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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
William C. McMaster III, Circuit Judge

Appellate Case No. 2025-001203
Court of Common Pleas Case No. 2023-CP-23-00189

Icon Custom Masonry, Inc., Respondent,

v.

The Settlement, LLC; Levi Grantham, LLC; and Atlantic Specialty Insurance Company,
Defendants,

Of which The Settlement, LLC and Levi Grantham, LLC are the Appellants

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.,	)	
	)	
Plaintiff,	)	ORDER ON DEFENDANTS' MOTION
	)	TO STAY AND COMPEL ARBITRATION
v.	)	
	)	
The Settlement, LLC and	)	
Levi Grantham, LLC,	)	
	)	
Defendants.	)	
	)	

Date of Hearing:	November 29, 2023
Presiding Judge:	The Honorable Alex Kinlaw, Jr.
Attorneys for Plaintiff:	Bryan P. Kelley, Esquire
	Katherine M. Sieber, Esquire
Attorneys for Defendants:	James A. Bruorton, Esquire
	Taylor B. Ambrosius, Esquire

This matter is before the Court upon motion of Defendants, The Settlement, LLC and Levi Grantham, LLC ("Defendants") by and through its counsel, to compel arbitration of all claims between the parties and to stay litigation of this matter pending arbitration. The basis for this Order is an arbitration provision within the contract between Plaintiff and Defendant Levi Grantham, LLC and that arbitration is a more effective form of dissolution in this matter. As discussed in greater detail below, the Court rules that Defendants' Motion to Stay and Compel Arbitration is hereby **GRANTED**.

BACKGROUND

On January 17, 2023, Plaintiff filed its Complaint against Defendants. The Defendants filed their Answer and Counterclaims against Plaintiff on April 7, 2023. Brief written discovery was thereafter conducted. On June 20, 2023, Defendants served their First Set of Interrogatories and First Set of Requests for Production on the Plaintiff, which were responded to on September 29,

2023. On June 21, 2023, Plaintiff served its First Set of Interrogatories, First Set of Requests for Production, and First Requests for Admission on Levi Grantham, LLC only. Levi Grantham, LLC thereafter responded to only the Requests for Admission on August 18, 2023. No further discovery has taken place in this action.

Defendants filed their motion to stay and compel arbitration on October 11, 2023. Oral arguments were heard by the Court on November 29, 2023. After considering the facts before the Court, applicable law, and the arguments presented by the parties, This Court makes the following findings:

STATEMENT OF LAW AND FINDINGS OF FACT

I. The arbitration provision in the Master Professional Service Agreement applies to this dispute.

“Both federal and state policy favor arbitrating disputes.” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct. App. 1999) (citing *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995)). “This preference for arbitration has manifested itself in legislation and judicial decisions supporting the expeditious appeal of decisions denying an application to compel arbitration.” *Towles*, 338 S.C. at 34, 524 S.E.2d at 842.

Pursuant to S.C. CODE ANN. § 15-48-10, a valid agreement to arbitrate requires notice to be “typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract”. *See also, Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 553 S.E.2d 110 (2001). The Master Professional Services Agreement (“MPSA”) between Plaintiff and Defendant Levi Grantham contains the required notice for arbitration in underlined capital letters on the first page of the MPSA.

Plaintiff calls into question whether the MPSA applies to the project that is the subject matter of this litigation, arguing there is not an addendum that specifically identifies the scope of

work Plaintiff alleges to have performed for the Defendants in its Complaint, and therefore, there was “no meeting of the minds” to which the arbitration provision could apply. Defendants argue that the arbitration provision in the MPSA is not project specific but rather applies to the entire universe of projects Plaintiff performs work for the Client. Defendants reference Paragraph 2 on the first page of the MPSA which states “[t]he Agreement applies to all Projects for which Consultant provides Work to Client.” The terms of Paragraph 2 of the MPSA are clear and unambiguous that the MPSA, and its provisions, applies to all projects between the parties.

Additionally, Plaintiff’s conduct in performing work to the project supports the contention it was aware of the scope of work, and therefore a meeting of the minds did exist between the parties. The MPSA goes further in to provide, pursuant to Paragraph 13, that the parties agreed all disputes between them arising out of or relating to the MPSA would be subject to arbitration. Plaintiff also admits in Paragraph 4 of its Reply to Defendants’ Counterclaim that Plaintiff and Defendant Levi Grantham entered into the MPSA whereby Plaintiff agreed to timely provide labor, materials, and equipment for certain improvements to be constructed and erected upon the referenced project that is the subject matter of this litigation. The Plaintiff’s admission within its pleadings prevents the Plaintiff from now arguing that the MPSA and its corresponding arbitration provision does not apply to this matter. *Edwards v. Atl. Coast Line R. Co.*, 148 S.C. 266, 146 S.E. 97, 110 (1928) (“A party is estopped by the allegations in his own pleadings.”); *Dawkins v. Sell*, 434 S.C. 572, 582, 865 S.E.2d 1, 6 (Ct. App. 2021), *reh’g denied* (Dec. 2, 2021) (“Parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise.”).

Based on the clear and unambiguous language of the MPSA, and the Plaintiff’s conduct in performing Work for the Defendants pursuant to the MPSA, along with Plaintiff’s admission of

the work performed pursuant to the MPSA, this Court finds the MPSA is applicable to the Project which is the subject matter of this litigation.

II. Defendants have not waived the right to arbitration through engagement in limited discovery.

Plaintiff has argued to this Court that the Defendants have waived their right to arbitration by engaging in discovery prior to requesting arbitration. “In order to establish waiver, a party must show prejudice through an undue burden caused by delay in demanding arbitration.” *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007) (quoting *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999)). In determining whether a party has waived its right to compel arbitration, courts consider the following factors, which are not mutually exclusive, as one factor may be inextricably connected to, and influenced by, the others:

- (1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration;
- (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and
- (3) whether the non-moving party was prejudiced by the delay in seeking arbitration.

Rhodes, 374 S.C. at 126, 647 S.E.2d at 251.

Here, the record shows less than nine (9) months transpired between the commencement of the action and the filing of Defendants’ Motion to Stay and Compel Arbitration. This factor alone is not conclusive to determine whether Defendants have waived their right to arbitration. The Court further evaluates the status of the case to determine to what extent, if any, discovery has taken place. The Court finds that the Defendants have engaged in limited written discovery through serving one set of initial interrogatories and requests for production. In response to written interrogatories, request for production and request to admit served by the Plaintiffs, Defendant

Levi Grantham, LLC responded only to Plaintiff's requests for admission before moving to compel arbitration. The Court recognizes no depositions have been noticed nor taken place in this matter.

The Court finds based on the facts before it and applicable South Carolina legal precedent, the amount of time and limited discovery that has occurred in this matter does not constitute waiver. *See Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co.*, 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003) (finding a thirteen month period where discovery was "very limited in nature and the parties had not availed themselves of the court's assistance," and "Respondent had not held any depositions," did not demonstrate waiver); *Rich v. Walsh*, 357 S.C. 64, 66, 590 S.E.2d 506, 507 (Ct. App. 2003) (finding a thirteen month period where "[l]imited discovery was conducted" and the party requesting arbitration took one deposition lasting fifteen minutes did not demonstrate waiver); *Gen. Equip. & Supply Co. v. Keller Rigging & Const., SC, Inc.*, 344 S.C. 553, 544 S.E.2d 643 (Ct. App. 2001) (finding a period of less than eight months where the "litigation consisted of routine administrative matters and limited discovery which did not involve the taking of depositions or extensive interrogatories" did not establish waiver).

Finally, this Court finds Plaintiff will suffer no prejudice by having its claims compelled to arbitration. "To establish prejudice, the non-moving party must show something more than 'mere inconvenience.'" *Rhodes*, 374 S.C. at 127, 647 S.E.2d at 251 (citing *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 548, 575 S.E.2d 74, 75–76 (Ct. App. 2003)). "To ascertain whether the non-moving party was prejudiced, our courts often examine whether the party requesting arbitration took 'advantage of the judicial system by engaging in discovery.'" *Id.* (citing *Evans* at 548, 575 S.E.2d at 76). Here, the evidence does not support that Defendants took advantage of the judicial system by engaging in discovery. Plaintiff has simply not shown a basis of prejudice other than simply not wanting its claims to be heard in arbitration rather than before

the Court. The time period from commencement of this action and filing of Defendants' Motion to Stay and Compel Arbitration is not substantial and very minimal discovery, certainly not extensive discovery, has occurred. As a result, the Court finds Defendants have not waived their right to compel arbitration of the claims in this action.

CONCLUSION

For all the reasons set forth herein, the Defendants' Motion to Stay and Compel Arbitration is hereby **GRANTED**.

IT IS THEREFORE ORDERED that the claims between the parties are hereby stayed pending arbitration of the claims pursuant to the agreement between Plaintiff and Defendant Levi Grantham, LLC. Any disputes regarding the joinder of additional parties, the scope of discovery, the need for additional discovery, dispositive motions, and the scheduling of the case for arbitration shall be decided by the Arbitrator(s).

IT IS SO ORDERED.

The Honorable Alex Kinlaw, Jr



Greenville Common Pleas

Case Caption: Icon Custom Masonry Inc vs. Settlement LLC , defendant, et al

Case Number: 2023CP2300189

Type: Order/Stay

So Ordered

s/Alex Kinlaw, Jr., #2763

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CA. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.,	)	
	)	
Plaintiff,	)	ORDER
	)	
v.	)	
	)	
The Settlement, LLC; Levi Grantham, LLC;	)	
and Atlantic Specialty Insurance Company,	)	
	)	
Defendants.	)	

This matter comes before the Court on two motions: (1) Defendants The Settlement, LLC (“The Settlement”) and Levi Grantham, LLC’s (“Levi Grantham”) (collectively, the “Defendants”) Motion to Vacate, or in the alternative, Modify or Correct Arbitration Award (the “Motion to Vacate”); and (2) Plaintiff Icon Custom Masonry, Inc.’s (“Icon”) Motion to Confirm Arbitration Award. The Court addresses the two motions in turn.

I. Defendants’ Motion to Vacate

Defendants’ Motion seeks two separate forms of relief that require application of two separate and distinct standards of review. S.C. Code Ann. § 15-48-130 provides that the court shall vacate an arbitration award where:

(1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party; (3) the arbitrators exceeded their powers; (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown therefore or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 15-48-50, as to prejudice substantially the rights of a party; or (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under Section 15-48-20 and the party did not participate in the arbitration hearing without raising an objection.

In addition to these statutory grounds, our courts have held that an arbitration award may only be vacated upon a showing of “manifest disregard or perverse misconstruction of the law by the arbitrator.” *Weimer v. Jones*, 364 S.C. 78, 80, 610 S.E.2d 850, 852 (Ct. App. 2005). This “manifest disregard” standard may be “established only where the arbitrator understands and correctly states the law, but proceeds to disregard the same.” *Group III Mgmt. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 155, 810 S.E.2d 781, 788 (Ct. App. 2018) (quoting *Patten v. Signator Ins. Agency, Inc.*, 441 F.3d 230, 234 (4th Cir. 2006) (internal quotations omitted)). “The focus is on the conduct of the arbitrator and **presupposes something beyond a mere error in construing or applying the law.**” *Gissel v. Hart*, 382 S.C. 235, 241-42, 676 S.E.2d 320, 323 (2009) (emphasis in original) (internal citations omitted). The standard is met “*only* when the award is the product of an *intentional* or *reckless* flouting of the law...” *Waldo v. Cousins*, 442 S.C. 662, 665, 901 S.E.2d 276, 278 (2004) (emphasis added) (citing *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)).

Defendants contend the Arbitrator, Franklin J. Smith (the “Arbitrator”) manifestly disregarded the law in three respects: (1) by awarding damages under the South Carolina mechanic’s lien statute for work that was not lienable thereunder; (2) by determining Icon was the “prevailing party” under the South Carolina mechanic’s lien statute; and (3) by awarding attorney’s fees to Icon which Defendants contend were not actually paid by Icon.

A. Amounts not lienable

Defendants contend the Arbitrator manifestly disregarded the law by awarding damages for two specific components of Icon’s claim which Defendants contend was not lienable work. First, Defendants point to an award of \$3,000 for permitting and engineering fees performed at the subject project. Defendants contend these fees were invoiced for services performed related to the

construction of five columns and that, at best, Icon should have been awarded \$2,400 for this component of its claim because only four of the five columns were actually constructed at the subject project. In support of their position, Defendants' Motion makes the bald assertion that "Defendants never benefited from anything Plaintiff alleges to have done to the fifth column."

Next, Defendants contend the Arbitrator manifestly disregarded the law by awarding Icon \$4,000 for materials it delivered to the project site to be used for said fifth column. Again, Defendants contend that the absence of construction of the fifth column renders this component of the award a manifest disregard of the law.

Defendants' primary legal authority is *Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020), *aff'd as modified*, 440 S.C. 456, 892 S.E.2d 297 (2023). Defendants contend this case imposes an "actual use" requirement for lienable work; in other words, Icon cannot recover damages for the fifth column materials or engineering work because the fifth column was not built. It appears the Arbitrator determined that when the engineering work was performed and materials delivered, Defendants had not yet decided to abandon the fifth column.

I find Defendants' reliance on *Kitchen Planners* is misplaced. *Kitchen Planners* was modified by the Supreme Court to remove any discussion of an "actual use" requirement; thus, there is no bright-line "actual use" requirement in the law that the Arbitrator could have disregarded. Moreover, the Arbitrator clearly and correctly addressed Defendants' arguments on this issue:

"All of Icon's work was performed with the understanding that Icon was to install five monuments. Therefore, all of these labors and materials were provided for the improvement of the owner's property including the materials left on site to construct the fifth monument. Since Levi [Grantham] later decided not to install the fifth monument, the estoppel doctrine prohibits Levi from arguing that the materials for the fifth monument were not provided for the improvement of its property."

Defs. Motion to Vacate, Ex. B.

In summary, Defendants fail to identify any controlling law that the Arbitrator understood and chose to disregard. To the contrary, it appears the Arbitrator's ruling was well based in applicable law and reason. Therefore, the Court has no choice but to deny Defendants' request for vacatur on these grounds.

B. The “prevailing party” determination

Defendants next contend the arbitrator manifestly disregarded the law by awarding Icon, and not Defendants, attorney's fees under the “prevailing party” provision of the South Carolina mechanic's lien statute, S.C. Code Ann. § 29-5-10 *et seq.* To paraphrase Defendants' arguments, they contend Icon incorrectly made an Offer of Settlement under S.C. Code Ann. § 29-5-10 whereas Icon's Offer of Settlement should have been made pursuant to § 29-5-20. The basis for this argument is that the real property where the project took place was owned by The Settlement, whereas Icon's contract was with Levi Grantham. Therefore, according to Defendants, Icon's Offer of Settlement could only properly be made under § 29-5-20 because its contract was with some entity other than the owner of the real property. Defendants further contend that, because the incorrect statute was cited by Icon, its Offer of Settlement was invalid and should not have been used by the Arbitrator in determining the prevailing party under the Mechanic's Lien statute.

Defendants' arguments ignore the following language of § 29-5-10(a): “[a] person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate . . . by virtue of an agreement with, *or by consent of*, the owner of the building or structure, *or a person having authority from, or rightfully acting for*, the owner in procuring or furnishing the labor or materials shall have a lien upon the building or structure. . . .” (emphasis added).

I find the Arbitrator carefully considered this issue when initially raised by Defendants in arbitration and concluded that Icon's work was performed with the consent of The Settlement. Thus, Icon satisfied the requirements of § 29-5-10 and properly filed its offer of settlement thereunder. Defendants fail to demonstrate manifest disregard, and a review of their arguments reveal the Arbitrator in fact reached the proper result.

C. The award of "unpaid" attorney's fees.

Defendants next contend that the Arbitrator's award of attorney's fees that had not yet been paid at the time of the issuance of the Arbitrator's Final Award was a manifest disregard of the law. I find Defendants have failed to identify any controlling precedent that the Arbitrator could have knowingly disregarded. Defendants appear to rely on a single case that is clearly inapplicable and irrelevant here. And for the second time in its Motion, the language cited by Defendants is found in a Court of Appeals opinion later modified by the South Carolina Supreme Court, with the modification removing the operative language.

Nonetheless, the case cited by Defendants provides that a trial court erred by awarding attorney's fees where "there was no evidence introduced to show that [Plaintiff] actually incurred costs, that he had paid any costs or expected to be billed in the future. There were no time records, invoices or any other documentation to justify the award of attorney fees." *Blumberg v. Nealco, Inc.*, 307 S.C. 537, 538-39, 416 S.E.2d 211, 212, (Ct. App. 1992) *aff'd as modified by* 310 S.C. 492, 427 S.E.2d 659 (1993). The facts of *Blumberg* simply do not apply here. The Arbitrator was provided both an Affidavit from Icon's counsel outlining and explaining the fees that had and would be billed, and the Arbitrator reviewed counsel's invoices *in camera*. It appears that, based on the Arbitrator's orders, he was thoughtful and exercised great care in identifying the fees that

were recoverable by Icon. Once again, Defendants fail to identify any controlling law that was manifestly disregarded.

II. Defendants' Motion to Modify or Correct

Turning to the alternative relief sought by Defendants' Motion, S.C. Code Ann. § 15-48-140 provides the grounds upon which this Court may modify or correct an arbitration award. Defendants rely solely upon § 15-48-140(a)(1), which allows for modification where "[t]here was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award."

An "evident miscalculation of figures" occurs where an arbitrator commits a mathematical error in computing the total amount of the award, not when an arbitrator makes a conscious decision as to the amount to be awarded. *See e.g., Lauro v. Visnapuu*, 351 S.C. 507, 570 S.E.2d 551 (Ct. App. 2002) ("Even if the arbitrator's decision in this regard [in applying the law] was erroneous, it does not constitute an evident miscalculation of figures envisioned under § 15-48-140. That is, the arbitrator did not commit a mathematical error in computing the total amount of the award."). Defendants contend such a miscalculation occurred in three respects: (1) in calculating Icon's damages; (2) in determining the prevailing party under the lien statute; and (3) in determining the amount of an award of reasonable attorney's fees.

The Defendants fail to identify a single mathematical error. For the reasons set forth below, I decline to disturb the Arbitrator's rulings.

A. Calculation of Icon's Damages

Defendants contend that the Arbitrator's Interim Award determined Icon's work on four columns was about 75% complete, therefore the damages awarded to Icon could not have exceeded 75% of Icon's contract price for the four columns. Instead, the Arbitrator awarded Icon its full

contract price for the four columns, then reduced it by the amounts paid by Defendants to complete the columns.

Although they do not acknowledge it, Defendants do not take issue with the Arbitrator's mathematical computations. Instead, they challenge the *method* used by the Arbitrator to calculate Icon's damages. Even if this Court disagreed with the methodology employed by the Arbitrator, which I do not, no grounds would exist to modify the award as no mathematical computation error occurred. Moreover, I find the Arbitrator's damages calculation method was reasonable given that Defendants, and not Icon, breached the parties' contract. The Arbitrator endeavored to give Icon the full benefit of its bargain, with a credit given to Defendants for their completion costs. In conclusion, no grounds exist which would allow this Court to modify the Arbitrator's award in this respect.

B. Calculation to Determine Prevailing Party

Defendants' arguments here go hand-in-hand with those discussed above. Defendants contend that a modification of the award using their own damages calculation methodology, rather than the Arbitrator's, would result in an award of \$89,550.00 (i.e., 75% of Icon's contract price for four columns). Defendants further contend that the Arbitrator miscalculated the Interim Award by awarding \$600 in engineering fees for the fifth column and \$4,000 for materials for the fifth column. Thus, the Interim Award should be further reduced to \$84,950. Such a reduction would render Defendants the prevailing party under the South Carolina Mechanic's Lien statute, based on the parties' respective offers of settlement.

While Defendants do not clearly state why the inclusion of damages related to the fifth monument by the Arbitrator can be grounds for *either* vacatur of the award *or* modification of the award, the grounds they put forth appear to be one and the same (i.e., that such damages were not

lienable and should not have been awarded). As discussed above, it appears the Arbitrator was justified in awarding damages related to the fifth column. And again, Defendants' arguments here amount to a legal issue rather than an actual computation error. In the absence of an evident miscalculation of figures, no grounds exist on which this Court can modify or correct the Arbitrator's findings.

C. Calculation of Icon's Attorney's Fees

Defendants' arguments are twofold: (1) that Icon was billed fees that are in excess of what Defendants were billed; and (2) that an attorney fee award of one-third of the total award is customary. I address these arguments in turn.

First, Defendants contend that the Arbitrator incorrectly applied the six-factor test in determining the reasonableness of an attorney's fee award as set forth in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997); specifically, customary legal fees for similar services.

Defendants offer one sole data point supporting their contention Icon's fees were excessive in comparison to customary legal fees for similar services, which is their own fees billed to Defendants. Defendants offer no precedent to support the notion that Icon cannot recover more fees than what has been billed to the opposing and non-prevailing party, and I accordingly reject their argument. And as discussed above, no mathematical calculation error has been identified by the Defendants; instead, they argue for the imposition of a non-existent legal principle. Therefore, the Court has no grounds upon which it is permitted to modify the Arbitrator's award.

Second, Defendants contend our courts have recognized that a fee equal to one third the total award is customary, citing *Global Protection Corp. v. Halsberg*, 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998). While it would be accurate to represent that the trial court in *Global Protection Corp.* awarded attorney's fees of one-third an award in spite of a contingency

agreement providing for a 40% contingency fee, *Global Protection Corp.* does *not* support the premise that a one-third fee is customary as Defendants contend. Instead, the trial court in that case recognized that “the typical range of such contingency fees was one-third to one-half the recovery,” and that sufficient evidence in the record existed to support the trial court’s conclusions as to the propriety of an award of one-third. *Id.*, at 161, 489.

Defendants also ask this Court to impose statutory attorney fee limitations that are not applicable to this matter. I decline to do so. The South Carolina Mechanic’s Lien Statute has its own fee limitation provisions, and limits recovery of reasonable attorney’s fees and costs to the amount of the lien. S.C. Code Ann. §§ 29-5-10, -20. Even if Defendants identified a computational error justifying modification, which they do not, I decline to impose an attorney fee limitation imposed by other inapplicable statutes.

WHEREFORE, based on the foregoing, Defendants’ Motion to Vacate or Modify the Arbitration Award is **DENIED**.

III. Plaintiff’s Motion to Confirm

Having rejected each of Defendants’ arguments in its Motion, I now turn to Plaintiff’s Motion to Confirm the Arbitration Award. “Upon application of a party, the court *shall* confirm an [arbitration] award, unless within the time limits hereinafter imposed grounds are urged for vacating modifying or correcting the award.” S.C. Code Ann. § 15-48-120 (emphasis added). “[T]he provision for judicial confirmation carries no hint of flexibility and the statement the court must grant the application unless the award is vacated, modified, or corrected is one which unequivocally tells courts to grant confirmation in all cases, except when one of the prescribed exceptions applies.” *Henderson v. Summerville Ford-Mercury, Inc.*, 405 S.C. 440, 454, n. 7, 748 S.E.2d 221, 229, n. 7 (2013) (quoting *Hall St. Assocs. v. Mattel, Inc.*, 552 U.S. 576, 587 (2008)).

WHEREFORE, based on the foregoing, and in the absence of any grounds to vacate, modify, or correct the arbitration award, Plaintiff's Motion is **GRANTED**.

The Clerk of Court is hereby directed to enter judgment in favor of Plaintiff and against Defendants Levi Grantham, LLC and The Settlement, LLC in the amount of **\$245,157.94**. This Order shall not adjudicate Plaintiff's claims against Defendant Atlantic Specialty Insurance Company.

IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE OF JUDGE FOLLOWING
[South Carolina Electronic Filing Policies and Guidelines § 6(a)]



Greenville Common Pleas

Case Caption: Icon Custom Masonry Inc vs. Settlement LLC , defendant, et al

Case Number: 2023CP2300189

Type: Order/Vacate Judgment

So Ordered

William C. McMaster, III

Electronically signed on 2025-06-13 15:59:41 page 11 of 11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2023-CP-23- <u>00189</u>
Icon Custom Masonry, Inc.,	)	
	)	SUMMONS
Plaintiff,	)	
	)	
v.	)	
	)	
The Settlement, LLC and	)	
Levi Grantham, LLC,	)	
	)	
Defendants.	)	
	)	

TO: ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY summoned and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at his office located at 19 Blair Street, Greenville, South Carolina (29607), Post Office Box 1887, Greenville, South Carolina 29602, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, a default judgment for the relief demanded in the Complaint will be rendered against you.

Respectfully submitted,

s/Bryan P. Kelley
 Bryan P. Kelley (SC Bar No. 76062)
 Elmore Goldsmith Kelley and deHoll, P.A.
 19 Blair Street (29607)
 Post Office Box 1887
 Greenville, South Carolina 29602
 Telephone: (864) 255-9500
 Facsimile: (864) 255-9505
 bkelley@elmoregoldsmith.com
Counsel for Icon Custom Masonry, Inc.

January 17, 2023
 Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2023-CP-23- <u>00189</u>
Icon Custom Masonry, Inc.,	)	
	)	COMPLAINT
Plaintiff,	)	
	)	
v.	)	
	)	
The Settlement, LLC and	)	
Levi Grantham, LLC,	)	
	)	
Defendants.	)	
_____	)	

COMES NOW Icon Custom Masonry, Inc ("Icon Custom"), by and through its undersigned counsel, and hereby asset causes of action against the Defendants as follows:

PARTIES, JURISDICTION, AND VENUE

1. Icon Custom is a corporation, incorporated and existing under the laws of the State of South Carolina and is authorized to conduct business in South Carolina.
2. Upon information and belief, Defendant, The Settlement, LLC ("The Settlement") is a limited liability company organized and existing under the laws of the State of South Carolina and is authorized to conduct business in South Carolina and is the owner of certain real property in Greenville County, South Carolina that is the subject of this litigation.
3. Upon information and belief, Levi Grantham, LLC ("Levi Grantham") is a limited liability company organized and existing under the laws of the State of South Carolina and is authorized to conduct business in South Carolina.
4. Venue is proper in Greenville County, and this court has jurisdiction over these parties and dispute.

FACTUAL ALLEGATIONS

5. Icon Custom entered into a contract with Levi Grantham (the "Contract") wherein Icon Custom was to provide certain construction materials and labor on the construction of a residential project located in Greenville County, South Carolina and owned by The Settlement (the "Project").

6. Upon information and belief, the Project is and was at all pertinent times hereto owned by The Settlement.

7. Icon Custom fulfilled its contractual obligations to Levi Grantham in providing materials and labor valued at \$153,445.50 for the Project.

8. Levi Grantham has not paid Icon Custom for its work and there is an unpaid balance due to Icon Custom in the amount of at least \$153,445.50.

9. A Notice and Certificate of Mechanic's Lien, attached hereto as **Exhibit A** was filed and served upon The Settlement and Levi Grantham within ninety days after Icon Custom ceased furnishing labor and materials to the Project pursuant to S.C. Code Ann. § 29-5-90.

10. **Exhibit A** alleges that Icon Custom is owed a total balance of \$153,445.50, which is the contract balance owed to Icon Custom.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract – Levi Grantham)

11. The above allegations are incorporated herein by reference as if restated verbatim herein.

12. Levi Grantham entered into a contract with Icon Custom wherein Icon Custom was to provide certain materials and labor in furtherance of the construction of the Project.

13. Icon Custom fulfilled its contractual obligations to Levi Grantham.

14. Levi Grantham has breached the contract in one or more of the following particulars: (a) by failing to pay Icon Custom the full contract price agreed upon by the parties; (b) by failing to pay Icon Custom interest due thereon; and (c) in such other and further matters as may be discovered prior to trial.

15. Icon Custom has suffered actual and consequential damages as a direct and proximate result of Levi Grantham's breach of contract in the amount of at least \$153,445.50, plus interest, cost, and attorney's fees for which it hereby sues.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit – All Defendants)

16. The above allegations are incorporated herein by reference as if restated verbatim herein.

17. Icon Custom furnished materials and labor for the Project for the benefit of the Levi Grantham and The Settlement for which Icon Custom has not been paid. A fair and reasonable value for these materials, services and labor is at least \$153,445.50.

18. At the time Icon Custom provided the aforesaid materials and labor, Icon Custom reasonably expected to be paid for said materials and labor, and Levi Grantham and The Settlement voluntarily and knowingly accepted the benefits of said materials and labor with reason to know that Icon Custom expected to be paid. Icon Custom did not gratuitously supply any materials and labor to the Project.

19. The acceptance of the materials and labor by Levi Grantham and The Settlement created an implied contract in which Levi Grantham and The Settlement would pay Icon Custom for the reasonable value of these materials and labor. Levi Grantham and The Settlement will be unjustly enriched if they do not pay Icon Custom for the material and labor supplied for their use and benefit.

20. As a result of the foregoing, Levi Grantham and The Settlement are liable to Icon Custom in an amount in quantum meruit or other equitable theory for reasonable value of the materials and labor in an amount to be determined at trial that is at least \$153,445.50, for which it hereby sues, together with such other relief as to which it may be entitled.

FOR A SEVENTH CAUSE OF ACTION
(Violation of S.C. Code Ann. § 27-1-15 – All Defendants)

21. The above allegations are incorporated herein by reference as if restated verbatim herein.

22. Pursuant to S.C. Code Ann. §27-1-15, Icon Custom has made a due and just demand by certified mail for payment for the labor and materials it has provided to the Project and the Property. A copy of the demand is attached hereto as **Exhibit B** and incorporated herein by reference.

23. Upon information and belief, Levi Grantham and The Settlement have failed or will fail to either make a reasonable and fair investigation into Icon Custom's claims and/or have unreasonably failed or will unreasonably fail to pay any undisputed portion of Icon Custom's claim.

24. As a direct and proximate result of Levi Grantham's and The Settlement's failure to pay Icon Custom, Icon Custom has suffered actual and consequential damages in the amount of at least \$153,445.50, plus interest, costs, and attorney's fees, for which it hereby sues.

FOR AN EIGHTH CAUSE OF ACTION
(Action for Mechanic's Lien Foreclosure – All Defendants)

25. The above allegations are incorporated herein in reference as if restated verbatim herein.

26. Levi Grantham contracted with Icon Custom for the material and labor Icon Custom provided on the Project but has failed and refused to pay Icon Custom the full amount due on the Project of at least \$153,445.50.

27. As a result of Levi Grantham's failure to pay Icon Custom for materials and labor in full, Icon Custom filed a Mechanic's Lien in the Register of Deeds Office in Greenville County, South Carolina, on November 10, 2022, in Book MI 0155 at Page 0768. A copy of the Mechanic's Lien is attached hereto as **Exhibit A**.

28. Icon Custom has properly filed and served its lien within ninety (90) days after ceasing to furnish materials, services, and labor to the Project, and has properly filed this Complaint within six (6) months of ceasing to furnish such materials, services and labor.

29. As of the date of this Complaint, Icon Custom's Mechanic's Lien on the Project is still unsatisfied in the amount of \$153,445.50.

30. Icon Custom is informed and believes that it is entitled to foreclosure on the property that is the subject of its Mechanic's Lien, and that the property should be sold in satisfaction of Icon Custom's claim in at least the sum of \$153,445.50, plus reasonable attorney's fees for the prosecution of this action, together with costs as allowed by statute.

31. As Lis Pendens covering the subject property is filed contemporaneously herewith.

WHEREFORE, Plaintiff prays for the following relief:

- A. For a non-jury trial;
- B. For judgment on each of its claims in an amount to be determined by the Court;
- C. Foreclosure of its Mechanics Lien pursuant to S. C. Code § 29-5-10 *et seq.*
- D. Attorneys' fees pursuant to S.C. Code Ann. §§ 29-5-10 *et seq.* and 27-1-15;
- E. Costs of the Court; and

F. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

s/Bryan P. Kelley

Bryan P. Kelley (SC Bar No. 76062)
Elmore Goldsmith Kelley and deHoll, P.A.
19 Blair Street (29607)
Post Office Box 1887
Greenville, South Carolina 29602
Telephone: (864) 255-9500
Facsimile: (864) 255-9505
bkelley@elmoregoldsmith.com
Counsel for Icon Custom Masonry, Inc.

January 17, 2023
Greenville, South Carolina



2022084968

7 Pgs

M/LIEN Book: MI 0155 Page: 0768 - 0774

November 10, 2022 09:01:54 AM

Rec: \$25.00

E-FILED IN GREENVILLE COUNTY, SC

Timothy J. Murray

STATE OF SOUTH CAROLINA

) IN THE OFFICE OF THE REGISTER OF DEEDS

)

COUNTY OF GREENVILLE

)

Icon Custom Masonry Inc,

)

Plaintiff/Petitioner,

)

**NOTICE AND CERTIFICATE OF
MECHANIC'S LIEN**

v.

)

)

The Settlement, LLC and Levi Grantham,
LLC,

)

)

Defendant/Respondent.

)

NOTICE IS HEREBY GIVEN, THAT**ICON CUSTOM MASONRY, INC**

is due the sum of ONE HUNDRED FIFTY-THREE THOUSAND FOUR HUNDRED FORTY-FIVE AND 00/100 DOLLARS (\$153,445.00) from Levi Grantham, LLC on the Project known as Settlement Wayfinding Columns located at the 1.72-acre common area 630 Fowler Road, Simpsonville, South Carolina 29681 owned by The Settlement LLC. A statement of a just and true account of said indebtedness, with all just credits given, being attached hereto and made a part hereof, together with interest due from the date said sum become due and owing.

That said debt is due the undersigned for labor performed or furnished, and/or for materials furnished, and actually used in the erection, alteration or repair of buildings or structures situated on, or in otherwise improving, the real estate hereinafter described, by virtue of an agreement with The Settlement LLC and with express consent of Levi Gratham, LLC. That, as shown by the attached statement, the undersigned furnished labor and materials for such buildings, structures, or improvements within ninety (90) days of the date hereof.

That by virtue thereof, by the service and filing of this Notice and Certificate, and pursuant to the provisions of the Statutes in such cases made and provided, the undersigned has and claims

EXHIBIT**A**

ROA 026

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a lien to secure the payment of the debt so due and the costs of enforcing said lien upon the buildings or structures herein above mentioned and upon the following described property:

SEE EXHIBIT A

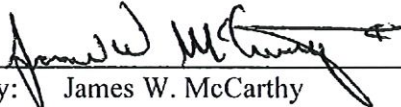
This property being commonly known as the 1.72-acre common area 630 Fowler Road, Simpsonville, South Carolina 29681.

Pinnacle Bank is named herein by virtue of its mortgage and any other interest which it may have in the property.

I hereby certify pursuant to S.C. Code Ann. §29-5-15, Icon Custom Masonry, Inc's License Number is 119443. and that this filing is not a frivolous lien.

The foregoing is true of my own knowledge.

