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.

FINAL BRIEF OF APPELLANTS

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2. **Did the circuit court err in failing to vacate the arbitration award where the Arbitrator manifestly disregarded the law by applying the incorrect mechanic's lien statute, resulting in a misidentification of the prevailing party and an improper denial of Appellants' entitlement to attorney's fees and costs?**

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STATEMENT OF THE CASE AND FACTS

This appeal arises from the order of the Honorable William C. McMaster, III, granting Respondent Icon Custom Masonry, Inc.'s ("Icon" or "Respondent") Motion to Confirm Arbitration Award, and denying Appellants The Settlement, LLC ("The Settlement") and Levi Grantham, LLC's ("Levi Grantham") (collectively "Appellants"), Motion to Vacate, or in the Alternative, Modify or Correct Arbitration Award.

This matter concerns a contract dispute between Icon and Levi Grantham for construction work at a development known as The Settlement in Simpsonville, South Carolina, owned by Appellant, The Settlement, at all times relevant hereto. (R. pp. 21, ¶ 6; R. pp. 67). Specifically, Levi Grantham contracted with Icon to construct five wayfinding monument columns at a price of $29,850.00 each, plus additional related charges. (R. pp. 67). However, disputes emerged regarding the agreed-upon costs, the percentage of work completed, and the legitimacy of Icon's billing. (*Id*.) Consequently, and as permitted by the contract, Levi Grantham withheld payment for incomplete work. (R. pp. 68). In September 2022, Icon abandoned the project after partially completing work on only four columns. (*Id*.) Levi Grantham had no choice but to subsequently hire third-party contractors to complete the fourth column. (*Id*.) Notably, the fifth column was never constructed. (*Id*.; R. pp. 85).

As a result of nonpayment, Icon filed a mechanic's lien on the property in the amount of One Hundred Fifty-Three Thousand, Four Hundred Forty-Five and no/100 Dollars ($153,445.00). (R. pp. 26-32). The Settlement, as the owner of the development, recorded a Surety Bond in the amount of Two Hundred Four Thousand, Five Hundred Forty-Two and 19/100 Dollars ($204,542.19). (R. pp. 47, ¶ 36). Icon proceeded to file this lawsuit on January 17, 2023, bringing the following causes of action: (1) Breach of Contract, (2) Quantum Meruit, (3) Violation of S.C.

Code Ann. § 27-1-15, and (4) Action for Mechanic's Lien Foreclosure. *See generally* (R. pp. 20-25). The lawsuit was ultimately stayed and compelled into arbitration on December 20, 2023. (R. pp. 1-7).

During arbitration, Icon 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. (R. pp. 68). Appellants challenged Icon's claims on the basis that Icon had neither completed the work as billed nor conferred the claimed benefits. (*Id*.)

On December 20, 2024, the Arbitrator issued an Interim Award in the amount of $119,400.00. (R. pp. 87). In calculating this amount, the Arbitrator found Levi Grantham had agreed to pay Icon $29,850.00 per monument and had approved the addition of permitting and engineering fees to the contract, bringing the total contract amount to $152,250.00 for five columns. (R. pp. 85). It was undisputed that Icon performed work to only four of the wayfinding monument columns. (R. pp. 86). Further, the parties agreed that only 75% to 80% of the work on those four columns was completed. (*Id*.) The Arbitrator determined that Icon 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. (R. pp. 87). In considering the costs that Levi Grantham incurred in having a third-party contractor complete the fourth column, the Arbitrator deducted $12,242.96 from the $119,400.00, resulting in a $107,157.04 being awarded to Icon for its "benefit of the bargain." (*Id*.)

Notably, the Arbitrator also awarded Icon compensation for work and materials related to the unbuilt fifth monument, explaining, "[Icon] 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*.) The Arbitrator awarded Icon an additional $7,000.00 for this work, bringing the total amount awarded in the Interim Award to $114,157.04. (*Id*.) Critically, the fifth column was never constructed, meaning the materials that were intended for the fifth column and allegedly delivered to the site were never used or incorporated into the property. (R. pp. 69).

