THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE LEXINGTON COUNTY COURT OF COMMON PLEAS
Walton J. McLeod, Circuit Court Judge
Case No.: 2022-CP-32-01932
Appellate Case No. 2025-000905

Bundy McDonald, LLC, Appellant,

vs.

WECO River District, LLC, Respondent.

RECEIVED
Mar 10 2026
SC Court of Appeals

RECORD ON APPEAL

RECORD ON APPEAL INDEX

Section	Page
Index.....	i
Order March 13, 2025.....	1
Order denying Post Trial Motion(s) April 8, 2025.....	26
Pleadings.....	28
Trial Transcript.....	37
Post Trial Transcript.....	181
Plaintiff's Proposed Order.....	247
Plaintiff's Motion to Alter or Amend.....	251
Plaintiff's Exhibits.....	253
Defendant's Exhibits	382

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
)	
Bundy McDonald, LLC)	Case No.: 2022-CP-32-01932
)	
Plaintiff,)	
)	
v.)	**ORDER**
)	
WECO River District, LLC)	
)	
Defendant.)	
)	
)	
)	

This matter is before the Court under a breach of contract claim alleging Defendant failed to pay a portion of a reverse contingency fee. A bench trial was held on September 26, 2024. Closing arguments were heard on October 17, 2024. The Plaintiff, Bundy McDonald, LLC ("Plaintiff") was present and represented by Walter Bundy, Esq. and Brent McDonald, Esq. Defendant, WECO River District, LLC ("Defendant") was present and represented by Hank Wall, Esq. Following the bench trial, the parties requested a transcript of the prior proceedings and submitted proposed orders on February 5, 2025. After consideration of the evidence, the arguments of counsel, and the record, the Court finds as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Defendant engaged Plaintiff through a written hourly fee agreement on December 4, 2018 (Def. Ex. 1). The scope of the representation included "legal counsel for purposes in connection with a project known as Brookland in West Columbia, South Carolina that is under construction by Carter and Carter Construction, LLC." Plaintiff prepared the fee

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

agreement and Plaintiff set the hourly rates. The hourly rates of $400.00 for W.H. Bundy, $300.00 per hour for M. Brent McDonald and $100.00 for "their paralegals" were reasonable and fair hourly rates.

2. In January, 2019, Plaintiff proposed a revision to the fee agreement which was a hybrid fee agreement based on the same hourly rates but subject to an hourly fee cap of $100,000.00 with an additional "contingency fee of 25% any reduction of the total amount of claims made by Contractor and 25% of any amount of in kind settlement or relief obtained and the same percentage of any funds actually collected, whether by settlement or judgment arising out of client's claims against Contractor or other parties to any proceeding covered by this fee agreement" (Def. Ex. 3). Plaintiff proposed this amendment in a letter of explanation dated January 24, 2019. (Def. Ex. 2; Tr. P. 88).
3. The parties executed an amended fee agreement with the foregoing conditions on November 15, 2019. During the representation, Defendant paid hourly fees to Plaintiff in the amount of $105,558.00, exceeding the "cap" by $5,558.00. (Def. Exs. 33 & 37).
4. According to Plaintiff, Contractor asserted a total claim of $4,029,749.43 against Defendant in a private arbitration proceeding and the arbitrator awarded the Contractor $2,640,715.64 (Def. Ex. 11). Plaintiff claims 25% of the difference of $1,389,033.64 or $347,258.45 as an additional contingent fee beyond the hourly fees previously paid. According to Defendant, Plaintiff did not meet the contingency because the Plaintiff did not complete the full scope of the services promised and undertaken in the legal matter. Defendant contends its prior payments of $105,558.00 and a subsequent payment of $150,000.00 (Def. Exs. 30 & 31) was the reasonable value of the legal services Plaintiff provided, and no further sums are due because Plaintiff never met the contingency.

2

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

Defendant argues that Plaintiff has been paid in full for the reasonable value of the legal services provided.

5. Plaintiff represented Defendant in a private arbitration against a Contractor. The subject of that proceeding included various contract claims and counterclaims between the Defendant Owner and the Contractor including unresolved change orders, contract balances, delays, and claims of defective and incomplete work. Defendant's counterclaim initially included the "SCDOT" claims (Tr. P. 90, 93-96). As the case unfolded, the SCDOT repairs were not yet complete, and Plaintiff advised Defendant to "carve out" those issues from the arbitration proceeding as not yet ripe for determination so that the issues could be reserved for future resolution. Plaintiff did not advise Defendant at that time that the bifurcation of the SCDOT issues would result in the SCDOT issues no longer being within the scope of the Defendant's representation in the arbitration (Tr. P. 90, 93-96)
6. During the arbitration, Plaintiff also recommended, prepared, and filed, on Defendant's behalf, a multi-party declaratory judgment action in Lexington County Common Pleas, Case No. 2020-CP-32-00580, against Contractor and a substantial number of subcontractors, including all known subcontractor lien claimants. The parties did not execute a separate fee agreement for this work. (Def. Ex. 33)(Tr. P. 53-55). Instead, it was included in the scope of services covered by the fee agreement because Plaintiff billed Defendant for this work under the hybrid fee agreement and Defendant paid Plaintiff for a portion of this work under the hourly component of the hybrid fee agreement (Def. Ex. 33)(Tr. P. 53-55). Defendant also posted millions of dollars to bond off various lien claims in the Civil Action. Resolution of the Civil Case was necessary not only for the final resolution of all known lien claims, including the merits of Contractor's lien which would

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

be determined in arbitration, but also the release of the cash collateral posted as lien bonds (Def. Exs. 5 & 34).

7. The lien claim of the Contractor was at issue in the Civil Action and the arbitration, but the Civil Action was stayed pending the outcome of the arbitration case and the arbitration case proceeded first.

8. The arbitrator heard evidence in the case between Defendant and Contractor in July 2020 and Plaintiff represented Defendant in that hearing. The arbitrator did not issue an award until January 4, 2021 (Def. Ex. 6). In the meantime, on September 22, 2020, Plaintiff filed a motion to lift the stay and confirm the anticipated arbitration award, a necessary step to transforming an arbitration award to a final judgment in the Declaratory Judgment case. In the motion, Plaintiff acknowledged there would be no "final" arbitration award until the arbitrator determined the issue of the "prevailing party" as between Defendant and Contractor so that statutory claims for attorney's fees arising from South Carolina's mechanic's lien law could be determined with finality (Def. Ex. 4). The ensuing written award of January 4, 2021, held that the SCDOT claims were not yet "ripe" for review and held that there would be future consideration on the question of attorney's fees. Therefore, this award, on its own terms, was not a final decision; it ended neither the arbitration case nor the underlying Civil Case.

9. Contractor submitted a request for attorney's fees to the arbitrator, claiming to be the "prevailing party" on January 25, 2021 (Def. Ex. 8). Within 90 days of the first arbitration award, Contractor also filed a motion to vacate the arbitration award in the underlying Civil Action (Def. Ex. 17).

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

10. On February 15, 2021, the arbitrator issued a clarification to the January 4, 2021, award, again confirming that the SCDOT issue was not ripe for review and was undecided (Def. Ex. 10).

11. At about this same time, Plaintiff advised Defendant that Plaintiff would not further assist Defendant in the arbitration matter concerning the SCDOT issues. Plaintiff told Defendant it would need a new attorney for the SCDOT matters and a new arbitrator would need to be appointed for that matter (Def. Ex. 35, Tr. P. 97-98). This was the first notice Defendant received that Plaintiff considered the SCDOT issues to be outside of the scope of Plaintiff's engagement (Tr. P. 97-100). On February 16, Defendant sought further guidance from Plaintiff on the arbitration ruling. Plaintiff responded, calling the SCDOT matter a "new claim" and advising client to retain a "new attorney." Plaintiff stated: "our fee agreement does not include another arbitration/litigation on any issue, including but not limited to, the SCDOT, warranty, deficient construction work or any other issues not adjudicated in the completed July 2020 arbitration, as set forth in the award and Clarification thereof." In this same communication, Plaintiff acknowledged it had a remaining obligation to continue representing Defendant in: 1) the attorney fee issue in the arbitration, and 2) the DJ action (Def. Ex. 35) (see also Tr. P. 100-101).

12. The arbitrator issued another minor clarification on February 17, 2021 (Def. Exs. 10 & 12). On that same day, Plaintiff sent Defendant an invoice for the full contingent fee in the amount of $347,258.45 (Def. Ex. 11). This Court finds as a matter of fact that on February 17, 2021, neither the arbitration case nor the Declaratory Judgment case was concluded on that date. According to Defendant, Plaintiff sent the invoice early because "a paid invoice would "make it easier to get attorney's fees in the end" (Tr. P. 114).

5

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

13. At this point Defendant had also engaged additional legal counsel, Henry Brown, to evaluate the case status at Defendant's sole expense. Mr. Brown took a contrary view to the status of the case. He did not consider the SCDOT issue to be a "new claim" requiring a "new" arbitrator. Mr. Brown believed the empaneled arbitrator had authority and jurisdiction to address the SCDOT issue which had, by this time become "ripe." Plaintiff disagreed with Mr. Brown and advised Defendant differently. Plaintiff suggested that the SCDOT matter should proceed separately because the arbitration was "over" (Def. Supplemental Exhibit Audio Recording of call date February 23, 2021).

14. The parties had a contentious phone conversation on February 23, 2021, which was recorded and is a part of the record. During the call, Mr. Bundy and Mr. Brown expressed their conflicting views regarding the continuing authority of the arbitrator in the ongoing arbitration and the appropriate legal strategy. Plaintiff clearly and plainly refused to agree to continue with representation of the Defendant in the SCDOT matter but acknowledged the attorney fee petition and the declaratory judgment case remained open and unresolved. The lawyers had different opinions as to whether the current arbitrator would agree to further entertain the unresolved SCDOT claims. Defendant Client did not discharge or terminate Plaintiff's services during the call, but the relationship was clearly strained. (Def. Supplemental Exhibit Audio Recording of call date February 23, 2021) (Tr. P. 101-103).

15. After the call, Mr. Brown advised the arbitrator that he would assume responsibility for the arbitration with limited continued involvement of Plaintiff by letter dated February 24, 2021 (Def. Ex. 13).

16. On March 2, 2021, Plaintiff responded to Mr. Brown's letter to the arbitrator, taking exception to Mr. Brown's statement to the arbitrator concerning Plaintiff's continuing

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

involvement (Def. Ex. 14). Plaintiff reiterated "the arbitration is over. The only remaining issue in the arbitration is the award of attorney's fees, if any.... I agree I will continue to be involved with that issue." Plaintiff hardly communicated with Defendant after this letter in 2021 (See also Tr. P. 104-107).

17. The arbitrator ultimately determined that the arbitration was not over. (Tr. P. 100-111). Mr. Brown pressed the arbitrator for further clarification of the scope of the arbitrator's continuing jurisdiction on March 12, 2021 (Def. Ex. 15). On April 14, 2021, the arbitrator notified the parties that he had continuing jurisdiction to hear the now ripened SCDOT claims, and the prior award of January 4, 2021, was "not final" (Def. Ex. 39). The arbitrator further held that "any determination of the prevailing party and award of attorney fees necessarily relies in part upon the determination of and outcome of the SCDOT claim."

18. This Court finds that this determination by the arbitrator rendered the arbitration award of January 4, 2021, which is the basis for the contingency fee claim, to be a preliminary and tentative decision rather than the outcome of the arbitration case. This Court further finds that as of the date of the invoice from Plaintiff, the Defendant did not receive the benefit of any settlement, judgment, outcome, or result. At that time, there was no final award. The attorney fee question which was within Plaintiff's scope of representation remained undecided. Similarly, the declaratory judgment Civil Action, also within Plaintiff's scope of representation, remained pending and unresolved (Tr. P. 53-55).

19. Within ninety days of the preliminary arbitration award, Contractor filed a timely motion to vacate the award in the Civil Action (Def. Ex. 17). Plaintiff's sole witness admitted that if the motion to vacate the award were granted, no contingency fee would earned at that time (Tr. P. 74-75).

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

20. For health reasons, Mr. Brown was unfortunately unable to conclude the arbitration. Defendant engaged a third lawyer on an hourly basis, Henry P. Wall, to conclude the arbitration and the declaratory judgment action in July of 2021.

21. After the engagement of Mr. Wall, Plaintiff notified Defendants he wished to be relieved as counsel of record in the Civil Action and requested "payment on the debt" or a lawsuit for the fees would ensue (Def. Ex. 18). By consent order, Plaintiff withdrew as counsel in the Civil Action on September 3, 2021 (Def. Ex. 19).

22. On November 12, 2023, Defendant reached a final settlement agreement with Contractor (Def. Ex. 21). This agreement became the final arbitration award in the case by stipulation and with the consent of the arbitrator. This agreement addressed and revised the first arbitration award, the SCDOT claims, the attorney's fee issue, and settled of the Declaratory Judgment Case.

23. Plaintiff filed this suit for breach of contract on November 17, 2021 (Def. Ex. 20).

24. The final resolution of the Declaratory Judgment Action occurred on February 8, 2022, by entry of an order of this Court (Def. Ex. 27).

25. Plaintiff performed no services in connection with the continuing arbitration proceedings, the attorney fee issue, or the declaratory judgment case from February, 2021, through the final resolution of the Civil Case twelve months later. During that time, Defendant incurred and paid hourly attorney fees of $46,907.50 to Mr. Brown's law firm and $49,166.00 to Mr. Wall's law firm (a total of $95,073.50 in legal fees to complete the arbitration and the Civil Action). Hourly rates for the new lawyers were $300.00 per hour and $360.00 per hour, respectively. (Def. Exs. 32 & 38).

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

26. Plaintiff stopped billing hourly fees to Defendant in June of 2020, just before the first arbitration hearing. Up until that time, Defendant had previously paid Plaintiff the hourly cap of $100,000.00 plus $5,558.00 in legal fees. (Def. Exs. 33 & 37) (Tr. P. 127).

27. During this case, Plaintiff produced a summary of unbilled hours which it claims had an hourly rate value of $117,960.00 (Def. Ex. 26) (Tr. P. 116-117). Plaintiff kept accurate records for this time. After October 2020, Plaintiff kept no time records, but Plaintiff estimated it is spent "at least 100 hours" in "additional time" during between October 2020 and March 2021 (Def. Ex. 26). I take this evidence as an admission of the total time Plaintiff expended for which it did not bill and was not paid on an hourly basis. No member of Plaintiff offered any testimony in this case in contradiction of Exhibit 26.

28. On May 24, 2022, eighty-five (85) days after the resolution of the case, Defendant paid Plaintiff $150,000.00, without requiring a release or dismissal of this lawsuit to be credited against the Plaintiff's claim (Def. Ex. 30) (Tr. P. 116-117). The Defendant's intent was to reach a fair approximation of Plaintiff's reasonable hourly rates for the unbilled work at fair and customary hourly rates in lieu of the claimed contingent fee. Defendant estimated the amount due as $117,960.00 at the Plaintiff's regular hourly rate, plus the estimated 100 additional hours at the same ratio/hourly rate of Bundy and McDonald (Tr. P. 119-120). Defendant has thus far paid Plaintiff a total of $255,558.00 in legal fees for its services in the arbitration and the Civil Case. Plaintiff has acknowledged these payments.

29. Plaintiff's expert witness agreed that a rate of $400.00 per hour for Mr. Bundy's time and $300.00 per hour for Mr. McDonald's time was a reasonable rate for those lawyers during the course of their representation (Tr. P. 51). Plaintiff claims, however, it is due the full

9

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

reverse contingent fee based on the invoice of February 17, 2021 ($347,258.45 less $150,000.00) plus prejudgment interest on the unpaid amounts from February 17, 2021.

30. Based on all this evidence and testimony I have concluded that the preponderance of the evidence is:

    a. Plaintiff did not fully complete the arbitration or obtain a final result in the arbitration. Plaintiff's scope included representation in the attorney fee claims, and defending the contractor's motion to vacate the arbitration award. Plaintiff never finished this work. Plaintiff did not complete the SCDOT portion of the arbitration which was a matter of contested scope but was initially asserted in the arbitration before it was carved out of the case. Defendant was not notified that acquiescence to the decision to carve out the SCDOT claims would limit Plaintiff's scope of representation in the future.

    b. Plaintiff did not complete the Civil Action, which was admittedly in their scope of work (Tr. P. 53-55).

Therefore, the primary issue in the case is whether or not Plaintiff has earned the full contingent fee, and if not, whether Plaintiff is due any additional reasonable attorney fees beyond the amount already paid under the facts of this case.

ANALYSIS

I. A Lawyer's Contingency Fee is Earned Upon a Successful Result or Outcome.

To earn a contingency fee, a lawyer must conclude a case by settlement or judgment; an interim, preliminary, or tentative determination does not suffice. Plaintiff's written fee agreement (Defense Trial Exhibit 3 (Def. Ex. 3)), the letter of explanation from Plaintiff (Def. Ex. 2), and the

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

body of case law, in South Carolina and elsewhere, mandate that a final result, by settlement or judgment, is a condition precedent to the Client's obligation to pay a contingent fee.

Justice Toal defined the essence of a contingent fee agreement in Estate of Jones v. Leatherwood 329 S.C. 97, 495 S.E.2d 450 (S.C. 1998) as, "one which is made to depend upon the success or failure in the effort to enforce a right, whether doubtful or not."[1]

Plaintiff drafted the Amended Fee Agreement, and it incorporates this requirement. The contingent fee is based upon 25% of a reduction of the "claim(s) made by Contractor" and 25% of "any amount of in kind *settlement or relief obtained* and the same percentage of any funds actually collected, whether by *settlement or judgement*" (emphasis added). The trigger for the Client's obligation to pay is the *achievement of a successful result or outcome for the client*. Nowhere does the Fee Agreement suggest that the fee is earned without final relief or outcome by settlement or judgment.

The letter of explanation from Plaintiff to Defendant Client (Def. Ex. 2) included this illustration: "if an arbitrator awards or a settlement is reached *so that client must pay"* and if the Client makes a claim "and the arbitrator awards or a settlement is reached.... then attorney will be entitled to.... 25% of the of the *recovered claim."* The contingency stated here is *an obligation to pay* or a *recovered claim*. The Amended Fee Agreement, the letter of explanation, and the law in

[1] Adair v. First Nat. Bank, 139 S.C. 1, 5, 137 S.E. 192, 193 (1927); *see also* City of Burlington v. Dague, 505 U.S. 557, 560–61, 112 S.Ct. 2638, 2640, 120 L.Ed.2d 449, 455 (1992) ("Fees for legal services in litigation may be either 'certain' or 'contingent' { or some hybrid of the two} . A fee is certain if it is payable without regard to the outcome of the suit; it is contingent if the obligation to pay depends on a particular result being obtained."); Alexander v. Inman, 903 S.W.2d 686, 696 (Tenn.Ct.App.1995) ("Most jurisdictions would agree that a contingent fee arrangement is an agreement for legal services under which the amount or payment of the fee depends, in whole or in part, on the outcome of the proceedings for which the services were rendered."); Martin v. Buckman, 883 P.2d 185, 192 (Okla.App.1994) ("In simple terms, a contingent fee contract is one in which a client engages an attorney to represent her in the recovery of, say, a certain sum of money she claims is owed to her, and the attorney agrees to accept for his services a certain percentage of what he recovers either by settlement or by judgment."); Black's Law Dictionary 614 (6th ed. 1990) (defining "contingent fees" as "[a]rrangement between attorney and client whereby attorney agrees to represent client with compensation to be a percentage of the amount recovered ...."..... As the above authorities explain, *a contingent fee agreement necessarily requires that a successful result be achieved before the fee is paid*... (emphasis added).

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

South Carolina all require a final result before a contingent fee is due. Lawyer contingent fees do not receive a preferential payment status before the client receives the benefit of the case outcome.

According to Plaintiff's sole witness, Tom Pope, the scope of the fee agreement covered "an arbitration" (i.e., one appearance in a single hearing without any further representation for the Project[2]). This Court does not concur in that interpretation considering the express language of the fee agreement for "legal counsel for purposes in connection with a project" and which covers "any proceeding" all of which Plaintiff wrote. Assuming however, for the sake of argument, the Amended Fee Agreement could be construed to so limit the scope of representation to a single arbitration hearing, the initial arbitration award (Def. Ex. 6) and subsequent clarification (Def. Ex. **10**) was not a final result or "recovery" by "settlement or judgment" as required in the fee agreement. The initial award did not end the existing arbitration case nor provide the client with a final outcome. The preponderance of the evidence is that Plaintiff never met the contingency, even under the very limited scope of representation Plaintiff now suggests.

On cross examination, Plaintiff's sole witness confirmed that the Claimant in the initial arbitration filed a motion to vacate the arbitration award in the Declaratory Judgment action (Def. Ex. 17). Plaintiff's witness agreed that if the Court granted that motion, there would be no successful outcome, no contingent fee would be earned, and no contingent fee would be due.

[2] The actual scope of representation, as Plaintiff's sole witness admitted on cross examination, included representation in both the Arbitration and the Declaratory Judgment case, including the attorney fee award, if any in the initial arbitration (Tr. P. 53-55). Plaintiff concluded none of these matters. Defendant-Client's expectation that the representation included the SCDOT matters is reliable and credible and fully consistent with the expectations of a lay person who engages legal counsel for representation in connection with a Construction Project. The evidence is uncontradicted Plaintiff did not explain to Defendant that the decision to table the SCDOT claims in the arbitration would limit Defendant's representation. See note 5 on Model Rule 1.5: "An agreement may not be made whose terms might induce the lawyer to improperly curtail services or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided up to a stated amount when it is foreseeable that more extensive services probably will be required unless that situation is adequately explained to the client. otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction."

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

Therefore, resolution of the motion to vacate the award was a condition precedent to achieving a result in the case, even under Plaintiff's interpretation of the scope of legal services in the fee agreement. Plaintiff withdrew from both the arbitration (Def. Ex. 35)[3] and the Declaratory Judgment Action (Def. Exs. 18 &19) *before the resolution of the Motion to Vacate* which resulted in the final resolution by consent award and confirmation by the Court on November 12, 2021, by final settlement (Def. Ex. 21) through the efforts of different lawyers, all at substantial cost to the client.

The arbitrator's first award (Def. Ex. 6) was, by its own terms, a temporary result subject to further modification and adjustment. It did not resolve the issue of the "prevailing party" for purposes of making a final monetary award and it required future argument, briefing, submissions by the parties, consideration, deliberations, and proceedings.[4] The Award states: "[a]ny award of attorney fees and costs to the prevailing party is expressly reserved *for future consideration*." (emphasis added). Plaintiff and opposing counsel in the arbitration both acknowledged the fee issue was within the scope of the arbitration, and a matter for further attention before the empaneled and appointed arbitrator could issue a final award (see Def. Exs.7,8, 14, 15,16 & 35). The arbitrator specifically and expressly retained jurisdiction over the award to clarify it (Def. Exs. 10 & 12) interpret its scope, and issue a final award.

---

[3] Plaintiff notified Client it would need to retain new counsel (Ex. 35) within days of sending the contested invoice for legal services based on the initial arbitration decision (Ex. 11), February 17, 2021. In the notice, Plaintiff agreed to "continue to handle the DJ action" and continue to represent Weco on the attorney's fee issue. (see also Ex. 14 "the arbitration is over"). Plaintiff did not conclude the DJ Action or Fee petition for the client.

[4] On September 22, 2020, Plaintiff filed a Motion to Confirm an Arbitration Award that had not yet been issued in the Declaratory Judgment case (**Ex. 4**). Setting aside the question of whether such a motion was ripe for consideration, the Motion acknowledged and conceded that: a) Plaintiff knew that the anticipated initial award would not be "final", b) the attorney fee issue would remain undecided, and c) "This Court has the authority and jurisdiction to confirm the final award once it is issued by the Arbitrator". Plaintiff, by these written admissions, was well-aware of the statutory procedure necessary to convert an arbitration award into a final judgment for the benefit of the client.

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

On April 12, 2021, the Arbitrator issued a supplemental order: "I conclude that the Award is *not final* … (see Def. Ex. 39, p. 2) **....** "I therefore further clarify the January 4, 2021, Award to expressly reserve jurisdiction over the DOT claim…jurisdiction exists to adjust the amount of the Award, if appropriate, *based on a final determination*…" (see Def. Ex. 39, p. 4 (emphasis added)). Months after Plaintiff ceased their work on behalf of the client, the arbitrator executed a final award, based on a settlement by and with the consent of all parties on November 12, 2021 (Def. Ex. 21). This final award was entered and confirmed by the court order and, upon confirmation and entry of judgment, became the final outcome in the case. This Court finds that the outcome in the case occurred more than 9 months after the Plaintiff effectively withdrew from representing the Defendant in the arbitration and declared the arbitration "over". Plaintiff did not meet the required contingency or complete the full scope of services, even under the narrowest view of their scope of services. This Court finds Plaintiff did not meet the contingency because Plaintiff did not obtain a final outcome or result for the client in the initial arbitration or the Declaratory Judgment Civil Action.

The uncontradicted testimony in the case is that Defendant never terminated or discharged Plaintiff (Tr. P. 101-104). Had Plaintiff remained in the case, the final arbitration award and judgment of November 12, 2021, and February 8, 2022, respectively, would have met the trigger for any contingent fee, but Plaintiff effectively withdrew one year prior to the last of these events. Significant additional work remained in the case to reach that end and alternate legal counsel was necessary. Defendant's witness testified that Defendant had no expectation or understanding that Plaintiff would refuse to proceed with the arbitration until after the initial award or that reserving and postponing the SCDOT claims which were in the original claim would result in Plaintiff's abrupt refusal to proceed with the arbitration or the Declaratory Judgment Action (Tr. P. 115).

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

Defendant represented that it would have been pleased to complete the case with Plaintiff as its advocate. This Court finds that Defendant did not discharge Plaintiff, constructively or otherwise, and even if Plaintiff had been discharged, only a reasonable fee would be due under the circumstances presented here.

This Court finds that the clear and unequivocal statement from Plaintiff in Def. Exhibit 35 that Client would need a "new attorney" placed Client in the unfortunate position of needing to retain new counsel at considerable expense during a complicated and ongoing case. The refund of a cash lien bond in excess of one million dollars depend upon the outcome of the Declaratory Judgment case, an action which Plaintiff had recommended (see Def. Ex. 34). Indeed, the ultimate costs to complete the representation, after Plaintiff's withdrawal, was more than $95,000.00. (see Def. Exs. 32 & 38).

The invoice for legal services, created on February 17, 2021, does not accurately compute the final outcome of the case. Plaintiff calculated the fee based on the interim and incomplete ruling from the arbitrator. The interim ruling was not only subject to adjustment and modifications, but it was under legal challenge in the Civil Action, and it was later modified and adjusted, diminishing the benefit to the Client[5]. The invoice was both premature and inaccurate.

Furthermore, even if the award stood without alteration or amendment, the preliminary award was not a settlement or judgment as a matter of law. Plaintiff does not acknowledge this objective legal reality. An arbitration award, by itself, *is not a self-executing final judgment or settlement*. Under the South Carolina Uniform Arbitration Act, a decision of an arbitrator may be a) confirmed, b) vacated, or c) modified. It is not a judgment of the court until a timely motion to

[5] Client settled the first portion of the arbitration and paid $2,950,000 to the arbitration claimant, not the $2,640,715, upon which Plaintiff calculated the "savings" for its reverse contingency fee computation. Clearly the claim was unliquidated at the time Plaintiff submitted the premature invoice. (see interest discussion, infra.)

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

vacate or modify the award is denied, the award is confirmed as a judgment by a court of law, or the award is paid by settlement.[6] The applicable statutory provisions provides multiple avenues to confirm the award. Once a party applies for confirmation, the award shall be confirmed by the court "unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 15-48-130 and 15-48-140." S.C. Code Ann. § 15-48-120. An award shall be vacated on a series of grounds such as corruption, fraud, undue means, arbitrator exceeding their powers, and others. S.C. Code Ann. § 15-48-130. Further, "[i]f the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award." S.C. Code Ann. § 15-48-130(d). An arbitration award shall be modified in instances of (1) "a miscalculation of figures or an evident mistake in the description," (2) an award has been made "upon a matter not submitted to them," or (3) "the award is imperfect in a matter of form, not affecting the merits of the controversy." S.C. Code Ann. § 15-48-140(a)(1)-(3). If any of these criteria are met then the court will modify the award, otherwise, the award will be confirmed by the court. S.C. Code Ann. § 15-48-140(b). Once an award is confirmed, modified, or corrected, a "judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree." S.C. Code Ann. § 15-48-150.

Here, Plaintiff moved for confirmation of the award per §15-48-120. Opposing counsel filed a timely motion to vacate per §15-48-130. Plaintiff withdrew from the case before the resolution of either motion. No judgment or obligation could ensue as a matter of law until resolution of the competing motions. Yet, Plaintiff sent an invoice to the client based upon an incorrect computation

[6] The Federal Arbitration Act has similar provisions. See 9 U.S.C §9-12. Of course, the parties could willingly settle and pay an award without this formality, but settlement did not occur until months after the Plaintiff withdrew from the DJ action and refused to proceed further in the arbitration.

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

before the resolution of either motion. Replacement counsel completed the arbitration and the pending motions in the Civil Action many months after Plaintiff issued the invoice for the full contingent fee.

Assuming Plaintiff was engaged on a limited scope for "an arbitration", Plaintiff's unfinished business included: a) the remaining issues in the arbitration case: the final award of attorney's fees and costs, b) the resolution of the pending motions to vacate and/or confirm the award, and c) the DJ action in which the arbitration motions were embedded. Client resolved all of these issues without Plaintiff's further representation with alternate legal counsel.

Plaintiff's scope of work included completion of the Declaratory Judgment Action. Defendant's testimony on this point is completely uncontradicted. Plaintiff's expert also acknowledged that Plaintiff billed hourly fees to the DJ action and Plaintiff was paid for the work and the records in evidence prove this (see time entries on Def Ex. 33 pages 00246-261) (Tr. P. 53-55). Plaintiff acknowledged its responsibility for the work, even after it claimed the arbitration was "over" (see Ex. 35). Plaintiff remained sole counsel of record in the DJ action, fully responsible for that scope of work as a matter of law, until it demanded to be relieved as counsel.[7]

[7] While Plaintiff claims it was constructively discharged from the work based on claims that Henry Brown agreed to assume responsibility for the case, neither Mr. Brown nor his firm ever made a formal appearance in the DJ case. Until formally relieved, Plaintiff in fact remained fully responsible to client regardless of any statements from Mr. Brown who would ultimately leave the case for health reasons (to have a heart transplant). See Ex Parte Strom 334 S.C. 257, 539 S.E. 2d 699 ((2000). Furthermore, Mr. Brown's email suggesting he would assume responsibility for the DJ case occurred after Plaintiff's refusal to participate further in the arbitration case and incorrect assumption that the arbitration was "over." (see Pl. Ex. 16). Additionally, Client and attorney did not reach any agreement on the remaining scope of Plaintiff's responsibilities during that call. (see page 25: "Bundy: So, you're going to take over the arbitration, whatever is left of it and whatever follows. What about the current case in Common Pleas. Mundy: I don't think that's what's been agreed to, and its still on the table. So, I'll interject there.... the arbitration is not over yet.... Bundy: Well, I'm certainly not going to do it....". The parties were at impasse: "Bundy: ...if we have a dispute later about whether I'm in breach of contract for failing to do what I said I was going to do, then that's just what we'll have." The full context of the Brown communication is also found in Def. Ex 24 pages 126-129. In the full context, Plaintiff unilaterally declared the arbitration over, leaving the Client with a need to retain new counsel to finish the arbitration. The arbitrator in fact determined the arbitration was not "over." Thus, client was placed in the awkward position of finishing at least part of the arbitration Plaintiff started with new counsel. Meanwhile, client had, upon the advice and recommendation of Plaintiff, posted cash bonds in the Declaratory Judgment Action more than seven million dollars. (see Ex. 34).

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

Based on the foregoing, this Court finds that:

1. Plaintiff did not participate or complete the remaining arbitration which involved the same parties, same project, same arbitrator, same witnesses, and same issues. The arbitration was not in fact "over" but rather continuing, and the Client had no appreciation or understanding that Plaintiff would declare an end to the case in February 2021. Plaintiff made a business decision to terminate representation of the Client in the arbitration on February 17th stating that "[o]ur fee agreement does not include another arbitration…". While Plaintiff believed the arbitration was over, that was not the case. This plainly occurred prior to meeting the contingency.[8]
2. Plaintiff did not complete the Companion Proceeding (the Declaratory Judgment Action) which was within Plaintiff's scope of work and for which Plaintiff had been compensated in part. Plaintiff insisted that it be relieved as counsel in that Action. Furthermore, the outcome of the Arbitration was inextricably tied to the outcome of the Civil Action. Without resolution of the Civil Action, the arbitration could not become final, and the Client could not extricate its assets from the Clerk of Court.
3. The final settlement and outcome of the Arbitration and Declaratory Judgment Action occurred through alternate representation at considerable additional cost to Client (see Ex. 32)
4. Plaintiff withdrew from both the Arbitration and the Declaratory Judgment Action before the matters were complete in the sense of settlement, judgment, or recovery.

[8] Even if Client constructively terminated client, it would not change the result. Under the rules, Client may discharge a lawyer at any time, subject to the obligation to pay reasonable fees. If termination occurred prior to the contingency, a law firm's fees must be "reasonable." See South Carolina Rules of Appellate Procedure, Rule 407. Model Rule 1.5 comment.

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

5. Within 90 days of the final resolution of the Civil Action, Client paid Plaintiff an additional $150,000.00 computed based on Plaintiff's initial hourly rates computed from Plaintiff's estimated hours. Plaintiff has been compensated more than $250,000.00 for legal fees in this case. The uncontradicted testimony is that Client accepted Plaintiffs's estimated hours (see Def. Ex 25). According to Plaintiff: "$117,960.00 of billable hours was spent...essentially preparation for and attendance at the Arbitration hearing.... further at least 100 hours in additional hours were spent in additional time." Client paid $117,960.00 at face value based on the time records. Client then paid, based on the ratio of hours between Mr. Bundy and Mr. McDonald additional sums to Plaintiff's law firm.[9] The additional payment was based on Plaintiff's time records and normal hourly fees.

II. Reasonable Fee Determination

When a lawyer who is engaged for a contingency fee withdraws or is terminated before recovery by settlement or judgment, the lawyer is entitled to either no fees at all or the reasonable value of the services rendered on a *quantum meruit valuation* or lodestar method of determination. Case law is uniform that a lawyer who does not meet the contingency may not recover a full contingent fee. The reason for this is manifest and obvious. If lawyers may abandon clients before obtaining a result, clients would be at the mercy of the legal profession.

In Lofton v. Fairmont Specialty Ins. 367 S. W. 3d 593 (Ky. 2012), a lawyer withdrew from a contingent fee case before settlement or recovery and later sued his client to recover fees. After noting that a lawyer who withdraws with or without just cause may not enforce a contract for a full contingent fee, the court addressed the circumstances of what compensation is

[9] See Section IV for an exact accounting and payment reconciliation of the final payment and means of determining the payment.

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

appropriate. The court concluded when the withdrawal is without cause, no fee may be recovered. When the withdrawal is justified, the recovery is limited to a *quantum meruit* measure.

Kannewurf v. Johns 632 N.E. 2d 711 (Ill. App. 1994) further explains this principle. There, the lawyer withdrew because of a difference of opinion with client. The client refused to follow the advice of the attorney, and the attorney withdrew. The court recognized that while a client may discharge their attorney at any point, with or without cause, an attorney will still be entitled to a "quantum meruit compensation for all work reasonably performed for the client prior to the discharge. Kannewurf v. Johns 632 N.E. 2d 711, 714-715 (citing Rhoades v. Norfolk & Western Ry. Co., 78 Ill.2d 217, 35 Ill.Dec. 680, 399 N.E.2d 969 (1979)). The court reasoned that trust is essential to the attorney-client relationship, and the client must be given an opportunity to find a new lawyer when that trust is absent. Id. Even with this freedom, the attorney will still be entitled to the reasonable value of these services. Id. at 715. (citing Leoris & Cohen, P.C. v. McNiece, 226 Ill.App.3d 591, 168 Ill.Dec. 660, 589 N.E.2d 1060 (1992)).

The Court of Appeals also noted other prior decisions of the court where an attorney hired on a contingent fee basis and withdrew was still entitled to a reasonable calculation of their fee because they withdrew for good cause. Id. (Reed Yates Farms, Inc. v. Yates, 172 Ill.App.3d 519, 122 Ill.Dec. 576, 526 N.E.2d 1115(1988)). Similarly, in Leoris & Cohen, the court found that "a complete breakdown in the attorney-client relationship is a justifiable basis for allowing an attorney to withdraw from a contingent fee case and still receive his fees on a quantum meruit basis." Id. (citing 226 Ill.App.3d 591, 168 Ill.Dec. 660, 589 N.E.2d 1060 (1992)). See also 7A CJS Attorney & Client §360 (2004) and 53 ALR 5th 287 Circumstances Under Which Attorney Retains Right to Compensation Notwithstanding Voluntary Withdrawal from Case. Although in some jurisdictions Plaintiff would be entitled to no fee whatsoever, see Faro v. Romani, 641 So. 2d 69

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

(Fl. 1994), Defendant has never contended total forfeiture would be appropriate here. Instead Defendant contends the appropriate measure is the reasonable calculation of the fee earned. See Rose v. Penn and Seaborn, 295 So. 3d 94 (Ct. App. Al 2019).

Eight factors should be considered in the evaluation of reasonableness in the award of attorney fees pursuant to Model Rule 1.5:

1. *Time and Labor required, and the novelty difficulty and skill needed to properly perform the services.*

The records support that this is a matter of some complexity and difficulty which would involve a substantial investment in time. This factor weighs in favor of a premium hourly rate as might be charged for a lawyer with a substantial amount of experience in construction matters and arbitration.

2. *The likelihood that acceptance of the employment will preclude other employment.*

Given the necessary time required to handle this case to conclusion, even in an expedited forum such as arbitration, it is likely that counsel would be required by necessity to decline other large matters and cases. This factor likewise weighs in favor of a premium hourly rate.

3. *The customary fees in the venue for similar services.*

Mr. Bundy's regular hourly rate at the time of $400.00 per hour and Mr. McDonald's rate of $300.00 per hour were substantial premium hourly rates. Plaintiff's expert could point to no examples of counsel with similar experience who charge more per hour (Tr. P. 51). and Plaintiff's expert admitted the rates charged were initially established by Plaintiff and were reasonable and appropriate hourly rates for exceptional construction lawyers in the South Carolina market at the time the case was proceeding. The Court notes that two other qualified

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

and capable counsel in the same practice area, both with substantial experience, charged Defendant lower hourly rates of $300.00 and $360.00 per hour, respectively, to complete the case.

4. The amount involved and the results obtained.

The case involved claims and counterclaims of several million dollars, weighing in favor of a high hourly rate; yet, as is discussed in detail above, Plaintiff did not obtain the result or outcome on behalf of the client. Without completing the work fully, not only did Plaintiff not meet the contingency, but it cannot be overlooked that Defendant incurred more than $95,000.00 in additional legal fees from other firms after Plaintiff stopped work on the case. The total costs to the client in obtaining the outcome should be considered in making any final reasonable fee determination; particularly when the Plaintiff does not fully complete the scope of its services.

5. The time limits imposed by the client or circumstances.

Arbitration proceeds at a faster rate than litigation and in this instance, there was both an arbitration and an underlying civil case. Again, this weighs in favor of a high hourly rate.

6. The nature and length of the professional relationship.

This was Plaintiff's first engagement with Defendant therefore, this factor is of limited weight.

7. The experience and ability of the Lawyer.

The court concurs in the testimony of Plaintiff's expert that Mr. Bundy is an exceptional and gifted trial advocate and that his partner, Mr. McDonald, is an experienced and gifted attorney too. This weighs in favor of a high hourly rate.

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

8. Whether the fee is fixed or contingent.

Here there is a hybrid fee structure. Notably, Plaintiff did not assume the full risk of the outcome of the case as would be typical in a fully contingent matter. Yet, the percentage is relatively high 25% of the gross savings or recovery in addition to a minimum fee of $100,000.00. Further, the contingent aspect is both positive (for counterclaims) and negative (for savings from Plaintiff's demand). The Court notes that Plaintiff's expert identified that reverse contingent fee cases put the attorney at additional risk of collection and therefore should drive a much higher than normal fee, but evidence of risk of non-payment is not here. Defendant paid more than the hourly cap of $100,000.00 and sent a payment of $150,000.00 to Plaintiff within 90 days of the outcome. Doubtful collectability of the fee does not impose a disproportional risk on counsel in the case at hand. On the other hand, Plaintiff's risk was significantly capped by the minimum hourly fee and hybrid nature of the amended fee agreement. Additionally, it is important to note that the agreement changed at attorney's suggestion and request and that attorney originally undertook the case a per se reasonable hourly rate set by attorney in the marketplace.