ICON CUSTOM MASONRY, INC


By: James W. McCarthy
Its: President

Subscribed and sworn to before me,
this 8th day of November, 2022


Notary Public for State of ~~South~~ Carolina
Print Notary Name: M. Ashley Bond
My commission expires: June 24, 2027

M. ASHLEY BOND
NOTARY PUBLIC
Mecklenburg County
NORTH CAROLINA
MY COMMISSION EXPIRES JUNE 24, 2027

EXHIBIT A

All that certain piece, parcel, or tract of land designated as "Common Area 1.72 acres" and located at the corner of Fowler Road and Crosswick Drive, Simpsonville, Greenville County, South Carolina containing 1.72 acres, more or less, as shown on that Final Plat by James Ralph Freeland dated February 2, 2022 and recorded in the Greenville County Register Deeds Office on February 22, 2022 in Plat Book PL 1423, Page 0024. Reference to said plat is made for a more complete and accurate description.

This being a portion of the property conveyed to The Settlement, LLC by Deed of The Gressette Limited Partnership dated July 15, 2019 and recorded on July 16, 2019 in Deed Book 2570 at Pages 4005-4007, in the Office of the Register of Deeds for Greenville County, South Carolina.

Tax Map No.: 05601901600

STATE OF SOUTH CAROLINA	)	IN THE OFFICE OF THE REGISTER OF DEEDS
	)	
COUNTY OF GREENVILLE	)	
	)	
Icon Custom Masonry Inc,	)	
	)	
Plaintiff/Petitioner,	)	STATEMENT OF ACCOUNT
	)	FOR MECHANIC'S LIEN
v.	)	
	)	
The Settlement, LLC and Levi Grantham,	)	
LLC,	)	
Defendant/Respondent.	)	

DEBITS:	\$153,445.50
CREDITS	<u>\$0.00</u>
TOTAL DUE:	\$153,445.50

I, James W. McCarthy first being duly sworn, state that I am the President of Icon Custom Masonry Inc. and that the foregoing is a true and accurate statement of the account of Levi Grantham, LLC and that no part of same has been paid by discount or otherwise in connection with that real property except as otherwise noted above. Icon Custom Masonry Inc. may also be entitled to additional monies not included in this Statement of Account, which is being provided without prejudice to any other claims which Icon Custom Masonry Inc. might have. The property subject to the lien is set forth as Exhibit A to Notice and Certificate of Mechanic's Lien ("Property"). Icon Custom Masonry Inc. furnished labor and materials for buildings, structures, or improvements on the Property within ninety (90) days of the date hereof.

SIGNATURE ON FOLLOWING PAGE

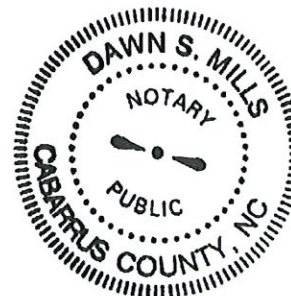
The foregoing is true of my own knowledge.

ICON CUSTOM MASONRY INC.

James W. McCarthy
By: James W. McCarthy
Its: President

Subscribed and sworn to before me,
this 2nd day of November, 2022

Dawn S. Mills
Notary Public for State of ~~South Carolina~~ North Carolina
Print Notary Name: Dawn S. Mills DM
My commission expires: April 10, 2027



STATE OF SOUTH CAROLINA	)	IN THE OFFICE OF THE REGISTER OF DEEDS
	)	
COUNTY OF GREENVILLE	)	
	)	
Icon Custom Masonry Inc,	)	
	)	
Plaintiff/Petitioner,	)	AFFIDAVIT OF MECHANIC'S LIEN
	)	
v.	)	
	)	
The Settlement, LLC and Levi Grantham,	)	
LLC,	)	
	)	
Defendant/Respondent.	)	

I, James W. McCarthy, the President of Icon Custom Masonry Inc, first being duly sworn, depose and state that:

1. Certain labor, services or materials were furnished for the improvement of property described in the attached Notice and Certificate of Mechanic's Lien (the property); such improvements having been authorized by the Owner or by virtue of and in agreement with or by consent of the Owner to such improvements or by some person or agent having authority from or rightfully acting for such Owner in the procuring or furnishing such labor, services or materials. Said labor, services or materials were last furnished within ninety (90) days from the date of this Affidavit.

2. Such labor, services or materials were delivered to the property under an agreement with Levi Grantham, LLC for the Project known as Settlement Wayfinding Columns located at the 1.72-acre common area 630 Fowler Road, Simpsonville, South Carolina 29681.

3. The value of labor, services or materials supplied to Levi Grantham, LLC was \$153,445.00. Levi Grantham, LLC have paid \$0.00 leaving a total amount due and owing of \$153,445.00.

4. Deponent further states that there is past due and owing from Levi Grantham, LLC to it, the sum of \$153,445.00 representing the sum which said labor, services or materials are reasonably worth as evidenced by the attached certified Statement of Account.

5. Pinnacle Bank is named herein by virtue of its mortgage and any other interest which it may have in the property.

Icon Custom Masonry Inc may also be entitled to additional monies not included in this Affidavit of Mechanic's Lien, which is being provided without prejudice to any other claims which Icon Custom Masonry Inc might have.

The foregoing is true of my own knowledge.

ICON CUSTOM MASONRY INC

By: James W. McCarthy
Its: President

Subscribed and sworn to before me,
this 8th day of November, 2022

M. Ashley Bond
Notary Public for State of ~~South~~ Carolina
Print Notary Name: M. Ashley Bond
My commission expires: June 24, 2027

M. ASHLEY BOND
NOTARY PUBLIC
Mecklenburg County
NORTH CAROLINA
MY COMMISSION EXPIRES JUNE 24, 2027



ELMORE
GOLDSMITH
KELLEY &
DEHOLL

Bryan P. Kelley
bkelley@elmoregoldsmith.com

December 13, 2022

Via Certified Mail 7016 2070 0001 1445 9322

Jim Cone
Registered Agent for Levi Grantham, LLC
572 Savannah Highway
Charleston, South Carolina 29407

Via Certified Mail 7020 0090 0002 2017 8059

Steven E. Harvey
Harvey & Vallini, LLC
Registered Agent for The Settlement, LLC
497 Bramson Court, Suite 201
Mount Pleasant, South Carolina 29464

Re: *Settlement Wayfinding Columns*
1.72- acre common area 630 Fowler Road, Simpsonville, South Carolina 29681

Dear Mr. Cone and Mr. Harvey:

We have been retained to represent Icon Custom Masonry, LLC ("Icon Custom Masonry") in connection with recovery of a contract balance due and owing to Icon Custom Masonry for its performance of certain services related to the above-referenced Project.

Icon Custom Masonry has completed its work on the Project, but unfortunately, its invoice has not been paid in full. There currently remains due and owing to Icon Custom Masonry an unpaid contract balance of \$153,445.00 which is over 90 days past due. You have previously been provided with a copy of this invoice, and Icon Custom Masonry has made efforts to collect the balance without effect.

On behalf of Icon Custom Masonry, demand is made upon you for payment of \$153,445.00 pursuant to S.C. Code Ann. § 27-1-15 which provides as follows:

SECTION 27-1-15. Recovery of attorney's fees and interest on claims for improvement of real estate.

Whenever a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any

ELMORE GOLDSMITH KELLEY & DEHOLL, P.A.

Post Office Box 1887 | Greenville, SC 29602
Phone (864) 255.9500 | Fax (864) 255.9505
elmoregoldsmith.com

**EXHIBIT
B**

ELECTRONICALLY FILED - 2023 Jan 17 11:57 AM - GREENVILLE - COMMON PLEAS - CASE#2023CP2300189

regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within forty-five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand.

Should you fail to make a reasonable investigation and pay the undisputed amount within forty-five (45) days from the date of this letter, Icon Custom Masonry is entitled to recover and will seek its attorney fees, costs, and expenses, together with prejudgment interest at the legal rate from the date of this letter in any subsequent proceedings.

Further, please be advised that Icon Custom Masonry has authorized this firm to take any necessary legal action against you in order to recover the amount due and owing.

Please contact me at your earliest convenience to discuss this matter.

Very truly yours,

ELMORE GOLDSMITH KELLEY & DEHOLL, P.A.



Bryan P. Kelley

BPK/kos

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2023-CP-23- <u>00189</u>
	)	L.P. No. 2023-LP-23-00033
Icon Custom Masonry, Inc.	)	
	)	LIS PENDENS
Plaintiff/Petitioner,	)	
	)	
v.	)	
	)	
The Settlement, LLC and	)	
Levi Grantham, LLC,	)	
	)	
Defendants/Respondents.	)	
	)	

NOTICE IS HEREBY GIVEN, pursuant to South Carolina Code § 15-11-10, that Plaintiff has brought an action for the purpose of foreclosing a Mechanic's Lien claimed by Plaintiff against the Defendants, which Mechanic's Lien was recorded in the Office of the Register of Deeds of Greenville County, South Carolina on November 10, 2022 in Book MI 0155 at Page 0768. The Mechanic's Lien covers the described real property situated in the County of Greenville, State of South Carolina described as follows:

All that certain piece, parcel, or tract of land designated as "Common Area 1.72 acres" and located at the corner of Fowler Road and Crosswick Drive, Simpsonville, Greenville County, South Carolina containing 1.72 acres, more or less, as shown on that Final Plat by James Ralph Freeland dated February 2, 2022 and recorded in the Greenville County Register Deeds Office on February 22, 2022 in Plat Book PL 1423, Page 0024. Reference to said plat is made for a more complete and accurate description.

This being a portion of the property conveyed to The Settlement, LLC by Deed of The Gressette Limited Partnership dated July 15, 2019 and recorded on July 16, 2019 in Deed Book 2570 at Pages 4005-4007, in the Office of the Register of Deeds for Greenville County, South Carolina.

Tax Map No.: 05601901600

This property being commonly known as the 1.72-acre common area 630 Fowler Road,
Simpsonville, South Carolina 29681.

Respectfully submitted,

s/Bryan P. Kelley

Bryan P. Kelley (SC Bar No. 76062)
Elmore Goldsmith Kelley and deHoll, P.A.
19 Blair Street (29607)
Post Office Box 1887
Greenville, South Carolina 29602
Telephone: (864) 255-9500
Facsimile: (864) 255-9505
bkelley@elmoregoldsmith.com
Counsel for Icon Custom Masonry, Inc.

January 17, 2023
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.,	)	
	)	DEFENDANTS THE SETTLEMENT,
Plaintiff,	)	LLC AND LEVI GRANTHAM, LLC’S
	)	ANSWER AND COUNTERCLAIM
v.	)	
	)	
The Settlement, LLC and	)	
Levi Grantham, LLC,	)	
	)	
Defendants.	)	
_____	)	

COME NOW The Settlement, LLC and Levi Grantham, LLC (hereinafter “Defendants”) by and through its undersigned counsel, answering the Complaint of Plaintiff, Icon Custom Masonry, Inc. (hereinafter “Icon” or “Plaintiff”), allege and state as follows:

FOR A FIRST DEFENSE

1. Each and every allegation set forth herein that is not answered, denied, modified or explained is hereby denied and strict proof thereof is demanded.
2. The allegations of Paragraph 1 are denied. Upon information and belief, Icon Custom Masonry, Inc. (“Icon”) is a corporation incorporated and existing under the laws of the State of North Carolina and has recently applied for authorization to conduct business in the State of South Carolina.
3. The allegations of Paragraphs 2 through 4 are admitted.
4. In answering the allegations of Paragraph 5, to the extent a valid and enforceable contract exist between the parties, Defendants crave reference to said contract and deny any inconsistencies therewith.
5. The allegations of Paragraph 6 are admitted.

6. The allegations of Paragraphs 7 and 8 are denied.

7. In answering the allegations of Paragraph 9, Defendants admit only to having been served with a Notice and Certificate of Mechanic's Lien from Plaintiff. Defendants deny the remaining allegations of Paragraph 9 and demand strict proof thereof.

8. The allegations of Paragraph 10 are denied.

AS TO PLAINTIFF'S FIRST CAUSE OF ACTION
(Breach of Contract – Levi Grantham)

9. In answering the allegations of Paragraph 11, Defendants reassert each and every answer in the preceding paragraphs as if fully restated herein.

10. In answering Paragraph 12, to the extent a valid and binding contract exists between the parties, Defendant Levi Grantham denies any inconsistencies therewith.

11. The allegations of Paragraph 13 through 15 are denied.

AS TO PLAINTIFF'S SECOND CAUSE OF ACTION
(Quantum Meruit – All Defendants)

12. In answering the allegations of Paragraph 16, Defendants reassert each and every answer in the preceding paragraphs as if fully restated herein.

13. The allegations of Paragraphs 17 through 20 are denied.

AS TO PLAINTIFF'S THIRD CAUSE OF ACTION
(Violation of S.C. Code Ann. § 27-1-15 – All Defendants)

14. In answering the allegations of Paragraph 21, Defendants reassert each and every answer in the preceding paragraphs as if fully restated herein.

15. The allegations of Paragraphs 22 through 24 are denied.

AS TO PLAINTIFF'S FOURTH CAUSE OF ACTION
(Action for Mechanic's Lien Foreclosure – All Defendants)

16. In answering the allegations of Paragraph 25, Defendants reassert each and every answer in the preceding paragraphs as if fully restated herein.

17. The allegations of Paragraph 26 are denied.

18. In answering the allegations of Paragraph 27, Defendants admit only to Icon having filed a Mechanic's Lien. Defendants deny the remaining allegations of Paragraph 27 and demand strict proof thereof.

19. The allegations of Paragraph 28 through 30 are denied.

20. The allegations of Paragraph 31 are admitted.

21. The remaining paragraph of Plaintiff's Complaint, including all subparts, consists of Plaintiff's prayer for relief that requires no response from Defendants. To the extent a response is required, Defendants deny Plaintiff is entitled to the relief sought.

FOR A SECOND DEFENSE
(Failure to State a Claim)

22. Further and affirmatively answering the Plaintiff's Complaint and as an additional and complete defense thereto, the Complaint should be dismissed pursuant to S.C. R. Civ. Pro. 12(b)(6) for failure to state facts sufficient to constitute a claim against Defendants.

FOR A THIRD DEFENSE
(Unclean Hands)

23. Further and affirmatively answering the Plaintiff's Complaint and as an additional and complete defense thereto, Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

FOR A FOURTH DEFENSE
(Estoppel)

24. Further and affirmatively answering the Plaintiff's Complaint and as an additional and complete defense thereto, Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

FOURTH A FIFTH DEFENSE
(Failure to Mitigate Damages)

25. Further and affirmatively answering the Plaintiff's Complaint and as an additional and complete defense thereto, Plaintiff has failed to mitigate its damages and, therefore, its claims are barred in whole or in part.

FOR A SIXTH DEFENSE
(Breach of Contract)

26. Further and affirmatively answering the Plaintiff's Complaint and as an additional and complete defense thereto, Plaintiff's breach of contract claim is barred because Plaintiff's actions, not the Defendants', breached the alleged contract.

FOR A SEVENTH DEFENSE
(Good Faith)

27. Further and affirmatively answering the Plaintiff's Complaint and as an additional and complete defense thereto, Defendants and its agents and employees have at all times pertinent hereto acted in good faith.

FOR AN EIGHTH DEFENSE
(Justification)

28. Further and affirmatively answering the Plaintiff's Complaint and as an additional and complete defense thereto, any actions taken by Defendants or its agents concerning Plaintiff were made under circumstances which were justified.

FOR A NINTH DEFENSE
(Surety Bond)

29. Further and affirmatively answering the Plaintiff's Complaint and as an additional and complete defense thereto, Defendants have a recorded Surety Bond for discharge of Plaintiff's Mechanic's Lien. The Bond takes the place of the Property and is instead the subject of the Mechanic's Lien.

FOR A TENTH DEFENSE
(Contractual Provision Requiring Mediation)

30. Further and affirmatively answering the Plaintiff's Complaint and as an additional and complete defense thereto, the Complaint should be dismissed pursuant to Article 13(a) of the Agreement requiring mediation to be the primary method for dispute resolution. No mediation has occurred in this matter, nor has one been scheduled.

FOR AN ELEVENTH DEFENSE
(Contractual Provision Requiring Arbitration)

31. Further and affirmatively answering Plaintiff's Complaint and as an additional and complete defense thereto, the Complaint should be dismissed pursuant to Article 13(b) of the Agreement requiring any dispute arising out of or relating to the Agreement not resolved by mediation to be subject to Arbitration.

FOR A TWELFTH DEFENSE
(Contractual Provision Requiring Approval)

32. Further and affirmatively answering Plaintiff's Complaint and as an additional and complete defense thereto, Plaintiff's demand for payment is not valid pursuant to Article 8(b) of the Agreement, which provides that invoices for payment of incomplete work will not be approved.

FOR A THIRTEENTH DEFENSE
(Set-Off)

33. Further and affirmatively answering Plaintiff's Complaint and as an additional and complete defense thereto, any recovery by Plaintiff must be set-off or reduced by any amount recovered by its own acts that caused or contributed to Plaintiffs' damages, if any.

FOR A FOURTEENTH DEFENSE
(Comparative Negligence)

34. Further and affirmatively answering Plaintiff's Complaint and as an additional and complete defense thereto, to the extent Plaintiff contributed to its own alleged damages, Plaintiff's claims are barred or reduced by Plaintiff's own comparative negligence.

FOR A FIFTEENTH DEFENSE
(Contractual Non-Reliance)

35. Further and affirmatively answering Plaintiff's Complaint and as an additional and complete defense thereto, Section 19(c) provides that no representation, promise, or inducement not included in the Agreement shall be relied upon or binding upon either part.

FOR A SIXTEENTH DEFENSE
(Reservation of Additional and Further Defenses)

36. Defendants reserve any additional and further defenses as may be revealed by additional information through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

DEFENDANTS THE SETTLEMENT, LLC AND LEVI GRANTHAM, LLC'S
COUNTERCLAIM AGAINST PLAINTIFF

Defendants The Settlement, LLC and Levi Grantham, LLC complaining of the Plaintiff above-named, allege and state as follows:

1. Upon information and belief, Plaintiff Icon Custom Masonry, Inc. (hereinafter “Icon” or “Plaintiff”) is a corporation organized and existing under the laws of the State of North Carolina and has recently applied for authorization to conduct business in South Carolina.

2. Defendant The Settlement, LLC (hereinafter “The Settlement”) is a limited liability company organized and existing under the laws of the State of South Carolina and conducts business in Greenville County.

3. Defendant Levi Grantham, LLC (hereinafter “Levi Grantham”) is a limited liability company organized and existing under the laws of the State of South Carolina and conducts business in Greenville County.

4. The Settlement owns the plot of land designated as TMS 05601901600 in the County of Greenville, State of South Carolina (hereinafter “Project”), which is being developed by The Settlement and Levi Grantham (hereinafter collectively referred to as “Defendants”).

5. Icon and Levi Grantham entered into a Master Professional Services Agreement dated May 22, 2022 (hereinafter the “Agreement”), whereby Plaintiff agreed to timely provide labor, materials, and equipment for certain improvements to be constructed and erected upon the referenced project. A copy of the Agreement is attached as **Exhibit A** and is hereby incorporated by reference.

6. Article 8 of the Agreement provides that Levi Grantham would pay Plaintiff for services and expenses in accordance with the Plaintiff’s then current fee schedule set forth in Plaintiff’s Proposal.

7. There were no signed proposals or purchase orders stating the amount to be paid by Levi Grantham to Plaintiff for Plaintiff’s work on the Project.

8. Icon failed to supply materials and perform work on the referenced project pursuant to the terms of the Agreement. Specifically, Icon failed to complete the Project by failing to construct the final wayfinding monument column and failing to provide sign pieces/hardware, ceiling/boxing, and back filing around bases of the other columns already constructed by Plaintiff.

9. In or about September 2022, Plaintiff sent Levi Grantham an invoice for the total amount of the project, which said amount included a demand for payment concerning the incomplete work stated herein.

10. On or about September 16, 2022, Levi Grantham sent an email to Plaintiff requesting clarification as to the amount stated in the invoice. Plaintiff responded the same day with a list of materials and charges, to which Levi Grantham thereafter addressed to Plaintiff its concerns of price gauging and incomplete work by Plaintiff on the Project.

11. Levi Grantham attempted to negotiate a reasonable market price for each item plus a reasonable amount of overhead, general and administrative expenses, and profit for the work Plaintiff had performed on the project, to which Plaintiff thereafter offered an unreasonable discount.

12. Defendants proceeded in a reasonable manner by documenting the condition of the Project and hiring a different contractor with a reasonable market price to complete the final column.

13. Plaintiff now demands payment to which it is not entitled to for its incomplete performance and alleged materials supplied to the reference project.

FOR A FIRST COUNTERCLAIM
(Breach of Contract)

14. Defendants reallege each and every allegation of its aforementioned counterclaims as if repeated herein verbatim.

15. To the extent there is a valid contract between Plaintiff and Levi Grantham, Plaintiff breached the contract.

16. The Settlement is the owner of the property that was the subject matter of the Agreement, and therefore The Settlement is an intended and direct beneficiary to the Agreement. The Settlement's rights have vested by nature of bringing this counterclaim.

17. Plaintiff owed Defendants a duty to complete its performance according to the terms of the Agreement.

18. Plaintiff breached the Agreement by failing to timely perform work in accordance with the Agreement, project documents, and industry standards, including, but not limited to, its failure to complete the final wayfinding monument column and failure to include sign pieces/hardware, ceiling/boxing, and back filling around the bases of the columns.

19. Plaintiff's breaches are material and substantial. All circumstances surrounding the complete performance of the Agreement was vitally important, and the parties truly intended it to so be.

20. Defendants mitigated its damages by seeking a reasonable bid from a third party to complete Plaintiff's unfinished work on the Project.

21. As a direct and proximate cause of Plaintiff's breach of its contractual obligations, Defendants have suffered and will continue to suffer actual and consequential damages to which Defendants are entitled to a judgment against Plaintiff in an amount to be determined by the Court, plus attorneys' fees, costs, and prejudgment interest.

FOR A SECOND COUNTERCLAIM
(Breach of Express Warranty)

22. Defendants reallege each and every allegation of its aforementioned counterclaims as if repeated herein verbatim.

23. Plaintiff expressly warranted that its work would conform to the requirements of the Agreement and would be performed using a Standard of Care equal to that standard used by reputable members of Plaintiff's profession practicing in the same locality at the same time and under similar circumstances.

24. Plaintiff breached the express warranty by failing to complete its performance and in accordance with the terms of the Agreement as stated herein.

25. As a direct and proximate cause of Plaintiff's breach of its contractual obligations, Defendants have suffered and will continue d to suffer actual and consequential damages to which Defendants are entitled to a judgment against Plaintiff in an amount to be determined by the Court, plus attorneys' fees, costs, and prejudgment interest.

FOR A THIRD COUNTERCLAIM
(Negligent Misrepresentation)

26. Defendants reallege each and every allegation of its counterclaims set forth in each and every aforementioned Paragraph as if repeated herein verbatim.

27. Plaintiff negligently made false representations to Levi Grantham regarding the costs of materials and labor for the Project.

28. Plaintiff had a pecuniary interest in making the statement so that it would be paid by Levi Grantham for work on the referenced project, whether the value of labor and materials equaled the amount billed to Levi Grantham or not.

29. Plaintiff owed a duty of care to see that it communicated truthful information to Levi Grantham.

30. Plaintiff breached that duty of care by failing to exercise due care in truthfully representing the anticipated cost of materials and labor for the Project along with the actual value of the work performed.

31. Levi Grantham justifiably relied upon the costs of material and labor originally represented by Plaintiff.

32. Levi Grantham suffered a pecuniary loss as the proximate result of the reliance upon Plaintiff's negligent misrepresentations.

33. Defendants are entitled to a judgment for actual and consequential damages against Plaintiff in an amount to be determined at trial, plus attorneys' fees, costs, and prejudgment interest.

FOR A FOURTH COUNTERCLAIM
(Vacate Mechanic's Lien)

34. Defendants reallege each and every allegation of its counterclaims set forth in each and every aforementioned Paragraph as if repeated herein verbatim.

35. On or about November 10, 2022, Plaintiff filed a Mechanic's Lien and was recorded in Book MI 0155 in Pages 0768 through 0774 with the Greenville County Register of Deeds.

36. On April 6, 2023 a Surety Bond to Discharge Mechanic's Lien, as amended, was filed and recorded in Book MI 0156 in Pages 0121 through 0126 with the Greenville County Register of Deeds. Said bond now takes the place of the property that is the subject matter of this Action.

37. Plaintiff has stated an inaccurate amount due from Defendants for labor and materials by nature that such amount is not due and owing to Plaintiff.

38. Upon information and belief, Plaintiff has willfully and knowingly claimed money that is not owed and is for an amount more than the reasonable value of the work it actually performed on the Project.

39. Pursuant to South Carolina Code § 29-5-10, *et seq.*, Defendants Petition the Court to vacate the recorded Mechanic's Lien, strike it from the public record, and enter judgment in favor of Defendants, with prejudice.

40. As a direct and foreseeable and proximate result of Plaintiff's actions, Defendants have suffered actual and consequential damages, including, but not limited to, retaining an attorney to defend the Mechanic's Lien.

FOR A FIFTH COUNTERCLAIM
(Cancellation of Lis Pendens)

41. Defendants reallege each and every allegation of its counterclaims set forth in each and every aforementioned Paragraph as if repeated herein verbatim.

42. Plaintiff filed a *lis pendens* action against The Settlement's property on or about January 17, 2023.

43. Plaintiff's *lis pendens* action relates to alleged payment owed by Levi Grantham to Plaintiff for work performed on the Property owned by The Settlement.

44. Plaintiff does not nor ever has had a legal or equitable ownership interest in the particular or specific property subject to the *lis pendens*.

45. Plaintiff's filing of a *lis pendens* against the property of The Settlement in an ordinary action for a money demand does not affect the title to real estate and is therefore ineffective for any purpose.

46. Plaintiff has therefore filed the *lis pendens* for the improper purpose of trying to accomplish post judgment relief at the prejudgment stage of the underlying Greenville County Case.

47. As a direct and foreseeable and proximate result of Plaintiff's actions, Defendants have suffered actual and consequential damages, including, but not limited to, retaining an attorney to defend the *lis pendens*.

48. Defendants are also entitled to reasonable attorney's fees and court cost pursuant to S.C. Code Ann. § 15-36-10 associated with the filing of this counterclaim to remove Plaintiff's improperly filed *lis pendens*.

WHEREFORE, having fully responded to Plaintiff's Complaint, Defendants The Settlement, LLC and Levi Grantham, LLC pray:

- A. That Plaintiff's Complaint be dismissed with costs;
- B. That the Court grant judgment in favor of Defendants The Settlement, LLC and Levi Grantham, LLC for all actual, consequential, and incidental damages against Plaintiff in an amount to be shown at trial;
- C. For an Order vacating the Mechanic's Lien;
- D. For an Order dismissing the *Lis Pendens* Action;
- E. That the Court apply and award prejudgment interest at the maximum legal rate, along with attorney's fees and the costs associated with this action; and
- F. For such other and further relief that the Court deems just and proper.

ROSEN HAGOOD, LLC.

By: **s/James A. Bruorton IV**
James A. Bruorton IV
(SC Bar #71300)
Taylor B. Ambrosius
(SC Bar #105933)
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Charleston, SC 29401
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cbruorton@rosenhagood.com
tambrosius@rosenhagood.com

ATTORNEYS FOR DEFENDANTS THE
SETTLEMENT, LLC AND LEVI
GRANTHAM, LLC

April 7, 2023
Charleston, South Carolina

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ROA 051

3. **Scope of work:** Consultant agrees to provide all materials, labor, tools, equipment, supervision, supplies and other items necessary or required to perform the work that is described in the Project Addendum. The scope of work, together with any signed and written supplements or modifications thereto for particular projects, are incorporated into this Agreement, and shall hereinafter be referred to collectively as the "Work."
4. **Construction Standards:** Consultant agrees that the work will be performed using a Standard of Care equal to that standard used by reputable members of the Consultant's profession practicing in the same locality at the same time and under similar circumstances. Consultant agrees to perform all Work in compliance with applicable federal, state, county and municipal codes, regulations, rules, and laws.
5. **Client Responsibilities:**
 - a. Client warrants that all information provided to Consultant regarding the Project(s) and Project(s) location are complete and accurate to the best of Client's knowledge.
 - b. Client agrees to furnish Consultant, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Consultant to enter onto the project site to perform the Services included in this Agreement.
 - c. Client agrees to disclose the identity of all utilities serving the Project(s) site and the presence and accurate location of hidden or obscured man-made objects known to Client that may be in Consultant's work area.
6. **Safety:** The safety of Consultant's employees, subConsultants, while on the jobsite applicable to project, is the responsibility of Consultant. Consultant shall comply with any safety policies, guidelines, and instructions which Client shall implement or define from time to time. Neither the professional services provided by Consultant, nor the presence of the its employees or subconsultants at a Project shall impose any additional duty on the Consultant, nor relieve the home builder of its obligations, duties and responsibilities for jobsite safety. The Consultant, its employees, nor subconsultants shall have any control over any other contractor or their employees in connection with their health or safety programs or procedures.
7. **Timing of Work:** Consultant agrees to perform the Work with reasonable diligence and expediency consistent with sound professional practices. The Consultant shall prepare and submit for Client approval a schedule for the performance of the Consultant's services. This schedule shall include reasonable allowances for review and approval times required by the Client, performance of services by the Client's consultants, and review and approval times required by public authorities having jurisdiction over the Project. This schedule may be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the Project requested by the Client, or for delays or other causes beyond the Consultant's reasonable control provided both parties agree in writing to the adjustments. The work to be performed under this agreement shall be commenced under the direction and scheduling with field superintendent in a timely manner. If at any time the Work is not performed in accordance with such schedule, the Consultant agrees to provide the necessary personnel to supply such equipment, materials, overtime work, workers and other devices and facilities as necessary so as to expedite the Work. The Consultant agrees to indemnify and reimburse the Client for all damages caused directly by Consultant's delays.
8. **Payment:** Client will pay Consultant for Services and expenses in accordance with Consultant's current fee schedule set forth in Consultant's Proposal.
 - a. **Invoices:** Consultant will submit progress invoices to Client monthly and a final invoices upon completion of Services. Payment is due within thirty (30) days, unless otherwise agreed to in writing prior to the submittal of the invoice. Invoices are past due thirty (30) days after the date of the invoice. Past due amounts are subject to a late fee of one and one-half percent interest per month.

- b. **Review & Approval:** All invoices will be reviewed by Client prior to payment. Invoices for payment of incomplete work will not be approved. Partial payments for incomplete work shall not be approved unless previously agreed to by Client in writing. Untimely or inaccurate invoices will cause delay in payment.
10. **Insurance:** Consultant shall purchase and maintain, on its own and at its own expense, the following insurance coverages:
- a. workers compensation insurance as required by the jurisdiction in which services are performed;
 - b. general liability insurance with minimum limits of \$1,000,000 per Combined Single Limit each occurrence, \$1,000,000 General Aggregate and \$1,000,000 Products/Completed Operation Aggregate;
 - c. property damage insurance;
 - d. comprehensive automotive liability and automotive property damage insurance with minimum limits of \$1,000,000 per combined single limit each occurrence.
 - e. The limits and terms of such coverages shall be as set forth on the Certificates of Insurance provided to Client prior to the execution of the Agreement. Each Certificate of Insurance shall name Client as certificate holder and shall state that the insurance will not be canceled without thirty (30) days written notice to Client.
 - f. The Consultant's general liability policy and Certificate of Insurance shall name Client as an additional insured. It shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
 - g. Client and Consultant mutually agree, to the fullest extent permitted by law, to waive all rights of subrogation against Client and Owner, their agents, officers, directors and employees for recovery of damages, losses, claims or costs arising out of or in connection with the work to the extent such damages, losses, claims, or costs are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance per the requirements stated above.
11. **Indemnification:** To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Client its consultants and employees of any of them from and against damages, losses and expenses, including but not limited to attorneys' fees to the extent recoverable under law, attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Consultant, a SubConsultant, anyone directly employed by them or anyone for whose acts they are liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
12. **Unforeseen Conditions or Occurrences:** If, during the performance of Services, any unforeseen hazardous substance, material, element, or constituent or other unforeseen conditions or occurrences are encountered which, in Consultant's judgment, significantly affects or may affect the Services, the risk involved in providing the Services, or the recommended Scope of Services, Consultant will promptly notify the Client. Subsequent to that notification, Consultant may: (a) if practicable, in Consultant's judgment and with approval of Client, complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; (b) Agree with Client to modify the Scope of Services and the estimate of charges to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated into this Agreement; or (c) Terminate the Services effective on the date of notification pursuant to the terms of Termination for Convenience set forth herein.

13. **Dispute Resolution:**

(a) **Mediation:** In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and the Consultant agree that all disputes between them arising out of or relating to this Agreement, or the Project shall be submitted to mediation. The Client and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution among the parties to all those agreements.

(b) **Arbitration:** If the dispute is not resolved after such mediation, the dispute shall be submitted to binding arbitration in the jurisdiction where the dispute arises in accordance with the South Carolina Uniform Arbitration Act. If the parties cannot agree on an Arbitrator, the arbitration shall be administered by the American Arbitration Association using the rules of Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time of the initiation of the arbitration. The decision of such arbitrator shall be final and enforceable in any court having jurisdiction. This agreement to arbitration shall survive termination of the contract.

14. **Breaches:** Consultant is fully responsible, in contract and tort, for the performance of the Work that its subconsultants, and employees, and other persons perform. In the event of any breach by Consultant of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against the Client, Owner, or the premises upon which the Work was performed, which claim or lien arises out of the Consultant's performance of this Agreement, the Client shall have the right to retain out of any payments due or to become due to the Consultant an amount sufficient to completely protect the Client from any and all loss, damage, or expense therefrom.15. **Termination by the Client for Cause:** The Client may terminate this Agreement if the Client determines in its discretion that the Consultant:

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to SubConsultants for materials or labor in accordance with the respective agreements between the Consultant and the SubConsultants;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders or other requirements of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

When any of the above reasons exists, the Client may, without prejudice to any other remedy the Client may have, and after giving the Consultant seven days' written notice, terminate the Agreement and take possession of the site and may finish the Work by whatever reasonable method the Client may deem expedient. When the Client terminates the Contract for one of the reasons stated above, the Consultant shall not be entitled to receive further payment other than any amounts already approved as being due and owing, by Consultant pursuant to Section 7(c) and Section 13 of this Contract. Upon termination, Client may withhold funds it deems sufficient to ensure all obligations of Consultant, including obligations of warranty, can be satisfied.

16. **Termination by the Client for Convenience:** The Client, at any time, may terminate this Agreement as a matter of convenience for an ongoing project or future projects. In the event the Client terminates this Agreement for convenience, Consultant shall be entitled to payment for work performed up to the date of termination.17. **Termination by Consultant:** Consultant has the right to terminate the Agreement as a matter of convenience or as a result of the Client's breach of its payment obligations under this Agreement provided thirty (30) days written notice is given to the Client of Consultant's intent to terminate, whether as to future or ongoing projects.