Appellants subsequently filed a Motion for Clarification/Modification in the Arbitration, 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 therefore, the awarded amount under the mechanic's lien cause of action should have been reduced accordingly. (*Id*.). In response, the Arbitrator issued an Order stating Icon "provided labor and materials to obtain permitting and engineering for five monuments [valued at $3,000.00]. 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. . . . Some materials [in the amount of $4,000.00] for the fifth monument were delivered to the site and while those materials were eventually not used for the fifth column; when provided, those materials were delivered to the site for the improvement of the owner's property and were therefore 'lienable'." (R. pp. 90). The Arbitrator emphasized that only materials delivered to the site were included in the Interim Award. (R. pp. 91).

However, prior to the Interim Award and ruling on Appellants' Motion for Clarification/Modification in the Arbitration, the parties each filed their Offer of Settlement in the Circuit Court action. *See* (R. pp. 95-97). Specifically, on November 6, 2024, Icon made an Offer of Settlement in the amount of $127,750.00, citing solely to S.C. Code Ann. § 29-5-10(b). (R. pp. 95). Appellants thereafter filed their Offer of Settlement in the amount of $90,000.00 on November 13, 2024, citing to both S.C. Code Ann. § 29-5-10(b) and S.C. Code Ann. § 29-5-20(c). (R. pp. 96-

97). After the issuance of the Interim Award and subsequent ruling on Appellants' Motion for Clarification/Modification, the parties submitted their positions on who should be the prevailing party under the applicable mechanic's lien statute. (R. pp. 70).

In their brief, Appellants argued Icon was not the prevailing party because its Offer of Settlement filed with the Circuit Court was made under the incorrect mechanic's lien statute, and given that strict compliance with the mechanic's lien statute is required, Icon's citation to the incorrect statute rendered its Offer of Settlement invalid, making the full amount prayed for in the complaint, $153,445.00, the operative figure, rather than the $127,750.00 stated in its defective offer. (*Id*.) As a result, Appellants argued that since the award was $114,157.04, and their offer of settlement was $90,000.00, they were closer to the award and thus the prevailing party under the statute. (*Id*.) The Arbitrator ultimately rejected this argument via its Order on Prevailing Party filed February 3, 2025, and determined that Icon cited the correct statute in its Offer of Settlement. (R. pp. 93). As a result, Icon's offer of settlement in the amount of $127,750.00 was deemed valid, and the Arbitrator determined Icon to be the prevailing party entitled to attorney's fees and costs under the statute. (*Id*.)

Icon subsequently filed its Affidavits of Attorney's Fees. (R. pp. 110-14). Appellants then submitted a memorandum opposing Icon's Affidavits of Attorney's Fees and Costs to the Arbitrator, arguing that the fees sought were unjustifiable and excessive. (R. pp. 70-71). Specifically, Appellants asserted that the *Jackson* factors did not support the amount of attorney's fees Icon sought. (*Id*.) Icon thereafter provided a breakdown of legal work performed by its attorneys and support staff, and the Arbitrator ultimately awarded Icon $64,736.50 in fees pursuant to his Final Award issued on February 28, 2025. (R. pp. 98-100). However, in the Final Order, the

Arbitrator never evaluated the *Jackson* factors in determining the amount of attorney's fees to award Icon. (*Id*.)

Per the Final Award, Icon 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. (R. pp. 99-100). On March 12, 2025, Icon filed its Motion to Confirm Arbitration Award, seeking to make the Final Award a judgment. (R. pp. 60-66). Contrarily, on April 1, 2025, Appellants filed their Motion to Vacate, or in the Alternative, Modify or Correct Arbitration Award pursuant to S.C. Code Ann. §§ 15-48-130 and 15-48-140. (R. 67-114). Pursuant to their motion, Appellants argued the Arbitrator exceeded his powers, that there was an evident miscalculation of figures, and that the Arbitrator manifestly disregarded the law or committed a perverse misconstruction of the law. (*Id*.) In summary, the Appellants argued that the Arbitrator: (1) included amounts in the award for the mechanic's lien cause of action that were not lienable; (2) improperly determined Icon to be the prevailing party under the mechanic's lien statute; (3) improperly awarded Icon fees and costs under the mechanic's lien statute; (4) miscalculated the Interim Award; and (5) and awarded an excessive and unreasonable amount in attorney's fees. (*Id*.)