Under these circumstances, this Court finds that the substantial hourly rates set by counsel of $400.00 and $300.00, respectively, are reasonable and fair based on the foregoing criteria. The skill of counsel and the complexity of the case, in particular weigh in favor of counsel being awarded no less than their going and established premium rates for their work on this matter. More problematic and troubling, however, would be to award an additional or higher bonus or adjusted fee given that the work was not completed, and client was required to engage new counsel to complete Plaintiff's scope of work at substantial additional costs. It is not reasonable to grant a higher fee award than the substantial hourly rates already adopted and accepted by the parties when

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

the contingency was not met. This Court finds that Defendants paid a total reasonable fee in the case for the unbilled fees, even giving Plaintiff the benefit of time for which there are no records.

I therefore find Defendant owes no additional fees to Plaintiff, as Defendants paid Plaintiff a reasonable fee for the work at a fair and premium hourly rate even though Plaintiff's work was incomplete. The payments made are reasonable pursuant to the criteria of South Carolina Rules of Appellate Procedure, Rule 407. Model Rule 1.5., which the Court has the power and discretion to approve. Plaintiff's claim for interest on the invoice is denied because: 1) the invoice was premature, 2) the invoice was an unliquidated and unjustified claim, and 3) the invoice was based on an award that was subsequently revised and amended through a final award and settlement in which Plaintiff had no involvement or participation.

Defendant has never pressed for a forfeiture of all legal fees (Tr. P. 115). Defendant has paid Plaintiff $255,558.00 for its services to compensate Plaintiff based upon the total hours Plaintiff devoted to the case multiplied by a reasonable hourly rate which Plaintiff established in the initial fee agreement. Therefore, Plaintiff is not, as a matter of law, entitled to recover a full contingent fee for the services associated with the incomplete work and has been reasonably compensated in full for its services in this case.

CONCLUSION

For these reasons, the claims are denied, and this Court finds in favor of the Defendant.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2025 Mar 13 8:33 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

Lexington Common Pleas

Case Caption: Bundy McDonald Llc VS WECO River District Llc

Case Number: 2022CP3201932

Type: Order/Judgment For Relief

It Is So Ordered

s/ Walton J. McLeod

25

ELECTRONICALLY FILED - 2025 Apr 08 12:05 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	Civil Action No.: 2022-CP-32-01932
Bundy McDonald, LLC,	)	
	)	
Plaintiff,	)	
	)	**ORDER DENYING MOTION**
v.	)	**TO ALTER OR AMEND PURSUANT TO**
	)	**RULE 59(e) and Rule 52, SCRCP**
WECO River District, LLC.	)	
	)	
Defendant.	)	

This matter came before this Court on Plaintiff's Motion to Alter or Amend filed on March 24, 2025, pursuant to Rule 59(e) and Rule 52, SCRCP, in response to this Court's findings arising from its Order entered on March 13, 2025. Specifically, Plaintiff asserted nine (9) grounds for relief seeking this Court to alter or amend its findings of fact, conclusions of law and judgment entered on March 13, 2025. Defendant filed a Response in opposition on April 1, 2025 wherein Defendant addressed Plaintiff's asserted grounds for relief.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby DENIES Plaintiff's Motion to Alter or Amend, pursuant to Rule 59(e) and Rule 52, SCRCP, this Court's Order entered on or about March 13, 2025. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2025 Apr 08 12:05 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

Lexington Common Pleas

Case Caption: Bundy McDonald Llc VS WECO River District Llc

Case Number: 2022CP3201932

Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod

27

ELECTRONICALLY FILED - 2021 Nov 17 11:45 AM - DORCHESTER - COMMON PLEAS - CASE#2021CP1802008
ELECTRONICALLY FILED - 2022 Jun 08 8:22 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOR THE FIRST CIRCUIT**
COUNTY OF DORCHESTER	)	
	)	**CASE NO.: 2021-CP-18-_____**
Bundy McDonald, LLC	)	
	)	
Plaintiff,	)	
	)	**SUMMONS**
vs.	)	
	)	
WECO River District, LLC	)	
	)	
Defendant.	)	

TO THE DEFENDANT WECO RIVER DISTRICT, LLC:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber, W.H. Bundy, Jr. 1516 Old Trolley Rd, 2nd Floor, Summerville, South Carolina 29485, within thirty (30) days after service thereof, exclusive of the day of service; and if you fail to do so judgment by default will be rendered against you for the relief demanded in the Complaint.

W.H. Bundy, Jr.
W. H. Bundy, Jr., Esq. (SC Bar #1012)
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559
walter@bundymcdonald.com

November 17, 2021

28

ELECTRONICALLY FILED - 2021 Nov 17 11:45 AM - DORCHESTER - COMMON PLEAS - CASE#2021CP1802008
ELECTRONICALLY FILED - 2022 Jun 08 8:22 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS FOR THE FIRST CIRCUIT**
COUNTY OF DORCHESTER	)	**CASE NO.: 2021-CP-18-_____**
Bundy McDonald, LLC	)	
Plaintiff,	)	**COMPLAINT (Non-Jury)**
vs.	)	
WECO River District, LLC	)	
Defendant.	)	

Plaintiff complaining of the Defendant herein would allege and show as follows:

THE PARTIES

1. Plaintiff is a limited liability company engaged in the practice of law organized and existing under the laws of the State of South Carolina with its principal place of business located in Dorchester County, South Carolina.

2. Defendant WECO River District, LLC ("Defendant") is a limited liability company, organized and existing under the laws of the State of South Carolina, engaged in real estate development.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the parties for the claims that are hereinafter set forth in this Complaint and venue is proper in this forum.

BACKGROUND

4. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

5. On December 4, 2018, Plaintiff and Defendant entered into a written contract for professional services, a redacted copy of said contract is attached as Exhibit "A".

29

ELECTRONICALLY FILED - 2021 Nov 17 11:45 AM - DORCHESTER - COMMON PLEAS - CASE#2021CP1802008
ELECTRONICALLY FILED - 2022 Jun 08 8:22 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

6. On November 15, 2019, Plaintiff and Defendant entered into an Amended Fee Agreement, a redacted copy is attached as Exhibit "B". The complete terms of the Amended Fee Agreement are incorporated by reference as if set forth verbatim herein.

7. On February 17, 2021, Plaintiff sent its Final Invoice in the amount of $347,258.45 to Defendant.

8. Defendant has failed and refused to pay the Final Invoice and is in material breach of said Amended Fee Agreement.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

9. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

10. A valid and enforceable contract exists between Plaintiff and Defendant.

11. Defendant is in material breach of the contract by failing to remit sums due under the contract in the amount of $347,258.45.

12. That as a direct and proximate of Defendant's breach, as aforesaid, Plaintiff has been damaged in the amount of $347,258.45 in addition to pre and post judgment interest.

WHEREFORE, the Plaintiff prays that this Court issue its Order granting judgment to the Plaintiff against Defendant for the following relief:

a. Enter Judgment against Defendant in the amount of $347,258.45;

b. Award Plaintiff pre-judgment interest at the legal rate from February 17, 2021 until Judgment is entered;

c. Award Plaintiff post-judgment interest at the legal rate;

30

d. Grant such relief as the Court deems just and proper.

W.H. Bundy, Jr.
W. H. Bundy, Jr., Esq. (SC Bar #1012)
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559
walter@bundymcdonald.com

November 17, 2021

31

ELECTRONICALLY FILED - 2021 Nov 17 11:45 AM - DORCHESTER - COMMON PLEAS - CASE#2021CP1802008
ELECTRONICALLY FILED - 2022 Jun 08 8:22 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

ELECTRONICALLY FILED - 2022 Jan 14 2:31 PM - DORCHESTER - COMMON PLEAS - CASE#2021CP1802008
ELECTRONICALLY FILED - 2022 Jun 08 8:22 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	
Bundy McDonald, LLC)	Case No.: 2021-CP-18-02008
)	
Plaintiffs,)	
)	
v.)	**ANSWER**
)	
WECO River District, LLC)	
)	
Defendants.)	
)	
)	
)	

Defendant, Weco River District, LLC ("Weco"), responding to the allegations of the Complaint, would show:

1. Except as is hereafter expressly admitted, each and every allegation of the Complaint is denied.
2. Weco admits paragraphs one and two.
3. Weco denies paragraph three and further avers that proper venue in this action is Lexington County, South Carolina and that Dorchester County lacks venue over this matter.
4. In response to paragraph four, Weco relies upon the foregoing responses, incorporated herein by reference.
5. Weco admits so much of the allegations of paragraph five and six as allege Weco initially engaged Plaintiff to provide legal services pursuant to a written agreement, a redacted copy of which is apparently attached to the Complaint, and that the parties subsequently amended the agreement, a redacted copy of which is also apparently attached to the Complaint.

ELECTRONICALLY FILED - 2022 Jan 14 2:31 PM - DORCHESTER - COMMON PLEAS - CASE#2021CP1802008
ELECTRONICALLY FILED - 2022 Jun 08 8:22 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

6. Weco admits so much of the allegations of paragraph seven as allege Plaintiff sent an invoice which speaks for itself.
7. In response to the allegations of paragraph eight, Weco admits it has not paid the invoice for good cause and with good reason. Weco denies that it is in material breach of the agreement. Weco further avers that the amount claimed has not yet been earned, that all conditions precedent to payment have not been met, that Plaintiff did not complete the work, and that Plaintiff previously breached and repudiated the agreement.
8. In response to paragraph nine, Weco relies upon the foregoing responses, incorporated herein by reference.
9. Weco denies paragraphs ten, eleven and twelve.

Wherefore, having responded to the allegations of the Complaint, Weco prays for judgment in its favor, for the dismissal of this action, for costs and expenses, and for such further relief as is deemed just and proper.

BRUNER POWELL WALL & MULLINS, LLC

s/ Henry P. Wall
Henry P. Wall, S.C. Bar No. 5797
Post Office Box 61110 (29260)
1735 St. Julian Place, Suite 200 (29204)
Columbia, South Carolina
(803) 252-7693
HWall@brunerpowell.com
Attorney for the Defendant

January 14, 2022
Columbia, South Carolina

ELECTRONICALLY FILED - 2022 Feb 14 4:39 PM - DORCHESTER - COMMON PLEAS - CASE#2021CP1802008
ELECTRONICALLY FILED - 2022 Jun 08 8:22 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)	
Bundy McDonald, LLC)	Case No.: 2021-CP-18-02008
)	
Plaintiffs,)	
)	
v.)	**AMENDED ANSWER**
)	
WECO River District, LLC)	
)	
Defendants.)	
)	
)	

Defendant, Weco River District, LLC ("Weco"), responding to the allegations of the Complaint, would show:

For a First Defense
(General Denial)

1. Except as is hereafter expressly admitted, each and every allegation of the Complaint is denied.
2. Weco admits paragraphs one and two.
3. Weco denies paragraph three and further avers that proper venue in this action is Lexington County, South Carolina and that Dorchester County lacks venue over this matter.
4. In response to paragraph four, Weco relies upon the foregoing responses, incorporated herein by reference.
5. Weco admits so much of the allegations of paragraph five and six as allege Weco initially engaged Plaintiff to provide legal services pursuant to a written agreement, a redacted copy of which is apparently attached to the Complaint, and that the parties subsequently

ELECTRONICALLY FILED - 2022 Feb 14 4:39 PM - DORCHESTER - COMMON PLEAS - CASE#2021CP1802008
ELECTRONICALLY FILED - 2022 Jun 08 8:22 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

amended the agreement, a redacted copy of which is also apparently attached to the Complaint.

6. Weco admits so much of the allegations of paragraph seven as allege Plaintiff sent an invoice which speaks for itself.

7. In response to the allegations of paragraph eight, Weco admits it has not paid the invoice for good cause and with good reason. Weco denies that it is in material breach of the agreement. Weco further avers that the amount claimed has not yet been earned, that all conditions precedent to payment have not been met, that Plaintiff did not complete the work, and that Plaintiff previously breached and repudiated the agreement.

8. In response to paragraph nine, Weco relies upon the foregoing responses, incorporated herein by reference.

9. Weco denies paragraphs ten, eleven and twelve.

For a Second Defense
(Failure to State a Claim)

10. Plaintiff's Complaint fails to state a claim for which relief can be granted.

For a Third Defense
(Venue)

11. Plaintiff's Complaint should be dismissed for lack of proper venue.

For a Fourth Defense
(Anticipatory Repudiation)

12. Plaintiff's claims are barred by anticipatory repudiation.

For a Fifth Defense
(Failure of Condition Precedent)

13. Plaintiff's claims are barred by failure of condition precedent.

ELECTRONICALLY FILED - 2022 Feb 14 4:39 PM - DORCHESTER - COMMON PLEAS - CASE#2021CP1802008
ELECTRONICALLY FILED - 2022 Jun 08 8:22 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201932

For a Sixth Defense
(Prior Material Breach)

14. Plaintiff's claims are barred by its own prior material breach of contract.

For a Seventh Defense
(Discharge by Law)

15. Plaintiff's decision to unilaterally withdraw from the contract discharged any contractual obligation of the Defendant as a matter of law.

By Way of Set-Off

16. Defendant incurred substantial costs and expenses in completing the incomplete legal work of the Plaintiff after its decision to terminate Defendant as a client. To the extent that there is any financial obligation to Plaintiff, Defendant is entitled to set off the costs and expenses in completing the legal work against any claims Plaintiff asserts in this case.

Wherefore, having responded to the allegations of the Complaint, Weco prays for judgment in its favor, for the dismissal of this action, for costs and expenses, and for such further relief as is deemed just and proper.

BRUNER POWELL WALL & MULLINS, LLC

s/ Henry P. Wall
Henry P. Wall, S.C. Bar No. 5797
Post Office Box 61110 (29260)
1735 St. Julian Place, Suite 200 (29204)
Columbia, South Carolina
(803) 252-7693
HWall@brunerpowell.com
Attorney for the Defendant

February 14, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	2022-CP-32-01932
	)	
	)	
	)	
	)	
	)	
BUNDY MCDONALD, LLC,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
WECO RIVER DISTRICT, LLC,	)	
DEFENDANT.	)	
	)	

September 26, 2024
Lexington, South Carolina

B E F O R E:

THE HONORABLE WALTON J. MCLEOD, IV, JUDGE.

A P P E A R A N C E S:

BRENT MCDONALD, ESQ.
Attorney for the Plaintiff

HANK WALL, ESQ.
Attorney for the Defendant

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

	Page No.
(PW) TOM POPE:	
Direct Examination by Mr. McDonald.....	21
Cross-Examination by Mr. Wall.....	50
Redirect Examination by Mr. McDonald.....	75
Recross-Examination by Mr. Wall.....	81
(DW) TERESA HODGE:	
Direct Examination by Mr. Wall.....	85
Cross-Examination by Mr. McDonald.....	127
Redirect Examination by Mr. Wall.....	141

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
	(Plaintiff's Exhibits)		
1	Demand for Arbitration		6
2	Response		6
3	Arbitration Rules		6
4	Fee Agreement		6
5	Letter		6
6	Consent Scheduling Order		6
7	Amended Fee Agreement		6
8	Certification of Mechanics Lien		6
9	Revised Arbitration Demand		6
10	Amended Consent Scheduling Order		6
11	Notes from Arbitration		6
12	Arbitration Rules & Procedure		6
13	Clarification		6
14	Errata Sheet		6
15	Invoices		6
16	Transcript of Phone Call		6
17	Letter		6
18	E-mail		6
19	Letter		6
20	E-mail		6
21	DJ Complaint		6
22	Motion		6
23	E-mail		46

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
	(Defendant's Exhibits)		
1	Hourly Fee Agreement		7
2	Letter		7
3	Amended Fee Agreement		7
4	Judgement Confirmation		7
5	(Not stated in record)		7
6	Arbitration Initial Award		7
7	(Not stated in record)		7
8	(Not stated in record)		7
9	(Not stated in record)		7
10	Clarification		7
11	Amended Arbitration Award		7
12	(Not stated in record)		7
13	Letter		7
14	Letter		7
15	(Not stated in record)		7
16	Letter		7
17	Motion		7
18	(Not stated in record)		7
19	Order Substituting Counsel		7
20	(Not stated in record)		7
21	Consent Final Award		7
22	(Not stated in record)		7
23	Letter		7
24	(Not stated in record)		7
25	(Not stated in record)		7
26	Letter		7
27	Order Confirming Final Arbitration		7
28	(Not stated in record)		7
29	(Not stated in record)		7
30	Letter		7
31	Check		7
32	Invoice	7	124
33	Invoice		7
34	Cash Bond Receipts		7
35	E-mail		7
36	(Not stated in record)		7
37	Bundy Invoices	7	
38	Summary	7	126
39	Order		7

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
	(Court's Exhibits)		
1	Prejudgment Interest	50	

All Exhibits were retained by the Clerk of Court for Lexington County.

PROCEEDINGS

THE COURT: We're here in the matter of Bundy McDonald, LLC vs. WECO River District, LLC. This is case number 2022-CP-32-01932.

If the attorneys for the parties could just introduce themselves on the record at this time, I would appreciate it.

MR. MCDONALD: I'm Brent McDonald and I represent the Plaintiff, Bundy McDonald.

THE COURT: Good morning.

MR. WALL: Judge, I'm Hank Wall representing Defendant, WECO District.

THE COURT: Good morning.

Okay. So we're here for a bench trial. I believe this is a breach of contract action, really, arising from a dispute over attorney's fees; is it not?

MR. MCDONALD: It is, indeed, Your Honor. And I think if I can do a little bit of housekeeping, we could really move this along, but I'll do it in whatever order you want to do it.

THE COURT: I was tangentially involved in this case I think on the -- maybe it was the construction portion of the case. I remember several WECO matters I dealt with, but I don't remember the facts.

MR. MCDONALD: I know that you were involved on the

declaratory -- there was a declaratory judgment aspect. And where that came to a head was, the party that filed the contract or that filed the mechanics lien failed to file a lis pendens. And that's, of course, fatal to canceling filing if the six months runs. So that issue was brought before Your Honor on a summary judgment to dismiss the mechanics lien. I don't believe you ever ruled on it.

THE COURT: I think the case resolved.

MR. MCDONALD: Thereafter, we were no longer involved.

THE COURT: There's a whole lot of consent matters.

MR. WALL: Judge, you might remember that you handled the closeout of the declaratory judgment action some time ago.

THE COURT: I want to say two years probably.

MR. WALL: You handled that. It arises out of similar facts, but different case.

THE COURT: Well, we're in a bench trial capacity at this point. Tell me where we're going and what I need to know.

MR. MCDONALD: Absolutely.

Your Honor, we have agreed on Plaintiff's Exhibits 1 through 22 to be admitted into evidence. And if I may approach, I have a marked copy for the court reporter and the Court.

(WHEREUPON, Plaintiff's Exhibit Nos. 1 through 22 were

admitted into evidence.)

THE COURT: Thank you.

MR. MCDONALD: We have, also, agreed, I can put it on record as well, we've, also, agreed -- Mr. Wall has admitted Exhibits 1 through 39. The only exhibits we have not agreed upon is Exhibit 32, Exhibit 37 and Exhibit 38.

THE COURT: So 1 through 32 are admitted by consent, but there's 23 [sic] through 39 of which there's only a disagreement on 32, 37 and 38?

MR. WAHL: That's right, Judge.

MR. MCDONALD: For the Defendant's. And it's 1 through 22 for the Plaintiffs.

THE COURT: So everything is in except 32, 37 and 38.

MR. MCDONALD: Of the Defendant's Exhibits.

THE COURT: So be it.

(WHEREUPON, Defendant's Exhibit Nos. 1 through 31 and 33 through 36 were admitted into evidence.)

(WHEREUPON, Defendant's Exhibit Nos. 32, 37 and 38 were marked for identification only.)

MR. MCDONALD: And, Your Honor, I'll go by your preference. Some bench trials, the judges don't want to hear what I'm going to do, they just want me to do it. Sometimes, they do want to hear it. It's up to you.

THE COURT: Yeah, tell me how we got here.

MR. MCDONALD: Absolutely.

Your Honor, this case came to this firm with an arbitration that had already been filed. The contractor on Brooklyn Apartments, WECO River District known as Brooklyn Apartments, filed an arbitration demand. Their long-time lawyer, Mr. Henry Brown, responded to the arbitration demand and, thereafter, got sick.

So they had a -- I hate to use the term beauty contest, but they had an interview with some lawyers. Mr. Wall, I believe, was interviewed. Mr. Bundy, my law partner, was interviewed. And they hired us to deal with the arbitration action.

But the job was still ongoing, so there's some pitfalls when the job is still ongoing from out standpoint. When the contractor files while the job is going on, you have to be very careful what's a part of the arbitration and what's not. Because there's a Brantley case out there that says if you're not careful, then they'll hit you with res judicata and you're in trouble. And they take the position on the warranties, you don't have anything.

So that moves along for a little while and there's a decision to -- originally, it's an hourly fee agreement. And there's a decision to change the hourly fee agreement into a blended agreement. And the blended agreement had three parts.

The first part is hourly fees capped at $100,000. The

second part was a reverse contingency of 25 percent of the reduction of any claim because it's in arbitration. And then the third part is a traditional contingency of 25 percent of any actual coverage. You don't really know whether things are going to swing out. So that amended agreement, amended fee agreement is entered into between the client and my firm.

It proceeds through the scheduling order process and arbitration. After the amended fee agreement is entered, there's a lien that's filed by the contractor for 3.9 million dollars. And there's an updated claim in the arbitration for 4.1 or something like that. And they had to update the claim because there's scheduling orders in these arbitrations. The arbitrator issues a scheduling order similar to what Your Honor does and you have to meet the deadlines in filing your claim that you're going to present for arbitration.

So that deadline goes for the contractor to submit its claim because it's the one that brought the arbitration. They were, essentially, the Plaintiff or the claimant. And then WECO submitted its claim. I don't know if Your Honor was familiar or knew Mr. Frank Elmore, he was the arbitrator. He's since passed, unfortunately. And we proceeded to arbitration. So we go to arbitration. Mr. Elmore was very, very ill at the time. It's Covid. He had

some lung issues. And it took him a while to issue the order.

During this time, what my law partner has always done and what I've been taught to do is if you have a bunch of subcontractor liens and the contractor's lien is you have to have a judicial mechanism to give your client a clean title, clear title at the end of it because the arbitrator can't do that. The arbitrator can't direct the clerk of court to do anything.

So the DJ action was originally filed and stayed as a place holder for that at the end. Once this arbitration order comes out, then we'll have a mechanism to go to the Court and say all right, you want a clean title. Here's how it shakes out. So that's happening while we're waiting on the order.

So Mr. Elmore, in January of 2021 issues an order that says okay, here's what the contractor gets. Here's the reduction of the claim. And the claim was reduced by -- and Your Honor will see when we go through the exhibits of what it was.

The contractor immediately takes the position that there were these other issues. And you'll hear a lot about them. There was an issue with the road and the DOT. There was defect issues. And that those were part of the knew or should have known of the arbitration and now you're done,

owner, the Brantley. What I brought up earlier. We were smart enough to bring it during the jobs and now we can hoodwink you.

So Mr. Bundy knew that was coming and immediately asked the arbitrator to say hey, I need an order of clarification to say you didn't consider these things because you didn't. And he gave a clarification order, I did not consider these things. The client is protected.

Under the rules that we're arbitrating under that the contract provides, once the arbitrator issues the award, you can't go change anything but typos, okay. At this time, the award has been issued, Mr. Brown comes back into the scene and he's been gradually getting better and gradually appearing. And what Your Honor will find is that after the order was issued, there was a dispute of strategy. The order has been issued. The reverse contingency has been earned.

There's a dispute of strategy how to deal with these issues that Mr. Elmore did not consider in that arbitration. Mr. Bundy had his theory, Mr. Brown had his theory. There's a transcript of the call that took place that's now in evidence that Your Honor can read. And the Defendant wanted to go with Mr. Brown's theory. Mr. Brown wrote a letter the next day, even though in the transcript they said they would get back to Mr. Bundy. Wrote a letter the next day to Mr.

Elmore, that was the arbitrator, that said I'm in charge now and I'm making the decisions for WECO and Bundy is only going to be involved in the fee issue as to who was the prevailing party.

We, also, were still going to be involved in the DJ action, but there wasn't much to do in the DJ action because we had already filed the motion for summary judgment and the affidavit and there just simply was no lis pendens. There was no way to get around that. You can't fix that after six months.

So the client, the Defendant in this case, decided to go with Mr. Brown. What you'll find is during that call with the transcript and thereafter, it was simply, that's fine. You have the absolute right to do that and you disagree with our advice. And you can go forward and handle these additional matters however you want. But that doesn't mean that we're not entitled to be paid for a reduction of a claim that we got in the arbitration award.

And that's where we are today. And I submit to Your Honor what you're going to hear is that there was a unilateral withdrawal. If you look at their pleadings, there's no malpractice cause of action. There's no breach of contract cause of action. They just simply say you quit. And I think what Your Honor will conclude at the end of this day is that's not at all what happened.

There was a sophisticated client whose original lawyer came back on the scene and had a completely different idea from what was in the best interest of the client. And they've got the absolute right to do that. What they don't have the absolute right to do is say because we're going to do this now, you're not entitled to your fee or it needs to be reduced because we've got this new lawyer that we want to pursue his strategies.

And I'll quit after this, Your Honor. You were sent some cases and those cases are when they say they're negotiating a settlement or they're doing something prejudgment or whatever it may be and they disagree and then they go get a new lawyer and the lawyer says well, I want a piece of that fee. That's not what happened here. We sat in the arbitration -- Ms. Hodge sat in the arbitration. We arbitrated it. We got an award and there was a reduction of the claim.

Now, there was some additional consent, settlement stuff that the client did with the DOT matters and stuff that wasn't part of the arbitration. And they've got the absolute right to do all that. But what that doesn't do is prevent us from collecting a fee where it said 25 percent in contingency of the reduction of any claim. That already happened. That event already happened.

Moving forward, the client wanted to follow different

legal advice. And like I said, they got the absolute right to do it. They heard both sides. Mr. Brown wrote a letter to the arbitrator and said I'm running the show now.

So that's where we are. We're just trying to collect our fee on something the client got the benefit of. And they have -- Your Honor will see through the documents that the fee was originally $347,000, something like that. They sent us a check after this case was filed for 150,000 saying would you just take this and we'll dispute the remainder of it. So you'll see through the documents that's what it's been reduced.

And I know I said I'll quit. I will quit after this. We have specifically pled prejudgment interest because the case law says I have to specifically plead it. I usually try to put it in through a witness just because it's probably a factual thing that I have to put in. If Your Honor wants to do that differently, I'm fine, too, but I was, in fact, going to try to put it in through a witness just because I'm probably required to under the case law.

Thank you very much, Your Honor.

THE COURT: Mr. Wall.

MR. WALL: Judge, it's a fee dispute. It started with a hourly rate with Plaintiff law firm, $300 an hour for Mr. McDonald's time, $400 an hour for Mr. Bundy's time. The scope of the initial fee agreement was not for specific

SO

case. It referred to the entire construction project, legal services in connection with the construction project.

There was an arbitration that was filed. As that matter moved along, Plaintiff law firm suggested a reverse contingency fee. That document is in evidence. That document provides that the fee will be earned just like any contingency fee in the State of South Carolina upon recovery or judgment, recovery or judgment. That's the trigger. That's the contingency that has to be met or it would not be a contingent fee agreement.

As the case unfolded between client and Plaintiff law firm, the $100,000 minimum fee in the amended fee agreement, hourly up to $100,000, plus 25 percent of savings and 25 percent of any counterclaim, hourly up to $100,000, plus 25 percent, that's the agreement we had. The agreement contemplated judgment or recovery and it, also, contemplated related proceedings.

As that case moved forward, Plaintiff law firm filed a declaratory judgment action. There's no question -- there won't be any question of fact that that declaratory judgment was in their scope of services. In fact, they charged fees within the $100,000 cap to draft that pleading, pay the filing fee and to work on that. There's no question that that was in their scope. No question.

The question is how do we get to the finish line? Now,

it is true there was an arbitration proceeding and Mr. Elmore, the arbitrator, issued an award. That award on its own face was preliminary. There's not going to be an issue about this. It started as a mechanics lien, as Mr. McDonald pointed out, and there would always be a sequel case to determine prevailing party and attorney's fees. Always. You know how our lien statute works, Your Honor. Plaintiff makes an offer. Then claimant makes an offer, respondent makes an offer. There would always be a subsequent event, in other words. Another trigger to determine finality.

After the initial award, counsel filed a quest to clarify the award, as Mr. McDonald stated. Now, prior to that time, counsel had, also, filed a motion to confirm the preliminary award. And about that time, counsel decided we're not going to be involved in this arbitration anymore. There's just going to be a sequel arbitration. Mr. McDonald went into some detail about the res judicata facts and the sequel claim. During the course of the arbitration, there was a small claim that was determined not yet ripe for adjudication.

So they developed a dispute between law firm and client about whether or not we're going to proceed with the sequel arbitration and how we're going to proceed with this sequel arbitration. Meanwhile, Your Honor, we've got no final judgment. We've got no recovery. We've got a piece of

paper from an arbitrator that says I make a preliminary award on this basis, but no final determination on fees, no final determination unliquidated, unrecovered, unliquidated.

Now, Judge, I'm going to tell you, an arbitration award is not a self-executed judgment. Never. Not under the state act, not under the federal act. You've got to do something with it. It's acknowledged they did something with it. They filed a motion to confirm the award. And then on the other side, of course, here comes the motion to vacate the award in the context of this declaratory judgment that they filed, which was within their scope.

And about that time, things -- for whatever reason disagreement developed between law firm and client about how to proceed in the sequel arbitration. Law firm, plaintiff law firm sends a bill to my client asking for $350,000 based on a computation on an incomplete arbitration award that doesn't have the fee piece into it. And they, also, confirm on that same day that they're going to continue to be involved in the fee petition pending before the arbitration and they're going to continue to finish the declaratory judgment. Neither of those things happened. Neither of those things happened.

At some point, mid-February, late February, early March, the testimony will be that the law firm effectively stopped communicating with my client here assuming that Mr.

Brown was handling the matter.

I want to point out something, Your Honor, the law firm during this whole time remained of counsel, listed as counsel of record in a declaratory judgment action. And then the proof will show that later on, law firm insisted that I, as I ended up taking over the case because subsequent to Mr. Brown being involved, he had a heart transplant, I came onto the scene and I finished the arbitration. I finished the declaratory judgment action. And that's what happened.

But the point in all that, the point in all that, quite frankly, very straightforward, under the total decision that we sent you, in a contingency fee case, the fee is not earned until there's recovery of judgment. You have to have success. You have to have benefit. The client has to have benefit. That did not occur until approximately one year after law firm had been working on the file.

Now, the cases I've sent you -- there's not a case in the country -- and I'm getting into argument, but I just want to tell you this. There's not a case in the country that says that a law firm that stops working on a contingency fee case before the fee is earned is entitled to the full contingent fee. There's not a case in the county that says that. All the cases either say this, there's a forfeiture or there's a quantum meruit measure of the legal

fees. That's what all the cases say, one or the other.

My client has never taken the position, never, ever taken the position that law firm did not deserve to get paid and did not earn a fee in this case. Never. They paid the firm $100,000 plus, about $105,000, actually. And then they -- after we got the records from Plaintiff law firm so we could create a legal fee structure, we paid them at their full hourly rate and that amounted to another $150,000, giving them the benefit of time entries for records which they did not keep.

THE COURT: What's the total amount y'all have paid at this point?

MR. WALL: We have paid a quarter million dollars plus. They want 200,000 more. We have paid an effective hourly rate of $400 an hour and $300 an hour and they want an effective hourly rate of $750 an hour and $650 an hour.

THE COURT: So they want 200 on top of what you're already paid. Is that what you're saying?

MR. WALL: That's correct, Judge. The invoice that they submitted, and it's in both sides' exhibits, I believe. But there's an invoice computing the reverse contingency fee of roughly $350,000. We paid $150,000.

But, Judge, it didn't turn out that way. Remember what I told you, the attorney's fee issue still had to be decided. Well, the evidence will show, the court records

will show, and you take judicial notice of all this, that, in fact, we paid attorney's fees. The legal fee is, actually, miscalculated because it's not calculated on a final amount. That's a whole other issue. But, Judge, we're fighting over $200,000. They argue they're due another $200,000. Our argument is you never earned the contingency fee because you never met the condition of the contingency. We're into a quantum meruit valuation and that means we're going to pay you a reasonable rate. And we have.

So that's our position, Judge. That's what the evidence is going to show. They didn't meet the contingency. That's our position.

THE COURT: Well, let's just get into witnesses and let's start going down what we need to hear.

MR. MCDONALD: Thank you very much, Your Honor. The Plaintiffs call Mr. Tom Pope.

TOM POPE,

after being duly sworn, testified as follows:

THE CLERK: Once you are seated, please, state your name, spelling your last name for the record.

THE WITNESS: My name is Thomas A. Pope, P-O-P-E.

THE COURT: Just one thing about this courtroom. This is the digital courtroom. These microphones are recording us. They are not amplifying our voice. So hearing

sometimes can be difficult in this courtroom, even with your questions and your answers.

DIRECT EXAMINATION

BY MR. MCDONALD:

Q Good morning.

A Good morning.

Q You've already said your name for the record. What do you do for a living?

A I'm a lawyer. I've been licensed in South Carolina since November 1974.

Q Do you have any peer review ratings?

A Yes, I have a rating in Martindale.

Q Where did you graduate from law school?

A I graduated from USC around June of 1974.

Q Have you continuously practiced law since that date?

A I have.

Q What areas do you typically practice law?

A I practice in many areas, class actions, personal injury, shareholder disputes, condemnations, bad faith cases, personal liability cases. I think I've tried over a hundred cases.

Q Do you have any memberships that you're a member in the field of the practice of law?

A I'm in the American College of Trial Lawyers. I was president of the South Carolina Chapter in 2015 to '17. I

was, also, member of BOTA, which is American Board of Trial Advocates for many years as well.

Q Tell the Court a little bit about the American College of Trial Lawyers.

A The American College of Trial Lawyers is an invitation-only organization. I think we have approximately 70 members in South Carolina that are living right now. It honors those people that try cases regularly, whether it's plaintiff, defense or criminal. Mr. Bundy is a member of the American College of Trial Lawyers as well.

Q And did you serve any time in the military?

A Yes. I was in the Navy. I was an officer, went through OCS, went to Vietnam, served as an officer in charge of a boat. Then I went to the Naval Academy Preparatory School where I taught and coached football.

Q Do you have any experience as an expert in the issue of attorney's fees?

A Yes. I've testified a number of times on attorney's fees. Most recently, I guess, I provided an affidavit in the opioid litigation John White and John Summers were involved with on the question of fees on the common benefit fund. Testified in two cases, one that Judge Hayes presided over. The case against SCE&G, the nuclear plant. The class attorneys wanted me to provide an affidavit about the fees they earned. I think they got 50 something million dollars.

That's what I recommended. The Judge cited my testimony in his order and he granted that. And then Justice Toal presided over a very similar case against Santee Cooper and I did the same thing in that case. She accepted my affidavit and awarded I think 74 million or something like that in attorney's fees for the class.

I've provided fee affidavits and testimony in domestic cases and other kinds of cases.

Q Are you familiar and have you had experience with hourly fee agreements?

A Well, personally, yes. I mean, right now -- I'm 78 years old, I'm picking my cases more carefully, but I have seven or eight active cases. And two of them are hourly and the other are contingency. Throughout my career, I would say on any given year, 60 to 90 percent of my fees were earned through contingencies.

Q Are you familiar with reverse contingency fee agreements?

A I'm familiar with them. I've never used one. But the thing about a contingency fee is in doing it, I think most clients are satisfied to have a contingency fee because once you sign it, you take the risk. The lawyer takes the risk of the case going south because you signed the agreement early on. You don't know if the case is going to get better or worse, stay the same.

The good thing about that is in terms of the lawyer's security, the only good thing is, you take the risk, but in the end, the funds come to you in your trust account and you disburse them in accordance with your client's agreement. Basically, you follow it and there's no question you'll be paid.

In a reverse contingency, the problem is you don't get any funds. You rely on a trust relationship and a good faith relationship. In the reverse contingency situation, you're, basically, saying I will do my best to keep the damages from being lower than what the plaintiff's are seeking. So it's a danger there and it's manifest by what happened in this case.

Q Are you familiar with --

MR. MCDONALD: Your Honor, at this time, I would offer Mr. Pope as an expert in attorney fee disputes, legal fee contracts and reasonable attorney's fees.

MR. WALL: Without objection.

THE COURT: This witness will be qualified as an expert witness as described.

THE WITNESS: Counsel, I meant to say one more thing about contingency fees. Contingency fees, there's no science to this, it's an art. Say you have a third in a plaintiff's case, you run the risk of that. The case may take years, may take months. But you risk getting a very

low fee or no fee at all.

So for that reason, when a lawyer sets that fee, he does it with two to three times his hourly rate in mind. Of course, he doesn't know exactly how many hours he's going to put in, but that's the danger of a contingency or reverse contingency case. At the end of the day, you're going to represent the client, but you may not -- you take the risk of not getting any compensation or little compensation.

BY MR. MCDONALD:

Q What were you asked to do in this case, Mr. Pope?

A I was asked to look at a whole bunch of documents and e-mails and letters and filings in the case involving Carter & Carter vs. WECO, including the arbitration, mechanics lien and DJs and all the other things.

Q And were you asked to look at the hourly attorney fees and the initial attorney fee agreement between Bundy McDonald and WECO River District?

A Yes.

Q Did you, in fact, do that?

A I did.

Q Did you look at documents associated with those two fee agreements?

A I did. And a lot of e-mails and there was a transcript that I think WECO made of a call they had with Mr. Bundy. It was very helpful in understanding the positions of the

parties at that point.

Q And based upon everything that you did, did you form an opinion in this matter?

A Yes, I did.

Q And was that opinion formed to a reasonable degree of certainty?

A It was.

Q And what is that opinion?

A My opinion is that Bundy McDonald deserved the full fee of $347 and some dollars with credit given for the 150 that was paid approximately two years after the award and prejudgment interest.

Q Did you look at the nature, extent and difficulty of the underlying case?

A I did. I look at all the factors. The case was highly contested. It involved a project that, I think, was 30 million, 40 million dollars. There was many issues about whether the contractor was doing right, complaints that the owner, WECO, was not paying bills timely. All sorts of issues like that. I would regard the case as a difficult one.

Q And did you evaluate based upon everything you looked at whether or not the results achieved by Bundy McDonald in the arbitration were beneficial?

A Yes, I thought the results achieved, which I regard as

the most important factor, were excellent. The contractor was looking for four plus million dollars and the award was 2.64 million. He saved the client a million four approximately, which was a very big result, very good.

Q Did you look at how much time was devoted to the case?

A Well, in a contingency case, time isn't really relevant. The client wants a result. I looked at it. Hundreds of hours were spent, but I did not calculate that. Because as I said, when you do a contingency case, hourly rate is irrelevant, otherwise, it would be like okay, we do a contingency, you're paid on the hourly rate three years later, that's not the hourly rate. You're just financing something that you didn't undertake.

Q Are you familiar with professional standing of Mr. Bundy?

A I certainly am. I regard Bill Bundy as one of the top five trial lawyers in the state. I think his excellence is in his thoughtfulness. He's great with strategy, great with tactics. He doesn't do unnecessary work. He does all the important things. He sees a case from 10,000 feet, one thousand feet and ground level, which is a valuable, valuable experience that he has and very few lawyers have. I regard him at the top. In fact, I would say this, other than my father, I regard him as the best lawyer I know.

Q Did you evaluate whether or not the fee that is being

claimed and charged by Bundy McDonald is customary fee for similar services?

A Yes, absolutely. I have had clients sort of the situation that Bundy McDonald was in. I had an hourly rate with a client when I was a young lawyer and working with Terrell Glenn in Columbia. He paid the first month. He didn't pay the second. He didn't pay the third. So I went to Terrell and said, you know, I like the case, but the guy isn't paying. He said, Well, see if he'll convert it to a contingency. So I could see it was going to involve out of state depositions. I converted it into a 50 percent contingency. And Matthew Perry gave us 300 something thousand dollars in 1979 on that case. So contingency can help the client.

Q Do you have a notebook of Plaintiff's Exhibit 1 through 22?

A I do. And I have the Defendant's here, also.

Q I'm going to be very brief going through this. Did you consider each of these documents marked as Plaintiff's Exhibits 1 through 22?

A I did. And I considered the Defendant's, also, although I don't have the last six of their exhibits for some reason.

Q If you would turn to Plaintiff's Exhibit 1. Do you recognize that?

A Yes. It is a demand for arbitration, April 6, 2018, filed by Carter & Carter on that date -- this is surprising to me because I'm not per se a construction lawyer. I've done -- I mediated a construction case about six weeks ago, but I was surprised that they filed this and the work was not even close to finished. But anyway, apparently, they have the right to do that.