18. **Limitation of Liability:** In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims (including claims by third parties), losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, exclusive of attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed the amount of insurance proceeds available to the Consultant for the claim at issue at the time of settlement or final judgment. It is intended that this limitation apply to any and all liability or cause of action, including without limitation active and passive negligence, however alleged or arising, unless otherwise prohibited by law. The Client specifically agrees that it has had the opportunity to negotiate this Limitation of Liability clause and to accept or reject its inclusion herein.
19. **Miscellaneous:**
- The agreement does not give exclusive rights to Consultant to work with Client. Client may create agreements with other parties in the same trade without affecting the Agreement.
- The Agreement shall be governed by and interpreted in accordance with applicable laws of the state of South Carolina.
 - The Agreement is the entire agreement between the parties and can only be modified or amended in writing.
 - No representation, promise or inducement not included in the Agreement is relied upon or shall be binding upon either party.
 - Notices required in the Agreement shall be in writing to the other party at the address of such party set forth above and shall be given in person by overnight delivery service prepaid, by facsimile, or by certified mail, return receipt requested. Such notice shall be deemed given when received at such address.
 - Each provision of the Agreement is severable from every other provision. If any provision is determined to be unenforceable, the rest of the Agreement shall remain valid and enforceable.
 - All plans, drawings and specifications provided by Client to Consultant shall remain the property of Client.
 - The term "including," shall mean, including but not limited to the specific item or matter mention
20. **Certification:** Consultant certifies that it: (a) has read the Agreement and understands it; (b) has the skills and qualifications necessary to perform the Work in accordance with the Agreement, and to otherwise comply with the Agreement; (c) has all licenses, registrations and similar governmental authorizations necessary to perform the Work and to comply with the Agreement; (d) is familiar with all of the Construction Standards and applicable laws, rules, regulations, codes, documents and other matters mentioned in the Agreement; and (e) has the authority to sign the Agreement. The individual signing on behalf of Consultant represents and certifies that he is authorized to sign this Agreement on behalf of Consultant.

 Consultant

 Client

Master Professional Services Agreement – Rev. 9.22.21

The undersigned below affirms by execution of this Agreement it is authorized to enter into this Agreement and bind its respective company to the obligations, terms, and conditions herein.

CLIENT COMPANY NAME:

Levi Grantham, LLC

By: Joseph Gallagher

Print Name: JOE GALLAGHER

Title: LAND DEVELOPMENT MANAGER

Date: 5 / 22 / 2022

CONSULTANT COMPANY NAME:

Icon Custom Masonry Inc.

By: James McCarthy

Print Name:

James W McCarthy

Title: President

Date: 5 / 22 / 2022

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James McCarthy Consultant

_____ Client

Master Professional Services Agreement – Rev. 9.22.21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S OFFER OF
v.	)	SETTLEMENT
	)	
The Settlement, LLC and Levi Grantham,	)	
LLC	)	
	)	
Defendants.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that, pursuant to S.C. Code Ann. § 29-5-10(b), Plaintiff Icon Custom Masonry, Inc. hereby offers to accept the sum of \$127,750.00 (exclusive of interest and costs) from The Settlement, LLC and/or Levi Grantham, LLC to settle the above-captioned lien foreclosure action in full, including all of Plaintiffs' claims set forth in this action and in arbitration. Plaintiff asserts that if it is the prevailing party in this action as defined by S.C. Code Ann. § 29-5-10(b), then it will seek all available remedies as allowed thereunder.

Respectfully submitted,

s/Bryan P. Kelley

Bryan P. Kelley (S.C. Bar No. 76062)
 Elmore Goldsmith Kelley & deHoll, P.A.
 19 Blair Street (29607)
 Post Office Box 1887
 Greenville, South Carolina 29602
 Telephone: (864) 255-9500
 Facsimile: (864) 255-9505
 bkelley@elmoregoldsmith.com
Attorney for Plaintiff

November 6, 2024
 Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	DEFENDANTS' OFFER OF
The Settlement, LLC and Levi Grantham,	)	SETTLEMENT
LLC.	)	
	)	
Defendants.	)	

Defendants, The Settlement, LLC and Levi Grantham, LLC (“Defendants”) by and through their undersigned attorneys, reject the OFFER OF SETTLEMENT filed by Plaintiff on November 6, 2024.

Pursuant to Section 29-5-10(b) and/or 29-5-20(c) of the Code of Laws of South Carolina, Defendants, The Settlement, LLC and/ Levi Grantham, by and through their undersigned counsel make an OFFER OF SETTLEMENT in the amount of NINETY THOUSAND and 00/100 DOLLARS (\$90,000.00), exclusive of interest and costs, to settle the above-captioned lien foreclosure action in full, including all of Plaintiff’s claims set forth in this action and in arbitration.

Pursuant to Section 29-5-10(b) and/or 29-5-20(c) of the Code of Laws of South Carolina, this offer is considered rejected unless an acceptance in writing is filed by Plaintiff and served on Defendants, or their counsel five (5) days before the date this case is scheduled for trial on November 25, 2024. If this offer is rejected, it may not be referred to for any purpose at the trial and/or arbitration of this case and may be considered by the Arbitrator solely for the purpose of awarding costs and litigation expenses under Section 29-5-10 and/or Section 29-5-20.

Defendants assert that if Defendants are the prevailing party in this action as defined by S.C. Code Ann. § 29-5-10(b) and/or S.C. Code Ann. § 29-5-20, the Defendants will seek all available remedies allowed thereunder.

ROSEN HAGOOD, LLC

By: s/James A. Bruorton IV
James A. Bruorton, IV
Taylor B. Ambrosius
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 577-6726
cbruorton@rosenhagood.com
tambrosius@rosenhagood.com

November 13, 2024

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CA. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.,	)	
	)	
Plaintiff,	)	MOTION TO CONFIRM
	)	ARBITRATION AWARD
v.	)	
	)	
The Settlement, LLC and Levi Grantham,	)	
LLC	)	
	)	
Defendants.	)	

COMES NOW Plaintiff Icon Custom Masonry, Inc. (“Icon”), by and through its undersigned counsel and pursuant to S.C. Code Ann. § 15-48-120 of the South Carolina Uniform Arbitration Act, and hereby moves for confirmation of an arbitration award. This Motion is based on the record, any arguments that may be raised in a subsequent memorandum of law, and the grounds set forth below:

1. On December 20, 2023, this Court entered an Order staying this litigation and compelling arbitration between Icon and Respondents The Settlement, LLC and Levi Grantham, LLC (collectively “Respondents”).

2. Icon and Respondents thereafter proceeded to arbitration in accordance with this Court’s Order and the parties’ arbitration agreement. The arbitration proceeding was administered by the American Arbitration Association and was assigned AAA Case No. 01-24-0005-8744.

3. On February 28, 2025, a Final Award of the Arbitrator (the “Award”) was issued in favor of Icon against Respondents in the amount of \$245,157.94.

4. The arbitration was conducted in accordance with the AAA Construction Industry Arbitration Rules, and the Award was rendered in compliance with these rules.

5. The Award adjudicated the claims and counterclaims asserted between Icon and Respondents, finding in favor of Icon and awarding damages, attorney's fees, costs, interest, and any other relief deemed appropriate by the arbitrator.

6. No grounds exist to vacate, modify or correct the Award. The Award remains in full force and effect.

7. Icon is entitled to an order confirming the Award and to entry of judgment thereon. S.C. Code Ann. §§ 15-48-120, -150, -160.

8. A copy of the Award is attached hereto as Exhibit "A" and incorporated herein by reference.

WHEREFORE, based upon the foregoing, Plaintiff Icon Custom Masonry, Inc. respectfully requests that this Court:

- a. issue and order confirming the arbitration Award;
- b. enter judgment on the Award in favor of Icon Custom Masonry, Inc. and against Respondents The Settlement, LLC and Levi Grantham, LLC;
- c. award Icon Custom Masonry, Inc. its reasonable attorney's fees, costs and expenses incurred in bringing this Motion pursuant to S.C. Code Ann. §§ 29-5-10 and 27-1-15 pursuant to the Award; and
- d. grant such other and further relief as this Court deems just and proper.

THIS SPACE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE ATTACHED.

Respectfully submitted,

s/Bryan P. Kelley

Bryan P. Kelley (SC Bar No. 76062)
Elmore Goldsmith Kelley and deHoll, P.A.
19 Blair Street (29607)
Post Office Box 1887
Greenville, South Carolina 29602
Telephone: (864) 255-9500
Facsimile: (864) 255-9505
bkelley@elmoregoldsmith.com
Counsel for Icon Custom Masonry, Inc.

March 12, 2025
Greenville, South Carolina

EXHIBIT A

**AMERICAN ARBITRATION ASSOCIATION
Construction Industry Arbitration Tribunal**

In the Matter of the Arbitration between

Case Number: 01-24-0005-8744

Icon Custom Masonry, Inc.,
Claimant

-vs-

Levi Grantham, LLC and The Settlement, LLC,
Respondents

FINAL AWARD OF THE ARBITRATOR

I, Franklin J. Smith, Jr., THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named parties (Claimant represented by Bryan P. Kelley, Esq. of Elmore Goldsmith Kelley and deHoll, P.A; Respondents represented by James A. Bruorton IV, Esq. and Taylor B. Ambrosius, Esq. of Rosen Hagood, LLC), and dated May 22, 2022, and having been duly sworn, and having duly heard the proofs and allegations of the parties at the evidentiary hearing held on November 25 and 26, 2024, and having previously issued the INTERIM AWARD on December 20, 2024, and having reviewed the parties' post-hearing submissions on attorneys' fees, interest, and costs, do hereby issue this FINAL AWARD as follows:

The INTERIM AWARD reserved each party's rights relating to interest, attorneys' fees, and costs. After issuance of the INTERIM AWARD, both parties claimed to be the prevailing party under the mechanic's lien cause of action. Additionally, Respondents claimed that Claimant was not entitled to recovery under SC Code Ann 27-1-15.

On December 30, 2024, Respondents submitted a request for clarification/modification of the Interim Award. On January 8, 2025, Claimant submitted its reply to Respondents' request for clarification/modification of the Interim Award. On January 10, 2025, an Order was issued denying Respondents' request for clarification/modification of the Interim Award.

An Order was issued on February 3, 2025, finding that Claimant was the prevailing party under the mechanic's lien cause of action and was entitled to recover under SC Code Ann 27-1-15.

On February 14, 2025, Respondents submitted its brief on Claimant's request for attorney's fees and costs. On February 21, 2025, Claimant submitted its reply to Respondents' brief on attorney's fees and costs. Claimant's reply included detailed invoices of all attorney's fees and costs sought by Claimant.

1. ATTORNEY'S FEES AND COSTS

As the prevailing party under the mechanic's lien claim, Claimant is entitled to recover reasonable

attorney's fees and costs against The Settlement, LLC relating to the lien claim. Claimant also asserted other causes of actions; therefore, Claimant is not entitled to recover for all its attorney's fees under the mechanic's lien claim. However, Claimant prevailed on its SC Code Ann 27-1-15 claim against both Respondents; therefore, it is entitled to recover from both Respondents all reasonable attorney's fees incurred from the date of the SC Code Ann 27-1-15 demand which was made on December 13, 2022.

In determining the reasonable attorney's fees, I deducted amounts for attorney's fees incurred before December 13, 2022, attorney's fees related to the failed attempt to contest the motion to compel arbitration and attorney's fees related to licensing issues in other states which I find to be unrelated. Based on my review of the detailed invoices and these deduction categories, I find that the reasonable attorney's fees are **\$64,736.50** (\$73,797.50 – \$9,061.00). I find that Icon Custom Masonry, Inc., incurred reasonable costs of **\$17,001.90** (\$14,606.82 in arbitration costs and \$2,395.08 in costs listed on Claimant's Summary of Attorney's Fees and Costs - Exhibit 1).

2. INTEREST

"The law has long allowed pre-judgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty." *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258. S.C. Code Ann. § 34-31-20(A) provides that "in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest" at the legal rate of 8.75%. However, parties are free to agree to higher interest rates within legal limits. *Butler Contracting*, 369 S.C. at 134, 631 S.E.2d at 259; *Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC*, 372 S.C. 89, 99, 641 S.E.2d 459, 464.

In this case, the interest rate is governed by the contract. The Master Professional Services Agreement, Section 8.a provides: "Payment is due within thirty (30) days, unless otherwise agreed to in writing prior to the submittal of the invoice. Past due amounts are subject to a late fee of one and one-half percent interest per month." Additionally, each of Claimant's invoices provide: "If balance is not paid by due date, a finance charge of 1.5% will be added to the outstanding balance each month until account is paid in full."

The INTERIM AWARD determined that Claimant was due \$114,157.04 as of October 6, 2022. Based on a rate of 18% per annum, this amount has accrued and continues to accrue interest of \$56.30 per day. As of February 28, 2025, the interest that has accrued since October 6, 2022, totals **\$49,262.50**.

3. FINAL AWARD

As the prevailing party, Icon Custom Masonry, Inc., is entitled to recover interest on the INTERIM AWARD amount and reasonable attorney's fees and costs. I find that the interest amount is \$49,262.50; reasonable attorney's fees are \$64,736.50; and costs are \$17,001.90.

Accordingly, Icon Custom Masonry, Inc., is awarded the following amounts against the Respondents:

INTERIM AWARD amount	\$114,157.04
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Interest on INTERIM AWARD	\$49,262.50
Attorney's Fees	\$64,736.50
<u>Costs</u>	<u>\$17,001.90</u>
TOTAL FINAL AWARD	\$245,157.94

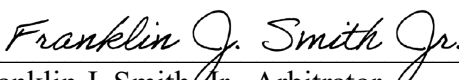
The administrative fees of the American Arbitration Association totaling \$6,250.00 and the compensation and expenses of the arbitrator totaling \$8,356.82 are to be borne by Respondents, and this amount is included in the costs listed above. Therefore, Respondents shall reimburse Claimant the total sum of \$14,606.82 representing that portion of the fees previously incurred and paid by Claimant.

The total award of \$245,157.94 shall be paid to Claimant by Respondents within thirty (30) days of the date of this Final Award.

This Final Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby DENIED.

I, the Undersigned Arbitrator, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

February 28, 2025



Franklin J. Smith, Jr., Arbitrator

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' MOTION TO VACATE,
	)	OR IN THE ALTERNATIVE, MODIFY
The Settlement, LLC and	)	OR CORRECT ARBITRATION AWARD
Levi Grantham, LLC,	)	
	)	
Defendants.	)	
	)	

TO: PLAINTFF ABOVE-NAMED AND ITS COUNSEL OF RECORD

COME NOW, Defendants The Settlement, LLC and Levi Grantham, LLC (“Defendants”) by and through their undersigned attorneys, moving to vacate, or in the alternative, modify or correct the Final Arbitration Award issued February 28, 2025, by Franklin J. Smith, Jr. (the “Arbitrator”), which counsel received on said date from the American Arbitration Association, pursuant to S.C. Code Ann. §§ 15-48-130 and 15-48-140. The Final Award should be vacated because (a) the Arbitrator’s award shows a manifest disregard or perverse misconstruction of the law, and (b) the Final Award consisted of computational errors.

BACKGROUND OF RELEVANT FACTS

This dispute arises from a contract between Icon Custom Masonry, Inc. (“Plaintiff”) and Levi Grantham, LLC (“Levi Grantham”) for construction work at a development known as The Settlement in Simpsonville, South Carolina, owned by The Settlement, LLC (“Settlement”). Defendant authorized Plaintiff to construct five wayfinding monument columns at a price of \$29,850.00 each, plus additional related charges. However, disputes emerged regarding the agreed-upon costs, the percentage of work completed, and the legitimacy of Plaintiff’s billing.

Consequently, Levi Grantham withheld payment for incomplete work, as permitted under the contract. In September 2022, Plaintiff abandoned the project after partially completing work on only four columns. Levi Grantham subsequently hired third-party contractors to complete the fourth column, and the fifth column was never constructed.

Plaintiff later filed a mechanic's lien, which Levi Grantham contested as invalid, leading to the posting of a Surety Bond. Plaintiff then initiated this lawsuit to foreclose on the mechanic's lien and sought recovery under various causes of action, including breach of contract and quantum meruit. The matter was ultimately compelled into arbitration. During arbitration, Defendants argued that Plaintiff's claims were meritless, as Plaintiff had neither completed the work as billed nor conferred the claimed benefits. Plaintiff contended it was owed \$153,445.00 for the work performed, which included \$116,437.50 for 75% completion of the monument columns, \$25,507.50 for materials stored offsite, and \$11,500.00 for engineering fees, permitting service fees, and permitting allowance fees for the barn structure.

According to the Arbitrator's Interim Award (**Exhibit A**), the parties had not contracted for work relating to the barn structure, and therefore, the \$11,500.00 in fees related to that work was excluded from the Interim Award. However, the Arbitrator found that Levi Grantham had agreed to pay Plaintiff \$29,850.00 per monument and had approved the addition of \$3,000.00 for permitting and engineering fees to the contract, bringing the total contract amount to \$152,250.00 for five columns. **Exhibit A**.

It was undisputed that Plaintiff had only worked on four wayfinding monument columns. **Exhibit A**, pg. 5. The Arbitrator's Interim Award states, "There is a general agreement that the percentage completion of this work [concerning the four columns] was 75% to 80% [Plaintiff] billed for 75%." *Id.* The Arbitrator ultimately determined via the Interim Award that Plaintiff was

entitled to payment for the work performed based on the accepted contract price, valuing the work on the four monuments at \$119,400.00 by multiplying the per-column price of \$29,850.00 by four. The Arbitrator further ruled, “Since Levi Grantham testified that it incurred \$12,242.96 to complete the 4 monuments ...[,] [Plaintiff] is entitled to recover \$107,157.04 for its ‘benefit of the bargain.’” *Id.* at 6. Additionally, the Arbitrator awarded Plaintiff compensation for work and materials related to the fifth monument, despite it never being constructed, as well as permitting and engineering fees relating to it. The Interim Award states: “[Plaintiff] had performed all permitting and engineering for all five monuments, which was valued at \$3,000 in the agreement, and had placed materials on site for the fifth monument valued at \$4,000.00.” *Id.* Accordingly, the Arbitrator awarded Plaintiff \$7,000.00 for this work, bringing the total amount awarded in the Interim Award to \$114,157.04. It is critical to note the fifth column was never constructed, nor did Defendants or its replacement contractor ever use the materials that were intended for the fifth column.

Defendants subsequently filed a Motion for Clarification/Modification, arguing, among other things, that the damages awarded under the mechanic’s lien cause of action improperly included non-lienable materials for the fifth column and the awarded amount should have been reduced accordingly. In response, the Arbitrator issued an Order, acknowledging that he was prohibited from reevaluating the merits but clarifying that Plaintiff had “provided labor and materials [concerning the permitting and engineering] for five monuments valued at \$3,000.00” and that “[m]aterials for the fifth monument were delivered to the site and were valued at \$4,000.” **Exhibit B**, pg. 3. The Arbitrator emphasized that only materials delivered to the site were included in the Interim Award.

Based on these two orders and in considering briefs subsequently submitted by the parties, the Arbitrator determined that Plaintiff was the prevailing party under the mechanic's lien statute. See **Exhibit C** (Order on Prevailing Party). Per Defendants' brief prior to the Order on Prevailing Party, Defendants argued that Plaintiff was not the prevailing party because its offer of settlement was made under the "Contractor Lien" statute, S.C. Code Ann. § 29-5-10, rather than the "Subcontractor Lien" statute, S.C. Code Ann. § 29-5-20. Defendants contended that Plaintiff had contracted with someone other than the owner or its agent (i.e., the property was owned by The Settlement, and Plaintiff contracted with Levi Grantham) and that, because strict compliance with the mechanic's lien statute is required, Plaintiff's citation to the incorrect statute ultimately rendered its offer of settlement the full amount prayed for in the complaint, \$153,445.00, not the \$127,750.00 in its invalid offer of settlement. See **Exhibit D** (Plaintiff's Offer of Settlement). As a result, Defendants argued that since the award was \$114,157.04, and their offer of settlement was \$90,000.00 (see **Exhibit E**), they were closer to the award and thus the prevailing party under the statute. The Arbitrator rejected this argument, finding that Levi Grantham was in an "ownership role" for the property with The Settlement, making Plaintiff a mechanic or supplier that had dealt directly with the owner. **Exhibit C**, pg. 2. Thus, the Arbitrator determined that S.C. Code Ann. § 29-5-10 applied, Plaintiff's offer of settlement in the amount of \$127,750.00 was valid, and Plaintiff was the prevailing party entitled to attorney's fees and costs under the statute. *Id.*

Pursuant to the same order, the Arbitrator further ruled that Defendants were liable for Plaintiff's attorney's fees under S.C. Code Ann. § 27-1-15, concluding that Defendants had failed to comply with the statute. *Id.* Defendants then submitted a memorandum opposing Plaintiff's Affidavits of Attorney's Fees and Costs, arguing that the fees sought were unjustifiable and

excessive. Defendants asserted that the *Jackson* factors did not support the amount of attorney's fees Plaintiff sought. Plaintiff thereafter provided a breakdown of legal work performed by its attorney and supporting staff, and the Arbitrator ultimately awarded Plaintiff \$64,736.50 in fees pursuant to his Final Award issued on February 28, 2025. **Exhibit F.**

Per the Final Award, Plaintiff was awarded a total of \$245,157.94, which included \$114,157.04 from the Interim Award, \$49,262.50 in interest, \$64,736.50 in attorney's fees, and \$17,001.90 in costs. *Id.* at 3-4. Defendants now seek to vacate, or alternatively modify or correct, the Final Award on the grounds that the Arbitrator included amounts that were not lienable, miscalculated the Interim Award, improperly determined Plaintiff as the prevailing party under the mechanic's lien statute and therefore improperly awarded Plaintiff costs, and awarded an excessive and unreasonable amount in attorney's fees. Thus, in issuing the Final Award, the Arbitrator exceeded his powers, miscalculated figures, and exhibited a manifest disregard or perverse misconstruction of the law.

LEGAL ANALYSIS

The Uniform Arbitration Act provides statutory grounds for vacating, modifying, or correcting an arbitrator's award under S.C. Code Ann. §§ 15-48-130 and 15-48-140. Specifically, S.C. Code Ann. § 15-48-130, concerning vacating an award, provides:

- (a) Upon application of a party, the court shall vacate an award where:
 - (1) The award was procured by corruption, fraud or other undue means;
 - (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
 - (3) The arbitrators exceeded their powers;**
 - (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the

controversy or otherwise so conducted the hearing, contrary to the provisions of Section 15-48-50, as to prejudice substantially the rights of a party; or

- (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 15-48-20 and the party did not participate in the arbitration hearing without raising the objection.

(emphasis added). Additionally, S.C. Code Ann. § 15-48-140, concerning modification or correction of an award, provides:

- (a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

- (1) **There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;**

- (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

- (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(emphasis added).

Absent one of these grounds, an arbitration award may only be vacated or amended based on the non-statutory ground of “manifest disregard or perverse misconstruction of the law by the arbitrator.” *See Weimer v. Jones*, 364 S.C. 78, 80, 610 S.E.2d 850, 852 (Ct. App. 2005); *Lauro v. Visnapuu*, 351 S.C. 507, 516, 570 S.E.2d 551, 556 (Ct. App. 2002). The term “disregard” “implies the arbitrator appreciates the existence of a clearly governing legal principle but decides to ignore or pay no attention to it.” *Lauro v. Visnapuu*, 351 S.C. 507, 570 S.E.2d 551 (Ct. App. 2002) (Hearn, C.J. concurring). “[M]anifest disregard of the law occurs when the arbitrator knew of a governing legal principle yet refused to apply it, and the law disregarded was well defined, explicit, and clearly applicable to the case.” *Weimer*, 364 S.C. at 80, 610 S.E.2d at 852, citing *Bazzle v. Green*

Tree Fin. Corp., 351 S.C. 244, 268, 569 S.E.2d 349, 361 (2002), *vacated and remanded on other grounds*, 539 U.S. 444, 123 S.Ct. 2402, 156 L.E.2d 414 (2003). Courts have not hesitated in appropriate cases to vacate an arbitration award where there is a manifest disregard or perverse misconstruction of the law. *See Trident Tech. Coll. v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 108–09, 333 S.E.2d 781, 787 (1985); *Harris v. Bennett*, 332 S.C. 238, 244, 503 S.E.2d 782, 786 (Ct. App. 1998).

I. The mechanic’s lien includes amounts not lienable under South Carolina law.

Defendants brought to the Arbitrator’s attention that the Interim Award includes amounts not lienable under South Carolina law. Despite this, the Arbitrator’s Final Award includes those amounts. S.C. Code Ann. § 29-5-10 states, “A person to whom a debt is due for labor performed or furnished or for materials furnished and *actually used* in the erection, alteration, or repair of a building or structure upon real estate . . . shall have a lien upon the building or structure[.]” (emphasis added). The \$114,157.04 awarded to Plaintiff via the Interim Award includes \$7,000 for “permitting and engineering for all five monuments which was valued at \$3,000 in the agreement[, and Plaintiff] had placed materials on site for the fifth monument valued at \$4,000.00.” **Exhibit A**, pg. 6. However, the fifth monument was never constructed, and therefore, not all of the permitting and engineering fees, and the \$4,000 worth of materials delivered to the site were never actually used at the property. Thus, regarding the \$3,000 in permitting and engineering fees for all five columns, only \$2,400 relates to four columns. Defendants never benefited from anything Plaintiff alleges to have done to the fifth column. Therefore, the award should have excluded the \$4,000 for materials, as well as the \$600.00 attributed to permitting and engineering fees for the fifth column, resulting in a total improper inclusion of \$4,600.00 to

Plaintiff. As a result, before considering the below arguments for further deductions to the Interim Award, the Interim Award should have instead been \$109,557.04.

Including these amounts in the Interim Award is a complete manifest disregard of the law, which requires the materials to actually be used or incorporated into the property for it to be lienable. *See Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020), *aff'd as modified*, 440 S.C. 456, 892 S.E.2d 297 (2023) (analyzing “actual use” requirement under the mechanic’s lien statute and finding contractor failed to show materials were actually used in property owner’s home) (quoting 22 S.C. Jur. Mechanics’ Liens § 14 (2020) (“Any material supplied for improving real estate by the erection of a building or structure ordinarily gives rise to a mechanics’ lien. Materials must, of course, be incorporated into the structure or become fixtures”)); *Nat’l Loan & Exch. Bank of Columbia v. Argo Dev. Co.*, 141 S.C. 72, 139 S.E. 183, 186 (1927) (“The mere furnishing of such material with the intention that it should be used in the erection of houses on the property is not enough to meet the requirements of the mechanic’s lien statute. There must also appear the use of the material in the erection or repair of some building or structure on the identical property against which the lien is claimed.”).

II. The Arbitrator miscalculated the final award.

The Arbitrator also erred in calculating the interim award of \$114,157.04 by incorrectly assessing damages based on the full contract price for four completed columns at \$29,850.00 each, totaling \$119,400.00, even though Plaintiff had only completed 75% of the four columns. Plaintiff’s compensation should be limited to the value of the work actually performed – 75% of \$119,400, which equals \$89,550.00. Instead, the arbitrator awarded Plaintiff the full contract amount for four columns and only deducted Defendant’s completion costs (\$12,242.96), resulting

in an inflated award of \$107,157.04, before improperly adding the \$7,000 for permitting, engineering, and materials relating to the fifth column.

This approach is fundamentally flawed because Plaintiff was never entitled to the full contract price in the first place. Defendant's cost to complete the remaining 25% of work to the fourth column is a separate expense and should not be factored into Plaintiff's recovery. The proper calculation is straightforward: Plaintiff should be awarded only the value of the work performed, \$89,550.00. The arbitrator's miscalculation unjustly enriches Plaintiff and warrants vacating or modifying the award. Furthermore, given the argument that the Arbitrator improperly included non-lienable amounts in the Interim Award – amounts from which Defendants derived no benefit – the award should have been \$89,550.00. Additionally, after removing the improperly included \$4,600.00 from this amount, the correct total for the interim award is \$84,950.00.

III. Defendants, not Plaintiff, are the prevailing parties under the mechanic's lien statute.

The Arbitrator improperly determined that Plaintiff was the prevailing party, a conclusion that is erroneous due to both the miscalculations outlined above and Plaintiff's citation to the incorrect statute in its Offer of Settlement, which rendered its offer of settlement the full \$153,445.00 prayed for in its complaint.

a. Miscalculations

In the event Plaintiff made a valid offer of settlement, it offered \$127,750.00. **Exhibit D.** Defendants' offer of settlement was \$90,000.00. **Exhibit E.** As set forth above, the Arbitrator miscalculated the Interim Award, which should have instead been \$84,950.00. Defendants' offer of settlement is \$5,050.00 away from the Interim Award, whereas Plaintiff was \$42,800.00 away. Therefore, Defendants' offer of settlement was closer, making it the prevailing party under the mechanic's lien statute. As a result, Defendants are the ones entitled to attorney's fees and costs

under the mechanic's liens statute. Therefore, the Final Award improperly awarded Plaintiff the \$64,736.50 in attorney's fees and \$17,001.90 in costs. Thus, an additional \$81,738.40 should be deducted from the Final Award.

b. Applicable Mechanic's Lien Statute

Alternatively, where the Arbitrator correctly calculated the Interim Award, which is denied, Defendants remain the prevailing party under the applicable mechanic's lien statute. "The South Carolina Mechanic's Lien Statute recognizes two types of liens — Section 29–5–10 affords a lien to the mechanic or supplier who deals directly with the owner, while Section 29–5–20 is designed to protect the mechanic or supplier who deals with a general contractor or some person other than the owner or his agent." *T.W. Morton Builders, Inc. v. von Buedingen*, 316 S.C. 388, 400, 450 S.E.2d 87, 94 (Ct. App. 1994). Here, Plaintiff did not deal directly with the owner of the development, The Settlement, LLC. See **Exhibit G** (real property report showing The Settlement, LLC is the owner). Instead, Plaintiff dealt with Levi Grantham, LLC, who is an entity other than the owner of the property or its agent, and therefore, S.C. Code § 29-5-20 applies. See *e.g.*, **Exhibit H** (contract between Plaintiff and Levi Grantham). The Arbitrator's finding via its Order on Prevailing Party is a manifest disregard of the law on this, improperly implicating Levi Grantham as an "owner" of the property.

Under S.C. Code Ann. § 29-5-20, either party may file and serve on the other party an offer of settlement, and within ten (10) days thereafter the party served may respond by filing and serving an offer of settlement. It further provides that the "offer shall state that it is *made under this section* and specify the amount, exclusive of interest and costs, which the party serving the offer is willing to agree constitutes a settlement of the lien." S.C. Code Ann. § 29-5-20 (emphasis added). The mechanic's lien statute must be strictly construed, and we are not a liberty to depart

from the plain meaning of the mechanic's lien's statutory language. See *Clo-Car Trucking Co., Inc. v. Cliffure Estates of South Carolina, Inc.*, 282 S.C. 573, 320 S.E.2d 51 (Ct. App. 1984). Lastly, the Mechanics Lien Statute further provides that "[i]f the plaintiff makes no written offer of settlement, the amount prayed for in his complaint is considered to be his final offer of settlement." S.C. Code Ann. § 29-5-20.

Here, Plaintiff's November 6, 2024, offer of settlement states that it is made pursuant to S.C. Code Ann. § 29-5-10(b) and makes no reference to S.C. Code Ann. § 29-5-20. See **Exhibit D**. Given that S.C. Code Ann. § 29-5-20 is the applicable statute, which is subject to strict interpretation and mandates that offers of settlement explicitly state their intention of such *under this section*, Plaintiff's Offer of Settlement is invalid. See *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 391, 483 S.E.2d 775, 779 (Ct. App. 1997) ("definition of 'prevailing party' found in statute intended to foster settlement was not applicable for purpose of attorney fee award, where plaintiff's written settlement offer did not state it was made under that statute, it was not filed with the court, and no other written offers were made during course of proceedings). Therefore, Plaintiff is not found to have made a valid written offer of settlement, and the amount of \$153,445.00 prayed for in its complaint is its final offer of settlement.

In response to Plaintiff's invalid offer of settlement, Defendants properly filed their offer of settlement on November 13, 2024, proposing a resolution amount of \$90,000.00. See **Exhibit E**. The Interim Award awarded Claimant \$114,157.04. The difference between the Interim Award and Defendants' offer of settlement is \$39,287.96 (\$153,445.00 - \$114,157.04), whereas the difference between the Interim Award and Defendants' offer of settlement is \$24,157.04 (\$114,157.04 - \$90,000.00). Furthermore, Defendant's offer of settlement is blatantly closer to the proper calculation of the interim award, \$84,950.00. Given that Defendants' offer of settlement is

closer to the amount in the Interim Award, and also closer to the amount the Interim Award should have been, Defendants are the prevailing party and therefore entitled to recover their attorney's fees and costs, which the Arbitrator did not award.

IV. In the event Plaintiff is entitled to Attorney's Fees, which is denied, the Arbitrator awarded fees that were grossly excessive and not supported by the *Jackson* factors.

In the event it is found the Arbitrator properly awarded Plaintiff its attorney's fees, they should be reduced pursuant to a proper application of the *Jackson* factors, which the arbitrator did not fully consider. Specifically, the Final Award grants Plaintiff \$64,736.50 in attorney's fees. However, this amount is grossly excessive and unjustifiable.

The South Carolina Supreme Court has established a six-factor analysis in determining reasonable attorney's fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *See Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). Consideration should be given to all six factors; none of the factors is controlling. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989).

a. Customary legal fees for similar services

Notably, Plaintiff's legal fees far exceed those incurred by Defendants, despite the comparable scope of work performed. Prior to the preparation of their Memorandum in Opposition to Plaintiffs' Affidavits of Attorney's Fees, counsel for Defendants had incurred \$39,164.00 in legal fees, just over half of the amount billed by Plaintiff's counsel. Claimant's counsel previously attempted to justify these fees by citing costs associated with (1) defending against Defendants' motion to stay this action and compel the matter into arbitration, which the Arbitrator ultimately did not include in the Final Award, and (2) engaging in discovery with Defendants prior to the stay and order to compel arbitration. However, the discovery conducted was minimal, limited to

Plaintiff's written responses to Defendant's First Set of Interrogatories and First Requests for Production. Meanwhile, Defendants also incurred fees for prosecuting the motion to stay and compel arbitration, as well as for preparing the discovery requests to Plaintiff, costs that are already included in their total fees of \$39,164.00. Despite this, Defendants' legal fees remain significantly lower than those of Plaintiff, raising serious questions about the reasonableness and necessity of the fees claimed by Plaintiff's counsel. The Arbitrator did not take this into consideration in rendering the Final Award.

