2021 | 118.80 |
| 6. June 21, 2021 | 162.30 |
| 7. July 25, 2021 | 157.50 |
| 8. August 26, 2021 | 139.00 |
| 9. September 10, 2021 | 409.40 |
| 10. October 7, 2021 | 582.90 |
| 11. November 16, 2021 | 436.10 |
| 12. December 16, 2021 | 384.00 |
| **Total Hours 2021** | **2,925.50** |

# Summary of Hours

# Bundy McDonald

# January – December 2022

| Bill Date Month and Year | HOURS |
|---|---|
| 1. January 21, 2022 | 174.50 |
| 2. May 6, 2022 | 22.60 |
| 3. June 24, 2022 | 14.50 |
| 4. July 6, 2022 | 4.30 |
| 5. August 19, 2022 | 3.90 |
| 6. October 10, 2022 | 134.05 |
| 7. December 1, 2022 | 161.35 |
| **Total Hours 2022** | **515.20** |

# Summary of Hours

# Bundy McDonald

# January – December 2023

| Bill Date Month and Year | HOURS |
|---|---|
| 1. February 2, 2023 | 340.75 |
| 2. March 27, 2023 | 86.00 |
| 3. April 20, 2023 | 98.50 |
| 4. May 24, 2023 | 192.50 |
| 5. June 9, 2023 | 300.20 |
| 6. June – 2023 | 85 |
| 7. October – 2023 | 69.5 |
| 8. November – 2023 | 25.75 |
| **Total Hours 2023** | **1,198.20** |

# BUNDY MCDONALD

# SUMMARY OF INVOICES

| INVOICE DATE | AMOUNT |
|---|---|
| 1. November 10, 2016 | $9,952.00 |
| 2. December 7, 2016 | $2,870.00 |
| 3. April 5, 2017 | $2,655.50 |
| 4. May 4, 2017 | $2,200.00 |
| 5. June 2, 2017 | $6,536.25 |
| 6. August 3, 2017 | $1,040.00 |
| 7. October 4, 2017 | $700.00 |
| 8. November 6, 2017 | $200.00 |
| 9. February 19, 2018 | $920.00 |
| 10. March 21, 2018 | $640.00 |
| 11. April 10, 2018 | $2,720.00 |
| 12. May 11, 2018 | $4,080.00 |
| 13. June 25, 2018 | $5,080.00 |
| 14. July 27, 2018 | $5,840.00 |
| 15. August 23, 2018 | $3,750.00 |
| 16. September 26, 2018 | $540.00 |
| 17. October 23, 2018 | $30.00 |
| 18. November 7, 2018 | $510.00 |
| 19. December 28, 2018 | $420.00 |
| 20. May 11, 2018 | $670.00 |
| 21. June 25, 2018 | $4,580.00 |

| | |
|---|---|
| 22. July 27, 2018 | $1,085.00 |
| 23. August 23, 2018 | $70.00 |
| 24. October 9, 2018 | $105.00 |
| 25. January 17, 2019 | $1,650.00 |
| 26. February 15, 2019 | $5,570.00 |
| 27. March 15, 2019 | $12,710.00 |
| 28. April 5, 2019 | $19,840.00 |
| 29. May 22, 2019 | $18,820.00 |
| 30. June 7, 2019 | $33,474.95 |
| 31. July 26, 2019 | $24,851.04 |
| 32. August 29, 2019 | $22,160.00 |
| 33. September 25, 2019 | $24,136.00 |
| 34. October 30, 2019 | $39,005.75 |
| 35. November 15, 2019 | $55,215.00 |
| 36. December 19, 2019 | $16,980.00 |
| 37. January 15, 2020 | $6,992.85 |
| 38. February 6, 2020 | $17,207.95 |
| 39. March 23, 2020 | $11,063.98 |
| 40. April 24, 2020 | $16,503.25 |
| 41. May 19, 2020 | $11,900.00 |
| 42. June 4, 2020 | $7,955.90 |
| 43. July 22, 2020 | $5,870.00 |
| 44. August 6, 2020 | $18,332.00 |
| 45. September 3, 2020 | $59,132.74 |
| 46. October 23, 2020 | $15,750.30 |
| 47. November 19, 2020 | $29,803.45 |
| 48. December 23, 2020 | $34,638.90 |

| | |
|---|---|
| 49. January 25, 2021 | $100,124.15 |
| 50. February 23, 2021 | $35,630.00 |
| 51. March 19, 2021 | $29,071.74 |
| 52. April 20, 2021 | $30,951.78 |
| 53. May 27, 2021 | $36,770.00 |
| 54. June 21, 2021 | $47,080.00 |
| 55. July 25, 2021 | $59,999.08 |
| 56. August 26, 2021 | $53,527.86 |
| 57. September 10, 2021 | $135,409.08 |
| 58. October 7, 2021 | $201,424.32 |
| 59. November 16, 2021 | $176,871.02 |
| 60. December 16, 2021 | $118,087.25 |
| 61. January 21, 2022 | $47,900.00 |
| 62. May 6, 2022 | $19,682.00 |
| 63. June 24, 2022 | $3,600.00 |
| 64. July 6, 2022 | $1,590.00 |
| 65. August 19, 2022 | $9,238.55 |
| 66. October 10, 2022 | $44,917.30 |
| 67. December 1, 2022 | $54,614.00 |
| 68. February 2, 2023 | $105,973.86 |
| 69. March 27, 2023 | $26,800.00 |
| 70. April 20, 2023 | $30,487.50 |
| **Total:** | **$1,936,507.30** |
| **Additional Bills:** | |
| 71. May 21, 2019 | $3,750.00 |
| 72. May 21, 2019 | $30.00 |
| 73. May 21, 2019 | $420.00 |

| | |
|---|---|
| 74. May 24, 2023 | $57,637.50 |
| 75. June 2023 | $26,450.00 |
| 76. June 9, 2023 | $84,587.50 |
| 77. October 2023 | $21,500.00 |
| 78. November 2023 | $8,100.00 |
| **New Total:** | **$2,138,982.30** |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: BMc 16-03

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $9,952.50 |
| New Balance | $9,952.50 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $9,952.50 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Matrix Program Management Services, LLC
4523 Bradbury Drive
Charlotte, NC 28209

Invoice Date: November 10, 2016
Invoice Number: 10002
Invoice Amount: $9,952.50

## Matter: BMc 16-03

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 10/10/2016 | Prepared for call with Clements; telephone conference with WHB re: Client call and overview of documents submitted by Clements; call with Clements re: BB claim (Lithco); Call with WHB re: possible strategy moving forward on claims; drafted changes to letter to BB re: Lithco claim; telephone conference with WHB re: changes; drafted email to Clements re: changes and contract copies | M.B.M. | 3.80 | $1,140.00 |
| 10/10/2016 | Telephone conference with MBM re: overview of documents from Clements; prepared for Client call; telephone conference with Clements and MBM; reviewed changes to Balfour response; telephone conference T/C with MBM re Contract review and Strategy; | W.H.B. | 2.50 | $1,000.00 |
| 10/11/2016 | Contract review; Met with MBM re: Architect and Strategy | W.H.B. | 1.00 | $400.00 |
| 10/11/2016 | Contract review; sent and received emails from Clements re: Contract documents and call; met with WHB re: emails forwarded by Clements; continued Contract review; prepared for Architect call | M.B.M. | 7.00 | $2,100.00 |
| 10/12/2016 | Prepared for Architect call; telephone conference with WHB re: Architect call and contract claim procedures; telephone conference with WHB re: call overview; telephone conference with Clements and WHB re: architect position and call; telephone conference with WHB, Clements, and Architect (BL and JF) | M.B.M. | 3.00 | $900.00 |

| | | | | |
|---|---|---|---|---|
| 10/12/2016 | Telephone conference with MBM re: architect call and contract claim; telephone conference with MBM re: preparation for call overview; telephone conference with Clements and MBM re: architect position; telephone conference with Clements and Architect | W.H.B. | 2.50 | $1,000.00 |
| 10/17/2016 | Reviewed WLA response to 6th floor delay claim; telephone conference with WHB re: response to WLA | M.B.M. | .80 | $240.00 |
| 10/17/2016 | Telephone conference with MBM re: response to WLA, received WLA response; left message for Clements | W.H.B. | .50 | $200.00 |
| 10/18/2016 | Reviewed WLA response; left message for Clements | W.H.B. | .50 | $200.00 |
| 10/18/2016 | Sent and received emails re: WLA response; prepared for call with Clements | M.B.M. | 3.80 | $1,140.00 |
| 10/19/2016 | Call with WHB; prepared for call with Clements; Call with Clements; research on claims and mediation procedure | M.B.M. | 3.80 | $1,140.00 |
| 10/19/2016 | Prepared for Clements call; telephone conference with MBM re: Mediation procedure; telephone conference with Client | W.H.B. | 1.00 | $400.00 |
| SUBTOTAL: | | | 30.20 | $9,860.00 |

**Costs**

| | | |
|---|---|---|
| 10/31/2016 | Photocopies/Color | $92.50 |
| SUBTOTAL: | | $92.50 |

**Matter Ledgers**

| | | |
|---|---|---|
| 11/10/2016 | Balance before last invoice | $0.00 |
| 11/10/2016 | Invoice 10002 | $9,952.50 |
| SUBTOTAL: | | $9,952.50 |

**Trust Account**

| | | |
|---|---|---|
| 11/10/2016 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $9,952.50

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $9,952.50

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: BMc 16-03

| | |
|---|---|
| Previous Balance | $9,952.50 |
| Current Charges | $2,870.00 |
| New Balance | $12,822.50 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $12,822.50 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: December 07, 2016
Invoice Number: 10015
Invoice Amount: $2,870.00

## Matter: BMc 16-03

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 11/1/2016 | Opened file; prepared documents for attorney review | S.R. | 1.00 | $100.00 |
| 11/2/2016 | Reviewed and responded to Clements email re: contact with Kor and Architect | M.B.M. | .30 | $90.00 |
| 11/7/2016 | Reviewed email from Clements re: 6th floor delay claim; met with WHB | M.B.M. | .30 | $90.00 |
| 11/7/2016 | Met with MBM re: update and call with Client | W.H.B. | .30 | $120.00 |
| 11/8/2016 | Met with WHB re: mediation demand and call with Clement | M.B.M. | .40 | $120.00 |
| 11/8/2016 | Met with MBM re: mediation demand and call with Clements | W.H.B. | .40 | $160.00 |
| 11/11/2016 | Telephone conference with WHB re: Clements and mediation demand | M.B.M. | .30 | $90.00 |
| 11/11/2016 | Telephone conference with MBM re: Clements and mediation demand | W.H.B. | .30 | $120.00 |
| 11/28/2016 | Reviewed email from BBC and Clements re: mediation demand; Telephone conference with WHB re: mediation demand and section 4.4.4 re architect request for additional information | M.B.M. | .50 | $150.00 |
| 11/28/2016 | Reviewed e-mails; telephone conference with MBM re: mediation demand and architect request for additional information | W.H.B. | .20 | $80.00 |
| 11/18/2016 | Received WLA response; left message for Clements | W.H.B. | .50 | $200.00 |
| 11/20/2016 | Telephone conference with MBM re: language and claims v. architect as opposed to claim to contractor | W.H.B. | .50 | $200.00 |
| 11/20/2016 | Telephone conference with WHB re: claim v. | M.B.M. | 4.50 | $1,350.00 |

| | | | |
|---|---|---|---|
| | Architect and claim of Contractor; organized claim/mediation/trial as to Contractor and impact of change order process | | |
| SUBTOTAL: | | 9.50 | $2,870.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 11/10/2016 | Balance before last invoice | $0.00 |
| 11/10/2016 | Invoice 10002 | $9,952.50 |
| 12/7/2016 | Invoice 10015 | $2,870.00 |
| SUBTOTAL: | | $12,822.50 |

**Trust Account**

| | | |
|---|---|---|
| 12/7/2016 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $2,870.00

PREVIOUS BALANCE DUE $9,952.50

CURRENT BALANCE DUE AND OWING $12,822.50

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project (BMc 16-03)

| | |
|---|---|
| Previous Balance | ($300.00) |
| Current Charges | $2,655.50 |
| New Balance | $2,355.50 |
| Adjustments | ($300.00) |
| Payments | ($12,822.50) |
| Now Due | $2,355.50 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: April 05, 2017
Invoice Number: 10100
Invoice Amount: $2,655.50

## Matter: Marion Square Hotel Project (BMc 16-03)

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 3/3/2017 | Reviewed emails from Clements; telephone conference with WHB re: request for C/O review | M.B.M. | .30 | $90.00 |
| 3/3/2017 | Telephone conference with MBM re: request for C/O review | W.H.B. | .20 | $80.00 |
| 3/6/2017 | Reviewed correspondence from Clements; telephone conference with WHB re: Mediation | M.B.M. | .20 | $60.00 |
| 3/6/2017 | Telephone conference with Clements re: AAA Mediation; Reviewed AAA calendar for Mediation; telephone conference with MBM re Mediation | W.H.B. | 1.00 | $400.00 |
| 3/7/2017 | Reviewed e-mails from Clements; telephone conference with MBM re: Mediation preparation and document review | W.H.B. | .50 | $200.00 |
| 3/7/2017 | Telephone conference with WHB re: document review and mediation preparation | M.B.M. | .30 | $90.00 |
| 3/23/2017 | Telephone conference with Jim Clements | W.H.B. | .30 | $120.00 |
| 3/28/2017 | Met with MBM re: Client call | W.H.B. | .50 | $200.00 |
| 3/28/2017 | Met with WHB re: call with Clements | M.B.M. | .50 | $150.00 |
| 3/29/2017 | Prepared for call with Clement; reviewed questions from Clement re: notification to architect in context of contract docs; telephone conference with WHB for prep for Clement call and architect mediation; call with Clement; WHB and KBB | M.B.M. | 2.20 | $660.00 |
| 3/29/2017 | Prepared for call with Client; telephone conference with MBM re: call with Client; telephone conference with Client and MBM | W.H.B. | 1.00 | $400.00 |

| | | | | |
|---|---|---|---|---|
| 3/31/2017 | Reviewed Change Order; E-mail correspondence with Kim Brown | W.H.B. | .50 | $200.00 |
| SUBTOTAL: | | | 7.50 | $2,650.00 |

**Costs**

| | | |
|---|---|---|
| 3/31/2017 | March Copy Costs | $5.50 |
| SUBTOTAL: | | $5.50 |

**Matter Ledgers**

| | | |
|---|---|---|
| 1/5/2017 | Balance before last invoice | $12,822.50 |
| 1/5/2017 | Invoice 10033 | $0.00 |
| 1/9/2017 | Fees from November & December 2016 Invoices | ($12,822.50) |
| 3/31/2017 | (Adjustment) WRITE OFF | ($300.00) |
| 4/5/2017 | Invoice 10100 | $2,655.50 |
| SUBTOTAL: | | $2,355.50 |

**Trust Account**

| | | |
|---|---|---|
| 4/5/2017 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $2,655.50

PREVIOUS BALANCE (CREDIT) $300.00

CURRENT BALANCE DUE AND OWING $2,355.50

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $2,200.00 |
| New Balance | $2,200.00 |
| Adjustments | ($2,355.50) |
| Payments | $0.00 |
| Now Due | $2,200.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: May 04, 2017
Invoice Number: 10119
Invoice Amount: $2,200.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 4/4/2017 | E-mail correspondence with AAA representative re: Mediation schedules | W.H.B. | .20 | $80.00 |
| 4/5/2017 | Downloaded and organized e-mails and documents received from Clements for MBM review | S.R. | 1.00 | $100.00 |
| 4/5/2017 | Telephone conference with MBM re: Clements call | W.H.B. | .20 | $80.00 |
| 4/5/2017 | Telephone conference with WHB re: prepared for Clements call | M.B.M. | .50 | $150.00 |
| 4/6/2017 | Reviewed documents from Clements; prepared for call with Clements; telephone conference with Clements; met with WHB re Overview | M.B.M. | 3.00 | $900.00 |
| 4/6/2017 | Telephone conference with Client; met with MBM re: overview | W.H.B. | 1.00 | $400.00 |
| 4/7/2017 | Drafted language for Clements for Architect Notice | M.B.M. | .30 | $90.00 |
| 4/10/2017 | E-mail correspondence with AAA representative re: Mediation schedules | W.H.B. | .20 | $80.00 |
| 4/20/2017 | Reviewed submission form Clements on SI#38; telephone conference with Clements | M.B.M. | .40 | $120.00 |
| 4/24/2017 | Mediation telephone conference; telephone conference with Clements | W.H.B. | .50 | $200.00 |
| SUBTOTAL: | | | 7.30 | $2,200.00 |

**Costs**

| | |
|---|---|
| SUBTOTAL: | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 4/5/2017 | Balance before last invoice | ($300.00) |
| 4/5/2017 | Invoice 10100 | $2,655.50 |
| 4/28/2017 | (Adjustment) Write-Off | ($2,355.50) |
| 5/4/2017 | Invoice 10119 | $2,200.00 |
| SUBTOTAL: | | $2,200.00 |

TOTAL $2,200.00

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $2,200.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $6,536.25 |
| New Balance | $6,536.25 |
| Adjustments | ($2,200.00) |
| Payments | $0.00 |
| Now Due | $6,536.25 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: June 02, 2017
Invoice Number: 10137
Invoice Amount: $6,536.25

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 5/26/2017 | Began preparing mediation packet for WHB | M.B.M. | 1.20 | $360.00 |
| 5/29/2017 | Completed mediation packet for WHB; met with WHB re: claims overview and RCO overview and went through documents | M.B.M. | 3.50 | $1,050.00 |
| 5/29/2017 | Met with WHB for mediation preparation | M.B.M. | 1.00 | $300.00 |
| 5/29/2017 | Prepared for Mediation; reviewed documents; met with MBM re: Mediation | W.H.B. | 4.00 | $1,600.00 |
| 5/30/2017 | Attended Mediation | W.H.B. | 8.00 | $3,200.00 |
| SUBTOTAL: | | | 17.70 | $6,510.00 |

**Costs**

| | | |
|---|---|---|
| 5/31/2017 | May Copy Costs | $26.25 |
| SUBTOTAL: | | $26.25 |

**Matter Ledgers**

| | | |
|---|---|---|
| 5/4/2017 | Balance before last invoice | $0.00 |
| 5/4/2017 | Invoice 10119 | $2,200.00 |
| 5/31/2017 | (Adjustment) Write off Invoice # 10119 | ($2,200.00) |
| 6/2/2017 | Invoice 10137 | $6,536.25 |
| SUBTOTAL: | | $6,536.25 |

**Trust Account**

| | | |
|---|---|---|
| 6/2/2017 | Previous Balance | $0.00 |

| | |
|---|---|
| Available in Trust: | $0.00 |

TOTAL $6,536.25
PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $6,536.25

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $1,040.00 |
| New Balance | $1,040.00 |
| | |
| Adjustments | $0.00 |
| | |
| Payments | ($6,536.25) |
| Now Due | $1,040.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: August 03, 2017
Invoice Number: 10173
Invoice Amount: $1,040.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 7/14/2017 | Telephone conference with Balfour Beaty attorney re: use of Cumings/Blatt. | B.B. | .75 | $300.00 |
| 7/17/2017 | Review email correspondence from Heuer to Clement. | B.B. | .30 | $120.00 |
| 7/21/2017 | Telephone conference with client re: scheduler | B.B. | .30 | $120.00 |
| 7/24/2017 | Telephone conference with Bennett re: scheduler | B.B. | .30 | $120.00 |
| 7/26/2017 | Meeting with Query and MBM; email correspondence with client. | B.B. | .75 | $300.00 |
| 7/28/2017 | Email correspondence to and from Clement re: CCD | B.B. | .20 | $80.00 |
| SUBTOTAL: | | | 2.60 | $1,040.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 7/6/2017 | Balance before last invoice | $6,536.25 |
| 7/6/2017 | Invoice 10155 | $0.00 |
| 7/12/2017 | Check #20934 - Payment for Invoice #10137 | ($6,536.25) |
| 8/3/2017 | Invoice 10173 | $1,040.00 |
| SUBTOTAL: | | $1,040.00 |

TOTAL $1,040.00
PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $1,040.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC

Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $700.00 |
| New Balance | $700.00 |
| Adjustments | $0.00 |
| Payments | ($1,040.00) |
| Now Due | $700.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: October 04, 2017
Invoice Number: 10202
Invoice Amount: $700.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 1/17/2017 | Reviewed correspondence and attachments from Clements re: 6th floor delay claim and possible 7th and 9th floor delay claims; prepared for meeting with WHB | M.B.M. | .80 | No Charge |
| 1/19/2017 | Reviewed e-mail from Clements re time extension notice and mark up on COs | B.B. | .20 | No Charge |
| 1/30/2017 | Conference with MBM; e-mail correspondence with Clements re: Mediator selection | B.B. | .30 | No Charge |
| 1/30/2017 | Reviewed AAA mediation docs; drafted letter to Clements re: mediator; Telephone conference with Clements re: him responding to AAA re: Wills as the agreed upon mediator; Telephone conference with WHB re: Mediator | M.B.M. | .50 | No Charge |
| 2/1/2017 | Telephone conference with Kim Brown; review of Goff Settlement Agreement; e-mails and telephone conferences with Goff's attorney | B.B. | .75 | $300.00 |
| 9/14/2017 | Review and receipt of Query schedule; Telephone conference with Kim Brown regarding the same; emails regarding meeting. | B.B. | 1.00 | $400.00 |
| SUBTOTAL: | | | 3.55 | $700.00 |

**Costs**

| | |
|---|---|
| SUBTOTAL: | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 9/5/2017 | Balance before last invoice | $1,040.00 |
| 9/5/2017 | Invoice 10187 | $0.00 |
| 9/29/2017 | Invoice 10173 | ($1,040.00) |
| 10/4/2017 | Invoice 10202 | $700.00 |
| SUBTOTAL: | | $700.00 |

**Trust Account**

| | | |
|---|---|---|
| 10/4/2017 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $700.00

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $700.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $700.00 |
| Current Charges | $200.00 |
| New Balance | $900.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $900.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: November 06, 2017
Invoice Number: 10219
Invoice Amount: $200.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 10/3/2017 | Telephone conference with Clement re: GC Contingency A/E extended visits and emails regarding the same. | B.B. | .50 | $200.00 |
| SUBTOTAL: | | | 0.50 | $200.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 10/4/2017 | Balance before last invoice | $0.00 |
| 10/4/2017 | Invoice 10202 | $700.00 |
| 11/6/2017 | Invoice 10219 | $200.00 |
| SUBTOTAL: | | $900.00 |

TOTAL $200.00
PREVIOUS BALANCE DUE $700.00

CURRENT BALANCE DUE AND OWING $900.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $920.00 |
| New Balance | $920.00 |
| Adjustments | $0.00 |
| Payments | ($700.00) |
| Now Due | $920.00 |
| Trust Account | $0.00 |

2018

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: February 19, 2018
Invoice Number: 10264
Invoice Amount: $920.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 1/23/2018 | Telephone conference with Jim regarding hotel change orders. | B.B. | .10 | $40.00 |
| 1/29/2018 | Telephone conference with Kim Bennett Brown. | B.B. | .20 | $80.00 |
| 1/30/2018 | Travel to and From Summerville Office to Hotel to attend a meeting with Mike Bennett | B.B. | 2.00 | $800.00 |
| SUBTOTAL: | | | 2.30 | $920.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 12/14/2017 | Balance before last invoice | $700.00 |
| 12/14/2017 | Invoice 10232 | $0.00 |
| 1/11/2018 | Payment for Invoice 10232 | ($700.00) |
| 2/19/2018 | Invoice 10264 | $920.00 |
| SUBTOTAL: | | $920.00 |

**Trust Account**

| | | |
|---|---|---|
| 2/19/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $920.00
PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $920.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $920.00 |
| Current Charges | $640.00 |
| New Balance | $1,560.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $1,560.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: March 21, 2018
Invoice Number: 10285
Invoice Amount: $640.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 2/9/2018 | Pc from and to Jim Clement re credit CO's | B.B. | .40 | $160.00 |
| 2/16/2018 | pc with kim | B.B. | .20 | $80.00 |
| 2/18/2018 | Preparation for and Conference call with Kim, Mike and Jim | B.B. | 1.00 | $400.00 |
| SUBTOTAL: | | | 1.60 | $640.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 2/19/2018 | Balance before last invoice | $0.00 |
| 2/19/2018 | Invoice 10264 | $920.00 |
| 3/21/2018 | Invoice 10285 | $640.00 |
| SUBTOTAL: | | $1,560.00 |

**Trust Account**

| | | |
|---|---|---|
| 3/21/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $640.00
PREVIOUS BALANCE DUE $920.00

CURRENT BALANCE DUE AND OWING $1,560.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $640.00 |
| Current Charges | $2,720.00 |
| New Balance | $3,360.00 |
| Adjustments | $0.00 |
| Payments | ($920.00) |
| Now Due | $3,360.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: April 10, 2018
Invoice Number: 10305
Invoice Amount: $2,720.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 3/1/2018 | Call with bennett, brown , clement re stucco | B.B. | .30 | $120.00 |
| 3/12/2018 | Pc from clement re contractors request for contigency payment | B.B. | .50 | $200.00 |
| 3/21/2018 | Phone calls and e-mails with Clement | B.B. | .75 | $300.00 |
| 3/22/2018 | Dealing with construction contingency claim , review of e-mails , conference call with Jim & Brent | B.B. | 1.50 | $600.00 |
| 3/22/2018 | Telephone conference with WHB re: issue on Cont. funds; pulled and reviewed correspondence to go over with WHB in prep for his call with BB lawyer; drafted memo to WHB; Telephone conference with WHB re: overview of BR issues; Telephone conference with Clements; reviewed emails from Clements | M.B.M. | 2.50 | $750.00 |
| 3/23/2018 | e-mail from clement re change order proposed revision and builders risk issue | B.B. | .75 | $300.00 |
| 3/23/2018 | Reviewed emails from Clement; reviewed BR policy; Telephone conference with WHB re: builders risk, change order qualification language, and Lithco retainage; Telephone conference with J. Clement and WHB regarding the same; Telephone conference with WHB; sent and received emails re: CO language | M.B.M. | 1.50 | $450.00 |
| SUBTOTAL: | | | 7.80 | $2,720.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 3/21/2018 | Balance before last invoice | $920.00 |
| 3/21/2018 | Invoice 10285 | $640.00 |
| 4/5/2018 | Payment for Invoice 10264 | ($920.00) |
| 4/10/2018 | Invoice 10305 | $2,720.00 |
| SUBTOTAL: | | $3,360.00 |

**Trust Account**

| | | |
|---|---|---|
| 4/10/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $2,720.00

PREVIOUS BALANCE DUE $640.00

CURRENT BALANCE DUE AND OWING $3,360.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $3,360.00 |
| Current Charges | $4,080.00 |
| New Balance | $7,440.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $7,440.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: May 11, 2018
Invoice Number: 10343
Invoice Amount: $4,080.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 4/10/2018 | Telephone conference with WHB re: overview for call with Heuer; call with Heuer and WHB | M.B.M. | 1.10 | $330.00 |
| 4/10/2018 | Emails from Clement, conf with Brent pc with Heuer re claims | B.B. | 1.00 | $400.00 |
| 4/11/2018 | Telephone conference with MBM re: Telephone conference with Clement; Telephone conference with MBM and Clement | B.B. | .50 | $200.00 |
| 4/11/2018 | Prepared for call with Clement; telephone conference with Clement and WHB; telephone conference with WHB re: prep for call with Heuer | M.B.M. | .80 | $240.00 |
| 4/12/2018 | Reviewed march update from Clements; telephone conference with WHB re: CCD and call to Kim; sent email to Heuer re: call; prepared for Heuer call | M.B.M. | .50 | $150.00 |
| 4/16/2018 | Prepared for call with Heuer; Telephone Conference with Heuer | M.B.M. | 1.10 | $330.00 |
| 4/20/2018 | Telephone conference with Clements re update | M.B.M. | 1.00 | $300.00 |
| 4/25/2018 | Telephone conference with WHB re: update; telephone conference with Clements re: contingency funds; drafted email to Heuer | M.B.M. | .30 | $90.00 |
| 4/25/2018 | Telephone conference with Clement and Brent re construction contingency | B.B. | .30 | $120.00 |
| 4/26/2018 | Pulled contract documents for WHB; telephone conference with Kim Brown and Clement; met with WHB re: contract documents. | M.B.M. | .40 | $120.00 |
| 4/26/2018 | Telephone conferene with MBM: Telephone | B.B. | 1.00 | $400.00 |

| | | | | |
|---|---|---|---|---|
| | conference with clement; Telephone conference with Kim re retainage | | | |
| 4/26/2018 | Telephone conference with MBM and Heuer | B.B. | .40 | $160.00 |
| 4/27/2018 | Prepared for call with Heuer; telephone conference with WHB; telephone conference with WHB and Heuer; reviewed CCD from Heuer | M.B.M. | 1.20 | $360.00 |
| 4/27/2018 | Telephone conference with MBM; Telephone conference with Heuer and MBM | B.B. | .70 | $280.00 |
| 4/30/2018 | Pulled contract docs to answer Clement questions; went over open issues with WHB; left message for Clement | M.B.M. | 1.00 | $300.00 |
| 4/30/2018 | Telephone conference withMBM; Telephone conference with Clement | B.B. | .75 | $300.00 |
| SUBTOTAL: | | | 12.05 | $4,080.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 4/5/2018 | Balance before last invoice | $640.00 |
| 4/10/2018 | Invoice 10305 | $2,720.00 |
| 5/11/2018 | Invoice 10343 | $4,080.00 |
| SUBTOTAL: | | $7,440.00 |

**Trust Account**

| | | |
|---|---|---|
| 5/11/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $4,080.00

PREVIOUS BALANCE DUE $3,360.00

CURRENT BALANCE DUE AND OWING $7,440.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $4,080.00 |
| Current Charges | $5,080.00 |
| New Balance | $9,160.00 |
| Adjustments | $0.00 |
| Payments | ($3,360.00) |
| Now Due | $9,160.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: June 25, 2018
Invoice Number: 10363
Invoice Amount: $5,080.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 5/1/2018 | Telephone Conference with Kim and Clements re: retainage | M.B.M. | .30 | $90.00 |
| 5/1/2018 | Telephone conference with Kim, Clement & MBM on retainage | B.B. | .30 | $120.00 |
| 5/2/2018 | Telephone conference with Clement& Lindsey regarding retainage | B.B. | .30 | $120.00 |
| 5/4/2018 | elephone conference with Clements re: retainage | M.B.M. | .20 | $60.00 |
| 5/4/2018 | review of e-mails re supplemental conditions | B.B. | .25 | $100.00 |
| 5/7/2018 | Sent and received emails re: meeting with Kim | M.B.M. | .10 | $30.00 |
| 5/11/2018 | Met with MBM re: Kim Brown meeting; Meeting with MBM and Kim Brown | B.B. | 1.20 | $480.00 |
| 5/11/2018 | Prepared for meeting with KBB; Met with WHB re: overview of KBB meeting and prep; meeting with KBB and WHB | M.B.M. | 2.00 | $600.00 |
| 5/11/2018 | Prep for and meeting with Kim re contract, strategy etc | B.B. | 2.00 | $800.00 |
| 5/15/2018 | Research on gross negligence exception to LDs and limitation of liability | M.B.M. | .50 | $150.00 |
| 5/16/2018 | P. C with Kim and Clement re contract docs | B.B. | .20 | $80.00 |
| 5/21/2018 | Prepared for call with Ryal; telephone conference with WHB re: AI issues and Sussex and Wylie call; telephone conference with Ryal | M.B.M. | 2.00 | $600.00 |
| 5/21/2018 | Reviewed email chain from Clements re: scheduling; telephone conference with WHB re: issues with scheduling | M.B.M. | .30 | $90.00 |

| | | | | |
|---|---|---|---|---|
| 5/22/2018 | Received emails from Claimants; Telephone call with MBM re: update | B.B. | .30 | $120.00 |
| 5/30/2018 | Telephone conference with WHB re: supplementation of forces; contract review and research | M.B.M. | 1.10 | $330.00 |
| 5/31/2018 | Meeting with Mike to walk the hotel looking for workers, very few found, pc with Kim and Brain Blount re cameras , pool drain leak and insurance issues, review of balfour Beatty RFP of 11/6/13 | B.B. | 2.00 | $800.00 |
| 5/31/2018 | Reviewed emails re: CGL/BR on pool pump claim; telephone conference with Clement re: door issue and manpower issue; drafted letter to BBC for Clement review; drafted email re: CGL policy on pool water issue; met with WHB re: overview; reviewed BBC marketing materials for superintendant language in letter to BBC | M.B.M. | 1.70 | $510.00 |
| SUBTOTAL: | | | 14.75 | $5,080.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 4/10/2018 | Balance before last invoice | $3,360.00 |
| 5/11/2018 | Invoice 10343 | $4,080.00 |
| 5/24/2018 | Payment for Invoice 10285 | ($640.00) |
| 6/4/2018 | Payment on Invoice 10305 | ($2,720.00) |
| 6/25/2018 | Invoice 10363 | $5,080.00 |
| SUBTOTAL: | | $9,160.00 |

**Trust Account**

| | | |
|---|---|---|
| 6/25/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $5,080.00

PREVIOUS BALANCE DUE $4,080.00

CURRENT BALANCE DUE AND OWING $9,160.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $4,080.00 |
| Current Charges | $5,840.00 |
| New Balance | $9,920.00 |
| Adjustments | $0.00 |
| Payments | ($5,080.00) |
| Now Due | $9,920.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: July 27, 2018
Invoice Number: 10381
Invoice Amount: $5,840.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 6/1/2018 | Met with WHB re: cameras and letter to BBC re: failing to staff and timing | M.B.M. | .30 | $90.00 |
| 6/4/2018 | Reviewed and drafted emails on property damage claim; began drafting response to BBC on CGL policy and notice to BR agent | M.B.M. | .50 | $150.00 |
| 6/5/2018 | Telephone Conference with WHB re: update on issues of CGL and BR | M.B.M. | .20 | $60.00 |
| 6/6/2018 | Continue to research on BR and CGL; drafted language for Clement for BR agent; reviewed emails on doors and RCO; reviewed BAR emails and letter; left message for Clement re: call with Kim, WHB and Clement | M.B.M. | 1.10 | $330.00 |
| 6/7/2018 | Prepared for client call; met with WHB to give overview of outstanding issues; call with WHB, KBB, JB and Clement | M.B.M. | 1.30 | $390.00 |
| 6/7/2018 | Met with MBM re: Update; Telephone conference with MBM, KBB, JB and Clement | B.B. | 1.00 | $400.00 |
| 6/8/2018 | Telephone Conference with Clement re: BR claim and outstanding change orders | M.B.M. | .10 | $30.00 |
| 6/14/2018 | Telephone Conference with KBB re: meeting to speak about supplementation of forces; reviewed confidential memorandum on status of the project | M.B.M. | .50 | $150.00 |
| 6/14/2018 | Met with MBM re: Update on supplementation of Forces | B.B. | .30 | $120.00 |
| 6/15/2018 | conf call with Kim,Mike,Jim & Brent | B.B. | 1.20 | $480.00 |

| | | | | |
|---|---|---|---|---|
| 6/15/2018 | Telephone conference with clients | B.B. | 1.00 | $400.00 |
| 6/18/2018 | Review emails from Clement; reviewed response letter from BBC; Telephone Conference with WHB re: BBC response letter | M.B.M. | .30 | $90.00 |
| 6/18/2018 | PC with Kim, E-mail re BB response to meeting with supplemental G.C. | B.B. | .50 | $200.00 |
| 6/18/2018 | Telephone conference with KBB re: BBC response letter; Telephone conference with MBM re: update | B.B. | .40 | $160.00 |
| 6/19/2018 | Prepared for client meeting; travel and client meeting; Telephone Conference with WHB re: overview; reviewed docs to send to BBC | M.B.M. | 3.80 | $1,140.00 |
| 6/19/2018 | Telephone conference with KBB re: Letter to BBC | B.B. | .30 | $120.00 |
| 6/20/2018 | Telephone Conference with Clement re: BBC meeting | M.B.M. | .20 | $60.00 |
| 6/22/2018 | Telephone conference with KBB, Clement and MBM re: BBC meeting; Telephone conference with MBM re: to do steps next week. | B.B. | 1.00 | $400.00 |
| 6/22/2018 | Telephone Conference with Clement re: meeting with BBC and call with WHB; Telephone Conference with Kim, Jim and Mr. Bennett and WHB Re: BBC meeting and contingency payment; Telephone Conference with WHB re: strategy for next week and causes of action for complaint | M.B.M. | 1.10 | $330.00 |
| 6/27/2018 | Reviewed emails from Clement re: recovery schedule and BAR approvals; met with WHB re: update | M.B.M. | .30 | $90.00 |
| 6/27/2018 | Reviewed emails from Clement re: recovery schedule and BAR approvals; met with WHB re: update | M.B.M. | .30 | $90.00 |
| 6/28/2018 | Reviewed emails from Robert and Clement on status of completion schedule and BAR; Telephone Conference with Clement; Telephone Conference with WHB re: BAR depo strategy; reviewed emails from BBC forwarded by Clement | M.B.M. | .80 | $240.00 |
| 6/28/2018 | Telephone conference with MBM re: BAR update and deposition strategy. | B.B. | .50 | $200.00 |
| 6/29/2018 | Reviewed contract re: light fixture issue; sent and received emails re: light fixture issue | M.B.M. | .40 | $120.00 |
| SUBTOTAL: | | | 17.40 | $5,840.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 6/4/2018 | Balance before last invoice | $4,080.00 |
| 6/25/2018 | Invoice 10363 | $5,080.00 |
| 7/24/2018 | Payment on Invoice 10363 | ($5,080.00) |
| 7/27/2018 | Invoice 10381 | $5,840.00 |

| | | |
|---|---|---|
| SUBTOTAL: | | $9,920.00 |

**Trust Account**

| | | |
|---|---|---|
| 7/27/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $5,840.00