Q All right. Take a look at Plaintiff's Exhibit 2.

A Exhibit 2 is response by WECO. Henry Brown signed that June 28th, 2018.

Q And in the first paragraph in the response, it says WECO and Carter entered into a binding agreement to arbitrate pursuant to rules of the American Arbitration, do you see that?

A Correct.

Q Did you take into consideration in your opinion?

A Yes.

Q Plaintiff's Exhibit 3, do you recognize that?

A Yes.

Q What do you recognize it to be?

A It's one of the arbitration rules. It talks about the closeout documents 9.10, 9.10 being conditions preceded to file arbitration.

Q Under section 4.6.2, I know it's small, can you read that?

A It says claims not dissolved by the parties shall be decided by binding arbitration, which unless the parties mutually agree otherwise shall be governed by the construction industry arbitration rules of the AAA currently in effect.

Q Construction industry arbitration rules?

A Right, of Triple A.

Q All right. And Plaintiff's Exhibit 4?

A Plaintiff's 4 is the fee agreement reached between Bundy McDonald and WECO, dated November 29th, 2018. It provided that Mr. Bundy would charge $400 an hour and you would charge $300 an hour, paralegal is $100 an hour to handle this matter.

Q It says on the top as legal counsel for purposes in connection with the project known as Brooklyn in West Columbia, South Carolina that is under construction by Carter & Carter, LLC, correct?

A Correct.

Q And you said the date, it was dated November 29th, 2018, correct?

A Correct.

Q And that's after the arbitration demands we just looked at, correct?

A Correct. And at this point, to fill in, the records, the documents I've seen show that Mr. Brown had a heart

attack. I saw his deposition. He had a heart attack at some point or illness of some kind after he made his appearance on behalf of WECO, his response and that, in turn, WECO, Mr. Bob Mundy, I think is a developer or the head developer there, he had interviews with lawyers, including Mr. Wall and Mr. Bundy and opted with Mr. Bundy.

Q Turn if you would to Plaintiff's Exhibit 5. Do you recognize that document?

A Right. This is a letter that Bill Bundy wrote to Mr. Mundy. Mr. Mundy is a very experienced developer. On January 24th, 2019, Bill wrote Mr. Mundy to explain -- he gave an example of a proposed change to make a reverse contingency in effect. And he says at the bottom, by way of an example, attorney will bill hourly, but will not bill any hourly fees over $100,000. If the contractor makes a total claim of $500,000 and the arbitrator awards that, the client must pay 300,000. So this sets out an explanation of what is in the amended fee agreement or revised fee agreement that's signed later.

Q And the sentence here in that same one, Also, if the client makes a claim for $500,000 and the arbitrator awards or a settlement is reached, the attorney will be entitled to hourly rates and 25 percent of the recovered claim, correct?

A That's right. That last paragraph of that letter makes it very clear, the example being if there's an award made,

that's what triggers the fee.
Q An award?
A Arbitration award.
Q And, also, uses a term claim, correct?
A Correct.
Q Did you consider this document in coming up with your opinion?
A Yes, I did.
Q Plaintiff's Exhibit 6, do you see that?
A This is a consent scheduling order that the arbitrator, Frank Elmore, signed September 30, 2019. He has various deadlines. One is the final statement of claim by claimant has to be filed by January 31, 2020.
Q And then the final statement of claim by respondent has to be February 28th, 2020, correct?
A That's right.
Q Turn if you would to Plaintiff's Exhibit 7.
A Exhibit 7 is the amended fee agreement with a reverse contingency. It was explained in the letter that Mr. Bundy sent Mr. Mundy just before that. It says that the scope of the work is the Brooklyn Project, subject to an arbitration.
Q It says this amended fee agreement supercedes the formerly hourly fee agreement signed by attorney on December 4th, 2018?
A Sure. My understanding, Mr. Mundy, like some clients,

tired of paying hourly rates maybe. I think there was some difficulty getting those paid. I think Mr. Bundy pointed out that he was four months late getting the first payment. But he preferred to shift that risk to your law firm.

Q And then under subsection two, it has hourly rates, correct?

A Correct.

Q And then it has reverse contingency, client agrees to pay a contingency fee of 25 percent of any reduction of the total amount of the claims made by contractor, correct?

A Correct.

Q And then it says "and, and then it's got a traditional contingency, correct?

A Correct. And it is dated November 15, 2019. So Mr. Mundy explained it to him ten months before that and, apparently, he was stewing over it or thinking about it or whatever. So he had plenty of time to understand the example and the agreement by the time it was signed.

Q And if you would turn to Plaintiff's Exhibit 8. If you considered this document in your opinion?

A I did. This is the notice and certification of the mechanics lien in the amount of $3,981,000.

Q And what is the date of this mechanics lien?

A It was filed December 23, 2019.

Q So after the amended fee agreement?

A Correct.
Q Take a look at Exhibit 9.
A Now, this is where the lawyer for Carter & Carter, Shepard, sent a revised arbitration demand. And it's attached with it and it shows the demand has now gone up to 4,029,749.43.
Q And that is dated?
A The e-mail transmitting is February 2, 2020.
Q All right. Take a look at Plaintiff's Exhibit 10. Did you consider that exhibit?
A Yes, I did. This is an amended consent scheduling order, which changes some of the deadlines. It's dated February 27, 2020. And the deadline for the final statement of claim by respondent was March 16, 2020. At that point, they were looking at the arbitration hearing to be held in May of 2020. It was, actually, held later.
Q Take a look at Plaintiff's Exhibit 11. Did you consider that document?
A Yes.
Q What do you understand this to be?
A Well, it recites -- the thing about it, there's no record of an arbitration. Obviously, you don't have transcripts and things like that. But this is what it really is. He noted by way of background that the hearings were held over four days in July in Summerville. He

included that the total award to Carter & Carter was 2,640,715.80. It notes that it's to be paid within 30 days after the contractor submits those documents and materials required in Article 9.10 to the architect.

Q And when is this dated?

A It's dated -- it was filed February 15, 2021.

Q The date of the arbitration award next to Mr. Elmore's signature?

A Right. Excuse me, his signature was dated January 24, 2021. That's when it was held. It wasn't recorded in the clerk's office until February. Noted in this award, claims by DOT for damages to the roadway are not ripe for review. So they weren't part of the arbitration.

Q Take a look at Plaintiff's Exhibit 12.

A That was the industry arbitration rules and mediation procedures. Rule 51 provides that the arbitrator upon notice may request that clerical, typographical, technical or computational errors may be corrected. The arbitrator is not empowered to redetermine the merits of any claims already decided. In other words, the arbitration award is with finality as to the issues that were arbitrated.

Q And this is the industry arbitration rules and mediation procedures of the Triple A that we talked about earlier?

A Correct.

Q That were in the contract and cited by Mr. Brown?
A Exactly.
Q Take a look at Plaintiff's Exhibit 13.
A 13 is clarification of arbitration award that Mr. Elmore signed February 15, 2021. He said he had a request for clarification and in other verbiage, he concluded that with the exception -- on the last page, with the exception of any claim by SCDOT for damage to the roadway, which is not ripe for review, and other than those characterized in the exhibits presented by WECO, no evidence or claim for defective work was presented by WECO and was considered or accomplished by the arbitration award.
Q And the date of that is?
A February 15, 2021.
Q Please take a look at Plaintiff's Exhibit 14.
A 14 is an errata to clarifications of arbitration award signed two days later, February 17, 2021, when the arbitrator corrected the last sentence to say, No evidence or claims for defective work were presented by WECO or considered or encompassed by the arbitration award.
Q And that's February 17th of 2021, correct?
A Right.
Q Take a look at Plaintiff's Exhibit 15.
A Yeah, that's the invoice that your firm sent February 17th, 2021 noting the computation for the contingency fee.

The demand was 4,029,000. The award was 2,640,000, I'm doing round numbers. So the difference is 1,389,033.79. And you multiply that by 25 percent and you get 347,258.45.

Q And that's based upon reverse contingency, correct?

A Exactly.

Q And the arbitration award had already been issued reducing the claim, correct?

A Correct.

Q The exact scenario that was presented in the letter of January --

A January 24th of 2019.

Q Take a look at Plaintiff's 16.

A 16 is a transcript of a telephone call that was held February 23, 2021.

Q Did you review that transcript?

A I did.

Q And did you consider it in forming your opinions given earlier today?

A I did. I don't want to burden the Court with reading a 30-page conversation. I can say, though, it makes -- I can identify a few areas where I think it's clear that Mr. Bundy -- I'll need to explain the context of the transcript.

Mr. Brown was sick, as we said, and he couldn't practice law for a while. Then he went to Florida and was treated. They said he was eligible for a heart transplant,

but they didn't have one ready. So then he came home and then they said we got one and then he goes down there. And I think this is about the time of the arbitration. It might have been a few months before. It's somewhere in the deposition of Mr. Brown. So he's feeling better.

Now, Mr. Brown has represented Bob Mundy and his companies for 20 or 30 years. They're very close. I think he talked to him on the phone, gave him legal advice from Florida where he was getting his transplant. He's now feeling better and he's coming back into the case. Like I said, this is February 23rd of 2019. And he is disagreeing with Bill about the very matters that the arbitrator said he didn't consider. So Bill said, Well, I've completed my arbitration. If you want to take it over, you want me to help? What can I do?

MR. WALL: Judge, I'm going to object at this point because I think the transcript speaks for itself. I gave the witness some latitude. I realize he's an expert, but he's testifying about Mr. Brown's state of mind. Mr. Brown's health. We're way out of bounds here.

THE COURT: I believe the witness was trying to give me some context, which did sort of segue off into areas, which I understand your objection is over.

MR. WALL: Yes, sir.

THE COURT: I appreciate your context and let's -- I

think the original question was the import of this transcript.

MR. MCDONALD: Yes, and I think that's what he's trying to explain, the background.

THE WITNESS: I'm skipping here, but like Mundy says, All I want to do is complete the agreement I have.

THE COURT: Can you tell me what page you're on?

THE WITNESS: That's on Page 29. And before that, he said if the client wants me to write a letter to Frank Elmore and tell him what he wants in the letter, I'll be glad to do it. You write the letter, I'll sign it. He's talking to Mr. Brown. You can do what you said, which is tell Frank you're not involved or you are involved and I'm not.

So he's -- you know, the implication of this is Mr. Mundy -- and I don't blame him. He trust Henry Brown, maybe. I mean, that's the deal. But the effect of that is Mr. Bundy is being pushed aside involuntarily. And it says -- Mundy says on Page 28, it doesn't matter to me. I can work with Henry if he handles the arbitration. I handle the mechanics lien. We can probably go different ideas about that.

On Page 27, what he was trying to do, as I understand it, was write a letter to Frank and find out what Frank was going to do relative to coming back before him on these

issues. Now, if that's changed, fine, tell me what you want to do. And then he says, Bundy says, Are you not agreeing that Henry is taking over the arbitration? Mundy says, I think we are okay with and open to discussion about Henry carrying the rest of the items from defective construction. Mundy says, If you agree that Henry can take it over -- Page 27 -- let him take it over. At some point, you think I'm responsible to handle anything else, we'll deal with that when it comes up. Just notify me in writing. And at the end of the call, Bill has done some things in this case that were very helpful.

First of all, both parties filed offers of settlement and they filed them in this court. And Carter & Carter put 3.2 million. And as you know, the deal is the prevailing party is the one where the ultimate result is closer to whichever party it is and that would determine attorney's fees. Bill recommended to WECO that they offer settlement of 2.2 million dollars. And they said oh, no, we're going to go with 1.8 something. And that's in the file filed in this court. So the result was a 2.640 million dollars that were awarded, which the prevailing party is Carter & Carter against Bill's advice.

Now, a client can not take his advice. I'm not saying they were wrong not to take that advice. But if they had taken his advice, they would have been the prevailing party

on the attorney's fees. Bill did a lot of things that were valuable.

And one of the things he did was he filed this stakeholder case. It was WECO against Carter & Carter and every sub, like 40 of them. The caption is quite long, but it's in this court. But he did that so that later, when issues arose, he wouldn't have to file a suit, he could just file a motion pursuant to this thing. And as soon as he filed that, he very wisely asked for a stay. I don't want anything now. This is before the arbitration. Let's hold it. If we got a case, it will be a shell, a stakeholder, which I think is very beneficial to the client. The client could have been the prevailing party on attorney's fees if they had listened to his advice. They didn't have to do that. They didn't do it.

But what we see here in this transcript, Bill is insisting -- and as reported earlier, these 9.10 issues are conditions preceding. It's up to the contractor to send the information in 9.10 to the architect and he makes a decision about those things, whether they're defects or things like that. Well, that wasn't part of the mediation. That's a condition precedent to payment later.

So at the end of this transcript, Your Honor, Mundy is talking about his interpretation of 9.10. He said, What I see is that's an issue for the architect. The architect is

going to determine whether or not they had met those conditions precedent. Once the architect says you've got the closeout documents and everything is finished, then you've got 30 days to pay the award. Brown says -- he has a counter argument.

So this transcript goes back and forth with strategy things. Bill says at the end of this -- Mr. Brown does to Bill, he says, I'll take that -- I'll make a decision about all this. We'll get back to you -- this is on Page 30. We'll get back to you and give you a little bit better idea here what we want to do. He never did. He never assigned -- Bill was asking, I'll help you with attorney's fees. Just tell me what you want me to do. You're obviously going to take over the case with you're buddies with Mr. Mundy. Bill never got out of this case. He never withdrew. He never quit.

BY MR. MCDONALD:

Q On that note, take a look at Plaintiff's Exhibit 17. Do you know when that call took place?

A Oh, the day before. The call was the day before. The call was February 23, 2021.

Q Take a look at Plaintiff's 17, what is that dated?

A This is a letter where Mr. Brown writes the arbitrator and says, For various reasons, I'm assuming representation of WECO for the remaining issues in this arbitration. Bill

Bundy will continue to be involved, however, I wanted to take the management of the case. You may correspond with me and look to me as the decisionmaker for WECO.

So he is now -- you don't write letters like that unless your client authorizes it. He is now telling Mr. Bundy he's still in it, but he hasn't answered the question. He says he's going to get back with him and tell him what he wants him to do. He never got back with him. And there are numerous e-mails inquiring about that by Mr. Bundy.

Q Take a look at Plaintiff's Exhibit 18.

A 18 is an e-mail from Teresa Hodge with Mr. Bundy's company. It's called --

Q You mean Mr. Mundy's company?

A What did I say?

Q I think you said Bundy.

A I meant Mundy, excuse me. March 1, 2021, she's writing Carter & Carter, the contractor's lawyer, William Shepard and she's copying Mr. Brown and Mr. Bundy and others. And she says, This is notice and information on the deficient construction items which Carter had been noticed several times with no response. Based on the architectural letter of 2/18/21 and the contractor's nonresponse, the previous notice is WECO will be receiving the completion of these items for 2.4 of the contract previously clarified by Frank Elmore. These specific items were not included in his

ruling if they were not a part of the arbitration. Then she has a list of things. Again, these weren't in the arbitration. It's supplemental to it, subject to a new arbitration. And she identifies, roughly, a hundred thousand dollars in issues that the contractor should be responsible for.

Q Take a look at Plaintiff's Exhibit 19.

A Exhibit 19 is a letter from Mr. Bundy, March 2, 2021, responding -- it's to Henry Brown. He says, I'm in receipt of your letter to Frank Elmore dated February 24, 2021. As a preliminary matter, I want to make it clear, I had no involvement in the drafting, review, approval or transmittal of the letter. After our conversation on Tuesday, February 23, 2021, you and your client -- the client informed me that you had discussed the strategy for moving forward and would then get back with me. No one did get back with me. Instead of communicating with me and without my consent, you sent the letter and stated Bill Bundy will continue to be involved.

Q At the end of the letter, does that restate the legal advice that Mr. Bundy gave in the transcript?

A You're talking about the end of the first page or the whole letter.

Q First page where it says legal advice?

A Yeah, he says the procedure proposed in the letter is

in direct contradiction of my legal advice. Your approach is inconsistent with arbitration rules and, more importantly, subjects WECO to additional adverse legal and tactical arguments that I previously sought to avoid and would have avoided.

He talks about Rule 51 of the arbitration rules of Triple A, which only allows the modification of an award for clerical, typo, technical or computational errors in the award. As such, the arbitrator is not empowered to consider those things you now appear to propose that he arbitrate as a continuation of the arbitration that has already taken place.

And he cites on the other page, on the last page, the first full paragraph, he said, Based predominantly on the position of Carter that the previous arbitration adjudicated all claims, I on numerous consultations with WECO worked very hard to separate those issues that were not arbitrated, i.e., SCDOT issues, final payment compliance and defects, et cetera.

Q Let me stop you there for just a second. Are those the clarification of awards and errata and all that we looked at earlier?

A Right, that was the very thing he was protecting when Bill got that clarification and the errata.

Q And what is the date of that letter?

A This letter is March 2, 2021.

MR. MCDONALD: Your Honor, I apologize. I only have one copy of those. I'll give it to the court reporter. This is going to be Plaintiff's Exhibit 23. The 23 is without objection, too. I just have one copy of it.

THE COURT: All right.

MR. MCDONALD: May I approach the witness?

THE COURT: Certainly.

(WHEREUPON, Plaintiff's Exhibit No. 23 was admitted into evidence.)

BY MR. MCDONALD:

Q Do you recognize that document?

A Yes. This is an e-mail from Henry Brown to Bill Bundy, April 15, 2021. He says, I'm sorting out the future. I recall your prior letter saying you were only handling the fee issue and the DJ action. WECO has previously accepted based on the letter that you no longer represent them in the arbitration except for any fee discussion. That would be sorted out if and when we get there. You mentioned the DJ action, but that is over, except for the lis pendens motion and Shepard motion to vacate. WECO looked to me to close out both questions. I'll be glad to discuss these issues, but let me get further down the road.

Q WECO looked to me, being looked at Henry Brown to look out for those issues?

A Right.
Q All right, sir. Take a look, if you would, at Plaintiff's Exhibit 21 -- wait, before we get there. Do you have any opinions to a reasonable degree of certainty whether or not Bundy McDonald unilaterally withdrew from this case?
A I do. And they did not. The e-mails and the transcript make it clear that they were trying to figure out what their role was because it was obvious Mr. Mundy was going to call on Mr. Brown to do things that he wanted done after the arbitration, but Bill wanted to make sure he was going to do everything per the arbitration award that he was supposed to do. And they never told him what to do. And now they're saying you didn't do enough.
Q And the fee being claimed in this case, the contingency fee is based on the original January 4th, 2021 arbitration order, correct?
A Correct.
Q Can you take a look at Plaintiff's Exhibit No. 21.
A This is the DJ complaint I referenced awhile ago that Bill filed this, a very smart thing to do. He did it February 11, 2020. This was several months before the arbitration. He moved after this to stay it.
Q Take a look if you would to Plaintiff's Exhibit 22. Did you consider that?

A Yes. This is another valuable component of what Bundy McDonald did. And that is they sought partial summary judgment to dissolve the mechanics lien because the lis pendens had not been filed and it has to be filed if you're going to foreclose. So that meant there would be no exposure for attorney's fees if that had been dissolved. I don't think it was ever resolved. But that was a very, very good move, smart lawyering in my opinion.

Q Do you know whether the client ever took advantage of this motion?

A I don't know.

Q And if you would, turn to Exhibit B of that motion.

A You said B?

Q B, yeah.

A Yes, that's the affidavit of Henry Brown.

Q What does that affidavit say?

A He pointed out -- he agreed that a lien has to be dissolved unless a lis pendens is filed.

Q Have you looked at all the correspondence that's been presented in the Defense exhibits except for the last six that you haven't received?

A Right, I have.

Q Has anything changed the opinions you've given this Court?

A No, it doesn't. Mr. Bundy was pleading with them, both

in the transcript of the February 23, 2021, and in e-mails afterwards, what do you want me to do. I want to help with attorney's fees. I'll help with the cash lien. I'm not going to do things that weren't part of the agreement, such as the DOT. There was no reference in the arbitration claim about DOT.

MR. MCDONALD: Beg the Court's indulgence.

(Pause.)

MR. MCDONALD: Thank you very much, Your Honor, that's all I have.

THE COURT: Anyone need a break before we start cross?

THE WITNESS: Can I have five minutes?

THE COURT: Let's take a short recess.

(WHEREUPON, a short break was taken.)

MR. MCDONALD: Your Honor, I have one line of questioning, won't take 30 seconds.

THE COURT: Okay.

BY MR. MCDONALD:

Q Mr. Pope, did you have an opportunity to calculate prejudgment interest in this matter?

A I did.

Q And what did the prejudgment interest come to?

A I don't have the document in front of me.

(Pause.)

THE WITNESS: The total prejudgment interest was

$78,808.05. And that's giving credit for the $150,000 payment made in May of 2022.

MR. MCDONALD: Would you like a copy of this? I don't know that it goes into evidence, but it might be helpful.

BY MR. MCDONALD:

Q The last thing, Mr. Pope, I handed you Plaintiff's Exhibit 23.

THE COURT: Why don't we make it a Court Exhibit.

MR. MCDONALD: Court's Exhibit 1.

THE COURT: That will be fine.

(WHEREUPON, Court's Exhibit No. 1 was marked for identification.)

MR. MCDONALD: May I approach, Your Honor?

THE COURT: Yes.

MR. MCDONALD: Thank you very much.

THE COURT: All right. Cross-examination.

MR. WALL: Thank you.

CROSS-EXAMINATION

BY MR. WALL:

Q Mr. Pope, I'm going to be working probably in my bigger notebook that's in front of you.

A Say it again.

Q The bigger notebook, I'll be working in that bigger notebook in front of you.

A Okay.

Q My exhibits. If you could, please, sir, just turn to Exhibit 1 there in that notebook. That's the original hourly fee agreement, do you see that?

A Yes.

Q You would agree with me, wouldn't you, that based on that agreement that $300 an hour and $400 an hour is a reasonable fee for Mr. Bundy's and Mr. McDonald's services at that time, 2018?

A I would agree that that was what they thought was fair and it is at that time.

Q And that is, also, the appropriate prevailing rate in the State of South Carolina for a construction lawyer of similar skill and experience. You would agree with that, wouldn't you?

A I would say yes. I would say it was low, but, yeah. Certainly, within the range of reasonable.

Q Do you know any construction lawyer in the State of South Carolina -- you're not a construction lawyer. Do you know anybody in the State of South Carolina that was charging more than that?

A I can't give you a name, no.

Q I didn't think so. All right. Let's look over at the amended fee agreement, which is Exhibit No. 3. Now, there's language in that first paragraph that says the client has retained Bundy McDonald to represent client as legal counsel

for purposes in connection with a project known as Brooklyn West. Do you see that?

A Right.

Q And it was similar language in the first agreement, wasn't it?

A Pretty similar.

Q Now, that's a pretty broad statement of scope, isn't it, sir?

A It is, but this agreement has "and subject to an arbitration". The other didn't reference that.

Q I understand that's your position. It's subject to an arbitration. Now, it, also, says on the second page, if you'd turn over with me, that the fees are going to be determined arising out of a contract of claims against contractor or other parties to any -- let's go to the bottom of Page 1. Bottom of Page 1 and then we'll go over. The last line, Actually collected whether by settlement or judgment. See that?

A Yes.

Q Arising out of client's claims against contractor or other parties to any proceeding covered by this fee agreement. You see that?

A Right.

Q Now, it's your testimony, sir, that means only the one arbitration; is that right?

A That's right.
Q So any proceeding, such as the DJ action would not be covered; is that right?
A I think it's any -- in this arbitration, it covers the fees earned in this arbitration.
Q You agree with me that there were, also, hourly fees charged in this case by a law firm, right? And you reviewed those records, did you?
A I haven't reviewed the hourly records. I've seen some of them, but I haven't reviewed them because -- because those have been paid. There's no question that the 100,000 was paid.
Q You would agree with me that the law firm, also, undertook to handle the DJ action within this fee agreement, won't you?
A Yeah, I would say that that was certainly within the confines of the scope of work as he interpreted it. I think moving to quash the mechanics lien was technically outside the scope, but he knew it was benefiting the client and he did it.
Q Well, now, let's get clear on this. Did you look at their invoices, Bundy McDonald invoices?
A I didn't look at them carefully. I saw them, but it -- I think there was a spreadsheet that his paralegal did. Is that what you're talking about.

Q No, sir. Could you turn over to my Exhibit 33?
A I don't have 33. I didn't get it. You can bring it up and I'll look at it.
Q I apologize. I'll get you the right page.
A Okay.
Q I thought you had this.
A I might have seen it, but I don't know what it is. As soon as you forwarded them to Brent, he forwarded them to me and I had my people put it in a notebook.
Q I understand. Let's get everybody on the right sheet. My Exhibit 33, and I'm going to direct you to Page 246, all the way towards the back.
A 246 is the first page.
Q No, sir, I'm directing your attention to that page in that document right there that I just put in front of you. I'll represent to you that this is the invoice, Bundy McDonald invoice dated March 23, 2020. Do you see that?
A Right.
Q And there's time entries there dated to drafting DJ pleading. Do you see that?
A Right.
Q And then there's discussion about DJ complaint. That would refer necessarily to the declaratory judgment pleading in this lawsuit, right?
A Right.

Q So they were paid hourly fees to handle that matter; is that right?
A Right.
Q Assuming this invoice was paid?
A Right.
Q So you would agree with me that handling that DJ action was, in fact, within the scope of the representation of the contingency fee agreement, correct?
A Yes.
Q Now, back to the amended fee agreement for a minute. If you could go back to Page 1 of Exhibit 3.
A What part of Exhibit 3?
Q Second paragraph. Page 1, Exhibit 3, second paragraph. You were in here when I made my opening statement, right?
A Right.
Q You heard my position, legal position that there has to be a settlement or a judgment.
A Mr. Bundy's letter explained it was based on an arbitration award.
Q I want to ask you about that. That's Exhibit 2, right? Turn to the document prior to that. That document is not made a part of the fee agreement, is it?
A It's an explanatory interpretation for the client so he would know what the fee agreement meant. It's part and parcel of it.

Q So you think it's part of the fee agreement?
A Yeah, I think it explains to the client. It gave an example, which is helpful.
Q And it says, If the arbitrator -- in the explanation paragraph, it says if the arbitrator awards or a settlement is reached. Do you see that?
A Is it --
Q The document right before the amended fee agreement. One page prior to that.
A I got you. Letter to Mr. Mundy from Bill Bundy, January 24, 2019.
Q Just to recap, it's your opinion, sir, that this letter dated January 24, 2019 is incorporated into or included in the amended fee agreement? That's your opinion?
A That's right. Because it was sent before he signed it. He knew what the interpretation was.
Q All right. And it's your -- now that paragraph, that bottom paragraph about arbitration award or settlement, I'm just saying that paragraph is not in the fee agreement, is it? It's in the letter, but it's not in the fee agreement, is it?
A It explains the fee agreement, right.
Q Explains the fee agreement. And it's your opinion, sir, that the arbitration award is what triggers the client's duty to pay?

A The arbitration award sets what the fee would be. The other things that have to flow. And Mr. Bundy was telling Mr. Brown he was happy to participate in the mechanics lien issue, the attorney's fee issue and anything else. But he never would tell him what to do. He bumped him out of the way.

Q Wait a minute. You said the arbitration award sets the fee?

A It doesn't mean you pay it the day you get it, but it means that's what the fee is. Because the rule we just looked at says you can't modify an award except for typo errors. So he has his award. It was 2,640 thousand some dollars.

Q Mr. Pope, go back to the actual amended fee agreement, please, tab three?

A Page what?

Q Page 1 of tab three, Exhibit 3.

A All right.

Q Mr. Pope, isn't it true that the client, actually, has to obtain a settlement or relief whether by settlement or judgement under this fee agreement? That's necessary, isn't it?

A Well, I think the award is a judgment.

Q I understand you think the award is a judgment. Let me ask you about that. You're not a construction lawyer,

right?
A Say it again.
Q You're not a construction lawyer, right?
A No.
Q Are you familiar with the South Carolina Uniform Arbitration Act?
A Generally, yeah.
Q Are you aware that under the South Carolina Uniform Arbitration Act that (indiscernible) in order to get the judgment.
A You have to get the judgment confirmed, right?
Q Right. That's the process I'm talking about. You're familiar with that process?
A Yeah.
Q Did Mr. Bundy do that?
A He moved to confirm the judgment. He filed a document to do that.
Q He did. He did, didn't he?
A He did before the arbitrator ruled.
Q He did. But he never got it confirmed, did he?
A Well, he moved to have it confirmed.
Q But he never got it confirmed, did he?
A I don't know. I don't see a document that shows that.
Q Let's go over to Exhibit No. 4, Defense 4, please, sir.
A Okay. That was what he filed.

Q That was what he filed. And let's look at this together for a minute. Mr. Bundy, clearly, knew how to turn an arbitration award into a judgment, didn't he?

A Yeah, he cites the rules.

Q He cites the rules and the cites the South Carolina Uniform Arbitration Act?

A Right.

Q And he, also, says in here in the bottom paragraph of the first page, third sentence, thereafter, the arbitrator will determine whether or not he will award prevailing parties with attorney's fees --

A Where are you now? I'm sorry.

Q I'm in the procedural history. Do you see that?

A Okay, yeah.

Q And then there's the third sentence.

A All right, I see it.

Q Thereafter, the arbitrator will determine whether or not he will award the prevailing party attorney's fees and expenses for the arbitration. Upon that determination, the arbitrator will enter the final award. Do you see that?

A Mr. Bundy offered to help with the attorney's fees and he was rejected.

Q I understand that, but the award you're relying on to calculate the fees, that was not the final arbitration award in this case, was it, sir?

95

A It's called arbitration award.
Q Right. If you go over, please, sir, that amount on the second page, 2,640,715. Do you see that?
A Yes.
Q That's the basis for this fee claim that you're asserting in this case, that your client is asserting in this case, correct?
A That's true. I think it was a very good result for the client.
Q Yes, sir. Now, go over to the next page, please. The sentence at the top of that page says, Any attorney's fees and costs to prevailing party is expressly reserved for future consideration. You see that, right?
A So Bundy asked to be involved in that, agree to be involved with that, but was never included.
Q Mr. Pope, I didn't ask you what Mr. Bundy asked whether to be involved in that. I just asked you whether that document said that or not?
A Yes, you did.
Q Now, in fact, the arbitration -- Mr. Bundy filed a motion to confirm the arbitration award before it had even come out, didn't he?
A Correct.
Q And in his motion, he notes that the first award that's going to come out is going to be a preliminary award; isn't

A It was the final arbitration. It wasn't the final award.
Q It was the final arbitration for Mr. Bundy, but it was not the final award, was it?
A Well, the attorney's fees hadn't been resolved.
Q The attorney's fees could make the difference in the ultimate outcome of the case in the recovery for the client, couldn't it?
A That's right. And Mr. Bundy, of course, filed an offer of settlement, which would have been favorable for the client, but they wanted to make it higher and he followed their wishes.
Q I understand that explanation, but we both agree the attorney's fees -- the way the attorney's fee issue could come out could make a difference in the ultimate computation of the attorney's fee, we both agree with that, don't we?
A It could.
Q It could. In fact, there was an amended award in this case, wasn't there?
A Could you point me to that?
Q Let's look at the initial award.
A Is this Exhibit 6?
Q Hang on one second, let me catch up. If you could go to Exhibit 6, yes, please, sir. That is the initial arbitration award; is it not?

that right?

A It says it in the footnote, you said?

Q It's not going to be a final award. I think we've covered that. Exhibit 5 -- I'm sorry, let me get you on the right sheet. Exhibit No. 4 said it's not final, but it will be final. Eventually, there will be another decision and that one will be final. Didn't he say that?

A Subject to the attorney's fee.

Q And, in fact, Mr. Pope, there was a final award in this case, correct?

A If you could point it to me.

Q Yes, sir. If you go, please, to Exhibit No. 21, please.

A Yes.

Q Exhibit No. 21 is called consent final award. Do you see that?

A I do.

Q And that is some one year later after that initial award, isn't it?

A It's November 12, 2021.

Q Yeah, sometime after that.

A This was after Mr. Brown took over.

Q Well, Mr. Pope, what I want to ask you about is this final arbitration award. Go to paragraph two, Page 2.

A Uh-huh.

Q There's an award of $309,000 for attorney's fees and there's a sentence beginning "therefore"; do you see that?

A Therefore, it is appropriate, is that what you're saying?

Q Yes, sir. Would you read that?

A Therefore, it is appropriate to increase the interim award for the initial phase by that amount, the 309,000.

Q The interim award to Carter & Carter for phase one in arbitration is hereby amended to 2.950, right?

A Right.

Q Well, Mr. Pope, what I want to ask you, given your earlier testimony that the award triggers the fee computation, given your interpretation of the instrument the fee agreement, it says the award is what triggers the computation. Why wouldn't you use the final award instead of the interim award to calculate attorney's fees? Why wouldn't you do that? Why wouldn't that be appropriate?

A First of all, the fees were the increase. C&C was considered the prevailing party. The contractor was considered the prevailing party. It's on Mr. Bundy's advice. They wouldn't have been the prevailing party. So it increased because of that.

Q All right.

A But WECO never said oh, we're going to readjust this. We're going to take the four million and we're going to

reduce it by 295 and pay you based on that. They didn't pay anything until a year later, year and a half, they paid 150,000.

Q Mr. Pope, would you turn over to Exhibit --

A And some of the factors in this included closeout costs, which were not part of the fee agreement.

Q I understand. Mr. Pope, would you turn over to Exhibit 17, please.

A Okay.

Q You were aware, sir, that after the interim award came out, the one upon which you've based your fee claim, your client has based his fee claim, there was a motion to vacate the arbitration award, right?

A Yeah, April 5, 2021.

Q Filed by Carter & Carter. And you knew about how to confirm a judgment under the State Arbitration Act?

A Yes, you see it in the statute.

Q And you know under -- do you know the State Arbitration Act and, also, under the Federal Arbitration Act that once a party timely files a motion to vacate an arbitration award, that is within 90 days of the award, once a party files that motion, it has to be resolved before a final arbitration award can be entered as a judgment; isn't that right?

A You have to resolve any motions, I guess.

Q Now, this was pending, this motion to vacate the

arbitration award was pending, correct? Do you know whether plaintiff law firm defended this motion in this declaratory judgment action, which we've already established was within their scope? Do you know whether they did that? Do you know whether they defended this motion, sir?

A They were shut out at that point. Henry Brown took it over. Bill Bundy offered to help in any way that he could. Mr. Brown took it over, wrote the letter unilaterally without consulting Bill. And later said, I'll let you know what you can do to help. He never did that, despite numerous e-mail requests, what is going on, what can I do to help with the attorney's fees, with this, the mechanics lien.

Q Do you think Mr. Bundy needed an invitation from Mr. Brown to handle a motion on a declaration judgment case when Mr. Bundy was listed as counsel of record? Do you think he needed an invitation from Mr. Brown for that?

A When Brown wrote the letter in February of 2019 and said I'm in charge, all decisions will be made by me, I'm the decisionmaker, no, he didn't have any choice at all. He said, All right, you've made your decision, the client's made the decision to take over. Now, tell me what I can do. And he never did.

Q Mr. Pope, you've been practicing law in this state for a long, long time, longer than I have, right? You know that

once a lawyer is counsel of record in this state, they're counsel of record until something happens, until they withdraw or until they're court appointed to withdraw or substitute counsel. You know that procedure, correct?

A I know that's a procedure, but you have lead counsel. Every time you have co-counsel, you've got lead counsel. And Bill Bundy told lead counsel, self-proclaimed lead counsel, blessed by the client, Mr. Mundy, that he was in charge. And despite Bill's request for assignments to help with attorney's fees, with anything, with the mechanics lien, he didn't do it. Now, he didn't offer to help with the DOT claim or the closeout because that wasn't part of the contract. But he offered to help in any way and Mr. Brown just shut him down.

So the way it happened in my view was Bundy McDonald started this case on their own goal line and they took the ball 100 yards and scored a touchdown. Mr. Brown, he wants to talk about you're going to kick the extra point. That's what it amounts to. Because the details here were minor compared to the scope of the work that Bundy McDonald accomplished.

Q Bundy McDonald did not, in fact, finish the declaratory action case where they were counsel of record, did they?

A Did they what?

Q They did not conclude that case as counsel of record,

did they?

A They didn't conclude it. It was set up for the very purpose that they later used it in. They used that case caption to file offers of settlement and everything else. They did not include the DJ.

Q In fact, Mr. Brown never became counsel of record in the DJ action, did he?

A I can't answer that. I don't know.

Q Well, you looked at these exhibits. Let's look over to Exhibit No. 16, please. You previously looked at this, right?

A I looked at it. It's a long letter from the Carter & Carter lawyer --

Q I'm sorry, I apologize. That was my mistake. I'm sorry, I meant to say 18. My eyes are going bad.

A This is an e-mail from Bill Bundy to you on August 30, 2021. It says, It's evident nothing is going to happen without a hard deadline. Here it is. My firm is relieved from this action by this Friday to a payment is made on the debt due by the following Friday. Absent being ordered deadline, I will follow the necessary documents to be relieved.

In other words, you've shut him out for a year plus or whatever -- I don't mean you, but Mr. Brown has kept him out of any involvement. They just isolated him completely with

a wall. So he wants to be paid. Explain why you can't pay. Why is it not reasonable to do so? He said, Once I file this, I will not compromise or negotiate the amount due. Friendships, even ours, has its limits.

Q Now, in fact, immediately behind that, Exhibit 19, do you see that?

A Yeah.

Q There's the order substituting counsel, right?

A Correct.

Q And, in fact, Mr. Bundy wanted out of the DJ action and he got out; isn't that right?

A He was shut out, so he had no role to play, so he got out. He wanted to get out.

Q All right.

A But he didn't withdraw from the case.

Q Go to Exhibit No. 35, please.

A I don't think I've seen this, but I'll read it if you want.

Q Well, let me ask you something. You have not seen this document?

A No.

Q I mean, you were testifying earlier about the transcript that I'll represent to you happened on February 22nd, but you didn't have this document before you formed your opinions about the transcript?

A If you're going to ask me about it, let me read it if you don't mind. The SCDOT work document?
Q No, sir, I'm sorry. I keep messing up my numbers. Oh, it is titled SCDOT work, you're right.
A It's an e-mail.
Q I'm sorry.
A Can I have a moment to read it?
Q Sure.
(Pause.)
Q I don't want to unfairly catch you, but you didn't have this document before, right, before you formed your opinions?
A I've not seen this one, no.
Q But, assuming this is from Mr. Bundy and the law firm, they are agreeing that they're going to continue DJ action as agreed, correct?
A That's what it says.
Q That's what it says. And it's February 17, 2021, you see that?
A Yes.
Q And that's, in fact, the same day, if you go back and you look at the legal invoice that Mr. Bundy sent out after the amended arbitration award, Exhibit No. 11, that's, in fact, that same day, isn't it?
A Right.

Q And he says in the third paragraph, the remaining arbitration issue on which they're representing WECO is attorney's fees, which we will handle once the arbitrator advises us, right?

A Where are you now?

Q I'm back on Exhibit No. 35, the middle paragraph there. He's saying that they're going to continue to represent WECO on attorney's fees and the DJ action, right?

A Right.

Q And then he's, also, saying -- he's taking the position here in the second paragraph that you're going to need a new attorney. You're going to need a new attorney to handle the arbitration moving forward, right?

A Yeah, for the matters that the arbitrator specifically outlined would be excluded from his award. The DOT, the warranty, deficient construction work.

Q Let me ask you this --

A They weren't addressed at the hearing.

Q Let me ask you this, you've looked at a lot of records that our firm has given you. You've looked at a lot of records that I've given you. Have you seen any records anywhere where my client discharged Mr. Bundy? Mr. Bundy, you're discharged. Bundy McDonald, you're fire, we no longer want you. Do you see any evidence of that at all?

A I haven't seen any correspondence that he quit or that

you fired him. What you did was constructively terminate him because Henry Brown writes I'm in charge, Bill's involved. Then Bill says okay, I'll be involved. These e-mails detail he's happy to be involved.

Q You don't --

A He's not going to take on the DOT claim because it's not part of arbitration. He's not going to do -- like you said, we're not adjudicated by that arbitrator. He never got back in touch with him. They left him in the cold. They might have well sent him to Siberia. They just don't communicate. He wanted to be involved, they wouldn't let him. So it's a constructive termination by the client.

Q You don't think that this e-mail is notice to client that I'm not working on your file anymore, I'm only working on these things? I'm working on the DJ action and I'm working on the attorney fee action, but I'm not working on anything else? The only remaining arbitration --

A He did -- I agree, he said he would help with attorney's fee. They never called on him. Why, I don't know. And he would help with the DJ action. They never called on him for that.

Q You don't think that's an "I quit" letter?

A No.

Q You don't?

A Absolutely not.

Q Okay. All right. Let me ask you about -- back on the fee agreement for a minute. There's language in here that is in the fee agreement that says "settlement or judgment". Right?

A What exhibit?