A hearing on Icon's Motion to Confirm Arbitration Award and on Appellants' Motion to Vacate, or in the Alternative, Modify or Correct Arbitration Award was heard by the Honorable William C. McMaster, III on May 30, 2025, and he subsequently issued a formal Order on June 16, 2025, granting Icon's Motion to Confirm Arbitration Award and denying Appellants' Motion to Vacate, or in the Alternative, Modify or Correct Arbitration Award. (R. pp. 8-18). This appeal followed, with the notice being served on Respondent on June 16, 2025.

ARGUMENTS

I. STANDARD OF REVIEW ON APPEAL

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 Gissel v. Hart,* 382 S.C. 235, 676 S.E.2d 320 (2009)*; 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,* 351 S.C. 507, 570 S.E.2d 551 (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); *Xu Dong Sun v. Wang*, No. 2013-000386, 2014 WL 2957105 (S.C. Ct. App. June 25, 2014).

In reviewing the denial of a motion to vacate, modify, or correct an arbitration award, the appellate court reviews it de novo. *See Crouch Const. Co. v. Causey*, 405 S.C. 155, 162–63, 747 S.E.2d 482, 486 (2013) ("The circuit court's adoption of a legal standard for evaluating claims of evident partiality under section 15–48–130 is a question of law which we review de novo.") (citing

Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) ("Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.")). Thus, in reviewing questions of law de novo, appellate courts "are free to decide a question of law with no particular deference to the circuit court." *Catawba Indian Tribe of South Carolina v. State*, 372 SC. 519, 642 S.E.2d 751 (2007) (citing *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000)).

II. THE CIRCUIT COURT ERRED IN FAILING TO VACATE THE ARBITRATION AWARD DESPITE THE ARBITRATOR'S MANIFEST DISREGARD OF THE LAW.

The Arbitrator manifestly disregarded the law in multiple respects, and the circuit court erred by failing to recognize these errors and by declining to vacate the arbitration award. Specifically, the Arbitrator manifestly disregarded the law by: (1) awarding amounts on Icon's mechanic's lien claim that were not lienable under South Carolina law, despite Appellants having raised this issue; (2) designating Icon as the prevailing party based on an incorrect application of the mechanic's lien statute; and (3) failing to analyze, apply, or make any record of the *Jackson* factors when determining the award of attorney's fees to Icon.

1. *The Arbitrator included amounts attributable to the mechanic's lien cause of action that are not lienable under South Carolina law.*

The circuit court failed to recognize that the Arbitrator manifestly disregarded the law by awarding Icon amounts related to its mechanic's lien claim that are not lienable under South Carolina law, despite Appellants having raised this issue and the Arbitrator having rejected it in its Order on Appellants' Motion for Clarification and Modification. *See* (R. pp. 88-91). Specifically, South Carolina law requires material to actually be used and incorporated to the property 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.").

However, without recognizing all binding authorities Appellants cite to which set forth established South Carolina law that requires actual use of the material delivered to be included in the mechanic's lien, the circuit court ultimately found the Arbitrator did not manifestly disregard the law, relying solely on the fact that Appellants' reliance on *Kitchen Planners, LLC v. Friedman* is apparently misplaced. (R. pp. 10). Specifically, the circuit court found that because "*Kitchen Planners* was modified by the Supreme Court to remove any discussion of an "actual use" requirement[,] . . . there is no bright-line 'actual use' requirement in the law that the Arbitrator could have disregarded." (*Id*.). Importantly, just because the Supreme Court removed the discussion of "actual use" does not mean that it is not the law in South Carolina. Specifically, South Carolina Mechanic's Lien statute still clearly states that it only provides a lien for "labor performed or furnished or for materials furnished and *actually used* in the erection, alteration, or repair of a building or structure." S.C. Code Ann § 29-5-10.