Furthermore, courts have recognized that a fee equal to one third of the total award is customary. *See e.g., Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998) (in awarding attorney's in unfair trade practice claim, the court awarded one third of the total damages although fee agreement provided for a fee 40% of any recovery). This also aligns with similar South Carolina statutes. *See e.g.,* S.C. Code Ann. § 38-59-40 (providing for attorney's fees where an insurer had refused to pay a claim in bad faith, but specifically limits fees to not exceed one-third of the amount of the judgment); S.C. Code Ann. § 42-1-560 (worker's compensation statute provides for recovery of attorney's fees in certain circumstances, which may not exceed one third of the total claim amount paid by the carrier to the injured employee). Therefore, per custom, if Plaintiff is entitled to an award of attorney's fees, which Defendants deny, they should be capped at the customary one-third of the amount of the interim award, which if properly calculated at \$114,157.04, would equal \$38,014.29, which is significantly closer to what Defendants' attorney's fees were. Moreover, because the Interim Award should have been \$84,950.00, an award of fees to Plaintiff in the amount of \$28,288.35 is more reasonable.

b. Plaintiff is not entitled to attorney's fees it did not actually pay

For attorney's fees to be recoverable, a party must have actually incurred the fees it seeks. This principle is tied to the "contingency of compensation" factor set forth in *Jackson*. "Contingency of Compensation" is not whether it is a contingency fee or hourly fee agreement; instead, "contingency" is to be considered as to whether a party on whose behalf services were rendered will be able to pay attorney's fees if an award is not made. *See Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991). Importantly, this factor requires a substantive evaluation of whether fees have been incurred.

Plaintiff's Affidavits of Attorneys' Fees and Costs make it clear that Claimant has not actually paid the fees it seeks to recover. The affidavits state only that Plaintiff "has been or will be invoiced." *See Exhibit I* (Aff. of Bryan Kelley, Esq., ¶ 8; Supplemental Aff. of Bryan Kelley, Esq., ¶ 6). This language suggests that the claimed fees were not yet incurred, making their recovery improper. Notably, the most recent invoice submitted to the Arbitrator dated February had a balance of \$49,677.51, inclusive of a prior balance of \$41,604.17. Prior invoices also included prior balances due, indicating Plaintiff had not been paying its fees.

Given there was evidence Plaintiff had not yet paid all of its fees at the time of the Final Award, which included the award of attorney's fees, the Arbitrator manifestly disregarded the law as he was only to award what was actually paid. Courts have previously reversed awards of attorney's fees where there was no evidence that the party seeking fees had incurred, paid, or even expected to be billed for the claimed costs. *See Blumberg v. Nealco, Inc.*, 307 S.C. 537, 538–39, 416 S.E.2d 211, 212 (Ct. App. 1992), *opinion modified on denial of reh'g* (Apr. 8, 1992), *aff'd as modified*, 310 S.C. 492, 427 S.E.2d 659 (1993) (holding that attorney's fees could not be awarded in the absence of evidence demonstrating the plaintiff had incurred or paid such costs).

Without such evidence and without the Arbitrator's review of such evidence, awarding attorney's fees was speculative and unsupported, thus a clear manifest disregard of the law that warrants vacation, modification, or correction of the Final Award.

CONCLUSION

For the reasons set forth here, the Final Arbitration Award should be vacated. In the event the Court does not vacate the Final Award, it should be modified or corrected as set forth herein. Defendants further request the Court to award the Defendants such other and further relief as the Court may deem just and proper. This motion will be further supported by the pleadings, records, and other documents filed or to be filed with the court.

ROSEN HAGOOD, LLC.

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ATTORNEYS FOR DEFENDANTS

April 1, 2025
Charleston, South Carolina



**AMERICAN ARBITRATION ASSOCIATION
Construction Industry Arbitration Tribunal**

In the Matter of the Arbitration between

Case Number: 01-24-0005-8744

Icon Custom Masonry, Inc.,
Claimant

-vs-

Levi Grantham, LLC and The Settlement, LLC,
Respondents

INTERIM AWARD

I, Franklin J Smith, Jr., THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named parties and dated May 22, 2022, and having been duly sworn, and having duly heard the proofs and allegations of the Parties at the evidentiary hearing held on November 25 and 26, 2024, do hereby issue this INTERIM AWARD as follows:

1. OPENING

a. Parties

Claimant, Icon Custom Masonry, Inc. ("Icon") is a specialty masonry contractor from Pineville, NC. Icon primarily performs community development and residential stonework in residential developments. Icon is represented by Bryan P. Kelley, Esquire of Elmore, Goldsmith, Kelley deHoll, P.A.

Respondent, The Settlement, LLC, ("Owner") is the owner of the subject property which is a residential development in Simpsonville, SC. The development is known as "The Settlement" (Project). Respondent, Levi Grantham, LLC ("Levi") is the developer of the Project. Respondents are represented by James A. Bruorton, IV Esquire and Taylor B. Ambrosius, Esquire of the Rosen Hagood, LLC.

b. Case Summary

This is a payment dispute relating to work performed by Claimant on the Project. The evidentiary hearing was held on November 25 and 26, 2024.

Claimant presented the following witnesses:

James McCarthy, Owner of Icon

Chris Lombardi, Employee of Icon

Respondents presented the following witnesses:

Joseph Gallagher, Land Development Manager for Levi

Jason “Jay” Harvey, Former Director of Land Development for Levi
 Kelly McGuinn, Former Division President of Crescent Homes, the parent company of Levi
 The parties jointly submitted 53 exhibits and agreed to admission of 5 exhibits during the hearing for a total of 58 exhibits.

c. Relief Sought

Claimant is seeking \$153,445.00 for obtaining permits and engineering services for a barn structure and five wayfinding monuments and the construction of the wayfinding monuments. Claimant did not construct the barn.

Respondents acknowledge that some amount is due Claimant for the work performed but assert that Claimant was not retained for any work relating to the barn and only partially performed work relating to the monuments. Further, Respondents contend that there are substantial setoffs based on the costs incurred to complete Claimant’s work.

d. Primary Issues

The primary issues relate to the scope of Claimant’s work, the amount owed for Claimant’s work and when that amount was due.

2. SUMMARY OF CLAIMS AND DEFENSES

a. Claimant’s claims and damages

Claimant contends that it was retained by Levi to obtain permits for a signage barn and five wayfinding sign monuments at the Project and later was retained to construct the five wayfinding monuments but not the signage barn. Levi contracted with Claimant for the permitting and installation of the monuments in late May 2022. Claimant began work in obtaining the permit and materials for the work. Actual work on site was performed from August 8 to August 18, 2022. Claimant contends that it is owed \$11,500.00 for obtaining a permit and engineering for the signage barn and \$142,035.00 for work related to the monuments.

Claimant asserted a mechanic’s lien claim for \$153,445.00 against the Owner; a breach of contract claim against Levi for \$153,445.00; and a quantum meruit claim against both Respondents. Claimant also seeks interest and attorney fees based on the mechanic’s lien statutes and SC Code Section 27-1-15.

b. Respondents’ defenses

Respondents contend that there was no contract with Claimant for anything related to the signage barn. Regarding the wayfinding sign monuments, Respondents acknowledge there was a contract for the installation of five monuments; however, Claimant only partially installed four wayfinding sign monuments and was not entitled to be paid any amount until the monuments were completed. Respondents assert that Claimant wrongfully abandoned the work and based on this wrongful action, Claimant is not entitled to recover anything on the breach of contract cause of action. Respondents concede that Claimant performed some work on the four monuments and contend that Claimant’s maximum recovery under the mechanic’s lien claim is between \$88,600.00 and \$89,550.00. Respondents seek attorney fees under the mechanic’s lien statutes.

3. SUMMARY OF FACTS

The relationship between Claimant and Respondents began in 2022. Claimant was performing work as a sub-subcontractor on the Tanner, a residential development owned by Levi. Jason “Jay” Harvey, Land Development Director for Levi, was involved in the Tanner project and asked Claimant if they were interested in quoting work on this Project. While performing work on the Tanner, Claimant began discussions with Jason “Jay” Harvey about doing work on this Project. Emails were exchanged between James “Jay” Harvey and James McCarthy, Owner of Icon, in the January to April 2022 timeframe regarding pricing work for the Project and obtaining permits.

James “Jay” Harvey left Levi in early April 2022 and Joe Gallagher, Land Development Manager for Levi, began corresponding with Claimant regarding the work. Gallagher sent a draft master contract to Claimant on May 19, 2022 and the contract was fully executed by James McCarthy and Joseph Gallagher on May 22, 2022.

On May 24, 2022, Claimant sent a proposal to Joseph Gallagher for various items of work on the Project including the signage barn and monuments. On May 25, 2022, Joseph Gallagher confirmed that they wanted Claimant to install the five monuments and indicated that he would let him know later about the rest of the work. On June 3, 2022, Alvin Johnson, Director of Land-South Carolina for Levi Grantham Group stated to Joseph Gallagher in an email “Icon Masonry is approved to install five wayfinding monument columns per the attached at a unit price of \$29,850.00 for a total of \$149,250.00”. Joseph Gallagher emailed James McCarthy “we are set to proceed with the five wayfinding monument columns.” James McCarthy asked Joseph Gallagher to sign and date the proposal but that was never done. On June 6, 2022, Alvin Johnson approved adding permitting and engineering fees to the contract and the contract amount increased to \$152,250.00.

Claimant began work to obtain permits and materials for the monuments. Claimant performed work on site from August 8 to August 18, 2022. When Claimant arrived on site, they were told that only four monuments could be started because there was a utility conflict on the fifth one that had to be resolved before they could start work.

When Claimant’s crew left the site on August 18, 2022, the four monuments were about 75% complete. The primary remaining work included installation of the signs and ceiling boxing. There were also some punch list items. Claimant testified that they expected the fifth monument to be installed soon and they intended to complete the four monuments when they came back to construct the fifth one.

On August 26, 2022, Claimant emailed an invoice to Levi for \$116,437.50, which represented 75% completion for the monuments and permitting and engineering costs. On September 16, 2022, Joseph Gallagher emailed James McCarthy requesting a breakdown on the unit price for the monuments because the Owner was “having trouble with the pricing”. Icon provided a breakdown that same day.

On September 23, 2022, Kelly McGuinn emailed James McCarthy indicating that he thought James McCarthy was “price gouging” them on the unit price and suggested that James McCarthy did not have a valid contract since there was no signed proposal or addendum, which was required under the terms of the master contract. Kelly McGuinn offered to pay \$19,000.00 per monument. James McCarthy replied the same day and rejected the offer. James McCarthy indicated that he could accept \$25,000.00 per monument and wanted to be paid before he continued the work. James McCarthy and

Kelly McGuinn continued discussions via phone and email but never reached an agreement. Icon refused to perform any further work because of the price dispute and failure of Levi to pay any amount for the work performed.

Claimant submitted two more invoices on October 20, 2022. One invoice was for \$11,500.00 representing the engineering and permit costs for the signage barn. The other invoice was for \$25,597.50, which James McCarthy contends, was for other work and stored materials for the fifth monument.

Respondents completed the installation of the four wayfinding monuments but decided not to construct the fifth monument.

Claimant filed a notice of mechanic's lien for \$153,445.00 on November 10, 2022.

Claimant sent a demand letter pursuant to SC Code Ann 27-1-15 on December 13, 2022. Respondents responded to the demand letter on January 27, 2023. Claimant filed its Demand for arbitration on June 7, 2024.

4. DISCUSSION

a. Scope of Work

Regarding the signage barn, there is no question that Claimant performed some work relating to the barn and obtained a permit for the barn; however, this work was done in anticipation of getting the work but Levi never awarded the barn work to Claimant. James McCarthy was dealing with Jason "Jay" Harvey in the January to April 2022 timeframe, and James "Jay" Harvey testified that the emails with James McCarthy about permits referred to the monument permits and he never authorized Claimant to procure any engineering services. While there was a reference to the barn in one email and Jason "Jay" Harvey was aware of James McCarthy performing some "legwork" for the barn, Jason "Jay" Harvey viewed this as preliminary work being performed in anticipation of getting the work. Further, there is no evidence that Respondents received any value from the work performed by Claimant on the barn. Respondents obtained the barn permit and never benefitted from any of the work Claimant performed relating to the barn.

Therefore, **I find that the evidence is insufficient to support a claim that Levi contracted with Claimant for the signage barn permitting.**

Regarding the wayfinding monuments, there is no question that Claimant and Levi contracted for the construction of five monuments. Levi agreed to pay Claimant \$29,850.00 per monument. This unit price was accepted by Levi without question and without any request for a breakdown. Joe Gallagher, Land Development Manager for Levi signed the Master Contract, exchanged emails relating to the proposal and confirmed approval with Alvin Johnson, Levi's Land Director. Therefore, as of May 26, 2022 and certainly by June 3, 2022, **Claimant had a written contract to install five monuments at \$29,850.00 each. Levi also approved adding permitting and engineering fees to the contract and the contract amount increased to \$152,250.00.**

b. Performance of the Work

It is undisputed that Claimant performed work on four wayfinding monuments. There is general agreement that the percentage completion of this work was 75% to 80%. Kelly McGuinn agreed that percentage completion was 75% to 80%. Claimant billed for 75%.

I also find that Claimant provided some materials for the fifth monument when they arrived on site to begin work. This is based on the testimony of James McCarthy and Chris Lombardi, employee of Icon. The signs for the fifth column were not brought to the site and were not ever provided to Levi.

c. Amount owed

In order to determine the amount owed to Claimant, it must be determined if the contract was breached by Claimant or Levi. **I find that Levi breached the contract by refusing to pay Claimant the agreed price of \$29,850.00 per monument.**

The only conclusion that can be reached based on the emails between James McCarthy and Kelly McGuinn and their testimony at the evidentiary hearing is that Kelly McGuinn decided he was not going to pay the agreed contract price because he thought it was “price gouging”. Based on that position, Kelly McGuinn deliberately tried to force Claimant to accept a lesser amount by suggesting that Claimant did not have a valid written addendum and was not entitled to payment yet because the work had not been completed.

Whether Icon was “price gouging” is not relevant. Icon and Levi agreed in writing on the unit price and Levi was stuck with that price. “It is the court’s duty to enforce a contract regardless of its wisdom or folly or apparent unreasonableness.” See *D.A. Davis Construction v Palmetto Properties, Inc.* 281 S.C. 415, 315 S.E.2d 370, 372 (1984)

The Claimant’s proposal and the email approvals from Levi satisfy the requirement that a proposal or addendum be added for work to be performed under the master contract. Therefore, Kelly McGuinn’s position that there was no contract due to a lack of a proposal or addendum is without merit. Further, his attempt to negotiate a new price after the price was accepted and the work had been partially performed violated the implied covenant of good faith and fair dealing in contracts. While Levi may have had a legitimate argument to not pay for the work performed because it was not complete, Levi did not have any legal reason to refuse to pay the agreed price and Levi’s attempt to renegotiate the price after the price had been accepted and work performed is the reason that a dispute arose. Once it was clear that Levi was not going to pay the agreed upon price, Claimant was justified in abandoning the project because Levi had breached the agreement. While there were discussions about Claimant leaving due to non-payment, those issues were the result of Levi trying to renegotiate the contract. Levi continued its lack of good faith and fair dealing when it refused to pay anything to Icon even though it admits that some amount is owed. Accordingly, I find that Levi breached the contract as of October 6, 2022, Claimant was not required to perform further work and was entitled to receive the benefit of the bargain it made in the contract.

Based on Levi’s breach of the contract, the provision for paying only for completed work was no longer applicable. The amount Levi owed for breaching the contract was owed as of October 6, 2022.

The bargain that Claimant made with Levi was that Claimant would be paid \$152,500.00 for five wayfinding monuments. Claimant performed some of the work but did not complete the work because Levi refused to honor the price agreement; thereby breaching the contract and excusing Claimant from completing the work. Therefore, Claimant is entitled to recover for the value of the

work it performed based on the price accepted by Levi. The value of the work on the four monuments is \$119,400.00. Since Levi testified that it incurred \$12,242.96 to complete the 4 monuments. (\$9,392.96 for signage and \$2,850.00 for punch list work.) Claimant is entitled to recover \$107,157.04 for its "benefit of the bargain". Further, Claimant is entitled to recover for the value of the work it performed on the fifth monument and for the permitting and engineering fees. Claimant had performed all permitting and engineering for all five monuments which was valued at \$3,000.00 in the agreement and had placed materials on site for the fifth monument valued at \$4,000.00. Therefore, Claimant is entitled to \$7,000.00 for this work.

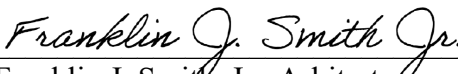
I find that the value of the labor and materials provided by Claimant is \$114,157.04 and Claimant is entitled to recover this amount under both the mechanic's lien and breach of contract actions.

5. INTERIM AWARD

Claimant's claim is GRANTED on the mechanic's lien and breach of contract causes of action and it is awarded \$114,157.04 against the Respondents. The quantum meruit claim is DENIED.

All claims for interest, attorneys' fees, and arbitration costs are reserved. The parties shall submit post-interim award briefs on the interest, attorneys' fees, and arbitration costs issues within **30** days of the date of this Interim Award.

December 20, 2024


Franklin J. Smith, Jr., Arbitrator

Respondents' Motion for Clarification and Modification is DENIED because it requests that the arbitrator reconsider factual and legal conclusions rather than "correct any clerical, typographical, technical, or computational errors in the award." In essence, Respondents' request is for a reevaluation of the merits of the claim and Rule 52(a) specifically prohibits this. Therefore, the rules prohibit modification of the Interim Award based on the Respondents' requests.

Nevertheless, in the interest of further explaining my findings in the Interim Award, I have addressed each of Respondents' issues.

CONTRACT AMOUNT

Respondents agreed to a contract price of \$152,250.00 for the installation of five monuments. While the \$3,000.00 for permitting and engineering fees were added a few days later, these items were necessary for the installation of the five monuments and essentially made the unit price for each monument \$30,500.00. At no time during the formation of the contract did Levi Grantham, LLC ("Levi") question the amounts or what was included in the unit price. Therefore, the contract price was \$152,250.00. James McCarthy did not specifically testify that the additional \$3,000.00 was a mistake. Any inconsistencies in his testimony on this issue, which only arose due to Levi's efforts to evade the agreement that it made, are not sufficient to support Respondent's argument that the \$3,000.00 for permitting and engineering were duplicative.

LIENABLE AMOUNT

Respondents contend that the "lienable" amount of the Interim Award is only \$88,650.04 because \$25,507.00 of the award was for costs that do not constitute "labor and materials" under the lien statute. Respondents reach this conclusion by referring to

Exhibit 28, which was an invoice, submitted after Levi breached the contract. I find that any testimony relating to that exhibit was not relevant to the value of the work performed by Icon Custom Masonry, Inc. (“Icon”).

Icon contracted to install five monuments for \$152,250.00. The price was based on a unit price of \$29,850.00 per monument plus \$3,000.00 for permitting and engineering for the monuments. The monuments were for the improvement of the owner’s property. Icon provided the labor and materials to obtain permitting and engineering for five monuments. This work was necessary for the installation of the monuments and was therefore “labor and materials” used for the improvement of the owner’s property. The labor and materials to partially install four monuments were obviously “labor and materials” used to improve the owner’s property. Some materials for the fifth monument were delivered to the site and while those materials were eventually not used on the fifth column; when provided, those materials were delivered to the site for the improvement of the owner’s property and were therefore “lienable”.

All of Icon’s work was performed with the understanding that Icon was to install five monuments. Therefore, all of these labors and materials were provided for the improvement of the owner’s property including the materials left on site to construct the fifth monument. Since Levi later decided to not install the fifth monument, the estoppel doctrine prohibits Levi from arguing that the materials for the fifth monument were not provided for the improvement of its property.

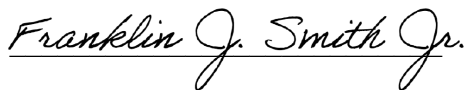
The Interim Award found that Icon was entitled to recover \$107,157.04 for labor and materials for partial installation of the four monuments. Icon also provided labor and materials for five monuments valued at \$3,000.00. Materials for the fifth monument were

delivered to the site and were valued at \$4,000.00. Therefore, the value of the labor and materials provided by Icon for the improvement of the Owner's property was \$114,157.04.

Respondent's argument that materials not delivered to a site are not lienable is correct; however, only materials delivered to the site are included in the Interim Award. Respondent's breakdown of the costs for the fifth monument; i.e. \$25,507.00, is not relevant and was not relied on because the breakdown was created in an effort to provide information to the Respondents that Icon was not contractually obligated to provide.

Accordingly, Respondents' Motion for Clarification and Modification is DENIED. The Interim Award issued on December 20, 2024 stands as written.

January 10, 2025

A handwritten signature in cursive script that reads "Franklin J. Smith Jr." The signature is written in black ink and is positioned above the printed name of the signatory.

Franklin J. Smith, Jr. – Arbitrator



**AMERICAN ARBITRATION ASSOCIATION
Construction Industry Arbitration Tribunal**

In the Matter of the Arbitration between

Case Number: 01-24-0005-8744

Icon Custom Masonry, Inc.,
Claimant

-vs-

Levi Grantham, LLC and The Settlement, LLC,
Respondents

ORDER ON PREVAILING PARTY

Based on the interim award issued on December 20, 2024, both parties contend to be the prevailing party under the mechanic's lien statute. Accordingly, I am issuing this order on the prevailing party issue only so that the non-prevailing party may submit its position on attorneys' fees and costs.

The Claimant, Icon Custom Masonry, Inc. (Icon) seeks attorney fees and costs as the prevailing party in the mechanic's lien cause of action and pursuant to SC Code Ann 27-1-15 based on Respondents, Levi Grantham, LLC (Levi) and The Settlement, LLC (Settlement) failure to conduct a reasonable investigation and pay undisputed amounts due.

Respondents contend that Settlement is the prevailing party in the mechanic's lien action due to Icon's procedural error in filing the lien under the wrong statute. Respondents also contend that Icon is not entitled to recover attorney fees and costs under SC Code Ann. 27-1-15.

S.C. Code Ann. § 29-5-10 *et seq.* (Lien Statute) provides that "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." Further, "[f]or purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. One verdict assumes some entitlement to the mechanic's lien and the consideration of compulsory counterclaims. The party whose offer is closer to the verdict reached is considered the prevailing party in the action."

Both Claimant and Respondents timely filed offers of settlement as defined by the Lien Statute in the underlying state court litigation. Icon's offer of settlement was \$127,750.00; Respondents' was \$90,000.00. The midpoint between the offers of settlement was \$108,875.00. Icon's offer was \$13,592.96 from the Interim Award of \$114,157.04; Respondents offer was \$24,157.04 from the Interim Award. Therefore, based on the offers of settlement, Icon is the prevailing party. However, Respondents contend that Icon's offer of settlement does not comply with the lien statute and therefore cannot be considered. If Icon's offer of settlement is invalid, then Respondents would be the prevailing party.

Respondents contend that Icon filed its lien under the "Contractor lien" statute- SC Code Ann 29-5-10 but it should have filed its lien under the "Subcontractor lien" statute- SC Code 29-5-20. "The South Carolina Mechanic's Lien Statute recognizes two types of liens — Section 29– 5– 10 affords a lien to the mechanic or supplier who deals directly with the owner, while Section 29–

5–20 is designed to protect the mechanic or supplier who deals with a general contractor or some person other than the owner or his agent.” *T.W. Morton Builders, Inc. v. von Buedingen*, 316 S.C. 388, 400, 450 S.E.2d 87, 94 (Ct. App. 1994).

Respondents contend that Icon did not deal directly with the owner of the development, The Settlement, LLC and they contend that Levi, the party Icon contracted with, is not the owner or its agent; therefore, S.C. Code § 29-5-20 applies.

In response to Respondents’ positions, Icon contends that it was proper to file under the Contractor’s lien statute because Levi was not the general contractor; it was, in essence, an owner related entity.

The relationship between Levi and Settlement was not a contested issue during the hearing. In their prehearing brief, Respondents stated “The Settlement, LLC was the Owner of the Project and a single purpose limited liability company subsidiary to Levi Grantham”. In Icon’s prehearing brief, it contented that Levi and Settlement were subsidiaries of Crescent Homes. The testimony of Respondents’ witnesses supported Icon’s position that both entities were subsidiaries of Crescent Homes. It is undisputed that Settlement was the owner of the property and there was no contract between Settlement and Levi.

I find that Respondents’ position that Levi was acting as the general contractor is not supported by the evidence. All evidence supports the position that Levi and Settlement were in “ownership roles” and not in a “owner/general contractor” relationship. The evidence also supports Icon’s position that Settlement “consented” to the work, thereby making the Contractors lien statute applicable.

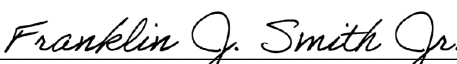
Accordingly, I find that Icon’s lien was properly filed under the Contractors lien statute and based on the offers of settlement, Icon is the prevailing party under the mechanic’s lien statute. As the prevailing party, Icon is entitled to recover reasonable attorney’s fees and costs.

SC Code Ann. § 27-1-15 requires a person upon whom a claim is made to pay a valid claim within forty- five days of the demand and if that 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. (emphasis added). It is undisputed that Icon properly made the demand per the statute and Respondents admitted at the hearing that some amount was owed to Icon; however, Respondents failed to pay any amount to Icon. **Therefore, I find that Respondents failed to comply with SC Code Ann. § 27-1-15 and Respondents are liable for attorney fees under this statute.**

Respondents shall provide its position on the amount of fees and costs requested by Icon no later than February 14, 2025.

AND IT IS SO ORDERED

February 3, 2025


Franklin J. Smith, Jr., Arbitrator

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S OFFER OF
	)	SETTLEMENT
	)	
The Settlement, LLC and Levi Grantham,	)	
LLC	)	
	)	
Defendants.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that, pursuant to S.C. Code Ann. § 29-5-10(b), Plaintiff Icon Custom Masonry, Inc. hereby offers to accept the sum of \$127,750.00 (exclusive of interest and costs) from The Settlement, LLC and/or Levi Grantham, LLC to settle the above-captioned lien foreclosure action in full, including all of Plaintiffs' claims set forth in this action and in arbitration. Plaintiff asserts that if it is the prevailing party in this action as defined by S.C. Code Ann. § 29-5-10(b), then it will seek all available remedies as allowed thereunder.

Respectfully submitted,

s/Bryan P. Kelley
 Bryan P. Kelley (S.C. Bar No. 76062)
 Elmore Goldsmith Kelley & deHoll, P.A.
 19 Blair Street (29607)
 Post Office Box 1887
 Greenville, South Carolina 29602
 Telephone: (864) 255-9500
 Facsimile: (864) 255-9505
 bkelley@elmoregoldsmith.com
Attorney for Plaintiff

November 6, 2024
 Greenville, South Carolina



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	DEFENDANTS' OFFER OF
The Settlement, LLC and Levi Grantham,	)	SETTLEMENT
LLC.	)	
	)	
Defendants.	)	

Defendants, The Settlement, LLC and Levi Grantham, LLC (“Defendants”) by and through their undersigned attorneys, reject the OFFER OF SETTLEMENT filed by Plaintiff on November 6, 2024.

Pursuant to Section 29-5-10(b) and/or 29-5-20(c) of the Code of Laws of South Carolina, Defendants, The Settlement, LLC and/ Levi Grantham, by and through their undersigned counsel make an OFFER OF SETTLEMENT in the amount of NINETY THOUSAND and 00/100 DOLLARS (\$90,000.00), exclusive of interest and costs, to settle the above-captioned lien foreclosure action in full, including all of Plaintiff’s claims set forth in this action and in arbitration.

Pursuant to Section 29-5-10(b) and/or 29-5-20(c) of the Code of Laws of South Carolina, this offer is considered rejected unless an acceptance in writing is filed by Plaintiff and served on Defendants, or their counsel five (5) days before the date this case is scheduled for trial on November 25, 2024. If this offer is rejected, it may not be referred to for any purpose at the trial and/or arbitration of this case and may be considered by the Arbitrator solely for the purpose of awarding costs and litigation expenses under Section 29-5-10 and/or Section 29-5-20.

Defendants assert that if Defendants are the prevailing party in this action as defined by S.C. Code Ann. § 29-5-10(b) and/or S.C. Code Ann. § 29-5-20, the Defendants will seek all available remedies allowed thereunder.

ROSEN HAGOOD, LLC

By: s/James A. Bruorton IV
James A. Bruorton, IV
Taylor B. Ambrosius
40 Calhoun Street, Suite 450
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November 13, 2024

Charleston, South Carolina



**AMERICAN ARBITRATION ASSOCIATION
Construction Industry Arbitration Tribunal**

In the Matter of the Arbitration between

Case Number: 01-24-0005-8744

Icon Custom Masonry, Inc.,
Claimant

-vs-

Levi Grantham, LLC and The Settlement, LLC,
Respondents

FINAL AWARD OF THE ARBITRATOR

I, Franklin J. Smith, Jr., THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named parties (Claimant represented by Bryan P. Kelley, Esq. of Elmore Goldsmith Kelley and deHoll, P.A; Respondents represented by James A. Bruorton IV, Esq. and Taylor B. Ambrosius, Esq. of Rosen Hagood, LLC), and dated May 22, 2022, and having been duly sworn, and having duly heard the proofs and allegations of the parties at the evidentiary hearing held on November 25 and 26, 2024, and having previously issued the INTERIM AWARD on December 20, 2024, and having reviewed the parties' post-hearing submissions on attorneys' fees, interest, and costs, do hereby issue this FINAL AWARD as follows:

The INTERIM AWARD reserved each party's rights relating to interest, attorneys' fees, and costs. After issuance of the INTERIM AWARD, both parties claimed to be the prevailing party under the mechanic's lien cause of action. Additionally, Respondents claimed that Claimant was not entitled to recovery under SC Code Ann 27-1-15.

On December 30, 2024, Respondents submitted a request for clarification/modification of the Interim Award. On January 8, 2025, Claimant submitted its reply to Respondents' request for clarification/modification of the Interim Award. On January 10, 2025, an Order was issued denying Respondents' request for clarification/modification of the Interim Award.

An Order was issued on February 3, 2025, finding that Claimant was the prevailing party under the mechanic's lien cause of action and was entitled to recover under SC Code Ann 27-1-15.

On February 14, 2025, Respondents submitted its brief on Claimant's request for attorney's fees and costs. On February 21, 2025, Claimant submitted its reply to Respondents' brief on attorney's fees and costs. Claimant's reply included detailed invoices of all attorney's fees and costs sought by Claimant.

1. ATTORNEY'S FEES AND COSTS

As the prevailing party under the mechanic's lien claim, Claimant is entitled to recover reasonable

attorney's fees and costs against The Settlement, LLC relating to the lien claim. Claimant also asserted other causes of actions; therefore, Claimant is not entitled to recover for all its attorney's fees under the mechanic's lien claim. However, Claimant prevailed on its SC Code Ann 27-1-15 claim against both Respondents; therefore, it is entitled to recover from both Respondents all reasonable attorney's fees incurred from the date of the SC Code Ann 27-1-15 demand which was made on December 13, 2022.

In determining the reasonable attorney's fees, I deducted amounts for attorney's fees incurred before December 13, 2022, attorney's fees related to the failed attempt to contest the motion to compel arbitration and attorney's fees related to licensing issues in other states which I find to be unrelated. Based on my review of the detailed invoices and these deduction categories, I find that the reasonable attorney's fees are **\$64,736.50** (\$73,797.50 – \$9,061.00). I find that Icon Custom Masonry, Inc., incurred reasonable costs of **\$17,001.90** (\$14,606.82 in arbitration costs and \$2,395.08 in costs listed on Claimant's Summary of Attorney's Fees and Costs - Exhibit 1).

2. INTEREST

"The law has long allowed pre-judgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty." *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258. S.C. Code Ann. § 34-31-20(A) provides that "in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest" at the legal rate of 8.75%. However, parties are free to agree to higher interest rates within legal limits. *Butler Contracting*, 369 S.C. at 134, 631 S.E.2d at 259; *Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC*, 372 S.C. 89, 99, 641 S.E.2d 459, 464.

In this case, the interest rate is governed by the contract. The Master Professional Services Agreement, Section 8.a provides: "Payment is due within thirty (30) days, unless otherwise agreed to in writing prior to the submittal of the invoice. Past due amounts are subject to a late fee of one and one-half percent interest per month." Additionally, each of Claimant's invoices provide: "If balance is not paid by due date, a finance charge of 1.5% will be added to the outstanding balance each month until account is paid in full."

The INTERIM AWARD determined that Claimant was due \$114,157.04 as of October 6, 2022. Based on a rate of 18% per annum, this amount has accrued and continues to accrue interest of \$56.30 per day. As of February 28, 2025, the interest that has accrued since October 6, 2022, totals **\$49,262.50**.

3. FINAL AWARD

As the prevailing party, Icon Custom Masonry, Inc., is entitled to recover interest on the INTERIM AWARD amount and reasonable attorney's fees and costs. I find that the interest amount is \$49,262.50; reasonable attorney's fees are \$64,736.50; and costs are \$17,001.90.

Accordingly, Icon Custom Masonry, Inc., is awarded the following amounts against the Respondents:

INTERIM AWARD amount	\$114,157.04
-----------------------------	---------------------

Interest on INTERIM AWARD	\$49,262.50
Attorney's Fees	\$64,736.50
<u>Costs</u>	<u>\$17,001.90</u>
TOTAL FINAL AWARD	\$245,157.94

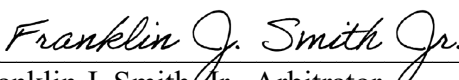
The administrative fees of the American Arbitration Association totaling \$6,250.00 and the compensation and expenses of the arbitrator totaling \$8,356.82 are to be borne by Respondents, and this amount is included in the costs listed above. Therefore, Respondents shall reimburse Claimant the total sum of \$14,606.82 representing that portion of the fees previously incurred and paid by Claimant.

The total award of \$245,157.94 shall be paid to Claimant by Respondents within thirty (30) days of the date of this Final Award.

This Final Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby DENIED.

I, the Undersigned Arbitrator, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

February 28, 2025



Franklin J. Smith, Jr., Arbitrator

Greenville County, SC - Property Report [Convert to PDF](#) 10/20/2022

PIN / Tax Map #

0560190101600



Owner Information

Owner Name SETTLEMENT LLC THE

Additional Owner Name

Care Of

Mailing Address 572 Savannah Hwy

City Charleston

State SC

Zip Code 29407

Mobile
Maps and
Information

Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification.