Q No. 3.

A Okay. Well, it says 25 percent of relief obtained. And he gets this letter, which was nine months before that saying if the arbitrator awards, that's what will trigger the --

Q Right. And we already agreed we'd go by the final award?

A The award is the award. You can't change an arbitrator's award.

Q What does it mean in this fee agreement, sir -- and I talked to you about how you turn an arbitration award into a judgment. Do you remember that discussion we had? So what does it mean in terms of this agreement whether by settlement or judgement? Is that just superfluous? Does it mean anything at all? What does it mean?

A I think it's, perhaps, confusing and that's why he did the letter. It says 25 percent of relief obtained in here under the agreement. His letter says if the arbitrator awards, that's the triggering moment.

Q All right.

A You're dealing with a sophisticated lawyer and a sophisticated client and the explanation is, apparently, what Mr. Mundy wanted to hear before he signed it. Because he didn't sign -- well, he didn't sign it immediately, but he signed it some months later with this explanation having been given to him.

Q It was a sophisticated lawyer and it was a sophisticated client, right?

A Yeah.

Q Are you meaning to insinuate that somehow the lawyer -- in that context, the lawyer who's being retained does not have an obligation to the client? You're not suggesting that, are you?

A They have lots of obligations to clients. I don't understand the question.

Q You don't think that the client, even if it's sophisticated relies on his sophisticated lawyer in signing a fee agreement?

A He should rely on the plain words of the January 24th, 2019 letter, which is Exhibit 2.

Q Let me ask you this hypothetical question. It is your testimony, sir, that the fees are triggered based on the initial award from Mr. Elmore. We covered that. That's what triggered the obligation, that's what triggered the fee?

A You keep calling initial award, it's an award.
Q Okay, the award that was later subsumed by a final award, we'll call it the first award, how about that? Can we agree on that?
A It's called award.
Q The earliest award, can we agree on that? That's what I'm referring to, the earliest in time award?
A The January 4, 2021.
Q Okay. The January 2021 award. That triggered, under your view of the world, that triggered the obligation to pay. That's when the fee was earned, correct?
A Correct.
Q All right. And so we've already established that there was a motion to vacate that award?
A By the contractor, yes.
Q Here's my question, your opinion, if the judge had come along and vacated that award, reduced it to zero, would the lawyer still be due fees, Mr. Pope?
A I would probably have to grant you if he vacated it -- the courts don't vacate any arbitrator awards. They don't want anything to do with them. You know that.
Q Well, I've had some vacated, Mr. Pope, so I'm not the right person to ask that.
A They can be vacated for fraud or something, but this was -- he was relitigating the claim in that award.

Q Mr. Pope --
A If it had been granted, theoretically, technically, yes, we would be back to square zero on the fee.
Q And the lawyer would not be owed any fee; isn't that right?
A I don't know about any fee. I don't remember what the grounds for the vacation were, but no. That would change the dynamics.
Q Would it matter what the grounds -- if the result were not obtained, would the lawyer have earned the contingency fee?
A If he didn't get a result, he wouldn't have earned the fee.
Q Thank you, sir.
A But he did get a result. He got a very good result.
MR. WALL: Bear with me a second, Your Honor.
THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. MCDONALD:
Q Mr. Pope, on direct examination, we looked at Plaintiff's Exhibit 17?
A Yes.
Q Do you have Plaintiff's Exhibit 17 in front of you?
A Yeah.
Q What is the date of Plaintiff's Exhibit 17?

A April 5, 2021.
Q 17?
A Plaintiff's 17?
Q Plaintiff's 17, not Defendant's.
A Oh, excuse me, I'm sorry. February 24, 2021.
Q February 24, 2021. And that exhibit says -- that is from Mr. Brown to Mr. Elmore, for various reasons, I am assuming representation of WECO for the remaining issues in this arbitration. Nobody will continue to be involved. However, I will undertake the management of the case and you may correspond with me and look to me as the decisionmaker with WECO. Did I read that correctly?
A You did.
Q Is your testimony on direct and cross examination based upon that letter?
A It was.
Q Okay. Now, you were asked some questions about Defendant's Exhibit 35. Can you pull that up?
A Yeah.
Q What is the date of Defendant's Exhibit 35?
A February 17, 2021.
Q And that's from Mr. Bundy to Ms. Hodge, myself, Mr. Matt Mundy and Mr. Bob Mundy, correct?
A Correct.
Q And it says, We will continue -- the only remaining

arbitration issues on which we are representing WECO is attorney's fees, which we will handle once the arbitrator advises us to do so. And then at the end, it says, We will continue to handle the DJ action as agreed, correct?

A Correct. And that was about six days before the transcript, which shows the full conversation between the client, lawyer and the new lawyer who interceded to take over the case.

Q Previously, we entered Plaintiff's Exhibit 23. What is the date of Plaintiff's Exhibit 23?

A February 15, 2021.

Q February or April?

A What did I say?

Q You said February?

A No, April 15, 2021.

Q So that post-dates Mr. Brown's letter of February 24th and Mr. Bundy's e-mail, Defendant's Exhibit 35, that we spent so much time on, correct? What does that letter say? Who is it from?

A It's from Henry Brown to Bill Mundy. And it's in response to Mr. Bundy's plea to tell him what we're supposed to be doing. He wants to help.

Q And what does that say?

A It says, I'm sorting out the future. I recall in your prior letter, Henry said you were only handling the fee

issue and the DJ action. WECO has previously accepted based on the letter that you no longer represent them in the arbitration except for any fee discussion and that will be sorted out if and when we get there. You mentioned the DJ action, but that is over except for the lis pendens motion and Shepard motion to vacate. WECO will look to me to close out both questions. I'll be glad to discuss these issues, but let me get further down the road. And he never got back --

Q Both questions. Both questions being the lis pendens issue and the motion to vacate, correct?

A Right.

Q And that's April 15, 2021, correct?

A Right.

Q Now, let's talk about under Defendant's Exhibit 21. This was maybe glossed over a little bit. What is the title of this document?

A Consent Final Arbitration Award.

Q And it says, This matter came before the undersigned arbitrator on the joint request of Carter & Carter. The parties, through counsel, have advised the undersigned that the parties reached a full final settlement agreement resolving all claims in this matter based on the terms and conditions stated herein?

A Right. That was between Mr. Brown and Carter's lawyer,

Shepard.

Q And when is that dated?

A This is November 12, 2021. Of course, Mr. Bundy had no input into that. He wasn't present. He wasn't notified. He was not involved. Mr. Brown took it upon himself to get a consent arbitration award.

Q Now, as of November 12th, 2021, if you'll look at Plaintiff's Exhibit 22, what is the date of Plaintiff's Exhibit 22?

A November 23, 2021.

Q No, 22?

A Exhibit 22?

Q Plaintiff's Exhibit 22.

A Yeah, the date is November 23, 2021. Oh, you said 23, I'm sorry.

Q No, 22.

A If you said 22, that's the date I gave you. It's the consent order confirming.

Q No, you're on Defense. Plaintiff's Exhibit 22.

A Oh, I'm sorry.

Q You've got too many notebooks.

A Yeah, I do. Okay. Exhibit 22 is the notice of motion for partial summary judgment for dissolution and removal of mechanics lien.

Q And that's based on the lis pendens issue that was

pending in the DJ action that was referenced in Henry Brown's affidavit. Also, in Plaintiff's Exhibit 23 where Henry Brown said I'm dealing with the lis pendens issue, right?

A Right.

Q What is the date of this, Plaintiff's Exhibit 22?

A October 14, 2020.

Q So at the time that the Defendant's Exhibit 21, the consent final arbitration award, that motion had been pending for 13 months?

A Correct.

Q Had the mechanics lien been thrown out, WECO would have been the prevailing party, correct?

A That's right. The lien would have been resolved and the attorney's fee wouldn't apply. So Mr. Bundy did a good day's work by doing this, protecting the client.

Q Now, you asked some questions in this consent order about attorney's fees that they put in here. This is Defendant's Exhibit 21. There's some interesting math in there, but I'm not going to make you do it. We'll do it later. But you asked some questions about the number they put in here, 309,284.20 on Page 2, correct?

A Right.

Q Is there anything in our fee agreement that deals with either regaining because of the award of attorney's fees or

losing because of the award of attorney's fees?
A No.
Q And you can't charge a fee on a fee, can you?
A You certainly can't.
THE COURT: Is that it?
MR. MCDONALD: I'm sorry, Your Honor. Yes.
THE COURT: Recross?
MR. WALL: Just one.

RECROSS-EXAMINATION

BY MR. WALL:
Q Mr. Pope, you don't mean to suggest that a client can't ever resolve their own case? You don't mean to suggest that?
A I don't, but I think Mr. Mundy was a difficult client. He's a very experienced developer. There's a reported case by the Supreme Court, which cast some real doubts about his method --
MR. WALL: That's totally unresponsive, Judge, to my question.
THE WITNESS: Well, I'm going to cite the case. The case is Boddie-Noell Properties --
THE COURT: I don't know where we're going here. You asked the question whether a client cannot resolve a case?
MR. WALL: I asked him --
BY MR. WALL:

Q A client has the right to settle their own case, don't they?
A They have the right to settle their own case.
MR. WALL: That's all I have.
THE WITNESS: But I would point out that in this case, Mr. Mundy has a history that's not good. The Supreme Court said he had bad behavior. In the case of Boddie-Noell Properties vs. Magnolia Partnership and Mundy, it's 574 S.E.2d 726. They found that it had breached the implied covenant of good faith and fair dealing.
BY MR. WALL:
Q You're talking about my client, Mr. Mundy.
A Mr. Mundy.
Q So you're just bringing that up to sort of disparage my client; is that right?
A Not to try to, it's a fact. I mean, it's in the --
Q You're bringing it up to disparage my client.
MR. WALL: Judge --
THE COURT: All right. If there's a case, there's a case.
Anything else, sir?
MR. WALL: No, sir.
THE COURT: The witness may step down.
Is he excused?
MR. MCDONALD: Yes, Judge. May I have five minutes?

THE COURT: Thank you, Mr. Pope.

All right. We'll take five minutes.

(WHEREUPON, a short break was taken.)

THE COURT: Ready for the next witness?

MR. MCDONALD: Your Honor, the Plaintiff rest.

THE COURT: Do you have any witnesses today?

MR. WALL: I do. I have Ms. Hodge, Your Honor. I can get started with her or I can put her up after lunch, whatever you prefer.

THE COURT: I have something to do during the lunch hour and now might work out better if it works out for y'all.

MR. WALL: Sure.

THE COURT: We'll start back at 12:45.

MR. WALL: That's fine.

THE COURT: I know we've got a witness we're going to do virtually on Monday.

MR. WALL: That's it. I've got Ms. Hodge and a witness on Monday. I don't know if we anticipate any reply testimony or not.

THE COURT: I didn't think about that either.

MR. MCDONALD: If we do have reply testimony, I'm sure we can do it over the same virtual --

THE COURT: Okay. We're talking about virtual. The Defendant's expert is in California. Just so you know my

schedule for Monday. The morning is being devoted to general sessions work. I've got a guilty plea. Hopefully, that's it. He'll still be in California?

MR. WALL: He'll be back, Your Honor. He'll be back on the East Coast.

THE COURT: Well, I'm looking at, roughly, midday to do it. I have a longstanding appointment at 2:45 on Monday. How long do you think Mr. Lloyd will be? Similar to Mr. Pope?

MR. WALL: I think shorter than Mr. Pope. His opinion testimony is not going to be really expansive, just really limited to what a reasonable hourly fee is for a lawyer in the State of South Carolina.

THE COURT: Why don't we plan it for 12:30 Monday?

MR. WALL: 12:30 Monday.

THE COURT: If I find out that we can start earlier, will that be suitable?

MR. WALL: Sure, Judge.

THE COURT: Why don't we recess for lunch right now. We'll start back at 12:45.

(WHEREUPON, a lunch break was taken.)

THE COURT: Are we ready to go?

MR. WALL: Yes, Your Honor.

THE COURT: The Defense can call their first witness.

MR. WALL: We call Teresa Hodge.

TERESA HODGE,

after being duly sworn, testified as follows:

THE CLERK: Have a seat and state your full name, spelling your last name for the record.

THE WITNESS: My name is Marianna Teresa Hodge. First name M-A-R-I-A-N-N-A, last name Hodge, H-O-D-G-E.

DIRECT EXAMINATION

BY MR. WALL

Q Good afternoon, Teresa. Can you tell the Court where you work?

A I work for Estates Management Company.

Q And what do you do there?

A I'm the director of development. I've been there a little over 20 years. And I handle all aspects of a project from inception. After we acquire the project, the entitlement, design, build and turn over.

Q And how many projects have you managed over the years roughly?

A Maybe ten, I don't recall.

Q Were you involved in the management of the WECO River District project that we're talking about here today?

A I handled it all, yes.

Q And when you say you handled it all, can you elaborate a little bit on what you do day-to-day?

A Sure. I do project management. I do a lot of

different things, but that involves, like I said, entitlements. If a property needs to get rezoned, I work with the city and municipalities on that. I work with the architect to get it designed. And then I work with my group by hiring a contractor and I work with the contractor through the build process and the architect as the intermediary to get things answered and completed.

Q And in managing the contract process, you handle all aspects in terms of change orders, claims, issues, contract claims arising out of construction, that sort of thing?

A All aspects, yes.

Q And on occasion when you're employer has need to retain counsel in connection with construction projects, are you involved in that?

A I'm, typically, the main contact for that as well.

Q Was that the case with the plaintiff law firm in this case? Were you the main point of contact?

A I was.

Q And when you say main point of contact, exactly what did you do?

A I handle, typically, the phone calls with counsel, what we go over, taking the notes and putting them into our file.

Q Can you tell the Court how you happened to engage the services of Bundy McDonald in this case?

A I can. As was noted earlier, Henry Brown was our main

counsel for over 30 years with Estates. And he had a heart attack in September of 2018. After that, it was apparent that we had a disagreement with our contractor at that time because the arbitration demand had been filed in April of '18. So we were seeking other counsel knowing that he was going to be out for a while with his heart attack. And we received a recommendation for Mr. Bundy. Someone that, also, worked on our project with us, Jim Clements. So we received his recommendation and a recommendation for Hank Wall, yourself.

Q And you, ultimately, engaged Mr. Bundy after interviewing both law firms; is that right?

A That's correct.

Q And how did you happen to engage Bundy McDonald, on basis initially?

A Initially, it was an hourly fee agreement in late 2018, I think that was December of 2018.

Q And that's found in Exhibit 1. Do you have the exhibits in front of you, Ms. Hodge?

A These are your exhibits, yes.

Q So the initial engagement there is Exhibit 1; is that right, on a straight hourly basis?

A Correct.

Q Did the agreement change at some point in time? And can you tell the Court the reason it changed or how it

happened to change?

A It did change to an amended fee agreement the following year. We signed that in November of '19.

Q Do you recall whose idea it was to change the fee agreement?

A It was Mr. Bundy's idea.

Q What's documented as Exhibit No. 2 is an example. Did you review that document, an example from Bundy McDonald on the conversion option to a contingent fee?

A I did.

Q And what was your understanding of the scope of Bundy McDonald's proposed representation in this case if you converted to a contingency fee?

A Our understanding is there was a cap on fees of $100,000. And they would work through that until the cap was met. And after that, it was 25 percent contingency fee on what they got the claim reduced by and what they received on our claim as well.

Q Now, was there an arbitration going on at this point in time by January of 2019?

A There was not.

Q By the time the amended fee agreement was signed, Exhibit No. 3, was there an arbitration going on?

A There was not.

Q When, if you recall, did the arbitration actually

start?
A It started in July of 2020.
Q Can you tell us a little bit about the arbitration? The nature of the arbitration, when it arose and what it involved.
A So the arbitration happened in July of 2020. It involved our claims against the contractor, which I think were approximately two million dollars and the contractor's claims against us, which was four million dollars. At some point in the job, we stopped paying payouts based on liquidated damages that would be due under the contract because of delay and other damages we had incurred based on our disagreements with the contractor. So at the end of the day, there was a dispute about amount owed. And that's what the arbitration was based on.
Q Did you understand that the arbitration would be parsed -- at this point in time, at least, at the initial engagement, that the arbitration would be split into pieces? Did you anticipate that?
A I did not.
Q What was your understanding of the scope of your engagement of the Bundy McDonald Law Firm?
A That they would take the claims that we had and they would fight for us on our side to get the best decision possible.

Q And did you discuss the contingency fee agreement with your counterparts or management of WECO?
A We did. We discussed it at length. We had never signed a contingency fee agreement before, not in my tenure there. And I don't think prior to that. So it was a new thing for us, especially the reverse contingency part of it. So we looked at it for a while to try to understand how that would work and what was needed.
Q In the meantime, were you paying on an hourly basis or the original fee agreement?
A Yes, they were working in the meantime.
Q On the amended fee agreement, what was your understanding -- if you could tell the Court just your understanding of how the fee would be arrived or computed. When would the fee be due and how would that work? From your understanding your knowledge?
A So from my understanding, we would go through the arbitration proceeding. There would be an award rendered. And then once everything was final and complete, then the money would be due.
Q Now, as the arbitration developed and the case developed, who did you primarily speak with from the law firm on a day-to-day basis?
A My primary point of contact was Brent McDonald.
Q And why was that? Was that by design?

A I think it's by design. Brent is in the details. We worked together very closely to put together the case and these tons of write-ups that were needed on our side that we put together. He comes across as the detailed person, so I, typically, dealt with Brent and not Mr. Bundy.

Q And did the preparation for the case go well, the arbitration?

A I think it went well, yes.

Q Any problems with Bundy McDonald's services during the preparation phase?

A No, I don't think so. I don't have any complaints.

Q Ultimately, there was an arbitration, right, in the summer?

A There was, in July.

Q And where was that?

A In Summerville at Mr. Bundy's office.

Q How did that go?

A I mean, it went for several days. I think it went fine. We would always have liked the decision to have been better, but I think it went fine.

Q And who was the arbitrator in that case?

A Frank Elmore.

Q And who was the lawyer on the other side, if you recall?

A Bill Shepard.

Q And did Mr. Bundy and Mr. McDonald handle that case together?
A They did.
Q And during this period of time, were you getting hourly invoices, were you -- in the arbitration, were you getting hourly invoices? Can you explain to the Court how that worked?
A I believe we got invoices on a monthly basis and we evaluated them at that time.
Q At some point, had you paid out the $100,000 cap, do you recall?
A We did pay the cap. I just don't know what time period that was.
Q And then after that, did you continue to receive invoices or hourly summaries of their work on your behalf or did those just stop?
A I believe we continued to receive some invoices up to a point because they were noting no charge by the hours.
Q And at some point during the arbitration, prior to or after, it doesn't really matter, but at some point, were there discussions about issues -- whether certain issues in the case were ripe for the arbitrator to consider or not?
A There were discussions about that as it related to the SCDOT issues.
Q Tell the Court what the SCDOT issues were.

A So at the end of the job, SCDOT walked the project because that's what they do in order to close the permit. And they had a litany of items that were incomplete or incorrectly put in by the contractor, including incorrect curbs, roadways, sidewalks. So they had a whole list of things that had to be corrected for them to close the permit out.

Q And was a decision made to include those in claims in the arbitration in July or carve those out? What do you recall about that?

A Well, there was certainly a part of our claim, our total claim submitted to Bundy McDonald to be a part of the arbitration. At some point in there, they advised us that it would be best to carve them out because they weren't ripe for review. I had never really heard that terminology before, but they weren't ripe for review, so may be best to carve them out. And it was, you know, $300,000 -- I think we had $250,000 on it as our estimate of what it would cost to fix these items. To me, that's not small.

Q And your total claim was how much?

A I believe it was 1.9.

Q Is that with or without the 300,000?

A With it.

Q So there was -- when you were advised -- or when you had these discussions with the law firm about ripeness --

first of all, what is your understanding of ripeness? Do you have a law degree?

A I do not.

Q What is your understanding of ripeness? What does that mean to you?

A That it's not fully ready or detailed to be heard.

Q When you had these discussions with the law firm about whether or not to include the DOT claim in the presentation to the arbitrator, was there discussion about whether or not it would affect the scope of Bundy McDonald's work in the future?

A No, that wasn't discussed. It was part of our original claim, so we always anticipated that it would be dealt with by Bundy McDonald.

Q Did you anticipate if you only had one arbitration hearing that law firm, Plaintiff law firm would no longer represent you in any further proceedings? Did you have that conversation? Did you have that understanding? Did you have that impression in any way?

A I never had that impression. We never had the conversation. It was a part of our original claim, like I said. And at that time, we had an estimate on it, which turned out to be a pretty accurate estimate. But there were no real estimates from site contractors, any actual general contractor. Never ever got an estimate on the work even

though they were aware of all the issues. So I think that's why they deemed it not ripe for review. But never at any point in time did I think that meant we were going to put it aside and then have to get another arbitrator and another attorney to handle it.

Q Now, the arbitration award came out and that's at Exhibit 6 in your book. Do you see that?

A I do.

Q And there was an award to Carter & Carter in the amount of 2.64 million dollars, right?

A Correct.

Q And the arbitrator, also, determined that the issue of attorney's fees would be resolved subsequently; is that right?

A That's correct.

Q And as to the roadway issue, the second page of the arbitration award, the bottom paragraph, what did the arbitrator say about the roadway issue?

A It says, Whether Carter & Carter is liable and/or whether WECO has suffered any damages as a result of any claim by SCDOT for damage to its roadway is not ripe for review. As such, no ruling or determination is made of the liability, if any, of Carter & Carter Construction on the issue. Determination of the issue, if necessary, in the future is expressly reserved to the parties.

Q What did you understand that to mean?
A I understood it to mean -- and testimony was given on this particular issue by myself during the arbitration hearing. So I understood it to mean that we asked him to claim that it was not ripe for review and that it would be heard later. Whenever estimates came in by either our side or contractor, if it was necessary to hear those, then that would happen at that time.
Q Okay. Was it your understanding that that would be a part of this same arbitration with this arbitrator or was it your understanding that you would have to start over again, essentially, with a new arbitration with a new arbitrator?
A It was my understanding that it would be a part of this arbitration with this arbitrator.
Q And this award came out on January 4, 2021; is that right?
A That's correct.
Q Now, subsequent to that, in Exhibit 10, the arbitrator issued a clarification to the award, do you recall that?
A I do.
Q What is your understanding of the purpose of that?
A Opposing counsel, Bill Shepard, had written some letters stating that everything, including the DOT had been heard by Frank Elmore and there was a decision rendered on it. So Mr. Bundy was getting it clarified that it, in fact,

had not been heard or rendered.

Q And by this point in time, the attorney's fee issue had not been resolved, correct?

A Correct.

Q And the SCDOT claim as issued by this clarification on the last page, can you read that into the record, please? The last page of Exhibit No. 10, second to last paragraph.

A With the exception of any claim by SCDOT for damage to its roadway, which is not ripe for review, and other than those characterized in the exhibits presented by WECO during this proceeding, no evidence or claims for defective work were presented by WECO and were considered or encompassed by the arbitration award.

Q And that's February 15, 2021, right?

A Right.

Q Now, what was your understanding as to whether or not you could continue to pursue the SCDOT claim with the same impound arbitrator? What was your understanding of that?

A Well, at this time, Mr. Bundy told us that we could not pursue it with the same arbitrator. And as you've heard, by this time, we were, also, talking with our longstanding counsel, Mr. Brown, and he was telling us different, that that's not at all how he interpreted this document.

Q Okay. Now, how did -- tell us -- this is important, so tell us how those conversations evolved.

A With Mr. Brown?
Q With Mr. Bundy and then Mr. Brown.
A I don't recall if it was right before this or right after, but Mr. Bundy explains very clearly that he would not be a part of any other arbitration or hearing that had to do with SCDOT or the defective work. He clearly said that was not in his scope and he would not have any part of it.
Q Now, is this the first time you heard this?
A It was.
Q Let's go to Exhibit No. 35, please. This is two days later. This is an e-mail two days later. Do you recall that you had conversations with Mr. Bundy prior to this e-mail?
A I do. On the second page is my e-mail to Mr. Bundy, which caused that response. But on February the 16th, so the day before, that's a Tuesday, Monday the 15th is when that clarification came out. Anyway, I said, Bill, regarding the SCDOT work, we've placed Carter and the bonding company on notice twice per the contract. No response. We've spoken with a contractor that priced the work and they can start late this week or early next week. (Indiscernible) before we're getting this work done and we'll deduct it from final payment as allowed, correct?
I plan to send a letter to Carter telling them WECO is proceeding to remedy the DOT work given Carter's failure to

respond in regard to the notice. I understood from the Friday call that you don't want to be involved in the other warranty/deficient construction work, however, for the SCDOT, this seems to be directly related to Frank's ruling and the requirements under 9.10, so I wanted to run this by you. Just call me for a quick discussion.

Q 9.10 is a provision of the contract; is that right?

A It is.

Q Did you have an understanding at this time that Mr. Bundy -- or about this time that Bundy McDonald -- that you had a lawyer to handle the SCDOT claims?

A It was my understanding, yes.

Q So then let's turn over then to that e-mail on the 21st.

A On the 17th?

Q On the 17th, excuse me. Now, when you received this, can you just describe to the Court your reaction to this e-mail from Mr. Bundy?

A Well, he had already verbally told us this on the phone call, so he had already said I'm not doing this. I'm not proceeding with anything that has to do with DOT. You need to go get a new attorney and a new arbitrator. And that, quite frankly, shocked us as the client because there was never any anticipation when they recommended that we take it out of our claim that it would never be dealt with by them.

It was part of our claim. We were trying to finish it all with one arbitration and with one attorney, obviously. So we were surprised and shocked at it. And immediately, we're trying to find plan B to get this done.

Q And what was plan B?

A We were talking with our counsel, Henry Brown. As mentioned, he was back to work by this time, so he would be our plan B.

Q Had you been consulting -- had Mr. Mundy or you been consulting with Henry Brown from time to time as this case was moving along?

A I think at the point where he came back into commission from his health issues. He was, actually, dealing with several other things for our company as of December of 2020. So that's the first e-mail that I could locate where I had asked him anything about this case. And it had to do with Carter's response to the motion for partial summary judgment.

Q Now, Ms. Hodge, back to this e-mail on the 17th. What was your understanding of what Mr. Bundy was telling you about law firm's scope of work, remaining scope of work? What were they willing to do at this point in time?

A Well, he said they were not willing to do anything with the DOT, warranty or the deficient construction, however, he understood that he needed to finish the attorney's fees

piece and the DJ action. He would continue to handle the DJ action as agreed.

Q And the attorney's fees as well; is that right?

A Yes.

Q And as it ultimately turned, did he handle the DJ action?

A He did not.

Q Did he, ultimately, run to ground the attorney's fee issue?

A He did not.

Q Back to the SCDOT matter, subsequent to this -- and you heard the testimony from their expert and the phone conversation. Subsequent to this on the 17th, were you a party to a conversation with Mr. Bundy and Mr. Brown and Matt Mundy, the transcript of which is in the Plaintiff's exhibits?

A I was a party to it. It happened on February 23rd, 2021. So several days after getting this e-mail and, of course, after the all that preceded this e-mail where he made it clear that he wasn't going to continue in this part of the work.

Q There was testimony from the expert, Mr. Pope, that said Mr. Bundy had been pushed involuntarily. I think I have that correct. I think that's a quote. How do you respond to that characterization?

A My response is that it was highly mischaracterized by Mr. Pope. I was a part of the conversation personally and I know the tone that Mr. Bundy had. I know what he had said prior to that about drawing the line in the sand, that he was finished. So he wasn't there on that call with the act of I just want to help. I just want to help however I can with these fees and this DJ action. He was there saying, you know, him and Henry disagreed -- Mr. Brown had disagreed on what the ruling said, what they thought it meant. And in that conversation, I believe Mr. Bundy said well, one of us is right and we'll find out who. So they had a disagreement about whether or not it could be heard or was intended to be heard in front of Frank Elmore.

And later, you'll find there's a supplemental order in April where Mr. Elmore writes this award is, in fact, not final to the DOT and deficient construction issue. And then he later gives a final award.

Q Right. And Mr. Brown's position was same arbitrator, same arbitration, let's finish it?

A Exactly. And it should be heard in front of Mr. Elmore and it was his position that he would agree and there's no reason for us to have to hire a new attorney and a new arbitrator to finish what was originally part of our claim.

Q Now, you referred to an order. Let's just go there. Exhibit No. 39. Do you see that? Is that what you were

referring to?
A It is.
Q Go to the last page of that agreement, Page 5.
A Okay.
Q First full paragraph on page 5.
A I, therefore, further clarify the January 4th, 2021 award to expressly reserve jurisdiction of the DOT claim and the article 9.10 compliance issues and to consider and rule upon each party's claims and defenses. Further, jurisdiction exist to adjust the amount of the award if appropriate based on the final determination of WECO's DOT's claim and the article 9.10 claim.
Q And with respect to this, this is the same arbitrator, same case, correct?
A It's the same case.
Q By this point in time, April 2021, had law firm had any ongoing work with WECO?
A Not to my knowledge.
Q Now, was WECO, indeed, willing to continue the relationship with law firm?
A One hundred percent.
Q Did WECO ever tell law firm you're fired, you're terminated? Your services are terminated?
A We never did.
Q What other characterization from the expert witness

that they were constructively terminating -- let's talk about that a little bit. After this meeting on the 17th, after this e-mail on the 17th and the phone call, were there times when you reached out to law firm?

A After the 17th of February?

Q Yes.

A I'm not sure at that time. Mr. Bundy had made it clear he didn't want to be a part of it. That was the reason for the call on the 23rd is to get them together because they were telling me different things, different opinions about what the award said. And I wanted to get them together just so that Bundy could hear himself what Mr. Brown was saying, not to fire anyone or to make those decisions. But he made that decision clear on the 17th and the prior conversation that he was not going to go forward in those specific areas. So he did say he would do the fees and the DJ action.

And later, Mr. Brown writes the letter the next day -- because it had already been made clear they weren't going to complete this arbitration on those specific issues. And he says Mr. Bundy will stay involved. And that was what was in his letter he wrote to Frank Elmore.

Q Let's go to that for a minute. If you could go to Exhibit 13, please.

A I'm there.

Q It does mention in the letter that Mr. Bundy will

continue to be involved, right?

A It says Bill Bundy will continue to be involved.

Q And did law firm or Mr. Bundy subsequently take umbrage to that?

A It appeared to upset Mr. Bundy very much. He wrote a letter on, I believe, March 2nd.

Q Is that Exhibit 14?

A Yes.

Q Go ahead.

A Would you like me to read it?

Q If you can, just briefly summarize your take-away from that letter?

A How I would summarize is that he did not -- that Mr. Brown was not to speak to Mr. Bundy. He could not put words in his mouth and he should not do that in the future. He had no part of the letter that was written and no agreement to the letter. He does say that the only remaining issue in arbitration is a decision on the award of attorney's fees, if any.

Q I want to draw your attention to -- there's a sentence in the first paragraph. He says, The only remaining issue in the arbitration is a decision of award for attorney's fees, if any. Prior to that, it says, I made clear on a telephone conversation on February 23, 2021, the arbitration is over.

A Yes, he said that many times. That it was over and could not be continued, especially with the same arbitrator.

Q You had a clear understanding that Mr. Bundy's position was the arbitration was over and he wasn't going to work on it anymore; is that right?

A Very clear.

Q And Mr. Brown wrote the letter to the arbitrator just prior to that, after the phone conversation and said Mr. Bundy is still going to be involved. Mr. Bundy took umbrage to that. And at that point in time after that, Ms. Hodge, did you have any more communications with law firm in that case?

A I did not have any direct communications. And in this letter, at the very end of his letter, I think it's meaningful to point out. He said he will not participate in the upcoming status call with Mr. Elmore. He said, I'm not participating in that. I'm not doing this part of it for you. To me, if he's proceeding with attorney fees or the DJ action, it looks like he would have been a part of that call if he is remaining involved.

Q Who walked away from the table?

A I'm sorry?

Q Who walked away from the table?

A Mr. Bundy.

Q Now, just prior to the 17th, going back in time a

little bit, were there occasions when you attempted to reach out to the Bundy Law Firm after the award and got no response?

A There were occasions. So, typically, I communicated with Brent McDonald, as mentioned. He was very responsive. There was several times as the client, and you well know this, that we want to discuss the legal issues because we are not experts at it. In fact, we like a lot of discussion on it. And Mr. Bundy did not like to discuss things a lot. So that's why I dealt with Brent mostly.

There was a point in time where Brent just stopped responding to me. And I recall a conversation with Bundy and he said, You're not dealing with Brent anymore. He's doing something that makes us money. You just deal directly with me now. I said, Okay.

Q Did you get the impression, Ms. Hodge, just your own impression, own sense that this remaining DOT was just too trifling or too small for this law firm to handle?

A I got the impression that he wanted to be done with it. He had other things, bigger things to do, other cases to go forward on. I understand he had a big case with the Bennett Hotel in Charleston and he was ready to be done with this case. That's the impression I got.

Q Now, did, in fact, Mr. Henry Brown continue to represent the company for a while longer in the arbitration?

A He did. So when Bill Bundy made his stance clear, then Henry Brown was willing and able to take over that part of the case. And wrote a letter to Elmore to see if he was right and that he would hear it and that it was part of his purview. He did that. He got the ruling from Elmore that he would hear it. Then, of course, the supplemental order in March. And then we submitted our claims for the SCDOT and deficient construction in May of 2021.

And I think it was June that Henry Brown was called down to Florida, maybe May, a couple months before that to get a heart transplant. We were still conversing with him while he was in Florida and, also, with his law partner, John Davison. And then in June, he got his transplant. After that, he's out of commission for a long time. So after that, we were talking to you intermittently and we hired you in July of 2021.

Q So with respect to Mr. Brown, is this a fair summary, he went from being ill, brought in law firm to handle the case. He got back on the scene in line for a heart transplant; is that right?

A That's right.

Q And he was handling the case, the arbitration case after the February incident. And then he was up for a heart transplant and that's when you engaged my services; is that right?

A That's correct.

Q With respect to the declaratory judgment action, what was going on with that?

A I believe it was filed sometime early 2020. It was presented to us as a strategy by Bundy McDonald. I'll be honest, at that point, I had never heard of a declaratory judgment action, wasn't sure why we would file an action that included all the stuff about the subs and the contractor, but trusted their advice, obviously, and it was filed.

Of course, I understand there was a stay requested on it. And at the time that Mr. Bundy decided he would go no further with the DOT or any deficient construction. It was still very much out there in the open because he said he would finish what he started on that.

Q Now, to your knowledge, prior to my engagement and substituting me as counsel in a declaratory judgment action, was any firm other than Bundy McDonald counsel of record in the declaratory judgment action?

A No.

Q Mr. Brown never assumed responsibility for the DJ action, did he?

A He did not.

Q Now, with respect to the arbitration, how much was in dispute in the DOT and the defective work claims? How much

money was involved?
A I believe it was around 450, $470,000.
Q And how did that arbitration, ultimately, get worked out?
A With the final arbitration award, he awarded the full amount of what we had spent out of pocket to correct those issues.
Q Now, it was a negotiated resolution that the arbitrator chopped off on, right?
A Right.
Q Now, did you think there was anything wrong with you settling your case? Do you think there's anything wrong there?
A No, I do not.
Q Ms. Hodge, that arbitration involved same parties, same counsel, except for Bundy, right?
A That's correct.
Q Same arbitrator, same opposing counsel, same issue?
A Yes.
Q Was it ever determined that that is separate, that's a separate arbitration from the earlier arbitration?
A It was only talked about by Mr. Bundy that it was separate and could not be heard in front of Mr. Elmore.
Q Mr. Bundy's position -- Bundy McDonald's position is that you didn't have a lawyer in that case. You were going

to have to start over from scratch with a brand new arbitrator and a brand new lawyer, right?

A Yes, because he said he absolutely would not do it.

Q And that's not the way it played out, is it?

A It played out with him not doing it.

Q Right.

A We had to hire someone else.

Q You had to hire someone else, but you didn't have to start over again, did you?

A We did not.

Q Turns out that that discussion between Mr. Brown and Mr. Bundy, the arbitrator ruled that Mr. Brown was correct; isn't that right?

A Yes, he did.

Q The arbitrator, the same arbitrator retained jurisdiction over the same issues to the conclusion; is that right?

A That's correct.

Q Now, did you ever -- did anyone at WECO ever prevent Bundy McDonald from reentering any litigation in the case or helping with the case?

A No. In fact, had Mr. Bundy or anyone at Bundy McDonald had said they would take on that issue with DOT and finish it as we expected them from the beginning, we would not have prevented that. However, he made a very clear stance that

he would not do it, so we had no other choice. Again, it's a substantial amount of money for a company and it needed to be rectified.

Q Let's talk about -- moving to the final award. Go to Exhibit 21, please, ma'am.

A I'm there.

Q The amount of the award granted, did we go settle the case ultimately with Carter & Carter than a different amount than was made in the initial award?

A We did.

Q How much was that ultimate settlement and ultimate award? Go over to Page 2 of the -- paragraph two, Page 2?

A At the bottom, it says, Therefore, it is appropriate to increase the interim awards for the initial phase for that amount. And interim award to Carter & Carter for phase one of the arbitration is hereby amended to 2,950,000 inclusive attorney fees, costs and all other claims.

Q Do you recall why did WECO decide to settle the case?

A At that point, I think we wanted to be finished with everything and everything complete so we could move on.

Q Do you recall the state of Mr. Elmore's health at that time?

A It was not good. So this award was in November, I believe, November 12th, 2021. He had different issues from the arbitration award where he had health issues that caused

delays in his award and everything else. In fact, a month after this, he passed. So there was an emergency to get an award -- decision from him, because he if passed away, which ended up happening, then we would have to start over was my understanding.

Q Do you recall receiving legal advice to that extent, that that was a good reason to settle the case?

A I do.

Q You did get recovery on your defect claims; is that right?

A That's right.

Q Over on Page 4, paragraph four?

A Page 4, number five, the undersigned finds that WECO is entitled to offsets against the phase one claims in the full amount of $470,000. Based upon WECO's incurred costs to complete the project and/or address defective work performed by some of Carter & Carter's subcontractors and that the $470,000 includes sums Carter & Carter is paying to extinguish claims against itself and its relevant subcontractors. Furthermore, WECO is, also, awarded the additional sum of $54,877 for its costs, interest and attorney fees for the phase two arbitration.

Q All right. And that's how that was resolved?

A Correct.

Q And after that was resolved, do you recall that there

was some work involved in resolving the declaratory judgment action?

A Yes, I understand there was quite a bit of work on your end to resolve the declaratory judgment action.

Q I'll get to that in a second. Let me ask you this, with respect to this invoice that you had received from law firm, let's go all the way back to Exhibit No -- well, wait a minute. Exhibit No. 11. The law firm sent an invoice the same day of the Exhibit 35, which is an e-mail we covered extensively a minute ago. What do you recall about the reason -- what your understanding is why this invoice was sent then?

A I did have a phone call with Mr. Bundy prior to this invoice being sent. And he commented that it would be better if we go ahead and pay his invoice in full because it would make it easier to get attorney's fees in the end.

Q And you didn't pay the invoice?

A We did not.

Q And why not?

A Well, a couple days prior to this and on the same day that we received this, we get the letter that he's not going to continue as our counsel for the issues that are open and remaining. And it wasn't finished, obviously, arbitration was not finished and the judgment had not been entered.

Q I want to ask you, did WECO ever take the position that

it owed plaintiff law firm no compensation whatsoever beyond the $100,000? Did you ever take that position?

A Never.

Q What was your position with respect to payment of fees to Bundy McDonald?

A Well, we acknowledged that something was owed. They, certainly, performed the arbitration and we worked with them to get through the arbitration. However, it wasn't finished. And never did we expect we would have to pay another attorney to finish that which we think should have been a part of the original scope because it was part of our claim. So that's what I thought about that.

Q Now, go to Exhibit 23. You're familiar with this letter, aren't you?

A I am.

Q This is January 14, 2022, about a week or two after Mr. Elmore's death. And did you discuss this letter with me?

A I did.

Q And it was our position, it was WECO's position at that time that as soon as we get the DJ matter worked out, we'd try to get the fee matter worked out; is that right?

A That's correct. That we would be fair and reasonable as to what was owed based on the time spent on our project with Bundy McDonald.

Q And you understood I was advising Bundy McDonald of

that and hadn't forgotten about their fees, we've got to get the case over first?

A Exactly.

Q Now, at some point, Teresa, WECO decided -- Bundy McDonald had filed a lawsuit.

A Yes.

Q And --

A I believe they filed it in November of 2021.

Q And then there was some discovery in that lawsuit. We'll get to that in a minute. But at some point, WECO decided to send Bundy unsolicited additional fees; isn't that right?

A That's correct.

Q Go to Exhibit No. 30, please. Is that your letter?

A That is my letter.

Q And what was the purpose of this?