PREVIOUS BALANCE DUE $4,080.00

CURRENT BALANCE DUE AND OWING $9,920.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $3,750.00 |
| New Balance | $3,750.00 |
| | |
| Adjustments | $0.00 |
| | |
| Payments | ($9,920.00) |
| Now Due | $3,750.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: August 23, 2018
Invoice Number: 10402
Invoice Amount: $3,750.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 7/2/2018 | Telephone conference with MBM re: Supplementation and update form client call. | B.B. | .50 | $200.00 |
| 7/2/2018 | Telephone conference with MBM re: current site status offer; expert walk thru | B.B. | .50 | $200.00 |
| 7/2/2018 | Reviewed emails from Clement and Robert; Telephone Conference with Clement re: changes orders and supplement forces and meeting with Robert; Telephone Conference with WHB re: update; Telephone Conference with Clement re: site visit and expert conclusions; Telephone Conference with WHB re: Clement site visit and next steps; Telephone Conference with Clement re: expert memo and status and light fixture sup. of forces | M.B.M. | 1.00 | $300.00 |
| 7/3/2018 | Telephone conference with MBM re: Client call; client call; Telephone call with MBM re: Strategy. | B.B. | 1.50 | $600.00 |
| 7/3/2018 | Telephone Conference with Clement re: site visit; prepared for client call and expert call; Telephone Conference with WHB re: update; Client call; Telephone Conference with WHB re: strategy | M.B.M. | 2.00 | $600.00 |
| 7/5/2018 | Telephone conference with MBM re: Update | B.B. | .50 | $200.00 |
| 7/5/2018 | Prepared for client and expert call; Client and expert call; Telephone Conference with WHB re: overview of call and strategy | M.B.M. | 1.50 | $450.00 |
| 7/10/2018 | Telephone conference with MBM re: Ballroom doors; Telephone conference with Clement re: | B.B. | .50 | $200.00 |

| | | | | |
|---|---|---|---|---|
| | Ballroom doors | | | |
| 7/10/2018 | Prepared Ball room door packet for WHB; Telephone Conference with WHB re: ballroom door issue update and strategy; Telephone Conference with Clement re: ballroom doors; reviewed email from KBB re: Draw 38; Telephone Conference with WHB re: Draw 38 | M.B.M. | 1.00 | $300.00 |
| 7/11/2018 | Meeting with MBM re: CO 182.6 and cover letter into language; reviewed language for cover letter | B.B. | .50 | $200.00 |
| 7/11/2018 | Drafted language for RCO 182.6; met with WHB re: language; sent emails to Jim and KBB | M.B.M. | .90 | $270.00 |
| 7/12/2018 | Meeting with MBM re: Access and potential injunction | B.B. | .20 | $80.00 |
| 7/16/2018 | Received message from Clement; reviewed contract language for Clement question; met with WHB re: Clement question on emergency costs | M.B.M. | .50 | $150.00 |
| SUBTOTAL: | | | 11.10 | $3,750.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 7/24/2018 | Balance before last invoice | $4,080.00 |
| 7/27/2018 | Invoice 10381 | $5,840.00 |
| 7/31/2018 | Payment on invoice 10343 | ($4,080.00) |
| 8/23/2018 | Payment on invoice 10381 | ($5,840.00) |
| 8/23/2018 | Invoice 10402 | $3,750.00 |
| SUBTOTAL: | | $3,750.00 |

**Trust Account**

| | | |
|---|---|---|
| 8/23/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $3,750.00

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $3,750.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $3,750.00 |
| Current Charges | $540.00 |
| New Balance | $4,290.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $4,290.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: September 26, 2018
Invoice Number: 10439
Invoice Amount: $540.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 8/3/2018 | Telephone Conference with Clement re: questions on Builders' Risk | M.B.M. | .10 | $30.00 |
| 8/7/2018 | Rec'd message from Clement; Telephone Conference with WHB re: issues; reviewed contract doc; Telephone Conference with Clement | M.B.M. | .30 | $90.00 |
| 8/9/2018 | Telephone Conference with Clement and KBB re: CCDs | M.B.M. | .70 | $210.00 |
| 8/13/2018 | Telephone Conference with Clement and KBB re: CCD on lighting and Arch. issues | M.B.M. | .30 | $90.00 |
| 8/20/2018 | Telephone Conference with Clement re: CCDs | M.B.M. | .10 | $30.00 |
| 8/30/2018 | Telephone Conference with Clements re: acceptance of non-conforming work and credit due; reviewed 201 for section number and sent to Clements for his review | M.B.M. | .30 | $90.00 |
| SUBTOTAL: | | | 1.80 | $540.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 7/31/2018 | Balance before last invoice | $5,840.00 |
| 8/23/2018 | Invoice 10402 | $3,750.00 |
| 10/9/2018 | Invoice 10439 | $540.00 |
| SUBTOTAL: | | $4,290.00 |

TOTAL $540.00
PREVIOUS BALANCE DUE $3,750.00

CURRENT BALANCE DUE AND OWING $4,290.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $4,290.00 |
| Current Charges | $30.00 |
| New Balance | $4,320.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $4,320.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: October 23, 2018
Invoice Number: 10461
Invoice Amount: $30.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 9/5/2018 | Rec'd VM from Clements re: late Change Orders | M.B.M. | .10 | $30.00 |
| SUBTOTAL: | | | 0.10 | $30.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 8/23/2018 | Balance before last invoice | $3,750.00 |
| 10/9/2018 | Invoice 10439 | $540.00 |
| 10/23/2018 | Invoice 10461 | $30.00 |
| SUBTOTAL: | | $4,320.00 |

TOTAL $30.00
PREVIOUS BALANCE DUE $4,290.00

CURRENT BALANCE DUE AND OWING $4,320.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $4,320.00 |
| Current Charges | $510.00 |
| New Balance | $4,830.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $4,830.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: November 07, 2018
Invoice Number: 10487
Invoice Amount: $510.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 10/3/2018 | Rec'd voice mail from Clement; Telephone Conference with Clement re: issues on punch list and notice of non-conforming work; pulled case records on Lithco case; met with staff re: Order of reference | M.B.M. | .50 | $150.00 |
| 10/18/2018 | Reviewed emails from Clement; Telephone Conference with Clement | M.B.M. | .30 | $90.00 |
| 10/23/2018 | Reviewed clement email and draft letter; Telephone Conference with Clement; Telephone Conference with WHB re: default letter | M.B.M. | .40 | $120.00 |
| 10/24/2018 | Reviewed emails from Clement and KBB and J. Faulkinberry re: partial use of building by Owner; reviewed K docs and Section 9.9.1; Telephone Conference with Clement re: requirement of agreement | M.B.M. | .30 | $90.00 |
| 10/29/2018 | Reviewed emails re: Supplemental of forces and punch list | M.B.M. | .20 | $60.00 |
| SUBTOTAL: | | | 1.70 | $510.00 |

**Costs**

| | |
|---|---|
| SUBTOTAL: | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 10/9/2018 | Balance before last invoice | $4,290.00 |
| 10/23/2018 | Invoice 10461 | $30.00 |
| 11/7/2018 | Invoice 10487 | $510.00 |
| SUBTOTAL: | | $4,830.00 |

**Trust Account**

| | | |
|---|---|---|
| 11/7/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $510.00

PREVIOUS BALANCE DUE $4,320.00

CURRENT BALANCE DUE AND OWING $4,830.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $4,830.00 |
| Current Charges | $420.00 |
| New Balance | $5,250.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $5,250.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: December 28, 2018
Invoice Number: 10511
Invoice Amount: $420.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 11/1/2018 | Telephone Conference with Clement re: supp. Of forces; Telephone Conference with WHB re: issues on Supp. of forces | M.B.M. | .40 | $120.00 |
| 11/1/2018 | Telephone conference with MBM re: Supp. of forces. | B.B. | .20 | $80.00 |
| 11/5/2018 | Reviewed email from KBB; Telephone Conference with Clement re: 3 day notice | M.B.M. | .20 | $60.00 |
| 11/15/2018 | Telephone conference with client. | B.B. | .20 | $80.00 |
| 11/27/2018 | Telephone conference with client re: Substantial completion. | B.B. | .20 | $80.00 |
| SUBTOTAL: | | | 1.20 | $420.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 10/23/2018 | Balance before last invoice | $4,320.00 |
| 11/7/2018 | Invoice 10487 | $510.00 |
| 12/28/2018 | Invoice 10511 | $420.00 |
| SUBTOTAL: | | $5,250.00 |

**Trust Account**

| | | |
|---|---|---|
| 12/28/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $420.00

PREVIOUS BALANCE DUE $4,830.00

CURRENT BALANCE DUE AND OWING $5,250.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Litcho Contracting v. Library Associates, LLC

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $670.00 |
| New Balance | $670.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $670.00 |
| Trust Account | $0.00 |

Litcho Contracting
v
Library Assoc.
2018

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: May 11, 2018
Invoice Number: 10344
Invoice Amount: $670.00

## Matter: Litcho Contracting v. Library Associates, LLC

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 4/5/2018 | Telephone conference with WHB re: Lithco suit; reviewed contact documents for authority to bond off lien and provide defense; telephone conference with Clements re: Builders Risk; telephone conference with Clement re: Builders Risk | M.B.M. | .80 | $280.00 |
| 4/5/2018 | Telephone conference with MBM re: Lithco suit; reviewed K docs for authority to bond off lien and provide defense; telephone conference with Clements re: Builders Risk; telephone conference with Clement re: builders Risk | B.B. | .80 | $320.00 |
| 4/20/2018 | Drafted email to Bowers re: extension to answer | M.B.M. | .20 | $70.00 |
| SUBTOTAL: | | | 1.80 | $670.00 |

**Costs**

| | |
|---|---|
| SUBTOTAL: | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 5/11/2018 | Balance before last invoice | $0.00 |
| 5/11/2018 | Invoice 10344 | $670.00 |
| SUBTOTAL: | | $670.00 |

**Trust Account**

| | | |
|---|---|---|
| 5/11/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $670.00

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $670.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Litcho Contracting v. Library Associates, LLC

| | |
|---|---|
| Previous Balance | $670.00 |
| Current Charges | $4,580.00 |
| New Balance | $5,250.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $5,250.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: June 25, 2018
Invoice Number: 10364
Invoice Amount: $4,580.00

## Matter: Litcho Contracting v. Library Associates, LLC

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 5/23/2018 | Research on moion to stay to enforce mediation; cont. to draft answer; cont to draft Motion to dismiss and Motion to stay; reviewed subcontract agreement for motion to dismiss/stay; reviewed prime contract for cross claims; telephone conference with WHB re: cross claims, motion to dismiss and authority to file corss claims | M.B.M. | 4.50 | $1,575.00 |
| 5/24/2018 | Conference with Brent McDonald re-list Gayle reply and counterclaim | B.B. | .60 | $240.00 |
| 5/24/2018 | Telephone conference with Clements re: existence of claims as to Lithco; telephone conference with WHB re: cross claims; cont to work on Answer and Cross-claims and motion to stay; cont. to draft cross claims; completed first draft of motion to dismiss/stay and motion to dismiss/refer to master | M.B.M. | 6.20 | $2,170.00 |
| 5/25/2018 | Telephone conference with WHb approving Answer and CC and mtions; finalized answer/CC and motion and exhibits | M.B.M. | 1.70 | $595.00 |
| SUBTOTAL: | | | 13.00 | $4,580.00 |

**Costs**

| | |
|---|---|
| SUBTOTAL: | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 6/25/2018 | Balance before last invoice | $0.00 |
| 5/11/2018 | Invoice 10344 | $670.00 |
| 6/25/2018 | Invoice 10364 | $4,580.00 |
| SUBTOTAL: | | $5,250.00 |

**Trust Account**

| | | |
|---|---|---|
| 6/25/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $4,580.00

PREVIOUS BALANCE DUE $670.00

CURRENT BALANCE DUE AND OWING $5,250.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Litcho Contracting v. Library Associates, LLC

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $1,085.00 |
| New Balance | $1,085.00 |
| Adjustments | $0.00 |
| Payments | ($5,250.00) |
| Now Due | $1,085.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: July 27, 2018
Invoice Number: 10382
Invoice Amount: $1,085.00

## Matter: Litcho Contracting v. Library Associates, LLC

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 6/15/2018 | Prepared for client meeting; travel; client meeting; Telephone Conference with KBB re: letter to BBC; Telephone Conference with M Bennett and KBB re: letters to BBC | M.B.M. | 3.10 | $1,085.00 |
| SUBTOTAL: | | | 3.10 | $1,085.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 5/11/2018 | Balance before last invoice | $670.00 |
| 6/25/2018 | Invoice 10364 | $4,580.00 |
| 7/24/2018 | Payment on invoices 10344, 10364 | ($5,250.00) |
| 7/27/2018 | Invoice 10382 | $1,085.00 |
| SUBTOTAL: | | $1,085.00 |

**Trust Account**

| | | |
|---|---|---|
| 7/27/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $1,085.00
PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $1,085.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Litcho Contracting v. Library Associates, LLC

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $70.00 |
| New Balance | $70.00 |
| Adjustments | $0.00 |
| Payments | ($1,085.00) |
| Now Due | $70.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

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## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: August 23, 2018
Invoice Number: 10403
Invoice Amount: $70.00

## Matter: Litcho Contracting v. Library Associates, LLC

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 7/26/2018 | Left message for Bowers re: reference to master; Telephone Conference with Bowers | M.B.M. | .20 | $70.00 |
| SUBTOTAL: | | | 0.20 | $70.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 7/24/2018 | Balance before last invoice | $0.00 |
| 7/27/2018 | Invoice 10382 | $1,085.00 |
| 8/23/2018 | Payment on invoice 10382 | ($1,085.00) |
| 8/23/2018 | Invoice 10403 | $70.00 |
| SUBTOTAL: | | $70.00 |

**Trust Account**

| | | |
|---|---|---|
| 8/23/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $70.00

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $70.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC

Re: Litcho Contracting v. Library Associates, LLC

| | |
|---|---|
| Previous Balance | $70.00 |
| Current Charges | $105.00 |
| New Balance | $175.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $175.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
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## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: October 09, 2018
Invoice Number: 10440
Invoice Amount: $105.00

## Matter: Litcho Contracting v. Library Associates, LLC

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 8/15/2018 | Made changes to consent order to refer to Master; reviewed and sent emails re: consent order | M.B.M. | .30 | $105.00 |
| SUBTOTAL: | | | 0.30 | $105.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 8/23/2018 | Balance before last invoice | $0.00 |
| 8/23/2018 | Invoice 10403 | $70.00 |
| 10/9/2018 | Invoice 10440 | $105.00 |
| SUBTOTAL: | | $175.00 |

**Trust Account**

| | | |
|---|---|---|
| 10/9/2018 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $105.00
PREVIOUS BALANCE DUE $70.00

CURRENT BALANCE DUE AND OWING $175.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $5,250.00 |
| Current Charges | $1,650.00 |
| New Balance | $6,900.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $6,900.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

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Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: January 17, 2019
Invoice Number: 10538
Invoice Amount: $1,650.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 12/6/2018 | Telephone Conference with Clement re: access; Telephone Conference with Kim, WHB and Clement re: Access | M.B.M. | .40 | $120.00 |
| 12/6/2018 | Telephone conference with KBB and Clement re: Site Access | B.B. | .30 | $120.00 |
| 12/7/2018 | Telephone Conference with WHB re: resolution of access issues this weekend and pending case | M.B.M. | .20 | $60.00 |
| 12/7/2018 | Telephone conference with MBM re: access and timing of cases | B.B. | .20 | $80.00 |
| 12/10/2018 | Telephone Conference with Clement re: rooms; Telephone Conference with WHB re: BBC refusal to punch out guest rooms; Telephone Conference with Clement re: BBC and guestrooms | M.B.M. | .40 | $120.00 |
| 12/10/2018 | Telephone conference with MBM re: Guest room punch out | B.B. | .20 | $80.00 |
| 12/13/2018 | Reviewed contract for RM; Telephone Conference with Clement re: RM contract and painter | M.B.M. | .50 | $150.00 |
| 12/17/2018 | Telephone conference with client and lender; Telephone conference with MBM | B.B. | 1.30 | $520.00 |
| 12/18/2018 | Telephone Conference with Clement re: Contract docs and lien bonds; Telephone Conference with WHB re: lien bonds | M.B.M. | .30 | $90.00 |
| 12/18/2018 | Telephone conference with MBM re: Lien Bonds | B.B. | .20 | $80.00 |
| 12/27/2018 | Reviewed Clement email on consequential damages; Telephone Conference with WHB re: direct | M.B.M. | .50 | $150.00 |

| | | | | |
|---|---|---|---|---|
| | damages; Telephone Conference with Clement re: direct damages | | | |
| 12/27/2018 | Telephone conference with MBM re: direct damages | B.B. | .20 | $80.00 |
| SUBTOTAL: | | | 4.70 | $1,650.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 11/7/2018 | Balance before last invoice | $4,830.00 |
| 12/28/2018 | Invoice 10511 | $420.00 |
| 1/17/2019 | Invoice 10538 | $1,650.00 |
| SUBTOTAL: | | $6,900.00 |

TOTAL $1,650.00

PREVIOUS BALANCE DUE $5,250.00

CURRENT BALANCE DUE AND OWING $6,900.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $6,900.00 |
| Current Charges | $5,570.00 |
| New Balance | $12,470.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $12,470.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

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## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: February 15, 2019
Invoice Number: 10560
Invoice Amount: $5,570.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 1/3/2019 | Telephone conference with MBM re: BBC payment; Telephone conference with client re: BBC payment. | B.B. | .30 | $120.00 |
| 1/3/2019 | Telephone Conference with WHB re: BBC payment; Telephone Conference with WHB and Clement re: BBC payment | M.B.M. | .40 | $120.00 |
| 1/17/2019 | Telephone conference with MBM re: Cap on CD's and Article III | B.B. | .80 | $320.00 |
| 1/17/2019 | Telephone Conference with Clements re: withholding; Telephone Conference with WHB re: withholding | M.B.M. | .30 | $90.00 |
| 1/24/2019 | Telephone Conference with Clement re: CO back charge; reviewed emails re: tub issues | M.B.M. | .30 | $90.00 |
| 1/25/2019 | Telephone Conference with WHB re: new consolidated claim and lien from BBC | M.B.M. | .30 | $90.00 |
| 1/27/2019 | Reviewed consolidated claim from BBC; worked on draft pleadings | M.B.M. | 1.60 | $480.00 |
| 1/28/2019 | Revised claim; Telephone conference with MBM re: Claim and strategy; Telephone conference with proposed experts; Reviewed cost estimates; telephone conference with client. | B.B. | 3.00 | $1,200.00 |
| 1/28/2019 | Continue reviewing claim from BBC; Telephone Conference with WHB re: strategy of claim; drafted preliminary costs document for WHB; client call; call with WHB re: strategy | M.B.M. | 2.50 | $750.00 |

| | | | | |
|---|---|---|---|---|
| 1/29/2019 | Telephone Conference with WHB re: consolidated claim | M.B.M. | .50 | $150.00 |
| 1/30/2019 | Telephone conference with MBM re: Lien; Telephone conference with Bennett re: Lien; Telephone conference with F. Gailland re: Lien | B.B. | 2.50 | $1,000.00 |
| 1/30/2019 | Telephone Conference with Clement re: change order for owners work correcting deficiencies; Telephone Conference with WHB re: bond requirements; reviewed Contract re: Bond requirements; Telephone Conference with WHB re: bank and lien strategy; drafted language for letter to Architect re: claim; Telephone Conference with WHB re: language for letter | M.B.M. | 2.50 | $750.00 |
| 1/31/2019 | Telephone conference with MBM re: Client meeting, strategy and experts; Telephone conference with MBM re: Grady | B.B. | .50 | $200.00 |
| 1/31/2019 | Telephone Conference with WHB re: client meeting; prepared for client meeting and began assembling strategy notebooks; Telephone Conference with WHB re: Grady | M.B.M. | .70 | $210.00 |
| SUBTOTAL: | | | 16.20 | $5,570.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 12/28/2018 | Balance before last invoice | $5,250.00 |
| 1/17/2019 | Invoice 10538 | $1,650.00 |
| 2/15/2019 | Invoice 10560 | $5,570.00 |
| SUBTOTAL: | | $12,470.00 |

**Trust Account**

| | | |
|---|---|---|
| 2/15/2019 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $5,570.00

PREVIOUS BALANCE DUE $6,900.00

CURRENT BALANCE DUE AND OWING $12,470.00

# BUNDY MCDONALD, LLC

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Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $11,960.00 |
| Current Charges | $12,710.00 |
| New Balance | $24,670.00 |
| Adjustments | $0.00 |
| Payments | ($510.00) |
| Now Due | $24,670.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

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Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: March 15, 2019
Invoice Number: 10583
Invoice Amount: $12,710.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 2/4/2019 | Prepare binders and documents for Hotel Bennett Meeting on February 5, 2019 | K.W. | .50 | $50.00 |
| 2/4/2019 | Prepared for client meeting; met with WHB re: client meeting | M.B.M. | 3.00 | $900.00 |
| 2/4/2019 | Prepared for client meeting; reviewed notebooks and contract documents; met with MBM re: client meeting. | B.B. | 4.00 | $1,600.00 |
| 2/5/2019 | Travel and client meeting | M.B.M. | 2.80 | $840.00 |
| 2/5/2019 | Travel to and from client meeting. | B.B. | 2.80 | $1,120.00 |
| 2/6/2019 | Telephone conference with Clement re: notice letters to BBC on refusal to do work | M.B.M. | .10 | $30.00 |
| 2/7/2019 | Reviewed emails from Clement; pulled contract sections for Clement; Telephone conference with WHB re: new liens and strategy and docs from client; mechanic's lien research; drafted email to KBB re: required docs | M.B.M. | 1.80 | $540.00 |
| 2/7/2019 | Telephone conference with MBM re: Liens and research | B.B. | .50 | $200.00 |
| 2/8/2019 | Reviewed contract provisions for prior breach theory on LD cap; met with WHB to discuss theory; reviewed contract docs for lien issues and cont. to develop prior breach theory ; Telephone conference with Kim re: claims and withholding; Telephone conference with WHB re: strategy on claims and withholding | M.B.M. | 5.20 | $1,560.00 |

| | | | | |
|---|---|---|---|---|
| 2/8/2019 | Reviewed lien law; Met with MBM re: Prior search theory | B.B. | 1.50 | $600.00 |
| 2/11/2019 | Telephone conference with WHB re: claims; Reviewed architect email re: current issues; pulled contract docs on withholding cert based on lines; Telephone conference with WHB re: architect email; Telephone conference with Clement and WHB re: claims and architect email; Telephone conference with WHB and Kim re: architect and notice of subcontractor claims | M.B.M. | 2.50 | $750.00 |
| 2/11/2019 | Telephone conference MBM re: Claim status; Telephone conference with Clement and MBM re: Claim status; reviewed architect email on claim status; Telephone conference with Kim re: Subcontractor liens; Telephone conference with MBM re: Claim strategy | B.B. | 2.00 | $800.00 |
| 2/12/2019 | Continued research on claims; reviewed lien docs and back up documentation from lawyer for Gulfstream | M.B.M. | 1.00 | $300.00 |
| 2/13/2019 | Telephone conference with Clement re: any response from BBC to architect; Telephone conference with WHB re: update; prepared for meeting with WHB re: claim; met with WHB re: claim | M.B.M. | 1.30 | $390.00 |
| 2/13/2019 | Met with MBM re: Claim; Telephone conference with Kent Stair | B.B. | 1.00 | $400.00 |
| 2/14/2019 | Reviewed Clement emails; left message for Clement; met with WHB re: prep for expert meeting; drafted claim language for LD "cap" claim | M.B.M. | 1.50 | $450.00 |
| 2/14/2019 | Met with MBM re: Clement emails and prep for expert. | B.B. | 1.00 | $400.00 |
| 2/15/2019 | Telephone conference with Clement re: outstanding COs and Change order files; Telephone conference with WHB re: Clement questions; Telephone conference with Kim re: letter to Architect and proposed substantial completion certificate | M.B.M. | 1.10 | $330.00 |
| 2/15/2019 | Telephone conference MBM re: Clement questions. | B.B. | .40 | $160.00 |
| 2/22/2019 | Prepared for client call; Telephone conference with WHB re: issues for client call; reviewed Agenda from Clement; client call | M.B.M. | 1.80 | $540.00 |
| 2/22/2019 | Prepare for client call; client call. | B.B. | 1.50 | $600.00 |
| 2/25/2019 | Telephone conference with Clement re: docs to expert | M.B.M. | .10 | $30.00 |
| 2/28/2019 | Telephone conference with MBM re: Letters to subcontractors who filed liens. | B.B. | .30 | $120.00 |
| SUBTOTAL: | | | 37.70 | $12,710.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 1/17/2019 | Balance before last invoice | $6,900.00 |
| 2/15/2019 | Invoice 10560 | $5,570.00 |
| 2/22/2019 | Payment on invoice 10487 | ($510.00) |

| | | |
|---|---|---|
| 3/15/2019 | Invoice 10583 | $12,710.00 |
| SUBTOTAL: | | $24,670.00 |

TOTAL $12,710.00

PREVIOUS BALANCE DUE $11,960.00

CURRENT BALANCE DUE AND OWING $24,670.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC

Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $24,670.00 |
| Current Charges | $19,840.00 |
| New Balance | $44,510.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $44,510.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: April 5, 2019
Invoice Number: 10605
Invoice Amount: $19,840.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 3/1/2019 | Drafted form letter to subs who file liens; met with WHB re: sub letter | M.B.M. | .70 | $210.00 |
| 3/1/2019 | Received subcontractor letter; Met with MBM re: subcontractor letter | B.B. | .40 | $160.00 |
| 3/4/2019 | Prepared for expert meeting | M.B.M. | 3.00 | $900.00 |
| 3/4/2019 | Prepare for client meeting | B.B. | 4.00 | $1,600.00 |
| 3/4/2019 | Met with MBM to prepare for expert meeting; prepared for expert meeting. | B.B. | 4.00 | $1,600.00 |
| 3/5/2019 | Travel and picked up experts; expert meeting with WHB and experts and Jim Clements | M.B.M. | 6.50 | $1,950.00 |
| 3/5/2019 | Expert meeting | B.B. | 8.00 | $3,200.00 |
| 3/6/2019 | Met with WHB re: complaint; finalized subcontractor liens correspondence; met with WHB re: subcontractor liens and contract provisions | M.B.M. | 3.50 | $1,050.00 |
| 3/7/2019 | Met with WHB re: subcontractor liens and BBC claim | M.B.M. | 1.00 | $300.00 |
| 3/12/2019 | Received BBC claim docs; began reviewing docs; Telephone conference with WHB re: strategy on claim docs | M.B.M. | .50 | $150.00 |
| 3/12/2019 | Telephone conference with MBM re: BBC claim documents. | B.B. | .30 | $120.00 |
| 3/13/2019 | Reviewed emails from Clement re: door hardware and warranty work; Telephone conference with WHB re: response to BBC claim docs to Architect and letters to subcontractors; Telephone conference | M.B.M. | 1.00 | $300.00 |

| | | | | |
|---|---|---|---|---|
| | with Clement re: letter to the Architect on BBC claim response | | | |
| 3/13/2019 | Telephone conference with MBM re: Subcontractors refusing warranty work and response to BBC claim | B.B. | .50 | $200.00 |
| 3/14/2019 | T/C with Clement re: architect response | M.B.M. | .20 | $60.00 |
| 3/15/2019 | Made changes to Clement letter; reviewed emails re: letter to architect; Telephone conference with Clement re; letter to architect | M.B.M. | .50 | $150.00 |
| 3/19/2019 | Reviewed summons and complaint; met with staff re: filing deadlines; Telephone conference with WHB re: answer and CC and discovery; cont to review BBC consolidated claim notebooks | M.B.M. | 3.50 | $1,050.00 |
| 3/20/2019 | Telephone conference with WHB re: Clement subpoena; worked on Clement subpoena; reviewed Clement contract; cont. reviewing BBC claim; Telephone conference with Jim re: Subpoena | M.B.M. | 3.10 | $930.00 |
| 3/20/2019 | Telephone conference with MBM re: Clement subpoena. | B.B. | .30 | $120.00 |
| 3/21/2019 | Reviewed Clement subpoena from BBC; Telephone conference with Clement re: subpoena; reviewed draft letter from Clement to BBC lawyer re: subpoena; cont. to review BBC claim docs; reviewed new liens; reviewed Beatty suit; left message for lawyer on Beatty suit; Cont. to review BBC claim docs; Telephone conference with WHB and KBB and Bank lawyers | M.B.M. | 7.20 | $2,160.00 |
| 3/22/2019 | Continue claim review | M.B.M. | 1.00 | $300.00 |
| 3/22/2019 | Reviewed docs from Marion; Telephone conference with Marion | M.B.M. | .40 | $120.00 |
| 3/25/2019 | Reviewed correspondence re: Clement subpoena; reviewed new sub liens; finalized letters re: new sub liens; reviewed Beaty case docs; worked on BBC claim docs; reviewed correspondence from Palmetto sprinkler; sent and received emails from Clement re: Palmetto Sprinkler requests; left message for Allen West re: Beaty case; reviewed correspondence from Hildebrand re: preservation; sent and received emails re: call with Salamander; Telephone conference with KBB re: Salamander call and update; worked on Answer in Beaty case | M.B.M. | 5.50 | $1,650.00 |
| 3/26/2019 | Worked on Beaty case; Telephone conference with lawyer representing Beaty re: extension and Bond; reviewed correspondence from Hildebrand re: preservation letters and subpoenas; Telephone conference with WHB re: call to Hildebrand; Telephone conference with Hildebrand re: date of service and subpoenas and preservation letters; met with staff re: preservation letters to client; sent and received emails re: extension in Beaty case; Telephone conference with Salamander and KBB; Telephone conference with KBB re: Beaty case and | M.B.M. | 4.50 | $1,350.00 |

| | | | | |
|---|---|---|---|---|
| | Bond and BBC case | | | |
| 3/27/2019 | Responded to Hildebrand re: answer to complaint; reviewed emails from Clement | M.B.M. | .40 | $120.00 |
| 3/28/2019 | Telephone conference with WHB re: Call with Matt Owen and written response; sent email to Owen re: call | M.B.M. | .30 | $90.00 |
| SUBTOTAL: | | | 60.30 | $19,840.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 2/22/2019 | Balance before last invoice | $11,960.00 |
| 3/15/2019 | Invoice 10583 | $12,710.00 |
| 4/5/2019 | Invoice 10605 | $19,840.00 |
| SUBTOTAL: | | $44,510.00 |

TOTAL $19,840.00

PREVIOUS BALANCE DUE $24,670.00

CURRENT BALANCE DUE AND OWING $44,510.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $44,510.00 |
| Current Charges | $18,820.00 |
| New Balance | $18,820.00 |
| Adjustments | $0.00 |
| Payments | $(44,510.00) |
| Now Due | $18,820.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: May 22, 2019
Invoice Number: 10628
Invoice Amount: $18,820.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 4/1/2019 | Met with WHB re: Update and BBC claim and press release; prepared for call with Matt Owen and WHB; call with Matt Owen and WHB re: press issues | M.B.M. | 1.00 | $300.00 |
| 4/1/2019 | Met with MBM re: BBC Claim; Telephone conference with Matt Owen and MBM | B.B. | 1.00 | $400.00 |
| 4/1/2019 | Met with WHB re: Update and BBC claim and press release; prepared for call with Matt Owen and WHB; call with Matt Owen and WHB re: press issues | M.B.M. | 1.00 | $300.00 |
| 4/2/2019 | Prepared for Call with experts; Telephone Conference with WHB re: call with experts; Call with experts; Telephone Conference with WHB re: reduction in lien motions (pros and cons); Telephone Conference with WHB re: role of Cotton and Cotton; reviewed BBC claim materials for MCC numbers | M.B.M. | 3.00 | $900.00 |
| 4/2/2019 | Reviewed documents from Expert; Telephone conference with MBM re: Expert call; Telephone conference with expert; Telephone conference with MBM re: Strategy on Liens; Telephone conference with MBM re: Cotton & Company; Reviewed Cotton & Company Proposal and materials; Telephone conference with KBB re: Cotton & Company; Telephone conference with MBM re: | B.B. | 3.50 | $1,400.00 |

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| | issues for Cotton & Company opinions. | | | |
| 4/3/2019 | Drafted Answer to Beaty compliant; research on lien statutes and grounds for dismissal; reviewed emails from Clement; Telephone Conference with Clement; Telephone Conference with WHB re: update; reviewed new lien | M.B.M. | 3.50 | $1,050.00 |
| 4/3/2019 | Telephone conference with MBM re: Update | B.B. | .30 | $120.00 |
| 4/4/2019 | Telephone Conference with WHB re: research on mechanic's lien discharge; sent email to Sam Hadley re: call | M.B.M. | .40 | $120.00 |
| 4/4/2019 | Telephone conference with MBM re: Grounds for Discharge of Lien. | B.B. | .30 | $120.00 |
| 4/5/2019 | Reviewed Answer from MCC in Beaty Case; reviewed emails from Clements on docs; sent and received emails re: call with Sam (auditor) | M.B.M. | .50 | $150.00 |
| 4/8/2019 | Telephone Conference with Kim re: shutters | M.B.M. | .30 | $90.00 |
| 4/9/2019 | Received external drive of Jim Clements document production pursuant to Record Subpoena, and began to download and prepare documents for production to all counsel of record. | K.W. | 1.50 | $150.00 |
| 4/10/2019 | Met with Staff re: Clement documents; reviewed documents from Koch; prepared for call with Sam Hadley; Call with Sam Hadley; call with K. Brown; Call with S. Hadley; reviewed correspondence from Kim to Sam Hadley; reviewed subpoena to Salamander and domestication docs | M.B.M. | 2.30 | $690.00 |
| 4/10/2019 | Review and search Charleston County Register of Deeds for additional Mechanic Liens. | K.W. | .10 | $10.00 |
| 4/12/2019 | Reviewed new WARCO Lien | M.B.M. | .20 | $60.00 |
| 4/15/2019 | Met with WHB re: case overview and status update; sent and received emails from auditor and Clement re: contract docs; set up meeting with CPMI | M.B.M. | 1.40 | $420.00 |
| 4/15/2019 | Met with MBM re: Status of all liens and case | B.B. | 1.00 | $400.00 |
| 4/16/2019 | Reviewed BBC claim; Cont. to prepare response to BBC claim to Architect; Telephone Conference with WHB re: response; Telephone Conference with Clement re: response; Telephone Conference with Clement re: response; Telephone Conference with WHB re: response and experts | M.B.M. | 3.50 | $1,050.00 |
| 4/16/2019 | Telephone conference with MBM re: BBC Claim; Telephone conference with MBM re: BBC Claim Response. | B.B. | 1.30 | $520.00 |
| 4/17/2019 | Worked on response to BBC consolidated claim; Telephone Conference with WHB re: consolidated claim; pulled portions of BBC back up on consolidated claims for WHB review; Telephone Conference with CPMI and WHB; Telephone Conference with WHB re: response to claim; Telephone Conference with Jason from Cotton and Cotton on audit letter | M.B.M. | 6.00 | $1,800.00 |
| 4/17/2019 | Reviewed emails and filed stip. of dismissal | M.B.M. | .20 | $60.00 |

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|---|---|---|---|---|
| 4/17/2019 | Worked on BBC claim response; Telephone conference with MBM re: Claim response; Telephone conference with MBM re: Claim response and audit; Telephone conference with MBM re: Scheduling experts; Telephone conference with MBM re: Letter to Architect. | B.B. | 4.00 | $1,600.00 |
| 4/23/2019 | Telephone Conference with WHB re: update; Telephone Conference with Kim re: update; reviewed BBC letter on claim | M.B.M. | .40 | $120.00 |
| 4/24/2019 | Reviewed correspondence from Lindsay; Telephone Conference with WHB re: Lindsay response; drafted claw back stipulation and proposed order; met with WHB re Lindsay response and claw back agreement; Telephone Conference with WHB re: experts | M.B.M. | 2.60 | $780.00 |
| 4/24/2019 | Reviewed Lindsay's response to BBC Claim; Reviewed Clawback Proposed Order; Telephone conference with MBM re: Claim and Lindsay; Met with MBM re: Claim and responsive pleadings and Clawback. | B.B. | 1.50 | $600.00 |
| 4/24/2019 | Prepare draft template for Clawback Agreement; Draft correspondence to Tom Hildebrand and Gray Taylor for service of Proposed Clawback Agreement; serve Hildebrand and Taylor with Proposed Clawback Agreement. | K.W. | .30 | $30.00 |
| 4/25/2019 | Drafted email to experts; Telephone Conference with Kim re: Architect, shutters, new lien; Telephone Conference with WHB re: claims made insurance | M.B.M. | .50 | $150.00 |
| 4/25/2019 | Telephone conference with MBM re: Liens and experts; Reviewed contract. | B.B. | 1.00 | $400.00 |
| 4/26/2019 | Telephone Conference with WHB re: claims and Salamander subpoena; reviewed new liens; reviewed correspondence from Pleasant Places counsel | M.B.M. | .80 | $240.00 |
| 4/26/2019 | Telephone conference with KBB re: claims and Clements record subpoena | B.B. | .50 | $200.00 |
| 4/29/2019 | Telephone Conference with WHB re: claim and responsive pleading and Clement subpoena docs; worked on research for responsive pleading; Telephone Conference with WHB re: update on Hildebrand call | M.B.M. | 2.30 | $690.00 |
| 4/29/2019 | Telephone conference with Salamander re: Subpoena response; Telephone conference with Hildebrand re: Claim. | B.B. | 1.00 | $400.00 |
| 4/30/2019 | Sent and received emails with Clement; Prepared for expert call; pulled contract sections for costs; Telephone Conference with WHB re: contract sections; cont. to work on Answer and CC; Telephone Conference with WHB re: Answer and CC; Telephone Conference with experts; Telephone Conference with WHB re: expert tasks and Answer | M.B.M. | 5.50 | $1,650.00 |