Importantly, the mechanic's lien statute must be strictly construed, and we are not at liberty to depart from the plain meaning of the mechanic's lien's statutory language. *See Clo-Car Trucking*

Co., Inc. v. Clifflure Estates of South Carolina, Inc., 282 S.C. 573, 320 S.E.2d 51 (Ct. App. 1984); *Fergsuson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C.,* 409 S.C. 331, 340, 762 S.E.2d 561, 565 (2014) ("Mechanic's liens are purely statutory and may be acquired and enforced only in accordance with the terms and conditions set forth in the statutes creating them."); *Greens of Rock Hill, LLC v. Rizon Com. Contracting, Inc.,* 411 S.C. 152, 156, 766 S.E.2d 876, 878 (Ct. App. 2014).

Here, the statute, along with supporting case law, plainly requires actual use of the materials delivered, and this law was explicitly brought to the Arbitrator's attention. (R. pp. 88-91). The Arbitrator nevertheless awarded amounts for labor and materials not incorporated into the property—specifically for the unbuilt fifth column—contrary to the statutory mandate. (*Id*.; R. pp. 98-100). Specifically, the Arbitrator found $4,000.00 of materials delivered to the site, along with $600.00 attributable to the permitting and engineering fees for the fifth column, though not used, were to be properly included in the mechanic's lien award. *See, e.g*., (R. pp. 73). Further, as explained below, the Arbitrator miscalculated the award by granting Icon the full contract price, which included unperformed work or materials not used or incorporated into the property, and then deducting completion costs. Critically, because those amounts represent work or materials not actually used in or incorporated into the property, they are not properly recoverable under the mechanic's lien claim. *See* infra., Section III (1).

However, without considering the requirement of "actual use," the circuit court found that the "Arbitrator's ruling was well based in applicable law and reason," noting that the Arbitrator found Levi Grantham was estopped from arguing that the materials for the fifth monument were not provided for the improvement of its property. (R. pp. 10-11). However, this still fails to account for the "actual use" requirement for a valid mechanic's lien, and the Court further erred in not finding that the Arbitrator exceeded his authority by determining that Levi Grantham was

estopped, an issue never raised or argued by Icon during the arbitration and which the Arbitrator raised on his own. (R. pp. 181, lines 4-21). Accordingly, the circuit court erred in finding that the Arbitrator did not manifestly disregard the law or exceed his authority. By affirming an award that includes amounts not lienable under South Carolina law, the court compounded the Arbitrator's legal error. The Final Award must therefore be vacated.

2. The Arbitrator improperly found Icon to be the prevailing party under the 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, Appellants argued to the Arbitrator that Icon did not deal directly with the owner of the development, The Settlement, LLC. (R. pp. 10, 92-93, 102 (real property report showing The Settlement, LLC is the owner)). Instead, Icon dealt with Levi Grantham, who is an entity other than the owner of the property or its agent, and therefore, S.C. Code § 29-5-20 applies. *See* (R. pp. 104-109) (contract between Icon and Levi Grantham).

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.,*

282 S.C. 573, 320 S.E.2d 51. 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. Further, "the party whose offer is closer to the verdict reached is considered the prevailing party in the action[,]" warranting an award of fees and costs. *Id*.

Appellants raised the issue to the Arbitrator that Icon'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. (R. pp. 92-93); *see also* (R. pp. 57). 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*, Icon'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, Appellants argued that Icon is not found to have made a valid written offer of settlement, and the amount of $153,445.00 prayed for in its complaint was its final offer of settlement. (R. pp. 77, 92-93).

In response to Icon's invalid offer of settlement, Appellants properly filed their offer of settlement on November 13, 2024, proposing a resolution amount of $90,000.00. (R. pp. 96-97). The Interim Award awarded Icon $114,157.04. (R. pp. 87). The difference between the Interim Award and Respondent's Offer of Settlement is $39,287.96 ($153,445.00 - $114,157.04), whereas the difference between the Interim Award and Appellants' offer of settlement is $24,157.04 ($114,157.04 - $90,000.00). (R. pp. 77). Given that Appellants' offer of settlement is closer to the

amount in the Interim Award, the Appellants are the prevailing party and therefore the ones entitled to recover their attorney's fees and costs, which the Arbitrator did not award to them. (R. pp. 77-78, 98-100).