Parcel Information

Acres	Description	Location	Subdivision
17.920	Common Area	Fowler	The Settlement

Reference Information

Deed Book	Deed Page	Deed Date	Plat Book	Plat Page
2570	4005	7/16/2019	1423	24

Building Information

Bedrooms	Bathrooms	Half Baths	Square Feet
0	0	0	0

Classification

Land Use	Jurisdiction	Homestead Code
1180 - Residential Vacant	County Jurisdiction	No

Values

Fair Market Value	Taxable Market Value	Sales Price	Total Rollback
\$60,000	\$60,000	\$0	\$0

Taxes / Fees

Tax District	County Stormwater Fee	City Stormwater Fee	Taxes	Taxes Paid Date
898	\$0	\$0	\$0	

Ownership History

Owner Name	Deed Book	Deed Page	Date of Last Sale	Last Sale Price
Settlement Llc The	2570	4005	20210429	\$0

loading



MASTER PROFESSIONAL SERVICES AGREEMENT

NOTICE: THIS CONTRACT IS SUBJECT TO ARBITRATION PURSUANT TO THE UNIFORM ARBITRATION ACT, SOUTH CAROLINA CODE SECTION 15-48-10 THROUGH 15-48-240.

Professional Services Company (as it appears on check): Icon Custom Masonry Inc.

Corporation: ☒ Partnership: ☐ Sole Proprietorship: ☐

Name of Owner, Partner, President: James W McCarthy Title: President

Business Address (include city, state, zip): 1208 Culp Rd, Pineville, NC 28134

Bus. Phone: 704 400 5715 Home Phone: _____ Pager/Nextel Number: _____

SSN: _____ or Federal Tax ID: [REDACTED]

INSURANCE CARRIERS:

Worker's Comp: Frankenmuth Mutual Insurance Company Policy #: 6664182 Expiration Date: 8/8/2022

General Liability: Frankenmuth Mutual Insurance Company Policy #: 6664173 Expiration Date: 8/8/2022

Auto: Frankenmuth Mutual Insurance Company Policy #: 6664172 Expiration Date: 8/8/2022

Icon Custom Masonry Inc., (hereinafter referred to as "Consultant") and Levi Grantham, LLC (hereinafter referred to as "Client") enter into this Professional Services Agreement (hereinafter "Agreement") on this 22 day of May, ~~2021~~ 2022

1. **Client:** The term "Client" as set forth herein shall mean Levi Grantham, LLC, its parents, owners, subsidiaries, and affiliates.
2. **Projects:** The Agreement applies to all Projects for which Consultant provides Work to Client. The term "Project" includes all lots or land on which Client has Consultant perform the Services to be rendered ("Services") as set forth in the Developer's Contract Addendum executed for each Project ("Addendum"). The Addendum shall reference the Project by Name and Tax Map Sequence Number.

James W McCarthy Consultant

LG Client

Master Professional Services Agreement – Rev. 9.22.21

3. **Scope of work:** Consultant agrees to provide all materials, labor, tools, equipment, supervision, supplies and other items necessary or required to perform the work that is described in the Project Addendum. The scope of work, together with any signed and written supplements or modifications thereto for particular projects, are incorporated into this Agreement, and shall hereinafter be referred to collectively as the "Work."
4. **Construction Standards:** Consultant agrees that the work will be performed using a Standard of Care equal to that standard used by reputable members of the Consultant's profession practicing in the same locality at the same time and under similar circumstances. Consultant agrees to perform all Work in compliance with applicable federal, state, county and municipal codes, regulations, rules, and laws.
5. **Client Responsibilities:**
 - a. Client warrants that all information provided to Consultant regarding the Project(s) and Project(s) location are complete and accurate to the best of Client's knowledge.
 - b. Client agrees to furnish Consultant, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Consultant to enter onto the project site to perform the Services included in this Agreement.
 - c. Client agrees to disclose the identity of all utilities serving the Project(s) site and the presence and accurate location of hidden or obscured man-made objects known to Client that may be in Consultant's work area.
6. **Safety:** The safety of Consultant's employees, subConsultants, while on the jobsite applicable to project, is the responsibility of Consultant. Consultant shall comply with any safety policies, guidelines, and instructions which Client shall implement or define from time to time. Neither the professional services provided by Consultant, nor the presence of the its employees or subconsultants at a Project shall impose any additional duty on the Consultant, nor relieve the home builder of its obligations, duties and responsibilities for jobsite safety. The Consultant, its employees, nor subconsultants shall have any control over any other contractor or their employees in connection with their health or safety programs or procedures.
7. **Timing of Work:** Consultant agrees to perform the Work with reasonable diligence and expediency consistent with sound professional practices. The Consultant shall prepare and submit for Client approval a schedule for the performance of the Consultant's services. This schedule shall include reasonable allowances for review and approval times required by the Client, performance of services by the Client's consultants, and review and approval times required by public authorities having jurisdiction over the Project. This schedule may be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the Project requested by the Client, or for delays or other causes beyond the Consultant's reasonable control provided both parties agree in writing to the adjustments. The work to be performed under this agreement shall be commenced under the direction and scheduling with field superintendent in a timely manner. If at any time the Work is not performed in accordance with such schedule, the Consultant agrees to provide the necessary personnel to supply such equipment, materials, overtime work, workers and other devices and facilities as necessary so as to expedite the Work. The Consultant agrees to indemnify and reimburse the Client for all damages caused directly by Consultant's delays.
8. **Payment:** Client will pay Consultant for Services and expenses in accordance with Consultant's current fee schedule set forth in Consultant's Proposal.
 - a. **Invoices:** Consultant will submit progress invoices to Client monthly and a final invoices upon completion of Services. Payment is due within thirty (30) days, unless otherwise agreed to in writing prior to the submittal of the invoice. Invoices are past due thirty (30) days after the date of the invoice. Past due amounts are subject to a late fee of one and one-half percent interest per month.

James McCarty Consultant

 Client

Master Professional Services Agreement – Rev. 9.22.21

- b. **Review & Approval:** All invoices will be reviewed by Client prior to payment. Invoices for payment of incomplete work will not be approved. Partial payments for incomplete work shall not be approved unless previously agreed to by Client in writing. Untimely or inaccurate invoices will cause delay in payment.
10. **Insurance:** Consultant shall purchase and maintain, on its own and at its own expense, the following insurance coverages:
- workers compensation insurance as required by the jurisdiction in which services are performed;
 - general liability insurance with minimum limits of \$1,000,000 per Combined Single Limit each occurrence, \$1,000,000 General Aggregate and \$1,000,000 Products/Completed Operation Aggregate;
 - property damage insurance;
 - comprehensive automotive liability and automotive property damage insurance with minimum limits of \$1,000,000 per combined single limit each occurrence.
 - The limits and terms of such coverages shall be as set forth on the Certificates of Insurance provided to Client prior to the execution of the Agreement. Each Certificate of Insurance shall name Client as certificate holder and shall state that the insurance will not be canceled without thirty (30) days written notice to Client.
 - The Consultant's general liability policy and Certificate of Insurance shall name Client as an additional insured. It shall apply as Primary and non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
 - Client and Consultant mutually agree, to the fullest extent permitted by law, to waive all rights of subrogation against Client and Owner, their agents, officers, directors and employees for recovery of damages, losses, claims or costs arising out of or in connection with the work to the extent such damages, losses, claims, or costs are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation and employers liability insurance per the requirements stated above.
11. **Indemnification:** To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Client its consultants and employees of any of them from and against damages, losses and expenses, including but not limited to attorneys' fees to the extent recoverable under law, attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the Consultant, a SubConsultant, anyone directly employed by them or anyone for whose acts they are liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
12. **Unforeseen Conditions or Occurrences:** If, during the performance of Services, any unforeseen hazardous substance, material, element, or constituent or other unforeseen conditions or occurrences are encountered which, in Consultant's judgment, significantly affects or may affect the Services, the risk involved in providing the Services, or the recommended Scope of Services, Consultant will promptly notify the Client. Subsequent to that notification, Consultant may: (a) if practicable, in Consultant's judgment and with approval of Client, complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; (b) Agree with Client to modify the Scope of Services and the estimate of charges to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated into this Agreement; or (c) Terminate the Services effective on the date of notification pursuant to the terms of Termination for Convenience set forth herein.

13. **Dispute Resolution:**

(a) **Mediation:** In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and the Consultant agree that all disputes between them arising out of or relating to this Agreement, or the Project shall be submitted to mediation. The Client and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution among the parties to all those agreements.

(b) **Arbitration:** If the dispute is not resolved after such mediation, the dispute shall be submitted to binding arbitration in the jurisdiction where the dispute arises in accordance with the South Carolina Uniform Arbitration Act. If the parties cannot agree on an Arbitrator, the arbitration shall be administered by the American Arbitration Association using the rules of Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time of the initiation of the arbitration. The decision of such arbitrator shall be final and enforceable in any court having jurisdiction. This agreement to arbitration shall survive termination of the contract.

14. **Breaches:** Consultant is fully responsible, in contract and tort, for the performance of the Work that its subconsultants, and employees, and other persons perform. In the event of any breach by Consultant of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against the Client, Owner, or the premises upon which the Work was performed, which claim or lien arises out of the Consultant's performance of this Agreement, the Client shall have the right to retain out of any payments due or to become due to the Consultant an amount sufficient to completely protect the Client from any and all loss, damage, or expense therefrom.15. **Termination by the Client for Cause:** The Client may terminate this Agreement if the Client determines in its discretion that the Consultant:

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to SubConsultants for materials or labor in accordance with the respective agreements between the Consultant and the SubConsultants;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders or other requirements of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

When any of the above reasons exists, the Client may, without prejudice to any other remedy the Client may have, and after giving the Consultant seven days' written notice, terminate the Agreement and take possession of the site and may finish the Work by whatever reasonable method the Client may deem expedient. When the Client terminates the Contract for one of the reasons stated above, the Consultant shall not be entitled to receive further payment other than any amounts already approved as being due and owing, by Consultant pursuant to Section 7(c) and Section 13 of this Contract. Upon termination, Client may withhold funds it deems sufficient to ensure all obligations of Consultant, including obligations of warranty, can be satisfied.

16. **Termination by the Client for Convenience:** The Client, at any time, may terminate this Agreement as a matter of convenience for an ongoing project or future projects. In the event the Client terminates this Agreement for convenience, Consultant shall be entitled to payment for work performed up to the date of termination.17. **Termination by Consultant:** Consultant has the right to terminate the Agreement as a matter of convenience or as a result of the Client's breach of its payment obligations under this Agreement provided thirty (30) days written notice is given to the Client of Consultant's intent to terminate, whether as to future or ongoing projects.

James McCarthy Consultant



Client

Master Professional Services Agreement – Rev. 9.22.21

18. **Limitation of Liability:** In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims (including claims by third parties), losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, exclusive of attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed the amount of insurance proceeds available to the Consultant for the claim at issue at the time of settlement or final judgment. It is intended that this limitation apply to any and all liability or cause of action, including without limitation active and passive negligence, however alleged or arising, unless otherwise prohibited by law. The Client specifically agrees that it has had the opportunity to negotiate this Limitation of Liability clause and to accept or reject its inclusion herein.
19. **Miscellaneous:**
- The agreement does not give exclusive rights to Consultant to work with Client. Client may create agreements with other parties in the same trade without affecting the Agreement.
- a. The Agreement shall be governed by and interpreted in accordance with applicable laws of the state of South Carolina.
 - b. The Agreement is the entire agreement between the parties and can only be modified or amended in writing.
 - c. No representation, promise or inducement not included in the Agreement is relied upon or shall be binding upon either party.
 - d. Notices required in the Agreement shall be in writing to the other party at the address of such party set forth above and shall be given in person by overnight delivery service prepaid, by facsimile, or by certified mail, return receipt requested. Such notice shall be deemed given when received at such address.
 - e. Each provision of the Agreement is severable from every other provision. If any provision is determined to be unenforceable, the rest of the Agreement shall remain valid and enforceable.
 - f. All plans, drawings and specifications provided by Client to Consultant shall remain the property of Client.
 - g. The term "including," shall mean, including but not limited to the specific item or matter mention
20. **Certification:** Consultant certifies that it: (a) has read the Agreement and understands it; (b) has the skills and qualifications necessary to perform the Work in accordance with the Agreement, and to otherwise comply with the Agreement; (c) has all licenses, registrations and similar governmental authorizations necessary to perform the Work and to comply with the Agreement; (d) is familiar with all of the Construction Standards and applicable laws, rules, regulations, codes, documents and other matters mentioned in the Agreement; and (e) has the authority to sign the Agreement. The individual signing on behalf of Consultant represents and certifies that he is authorized to sign this Agreement on behalf of Consultant.

 Consultant

 Client

Master Professional Services Agreement – Rev. 9.22.21

The undersigned below affirms by execution of this Agreement it is authorized to enter into this Agreement and bind its respective company to the obligations, terms, and conditions herein.

CLIENT COMPANY NAME:

Levi Grantham, LLC

By:

Print Name:

Title: LAND DEVELOPMENT MANAGER

Date:

CONSULTANT COMPANY NAME:

Icon Custom Masonry Inc.

By:

Print Name:

Title: President

Date:

James McCarthy Consultant

_____ Client

Master Professional Services Agreement – Rev. 9.22.21



AMERICAN ARBITRATION ASSOCIATION
IN THE MATTER OF ARBITRATION BETWEEN

Icon Custom Masonry, Inc.,	)	AAA Case No. 01-24-0005-8744
	)	
Claimant,	)	
	)	AFFIDAVIT OF ATTORNEYS FEES
v.	)	AND COSTS
	)	
The Settlement, LLC and	)	
Levi Grantham, LLC,	)	
	)	
Respondents.	)	
_____	)	

PERSONALLY APPEARED BEFORE ME, Bryan P. Kelley, who first duly sworn and
deposed states:

1. My name is Bryan P. Kelley, and I am above the age of eighteen (18) and legally
competent to make this affidavit.

2. This Affidavit is based upon my personal knowledge and experience regarding the
facts stated herein.

3. I am a partner of the law firm of Elmore Goldsmith Kelley & deHoll, P.A.
("EGKD"). I am a member in good standing with the South Carolina Bar Association and have
practiced in South Carolina since I was licensed in this state in 2007.

4. I am the attorney of record for Icon Custom Masonry, Inc., ("Icon Custom"), in the
above-styled case.

5. EGKD was retained by Icon Custom in or about October 2022 to assist Icon Custom
in recovering amounts due to it from Defendants The Settlement, LLC, ("The Settlement") and
Levi Grantham, LLC, ("Levi Grantham") (collectively the "Defendants").

6. I have been primary supervising attorney working on this case. I took several steps
to assure that there was no unnecessary duplication of the attorneys' time. These steps included

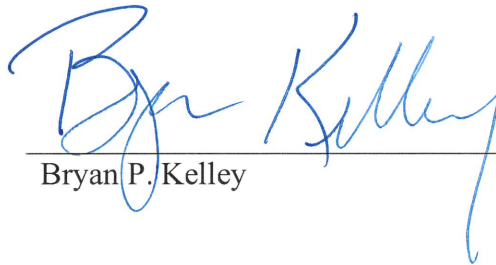
delegating specific assignments to my associate attorney and paralegals. I believe that there was very little duplication of effort in this matter because of the specific assignments handled by myself and the paralegal and associate attorney and the fact that I personally coordinated and planned the preparation of this case.

7. EDKG maintains daily, detailed time records for all professional services rendered. I billed my time at an hourly rate of \$400 per hour; my associate attorneys billed at an hourly rate of \$265 per hour; paralegals billed at an hourly rate of \$180 per hour.

8. In reviewing EGKD's billing records for the period October 1, 2022 through January 21, 2025, I have determined that Icon Custom has been or will be invoiced \$71,757.50 in attorneys' fees and \$2,395.08 in costs and disbursements in connection with this matter. Icon Custom has been invoiced a total of \$15,112.50 by the American Arbitration Association in arbitration fees through January 21, 2025 in connection with this matter. The summary of attorneys' fees, costs, and expenses billed or to be billed to Icon Custom is attached hereto as **Exhibit 1**. These fees, costs, and expenses amount to a grand total of **\$89,265.08**.

9. Icon Custom is entitled to recover attorneys' fees under the Contract in this matter and pursuant to S.C. Code § 27-1-15 and S.C. Code § 29-5-10 *et seq.*

FURTHER AFFIANT SAYETH NOT.


Bryan P. Kelley

Subscribed and sworn to before me,
this 21st day of January 2025

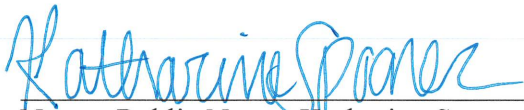

Notary Public Name: Katharine Spooner
Notary Public for the State of South Carolina
My commission expires: July 26, 2032



EXHIBIT 1**SUMMARY OF ATTORNEYS FEES AND COSTS
S.C. R. Evid. 1006**

c/m # 002280-001

Fees through January 21, 2025 <i>billed and anticipated</i>	\$71,757.50
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Disbursements

Mechanic's Lien Filing Fee	\$29.75
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Complaint Filing Fee	\$180.32
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Service of Process	\$87.78
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Motion Filing Fees	\$95.22
--------------------	---------

Westlaw Research	\$2,002.01
------------------	------------

Arbitration Fees	\$15,112.50
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TOTAL	\$89,265.08
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AMERICAN ARBITRATION ASSOCIATION
IN THE MATTER OF ARBITRATION BETWEEN

Icon Custom Masonry, Inc.,	)	AAA Case No. 01-24-0005-8744
	)	
Claimant,	)	
	)	SUPPLEMENTAL AFFIDAVIT OF
v.	)	ATTORNEYS FEES AND COSTS
	)	
The Settlement, LLC and	)	
Levi Grantham, LLC,	)	
	)	
Respondents.	)	
_____	)	

PERSONALLY APPEARED BEFORE ME, Bryan P. Kelley, who first duly sworn and
deposed states:

1. My name is Bryan P. Kelley, and I am above the age of eighteen (18) and legally
competent to make this affidavit.

2. This Affidavit is based upon my personal knowledge and experience regarding the
facts stated herein. This Affidavit is intended to supplement my Affidavit of Attorney's Fees and
Costs dated January 21, 2025. It shall not circumvent or supersede my January 21, 2025 Affidavit.

3. I am a partner of the law firm of Elmore Goldsmith Kelley & deHoll, P.A.
("EGKD"). I am a member in good standing with the South Carolina Bar Association and have
practiced in South Carolina since I was licensed in this state in 2007.

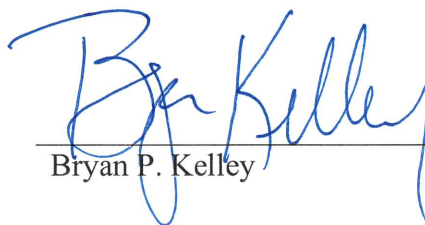
4. I am the attorney of record for Icon Custom Masonry, Inc., ("Icon Custom"), in the
above-styled case.

5. EDKG maintains daily, detailed time records for all professional services rendered.
I billed my time at an hourly rate of \$400 per hour; my associate attorneys billed at an hourly rate
of \$265 per hour; paralegals billed at an hourly rate of \$180 per hour.

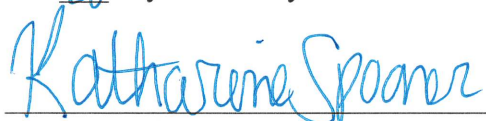
6. In reviewing EGKD's billing and time records for the period January 22, 2025 through January 28, 2025, I have determined that Icon Custom has been or will be invoiced \$2,040.00 in connection with this matter.

7. Icon Custom is entitled to recover these fees, in addition to those attorney's fees set forth in my initial Affidavit of Attorney's Fees and Costs dated January 21, 2025, under the Contract in this matter and pursuant to S.C. Code § 27-1-15 and S.C. Code § 29-5-10 *et seq.*

FURTHER AFFIANT SAYETH NOT.


Bryan P. Kelley

Subscribed and sworn to before me,
this 28th day of January 2025



Notary Public Name: Katharine Spooner
Notary Public for the State of South Carolina
My commission expires: July 26, 2032



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CA. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.,	)	
	)	
Plaintiff,	)	MEMORANDUM OF LAW IN
	)	OPPOSITION TO DEFENDANTS’
v.	)	MOTION TO VACATE
	)	ARBITRATION AWARD
The Settlement, LLC and Levi Grantham,	)	
LLC	)	
	)	
Defendants.	)	

Plaintiff Icon Custom Masonry, Inc. (“Icon”), by and through its undersigned counsel, submits this Memorandum of Law in Opposition to Defendants The Settlement, LLC, and Levi Grantham, LLC’s (“Defendants”) motion to vacate, modify or correct the arbitration award entered in the underlying arbitration proceedings amongst the parties.

PRELIMINARY STATEMENT

Defendants’ motion to vacate is nothing more than an attempt to sway this Court to acquiesce into a request to meddle in the underlying arbitration proceedings and revert back to the common law as it existed before the codification of the Federal Arbitration Act and the South Carolina Uniform Arbitration Act. Defendants’ motion is neither based on established law nor does it sound in reason. Defendants appear to criticize the Arbitrator¹ by alleging “manifest disregard of the law” simply because they do not agree with the results or perhaps wish to delay payment of the arbitration award and justice to Icon. At the same time, Defendants brazenly ask

¹ The Arbitrator in the underlying arbitration is Franklin J. Smith, Jr., Esq., who practiced construction law for over three decades before moving to focus his practice on ADR services primarily in construction-related litigation. Mr. Smith is widely regarded as an expert in South Carolina construction law, and mechanic’s lien laws in particular; to wit, Defendants themselves initially suggested the selection of Mr. Smith as the Arbitrator. (see **Exhibit G**)

this Court to misapply the law governing arbitration awards. Defendants' *tu quoque* fallacy is specious at best.

Defendants' Motion is the latest in a series of attempts by Defendants to avoid the day of reckoning, and it should fare no better than the litany of exact same arguments previously raised to and dismissed by the Arbitrator in the underlying arbitration proceedings. Defendants ask this Court to ignore the policies favoring arbitration and to ignore statutory and common law governing the same in an apparent effort to revoke its consent to the underlying arbitration proceedings through the continuance of unauthorized litigation in this Court. Such request frustrates the very fundamental principle of arbitration – to resolve disputes in an efficient, cost-effective manner with limited oversight by the judiciary. It should not be forgotten that Defendants were the ones who asked this Court to compel the parties' dispute to arbitration in the first place. (Defs.' Motion to Stay and Compel Arbitration, filed October 11, 2023).

At this time, the underlying dispute amongst the parties has been concluded with the issuance of the underlying arbitration award. Review of that award by this Court is among the narrowest circumscribed by law. Opposite to what Defendants seem to be requesting, review is not an invitation to this Court to scrutinize the decision of the Arbitrator or an invitation to this Court to sit as one with appellate jurisdiction. Review is limited to determine whether the Arbitrator did the job he was asked to do, regardless of whether he did a good job, got the outcome wrong or right or whether the court agrees with the award. Defendants have not and cannot show that the Arbitrator did not do his job through a supposed "manifest disregard of the law." There are no grounds upon which this Court is permitted to vacate, modify or correct the underlying arbitration award. Consequently, this Court has no discretion but to confirm that award and enter judgment upon the record.

BACKGROUND OF FAA AND SCUAA

In 1925, Congress enacted the Federal Arbitration Act (“FAA”) to “reverse the longstanding judicial hostility to arbitration agreements that had existed [in] English common law and [] adopted by American courts.” *Gilmer v. Inerstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991).² In doing so, “Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.” *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984).

In 1978, the South Carolina General Assembly followed suit by codifying the Uniform Arbitration Act of 1955 into the South Carolina Code of Laws. *See* S.C. Code Ann. §§ 15-48-10, *et. seq.* (“SCUAA”). Effectively, our General Assembly decreed that agreements to arbitrate should be placed on equal footing with other all other contracts. In agreeing to arbitrate, disputes are taken out of the court system and resolved by arbitration. Case law established after the enactment of the FAA and SCUAA strictly instructs courts that standards for judicial intervention are to be *narrowly drawn* to assure the basic integrity of the arbitration process without meddling in it. *See, e.g., Crouch Const. Co., Inc. v. Causey*, 747 S.E.2d 482 (2013); *see also Jones v. Dancel*, 792 F.3d 395, 401 (4th Cir. 2015) (“judicial review of an arbitration award in federal court is severely circumscribed and among the narrowest known at law.”) (internal citations and quotations omitted).

² In 1609, Lord Edward Coke expressed in dictum the notion that even where a party submits to arbitration, that party may revoke his consent, just as he may revoke consent for any other appointed agent. *Vynior’s Case*, 8 Coke 81b, 77 Eng. Rep. 595 (1609) (“a man cannot by his act make such authority, power or warrant not, which by the law and of his nature is.”). Following Lord Coke’s pronouncement in *Vynior’s Case*, hostility towards arbitration agreements developed in English common law and traversed into our early American legal institutions.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

This dispute arose from a construction project on a residential development in Simpsonville, South Carolina (the “Project”). Defendants contracted with Plaintiff to construct five monument columns on the Project. Thereafter dispute arose between the parties relating to Icon’s work on the Project and Defendants failure to provide payment under the parties’ agreement.

On November 10, 2023, Icon filed a mechanic’s lien in the Greenville County Office of the Register of Deeds, Book MI 0155 at Page 0768, and served it upon Defendants in order to secure its rights for the material, labor and services it furnished on the Project. Thereafter Icon asserted a payment demand to Defendants under S.C. Code Ann. § 27-1-15. On January 17, 2023, Icon filed the instant action in the Greenville County Court of Common Pleas asserting claims for (i) breach of contract, (ii) quantum meruit, (iii) violation of S.C. Code Ann. § 27-1-15, and (iv) mechanic’s lien foreclosure. On October 11, 2023, Defendants filed a motion to stay and compel arbitration. The Court granted Defendants motion in finding that the party’s agreement was enforceable and governed by SCUAA, stayed the action and compelled the parties to arbitration. (Order, filed on December 20, 2021). The dispute then proceeded in arbitration in accordance with the Court’s Order and the parties arbitration agreement. The arbitration proceeding was administered by the American Arbitration Association and was assigned AAA Case No. 01-24-0005-8744.

On November 6, 2024, Icon filed its Offer of Settlement with this Court offering to accept the sum of \$127,750.00 from Defendants to settle this matter. Defendants rejected Icon’s offer and responded with an offer of settlement of their own in the amount of \$90,000.00.

On December 19, 2024, the Arbitrator issued an Interim Award granting Icon's claims on the mechanic's lien and breach of contract and awarded \$114,157.04 against Defendants. The Interim Award is attached hereto as **Exhibit A** and incorporated herein by reference. Defendants subsequently moved for clarification or modification of the Interim Award based on the same "miscalculation" arguments raised herein. See **Exhibit B**. The Arbitrator denied the motion and flatly rejected Defendants' arguments by Order dated January 10, 2025. See **Exhibit C**.

On January 21, Defendants submitted a briefing contending they were the prevailing parties under the mechanic's lien statute, based on the very same arguments raised herein. A copy of Defendants' arbitration submission is attached hereto as **Exhibit D**. On February 3, 2025, the Arbitrator issued an order on the "prevailing party" for purposes of an award of reasonable attorney's fees under the mechanic's lien statute, which flatly rejected Defendants' arguments, declared Plaintiff the prevailing party, and found that Defendants were liable for attorney's fees for their failure to comply with S.C. Code Ann. § 27-1-15. A copy of the February 3, 2025, Order is attached hereto as **Exhibit E** and incorporated herein by reference. Finally, following a review of Plaintiff's submission on its reasonable attorney's fees and costs and on February 28, 2025, the Arbitrator issued and delivered its Final Award to the parties, concluding the underlying arbitration proceedings in full and awarding \$245,157.94 to be paid by Defendants to Icon. A copy of the Final Award (hereinafter the "Award") is attached hereto as **Exhibit F** and incorporated herein by reference. To date, Defendants have failed to comply with the Arbitrator's Award.

Icon timely filed a Motion for Confirmation of the Award pursuant to S.C. Code Ann. § 15-48-120 on March 13, 2025. Icon's Motion was set for hearing on March 3, 2025 before this Court. On the eve of the March 3, 2025, Defendants filed a motion for continuance and a motion to vacate, modify or correct the award raising arguments mirroring those that were properly before

the Arbitrator in asking this Court to fully scrutinize the Award. Specifically, Defendants allege that “in issuing the [] Award, the Arbitrator [1] exceed his powers, [2] miscalculated figures, and [3] exhibited a manifest disregard or perverse misconstruction of the law.” (Defs. Motion to Vacate, p. 5).

LEGAL STANDARD

“When a dispute is submitted to arbitration, the arbitrator determines questions of both law and fact.” *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009). “Factual and legal errors by arbitrators do not constitute an abuse of powers, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers.” *Id.* at 242, 676 S.E.2d at 324. “The scope of judicial review for an arbitrator’s decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all.” *Group III Mgmt. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 149, 810 S.E.2d 781, 785 (Ct. App. 2018) (internal citations and quotations omitted). In reviewing an arbitration award, a reviewing court is “limited to determine whether the arbitrators did the job they were told to do – not whether they did it well, or correctly, or reasonably, but simply whether they did it.” *Id.* 425 at 150, 819 S.E.2d at 786 (quoting *UBS Fin. Servs. Inc., v. Padussis*, 842 F.3d 336, 339 (4th Cir. 2016) (internal quotations omitted)). Moreover “the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm [an] [arbitration] award.” S.C. Code Ann. § 15-48-130.

ARGUMENT

“Upon application of a party, the court *shall* confirm an [arbitration] award, unless within the time limits hereinafter imposed grounds are urged for vacating modifying or correcting the award.” S.C. Code Ann. § 15-48-120 (emphasis added). “[T]he provision for judicial confirmation

carries no hint of flexibility and the statement the court must grant the application unless the award is vacated, modified, or corrected is one which unequivocally tells courts to grant confirmation in all cases, except when one of the prescribed exceptions applies.” *Henderson v. Summerville Ford-Mercury, Inc.*, 405 S.C. 440, 454, n. 7, 748 S.E.2d 221, 229, n. 7 (2013) (quoting *Hall St. Assocs. v. Mattel, Inc.*, 552 U.S. 576, 587 (2008)).

Here, none of the prescribed exceptions applies and the Court must grant the award.

I. No statutory ground exists upon which the Court can vacate, modify or correct the Award.

As an initial matter, the Court should reject any argument that the Arbitrator exceeded its powers or miscalculated the Award. SCUAA provides five (5) statutory grounds upon which an arbitration award may be vacated. S.C. Code Ann. § 15-48-130(a)(1) – (5). None of these statutory grounds for vacatur are present.

Defendants incorrectly emphasize Section 15-48-130(a)(3) in their motion to vacate, in an apparent attempt to argue that the Arbitrator exceed his powers. Yet, nowhere in their motion do they dispute that the issues resolved by the Arbitrator were not issues of arbitrability or properly before the Arbitrator. *See Harris v. Bennett* 332 S.C. 238, 243, 503 S.E.2d 782, 785 (Ct. App. 1998) (“arbitrators exceed their powers only if the issue resolved by them is not within the scope of the agreement to arbitrate.”). Instead, Defendants appear to allege the Arbitrator exceed his powers merely because they disagree with the Arbitrator’s application of the law and result rendered by the Award. Such notion is misplaced and a misstatement of the statute as it is not what “exceeded their powers” entails. Nor do any of their arguments fit within any of the other four statutory grounds. This Court should utterly disregard any argument that the Arbitrator exceeded his powers.

Likewise, the Court should disregard Defendants' argument that the Arbitrator "miscalculated figures." Yet again, Defendants incorrectly emphasize to the Court a section of SCUAA that has no application to the arguments they now raise. Section 15-48-140(a)(1) provides that "the court shall modify or correct the award where [t]here was an *evident miscalculation of figures* or an evident mistake in the description of any person, thing or property referred to in the award." S.C. Code Ann. § 15-48-140(a)(1) (emphasis added). An "evident miscalculation of figures" occurs where an arbitrator commits a mathematical error in computing the total amount of the award, not when an arbitrator makes a conscious decision as to the amount to be awarded. *See e.g., Lauro v. Visnapuu*, 351 S.C. 507, 570 S.E.2d 551 (Ct. App. 2002) ("Even if the arbitrator's decision in this regard [in applying the law] was erroneous, it does not constitute an evident miscalculation of figures envisioned under § 15-48-140. That is, the arbitrator did not commit a mathematical error in computing the total amount of the award."). Thus, the Court is not permitted to modify or correct the Award.

Defendants ask for vacation, modification or correction on the grounds of manifest disregard of the law throughout their motion. It is apparent that Defendants have not even familiarized themselves with SCUAA or the "manifest disregard of the law" standard. Neither SCUAA nor case law allows a Court to modify or correct an award upon the grounds of "manifest disregard." The common law "manifest disregard" is applicable to vacatur only. Otherwise, to modify or correct an award upon grounds of "manifest disregard" would in effect direct the Arbitrator on how to rule in any potential rehearing. Such an improper direction would perversely intrude upon the sanctity of an arbitrator's authority and thus prejudice the arbitration proceedings as a whole. Even assuming *arguendo* that the Court determines the award should be vacated upon non-statutory grounds that the Arbitrator "manifestly disregarded the law," arguments relating to

miscalculation of the Award, absent a showing of mathematical error or some scrivener's error, cannot simultaneously be considered by the Court. Regardless, as discussed below, the Arbitrator did not manifestly disregard the law in issuing the Award.

II. Defendants have not and cannot show that the Arbitrator “manifestly disregarded the law.”

At the beginning Defendants legal analysis section of their motion to vacate, Defendants cite to *Trident Tech. Coll. V. Lucas & Stubbs, Ltd.* for the proposition that “courts have not hesitated in appropriate cases to vacate an arbitration award where there is a manifest disregard or perverse misconstruction of the law.” 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985). Conveniently, Defendants withhold the sentence directly following this language in that opinion. There, the South Carolina Supreme Court goes on to state: “[w]hile this is certainly true, those cases have been exceedingly rare, requiring circumstances far more egregious than mere errors in interpreting or applying the law.” *Id.*

More recently, in *Waldo v. Cousins*, our Supreme Court reminded courts that they may vacate an arbitration award, “only when it is untethered from controlling legal principles known to, but shrugged off by, the arbitrator.” 442 S.C. 662, 669, 901 S.E.2d 276, 279 (2024). This extra-statutory ground for vacating an award through “manifest disregard” may be “established only where the arbitrator understands and correctly states the law, but proceeds to disregard the same.” *Group III Mgmt.*, 425 S.C. at 155, 810 S.E.2d at 788 (quoting *Patten v. Signator Ins. Agency, Inc.*, 441 F.3d 230, 234 (4th Cir. 2006) (internal quotations omitted)). “The focus is on the conduct of the arbitrator and **presupposes something beyond a mere error in construing or applying the law.**” *Gissel*, 382 S.C. at 241-42, 676 S.E.2d at 323 (emphasis in original) (internal citations omitted). The standard is met “*only* when the award is the product of an *intentional* or *reckless*

flouting of the law..." *Waldo*, 442 S.C. at 665, 901 S.E.2d at 278 (citing *Gissel*, 382 S.C. at 241, 676 S.E.2d at 323).