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| | and CC and Motion to consolidate; worked on claim; prepared for call with Robert Gambrell and Kim and WHB; worked on subpoenas to subcontractors. | | | |
| 4/30/2019 | Telephone conference with Gambrell and KBB re: Motion; Prepared for call with expert; Telephone conference with MBM re: contract and experts; Telephone call with Mike Bennett re: Status; Telephone conference with experts; Telephone conference with MBM re: Answer and Motions; Telephone conference with MBM re: Motion to Consolidate; Reviewed contract documents; Call with Salamander lawyer. | B.B. | 4.00 | $1,600.00 |
| 4/30/2019 | Prepared Draft Record Subpoenas to 1st Choice Glass, Bernard MCC, Cook & Boardman, David Allen Company, Forton Company, Gulf Stream, Palmetto Automatic Sprinkler Co.; Pleasant Places; Precision Walls; Premier Exteriors; Robert Thomas Iron Design; Strong Tower d/b/a Koch Corporation; Tom Rochester & Associates d/b/a Southeastern Architectural Systems; Trimark; Warco Construction, and Watson Electric. in preparation for review and edits from Counsel. | K.W. | 2.50 | $250.00 |
| SUBTOTAL: | | | 59.20 | $18,820.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 4/19/2019 | Balance before last invoice | $44,510.00 |
| 5/22/2019 | Payment on Invoices: 10439, 10538, 10560, 10583, 10605, 10402, 10461, 10511 | $(44,510.00) |
| 5/22/2019 | Invoice 10628 | $18,820.00 |
| SUBTOTAL: | | $18,820.00 |

TOTAL $18,820.00

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $18,820.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $18,820.00 |
| Current Charges | $33,474.95 |
| New Balance | $52,294.95 |
| Adjustments | $0.00 |
| Payments | ($44,510.00) |
| Now Due | $52,294.95 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: June 07, 2019
Invoice Number: 10653
Invoice Amount: $33,474.95

## Matter: Marion Square Hotel Project

**Attorney's Fees**

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|---|---|---|---|---|
| 5/1/2019 | Verify Lien Amounts filed to date and Update Lien Index accordingly. | K.W. | .30 | $30.00 |
| 5/1/2019 | Telephone conference with MBM re: Grady subpoena and Clawback Agreement. | B.B. | .20 | $80.00 |
| 5/1/2019 | Reviewed emails from Grady re: subpoena; Telephone conference with WHB re: Grady subpoena and Clawback Agreement; reviewed Grady drop box; sent email to Grady re: docs; worked on Answer and counterclaims | M.B.M. | 3.00 | $900.00 |
| 5/2/2019 | Telephone conference with KBB re: Gutters; Received Draft Answer and Counterclaims. | B.B. | 1.50 | $600.00 |
| 5/2/2019 | Continued. drafting Answer and CC; research on gross negligence and limitation of liability; Telephone conference with WHB re: answer and CC; worked on research for motion to consolidate and limit sub liens; Telephone conference with Kim re: notice of claim to architect and shutters; Telephone conference with WHB re: answer and cc draft | M.B.M. | 6.00 | $1,800.00 |
| 5/6/2019 | Met with MBM re: Bank issues; counterclaim amendment and motion to consolidate liens. | B.B. | .80 | $320.00 |
| 5/6/2019 | Telephone conference with Clement re: subpoena; Left message for Hildebrand; Telephone conference with WHB re: claim amounts; Telephone conference with K. Brown re: subcontracts and bank; Met with | M.B.M. | 2.00 | $600.00 |

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| | WHB re: counterclaims and strategy and motion to consolidate; continue to work on Motion to consolidate | | | |
| 5/7/2019 | Telephone conference with Kim Brown re: experts; sent and received emails from experts; Telephone conference with Hildebrand re: Clement docs and discovery responses; reviewed letter from Warco lawyer | M.B.M. | .60 | $180.00 |
| 5/8/2019 | Telephone conference with WHB re: expert meeting; reviewed Clawback Order from Hildebrand; reviewed Lithko claim | M.B.M. | .60 | $180.00 |
| 5/9/2019 | Met with MBM re: Lien discharge | B.B. | 1.00 | $400.00 |
| 5/9/2019 | Meeting with K. Brown, Jason Boberg, and Mike Bennett. | B.B. | 6.00 | $2,400.00 |
| 5/9/2019 | Telephone conference with Clements re: Lowcountry lien; legal research on lien defense and notice; cont. drafting motion to consolidate and limit; Met with WHB re: lien defenses and timing; cont. working on motion on subcontractor liens; Met with WHB re: third party complaint against subs; Telephone conference with Kim and Sam and Jason re: BBC lien | M.B.M. | 8.30 | $2,490.00 |
| 5/10/2019 | Draft correspondence to Attorney Wright and Idgal in regards to Pleasant Places, Inc. v. Library Associates ( 2019-CP-10-2399) requesting an Acceptance of Service and a 30 day extension to Answer or otherwise plead on behalf of Library Associates, Inc. | K.W. | .10 | $10.00 |
| 5/10/2019 | Draft correspondence to Attorney Freeman in regards to Gulf Stream Construction Company, Inc. v. Library Associates ( 2019-CP-10-2275) requesting an Acceptance of Service and a 30 day extension to Answer or otherwise plead on behalf of Library Associates, Inc. | K.W. | .10 | $10.00 |
| 5/10/2019 | Worked on sub claims and experts | B.B. | 7.50 | $3,000.00 |
| 5/10/2019 | Research on lien discharge; met with WHB re: lien discharge; reviewed sub claim and amounts; reviewed correspondence and back up documentation from lawyers for Gulfstream and Koch; Met with WHB re: strategy and third-party complaint; prepare for call with experts; call with experts; met with WHB re: amended pleading | M.B.M. | 6.00 | $1,800.00 |
| 5/13/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/13/2019 | Draft correspondence to Attorney James in regards to 1st Choice Glass Inc. v. Library Associates ( 2019-CP-10-2424) requesting an Acceptance of Service and a 30 day extension to Answer or otherwise plead on behalf of Library Associates, Inc. | K.W. | .10 | $10.00 |
| 5/13/2019 | Continue legal research for subcontractor liens; continue to work on amended pleading and motion | M.B.M. | 4.50 | $1,350.00 |

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| | to consolidate | | | |
| 5/14/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/14/2019 | Telephone conference with Gray Taylor; Telephone conference with Sam (Expert); Telephone conference with Mike Bennett; Telephone conference with MBM re: Amended Answer and Third-Party Complaint; Telephone conference with MBM re: Bond strategy; Telephone conference with Sam (Expert); Reviewed draft Amended Answer, Counterclaims, Summons and Third-Party Complaint, and Motion to Consolidate. | B.B. | 5.00 | $2,000.00 |
| 5/14/2019 | Contine to work on amended pleading and Third party complaint; Telephone conference with WHB re: theory on third party complaint and DJ actions to be added; cont. to work on amended pleading and third party complaint; completed first draft of third party complaint and amended pleading; Telephone conference with WHB re: overview of Third Party Complaint and Rule to show cause strategy; completed draft of Motion to consolidate | M.B.M. | 7.00 | $2,100.00 |
| 5/15/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/15/2019 | Prepare Library Associates, LLC's Amended Answer, Counterclaims, Summons and Third-Party Complaint, along with Library Associates Motion to Consolidate for Filing with Charleston County Clerk of Court; Hand Deliver/File Pleading with Charleston County Clerk of Court. | K.W. | 1.50 | $150.00 |
| 5/15/2019 | Met with WHB re: amended pleadings and motion to consolidate; research on spoliation; finalized amended pleadings and motion to consolidate; research on rule to show cause | M.B.M. | 2.50 | $750.00 |
| 5/16/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/16/2019 | Prepare Correspondence and Acceptance of Service for Library Associates, LLC's Amended Answer, Counterclaims, Summons and Third-Party Complaint to Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, 1st Choice Glass, Inc., Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction, Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Robert Thomas Iron Design, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LL, Lowcountry Case & | K.W. | 2.00 | $200.00 |

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| | Millwork, Inc., Quantum Coatings, LLC, and Balfour Beatty Construction Group, Inc. | | | |
| 5/16/2019 | Prepare Filed Copies for Service to Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, 1st Choice Glass, Inc., Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction, Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Robert Thomas Iron Design, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC Lowcountry Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc. | K.W. | 2.50 | $250.00 |
| 5/17/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/17/2019 | Prepared for Clement meeting | M.B.M. | 2.00 | $600.00 |
| 5/20/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/20/2019 | Prepared for Clement meeting; Clement meeting; Telephone conference with K. Brown re: Cotton and Cotton Spreadsheet; cont. to work on discovery responses; met with Clement and WHB re: tasks for Clement; Met with WHB re: rule to show cause | M.B.M. | 4.50 | $1,350.00 |
| 5/20/2019 | Met with Clement and MBM re: Tasks for Clement; Met with MBM re: Rule to show Cause | B.B. | 2.50 | $1,000.00 |
| 5/21/2019 | Prepare draft of Amended Exhibit A for Record Subpoena to Precision Walls. | K.W. | .10 | $10.00 |
| 5/21/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/22/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/22/2019 | Prepared for client meeting on discovery; travel and meeting with client on discovery | M.B.M. | 2.50 | $750.00 |
| 5/23/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/23/2019 | Telephone conference with WHB re: discovery strategy; reviewed email from Hildebrand | M.B.M. | .50 | $150.00 |
| 5/23/2019 | Telephone conference with MBM re: discovery strategy | B.B. | .40 | $160.00 |
| 5/24/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/24/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/24/2019 | Worked on discovery responses | M.B.M. | 1.50 | $450.00 |
| 5/28/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |

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| 5/28/2019 | Telephone conference with WHB re: subcontractors and discovery responses; Telephone conference with WHB re: discovery; continue to work on discovery responses | M.B.M. | 4.00 | $1,200.00 |
| 5/28/2019 | Telephone conference with MBM re: subcontractors and discovery responses; Telephone conference with MBM re: discovery | B.B. | 1.50 | $600.00 |
| 5/29/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/29/2019 | Draft template for Library Associates Answers to Plaintiff Balfour Beatty Construction LLC's First Set of Interrogatories and Request For Production in preparation for our responses; Prepare Certificates of Service and Cover Letter for same. | K.W. | .50 | $50.00 |
| 5/29/2019 | Telephone conference with WHB re: letter to subcontractors re: excessive liens; Continue to work on discovery responses; Telephone conference with WHB, Kim and Jason re: expert reports and discovery responses; Cont. to work on discovery responses; sent and received emails re: discovery responses; Telephone conference with Clement re: individual names for Project | M.B.M. | 6.50 | $1,950.00 |
| 5/29/2019 | Telephone conference with MBM, Kim and Jason; Telephone conference with MBM re: Discovery, Rule to Show Cause, Subcontractors, and strategy; reviewed emails regarding deadline with agreement. | B.B. | 1.50 | $600.00 |
| 5/30/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| 5/30/2019 | Telephone conference with Angela Gross, Paralegal to Attorney Epting, re: Executed Acceptance of Service on behalf of Library Associates; forwarded correspondence enclosing original signature page for the same. | K.W. | .10 | $10.00 |
| 5/30/2019 | Reviewed Balfour answers to Lowcountry; Pleasant Places and Gulfstream | M.B.M. | .50 | $150.00 |
| 5/31/2019 | Review Charleston County Pending Case Search for new filings and liens. | K.W. | .10 | $10.00 |
| SUBTOTAL: | | | 99.20 | $30,790.00 |

**Costs**

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|---|---|---|
| 5/15/2019 | Motion Filing Fee | $25.00 |
| 5/22/2019 | Federal Express | $38.33 |
| 5/30/2019 | May Copy Charges: 3,768 pages | $942.00 |
| 5/31/2019 | Postage | $173.60 |
| 5/31/2019 | Copies: 3,768 @ .25 per copy | $942.00 |
| 5/31/2019 | Process Servers | $236.70 |
| 5/31/2019 | Copy Service: ProLegal Copies | $327.32 |
| SUBTOTAL: | | $2,684.95 |

**Matter Ledgers**

| | | |
|---|---|---|
| 4/19/2019 | Balance before last invoice | $44,510.00 |
| 5/22/2019 | Invoice 10628 | $18,820.00 |
| 5/22/2019 | Payment on invoices: 10439, 10538, 10560, 10583, 10605, 10402, 10461, 10511 | ($44,510.00) |
| 6/7/2019 | Invoice 10653 | $33,474.95 |
| SUBTOTAL: | | $52,294.95 |

TOTAL $33,474.95

PREVIOUS BALANCE DUE $18,820.00

CURRENT BALANCE DUE AND OWING $52,294.95

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $33,474.95 |
| Current Charges | $24,851.04 |
| New Balance | $58,325.99 |
| Adjustments | $0.00 |
| Payments | ($18,820.00) |
| Now Due | $58,325.99 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: July 26, 2019
Invoice Number: 10678
Invoice Amount: $24,851.04

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 6/3/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/3/2019 | Reviewed emails from opp. Counsel re: production of docs; reviewed BBC Answer to Library's Amended CC | M.B.M. | .50 | $150.00 |
| 6/4/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/4/2019 | Reviewed and responded to emails from Friday and Monday; continue to work on research for Rule to show cause; reviewed Quantum Coatings Answer and counterclaims | M.B.M. | 1.40 | $420.00 |
| 6/5/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/5/2019 | Research on pay when paid and pay if paid clauses; met with WHB re: pay when paid issues and call with Sam and Jason | M.B.M. | 2.00 | $600.00 |
| 6/5/2019 | Telephone conference with Joey Floyd attorney for Precision Walls, Inc. | B.B. | .60 | $240.00 |
| 6/5/2019 | Telephone conference with Kim Bennett Brown in regard to Precision Wall. | B.B. | .50 | $200.00 |
| 6/5/2019 | Met with MBM re: Pay when paid defense | B.B. | .30 | $120.00 |
| 6/6/2019 | Review Charleston County Court website for | K.W. | .10 | $10.00 |

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| | potential new claims and liens and update all indexes accordingly. | | | |
| 6/6/2019 | Met with WHB re: subcontractor liens; worked on rule to show cause; Telephone conference with WHB and Kim and Jason re: Cotton and Cotton affidavit and final excessive liens; reviewed new foreclosure actions from Palmetto and Koch | M.B.M. | 3.40 | $1,020.00 |
| 6/7/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/7/2019 | Multiple telephone calls with MB, KBB, MBM, Gray Taylor, Hamlin O'Kelly in regard to access liens, Met Life issues/problems, bonding of liens and Certificate of Occupancy letters. | B.B. | 3.00 | $1,200.00 |
| 6/7/2019 | Prepared for call with Hildebrand; Telephone conference with WHB re: electronic discovery rules; Call with Hildebrand and WHB and Taylor Morris; worked on rule to show cause | M.B.M. | 3.70 | $1,110.00 |
| 6/7/2019 | Prepared for and telephone conference with MBM and Tom Hildebrand re: discovery | B.B. | .75 | $300.00 |
| 6/10/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/10/2019 | Worked on Rule to Show cause; Telephone conference with Jason and Sam from Cotton and Co; Cont. to work on draft of Rule to Show Cause for transmittal to Gray Taylor; met with WHB re: Rule to Show Cause; reviewed Sam's draft affidavit; Telephone conference with Jim and Kim and MB and WHB re: bond; pulled docs for bond agent; met with WHB re: Hadley affidavit | M.B.M. | 7.50 | $2,250.00 |
| 6/10/2019 | Telephone conference with Kim Brown re: Bank; Telephone conference with Hamli re: bank, Telephone conference with MBM and Jason re: Salamandar Affidavit; met with MBM re: Rule to Show Cause; Drafted changes to Rule to Show Cause; Reviewed Sam Hadly Affidavit, met with MBM re: Hadley affidavit; Telephone conference with Bond Agent and client, Met with MBM re: Rule to Show Cause. | B.B. | 4.50 | $1,800.00 |
| 6/11/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/11/2019 | Cont. to review and analyze Hadley draft affidavit; prepared for call with Hadley and Jason; call with Hadley and Jason and WHB; met with WHB re: Rule to show cause; updated Supp. Responses to Interrogatories | M.B.M. | 4.50 | $1,350.00 |
| 6/12/2019 | Worked on rule to show cause; reviewed Bow affidavit and made changes; Telephone conference with WHB re: Bow affidavit and changes; | M.B.M. | 7.50 | $2,250.00 |

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|---|---|---|---|---|
| | Telephone conference with WHB and Bow re affidavit; Telephone conference with Jason re: Palmetto Sprinkler lien and waivers submitted; made changes to supplemental responses to interrogatories; Telephone conference with Clement re: Balfour statements during preconstruction; made changes to interrogatories responses; Telephone conference with WHB re: Interrogatories changes; drafted verification for KBB; Telephone conference with WHB re: verification; continue to work on rule to show cause; Telephone conference with KBB re: supp. Responses and MB re: Bank discovery | | | |
| 6/12/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/13/2019 | Finalized rule to show cause; travel and filing of rule to show cause; Telephone conference with WHB re: Rule to show cause and attachments; finalized supplemental discovery responses; reviewed 1st choice case and responsive pleadings; Left message for counsel for first choice; drafted changes to cover letter to Judge Young and certificate of service; reviewed Pleasant Places lien overview from Boberg | M.B.M. | 5.40 | $1,620.00 |
| 6/13/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/13/2019 | Serve Rule to Show Cause on all counsel of record. | K.W. | .20 | $20.00 |
| 6/14/2019 | Telephone conference with WHB re: sub liens and Rule to show cause | M.B.M. | .50 | $150.00 |
| 6/14/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/17/2019 | Met with WHB re: docs to Jim Holmes and bank requests; sent email to Holmes re: call; reviewed emails from Holmes; prepared for Holmes call; reviewed pleadings from Lithko, Robert Thomas Iron, Lowcountry Millwork; and ONSM | M.B.M. | 2.50 | $750.00 |
| 6/17/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/18/2019 | Worked on Answers to subcontractor complaints; Telephone conference with Jim Homes re: bond information | M.B.M. | 1.40 | $420.00 |
| 6/18/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/19/2019 | Worked on Answers to subcontractor complaints and motions to consolidate; Telephone conference with Kim re: update on Rule to Show Cause | M.B.M. | 3.20 | $960.00 |
| 6/19/2019 | Review answers to subcontractor complaint and Motion to Consolidate. | B.B. | .80 | $320.00 |

| | | | | |
|---|---|---|---|---|
| 6/19/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/19/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/19/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/20/2019 | Continued reviewing hard document boxes from Library Associates | M.B.M. | 6.50 | $1,950.00 |
| 6/20/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/20/2019 | Prepare cover letter and attach discovery to all 3rd Party Defendant and serve same. | K.W. | .50 | $50.00 |
| 6/20/2019 | Prepare cover letter and a copy of Third Party Complaint for service on the Registered Agents for: Cook and Boardman, Forton Company, and Premier Exteriors, LLC.; set up process servers for personal service. | K.W. | 1.00 | $100.00 |
| 6/21/2019 | Continued Hard document review | M.B.M. | 2.00 | $600.00 |
| 6/21/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/24/2019 | Continue to review hard docs; drafted reply to Quantum's counterclaim | M.B.M. | 3.10 | $930.00 |
| 6/24/2019 | Reviewed reply to Quantum's counterclaim. | B.B. | .30 | $120.00 |
| 6/24/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/25/2019 | Continued to review hard copy docs | M.B.M. | 2.00 | $600.00 |
| 6/25/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/26/2019 | Reviewed Boberg email on SEAS; Telephone conference with WHB re: search terms; cont. hard doc review | M.B.M. | 1.50 | $450.00 |
| 6/26/2019 | Reviewed Cotton & Company analysis of SEAS lien; Telephone conference with MBM re: search terms. | B.B. | .70 | $280.00 |
| 6/26/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/27/2019 | Completed answer to Koch Complaint and motion to consolidate; Cont. Hard doc review for call with BBC counsel; sent email to BBC counsel; Telephone conference with counsel for Watson Electric | M.B.M. | 4.30 | $1,290.00 |
| 6/27/2019 | Telephone conference with MBM re: call with BBC lawyers and search terms; Reviewed Strong Tower | B.B. | .50 | $200.00 |

| | | | | |
|---|---|---|---|---|
| | Answer. | | | |
| 6/27/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| 6/28/2019 | Review Charleston County Court website for potential new claims and liens and update all indexes accordingly. | K.W. | .10 | $10.00 |
| SUBTOTAL: | | | 78.75 | $24,040.00 |

**Costs**

| | | |
|---|---|---|
| 6/14/2019 | Delivery Service - Bullet Delivery | $31.50 |
| 6/14/2019 | 2,425 Copies @ .25 | $606.25 |
| 6/28/2019 | Postage | $73.29 |
| 6/28/2019 | June Court Filing Fees | $100.00 |
| SUBTOTAL: | | $811.04 |

**Matter Ledgers**

| | | |
|---|---|---|
| 5/22/2019 | Balance before last invoice | $18,820.00 |
| 6/7/2019 | Invoice 10653 | $33,474.95 |
| 6/14/2019 | Payment on invoice 10628 | ($18,820.00) |
| 7/26/2019 | Invoice 10678 | $24,851.04 |
| SUBTOTAL: | | $58,325.99 |

**Trust Account**

| | | |
|---|---|---|
| 7/26/2019 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $24,851.04

PREVIOUS BALANCE DUE $33,474.95

CURRENT BALANCE DUE AND OWING $58,325.99

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $22,160.00 |
| New Balance | $22,160.00 |
| Adjustments | $0.00 |
| Payments | ($58,325.99) |
| Now Due | $22,160.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: August 29, 2019
Invoice Number: 10697
Invoice Amount: $22,160.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 7/1/2019 | Reviewed new pleadings from Precision Walls and Watson; Met with WHB re: ONSM foreclosure; prepared for call with BBC counsel and met with WHB re: call; drafted reply to Lithko counterclaim | M.B.M. | 3.50 | $1,050.00 |
| 7/1/2019 | Met with MBM re: ONSM and discovery strategy; Reviewed BBC Counsel's Discovery Protocol; Met with MBM re: Subcontractors depositions; Begin drafting discovery to subcontractors | B.B. | 2.70 | $1,080.00 |
| 7/1/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/2/2019 | Prepared for call with BBC lawyers re: discovery protocol; met with staff re: pleading deadlines; Call with BBC lawyer and WHB; finalized Lithko reply to counterclaim | M.B.M. | 3.50 | $1,050.00 |
| 7/2/2019 | Prepared for discovery call with Hildebrand; Telephone conference with Hildebrand and MBM. | B.B. | 2.50 | $1,000.00 |
| 7/2/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/2/2019 | Assist counsel with the preparation for Library Associates Answer to Lithko Counterclaim, Prepare cover letter to Counsel and to Clerk of Court For Service of the Same | K.W. | 1.00 | $100.00 |
| 7/2/2019 | Assist counsel with the preparation for Library Associates Answer to ONSM Counterclaim, Prepare cover letter to Counsel and to Clerk of Court For | K.W. | 1.00 | $100.00 |

| | | | | |
|---|---|---|---|---|
| | Service of the Same | | | |
| 7/3/2019 | Worked on discovery protocol and search terms; Telephone conference with Kim re: SEAS settlement; Telephone conference with WHB re: assignments in subcontractor claims | M.B.M. | 2.00 | $600.00 |
| 7/3/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/8/2019 | Drafted answers to Lowcountry and Pleasant Places Complaints and Motions to consolidate | M.B.M. | 1.70 | $510.00 |
| 7/8/2019 | Drafted answers to Lowcountry and Pleasant Places Complaints and Motions to consolidate | M.B.M. | 1.70 | $510.00 |
| 7/8/2019 | Telephone conference with Joey Floyd regarding possible settlement. | B.B. | 1.00 | $400.00 |
| 7/8/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/8/2019 | Assist counsel with the preparation for Library Associates Answer to Lowcountry Case & Millwork Summons & Complaint, Motion to Consolidate, and Prepare cover letter to Counsel and to Clerk of Court For Service of the same. | K.W. | 1.00 | $100.00 |
| 7/8/2019 | Assist counsel with the preparation for Library Associates Answer to Pleasant Places Summons & Complaint, Motion to Consolidate, and Prepare cover letter to Counsel and to Clerk of Court For Service of the same. | K.W. | 1.00 | $100.00 |
| 7/9/2019 | Telephone conference with K. Brown re: SEAS; Telephone conference with WHB re: Precision Walls | M.B.M. | .50 | $150.00 |
| 7/9/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/10/2019 | Telephone conference with WHB re: ONSM; Telephone conference with Kim re: ONSM; drafted reply to Bernhard's counterclaim | M.B.M. | 2.00 | $600.00 |
| 7/10/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/10/2019 | Assist counsel with the preparation for Library Associates Answer to Bernhard Counterclaim, Prepare cover letter to Counsel and to Clerk of Court For Service of the Same | K.W. | .10 | $10.00 |
| 7/11/2019 | Reviewed subguard policy and research on subguard; Telephone conference with WHB re: subguard overview; Telephone conference with WHB and Kim and J. Bennett re: subguard; cont. research on subguard; Telephone conference with WHB re: precision walls and potential sub settlements | M.B.M. | 3.50 | $1,050.00 |
| 7/11/2019 | Telephone conference with MBM re: Subguard policy; Telephone conference with Kim and Jack re: subguard; Telephone conference with Joey Floyd re: Precision Walls; Telephone conference with MBM re: Precision Walls; Telephone conference with Joey | B.B. | 2.50 | $1,000.00 |

| | | | | |
|---|---|---|---|---|
| | Floyd re: Precision Walls; Telephone conference with MBM re: Subguard strategy. | | | |
| 7/11/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/12/2019 | Continue to prepare for discovery meeting with opposing counsel | M.B.M. | 2.00 | $600.00 |
| 7/12/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/15/2019 | Worked on pleadings; reviewed filed documents and pleadings; reviewed Order in Lithko case; Telephone conference with WHB re: Precision Walls | M.B.M. | 1.50 | $450.00 |
| 7/15/2019 | Telephone conference with Kim Brown; Telephone Conference with Joey Floyd; Review of Financial documents. | B.B. | 1.50 | $600.00 |
| 7/15/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/16/2019 | Prepared for discovery meeting; cont. to work on search terms; met with WHB re: search terms; sent email to opposing counsel re: search terms; Cont. to review hard doc file; met with WHB re: 30(b)(6) notice to 4 subs with overstated liens; drafted 30(b)(6) topics | M.B.M. | 4.50 | $1,350.00 |
| 7/16/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/17/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/18/2019 | Continue Hard doc review; reviewed privilege log; prepared for discovery call; worked on search terms; finalized 30(b)(6) depo notices; Call with opposing Counsel re: discovery and search terms | M.B.M. | 4.00 | $1,200.00 |
| 7/18/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/18/2019 | Prepare Draft Notice of Deposition of ONSM, Precision Walls, Watson Electric, and Bernhard, LLC; Prepare Cover Letters for Service, and Service All Counsel of Record with Same. | K.W. | 1.00 | $100.00 |
| 7/19/2019 | Continue reviewing hard documents. | M.B.M. | 2.50 | $750.00 |
| 7/19/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/22/2019 | Drafted answer to Watson counterclaim; continue to review hard docs; worked on search terms; Telephone conference with Linton re: Bernhard claim; Telephone conference with WHB re: Bernhard claim | M.B.M. | 3.00 | $900.00 |
| 7/22/2019 | Telephone conference with MBM re: Bernhard claim; Telephone conference with MBM re: Subguard Subpoena. | B.B. | 1.00 | $400.00 |
| 7/22/2019 | Telephone conference with Kim Brown re Liens | B.B. | 1.00 | $400.00 |
| 7/22/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |

| | | | | |
|---|---|---|---|---|
| 7/22/2019 | Assist counsel with the preparation for Library Associates Answer to Watson's Counterclaim, Prepare cover letter to Counsel and to Clerk of Court For Service of the Same | K.W. | 1.00 | $100.00 |
| 7/23/2019 | Drafted Interrogatories to BBC; drafted second set of Interrogatories to BBC; met with WHB re: amended lien; met with opposing Counsel re: document review | M.B.M. | 3.50 | $1,050.00 |
| 7/23/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/24/2019 | Worked on search terms; Reviewed pleadings and began to prepare responses | M.B.M. | 4.30 | $1,290.00 |
| 7/24/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/25/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/26/2019 | Drafted email to Opposing Counsel re: search terms; continue to work on search terms for discovery; reviewed letter from counsel for ONSM and Watson re: 30(b)(6); worked on response to letter; Telephone conference with WHB re: amended 30(b)(6) topics for Watson and ONSM | M.B.M. | 1.50 | $450.00 |
| 7/26/2019 | Worked on PW release of lien document; worked on responsive pleadings and discovery responses; cont. to prepare search terms | M.B.M. | 5.50 | $1,650.00 |
| 7/26/2019 | Telephone conference with MBM re: Watson 30(b)(6) Deposition. | B.B. | .50 | $200.00 |
| 7/26/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/29/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/29/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/30/2019 | Met with WHB re: update on outstanding items and ONSM depo notice questions; worked on responsive pleadings; worked on search terms; Telephone conference with K Brown re: PW settlement | M.B.M. | 2.10 | $630.00 |
| 7/30/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/31/2019 | Worked on ONSM amended depo notice; Telephone conference with WHB re: amended topics; made changes to amended topics | M.B.M. | 1.20 | $360.00 |
| 7/31/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens. | K.W. | .10 | $10.00 |
| 7/31/2019 | Prepare Draft Amended Notice of Deposition of , Bernhard, ONSM, Watson Electric, and Prepare Cover Letters for Service, and Service All Counsel of Record with Same. | K.W. | .50 | $50.00 |
| SUBTOTAL: | | | 75.50 | $22,160.00 |

**Costs**

| | | |
|---|---|---|
| SUBTOTAL: | | $0.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 6/14/2019 | Balance before last invoice | $33,474.95 |
| 7/22/2019 | Invoice 10678 | $24,851.04 |
| 8/12/2019 | Payment on invoices 10653 and 10678 | ($58,325.99) |
| 8/29/2019 | Invoice 10697 | $22,160.00 |
| SUBTOTAL: | | $22,160.00 |

TOTAL $22,160.00

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $22,160.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC

Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $22,160.00 |
| Current Charges | $24,136.00 |
| New Balance | $46,296.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $46,296.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: September 25, 2019
Invoice Number: 10713
Invoice Amount: $24,136.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 8/1/2019 | Review of email correspondence in regard to Pleadings; Receipt and review of spreadsheet from Jason, Cotton & Company; Email correspondence to and From Jason in regard to spreadsheet. | B.B. | 1.00 | $400.00 |
| 8/1/2019 | Finalized Precision Wall's settlement; cont. to work on responsive pleadings; reviewed stipulation of dismissal; reviewed Sub lien analysis from Cotton; | M.B.M. | 1.70 | $510.00 |
| 8/2/2019 | Reviewed discovery demand letter from BBC; sent and received emails re: PW settlement; continued to work on search terms | M.B.M. | 1.30 | $390.00 |
| 8/5/2019 | Telephone conference with MBM re: Precision Walls Settlement; Sent and received emails from J. Floyd re: Precision Walls Deposition; Telephone conference with MBM re: Rule to Show Cause. | B.B. | 1.00 | $400.00 |
| 8/6/2019 | Worked on responsive pleadings | M.B.M. | .50 | $150.00 |
| 8/7/2019 | Telephone conference with MBM re: SEAS; Telephone conference with MBM & Kim; Telephone conference with MBM re: Depositions | B.B. | 2.00 | $800.00 |
| 8/7/2019 | Reviewed SEAS settlement document; Telephone Conference with WHB re: update; Telephone Conference with K Brown re: SEAS, low voltage subs, and depositions; Sent email to Hildebrand re: depositions; sent and received emails re: SEAS and search terms; Telephone Conference with K Brown re: SEAS objections and warranty work | M.B.M. | 1.80 | $540.00 |

| | | | | |
|---|---|---|---|---|
| 8/7/2019 | Assist counsel by preparing draft Supplemental Interrogatories and Request For Production for review in preparation for service on Third-Party Defendants. | K.W. | .50 | $50.00 |
| 8/8/2019 | Telephone conference with MBM re: Updates | B.B. | .50 | $200.00 |
| 8/8/2019 | Telephone Conference with WHB re: discovery; reviewed email from counsel for OSNM re: depositions; drafted letter objecting to disbursement; Telephone Conference with counsel for BBC re: discovery and search terms; Telephone Conference with Jim Clements re: depositions; sent and received emails re: depositions; | M.B.M. | 2.50 | $750.00 |
| 8/9/2019 | Worked on search terms and custodian list; updated interrogatory responses; Telephone Conference with Morris re: search terms and custodians list; Telephone Conference with K brown re: updated interrogatory and deposition prep and search terms and custodian list | M.B.M. | 3.80 | $1,140.00 |
| 8/12/2019 | Completed first draft of search terms and custodian list; cont. to review hard docs for privilege and substance; Telephone Conference with WHB re: depositions of BBC; reviewed pleasant places discovery responses | M.B.M. | 3.50 | $1,050.00 |
| 8/13/2019 | Telephone Conference with KBB re: SEAS and additional docs; Telephone Conference with WHB re: SEAS; met with opp. Counsel re: hard doc production and search terms; drafted pleadings for David Allen, Warco, Premier Exteriors and Trimark; Telephone Conference with WHB re: pleading responses; began to work on Premier Exteriors Answer and Motion to consolidate | M.B.M. | 6.50 | $1,950.00 |
| 8/13/2019 | Prepare cover letters to counsel and clerk and serve/file Library Associates Answer to Warco Construction's Counterclaim, and copy all counsel of record with same. | K.W. | .20 | $20.00 |
| 8/13/2019 | Prepare cover letters to counsel and clerk and serve/file Library Associates Answer to Trimark's Counterclaim, and copy all counsel of record with same. | K.W. | .20 | $20.00 |
| 8/13/2019 | Prepare cover letters to counsel and clerk and serve/file Library Associates Answer to Premier Exteriors Counterclaim, and copy all counsel of record with same. | K.W. | .20 | $20.00 |
| 8/13/2019 | Prepare cover letters to counsel and clerk and serve/file Library Associates Answer to David Allen Company's Counterclaim, and copy all counsel of record with same. | K.W. | .20 | $20.00 |
| 8/14/2019 | Telephone Conference with staff re: Premier pleadings; sent and received emails re: Premier pleadings | M.B.M. | .50 | $150.00 |
| 8/15/2019 | Telephone conference with MBM re: SEAS; | B.B. | 1.50 | $600.00 |

| | | | | |
|---|---|---|---|---|
| | Reviewed responsive Pleadings | | | |
| 8/15/2019 | Prepared for BMCC deposition | M.B.M. | 5.50 | $1,650.00 |
| 8/16/2019 | Reviewed responsive pleadings; Telephone Conference with Kim Brown re: Precision walls and BMCC; Prepared for BMCC deposition; Telephone Conference with counsel for BMCC | M.B.M. | 3.00 | $900.00 |
| 8/19/2019 | Prepared for Rosen call; Telephone Conference with Rosen Litigation Tech re: search terms and document review; prepared for BMCC depo; Telephone Conference with WHB re: BMCC depo preparation | M.B.M. | 2.50 | $750.00 |
| 8/20/2019 | Telephone Conference with Jim Holmes re: update and BMCC depo; sent and received correspondence with Jim Holmes re: bond for liens; Telephone Conference with WHB re: Jim Holmes call; drafted answers to Cook and Boardman pleadings and PASCO pleadings; cont. to prepare for BMCC depo | M.B.M. | 7.10 | $2,130.00 |
| 8/20/2019 | Assist counsel with the preparation for the 30(b)(6) deposition of BMCC. | K.W. | 2.00 | $200.00 |
| 8/20/2019 | Prepare cover letters to counsel and clerk and serve/file Library Associates Answer to Cook & Boardman's Counterclaim, and copy all counsel of record with same. | K.W. | .20 | $20.00 |
| 8/21/2019 | Prepared for and deposed BMCC; met with WHB re: deposition | M.B.M. | 7.50 | $2,250.00 |
| 8/23/2019 | Prepared for call with Jim Holmes; call with Kim Brown re: update on depo and Holmes call; call with Holmes; began pulling docs for Holmes; Telephone Conference with WHB re: update on Holmes call; cont. to review hard docs for privilege and content | M.B.M. | 6.20 | $1,860.00 |
| 8/26/2019 | Met with MBM re: Updates; Telephone conference with MBM re: Document Review; Telephone conference with Kim re: Update | B.B. | 1.50 | $600.00 |
| 8/26/2019 | Cont. hard file document review for privilege and content; Telephone Conference with WHB re: duplication of lines from Balfour and subs; Telephone Conference with WHB re: Holmes items; Drafted reply to SEAS counterclaims | M.B.M. | 7.50 | $2,250.00 |
| 8/27/2019 | Met with MBM re: Bonds and Liens | B.B. | .50 | $200.00 |
| 8/27/2019 | Travel and meeting with RLT; met with BBC lawyer re: doc production; met with WHB re: Bank and bond agent material | M.B.M. | 3.50 | $1,050.00 |
| 8/27/2019 | Prepare cover letters to counsel and clerk and serve/file Library Associates Answer to SEAS Counterclaim, and copy all counsel of record with same. | K.W. | .20 | $20.00 |
| 8/29/2019 | Completed review of hard docs from Kim and Jack | M.B.M. | 2.10 | $630.00 |
| 8/30/2019 | Reviewed Watson Electric's requests for production | M.B.M. | .30 | $90.00 |
| SUBTOTAL: | | | 79.00 | $23,760.00 |

**Costs**

| | | |
|---|---|---|
| 8/31/2019 | Copy Charges - August (1,304 copies @ .25) | $326.00 |
| 8/31/2019 | Court Filing Fees | $50.00 |
| SUBTOTAL: | | $376.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 8/12/2019 | Balance before last invoice | $0.00 |
| 8/29/2019 | Invoice 10697 | $22,160.00 |
| 9/25/2019 | Invoice 10713 | $24,136.00 |
| SUBTOTAL: | | $46,296.00 |

TOTAL $24,136.00

PREVIOUS BALANCE DUE $22,160.00

CURRENT BALANCE DUE AND OWING $46,296.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $46,296.00 |
| Current Charges | $39,005.75 |
| New Balance | $85,301.75 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $85,301.75 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: October 30, 2019
Invoice Number: 10731
Invoice Amount: $39,005.75