The Arbitrator ultimately rejected this argument via his Order on Prevailing Party, finding that because The Settlement, although an entirely separate entity, was a "single purpose limited liability company subsidiary to Levi Grantham", Levi Grantham was in an "ownership role" for the property with The Settlement, thereby making Icon a mechanic or supplier that had dealt directly with the owner. (R. pp. 93). This conclusion is legally and factually flawed. Levi Grantham was not the owner of the property, nor was it a duly authorized agent of the owner. The record is clear that The Settlement is the actual owner, while Levi Grantham acted solely as a separate contracting entity. *See* (R. pp. 102, 104-109). The mere status that The Settlement was a single purpose subsidiary of Levi Grantham does not mean they are one and the same and that every action of Levi Grantham was done on behalf of The Settlement. The Arbitrator's reasoning conflates ownership with contractual involvement, improperly elevating Levi Grantham's role to that of an owner or agent, contrary to the plain language and strict construction required under South Carolina's mechanic's lien statutes.

Because Icon's Offer of Settlement cited § 29-5-10 rather than the controlling § 29-5-20, and failed to comply with the statutory requirements for an offer under that section, the offer is invalid. By failing to recognize this, the Arbitrator effectively ignored the statutory scheme, and improperly found Icon to be the prevailing party. This constitutes manifest disregard of the law, as the Arbitrator rejected Appellants' argument despite clear statutory authority and controlling precedent. The circuit court compounded this error by relying on S.C. Code Ann. § 29-5-10(a) and concluding that the Arbitrator correctly found Icon satisfied the requirements of § 29-5-10 because

its work was performed with the consent of The Settlement. (R. pp. 11-12). This analysis ignores the fundamental statutory distinction between § 29-5-10 and § 29-5-20. Consent from a contracting entity other than the owner or its authorized agent cannot convert a § 29-5-20 claim into a § 29-5-10 claim. By failing to recognize this clear statutory requirement, the circuit court incorrectly concluded that the Arbitrator did not manifestly disregard the law in determining the prevailing party.

3. The attorney's fees awarded by the Arbitrator were grossly excessive and not supported by the Jackson Factors.

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). However, most critically, without specific findings of fact as each of the *Jackson* factors when awarding attorney's fees, such award is subject to reversal. *See Blumberg v. Nealco, Inc*., 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993) ("[A]bsent sufficient evidentiary support on the record for each factor, the award should be reversed and the issue remanded for the circuit court to make specific findings of fact."); *Griffith v. Griffith*, 332 S.C. 630, 646, 506 S.E.2d 526, 534 (Ct. App. 1998) ("Our case law and court rules make clear that when a contract or statute authorizes an award of attorney's fees, the circuit court must make specific findings of fact on the record for each of the required factors to be considered.").

Here, not only did the Arbitrator fail to do so, but the circuit court also failed to correct this error. *See* (R. pp. 92-93, 8-18). The circuit court further erred in concluding that Appellants'

arguments regarding the specific factors of the analysis should be addressed under a modification of the award rather than as a basis for vacatur. (R. pp. 15-16). This was erroneous because Appellants sought vacatur of the award precisely on the grounds that the Arbitrator manifestly disregarded the law by failing to consider and document, in the record of the Final Award, each of the *Jackson* factors. By treating these arguments as relevant only to modification, the circuit court ignored the proper legal standard for vacatur and improperly upheld an award issued in manifest disregard of the law, especially when the law applied in analyzing each *Jackson* factor was manifestly disregarded by the Arbitrator.

Specifically, the Final Award grants Icon $64,736.50 in attorney's fees. (R. pp. 100). However, by disregarding the law and failing to address the *Jackson* factors, this award is grossly excessive and legally unjustifiable. The attorney's fees awarded to Icon are flawed for at least two reasons: (1) they do not reflect customary or reasonable fees for comparable legal services, and (2) they include amounts that Icon has not actually paid. Accordingly, the circuit court erred in not finding that the award should be vacated.