Waldo is the most recent published upon in which our appellate courts have held that an arbitrator did in fact manifestly disregard the law. There, the record before the South Carolina Supreme Court showed that the arbitrators were not only aware of the governing statutory law that they ignored, but that the arbitrators also had in hand during the arbitration proceeding a circuit court order dismissing similar claims on the governing statutory law grounds which arose from the very same transaction. *Waldo*, 442 S.C. at 668, 901 S.E.2d at 279. Importantly, the statute at issue there commanded that "provisions of this section which are inconsistent with applicable principles of common law supersede the common law." *Id.* The arbitrators had that statute, a circuit court order from the same transaction, yet chose to render an award upon old common law that had since been superseded by the very same statute known to them. *Id.* During the arbitration hearing, the chairman of the arbitration panel even alluded to the fact that he had the law in hand but was going to ignore it, nevertheless. *Id.* As Justice Hill noted:

Arbitration is designed to be the end, not the beginning, of legal wrangling, and our strict manifest disregard standard for vacatur honors this design by ensuring the legal end is not a lawless one. We have progressed from the days, described by the 19th century Scottish judge, when an arbitrator "may believe what nobody else believes, and he may disbelieve what all the world believes. He may overlook or flagrantly misapply the most ordinary principles of law, and there is no appeal for those who have chosen to submit themselves to his despotic power."

Id. at 668–69, 901 S.E.2d at 279 (quoting Noah Rubins, "*Manifest Disregard of the Law*" and *Vacatur of Arbitral Awards in the United States*, 12 Am. Rev. Int'l Arb. 363, 367 (2001)). *Waldo* is one of those exceedingly rare cases in which egregious circumstances permit vacatur of an award due to arbitrators substituting personal policy views or personal motives for a controlling legal principle actually known to them and in their very hand.

The matter before this Court is *not* one of those exceedingly rare cases which egregious circumstances could possibly justify grounds for a court to vacate the Award.

A. The Arbitrator did not manifestly disregard the law in concluding that the amounts in Icon’s mechanic’s lien are lienable under South Carolina law.

First, this Court should reject Defendants arguments that the Arbitrator manifestly disregarded the law with respect to the mechanic’s lien statute, S.C. Code Ann. § 29-5-10, and that certain labor and materials are non-lienable because they were not “actually used” in the real property. The Arbitrator considered this very same argument posited by Defendants and concluded that:

All of Icon’s work was performed with the understanding that Icon was to install five monuments. Therefore, all of these labors and materials were provided for the improvement of the owner’s property including the materials left on site to construct the fifth monument. Since Levi later decided to not install the fifth monument, the *estoppel doctrine prohibits Levi from arguing that the materials for the fifth monument were not provided for the improvement of its property.*

(Ex. C) (emphasis added).

This statement alone is evidence enough that the factual and legal conclusions of the Arbitrator are based on reason and the law, which in and of itself exceeds the requirement that the award does not need to be accompanied by any reason so long as the award can be reconciled with factual inferences and legal conclusions that are at least “barely colorable.” *Waldo*, 442 S.C. at 665, 901 S.E.2d at 278 (internal citations omitted).

Defendants then cite to the Court of Appeals decision in *Kitchen Planners, LLC v. Friedman* (“*Kitchen Planners I*”), to argue that materials must “actually be used” in the erection of a building to support a mechanic’s lien. 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020). That opinion was subsequently affirmed as modified by the South Carolina Supreme Court. 440 S.C. 456, 892 S.E.2d 297 (2023) (“*Kitchen Planners II*”). In *Kitchen Planners II* the Supreme Court

focused solely on the untimeliness of the lien in affirming the Court of Appeals reached the correct result in determining that the underlying lien was untimely. The Supreme Court did not address or reach the merits actual use. Thus, Defendants reliance on *Kitchen Planners I* is misplaced.

Moreover, Defendants reliance on *Kitchen Planners I* is further misplaced. As acknowledged in the language quoted by Defendants, *Kitchen Planner I* quotes South Carolina Jurisprudence Mechanics' Liens § 14. 432 S.C. at 277, 851 S.E.2d at 730. § 14 of the South Carolina Jurisprudence Mechanics' Liens acknowledges that a party may be estopped to deny the lien. South Carolina Jurisprudence Mechanics' Liens § 14 (citing *Hodge v. First Federal Sav. and Loan Ass'n of Spartanburg*, 267 S.C. 270, 227 S.E.2d 310 (1976) (goods supplied to owner but diverted for other purposes and never incorporated into the building or structure could still support mechanic's lien.)). *Kitchen Planner I* even notes the estoppel issues as well. *Id.* at 282, 851 S.E.2d at 733 (Court of Appeals noting that Kitchen Planners asserted that owners were estopped from avoiding lien by refusing to allow cabinets to be installed, but refusing to rule on such assertion because it was raised for the first time on appeal.).

To further highlight the fallacies in Defendants' position, their arguments surrounding permitting and engineering fees fail. Section 29-5-10(a) defines "labor performed or furnished" in the erection, alteration or repair of any building or structure upon any real estate to include: "the preparation of plans, specifications, and design drawings and the work of making the real estate suitable as a site for the building or structure." S.C. Code Ann. § 29-5-10(a). Permitting and engineering fees encompass "labor performed or furnished" in the work of making the real estate suitable as a site for the building or structure for purposes of supporting the mechanic's lien. In fact, counsel for Defendants have personal knowledge that services such as these fall within the

definition of labor for purposes of supporting a mechanic's lien. *See Spriggs Group, P.C. v. Slivka*, No. 2013-UP-497, 2013 WL 10343401 (Ct. App. Feb. 6, 2013).

B. The Arbitrator did not miscalculate the Award nor did he err in calculating the difference between offers of settlement for purposes of determining the prevailing party.

Calamitous to the remainder of the arguments asserted by Defendants is the fact that none of them hold any water whatsoever if the Arbitrator did not manifestly disregard the law with respect to application of the lienable amount in the Award.

Because the Arbitrator did not manifestly disregard the law when awarding Icon damages under its lien claim, the Arbitrator likewise could not have manifestly disregarded the law thorough supposed miscalculation of amounts Defendants now disagree with. Again, a miscalculation is a mathematical error. The Arbitrator considered Defendants arguments and found them unpersuasive as the amount awarded (\$114,157.04) was for “the value of the labor and materials provided by Icon for the improvement of the Owner’s property.” (Ex. C, p. 4).

Defendants’ arguments regarding the notion that Icon is only entitled to 75% of \$119,400.00 is a smoke-and-mirrors argument that conveniently forgets the established premise that **Defendants – and not the Plaintiff – breached the contract**. The arbitrator correctly determined that Icon’s measure of damages was its contract price for four columns (\$119,400.00), less credits to Defendants for the costs they incurred to complete Icon’s work (-\$12,242.96), plus Icon’s permitting and engineering work (\$3,000.00) and materials provided for a fifth column (\$4,000.00). Defendants’ tortured argument suggests they should only pay 75% of the contract price for four columns (\$89,550.00) because the Interim Award states that the columns were “about 75% complete.” In other words, Defendants contend they should only be required to pay this amount plus the completion costs of \$12,242.96 for the four columns, for a total of

\$101,792.96. This result would reward Defendants for their bad acts, as their total cost for the four columns would be over \$17,600.00 below the contract price the Arbitrator established for the four columns.

The Arbitrator reached the correct result. However, even if the Court disagrees, Defendants fail to identify any law supporting what they contend to be the correct measure of damages which the Arbitrator acknowledged yet chose to ignore. Therefore, no manifest disregard can be established.

Likewise, the Arbitrator did not err in finding Icon is the prevailing party because he did not err in miscalculating the fact that Icon's Offer of Settlement (\$127,750.00) is closer to the amount awarded (\$114,157.04) than Defendants' Offer of Settlement (\$90,000.00). Defendants alternatively argue that Icon's Offer of Settlement was no offer at all because it cites to S.C. Code Ann. § 29-5-10 instead of S.C. Code Ann. § 29-5-20. Yet again, as addressed below, this is another point of contention by the Defendants that have already been raised to and ruled on by the Arbitrator.

C. Icon is the prevailing party.

Defendants again raise yet another argument that lacks any merit. Icon's reference to § 29-5-10(b) in its offer of settlement was proper. The Arbitrator did not err in determining that Icon was entitled to and did assert a lien under the contractor's lien statute. Nevertheless, even assuming *arguendo* that the arbitrator somehow erred in making its findings of fact under the statute, there is nothing before this Court to support Defendants' arguments and allow such to meet the enormously high bar of showing "manifest disregard of the law" in order for this court to scrutinize the Award. *See e.g., Lauro*, 351 S.C. at 520, 570 S.E.2d at 557 (Arbitrator, when declining to award attorney fees to mechanic's lien holder in its contract dispute with homeowners, did not

manifestly disregard the law by failing to apply mechanic's lien statute as amended, and thus Circuit Court was not justified in modifying award to find that lien holder was prevailing party and thereby entitled to attorney fees.) *Lauro* directly addresses the issue before the Court with respect to Defendant's arguments surrounding § 29-5-10 and § 29-5-20.

Notwithstanding the fact that an error in application of the law does not constitute "manifest disregard," to highlight the fallacies of Defendants' position regarding the lien Icon offers the following: Specifically: (1) the Interim Award establishes that Icon contracted with the Developer (and not the general contractor) of the Project; (2) Icon's work was undisputedly performed at the direction of and with the consent of the Owner; (3) the assertions within Respondents' Brief directly contradict the testimony of their own witnesses regarding the relationship between Levi Grantham and The Settlement; and (4) the plain language of the Master Professional Services Agreement is more akin to an owner/general contractor agreement instead of a general contractor/subcontractor agreement. (*See Ex. C and Ex. E*).

The Lien Statute establishes two types of liens – a contractor's lien under § 29-5-10, and a subcontractor's lien under § 29-5-20. Defendants contend that while Icon's offer of settlement references the contractor's lien statute, it should instead have referenced the subcontractor's lien statute. The contractor's lien is authorized when a person has provided labor or materials to real property "by virtue of an agreement with, *or by consent of*, the owner of the building or structure *or a person having authority from, or rightfully acting for*, the owner in procuring or furnishing the labor or materials..." S.C. Code Ann. § 29-5-10 (emphasis added).

§ 29-5-20 contains similar but distinguishable language, and provides that a "laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been *authorized* by the owner has a lien thereon . . ." (emphasis added.)

While the contractor's lien requires the Owner's consent of the claimant's work, the subcontractor's lien conversely requires the claimant's work merely be "authorized" by the Owner.

As a general and practical matter, the contractor's lien is typically more favorable for a claimant as it does not impose certain recovery limitations that are found within the subcontractor's lien statute. Those limitations are often the driving factor behind a dispute as to whether the contractor's lien or the subcontractor's lien applies to a specific claim, as they limit a subcontractor's lien to any amounts owed by an owner to a general contractor at the time the owner receives notice of the subcontractor's lien. The purpose of this limitation is simple – to protect a project owner from potential double payment to both a general contractor and subcontractor for the same scope of work.

The distinction between the lien statutes is notable here not only because of Defendants' contentions, but because the subcontractor's lien *requires the existence of a general contractor/subcontractor relationship*. Without that dichotomy, the recovery limitations imposed by the subcontractor lien statute cannot be established. In other words, for Defendant Levi Grantham to have prevailed on this argument at arbitration it had to establish it was the Project's general contractor, and that Icon was a subcontractor to Defendant Levi Grantham.

Icon must be a subcontractor to Defendant Levi Grantham for its lien to be governed by § 29-5-20. Still, the limitations on amounts recoverable by subcontractors under § 29-5-20 were not at issue in the underlying arbitration proceedings. What seemingly *was* at issue is the nature of the relationship between Icon, Defendant Levi Grantham, and Defendant The Settlement, and whether Icon's work was: (1) performed by consent of the Owner or a under a directive from a person having authority from or rightfully acting for the Owner (entitling Icon to pursue a contractor's lien); or (2) simply "authorized" by the Owner (possibly limiting Icon to a

subcontractor's lien). While neither the Lien Statute nor established case law specifically define what constitutes the Owner's authorization under § 29-5-20, it is generally accepted that a subcontractor performing work for a contractor who has a construction agreement with the Owner has the Owner's authorization.

The Owner's *consent*, on the other hand, is more burdensome to establish. *See Guignard Brick Works v. Gantt*, 251 S.C. 29, 159 S.E.2d 850 (1968) (holding that consent has to rise to the level of a legally enforceable agreement). While decided in the landlord/tenant context, *F & D Elec. Contractors, Inc. v. Powder Coaters, Inc.*, 350 S.C. 454, 567 S.E.2d 842 (2002) is instructive as to the factors constituting the Owner's consent:

Clearly, if the landlord/owner or his agent gives consent directly to the materialman, a lien can be established. Consent can also be given to the tenant, but the consent needs to be specific. The landlord/owner or his agent must know the scope of the project (for instance, as the lease provided in the instant case, the landlord could approve written plans submitted by the tenant). The consent needs to be more than "mere knowledge" that the tenant will perform work on the property. There must be some kind of express or implied agreement that the landlord may be held liable for the work or material. The landlord/owner or his agent may delegate the project or work to his tenant, but there must be an express or implied agreement about the specific work to be done. A general provision in a lease which allows tenant to make repairs or improvements is not enough.

F & D Elec. Contractors, Inc. v. Powder Coaters, Inc., 350 S.C. at 462, 567 S.E.2d at 846 (2002).

Thus, the questions posed by Defendants to the Arbitrator were: (1) whether a general contractor/subcontractor relationship existed between Defendant Levi Grantham and Icon; and (2) if so, whether Icon's work was merely authorized by the Owner or was either performed with the consent of the Owner or directed on the Owner's behalf.

Based upon the evidence before him, the Arbitrator rejected the exact same arguments Defendants raise to this Court surrounding the statute in which Icon's Offer of Settlement was made. Specifically, the Arbitrator determined:

that Respondents' position that Levi [Grantham] was acting as the general contractor is not supported by the evidence. All evidence supports the position that Levi [Grantham] and [The] Settlement were in "ownership roles" and not in a "owner/general contractor" relationship. The evidence also supports Icon's position that Settlement "consented" to the work, thereby making the Contractors lien statute [§ 29-5-10(b)] applicable.

Accordingly, I find that Icon's lien was properly filed under the Contractors lien statute and based on the offers of settlement, Icon is the prevailing party under the mechanic's lien statute. As the prevailing party, Icon is entitled to recover reasonable attorney's fees and costs.

(Ex. E).

As discussed in the following section, the hypocrisy of Defendants raising these meritless arguments to this Court, (arguments themselves that are not support) will only exacerbate the amount owed to Icon as attorney's fees and interest continue to accrue.

III. The Court cannot modify the Award of Attorney's Fees.

Defendants conclude their remaining argument with respect to the award of attorney's fees to Icon as set out in the Award by suggesting that the arbitrator manifestly disregarded the law because such attorney's fees are "grossly excessive" and "unjustifiable" such as to warrant vacation, modification, or correction of the Award. Again, manifest disregard are not grounds upon which a Court can modify or correct an arbitration award. This includes the portion of that award that encompasses attorney's fees. And again, Defendants have pointed to no substance to support their position that the arbitrator manifestly disregarded the law with respect to the award of attorney's fees. As shown below, Defendants arguments are riddled with misstatements and misinterpretations of their supporting case law. While Icon vehemently disagrees with Defendant's characterization of its fees awarded, whether they are "grossly excessive" or "unjustifiable" does not equate to a "manifest disregard of the law."

In fact, Defendants raised these very issues before this Court to the Arbitrator citing to the six-factor *Jackson* analysis. *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997) ((1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.). As Defendants acknowledge, these six *Jackson* factors are factors and not elements. For some reason, Defendants only raise issue to two of them they feel which they boldly assert that the arbitrator failed to consider and therefore must have manifestly disregarded the law. The Arbitrator was unpersuaded when he determined that \$64,736.50 award for attorney's fees was "reasonable." (Ex. F). This Court should be unpersuaded too. Nevertheless, to address the issues raised by Defendants, Icon offers the following:

First, Defendants raise issue to "customary legal fees" pointing to the disparity between its fees and those of Icon's in accusing the Arbitrator of failing to take into consideration this difference when rendering the Award. Defendants fail to consider the 2nd and 5th *Jackson* factor above (time devoted to the case and beneficial results obtained). Icon's affidavit shows that it was billed on an hourly basis. Therefore, time is a proper factor in considering the "customary legal fees." Obviously if more time is expended on an hourly basis, more fees will be incurred. Another obvious point to note is that Defendants were unsuccessful at arbitration. As Defendants note, these are factors not elements and one factor might overlap into another.

Second, Defendants raise issue to attorney's fees that have not yet actually been paid with respect to the 6th *Jackson* factor's "contingency of compensation." Defendants first point to a family law case, *Glasscock v. Glasscock*, to support their position. 304 S.C. 158, 403 S.E.2d 313 (1991). *Glasscock* is a family law case where a fee arrangement had been agreed to, based upon

the amount recovered for a client. There an attorney submitted an affidavit of attorney's fees during the final decree hearing. That fee based on an hourly rate amounted to \$51,988.75. The attorney also testified that his client agreed to pay \$150,000.00 as a reasonable fee based upon the successful recover of \$1.6 million dollars. The trial court fashioned an attorney fee of \$150,000.00 based on the contingency fee arrangement. Rule 1.5(d) of the South Carolina Rules of Professional Conduct strictly forbade such arrangement in a domestic relations matter. Because contingency fees are prohibited in domestic relation matters, the Supreme Court in *Glasscock* fashioned its own reasonable hourly fee by applying the six *Jackson* factors to determine that \$51,988.75 as stated in the attorney's original affidavit was appropriate.

Third, Defendants raise yet another baseless argument with respect to the outstanding balance owed by Icon at the time of the Award. Defendants point to no statutory authority nor any case law that even suggests that actual payment of attorney's fees is a mandatory prerequisite before attorney's fees can be awarded. In fact, Defendants do point to *Glasscock* which itself shows that the Court fashioned the award and does not suggest payment is required before the Court can award reasonable attorney's fees. Icon would further point out that Defendants misconstrue the holding in *Blumberg v. Nealco, Inc.* for the proposition that attorney's fees cannot be awarded where there is no evidence the same had been incurred or paid and an appellate court can reverse an award if made on no evidence. 307 S.C. 537, 538–39, 416 S.E.2d 211, 212 (Ct. App. 1992). In fact, *Blumberg*, the Court of Appeals noted there was no evidence the client “expected to be billed in the future.” *Id.* at 538, 416 S.E.2d at 212. Furthermore, Defendant's fail to note that on certiorari, the Supreme Court affirmed as modified in holding that:

When an award of attorney's fees is requested and authorized by contract or statute, the court should make specific findings of fact on the record for each factor set forth in *Collins*, supra. On appeal, absent sufficient evidentiary support on the record for each factor, the award should be reversed and the issue remanded for the trial court

to make specific findings of fact. The Court of Appeals should have remanded the issue of attorney's fees. Accordingly, the Court of Appeals' decision is AFFIRMED AS MODIFIED.

Blumberg v. Nealco, Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993).

Here, Icon's actual billing records were provided to the Arbitrator for in camera review. The *Jackson* factors were briefed by the parties when the arbitrator was rendering his decision regarding attorney fees. The arguments now raised by Defendants are unsupported but most importantly do not rise to the level of showing that the Arbitrator manifestly disregarded the law in order for this Court to vacate that award. As Justice Hill noted in *Wlado*, that "standard is met only when the award is the product of an intentional or reckless flouting of the law, not a mere error in interpreting it. This complements the well-known rule that the form of the award need not be accompanied by any reasoning, so long as the award can be reconciled with factual inferences and legal conclusions that are at least 'barely colorable.'" *Waldo v. Cousins*, 442 S.C. at 665, 901 S.E.2d at 278 (internal citations and quotations omitted).

No reasoning in the Award need have been given. Nevertheless, the Award and all of its preceding opinions clearly state the Arbitrator's reasoning. (See Ex. A, C, E, F). Defendants now twist the evidence that was before the Arbitrator and misconstrues case law to make what appears to be a colorful argument on paper to this Court in that Icon's outstanding balance shows that neither Icon intends to pay the fees incurred by undersigned nor does undersigned counsel expect to receive the same. Instead, perhaps inadvertently, Defendants appear to be suggesting that undersigned counsel is attempting to conflate its attorney's fees to somehow get a more favorable result for Icon. How this unfounded notion somehow equates to a manifest disregard of the law is concerning.

Icon has now incurred further attorney's fees and costs in responding to Defendants' instant motion. Icon will be filing a motion seeking to recover the additional attorney's fees expended throughout the hearing on this matter, along with pre-judgment interest that has been accruing each day.

CONCLUSION

For all of the reasons set forth above, Defendants' motion to vacate, modify or correct the Arbitration Award must be denied. Thereafter, the Court has no discretion but to confirm the Arbitration Award.

Respectfully submitted,

/s/Bryan P. Kelley

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May 22, 2025
Greenville, South Carolina

**AMERICAN ARBITRATION ASSOCIATION
Construction Industry Arbitration Tribunal**

In the Matter of the Arbitration between

Case Number: 01-24-0005-8744

Icon Custom Masonry, Inc.,
Claimant

-vs-

Levi Grantham, LLC and The Settlement, LLC,
Respondents

INTERIM AWARD

I, Franklin J Smith, Jr., THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named parties and dated May 22, 2022, and having been duly sworn, and having duly heard the proofs and allegations of the Parties at the evidentiary hearing held on November 25 and 26, 2024, do hereby issue this INTERIM AWARD as follows:

1. OPENING

a. Parties

Claimant, Icon Custom Masonry, Inc. ("Icon") is a specialty masonry contractor from Pineville, NC. Icon primarily performs community development and residential stonework in residential developments. Icon is represented by Bryan P. Kelley, Esquire of Elmore, Goldsmith, Kelley deHoll, P.A.

Respondent, The Settlement, LLC, ("Owner") is the owner of the subject property which is a residential development in Simpsonville, SC. The development is known as "The Settlement" (Project). Respondent, Levi Grantham, LLC ("Levi") is the developer of the Project. Respondents are represented by James A. Bruorton, IV Esquire and Taylor B. Ambrosius, Esquire of the Rosen Hagood, LLC.

b. Case Summary

This is a payment dispute relating to work performed by Claimant on the Project. The evidentiary hearing was held on November 25 and 26, 2024.

Claimant presented the following witnesses:

James McCarthy, Owner of Icon

Chris Lombardi, Employee of Icon

Respondents presented the following witnesses:

Joseph Gallagher, Land Development Manager for Levi

Jason “Jay” Harvey, Former Director of Land Development for Levi
 Kelly McGuinn, Former Division President of Crescent Homes, the parent company of Levi
 The parties jointly submitted 53 exhibits and agreed to admission of 5 exhibits during the hearing for a total of 58 exhibits.

c. Relief Sought

Claimant is seeking \$153,445.00 for obtaining permits and engineering services for a barn structure and five wayfinding monuments and the construction of the wayfinding monuments. Claimant did not construct the barn.

Respondents acknowledge that some amount is due Claimant for the work performed but assert that Claimant was not retained for any work relating to the barn and only partially performed work relating to the monuments. Further, Respondents contend that there are substantial setoffs based on the costs incurred to complete Claimant’s work.

d. Primary Issues

The primary issues relate to the scope of Claimant’s work, the amount owed for Claimant’s work and when that amount was due.

2. SUMMARY OF CLAIMS AND DEFENSES

a. Claimant’s claims and damages

Claimant contends that it was retained by Levi to obtain permits for a signage barn and five wayfinding sign monuments at the Project and later was retained to construct the five wayfinding monuments but not the signage barn. Levi contracted with Claimant for the permitting and installation of the monuments in late May 2022. Claimant began work in obtaining the permit and materials for the work. Actual work on site was performed from August 8 to August 18, 2022. Claimant contends that it is owed \$11,500.00 for obtaining a permit and engineering for the signage barn and \$142,035.00 for work related to the monuments.

Claimant asserted a mechanic’s lien claim for \$153,445.00 against the Owner; a breach of contract claim against Levi for \$153,445.00; and a quantum meruit claim against both Respondents. Claimant also seeks interest and attorney fees based on the mechanic’s lien statutes and SC Code Section 27-1-15.

b. Respondents’ defenses

Respondents contend that there was no contract with Claimant for anything related to the signage barn. Regarding the wayfinding sign monuments, Respondents acknowledge there was a contract for the installation of five monuments; however, Claimant only partially installed four wayfinding sign monuments and was not entitled to be paid any amount until the monuments were completed. Respondents assert that Claimant wrongfully abandoned the work and based on this wrongful action, Claimant is not entitled to recover anything on the breach of contract cause of action. Respondents concede that Claimant performed some work on the four monuments and contend that Claimant’s maximum recovery under the mechanic’s lien claim is between \$88,600.00 and \$89,550.00. Respondents seek attorney fees under the mechanic’s lien statutes.

3. SUMMARY OF FACTS

The relationship between Claimant and Respondents began in 2022. Claimant was performing work as a sub-subcontractor on the Tanner, a residential development owned by Levi. Jason “Jay” Harvey, Land Development Director for Levi, was involved in the Tanner project and asked Claimant if they were interested in quoting work on this Project. While performing work on the Tanner, Claimant began discussions with Jason “Jay” Harvey about doing work on this Project. Emails were exchanged between James “Jay” Harvey and James McCarthy, Owner of Icon, in the January to April 2022 timeframe regarding pricing work for the Project and obtaining permits.

James “Jay” Harvey left Levi in early April 2022 and Joe Gallagher, Land Development Manager for Levi, began corresponding with Claimant regarding the work. Gallagher sent a draft master contract to Claimant on May 19, 2022 and the contract was fully executed by James McCarthy and Joseph Gallagher on May 22, 2022.

On May 24, 2022, Claimant sent a proposal to Joseph Gallagher for various items of work on the Project including the signage barn and monuments. On May 25, 2022, Joseph Gallagher confirmed that they wanted Claimant to install the five monuments and indicated that he would let him know later about the rest of the work. On June 3, 2022, Alvin Johnson, Director of Land-South Carolina for Levi Grantham Group stated to Joseph Gallagher in an email “Icon Masonry is approved to install five wayfinding monument columns per the attached at a unit price of \$29,850.00 for a total of \$149,250.00”. Joseph Gallagher emailed James McCarthy “we are set to proceed with the five wayfinding monument columns.” James McCarthy asked Joseph Gallagher to sign and date the proposal but that was never done. On June 6, 2022, Alvin Johnson approved adding permitting and engineering fees to the contract and the contract amount increased to \$152,250.00.

Claimant began work to obtain permits and materials for the monuments. Claimant performed work on site from August 8 to August 18, 2022. When Claimant arrived on site, they were told that only four monuments could be started because there was a utility conflict on the fifth one that had to be resolved before they could start work.

When Claimant’s crew left the site on August 18, 2022, the four monuments were about 75% complete. The primary remaining work included installation of the signs and ceiling boxing. There were also some punch list items. Claimant testified that they expected the fifth monument to be installed soon and they intended to complete the four monuments when they came back to construct the fifth one.

On August 26, 2022, Claimant emailed an invoice to Levi for \$116,437.50, which represented 75% completion for the monuments and permitting and engineering costs. On September 16, 2022, Joseph Gallagher emailed James McCarthy requesting a breakdown on the unit price for the monuments because the Owner was “having trouble with the pricing”. Icon provided a breakdown that same day.

On September 23, 2022, Kelly McGuinn emailed James McCarthy indicating that he thought James McCarthy was “price gouging” them on the unit price and suggested that James McCarthy did not have a valid contract since there was no signed proposal or addendum, which was required under the terms of the master contract. Kelly McGuinn offered to pay \$19,000.00 per monument. James McCarthy replied the same day and rejected the offer. James McCarthy indicated that he could accept \$25,000.00 per monument and wanted to be paid before he continued the work. James McCarthy and

Kelly McGuinn continued discussions via phone and email but never reached an agreement. Icon refused to perform any further work because of the price dispute and failure of Levi to pay any amount for the work performed.

Claimant submitted two more invoices on October 20, 2022. One invoice was for \$11,500.00 representing the engineering and permit costs for the signage barn. The other invoice was for \$25,597.50, which James McCarthy contends, was for other work and stored materials for the fifth monument.

Respondents completed the installation of the four wayfinding monuments but decided not to construct the fifth monument.

Claimant filed a notice of mechanic's lien for \$153,445.00 on November 10, 2022.

Claimant sent a demand letter pursuant to SC Code Ann 27-1-15 on December 13, 2022.

Respondents responded to the demand letter on January 27, 2023. Claimant filed its Demand for arbitration on June 7, 2024.

4. DISCUSSION

a. Scope of Work

Regarding the signage barn, there is no question that Claimant performed some work relating to the barn and obtained a permit for the barn; however, this work was done in anticipation of getting the work but Levi never awarded the barn work to Claimant. James McCarthy was dealing with Jason "Jay" Harvey in the January to April 2022 timeframe, and James "Jay" Harvey testified that the emails with James McCarthy about permits referred to the monument permits and he never authorized Claimant to procure any engineering services. While there was a reference to the barn in one email and Jason "Jay" Harvey was aware of James McCarthy performing some "legwork" for the barn, Jason "Jay" Harvey viewed this as preliminary work being performed in anticipation of getting the work. Further, there is no evidence that Respondents received any value from the work performed by Claimant on the barn. Respondents obtained the barn permit and never benefitted from any of the work Claimant performed relating to the barn.

Therefore, **I find that the evidence is insufficient to support a claim that Levi contracted with Claimant for the signage barn permitting.**

Regarding the wayfinding monuments, there is no question that Claimant and Levi contracted for the construction of five monuments. Levi agreed to pay Claimant \$29,850.00 per monument. This unit price was accepted by Levi without question and without any request for a breakdown. Joe Gallagher, Land Development Manager for Levi signed the Master Contract, exchanged emails relating to the proposal and confirmed approval with Alvin Johnson, Levi's Land Director. Therefore, as of May 26, 2022 and certainly by June 3, 2022, **Claimant had a written contract to install five monuments at \$29,850.00 each. Levi also approved adding permitting and engineering fees to the contract and the contract amount increased to \$152,250.00.**

b. Performance of the Work

It is undisputed that Claimant performed work on four wayfinding monuments. There is general agreement that the percentage completion of this work was 75% to 80%. Kelly McGuinn agreed that percentage completion was 75% to 80%. Claimant billed for 75%.

I also find that Claimant provided some materials for the fifth monument when they arrived on site to begin work. This is based on the testimony of James McCarthy and Chris Lombardi, employee of Icon. The signs for the fifth column were not brought to the site and were not ever provided to Levi.

c. Amount owed

In order to determine the amount owed to Claimant, it must be determined if the contract was breached by Claimant or Levi. **I find that Levi breached the contract by refusing to pay Claimant the agreed price of \$29,850.00 per monument.**

The only conclusion that can be reached based on the emails between James McCarthy and Kelly McGuinn and their testimony at the evidentiary hearing is that Kelly McGuinn decided he was not going to pay the agreed contract price because he thought it was “price gouging”. Based on that position, Kelly McGuinn deliberately tried to force Claimant to accept a lesser amount by suggesting that Claimant did not have a valid written addendum and was not entitled to payment yet because the work had not been completed.

Whether Icon was “price gouging” is not relevant. Icon and Levi agreed in writing on the unit price and Levi was stuck with that price. “It is the court’s duty to enforce a contract regardless of its wisdom or folly or apparent unreasonableness.” See *D.A. Davis Construction v Palmetto Properties, Inc.* 281 S.C. 415, 315 S.E.2d 370, 372 (1984)

The Claimant’s proposal and the email approvals from Levi satisfy the requirement that a proposal or addendum be added for work to be performed under the master contract. Therefore, Kelly McGuinn’s position that there was no contract due to a lack of a proposal or addendum is without merit. Further, his attempt to negotiate a new price after the price was accepted and the work had been partially performed violated the implied covenant of good faith and fair dealing in contracts. While Levi may have had a legitimate argument to not pay for the work performed because it was not complete, Levi did not have any legal reason to refuse to pay the agreed price and Levi’s attempt to renegotiate the price after the price had been accepted and work performed is the reason that a dispute arose. Once it was clear that Levi was not going to pay the agreed upon price, Claimant was justified in abandoning the project because Levi had breached the agreement. While there were discussions about Claimant leaving due to non-payment, those issues were the result of Levi trying to renegotiate the contract. Levi continued its lack of good faith and fair dealing when it refused to pay anything to Icon even though it admits that some amount is owed. Accordingly, I find that Levi breached the contract as of October 6, 2022, Claimant was not required to perform further work and was entitled to receive the benefit of the bargain it made in the contract.

Based on Levi’s breach of the contract, the provision for paying only for completed work was no longer applicable. The amount Levi owed for breaching the contract was owed as of October 6, 2022.

The bargain that Claimant made with Levi was that Claimant would be paid \$152,500.00 for five wayfinding monuments. Claimant performed some of the work but did not complete the work because Levi refused to honor the price agreement; thereby breaching the contract and excusing Claimant from completing the work. Therefore, Claimant is entitled to recover for the value of the

work it performed based on the price accepted by Levi. The value of the work on the four monuments is \$119,400.00. Since Levi testified that it incurred \$12,242.96 to complete the 4 monuments. (\$9,392.96 for signage and \$2,850.00 for punch list work.) Claimant is entitled to recover \$107,157.04 for its "benefit of the bargain". Further, Claimant is entitled to recover for the value of the work it performed on the fifth monument and for the permitting and engineering fees. Claimant had performed all permitting and engineering for all five monuments which was valued at \$3,000.00 in the agreement and had placed materials on site for the fifth monument valued at \$4,000.00. Therefore, Claimant is entitled to \$7,000.00 for this work.

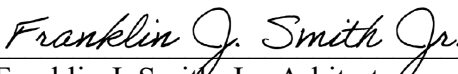
I find that the value of the labor and materials provided by Claimant is \$114,157.04 and Claimant is entitled to recover this amount under both the mechanic's lien and breach of contract actions.

5. INTERIM AWARD

Claimant's claim is GRANTED on the mechanic's lien and breach of contract causes of action and it is awarded \$114,157.04 against the Respondents. The quantum meruit claim is DENIED.

All claims for interest, attorneys' fees, and arbitration costs are reserved. The parties shall submit post-interim award briefs on the interest, attorneys' fees, and arbitration costs issues within **30** days of the date of this Interim Award.