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 9/3/2019 | Telephone Conference with Kim Brown re: BBC discovery responses; Telephone Conference with WHB re: BBC discovery responses; sent and received emails re: BBC discovery responses; sent and received emails from Jim Holmes re: discovery responses | M.B.M. | .30 | $90.00 |
| 9/3/2019 | Telephone conference with MBM re Bonds | B.B. | .30 | $120.00 |
| 9/3/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens, and upcoming court appearances. | K.W. | .10 | $10.00 |
| 9/4/2019 | Telephone Conference with counsel for BBC re: discovery responses; Telephone Conference with Jim Holmes re: bond requirement documentation; reviewed discovery responses from BBC; sent email to Cotton and Co re: discovery responses | M.B.M. | 2.50 | $750.00 |
| 9/5/2019 | Telephone Conference with WHB re: strategy on discovery responses | M.B.M. | .50 | $150.00 |
| 9/5/2019 | Telephone conference with MBM re: Belfour Beatty discovery responses. | B.B. | .50 | $200.00 |
| 9/6/2019 | Worked on BBC discovery response strategy; prepared for call with Cotton and Co.; Telephone Conference with WHB re: Cotton and Co role; Call with Cotton and Company | M.B.M. | 2.80 | $840.00 |
| 9/6/2019 | Telephone conference with MBM re: Cotton & Co; Telephone conference with Jason @ Cotton & Co. | B.B. | 1.00 | $400.00 |

| | | | | |
|---|---|---|---|---|
| 9/9/2019 | Worked on Bond form; Telephone Conference with MB and KBB; Telephone Conference with Kim re: Bond form; worked on Bond form; prepared for call with Cotton and Co; Call with Cotton and Co; Call with MB and KBB | M.B.M. | 3.50 | $1,050.00 |
| 9/10/2019 | Prepared for Cotton and Co. call; Call with Cotton and Co and MB | M.B.M. | 1.00 | $300.00 |
| 9/10/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens, and upcoming court appearances. | K.W. | .10 | $10.00 |
| 9/11/2019 | Reviewed discovery responses; cont. working on Pleasant Places discovery responses | M.B.M. | 1.50 | $450.00 |
| 9/12/2019 | Prepared for call with Cotton and Co.; Telephone Conference with WHB re: motions and discovery and Cotton and Co. call; Call with client and Cotton and Company and WHB; continue to work on discovery responses; worked on emergency motion and discovery motions; Telephone Conference with Counsel for SEAS and Warco re: discovery responses | M.B.M. | 6.30 | $1,890.00 |
| 9/12/2019 | Prepared Third Amended Notice of Deposition of Watson and ONSM and serve all counsel of record with same. | K.W. | .30 | $30.00 |
| 9/13/2019 | Telephone Conference Ackerman; Telephone Conference with Taylor Morris; Telephone Conference with WHB re: update; drafted discovery responses; reviewed emails re: discovery protocol and document production; Telephone Conference with Morris re: document production | M.B.M. | 4.00 | $1,200.00 |
| 9/13/2019 | Continue to update Privilege Log. | K.W. | 1.00 | $100.00 |
| 9/15/2019 | Reviewed Cotton and Co draft letter | M.B.M. | 1.00 | $300.00 |
| 9/16/2019 | Continue to review Cotton and Co draft letter; sent emails re: document production and bond terms; Telephone Conference with WHB re: Cotton and Co letter; Telephone Conference with Kim re: update; worked on emergency motion; Telephone Conference with Jason at Cotton and Company re: letter; continue to work on emergency motion | M.B.M. | 7.00 | $2,100.00 |
| 9/16/2019 | Prepare a Chronological Index of Liens filed to date; Update Index with Lien Releases/Satisfaction of Lien's Filed with Register of Deeds. | K.W. | 1.00 | $100.00 |
| 9/16/2019 | Prepare cover letter to Clerk of Court and Plaintiff's Counsel in preparation for the filing of the Answer and Motion to Consolidate in PASCO v. Library Associates and copy all counsel of record with same via Email and US Mail. | K.W. | .50 | $50.00 |
| 9/17/2019 | Pulled domains for privilege search; Telephone Conference with Ackerman re: privilege search and production; sent and receive emails with next point; reviewed Cotton and Co final letter; cont. to draft emergency motion and legal research; worked on | M.B.M. | 8.50 | $2,550.00 |

| | | | | |
|---|---|---|---|---|
| | document production | | | |
| 9/18/2019 | Worked on document production; finalized emergency motion; met with WHB re: emergency motion and strategy | M.B.M. | 4.00 | $1,200.00 |
| 9/18/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens, and upcoming court appearances. | K.W. | .10 | $10.00 |
| 9/19/2019 | Worked on document production | M.B.M. | 3.00 | $900.00 |
| 9/20/2019 | Working on getting hearings, Telephone conference with Judge's clerk; Telephone conference with Met Life's attorney; and telephone conference with Kim. | B.B. | 1.50 | $600.00 |
| 9/23/2019 | Telephone Conference with Kim re: update; met with WHB re: emergency hearings date; reviewed correspondence for hearing date; met with WHB re: hearing prep; left message for Sam re: hearing; Telephone Conference with MB and KB re: hearing; Telephone Conference with WHB re: hearing prep and strategy; Telephone Conference with WHB re: strategy; Telephone Conference with Sam at Cotton and Co re: testimony | M.B.M. | 5.60 | $1,680.00 |
| 9/23/2019 | Worked on hearing scheduling; Met with MBM re: Strategy for Emergency Hearing. | B.B. | 2.00 | $800.00 |
| 9/24/2019 | Worked on scheduling Hearing; prepared for hearing | M.B.M. | 8.00 | $2,400.00 |
| 9/24/2019 | Worked on scheduling and hearing; Prepared for hearing; Telephone conference with MBM re: Hearing | B.B. | 5.00 | $2,000.00 |
| 9/24/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens, and upcoming court appearances. | K.W. | .10 | $10.00 |
| 9/25/2019 | Prepared for hearing; Telephone Conference with Cotton and Co.; Telephone Conference with WHB re: hearing strategy; Prepared for hearing; Telephone Conference with WHB re: Bennett Depo | M.B.M. | 7.50 | $2,250.00 |
| 9/26/2019 | Met with WHB re: Bennett Depo; worked on hearing research; prepared docs for hearing; drafted memo for hearing; cont. to prepare for hearing | M.B.M. | 6.50 | $1,950.00 |
| 9/26/2019 | Attend Mike Bennett's Deposition | B.B. | 9.00 | $3,600.00 |
| 9/26/2019 | Prepare notebooks for Motion Hearing. | K.W. | 5.00 | $500.00 |
| 9/27/2019 | Prepared for hearing | M.B.M. | 2.50 | $750.00 |
| 9/27/2019 | Attend Mike Bennett's deposition | B.B. | 7.00 | $2,800.00 |
| 9/30/2019 | Telephone Conference with client, Telephone Conference with WHB re: Yates testimony and hearing strategy; Telephone Conference with Yates; prepared for hearing | M.B.M. | 5.10 | $1,530.00 |
| 9/30/2019 | Prepared for Hearing | B.B. | 8.00 | $3,200.00 |
| SUBTOTAL: | | | 123.60 | $38,870.00 |

**Costs**

| | | |
|---|---|---|
| 9/30/2019 | Court Fees | $50.00 |
| 9/30/2019 | Copy Charges | $85.75 |

| | | |
|---|---|---|
| SUBTOTAL: | | $135.75 |

**Matter Ledgers**

| | | |
|---|---|---|
| 8/29/2019 | Balance before last invoice | $22,160.00 |
| 9/25/2019 | Invoice 10713 | $24,136.00 |
| 10/30/2019 | Invoice 10731 | $39,005.75 |
| SUBTOTAL: | | $85,301.75 |

**Trust Account**

| | | |
|---|---|---|
| 10/30/2019 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $39,005.75

PREVIOUS BALANCE DUE $46,296.00

CURRENT BALANCE DUE AND OWING $85,301.75

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $55,215.00 |
| New Balance | $55,215.00 |
| Adjustments | $0.00 |
| Payments | ($85,301.75) |
| Now Due | $55,215.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: November 15, 2019
Invoice Number: 10751
Invoice Amount: $55,215.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 10/1/2019 | Prepared for hearing; Attended hearing. | B.B. | 8.50 | $3,400.00 |
| 10/1/2019 | Prepared for hearing; Travel; attended hearing; travel | M.B.M. | 10.00 | $3,000.00 |
| 10/1/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens, and upcoming court appearances. | K.W. | .10 | $10.00 |
| 10/2/2019 | Telephone conference with Mike Bennett, Telephone conference with MBM re: Strategy, reviewed correspondence with court, Telephone conference with MBM re: Questions to Balfour and Subs | B.B. | 3.00 | $1,200.00 |
| 10/2/2019 | Telephone conference with WHB re: discovery; worked on discovery plan and outline; telephone conference with KBB re: update and Lien timing; telephone conference with WHB re: strategy; telephone conference with Clement re: dates; researched lien timing; worked on BBC amendment: prepared for Hadley call; telephone conference with WHB re: Strategy and questions to BBC and 3 subs | M.B.M. | 6.30 | $1,890.00 |
| 10/3/2019 | Met with MBM re: Strategy; Telephone conference with Sam and MBM re: Questions; Reviewed revised questions. | B.B. | 1.50 | $600.00 |
| 10/3/2019 | Prepared for call with Sam; Telephone conference with WHB and Sam; telephone conference with Andrew from Cotton and Co.; Met with WHB re: | M.B.M. | 4.50 | $1,350.00 |

| | | | | |
|---|---|---|---|---|
| | pleadings and discovery; worked on audit research for pleadings; worked on to do folder | | | |
| 10/3/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens, and upcoming court appearances. | K.W. | .10 | $10.00 |
| 10/3/2019 | Telephone conference with MBM and Sam; Met with MBM re: pleadings and discovery; worked on audit research for pleadings | B.B. | 2.50 | $1,000.00 |
| 10/4/2019 | Telephone conference with WHB re: questions from Sam and discovery and proposed orders; reviewed proposed orders; drafted proposed order on discovery; drafted discovery requests pursuant to proposed order; sent and received correspondence with judge's law clerk | M.B.M. | 3.00 | $900.00 |
| 10/4/2019 | Prepare cover letter to counsel for ONSM, Watson, BBC and BMCC for service of Request For Production per Court Order and serve all counsel of record with same. | K.W. | .10 | $10.00 |
| 10/7/2019 | Worked on discovery requests and responses; worked on to do outline | M.B.M. | 2.50 | $750.00 |
| 10/7/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens, and upcoming court appearances. | K.W. | .10 | $10.00 |
| 10/8/2019 | Worked on discovery requests; telephone conference with WHB re: strategy and motions and counterclaims | M.B.M. | 3.00 | $900.00 |
| 10/8/2019 | telephone conference with MBM re: client call and meeting | B.B. | .50 | $200.00 |
| 10/9/2019 | Telephone conference with WHB re: discovery update; reviewed and sent Rule 11 letters; Telephone conference with Kim re: update; worked on discovery | M.B.M. | 4.00 | $1,200.00 |
| 10/9/2019 | Review file and update the discovery index of outstanding discovery responses and prepare draft Rule 11 letters for review by counsel. | K.W. | 1.50 | $150.00 |
| 10/9/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens, and upcoming court appearances. | K.W. | .10 | $10.00 |
| 10/9/2019 | Telephone conference with MBM re: discovery update | B.B. | .50 | $200.00 |
| 10/10/2019 | Telephone conference with Kim re: Parker Poe and Bank; Telephone conference with WHB re: update; reviewed emails re: discovery and depositions; worked on discovery and strategy outline | M.B.M. | 2.50 | $750.00 |
| 10/10/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens, and upcoming court appearances. | K.W. | .10 | $10.00 |
| 10/10/2019 | Telephone conference with MBM re: update | B.B. | .50 | $200.00 |
| 10/11/2019 | Worked on strategy outline; cont. to respond to and draft discovery | M.B.M. | 3.50 | $1,050.00 |
| 10/11/2019 | Review Charleston County Court Website in | K.W. | .10 | $10.00 |

| | | | | |
|---|---|---|---|---|
| | determination of new pending litigation and/or liens, and upcoming court appearances. | | | |
| 10/14/2019 | Telephone conference with WHB re: discovery responses and Meeting with Buck Lindsay; prepared docs for WHB meeting with Buck Lindsay lawyer; reviewed correspondence from the Court | M.B.M. | 4.00 | $1,200.00 |
| 10/14/2019 | Telephone conference with MBM re: discovery responses and Meeting with Buck Lindsay | B.B. | 1.50 | $600.00 |
| 10/15/2019 | Telephone conference with MBM re: Counterclaims, worked on counterclaims. | B.B. | 1.00 | $400.00 |
| 10/15/2019 | Telephone conference with WHB re: Lindsay lawyer meeting and strategy; worked on outline for Lindsay docs; Reviewed discovery responses from BMCC, Lithko, and ONSM; worked on Answer to Amended Complaint and Counter claims and Third-Party Complaint; telephone conference with WHB re: pleadings and strategy | M.B.M. | 2.80 | $840.00 |
| 10/15/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens, and upcoming court appearances. | K.W. | .10 | $10.00 |
| 10/16/2019 | Drafted and research second draft of answer to amended complaint and counterclaims and third party complaint; telephone conference with WHB re: new cause of action and new DJ actions; completed second draft of answer and CC to amended complaint; telephone conference with lawyer for BMCC re: confidentiality order and docs to be produced; telephone conference with WHB re: confidentiality order and docs to be produced | M.B.M. | 8.00 | $2,400.00 |
| 10/16/2019 | Telephone conference with MBM re: new cause of action and new DJ actions | B.B. | 2.00 | $800.00 |
| 10/17/2019 | Travel to Atlanta for meeting with Buck Lindsay's Lawyer. | B.B. | 4.50 | $1,800.00 |
| 10/17/2019 | Telephone conference with WHB re: final answer and CC and TPC; Finalized, filed and served Answer and CC and Third Party Complaint; drafted discovery responses to PASCO; telephone conference with Don Terry re: Watson Electric | M.B.M. | 3.50 | $1,050.00 |
| 10/17/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens, and upcoming court appearances. | K.W. | .10 | $10.00 |
| 10/17/2019 | Prepare cover letters to counsel for BBC, Clerk of Court, and Third-Party Defendants for Filing and Service of Library Associates Third-Party Complaint.; Prepare hard copies of the same for service to all counsel of record. | K.W. | 1.50 | $150.00 |
| 10/17/2019 | Telephone conference with MBM re: final answer and CC and TPC | B.B. | 1.00 | $400.00 |
| 10/18/2019 | Meeting with Buck Lindsay lawyer | B.B. | 2.00 | $800.00 |
| 10/18/2019 | Worked on discovery responses and requests for subcontractors | M.B.M. | 3.00 | $900.00 |

| | | | | |
|---|---|---|---|---|
| 10/18/2019 | Review Charleston County Court Website in determination of new pending litigation and/or liens, and upcoming court appearances. | K.W. | .10 | $10.00 |
| 10/21/2019 | Reviewed responses to Court ordered discovery from BBC and 3 subs | M.B.M. | 2.00 | $600.00 |
| 10/21/2019 | E-File Notice of Appearance on behalf of MBM and WHB in Library Associates' Cases in preparation of future filing on Charleston County E-File System; Create index for all future filings and court mandated deadlines. | K.W. | 2.00 | $200.00 |
| 10/22/2019 | Worked on motions to consolidate and prepared for meeting with WHB re: BBC and subs response; worked with staff re: docs to Sam and Kim | M.B.M. | 6.00 | $1,800.00 |
| 10/22/2019 | Review court website and file and prepare Motion To Consolidate Index in preparation for upcoming Motion Hearings. | K.W. | .50 | $50.00 |
| 10/22/2019 | At the request of Counsel, gathered documents and prepare dropbox link for service of documents to Sam H. and Jason for review. | K.W. | 1.00 | $100.00 |
| 10/23/2019 | Met with MBM re: Total Cost Claims, discovery, and MCAA; Research on MCAA Manual and case law | B.B. | 8.00 | $3,200.00 |
| 10/23/2019 | Met with WHB re: all discovery and strategy; research on Total cost claim and MCAA factors | M.B.M. | 8.50 | $2,550.00 |
| 10/24/2019 | Telephone conference with Hamlin; worked on discovery; prepared for ONSM and Watson depositions | M.B.M. | 6.30 | $1,890.00 |
| 10/24/2019 | Set up Videographer and confirm depositions of ONSM and Watson with the Court Reporter | K.W. | .10 | $10.00 |
| 10/25/2019 | Prepared for OSNM depo and Watson depo | M.B.M. | 2.50 | $750.00 |
| 10/28/2019 | Prepare for the upcoming deposition of ONSM and Watson | B.B. | 4.00 | $1,600.00 |
| 10/28/2019 | Prepared for OSNM depo and Watson depo | M.B.M. | 5.10 | $1,530.00 |
| 10/28/2019 | Assist Counsel with preparation for the deposition of ONSM and Watson | K.W. | 2.50 | $250.00 |
| 10/29/2019 | Prepared with WHB re: Watson and ONSM depositions; prepared for Motion to consolidate; met with WHB re: motion to consolidate; drafted proposed order on motion to consolidate; reviewed Answers from Third Party Subcontractors; met with staff re: responses to counterclaims; reviewed new ONSM docs | M.B.M. | 5.70 | $1,710.00 |
| 10/29/2019 | Assist Counsel with preparation for the deposition of ONSM and Watson | K.W. | 1.00 | $100.00 |
| 10/29/2019 | Prepare for and attend depositions of ONSM and Watson | B.B. | 10.00 | $4,000.00 |
| 10/30/2019 | Began working on responses to counterclaims; cont. research on unjust enrichment; prepared for call with Sam and Jason | M.B.M. | 3.40 | $1,020.00 |
| 10/31/2019 | Prepared for call with Sam and Jason; telephone conference with WHB re: call with Sam and Jason; | M.B.M. | 4.50 | $1,350.00 |

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|---|---|---|---|---|
| | Call with WHB, Sam and Jason; telephone conference with WHB re: update; cont. legal research on subcontractor claims; telephone conference with WHB re: subcontractor claims and expert on value | | | |
| 10/31/2019 | Continue to update Privilege Log | K.W. | 1.00 | $100.00 |
| 10/31/2019 | Prepared for call with Sam and Jason; telephone conference with MBM re: call with Sam and Jason; Call with MBM, Sam and Jason; telephone conference with MBM re: update; cont. legal research on subcontractor claims; telephone conference with MBM re: subcontractor claims and expert on value | B.B. | 4.50 | $1,800.00 |
| SUBTOTAL: | | | 172.20 | $54,790.00 |

**Costs**

| | | |
|---|---|---|
| 10/31/2019 | Copies | $425.00 |
| SUBTOTAL: | | $425.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 9/25/2019 | Balance before last invoice | $46,296.00 |
| 10/30/2019 | Invoice 10731 | $39,005.75 |
| 11/7/2019 | Payment on invoices 10697, 10713, 10731 | ($85,301.75) |
| 11/15/2019 | Invoice 10751 | $55,215.00 |
| SUBTOTAL: | | $55,215.00 |

TOTAL $55,215.00

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $55,215.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $55,215.00 |
| Current Charges | $16,980.00 |
| New Balance | $72,195.00 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $72,195.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: December 19, 2019
Invoice Number: 10772
Invoice Amount: $16,980.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 11/1/2019 | Prepared for call with Sam and Jason; Telephone conference with WHB re: call with Sam and Jason | M.B.M. | 1.20 | $360.00 |
| 11/4/2019 | Prepared for call with Sam and Jason; Telephone Conference with WHB re: Total Cost; drafted Interrogatories re: Total cost; Telephone Conference with WHB re: Total Cost and valuation expert and call with Sam and jason | M.B.M. | 3.50 | $1,050.00 |
| 11/5/2019 | Prepared for call with Jason and Sam; call with Jason and Sam and WHB; Telephone Conference with WHB re: motion for specific performance; research on motion for specific performance; reviewed Balfour discovery responses; reviewed Watson and ONSM motion for protective order; began working on motion for specific performance | M.B.M. | 6.00 | $1,800.00 |
| 11/5/2019 | Telephone conference with MBM re: Update & Reviewed Cotton & Co. spreadsheet; Telephone conference with MBM, Sam and Jason; Telephone conference with MBM re: Strategy. | B.B. | 2.00 | $800.00 |
| 11/6/2019 | Worked on discovery, responsive pleadings; completed research on unjust enrichment; cont. research on total cost; completed supp. Interrogatories and request for production | M.B.M. | 5.40 | $1,620.00 |
| 11/7/2019 | Worked on SEAS lien release; sent emails re: SEAS lien release | M.B.M. | .80 | $240.00 |
| 11/11/2019 | Research and worked on motion for injunction | M.B.M. | 2.50 | $750.00 |

| | | | | |
|---|---|---|---|---|
| 11/12/2019 | Research and worked on motion for injunction; Telephone Conference with Kim re: update; Telephone Conference with Jason Boberg re: update; Telephone Conference with WHB re: motion and strategy | M.B.M. | 1.80 | $540.00 |
| 11/13/2019 | Drafted consent orders for motion to consolidate and refer in Gulf Stream case and Strong Tower case; completed drafting Motion for injunction; Telephone Conference with WHB re: Motion for injunction; performed additional research on motion for injunction; reviewed and annotated ONSM depo; Telephone Conference with Kim re: ONSM depo and motion for injunction | M.B.M. | 5.80 | $1,740.00 |
| 11/13/2019 | Telephone conference with MBM re: Injunction Motion; Reviewed and made changes to Injunction Motion; Telephone conference with MBM re: additional research | B.B. | 1.50 | $600.00 |
| 11/13/2019 | Telephone conference with MBM re: HVAC contractor and Mechanical design. | B.B. | .40 | $160.00 |
| 11/14/2019 | Finalized and filed consent orders in Strong Tower and Gulfstream; drafted replies to ONSM, Lithco, Watson, David Allen, Trimark, and Premier Exteriors; Telephone Conference with WHB re: update; sent and received emails with KBB re: dining room envelope; scheduled call with Clements | M.B.M. | 6.40 | $1,920.00 |
| 11/15/2019 | Prepared for call with Sam and Jason; Cont. organizing chart for ONSM docs; pulled waterproofing allegations for Clement call | M.B.M. | 2.00 | $600.00 |
| 11/18/2019 | Worked on responsive pleadings to Warco and Guy Beatty; prepared for call with Sam and Jason | M.B.M. | 1.50 | $450.00 |
| 11/19/2019 | Prepared for Clement call; call with WHB re: Clement call; Call with Clement and WHB; drafted email to Clement | M.B.M. | 1.50 | $450.00 |
| 11/20/2019 | Prepared for call with Sam and Jason; made notes for affidavit changes; Call with Sam and Jason; Call with Clement re: witnesses; reviewed Clement witnesses; Call with WHB re: affidavit and update on Clement witnesses; worked on pleading responses | M.B.M. | 3.70 | $1,110.00 |
| 11/20/2019 | Telephone conference with MBM re: Client witness; Telephone conference with MBM re: Sam H. Affidavit; reviewed affidavit and updated affidavit | B.B. | 1.50 | $600.00 |
| 11/21/2019 | Telephone Conference with Clement re: SM&E meeting | M.B.M. | .30 | $90.00 |
| 11/22/2019 | Reviewed updated affidavit; Telephone Conference with WHB re: affidavit; Telephone Conference with Boberg re: affidavit; left VM for Hamlin re: affidavit; Telephone Conference with KBB re: update | M.B.M. | 2.50 | $750.00 |
| 11/25/2019 | Drafted responsive pleadings | M.B.M. | 1.00 | $300.00 |
| 11/26/2019 | Drafted responsive pleadings; worked to finalize | M.B.M. | 2.50 | $750.00 |

| | | | | |
|---|---|---|---|---|
| | Cotton Affidavit; Telephone Conference with WHB re: motions and bank. | | | |
| 11/27/2019 | Worked on finalization and filing of Cotton affidavit; Telephone Conference with client | M.B.M. | 1.00 | $300.00 |
| SUBTOTAL: | | | 54.80 | $16,980.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 10/30/2019 | Balance before last invoice | $0.00 |
| 11/15/2019 | Invoice 10751 | $55,215.00 |
| 12/19/2019 | Invoice 10772 | $16,980.00 |
| SUBTOTAL: | | $72,195.00 |

TOTAL $16,980.00

PREVIOUS BALANCE DUE $55,215.00

CURRENT BALANCE DUE AND OWING $72,195.00

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC

Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $72,195.00 |
| Current Charges | $6,992.85 |
| New Balance | $79,187.85 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $79,187.85 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: January 15, 2020
Invoice Number: 10810
Invoice Amount: $6,992.85

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 12/2/2019 | Met with WHB re: update and strategy and Clement meeting | M.B.M. | .50 | $150.00 |
| 12/2/2019 | Met with MBM re: Client meeting | M.B.M. | .50 | $150.00 |
| 12/3/2019 | Telephone Conference with Kim re: Update; met with WHB re: motions and strategy | M.B.M. | .80 | $240.00 |
| 12/3/2019 | Met with MBM re: Motions and depositions. | B.B. | .50 | $200.00 |
| 12/6/2019 | Reviewed BBC discovery responses | M.B.M. | .50 | $150.00 |
| 12/9/2019 | Prepared for meeting with Clement and Mark from SME; Meeting with Clement and Mark from SME; Meeting with Clement; Telephone Conference with WHB re: update | M.B.M. | 4.00 | $1,200.00 |
| 12/11/2019 | Telephone Conference with Scott Miller (attny for SEAS) re: stipulation of dismissal; made changes to stipulation of dismissal; emails Kim re: stipulation of dismissal and lien release; reviewed docs from Clement and sent correspondence with Clement re: meeting with Baumbach | M.B.M. | 1.30 | $390.00 |
| 12/16/2019 | Reviewed discovery responses from Third Party Defendants | M.B.M. | .80 | $240.00 |
| 12/16/2019 | Review file and update all Indexes in preparation for upcoming events and deadlines. | K.W. | .50 | $50.00 |
| 12/17/2019 | Telephone Conference with Kim and jack re: status update | M.B.M. | .30 | $90.00 |
| 12/18/2019 | Telephone Conference with WHB re: discovery; Telephone Conference with WHB and Clement re: Baumbach; Telephone Conference with WHB re: Linton; Call with Linton (attny for BMCC; | M.B.M. | 3.00 | $900.00 |

| | | | | |
|---|---|---|---|---|
| | Telephone Conference with WHB re: call with Linton overview; drafted discovery requests to all parties | | | |
| 12/18/2019 | Telephone conference with MBM re: Discovery, Call with client & MBM; Call with MBM re: Linton & BMCC | B.B. | 1.70 | $680.00 |
| 12/19/2019 | Telephone Conference with WHB re: Rule 11 letters and RTAS | M.B.M. | .30 | $90.00 |
| 12/19/2019 | Prepare draft template for Supplemental Interrogatories, Request For Production, and Update Certificate of service in preparation for service of same to All Counsel of Record. | K.W. | .50 | $50.00 |
| 12/19/2019 | Telephone conference with MBM re: Rule 11 letters and RTAs | B.B. | .30 | $120.00 |
| 12/23/2019 | Reviewed subpoena to Welch Roberts; drafted objection letter to Hildebrand; Telephone Conference with clients re: subpoena; Telephone Conference with Ronnie Richter re: Welch Roberts docs | M.B.M. | 1.50 | $450.00 |
| 12/30/2019 | Reviewed Bennett Hospitality subpoena; reviewed Midlands subpoena; began working on objection letters and motion to quash; sent email to Richter re: follow up; worked on discovery letters; Telephone Conference with clients; Telephone Conference with clients | M.B.M. | 2.50 | $750.00 |
| 12/31/2019 | Telephone Conference with WHB re: subpoenas and objections; drafted motion to quash Welch Subpoena; drafted midland objection letter; drafted BH objection letter; began drafting motion to quash for midland and BH | M.B.M. | 2.00 | $600.00 |
| 12/31/2019 | Telephone conference with MBM re: Update | B.B. | .50 | $200.00 |
| SUBTOTAL: | | | 22.00 | $6,700.00 |

**Costs**

| | | |
|---|---|---|
| 12/31/2019 | Court Filing Fees | $89.10 |
| 12/31/2019 | Dec Copy Charges | $203.75 |
| SUBTOTAL: | | $292.85 |

**Matter Ledgers**

| | | |
|---|---|---|
| 11/15/2019 | Balance before last invoice | $55,215.00 |
| 12/19/2019 | Invoice 10772 | $16,980.00 |
| 1/15/2020 | Invoice 10810 | $6,992.85 |
| SUBTOTAL: | | $79,187.85 |

TOTAL $6,992.85

PREVIOUS BALANCE DUE $72,195.00

CURRENT BALANCE DUE AND OWING $79,187.85

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $6,992.85 |
| Current Charges | $17,207.95 |
| New Balance | $24,200.80 |
| Adjustments | $0.00 |
| Payments | ($72,195.00) |
| Now Due | $24,200.80 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: February 06, 2020
Invoice Number: 10828
Invoice Amount: $17,207.95

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 1/2/2020 | Worked on Motions to Quash; Telephone conference with Hamlin re: Midland Subpoena; Telephone conference with Bobby Wylie re: consent to referral; Drafted consent order for Referral in PASCO case; began answering BBC Group discovery | M.B.M. | 2.50 | $750.00 |
| 1/3/2020 | Prepared for Motion hearing; Telephone conference with Wylie re: motion to consolidate; Telephone conference with WHB re: Motion to consolidate; Telephone conference with counsel for pleasant places re: referral and continuance of motion; met with staff re: motions to quash; reviewed correspondence from Ryan Q to BBC re: water damage; worked on Motions to consolidate; call with WHB re: PASCO motion to consolidate | M.B.M. | 2.80 | $840.00 |
| 1/3/2020 | Telephone conference with MBM re: Motions to Consolidate x 3. | B.B. | 1.00 | $400.00 |
| 1/6/2020 | Prepared documents and law for motion hearing for WHB; Telephone conference with WHB re: motion hearing; Met with WHB re: motion hearing; correspondence with Clement re: Baumbach meeting; drafted responses to BBC interrogatories on guarantor. | M.B.M. | 4.00 | $1,200.00 |
| 1/6/2020 | Travel and attend Motion Hearing. | B.B. | 4.00 | $1,600.00 |
| 1/6/2020 | Telephone conference with MBM re: Motion | B.B. | 1.00 | $400.00 |

| | | | | |
|---|---|---|---|---|
| | Hearing Met with MBM re: Motion Hearing. | | | |
| 1/7/2020 | Telephone conference with WHB re: interrogatories responses; left messages for Counsel for Premier and Cook and Boardman re: consolidation | M.B.M. | .50 | $150.00 |
| 1/8/2020 | Finalized discovery responses; Telephone conference with KBB re; update; Worked on finalizing all orders to consolidate; Telephone conference with Hughes (counsel for Premier); Telephone conference with DiFranco (Counsel for C&B); met with staff re: consolidation orders | M.B.M. | 1.50 | $450.00 |
| 1/8/2020 | Telephone conference with WHB re Status Conference and Hildebrand letter. | M.B.M. | 1.00 | $300.00 |
| 1/8/2020 | Telephone conference with MBM re: Status conference and Hildebrand letter; received Hildebrand letter. | B.B. | 1.00 | $400.00 |
| 1/8/2020 | Email communication with all counsel of record for consent for the Proposed Order to Consolidate and Refer to Charleston County Master In Equity in preparation for Filing with Court. - Cook & Boardman v. Library Associates. | K.W. | .10 | $10.00 |
| 1/8/2020 | Email communication with all counsel of record for consent for the Proposed Order to Consolidate and Refer to Charleston County Master In Equity in preparation for Filing with Court. - ONSM v. Library Associates. | K.W. | .10 | $10.00 |
| 1/14/2020 | Reviewed new Midland Loan subpoena; sent email to Kim; reviewed and replied to email re: depos from BBC counsel | M.B.M. | .50 | $150.00 |
| 1/15/2020 | Began drafting responses to RTAs from Pleasant Places and BMCC; Telephone conference with KBB re: RTAs; worked on consolidation orders; finished first draft of RTA response to Pleasant Places | M.B.M. | 2.50 | $750.00 |
| 1/20/2020 | Telephone conference with Kim re: Pleasant Places RTAs; finalized orders on Motion to consolidate; reviewed correspondence on consents. | M.B.M. | 1.00 | $300.00 |
| 1/23/2020 | Sent and received emails re: Scarborough hearing; Telephone conference with WHB re: Scarborough hearing initial strategy | M.B.M. | 1.50 | $450.00 |
| 1/23/2020 | Telephone conference with MBM re: Hearing with MIE Telephone conference with MBM re: To Do for hearing; received emails and sent emails regarding 2/28/20 hearing. | B.B. | 1.00 | $400.00 |
| 1/24/2020 | Telephone conference with Kim re: Scarborough hearing and update; worked on discovery responses | M.B.M. | .50 | $150.00 |
| 1/27/2020 | Prepared for Baumbach meeting; Meeting with Baumbach and Clement and WHB | M.B.M. | 4.00 | $1,200.00 |
| 1/27/2020 | Prepare for Baumbaugh meeting; Meeting with Baumbauch, Clement and MBM. | B.B. | 2.50 | $1,000.00 |
| 1/27/2020 | Prepare cover letter and serve responses to Pleasant Places RTA via US Mail and Email, copy all counsel of record with same. | K.W. | .20 | $20.00 |

| | | | | |
|---|---|---|---|---|
| 1/28/2020 | Telephone conference with Kim re: update; Telephone conference with Mike Bennett re: update | M.B.M. | .60 | $180.00 |
| 1/30/2020 | Prepared for and Attended hearing on Motion to Consolidate | M.B.M. | 5.00 | $1,500.00 |
| SUBTOTAL: | | | 38.80 | $12,610.00 |

**Costs**

| | | |
|---|---|---|
| 1/6/2020 | Travel to and from Hearing (240 miles @ .58 per mile) | $139.20 |
| 1/31/2020 | Advance Depositions - 30(b)(6) Deposition of Watson Electrical Construction and ONSM. (Deposition was taken on 10.29.19) | $3,242.90 |
| 1/31/2020 | AWR - Deposition Transcript of M. Bennett (9.26.19) | $1,184.35 |
| 1/31/2020 | Copies | $31.50 |
| SUBTOTAL: | | $4,597.95 |

**Matter Ledgers**

| | | |
|---|---|---|
| 1/15/2020 | Balance before last invoice | $72,195.00 |
| 1/15/2020 | Invoice 10810 | $6,992.85 |
| 2/3/2020 | Payment on Invoices 10751, 10772. | ($72,195.00) |
| 2/6/2020 | Invoice 10828 | $17,207.95 |
| SUBTOTAL: | | $24,200.80 |

TOTAL $17,207.95

PREVIOUS BALANCE DUE $6,992.85

CURRENT BALANCE DUE AND OWING $24,200.80

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $17,207.95 |
| Current Charges | $11,063.98 |
| New Balance | $28,271.93 |
| Adjustments | $0.00 |
| Payments | ($6,992.85) |
| Now Due | $28,271.93 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: March 23, 2020
Invoice Number: 10841
Invoice Amount: $11,063.98

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 2/5/2020 | Reviewed outstanding motions; met with staff re: outstanding motions; prepared discovery requests | M.B.M. | 1.00 | $300.00 |
| 2/6/2020 | Reviewed Midland subpoena | M.B.M. | .30 | $90.00 |
| 2/7/2020 | Worked on discovery responses to ONSM | M.B.M. | 1.00 | $300.00 |
| 2/11/2020 | Answered BMCC discovery requests | M.B.M. | 2.00 | $600.00 |
| 2/26/2020 | Prepared for hearing | B.B. | 6.00 | $2,400.00 |
| 2/26/2020 | Prepared for hearing; legal research | M.B.M. | 2.00 | $600.00 |
| 2/27/2020 | Prepared for Hearing | B.B. | 3.50 | $1,400.00 |
| 2/27/2020 | Prepared for hearing; met with WHB re: hearing | M.B.M. | 4.50 | $1,350.00 |
| 2/28/2020 | Prepared for Hearing, Travel, and Attended Hearing | B.B. | 5.00 | $2,000.00 |
| 2/28/2020 | Prepared for hearing; met with WHB re: hearing and arguments; travel; attended hearing | M.B.M. | 5.00 | $1,500.00 |
| 2/28/2020 | Met with MBM re: Hearing and arguments. | B.B. | 1.00 | $400.00 |
| SUBTOTAL: | | | 31.30 | $10,940.00 |

**Costs**

| | | |
|---|---|---|
| 2/28/2020 | Copies | $60.50 |
| 2/28/2020 | Court Filing Fees | $63.48 |
| SUBTOTAL: | | $123.98 |

**Matter Ledgers**

| | | |
|---|---|---|
| 2/3/2020 | Balance before last invoice | $6,992.85 |
| 2/6/2020 | Invoice 10828 | $17,207.95 |
| 2/26/2020 | Payment on invoice 10810 | ($6,992.85) |

| | | |
|---|---|---|
| 3/23/2020 | Invoice 10841 | $11,063.98 |
| SUBTOTAL: | | $28,271.93 |

**Trust Account**

| | | |
|---|---|---|
| 3/23/2020 | Previous Balance | $0.00 |
| Available in Trust: | | $0.00 |

TOTAL $11,063.98

PREVIOUS BALANCE DUE $17,207.95

CURRENT BALANCE DUE AND OWING $28,271.93

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $28,271.93 |
| Current Charges | $16,503.25 |
| New Balance | $44,775.18 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $44,775.18 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: April 24, 2020
Invoice Number: 10849
Invoice Amount: $16,503.25