i. Customary legal fees for similar services

Icon's legal fees far exceed those incurred by Appellants, despite the comparable scope of work performed. For example, prior to the preparation of their Memorandum in Opposition to Icon's Affidavits of Attorney's Fees, counsel for Appellants had incurred $39,164.00 in legal fees, just over half of the amount billed by Icon's counsel. (R. pp. 78). On this point, the Circuit Court ruled that Appellants offered no precedent to support the notion that Icon cannot recover more fees than what has been billed to opposing counsel. (R. pp. 15). However, this misconstrues Appellants' argument. Appellants did not contend that a prevailing party's fees must be limited to those of the opposing party as a matter of law. Rather, Appellants presented this comparison as compelling

evidence that the amount of fees sought by Icon was patently unreasonable and grossly disproportionate to the work performed. The disparity between the parties' respective fees—where Icon's counsel billed more than twice the amount incurred by Appellants for substantially similar work—underscores that Icon's claimed fees are excessive and not reflective of the actual complexity or scope of the proceedings.

The Circuit Court's failure to recognize this point, and the Arbitrator's failure to meaningfully evaluate the reasonableness and necessity of the claimed fees in light of this disparity, collectively demonstrate that the Final Award was improperly calculated and should have been vacated for manifestly disregarding the *Jackson* factors. *See Blumberg,* at 494, 427 S.E.2d at 661 ("[A]bsent sufficient evidentiary support on the record for each factor, the award should be reversed and the issue remanded for the circuit court to make specific findings of fact."); *Griffith*, at 646, 506 S.E.2d at 534 (finding conclusory information provided in the affidavit was deemed insufficient to support the award, even with the wife's testimony confirming the amounts paid).

ii. Icon is not entitled to attorney's fees it did not actually pay.

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). Thus, 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). Thus, this factor requires a substantive evaluation of whether fees have been incurred.

Appellants raised concern with the Arbitrator that Icon's Affidavits of Attorneys' Fees and Costs made it clear that Icon has not actually paid the fees it seeks to recover. (R. pp. 80). Specifically, Icon's affidavits of attorney's fees it submitted in the Arbitration state only that Icon "has been or *will be invoiced*." *See* (R. pp. 111, ¶ 8 (emphasis added); R. pp. 114, ¶ 6 (emphasis added)). This language suggests that the claimed fees were not yet incurred, making their recovery improper. Further, the most recent invoice submitted to the Arbitrator dated February 2025 had a balance of $49,677.51, inclusive of a prior balance of $41,604.17. (R. pp. 80). Prior invoices also included prior balances due, indicating Icon had not been paying its fees. (*Id*.)

At a minimum, this factor should have been given consideration as part of an analysis under the *Jackson* factors. Given that the Arbitrator failed to expressly detail his analysis of each *Jackson* factor, it is reasonable to assume that this factor was not given any consideration as no reduction was reflected in the fees for fees having not been "incurred." The circuit court ignored that awarding fees that have not been incurred or paid exceeds the Arbitrator's authority and directly conflicts with established precedent.

III. THE CIRCUIT COURT ERRED IN FAILING TO MODIFY OR CORRECT THE ARBITRATION AWARD IN FINDING THERE WERE NO MISCALCULATIONS BY THE ARBITRATOR.

S.C. Code Ann. § 15-48-140 allows for modification of an arbitration award where, among other reasons, "[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." The circuit court's Order states that Appellants contend the Arbitrator miscalculated the arbitration award in three respects:

(1) in calculating Icon's damages, (2) likewise in determining the prevailing party under the lien statute, and (3) in determining the amount of an award of reasonable attorney's fees. (R. pp. 13).

As stated above, this characterization, however, misrepresents Appellants' Motion to Vacate, or in the Alternative, Modify or Correct Award. Appellants sought modification solely with respect to the calculation of Icon's damages, which constitutes an evident miscalculation under the statute. The other two issues—the determination of the prevailing party and the award of attorney's fees—warranted vacation of the Arbitration Award because of the Arbitrator's manifest disregard of the law. Specifically, the Arbitrator improperly designated Icon as the prevailing party in violation of controlling law and failed entirely to address the *Jackson* factors in the Final Award, further evidencing manifest disregard. Appellants addressed prevailing party status to demonstrate that, once the evident miscalculation in the award is corrected, the determination of the prevailing party would likewise be affected. Accordingly, the circuit court erred both in concluding that modification was unwarranted and in its mischaracterization of the relief Appellants actually sought, warranting reversal.