December 20, 2024


Franklin J. Smith, Jr., Arbitrator

AMERICAN ARBITRATION ASSOCIATION
CASE NO. 01-24-0005-8744

Icon Custom Masonry,	)	
	)	
Claimant,	)	
	)	REQUEST FOR CLARIFICATION/
v.	)	MODIFICATION OF ARBITRATOR'S
	)	PRELIMINARY AWARD
Levi Grantham, LLC and The Settlement	)	
LLC.	)	
	)	
Respondent.	)	
_____	)	

Pursuant to R-52 (a) of the American Arbitration Association ("AAA") Construction Industry Arbitration Rules, Respondents request that the Arbitrator, through the AAA, modify his Preliminary Award issued December 20, 2024, and correct technical and computational errors in the Preliminary Award as set forth below.

Specifically, Resondents requests clarification and modification of the Arbitrator's Preliminary Award based on the following:

(1) Enforceable Contract Amount

The parties had a written contract to install five monument columns at \$29,850.00 each for a total of \$149,250.00. James McCarthy, after proposing and agreeing to the price of \$149,250.00, submitted an increase of \$3,000.00 to cover permitting and engineering fees raising the total to \$152,500.00. While Alvin Johnson confirmed approval of the increase, Mr. Johnson nor any other Levi Grantham representative was informed that the permitting and engineering fees were a duplicative cost. Mr. McCarthy testified that his per unit number of \$29,850.00 included \$300.00 per column for permitting and \$300.00 per column for engineering. He also testified that the \$3,000.00 increase to the column price was for permitting and engineering. These are identical charges for which Respondent should not be responsible to pay for twice. Either the per column unit price is \$29,250.00 with a separate \$3,000.00 charge for permitting and engineering, or the

per column price is \$29,850 with the permitting and engineering included, which was what was originally proposed and agreed to.

For the reasons set forth herein, the Arbitrator's Interim Award must be reduced by \$3,000.00.

(2) Modification/Clarification on Mechanic's Lien Cause of Action

The Arbitrator's Interim Award sets forth that "Claimant is entitled to recover \$107,157.04 for its "benefit of the bargain." The Arbitrator then determined that the "value of the labor and materials provided by Claimant is \$114,157.04 and Claimant is entitled to recover this amount under both the mechanic's lien and breach of contract actions." However, the Arbitrator failed to consider that the materials placed on site for the fifth monument column, may be awardable under the parties' contract, but are not lienable under South Carolina law and therefore not recoverable under the Claimant's mechanic's lien cause of action. Further, James McCarthy testified that Exhibit 28, in the amount of \$25,507.50 was for stored materials, including signage related to the four incomplete columns and column #5. Only \$4,000.00 of these materials was ever delivered to the jobsite according to Icon representative, Chris Lombardi.

S.C. Code Ann. § 29-5-20 requires material to have been for the improvement of the real estate. No evidence was presented at arbitration that materials left on site by Icon were actually used in the improvement of the real estate. In fact, Joe Gallagher testified that those materials were not used for any purpose and were discarded. Accordingly, these materials are not lienable under the provisions of the South Carolina Mechanic's lien statute. *See Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020), *aff'd as modified*, 440 S.C. 456, 892 S.E.2d 297 (2023) (contractor failed to show materials were actually used in property owner's home as requirement of statute governing mechanics' lien). As a result, none of Exhibit 28 can be considered as part of Claimant's lien claim.

For the reasons set forth herein, the maximum amount lienable under the South Carolina Mechanic's Lien Statute and potentially recoverable under Claimant's Foreclosure of Mechanic's Lien cause of action is \$88,650.04 (\$114,157.04 - \$25,507.50). The Arbitrator should clarify its award to distinguish the amount recoverable under Claimant's breach of contract claim (\$114,157.04) and the amount subject to the Mechanic's Lien claim (\$88,650.04). Subject to the arguments in Section 1, these amounts should be further reduced by \$3,000.00.

Determination of Prevailing Party

Pursuant to the Arbitrator's Order, the parties are to submit positions as to the Arbitrator's finding of Prevailing Party. Before the Arbitrator can determine the prevailing party in this Arbitration, the above clarifications and modifications must be made as it directly impacts the Arbitrator's determination of Prevailing Party.

Charleston, South Carolina

December 30, 2024

ROSEN HAGOOD, LLC

s/James A. Bruorton IV

James A. Bruorton IV

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EXHIBIT C

AMERICAN ARBITRATION ASSOCIATION Construction Industry Arbitration Tribunal

In the Matter of the Arbitration between

Case Number: 01-24-0005-8744

Icon Custom Masonry, Inc.,
Claimant

-vs-
Levi Grantham, LLC and The Settlement, LLC,
Respondents

ORDER ON RESPONDENTS' MOTION FOR CLARIFICATION/MODIFICATION

Respondents moved, pursuant to R-52(a) of the American Arbitration Association ("the AAA") Construction Industry Arbitration Rules, for clarification and modification of the December 20, 2024 Interim Award as follows:

1. Respondents contend that the contract amount contained duplicative costs and requests that \$3,000.00 be deducted from the breach of contract damages award;
2. Respondents contend that the amount awarded under the mechanic's lien cause of action failed to consider that materials for the fifth column are not "lienable" and therefore, the award of damages under the mechanic's lien cause of action should be reduced by \$25,507.00.

Rule 52(a) of the AAA Construction Industry Arbitration Rules provides:

Within 20 calendar days after the transmittal of an award, the arbitrator on his or her initiative, or any party, upon notice to the other parties, may request that the arbitrator, through the AAA, clarify the award or correct any clerical, typographical, technical, or computational errors in the award. In clarifying the award or correcting clerical, typographical, technical, or computational errors in it, the arbitrator is not empowered to redetermine the merits of any claim already decided.

Respondents' Motion for Clarification and Modification is DENIED because it requests that the arbitrator reconsider factual and legal conclusions rather than "correct any clerical, typographical, technical, or computational errors in the award." In essence, Respondents' request is for a reevaluation of the merits of the claim and Rule 52(a) specifically prohibits this. Therefore, the rules prohibit modification of the Interim Award based on the Respondents' requests.

Nevertheless, in the interest of further explaining my findings in the Interim Award, I have addressed each of Respondents' issues.

CONTRACT AMOUNT

Respondents agreed to a contract price of \$152,250.00 for the installation of five monuments. While the \$3,000.00 for permitting and engineering fees were added a few days later, these items were necessary for the installation of the five monuments and essentially made the unit price for each monument \$30,500.00. At no time during the formation of the contract did Levi Grantham, LLC ("Levi") question the amounts or what was included in the unit price. Therefore, the contract price was \$152,250.00. James McCarthy did not specifically testify that the additional \$3,000.00 was a mistake. Any inconsistencies in his testimony on this issue, which only arose due to Levi's efforts to evade the agreement that it made, are not sufficient to support Respondent's argument that the \$3,000.00 for permitting and engineering were duplicative.

LIENABLE AMOUNT

Respondents contend that the "lienable" amount of the Interim Award is only \$88,650.04 because \$25,507.00 of the award was for costs that do not constitute "labor and materials" under the lien statute. Respondents reach this conclusion by referring to

Exhibit 28, which was an invoice, submitted after Levi breached the contract. I find that any testimony relating to that exhibit was not relevant to the value of the work performed by Icon Custom Masonry, Inc. (“Icon”).

Icon contracted to install five monuments for \$152,250.00. The price was based on a unit price of \$29,850.00 per monument plus \$3,000.00 for permitting and engineering for the monuments. The monuments were for the improvement of the owner’s property. Icon provided the labor and materials to obtain permitting and engineering for five monuments. This work was necessary for the installation of the monuments and was therefore “labor and materials” used for the improvement of the owner’s property. The labor and materials to partially install four monuments were obviously “labor and materials” used to improve the owner’s property. Some materials for the fifth monument were delivered to the site and while those materials were eventually not used on the fifth column; when provided, those materials were delivered to the site for the improvement of the owner’s property and were therefore “lienable”.

All of Icon’s work was performed with the understanding that Icon was to install five monuments. Therefore, all of these labors and materials were provided for the improvement of the owner’s property including the materials left on site to construct the fifth monument. Since Levi later decided to not install the fifth monument, the estoppel doctrine prohibits Levi from arguing that the materials for the fifth monument were not provided for the improvement of its property.

The Interim Award found that Icon was entitled to recover \$107,157.04 for labor and materials for partial installation of the four monuments. Icon also provided labor and materials for five monuments valued at \$3,000.00. Materials for the fifth monument were

delivered to the site and were valued at \$4,000.00. Therefore, the value of the labor and materials provided by Icon for the improvement of the Owner's property was \$114,157.04.

Respondent's argument that materials not delivered to a site are not lienable is correct; however, only materials delivered to the site are included in the Interim Award. Respondent's breakdown of the costs for the fifth monument; i.e. \$25,507.00, is not relevant and was not relied on because the breakdown was created in an effort to provide information to the Respondents that Icon was not contractually obligated to provide.

Accordingly, Respondents' Motion for Clarification and Modification is DENIED. The Interim Award issued on December 20, 2024 stands as written.

January 10, 2025

A handwritten signature in cursive script that reads "Franklin J. Smith Jr.".

Franklin J. Smith, Jr. – Arbitrator

EXHIBIT D

AMERICAN ARBITRATION ASSOCIATION CASE NO. 01-24-0005-8744

Icon Custom Masonry,	)	
	)	
Claimant,	)	
	)	RESPONDENTS' BRIEF
v.	)	ON PREVAILING PARTY
	)	AND AWARD OF
Levi Grantham, LLC and The Settlement	)	ATTORNEY'S FEES
LLC,	)	AND COSTS
	)	
Respondents.	)	
	)	

Respondents, Levi Grantham, LLC and The Settlement, LLC ("Respondents") by and through their undersigned counsel, submit this Brief on Prevailing Party and Award of Attorney's Fees and Costs in accordance with the Arbitrator's direction at the conclusion of the merits hearing and in support of its defenses against the claims brought by Claimant Icon Custom Masonry, Inc. ("Respondent" or "Icon").

I. Claimant is not entitled to recover attorney's fees and costs under the South Carolina Mechanic's Lien Statute.

"The South Carolina Mechanic's Lien Statute recognizes two types of liens — Section 29–5–10 affords a lien to the mechanic or supplier who deals directly with the owner, while Section 29–5–20 is designed to protect the mechanic or supplier who deals with a general contractor or some person other than the owner or his agent." *T.W. Morton Builders, Inc. v. von Buedingen*, 316 S.C. 388, 400, 450 S.E.2d 87, 94 (Ct. App. 1994). Here, as proven at the final hearing, Claimant did not deal directly with the owner of the development, The Settlement, LLC. See **Exhibit A** (real property report showing The Settlement, LLC is the owner). Instead, Claimant dealt with Levi Grantham, LLC, who is an entity other than the owner of the property or its agent, and therefore, S.C. Code § 29-5-20 applies. See e.g., **Exhibit 14** (contract between Claimant and Levi Grantham).

The South Carolina Mechanic's Lien Statute provides recovery of attorney's fees and costs to the prevailing party. *See* S.C. Code Ann. § 29-5-20. Under the applicable statute, either party may file and serve on the other party an offer of settlement, and within ten (10) days thereafter the party served may respond by filing and serving an offer of settlement. *Id.* It further provides that the "offer shall state that it is *made under this section* and specify the amount, exclusive of interest and costs, which the party serving the offer is willing to agree constitutes a settlement of the lien." *Id.* (emphasis added). The mechanic's lien statute must be strictly construed, and we are not a liberty to depart from the plain meaning of the mechanic's lien's statutory language. *See Clo-Car Trucking Co., Inc. v. Cliffure Estates of South Carolina, Inc.*, 282 S.C. 573, 320 S.E.2d 51 (Ct. App. 1984). Lastly, the Mechanics Lien Statute further provides that "[i]f the plaintiff makes no written offer of settlement, the amount prayed for in his complaint is considered to be his final offer of settlement." S.C. Code Ann. § 29-5-20.

Here, Claimant's November 6, 2024 offer of settlement states that it is made pursuant to S.C. Code Ann. § 29-5-10(b) and makes no reference to S.C. Code Ann. § 29-5-20. *See Exhibit B.* Given that S.C. Code Ann. § 29-5-20 is the applicable statute, which is subject to strict interpretation and mandates that offers of settlement explicitly state their intention of such *under this section*, Claimant's Offer of Settlement is invalid. *See Seckinger v. Vessel Excalibur*, 326 S.C. 382, 391, 483 S.E.2d 775, 779 (Ct. App. 1997) ("definition of 'prevailing party' found in statute intended to foster settlement was not applicable for purpose of attorney fee award, where plaintiff's written settlement offer did not state it was made under that statute, it was not filed with the court, and no other written offers were made during course of proceedings). Therefore, Claimant is not found to have made a valid written offer of settlement, and the amount of \$153,445.00 prayed for in its complaint is its final offer of settlement.

In response to Claimant's invalid Offer of Settlement, Respondents properly filed their offer of settlement on November 13, 2024, proposing a resolution amount of \$90,000.00. *See Exhibit C.* The Arbitrator's Interim Award awarded Claimant \$114,157.04. The difference between the Interim Award and Claimant's Offer of Settlement is \$39,287.96 (\$153,445.00 - \$114,157.04), whereas the difference between the Interim Award and Respondents' Offer of Settlement is \$24,157.04 (\$114,157.04 - \$90,000.00). Given that Respondents' offer of settlement is closer to the awarded amount, Respondents are the prevailing party and therefore entitled to recover their attorney's fees and costs.

II. Claimant is not entitled to recover under attorney's fees and costs under S.C. Code Ann. § 27-1-15.

Claimant has asserted in its pleadings that it is entitled to an award of attorney's fees, costs, and interests pursuant to S.C. Code Ann. § 27-1-15, alleging it made a proper demand for payment pursuant to the statute on December 13, 2022, seeking payment for the labor and materials provided to the Project. However, S.C. Code Ann. § 27-1-15 stipulates that liability for reasonable attorney's fees and interest at the judgment rate arises only if the party fails to conduct a fair investigation or unreasonably refuses to pay the claim or the appropriate portion thereof. Further, S.C. Code Ann. § 27-1-15 only provides for attorney's fees and interest, not costs as alleged by Claimant. Regardless, Respondents have met its burden required by the statute precluding Claimant's recovery of any fees or interest pursuant to the statute.

Pursuant to S.C. Code Ann. § 27-1-15, the party seeking an award of attorney's fees and interest under the statute has the initial burden of presenting prima facie evidence that the person against whom the claim is made did not make a fair and reasonable investigation of the claim. *See Moore Elec. Supply, Inc. v. Ward*, 316 S.C. 367, 450 S.E.2d 96 (S.C. App. 1994). Here, Claimant did not fulfill its burden of proving Respondents did not make a fair and reasonable investigation into the claim or that it otherwise unreasonably refused to pay the claim or proper portion.

Respondents responded to Claimant's demand within the statutory forty-five (45) day period. Specifically on January 27, 2023, in its response to Claimant's demand, Levi Grantham and The Settlement detailed the reasonable and thorough investigation the parties conducted into the merits of Claimant's payment request. *See Exhibit 43*. The response detailed the discrepancies in Claimant's invoiced amounts, thereby providing a reasonable basis for disputing the sum demanded as due. *Id.* For example, as determined by the Arbitrator, Claimant's invoices included charges for work on the barn structure, which was neither authorized nor intended to improve real property, rendering the engineering plans unnecessary. Additionally, Respondents reasonably believed Claimant billed for work on the columns that was never performed. Under these circumstances, Respondents' decision to withhold payment was not only reasonable but fully justified. Furthermore, as the project remained incomplete at the time of the § 27-1-15 correspondences between the parties, the cost to complete Claimant's scope of work was undetermined. Therefore, Respondents made a fair a reasonable investigation into Claimant's claim and reasonably withheld payment.

Accordingly, Respondents have complied with its obligations set forth in S.C. Code Ann. § 27-1-15. *See Moore Elec. Supply, Inc. v. Ward*, 316 S.C. 367, 450 S.E.2d 96 (Ct. App. 1994) (supplier failed to meet the burden of proof necessary for recovery of attorney's fees and interest where the supplier did not present evidence at trial that the surety failed to take reasonable and fair steps to investigate the validity of the claim); *Carolina Steel Corp. v. Palmetto Bridge Constructors*, 444 F. Supp. 2d 577 (D.S.C. 2006) (district court's findings against steel buyers in certain particulars did not imply that their investigation and resulting decisions in paying seller were unreasonable or unfair, and, thus, buyers were not liable for reasonable attorney fees under South Carolina statute on recovery of attorney fees on claims for improvement of real estate).

Thus, Claimant's claim for violation of S.C. Code Ann. § 27-1-15 fails as a matter of law and it is therefore not entitled to attorney's fees or interest under this statute.

ROSEN HAGOOD, LLC

s/James A. Bruorton IV

James A. Bruorton IV

Taylor B. Ambrosius

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tambrosius@rosenhagood.com

Charleston, South Carolina

January 21, 2025

Greenville County, SC - Property Report [Convert to PDF](#) 10/20/2022

PIN / Tax Map #

0560190101600



Owner Information

Owner Name SETTLEMENT LLC THE

Additional Owner Name

Care Of

Mailing Address 572 Savannah Hwy

City Charleston

State SC

Zip Code 29407

Mobile
Maps and
Information

Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification.

Parcel Information

Acres	Description	Location	Subdivision
17.920	Common Area	Fowler	The Settlement

Reference Information

Deed Book	Deed Page	Deed Date	Plat Book	Plat Page
2570	4005	7/16/2019	1423	24

Building Information

Bedrooms	Bathrooms	Half Baths	Square Feet
0	0	0	0

Classification

Land Use	Jurisdiction	Homestead Code
1180 - Residential Vacant	County Jurisdiction	No

Values

Fair Market Value	Taxable Market Value	Sales Price	Total Rollback
\$60,000	\$60,000	\$0	\$0

Taxes / Fees

Tax District	County Stormwater Fee	City Stormwater Fee	Taxes	Taxes Paid Date
898	\$0	\$0	\$0	

Ownership History

Owner Name	Deed Book	Deed Page	Date of Last Sale	Last Sale Price
Settlement Llc The	2570	4005	20210429	\$0

loading

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S OFFER OF
	)	SETTLEMENT
	)	
The Settlement, LLC and Levi Grantham,	)	
LLC	)	
	)	
Defendants.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that, pursuant to S.C. Code Ann. § 29-5-10(b), Plaintiff Icon Custom Masonry, Inc. hereby offers to accept the sum of \$127,750.00 (exclusive of interest and costs) from The Settlement, LLC and/or Levi Grantham, LLC to settle the above-captioned lien foreclosure action in full, including all of Plaintiffs' claims set forth in this action and in arbitration. Plaintiff asserts that if it is the prevailing party in this action as defined by S.C. Code Ann. § 29-5-10(b), then it will seek all available remedies as allowed thereunder.

Respectfully submitted,

s/Bryan P. Kelley
 Bryan P. Kelley (S.C. Bar No. 76062)
 Elmore Goldsmith Kelley & deHoll, P.A.
 19 Blair Street (29607)
 Post Office Box 1887
 Greenville, South Carolina 29602
 Telephone: (864) 255-9500
 Facsimile: (864) 255-9505
 bkelley@elmoregoldsmith.com
Attorney for Plaintiff

November 6, 2024
 Greenville, South Carolina



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2023-CP-23-00189
	)	
Icon Custom Masonry, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
The Settlement, LLC and Levi Grantham,	)	DEFENDANTS' OFFER OF
LLC.	)	SETTLEMENT
	)	
Defendants.	)	

Defendants, The Settlement, LLC and Levi Grantham, LLC (“Defendants”) by and through their undersigned attorneys, reject the OFFER OF SETTLEMENT filed by Plaintiff on November 6, 2024.

Pursuant to Section 29-5-10(b) and/or 29-5-20(c) of the Code of Laws of South Carolina, Defendants, The Settlement, LLC and/ Levi Grantham, by and through their undersigned counsel make an OFFER OF SETTLEMENT in the amount of NINETY THOUSAND and 00/100 DOLLARS (\$90,000.00), exclusive of interest and costs, to settle the above-captioned lien foreclosure action in full, including all of Plaintiff’s claims set forth in this action and in arbitration.

Pursuant to Section 29-5-10(b) and/or 29-5-20(c) of the Code of Laws of South Carolina, this offer is considered rejected unless an acceptance in writing is filed by Plaintiff and served on Defendants, or their counsel five (5) days before the date this case is scheduled for trial on November 25, 2024. If this offer is rejected, it may not be referred to for any purpose at the trial and/or arbitration of this case and may be considered by the Arbitrator solely for the purpose of awarding costs and litigation expenses under Section 29-5-10 and/or Section 29-5-20.

Defendants assert that if Defendants are the prevailing party in this action as defined by S.C. Code Ann. § 29-5-10(b) and/or S.C. Code Ann. § 29-5-20, the Defendants will seek all available remedies allowed thereunder.

ROSEN HAGOOD, LLC

By: s/James A. Bruorton IV
James A. Bruorton, IV
Taylor B. Ambrosius
40 Calhoun Street, Suite 450
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(843) 577-6726
cbruorton@rosenhagood.com
tambrosius@rosenhagood.com

November 13, 2024

Charleston, South Carolina

**AMERICAN ARBITRATION ASSOCIATION
Construction Industry Arbitration Tribunal**

In the Matter of the Arbitration between

Case Number: 01-24-0005-8744

Icon Custom Masonry, Inc.,
Claimant

-vs-
Levi Grantham, LLC and The Settlement, LLC,
Respondents

ORDER ON PREVAILING PARTY

Based on the interim award issued on December 20, 2024, both parties contend to be the prevailing party under the mechanic's lien statute. Accordingly, I am issuing this order on the prevailing party issue only so that the non-prevailing party may submit its position on attorneys' fees and costs.

The Claimant, Icon Custom Masonry, Inc. (Icon) seeks attorney fees and costs as the prevailing party in the mechanic's lien cause of action and pursuant to SC Code Ann 27-1-15 based on Respondents, Levi Grantham, LLC (Levi) and The Settlement, LLC (Settlement) failure to conduct a reasonable investigation and pay undisputed amounts due.

Respondents contend that Settlement is the prevailing party in the mechanic's lien action due to Icon's procedural error in filing the lien under the wrong statute. Respondents also contend that Icon is not entitled to recover attorney fees and costs under SC Code Ann. 27-1-15.

S.C. Code Ann. § 29-5-10 *et seq.* (Lien Statute) provides that "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." Further, "[f]or purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. One verdict assumes some entitlement to the mechanic's lien and the consideration of compulsory counterclaims. The party whose offer is closer to the verdict reached is considered the prevailing party in the action."

Both Claimant and Respondents timely filed offers of settlement as defined by the Lien Statute in the underlying state court litigation. Icon's offer of settlement was \$127,750.00; Respondents' was \$90,000.00. The midpoint between the offers of settlement was \$108,875.00. Icon's offer was \$13,592.96 from the Interim Award of \$114,157.04; Respondents offer was \$24,157.04 from the Interim Award. Therefore, based on the offers of settlement, Icon is the prevailing party. However, Respondents contend that Icon's offer of settlement does not comply with the lien statute and therefore cannot be considered. If Icon's offer of settlement is invalid, then Respondents would be the prevailing party.

Respondents contend that Icon filed its lien under the "Contractor lien" statute- SC Code Ann 29-5-10 but it should have filed its lien under the "Subcontractor lien" statute- SC Code 29-5-20. "The South Carolina Mechanic's Lien Statute recognizes two types of liens — Section 29– 5– 10 affords a lien to the mechanic or supplier who deals directly with the owner, while Section 29–

5–20 is designed to protect the mechanic or supplier who deals with a general contractor or some person other than the owner or his agent.” *T.W. Morton Builders, Inc. v. von Buedingen*, 316 S.C. 388, 400, 450 S.E.2d 87, 94 (Ct. App. 1994).

Respondents contend that Icon did not deal directly with the owner of the development, The Settlement, LLC and they contend that Levi, the party Icon contracted with, is not the owner or its agent; therefore, S.C. Code § 29-5-20 applies.

In response to Respondents’ positions, Icon contends that it was proper to file under the Contractor’s lien statute because Levi was not the general contractor; it was, in essence, an owner related entity.

The relationship between Levi and Settlement was not a contested issue during the hearing. In their prehearing brief, Respondents stated “The Settlement, LLC was the Owner of the Project and a single purpose limited liability company subsidiary to Levi Grantham”. In Icon’s prehearing brief, it contented that Levi and Settlement were subsidiaries of Crescent Homes. The testimony of Respondents’ witnesses supported Icon’s position that both entities were subsidiaries of Crescent Homes. It is undisputed that Settlement was the owner of the property and there was no contract between Settlement and Levi.

I find that Respondents’ position that Levi was acting as the general contractor is not supported by the evidence. All evidence supports the position that Levi and Settlement were in “ownership roles” and not in a “owner/general contractor” relationship. The evidence also supports Icon’s position that Settlement “consented” to the work, thereby making the Contractors lien statute applicable.

Accordingly, I find that Icon’s lien was properly filed under the Contractors lien statute and based on the offers of settlement, Icon is the prevailing party under the mechanic’s lien statute. As the prevailing party, Icon is entitled to recover reasonable attorney’s fees and costs.

SC Code Ann. § 27-1-15 requires a person upon whom a claim is made to pay a valid claim within forty- five days of the demand and if that 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. (emphasis added). It is undisputed that Icon properly made the demand per the statute and Respondents admitted at the hearing that some amount was owed to Icon; however, Respondents failed to pay any amount to Icon. **Therefore, I find that Respondents failed to comply with SC Code Ann. § 27-1-15 and Respondents are liable for attorney fees under this statute.**

Respondents shall provide its position on the amount of fees and costs requested by Icon no later than February 14, 2025.

AND IT IS SO ORDERED

February 3, 2025

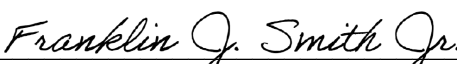

Franklin J. Smith, Jr., Arbitrator

EXHIBIT F

AMERICAN ARBITRATION ASSOCIATION Construction Industry Arbitration Tribunal

In the Matter of the Arbitration between

Case Number: 01-24-0005-8744

Icon Custom Masonry, Inc.,
Claimant

-vs-

Levi Grantham, LLC and The Settlement, LLC,
Respondents

FINAL AWARD OF THE ARBITRATOR

I, Franklin J. Smith, Jr., THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named parties (Claimant represented by Bryan P. Kelley, Esq. of Elmore Goldsmith Kelley and deHoll, P.A; Respondents represented by James A. Bruorton IV, Esq. and Taylor B. Ambrosius, Esq. of Rosen Hagood, LLC), and dated May 22, 2022, and having been duly sworn, and having duly heard the proofs and allegations of the parties at the evidentiary hearing held on November 25 and 26, 2024, and having previously issued the INTERIM AWARD on December 20, 2024, and having reviewed the parties' post-hearing submissions on attorneys' fees, interest, and costs, do hereby issue this FINAL AWARD as follows:

The INTERIM AWARD reserved each party's rights relating to interest, attorneys' fees, and costs. After issuance of the INTERIM AWARD, both parties claimed to be the prevailing party under the mechanic's lien cause of action. Additionally, Respondents claimed that Claimant was not entitled to recovery under SC Code Ann 27-1-15.

On December 30, 2024, Respondents submitted a request for clarification/modification of the Interim Award. On January 8, 2025, Claimant submitted its reply to Respondents' request for clarification/modification of the Interim Award. On January 10, 2025, an Order was issued denying Respondents' request for clarification/modification of the Interim Award.

An Order was issued on February 3, 2025, finding that Claimant was the prevailing party under the mechanic's lien cause of action and was entitled to recover under SC Code Ann 27-1-15.

On February 14, 2025, Respondents submitted its brief on Claimant's request for attorney's fees and costs. On February 21, 2025, Claimant submitted its reply to Respondents' brief on attorney's fees and costs. Claimant's reply included detailed invoices of all attorney's fees and costs sought by Claimant.

1. ATTORNEY'S FEES AND COSTS

As the prevailing party under the mechanic's lien claim, Claimant is entitled to recover reasonable

attorney's fees and costs against The Settlement, LLC relating to the lien claim. Claimant also asserted other causes of actions; therefore, Claimant is not entitled to recover for all its attorney's fees under the mechanic's lien claim. However, Claimant prevailed on its SC Code Ann 27-1-15 claim against both Respondents; therefore, it is entitled to recover from both Respondents all reasonable attorney's fees incurred from the date of the SC Code Ann 27-1-15 demand which was made on December 13, 2022.

In determining the reasonable attorney's fees, I deducted amounts for attorney's fees incurred before December 13, 2022, attorney's fees related to the failed attempt to contest the motion to compel arbitration and attorney's fees related to licensing issues in other states which I find to be unrelated. Based on my review of the detailed invoices and these deduction categories, I find that the reasonable attorney's fees are **\$64,736.50** (\$73,797.50 – \$9,061.00). I find that Icon Custom Masonry, Inc., incurred reasonable costs of **\$17,001.90** (\$14,606.82 in arbitration costs and \$2,395.08 in costs listed on Claimant's Summary of Attorney's Fees and Costs - Exhibit 1).

2. INTEREST

"The law has long allowed pre-judgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty." *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258. S.C. Code Ann. § 34-31-20(A) provides that "in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest" at the legal rate of 8.75%. However, parties are free to agree to higher interest rates within legal limits. *Butler Contracting*, 369 S.C. at 134, 631 S.E.2d at 259; *Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC*, 372 S.C. 89, 99, 641 S.E.2d 459, 464.

In this case, the interest rate is governed by the contract. The Master Professional Services Agreement, Section 8.a provides: "Payment is due within thirty (30) days, unless otherwise agreed to in writing prior to the submittal of the invoice. Past due amounts are subject to a late fee of one and one-half percent interest per month." Additionally, each of Claimant's invoices provide: "If balance is not paid by due date, a finance charge of 1.5% will be added to the outstanding balance each month until account is paid in full."

The INTERIM AWARD determined that Claimant was due \$114,157.04 as of October 6, 2022. Based on a rate of 18% per annum, this amount has accrued and continues to accrue interest of \$56.30 per day. As of February 28, 2025, the interest that has accrued since October 6, 2022, totals **\$49,262.50**.

3. FINAL AWARD

As the prevailing party, Icon Custom Masonry, Inc., is entitled to recover interest on the INTERIM AWARD amount and reasonable attorney's fees and costs. I find that the interest amount is \$49,262.50; reasonable attorney's fees are \$64,736.50; and costs are \$17,001.90.

Accordingly, Icon Custom Masonry, Inc., is awarded the following amounts against the Respondents:

INTERIM AWARD amount	\$114,157.04
-----------------------------	---------------------

Interest on INTERIM AWARD	\$49,262.50
Attorney's Fees	\$64,736.50
<u>Costs</u>	<u>\$17,001.90</u>
TOTAL FINAL AWARD	\$245,157.94

The administrative fees of the American Arbitration Association totaling \$6,250.00 and the compensation and expenses of the arbitrator totaling \$8,356.82 are to be borne by Respondents, and this amount is included in the costs listed above. Therefore, Respondents shall reimburse Claimant the total sum of \$14,606.82 representing that portion of the fees previously incurred and paid by Claimant.

The total award of \$245,157.94 shall be paid to Claimant by Respondents within thirty (30) days of the date of this Final Award.

This Final Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby DENIED.

I, the Undersigned Arbitrator, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

February 28, 2025

Franklin J. Smith Jr.

Franklin J. Smith, Jr., Arbitrator

EXHIBIT G

From: [Bryan Kelley](#)
To: [Taylor Ambrosius](#)
Cc: [Chip Bruorton](#)
Subject: RE: Icon Custom Masonry, Inc. v. Levi Grantham, LLC - Case 01-24-0005-8744
Date: Thursday, July 11, 2024 4:37:27 PM
Attachments: [image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image010.png](#)
[image011.png](#)

Taylor:

We will agree to use Frank Smith. Thanks for the suggestion.

Bryan



Bryan P. Kelley
Attorney
bkelly@elmoregoldsmith.com

ELMORE GOLDSMITH KELLEY & DEHOLL, P.A.
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From: Taylor Ambrosius <tambrosius@rosenhagood.com>
Sent: Wednesday, July 10, 2024 3:13 PM
To: Bryan Kelley <bkelly@elmoregoldsmith.com>
Cc: Chip Bruorton <cbruorton@rosenhagood.com>
Subject: FW: Icon Custom Masonry, Inc. v. Levi Grantham, LLC - Case 01-24-0005-8744

External Email: Use caution with links and attachments.

Hi Bryan, we are happy to file our list with the AAA but wanted to reach out ahead of time to see if you would be agreeable to using Frank Smith.

Thanks,

Taylor Ambrosius

[Attorney at Law]

40 Calhoun Street, Suite 450
Charleston, SC 29401

Office: (843) 577-6726 | Fax: (843) 724-8036

Direct Phone: (843) 266-8120 | Direct Fax: (843) 266-2244

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From: TiffanieWilliams@adr.org <TiffanieWilliams@adr.org>

Sent: Wednesday, July 10, 2024 1:21 PM

To: Taylor Ambrosius <tambrosius@rosenhagood.com>; Chip Bruorton <cbruorton@rosenhagood.com>; bkelly@elmoregoldsmith.com

Subject: Icon Custom Masonry, Inc. v. Levi Grantham, LLC - Case 01-24-0005-8744

Hello,

Please review the attached correspondence regarding the above-referenced case.

Feel free to contact me with any questions, comments or concerns you have related to this matter.

Thank you.



AAA Tiffanie Williams
Manager of ADR Services

American Arbitration Association
International Centre for Dispute Resolution
T: 404 320 5110 F: 877 395 1388 E:
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
SOUTH CAROLINA CIRCUIT COURT 13
CASE NO. 2023-CP-23-00189

ICON CUSTOM MASONRY INCORPORATED,

PLAINTIFF,

VERSUS

THE SETTLEMENT, LIMITED LIABILITY CORPORATION
LEVIN GRANTHAM, LIMITED LIABILITY CORPORATION
AND ATLANTIC SPECIALTY INSURANCE COMPANY,

DEFENDANT.

H E A R I N G
BEFORE THE HONORABLE WILLIAM C. McMASTER III

DATE: MAY 30, 2025

LOCATION: GREENVILLE COUNTY

TRANSCRIPTIONIST: THERESA SHIRLEY

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES

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6 ATTORNEY FOR THE PLAINTIFF.

7

8 TAYLOR AMBROSIUS, ESQUIRE

9 ROSEN HAGOOD LLC.

10 40 CALHOUN STREET SUITE 450

11 CHARLESTON, SOUTH CAROLINA 29401

12 ATTORNEY FOR THE DEFENDANT.

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: All right. Our next matter on the
3 Docket involves three different motions, and so we'll be
4 hearing those all at the same time. We're going to go
5 to 2023-CP-23-00189, Icon Custom Masonry Inc., versus
6 The Settlement LLC. I've got a Defendant's motion to
7 vacate arbitration. I've got a Plaintiff's motion to
8 approve arbitration award, and then I've got a
9 Plaintiff's motion for summary judge. So we're going to
10 -- we'll unpack all that in just a second.