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 3/2/2020 | Sent and received emails re: orders on consolidation; met with WHB re: experts and hearing on 3/16 | M.B.M. | .50 | $150.00 |
| 3/2/2020 | Met with MBM re: Experts and hearing on 3/16/20 | B.B. | .20 | $80.00 |
| 3/3/2020 | Met with WHB re: 3/16 hearing and strategy for preparation; Telephone Conference with Boberg and WHB; Telephone Conference with K Brown; worked on hearing presentation outline with WHB | M.B.M. | 2.50 | $750.00 |
| 3/3/2020 | Met with MBM re: 3/16 and strategy for preparation; Telephone conference with Boberg and MBM; worked on hearing presentation outline with MBM | B.B. | 2.00 | $800.00 |
| 3/13/2020 | Prepared for hearing | M.B.M. | 3.00 | $900.00 |
| 3/16/2020 | Prepared for hearing; met with WHB re: hearing; travel and attended hearing | M.B.M. | 11.00 | $3,300.00 |
| 3/16/2020 | Prepared for Hearing; met with MBM re: hearing; travel and attend hearing | B.B. | 9.00 | $3,600.00 |
| 3/17/2020 | Telephone Conference with WHB re: strategy; drafted letter to Hildebrand re: KBB depo; prepared for call with experts; call with Experts; began review of insurance policies | M.B.M. | 5.00 | $1,500.00 |
| 3/17/2020 | Telephone conference with MBM re: Strategy | B.B. | 2.70 | $1,080.00 |
| 3/18/2020 | Cont. Insurance policy review; Telephone Conference with MB and JB; Telephone Conference with JB and Russ Parker; Cont. Insurance policy review; reviewed correspondence from Hildebrand | M.B.M. | 3.00 | $900.00 |

| | | | | |
|---|---|---|---|---|
| 3/18/2020 | Telephone conference with MBM re: Expert Strategy | B.B. | 1.00 | $400.00 |
| 3/19/2020 | Worked on insurance policies; Telephone Conference with MB and JB; Telephone Conference with WHB re: update | M.B.M. | 1.00 | $300.00 |
| 3/19/2020 | Telephone conference with MBM re: Update | B.B. | .20 | $80.00 |
| 3/23/2020 | Reviewed policies; Worked on Ins. Policies for BI; worked on talking points; Telephone Conference with WHB : talking points; Telephone Conference with JB re: talking points; reviewed Montana reservation of rights letter; prepared for call with Sam and Jason | M.B.M. | 4.00 | $1,200.00 |
| 3/23/2020 | Telephone conference wit MBM re: talking points | B.B. | .40 | $160.00 |
| 3/24/2020 | Prepare for call with Cotton and Co; call with WHB and Sam and Jason; sent email to Hildebrand | M.B.M. | 1.50 | $450.00 |
| 3/30/2020 | Worked on Insurance/BI issues; Telephone Conference with J Bennett re: Ins.; Telephone Conference with WHB re: strategy; drafted memo on talking points for Gov. backed BI points | M.B.M. | 2.00 | $600.00 |
| 3/30/2020 | Telephone conference with MBM re: Strategy | B.B. | .30 | $120.00 |
| SUBTOTAL: | | | 49.30 | $16,370.00 |

**Costs**

| | | |
|---|---|---|
| 3/16/2020 | Copies | $133.25 |
| SUBTOTAL: | | $133.25 |

**Matter Ledgers**

| | | |
|---|---|---|
| 2/26/2020 | Balance before last invoice | $17,207.95 |
| 3/23/2020 | Invoice 10841 | $11,063.98 |
| 4/24/2020 | Invoice 10849 | $16,503.25 |
| SUBTOTAL: | | $44,775.18 |

TOTAL $16,503.25

PREVIOUS BALANCE DUE $28,271.93

CURRENT BALANCE DUE AND OWING $44,775.18

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $44,775.18 |
| Current Charges | $11,900.00 |
| New Balance | $56,675.18 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $56,675.18 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: May 19, 2020
Invoice Number: 10852
Invoice Amount: $11,900.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 4/1/2020 | Reviewed letter from BC Counsel for Audit | M.B.M. | .20 | $60.00 |
| 4/2/2020 | Worked on motion to enforce order; Telephone Conference with Clients re: motion and issues; Telephone Conference with WHB re: motion and issues | M.B.M. | 3.50 | $1,050.00 |
| 4/2/2020 | Telephone conference with MBM re: Motion and issues | B.B. | 1.00 | $400.00 |
| 4/3/2020 | Worked on Motion to enforce; finalized motion to enforce; Telephone Conference with WHB re: Motion and his changes; Telephone Conference with client re: motion; Telephone Conference with client re: motion | M.B.M. | 4.50 | $1,350.00 |
| 4/3/2020 | Telephone conference with MBM re: Motion and changes | B.B. | 1.00 | $400.00 |
| 4/6/2020 | Worked on letter to Insurance Adjuster in MT; Telephone Conference with WHB re: letter to Insurance Adjuster. Adjuster in MT; Telephone Conference with Jack re: letter | M.B.M. | 2.00 | $600.00 |
| 4/6/2020 | Telephone conference with MBM re: Letter to Insurance Adjuster | B.B. | .50 | $200.00 |
| 4/7/2020 | Worked on letter to Insurance Adjuster in MT; completed letter; Telephone Conference with jack re: letter; Telephone Conference with WHB re: letter | M.B.M. | 2.00 | $600.00 |
| 4/7/2020 | Telephone conference with MBM re: Letter | B.B. | .50 | $200.00 |
| 4/9/2020 | Began working on memorandum of law for motion | M.B.M. | 1.50 | $450.00 |

| | | | | |
|---|---|---|---|---|
| | to enforce | | | |
| 4/9/2020 | Telephone conference with MBM re: Motion to Enforce | B.B. | .50 | $200.00 |
| 4/10/2020 | Telephone conference with MBM re: Filings on Motion to Enforce | B.B. | .50 | $200.00 |
| 4/14/2020 | Legal research; cont. working on memo of law for motion to enforce; Telephone Conference with WHB re: Strategy; Telephone Conference with WHB re: changes to motion to enforce outline | M.B.M. | 3.00 | $900.00 |
| 4/14/2020 | Telephone conference with MBM re: Strategy and changes to Motion to Enforce Outline. | B.B. | .80 | $320.00 |
| 4/15/2020 | Continued to outline motion to enforce memo; Telephone Conference with WHB re: motion to enforce | M.B.M. | 1.50 | $450.00 |
| 4/15/2020 | Telephone conference with MBM re: Motion to Enforce | B.B. | .50 | $200.00 |
| 4/16/2020 | Worked on memo; Telephone Conference with WHB re: memo | M.B.M. | 1.30 | $390.00 |
| 4/17/2020 | Drafted letter to Hartford; Telephone Conference with WHB re: letter to Hartford: Telephone Conference with WHB re: memo on enforcement motion; Telephone Conference with client re: update | M.B.M. | 1.50 | $450.00 |
| 4/19/2020 | Worked on memo in support of motion to enforce | M.B.M. | 1.50 | $450.00 |
| 4/20/2020 | Completed draft of Memo in support; Telephone Conference with WHB re: his changes and strategy; met with staff re: exhibits | M.B.M. | 5.00 | $1,500.00 |
| 4/20/2020 | Worked on Memorandum of Law; Telephone conference with MBM re: Memorandum of Law; Made changes and reviewed final draft of Memorandum of Law; Telephone conference with MBM re: Strategy and oral arguement. | B.B. | 2.00 | $800.00 |
| 4/27/2020 | Telephone Conference with WHB re: letter to Scarborough and Justice Beatty's Order | M.B.M. | .50 | $150.00 |
| 4/27/2020 | Telephone conference with MBM re: Letter to Scarborough and Justice Beatty's Order | B.B. | .50 | $200.00 |
| 4/29/2020 | Reviewed subpoenas and discovery requests from BBC; Telephone Conference with WHB re: discovery requests; set up call with Mark Boe and Sam and WHB | M.B.M. | 1.00 | $300.00 |
| 4/29/2020 | Telephone conference with MBM re: Discovery Requests | B.B. | .20 | $80.00 |
| SUBTOTAL: | | | 37.00 | $11,900.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 3/23/2020 | Balance before last invoice | $28,271.93 |
| 4/24/2020 | Invoice 10849 | $16,503.25 |
| 5/19/2020 | Invoice 10852 | $11,900.00 |
| SUBTOTAL: | | $56,675.18 |

TOTAL $11,900.00
PREVIOUS BALANCE DUE $44,775.18

CURRENT BALANCE DUE AND OWING $56,675.18

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $56,675.18 |
| Current Charges | $7,955.90 |
| New Balance | $64,631.08 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $64,631.08 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: June 04, 2020
Invoice Number: 10857
Invoice Amount: $7,955.90

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 5/1/2020 | Continued outlining letter to Scarborough; Telephone Conference with WHB re: letter and strategy | M.B.M. | 1.50 | $450.00 |
| 5/1/2020 | Telephone Conference with MBM re: Scarbourough letter | B.B. | 1.00 | $400.00 |
| 5/4/2020 | Continued outlining letter to Scarborough; reviewed correspondence from Hildebrand and Clement; prepared for expert call; Telephone Conference with WHB re: expert call; expert call | M.B.M. | 2.50 | $750.00 |
| 5/4/2020 | Telephone Conference with MBM re: expert call; expert call; Follow up with MBM re: Expert call | B.B. | 1.50 | $600.00 |
| 5/5/2020 | Sent memo to experts; Telephone Conference with MB re: update and hearing transcripts; pulled hearing transcript page numbers for MB review | M.B.M. | 1.00 | $300.00 |
| 5/7/2020 | Worked on insurance coverage issue; reviewed new denial letters; prepared for call with JB | M.B.M. | 1.00 | $300.00 |
| 5/7/2020 | Telephone conference with MBM re: Insurance claims. | B.B. | .30 | $120.00 |
| 5/11/2020 | Completed draft of letter to Scarborough; met with WHB re: letter and strategy | M.B.M. | 2.00 | $600.00 |
| 5/11/2020 | Met with MBM re: Letter to Judge; Made changes to letter to Judge | B.B. | 1.00 | $400.00 |
| 5/12/2020 | Met with WHB re: changes to letter and discovery strategy | M.B.M. | 1.00 | $300.00 |
| 5/12/2020 | Met with MBM re: Discovery | B.B. | 1.00 | $400.00 |

| | | | | |
|---|---|---|---|---|
| 5/13/2020 | Client call re: update | M.B.M. | .50 | $150.00 |
| 5/14/2020 | Reviewed BBC response letter to Scarborough | M.B.M. | .50 | $150.00 |
| 5/18/2020 | Met with WHB re: Hildebrand letter and strategy | M.B.M. | .50 | $150.00 |
| 5/18/2020 | Met with MBM re: Hildebrand letter and strategy | B.B. | .50 | $200.00 |
| 5/19/2020 | Reviewed email from Scarborough's clerk; Telephone Conference with WHB re: email and response | M.B.M. | .50 | $150.00 |
| 5/20/2020 | Telephone Conference with WHB re: response filing on Motion to enforce; Telephone Conference with lawyer for Low Voltage contractor and subpoena | M.B.M. | 1.00 | $300.00 |
| 5/20/2020 | Telephone conference with MBM re: Response to Judge Scarborough. | B.B. | .50 | $200.00 |
| 5/22/2020 | Drafted letter to Scarborough; Telephone Conference with client; Telephone Conference with WHB re: letter | M.B.M. | 2.00 | $600.00 |
| 5/22/2020 | Finalized letter to Scarborough | B.B. | 1.00 | $400.00 |
| 5/27/2020 | Reviewed ROR letters; Telephone Conference with J Bennett re: ROR letters | M.B.M. | 1.00 | $300.00 |
| 5/28/2020 | Telephone Conference with KBB re: liens | M.B.M. | .20 | $60.00 |
| 5/29/2020 | Download zip file received from Mr. Raines regarding record subpoena and begin to review for Privilege documents | K.W. | 2.00 | $200.00 |
| 5/29/2020 | Review ROD website and verify satisfaction of liens and update Lien index accordingly | K.W. | .30 | $30.00 |
| SUBTOTAL: | | | 24.30 | $7,510.00 |

**Costs**

| | | |
|---|---|---|
| 5/29/2020 | Copies of 2/28/20 and 3/16/20 Court Transcripts | $445.90 |
| SUBTOTAL: | | $445.90 |

**Matter Ledgers**

| | | |
|---|---|---|
| 4/24/2020 | Balance before last invoice | $44,775.18 |
| 5/19/2020 | Invoice 10852 | $11,900.00 |
| 6/4/2020 | Invoice 10857 | $7,955.90 |
| SUBTOTAL: | | $64,631.08 |

TOTAL $7,955.90

PREVIOUS BALANCE DUE $56,675.18

CURRENT BALANCE DUE AND OWING $64,631.08

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $7,955.90 |
| Current Charges | $5,870.00 |
| New Balance | $13,825.90 |
| | |
| Adjustments | $0.00 |
| | |
| Payments | ($56,675.18) |
| Now Due | $13,825.90 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: July 22, 2020
Invoice Number: 10872
Invoice Amount: $5,870.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 6/3/2020 | Reviewed correspondence from Court | M.B.M. | .30 | $90.00 |
| 6/4/2020 | Reviewed draft letter from J Bennett; Telephone Conference with Kim re: update; Telephone Conference with MB re: update | M.B.M. | .50 | $150.00 |
| 6/16/2020 | Reviewed Court Orders; Telephone conference with MBM; Telephone conference with M. Bennett | B.B. | 1.00 | $400.00 |
| 6/17/2020 | Reviewed court order on audit; Telephone Conference with WHB re: audit order; Telephone Conference with Kim re: order | M.B.M. | 1.50 | $450.00 |
| 6/17/2020 | Telephone conference with MBM re: Audit Order | B.B. | .50 | $200.00 |
| 6/18/2020 | Telephone Conference with WHB re: audit order and Cotton and Co; Telephone Conference with WHB and Cotton and Co | M.B.M. | 1.50 | $450.00 |
| 6/18/2020 | Telephone Conference with MBM re: audit order and Cotton and Co; Telephone Conference with MBM and Cotton and Co | B.B. | 1.50 | $600.00 |
| 6/18/2020 | Picked up (2) External Hard Drives from BBC Counsel | K.W. | .50 | $50.00 |
| 6/18/2020 | Worked with IT, on site at our office, began decrypting the External Hard Drives and began to prepare files to be downloaded and transferred to server | K.W. | 2.00 | $200.00 |
| 6/19/2020 | Reviewed docs from BBC for audit to prepare hard drive for Cotton and Co. | M.B.M. | 2.00 | $600.00 |
| 6/19/2020 | Reviewed files and prepared a copy of the external | K.W. | 3.00 | $300.00 |

| | | | | |
|---|---|---|---|---|
| | drives for our expert to review. Prepared and Index of the documents/files that we are unable to open. | | | |
| 6/19/2020 | Telephone call with Kevin at Carolina IT to determine how we could access the files with uncommon domains | K.W. | .50 | $50.00 |
| 6/19/2020 | Telephone call with Taylor Morris regarding the files that were unable to open | K.W. | .10 | $10.00 |
| 6/19/2020 | Prepared copies of the external hard drives produced by BBC for Experts Sam Hadley and Jason Boberg to review. | K.W. | 1.50 | $150.00 |
| 6/22/2020 | Met with staff re: audit docs and reviewed emails re: audit docs | M.B.M. | 1.00 | $300.00 |
| 6/22/2020 | Telephone conference with Kevin at Carolina IT re: Decryption Software | K.W. | .20 | $20.00 |
| 6/23/2020 | Worked on Audit Docs | M.B.M. | 1.00 | $300.00 |
| 6/30/2020 | Prepared for call with experts; call with experts; met with WHB re: audit; Telephone Conference with Hildebrand re: discovery | M.B.M. | 2.50 | $750.00 |
| 6/30/2020 | Prepared for telephone conference with Sam and MBM; Telephone conference with Sam and MBM; Telephone conference with M. Bennett | B.B. | 2.00 | $800.00 |
| SUBTOTAL: | | | 23.10 | $5,870.00 |

2

**Matter Ledgers**

| | | |
|---|---|---|
| 5/19/2020 | Balance before last invoice | $56,675.18 |
| 6/4/2020 | Invoice 10857 | $7,955.90 |
| 6/12/2020 | Payment invoices 10828, 10841, 10849, 10852 | ($56,675.18) |
| 7/22/2020 | Invoice 10872 | $5,870.00 |
| SUBTOTAL: | | $13,825.90 |

TOTAL $5,870.00

PREVIOUS BALANCE DUE $7,955.90

CURRENT BALANCE DUE AND OWING $13,825.90

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $13,825.90 |
| Current Charges | $18,332.00 |
| New Balance | $32,157.90 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $32,157.90 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: August 06, 2020
Invoice Number: 10900
Invoice Amount: $18,332.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 7/6/2020 | Telephone conference with Sam and Jason and WHB | M.B.M. | 1.50 | $450.00 |
| 7/6/2020 | Telephone conference with Sam and Jason and MBM | B.B. | 1.50 | $600.00 |
| 7/15/2020 | Reviewed correspondence from Sam; reviewed court order with WHB | M.B.M. | 1.00 | $300.00 |
| 7/15/2020 | Reviewed court order with MBM | B.B. | .50 | $200.00 |
| 7/16/2020 | Telephone Conference with MBM re: RTC and research | B.B. | 1.00 | $400.00 |
| 7/16/2020 | Worked on Rule to shoe cause and performed research; Telephone Conference with WHB re: RTC and research | M.B.M. | 3.00 | $900.00 |
| 7/17/2020 | Continue to work on RTC; finalized RTC; Telephone Conference with WHB re: RTC x 3 | M.B.M. | 4.00 | $1,200.00 |
| 7/17/2020 | Worked on Rule to Show Cause; Telephone conference with MBM re: RTSC; Telephone conference with Hildebrand; Telephone conference with MBM re: RTSC | B.B. | 3.00 | $1,200.00 |
| 7/20/2020 | Telephone Conference with WHB re: strategy on RTC; reviewed emails from BBC; Telephone Conference with WHB to prepare for Cotton and Co call; call with Cotton and Co.; Telephone Conference with WHB re: KBB depo and Cotton and Co | M.B.M. | 3.30 | $990.00 |
| 7/20/2020 | Reviewed emails from BBC and Cotton & | B.B. | 8.00 | $3,200.00 |

| | | | | |
|---|---|---|---|---|
| | Company; Telephone conference with MBM re: Cotton & Company; Telephone conference with Cotton & Company and MBM; Telephone conference with Kim Brown re: Deposition; Telephone conference with Tom Hildebrand; Telephone conference with Jim Clements | | | |
| 7/21/2020 | Worked on strategy for Rule to show cause with WHB; reviewed 10/1/20 transcript | M.B.M. | 3.50 | $1,050.00 |
| 7/21/2020 | Worked on Rule to Show Cause plan; Received Transcript from first hearing | B.B. | 3.00 | $1,200.00 |
| 7/22/2020 | Worked on strategy for Rule to chow cause; pulled and reviewed all old filings; Telephone Conference with client; Telephone Conference with WHB re: strategy | M.B.M. | 4.50 | $1,350.00 |
| 7/22/2020 | Worked on Rule to Show Cause plan | B.B. | 3.50 | $1,400.00 |
| 7/23/2020 | Call with WHB re: strategy on RTC; Telephone Conference with Clement; cont. to pull filing; research on Judicial estoppel | M.B.M. | 3.00 | $900.00 |
| 7/23/2020 | Worked on Rule to Show Cause; Telephone conference with MBM re: RTSC; Telephone conference with T. Hildebrand | B.B. | 1.50 | $600.00 |
| 7/28/2020 | Telephone conference with Sam and Jason | B.B. | .75 | $300.00 |
| 7/30/2020 | Call with WHB re: update on Rule to Show Cause; Call with WHB and Cotton and Company | M.B.M. | 1.00 | $300.00 |
| 7/30/2020 | Call with MBM re: update on Rule to Show Cause; Call with MBM and Cotton and Company; email and telephone correspondence with Client; Telephone conference with T. Hidlebrand | B.B. | 4.00 | $1,600.00 |
| SUBTOTAL: | | | 51.55 | $18,140.00 |

**Costs**

| | | |
|---|---|---|
| 7/31/2020 | Invoice for copy of October 2019 hearing transcript. | $192.00 |
| SUBTOTAL: | | $192.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 6/4/2020 | Balance before last invoice | $7,955.90 |
| 7/22/2020 | Invoice 10872 | $5,870.00 |
| 8/6/2020 | Invoice 10900 | $18,332.00 |
| SUBTOTAL: | | $32,157.90 |

TOTAL $18,332.00

PREVIOUS BALANCE DUE $13,825.90

CURRENT BALANCE DUE AND OWING $32,157.90

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC

Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $59,132.74 |
| New Balance | $59,132.74 |
| Adjustments | $0.00 |
| Payments | ($32,157.90) |
| Now Due | $59,132.74 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: September 03, 2020
Invoice Number: 10907
Invoice Amount: $59,132.74

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 8/3/2020 | Prepared for Kim Brown deposition; Telephone conference with Sam and Jason and WHB re: affidavit; prepared with WHB for KBB deposition. | M.B.M. | 6.00 | $1,800.00 |
| 8/3/2020 | Prepared for Kim Brown's deposition, worked with MBM, Sam and Jason in preparation for deposition, review and respond to email correspondence from Kim Brown, Review email correspondence from Tom Hildebrand. | B.B. | 6.00 | $2,400.00 |
| 8/3/2020 | Receipt and review of email correspondence with Sam and Jason in regards to Sam's Draft Affidavit. | B.B. | .30 | $120.00 |
| 8/4/2020 | Meeting with WHB re: Kim Brown deposition. | M.B.M. | .50 | $150.00 |
| 8/4/2020 | Travel and attend deposition of Kim Brown | B.B. | 9.00 | $3,600.00 |
| 8/5/2020 | Met with WHB re: Kim Brown deposition; telephone conference with WHB re: Kim Brown deposition; telephone conference with WHB re: Architect, J. Clement and Kim Brown deposition. | M.B.M. | 1.00 | $300.00 |
| 8/5/2020 | Travel and attend deposition of Kim Brown | B.B. | 9.00 | $3,600.00 |
| 8/6/2020 | Travel and attended Kim Brown's deposition | M.B.M. | 5.20 | $1,560.00 |
| 8/6/2020 | Travel and attend deposition of Kim Brown | B.B. | 5.00 | $2,000.00 |
| 8/7/2020 | Reviewed RTC order; telephone conference with WHB re: RTC order | M.B.M. | 1.00 | $300.00 |
| 8/7/2020 | Telephone conference with MBM re: RTC order | B.B. | .50 | $200.00 |
| 8/10/2020 | Prepared for Rule to Show cause | M.B.M. | 4.00 | $1,200.00 |
| 8/11/2020 | Prepared for Rule to Show Cause; reviewed BBC filings | M.B.M. | 7.50 | $2,250.00 |

| | | | | |
|---|---|---|---|---|
| 8/11/2020 | Receipt and respond to email correspondence from Jason and Sam in preparation for upcoming Hearing. | B.B. | .50 | $200.00 |
| 8/12/2020 | Prepared for Rule to Show cause | M.B.M. | 6.00 | $1,800.00 |
| 8/12/2020 | Receive and respond to emails from Kim Brown | B.B. | .20 | $80.00 |
| 8/12/2020 | Receipt and review of T. Hildebrand's Supplemental Affidavit | B.B. | .20 | $80.00 |
| 8/13/2020 | Prepared for Rule to Show cause; telephone conference with Sam and Jason and WHB | M.B.M. | 8.00 | $2,400.00 |
| 8/13/2020 | Telephone conference with Sam, Jason and MBM | B.B. | 1.50 | $600.00 |
| 8/14/2020 | Prepared for Rule to Show Cause and then moved to preparing for Motion to Vacate | M.B.M. | 9.00 | $2,700.00 |
| 8/14/2020 | Receipt and review of T. Hildebrand's Motion & Request for Expedited Hearing | B.B. | .30 | $120.00 |
| 8/14/2020 | Prepared for Rule to Show Cause | B.B. | 4.00 | $1,600.00 |
| 8/15/2020 | Prepared for Motion to Vacate and began drafting outline of Motion in Opposition. | M.B.M. | 4.00 | $1,200.00 |
| 8/15/2020 | Email correspondence with Sam & Jason in preparation for upcoming Motion Hearing. | B.B. | .50 | $200.00 |
| 8/15/2020 | Prepared for Rule to Show Cause | B.B. | 4.00 | $1,600.00 |
| 8/17/2020 | Finalized Memo in Opposition for Motion to Vacate and prepared for Motion Hearing. | M.B.M. | 5.50 | $1,650.00 |
| 8/17/2020 | Gather and prepare dropbox link for the document production to Jim Clement for his review in preparation for his upcoming deposition testimony. | K.W. | .30 | $30.00 |
| 8/18/2020 | Prepared for and attended hearing on Motion to Vacate; met with WHB re: strategy and brief | M.B.M. | 5.50 | $1,650.00 |
| 8/18/2020 | Meeting with MBM re: strategy and brief, Prepared for and attended Motion to Vacate | B.B. | 5.50 | $2,200.00 |
| 8/18/2020 | Draft responses to BMCC Interrogatories in preparation for review and edits by Counsel. | K.W. | .50 | $50.00 |
| 8/19/2020 | Worked on brief for Opposition to Motion to Vacate. | M.B.M. | 6.80 | $2,040.00 |
| 8/19/2020 | Receipt and respond to emails from Jim Clement in regards to his upcoming deposition testimony. | B.B. | .10 | $40.00 |
| 8/19/2020 | Prepare correspondence to Court Reporter for request of a copy of the Court Transcript. | K.W. | .10 | $10.00 |
| 8/20/2020 | Continued working on brief. | M.B.M. | 3.00 | $900.00 |
| 8/21/2020 | Worked on Brief | M.B.M. | 4.50 | $1,350.00 |
| 8/21/2020 | Worked on brief with MBM | B.B. | 3.00 | $1,200.00 |
| 8/24/2020 | Worked on Brief | M.B.M. | 6.00 | $1,800.00 |
| 8/25/2020 | Worked on brief and attended Jim Clement deposition. | M.B.M. | 8.00 | $2,400.00 |
| 8/25/2020 | Receipt and review of Court Transcript. | B.B. | 1.00 | $400.00 |
| 8/26/2020 | Worked on brief and chart and attended Clement deposition. | M.B.M. | 4.50 | $1,350.00 |
| 8/26/2020 | Worked on Memorandum | B.B. | 3.00 | $1,200.00 |
| 8/27/2020 | Drafted proposed order; telephone conference with WHB re: proposed order | M.B.M. | 1.50 | $450.00 |
| 8/27/2020 | Telephone conference with MBM re: proposed order, Worked on Memo and Proposed Order | B.B. | 4.00 | $1,600.00 |
| 8/28/2020 | Finalized Memo in Opposition.; reviewed BBC | M.B.M. | 3.00 | $900.00 |

| | | | | |
|---|---|---|---|---|
| | memo and Proposed Order; Telephone conference with WHB re: BBC Memo | | | |
| 8/28/2020 | Worked on Memorandum, Telephone conference with MBM re: Memorandum, Reviewed BBC Memo and Proposed Order. | B.B. | 3.00 | $1,200.00 |
| 8/28/2020 | Receipt and review of T. Hildebrand's Memo of Law Regarding Audit Provisions of the Contract. | B.B. | 2.00 | $800.00 |
| 8/31/2020 | Telephone conference with WHB; Telephone conference with MB; Telephone conference with KBB and MB; Telephone conference with KBB | M.B.M. | .80 | $240.00 |
| SUBTOTAL: | | | 164.80 | $55,520.00 |

**Costs**

| | | |
|---|---|---|
| 8/14/2020 | Atlanta Legal Services, Inc.: Process Server for Casey Thompson | $110.00 |
| 8/19/2020 | ProLegal - Scan of Exhibit 38 (large notebook) of Kim Brown's deposition. | $254.33 |
| 8/19/2020 | Veritext Legal Solutions - Inv #SC4481932, SC4484502, 4486953: Copies of K. Brown's deposition transcripts and exhibits. | $3,248.41 |
| SUBTOTAL: | | $3,612.74 |

**Matter Ledgers**

| | | |
|---|---|---|
| 7/22/2020 | Balance before last invoice | $13,825.90 |
| 8/6/2020 | Invoice 10900 | $18,332.00 |
| 8/20/2020 | Payment on Invoices 10857, 10872 | ($13,825.90) |
| 9/2/2020 | Payment on Invoice 10900 | ($18,332.00) |
| 9/3/2020 | Invoice 10907 | $59,132.74 |
| SUBTOTAL: | | $59,132.74 |

TOTAL $59,132.74

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $59,132.74

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $59,132.74 |
| Current Charges | $15,750.30 |
| New Balance | $74,883.04 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $74,883.04 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: October 23, 2020
Invoice Number: 10912
Invoice Amount: $15,750.30

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 9/1/2020 | Worked on response to BBC letter. | B.B. | 3.50 | $1,400.00 |
| 9/1/2020 | Worked on response to Hildebrand letter; Telephone conference with WHB re: response; research; pulled documents for Chronology | M.B.M. | 4.50 | $1,350.00 |
| 9/1/2020 | Telephone conference with Kent Stair re: Buck Lindsay deposition. | B.B. | .50 | $200.00 |
| 9/2/2020 | Drafted chronology of events in response to claim of privilege | M.B.M. | 2.00 | $600.00 |
| 9/3/2020 | Worked on discovery strategy and discovery topics | M.B.M. | 2.00 | $600.00 |
| 9/7/2020 | Telephone conference with Kent Stair regarding Buck Lindsay's upcoming deposition. | B.B. | .50 | $200.00 |
| 9/8/2020 | Telephone conference with Kent Stair re: Buck Lindsay deposition | B.B. | .50 | $200.00 |
| 9/9/2020 | Attend Deposition of Buck Lindsay | B.B. | 8.00 | $3,200.00 |
| 9/10/2020 | Reviewed order from Scarborough on Motion to Vacate | M.B.M. | .50 | $150.00 |
| 9/11/2020 | Telephone Conference with WHB re: order and strategy and Cotton and Co.; Telephone Conference with Kim re: order and strategy | M.B.M. | 1.50 | $450.00 |
| 9/11/2020 | Telephone conference with MBM re: Strategy and discovery; Telephone conference with MBM and Kim | B.B. | 1.00 | $400.00 |
| 9/14/2020 | Drafted RTAs; Telephone Conference with WHB re: RTAs and strategy; Telephone Conference with client re: update | M.B.M. | 2.00 | $600.00 |

| | | | | |
|---|---|---|---|---|
| 9/14/2020 | Worked on RTA's; Telephone conference with MBM re: Strategy. | B.B. | 1.00 | $400.00 |
| 9/15/2020 | Telephone conference with MBM re: Motions | B.B. | .50 | $200.00 |
| 9/16/2020 | Telephone conference with MBM re: Subcontractor Motions | B.B. | .50 | $200.00 |
| 9/17/2020 | Call with Cotton & Company; Telephone conference with MBM re: Discovery | B.B. | .70 | $280.00 |
| 9/21/2020 | Prepared for Boe Call; Boe call; Telephone Conference with WHB re: Boe Call and expert strategy; Telephone Conference with Sam Wheeler and WHB | M.B.M. | 2.00 | $600.00 |
| 9/21/2020 | Telephone conference with MBM re: Boe; Telephone conference with Boe; Telephone conference with MBM; Telephone conference with Koch lawyer. | B.B. | 2.00 | $800.00 |
| 9/22/2020 | Prepared for client call; client call; Telephone Conference with WHB re: pleading | M.B.M. | 1.50 | $450.00 |
| 9/22/2020 | Preparation for client call; Client call. | B.B. | 1.00 | $400.00 |
| 9/23/2020 | Worked on Motion to Supplement | M.B.M. | 3.00 | $900.00 |
| 9/24/2020 | Worked on Motion to Supplement | M.B.M. | 3.00 | $900.00 |
| 9/28/2020 | Worked on Motion to Supplement | M.B.M. | 4.00 | $1,200.00 |
| SUBTOTAL: | | | 45.70 | $15,680.00 |

**Costs**

| | | |
|---|---|---|
| 9/22/2020 | Fed-Ex | $70.30 |
| SUBTOTAL: | | $70.30 |

**Matter Ledgers**

| | | |
|---|---|---|
| 9/3/2020 | Invoice 10907 | $59,132.74 |
| 10/23/2020 | Invoice 10912 | $15,750.30 |
| SUBTOTAL: | | $74,883.04 |

TOTAL $15,750.30

PREVIOUS BALANCE DUE $59,132.74

CURRENT BALANCE DUE AND OWING $74,883.04

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $74,883.04 |
| Current Charges | $29,803.45 |
| New Balance | $104,686.49 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $104,686.49 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: November 19, 2020
Invoice Number: 10916
Invoice Amount: $29,803.45

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 10/1/2020 | Worked on motion and brief for supplemental complaint | M.B.M. | 4.00 | $1,200.00 |
| 10/2/2020 | Worked on motion and brief for supplemental complaint; Telephone Conference with WHB re: Clement depo | M.B.M. | 2.00 | $600.00 |
| 10/2/2020 | Telephone Conference with MBM re: Clement depo | B.B. | 1.00 | $400.00 |
| 10/5/2020 | Telephone Conference with WHB re: Clement depo | M.B.M. | .30 | $90.00 |
| 10/5/2020 | Attend deposition of Jim Clement | B.B. | 7.00 | $2,800.00 |
| 10/5/2020 | Telephone Conference with MBM re: Clement depo | B.B. | .30 | $120.00 |
| 10/6/2020 | Reviewed amended pleading from BBC; Telephone Conference with WHB re: response; Telephone Conference with WHB and Kim re: strategy on amended complaint; began drafting amended answer and CC; Telephone Conference with WHB re: strategy and upcoming depos; Telephone Conference with Clement re: super list | M.B.M. | 3.00 | $900.00 |
| 10/6/2020 | Reviewed amended pleading from BBC; Telephone Conference with MBM re: response; Telephone Conference with MBM and Kim re: strategy on amended complaint; Telephone Conference with MBM re: strategy and upcoming depos. | B.B. | 1.50 | $600.00 |
| 10/7/2020 | Worked on amended answer; Telephone Conference with WHB re: amended answer; sent email to Balfour counsel re: amended complaint | M.B.M. | 1.00 | $300.00 |
| 10/7/2020 | Telephone Conference with MBM re: amended | B.B. | .50 | $200.00 |

| | | | | |
|---|---|---|---|---|
| | answer | | | |
| 10/13/2020 | Telephone conference with Client and MBM | B.B. | 2.00 | $800.00 |
| 10/13/2020 | Telephone conference with Client and WHB | M.B.M. | 2.00 | $600.00 |
| 10/14/2020 | Worked on response pleading | M.B.M. | 2.50 | $750.00 |
| 10/15/2020 | Worked on response pleading | M.B.M. | 3.00 | $900.00 |
| 10/15/2020 | Worked on amended pleading; Telephone conference with MBM re: discovery | B.B. | 1.50 | $600.00 |
| 10/16/2020 | Finalized response pleading; Telephone Conference with WHB re: response pleading; reviewed Boe email and attachments re: Bust; reviewed draw requests re: busts; Telephone Conference with WHB re: Busts | M.B.M. | 5.00 | $1,500.00 |
| 10/16/2020 | Worked on Amended Pleading; Telephone conference with client | B.B. | 2.00 | $800.00 |
| 10/19/2020 | Prepared for Boe call; Telephone Conference with WHB re: Boe Call; worked on Answer and counterclaims | M.B.M. | 2.50 | $750.00 |
| 10/19/2020 | Worked on amended pleading; worked on discovery; telephone conference with MBM re: depositions | B.B. | 1.50 | $600.00 |
| 10/20/2020 | Finalized Answer and CC; Telephone Conference with WHB re: changes | M.B.M. | 1.50 | $450.00 |
| 10/20/2020 | Finalized amended pleading | B.B. | 1.00 | $400.00 |
| 10/20/2020 | Prepare/format documents for filing LA's Answer to Amended Complaint and Third-Party Complaint and Summons. Prepare cover letter and serve all counsel of record with same. | K.W. | 1.50 | $150.00 |
| 10/21/2020 | Telephone Conference with Sam re: GCs; reviewed pay apps on GCs | M.B.M. | 1.50 | $450.00 |
| 10/21/2020 | Telephone conference with MBM re: Mediation prep and depos. | B.B. | 1.00 | $400.00 |
| 10/21/2020 | Prepare Draft Templates for Counsel in preparation for clients response to Quantum's Request to Admit, Interrogatories, and Request For Production | K.W. | 1.00 | $100.00 |
| 10/22/2020 | Telephone Conference with WHB re: Sam call and GCs; Telephone Conference with Kim and Jim and WHB; worked on responses to RTAs and Quantum Discovery | M.B.M. | 3.00 | $900.00 |
| 10/22/2020 | Telephone Conference with MBM re: GCs and lump sum; Telephone Conference with Kim re: GCs and lump sum | B.B. | 1.00 | $400.00 |
| 10/23/2020 | Call with Jim; worked on RTA responses; Call with WHB re: Sam; sent email to Sam re: GCs | M.B.M. | 2.00 | $600.00 |
| 10/23/2020 | Telephone conference with MBM re: RTA's and Client email and Sam | B.B. | .50 | $200.00 |
| 10/26/2020 | Prepared for mediation | M.B.M. | 3.00 | $900.00 |
| 10/26/2020 | Prepared for Mediaiton | B.B. | 3.00 | $1,200.00 |
| 10/27/2020 | Prepared for mediation | M.B.M. | 3.00 | $900.00 |
| 10/27/2020 | Prepared for Mediation | B.B. | 3.00 | $1,200.00 |
| 10/28/2020 | Mediation; Telephone Conference with Sam; Telephone Conference with WHB; Telephone Conference with Lyles | M.B.M. | 8.50 | $2,550.00 |

| | | | | |
|---|---|---|---|---|
| 10/28/2020 | Prepared for Mediation; Telephone Conference with MBM re: Mediation; Attended Mediation, Telephone Conference with Lyles (x 3); Telephone conference with MBM | B.B. | 5.00 | $2,000.00 |
| 10/29/2020 | Drafted first list of Deponents from BBC; Telephone Conference with WHB re: actual delays | M.B.M. | 4.00 | $1,200.00 |
| 10/29/2020 | Telephone Conference with MBM re: actual delays | B.B. | 2.00 | $800.00 |
| 10/29/2020 | Prepare Deposition Chart with Date, Time, Deponent and Description of Job Duties for each Deponent for use and review for WHB | K.W. | .50 | $50.00 |
| SUBTOTAL: | | | 88.60 | $29,360.00 |

**Costs**

| | | |
|---|---|---|
| 10/30/2020 | Postage | $130.20 |
| 10/30/2020 | Copies | $313.25 |
| SUBTOTAL: | | $443.45 |