1. The Arbitrator miscalculated the final award by assessing damages based on the full contract price rather than the value of the work actually completed.

The circuit court held that Appellants did not dispute any mathematical errors in the Arbitrator's award but rather took issue with the Arbitrator's methodology in calculating Icon's damages, and therefore, even where the methodology is questionable, there was no basis to modify the award because the calculations themselves were not mathematically incorrect. (R. pp. 14). However, the miscalculation is not a matter of methodology or discretion—it is a clear mathematical error: as demonstrated below, the award includes amounts for work not performed, improperly credits Appellants' costs against that work, and adds amounts that did not confer a benefit to Appellants resulting in an inflated total. This constitutes precisely the type of evident

miscalculation that § 15-48-140 contemplates. By failing to recognize this evident miscalculation, the circuit court erred as a matter of law.

Specifically, the Arbitrator 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 Icon had only completed 75% of the four columns. Icon'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 Icon the full contract amount for four columns and only deducted Appellants' completion costs of $12,242.96, resulting in an inflated award of $107,157.04, before improperly adding the $4,600 for permitting, engineering, and materials relating to the fifth column.

This is fundamental miscalculation because Icon was never entitled to the full contract price in the first place. Appellants' cost to complete the remaining 25% of work to the fourth column is a separate expense and should not be factored into Icon's recovery. The proper calculation is straightforward: Icon should be awarded only the value of the work performed, ie., 75% of the cost to complete four columns, totaling $89,550.00. The Arbitrator's miscalculation unjustly enriches Icon and warrants modifying the award. Furthermore, given the argument that the Arbitrator improperly included non-lienable amounts in the Interim Award totaling $4,600.00 – amounts from which Appellants derived no benefit – the award should have been $84,950.00. The circuit court's refusal to modify the award not only misapplied the statutory standard but also unjustly enriched Icon, warranting reversal of the June 16, 2025, Order.

2. The Arbitrator's miscalculations improperly resulted in Icon being deemed the prevailing party under the mechanic's lien statute.

Under both mechanic's lien statute, S.C. Code Ann. §§ 29-5-10 and 29-5-20, "the party whose offer is closer to the verdict reached is considered the prevailing party in the action." Even

assuming Icon made a valid Offer of Settlement, which Appellants contest, the Arbitrator erred in finding Icon the prevailing party under the mechanic's lien statute due to the Arbitrator's miscalculations in the Arbitration Award. Specifically, Icon's Offer of Settlement, if valid, was $127,750.00, while Appellants' Offer of Settlement was $90,000.00. (R. pp. 57-59). Thus, where the Court erred in not finding the Arbitrator miscalculated the Arbitration Award, the Court likewise erred in not correcting the Arbitration Award to instead find that Appellants were the prevailing party under the mechanic's lien statute, not Icon. Specifically, as stated, the Award should have been $84,950.00, meaning Appellants' offer of settlement is $5,050.00 away from the Interim Award, whereas Icon's was $42,800.00 away. As a result, Appellants are the ones entitled to attorney's fees and costs under the mechanic's liens statute. Therefore, the Final Award improperly awarded Icon the $64,736.50 in attorney's fees and $17,001.90 in costs. The Final Award should be vacated and remanded for consideration of the attorney's fees and costs to be awarded to Appellants as the prevailing party under the mechanic's lien statute. Thus, the Court erred in not modifying the Arbitration Award accordingly.

CONCLSUION

For the reasons discussed above, the circuit court erred in failing to vacate the Arbitration Award by not finding the Arbitrator manifestly disregarded the law. The circuit court further erred in failing to modify or correct the Arbitration Award by failing to find the Arbitrator committed a miscalculation. Appellants respectfully request that this Honorable Court reverse the decision of the circuit court, remand the case to that court for further proceedings, and grant Appellants such other and further relief as the nature of their cause may warrant.

REQUEST FOR ORAL ARGUMENT

Appellants respectfully request oral argument.

Respectfully submitted,

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