A To send the $150,000 check to Bundy McDonald as we felt that was a reasonable amount that he would be owed based on the hours spent. And that was derived from conversations between you and Mr. Bundy about his hours. Not that we had record of it, but he wrote a letter and told you that he thinks he spent a hundred extra hours on it, but he didn't keep records. So we took that at face value and said okay, even though we don't have any record or backup that that's what was spent, we'll agree that that's reasonable and send

this amount to cover his hourly fees.
Q And behind that is Exhibit 31, the check; is that right?
A That's right.
Q So let's look at the backup to the extent WECO had it. Go to Exhibit No. 26, please.
A I'm there.
Q You've seen this letter before, right?
A I have.
Q I want to go over a few things in this letter with you. First of all, Mr. Bundy is telling me that all the information in this letter comes from the business records of Bundy McDonald and it's admissible in evidence, right?
A Yes.
Q Now, I want to direct your attention to the bottom of paragraph two. You see that?
A I do.
Q What does that say?
A Number two at the bottom says $117,960 of billable time was spent over four months filing the amended fee agreement. Essentially, the preparation for and attendance at the arbitration hearing, none of which was charged to WECO pursuant to the amended fee agreement.
Q Now, I want you to look over with me -- you see those numbers at the bottom? They're Bates numbered at the

bottom. I want you to go to document 137, about four pages back.

A Okay.

Q And there's a table there. And I apologize for the faintness of the print. You see that middle table there?

A I do.

Q That rolls up to that 117,960; does it not?

A It does.

Q And that, also, has an hourly recap?

A Yes, sir.

Q Of the times that Mr. Bundy and Mr. McDonald spent in July, August, September and October, right?

A That's correct.

Q And it has an hourly rate, if you multiply the hourly rate, 400 for Mr. Bundy and 300 for Mr. McDonald and that rolls up to $117,960?

A That's correct.

Q You paid more than that?

A We did.

Q We'll talk about that now. He says in this letter, paragraph three, you see that, back to the letter?

A On Page 1?

Q Yes.

A Yes.

Q Subsequent to October 2020, Bundy McDonald no longer

kept time records?
A What page are you on?
Q Page 2, paragraph three of the letter.
A Okay.
Q 134, Page 134.
A Subsequent to October of 2020, Bundy McDonald no longer kept time records because of the existence of the amended fee agreement.
Q Right.
A The fee was changed to a contingency. I would just point out that we had already received -- he had already kept some time records, but then didn't keep others.
Q He did keep some time records subsequent to the conversion of the amended fee agreement, but from October on, apparently, he says he did not; is that right?
A That's right.
Q But he says there that they've got, at least, another hundred hours. Do you see that?
A Yes. It says, Between the first part of November and the time when Bundy McDonald was, essentially, told to stand down by Henry Brown from representing WECO any further, at least, 100 hours were spent in additional time advising the client and defending our legal advice to Henry Brown.
Q Okay. So did you make an adjustment off of that $117,000? 117,000 is in addition to what you already paid

for the hundred thousand dollars, right? You paid the 117, did you make an adjustment for this additional 100 hours?

A We did.

Q And is that why the check rolls up to $150,000?

A That is why.

Q And the actual payments to Bundy McDonald were approximately $260,000; isn't that right?

A That's correct.

Q Paragraph five, just in passing, the first sentence, that's just incorrect, right? That WECO has not billed nor have they been paid a single dime for all the legal work in regard to the declaratory judgement, that's just not true, is it?

A It's not true. As you pointed out previously, directly on their bills, they list work related to the DJ action.

Q You came up with the $150,000, sent it to Bundy McDonald. The check was cashed, right?

A It was.

Q And Bundy McDonald is still able to pursue their lawsuit, you just ask for it to be credited?

A Correct.

Q Ms. Hodge, did you engage Mr. Brown on an hourly rate basis? Did he get paid by the hour to work on your file?

A He did.

Q Did you engage me on an hourly basis?

A We did.
Q Do you happen to recall what the hourly rate was for Mr. Brown and what the hourly rate is for Mr. Wall?
A I believe it's 350 an hour.
Q Now, let's go to Exhibit No. 32.
A Okay.
Q First of all, can you tell the Court what is Exhibit No. 32?
A The first part of it are the Bruner Powell invoices and the second part of it are the Nexsen Pruet, which is where Henry Brown works.
Q Now, would these documents have come to your attention? Would you have reviewed these exhibits, these invoices?
A Yes, I reviewed them.
Q And these invoices, notes on the side, there's circles and notes and comments, are those from the copies out of the business records of WECO River District?
A They are.
Q And are those kept in the ordinary course of business?
A They are.
Q And these represent the invoices and fees charged by Bruner Powell and Nexsen Pruet when Mr. Brown was at Nexsen Pruet to conclude the matters in the arbitration and declaratory judgment and the pending motions and the arbitration; is that right?

A That's right. Some of the handwriting is where I specifically went through Nexsen Pruet's bills because Mr. Brown was working on other things, like leases we had going on with certain tenants and I just wanted to make sure those weren't included in our accounting for what we spent to finish this arbitration.

MR. WALL: Judge, this is one of the documents that was marked for identification previously. I move to admit Defendant's Exhibit No. 32.

MR. MCDONALD: Your Honor, I would just object to the Nexsen Pruet bills. They looked like they're marked up by somebody with the initials JKS. As long as this witness is going to testify that's not who marked these Nexsen Pruet bills up, I don't see any MTH initials. That's the problem I have with it. It doesn't comply with the rule if --

THE COURT: One thing at a time. The Bruner Powell records, you're fine with?

MR. MCDONALD: I don't believe the Bruner Powell records are -- I don't believe they've been marked up.

THE COURT: Exhibit 32 is a pretty big exhibit.

MR. MCDONALD: It is indeed.

THE COURT: I thought I heard you say you were okay with Bruner Powell records, but you've got an issue with Nexsen Pruet.

MR. MCDONALD: I don't believe the Bruner Powell

records have been marked up. The Nexsen Pruet records have been marked up by initialing some party. And we have no way of cross-examining what that means.

MR. WALL: Judge, I'm not offering them for the markup. I'm offering them for the dollar amounts.

THE COURT: You're offering them --

MR. WALL: For the purpose of the dollar amounts.

MR. MCDONALD: And there's no foundation for the break up of the Bruner Powell charges or the Nexsen Pruet charges. There's just cross-offs, circles, underlines. So there's no way to break up what Your Honor is dealing with what our position on DOT defects and whether that was a second arbitration, whether it was a DJ action, what it is or who marked it up.

MR. WALL: The markup and lineations are not offered for anything. It's the dollar amounts. The witness is going to offer testimony. I'm offering the exhibit right now. I'm going to get some more testimony out of this witness, but the witness is offering this testimony to authenticate these business records. She's testified they were copied right out of their archives.

THE COURT: This is essentially --

MR. WALL: It's a business record.

THE COURT: You're offering it to show what -- what WECO paid your firm in comparison to what they paid other

lawyers.

MR. MCDONALD: But it's not a business record if it's been marked up and there's other charges associated with this particular bill. That wouldn't be kept in the normal course of business.

THE COURT: Objection is overruled. It's admitted. You can point out later anything you want to.

Move on.

(WHEREUPON, Defendant's Exhibit No. 32 was admitted into evidence.)

BY MR. WALL:

Q Do you know who those initials belong to?

A I do. JKS is Janet Safran. She reviews all the legal bills as well. But in conjunction with that, I review them along side her and tell her if I have any issues with it. Sometimes I sign them, sometimes she signs them.

The other initials on there are Lisa Mendanol (ph), our accountant. And the markups, I will testify, are from me when I went through and determined, okay -- for example, Bates number 178 in this group --

THE COURT: Wait, wait, wait. Okay. Go ahead.

THE WITNESS: So you can see the third entry is to prepare a lease agreement for the Pilates studio. That has nothing to do with this arbitration or this case, so I marked through it. Down at the bottom, review requests and

client's comments on the Pilates studio, nothing to do with it.

However, if you read the other entries -- and I think it's pretty clear, outline proposed arbitration order, review and draft proposed order, receipt and review Carter's motion to vacate, all of these things are directly related to the cases with the arbitration.

So I went through -- since Nexsen Pruet didn't separate them out because it still had to do with WECO River District because it was a Pilates lease of that company, they didn't separate it out for that reason. So I wanted to make sure that we weren't saying we spent money or paid Henry Brown to do things regarding the arbitration that wasn't spent for the arbitration. And that is all it is.

BY MR. WALL:

Q Turn over to what's been marked for identification as Exhibit 38, please. Have you had occasion to prepare a summary of the amounts expended to Nexsen Pruet and Bruner, Powell, Wall and Mullins for the costs associated with completing the arbitration and declaratory judgment action, attorney's fees petition and all of the matters involved in the WECO vs. Carter & Carter case?

A Yes.

Q What are those amounts?

A It's $46,907 for Nexsen Pruet and $49,166 for Bruner

Powell totaling $95,073.

MR. WALL: Judge, this is demonstrative summary. I mean, I'd move to admit it, but the witness has testified to it. I move to admit 38.

THE COURT: Subject to your objection, Mr. McDonald.

MR. MCDONALD: It is subject to objection.

THE COURT: So admitted.

(WHEREUPON, Defendant's Exhibit No. 38 was admitted into evidence.)

BY MR. WALL:

Q Exhibit 33 is the payments, invoices from Bundy McDonald; is that right?

A That's correct.

Q Now, Ms. Hodge, have you had occasion to -- go over to 39 -- beg your pardon. 37.

A I'm there.

Q Have you had occasion to tabulate the amount of the Bundy McDonald invoices?

A Yes. Our accounting personnel did that.

Q Roughly, $110,372, right?

A That's correct.

Q And you backed out expenses; is that right?

A Yes.

Q From those invoices, as shown on those invoices. And the actual fees paid prior to the additional $150,000

payment, subject to that, a cap was, actually, 105,558; is that right?

A That's correct.

Q So there was a slight overpayment on the hourly invoices; is that right?

A Agreed.

Q We're not asking for that back, right?

A We are not.

Q We're just asking for credit for that; is that right?

A Correct.

Q Ms. Hodge, do you believe that Bundy McDonald fulfilled their contractural obligation to WECO River District under the modified contingency fee agreement?

A I do not. I believe they started a job and did not finish it and we had to hire other counsel to finish it.

MR. WALL: Please answer any questions Mr. McDonald may have for you.

THE COURT: We've been going about an hour and 15 minutes. Let's take a break and refresh ourselves.

(WHEREUPON, a short break was taken.)

THE COURT: Please be seated. Thank you, sir.

CROSS-EXAMINATION

BY MR. MCDONALD:

Q How you are doing?

A Good. How are you?

Q We know each other?
A We do.
Q We spent a lot of time together on this case, correct?
A We did.
Q I just have a few questions for you. You were asked a bunch of questions about the second arbitration. Where did that take place?
A It was (indiscernible).
Q Who was there?
A Hank Wall was present. Frank Elmore, obviously, Bill Shepard. I believe (indiscernible) was present. I'd have to see the roll call, but it was in November of 2021.
Q It was in November of 2021?
A I believe so.
Q And you were asked questions about the document No. 38 that was the overview of the Nexsen Pruet bills and Mr. Wall's bills, correct?
A Yes.
Q And do those bills include the attendants at the virtual second arbitration?
A They do.
Q And do they include the inevitable lead up to the second arbitration?
A They do.
Q Preparation and all that stuff, right?

A Yes.
Q And, in fact, if you would go to the bills, Exhibit 32, we can go to the Nexsen Pruet bills. Are you there?
A I'm at the beginning of the Nexsen Pruet bills.
Q And if you go to the WECO trial exhibits 183, you see that on the bottom?
A I'm there.
Q And the first entry, I'm just picking one out, April 21st, 2021, it says calls and claim preparation. Is that a claim preparation for the second arbitration?
A Yes, that is the claim preparation for Elmore to hear the DOT issues and defective construction.
Q That would have been after Elmore's original order, correct?
A It was.
Q And it was your testimony earlier that you all had submitted that claim in the first arbitration?
A It was a part of our claim is what I said. The amount was an estimate is what I said previously. At this time, we had bills for the work, I believe. So the claim evolved into more detailed work because it had been done.
Q And that's what you had to do in order to submit it for the second arbitration, correct?
A Yes.
Q Now, when -- and we'll come back to this in a second.

You said you stated earlier in your testimony that Mr. Bundy and Mr. Brown had a disagreement. You were speaking with Mr. Brown on one side and you're speaking with Mr. Bundy on the other side. And they were telling you two different things, right?

A That's accurate.

Q And no problem with two lawyers having a disagreement, right?

A No problem.

Q Do you recall Mr. Bundy explaining to you the issues with having res judicata or the Brantley case or is that above your pay grade?

A I recall him talking about it. I'm not going to say it's not above my pay grade, but I do recall him talking about res judicata. That was, actually, what he argued to -- that's what Bill Shepard was saying happened and he was arguing it back to Elmore to get the clarification of our award.

Q And that was the dispute between Brown and Bundy. Brown thought he could go back to Elmore and get the orders modified, the order of January modified and Bundy thought that was a mistake, right?

A I wouldn't say that was the subject of the dispute. The dispute was -- because in my opinion, Shepard wrote the letter saying everything has been determined by Elmore. Mr.

Mundy got the clarification that, in fact, had not. The DOT was heard, but it was reserved and held out because it wasn't determined in his award. And then the defective construction issues weren't heard. The disagreement between Mr. Bundy and Brown was whether or not Elmore, Frank Elmore would hear the SCDOT case and determine how it affected our arbitration.

Q Okay. So let me parse that out. And you got the letters from Mr. Bundy, correct?

A I do.

Q Do you recall his concerns regarding going back to Elmore and taking the position that this was part of the original arbitration?

A I recall that he was very emphatic about not being able to change an award.

Q Okay. And Mr. Brown said that he could, he could go back to Frank Elmore and get this done.

A He said that's how he read Elmore's award is that that was anticipated.

Q And that's in the transcript that's admitted in evidence, correct?

A From the phone call, yes.

Q From the recorded phone call, okay. Now, turn to Exhibit 21?

A I'm there.

Q This is the consent final arbitration award, correct?
A It is.
Q And did you have a hand in approving and drafting this final arbitration award?
A No.
Q You weren't submitted a draft before it was sent to Mr. Elmore?
A I believe Elmore authored this, so I wouldn't review his draft.
Q Okay. And on this consent final arbitration award, if you go to some of the backup to it, at this point, you all had escrowed a certain amount of money, correct?
A That's right.
Q And was Bundy McDonald involved in that decision at all?
A No.
Q And at that point, the DJ action where they failed to file the lis pendens was still pending, correct?
A That's right.
Q And if you read this, it says I find, on Page 2, paragraph two, that the amount set aside and reserved by the parties as a reserve for fees and costs $9,284.20. Did I read that correctly?
A Yes, you did.
Q And if you add that to the award that our fee was based

on, the 2.6, you come to the exact number that had been escrowed, correct?

A Well, the amount of the original award was 2.6, plus the 300 is 2.9. What's your question?

Q Doesn't it add up exactly to the amount that y'all had escrowed?

A I don't know. Is there a document that shows how much we escrowed? I thought at this time, the only amount in escrow was a million 50.

Q So you got a million 50 and then you've got the previous payment of the million nine?

A Page 3 has pursuant to the consent order that was signed of a million 50, which would be the escrowed and remain on deposit to be allocated and distributed.

Q But do you see the 1.9 before that, already received payment?

A I do.

Q And then that's the two million 950, correct?

A Yes.

Q And all I'm saying is if you add up the original award and the award that had been made for fees and costs, it amounts to that two million 950, correct?

A That sounds like the correct math.

Q Thank you. That's all I was trying to get at. Now, you, also, got pursuant to this final award -- who came up

with the numbers that are in here?
A So the negotiated settlement with Hank Wall and the alternate counsel.
Q In fact, it talks about that, right, at the last page?
A The very last page, number seven?
Q Yes.
A The parties have implemented a supplemental settlement memorandum containing additional terms which are incorporated by reference and the arbitrator reserves the authority to resolve any disputes or disagreements which may arise from the terms and conditions of this supplemental memorandum.
Q So there's another supplemental settlement memorandum out there somewhere?
A Potentially.
Q Well, that's what it says, right?
A It does.
Q And the numbers that are in this consent final arbitration award are numbers not that Frank Elmore came up with, but numbers that you came up with negotiating with Carter, correct?
A I would say numbers that our counsel came up with in the negotiations.
Q But Elmore didn't come up with them, correct?
A I don't know Elmore's part in that.

Q So what you got after this is -- for the DOT closeout, you, indeed, got another $263,947, correct?
A Yes.
Q And you and I can both agree that you didn't have very much backup documentation at the time of March 16th, 2020 to back up those numbers, correct?
A Yes.
Q And that was the time on Plaintiff's Exhibit 10 that the final statement of claim by respondent was due, correct?
A May I look at it, please? Tell me the question again.
Q At the time that the final claim that was due in our arbitration, Bundy McDonald's arbitration, you didn't have any of these backup numbers? In fact, you didn't even know what the DOT was, ultimately, going to require, correct?
A We did have a punch list from the DOT that we, actually, walked with Carter & Carter and a whole list of pictures and items that were out there, so we put an estimate on it, but we didn't have an actual estimate from a contractor.
Q That's all I'm asking. And you came up and you received an additional $263,947, correct?
A Yes.
Q And that was what was called the phase two of the arbitration, correct?
A You can call it that.

Q So you got more money in the phase two arbitration?
A We got money that we spent in that arbitration.
Q What I'm saying, you didn't get that $263,000 in the first arbitration, correct?
A Right, because you asked us to take it out.
Q And then you, also, got some landscaping for the closeout and you had building leaks out there as well, correct?
A Well, the landscaping, if you read it, is associated with the DOT work because it had to get destroyed in order to fix it.
Q Understood. That's something you, also, didn't get in the first arbitration?
A The money that we spent out of pocket fixing these things that Carter & Carter did wrong.
Q That's all I'm asking. And then you, also, had defects out there?
A Correct.
Q And we can agree that that wasn't in the first arbitration, correct?
A Correct.
Q So those all came up after the March 20th, 2020, date, whenever our thing was due on Plaintiff's Exhibit 10?
A Correct.
Q So WECO in, quote, unquote, its own characterization,

phase two of the arbitration picked up another $470,123?
A We were reimbursed for it. We spent it out of pocket.
Q Sure. But you didn't get it in the first arbitration. And you, also, received an additional sum of $54,877 for costs, interest and attorney's fees for the phase two arbitration, correct?
A That is what it reads.
Q Well, that's what it says, right? Did you not get that?
A Yes.
Q You did get it?
A I'm just saying what you're reading --
Q So you got the cost, interest and attorney's fees for the phase two arbitration?
A Yes.
Q All right. And so under direct examination, you were asking for a setoff of attorney's fees that you spent in the phase two arbitration and the closeout of the declaration judgment action, right?
A I'm asking for a setoff?
Q Is that what you're asking for?
A I would ask that you clarify the question.
Q Sure. You spent in great detail going through Exhibit 38 and you informed the Court that you had been through all the legal bills and made a determination which portion of

those legal bills made up Exhibit 38, which is demonstrative. All I'm asking is in making that determination, isn't it true that you went through those legal bills and made your own determination which ones applies to the phase two arbitration and which ones applies to the closeout of the DJ case?

A That's incorrect.

Q Okay.

A I was just explaining that I went through and made sure that anything that had to do with something outside of the arbitration period was not included. Again, I referenced the Pilates lease bill. It didn't have anything to do with the first versus second. If it had nothing to do with the arbitration at all, I didn't include it in the amount.

Q So under Exhibit 38 and Exhibit 32, the actual bills themselves, anything that related to the Brooklyn project as it related to Carter, as it related to subcontractors, DOT, anything, you included those numbers?

A As long as -- I don't think we included anything prior to April because Bundy McDonald definitely quit before then, but we had, as you know, talked to Henry Brown about this case in January and I mentioned in December. And at that time, we were just consulting a second opinion so he wasn't the attorney of record. I didn't include of that.

Q No, I'm just asking as you went through it, you took

out the Pilates studio, you took out things unrelated to Carter & Carter or subcontractors or the DJ action or the phase two and then left everything in that related to that, correct?

A Yes.

Q Thank you very much.

A You're welcome.

Q All right. Now, the cost associated with the DJ action, who made the decision not to pursue the DJ action until they could get a ruling from the Court that the mechanics lien was no good?

A I don't know.

Q You weren't involved in that decision?

A I assume it was our counsel, I don't know.

Q Is your counsel allowed just to make decisions without y'all's involvement, is that what happened?

A I'm sure we talked about it, but I don't recall, Brent, Mr. McDonald.

Q If you'll go back to the -- do you recall there being an issue with allowing Carter to investigate the defects out at the job site and then they would get back on site and reup their lien rights?

A I know Carter returned to the site at some point to look at the defect issues. I don't remember the timing of that.

Q So you don't recall any discussions about not letting them on site so they could reup their lien rights since they had failed to file lispendens?

A I don't recall.

Q And so the numbers -- the 95,073.50 on Defendant's Exhibit 38 represents every bit of money that you all spent from April until November for any legal advice related to that project at all except for leases, restaurants, things like that?

A I do know that it's April for Nexsen Pruet, but Bruner Powell bills go past November, I believe. Because the DJ action didn't get resolved until February of '22.

Q That's all I'm asking, it was for every bit of legal advice that you got out there, correct, except for leases, restaurants, things like that?

A Every bit that's directly related to these issues, yes.

Q When you say these issues, what do you mean?

A What we had to continue the arbitration for, attorney's fees and the defective construction.

Q I thought I asked that question to start this whole line of questioning off. So this $95,073.50 only -- you take the position only relates to phase two arbitration and the closeout of the DJ action?

A Yes.

Q And you all received 57 some odd thousand dollars for

your attorneys for the phase two arbitration, correct?

A I belive it was 53, but we can turn to that exhibit if you want.

Q Exhibit 21.

A 54,877 is the number.

Q The virtual arbitration, were there any witnesses?

A Aside from all the people involved? Aside from all the attorneys I just mentioned that were involved? I was a witness.

Q Anybody besides yourself?

A Potentially, someone else in my company. I don't recall exactly who was listening to that arbitration.

Q No, I'm sorry. A witness sworn in and testified about facts, not a witness just watching it?

A I don't recall.

Q One way or the other?

A One way or the other, yeah.

MR. MCDONALD: That's all I have. Thank you very much.

THE COURT: Redirect?

MR. WALL: Just briefly.

REDIRECT EXAMINATION

BY MR. WALL:

Q Teresa, I want to talk to you a little bit about Exhibit 34 and the bonds.

MR. MCDONALD: Your Honor, I know this is a bench

trial, but I don't recall bringing up anything about bonds.

THE COURT: I haven't heard the question yet. Your objection is outside the scope of redirect, but I honestly don't know --

Where do you want to go here, Mr. Wall?

BY MR. WALL:

Q Well, Ms. Hodge, can you tell us what Exhibit 34 is?

A Exhibit 34 are the cash bond receipts that we set for all of the bonds that were outstanding before we went to arbitration.

Q Can you tell the Court how the bond matters relate to the conclusion of the declaratory judgment action?

A Because we had to put up all the cash bond, and we did that in order to get refinancing at the time, it totaled about 7.1 million dollars that we put in the courthouse in order to get refinancing for the job. And some of that -- a portion of that got released in May of 2022 because it absolutely should not have been held that long and it was. And, obviously, our liability at that point was the 2.6 that was in the award at the beginning, plus the attorney's fees potential at the end. And we had requested that a lot of that get released.

So some of it got released by consent order between (indiscernible) and I believe Henry Brown at the time. The remaining was left in the courthouse, so it was important to

get the rest of the money out of the courthouse.

Q And is that Exhibit No. 27?

A Exhibit 27 is the order confirming final arbitration award and directing clerk of court to make partial distribution of cash bond.

Q Is that the order from Judge McLeod?

A That's the order from Judge McLeod. I was looking for a date.

Q Electronically signed February 7th --

A February 2022. That's when the declaratory judgment action was finalized.

Q Is that the ending point of the Carter & Carter litigation?

A Yes.

MR. WALL: I don't have any further questions.

THE COURT: Any recross?

MR. MCDONALD: No, Your Honor.

THE COURT: The witness may step down.

So that's our last witness for today. We have one witness on Monday we've set for 12:30. I'm going to ask -- if I can get an idea that these general sessions matters will be done by 11:00 or something, I'll let you know. The sooner we start, the better because I do have an appointment I'd like to not break. It's Monday afternoon. It's weird, I want to get into questions, but I have another witness.

So I'm trying to write notes that we can talk about on Monday.

Go ahead and plan to be doing a proposed order for me to review. I don't know what your schedules are. If it's a date and time y'all can agree on, if that's 15 days or 30 days, you just tell me. As long as they're submitted at, basically, the same time. And those orders will need to have your substantive legal arguments. I realize we've only been here for two witnesses, but it's still a lot of material. So I want that on the horizon.

Anything else for the record today?

MR. WALL: No, Your Honor. You want proposed orders in the sense of findings of fact and conclusions of law in lieu of any closing arguments or anything like that?

THE COURT: Well, we may have some discussion. Again, I'm at this point where I don't want to start asking questions when the witnesses aren't done yet.

MR. WALL: Sure.

THE COURT: I think I have a question or two we might could discuss on the record.

We'll just be in recess until Monday. I will confirm the time for you tomorrow.

CERTIFICATE OF TRANSCRIBER

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; **that said proceedings were transcribed to the best of my ability from the audio recording and supporting information**; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

December 26, 2024

Penny M. Johnson
Penny M. Johnson
Transcriber

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	2022-CP-32-01932
	)	
	)	
	)	
	)	
	)	
BUNDY MCDONALD, LLC,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
WECO RIVER DISTRICT, LLC,	)	
DEFENDANT.	)	
	)	

October 17, 2024
Lexington, South Carolina

B E F O R E:

THE HONORABLE WALTON J. MCLEOD, IV, JUDGE.

A P P E A R A N C E S:

WALTER BUNDY, ESQ.
Attorney for the Plaintiff

HANK WALL, ESQ.
Attorney for the Defendant

PENNY M. JOHNSON
Court Reporter III

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

PROCEEDINGS

THE COURT: All right. We are back on the record in the case of Bundy McDonald, LLC vs. WECO River District. We met two weeks ago approximately and did a day of bench trial work. We initially intended to do some follow-on testimony in the virtual courtroom with some closing in the virtual courtroom. As I recall, it was decided that one of the witnesses, Mr. Ward, was not going to testify. A request was made to have summation arguments in person, which I'm glad to do. That kind of brings us to where we are today.

I think since we've had a little bit of a break, I don't want to be here all day, obviously, but I'd like to give both parties a chance to kind of refresh what they put forward in their respective direct and cross-examinations. And then after having a brief summary, tell me your closing remarks on why the decision should be what it should be.

Mr. Bundy, you had your partner here last time. You're going to argue today; is that correct?

MR. BUNDY: Yes, Your Honor.

THE COURT: Mr. Bundy, happy to hear from you, sir.

MR. BUNDY: May it please the Court?

THE COURT: Yes, sir.

MR. BUNDY: Your Honor, this is a breach of contract case. I'd like to begin with the pleadings. I used to call these the airplane tickets that got us where we are.

Where we are, the Summons and Complaint was filed in November of 2021 and it contains one cause of action, breach of contract. It's fairly straightforward. It says on December 4, 2018, the parties entered a written contract attached as Exhibit A. On November 15, 2019, an amended contract as Exhibit B. I find an invoice was sent for 347,258 on February 17, failed or refused to pay 347,258.45. It's a liquidated amount. We asked for preimposed judgment interest. Pretty straightforward. One cause of action.

The amended answer, which joins these pleadings, in effect, or actually does admit the existence of these two contracts. And it admits the invoice is not being paid for good cause and good reason, because the denial of material breach claim has not been earned, all condition precedents have not been met, Plaintiff did not complete the work, Plaintiff previously breached and repudiated the contract.

Second defense, failure to state a claim. Third defense, venue. Venue was changed. Fourth defense, anticipatory repudiation, failure condition precedent, prior material breach, discharged by law and, finally, by way of setoff. Those are all the defenses.

And setoffs is legal work -- Defendant incurred substantial costs and expenses in completing the incomplete legal work of the Plaintiff after its decision to terminate Defendant as a client. So the allegation is that the

Plaintiff decided to terminate the Defendant as a client.

Your Honor, I don't know when we're going to have post-trial motions. Obviously, now is not the right time, but at some point, I need to move to dismiss all of these defenses for which there was no evidence presented. But I guess we can get to that afterwards.

I want to get the record clean. I need to make post-trial motions and all of that. Right now is just closing arguments. I wanted to bring that to your attention.

The other thing I'd like -- while I'm thinking about it. I'd like Your Honor to consider having the transcript transcribed so that when we -- either you draw your order or we do proposed findings of law -- findings of fact, conclusions of law, we will have an actual transcript to refer to by page and line number. I've found that to be very helpful, particularly on appeal.

THE COURT: Y'all can certainly request a transcript. Will y'all request a transcript?

MR. BUNDY: I haven't requested it yet, but I will if you -- I didn't want to request it until I made sure that you were agreeable to that. In other words, I'm glad to request it. We'll pay it. And then we'll prepare the orders after we get the transcript. That would be my request.

THE COURT: I would suggest at the end of this, we speak to the court reporter when she's not writing down everything we're saying, you can find out what the timeline is for getting such a transcript.

MR. BUNDY: As you know, it was a pretty short trial.

THE COURT: Sure. Sure. But they have a lot of transcripts.

MR. BUNDY: I understand. I understand.

So we had some discovery and we had a trial. And there were only two witnesses. The first witness was Tom Pope, our expert witness, who was not objected to as to his qualifications, as to the necessity of expert testimony. No objection to any of that at all. I assume the Defendant objects to the content or the substance of Mr. Pope's opinion, although they did not provide any expert testimony whatsoever about this fee at all. Although, they had an expert witness, they listed him, had him set up to take his deposition, for whatever reason, chose not to enter that evidence into the record. I'll let you draw whatever inference you want to draw from that.

They did, however, put up one witness, the lady who's here right now. And her testimony, hopefully, we'll have it transcribed, so I will, of course, defer to what was actually said, but my recollection is, among other things, she said that we did a good job, a very good job. We were

well prepared.

And if we go back to the pleadings, there's no allegation in this case of malpractice or any of that. Most lawyers don't sue clients for the very reason that you typically get sued for malpractice, so you walk away from the fee. This is my first experience in suing a client in 43 years of practicing law. In fact, this is the first fee dispute I've ever had with a client. But 300 something thousand dollars is a pretty good slug of money for me and I thought it was worth trying to collect it.

THE COURT: Let me just ask a question. You're talking about $347,000. Now, they did pay you something, though?

MR. BUNDY: Yes, they did.

THE COURT: So what is the balance of what you are seeking today?

MR. BUNDY: Well, Your Honor, let me see here. The balance -- they made a payment. It's Exhibit -- give me a second, Your Honor.

(Pause.)

MR. BUNDY: Plaintiff's Exhibit 20, on May the 24th, 2022, we received Plaintiff's Exhibit 20. This is years after we filed the lawsuit. The lawsuit was filed in November of 2021. So it was May of 2022, so, roughly, six months after suing for the full amount, we got a check for $150,000.

And in this check, it came just out of the blue. This is by Ms. Teresa Hodge. It's not written by her lawyer. This is Exhibit 20.

THE COURT: Yes, sir.

MR. BUNDY: We're not asking you to sign a release, you may reserve all rights. We simply ask you to properly credit this payment against any amount. WECO disputes any claim over the amount tendered because we were required to engage other counsel to complete the work. That was the basis of this payment.

I guess, based on the testimony and the exhibits, it was a gift. Because there's no rational basis for this payment legally. We didn't sue these people for quantum meruit. I don't want quantum meruit. I haven't sued for quantum meruit. And I wouldn't have the right legally to sue for quantum meruit because I had a written contract. In order to sue for quantum meruit, you have to have an extra contractural basis to sue for quantum meruit.

THE COURT: Okay, so the check for $150,000 was not deposited in your account?

MR. BUNDY: No, it was deposited. I deposited the check.

THE COURT: Okay, so --

MR. BUNDY: My point is, the payment of this check is inconsistent with any legal theory that is available to

them.

THE COURT: My only question is does that $150,000 count as a credit towards --

MR. BUNDY: Absolutely. And we have an exhibit which shows that, I believe.

THE COURT: I thought I recalled that from the hearing, but I wanted to make sure.

MR. BUNDY: There's an exhibit on prejudgment interest, Your Honor, and it shows the calculation of prejudgment interest on the full amount and then calculation of prejudgment interest after giving credit for the 150. I'll find it for you. No, it's not an exhibit. It's this document here.

The way the prejudgment interest is calculated, the amount -- I can hand this up to you. But, basically, it's a document entitled prejudgment interest calculation. 8.75 percent on $347,258.45 from February 17, 2021 to May 24th, 2022. That's when the second payment was made -- that's when the first payment was made, excuse me. So that amount of interest is $38,378.82.

And then there's 8.7 percent of 197,258 from 5/25 to 9/26. Of course, that needs to be updated to whenever you decide. So the principle due is 197,258.45.

Do you mind if I hand this up?

THE COURT: Certainly.

MR. BUNDY: So the only amendment that needs to be made would just be the per diem calculation on prejudgment interest from the date that the prejudgment interest was calculated on the unpaid balance after the payment was made.

My point is, the point I was trying to make is that I'm not sure how that -- I'm not so sure how I'm supposed to handle the 150 that was paid for my firm's income taxes. Do I apply it for a gift tax? Is it a gift? I don't know. There's no claim before you to reform the contract. There's reformation. They just gratuitously decided -- they made a unilateral change to the contract from a contingency to some other contract. They just picked a number out of the air, 150, and sent it to me. My point is there's no factual basis for that, no legal basis for it, that's all.

So where we are is that we had a trial. We put up Pope and you heard what he had to say. If you may recall, Pope had an opinion as to what we were entitled to. He read every single document, looked at every single piece of paper. We paid him to do all that. And he testified. You qualified him. He was not objected to as an expert witness in attorney's fees.

The only thing that Mr. Pope was unable to explain in his testimony and did not have an explanation for is why was there a consent arbitration award? Why? The second arbitration. There was no second arbitration as alleged.

190

Once we got into the cross-examination of the testimony, there was no arbitration. There was no hearing. There was a consent arbitration award. We're going to go through that, but I just wanted to point out to Your Honor that's one question that Mr. Pope was unable to answer.

And I would suggest to Your Honor that that's something that you might want to consider in your deliberations. Why was that? What was the necessity to prepare a consent arbitration order which has -- which was just a settlement, which has included as an attachment, but nobody has ever seen it, although we asked for it, of a memorandum of settlement that's incorporated therein. But nobody has ever seen that. I don't know what it says. But why would you need that document? I have an answer to that question I'm going to give you later, but I'd like you to consider it.

So let's start with this case. How did I get involved in this case? How did my firm get involved in this case? I got a call from a gentleman I did not know, Mr. Mundy, who said his lawyer, Henry Brown, was sick and he needed a replacement. Now, there was a beauty contest, what I call a beauty contest. Luckily, it wasn't a true beauty contest or I would have never gotten the job. But it was -- I went and met Mr. Mundy. Mr. Wall went and met Mr. Mundy. That was the other contestant in the beauty contest, my counsel here trying to keep me from getting a fee.

was.

The contract -- and I'd like you if you have a chance at your leisure to read this demand for arbitration and see what it really is all about. This was a cost plus, guaranteed maximum sum construction contract for 20 or 30 million dollars, whatever it was. It was a substantial amount of money.

The job was not even finished. This was brought during the pendency of the job. The job was late. There was problems with the contractor. And there was a dispute, a lot of disputes, as you can see. It's seven pages, whatever it is. There were a lot of disputes, but the basic dispute was we've got a guaranteed maximum sum over here and you've exceeded the guaranteed maximum sum. We need to amend the maximum sum because you've given us a lot of extra work to do. You've delayed us. You're withholding liquidated damages. And we're out millions of dollars and we're down here working and you won't pay us what you owe us. We can't work unless we're paid.

Now, that was the basis of it. It was never contemplated -- if you look at this, it was never contemplated there was going to be a positive recovery by WECO. WECO was ahead of these people a couple of million dollars. They had done the work. The work was out there. They received the benefit of it. WECO was taking the

So I got selected, unfortunately, and I then proceeded to go forward. Now, what was I facing when I got hired? I was facing a situation where Mr. Mundy's firm, WECO, was being sued in an arbitration. And that, Your Honor -- do you have the exhibits?

THE COURT: I have a bunch of exhibits.

MR. BUNDY: I've got another copy if you'd like --

THE COURT: No, just tell which exhibit you're looking at.

MR. BUNDY: Well, let's look at Exhibit No. 1.

THE COURT: American Arbitration agreement -- or Association, excuse me.

MR. BUNDY: Exhibit No. 1 is the demand for arbitration. This gives you the -- this is where it all started. This arbitration demand was filed before I ever met Mr. Mundy. I didn't know Mr. Mundy from Adam's house cat. It was filed by a gentleman named Shepard, who represented Carter & Carter, the construction company. Mr. Brown was representing Mr. Mundy and WECO at the time. And Mr. Brown, also, filed an answer. And that's Exhibit 2.

All of this was in existence when I got hired. I had nothing to do with any of it. The construction contract which was in dispute, the terms of which were in dispute were, presumably, reviewed by Mr. Brown, who had been representing this gentleman for 20 or 30 years, whatever it

position, you've exceeded the maximum sum. You're not entitled to increase the lump sum, so you've got all the money you're going to get and you're late and we're going to deduct all these liquidated damages.

So there was never going to be any more money coming from contractor back to owner. This was the owner trying to get his money from the -- the contractor trying to get his money for work already been done, materials and labor he's already placed in the job.

So we started that out with a standard hourly fee agreement and that's in the exhibits. Because when I got this job, I knew nothing about it. I've only been doing this 40 something years, but I learned pretty early in the construction business as a construction lawyer, your clients will say -- when you take a case like this, I've got a great hand over here. I've got three aces and two kings. Well, let me see them. No, you can't see them yet, but I've got three aces and two kings. You need to take this case on a contingency, whatever.

That happened to me one time and after six months or a year of discovery, I realized the client had a two, a six, a nine, a four. And I was completely behind the eight ball. I had taken a case on a contingency based on what my client said how good the case was. That never happened again. That happens to you twice, you have to go into dentistry, I

guess. You can't practice law that way. So I never take these cases on anything but an hourly rate to start out with, unless it's a particular kind of case. These aren't the kind of cases you do that.

So we started out on an hourly basis and I started looking into it. And if you look at the bills, the bills, you'll find, I believe in the Defendant's notebook, my hourly bills that I sent, I started billing shortly after we met the first time. I think my first bill was $150. The next month, the bill was maybe $300. And for the first six or seven months, the bills were only a couple thousand dollars a month because I was learning what the case was about. Learning what the case was about. Took a while to get paid, but we finally got paid.

Now, at some point, it became -- there was a discussion about an alternate way to bill as opposed to an hourly basis only. An alternate way to bill for this kind of case. And there was a discussion had. Now, it's immaterial whether it came from me or him, how the discussion started is immaterial from a contract standpoint and it's not worth talking about. But I will say this, if you look at the dates, the original letter that I sent to Mr. Mundy -- okay, the original hourly fee agreement, Your Honor, is Exhibit 4. That's the standard hourly fee agreement. And it's dated November 2018. The beauty contest was sometime in October.

Now, Exhibit 5, in January 2018, roughly, three or four months after I had been working for them and I was starting to get into the case and starting to look at it. By this time, I had had a chance to read the contracts that Mr. Brown had approved and I was starting to get in to see what the evidence looked like and whether or not there really were three aces and two kings.

And the contract that WECO had signed was not a very well-drafted contract from their standpoint. It was not an owner friendly contract. It had ambiguities. It had problems. And the way WECO had been handling the project had problems. They had made some errors. They had done some things they shouldn't have done and they had problems. If they didn't have any problems, there wouldn't have been a case. You know, it didn't make any difference to me. I'm just saying this wasn't any slam dunk, okay.

So there was a conversation the first of the year. I had been on the job maybe 90 days. I had sent them maybe three months worth of bills. But everybody was beginning to see. They were getting to know me and they were getting ready to see that this is going to be a lot of work. There's going to be a lot of time involved and hours.

So I wrote Mr. Mundy a letter. Whether I made this up one night in my sleep and decided the letter, I don't recall that happening, but I did write him a letter, Exhibit 5.

Dear Bob, Bob Mundy. And that's who I dealt with, Bob Mundy, on the fee agreement. I didn't deal with Ms. Hodge on the fee agreement. As discussed, here is the proposed language of the hypothetical example. Do not hesitate to call me if you have any questions. And I went through, and Your Honor can read the letter, and I tried to make it as clear as I possibly could what this contract meant and how it was going to work.