**Matter Ledgers**

| | | |
|---|---|---|
| 9/3/2020 | Balance before last invoice | $59,132.74 |
| 10/23/2020 | Invoice 10912 | $15,750.30 |
| 11/19/2020 | Invoice 10916 | $29,803.45 |
| SUBTOTAL: | | $104,686.49 |

TOTAL $29,803.45

PREVIOUS BALANCE DUE $74,883.04

CURRENT BALANCE DUE AND OWING $104,686.49

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $45,553.75 |
| Current Charges | $34,638.90 |
| New Balance | $80,192.65 |
| Adjustments | $0.00 |
| Payments | ($59,132.74) |
| Now Due | $80,192.65 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: December 23, 2020
Invoice Number: 10919
Invoice Amount: $34,638.90

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 11/2/2020 | Prepare draft of Library Associates answers to BMCC Interrogatories for Counsel to edit and draft responses; Serve all counsel of record with same. | K.W. | 1.00 | $100.00 |
| 11/2/2020 | Worked on deposition notices; Telephone conference with WHB re: discovery strategy | M.B.M. | .50 | $150.00 |
| 11/2/2020 | Telephone conference with MBM re: discovery strategy | B.B. | .30 | $120.00 |
| 11/3/2020 | Prepare Notice of Depositions, Subpoenas, & Certificates of Service for H. Bradford, Johnny Eldridge, N. Starcevik, Ryan Ledford, Steve Zanowski, Tim Spano, and Cover Letter to BBC Counsel in preparation for service. Copy all counsel of record with same. | K.W. | 2.00 | $200.00 |
| 11/3/2020 | Telephone conference with MBM re: depositions | B.B. | .50 | $200.00 |
| 11/3/2020 | Telephone conference with Kim re: discovery and info for Sam; Telephone conference with WHB re: depositions; reviewed answers and counterclaims; finalized discovery responses to BMCC | M.B.M. | 1.50 | $450.00 |
| 11/4/2020 | Telephone conference with MBM re: depos; reviewed correspondence from Hildebrand | B.B. | .50 | $200.00 |
| 11/4/2020 | Reviewed answers and counterclaims to prepare responses; finalized deposition notices; Telephone conference with WHB re: depos; reviewed correspondence from Hildebrand | M.B.M. | 2.50 | $750.00 |
| 11/5/2020 | Reviewed new pleadings from Defendants | M.B.M. | 1.50 | $450.00 |

| | | | | |
|---|---|---|---|---|
| 11/6/2020 | Telephone conference with MBM re: Boe report | B.B. | .30 | $120.00 |
| 11/6/2020 | Telephone conference with Boe re: report; Telephone conference with WHB re: Boe report | M.B.M. | .60 | $180.00 |
| 11/9/2020 | Reviewed Boe Report | M.B.M. | 2.00 | $600.00 |
| 11/9/2020 | Received Boe Report; Telephone conference with MBM re: Issues in report. | B.B. | 2.50 | $1,000.00 |
| 11/10/2020 | Prepared for Boe call; Telephone conference with MB re: update; Telephone conference with WHB re: Boe report; Telephone conference with WHB and Boe re: Boe report; Telephone conference with WHB re: Boe report | M.B.M. | 4.00 | $1,200.00 |
| 11/10/2020 | Prepared for Boe telephone conference; Telephone conference with Boe and MBM; Telephone conference with MBM (x3) | B.B. | 2.50 | $1,000.00 |
| 11/11/2020 | Prepare Notice of Deposition, Subpoena, Certificate of Service to All Counsel for Marty Dale, Brendon Denney along with cover letters for service. | K.W. | 1.00 | $100.00 |
| 11/11/2020 | Worked on subpoenas for depos; Telephone conference with WHB re: depos; reviewed Boe spreadsheet | M.B.M. | 2.00 | $600.00 |
| 11/11/2020 | Telephone conference with MBM re: Depositions and Discovery | B.B. | .50 | $200.00 |
| 11/12/2020 | Prepared responsive pleadings; pulled dos for Boe; Telephone conference with WHB re: Architect and interior designer depositions. | M.B.M. | 3.50 | $1,050.00 |
| 11/12/2020 | Received updated Boe Report; Telephone conference with MBM re: Depositions; Received Sam's spreadsheet | B.B. | 2.00 | $800.00 |
| 11/13/2020 | Contact Process Servers for North Carolina and Ohio in preparation for the domestication and service of Notice of Depositions; Prepare Notice of Depositions, Subpoenas, and service cover letters for Manny Teodoro, Alec Dooley, Mike Baumbach, Dan Ricci, Keith Rossi, Manny Teodoro, Paola Dorante and Ryan Lawerence. | K.W. | 3.50 | $350.00 |
| 11/13/2020 | Continue to prepare responsive pleadings; reviewed spreadsheets from Sam; completed responsive pleadings; Telephone conference with WHB re: Boe report | M.B.M. | 4.00 | $1,200.00 |
| 11/13/2020 | Telephone conference with MBM re: Lien Bond off and duplications | B.B. | .50 | $200.00 |
| 11/16/2020 | Assist counsel with preparation of Designation of Expert Witnesses with Exhibits and serve all Counsel of Record with same. | K.W. | .50 | $50.00 |
| 11/16/2020 | Telephone conference with WHB re: expert reports; Began to prepare expert disclosures; attended Woody Faust depo; attended Karen Jenkins depo; Telephone conference with Kim and MB; Telephone conference with Jason Boberg; reviewed Boe Final Report; Reviewed Cotton and Co report; finalized expert disclosures | M.B.M. | 8.50 | $2,550.00 |

| | | | | |
|---|---|---|---|---|
| 11/16/2020 | Telephone conference with MBM re: Depositions and Expert Disclosures; Telephone conference with Client; Received Expert Reports | B.B. | 2.50 | $1,000.00 |
| 11/17/2020 | Prepare Amended Notice of Depositions, Subpoenas and Cover Letters for Personal Service on Shanti Pieniak, Nick Starcevik, Steve Zanowski, Ryan Ledford, Johnny Ethridge, Tim Spano, and Bob Cotherman. Contact Process Server and arrange for personal service of the same. Copy all counsel of record. | K.W. | 2.00 | $200.00 |
| 11/17/2020 | Prepare Deposition Chart /Index or use by Counsel and Court Reporter. | K.W. | .30 | $30.00 |
| 11/17/2020 | Telephone conference with WHB re: update; Telephone conference with Kim re: update and expert reports; Cont. to review expert reports; attended deposition of Faulkinberry | M.B.M. | 5.00 | $1,500.00 |
| 11/17/2020 | Telephone conference with MBM re: Expert Reports and depositions; Continue to review Expert Reports from BBC; Telephone conference with MBM re: Bifurcation | B.B. | 3.00 | $1,200.00 |
| 11/18/2020 | Telephone conference with WHB re: depositions and liquidated damages; attended Taylor Walker depo; research on LDs and claim; attended Jim Lord depo; prepared for Boe call; call with Kim re: update; research on standard of review for initial decision maker | M.B.M. | 6.50 | $1,950.00 |
| 11/18/2020 | Telephone conference with MBM re: Liquid Damages research | B.B. | .30 | $120.00 |
| 11/19/2020 | Prepared for Boe Call; Telephone conference with WHB re: contract provisions and call with Boe; Call with Boe and WHB; Cont. to map contract provisions on notice; worked on service for depo subpoenas; worked on subpoenas to BBC experts; Telephone conference with WHB re: client call; client call; Telephone conference with WHB re: depos and questions; reviewed Boe email; sent and received emails with Hadley re: call; cont to work on expert reports; continue legal research on conditions precedent | M.B.M. | 6.00 | $1,800.00 |
| 11/19/2020 | Prepared for Boe telephone conference; Telephone conference with MBM re: Boe call; Telephone conference with Boe; Prepared for Client call; Telephone conference with Client; Telephone call with MBM re: Depositions and strategy; Continued receiving BBC Expert Reports | B.B. | 5.50 | $2,200.00 |
| 11/20/2020 | Prepare Record Subpoenas and Cover letters for service to Contract Solutions (x3 - BBC, Lithko, ONSM), Quick Group, Core International, James McAuliffe, and ABS; Arrange Process Servers for service of same. | K.W. | 1.50 | $150.00 |
| 11/20/2020 | Telephone conference with WHB re: BBC | M.B.M. | 4.00 | $1,200.00 |

| | | | | |
|---|---|---|---|---|
| | depositions and prep; cont. to prep for BBC depoitions | | | |
| 11/20/2020 | Telephone conference with MBM re: Offers of Judgment; Continue to review Expert reports. | B.B. | 2.00 | $800.00 |
| 11/23/2020 | Continue to prep for BBC depositions; Telephone conference with Clements re: daily reports and expert reports; Telephone conference with WHB re: daily reports; met with staff re: daily reports; prepared for Cotton call; Cotton call with WHB and Cotton | M.B.M. | 4.50 | $1,350.00 |
| 11/23/2020 | Prepared for Cotton & Company call; Telephone conference with Cotton & Company | B.B. | 2.00 | $800.00 |
| 11/24/2020 | Sent and received emails re: Clement depo; Telephone conference with WHB re: update; reviewed email from Hildebrand; started drafting RTAs | M.B.M. | 1.50 | $450.00 |
| 11/24/2020 | Telephone conference with WHB re: depositions; prepare for BBC depoitions | M.B.M. | 4.50 | $1,350.00 |
| 11/24/2020 | Telephone conference with MBM re: update | B.B. | .50 | $200.00 |
| 11/30/2020 | Prepare Amended Notice of Deposition and Subpoena of Mike Baumbach; serve all counsel of record with same | K.W. | .30 | $30.00 |
| 11/30/2020 | Telephone conference with WHB re: depositions; prepare for BBC depositions | M.B.M. | 4.50 | $1,350.00 |
| 11/30/2020 | Telephone conference with MBM re: depositions | B.B. | 1.00 | $400.00 |
| SUBTOTAL: | | | 105.60 | $31,900.00 |

**Costs**

| | | |
|---|---|---|
| 11/24/2020 | Reynolds - Process Service | $1,450.00 |
| 11/30/2020 | Process Service, Inc. (11-11-20 thru 11-24-20) | $1,288.90 |
| SUBTOTAL: | | $2,738.90 |

**Matter Ledgers**

| | | |
|---|---|---|
| 10/23/2020 | Balance before last invoice | $74,883.04 |
| 11/19/2020 | Invoice 10916 | $29,803.45 |
| 12/1/2020 | Payment on invoice 10907 | ($59,132.74) |
| 12/23/2020 | Invoice 10919 | $34,638.90 |
| SUBTOTAL: | | $80,192.65 |

TOTAL $34,638.90

PREVIOUS BALANCE DUE $45,553.75

CURRENT BALANCE DUE AND OWING $80,192.65

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: January 25, 2021
Invoice Number: 10922
Invoice Amount: $100,124.15

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 12/1/2020 | Prepared for depositions | M.B.M. | 3.50 | $1,050.00 |
| 12/2/2020 | Prepared for depositions | B.B. | 5.00 | $2,000.00 |
| 12/2/2020 | Prepared for depositions | M.B.M. | 6.50 | $1,950.00 |
| 12/3/2020 | Prepared for depositions | B.B. | 5.00 | $2,000.00 |
| 12/3/2020 | Prepared for depositions | M.B.M. | 6.50 | $1,950.00 |
| 12/4/2020 | Prepared for depositions | B.B. | 5.00 | $2,000.00 |
| 12/4/2020 | Prepared for depositions | M.B.M. | 6.50 | $1,950.00 |
| 12/6/2020 | Prepared for depositions | B.B. | 3.00 | $1,200.00 |
| 12/7/2020 | Prepared for and attended depositions of K. Rossi and M. Teodoro | B.B. | 8.00 | $3,200.00 |
| 12/7/2020 | Prepared for and attended depositions of Teodoro and Rossi; Telephone Conference with client | M.B.M. | 5.50 | $1,650.00 |
| 12/8/2020 | Prepared for B. Denney deposition; Telephone conference with MBM re: Update and discovery motions; attended B. Denney deposition | B.B. | 5.00 | $2,000.00 |
| 12/8/2020 | Prepared for Denney depo; Telephone Conference with WHB re: update and discovery; drafted letter to counsel for subcontractors; attended Denney depo | M.B.M. | 5.00 | $1,500.00 |
| 12/9/2020 | Prepared for B. Cotherman's deposition; Telephone conference with MBM re: Cotton & Company Report; Telephone conference with M. Baughman's attorney | B.B. | 3.00 | $1,200.00 |
| 12/9/2020 | Prepared for depositions; Telephone conference with WBH re: Cotton & Company Report; Telephone Conference with Baumbach lawyer | M.B.M. | 4.00 | $1,200.00 |



2021

| | | | | |
|---|---|---|---|---|
| 12/10/2020 | Prepared fir Cotherman's deposition; Took Cotherman's deposition; Telephone conference with MBM re: Motions to Compel; Prepared for depositions of Bradford and Dooley | B.B. | 8.50 | $3,400.00 |
| 12/10/2020 | Prepared for and attended Cotherman depo; Telephone Conference with WHB re: depositions and motions; began preparing motions; reviewed cotton and company report | M.B.M. | 9.50 | $2,850.00 |
| 12/11/2020 | Prepared for Dooley and Bradford depositions; Took depositions; Telephone conference with MBM re: Experts and depositions | B.B. | 8.00 | $3,200.00 |
| 12/11/2020 | Drafted discovery requests; Telephone Conference with WHB re: depositions and themes; drafted letters to opposing counsel; attended Dooley depo; travel and attended Bradford depo; travel; Telephone Conference with Kim and Jack; Telephone Conference with WHB re: update and depo prep | M.B.M. | 7.00 | $2,100.00 |
| 12/13/2020 | Worked on O'Connor expert; Prepared for depositions | B.B. | 4.00 | $1,600.00 |
| 12/14/2020 | Prepared for Starcevik and Ledford depositions; Took Starcevik and Ledford depositions; Telephone conference with Bennett; Telephone conference with MBM rlibe: Deposition preparation and experts | B.B. | 8.50 | $3,400.00 |
| 12/14/2020 | Prepared for depositions; travel; attended Starcovic depo; Telephone Conference with WHB re: depositions; Telephone Conference with Kim re: update; attended Ledford depo; Telephone Conference with WHB re: strategy and remaining depositions; Telephone Conference with Mr. Bennett re: update and strategy; prepared for Baumbach depositions | M.B.M. | 8.00 | $2,400.00 |
| 12/14/2020 | Gather documents for Expert Patrick O'Connor and prepare same via dropbox and email for his review. | K.W. | .50 | $50.00 |
| 12/15/2020 | Prepared for and took M. Baumbach deposition; Prepared for and took Zanowski's deposition. | B.B. | 6.50 | $2,600.00 |
| 12/15/2020 | Prepared for and attended Baumbach depo; attended Zanowski depo; prepared for Spano depo; drafted expert disclosures; reviewed Boe report | M.B.M. | 7.00 | $2,100.00 |
| 12/16/2020 | Prepared for and took J. Eldridge deposition; worked on Spano's deposition; reviewed all expert reports | B.B. | 8.00 | $3,200.00 |
| 12/16/2020 | Prepared for and attended Eldridge depo; Telephone Conference with Client re: update; Reviewed rebuttal reports from experts; pulled contract provisions for rebuttal reports; Telephone Conference with WHB re: rebuttal reports; pulled exhibits for Spano and Starcevic depositions | M.B.M. | 7.50 | $2,250.00 |
| 12/17/2020 | Prepared for and took Spano's deposition; worked on legal ethics for aiding and abetting; Telephone conference with MBM re: Strategy and RTA's; Prepared for Starcevic deposition. | B.B. | 9.50 | $3,800.00 |
| 12/17/2020 | Prepared for Spano depo; Telephone Conference | M.B.M. | 8.00 | $2,400.00 |

| | | | | |
|---|---|---|---|---|
| | with WHB re: Spano depo; attended Spano depo; legal research; prepared for Starcevic depo | | | |
| 12/18/2020 | Prepared for and took Starcevic deposition; Telephone conference with MBM re: deposition and legal research; Telephone conference with Bennett; Telephone conference with Bennett | B.B. | 5.00 | $2,000.00 |
| 12/18/2020 | Legal research; Telephone Conference with WHB re: new issue and research; drafted Requests to Admit; attended Starcevic depo | M.B.M. | 5.00 | $1,500.00 |
| 12/21/2020 | Telephone conference with MBM re: Motions and deposition list; Client call preparation; Telephone conference with MBM, Client, J. Clement; Reviewed Motion and to do list with MBM | B.B. | 3.50 | $1,400.00 |
| 12/21/2020 | Prepared for client call; Telephone Conference with WHB re: motions list and drafting schedule; Telephone Conference with client and clement and WHB; cont. to work on motions and to do list | M.B.M. | 6.50 | $1,950.00 |
| 12/24/2020 | Reviewed Daily Reports | B.B. | 3.00 | $1,200.00 |
| 12/28/2020 | Prepared for Client meeting; Telephone conference with MBM, J Clement and Kim; Reviewed Daily Reports | B.B. | 5.00 | $2,000.00 |
| 12/29/2020 | Worked on Daily Reports | B.B. | 2.00 | $800.00 |
| 12/29/2020 | Telephone Conference with WHB re: Daily reports and timeline; met with staff re: timeline and war room; worked on motions and Daily reports | M.B.M. | 2.50 | $750.00 |
| 12/30/2020 | Worked on Daily Reports | B.B. | 2.50 | $1,000.00 |
| 12/30/2020 | Prepared for RCO call; Telephone Conference with WHB re; RCO and Daily Reports and War room set up | M.B.M. | .50 | $150.00 |
| 12/30/2020 | Set up and prepared War Room for Library Associates matter | K.W. | 4.50 | $450.00 |
| 12/31/2020 | Make binders for Pay Applications 28, 29, 38, 39, 40, 41, 42, and 43 | K.W. | 1.00 | $100.00 |
| 12/31/2020 | Begin to review hard files and make copies of RCO's for future use by Counsel. | K.W. | 1.50 | $150.00 |
| SUBTOTAL: | | | 214.50 | $73,650.00 |

**Costs**

| | | |
|---|---|---|
| 12/2/2020 | Fed Ex | $54.40 |
| 12/3/2020 | Fed Ex | $65.87 |
| 12/4/2020 | ProLegal | $151.23 |
| 12/7/2020 | Fed Ex | $29.51 |
| 12/8/2020 | Copy Service for Contract Solutions Documents in Response to Record Subpoenas | $319.68 |
| 12/14/2020 | ESG Process Server | $150.00 |
| 12/14/2020 | Veritext - Court Reporting | $1,711.80 |
| 12/23/2020 | Advanced One Invoice #708729 - Deposition of Brandon Denney | $2,036.98 |
| 12/23/2020 | Advanced Deposition Invoice #708715 - Deposition of Keith Rossi and Manny Teodoro | $2,081.42 |
| 12/28/2020 | Office Supplies - Wulbern Koval (Binders) | $291.80 |

| | | |
|---|---|---|
| 12/30/2020 | Advanced One Invoice #709075 - Deposition of Ryan Ledford | $1,519.65 |
| 12/31/2020 | Office supplies - Amazon | $464.74 |
| 12/31/2020 | Advanced One Inv #709009 - Deposition of Bob Cotherman. | $3,231.25 |
| 12/31/2020 | Advanced One Inv 709160 - Deposition of Heath Bradford | $871.75 |
| 12/31/2020 | Advanced One Depositions Inv 709164 - Deposition of Alec Dooley | $3,373.15 |
| 12/31/2020 | Advanced One Depositions Inv #709168 - Deposition of Nick Starcevic - Vol I | $1,791.63 |
| 12/31/2020 | Advanced One Depositions Inv 709171 - Depositions of Mike Baumbach and Steve Zanowski | $3,388.66 |
| 12/31/2020 | Advanced One Deposition Inv #709263 - Deposition of Johnny Eldridge | $1,018.88 |
| 12/31/2020 | Advance One Deposition Inv #709423 - Deposition of Tim Spano | $2,961.75 |
| 12/31/2020 | Advanced One Deposition Inv #709519 - Deposition of Nick Starcevic (Vol II) | $924.00 |
| 12/31/2020 | Applied Building Science Invoice #950.18016.-06 - Document production pursuant to record subpoena | $36.00 |
| SUBTOTAL: | | $26,474.15 |

**Matter Ledgers**

| | | |
|---|---|---|
| 12/1/2020 | Balance before last invoice | $45,553.75 |
| 12/23/2020 | Invoice 10919 | $34,638.90 |
| 12/31/2020 | Payment on Invoice 10912 | ($15,750.30) |
| 1/25/2021 | Invoice 10922 | $100,124.15 |
| SUBTOTAL: | | $164,566.50 |

TOTAL $100,124.15

PREVIOUS BALANCE DUE $64,442.35

CURRENT BALANCE DUE AND OWING $164,566.50

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: February 23, 2021
Invoice Number: 10931
Invoice Amount: $35,630.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 1/3/2021 | Prepared for RCO call with Jim and WHB | M.B.M. | 2.00 | $600.00 |
| 1/4/2021 | Continue to review file and pull/copy RCO's; Prepare folders and redwells for the 280 RCO hard copies; Prepare Index in regard to RCO's on Pay Application 45; | K.W. | 4.00 | $400.00 |
| 1/4/2021 | Prepared for RCO call; RCO call with Jim and WHB; began to organize RCOs into three categories for Jim | M.B.M. | 5.50 | $1,650.00 |
| 1/4/2021 | Prepared for RCO Meeting; RCO Meeting with Jim and MBM; Telephone conference with MBM re: Strong Tower | B.B. | 4.00 | $1,600.00 |
| 1/5/2021 | Receipt of emails from Jim Clements with RCO back up, print, update hard files; continue to review both electronic files and hard files for RCO's make copies and update hard file and indexes accordingly. | K.W. | 4.50 | $450.00 |
| 1/5/2021 | Worked on RCO log; Telephone Conference with WHB re: Cotton and Co call; prepared for Cotton and Company call; Cotton and Company call with WHB; cont. working on RCO log; Telephone Conference with Sam Wheeler (lawyer for Strongtower) and WHB re: motion for Summary judgment; reviewed BBC memo in opposition to Strongtower motion | M.B.M. | 6.00 | $1,800.00 |
| 1/5/2021 | Prepared for Cotton & Company telephone conference; Telephone conference with MBM re: | B.B. | 5.00 | $2,000.00 |

| | | | | |
|---|---|---|---|---|
| | Strong Tower Motion and Cotton call; Telephone conference with Cotton & Co; Telephone conference with MBM re: Strong Tower Motion; Telephone conference with lawyer from Strong Tower and MBM | | | |
| 1/6/2021 | Receipt of email with link from Jim Clement containing copies of RCOs, 07 RFI, CCDs, and Pay Apps and begin to print, download, prepare hard files and indexes | K.W. | 5.50 | $550.00 |
| 1/6/2021 | Reviewed BBC file; prepared for Strongtower motion hearing; drafted RFP to BBC based on counsel's statements at the hearing | M.B.M. | 7.20 | $2,160.00 |
| 1/6/2021 | Telephone conference with MBM re: BBC license; Attended Strong Tower Hearing; Telephone conference with MBM re: RTP to BBC | B.B. | 3.00 | $1,200.00 |
| 1/7/2021 | Download deposition transcripts of BBC Employees and prepare dropbox link in preparation for delivery to Mark Boe for his review. | K.W. | .30 | $30.00 |
| 1/7/2021 | Worked on discovery responses; Telephone Conference with WHB re: to do list and RCOs; worked on RCO chart; worked on RTP to BBC; Call with Boe | M.B.M. | 4.50 | $1,350.00 |
| 1/7/2021 | Prepared for telephone conference with Mark Boe; Telephone conference with M. Boe and MBM; Reviewed RFP draft; Telephone conference with MBM re: RFP | B.B. | 2.50 | $1,000.00 |
| 1/8/2021 | Update RCO Index with revisions provided by Counsel | K.W. | .50 | $50.00 |
| 1/8/2021 | Continue to review hard and electronic file and print RCO's for hard file in preparation for future reference and use by Counsel | K.W. | 3.50 | $350.00 |
| 1/8/2021 | Finalized RTP to BBC | M.B.M. | 1.00 | $300.00 |
| 1/11/2021 | Receipt of Jim Clements email containing back up RCO documents and prepare download, print hard copy for physical file, and update index accordingly; continue to review file and pull hardcopies of missing RCO;s | K.W. | 2.50 | $250.00 |
| 1/11/2021 | Prepared for RCO meeting | M.B.M. | 1.50 | $450.00 |
| 1/12/2021 | Prepared for RCO meeting; RCO meeting | M.B.M. | 2.00 | $600.00 |
| 1/12/2021 | Prepared for RCO Meeting; Attended RCO Zoom meeting | B.B. | 2.00 | $800.00 |
| 1/13/2021 | Gather, download and print copies of CCDs. Create file folders and redwells for hardcopies and update index accordingly; Type/format MBM Meeting Notes to date from Zoom meeting with Jim, Kim, WHB, and MBM | K.W. | 4.50 | $450.00 |
| 1/14/2021 | Review of hard file and all email correspondence for all discovery responses and document production to date by all parties. Save all discovery to electronic file and print hard copy for the file. Create Index for tracking of the same. | K.W. | 4.50 | $450.00 |

| | | | | |
|---|---|---|---|---|
| 1/14/2021 | RCO meeting | B.B. | 1.00 | $400.00 |
| 1/15/2021 | Prepare cover letter, and Fifth and Sixth Supplemental Interrogatories to BBC to be finalized by MBM and serve all counsel with same; prepare letter for WHB signature to All Counsel regarding available dates for Zoom meeting in preparation for trial procedure. Continue to go thru hard file and email to pull all discovery and document production and prepare same for use during trial preparation. | K.W. | 4.00 | $400.00 |
| 1/18/2021 | Prepared for RCO meeting; reviewed Clement emails | M.B.M. | 1.00 | $300.00 |
| 1/19/2021 | Prepared for RCO Meeting; attended RCO meeting; pulled RCOs with KBB; reviewed BBC responses to Requests for admission; drafted email to Hildebrand re: responses | M.B.M. | 5.30 | $1,590.00 |
| 1/20/2021 | Prepared for call with all counsel for trial procedure; prepared for RCO call | M.B.M. | 5.00 | $1,500.00 |
| 1/21/2021 | Prepared for RCO meeting; attended RCO meeting; prepared for Counsel Conf. on Trial Procedure; Prepared Trial Procedure outline for WHB; Telephone Conference with WHB re: Update; worked on RCOs | M.B.M. | 5.50 | $1,650.00 |
| 1/21/2021 | Telephone conference with MBM re: Counsel call; Prepared for counsel call; Reviewed Trial Form from MBM; Counsel call; Telephone conference with MBM re: Trial Procedure snd Experts. | B.B. | 3.50 | $1,400.00 |
| 1/25/2021 | Review RCO's sent by Jim Clement and print for tomorrows Zoom Call; Prepare Motion for Counsel's e signature, file with Charleston County Efile and serve all Counsel of record with same; Email all counsel WHB letter re: Trial Proposal. | K.W. | 4.50 | $450.00 |
| 1/25/2021 | Prepared for RCO Meeting; Telephone Conference with Kim re: RCO Meeting; Telephone Conference with WHB re: update and RCO meeting; prepared for status conference; drafted motion on Roggs; Finalized letter to opp. Counsel re: Trial Procedure | M.B.M. | 6.50 | $1,950.00 |
| 1/25/2021 | Telephone conference with MBM re: Update and RCO Meeting. | B.B. | 1.00 | $400.00 |
| 1/26/2021 | Prepared for RCO meeting; attended RCO meeting; Telephone Conference with WHB re: status conference and trial procedure and extended discovery | M.B.M. | 2.50 | $750.00 |
| 1/26/2021 | Reviewed Court Website for all outstanding Motions in Preparation for upcoming Status Hearing. | K.W. | 1.50 | $150.00 |
| 1/26/2021 | Telephone conference with MBM re: Status Conference and Trial Procedure and extended discovery. | B.B. | 1.00 | $400.00 |
| 1/27/2021 | Worked on discovery responses to BBC; prepared for RCO meeting; Telephone Conference with WHB re: status conference; prepared for status conference | M.B.M. | 3.00 | $900.00 |
| 1/27/2021 | Telephone conference with MBM re: Status | B.B. | .50 | $200.00 |

| | | | | |
|---|---|---|---|---|
| | Conference | | | |
| 1/28/2021 | Prepared for call with Kim and Jim and WHB; call with Kim and Jim and WHB; first review of daily reports | M.B.M. | 7.00 | $2,100.00 |
| 1/28/2021 | Worked on discovery responses to BBC; Telephone Conference with WHB re: discovery responses and status conference; drafted bench memo for Trial Procedure Outline; prepared for RCO meeting; RCO meeting with Jim Clement; finalized discovery responses to BBC; prepared for status conference | M.B.M. | 4.00 | $1,200.00 |
| 1/28/2021 | Telephone conference with Kim Brown and Jim Clements | B.B. | 1.00 | $400.00 |
| 1/28/2021 | Telephone conference with MBM re: Discovery Responses and Status Conference. | B.B. | 1.00 | $400.00 |
| 1/29/2021 | Prepared for Status Conference | M.B.M. | 2.00 | $600.00 |
| SUBTOTAL: | | | 136.80 | $35,630.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 1/25/2021 | Balance before last invoice | $164,566.50 |
| 2/23/2021 | Payment on invoice 10916 | ($29,803.45) |
| 2/23/2021 | Invoice 10931 | $35,630.00 |
| SUBTOTAL: | | $170,393.05 |

TOTAL $35,630.00

PREVIOUS BALANCE DUE $134,763.05

CURRENT BALANCE DUE AND OWING $170,393.05

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: March 19, 2021
Invoice Number: 10938
Invoice Amount: $29,071.74

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 2/1/2021 | Prepared for status hearing and motion hearing; attended status hearing and motion hearing; Telephone conference with WHB re: orders and timeline; began assembling documents for timeline; finalized motion and order of commission drafts | M.B.M. | 8.00 | $2,400.00 |
| 2/1/2021 | Transcribe/Type MBM notes from RCO meeting, Pull outstanding Motions, Prepare Motion for Commission for out of State record subpoena | K.W. | 2.50 | $250.00 |
| 2/1/2021 | Telephone conference with MBM re: Orders and timeline | B.B. | 1.00 | $400.00 |
| 2/2/2021 | Prepared for hearing; Attended hearing; Telephone conference with MBM & Kim re: Update; Telephone conference with MBM re: Strategy; Telephone conference with MBM re: Orders and Timeline | B.B. | 4.50 | $1,800.00 |
| 2/2/2021 | Cont. to work on timeline docs; prepared for Clements meeting; sent and received emails with mark Boe; Clements meeting; Telephone conference with WHB re: timeline documents for 4Q 18 and 1Q 19; legal research for WHB on LDs and Notice and qualified immunity; prepared for meeting with Kim | M.B.M. | 5.00 | $1,500.00 |
| 2/2/2021 | Telephone conference with Ms. Brunson, MIE Law Clerk, re: Outstanding Motion and Order | K.W. | .20 | $20.00 |
| 2/2/2021 | Draft Amended Notice of Deposition of Steve Humbert. | K.W. | .20 | $20.00 |

| | | | | |
|---|---|---|---|---|
| 2/3/2021 | Reviewed emails from Clement for timeline; cont. to work on timeline; Telephone conference with WHB re: timeline; Telephone conference with Mark Boe | M.B.M. | 4.00 | $1,200.00 |
| 2/4/2021 | Attended Thursday RCO Meeting; Meeting with Kim and MBM re: Finances; Telephone conference with MBM re: Condition precedent. | B.B. | 1.50 | $600.00 |
| 2/4/2021 | Prepared for RCO meeting; cont. to work on timeline; RCO Meeting with WHB and Jim and KB; Reviewed Buck Lindsay depo | M.B.M. | 4.50 | $1,350.00 |
| 2/4/2021 | Telephone conference with MBM re: Timeline | B.B. | 1.00 | $400.00 |
| 2/9/2021 | Prepared for and attended meeting with Jim and Kim. | B.B. | 1.00 | $400.00 |
| 2/9/2021 | Prepared for Tuesday meeting; attended Tuesday meeting | M.B.M. | 1.50 | $450.00 |
| 2/11/2021 | Prepare Library Associates Supplemental Designation of Expert Witnesses once finalized serve all counsel of record with same. | K.W. | 1.00 | $100.00 |
| 2/11/2021 | Draft Library Associates Responses to BBC Request to Admit for review and edits by Counsel, once finalized served all Counsel of Record with same. | K.W. | 1.50 | $150.00 |
| 2/15/2021 | Worked on timeline; reviewed Boe report; updated discovery with Boe Report; Telephone conference with WHB re: Boe report; prepared for call with Kim and Jim; cont. drafting 30(b)(6) topics | M.B.M. | 5.00 | $1,500.00 |
| 2/15/2021 | Prepare Library Associates Supplemental Response to All Parties Discovery and serve all Counsel of Record with Same. | K.W. | 1.50 | $150.00 |
| 2/15/2021 | Telephone conference with MBM re: Boe report | B.B. | 1.00 | $400.00 |
| 2/16/2021 | Telephone conference with WHB re: meeting with Kim and Jim; Call with Kim and Jim; drafted email to Boe and Sam re: 30(6) topics | M.B.M. | 1.50 | $450.00 |
| 2/16/2021 | Telephone conference with MBM re: Meeting with Kim and John | B.B. | 1.00 | $400.00 |
| 2/17/2021 | Reviewed financial docs from Kim re: LA; Met with WHB re: financial docs; sent and received emails with Sam and Jason; met with staff re: Rule 11 letter to Hildebrand; worked on timeline | M.B.M. | 4.50 | $1,350.00 |
| 2/17/2021 | Telephone conference with MBM re: Financial docs | B.B. | 1.00 | $400.00 |
| 2/18/2021 | Prepared for client meeting; Client meeting with WHB; drafted letter to Hildebrand; worked on timeline | M.B.M. | 4.00 | $1,200.00 |
| 2/18/2021 | Client meeting with MBM | B.B. | 1.00 | $400.00 |
| 2/19/2021 | Worked on Timeline; drafted letter to Scarborough; met with WHB re: timeline | M.B.M. | 3.50 | $1,050.00 |
| 2/19/2021 | Meeting with MBM re: Timeline | B.B. | 1.00 | $400.00 |
| 2/22/2021 | Reviewed Privilege Log from Balfour Beatty | B.B. | 3.00 | $1,200.00 |
| 2/22/2021 | Reviewed BBC privilege log; met with WHB re: log and withheld docs | M.B.M. | 8.00 | $2,400.00 |
| 2/23/2021 | Tuesday meeting with Jim and Kim; cont. to work on privilege log rebuttal; met with Kim re: structural claim timeline; met with WHB re: overview of | M.B.M. | 6.50 | $1,950.00 |

| | | | | |
|---|---|---|---|---|
| | privilege log rebuttal | | | |
| 2/23/2021 | Meeting with MBM re: Overview of privilege log rebuttal | B.B. | 1.50 | $600.00 |
| 2/24/2021 | Cont. to work on privilege log; worked on timelines for structural delay; prepared for Thursday meeting | M.B.M. | 2.50 | $750.00 |
| 2/25/2021 | Met with MBM re: Privilege Log Issues | B.B. | 1.00 | $400.00 |
| 2/25/2021 | Prepared for Thursday meeting; met with WHB re: overview of Thursday meeting; Thursday meeting; Met with Kim re: CCD timeline and NTP timeline; prepared for hearing on 3/2; met with WHB re: hearing on 3/2; pulled BBC docs to compare to Privilege Log | M.B.M. | 4.50 | $1,350.00 |
| 2/26/2021 | Met with MBM re: Privilege Log Issues | B.B. | 1.50 | $600.00 |
| 2/26/2021 | Prepared for hearing; drafted letter to Hildebrand re: Privilege log; met with WHB re: letter to Hildebrand; reviewed email from Jim re: NTP | M.B.M. | 3.50 | $1,050.00 |
| SUBTOTAL: | | | 94.40 | $29,040.00 |

**Costs**

| | | |
|---|---|---|
| 2/25/2021 | Court Filing Fee | $31.74 |
| SUBTOTAL: | | $31.74 |

**Matter Ledgers**

| | | |
|---|---|---|
| 2/23/2021 | Balance before last invoice | $170,393.05 |
| 3/19/2021 | Invoice 10938 | $29,071.74 |
| SUBTOTAL: | | $199,464.79 |

TOTAL $29,071.74

PREVIOUS BALANCE DUE $170,393.05

CURRENT BALANCE DUE AND OWING $199,464.79

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: April 20, 2021
Invoice Number: 10940
Invoice Amount: $30,951.78