11 If the parties will please identify themselves and
12 who they represent.

13 MR. KELLEY: Brian Kelly, I represent the
14 Plaintiff, Icon Custom Masonry.

15 MS. AMBROSIUS: Good Morning, Your Honor. My name
16 is Taylor Ambrosius and I represent all three Defendants
17 in this matter.

18 THE COURT: All right. Okay. Obviously, we've got
19 -- we're going to have some competing -- one wants to
20 approve, one wants to -- to, you know, to vacate. So
21 I'll just start with the motion to vacate, and you'll
22 probably, I would think argue your motion to approve at
23 the same time in the response. So we should be able to
24 knock out both those at the same time. I am going to
25 give everybody enough time to say whatever they'd like

1 to say.

2 MR. KELLEY: Thank you.

3 THE COURT: All right, sir, this -- the we got
4 Defendant's motion to start with. So Ms. Ambrosius
5 would be happy to hear from you.

6 MS. AMBROSIUS: Thank you. Your Honor. May it
7 please the Court?

8 THE COURT: Yes, ma'am.

9 MS. AMBROSIUS: So this matter involves a
10 development in Simpsonville, and at the time the
11 development was being constructed, it was owned by The
12 Settlement LLC. During this development, there was a
13 payment dispute between Icon and Levin Grantham. Levin
14 Grantham had contracted with Icon for Icon to construct
15 five wayfinding monument columns in this development,
16 the payment dispute related to agreed upon costs, the
17 percent completed of the work, and the legit --
18 legitimacy of Icon's billings. Levin Grantham then
19 withheld payment for the incomplete work as permitted
20 under the contract and under the applicable South
21 Carolina code. And as a result, Icon had left the
22 project. When they left the project, they had only
23 partially completed four of the columns, so the fifth
24 column was not completed. As a result, Levin Grantham
25 had to hire a third party contractor to complete the

1 four columns, and then was intending to complete the
2 fifth column, but actually never was constructed. As a
3 result, Icon had filed a mechanic's lien seeking to
4 recover the unpaid monies, and Levin Grantham then
5 posted a surety bond to release the property from that
6 lien. Then Icon had filed their lawsuit to foreclose on
7 mechanic's lien, bringing other causes of actions as
8 well, and ultimately it was compelled into arbitration.
9 During the arbitration, Icon had claimed that it was
10 owed \$153,445 for the work it had performed. This
11 included roughly \$116,000 for 75 percent completion of
12 the monument columns, and roughly \$25,000 for materials
13 stored off site, along with \$11,500 relating to the barn
14 structure, which included engineering fees, permitting
15 fees and permitting allowance. The arbitrator entered
16 an interim award on December 20, 2024 and found that
17 Levin Grantham did contract with Icon to construct five
18 way finding columns at a price of \$29,850 each, plus
19 related charges. It was found that the parties did not
20 contract for the barn structure, so that 11,500 was not
21 included in the interim award, along with the 2500
22 claimed for material stored off site, because these
23 materials were never actually given to Levin Grantham.
24 The arbitrator had found that Levin Grantham agreed to
25 pay the 29,850 per monument, and that Levin Grantham

1 approved the additional 3000 for the permitting and
2 engineering fees, bringing the total contract amount to
3 \$152,250 for five columns. However, in the interim
4 award, it was noted that only 75 percent of four columns
5 was completed. So the interim had valid -- the interim
6 award had valued work on the four complete columns at
7 \$119,400 this would be the 29,850 times four.

8 The arbitrator had recognized that Levin Grantham
9 did, in fact incur \$12,242.96 to complete the four
10 columns. So as a result, he had deducted that amount
11 from the \$119,400 bringing the amount of work Icon had
12 done it to \$107,000 -- 100 -- 100 excuse me, \$107,157.04
13 awarded to Icon. But what we'll get into later, is that
14 this was miscalculated in that Icon had only performed
15 at 75 percent of the four columns. So 75 percent of the
16 four columns at the value of each column ultimately
17 comes to \$89,550 -- 550 instead, the arbitrator had
18 deducted the cost that Levin Grantham incurred to
19 complete the remaining \$25,000 which will explain why
20 this is miscalculated.

21 The interim award also included compensation for
22 work and materials relating to the fifth column.
23 However, Levin Grantham, as I mentioned, never
24 constructed that fifth column and never used work or
25 materials for that fifth column on anything else. So

1 with regards to the fifth column, it included permitting
2 and engineering fees. For all five columns, the
3 permitting and engineering fees was \$3,000. So if we
4 were to deduct that specifically for the fifth column,
5 that would be \$600 worth of permitting and engineering
6 fees for that fifth column. The award also at least as
7 to mechanics cause of action, included \$4,000 in
8 materials relating to the fifth column. So for the
9 fifth column, it included an improper amount of what
10 would have been, excuse me, but my calculations are in
11 here. But it would have been the \$600 plus 4000 so
12 \$4,600. And so that interim award, then ultimately came
13 to \$114,000 -- \$114,157.04. So Defendant's motion for
14 clarification and or modify -- vacating the award seeks
15 to get it vacated modified because it improperly
16 included damages under the mechanic's lien cause of
17 action and included non-lienable amounts for the fifth
18 column. We have brought this to arbitrator's attention
19 on December 20th via a request for modification, and we
20 have cited to supporting case law as well. However, his
21 subsequent order in January did not modify the award.
22 We also submitted a briefing as to attorney's fees as to
23 why Icon ultimately, was not the prevailing party under
24 the mechanic's lien statute, which I will also get into
25 today.

1 And then ultimately the final award was entered in
2 February, and it awarded Icon \$64,736.50 in attorney's
3 fees, bringing the total award with that 114,000 roughly
4 49,000 roughly in interest, the rough \$64,000 in fees
5 and roughly \$17,000 in cost, to a total of \$245,157.94.
6 But in summary, we're seeking to vacate or modify and
7 correct the award for four reasons.

8 The first being that the arbitrator awarded amounts
9 under the mechanic's lien statute, that is not lienable.

10 The second being that there's a miscalculation of
11 the interim award.

12 The third being that he had improperly found Icon
13 to be the prevailing party under the mechanic's lien
14 statute, and so therefore Icon technically should not
15 have been awarded fees and costs under that statute.
16 And this is also important, because even if Icon was
17 properly awarded fees under their 27-1-15 action, that
18 statute does not provide for costs.

19 And then also our fourth reason is that the
20 attorney's fees was excessive and unreasonable, which we
21 had brought to the arbitrators attention, and he did not
22 explicitly rule on each of the Jackson Factors. So as a
23 result, the arbitrator had exceeded its powers, which
24 exhibited a manifest disregard or perverse
25 misconstruction of the law, and he miscalculated the

1 figures.

2 So in order to vacate an arbitration award that is
3 going to be under South Carolina statute 15-48-130 and
4 the modification is under 15-48-140. To vacate, it says
5 that an award shall be vacated where an arbitrator
6 exceeds his powers and then to seek modification or
7 correction. It says that it shall be modified or
8 corrected where, and among other reasons, there was an
9 evident miscalculation of figures, or the arbitrators
10 have awarded upon a matter not submitted to them, and
11 the award may be corrected without affecting the merits
12 of the decision upon the issues submitted.

13 However, where neither of the statutory grounds
14 exist, common law provides that an arbitration award
15 will be vacated where there's a manifest disregard or
16 perverse misconstruction of the law by the arbitrator,
17 and that's exactly what we are arguing here today. A
18 manifest disregard of the law actually occurs when the
19 arbitrator knew of a governing legal principle but yet
20 had refused to apply it, and the law disregarded was
21 well defined, explicit and clearly applicable to the
22 case. A case I'd like to bring to your attention that,
23 although not cited, in our motion is it's *Xu Dong Sun*
24 *versus Wang*. It's a South Carolina Court of Appeals
25 case from 2014 that vacated an arbitration award because

1 the arbitrator had ignored a legal principle that the
2 first party to breach a contract cannot complain when
3 another party subsequently breaches the contract. This
4 is just an example of where an arbitrator actually
5 ignores a governing law that an arbitration award can be
6 vacated.

7 THE COURT: What's the line on that?

8 MS. AMBROSIUS: Here that would be Westlaw number
9 2014 Westlaw 2957105.

10 THE COURT: 2957105?

11 MS. AMBROSIUS: Yes, Your Honor.

12 THE COURT: All right. Go ahead.

13 MS. AMBROSIUS: So here there was obviously, as I
14 had mentioned, a manifest disregard of the law, because
15 he had included non-lienable amounts in the arbitrator's
16 award. And also found Icon to be the prevailing party
17 under the incorrect mechanic's lien statute.
18 Alternatively, we're seeking modification because of
19 miscalculation, and he had ruled on a matter not
20 submitted to him. So first, with regards to the
21 mechanic's lien, cause of action award, including
22 amounts not lienable under South Carolina law. The
23 mechanic's lien statute section 29-5-10, requires the
24 materials to actually have been used in the erection,
25 alteration or repair of a building or structure upon

1 real estate. The interim award of \$114,157.04 includes
2 permitting and engineering to the fifth column, along
3 with \$4,000 of materials that were placed on site for
4 the fifth column. Although, however -- although, I've
5 mentioned before that the fifth column was actually
6 never constructed, so therefore not all the permitting
7 and engineering fees, nor the \$4,000 worth of materials
8 delivered to the site was actually used. And as I
9 stated before, when you break down the \$3,000 for all
10 five columns, ultimately only 600 is attributable to the
11 fifth column. So therefore there was \$4,600 that was
12 improperly included in the mechanic's lien cause of
13 action, which brings the lienable amount to instead be
14 \$109,557.04. This is a manifest disregard of the law,
15 because we had brought this to the arbitrator's
16 attention and cited supporting case law that analyzes
17 the actual use requirement that it be incorporated into
18 the property. Our motion also cites to a secondary
19 source on this as well, stating that it must be
20 incorporated or become a fixture. We also cite to the
21 *National Loan and Exchange Bank of Columbia versus Argo*.
22 And this is a 1927, Supreme Court case that says the
23 mere furnishing of such materials, which had happened
24 here, it was merely furnished to the property, with the
25 intention that it should be used in the erection of

1 houses on the property is not enough to meet the
2 requirements of the mechanics lien statute. There must
3 also appear to be use of the material in the erection or
4 repair of some building or structure. Icon is
5 essentially going to attempt to argue an estoppel
6 argument here, and this is based on the arbitrator's
7 order on our request for the modification, because the
8 arbitrator ultimately found that because Icon had
9 contracted to install five columns and Levin Grantham
10 ultimately decided not to do the fifth column that Levin
11 Grantham is estopped from making this argument. But
12 Icon never raised this in arbitration, and the
13 arbitrator had raised this himself, making this a matter
14 that was not brought to his attention, that he therefore
15 ruled on. And in fact, Icon, even now, fails to cite
16 any supporting case law to this estoppel argument.
17 Instead, they merely cite to the *Kitchen Case* that we
18 cite as well, but they -- that case doesn't even explain
19 the estoppel argument, and it was merely referenced in
20 that opinion, and there's no analysis on it, because it
21 was raised for the first time on appeal. Going into our
22 second point that the arbitrator had miscalculated the
23 final award. He had assessed damages based on the full
24 contract price for four columns, which is 29,850 for
25 each times four is 119,400 but Icon had only completed

1 75 percent of those four columns. So Icon's
2 compensation should actually be limited to value of the
3 work it actually performed. So 75 percent of
4 \$119,400.00 is \$89,550.00 as I said, instead, the
5 arbitrator awarded Icon the full amount for the four
6 columns and deducted Levin Grantham's completion costs.
7 But this results in an inflated award, which is then
8 \$107,000 -- 107,100 -- \$107,157.04.

9 THE COURT: The 75 percent the parties agreed upon
10 that -- that figure, I believe I read in the brief ahead
11 of time, is that correct?

12 MS. AMBROSIUS: In completion of the work for four
13 columns, yes, Your Honor, and that's what's in the final
14 award as well. So this is flawed because Icon is not
15 entitled to the full contract price in the first place,
16 and so Levin Grantham cost to complete the remaining 25
17 percent of the four columns is a separate expense, and
18 it should not be factored into Icons recovery, because
19 it gives Icon compensation for work it did not even
20 perform, and unjustly enriches Icon.

21 The proper calculation, instead, is
22 straightforward. Icon should have been awarded the
23 value of the work it performed, which is at \$89,550 and
24 then when you remove at least this mechanic's lien
25 cause of action, when you remove that improper \$4,600 it

1 comes down to \$84,950.

2 To my third point, Defendants are actually the
3 prevailing party, not Icon. This is for two reasons,
4 one being the miscalculations that gets factored into
5 that evaluation; and the second reason being that Icon
6 had cited to the incorrect statute in its offer of
7 settlement, making the full amount plead for in its
8 complaint the offer of settlement. So 15-48-140 of the
9 Uniform Arbitration Act provides for modification, where
10 there is that miscalculation in the event that Icon did
11 make a valid settlement offer of 127,750 which we're
12 disputing. Their -- their offer still would have been
13 further away, not making them the prevailing party.
14 The Defendants offer for settlement was 90,000 the
15 arbitrator, as I had mentioned, had miscalculated that
16 arbitration award. So whether it be 89,550 or 84,950.
17 It's evident that the 90,000 that Defendants offered is
18 the closer to that award making Defendants the
19 prevailing party, and therefore the ones entitled to
20 attorneys fees and costs under that statute. And like I
21 said, even if say Icon is entitled to their fees,
22 they're not entitled to the costs because 27-1-15, where
23 they may be awarded fees, does not provide for costs.
24 The applicable mechanic's lien statute says that. Let
25 me back up a second here. I actually want to talk about

1 the fact that they cite the incorrect statute in their
2 offer of settlement, *TW Morton Builders, Inc.*, that we
3 cite in our motion states that section 29-5-10 affords a
4 lien to the mechanic or supplier who deals directly with
5 the owner. While section 29-5-20 is designated to
6 protect the mechanic or supplier who deals with a
7 general contractor or some person other than the owner,
8 or his agent. South Carolina law provides also that
9 these mechanics lien statutes need to be construed
10 strictly. 29-5-10 and 29-5-20 say when making an offer
11 of settlement it needs to explicitly state that it's
12 made under those statutes. Here, Icon, had made their
13 offer of settlement under 29-5-10 and we're saying that
14 instead should have been under 29-5-20, the settlement
15 is the one that had owned the property that had the lien
16 on it, so the settlement is the owner. And this is
17 evident through our exhibit G that we filed, showing the
18 owner of the property, and also in Icon's mechanic's
19 lien. Icon here, had instead dealt directly with Levin
20 Grantham. Levin Grantham is an entity other than the
21 owner or its agent. Levin Grantham was the developer of
22 the neighborhood that had ultimately sold finished lots
23 to home builders. And Levin Grantham had contracted
24 with Icon for Icon to build these decorative monuments.
25 So Icon was not dealing with The Settlement. And going

1 on as I stated, there's even some supporting case law
2 under memo that shows where the improper statute is
3 cited in an offer of settlement, that -- that's not a
4 valid offer of settlement. So in this situation, given
5 that there was not a valid offer of settlement by Icon,
6 their offer ultimately is what they plead for in their
7 complaint, which is \$153,445. And the Defendants have
8 filed theirs for \$90,000 that interim award was
9 \$114,157.04 so the difference between Icons offer of
10 settlement, which would be the 153,000 is roughly 39,000
11 from the interim award and Defendants. The difference
12 between 90,000 and 114,000 roughly, is about roughly
13 24,000 but I still do want to note that we think the
14 interim award should have been the 89,000 or 84,000 not
15 the 114,000. So given that the Defendants instead would
16 have been the prevailing party and the ones entitled to
17 attorneys fees and costs. But as I stated, even if Icon
18 is entitled to fees under 27-1-15 they are not entitled
19 to costs. And lastly, we are arguing that the
20 arbitrator had manifestly disregarded the law with
21 regards to the award of attorney's fees to Icon, given
22 the fact that the award was not supported by the Jackson
23 Factor -- Factors. The specific factors of the Jackson
24 Factors is in comparing customary legal fees for similar
25 services, and also the fact that Icon ultimately may

1 have not actually incurred some of these fees that they
2 were claiming. We had brought this to arbitrator's
3 attention as well in one of our briefs, and he
4 disregarded it; didn't even essentially cite the Jackson
5 Factors in his award.

6 And looking at the customary legal fees for similar
7 services. Icon's legal fees far exceed for those
8 incurred by the Defendant's despite comparable scope of
9 work. At the time that Icon had submitted their
10 affidavit of attorney's fees, they had requested
11 \$73,797.50. Our opposition had brought to the
12 arbitrator's attention that the fees requested by Icon
13 included their opposition to our original motion to stay
14 and compel arbitration, in which Icon had unfavorable
15 results and then their attorney's fees requests also
16 included some minor written discovery that incurred
17 before arbitration.

18 So the arbitrator did reduce their award of
19 attorney's fees, ultimately by \$9,000 roughly. And so
20 -- but although I want to compare this to the exact same
21 similar work that Defendants had done in this case, and
22 even when we did include fees for prosecuting on our
23 motion to compel and in writing that discovery, our fees
24 were merely \$39,000, roughly.

25 So our fees were significantly lower than Icon's,

1 and that raises serious questions about the
2 reasonableness and necessity of fees planned by Icon.

3 And we also, kind of, address some case law in our
4 motion which was also brought to the arbitrator's
5 attention that a third of the fees tend to be customary.

6 And then lastly, we believe Icon is not, and the
7 law supports this, that Icon is not entitled to fees it
8 did not actually pay. And it requires substantive
9 -- substantive evaluation of whether the fees were
10 incurred. We cite to a *Bloomberg Case* in our motion,
11 which held that attorney's fees could not be awarded in
12 the absence of evidence demonstrating that the Plaintiff
13 had incurred or paid such cost. Icon's affidavit of
14 attorney's fees and costs that they filed in arbitration
15 states only that Plaintiff had been or will be invoiced.
16 So it suggests -- claims -- it suggests that some fees
17 were not yet incurred and making their recovery
18 improper. And so giving the suggestion that Icon did
19 not actually incur all the fees at the time of the final
20 award, we believe the arbitrator had manifestly
21 disregarding the law on that point with the Jackson
22 Factors as well, which was brought to his attention. So
23 with that, Your Honor, we would respectfully request
24 that their award be either vacated or in the alternative
25 modified. Thank you.

1 THE COURT: All right. I'll switch to the
2 Plaintiff now.

3 MR. KELLEY: Thank you, Your Honor. If it may
4 please the court?

5 THE COURT: Yes, sir.

6 MR. KELLEY: This is just a bunch of sour grapes.
7 Essentially their third bite at the apple. I want to
8 talk a little bit about the standards because I think
9 those are worthy of elaboration.

10 First, I want to give a little bit more context to
11 what Ms. Ambrosius described as a payment dispute. And
12 all of this is born out in the arbitrator's interim
13 award in terms of what the facts and the evidence
14 revealed in arbitration. Which was that our two clients
15 had a contract for a set unit price for these five
16 columns, and these columns were built in the amenities
17 section of a residential neighborhood. They had a
18 masonry base. They had a wooden sort of shaft on top of
19 the masonry, and then a roof structure on top of that,
20 along with some signage for the -- for the development.
21 And there's a reason why I want you to understand that;
22 when Icon came to the site it came with the intent of
23 constructing all five columns. And the way that the
24 sort of the -- the order of operations was, is that the
25 masonry materials for all five columns were delivered at

1 one time. Icon then comes back to the site the next day
2 and does the work for the wooden components of the
3 columns. And they're told when they go to do the
4 masonry work that -- that someone hasn't quite yet
5 figured out where the fifth column is going to go. So
6 we're going to pause on the fifth column. You leave the
7 masonry materials here. Go ahead and do these other
8 four. We'll come back and do the fifth at another time.
9 And that's exactly what happened. They do the masonry
10 work. They leave. They deliver all the masonry
11 materials for all five. Do the masonry work for the
12 four. Do the woodwork for the four. But they don't
13 completely finish the four. They haven't done the
14 signage and some of the roofing work on this four. And
15 they know that they're coming back. They know they're
16 coming back to do this fifth column at a later date. So
17 the plan is, when we come back to do column number five,
18 we'll finish all of them at the same time. The payment
19 dispute was this, after we had predominantly finished
20 the four columns we sent them a bill. And the bill
21 indicated it was for 75 percent of the project along
22 with some engineering fees and fees related to the barn
23 structure. Which the arbitrator didn't award to us.
24 When Levin Grantham received that invoice, they
25 contacted Icon and said we don't like this contract

1 price anymore. We want you to take 20 percent less than
2 the contract price. And we are going to give you two
3 choices, you either take this 20 percent reduction or
4 we're not going to pay you anything. So Icon files a
5 mechanic's lien, doesn't want -- they did actually --
6 tried to reach sort of a midpoint with Levin Gratham,
7 they refused to compromise. They stuck to their guns
8 and said that its got to be 20 percent or you're getting
9 nothing at all. So ultimately we're here today because
10 Icon wanted its contract price that it felt it was
11 entitled to. So that's the payment dispute.

12 So the arbitrator found that their attempt to
13 renegotiate the contract price in midstream was the
14 breach. That's when the contract gets breached and that
15 excuses Icon from further performance obligations and
16 that entitles Icon as the non-breaching party with the
17 benefit of the bargain. And so the way the arbitrator
18 valued my client's damages was what -- what is the
19 benefit of the bargain when it comes to the columns.
20 It's the contract price, we will get the owner a credit
21 for the money they had to spend to finish and reduce
22 that from the contract price, and that's the measure of
23 damages. I'll talk a little bit more about this 75
24 percent notion, but in terms of the standard of review,
25 the manifest disregard standard is an absurdly high

1 standard to meet. You don't have to agree with the
2 arbitrator's findings, you don't have to like his
3 conclusions, you can determine that he made a mistake.
4 But manifest disregard means that the arbitrator
5 acknowledges the existence of a controlling precedent
6 and acknowledges that -- that controlling precedent
7 applies to the case, but refuses to apply that
8 controlling precedent anyway.

9 It's not incumbent on me, in defeating this motion
10 today, to explain why the arbitrator was correct in
11 making each and every one of his decisions. I'm going
12 to do that anyway. But that's not the manifest
13 disregard standard. The manifest disregard standard is
14 for them to point to language in any of the arbitrators
15 orders where he acknowledges the existence of a
16 controlling precedent and acknowledges that he's
17 refusing to apply it. We don't have that here. You'll
18 see that when you review the orders.

19 In talking about, I want to talk a little bit about
20 -- about the arbitrator himself. The arbitrator was
21 Frank Smith. Mr. Smith use to practice with Richardson
22 Plowden and Robinson before he started his own neutral
23 services firm about five years ago. He has been
24 arbitrating construction cases and mechanic's lien cases
25 for my firm for 28 years. I served as a role on the

1 Construction Section Council for the bar for nine years,
2 during which time, Mr. Smith was universally regarded as
3 perhaps the preeminent expert on mechanic's lien laws in
4 our state. Believe he maintains that reputation here
5 today. The last time, when I was on the council that we
6 presented a CLE on mechanic's liens, the attorneys that
7 made that presentation use written materials that were
8 originally authored by Frank Smith. He's a co-author on
9 the construction law desk book that's issued by the bar.
10 This is the person that Ms. Ambrosius says manifestly
11 disregarded the law.

12 I think if you were to ask any -- any practicing
13 construction attorney today what their opinion of Frank
14 Smith is, would be overwhelmingly positive. To -- to
15 that end, Ms. Ambrosius recommended that we use Frank
16 Smith as the arbitrator for this case. He is a smart
17 guy. He knows that sometimes when a party prevails in
18 arbitration, they're going to have to deal with sore
19 losers. He knows what the manifest disregard standard
20 is and he knows not to do that. He knows, he
21 anticipates that this day might be coming, the lawyers
22 that are involved in the case. So manifest disregard
23 applies to totally vacating the award. You throw the
24 whole thing out and we go to arbitrate it again. The
25 modification standard is different, and that's what

1 Ms. Ambrosius outlined in the statute, is -- is there a
2 miscalculation of figures? A miscalculation of figures,
3 however, is not necessarily a misapplication of the law.
4 It's a math error. One plus one equals three. If the
5 arbitrator had done that, that might be considered a
6 miscalculation worthy of modification. What they're
7 arguing is he applied the statutes incorrectly in a
8 variety of ways. We don't think that he did. We don't
9 concede that he did, but even if he did, that is not
10 grounds for modification.

11 Turning to the substantive arguments that they've
12 made, the notion that we were awarded under the
13 mechanic's lien statute, damages for amounts that were
14 not lienable. They raised two arguments.

15 One is that the engineering and permitting fees
16 were not lienable. Quite simply, Your Honor, the
17 arbitrator addressed this. The engineering and
18 permitting work that was done was necessary for the
19 improvement of the owner's real property. My client
20 pulled the permit for this job. And to pull the permit,
21 he had to do engineering work and submit drawings to the
22 permitting authority. We had a contract with Levin
23 Grantham where we were going to be paid \$3,000 for that
24 service. We performed the service, we got the permit.
25 The arbitrator determined that we were entitled to that

1 as proper work, improving real property. Engineering
2 fees are allowed under the mechanic's lien statute.
3 Engineers do work on projects all the time. If they
4 don't get paid, they're allowed to file mechanic's lien.
5 That is very -- very clear law. The actual use doctrine
6 does not exist in South Carolina, as it's been presented
7 to you. There are two cases that they rely on to
8 suggest that we have the burden of proving that work,
9 that materials were actually used in the erection of the
10 project.

11 The first is the *Kitchen Planners Case*. They're
12 relying on a modified opinion brought by the State
13 Supreme Court that includes an actual use discussion.
14 That case is really not about actual use. It's about
15 the timing of a mechanic's lien and when the 90 day
16 period starts to run. But when that -- when that
17 opinion was modified, the court took out the entire
18 section about actual use, so the opinion has modified
19 does not include the language that they cited in their
20 brief. The other case they cited is 100 year old
21 opinion that admittedly does have the language that they
22 quoted, but the case does not support the proposition
23 that there is an actual use requirement. The case is
24 about notice pleading and what is sufficient for a -- a
25 lien enforcement action. There is not a single case out

1 there that cites the opinion that they're relying on for
2 the notion that there's an actual use requirement. What
3 the arbitrator determined was that when Icon went to the
4 property and delivered the masonry based materials for
5 the fifth column. All the parties agreed that those
6 materials were going to be used for column number five.
7 The decision to delete the fifth column came later,
8 after Icon was off the site and after -- after Levin
9 Grantham had breached the contract, they then decide
10 we're not going to do the fifth column.

11 One of their witnesses, when I asked them in
12 arbitration, whatever happened to these materials, he
13 said we probably threw them in a dumpster somewhere.
14 But there was no dispute that at the time they were
15 delivered, they were intended for the use of the owner's
16 property.

17 As far as the estoppel argument goes, this is the
18 first time I've heard someone argue that we have to
19 submit a specific legal argument to an arbitrator in
20 order for him to rule on it, he has some discretionary
21 authority to get to the correct result. The fact that
22 we didn't say, hey, it's estoppel doesn't preclude him
23 from asserting that we're entitled to that money because
24 of estoppel, and the estoppel is because they breached
25 the contract. And at the time that they breached the

1 contract, there was an intent by both parties for those
2 materials to be used.

3 That brings us to the evidence miscalculation
4 argument. So again, this goes towards modification of
5 the award and not a full vacating of the award. So
6 again, they're -- they're relying on a math error, and
7 what they contend is the math error as well the
8 arbitrator should have calculated Icon's damages in a
9 different manner. He should have applied a set -- a
10 factor of 75 percent to the contract price. There's no
11 supporting law that they cite supporting that position,
12 no -- no authority saying, well, if you have a billing
13 that says 75 percent you can never recover more than
14 that. Their issue is the methodology by which the
15 arbitrator calculated Icon's damages. It's not a math
16 error. There's a -- a math error would be, if you take
17 the contract price and then you reduce the amounts that
18 they pay to complete and you come up with a total
19 different -- than what the arithmetic would bare. That
20 would be something that perhaps would be worthy of
21 modification based on a miscalculation. It's not where
22 we don't -- we don't agree with the way the arbitrator
23 applied the law. And one thing that I've heard
24 Ms. Ambrosius say many times is we brought this to the
25 arbitrators attention, and he ruled against us anyway,

1 as if that constitutes manifest disregard or something
2 worthy of modification. We didn't get the result that
3 we wanted. So we want you, Judge, to fix this for us.
4 Prevailing party, this very similar situation here,
5 Judge, the arbitrator reached the correct result. There
6 is no controlling authority out there that suggests that
7 in order for someone to be entitled to a general
8 contractor's lien under that statute, that we have to
9 enter into a contract with the party whose name is on
10 the title. That requirement does not exist anywhere.
11 What does exist is that we have to have the owner's
12 consent in order to be entitled to a general
13 contractor's lien.

14 And what the arbitrator determined, based on the
15 evidence that was presented at the hearing, was that The
16 Settlement and Levin Grantham were essentially one in
17 the same; they operated under the same corporate
18 umbrella. They were acting as the developer.
19 Everything that was done by Levin Grantham was done with
20 the knowledge and approval of The Settlement for the
21 purpose of completing the project. That's what we have
22 to show in order to be entitled to a lien under the
23 general contractor statute. The arbitrator determined
24 that we did.

25 In terms of the 27-1-15, I appreciate the fact that

1 they're conceding that we're entitled to fees under that
2 statute. In terms of the cost, those do fall under the
3 mechanic's lien statute, but the entitlement that we
4 have to attorney's fees is two fold. It's both under
5 the 27-1-15 violation that they committed, and the
6 arbitrator determination that we were the prevailing
7 party under the lien statute.

8 Excessive and unreasonable fees, this is being
9 argued by them as a manifest disregard. So what they
10 would have to show is that the arbitrator acknowledged
11 the application of some Jackson Factors that worked
12 against us, but that he was refusing to apply them
13 anyway.

14 What actually happened is that the arbitrator asked
15 us to submit all of our invoices for this matter, which
16 we did, and he reviewed them. And in the course of that
17 review, he identified certain line items that he thought
18 should not be billed to The Settlement and he took those
19 out. We don't have to be capped by what they spent. It
20 would be unfair for you to say, well, you have to
21 compare your fees to the losing side, even though you
22 want this notion that there's a customary 30 percent
23 cap, but if that doesn't exist under the lien statute.
24 Our lien statute has a cap for the maximum amount of
25 attorney's fees that we're allowed to recover. That cap

1 is the amount of the lien, so we're subject to a
2 reasonableness requirement. But that's the cap that
3 applies. It's not some other cap that applies to some
4 other statute that they've cited to, we have a cap and
5 that's the cap that the arbitrator applied, and he
6 determined that the remaining fees that he awarded to us
7 were reasonable in light of the services that we
8 provided.

9 Also the notion that we are only entitled to fees
10 that we've been paid. The case that they've cited says
11 that you aren't entitled to fees when there's no
12 evidence that those fees will ever be billed. We have
13 billed our client everything that we expect to be paid.
14 He is making, continuing to make partial payments on
15 those invoices, as we sit here today. We consider the
16 account to be in good standing. Those fees will be
17 paid. They have been billed. The arbitrator had those
18 bills. They will be paid. They are due and owing to
19 us, we are entitled to an award for them under both the
20 lien statute and under 27-1-15. That's all I have,
21 Your Honor. Thank you for your time.

22 THE COURT: You can have a brief reply.

23 MS. AMBROSIUS: Thank you, Your Honor. I just want
24 to refer to the *Kitchens Case* that he refers to,
25 although the Supreme Court had modified the opinion, it

1 doesn't actually even reject the actual use statement at
2 all. So given the fact that the statute itself still
3 requires actual use, I think that's critical for the
4 court to consider. And just because it was supplied for
5 improvement of the real property does not mean that it's
6 lienable. It needs the actual use. And one other point
7 I just want to point out is with regards to manifest
8 disregard, the law does not require an actual
9 acknowledgment from the arbitrator. What it requires,
10 in our *Weimer Case*, that we cite in our motion states
11 that all is needed is that the arbitrator knew of a
12 governing principle and refused to apply it. I mean, we
13 would assume that Arbitrator Smith would have reviewed
14 all of our briefing in this arbitration, and our
15 briefings include the law that supports our position on
16 this, so he knew of these governing principles and still
17 chose not and refused not to apply it. So that's all
18 I'd like to clarify for that, Your Honor, so thank you.

19 THE COURT: Thank you both for your arguments.
20 I'll take that motion to confirm the arbitration award
21 and the motion to vacate under advisement, and I'll have
22 to review that and get back through the information. I
23 appreciate your arguments. I will be in Charleston next
24 week for -- for general sessions. So it will probably
25 be a week or so before I can get it -- get back to you,

1 but I will as soon as I can. All right.

2 MR. KELLEY: Thank you.

3 MS. AMBROSIUS: Thank you, Your Honor.

4 THE COURT: We had a motion for summary judgment,
5 but I guess that needs to be held on.

6 MR. KELLEY: Well, yes, Your Honor, I think that
7 your ruling on the motion to vacate will be
8 determinative of that in a very basic sense, the motion
9 is against the discharge bond surety. If we are
10 entitled to an award against their bonded principle, we
11 are also entitled to a judgment against them as the
12 surety.

13 We will have if the court rules in our favor,
14 today, we intend to submit a motion for additional
15 attorney's fees and interest for the time period between
16 the issuance of the final award and today, but that will
17 not have an effect on the surety, because the penal sum
18 of the bond caps their liability. That liability right
19 now is a little over 200,000 so since we're already but
20 over and above that with about 254 anything that we add
21 on is not going to impact the surety's liability. They
22 will never be liable to us for more than the penal sum
23 of the bond.

24 THE COURT: All right. And you agree with that we
25 will hold that in abeyance until...

1 MS. AMBROSIUS: Yes, Your Honor, conditional on the
2 ruling.

3 THE COURT: All right. We'll come back and circle
4 around with that if necessary. And I'll -- put on a
5 short form 4 to just kind of -- that we're all on the
6 same page of what happened.

7 MS. AMBROSIUS: All right. Thank you, Your Honor.

8 MR. KELLEY: Thank you.

9 THE COURT: And I'll be in touch about any
10 additional information. Thank you. Appreciate y'all
11 being here all on time. Thank you.

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CERTIFICATE OF TRANSCRIBER

I, Theresa Shirley, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings in the hearing of the above captioned in Greenville County South Carolina Circuit Court 13 on the 30th day of May, 2025.

A court reporter was not present at the proceedings and therefore cannot guarantee that every word of testimony could be heard or that the speaking parties are properly identified.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Theresa Shirley

September 11, 2025

Theresa Shirley

Transcriber

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellants certifies that, in accordance with Rule 210(c), SCACR, this **Record on Appeal** contains all material proposed to be included by any party that was presented to the lower court and not any other material. The undersigned also certifies that this **Record on Appeal** complies with the Supreme Court of South Carolina's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings issued April 15, 2014.

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