In order for there to be a contingency contract in a case where there's actually not going to be or anticipated to be any actual recovery of money from the contractor to the owner, but merely, the owner retaining money that belongs to the contractor, at least, theoretically, that money is -- there's never going to be a physical money moving back from contractor to owner. Owner is just going to get to keep some portion of the money he's holding, which the contractor claims is his money.

So it was never going to go through my escrow account. Because if this had been -- if I had gotten this million dollars that I was entitled to 25 percent of, which I did save them a million dollars, over a million dollars, that money would have come through my escrow account. And I can tell you, we wouldn't be here. I wouldn't be the Plaintiff in this case. They would be suing me to get their money back because it would still either be in my escrow account

or I would have disbursed it. But that's not the way these work and that's what I had to explain.

A reverse contingency case, also, has to have an ending. It can't go on forever. And this was an arbitration to do specific things. And if you look at Mr. Shepard's arbitration demand, it's very specific, very detailed about what was involved. And one of the big things involved was liquidated damages. This was a delay case.

The two basic elements that I tried were liquidated damages, a delay case and a case claiming that they were entitled to increase the guaranteed maximum sum. Because in a guaranteed maximum sum job, if the guaranteed maximum sum is 29 million dollars, it doesn't matter if they spent 80 million dollars, they're only going to get 29. And in order to get 30 or 31, they're going to have to prove through the contract that they had additional change order work, which increased the guaranteed maximum sum. Those are the claims that were being made. That's what I agreed to defend.

And there were serious problems with that. Because in construction law, there's a thing called concurrent delay. The contractor can delay the job, but if the owner, also, delays the job, that's a concurrent delay, which means the owner can't apply liquidated damages. So an owner has to show that the sole cause of the delay was the contractor had nothing to do with it. And that was a very steep hill to

climb in this case.

So with this information, with this information, in January of 2019, I sent this to Mr. Mundy. I don't recall ever discussing it again. I plowed forward, sent bills and went down the road. Then, all of a sudden, in November of that year, I get the side fee agreement, the amended fee agreement signed. No further discussion. No indication they don't understand it, none of that. They sign it. And we'll look at the fee agreement in just a minute.

Now, circumstantially, what would encourage them or get them to do that in November? Well, if you look at my bills in their book, that's when I started billing. Because about November, I finally figured out what the case was about and the bills start getting bigger. The hourly bills get bigger. That's why there's a hundred thousand dollar cap on the bills. Because what they were trying to do -- and this is perfectly okay, perfectly okay for a client to say okay, I don't know what this hourly thing is going to cost me. At that point in time, the arbitration was six or seven or eights months away. And we had all this discovery to do, all the getting ready to do, the arbitration itself, the hearing, expert witnesses and all of it.

So the owner is facing an unlimited legal fee, okay. And he was trying to figure out, I guess, one, how to cut that loss. A hundred thousand bucks. I'll agree, Bundy, if

it cost 200,000 bucks, I'll eat the other hundred. That's the risk on me. That's a guaranteed maximum sum almost, okay. But if I'm going to take that risk, you're going to have to give me an incentive, okay, which is 25 percent of any money that I get -- that you get to keep that otherwise belongs to the contractor. Because if it hadn't been a guaranteed maximum sum, if it had just been a straight cost plus contract, contractor would have been entitled to all this money. And if the loss to liquidated damages, if they were entitled to a time extension or if there was concurrent delay, then he would be entitled to that money.

This was not an easy case to try. This was a very difficult case. And the contingency was the only real incentive I had to put a hundred thousand dollar cap on it. I don't know what the owner thought. One thing the owner could have thought is the chances of a reduction, any substantial reduction in the claims of the contractor are not very great. And even if they are, it's still the contractor's money. All I'm doing is giving up money I wasn't entitled to in the first place because I've gotten the benefit of the work and labor of this contractor. So that's a legitimate business risk to take.

The other thing they did, the other thing the agreement allowed, there's a $500,000 cap. So if I would have gotten rid of the entire five million dollars, they would have been

paying four and $500,000 in legal fees. This was a business decision made by business people at a point in time where they assessed their risk and decided to go one way as opposed to the other way. And the real thing that's going on here is that when the case was over with, when I delivered a million dollars in benefit to them, they decided they didn't like that agreement anymore because they had never assumed that I would produce that kind of result, which they agree was a good result, but they just don't want to pay the bill. So that's where we are in terms of the contract.

THE COURT: I don't want to throw you off your presentation, but as I recall, one of the big issues was whether or not there as an award. Is that accurate?

MR. BUNDY: We're going to get there.

THE COURT: All right. Well, I'm thinking about it, so maybe get there sooner.

MR. BUNDY: There was an award. The contract, the fee contract I had with them, the arbitration agreement was and the fee agreement was, I'm going to handle this. I'm going to handle the claim in front of you. Their analysis of it, I'd be working for these people still today. If they hadn't have changed the contract from an hourly rate to a contingency based on the outcome of that arbitration, we wouldn't have a dispute. I would have just kept sending

them bills and we would have kept going and going and going and going. There was no -- it would be ridiculous for me to agree to represent somebody ad infinitum.

THE COURT: Let me rephrase my question. You assert that this fee was earned at a certain point?

MR. BUNDY: Yes, sir.

THE COURT: They argue to the contrary. I'd like you to address that argument to the contrary.

MR. BUNDY: Okay. I'm getting there. I'm getting there. I'm getting there.

Let's look at the award. In order to answer your question, you have to look at the award that was issued by the arbitrator --

THE COURT: Which was exhibit what?

MR. BUNDY: Let me see.

THE COURT: 11?

MR. BUNDY: 11. Now, before we get there, I'd like to, at least, make this point. Their only witness testified that she did not understand the fee agreement, that all it was was this one arbitration. Well, one, she didn't sign the fee agreement. I never negotiated the fee agreement with her.

And interestingly enough, you know, you tell jurors, and I guess I'll tell you, sometimes the Judge or the jury has to look at who didn't show up at a hearing to testify.

Who didn't show up was Mundy, who I negotiated with. Who didn't show up was his son, who signed the fee agreement, to explain why they didn't understand it. Nobody has explained any of that.

THE COURT: Well, no one has asserted that the amended fee agreement is not legitimate.

MR. BUNDY: Okay.

THE COURT: Right?

MR. BUNDY: They asserted that they didn't understand that the fee agreement was only for this arbitration. Their understanding was that this fee agreement went on ad infinitum for as many arbitrations as there were in regard to this project. That's the only rational way to look at it. Because the arbitration had specific issues that were involved. The fee agreement that had a contingency had specific results that were involved with that arbitration. There could have been three or four more arbitrations after the arbitration I signed because the job wasn't finished yet. But we'll go through all that in a minute.

Under their theory, if they had a window leak out there, I'd still have to go down there and continue to do this. That was the whole point of the contingency, to try to figure out a way to have an end to it.

The example I would give you, and if Your Honor -- you know, if somebody defies me what I can put in my contract to

keep this from happening, I would love to know it. This is analogous to you hiring me to try a case for you as a plaintiff. I go down there, the jury comes back and they say Bundy, your client gets three million dollars. Verdict, three million dollar verdict. And while the judge sends everybody out while we have post-trial motions, the client comes over and goes you know what, I really appreciate your help, but Mr. Brown is going to take care of the post-trial motions. We're done with you, okay. We don't need you anymore. So Mr. Brown, I'm in charge now. I write a letter, I'm in charge. Judge, I'm the one in charge.

They then go out before the post-trial motions and settle the case, which is what they did here. They then say to me you never got us a judgment. You never got us a verdict. Mr. Brown settled the case and we got rid of you before you got any of that done. So you're not entitled to be paid.

What would I put in a fee agreement to stop that from happening? The rules of ethics say the client can fire me any time he wants to for any reason at all. He simply has to pay his bill. I earned my fee. I got them a million and some odd dollars.

Mr. Brown, now, is well, he doesn't like my strategy, whatever it is, and they take the case away from me. Do they go try an arbitration? No. No. They didn't try an

arbitration. There was no second arbitration. They settled it. They settled it. There was no second arbitration. I wasn't involved in it. I was told not to worry about it. And we'll go through all of that in a minute.

Their witness testified on the witness stand she didn't know anything about any of these numbers in the settlement.

THE COURT: What was the difference between, as you put it, the settlement and the verdict in this case?

MR. BUNDY: They picked up another $200,000 based upon the work I did.

THE COURT: They picked up --

MR. BUNDY: Yes, they being the owner. We'll look at the settlement agreement. They split $1,050,000. We'll go through the numbers and look at it. They ended up paying less, less to the contractor after they settled it than the verdict that I got, the arbitration award I got. They ended up better off. In fact, I should be entitled to a fee on the additional money they got. I didn't ask for it because I wasn't involved in that.

THE COURT: So in your type of analogy, and I hate to bring it back up, a typical jury trial case, but I can understand that analogy, that you reached a verdict and in post-trial motions, you, essentially, settled it for more to avoid an appeal, so to speak. And you would argue that's analogous to what happened here?

MR. BUNDY: I think it's absolutely on point. We'll get to it in a minute. And I'll show you how really absurd the arbitration settlement was, how devious it really was. Because there was no reason to do it. And we'll go into that.

THE COURT: And I want to go through everything, Mr. Bundy, but I, also, want to be laser focused on what is the legal basis for me to make a decision that you --

MR. BUNDY: Based --

THE COURT: And I'll ask Mr. Wall the same thing. I know y'all have a lot invested in this case. It's personal. I get it. But I've got to focus on the legal.

MR. BUNDY: I understand that. The legal basis is there's no legal basis not to pay it. That's the legal basis. They haven't put up a defense. There's no defense that they have put up. That's the legal basis. They've gone from this defense to that defense. They haven't put in any evidence of quantum meruit. They haven't put in any evidence of what the reasonable value of the services was. They haven't done any of that. There's been no testimony that you've gotten about the reasonable value of any services. They just simply picked a number out of the air and said we're not entitled to it.

The consent arbitration award awards attorney's fees. They've been paying all these attorney's fees under the

award that they have. We'll go through all of that. They don't have any damages. That's the other part, they don't have any damages from all of this.

So at any rate, Your Honor, let's look at the award. Let's look at the award. The award that I got, that we got says that the owner previously paid -- okay, change order, approved change orders totaling four million whatever. I find that Carter & Carter is due 3,308,000 amount due unpaid payment applications, change orders and additional cost claims rejected, which WECO should have been granted.

In other words, this is the three million bucks that they were holding that belonged to WECO. That money was never going to go back to WECO. The claim that was made was four million and some odd thousand dollars. So that's a savings there of $700,000. I find WECO is entitled to credits of 6,668,000. This adds together to be the money that is based on the 25 percent.

He then goes on to say that the money is not payable until the job is closed out. This is over. This claim, this arbitration related to these issues is over. The contract balance has been determined. The liquidated damages have been determined. The job is not finished. If there's more things to do, do it, but you've got to go through the architect. That's the way it works. If you've got another claim, you've got to go through the architect.

And that's what I kept saying to them was that I had finished the arbitration claim. We had resolved the disputes that you brought before me. There were disputes that they brought up later, but I told them -- and you'll see in the -- let's go through it.

If you look at Exhibit No. 12. I believe it's 12. The clarification, Exhibit 13. After the arbitration award, the contractor's lawyer did exactly what I was sure he was going to do from the start. I know you don't want to hear all this, but I think you need to understand it because it doesn't make any sense otherwise. It doesn't give you an understanding of why it was that I took the position that I took.

THE COURT: I appreciate the context. I mean, I'm not trying to cut you off, I just --

MR. BUNDY: I'm going to get there, just, please, be patient. The Brantley case in South Carolina, I was involved in that case, says that if you bring an arbitration, everything that you had in arbitration is done. That's why most people wait until the job is over before they bring an arbitration. But this contractor's lawyer was pretty smart. He brought it during the job, okay. And I knew all along that he was going to take the position once he got the arbitration award that that solved all kind of other problems that these people had. The DOT problem, some

defective work problem.

And I specifically told my clients we cannot bring those claims in this arbitration. It wasn't part of the arbitration he brought initially. It wasn't part of the claims we had against them. And they didn't even have the numbers. They didn't even know what those numbers were. And if you go down there and make the claim and don't have any numbers, you're just going to lose. So the contractor made that argument.

I then applied to the arbitrator, Mr. Elmore. If you look at Exhibit 13, he goes through -- this should be important. On Page 2 of his award, he says this in the second paragraph, The third, fourth, fifth, seventh and ninth circuits recognize the exception to the functus officio doctrine, that once the arbitrator has fully executed their authority to adjudicate the issues submitted to them, their authority over these questions is ended and the arbitrator has no further authority.

So the first thing when I asked for a clarification the arbitrator had to do was determine whether he had the authority to even explain his award. The significance of that is is that it's a legal basis and it is the law that once an arbitrator rules and makes a decision, that arbitration is over. And that's all I agreed to litigate was that arbitration.

But he found further that there is an exception, okay, which is to explain his award. The arbitrator himself said I'm done here. That arbitration is over. The fee agreement says an arbitration. The example I gave in a letter was "an arbitration".

So he then goes through and Page 3 will give you a good example of how complicated this was. There are all these issues that he considered. So he considers them, clarifies the award.

Now, I then am now confronted with Henry Brown, who's back. Well, we want to put it back before the arbitrator. We want to do this, that and the other. And as Ms. Hodge said, what she was faced with at that point was two lawyers with two separate legal opinions. I had been trying this case for two years. I had a strategy. My strategy was going very well. I had the contractor exactly where I wanted him. My client was going to continue to keep the money. They weren't even going to have to pay the money over until the job was over. I had the contractor exactly where I wanted him. I had a declaratory judgment action, which they hadn't filed a lis pendens.

The only thing that the client had to do was simply to hang on until we got a verdict or a ruling on the lis pendens because then that would release the bond release money so they could have been able to go forward. So the

strategy was working exactly like I wanted it to work. That was my strategy. That had been all along, get the contractor, figure out what it was, get the lien dropped and now you've got him. Now, you've got him.

They came in and said no, we don't agree with that strategy. We want to get back in front of Elmore. We want to do all these things. This is in the face of Elmore telling them no, I don't have the authority to do all of that.

So I get a letter, I get a call, you've got the transcript of the phone call. I explained all this to them. After the phone call, I get a letter. It's an exhibit. Writing to the arbitrator saying Bundy is now out of the case. I am in charge. I was prevented from moving forward with my strategy. I didn't quit. What I was obligated to do to the client was to give the best legal advice I could give under the circumstances. And I refused to let Henry Brown or Hank Wall come in and tell me how I was going to arbitrate a case or what my strategy was going to be when I thought it was not in the client's best interest.

And I didn't think it was in the client's best interest. And I don't believe a client can make me do something that's not in his best interest. I have to take my chances. If I tell the doctor to cut off the wrong leg, he doesn't have to cut it off. He goes no, I'm not doing

that. And I refused to do it. And they said okay, if you refuse to do it, if you refuse to do what we tell you to do, we're taking it over.

And if you look at the phone call, they were supposed to get back with me, okay. At the end of the phone call, they say they're going to get back with me about what they're going to do. Mundy says this, that or the other. I never got anything. I just simply got a letter that Henry Brown wrote to the arbitrator. I then wrote Henry back and said I don't know anything about all these letters. I sat down and I told him what my position was. It's all in the file. It's in the documents.

So then what happens? Within 60 days, within less then 60 days, I get an e-mail from Henry Brown -- let's see if I can find it. This is the only down side of not having my partner here. There's a letter from Henry Brown -- here it is.

Let's start with Exhibit 17. This is to Frank Elmore from Henry Brown. For various reasons, I am assuming representation of WECO for the remaining issues. Bundy will continue to be involved, but I am taking the management of the case and you may correspondence with me. A copy of that was sent to me. I'm out. I'm done. And I'm done because I refused to take their orders about the best way to handle my client's case because I didn't think it was in my client's

best interest. But at this point, it was an arbitration award which benefited them by a million dollars.

So I wrote Henry back, Exhibit 19, and explained my position to him and told him what I would do, why I didn't think it was appropriate, why the arbitration rules did not allow for all of this. If you listen to the phone call, Henry seems to be saying he's talked to Frank and they're going to work it out. And I said, Well, you've talked to Frank? No, I haven't talked to Frank.

And you, also, have to remember that Frank Elmore is dying of lung cancer. He's been slowly dying for the last year and a half. That's why it took him so long to get the arbitration award out. I've known Frank for 20 years. Dying of lung cancer. So they then take it over.

Basically, what Henry says within less than 60 days of the phone call and him writing that letter is we have resolved the declaratory judgment action. They took care of it. They settled the declaratory judgment action. They just agreed to settle it.

What they didn't do was let it go to a hearing because it would have been dismissed. The pleadings that I filed and all, they didn't file a lis pendens. There was no lis pendens. It's a mechanics lien without a lis pendens. I mean, there's no way that was not going to happen. And when it did happen, this $800,000 or whatever it was was going to

go back to WECO and the contractor would have had no lien. Its subcontractors would have had no way to get their money and they would have had to go against the bond of WECO. But they resolved it. I had nothing to do with it. But it was settled. It was settled.

So then the next thing I hear is they have settled -- well, the next thing I heard was is there was an arbitration. So let's look at the arbitration. First off, we learn from the first time that, in fact, there was no arbitration hearing. But I would, also, suggest to you, Your Honor -- well, there was no testimony taken. But I would, also, suggest to you there was no hearing. And the reason I would suggest that is because if you look at Mr. Wall's exhibits, specifically, his billings, I think it's Exhibit 32 of his exhibits. And this is during the period of October and November of 2021.

If you look at this, he's got 10/12, preparing for arbitration, preparing for arbitration, three-quarters of an hour, three-quarters of an hour. But on 10/19, extended call to client concerning settlement. 10/21, preparation of settlement documents, review of prior orders and attorney's fees issues. 10/22, preparation of final award and settlement agreement. Conference with the client regarding status of settlement. Attention to preparation and reviewing of settlement documents, extended conference with

client. Preparation and negotiation of final settlement documents. Review of lien, attention to loose ends.

There's no billing -- and I don't know whether there was a hearing and they decided not to bill WECO for it, but there's no evidence of any billing for an arbitration hearing. All this is is a list of time spent preparing and settling the case. There was no reason, none, to have a consent arbitration settlement agreement. None at all. It was simply a settlement. And we'll go through the terms of that settlement in a minute.

There was no second arbitration. There was simply a settlement based upon all the work I did, which put WECO in a position to cram a settlement down the throat of the general contractor. And that's what they did. And by virtue of that, they improved their position. They got more money in the end than they would have gotten had the original arbitration simply been paid at that point in time. They would have had to pay more money out.

So they benefited, they took what I did and benefited from it. And they haven't presented any evidence to show what it cost them in addition. There's no way for you to know. Nobody has given you an opinion. Nobody has testified about because of this additional arbitration settlement document that somehow we spent this amount of money. In fact, it's just the opposite. And we'll go

through the arbitration settlement agreement in a second.

I'm sorry, Your Honor. I'm having a hard time keeping up with all this stuff.

MR. WALL: Your Honor.

THE COURT: Yes, sir.

MR. WALL: While Mr. Bundy is locating a document, can I just step out for a comfort break?

THE COURT: Let's take five minutes.

(WHEREUPON, a short break was taken.)

THE COURT: All right, Mr. Bundy.

MR. BUNDY: Your Honor, I found the consent final arbitration award. I don't see where it's been marked as an exhibit. Do you have it?

THE COURT: I may.

MR. WALL: It's in our exhibits, Judge. It's Defendant's 29.

THE COURT: 29.

MR. WALL: It is in our exhibits. I'm sorry, it's Exhibit 21.

THE COURT: 21.

All right. I have it now.

MR. BUNDY: Thank you, Your Honor. Also, if you just put in front of you Plaintiff's Exhibit 11, which is the arbitration award. I've got another copy if you need it.

THE COURT: I've got it.

MR. BUNDY: Let's start with Defendant's Exhibit 21, which is a consent final arbitration award. As I pointed out to you earlier, I don't know what the necessity of this was other than to set up some defense in this case. It was not necessary to settle the case between these parties.

But let's go through -- and based on the -- first, I'd like to point out that based on the exhibits that are in evidence and the testimony, this document was not prepared by the arbitrator. This document was prepared by the lawyers as a settlement document. This was not prepared by the arbitrator. In fact, there was no hearing because I think the circumstantial evidence is there would not have been a hearing because there was no billing for a hearing.

You've, also, got a gentleman who signs this award and within 45 days, he was in the ground. He died 45 days after this. He was in a great deal of distress. He knew both of these gentlemen and had known both of them for a long time.

MR. WALL: Objection. This isn't even argument. This is just speculation. Judge --

THE COURT: I hear you as far as Mr. Elmore, who I think we all remember. We've heard enough about his condition. Thank you.

MR. BUNDY: Your Honor, if we look at this consent arbitration award, paragraph one, it says -- it talks about the arbitration award, which is Exhibit No. 11. It is

collectively the interim award, in quotations, the interim award.

Now, nowhere in the record, in the documents actually prepared by Mr. Elmore, the arbitrator, is this document, Exhibit 11, referred to as an interim award. On its face, it's entitled arbitration award. This is a new name for something that was simply created out of thin air. This was not an interim award. It's not an interim of anything. It is an arbitration award. This document was prepared to make it appear as though there was another arbitration.

So if we move on, we'll find that he then describes -- the undersigned further found WECO, then he talks about what he was entitled to in the hearings held on July 20 in Summerville, phase one. Nowhere in this arbitration award and nowhere in the record is this referred to before this as a phase one arbitration. It was not brought as a phase one arbitration. It was not tried as a phase one arbitration. There was no indication there was going to be a subsequent arbitration when I signed this fee agreement that did not fully resolve the competing claims of both parties returning fees and interest. Then he talks about the compliance with various things.

The arbitrator has been advised that the parties have resolved all claims in both phases and issues in this award. This is what he was advised as the arbitrator. That y'all

had resolved everything and presented him with this document. Because they all agreed to it.

Paragraph two, first, with respect to the interim award for phase one, I find, okay. You've now set aside -- I find that the amount set aside and reserved by the parties as a reserve for fees and costs is 309,284.20. Now, how would he make such a finding without having a hearing? Based on the representations of whom? He's making findings of fact without a hearing in a consent order?

You know, Judge, I'm sure you've run across this. In a contract case or in some insurance case, they used to go down and get default judgments, consent default judgments against a defendant who didn't have enough money or didn't have enough insurance and the defendant would agree to a judgment of four million dollars and I've only got a million dollars in insurance and they would take that default judgment and sue the insurance company for bad faith, right.

Well, the Supreme Court said no, that doesn't work that way. You can't do it. You've got to go down and try the case if you're going to use a subsequent judgment for any purposes. What they're doing here is taking a consent settlement, trying to make it appear as though it is findings of fact when it is not. And I submit to you that the physical condition of the arbitrator at that time is germane and relevant to where he was physically and mentally

to sign a document that says he made findings when there was no basis.

THE COURT: Well, let me just -- and refresh my memory, both of you. I don't think we had substantive testimony at the trial on Mr. Elmore's health other than he was in poor health. I realize it's already -- I don't think it's in evidence.

MR. BUNDY: All right. That's fine.

So he made a finding of fact in the settlement that he had no evidence. I think that's clear.

THE COURT: Yes, sir.

MR. BUNDY: Then he goes on to say that WECO has reserved these claims of 470,123 and he comes up with all these numbers. Now, the witness who took the stand for WECO said that all of these numbers came from the lawyers and she had no knowledge of any of it. That's what she said, she had no knowledge of any of these numbers, wasn't involved in it. These are numbers that were made up by the lawyers.

And if you look at the math, the way the math works out is they agreed to split the amount -- part of the settlement was we're going to split the amount that's being held in escrow up at the county courthouse to bond off these liens. That was 1,050,000. They're going to split that amount of money as part of their settlement.

And what they did was, is they added up all these

numbers that they made up, that the client didn't approve and it came up to a number that was $54,877 short of one-half of $1,050,000. So how did they reverse engineer it? Furthermore, WECO was awarded the additional sum of $54,877 for costs, interest and attorney's fees for phase two arbitration.

So they got 58,000 [sic] bucks, but how did they get to that number of 58,877 [sic]. If you add up all of these numbers that they put in front of the arbitrator, the closeout documents, the 470,123 and add 54,877, you come up to one-half of 1,050,000. And the other half of that went to WECO.

This order was reversed engineered in order to appear as though it was an arbitration award. All it is is a settlement that was created to give you the impression that there was a second arbitration. And there was not. There is no rational explanation as to why they would have had to do this other than to try to gem up some claim that I didn't finish my job and they had to go down and finish it.

What they did was they took a verdict that I got, didn't allow me to finish it, told me they had another lawyer, went and settled it and they don't want to pay the fee that I earned.

This is much like Richard Nixon. He didn't get in nearly as much trouble for what he did in Watergate. What

he got in trouble for was the coverup. And that's what this is. This is a coverup. This is a manufactured document to make it appear as though there were two arbitrations. There was one.

THE COURT: I'm trying to review our notes from the bench trial portion.

MR. BUNDY: That's probably why we need a transcript.

THE COURT: We will, but our notes, also, indicate attendance. Certainly, I don't want to be too specific because my notes are just that, notes. I think there was testimony that inferred a second arbitration at a minimum.

MR. BUNDY: That's the whole point, there was an inference, but it wasn't true. But if you go to -- look at five and six. WECO was awarded the additional sum of 54,877. Based on the foregoing, the undersigned, which is Mr. Elmore, finds that Carter & Carter is entitled to receive the sum of $525,000 from the escrow fund and WECO is entitled to received $525,000 from the escrow fund.

Now, isn't that coincidental that by going through the claims, all of these claims, some of which are down to the penny that nobody testified to, that all of a sudden, they come up with a magical number of $54,877.70 in legal fees and, magically, it ends up being half of the money in escrow for each party, WECO and Carter & Carter.

So the point is -- I know I've made it a couple of

times -- and then you go to paragraph seven. The parties have executed a supplemental settlement agreement memorandum containing additional terms, which are incorporated by reference. The arbitrator reserves the authority to resolve any disputes or disagreements which might arise from the terms or conditions of the supplemental memorandum. What does all that mean? This is an arbitration.

They talk about me not going and getting the arbitration award confirmed. This arbitration award was never confirmed because you don't confirm this kind of thing. And you needed to, one of these parties, if this is just an arbitration award, could have moved to have vacated it. Because all arbitration awards can be vacated based on fraud or any other reason.

So what is the reason? What is the rationale behind putting up this document alleging and making you believe there was an arbitration when there was not? The only purpose was to be able to bolster or try to bootstrap their way up to the notion that I didn't finish my job. But they took my case away from me. They took the benefit of it. They received the dollar benefit of it. They received the benefit of being able to negotiate and get more money. They get more money now. WECO gets more money out of this than they got out of the agreement, the arbitration award I got for them. I can't see how they've been damaged.

And they, also, got fees out of it for the second arbitration award. And they settled the DJ action. And they settled it without waiting for a hearing, which I -- you've got the evidence in front of you of the motion we filed, the briefs. It's clear they didn't file a lis pendens. So I didn't quit, I was told to stop. I was told to stop.

THE COURT: I would put it, not by order of the Court, but you were relieved by the client.

MR. BUNDY: Yes, I was relieved. And I hate to be egotistical, but if they would have let me continue with what I was doing, I could have done a better job. I could have gotten them a better result. I am absolutely convinced of it. But I was not going to go down there and be told by a lay client how I'm supposed to handle a case. And I'm not going to let a lawyer come in at the last minute and tell me how to handle my case. Because I don't think it's in the best interest of the client. And if this happens again, I'm going to do the same thing again, regardless of the outcome. I don't know how I'm going to change my fee agreement to protect me. I think I'm going to have to be more careful of the clients I agree to represent.

Thank you, Your Honor.

THE COURT: Mr. Wall, I appreciate you letting Mr. Bundy speak for the past hour. I'm sure Mr. Bundy will give

you the same courtesy.

So happy to hear from you, sir.

MR. WALL: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

MR. WALL: I'm not going to be an hour, Your Honor. Planning to be ten or 15 minutes max.

I want to ask you as a threshold matter, did you get my memorandum? I filed a memorandum.

THE COURT: When did you file it?

MR. WALL: I filed it on Friday, Your Honor.

THE COURT: Did you send it to us via e-mail?

MR. WALL: I sent you a copy via e-mail.

THE COURT: I did see it. To be frank, Mr. Wall, I had a trial Monday morning. Am I completely familiar with it? No. So in those regards, my apologies.

MR. WALL: No, not at all. As a threshold matter, Judge --

THE COURT: I'll look it up now.

MR. WALL: I don't want to rehash the memo, but I would ask you -- there is a long explanation of the South Carolina law in that memo and, also, a long explanation of what's required to earn a contingency fee in the State of South Carolina and why law firm, Plaintiff in this case, did not get the case across the finish line.

I don't want to regurgitate all those arguments because I want to simplify things for you, Judge. I want to cut to the chase and I want to simplify this case.

The law firm, plaintiff law firm in this case did not get the arbitration, either the arbitration or the totality of their scope of work across the finish line. They just didn't. That's what necessary to earn a contingency fee in the State of South Carolina.

And you can read my brief, it's been briefed, Judge. I cite exhibits, I cite Mr. Pope's testimony. I will say that Mr. Pope during the course of his cross-examination agreed with me, if you recall this, I'm sure the transcript will be quite clear, that if the Court had vacated the arbitration award, the pending motion to vacate the arbitration award, if that had occurred, Mr. Bundy would have never earned a fee. Bundy McDonald would have never earned a fee. Their expert said that.

They never resolved that -- that one fact, Judge, the fact that they never resolved the motion to vacate the arbitration award that we did. We did. We did it in a sequel case, in the declaratory judgment case and the subsequent settlement, which I'll address in a minute.

But I'm going to simplify it by telling you this case is really important to the Bar of South Carolina for a lot of reasons. And all roads in this case, all roads in this

case go right back, every rabbit trail that was thrown out, every allegation of misrepresentation, fraud, every red herring, every rabbit that Mr. Bundy has come in here and emptied out of the box, chasing all these rabbits around all lead back to this, this one thing. And it's Rule 407 of South Carolina Appellate Court Rules, Rule 1.5, reasonableness of attorney's fees. Everything comes back there, whether he was terminated or whether he quit. And the preponderance of the evidence is he quit. The preponderance of the evidence is he quit too soon.

But regardless, regardless of whether he quit or he was constructively terminated, all roads lead back to Rule 407, Rule 1.5, reasonableness of attorney's fees. And that's the evaluation you must make under the South Carolina rules. That's the only question in this case is was law firm paid a reasonable fee for the services rendered? That's the only issue in this case.

Now, Mr. Bundy makes a great deal about a contract case, a contract case, and that he didn't plead quantum meruit. Rule 1.5, reasonableness of attorney's fees is implied on every contract for legal services in this state. No one in the State of South Carolina can contract around Rule 1.5. Cannot be done. If it's attempted, the attorney fee agreement is void. It's reasonableness. It's reasonableness. That's the whole issue in this case. Was

he paid a reasonable fee for the services rendered? Whole issue in this case.

THE COURT: Let me ask a quick question.

MR. WALL: Yes, sir.

THE COURT: And I realize this wasn't a straight contingent fee agreement. This was some sort of a hybrid agreement. Let's just start with the standard contingent fee agreements that award attorneys 25 percent, a third, 40 percent to take on a case. Sometimes that results in zero. Sometimes it results in a large award, whether it be by settlement, a verdict. Sometimes it takes years of work. Sometimes it resolves in a week. As to the State of South Carolina, the question of reasonableness of contingent fee agreement under that type of scenario?

MR. WALL: You've got to get the hay in the barn, Judge.

THE COURT: Say it again.

MR. WALL: You've got to get the hay in the barn.

THE COURT: Okay.

MR. WALL: Under the fee agreement signed and the definition of fee agreement in South Carolina --

THE COURT: I thought you said hay in the bar.

MR. WALL: Hay in the barn. There's got to be a harvest.

THE COURT: I didn't know they put hay in a bar. Okay.

All right.

MR. WALL: There's got to be a harvest. There's got to be a benefit realized. And under the Toal decision we cite, under the language of the fee agreement, under the language of Mr. Bundy's letter of explanation to the client, it's got to be an arbitration award so that the clients must pay, okay, by settlement or judgment. That's his language. And that's what a contingency fee agreement is. You have to meet the contingency.

So to answer your question, of course, of course, had Bundy McDonald finished the case all the way through, all the way through, all the way through, the declaration judgment case that they charged for, the arbitration that they charged for, had they finished the case, they would have earned a contingency fee.

The law in every state in the union, as I point out in my brief, is a lawyer who does not meet the contingency -- and Judge Toal goes into this in her opinion, which I cite in my brief. If you don't realize the benefit, if you don't quite get it across the finish line all the way, all the way, you're entitled only to a quantum meruit Load-star measure under Rule 1.5. That's what you're entitled to. That's what the law says. And that rule, that ethical rule is superimposed on every legal contract for services in the State of South Carolina.

THE COURT: My first question in the early part of Mr. Bundy's presentation, you know, as I recall, Mr. Pope testified there was an award. Y'all took a different view of that because -- well, you just take a different view. So when is the award in your opinion an award? When is the hay in the barn?

MR. WALL: When there is a settlement or a judgment. When there is a settlement or a judgment and the client realizes the benefit.

Let me give you an illustration, Judge. Under his theory of the case, a lawyer tries a case, let's take a jury trial, gets a verdict and then there is a remittitur or there is a judgment notwithstanding the verdict granted. The lawyer has not earned that fee if it gets wiped out. He hasn't earned it. The lawyer doesn't get paid in preference to the client. That never happens in a contingency fee. It's not allowed to happen in a contingency fee.

Here's why this case is so important as a matter of public policy. Really important. If a lawyer is allowed to declare premature victory, as happened in this case, case over. I'm done. I'm finished. Case over. We won. No final judgment. But you, client, go hire another lawyer. As Mr. Bundy directed -- in Exhibit 37, directed the client to go get another lawyer before any of this constructive business came up. Mr. Bundy said, I'm finished. Go get

another lawyer. If that's allowed, clients are going to be at the mercy of the plaintiff bar. It's just a fact. The lawyer will be allowed to drag the pot, get full contingency fee and require a client to go retain another lawyer.

If you look at Exhibit 37 -- I'm sorry, 35, this is before the phone call. This is before Henry Brown, apparently, came in and threw Mr. Bundy out of the case.

THE COURT: You're referring to a February 17th e-mail?

MR. WALL: This is the same day of the invoice that Mr. Bundy sent, yes, sir. From Mr. Bundy to the client, you need to run this by your new attorney. This is a new claim. Our fee agreement does not include this. The only remaining things we're handling are attorney's fees, which we will continue to handle. Which he did not. Then at the bottom, he says, we will continue to handle the DJ action as agreed. But here's the thing, get a new attorney.

Now, if the fee is earned -- and at this point in the case, Judge, the arbitrator has only issued a preliminary award -- and I want to clarify something about this award business. Because there's been an inference or suggestion that somehow the subsequent attorneys got together and gemmed up a false arbitration order. It's a settlement, first of all. It says it's a settlement.

But second of all, if you look at Exhibit 39, Judge, this is a subsequent award order from the arbitrator in this

case before I was even involved. It's in the record. And he says on Page 2, he's referring to his previous order. And he's not six weeks away from dying at this point, Judge. He says on Page 2, middle of the page, After consideration and reading the submission of argument and review of the proceeding, I conclude the award is not final. There's unfinished business here. WECO is going to be entitled to present their claims. It's not across the finish line. The hay is not in the barn. The fee is not earned. The settlement hasn't been had. There's not a judgment on which to base a contingency fee.

Let me get you back on the path to the right resolution of this case, which is an evaluation of Rule 407 and 1.5 about reasonableness of attorney's fees. Because all the cases -- keep in mind, Judge, this suggestion -- let's look at the evidence. I don't agree with it, but let's look at the evidence most charitably for law firm. Let's impose a summary judgment standard here. Let's look at the evidence most charitably for them.

There was a misunderstanding of the scope of work that they were to do. They thought they only signed up for one arbitration. This is an ala carte fee agreement. Even though their fee agreement says settlement of judgment, even though their fee agreement and letter of explanation says so that client must pay or you receive a benefit by settlement

or judgment. Even though it says all that, we're going to say this is an ala carte fee agreement. And when Frank Elmore issues a preliminary award as the arbitrator in this case, the case is over, we get to declare it over. And in fact, they did declare it over in their letter of explanation, which they sent to Mr. Brown, which is Exhibit -- Defense Exhibit 2, the arbitration -- excuse me, not Exhibit 2. Bear with me. I apologize. It's in response to the Brown letter where Mr. Bundy says the arbitration is over.

Let's assume that under those facts that the arbitration is over and Mr. Bundy has been constructively discharged. Just for the sake of argument, let's assume that. Even under those facts, Judge, and Mr. Bundy acknowledged this in his argument, even under those facts, Your Honor, which are not manifested in this record, but even under those facts, the client has an absolute right to engage Mr. Brown, to get a second opinion, to engage another lawyer. The client has an absolute right. The rule says, Rule 1.5, getting back, getting centered back to the rule, that the client has a right to discharge a lawyer at any time with or without cause subject to liability for paying for the lawyer's services.

Now, the question is -- let's assume that my client, despite the fact that Mr. Bundy wrote a pretty clear and

unequivocal letter back in the exhibit that I showed you a minute ago, saying go get a new lawyer. I'm done. This is not my scope anymore. Assuming that's the case, it's still a reasonable fee for the services rendered. The case still isn't over. There's still work to be done. The evidence in the record is that the declaratory judgment work was in Mr. Bundy's scope. They charged for it. You recall that testimony. It's clear as a bell. Their expert witness admitted that. They never finished that case. They never got that case across the finish line. They never got the arbitration all the way finished. They never got the fee petition finished in the arbitration award.

So let's look at what they did do. Let's look at the criteria under Rule 1.5. Let's look at the criteria. And I want to focus on two things that are really important, Judge, on the criteria. The first thing is setting a fee, Judge. Number three, criteria number three. What's the fee customarily charged for in the locality for similar legal services? What is it?

Now, at trial, their expert admitted 300 to $400 an hour for their time is a reasonable fee, admitted it on cross. Moreover, the evidence in the case, the preponderance of the evidence in the case is -- remember, this is a hybrid agreement. That's precisely the amount of fees that Mr. Bundy charged when it was an hourly rate

agreement, $300 an hour for Mr. McDonald's time, $400 an hour for his time.

So number three -- and the evidence is uncontradicted that that's a reasonable fee. In fact, that's in range with what Mr. Brown, their evidence in the record. It's in range of what I charge. That's a reasonable fee. That's the going rate. So that should weigh heavily in setting the fees in this case given that the contingency fee was not earned. And you've got to go to my brief to read that, Judge. Read it, please.

The second thing is -- the next criteria that's important in this case is criteria number four under Rule 1.5. And that's the result that was obtained. The result that was actually obtained by law firm.

Now, the result that was, actually, obtained by law firm didn't become final. It was a preliminary ruling, okay, that the arbitrator said was not final, subject to being revisited. It, in fact, was revisited. It did not stay as the final award, okay. It was later amended and modified by settlement agreement. And, certainly, the client had every right to enter into a settlement agreement to resolve the case if they wanted to. But there was a benefit, there's no question there was a benefit from the interim award.

But the question is what was left unfinished. What was

left unfinished. Where does it fall short of having the hay in the barn, Judge? And where it falls short of not having the hay in the barn is six particular things, six particular results that the client needed that was within the scope of work.

And just speaking to the scope of work for a minute, Judge. Under ethical rules, it is incumbent -- I'll remind the Court, I'll remind the Court of this ethical rule. It's incumbent upon the lawyer to acquaint the client with the scope of representation. Rule 407, the law firm has an obligation under that rule to establish the scope of representation. The scope of representation, the basis of reasonable fee and expenses for which the client will be responsible shall be communicated to the client preferably in writing within a reasonable time after the representation starts.

Now, Judge, before I get to the six things, let me just comment on this point. You will recall that the testimony from Ms. Hodge at trial was when she received the e-mail, the February 17th e-mail, which was the same day that the invoice was sent, that was the high water mark of the recovery. And that was when, go get yourself another lawyer, I'm done. That was the first indication, the first indication to the client in writing. There had been verbal conversations prior to that, but that was the first

indication in writing well into the representation where the lawyer had adopted -- the law firm had adopted the position that it's over. We're done. Our scope doesn't include these other things. But now, it does include the DJ action and it does include the legal fees. But later on, because Mr. Brown got involved and then later on, I guess I got involved after Mr. Brown had his heart transplant. But because Mr. Brown got involved, all of a sudden, it's done. I don't have to do what I said I was going to have to do.

There are six things that the law firm did not do that you need to take into account in setting a reasonable fee in this case. Did we get a final resolution of the attorney's fee claim? Did this law firm do that? Did they run it to ground? Did they finish that? They did not.

Did the get a final resolution of the motion to vacate the arbitration award or confirm the arbitration award? They did not.