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 3/1/2021 | Prepared for and drafted memos of law for motion hearing; legal research on guaranty; Telephone conference with WHB re: hearing and motions x3; cont. to work on timeline and trial procedure | M.B.M. | 7.50 | $2,250.00 |
| 3/1/2021 | Telephone conference with MBM re: hearing and motions | B.B. | 1.50 | $600.00 |
| 3/2/2021 | Telephone conference with WHB re: hearing; pulled and reviewed transcript from 2.1.21 hearing and highlighted relevant portions for WHB; prepared for meeting with KBB; met with KBB re: pay apps and low country custom millwork 30(b)(6) topics; Telephone conference with WHB and KBB re: update on hearing; cont. to work on motions and letter re: privilege log | M.B.M. | 6.00 | $1,800.00 |
| 3/2/2021 | Telephone conference with MBM re: Hearing | B.B. | 1.50 | $600.00 |
| 3/3/2021 | Telephone conference with Jim re: update; Telephone conference with WHB re: Buck meeting; prepared for Thursday meeting | M.B.M. | 1.00 | $300.00 |
| 3/3/2021 | Telephone conference with MBM re: Buck meeting | B.B. | .50 | $200.00 |
| 3/4/2021 | Legal research on Severin Doctrine; pulled subcontracts and reviewed re: BIM and waiver; prepared for client meeting; Telephone conference with WHB re: overview of client meeting; Client meeting; worked on pay apps 44 and 45; Met with Kim re: Lithko pay apps Telephone conference with | M.B.M. | 4.50 | $1,350.00 |

| | | | | |
|---|---|---|---|---|
| | WHB re: Tate depo and Lithko, Watson and ONSM strategy | | | |
| 3/4/2021 | Telephone conference with Jim, Kim and MBM; Telephone conference of MBM re: Don Terry's client Knox Tate deposition | B.B. | 1.00 | $400.00 |
| 3/9/2021 | Worked on Lowcountry claim for call with counsel for Lowcountry; Telephone conference with Jim re: pay apps 44 and 45; prepared for Knox depo; cont to work on letters for 30(b)(6) and privilege log | M.B.M. | 4.00 | $1,200.00 |
| 3/9/2021 | Assist counsel in preparation for the deposition of Knox Tate. | K.W. | 1.00 | $100.00 |
| 3/10/2021 | Organized docs for Lowcountry call; Telephone conference with WHB re: Lowcountry docs; drafted bullet points for Lowcountry; prepared for Knox Tate depo; took Knox Tate depo | M.B.M. | 5.50 | $1,650.00 |
| 3/10/2021 | Telephone with MBM re: Lowcountry documents and overview; Received overview, telephone conference with Counsel for Lowcountry; Telephone conference with MBM re: Knox deposition outline. | B.B. | 1.50 | $600.00 |
| 3/11/2021 | Prepared for Thursday meeting; attended Thursday meeting; met with staff re: Daily reports | M.B.M. | 2.00 | $600.00 |
| 3/11/2021 | Prepared updated index of weekly RCO meeting notes and distribute to Kim, Jim C , MBM and WHB in preparation for next week's meeting. | K.W. | 1.50 | $150.00 |
| 3/12/2021 | Worked on responses to BMCC discovery | M.B.M. | 1.00 | $300.00 |
| 3/12/2021 | Prepare draft responses to BMCC's Supplemental Interrogatories for review and finalization by Counsel. | K.W. | 1.50 | $150.00 |
| 3/12/2021 | Prepare draft of Library Associates responses to Pleasant Places Request to Admit for Counsels review and edits. Once finalized serve same to All Counsel of Record. | K.W. | 1.00 | $100.00 |
| 3/15/2021 | Prepared for Tuesday meeting | M.B.M. | .50 | $150.00 |
| 3/16/2021 | Attended Tuesday meeting with WHB and Clement; cont. to review daily reports and provide synopsis for 2016 | M.B.M. | 3.50 | $1,050.00 |
| 3/16/2021 | Meeting with MBM and Jim Clement. | B.B. | 1.00 | $400.00 |
| 3/17/2021 | Cont. to review 2016 Daily reports | M.B.M. | 4.00 | $1,200.00 |
| 3/18/2021 | Prepared for hearing; Telephone conference with WHB re: hearing prep | M.B.M. | 2.50 | $750.00 |
| 3/18/2021 | Assist counsel with the preparation for the Upcoming Motion Hearing by gathering documents used as reference during hearing. | K.W. | 1.00 | $100.00 |
| 3/18/2021 | Telephone conference with MBM re: Hearing Preparation | B.B. | 1.00 | $400.00 |
| 3/19/2021 | Prepared for hearing; attended hearing; Telephone conference with WHB re: Hearing and to do list | M.B.M. | 4.00 | $1,200.00 |
| 3/19/2021 | Telephone conference with MBM re: Hearing and to do list. | B.B. | 1.00 | $400.00 |
| 3/22/2021 | Prepared for call with O'Connor; Call with | M.B.M. | 3.50 | $1,050.00 |

| | | | | |
|---|---|---|---|---|
| | O'Connor; met with WHB re: O'Connor Topics | | | |
| 3/22/2021 | Telephone conference re: Patrick O'Connor Topics | B.B. | 1.00 | $400.00 |
| 3/23/2021 | Prepared for Tuesday meeting; Tuesday meeting; prepared for call with O'Connor; O'Connor Call | M.B.M. | 5.50 | $1,650.00 |
| 3/24/2021 | Prepared for O'Connor Call; O'Connor Call; cont. drafting O'Connor topics | M.B.M. | 7.50 | $2,250.00 |
| 3/25/2021 | Cont. Drafting O'Connor disclosure; Telephone conference with WHB re: O'Connor disclosure; sent draft to O'Connor; Met with Clement re: Clement disclosure; started drafting Clements disclosure | M.B.M. | 4.50 | $1,350.00 |
| 3/25/2021 | Reviewed P. O'Connor's disclosure | B.B. | .50 | $200.00 |
| 3/26/2021 | Drafted Clements disclosures; sent to Clement for approval; made Clement changes; Telephone conference with O'Connor re: changes; made O'Connor changes | M.B.M. | 3.50 | $1,050.00 |
| 3/26/2021 | Prepare draft of Library Associates Second Supplemental Designation of Expert Witnesses for Counsels review and edits. Once finalized serve same to All Counsel of Record. | K.W. | 1.50 | $150.00 |
| 3/26/2021 | Reviewed J. Clements disclosure | B.B. | .30 | $120.00 |
| 3/31/2021 | Worked on RTA responses and contract language | M.B.M. | 1.00 | $300.00 |
| SUBTOTAL: | | | 89.80 | $26,520.00 |

**Costs**

| | | |
|---|---|---|
| 3/10/2021 | Bill Lyles - Mediation | $387.50 |
| 3/10/2021 | ESG Legal Services, Inc. | $135.00 |
| 3/10/2021 | Veritext | $2,430.92 |
| 3/10/2021 | Reynolds Process Service | $1,175.00 |
| 3/10/2021 | Sandlapper Court Reporting | $75.00 |
| 3/10/2021 | ProLegal | $228.36 |
| SUBTOTAL: | | $4,431.78 |

**Matter Ledgers**

| | | |
|---|---|---|
| 3/19/2021 | Balance before last invoice | $199,464.79 |
| 4/20/2021 | Invoice 10940 | $30,951.78 |
| SUBTOTAL: | | $230,416.57 |

TOTAL $30,951.78

PREVIOUS BALANCE DUE $199,464.79

CURRENT BALANCE DUE AND OWING $230,416.57

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: May 27, 2021
Invoice Number: 10941
Invoice Amount: $36,770.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 4/1/2021 | Prepared for Clement call; Call with Clement re: Scheduling and Daily Logs; | M.B.M. | 1.50 | $450.00 |
| 4/1/2021 | Telephone conference with MBM re: Supplemental Production | B.B. | 2.00 | $800.00 |
| 4/2/2021 | Started to review Balfour supplemental production; Telephone conference with WHB re: supp. production | M.B.M. | 4.00 | $1,200.00 |
| 4/2/2021 | Telephone conference with MBM re: Supplemental production | B.B. | 1.50 | $600.00 |
| 4/5/2021 | Cont. review Balfour Supplemental Production; set up call with Rosen | M.B.M. | 2.00 | $600.00 |
| 4/6/2021 | Drafted letter to Hildebrand re: deposition | M.B.M. | .50 | $150.00 |
| 4/7/2021 | Worked on 30(b)(6) topic draft | M.B.M. | 5.50 | $1,650.00 |
| 4/8/2021 | Prepared for Thursday meeting; attended Thursday meeting; prepared for Buck meeting | M.B.M. | 6.00 | $1,800.00 |
| 4/9/2021 | Prepared for Buck meeting | M.B.M. | 7.00 | $2,100.00 |
| 4/12/2021 | Prepared for and attended Buck meeting; began organizing docs for Buck; met with WHB re: docs to Buck | M.B.M. | 5.00 | $1,500.00 |
| 4/12/2021 | Worked on 30(b)(6) Topics and Telephone conference with Buck Lindsay and Jennifer Faulkinberry | B.B. | 3.50 | $1,400.00 |
| 4/13/2021 | Drafted letter to Hildebrand re: privilege log; finalized 30(b)(6) topics; met with WHB re: privilege claims and 30(b)(6) topics | M.B.M. | 2.50 | $750.00 |

| | | | | |
|---|---|---|---|---|
| 4/13/2021 | Worked on Letter re: Privilege; Meeting with MBM re: Privilege letter and 30(b)(6) Topics | B.B. | 1.00 | $400.00 |
| 4/14/2021 | Prepared for Call with Sam and Mark Boe; call with Sam and Mark Boe; reviewed Grady docs from Jim | M.B.M. | 4.50 | $1,350.00 |
| 4/14/2021 | Telephone conference with MBM re: Expert Call. | B.B. | .30 | $120.00 |
| 4/15/2021 | Prepared for Thursday call; Thursday call; pulled expert docs for Jim | M.B.M. | 2.50 | $750.00 |
| 4/16/2021 | Drafted interrogatories to Subs; Telephone conference with WHB re: 30(b)(6) depos | M.B.M. | 2.50 | $750.00 |
| 4/16/2021 | Telephone conference with MBM re: 30(b)(6) deposition | B.B. | 1.00 | $400.00 |
| 4/16/2021 | Draft Library Associates Supplemental Interrogatories and Request Production to All Third-Party Defendants ONSM, Lithko, WARCO, Pleasant Places, PASCO, TRIMARK, Lowcountry Case and Millwork, Quantum, Strong Tower, Watson, David Allen, Cook & Boardman, Gulf Stream, Premier, BMCC, and Guy Beatty, with Service of Same to All Counsel of Record. | K.W. | 3.00 | $300.00 |
| 4/19/2021 | Prepared for architect meeting; prepared for Clement depo; Telephone conference with WHB re: motion to compel; completed research on privilege; drafted motion to compel documents from BBC that have been withheld as privileged | M.B.M. | 7.00 | $2,100.00 |
| 4/19/2021 | Telephone conference with MBM re: motion to compel | B.B. | 1.00 | $400.00 |
| 4/19/2021 | Receipt of Core International Documents pursuant to Record Subpoena; download documents and prepare notebooks of same. | K.W. | 3.50 | $350.00 |
| 4/20/2021 | Prepared for and attended Architect and Clement meeting; reviewed discovery responses from BBC | M.B.M. | 2.50 | $750.00 |
| 4/20/2021 | Prepared for and attended Architect and Clement meeting | B.B. | .50 | $200.00 |
| 4/21/2021 | Prepared for Clement depo; Telephone conference with Clement re: depo; worked on responses to BBC requests to admit | M.B.M. | 3.00 | $900.00 |
| 4/22/2021 | Prepared for and attended Clement depo; met with WHB re: Clement depo and Library 30(b)(6) depo | M.B.M. | 6.00 | $1,800.00 |
| 4/22/2021 | Meeting with MBM re: Jim Clement deposition and Library 30(b)(6) deposition. | B.B. | 2.00 | $800.00 |
| 4/25/2021 | Prepared for meeting with KBB; met with KBB re: Library 30(b)(6) prep; Telephone conference with WHB re: update on KBB prep | M.B.M. | 3.50 | $1,050.00 |
| 4/25/2021 | Telephone conference with MBM re: update on KBB prep | B.B. | 1.00 | $400.00 |
| 4/26/2021 | Prepared for Singh depo; attended Singh depo; prepared for Boe call; met with KBB for 30(b)(6) prep; Boe call; prepared for O'Connor call; O'Connor call; | M.B.M. | 6.50 | $1,950.00 |
| 4/27/2021 | Attended Patrick O'Connor Deposition | B.B. | 3.00 | $1,200.00 |
| 4/28/2021 | Prepared for LA 30(b)(6) depo; attended LA | M.B.M. | 7.50 | $2,250.00 |

| | | | | |
|---|---|---|---|---|
| | 30(b)(6) depo | | | |
| 4/29/2021 | Prepared for and attended LA 30(b)(6) depo; drafted motion to extend discovery | M.B.M. | 6.50 | $1,950.00 |
| 4/29/2021 | Attended Kim Brown's deposition; Telephone conference with MBM re: Update | B.B. | 3.50 | $1,400.00 |
| 4/30/2021 | Finalized motion to extend discovery; Telephone conference with WHB re: depo prep | M.B.M. | 2.00 | $600.00 |
| 4/30/2021 | Drafted Memo; Telephone conference with MBM re: Upcoming depositions | B.B. | 4.00 | $1,600.00 |
| SUBTOTAL: | | | 118.80 | $36,770.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 4/20/2021 | Balance before last invoice | $230,416.57 |
| 5/19/2021 | Payment on Invoice 10919 | ($34,638.90) |
| 5/27/2021 | Invoice 10941 | $36,770.00 |
| SUBTOTAL: | | $197,908.77 |

TOTAL $36,770.00

PREVIOUS BALANCE DUE $195,777.67

CURRENT BALANCE DUE AND OWING $232,547.67

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: June 21, 2021
Invoice Number: 10942
Invoice Amount: $47,080.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 5/3/2021 | Prepared for Boe depo; Telephone conference with Boe re: depo; attended Boe depo; drafted letter to Scarborough; Telephone conference with KBB and MB | M.B.M. | 8.00 | $2,400.00 |
| 5/3/2021 | Telephone conference with MBM re: Update and M. Boe deposition | B.B. | 1.00 | $400.00 |
| 5/4/2021 | Prepared for Hadley depo; Telephone conference with WHB re: overview of Boe depo and prep for BMCC depo; Reviewed BBC Interrogatory response naming WHB as a witness | M.B.M. | 2.50 | $750.00 |
| 5/4/2021 | Telephone conference with MBM re: Overview of M. Boe and Prepared for BMCC and Sam Hadley deposition. | B.B. | 2.50 | $1,000.00 |
| 5/5/2021 | Prepared for Hadley depo; Telephone conference with client re: BBC discovery update re: WHB; attended Hadley depo | M.B.M. | 9.00 | $2,700.00 |
| 5/5/2021 | Telephone conference with MBM re: BMCC deposition; BBC Supplemental Interrogatories and S. Hadley deposition | B.B. | 1.00 | $400.00 |
| 5/6/2021 | Telephone conference with WHB re: update and BMCC; Prepared for Hadley depo and BMCC depos; pulled docs for BMCC depos; Attended Hadley depo; Telephone conference with WHB re: Hadley depo; Telephone conference with KBB re: update | M.B.M. | 5.50 | $1,650.00 |

| | | | | |
|---|---|---|---|---|
| 5/6/2021 | Gather Exhibits in preparation for upcoming BMCC depositions. | K.W. | 3.50 | $350.00 |
| 5/6/2021 | Telephone conference with MBM re: BMCC deposition and S. Hadley deposition update; Telephone conference with MBM re: S. Hadley update; Prepared for BMCC deposition | B.B. | 2.50 | $1,000.00 |
| 5/7/2021 | Prepared for Shephard and attended Shephard depo; Prepared for Amend depo; attended Amend Depo | M.B.M. | 9.00 | $2,700.00 |
| 5/7/2021 | Prepared for and took BMCC depositions | B.B. | 10.50 | $4,200.00 |
| 5/10/2021 | Worked on discovery requests; Telephone conference with WHB re: BMCC; reviewed Court order; Cont. to work on discovery requests | M.B.M. | 6.00 | $1,800.00 |
| 5/10/2021 | Telephone conference with MBM re: Written discovery; drafted letter to Hildebrand re: Depositions; Telephone conference with Linton re: BMCC; Telephone conference with MBM re: Additional discovery and Court Order; Telephone conference with Linton re: Court Order | B.B. | 3.00 | $1,200.00 |
| 5/11/2021 | Reviewed BBC emails; Tuesday call; Telephone conference with WHB re: update on emails; cont. to review BBC emails | M.B.M. | 7.00 | $2,100.00 |
| 5/11/2021 | Telephone conference with MBM re: Update on emails | B.B. | 1.00 | $400.00 |
| 5/12/2021 | Cont. to review emails; reviewed RCO 20 from Clement; drafted discovery to all parties; met with WHB re: discovery | M.B.M. | 6.50 | $1,950.00 |
| 5/12/2021 | Draft Library Associates Supplemental Interrogatories and Request Production to All Third-Party Defendants ONSM, Lithko, WARCO, Pleasant Places, PASCO, TRIMARK, Lowcountry Case and Millwork, Quantum, Strong Tower, Watson, David Allen, Cook & Boardman, Gulf Stream, Premier, BMCC, and Guy Beatty, with Service of Same to All Counsel of Record. | K.W. | 3.00 | $300.00 |
| 5/12/2021 | Prepare Library Associates Supplemental Interrogatories, Request For Production and Request to Admit to Balfour Beatty Construction. Serve T. Hildebrand and all counsel of record with same. | K.W. | 1.50 | $150.00 |
| 5/12/2021 | Worked with MBM on Discovery; Drafted letter to Judge | B.B. | 5.00 | $2,000.00 |
| 5/12/2021 | Telephone conference with J. Floyd re Precision Walls, Inc. | B.B. | 2.00 | $800.00 |
| 5/13/2021 | Telephone conference with WHB re: Update and strategy; Prepared for Thursday call; Thursday call; worked on discovery requests and responses | M.B.M. | 7.00 | $2,100.00 |
| 5/13/2021 | Review hard and electronic files of all Subcontractors and prepare an index of all responses and document production to date in preparation for Rule 11 Letters. | K.W. | 4.50 | $450.00 |
| 5/13/2021 | Prepare Library Associates Supplemental Request To Admit to Balfour Beatty Construction; Serve | K.W. | 1.00 | $100.00 |

| | | | | |
|---|---|---|---|---|
| | same to T. Hildebrand and All Counsel of Record | | | |
| 5/13/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 5/14/2021 | Telephone conference with WHB re: update and strategy; Cont. to review subcontractor discovery responses and pay apps | M.B.M. | 5.00 | $1,500.00 |
| 5/14/2021 | Update Lien Index in preparation for use by Counsel | K.W. | .30 | $30.00 |
| 5/14/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 5/17/2021 | Telephone conference with WHB re: update and strategy; Cont. to review discovery responses from subs; cont. to draft discovery response and Rule 11 topics for subs; drafted letter to Watson; Cont. to review emails; drafted expert designation; Telephone conference with Grady | M.B.M. | 7.50 | $2,250.00 |
| 5/17/2021 | Prepare/draft Library Associates Third Supplemental Designation of Expert Witnesses | K.W. | 1.00 | $100.00 |
| 5/17/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 5/18/2021 | Telephone conference with WHB re: update and strategy; Cont. to review discovery responses from subs; cont. to draft discovery response and Rule 11 topics for subs; finalized Rule 11 letters to subs | M.B.M. | 3.50 | $1,050.00 |
| 5/18/2021 | Prepare Rule 11 letters with detail description of missing responses to All Third-Party Defendants. | K.W. | 2.50 | $250.00 |
| 5/18/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 5/19/2021 | Telephone conference with WHB re: update and strategy; Began to organize expert depositions to draft written discovery | M.B.M. | 4.00 | $1,200.00 |
| 5/19/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 5/20/2021 | Telephone conference with WHB re: update and overview on discovery; Prepared for client meeting; client meeting; reviewed Clement work; Cont. to work on discovery; reviewed new Civil conspiracy case | M.B.M. | 5.00 | $1,500.00 |
| 5/20/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 5/21/2021 | Reviewed Sheppard and Amended Deposition transcripts for written discovery; pulled docs for BBC discovery | M.B.M. | 3.00 | $900.00 |
| 5/21/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 5/24/2021 | Continued to review emails; reviewed discovery responses; cont. to prepare discovery requests | M.B.M. | 2.50 | $750.00 |
| 5/24/2021 | Review BMCC Document production 1-163055, print copies of all documents referenced in BMCC's 05.21.21 Discovery Responses and prepare notebook with same for use by Counsel. | K.W. | 5.00 | $500.00 |
| 5/24/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 5/25/2021 | Reviewed correspondence from Hildebrand; Telephone conference with WHB re: response; drafted response letter; Telephone conference with Britt Kelly re: Trimark; reviewed email from Kelly; Reviewed ONSM discovery responses; Telephone conference with WHB re: ONSM and Trimark | M.B.M. | 4.00 | $1,200.00 |
| 5/25/2021 | Telephone conference with MBM re: Response and | B.B. | 1.00 | $400.00 |

| | | | | |
|---|---|---|---|---|
| | drafted response letter | | | |
| 5/26/2021 | Continue to review BMCC Document production 1-163055, print copies of all documents referenced in BMCC's 05.21.21 Discovery Responses and prepare notebook with same for use by Counsel. | K.W. | 5.50 | $550.00 |
| 5/28/2021 | Review Motion re: Request to Admit, Initial draft responses, review and download of Premier file, Email correspondence to and from Kim Brown, Mark Boe and Jim Clements. | B.B. | 2.00 | $800.00 |
| SUBTOTAL: | | | 162.30 | $47,080.00 |

**Matter Ledgers**

| | | |
|---|---|---|
| 5/27/2021 | Balance before last invoice | $232,547.67 |
| 6/21/2021 | Invoice 10942 | $47,080.00 |
| SUBTOTAL: | | $279,627.67 |

TOTAL $47,080.00

PREVIOUS BALANCE DUE $232,547.67

CURRENT BALANCE DUE AND OWING $279,627.67

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $59,999.08 |
| New Balance | $59,999.08 |
| Adjustments | $0.00 |
| Payments | ($279,627.67) |
| Now Due | $59,999.08 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: July 25, 2021
Invoice Number: 10948
Invoice Amount: $59,999.08

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 6/1/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/1/2021 | Telephone conference with WHB re: response to Trimark lawyer; call with KBB and MB and WHB re: Trimark and update; reviewed Hildebrand motion; telephone conference with WHB re: response; began working on response; finalized discovery to BMCC; cont. reviewing BBC emails and pulling exhibits for BBC deposition; reviewed BMCC discovery responses | M.B.M. | 8.00 | $2,400.00 |
| 6/2/2021 | Prepare Library Associates Supplemental Interrogatories and Request For Production to BMCC | K.W. | 1.00 | $100.00 |
| 6/2/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/2/2021 | Continue to prepare response to BBC motion on RTA's; Telephone conference with WHB re: update; cont. preparing for BBC deposition | M.B.M. | 5.50 | $1,650.00 |
| 6/3/2021 | Received Hildebrand Motion, Received letter from Hildebrand re priv. docs; Telephone conference with MBM re: Strategy | B.B. | 1.50 | $600.00 |
| 6/3/2021 | Reviewed BBC privilege doc response; Telephone conference with WHB re: response | M.B.M. | 1.50 | $450.00 |
| 6/4/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/4/2021 | Began reviewing previously withheld BBC docs; Preparation for BBC depositions | M.B.M. | 8.50 | $2,550.00 |
| 6/7/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |

| | | | | |
|---|---|---|---|---|
| 6/7/2021 | BBC Deposition Preparation | M.B.M. | 8.50 | $2,550.00 |
| 6/8/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/8/2021 | BBC Deposition Preparation | M.B.M. | 8.00 | $2,400.00 |
| 6/9/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/9/2021 | BBC Deposition Preparation | M.B.M. | 4.00 | $1,200.00 |
| 6/10/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/10/2021 | BBC Deposition Preparation | M.B.M. | 8.50 | $2,550.00 |
| 6/11/2021 | Prepare for the 30(b)(6) Deposition of Balfour Beatty Construction by organizing and printing copies of all RCO's is preparation for use as Exhibits at Deposition. | K.W. | 2.00 | $200.00 |
| 6/11/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/11/2021 | BBC Deposition Preparation | M.B.M. | 8.00 | $2,400.00 |
| 6/12/2021 | BBC Deposition Preparation | M.B.M. | 4.00 | $1,200.00 |
| 6/14/2021 | Continue to prepare for the 30(b)(6) Deposition of Balfour Beatty Construction by organizing and printing copies of all RCO's, CCD;s and other documents is preparation for use as Exhibits at Deposition. | K.W. | 5.00 | $500.00 |
| 6/14/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/14/2021 | BBC Deposition Preparation | M.B.M. | 6.00 | $1,800.00 |
| 6/15/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/15/2021 | BBC deposition Preparation; BBC deposition; BBC deposition Preparation | M.B.M. | 9.50 | $2,850.00 |
| 6/16/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/16/2021 | BBC deposition Preparation; BBC deposition; telephone conference with client; telephone conference with WHB re: WHB deposition and motions | M.B.M. | 6.50 | $1,950.00 |
| 6/17/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/17/2021 | Worked on motion and agendas; telephone conference with WHB re: subcontractor claims | M.B.M. | 8.00 | $2,400.00 |
| 6/18/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/18/2021 | Worked on organizing subcontractor claims | M.B.M. | 4.50 | $1,350.00 |
| 6/21/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/21/2021 | Worked on Precision Walls claim | M.B.M. | 6.50 | $1,950.00 |
| 6/21/2021 | Worked on Precision Walls claim and Gulfstream claim | M.B.M. | 7.00 | $2,100.00 |
| 6/22/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/23/2021 | Draft Library Associates Supplemental Request to Admit to All Third-Party Defendants ONSM, Lithko, WARCO, Pleasant Places, PASCO, TRIMARK, Lowcountry Case and Millwork, Quantum, Strong Tower, Watson, David Allen, Cook & Boardman, Gulf Stream, Premier, BMCC, and Guy Beatty, with Service of Same to All Counsel of Record. | K.W. | 2.00 | $200.00 |
| 6/23/2021 | Telephone conference with MBM re: RTA and ONSM delay notices; Telephone conference with Costa; Depo of G. Query. | B.B. | 3.50 | $1,400.00 |
| 6/23/2021 | Prepared for and attended Bennett Hospitality | M.B.M. | 8.00 | $2,400.00 |

| | | | | |
|---|---|---|---|---|
| | motion to dismiss car complaint; worked on ONSM claim | | | |
| 6/24/2021 | Telephone conference with MBM, Sam, and Mark; working on file. | B.B. | 3.00 | $1,200.00 |
| 6/25/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/28/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/29/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| 6/30/2021 | Telephone conference with MBM re: Strategy | B.B. | 1.00 | $400.00 |
| SUBTOTAL: | | | 157.50 | $47,950.00 |

**Costs**

| | | |
|---|---|---|
| 6/11/2021 | Veritext | $1,223.80 |
| 6/11/2021 | Advanced One Legal | $8,019.56 |
| 6/11/2021 | ProLegal | $2,805.72 |
| SUBTOTAL: | | $12,049.08 |

**Matter Ledgers**

| | | |
|---|---|---|
| 7/22/2021 | Payment on Invoices 10922, 10931, 10938, 10940, 10941, 10942 | (279,627.67) |
| 7/25/2021 | Invoice 10948 | $59,999.08 |
| SUBTOTAL: | | $59,999.08 |

TOTAL $59,999.08

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $59,999.08

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $59,999.08 |
| Current Charges | $53,527.86 |
| New Balance | $113,526.94 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $113,526.94 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: August 26, 2021
Invoice Number: 10955
Invoice Amount: $53,527.86

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 7/1/2021 | Pull all bates documents pursuant to BMCC response to Supplemental Request For Production, put in chronological order and prepare binder of the same for use and reference by Counsel | K.W. | 6.00 | $600.00 |
| 7/2/2021 | Various emails with opposing counsel and telephone conference with Kim B. | B.B. | 1.50 | $600.00 |
| 7/5/2021 | Prepared for my deposition | B.B. | 2.00 | $800.00 |
| 7/6/2021 | Prepared for WHB depo; attended WHB depo; cont to work on subcontractor claims | M.B.M. | 8.50 | $2,550.00 |
| 7/6/2021 | Prepared for and attended my Deposition. | B.B. | 6.00 | $2,400.00 |
| 7/7/2021 | Prepare documents for E-Filing. E-File Library Associates Motion for Protective Order Regarding the Deposition of W.H. Bundy, Jr. Serve all counsel via email with same. | K.W. | .40 | $40.00 |
| 7/7/2021 | Cont. to work on subcontractor claims of ONSM; Premier and Warco | M.B.M. | 8.00 | $2,400.00 |
| 7/7/2021 | Drafted motion for protective order for WHB | M.B.M. | 1.50 | $450.00 |
| 7/8/2021 | Worked on Premier's claim | M.B.M. | 7.50 | $2,250.00 |
| 7/9/2021 | Prepared for Boe call; call with WHB and Boe and Jim; cont. to work on subcontractor claims | M.B.M. | 3.00 | $900.00 |
| 7/9/2021 | Telephone conference with MBM, M. Boe and Jim C. | B.B. | 1.00 | $400.00 |
| 7/12/2021 | Prepare Notice of Depositions, Acceptance of Service, Certificates of Service and Cover Letters for the Following: Chris Ball, Phil Garcia, Joe | K.W. | 3.50 | $350.00 |

| | | | | |
|---|---|---|---|---|
| | Canitano, Joe Anastasi, Randy Lynn, Dale Winovich, 30 (b)(6) Lithko, 30(b)(6) David Allen Company, 30(b)(6) Premier Exteriors, 30(b)(6) WARCO, 30(b)(6) Strong Tower, 30(b)(6) Gulf Stream, 30(b)(6) PASCO, 30(b)(6) Lowcountry Case & Millwork, 30(b)(6) Cook & Boardman, 30(b)(6) Quantum. Contact Court Reporter for scheduling. | | | |
| 7/12/2021 | Prepare Index of upcoming Depositions with Deponent, Date, Time and Location. | K.W. | .50 | $50.00 |
| 7/12/2021 | Worked on PASCO claim | M.B.M. | 6.50 | $1,950.00 |
| 7/13/2021 | Worked on Warco and PASCO claims | M.B.M. | 8.50 | $2,550.00 |
| 7/14/2021 | Worked on Watson Claim | M.B.M. | 9.00 | $2,700.00 |
| 7/15/2021 | Worked on Watson Claim | M.B.M. | 7.00 | $2,100.00 |
| 7/15/2021 | Prepare Exhibit Notebooks for the following depositions: Dale Winovich, Premier Exteriors, Joe Canitano, Joe Anastasi, WARCO, PASCO, and the David Allen Company | K.W. | 4.50 | $450.00 |
| 7/16/2021 | Worked on Pleasant Places claim | M.B.M. | 1.50 | $450.00 |
| 7/19/2021 | Prepare documents for E-Filing. E-File (3) Library Associates Motion to Compel Against ONSM; Watson; Lithko. Serve all counsel via email with same. | K.W. | .60 | $60.00 |
| 7/19/2021 | Prepared for ONSM depo; reviewed Scarborough order, telephone conference with WHB re: order and next steps | M.B.M. | 6.00 | $1,800.00 |
| 7/19/2021 | Telephone conference with MBM re: Order and next steps. | B.B. | 1.50 | $600.00 |
| 7/20/2021 | Prepared for Watson, DAC, Lithko, and premier depos; drafted amended RTA response to BBC | M.B.M. | 2.50 | $750.00 |
| 7/26/2021 | Prepare documents for E-Filing. E-File (3) Library Associates Memorandum in Response to Lithko Motion for Protective Order, Watson Motion for Protective Order, ONSM Motion for Protective Order. Serve all counsel with same via email | K.W. | 1.50 | $150.00 |
| 7/26/2021 | Prepared for depos of strong tower and Watson and ONSM; drafted memos in opposition of motion for protective order | M.B.M. | 6.50 | $1,950.00 |
| 7/26/2021 | Prepare Exhibit Binder for the 30(b)(6) Deposition of Strong Tower. | K.W. | 1.00 | $100.00 |
| 7/27/2021 | Prepared for strong tower depo; prepared for client call; client call; call with Wheeler for Strongtower | M.B.M. | 7.00 | $2,100.00 |
| 7/28/2021 | Prepared for depos; prepared offers of settlement; telephone conference with WHB re: update; cont. to prepare for sub depositions. | M.B.M. | 4.50 | $1,350.00 |
| 7/28/2021 | Telephone conference with MBM re: Update and next steps | B.B. | 1.50 | $600.00 |
| 7/29/2021 | Draft Offer of Settlement and Cover Letter to BBC, BMCC, Cook & Boardman, David Allen Company, Gulf Stream, Lithko, ONSM, Watson, Lowcountry Case & Millwork, PASCO, Pleasant Places, Premier | K.W. | 4.00 | $400.00 |

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|---|---|---|---|---|
| | Exteriors, Quantum Coatings, and Warco. Prepare same documents for E-Filing; E-File individual Offers of Settlement. Serve counsel via email with same. | | | |
| 7/29/2021 | Prepared for subcontractor depositions | M.B.M. | 8.00 | $2,400.00 |
| 7/30/2021 | Prepared for subcontractor depositions | M.B.M. | 8.00 | $2,400.00 |
| SUBTOTAL: | | | 139.00 | $38,650.00 |

**Costs**

| | | |
|---|---|---|
| 7/13/2021 | Advanced One Legal Depositions | $11,312.90 |
| 7/13/2021 | Veritext | $831.00 |
| 7/13/2021 | Clark & Associates | $743.90 |
| 7/13/2021 | IST Court Reporting | $1,863.10 |
| 7/31/2021 | Court Filing Fees for July 2021 | $126.96 |
| SUBTOTAL: | | $14,877.86 |

**Matter Ledgers**

| | | |
|---|---|---|
| 7/25/2021 | Invoice 10948 | $59,999.08 |
| 8/26/2021 | Invoice 10955 | $53,527.86 |
| SUBTOTAL: | | $113,526.94 |

TOTAL $53,527.86

PREVIOUS BALANCE DUE $59,999.08

CURRENT BALANCE DUE AND OWING $113,526.94

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $113,526.94 |
| Current Charges | $135,409.08 |
| New Balance | $248,936.02 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $248,936.02 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: September 10, 2021
Invoice Number: 10956
Invoice Amount: $135,409.08

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 8/1/2021 | Prepared for David Allen depo | M.B.M. | 4.50 | $1,350.00 |
| 8/2/2021 | Prepared for subs depositions | M.B.M. | 8.00 | $2,400.00 |
| 8/2/2021 | Prepare documents for the Exhibits for the upcoming depositions of Quantum Coatings and Lowcountry Case & Millwork. Copy same to ProLegal for electronic production and (3) binder. Forward same to Court Reporter for use during depositions. | K.W. | 2.50 | $250.00 |
| 8/3/2021 | Prepared for and took David Allen Depo | M.B.M. | 5.00 | $1,500.00 |
| 8/3/2021 | Prepared for Premier Exteriors Depo | M.B.M. | 3.50 | $1,050.00 |
| 8/3/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for upcoming depositions. | K.W. | 4.00 | $400.00 |
| 8/4/2021 | Prepared for and took Premier Exteriors depo | M.B.M. | 6.00 | $1,800.00 |
| 8/4/2021 | Prepared for Warco depo | M.B.M. | 3.00 | $900.00 |
| 8/5/2021 | Prepared for and took Warco Deposition | M.B.M. | 4.50 | $1,350.00 |
| 8/5/2021 | Worked on BMCC claim and prepared for Cook and Boardman and Gulfstream depos | M.B.M. | 5.00 | $1,500.00 |
| 8/6/2021 | Travel; Prepared for and took Gulf Stream and Cook and Boardman's depo | M.B.M. | 5.00 | $1,500.00 |
| 8/6/2021 | Reviewed offer of settlement; Telephone conference with WHB re: strategy and offer of settlement and | M.B.M. | 2.50 | $750.00 |

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|---|---|---|---|---|
| | Terry letter | | | |
| 8/6/2021 | Worked on BMCC claim | M.B.M. | 1.00 | $300.00 |
| 8/6/2021 | Worked on BMCC offer, Telephone conference with MBM, J. Clements, S. Hadley, and Kim re: Strategy and offer. | B.B. | 2.00 | $800.00 |
| 8/6/2021 | Receipt and review of multiple offers from subcontractors, letters, and email correspondence; Telephone conference with MBM re: Don Terry letter and responses. | B.B. | 3.00 | $1,200.00 |
| 8/6/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for upcoming depositions. | K.W. | 2.00 | $200.00 |
| 8/7/2021 | Worked on BMCC claim and offers of settlement | M.B.M. | 1.00 | $300.00 |
| 8/7/2021 | Drafted letter to Terry for WHB | M.B.M. | .50 | $150.00 |
| 8/8/2021 | Prepared for PASCO depo | M.B.M. | 2.50 | $750.00 |
| 8/8/2021 | Reviewed BMCC charts from Sam Hadley | M.B.M. | 2.50 | $750.00 |
| 8/8/2021 | Prepared for next week's depositions, conference calls, email correspondence to and from Sam Hadley, and receipt and review of supplemental document production from BBC | B.B. | 1.50 | $600.00 |
| 8/9/2021 | Prepared for and attended PASCO deposition | M.B.M. | 6.50 | $1,950.00 |
| 8/9/2021 | Prepared for Low country depo | M.B.M. | 1.50 | $450.00 |
| 8/9/2021 | Worked on BMCC settlement letter | M.B.M. | 1.00 | $300.00 |
| 8/9/2021 | Prepared for Precision Walls depo | M.B.M. | 1.50 | $450.00 |
| 8/9/2021 | Telephone conference with Sam, Kim and MBM; receipt and review of multiple email correspondence, draft of settlement offer letter to BMCC's attorney | B.B. | 9.00 | $3,600.00 |
| 8/9/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for upcoming depositions. | K.W. | 4.50 | $450.00 |
| 8/10/2021 | Assist counsel with the preparation of Final Draft of Confidential Offer of Settlement to Mr. Linton, BMCC. | K.W. | .20 | $20.00 |
| 8/10/2021 | Prepared for Precision Walls Depo; attended Precision Walls depo | M.B.M. | 4.00 | $1,200.00 |
| 8/10/2021 | Prepared for Lowcountry depo; attended Lowcountry depo | M.B.M. | 4.00 | $1,200.00 |
| 8/10/2021 | Prepared for Quantum Coatings Depo | M.B.M. | 2.00 | $600.00 |
| 8/10/2021 | Attended the depositions of Lowcountry Case & Millwork and Precision Walls, Telephone conference John Linton re: BMCC settlement proposal, email correspondence to and from Kim and others. | B.B. | 8.00 | $3,200.00 |
| 8/10/2021 | Review numerous email correspondence for new | K.W. | 4.00 | $400.00 |

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| | discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for upcoming hearing on outstanding motions. | | | |
| 8/11/2021 | Prepared for Quantum Coatings Depo and took Quantum Coatings depo | M.B.M. | 3.00 | $900.00 |
| 8/11/2021 | Prepare for Kay Kendall depo | M.B.M. | 2.00 | $600.00 |
| 8/11/2021 | Telephone conference with MBM re: Quantum's deposition and BMCC's claim, attending the deposition of Quantum (via Zoom), Telephone conference with J. Linton, Memo to MBM on dispositive motions, and prepared for Monday's hearing. | B.B. | 6.50 | $2,600.00 |
| 8/11/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for upcoming hearing on outstanding motions. | K.W. | 3.20 | $320.00 |
| 8/12/2021 | Prepare DRAFT Release for Mechanic's Lien and Cancellation of Lis Pendens for PASCO. | K.W. | .50 | $50.00 |
| 8/12/2021 | Prepare documents for E-Filing. E-File Library Associates Motion to Exclude Kay Kendall's Testimony. | K.W. | .50 | $50.00 |
| 8/12/2021 | Prepare documents for E-Filing. E-File Library Associates Objection to Quantum's Motion for Continuance. Serve all counsel via email with same. | K.W. | .40 | $40.00 |
| 8/12/2021 | Worked on dispositive motions and objection to continuance motion | M.B.M. | 4.00 | $1,200.00 |
| 8/12/2021 | Travel and Attended Kay Kendall depo; worked on motion to exclude | M.B.M. | 1.50 | $450.00 |
| 8/12/2021 | Telephone conference with MBM re: Motion preparation, prepared for Monday's hearing, Telephone conference with R. Wylie, Telephone conference with J. Linton, Telephone conference with Kim and Mike. | B.B. | 6.00 | $2,400.00 |
| 8/12/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 1.50 | $150.00 |
| 8/13/2021 | Prepare documents for E-Filing. E-File Library Associates Motions for Summary Judgment 1-4 and Motion for Summary Judgment Specific to Quantum Coatings. Serve all counsel via email with same. | K.W. | 1.50 | $150.00 |
| 8/13/2021 | Worked on dispositive motions; prepared for motions hearing Monday | M.B.M. | 9.00 | $2,700.00 |
| 8/13/2021 | Telephone conference with J. Linton, Telephone conference with Kim, Jack, and Mike re: BMCC settlement, Preparation of numerous motions, and | B.B. | 8.00 | $3,200.00 |

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| | prepared for hearing on Monday and trial prep. | | | |
| 8/13/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 2.40 | $240.00 |
| 8/15/2021 | Prepared for motions hearings and depos of ONSM, Lithko and Watson | M.B.M. | 4.50 | $1,350.00 |
| 8/15/2021 | Prepared for Motion hearing on Monday, email correspondence with Sam, Mark and MBM | B.B. | 3.00 | $1,200.00 |
| 8/16/2021 | Review hard file and email correspondence in regard to Lithko Discovery Responses and Document production. Prepare Narrative to the File with detail documentation of dates and times discovery/document production was received and approximately how long it took to download production. | K.W. | 1.50 | $150.00 |
| 8/16/2021 | Prepared for and attended motions hearings; met with WHB re: upcoming week and strategy | M.B.M. | 9.50 | $2,850.00 |
| 8/16/2021 | Travel to and from Hearing, attended hearing, Zoom meeting with Sam and Mark, Telephone conference with Kim re: hearing | B.B. | 8.00 | $3,200.00 |
| 8/16/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 2.50 | $250.00 |
| 8/17/2021 | Prepare DRAFT Release for Mechanic's Lien and Cancellation of Lis Pendens for Strong Tower | K.W. | .50 | $50.00 |
| 8/17/2021 | Worked on filings for court and Sam memo | M.B.M. | 8.00 | $2,400.00 |
| 8/17/2021 | Receipt of multiple correspondence to and from A. Windle, Prepared Draft Memo's to Judge, Telephone conference with Sam, continue to prepare for trial. | B.B. | 4.50 | $1,800.00 |
| 8/17/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 4.50 | $450.00 |
| 8/18/2021 | Prepare DRAFT Release for Mechanic's Lien and Cancellation of Lis Pendens for Premier Exteriors | K.W. | .50 | $50.00 |
| 8/18/2021 | Worked on Sam letter to Court | M.B.M. | 6.00 | $1,800.00 |
| 8/18/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 3.00 | $300.00 |
| 8/19/2021 | Assist Counsel with the Prepare documents for the August 18, 2021, letter to Judge Scarborough from Mr. Bundy. Sent to Judge Scarborough via email and serve all counsel with same. | K.W. | .30 | $30.00 |
| 8/19/2021 | Prepare and serve a follow up letter to Mark Doran, | K.W. | .20 | $20.00 |

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|---|---|---|---|---|
| | Contract Solutions, in regard to response our Record Subpoena for Watson. | | | |
| 8/19/2021 | Completed letter to the Court; prepared for Depos | M.B.M. | 8.00 | $2,400.00 |
| 8/19/2021 | Receipt and review of numerous emails, Telephone conference with MBM re: Update and Strategy, and continue to prepare for trial. | B.B. | 4.00 | $1,600.00 |
| 8/19/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 4.20 | $420.00 |
| 8/20/2021 | Prepare documents for E-Filing. E-File Library Associates Motion for Summary Judgment Specific to David Allen Company; and Library Associates Motion for Partial Summary Judgment Specific to Lithko, ONSM, & Watson. Serve all counsel via email with same. | K.W. | 1.50 | $150.00 |
| 8/20/2021 | Prepared for depos; call with BMCC folks; prepared for depos | M.B.M. | 8.50 | $2,550.00 |
| 8/20/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 5.00 | $500.00 |
| 8/23/2021 | Prepare documents for E-Filing. E-File Library Associates Notice of Mary Carter Agreement. Serve all counsel of record via email with same. | K.W. | .40 | $40.00 |
| 8/23/2021 | Prepared for depos; meeting with Premier; cont. to prepared for depos; drafted Notice to Court | M.B.M. | 8.00 | $2,400.00 |
| 8/23/2021 | Meeting with stucco contractor and their lawyer to discuss the case with Brent and me for trial preparation. Telephone conference with MBM re: Watson Summary Judgment Motion, deposition preparation, drafting and discussion with MBM re: Conspiracy Theories | B.B. | 4.50 | $1,800.00 |
| 8/23/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 5.00 | $500.00 |
| 8/24/2021 | Prepared for ONSM depos | M.B.M. | 8.00 | $2,400.00 |
| 8/24/2021 | Telephone conference with MBM re: Upcoming depositions, emails from D. Terry re: secret agreement, civil conspiracy research; Preparation of questions for the 30(b)(6) deposition of Watson on Thursday | B.B. | 3.00 | $1,200.00 |
| 8/24/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 3.50 | $350.00 |

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|---|---|---|---|---|
| 8/25/2021 | Revised Lithko Narrative to File in regard to additional responses to Discovery and Document Production | K.W. | .30 | $30.00 |
| 8/25/2021 | Prepared for and took ONSM depos | M.B.M. | 6.50 | $1,950.00 |
| 8/25/2021 | Prepared for Watson Depo | M.B.M. | 3.00 | $900.00 |
| 8/25/2021 | Prepared for and attended the deposition of ONSM | B.B. | 6.00 | $2,400.00 |
| 8/25/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 3.80 | $380.00 |
| 8/26/2021 | Prepared for and took Watson depo | M.B.M. | 10.00 | $3,000.00 |
| 8/26/2021 | Prepared for and attended the deposition of Watson's project manager, Took the 30(b)(6) deposition of Watson, research, email correspondence to and from various parties, Receipt and review of new Pleadings, email correspondence to and from Sam, Telephone conference with M. Timbes re: his proposed settlement. | B.B. | 10.00 | $4,000.00 |
| 8/26/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 6.00 | $600.00 |
| 8/27/2021 | Prepared for Lithko depo | M.B.M. | 6.00 | $1,800.00 |
| 8/27/2021 | Prepared for motions hearings on Tuesday | M.B.M. | 2.50 | $750.00 |
| 8/27/2021 | Prepared for and attended the deposition of Lithko Contracting, Trial and motion hearing prep with MBM, Receipt and review of Memorandums from BBC and Subcontractors, Email correspondence to and from MBM, Legal research. | B.B. | 11.00 | $4,400.00 |
| 8/27/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 7.00 | $700.00 |
| 8/28/2021 | Email communication with Judge Scarborough's Law Clerk, Lillian Wilkerson, withdrawing All Library Associates Motions for Summary Judgment. | K.W. | .20 | $20.00 |
| 8/29/2021 | Prepared for motions hearings; worked on remaining subs claims | M.B.M. | 4.50 | $1,350.00 |
| 8/30/2021 | Prepared for motions hearings; call with Sam and WHB and KBB; worked on remaining subs claims and spreadsheet for Sam; worked on Quantum and PP settlements | M.B.M. | 8.00 | $2,400.00 |
| 8/30/2021 | Telephone conference with MBM, Kim, and Mike, worked on settlements with Pleasant Places and Quantum, Telephone conference with M. Timbes. | B.B. | 8.00 | $3,200.00 |
| 8/30/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep | K.W. | 6.50 | $650.00 |

| | | | | |
|---|---|---|---|---|
| | Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | | | |
| 8/31/2021 | Prepare documents for E-Filing. E-File Library Associates Motion to Exclude Any Evidence From Watson Related to Any Delay Claims and Any Claims for Additional Time or Money | K.W. | .30 | $30.00 |
| 8/31/2021 | Prepared for hearings; call with Sam and WHB; travel and attended hearings; met with WHB re: trial prep to do list | M.B.M. | 10.00 | $3,000.00 |
| 8/31/2021 | Prepared for and attending Hearing. | B.B. | 10.00 | $4,000.00 |
| 8/31/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial | K.W. | 4.00 | $400.00 |
| SUBTOTAL: | | | 409.40 | $116,840.00 |

**Costs**

| | | |
|---|---|---|
| 8/20/2021 | AdvancedOne Legal Inv 722676, 723946, 723955, 724030, and 724035 | $13,826.30 |
| 8/20/2021 | Veritext Inv. #50280524, 5146803 | $827.72 |
| 8/20/2021 | Palmetto Scheduling, Invoice #7416 | $475.00 |
| 8/31/2021 | Prolegal Copy Service for August | $3,217.88 |
| 8/31/2021 | Court Filing Fee's for August | $222.18 |
| SUBTOTAL: | | $18,569.08 |

**Matter Ledgers**

| | | |
|---|---|---|
| 7/25/2021 | Balance before last invoice | $59,999.08 |
| 8/26/2021 | Invoice 10955 | $53,527.86 |
| 9/10/2021 | Invoice 10956 | $135,409.08 |
| SUBTOTAL: | | $248,936.02 |

TOTAL $135,409.08

PREVIOUS BALANCE DUE $113,526.94

CURRENT BALANCE DUE AND OWING $248,936.02

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $201,424.32 |
| New Balance | $201,424.32 |
| | |
| Adjustments | $0.00 |
| | |
| Payments | ($248,936.02) |
| Now Due | $201,424.32 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: October 07, 2021
Invoice Number: 10957
Invoice Amount: $201,424.32

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 9/1/2021 | Prepare draft letter to Judge Scarborough including document production subject to ONSM Motion for Protective Order. Serve Judge and Counsel with same. | K.W. | .20 | $20.00 |
| 9/1/2021 | Prepare DRAFT correspondence to Mr. Hildebrand from Mr. Bundy regarding in office meeting and witness order for upcoming trial | K.W. | .20 | $20.00 |
| 9/1/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial. | K.W. | 2.50 | $250.00 |
| 9/1/2021 | Prepared for trial | M.B.M. | 10.00 | $3,000.00 |
| 9/1/2021 | Prepared for trial | B.B. | 2.00 | $800.00 |
| 9/2/2021 | Prepare documents for E-Filing. E-File Library Associates Memorandum in Opposition to Watson's Notice of Motion & Petition For Rule to Show Cause and Motion to Strike. | K.W. | .50 | $50.00 |
| 9/2/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial. | K.W. | 5.75 | $575.00 |
| 9/2/2021 | Prepared for trial | M.B.M. | 10.00 | $3,000.00 |
| 9/2/2021 | Prepared for trial | B.B. | 2.00 | $800.00 |

| | | | | |
|---|---|---|---|---|
| 9/3/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial. | K.W. | 6.00 | $600.00 |
| 9/3/2021 | Prepared for trial and worked on Watson Offer | M.B.M. | 11.00 | $3,300.00 |
| 9/3/2021 | Prepared for trial and worked on Watson offer. | B.B. | 2.50 | $1,000.00 |
| 9/4/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial. | K.W. | 3.50 | $350.00 |
| 9/4/2021 | Prepared for trial | M.B.M. | 4.00 | $1,200.00 |
| 9/5/2021 | Prepared for trial | M.B.M. | 3.50 | $1,050.00 |
| 9/6/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial. | K.W. | 1.50 | $150.00 |
| 9/6/2021 | Prepared for trial | M.B.M. | 4.50 | $1,350.00 |
| 9/6/2021 | Prepared for trial | B.B. | 3.00 | $1,200.00 |
| 9/7/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial. | K.W. | 8.50 | $850.00 |
| 9/7/2021 | Prepared for Trial; travel and meeting with Hildebrand; update to WHB | M.B.M. | 9.00 | $2,700.00 |
| 9/7/2021 | Met with MBM re: Update from meeting with Tom Hildebrand | B.B. | 1.00 | $400.00 |
| 9/8/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial. | K.W. | 7.00 | $700.00 |
| 9/8/2021 | Prepared for trial | M.B.M. | 8.50 | $2,550.00 |
| 9/8/2021 | Prepared for trial | B.B. | 4.50 | $1,800.00 |
| 9/9/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial. | K.W. | 7.50 | $750.00 |
| 9/9/2021 | Prepared for trial | M.B.M. | 10.00 | $3,000.00 |
| 9/9/2021 | Prepared for trial | B.B. | 4.00 | $1,600.00 |
| 9/10/2021 | Review numerous email correspondence for new discovery production, pleadings, etc.; continue to update hard files and the electronic Trial Prep Notebook with same in preparation for trial. Assist counsel with continued preparations for trial. | K.W. | 8.00 | $800.00 |
| 9/10/2021 | Prepared for trial | M.B.M. | 11.00 | $3,300.00 |
| 9/10/2021 | Prepared for trial | B.B. | 4.00 | $1,600.00 |

| | | | | |
|---|---|---|---|---|
| 9/11/2021 | Continue to Prepare for Trial. | K.W. | 7.00 | $700.00 |
| 9/11/2021 | Prepared for trial | M.B.M. | 7.00 | $2,100.00 |
| 9/11/2021 | Prepared for trial | B.B. | 2.00 | $800.00 |
| 9/12/2021 | Continue to prepare for Trial. | K.W. | 8.00 | $800.00 |
| 9/12/2021 | Prepared for trial | M.B.M. | 8.50 | $2,550.00 |
| 9/12/2021 | Prepared for trial | B.B. | 8.00 | $3,200.00 |
| 9/13/2021 | Prepared for and attended trial | M.B.M. | 12.50 | $3,750.00 |
| 9/13/2021 | Prepared for and attended trial. | B.B. | 12.50 | $5,000.00 |
| 9/13/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 8.00 | $800.00 |
| 9/14/2021 | Prepared for and attended trial | M.B.M. | 12.00 | $3,600.00 |
| 9/14/2021 | Prepared for and attended trial. | B.B. | 12.00 | $4,800.00 |
| 9/14/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 8.50 | $850.00 |
| 9/15/2021 | Prepared for and attended trial | M.B.M. | 13.50 | $4,050.00 |
| 9/15/2021 | Prepared for and attended trial. | B.B. | 13.50 | $5,400.00 |
| 9/15/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 9.00 | $900.00 |
| 9/16/2021 | Prepared for and attended trial | M.B.M. | 12.00 | $3,600.00 |
| 9/16/2021 | Prepared for and attended trial. | B.B. | 12.00 | $4,800.00 |
| 9/16/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 8.50 | $850.00 |
| 9/17/2021 | Prepared for and attended trial | M.B.M. | 12.00 | $3,600.00 |
| 9/17/2021 | Prepared for and attended trial. | B.B. | 12.00 | $4,800.00 |
| 9/17/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 8.75 | $875.00 |
| 9/18/2021 | Prepared for Trial | M.B.M. | 4.50 | $1,350.00 |
| 9/18/2021 | Prepared for trial | B.B. | 4.50 | $1,800.00 |
| 9/18/2021 | Continue to assist counsel with trial preparations | K.W. | 6.50 | $650.00 |
| 9/19/2021 | Prepared for trial | M.B.M. | 7.00 | $2,100.00 |
| 9/19/2021 | Prepared for trial. | B.B. | 7.00 | $2,800.00 |
| 9/19/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 4.00 | $400.00 |
| 9/20/2021 | Prepared for and attended trial. | B.B. | 12.00 | $4,800.00 |
| 9/20/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 9.00 | $900.00 |
| 9/21/2021 | Prepared for and attended trial. | M.B.M. | 13.00 | $3,900.00 |
| 9/21/2021 | Prepared for and attended trial. | B.B. | 13.00 | $5,200.00 |
| 9/21/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 9.00 | $900.00 |
| 9/22/2021 | Prepared for and attended trial. | M.B.M. | 12.00 | $3,600.00 |
| 9/22/2021 | Prepared for and attended trial. | B.B. | 12.00 | $4,800.00 |
| 9/22/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 8.50 | $850.00 |
| 9/23/2021 | Prepared for and attended trial. | M.B.M. | 12.00 | $3,600.00 |
| 9/23/2021 | Prepared for and attended trial. | B.B. | 12.00 | $4,800.00 |
| 9/23/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 8.00 | $800.00 |
| 9/24/2021 | Prepared for and attended trial. | M.B.M. | 7.00 | $2,100.00 |
| 9/24/2021 | Prepared for and attended trial. | B.B. | 7.00 | $2,800.00 |
| 9/24/2021 | Assist counsel with trial preparation and attend trial; coordinate with Bullet Courier for boxes to be picked up from courthouse and met courier at office to unload boxes. | K.W. | 6.50 | $650.00 |
| 9/26/2021 | Worked on deposition designation excerpts. | M.B.M. | 4.00 | $1,200.00 |
| 9/27/2021 | Worked on depo transcripts for trial and DV motion and brief on contract docs | M.B.M. | 8.50 | $2,550.00 |
| 9/27/2021 | Telephone conference with MBM; Telephone conference with client. | B.B. | 2.00 | $800.00 |
| 9/28/2021 | Worked on depo transcripts for trial and DV motion and brief on contract docs | M.B.M. | 8.00 | $2,400.00 |

| | | | | |
|---|---|---|---|---|
| 9/28/2021 | Telephone conference with MBM; Continue to prepare for trial. | B.B. | 1.00 | $400.00 |
| 9/29/2021 | Worked on depo transcripts for trial and DV motion and brief on contract docs | M.B.M. | 8.00 | $2,400.00 |
| 9/29/2021 | Meeting with MBM and A. Haselden | B.B. | 3.00 | $1,200.00 |
| 9/30/2021 | Worked on depo transcripts for trial and DV motion and brief on contract docs | M.B.M. | 8.00 | $2,400.00 |
| 9/30/2021 | Meeting with MBM re: trial strategy | B.B. | 3.00 | $1,200.00 |
| SUBTOTAL: | | | 582.90 | $159,940.00 |

**Costs**

| | | |
|---|---|---|
| 9/7/2021 | Process Service, Inc.: Service of trial subpoena | $95.00 |
| 9/27/2021 | Transcript Fee for the August 16, 2021, hearing | $279.30 |
| 9/30/2021 | ProLegal Fees: Copies and binders for trial | $4,439.56 |
| 9/30/2021 | Veritext Court Reporting | $1,045.47 |
| 9/30/2021 | AdvandedOne Legal: Inv 724028, 724293, 724298, 724306, 725321, 725327, 725330 | $33,909.99 |
| 9/30/2021 | Carolina IT prepared hard drives for use at trial. | $1,715.00 |
| SUBTOTAL: | | $41,484.32 |

**Matter Ledgers**

| | | |
|---|---|---|
| 9/10/2021 | Balance before last invoice | $248,936.02 |
| 9/20/2021 | Payment on invoices 10955, 10956, 10948 | -$248.936.02 |
| 10/7/2021 | Invoice 10957 | $201,424.32 |
| SUBTOTAL: | | $201,424.32 |

TOTAL $201,424.32

PREVIOUS BALANCE DUE $0.00

**CURRENT BALANCE DUE AND OWING $201,424.32**

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $201,424.32 |
| Current Charges | $176,871.02 |
| New Balance | $378,295.34 |
| Adjustments | $0.00 |
| Payments | $0.00 |
| Now Due | $378,295.34 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: November 16, 2021
Invoice Number: 10958
Invoice Amount: $176,871.02

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 10/1/2021 | Assist counsel with trial preparation. | K.W. | 4.50 | $450.00 |
| 10/1/2021 | Worked on DV motion and depo excerpts | M.B.M. | 4.50 | $1,350.00 |
| 10/1/2021 | Telephone conference with MBM re: DV Motion and trial strategy | B.B. | 2.00 | $800.00 |
| 10/3/2021 | Worked on DV motions | M.B.M. | 5.50 | $1,650.00 |
| 10/4/2021 | Assist counsel with trial preparation | K.W. | 6.00 | $600.00 |
| 10/4/2021 | Worked on DV motion and finalized excerpts and letters to the Judge; cont. trial prep | M.B.M. | 9.00 | $2,700.00 |
| 10/4/2021 | Review of DV Motion, Continued Trial Preparation | B.B. | 2.00 | $800.00 |
| 10/5/2021 | Assist counsel with trial preparation. | K.W. | 3.50 | $350.00 |
| 10/5/2021 | Worked on BBC damages numbers and exhibits | M.B.M. | 10.00 | $3,000.00 |
| 10/5/2021 | Trial preparation; Telephone conference with MBM re: Damages, exhibits and trial strategy. | B.B. | 5.00 | $2,000.00 |
| 10/6/2021 | Assist counsel with trial preparation. | K.W. | 5.50 | $550.00 |
| 10/6/2021 | Worked on BBC damages numbers and exhibits | M.B.M. | 10.00 | $3,000.00 |
| 10/6/2021 | Trial preparation, damages, exhibits, telephone conference with MBM re: Strategy. | B.B. | 4.00 | $1,600.00 |
| 10/7/2021 | Assist counsel with trial preparation. | K.W. | 2.50 | $250.00 |
| 10/7/2021 | Worked on BBC damages numbers and exhibits; call with Sam and Mark | M.B.M. | 8.00 | $2,400.00 |
| 10/7/2021 | Trial preparation, telephone conference with S. Hadley and M. Boe re: Strategy. | B.B. | 4.00 | $1,600.00 |
| 10/8/2021 | Assist counsel with trial preparation. | K.W. | 3.50 | $350.00 |
| 10/8/2021 | Worked on BBC damages numbers and exhibits; met with Kim re: damages | M.B.M. | 6.50 | $1,950.00 |
| 10/8/2021 | Trial preparation | B.B. | 3.00 | $1,200.00 |
| 10/10/2021 | Reviewed docs from Sam and Boe docs for prep meeting | M.B.M. | 4.00 | $1,200.00 |

| | | | | |
|---|---|---|---|---|
| 10/11/2021 | Assist counsel with trial preparation. | K.W. | 5.50 | $550.00 |
| 10/11/2021 | Worked on return to ONSM motion; prepared for Boe meeting | M.B.M. | 7.00 | $2,100.00 |
| 10/12/2021 | Prepared for Boe meeting; met with WHB re: Boe meeting and ONSM return; worked on ONSM return; finalized ONSM return | M.B.M. | 6.00 | $1,800.00 |
| 10/12/2021 | Met with MBM re: Boe meeting and ONSM return | B.B. | 2.50 | $1,000.00 |
| 10/13/2021 | Assist counsel with trial preparation. | K.W. | 6.10 | $610.00 |
| 10/13/2021 | Met with MBM re: Clement meeting | B.B. | 2.00 | $800.00 |
| 10/13/2021 | Prepared for Clement meeting; Clement meeting; met with WHB re: Clement meeting | M.B.M. | 6.50 | $1,950.00 |
| 10/14/2021 | Assist counsel with trial preparation. | K.W. | 5.50 | $550.00 |
| 10/14/2021 | Kim prep; Trial preparation | M.B.M. | 9.00 | $2,700.00 |
| 10/14/2021 | Trial preparation | B.B. | 8.00 | $3,200.00 |
| 10/15/2021 | Trial preparation | M.B.M. | 8.00 | $2,400.00 |
| 10/15/2021 | Trial preparation | B.B. | 6.00 | $2,400.00 |
| 10/17/2021 | Trial Preparation | M.B.M. | 4.00 | $1,200.00 |
| 10/18/2021 | Assist counsel with trial preparation. | K.W. | 7.00 | $700.00 |
| 10/18/2021 | Sam Prep; Trial Prep | M.B.M. | 8.50 | $2,550.00 |
| 10/19/2021 | Assist counsel with trial preparation. | K.W. | 6.00 | $600.00 |
| 10/19/2021 | Sam Prep; Trial Prep | M.B.M. | 8.50 | $2,550.00 |
| 10/20/2021 | Assist counsel with trial preparation. | K.W. | 4.00 | $400.00 |
| 10/20/2021 | Sam Prep; Kim prep; Trial Prep | M.B.M. | 8.50 | $2,550.00 |
| 10/21/2021 | Assist counsel with trial preparation. | K.W. | 6.00 | $600.00 |
| 10/21/2021 | Sam prep; Jim prep; Trial Prep | M.B.M. | 8.50 | $2,550.00 |
| 10/22/2021 | Assist counsel with trial preparation. | K.W. | 7.50 | $750.00 |
| 10/22/2021 | Trial Prep; Grady Prep; Kim Prep | M.B.M. | 9.00 | $2,700.00 |
| 10/24/2021 | Trial Prep | M.B.M. | 9.00 | $2,700.00 |
| 10/24/2021 | Trial preparation and met with witnesses. | B.B. | 6.00 | $2,400.00 |
| 10/25/2021 | Met with movers took boxes to Courthouse and set up courtroom, assist counsel with trial preparation and attend trial. | K.W. | 11.50 | $1,150.00 |
| 10/25/2021 | Trial Prep and Attend Trial | M.B.M. | 12.00 | $3,600.00 |
| 10/25/2021 | Trial Prep and Attend Trial | B.B. | 12.00 | $4,800.00 |
| 10/26/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 8.50 | $850.00 |
| 10/26/2021 | Trial Prep and Attend Trial | M.B.M. | 12.00 | $3,600.00 |
| 10/26/2021 | Trial Prep and Attend Trial | B.B. | 12.00 | $4,800.00 |
| 10/27/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 8.00 | $800.00 |
| 10/27/2021 | Trial Prep and Attend Trial | M.B.M. | 12.00 | $3,600.00 |
| 10/27/2021 | Trial Prep and Attend Trial | B.B. | 12.00 | $4,800.00 |
| 10/28/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 8.00 | $800.00 |
| 10/28/2021 | Trial Prep and Attend Trial | M.B.M. | 12.00 | $3,600.00 |
| 10/28/2021 | Trial Prep and Attend Trial | B.B. | 12.00 | $4,800.00 |
| 10/29/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 6.50 | $650.00 |
| 10/29/2021 | Trial Prep and Attend Trial | M.B.M. | 10.00 | $3,000.00 |
| 10/29/2021 | Trial Prep and Attend Trial | B.B. | 10.00 | $4,000.00 |
| 10/31/2021 | Trial Prep | M.B.M. | 5.00 | $1,500.00 |
| 10/31/2021 | Trial Prep | B.B. | 5.00 | $2,000.00 |
| SUBTOTAL: | | | 436.10 | $118,460.00 |

**Costs**

| | | |
|---|---|---|
| 10/31/2021 | Advanced Depositions Invoice 724306, 7424298, 724293, 725330, 725321, 725327,724028, 728034 | $45,204.28 |
| 10/31/2021 | ProLegal Invoices 157347, 157510, 157696, 157271, 157347 | $12,807.70 |
| 10/31/2021 | Process Service on Otis Elevator | $399.04 |
| SUBTOTAL: | | $58,411.02 |

**Matter Ledgers**

| | | |
|---|---|---|
| 10/7/2021 | Invoice 10957 | $201,424.32 |
| 11/16/2021 | Invoice 10958 | $176,871.02 |
| SUBTOTAL: | | $378,295.34 |

TOTAL $176,871.02

PREVIOUS BALANCE DUE $201,424.32

CURRENT BALANCE DUE AND OWING $378,295.34

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $176,871.02 |
| Current Charges | $118,087.25 |
| New Balance | $294,958.27 |
| Adjustments | $0.00 |
| Payments | ($201,424.32) |
| Now Due | $294,958.27 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: December 16, 2021
Invoice Number: 10960
Invoice Amount: $118,087.25

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 11/1/2021 | Trial preparation and attended trial. | M.B.M. | 12.00 | $3,600.00 |
| 11/1/2021 | Trial preparation and attended trial. | B.B. | 12.00 | $4,800.00 |
| 11/1/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 11.00 | $1,100.00 |
| 11/2/2021 | Trial preparation and attended trial. | B.B. | 12.00 | $4,800.00 |
| 11/2/2021 | Trial preparation and attended trial. | M.B.M. | 12.00 | $3,600.00 |
| 11/2/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 10.00 | $1,000.00 |
| 11/3/2021 | Trial preparation and attended trial. | M.B.M. | 12.00 | $3,600.00 |
| 11/3/2021 | Trial preparation and attended trial. | B.B. | 12.00 | $4,800.00 |
| 11/3/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 10.00 | $1,000.00 |
| 11/4/2021 | Trial preparation and attended trial. | B.B. | 6.00 | $2,400.00 |
| 11/4/2021 | Trial preparation and attended trial. | M.B.M. | 6.00 | $1,800.00 |
| 11/4/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 7.00 | $700.00 |
| 11/5/2021 | Worked on Sam Rebuttal; met with WHB re: prep for 11/29 trials | M.B.M. | 2.50 | $750.00 |
| 11/5/2021 | Met with MBM re: prep for 11/29 trials | B.B. | 1.00 | $400.00 |
| 11/5/2021 | Assist counsel with trial preparation. | K.W. | 3.00 | $300.00 |
| 11/8/2021 | Prepared for a telephone conference with Sam. | M.B.M. | 1.00 | $300.00 |
| 11/9/2021 | Prepared for Sam call; prepared schedule of liens; met with WHB re: Sam call and liens and rebuttal testimony | M.B.M. | 1.50 | $450.00 |
| 11/9/2021 | Met with MBM re: Sam call, liens, and rebuttal testimony. | B.B. | 1.00 | $400.00 |
| 11/9/2021 | Assist counsel with trial preparation. | K.W. | 2.50 | $250.00 |
| 11/10/2021 | Prepared for Sam call; Call with Sam; met with WHB re: rebuttal prep; reviewed email from Judge | M.B.M. | 3.50 | $1,050.00 |

| | | | | |
|---|---|---|---|---|
| 11/10/2021 | Met with MBM re: rebuttal prep | B.B. | 1.50 | $600.00 |
| 11/11/2021 | Prepared for completion of trial and subcontractor trials. | M.B.M. | 8.00 | $2,400.00 |
| 11/11/2021 | Prepared for completion of trial and subcontractor trials. | B.B. | 8.00 | $3,200.00 |
| 11/12/2021 | Prepared for completion of trial and subcontractor trials. | B.B. | 8.00 | $3,200.00 |
| 11/12/2021 | Prepared for completion of trial and subcontractor trials. | M.B.M. | 8.00 | $2,400.00 |
| 11/15/2021 | Prepared for completion of subcontractor trials. | M.B.M. | 8.00 | $2,400.00 |
| 11/15/2021 | Prepared for completion of subcontractor trials. | B.B. | 8.00 | $3,200.00 |
| 11/15/2021 | Continue to assist counsel with trial preparations. | K.W. | 3.50 | $350.00 |
| 11/16/2021 | Prepared for completion of subcontractor trials. | B.B. | 4.50 | $1,800.00 |
| 11/16/2021 | Prepared for completion of subcontractor trials. | M.B.M. | 9.00 | $2,700.00 |
| 11/16/2021 | Continue to assist counsel with trial preparations. | K.W. | 1.00 | $100.00 |
| 11/17/2021 | Prepared for completion of subcontractor trials. | M.B.M. | 8.00 | $2,400.00 |
| 11/17/2021 | Prepared for completion of subcontractor trials. | B.B. | 4.00 | $1,600.00 |
| 11/17/2021 | Continue to assist counsel with trial preparations. | K.W. | 1.50 | $150.00 |
| 11/18/2021 | Prepared for completion of sub trials | B.B. | 6.00 | $2,400.00 |
| 11/18/2021 | Prepared for completion of sub trials | M.B.M. | 6.00 | $1,800.00 |
| 11/18/2021 | Continue to assist counsel with trial preparations. | K.W. | 2.00 | $200.00 |
| 11/19/2021 | Prepared for completion of sub trials | M.B.M. | 4.00 | $1,200.00 |
| 11/19/2021 | Prepared for completion of sub trials | B.B. | 7.00 | $2,800.00 |
| 11/22/2021 | Prepared for completion of sub trials | B.B. | 4.00 | $1,600.00 |
| 11/22/2021 | Prepared for completion of sub trials | M.B.M. | 6.00 | $1,800.00 |
| 11/23/2021 | Prepared for subs trial | M.B.M. | 6.00 | $1,800.00 |
| 11/23/2021 | Prepared for completion of sub trials | B.B. | 5.00 | $2,000.00 |
| 11/23/2021 | Continue to assist counsel with trial preparation. | K.W. | 4.50 | $450.00 |
| 11/24/2021 | Telephone conference with Kim re: Update, reviewed emails on payment to subs. | M.B.M. | 1.00 | $300.00 |
| 11/26/2021 | Trial preparation | M.B.M. | 9.00 | $2,700.00 |
| 11/26/2021 | Prepared for trial. | B.B. | 8.00 | $3,200.00 |
| 11/27/2021 | Trial preparation | M.B.M. | 8.00 | $2,400.00 |
| 11/27/2021 | Prepared for trial | B.B. | 6.00 | $2,400.00 |
| 11/28/2021 | Trial preparation | M.B.M. | 4.50 | $1,350.00 |
| 11/28/2021 | Prepared for trial | B.B. | 4.50 | $1,800.00 |
| 11/28/2021 | Continue to assist counsel with trial preparation. | K.W. | 3.50 | $350.00 |
| 11/29/2021 | Trial preparation and attended trial. | M.B.M. | 12.00 | $3,600.00 |
| 11/29/2021 | Trial preparation and attended trial. | B.B. | 12.00 | $4,800.00 |
| 11/29/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 11.00 | $1,100.00 |
| 11/30/2021 | Trial preparation and attended trial. | M.B.M. | 12.00 | $3,600.00 |
| 11/30/2021 | Trial preparation and attended trial. | B.B. | 12.00 | $4,800.00 |
| 11/30/2021 | Assist counsel with trial preparation and attend trial. | K.W. | 11.00 | $1,100.00 |
| SUBTOTAL: | | | 384.00 | $113,150.00 |

**Costs**

| | | |
|---|---|---|
| 11/30/2021 | Court Fees | $20.00 |
| 11/30/2021 | Palmetto Scheduling Invoice #7691 | $4,600.00 |
| 11/30/2021 | ProLegal Inv #157827 | $100.25 |
| 11/30/2021 | Parking | $217.00 |
| SUBTOTAL: | | $4,937.25 |

**Matter Ledgers**

| | | |
|---|---|---|
| 10/7/2021 | Balance before last invoice | $201,424.32 |
| 11/16/2021 | Invoice 10958 | $176,871.02 |
| 11/17/2021 | Payment on Invoice 10957 | -$201,424.32 |
| 12/16/2021 | Invoice 10960 | $118,087.25 |
| SUBTOTAL: | | $294,958.27 |

TOTAL $118,087.25
PREVIOUS BALANCE DUE $176,871.02

CURRENT BALANCE DUE AND OWING $294,958.27

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Library Associates, LLC
Re: Marion Square Hotel Project

| | |
|---|---|
| Previous Balance | $0.00 |
| Current Charges | $47,900.00 |
| New Balance | $47,900.00 |
| Adjustments | $0.00 |
| Payments | ($294,958.27) |
| Now Due | $47,900.00 |
| Trust Account | $0.00 |

# BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

## INVOICE

Library Associates, LLC
Bennett Hospitality
17 Lockwood Drive, Ste 400
Charleston, SC 29401

Invoice Date: January 21, 2022
Invoice Number: 10962
Invoice Amount: $47,900.00

## Matter: Marion Square Hotel Project

**Attorney's Fees**

| | | | | |
|---|---|---|---|---|
| 12/1/2021 | Prepared for Trial | M.B.M. | 8.50 | $2,550.00 |
| 12/1/2021 | Trial preparation | W.H.B. | 8.50 | $3,400.00 |
| 12/1/2021 | Assist counsel with trial preparations | K.W. | 6.50 | $650.00 |
| 12/2/2021 | Trial preparation and attended trial | M.B.M. | 13.00 | $3,900.00 |
| 12/2/2021 | Trial preparation and attended Trial. | W.H.B. | 13.00 | $5,200.00 |
| 12/2/2021 | Assist counsel with trial preparations and attend trial | K.W. | 13.00 | $1,300.00 |
| 12/3/2021 | Trial prep and Trial and Trial doc collection and organization | M.B.M. | 12.50 | $3,750.00 |
| 12/3/2021 | Trial preparation and attended Trial. | W.H.B. | 8.00 | $3,200.00 |
| 12/3/2021 | Assist counsel with trial preparation and attend trial. Gathered documents from Court Room took back to Summerville Office | K.W. | 13.00 | $1,300.00 |
| 12/4/2021 | Reviewed correspondence from WHB re: Trial Brief ideas and began to outline | M.B.M. | 2.00 | $600.00 |
| 12/6/2021 | Pulled and organized all trial exhibits | M.B.M. | 8.50 | $2,550.00 |
| 12/7/2021 | Pulled and organized all trial exhibits; cont. to outline brief | M.B.M. | 6.00 | $1,800.00 |
| 12/7/2021 | Assisted counsel with pulling and organizing marked trial exhibits. | K.W. | 4.50 | $450.00 |
| 12/8/2021 | Cont. to outline brief | M.B.M. | 3.50 | $1,050.00 |
| 12/9/2021 | T/C with Rannick re: Lowcountry; T/C with Kim re: Lowcountry | M.B.M. | .50 | $150.00 |
| 12/10/2021 | Reviewed exhibits for proposed order; cont. to outline proposed order and pull WHB thoughts | M.B.M. | 8.00 | $2,400.00 |
| 12/13/2021 | Reviewed Exhibits for proposed order | M.B.M. | 6.00 | $1,800.00 |