Did they get a final resolution in a civil action for declaratory judgment pending in a certain court? They did not.

Did they get a final satisfaction or dismissal of various mechanics liens and return of the lien bond proceeds? That's all in the record, Judge. They did not.

Did they get a final resolution or settlement of the remaining damages issues pending in the continuing

arbitration? They did not.

Now, this business about whether there was a second arbitration or not, of course, there was. Read the record. There's discussion about additional claims that were not pursued by plaintiff law firm that our firm handled. There's work involved in those claims. There was another 400 and something thousand, 500 and something thousand dollars worth of claims. Those claims happened to be settled. There was a settlement agreement, settlement arbitration award. The testimony at trial was, Ms. Hodge indicated that she was concerned, we were all concerned that Mr. Elmore might have died, but there's other reasons. There's other reasons to settle. It was a fair settlement.

Judge, it's not uncommon to put a settlement on the record. Lawyers do it all the time. They do it all the time. They come into court, they stipulate under Rule 43, let's put the settlement on the record. Why would you do that? Well, because it becomes an enforceable judgment.

Why would you do it in this case? Well, because there's about seven million dollars, later three million dollars parked down at circuit court and somehow we're going to need a judgment to break that money out of the court registry. We're going to need a judgment for that. We're going to need an order to get that money out. We're going to need an order to clean up these mechanics liens.

And furthermore, Judge, Mr. Bundy testified some -- he's impugned my character. And I'll just tell you this, there was an insurance defense lawyer on the other side in that case, they wanted the allocation for settlement so they can pursue their subrogation claims. We thought the arbitrator was going to die. There were real good reasons, real good reasons, real good reasons to get a final judgment and it had nothing to do with Mr. Bundy's fee. Nothing.

It's ridiculous to suggest that there was a sham arbitration. There was not a sham arbitration. There was a split the difference. There was a settlement that was put on the record. And the lawyers came before you, Judge, and I came before you and I asked you to confirm the judgment and you did. And that's not a sham document and it never was. It was a settlement put on the record to release money from the court registry and resolve a declaratory judgment action and resolve a claim for attorney's fees and get to finality and give the insurance lawyer on the other side an opportunity to chase his subrogation claims. And that's what that was. And there was a lot of work involved in that.

In fact, my client spent $95,000 between me and Mr. Brown to finish the scope of work that Mr. Bundy had originally agreed to pursue. And there was only one arbitration in this case and Mr. Bundy and Bundy McDonald

did not finish it. They didn't earn the fee.

So Judge, the final thing I'll say about this is this suggestion -- this is important. Judge, this is super important. There's been suggestion that this $150,000 was plucked out of thin air. That's not the case at all. Mr. Bundy, also, started his argument off with pleadings. And to the extent we need to amend our answer to plead a defense of payment discharge, we made that motion. Because it was implied and Mr. Bundy's acknowledged it, the amount that was paid needs to be applied to the invoice, to the claim. But the suggestion that that $150,000 was plucked out of thin air and just randomly applied was incorrect.

And I want to get to this, this is super important as to the reasonableness of the fees. I told you a while ago that $300 an hour for Mr. McDonald's time, $400 an hour for Mr. Bundy's time is the appropriate Load-start amount for this claim because it's their effective hourly rate, ongoing rate. If you could, Judge, just turn with me, please, to Defendant's Exhibit 26. And there was testimony from Ms. Hodge as to this point.

If you turn with me to Defendant's Exhibit 26. This is a summary of the hours obtained through discovery. In fact, this was, basically, volunteered from Mr. Bundy as an admissible document --

THE COURT: Let me just, also, say, you're referring to

a January 20th, 2022 --

MR. WALL: Yes, sir. And this is a time summary of the amount of time, unbilled time that they haven't filed. I want to get back to how did we come up with this $150,000, okay. This is the important thing. So if you look down at the bottom there of the first page, paragraph two, it's, basically, we've been paid $108,000, paragraph one. Then paragraph two says $117,000 in billable time was spent over the four months, filing the amended fee agreement, essentially, prepare for and attend the arbitration hearing. That's the unbilled time component at the hourly rates. That amount was paid, Judge, in that $150,000. That's one of the components.

So my client has never ever, ever, ever for one minute, for one hour, for one day taken the position that they were trying to stiff Bundy McDonald for the fees. What they were trying to do is get the case finished and then settle up on payment.

So the first thing they did, the first thing they did after the case had been resolved, after the declaratory judgment had been resolved, after the dust had settled is they tried to pay the reasonable amount of fees. So they took $117,000 -- and the backup to that, Judge, if you go two pages back in that letter, you'll see at Bates label 137 -- I want to make sure you see this, Your Honor. Down at

the bottom Bates label 137, you see that?

THE COURT: Yes, sir.

MR. WALL: You see the bottom table, the table there where there's an invoice date?

THE COURT: Yes, sir.

MR. WALL: And that rolls up to $117,960. Do you see that?

THE COURT: Okay.

MR. WALL: Those are the hours the law firm had in the file through the arbitration. Those hours, that was one piece of what was paid in that $150,000.

Now, if you would go back to the letter with me, Your Honor, and go back to Exhibit No. 134.

THE COURT: Page.

MR. WALL: Page 134, excuse me. Paragraph three at the top there, do you see that?

THE COURT: Yes, sir.

MR. WALL: I want you to know that my client took this at face value. Subsequent to October of 2020, Bundy no longer kept time records because of the amended fee agreement. The last sentence, the last two lines there, at least, 100 hours were spent in addition to the time advising the client, defending our legal advice to him. Another 100 hours, Judge.

In our brief, at Page 14 and 15 of our brief, you'll

see what the formula was. We simply took those 100 hours at face value, allocated them proportionately by the previous time spent between timekeeper Bundy and timekeeper McDonald and we came up with a formula proratable. It's our brief. And it was $151,772.

The suggestion that we came up with a random swag number of $150,000 to just throw at this as a charitable gift to this law firm is ridiculous. We were paying them based on their hourly rates, based upon the hours they recorded and then an approximation of the hours recorded.

Now, law firm has been paid the Load-star reasonable hourly rate. And law firm has been paid a fair amount. You asked at the inception of Mr. Bundy's argument what are y'all fighting about? How much is in dispute? I'll tell you what we're fighting about, Judge. We're fighting about whether law firm should be paid $700 an hour and $800 an hour for a case that they didn't finish, for a case that the client had to go out and hire another law firm. And then, unfortunately, Mr. Brown, who was hired and is a good lawyer, is a better lawyer than I am, who's carrying his heart around in a suitcase, got called on a transplant list and went and got a transplant instead of working on this file and I finished it up. But my client's not asking for that money back from Bundy. We didn't make a counterclaim. We just wanted to square up and true up with you. But my

client paid $95,000 to finish this case.

And furthermore, although Mr. Bundy and Bundy McDonald sent their legal bill on the 17th, when that was a high water mark of award, that case was settled and compromised. It's misfigured. It's wrong. The record will show that. The amount of benefit in the ultimate sense for the work portion that Mr. Bundy completed was the client ended up having to pay more money. So it's misfigured by about $300,000. He hasn't taken in account the $95,000 client had to pay to finish the case to other law firms. And the suggestion in this unliquidated claim that you could add prejudgment interest to this unliquidated claim calculated on a wrong number which doesn't take into account the totality of the circumstances is ridiculous.

So Your Honor, it's our position -- again, I want to revert back to my brief. I've been rambling a little bit. I said I was going to be short and it turned out, I wasn't. I apologize.

But the hay never got in the barn. The case never got finished. This wasn't some vast conspiracy to strip a lawyer out of contingency fees. There are worst travesties in the world than a lawyer getting paid $400 an hour instead of $800 an hour. The fee was not earned in this case. The fee was miscalculated.

Judge, the Sherpa doesn't leave the client in the

wilderness. That's not what happens. That's not what this profession is about. The lawyer doesn't own the case, the client does. It's an important case. Lawyers don't just get to declare a premature victory, drag the pot and throw the client away and earn the full contingency fee. It's not just. It's not right. It's not in accordance with Rule 407.

I rest on my argument and brief, Your Honor.

THE COURT: Very well, sir.

So I can make sure my numbers -- just to be clear, if I look at the correspondence, is it accurate to say the amount of money paid to Mr. Bundy's firm was approximately $258,000?

MR. WALL: $258,000.

THE COURT: Okay.

Mr. Bundy, happy to give you a brief reply.

MR. BUNDY: Nothing further.

THE COURT: As we were sitting here, I, also, remembered that when we had our trial, we did it downstairs in the digital courtroom. So that was a digital reporter. So there's not a transcript, not even a rough transcript in existence right now. I will need y'all to request that the transcript be written if that's what you want, if you want a transcript before a final order is written. I think that's, actually, a good idea in these circumstances.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Lexington County, South Carolina, on the 17th day of October, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 27, 2024

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

MR. BUNDY: I would request a transcript.

THE COURT: Well, what I'm trying to tell you -- anything else for the record?

MR. BUNDY: Standard motions for redirect verdict, lack of proof on all their affirmative defenses, they lack proof on condition precedent and all the rest of it. I just want to protect the record. If you want me to make an argument on each one, I can.

THE COURT: Typically, directed verdict motions would be before closing arguments, but I'll just say they are preserved for the record.

Anything else for the record today? I will be reaching out to the parties to provide proposed orders.

Thank you.

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOR THE ELEVENTH JUDICIAL**
COUNTY OF LEXINGTON	)	**CIRCUIT**
	)	**CASE NO: 2022-CP-32-01932**
Bundy McDonald, LLC	)	
	)	
Plaintiff,	)	**[Proposed] Order**
	)	
vs.	)	
	)	
WECO River District, LLC	)	
	)	
Defendant.	)	

This matter came before me for a non-jury trial on September 26, 2024. The action arises out of a breach of contract cause of action filed by Plaintiff Bundy McDonald, LLC ("Plaintiff") against Defendant WECO River District LLC ("Defendant"). Based upon all the evidence and weighing the credibility of the witnesses, this Court makes the following findings of fact and conclusions of law by the preponderance of the evidence:

The Pleadings

Plaintiff brought this breach of contract action on November 17, 2021 arising out of an unpaid legal fee from an existing arbitration ("The Arbitration") that Plaintiff was hired to take over and represent the Defendant.[1] Defendant filed an amended answer on February 14, 2022 which included a general denial and certain affirmative defenses. No counter-claims for breach of contract or legal malpractice were alleged by Defendant against Plaintiff.

[1] The arbitration was pending when Plaintiff was hired. (Plaintiff's Exs. 1 and 4).

247

Findings of Fact

(1) On November 29, 2018, the parties entered into a valid and enforceable contract based upon an hourly fee arrangement ("Hourly Fee Agreement") (Plaintiff Ex. 4). The Hourly Fee Agreement was for The Arbitration which arose out of a construction dispute between Defendant and its general contractor for an apartment project.

(2) On November 15, 2019, the parties entered into an amended valid and enforceable contract based upon an hourly fee arrangement and a reverse contingency fee ("The Contract"). (Plaintiff's Ex. 7). The Contract required Defendant to pay hourly fees to be capped at $100,000.00 AND "25% of any reduction of the total amount of claims made by the Contractor…" (Id.) Both portions were to be capped at $500,000.00.

(3) I find that both Plaintiff and Defendant are sophisticated business ventures and were so at such time of entry into The Contract.

(4) On December 23, 2019, the general contractor in the arbitration filed a mechanic's lien claim in the amount of $3,981,919.92. (Plaintiff's Ex. 8).

(5) On February 2, 2020, the general contractor in the arbitration filed an amended claim in the amount of $4,029,749.43. (Plaintiff's Ex. 9).

(6) On February 27, 2020, the arbitrator entered a final scheduling order that required Defendant to submit a "Final Claim" in the arbitration by March 16, 2020. (Plaintiff's Ex. 10).

(7) The Arbitration was held on July 7, 8, 14, and 15 in Summerville, SC. (Plaintiff's Ex. 11).

(8) The Arbitration resulted in an award to the general contractor in the amount of $2,640,715.80 ("Arbitration Award").

(9) On February 17, 2021, Plaintiff issued a valid invoice to Defendant for $347,258.45. (the "Fee") (Plaintiff's Ex. 15). This amount was based upon The Contract between the parties requiring a fee of "25% of any reduction of the total amount of claims made by the Contractor…" to be paid by Defendant to Plaintiffs. (Plaintiff's Ex. 7).

(10) Defendant has failed to pay the invoice in full. The total fee did not reach the $500,000.00 cap negotiated by the parties.

(11) At trial, Plaintiff presented the testimony of Thomas A. Pope, Esq.- a licensed South Carolina lawyer with 50 years of experience. Mr. Pope was qualified without objection as an expert in "attorney fee disputes, legal fee contracts, and reasonable attorneys fees." (Transcript p. 24). He testified that he reviewed all the relevant information and opined that the Fee was owed in full.[2]

(12) I find that Mr. Pope was qualified, prepared, reliable and credible for every aspect of the testimony he provided to the Court. Additionally, I find that Mr. Pope performed the only fee analysis in this matter. Defendant did not provide a witness qualified to perform such analysis.

Conclusions of Law

"The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach." *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009).

I find that Plaintiff and Defendant entered into a valid and enforceable contract. I further find that Plaintiff performed all responsibilities under such contract. Plaintiff concluded the

[2] Mr. Pope gave credit due for the $150,000.00 voluntarily paid by Defendant on May 24, 2022 (Plaintiff's Ex. 20).

arbitration for which it was hired. The Arbitration Award, upon which the Plaintiff's fee was based, was executed, and Defendant received the full benefit of the Arbitration Award. I further find that the fee called for in The Contract is reasonable based upon the factors in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997).

I find that Plaintiff issued an invoice to Defendant based upon the Contract. Defendant failed to pay the invoice in full—proximately and directly resulting in damages to Plaintiff in the amount of $197,258.45. (See Plaintiff's Ex. 15)[3]. As this is a liquidated sum certain, Plaintiff is entitled to pre-judgment interest, pursuant to S.C. Ann. Section 34-31-20, in the amount of $78,808.05.

I further find that Defendant failed to meet its burden of proof on any of its affirmative defenses.

IT IS THERFORE ORDERED AS FOLLOWS:

I. Judgment is to be entered in favor of Bundy McDonald, LLC on its breach of contract cause of action against WECO River District, LLC in the amount of $197,258.45 ("Liquidated Sum").

II. Further, Judgment is to be entered in favor of Bundy McDonald, LLC for prejudgment interest in the amount of $78,808.05 on the Liquidated Sum.

III. The total amount of Judgment in favor of Bundy McDonald, LLC against WECO River District, LLC is, therefore, $276,066.50.

IT IS SO ORDERED!

- Signature Page of Judge follows -

[3] This amount give credit due for the $150,000.00 voluntarily paid by Defendant on May 24, 2022 (Plaintiff's Ex. 20).

250

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOR THE ELEVENTH JUDICIAL**
COUNTY OF LEXINGTON	)	**CIRCUIT**
	)	**CASE NO: 2022-CP-32-01932**
Bundy McDonald, LLC	)	
	)	
Plaintiff,	)	**PLAINTIFF BUNDY MCDONALD,**
	)	**LLC'S RULE 59(e) and 52(b), SCRCP**
vs.	)	**MOTION TO ALTER AND AMEND**
	)	
WECO River District, LLC	)	
	)	
Defendant.	)	

YOU WILL PLEASE TAKE NOTICE Plaintiff Bundy McDonald, LLC ("Plaintiff") respectfully moves this Court to alter or amend its Order entered on March 13, 2025 ("Order") pursuant to Rule 59(e), SCRCP. Because this Court sat as the finder of fact in the trial of this matter, Plaintiff also brings this motion pursuant to Rule 52(b), SCRCP, to amend, as necessary, the Court's findings of fact.

Plaintiff hereby moves that the Order be altered or amended on the following grounds:

(1) Plaintiff respectfully incorporates its Proposed Order, submitted to the Court on February 5, 2025, as if stated verbatim herein and requests the Court to alter or amend the Order consistent with findings contained in Plaintiff's Proposed Order, and rule on each finding or fact and conclusion of law incorporated therein.

(2) The Court's order makes no distinction between findings of fact and conclusion of law in violation of Rule 52(a), SCRCP.

(3) Plaintiff respectfully submits the Court erred making findings of fact not supported by any evidence presented at the trial of this matter.

251

(4) Plaintiff respectfully submits the Court erred in ignoring the uncontradicted testimony of Plaintiff's witness.

(5) Plaintiff respectfully submits the Court erred in adopting Defense counsel's argument as findings of fact.

(6) Plaintiff respectfully submits the Court erred in making findings of fact based upon parol evidence.

(7) Plaintiff respectfully submits the Court erred in failing to follow contract law in interpreting the fee agreement entered by the parties.

(8) Plaintiff respectfully submits the Court erred in ignoring the arbitration rules governing the arbitration in the underlying matter.

(9) Such other grounds as may be submitted at the time of the hearing of this Motion.

Wherefore, Plaintiff requests that the Order be altered or amended as to the foregoing requests.

Respectfully submitted,

W.H. Bundy, Jr.
W. H. Bundy, Jr., Esq. (SC Bar #1012)
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559
walter@bundymcdonald.com

March 24, 2025

252

AMERICAN ARBITRATION ASSOCIATION®

CONSTRUCTION ARBITRATION RULES
DEMAND FOR ARBITRATION

Mediation: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box ☐
There is no additional administrative fee for this service.

Name of Respondent: Weco River District, LLC	Name of Representative (if known): Turesa Hodge and Matt Mundy
Address: 1401 Main Street, Suite 650, Post Office Box 11739	Name of Firm (if applicable):
	Representative's Address:
City: Columbia, SC / State: SC / Zip Code: 11739	City: / State: / Zip Code:
Phone No.: / Fax No.:	Phone No.: / Fax No.:
Email Address: thodge@eaistesino.com	Email Address:

The named claimant, a party to an arbitration agreement dated May 13, 2017, which provides for arbitration under the Construction Industry Rules of the American Arbitration Association, hereby demands arbitration.

Arbitration Clause: Please indicate whether the contract containing the dispute resolution clause governing this dispute is a standard industry form contract (such as AIA, ConsensusDOCS or AGC) or a customized contract for the specific project.

Contract Form: AIA Form A102-2007, with AIA A201-1997 (see attached Exhibit B for terms of agreement to arbitrate)

The Nature of the Dispute:

See attached Exhibit A for details of the claim

Dollar Amount of Claim: $ $1,213,590.33	Other Relief Sought: ☑ Attorneys Fees ☑ Interest ☑ Arbitration Costs ☐ Punitive/Exemplary ☑ Other
Amount Enclosed: $	In Accordance with Fee Schedule: ☐ Flexible Fee Schedule ☐ Standard Fee Schedule

Please describe appropriate qualifications for arbitrator(s) to be appointed to hear this dispute:

Familiarity with construction disputes and applicable legal principles

Hearing Locale Requested: Columbia, SC	Project Site: Columbia, SC
Estimated Time Needed for Hearings Overall: hours or 2 days	Specify Type of Business: Claimant General Contractor; Respondent Owner

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Signature (may be signed by a representative):	Date: April 6, 2018
Name of Claimant: Carter & Carter Construction, LLC	Name of Representative: William J. Sheppard
Address (to be used in connection with this case): 3399 Peachtree Road, Suite 1700	Name of Firm (if applicable): James-Bates-Brannan-Groover-LLP
	Representative's Address: 3399 Peachtree Road, Suite 1700
City: Atlanta / State: [illegible] / Zip Code: 30326	City: Atlanta / State: [illegible] / Zip Code: 30326
Phone No.: (404) 997-6020 / Fax No.: (404) 997-6021	Phone No.: (404) 997-6020 / Fax No.: (404) 997-6021
Email Address: wsheppard@jamesbatesllp.com	Email Address: wsheppard@jamesbatesllp.com

To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.

Please visit our website at www.adr.org if you would like to file this case online. AAA Case Filing Services can be reached at 877-495-4185.

PLAINTIFF'S EXHIBIT 1

253

Demand for Arbitration – Exhibit A

Carter & Carter Construction, LLC ("Carter & Carter") entered into a contract (the "Contract") dated May 13, 2017, with Weeo River District, LLC (the "Owner"). Under the terms of the Contract, Carter & Carter were to construct a multi-family residential development containing 204 apartment units in three separate buildings, along with associated parking structures (the "Project"). The Project is known as "Brookland Village" and is located near the intersections of State Street and Meeting Street in West Columbia, South Carolina. The form the parties chose for the Contract is the AIA A102-2007 with the AIA A201-1997 General Conditions. However, the Contract was extensively negotiated and the forms were manuscripted by the parties to reflect the details of their agreement.

Construction on the Project is ongoing, but disputes have arisen between the parties that they have not been able to resolve through direct discussions as contemplated by the Contract. There are seven (7) areas of dispute that require resolution through this arbitration. They are as follows:

1. The amount of extended time to which Carter & Carter is entitled to complete its work on Phase II of the Project due to the Owner's delay in completing the design and the amount of compensation due for the associated delay in performance;

2. The amount to which Carter & Carter is entitled for costs due under the Contract that the Owner has withheld from payment to date, plus interest on the amount improperly withheld;

3. Interest due on amounts that the Owner agreed were owed but paid late;

4. Outstanding change order requests other than the change related to the delay in the design of Phase II;

5. The proper interpretation of the Contract as it relates to changes which increase the "Guaranteed Maximum Price" and the use of any "savings" realized by Carter & Carter in the process of "buying out" the Project;

6. The Owner's obligation to provide evidence that it has sufficient resources to fulfill the Owner's financial obligations under the Contract; and

7. Carter & Carter's entitlement to attorneys' fees and expenses of this arbitration.

The facts relevant to each issue are explained in more detail below.[1]

I. **Carter & Carter is entitled to an extension of the Contract time equal to at least 130 days and an increase in the Contract Price of at least $422,071 for extended general conditions costs associated with that delay.**

Carter & Carter commenced on the Project in January 2017 without a written contract. Carter & Carter did so based on a notice from the Owner to proceed with site work only and an agreement for payment for that work. The Owner decided to proceed in that fashion because it needed to commence work without having finalized the design for the entire Project. In early February 2016, Carter & Carter received the completed design drawings for the first two buildings on the Project ("Phase I") and began working with the Owner to finalize the pricing for that work. On March 15, 2017, Carter & Carter received the "permit set" of drawings for Phase II, but the drawings were incomplete. The structural design for Phase II was not finished.

Carter & Carter and the Owner executed the Contract in mid-May 2017 with a retroactive commencement date to January 30, 2017. At the time the Contract was signed, Carter & Carter still had not received the final structural design drawings for Phase II. The schedule for the Project at the time the Contract was signed anticipated that excavation for the podium garage, the first work in Phase II, would begin on July 26, 2017.

Between January and May 2017, Carter & Carter and the Owner discussed the impact that the delay in the design of Phase II was having (and would continue to have) on the Project.

[1] Carter & Carter has recently requested that the Owner provide information demonstrating that the Owner has the ability to perform its obligation to pay for the entire cost of completing the Project. The Owner is required to provide that information by the terms of the Contract. If the Owner refuses to do so, Carter & Carter reserve the right to assert that issue in this arbitration.

On August 4, 2017, Carter & Carter formally notified the Owner of the delay in accordance with the terms of the Contract.

On August 21, 2017, three weeks after work on Phase II was to have commenced, Carter & Carter received the first full set of "for construction" drawings for Phase II. But the Owner and its consultants continued to modify the structural design for Phase II for the next five months. It was not until December 15 when Carter & Carter finally received final drawings for Phase II.

Carter & Carter submitted an interim proposed change order relating to the delay on November 16, 2017. At that time, the best information available to Carter & Carter was that the critical path of the work on the Phase II of Project had been delayed by ninety-eight (98) days. The Owner did not formally respond to the proposed change order, but did ask Carter & Carter to consider altering the request. Events since November have demonstrated that the impact of the delay in design of Phase II is actually much more significant than originally thought. The parties have engaged in discussions over the past three months, but have been unable to resolve their agreement over the extent of delay and the compensation due to Carter & Carter as a result. On March 26, 2018, Carter & Carter discovered that there had been another revision to the Phase II design drawings dated as of January 19, 2018. That revision had never been given to Carter & Carter. As a result, Carter & Carter is assessing what changes have been made and how those changes impact the Project.

At this point, Carter & Carter seeks an extension of not less than 130 days and $447,395.26 as a result of that delay. As more information is known, Carter & Carter will refine the delay claim and associated general conditions.[2]

2. **Carter & Carter is entitled $65,892.72 for costs due under the Contract but improperly withheld, plus interest.**

The Contract price is based on the cost of the work, plus a fee, with a guaranteed maximum price. The Contract contains a provision identifying one aspect of the cost of the work to be paid as follows:

> § 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at the Contractor's home office (as identified in the Contractor's detailed pricing proposal), and in factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

[Contract § 7.2.3.] In Section 15.6.2, Carter & Carter identified specific personnel and costs to be included in its costs. Carter & Carter's "detailed pricing proposal" was even more specific, identifying each person in Carter & Carter's home office whose salary would be billed to the Owner and the applicable percentage of their salary.

From the very beginning of the Project, Carter & Carter billed the Owner consistent with the terms of the Contract. The Owner paid the amounts requested in the first five pay applications without any question or complaint. However, starting with the sixth pay application, the Owner began to withhold some amounts billed for Carter & Carter's home office personnel and costs. The Owner did so despite the specific language in the Contract quoted above and the contents of Carter & Carter's detailed pricing proposal. The amount wrongfully

[2] The premium on builder's risk policy that Carter & Carter purchased was based on the original anticipated duration. If Carter & Carter is required to extend the coverage period on that policy based on the Owner's delays, Carter & Carter will assert a right to recover that additional premium.

withheld by the Owner through Pay Application 12 is $65,892.72. Carter & Carter is entitled to payment of that amount immediately.

Pursuant to the terms of the South Carolina Prompt Payment Act, Carter & Carter is entitled to interest on the sums wrongfully withheld by the Owner at the rate of one percent per month from the date when due under the Contract until paid. S.C. Code Ann. § 29-6-50. Through March 30, 2017, the accrued interest amount is $347.69. Interest continues to accrue thereafter at the rate of $1.81 per day.[3]

Carter & Carter anticipates that the Owner will continue to wrongfully withhold money that is due under the Contract from pay application submitted after Pay Application 12. Carter & Carter reserves the right to pursue claims for any additional sums that are wrongfully withheld (and interest on them) in this arbitration.

3. **The Owner owes Carter & Carter $3,262.12 in interest on sums paid after the date when due.**

As noted in Section 2 above, the Owner has paid parts of the amounts for which Carter & Carter submitted applications for payment. But every payment has been made after the date when due by at least eight (8) days. Using the interest rate provided in the Prompt Payment Act, Carter & Carter is entitled to recover the sum of $3,262.12 as interest on the Owner's late payments.

---

[3] Although the Contract states that amounts not timely paid accrue interest at the rate of six percent (6%) per annum, the Contract does not contain an express waiver of the remedies available to Carter & Carter under the South Carolina Prompt Payment Act. S.C. Code Ann. § 29-5-60 (agreement to vary rate of interest by contract requires reference to the specific Code section and that the waiver be "in conspicuous bold-faced or underlined type"). Therefore, the interest rate from the statute applies to Carter & Carter's claims.

4. **The Owner has failed to act on or wrongfully rejected proposed change orders to which Carter & Carter is entitled.**

In addition to the change order relating to the delays in the design of Phase II, Carter & Carter has submitted a number of proposed changes orders which the Owner either has not acted or has wrongfully rejected. Those proposed changes orders are as follows:

COR	Description	Additional Days	Dollar Amount
6	Cumulative Weather Delays – Jan / Feb 2017	6	TBD[4]
10	Weather Delays – July 2017	3	TBD
12	Conversion from Percentage Fee to Fixed Fee	0	$0
13	Weather Delays – Aug. 2017	2	TBD
28	PIV Relocation	0	$7,984.88
29	Building 3 Unsuitable Soils	0	$56,678.20
33	Phase II Construction Cost Increase	0	$13,735.48
36	Sink & Faucet Upgrades	0	$20,193.00
39	Shower Pans	0	$5,506.32
41	Weather Days – Dec. 2017	1	TBD
47	Reconciliation of Hardscape Allowance	0	$50,757.57
49	Weather Days – Jan. 2018	2	TBD
50	Phase 2 -- Revision 6	0	$35,466.49
51	Architectural Revision 5 (Phase 1)	0	$6,744.62
52	Building 1 Exterior Lights	0	$90,113.97
~~53~~	~~Building 1 Exterior Lights (Rough-in only)~~	~~0~~	~~$12,495.41~~
55	Building 1 Corridor $ Stair Flooring	0	$47,034.32
57	Structural Revisions to Podium Garage	0	$135,828.40
58	Slipdock Geopier System	3	$74,730.00
63	Replace U24s with U25s	0	$2,059.01
64	Building 1 Exterior Lighting VE Options	0	$52,192.96
67	Phase 1 Architectural Revision 10	0	$5,406.00
68	Earthwork Associated with Deep Foundations	0	$30,236.50
69	Elevator 2 Finish Selection	0	$4,028.00
72	French Drain at Garage 2	0	$27,660.70

[4] The additional general conditions for weather delays will be calculated at the end of the project once the cumulative numbers of additional days is determined.

73	Roof Access Door	0	$1,871.71
74	Slip Deck Over Excavation for Foundations	0	$74,172.97
75	Change Roof Towers – Building 1	0	$3,413.20
76	Furr Out Wall in Laundry Closets	0	$2,671.20

The Owner has acknowledged its obligation to respond to Carter & Carter's requests for change orders saying recently "we owe you a response to several of the larger outstanding project items." Under the terms of the Contract, Carter & Carter is not supposed to undertake any changed work without a signed change order. If the Owner continues to refuse to act on these change orders, Carter & Carter will be put at risk of performing unauthorized work or work for which it will not be paid. The cumulative value of these change orders is $696,692.54.[5] Carter & Carter is entitled to some action by the Owner on those proposed change orders.[6]

5. Carter & Carter is entitled to a declaration of the meaning of the Contract.

As noted in Section 2 above, the Contract price is based on the cost of the work, plus a fee, with a guaranteed maximum. Pursuant to the Contract, Carter & Carter developed a schedule of values on which its Pay Applications are to be based. As is customary on projects where the contractor's compensation is based on the cost of the work, plus a fee, Carter & Carter has used its best efforts to identify subcontractors who can complete their applicable portion of the work on the Project at prices that are less than the line item for that work in the schedule of

[5] Three of these pending change orders – Nos. 52, 53, and 64 – all deal with exterior lighting changes on Building 1. Carter & Carter has offered the Owner three alternatives. For purposes of calculating the value of all listed change orders, Carter & Carter has included the cost of the most comprehensive proposal relating to the exterior lighting.

[6] Some of these change orders have only recently been submitted, but given the Owner's past inaction, they have been included in order to avoid a later dispute over them. Also some change orders are noted as having no impact to schedule because they relate to future phases of the work or the lack of a decision by the Owner has not yet delayed the work on the Project. If Carter & Carter does not get direction for a long period of time on those change orders, there may be impacts. Carter & Carter specifically reserves the right to pursue additional time and associated costs if warranted by future events.

values. In fact, the Contract contemplates that Carter & Carter will attempt to do so in order to bring the Project in under budget. [See Contract, Article 3 ("The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to . . . exercise the Contractor's skill and judgment in furthering the interests of the Owner . . . and to perform the Work in an expeditious and economical manner consistent with the Owner's interests").][7]

Carter & Carter has been able to negotiate subcontracts for some portions of the work at prices that indicate there may be "savings." The current "savings" are approximately $248,000. But Carter & Carter has not subcontracted for the entire Project at this point and those "savings" may properly be spent on cost overruns in the future. That is particularly true since the Owner has continuously altered the design on Phase II and bids for that work are still being collected.

The Owner has recently insisted that it is entitled to use the "savings" to "pay for" changes in the scope of Carter & Carter's work that would otherwise increase the Guaranteed Maximum Price. Specifically, the Owner has suggested that it "can use the buyout savings for scope changes and the [Guaranteed Maximum Price] remains the same until the Owner exceeds the amount" of savings. That is not how the Contract is written. See Ecclesiastes Production Ministries v. Outparcel Assocs., LLC, 374 S.C.483, 498 (2007) ("To discover the intention of a contract, the court must look first to its language -- if the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect."). Under the plain and unambiguous terms of the Contract, changes in the scope of the work should be accounted for in change orders, with corresponding increases or decreases in the Guaranteed Maximum Price. If

[7] One thing that is unusual in this instance is that Carter & Carter does not share in any savings realized by the Owner if the Project is finished for less than the Guaranteed Maximum Price.

that is not the case, and the Owner "spends" the projected "savings" on changes to the agreed scope of work, Carter & Carter will be at risk at the end of the Project if those "savings" are not realized.

The provisions in the Contract that are the subject of Carter & Carter's request for declaratory relief include, but are not limited to, the following:

1. Section 5.2.1 of the A102 which says "The Contact Sum is guaranteed by the Contractor not to exceed Twenty-Six Million Seven Hundred and Forty Eight Thousand and Four Hundred and Fifty Three Dollars ("26,748,452), ***subject to additions and deductions by Change Order as provided in the Contract Documents***."

2. Section 6.1 of the A102 which says "***Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3*** of the AIA Document A201-2007, General Conditions of the Contract for Construction, as amended for this Project."

3. Section 6.3 of the A102 which says "***In calculating adjustments to the Guaranteed Maximum Price***, the terms "cost" and "costs" as used in the above-referenced provisions of the AIA Document A201-2007, as amended for this Project, shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1 of this Agreement.

[Contract §§ 5.2.1, 6.1, 6.3 (emphasis supplied).]

Carter & Carter requests that the arbitrator declare the rights of the parties under the Contract with regard to the Owner's claim to use "savings" to "pay for" the cost of changes in the work that should otherwise increase the Guaranteed Maximum Price. See S.C. Code Ann. §§ 15-53-10 et seq.

6. **The Owner has defaulted under the Contract by failing to provide evidence that it has the financial resources to meet its obligation to pay the full cost owed under the Contract.**

At the outset of the Project, the Owner informed Carter & Carter that the Owner's financing for the Project included $6,000,000 in equity contributions (the "Owner's Equity"), a construction loan for up to $24,500,000.00 (the "Construction Loan"), and $5,000,000 in tax increment bond financing (the "Bond Financing"). Based on recent events (including the Owner's position regarding the use of "savings" as discussed in Section 5 above), Carter & Carter is concerned that the Owner does not have the financial resources to pay for the full cost of the Project.

The Contract contains the following provision:

> The Owner shall, at the written request for the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement of continuation of the Work.

[AIA A201 General Conditions § 2.2.1.] By letter dated March 26, 2018, Carter & Carter asked the Owner to provide documents reflecting the current status of the Owner's stated sources of financing for the Project, including, but not limited to the following:

1. Documents showing the funding and uses of the Owner's Equity;
2. Documents reflecting communications with persons or entities providing all or part of the Owner's Equity regarding payment of the sums committed to the Project;
3. Documents showing the closing and funding of the Construction Loan;
4. Documents reflecting the amount left to be drawn on the Construction Loan;

5. Document reflecting communications with the lender regarding the availability of funding on the Construction Loan and any issues with that funding;

6. Documents showing the closing and funding of the Bond Financing; and

7. Documents reflecting communications with the bond issuer regarding timing and payment of the Bond Financing committed to the Project.

The Owner failed and refused to produce any of the requested information within the time set out in the March 26 letter. Carter & Carter sent a follow-up letter to the Owner notifying the Owner that failure to produce the requested information constituted a default under the Contract and that continued failure to perform could result in a suspension of the work on the Project.

Carter & Carter requests that the arbitrator issue an award requiring the owner to produce evidence of its financial ability to pay the cost to complete Project as a condition precedent to Carter & Carter's continued performance.

7. **Carter & Carter is entitled to recover attorneys' fees and expenses of this arbitration.**

The Contract states, in part, that "[t[he arbitrator may award the prevailing party or parties attorneys' fees and expenses of arbitration and allocate the costs of the arbitration amount the parties as justice requires." Under South Carolina law, a party may recover its attorneys' fees and expenses where agreed to in the contract at issue. See Townsend v. Singleton, 257 S.C. 1, 12 (1971) ("We have held that recoverable damages do not include the expense of employing counsel ***except when so provided for by contract or statute***.") (emphasis supplied). Carter & Carter requests that any award made in this arbitration require the Owner to pay Carter & Carter's reasonable attorneys' fees and expenses of the arbitration, including filing and witness fees and all compensation paid to the arbitrator.

AMERICAN ARBITRATION ASSOCIATION
CONSTRUCTION ARBITRATION RULES

In the Matter of the Private Arbitration Between Carter & Carter Construction, LLC and Weco River District, LLC, Respondent-Counterclaimant.	**Response to Arbitration Demand by Carter**

The Respondent Weco River District, LLC alleges the following response to the claims asserted by Carter & Carter Construction, LLC.

1. Weco and Carter entered into a binding agreement to arbitrate pursuant to the Rules of the American Arbitration Association, but not administered by the American Arbitration Association. There is to be a single arbiter who has not been chosen yet.

2. The Project at issue is ongoing and all claims asserted by Carter are premature and should be stayed until the conclusion of the Project and all facts and circumstances relevant to all claims are known.

3. Carter listed 7 items to be addressed.

4. Item 1 is affected by ongoing impacts and other contributing factors caused by the contractor and it is premature to assess any delay or liquidated damages that may be due to Carter or Weco until the end of the project. This item should be stayed until completion of the project.

5. Item 2 is dependent upon other and future circumstances. The amount the Owner is entitled to withhold is also affected by circumstances now occurring and to hereafter occur. The owner can withhold funds for a number of reasons, as enumerated in Article 9 including liquidated damages, costs to correct, insufficient funds to complete and other such ongoing and future circumstances. This item should be determined in the context of a completed job and this claim should be stayed until completion of the project.

6. Item 3 can be resolved in the context of other issues and to have a hearing on this issue midway is inefficient as it is subject to change or amendment. Therefore, this item should be stayed until completion of the project.

7. Item 4 has been principally resolved. Carter has listed a number of items in its demand. Carter has agreed that weather delays are not compensable. Numerous change orders have been resolved since April 6, 2018. All other change orders have either been ruled upon by the Owner and Architect or are in progress to be resolved in due time. Any hearing on these issues should be resolved at the end of the job, assuming there are outstanding change orders that have not or cannot be resolved by the parties.

8. Carter and Weco agree on the savings issue.

9. Carter has been provided with information to resolve Item 6.

10. Item 7 has to be decided in the context of the prior six (6) issues and should be delayed until the resolution of these items.

11. Weco denies all of Carters assertions in the Demand except as to those admitted herein, and only to the extent admitted herein.

12. Weco reserves the right to assert counterclaims as to delay and liquidated damages, and other damages, until the end of the project and when such claims are defined and can be asserted with clarity.

Henry W. Brown, Esquire
D. Gregory Placone, Esquire
hbrown@nexsenpruet.com
gplacone@nexsenpruet.com
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Post Office Drawer 2426
Columbia, SC 29202
Tel: 803.771.8900
Fax: 803.727.1427
Attorneys for Respondent/Counterclaimant, Weco River District, LLC

June 28, 2018

266

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.

§ 4.5 MEDIATION/DIRECT NEGOTIATIONS

§ 4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to direct discussions between the designated representatives of the Owner and the Contractor (or upon joint agreement mediation conducted with a mutually agreeable third-party) as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

§ 4.5.2 If the parties elect mediation, the mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association.

§ 4.5.3 The parties shall share any mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 4.6 ARBITRATION

§ 4.6.1 Any Claim arising out of or related to the Contract, that involves any issues between Contractor and the Owner except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes in accordance with the provisions of Section 4.5. In the event the joinder of any third party, including subcontractors or the Architect is necessary for complete adjudication of all rights, arbitration shall not be mandatory but shall be by mutual consent.

§ 4.6.2 Claims not resolved by the parties shall be decided by binding arbitration which, unless the parties mutually agree otherwise, shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Any arbitration shall not be administered through the American Arbitration Association but shall be a private arbitration decided by single arbitrator unless agreed by all parties [illegible]

§ 4.6.3 A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 13.7.

§ 4.6.4 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is substantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

AIA Document A201™ – 1997. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved, WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by AIA software at 13:19:12 on 01/05/2015 under Order No. 2114513695_2 which expires on 5/11/2015, and is not for resale.
User Notes:

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

HOURLY FEE AGREEMENT

Weco River District, LLC (hereinafter referred to as "Client") hereby employs and retains Bundy McDonald, LLC (hereinafter called "Attorney") to represent Client as legal counsel for purposes in connection with the project known as Brookland in West Columbia, South Carolina that is under construction by Carter & Carter Construction, LLC:

1. The Attorney will devote his full professional abilities to Client's claim and/or case, keep Client informed of the progress of the case, pursue Client's objectives as permitted by law and Attorneys rules of professional conduct and Client agrees to fully cooperate with Attorney. Client shall not make any agreement for settlement of Client's claims, either in whole or in part, without advising Attorney. Attorney shall not make any settlement agreement without prior agreement and consent of Client.

2. Client shall pay W. H. Bundy, Jr. $400.00 per hour, M. Brent McDonald $300.00 per hour, and their paralegals $100.00 per hour. In addition, Client shall reimburse Attorney for all costs incurred, including, but not limited to, depositions, filing fees, travel and lodging (not to exceed $250.00 per person per day for meals and lodging without prior agreement of Client), mileage at the prevailing rate per mile, copy costs (at $.25 per page), and computerized legal research on a monthly basis. Client agrees to immediately advise Attorney of any questions or objections to any billing invoice. Payment of the invoice without notice of any question or objection by the Client is an acknowledgment of the reasonableness of the time charged at the agreed upon rate.

3. Client further agrees and understands that the Attorney may, from time to time, need to hire the services of expert witnesses and/or consultants to aid in the prosecution and/or defense of the

PLAINTIFF'S EXHIBIT 4

claims involved herein and that the services of such expert witnesses and/or consultants shall be paid for by Client; provided, however, that Attorney shall consult with Client prior to retaining any such expert witnesses and/or consultants, shall advise Client as to the basis upon which such expert witnesses and/or consultants are to be compensated, and shall obtain the consent of Client to retain the services of any expert witnesses and/or consultants. Client shall promptly pay all statements submitted by such expert witnesses and/or consultants. Compensation (fees) to be paid to expert witnesses and/or consultants shall not exceed the usual and customary fees for such services. Further, services of experts and consultants shall be billed to Client at the Attorney's costs of such services.

4. Client hereby acknowledges that the Attorneys have made no representations, promises or guarantees regarding the outcome of Client's claim.

5. This agreement is and shall be binding upon Client, successors, executors, and assigns with regards to the terms and conditions as set forth herein.

6. After the completion of the professional services, Attorneys agree to keep Client's file for a period of one (1) year, after which time the file may be destroyed by the Attorneys.

7. Client has read this agreement and agrees to its terms and conditions. There are no other agreements, oral or otherwise, between Client and Attorneys. Any modification of this agreement shall be made in writing and signed by both Client and Attorneys.

WECO RIVER DISTRICT, LLC

Dated: 1/29, 2018

By:

269

Its: Authorized Agent

BUNDY MCDONALD, LLC

Dated: 4/1, 2018

W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire

270

Bundy McDonald
TRIAL LAWYERS

WALTER H. BUNDY
walter@bundymcdonald.com
843-212-0525 (Direct)
843-708-1519 (Cell)

January 24, 2019

Via Email & US Mail
Robert Mundy
Estates and Companies
1401 Main Street Suite 650
Columbia, SC 29201
bmundy@estatesinc.com

RE: Weco River District, LLC – Revised Fee Agreement
Project: Brookland Village, West Columbia South Carolina

Dear Bob:

As discussed, here is the proposed fee language with a hypothetical example. Do not hesitate to call me if you have any questions.

"Client shall pay W. H. Bundy, Jr. $400.00 per hour, M. Brent McDonald $300.00 per hour, and their paralegals $100.00 per hour ("Hourly Rates"). The Hourly Rates will be capped at one hundred thousand dollars ($100,000.00). In addition to the Hourly Rates, Client agrees to pay a contingency fee of 25% of any reduction of the total amount of claim(s) made by the Contractor and 25% of the any amount of in kind settlement or relief obtained and the same percentage of any funds actually collected, whether by settlement or a judgment arising out of the Client's claims against Contractor or other parties to any proceeding covered by this Fee Agreement. Client shall reimburse Attorney for all costs incurred, including, but not limited to, depositions, filing fees, travel and lodging (not to exceed $250.00 per person per day for meals and lodging without prior agreement of Client), mileage at the prevailing rate per mile, copy costs (at $.25 per page), and computerized legal research on a monthly basis. Client agrees to immediately advise Attorney of any questions or objections to any billing invoice. Payment of the invoice without notice of any question or objection by the Client is an acknowledgment of the reasonableness of the time charged at the agreed upon rate."

By way of an example. Attorney will bill hourly but will not bill any hourly fees over $100,000.00. If the contractor makes a total claim for $500,000,00 and the arbitrator awards or a settlement is reached so that Client must pay $300,000.00 then Attorney will be entitled to Hourly Rates (not to exceed $100k) and 25% of the reduction of the claim (in this scenario $50k). Also, if the Client makes a claim for $500,000.00 and the arbitrator awards or a settlement is reached for $400,000 then Attorney will be entitled to Hourly Rates (not to exceed $100k) and 25% of the recovered claim (in this scenario $100,000.00). The total fee in this scenario would be Hourly Rates (not to exceed $100k) + $150k.

Sincerely yours,

W.H. Bundy, Jr.

WHB/kjw

PLAINTIFF'S EXHIBIT 5

CARTER & CARTER CONSTRUCTION, LLC,

Claimant,

v.

WECO RIVER DISTRICT, LLC,

Respondent.

CONSENT SCHEDULING ORDER

This matter having come before Arbitrator Frank Elmore on the consent of Claimant Carter & Carter Construction, LLC, and Respondent Weco River District, LLC, and the parties and the Arbitrator having established a schedule for the arbitration hearing, and it appearing that the parties have agreed on pre-hearing deadlines in this matter, the following is ordered:

Activity	Deadline
Final Request for Production of Documents	October 15, 2019
Final Production of Documents	November 15, 2019
Depositions (limited to 4 per party)	November 15, 2019 - December 31, 2019
Final Statement of Claim by Claimant	January 31, 2020
Final Statement of Claim by Respondent	February 28, 2020
Exchange of Arbitration Witness Lists	March 20, 2020
Exchange of Arbitration Exhibits	March 20, 2020
Service of Arbitration Pre-Hearing Briefs	March 31, 2020
Arbitration Hearing	April 2020 (Dates TBD)

SO ORDERED, this 30th day of September, 2019.

L. Franklin Elmore, Arbitrator

272

STATE OF SOUTH CAROLINA)
) AMENDED FEE AGREEMENT
COUNTY OF DORCHESTER)

Weeo River District, LLC (hereinafter referred to as "Client") hereby employs and retains Bundy McDonald, LLC (hereinafter called "Attorney") to represent Client as legal counsel for purposes in connection with the project known as Brookland in West Columbia, South Carolina that is under construction by Carter & Carter Construction, LLC and subject to an arbitration. This Amended Fee Agreement supersedes the former "Hourly Fee Agreement" signed by Attorney on December 4, 2018. Client and Attorney agree as follows:

1. The Attorney will devote his full professional abilities to Client's claim and/or case, keep Client informed of the progress of the case, pursue Client's objectives as permitted by law and Attorneys rules of professional conduct and Client agrees to fully cooperate with Attorney. Client shall not make any agreement for settlement of Client's claims, either in whole or in part, without advising Attorney. Attorney shall not make any settlement agreement without prior agreement and consent of Client.

2. Client shall pay W. H. Bundy, Jr. $400.00 per hour, M. Brent McDonald $300.00 per hour, and their paralegals $100.00 per hour ("Hourly Rates"). The Hourly Rates will be capped at one hundred thousand dollars ($100,000.00). In addition to the Hourly Rates, Client agrees to pay a contingency fee of 25% of any reduction of the total amount of claim(s) made by the Contractor and 25% of the any amount of in kind settlement or relief obtained and the same percentage of any funds actually collected, whether by settlement or a judgment arising out of the Client's claims against

PLAINTIFF'S EXHIBIT 7

Contractor or other parties to any proceeding covered by this Fee Agreement ("Contingent Fee"). The Contingent Fee and Hourly Fee together will be capped at $500,000.00. Client shall reimburse Attorney for all costs incurred, including, but not limited to, depositions, filing fees, travel and lodging (not to exceed $250.00 per person per day for meals and lodging without prior agreement of Client), mileage at the prevailing rate per mile, copy costs (at $.25 per page), and computerized legal research on a monthly basis. Client agrees to immediately advise Attorney of any questions or objections to any billing invoice. Payment of the invoice without notice of any question or objection by the Client is an acknowledgment of the reasonableness of the time charged at the agreed upon rate.

3. Client further agrees and understands that the Attorney may, from time to time, need to hire the services of expert witnesses and/or consultants to aid in the prosecution and/or defense of the claims involved herein and that the services of such expert witnesses and/or consultants shall be paid for by Client; provided, however, that Attorney shall consult with Client prior to retaining any such expert witnesses and/or consultants, shall advise Client as to the basis upon which such expert witnesses and/or consultants are to be compensated, and shall obtain the consent of Client to retain the services of any expert witnesses and/or consultants. Client shall promptly pay all statements submitted by such expert witnesses and/or consultants. Compensation (fees) to be paid to expert witnesses and/or consultants shall not exceed the usual and customary fees for such services. Further, services of experts and consultants shall be billed to Client at the Attorney's costs of such services.

4. Client hereby acknowledges that the Attorneys have made no representations, promises or guarantees regarding the outcome of Client's claim.

5. This agreement is and shall be binding upon Client, successors, executors, and assigns with regards to the terms and conditions as set forth herein.

6. After the completion of the professional services, Attorneys agree to keep Client's file for a period of one (1) year, after which time the file may be destroyed by the Attorneys.

7. Client has read this agreement and agrees to its terms and conditions. There are no other agreements, oral or otherwise, between Client and Attorneys. Any modification of this agreement shall be made in writing and signed by both Client and Attorneys.

WECO RIVER DISTRICT, LLC

Dated: 11/15/2019, 2019

By: _____

Its: Authorized Agent

BUNDY MCDONALD, LLC

Dated: 11/15/2019, 2019

W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire

285

20190058128 BK: 20850 PG: 1680 - 1686 7 PGS
MECHANICS LIEN
Rec: $25.00 Cnty: $0.00 State: $0.00
December 23, 2019 10:26:07 AM
FILED IN LEXINGTON COUNTY, SC
Tina Guerry

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

REGISTER OF DEEDS OFFICE

Carter & Carter Construction, LLC,

Petitioner,

v.

Weco River District, LLC and
Capital Bank Corporation,

Respondents.

NOTICE AND CERTIFICATION OF MECHANIC'S LIEN

TO: THE RESPONDENT ABOVE-NAMED AND ALL OTHERS CONCERNED:

NOTICE IS HEREBY GIVEN that Carter & Carter Construction, LLC ("Claimant"), is due the sum of Three Million Nine Hundred Eighty-One Thousand Nine Hundred Nineteen and 92/100's Dollars ($3,981,919.92) from Weco River District, LLC (the "Owner"), a statement of just and true account of said indebtedness, with all just credits given, being attached hereto and made a part hereof.

That said debt is due Claimant for labor performed and materials and equipment furnished and used in the erection, alteration, or repair of buildings or structures situated on, and/or otherwise improving the real estate, by virtue of an agreement with, and at the direction and request of the Owner of the real property (the "Property") described on Exhibit A, attached hereto and incorporated herein by reference.

Capital Bank Corporation is the holder of a mortgage on the Property pursuant to that certain "Mortgage, Assignment of Rents and Security Agreement" executed by and between Capital Bank Corporation and the Owner recorded on March 31, 2017, in the Office of the

Register of Deeds for Lexington County, South Carolina in Mortgage Book 19105 at Page 87 and that certain "Amended and Restated Mortgage, Assignment of Rents an Security Agreement" executed by and between Capital Bank Corporation and the Owner recorded on June 19, 2018, in the Office of the Registrar of Deeds for Lexington County, South Carolina in Mortgage Book 20088, at Page 1.

Claimant labored on and furnished labor and materials for such buildings, structures or improvements within ninety (90) days of the date hereof. The last date of furnishing said labor and materials for such buildings, structures or improvements to the real property was December 19, 2019. No part of the debt has been paid by cash, credit, or otherwise and 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, Claimant has and claims a lien to secure the payment of the debt so due and all the costs and reasonable attorney's fees of enforcing said lien upon the interest in the real estate described above. The Claimant's Contractor License Number is G117858.

CARTER & CARTER CONSTRUCTION, LLC

By: _____
Name: Collin Carter
Its: Manager

Sworn to and subscribed before me
this 20 day of December, 2019.

_____
Notary

JIMMICA SLAUGHTER
Notary Public
Alabama State at Large
(Seal)

My commission expires: My Commission Expires June 9, 2022

2019058126 RECORD BOOK BK 20850 PG 1681

2020027683 RECORD BOOK BK 20879 PG 2353

277

EXHIBIT A

LEGAL DESCRIPTION

PARCEL NO. 1:

ALL that piece, parcel or lot of land, situate, lying and being at the corner of State Street and Court Avenue, in the Town of West Columbia, Congaree Township, School District No. 29, Lexington County, South Carolina, containing 0.04 acres, more or less, as shown on a plat prepared for the City of West Columbia by Associated B & S, Inc., dated May 6, 2015, recorded on May 21, 2015 and recorded in the Office of the Register of Deeds for Lexington, South Carolina in Plat Book 17653, at page 158 with reference to the plat for the exact metes, bounds, distances and description

DERIVATION: Limited Warranty Deed to City of West Columbia from Ann G. Duncan dated May 26, 2015 and recorded May 26, 2015 in the Office of the Register of Deeds for Lexington, South Carolina in Book 17660, at page 259.

TMS No.: 004647-31-002

PARCEL NO. 2:

ALL that certain piece, parcel or tract of land, with all improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, containing .12 acres, shown by Parcel "A" on Plat prepared for City of West Columbia, prepared by Associated B & S, Inc., dated June 20, 2014, revised July 21, 2014 and recorded August 1, 2014 in the Office of the Register of Deeds for Lexington, South Carolina in Plat Book 17102, at page 183, with reference to the plat for the exact metes, bounds, distances and description.

DERIVATION: Limited Warranty Deed to City of West Columbia from Miles Management, LLC dated July 31, 2014 and recorded August 1, 2014 in the Office of the Register of Deeds for Lexington County in Book 17102, at page 184.

TMS No: 004647-31-003

PARCEL NO. 3:

ALL that certain piece, parcel or tract of land, with any improvements thereon, situate, lying and being in the City of West Columbia, in the County of Lexington, State of South Carolina, being shown and designated as 0.12 Acre, on plat prepared for City of West Columbia by Cox and Dinkins Inc., dated September 27, 2004, and recorded December 22, 2004 in the Office of the Register of Deeds for Lexington, South Carolina Plat Book 9794, a page 332. with reference to the plat for the exact metes, bounds, distances and description.

DERIVATION: Deed to City of West Columbia from Harrelson and Associates, Inc. dated December 20, 2004 and recorded December 22, 2004 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 9794, at page 333.

TMS No.: 004647-31-004

2018056128 RECORD BOOK BK 20850 PG 1682

2020027683 RECORD BOOK BK 20879 PG 2354

PARCEL NO. 4:

ALL that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being the City of West Columbia, Lexington County, State of South Carolina, being shown and delineated as 1.18 Acres/51,615 SQ.FT. on plat prepared for City of West Columbia, S.C. by Cox and Dinkins, Inc., dated April 1, 2004 and recorded June 9, 2004 in the Office of the Register of Deeds for Lexington, South Carolina in Plat Book 9327, at page 737 (Slide 768, at page 10), with reference to the plat for the exact metes, bounds, distances and description.

DERIVATION: Deed to City of West Columbia, South Carolina from Larry M. Taylor and Taylor Family Partnership, a General Partnership dated June 3, 2004 and recorded June 9, 2004 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 9327, at page 235.

TMS No: 004647-31-007

PARCEL NO. 5:

ALL that certain piece, parcel or tract of land, with all improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, containing 0.03 acres, shown by Parcel "D" on Plat prepared for City of West Columbia, prepared by Associated E & S, Inc. dated June 20, 2014, revised on July 21, 2014 and recorded August 1, 2014 in the Office of the Register of Deeds for Lexington, South Carolina in Plat Book 17102, at page 183, with reference to the plat for the exact metes, bounds, distances and description.

DEVIRATION: Deed to City of West Columbia, South Carolina from H. Wayne Skipper, Sr. and Lela June R. Skipper dated June 25, 2004 and recorded July 9, 2004 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 9400, at page 191 (as to a one-half undivided interest); and Limited Warranty Deed to City of West Columbia from Miles Management, LLC dated July 31, 2014 and recorded August 1, 2014 in said Office in Book 17102, at page 184 (as to a one-half undivided interest).

TMS No: 004647-31-010

PARCEL NO. 6:

ALL that certain piece, parcel, or tract of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, and being more particularly described as 1.09 Acres on a plat prepared for Dr. Charles Thomas Goodson dated November 8, 1995, and prepared by Collingwood Surveying, Inc., Robert Collingwood, R.L.S., recorded in the Office of the Register of Deeds for Lexington County, South Carolina in Plat Book 274, at page 686. Also shown on plat prepared for City of West Columbia, S.C. by Cox and Dinkins, Inc., dated April 1, 2004 and recorded in said Office in Plat Book 10091, at page 220 (Slide 820, at page 5, with reference to the plats for the exact metes, bounds, distances and description.

DERIVATION: Deed to City of West Columbia, a South Carolina Municipal Corporation from

Diane Y. Goodson dated April 28, 2005 and recorded April 29, 2005 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 10091, at page 218.

TMS No.: 004647-31-011

PARCEL NO. 7:

ALL those certain pieces parcels or lots of land, together with improvements thereon, situate, lying and being in the City of West Columbia, Lexington County, State of South Carolina, being shown and delineated as 0.91 Acre/39.816 SQ.FT. and 0.20 Acre/8,847 SQ. FT. and 0.05 Acre/2.391 SQ. FT., all shown on plat prepared for City of West Columbia, S.C. by Cox and Dinkins, Inc., dated April 1, 2004 and recorded in the Office of the Register of Deeds for Lexington County, South Carolina in Plat Book 9400, at page 190 (Slide 773, at page 4), with reference to the plats for the exact metes, bounds, distances and description.

DERIVATION: Deed to City of West Columbia, South Carolina from H. Wayne Skipper, Sr. and Lela Jane R. Skipper dated June 25, 2004 and recorded July 9, 2004 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 9400, at page 191.

TMS No.: 004647-31-012

PARCEL NO. 8:

ALL that certain piece, parcel, or lot of land, with the improvements thereon, situate, lying and being on the northern side of Court Avenue, City of West Columbia, State of South Carolina and being more particularly shown as 0.23 ACRE/10,000 SQ. FT. on that plat prepared for Fred McCary by Associated Engineers and surveyors, Inc., dated February 23, 1994 and recorded in the Office of the Register of Deeds for Lexington County, South Carolina in Plat Book 268, at page 800 with reference to the plat for the exact metes, bounds, distances an description. According to said plat, said lot having the following boundaries and measurements, to-wit: On the West by property now or formerly of H. Wayne Skipper and Doris K. Robinson, whereon it measures a distance of 111.96 feet; On the North by property now or formerly of H. Wayne Skipper and Doris K. Robinson, whereon it measures the distance of 80.31 feet; On the East by property now or formerly of H. Wayne Skipper and Doris K. Robinson, whereon it measures the distance of 137.08 feet; and on the South by the right of way for Court Avenue, whereon it measures the distance of 84.31 feet; be all measurements a little more or less.

DERIVATION: Deed to City of West Columbia, South Carolina from Rhea L. McCary dated September 8, 2005 and recorded September 12, 2005 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 10456, at page 83.

TMS No.: 004647-31-013

2016058128 RECORD BOOK BK 20850 PG 1684

STATE OF SOUTH CAROLINA **REGISTER OF DEEDS OFFICE**

COUNTY OF LEXINGTON

Carter & Carter Construction, LLC,

Petitioner,

NOTICE AND CERTIFICATION OF MECHANIC'S LIEN

v.

Weeo River District, LLC

Respondent.

PERSONALLY APPEARED before me, Collin Carter, who being first duly sworn affirms that he is the Manager for Carter & Carter Construction, LLC, that he has read the foregoing Notice and Certificate of Mechanic's Lien; and that the matters set forth therein are true and accurate and that the amounts alleged therein to be past due and owed to Carter & Carter Construction, LLC, are true and accurate.

CARTER & CARTER CONSTRUCTION, LLC

By: _____
Name: Collin Carter
Its: Manager

Sworn to and subscribed before me
this 20 day of December, 2019.

Jimmica Slaughter
Notary

JIMMICA SLAUGHTER
Notary Public
[Seal] Alabama State at Large

My commission expires: My Commission Expires June 8, 2022

2019058126 RECORD BOOK BK 20850 PG 1605

2020027683 RECORD BOOK BK 20879 PG 2357

281

STATE OF SOUTH CAROLINA **REGISTER OF DEEDS OFFICE**

COUNTY OF LEXINGTON

Carter & Carter Construction, LLC,

Petitioner,

NOTICE AND CERTIFICATION OF MECHANIC'S LIEN

v.

Weco River District, LLC

Respondent.

Unpaid contract price for labor, materials, and equipment	$3,981,919.92
Unapplied credits	$ 0
Total owed and unpaid	$3,981, 919.92

The undersigned, Collin Carter, the Manager for Carter & Carter Construction, LLC, declares under penalty of law that the above statement is a just and true account of the indebtedness of Weco River District, LLC with all just credits given and that no part of the aforementioned debt has been paid.

CARTER & CARTER CONSTRUCTION, LLC

By: _____
Name: Collin Carter
Its: Manager

Sworn to and subscribed before me
this 20 day of December, 2019.

Jimmica Slaughter
Notary

JIMMICA SLAUGHTER
Notary Public
[Seal] Lexington State at Large

My commission expires: My Commission Expires June 8, 2022

2019058128 RECORD BOOK BK 20850 PG 1686 (LAST PAGE)

2020027683 RECORD BOOK BK 20879 PG 2358

282

Gmail

Brent McDonald <brent@bundymcdonald.com>

Carter & Carter v. Weco Ri ver District, LLC

William J. Sheppard <wsheppard@jamesbatesllp.com> Sun, Feb 2, 2020 at 3:18 PM
To: "Frank Elmore (felmore@elmoregoldsmith.com)" <felmore@elmoregoldsmith.com>
Cc: "brent@bundymcdonald.com" <brent@bundymcdonald.com>, "Rick Edema (rick@carter-carter.net)" <rick@carter-carter.net>, Jimmica Slaughter <jimmica@carter-carter.net>

Attached is Carter & Carter's revised arbitration demand.

William J. Sheppard
Partner

JAMES-BATES-BRANNAN-GROOVER-LLP
jamesbatesllp.com
3399 Peachtree Rd NE, Suite 1700
Atlanta, GA 30326
O: 404-997-6026
F: 404-997-6021

Confidentiality Notice:
This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee of this message, this message was not intended for you, and your receipt of this message was an inadvertent disclosure of the information and contents herein. If you are not the named addressee, you are not authorized to read, print, retain, copy, or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by email and delete all copies of the message. The receipt of this email alone may not necessarily create an attorney-client privilege between you and James-Bates-Brannan-Groover-LLP. If we do not represent you, please do not respond to this email with any confidential information because your communication may not be treated as privileged or confidential. Thank you.

Revised Arbitration Demand.DOCX
20K

PLAINTIFF'S EXHIBIT 9

282

CARTER & CARTER CONSTRUCTION, LLC,

Claimant,

v.

WECO RIVER DISTRICT, LLC,

Respondent.

REVISED DEMAND FOR ARBITRATION

Carter & Carter Construction, LLC ("Carter & Carter") entered into a contract (the "Contract") dated May 13, 2017, with Weco River District, LLC (the "Owner"). Under the terms of the Contract, Carter & Carter was to construct a multi-family residential development containing 204 apartment units in four separate buildings, along with associated parking structures, landscape, hardscape, and amenities (the "Project"). The Project is known as "Brookland Village" and is located near the intersections of State Street and Meeting Street in West Columbia, South Carolina. The form the parties chose for the Contract is the AIA A102-2007 with the AIA A201-1997 General Conditions. However, the Contract was extensively negotiated and the forms were manuscripted by the parties to reflect the details of their agreement.

The amount to be paid to Carter & Carter under the Contract was to be based on the "Cost-of-the-Work-Plus-a-Fee" subject to a guaranteed maximum price (the "GMP"). The original GMP was $26,748,453. Due to changes in the scope of the work, including changes issued through construction change directives, Carter & Carter contends that the GMP has been increased by $5,216,293.35 and is now $31,964,746.35. Carter & Carter has expended in excess of the adjusted GMP and is entitled to payment of a total of $31,964,746.35 under the Contract. The Owner has paid Carter & Carter a total of $27,934,996.92, leaving a balance currently due in

284

the principal sum of $4,029,749.43. Carter & Carter also seeks to recover interest on the principal sums owed as provided in the Contract and under South Carolina law.

The Contract contained a phased schedule of completion for the different aspects of the Project, with the last building (Building 3) being substantially complete in 637 days from the commencement date. Due to changes in the scope of work required under the Contract as amended, delays by the Owner and its consultants, and delays due to inclement weather, Carter & Carter is entitled to extensions of the completion milestone dates. Based on the adjusted completion dates, Carter & Carter is responsible for payment to the Owner of approximately $85,000 in liquidated damages. The final sum owed for liquidated damages should be offset against the amount of principal and interest to which the arbitrator determines Carter & Carter is entitled.

The Contract provides for the prevailing party in this arbitration to recover its attorneys' fees and expenses of the arbitration. Carter & Carter seeks to recover those fees and expenses, the amount of which will be proven at the arbitration hearing.

CARTER & CARTER CONSTRUCTION, LLC,

Claimant,

v.

WECO RIVER DISTRICT, LLC,

Respondent.

AMENDED CONSENT SCHEDULING ORDER

This matter having come before Arbitrator Frank Elmore on the consent of Claimant Carter & Carter Construction, LLC and Respondent Weco River District, LLC, and the parties and the Arbitrator having established a schedule for the arbitration hearing, and it appearing that the parties have agreed to amend the remaining pre-hearing deadlines in this matter, the following is ordered:

Activity	Deadline
Final Statement of Claim by Respondent	March 16, 2020
Complete discovery	March 31, 2020
~~Exchange of Arbitration Witness Lists~~	~~April 20, 2020~~
Exchange of Arbitration Exhibits	April 30, 2020
Service of Arbitration Pre-Hearing Briefs	April 30, 2020
Arbitration Hearing	May 2020 (Dates TBD)

SO ORDERED, this 27th day of February, 2020.

Frank Elmore, Arbitrator

PLAINTIFF'S EXHIBIT 10

286

ELECTRONICALLY FILED - 2021 Feb 15 3:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

IN THE MATTER OF ARBITRATION BETWEEN

Carter & Carter Construction, LLC,

Claimant,

-and-

Weco River District, LLC,

Respondent.

Civil Action No. 2020-CP-32-00580

ARBITRATION AWARD

Hearings were held in this matter on July 7, 8, 14, and 15 in Summerville, South Carolina. At the conclusion of the hearings, the parties waived all requests for a reasoned award, and requested the award be limited to any amount found to be due.

Following the hearings, the parties submitted extensive and voluminous post hearing briefs. After consideration of the testimony of the witnesses, the evidence, and exhibits presented, the undersigned finds and concludes as follows.

Claimant Contractor, Carter & Carter Construction, LLC ("Carter & Carter") and Respondent Owner, Weco River District, LLC ("Weco") entered into a modified AIA A102 Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work, Plus a Fee with a Guaranteed Maximum Price (the "GMP Contract") on May 13, 2017. I find that the original Guaranteed Maximum Price under the GMP Contract was $26,748,453.00 before adjustment for any change orders, claims of the Weco or Carter & Carter. During the course of the project, approved change orders were issued totaling $4,177,934.92

PLAINTIFF'S EXHIBIT 11

287

ELECTRONICALLY FILED - 2021 Feb 15 3:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

resulting in a revised Guaranteed Maximum Price of $30,926,387.92. The Owner previously paid $27,934,996.92, leaving a balance of $2,991,391.00 before adjusting for disputed claims and change orders due to the Owner or Contractor.

I find that Carter & Carter is due $3,308,931.64 for unpaid amounts due, including unpaid payment applications, change orders, and additional cost claims rejected by Weco which should have been granted.

I find that Weco is entitled to credits and offsets in the amount of $668,215.84.

I therefore find and award the total amount of **$2,640,715.80** to Carter & Carter Construction, LLC to be paid within thirty (30) days after it submits those documents and materials required by Article 9.10 of the AIA A201 General Conditions of the Contract for Construction (the "Project Close Out Documents"). If the award is not paid within thirty (30) days after submission by Carter & Carter Construction, LLC of the Project Close Out Documents, interest shall accrue thereafter at the rate of eight and three-quarter percent (8 ¾%) until paid pursuant to S. C. Code Ann. §34-31-20.

Whether Carter & Carter is liable, and/or whether Weco has suffered any damages, as a result of any claim by SCDOT for damage to its roadway is not ripe for review. As such, no ruling or determination is made of the liability, if any, of Carter & Carter Construction, LLC on this issue. Determination of the issue, if necessary, in the future, is expressly reserved to the parties.

[SIGNATURE FOLLOWS ON NEXT PAGE]

288

Any award of attorney fees and costs to the prevailing party is expressly reserved for future consideration.

The parties shall equally bear the costs, fees, and expenses of the Arbitrator.

January 4, 2021.

L. Franklin Elmore, Arbitrator

ELECTRONICALLY FILED - 2021 Feb 15 3:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

289

onstruction

Industry Arbitration Rules and Mediation Procedures

Including Procedures for Large, Complex Construction Disputes

---

AMERICAN ARBITRATION ASSOCIATIONN'

Available online at adr.org/Construction

Rules Amended and Effective July 1, 2015

290

R-51. Modification of Award

(a) 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 correct any clerical, typographical, technical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided.

(b) If the modification request is made by a party, the other parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 20 calendar days after transmittal by the AAA to the arbitrator of the request and any response thereto.

(c) If applicable law provides a different procedural time frame, that procedure shall be followed.

R-52. Release of Documents

The AAA shall, upon the written request of a party to the arbitration, furnish to that party, at its expense, copies or certified copies of papers in the AAA's possession that are not determined by the AAA to be privileged or confidential.

R-53. Withdrawal of Claims or Counterclaims

(a) Once the AAA has provided notice to the parties that the filing requirements for a claim or counterclaim have been met, no claim or counterclaim may be withdrawn unless the parties agree or the arbitrator consents.

(b) Disputes regarding whether a claim or counterclaim is withdrawn with or without prejudice may be decided by the arbitrator.

R-54. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator in a proceeding under these Rules is a necessary or proper party in judicial proceedings relating to the arbitration.

(c) Parties to these Rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Parties to an arbitration under these Rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages, injunctive or declaratory relief for any act or omission in connection with any arbitration under these rules.

291

ELECTRONICALLY FILED - 2021 Feb 15 3:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

IN THE MATTER OF ARBITRATION BETWEEN

Carter & Carter Construction, LLC,

Claimant,

-and-

Weco River District, LLC,

Respondent

Civil Action No. 2020-CP-32-00580

CLARIFICATION OF ARBITRATION AWARD

Respondent Weco River District, LLC ("Weco") seeks clarification of the Arbitration Award dated January 4, 2021. Specifically, Weco seeks clarification of, among other things, whether claims of Weco for defective construction were, or were not, presented during these proceedings and considered; and are, or are not, encompassed by the Arbitration Award.

Initially, the question arises of the authority of the arbitrator to consider Weco's request for clarification. The parties entered into a modified version of AIA Document A102, 2007 edition, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus Fee with a Guaranteed Maximum Price dated May 13, 2017 (the "Agreement"). Article 16.1.2 of the Agreement incorporated by reference a modified version of AIA A201, 1997 edition, which contained the following dispute resolution provision:

> §4.6.2 Claims not resolved by the parties shall be decided by binding arbitration which, unless the parties mutually agree otherwise, shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Any arbitration shall not be administered through the American

PLAINTIFF'S EXHIBIT 13

292

ELECTRONICALLY FILED - 2021 Feb 15 3:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Arbitration Association but shall be a private arbitration decided by single arbitrator unless agreed by all parties joined

Rule 9(a) of the Construction Industry Rules of the American Arbitration Association provides, in pertinent part:

> (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement.

The United States Supreme Court and South Carolina Appellant Courts have recognized the authority of the arbitrator to rule upon his own power and jurisdiction. *See Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019); *Damico, et al. v. Lennar Carolinas, LLC*, 844 S.E. 2d 66, 430 S.C. 188 (S.C. App. 2020).

The Third, Fourth, Fifth, Sixth, Seventh, and Ninth Circuits recognize an exception to the functus officio doctrine that, once arbitrators have fully exercised their authority to adjudicate the issues submitted to them, their authority over those questions is ended, and the arbitrators have no further authority, absent agreement by the parties, to redetermine those issues. The exception arises where an arbitral award:

> "fails to address a contingency that later arises or when the award is susceptible to more than one interpretation." *Sterling China Co. v. Glass, Molders, Pottery, Plastics & Allied Workers Local No. 24*, 357 F.3d 546, 554 (6th Cir. 2004) (internal quotation marks omitted); *Brown v. Witco Corp.*, 340 F.3d 209, 219 (5th Cir. 2003) ("An arbitrator can . . . clarify or construe an arbitration award that seems complete but proves to be ambiguous in its scope and implementation."); *Glass, Molders, Pottery, Plastics & Allied Workers Int'l Union v. Excelsior Foundry Co.*, 56 F.3d 844, 847 (7th Cir. 1995) (same); *Colonial Penn. Ins. Co. v. Omaha Indem. Co.*, 943 F.2d 327, 334 (3d Cir. 1991) ("[W]hen the remedy awarded by the arbitrators is ambiguous, a remand for clarification of the intended meaning of an arbitration award is appropriate."); *McClatchy Newspapers v. Central Valley Typographical Union No. 46*, 686 F.2d 731, 734 n.1 (9th Cir. 1982) (same); *Cannelton Industries, Inc. v. District 17, United Mineworkers of America, Local Union 8843*, 951 F.2d 591 (4th Cir. 1991).

Accordingly, the undersigned has jurisdiction to entertain Weco's request

293

ELECTRONICALLY FILED - 2021 Feb 15 3:23 PM - LEXINGTON - COMMON PLEAS - CASE #2020CP3200580

In arriving at the arbitration award of $2,640,715.80, the following claims and issues were presented and considered, and the amount claimed for each was either allowed, or denied, in whole or in part:

- Carter & Carter Exhibits 1-121
- Weco Exhibits 1-51
- Original Contract Amount
- Undisputed Change Orders No. 1-18; 20-27; 28-1; and 29-1
- Disputed Change Orders 19, 28, 29, 30, 31, 32, 36
- To the extent not included in the change orders above, the following PCOs are also encompassed by the arbitration award:

029	033	057	057.2
068	116	120	135
137	147	209	33.1
078	045	011	196
181	182	183	085.3
215	238	60	240
242	244	245	246
omitted bond premium		033	012
138	156	047	501
502	503	504	179
187	188	189	

- Payment Application #33
- Owner's claim for liquidated damages (Owner Ex. 29)
- Owners claim(s) for delay damages above the liquidated damages cap (Owner Ex. 29)
- Owner's claim(s) for additional contract administration costs (Owner Ex. 30)
- Owner's claim(s) for damages arising out of Carter & Carter's alleged breach (Owner Ex. 31)
- *Owner's claim(s) for damages arising out of Carter & Carter's deficient, incomplete, and substandard work (Owner Ex. 32)*
- Owner's Claim for Cost of Releasing Mechanic's Lien
- Tenant Car Damage
- Admitted Credit Due Owner
- Architect Issued Deductive Change Orders
- Cost of the Work
- Guaranteed Maximum Price
- Carter & Carter's Fee
- Carter & Carter's Claim for Additional General Conditions Costs
- Carter & Carter's Claim(s) for Time Extensions
- Carter & Carter's Claim for Interest

294

With the exception of any claim by SCDOT for damage to its roadway which is not ripe for review; and, other than those characterized in the Exhibits presented by Weco during this proceeding, no evidence or claims for defective work were presented by Weco and were considered or encompassed by the Arbitration Award.

EXEPT AS HEREIN CLARIFIED, the Arbitration Award dated January 4, 2021 remains in full force and effect.

February 15, 2021

L. Franklin Elmore, Arbitrator

ELECTRONICALLY FILED - 2021 Feb 15 3:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

295

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

IN THE MATTER OF ARBITRATION BETWEEN

Carter & Carter Construction, LLC, Claimant, -and- Weco River District, LLC, Respondent.	Civil Action No. 2020-CP-32-00580 **ERRATA TO CLARIFICATION OF ARBITRATION AWARD**

With the exception of any claim by SCDOT for damage to its roadway which is not ripe for review ; and, other than those characterized in the Exhibits presented by Weco during this proceeding, no evidence or claims for defective work were presented by Weco ~~and~~ or were ~~considered or encompassed by the Arbitration Award.~~

February 17, 2021

L. Franklin Elmore, Arbitrator

PLAINTIFF'S EXHIBIT 14

296

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District
c/o Estates and Companies
2801 Devine Street Ste 202
Columbia, SC 29205

Invoice Date: February 17, 2021
Invoice Number: 021721
Invoice Amount: $347,258.45

Matter: WECO/Brookland Project

1.	Demand:	$4,029,749.43
2.	Award:	($2,640,715.64)
	Total:	$1,389,033.79
3.	Contingency Fee:	$1,389,033.79 x 25% = $347,258.45

CURRENT BALANCE DUE AND OWING: $347,258.45

297

Transcription of Telephone Conversation

298

MR. BROWN: Theresa, hello.

MS. HODGE: I'm here, yes. Can you hear me?

MR. BROWN: Yes.

MS. HODGE: Okay. Good. Are we waiting on anybody else?

MR. BROWN: I'm not aware of anybody. So that's -- you or Bill might, but I don't.

MS. HODGE: I mean, I think Bob and Matt were going to join. So if they're not on, let's just wait just a second.

MR. BUNDY: Brent has something -- Brent has something else to do. So it's just me from this end.

MR. MUNDY: Matt.

MR. BUNDY: Hey, Matt.

MR. MUNDY: Howdy.

MS. HODGE: Okay. Well, if that's Matt, I think that's it. We're not waiting on anybody else.

MR. BUNDY: All right.

MS. HODGE: So I don't know -- I know I asked for the call. I'm trying to get you, Bill, and Henry together. I don't know where this DOT stuff goes and the other construction items. So,

Henry, you want to just take the lead and talk about what we discussed on it or what?

MR. BROWN: Yeah, I can do that. Bill, I'm going to need you to help me and provide information and certainly stay around. So I'm hoping you can do that as I need you.

MR. BUNDY: Sure.

MR. BROWN: Get me back up to date on what's happened and that question.

MR. BUNDY: No problem.

MR. BROWN: I guess the work on the DOT should start, according to Brian, should start Monday or Tuesday. It sort of depends on whether -- then you've got Meeting Street. Theresa, I don't know if we know whether the DOT has accepted Meeting Street or whether they don't think --

MS. HODGE: I haven't heard from them

yet. So I don't know yet.

MR. BROWN: All right. They still could answer and say, yes, it went under warranty two years ago. We don't know.

MS. HODGE: Yeah, and did you ever happen to get Jonathan Rosemore just to see if he had an opinion?

MR. BROWN: I called him Friday, and I didn't get to it. I think Jonathan has been in and out some, but I'll call him again. But I did -- I called and left a message and haven't heard back from him.

MS. HODGE: Okay.

MR. BROWN: I would have to pull his file. But I guess the remaining issues are the ones we've talked about, trying to stack up a list of missing the 9.10 items and put a value on it. And then, Bill, I'm assuming we will go back to Frank and say we're ready to -- everything is ripe, and we're now ready to hear the remaining open issues.

Shepherd seems to have been very clear

that he's not coming or they're not coming -- no threat of them coming back. They seem to have taken a pretty clear position that we don't owe them anything, so we're not going to do any work.

So I think -- I think the avenue for us to go do all of the work and price it or a price that hasn't been done is pretty open. I was going to try to do a list or start on somewhat of a submission in which we take each one of those and put the documents in it and copy the plan

sheets and prepare a submission for Frank giving him all of the open items and the value.

MR. BUNDY: Well, let me throw -- let me throw out a different idea. I think an argument could be made Frank is done, other than attorneys' fees. There's nothing left he was asked to adjudicate, other than the items listed in his clarification order. And thank goodness he issued one.

The matter of closeout, in my mind, was never part of the arbitration and is simply a condition precedent to any payment. The closeout issue first has to go to the architect, and then

the architect, seems to me, would make that determination. And if one or more or both of the parties to the contract are unhappy with that, then that would be the subject of another arbitration, because he hasn't really heard -- I mean, he's closed the evidence in that case with the exception of the fees -- the attorneys' fees.

I don't think there's any way to reopen that case, and I'm not so sure that's in WECCO's best interests, but I, of course, would leave that up to you. It seems to me that that issue, as well as the issue of the DOT, is a

separately arbitrable problem, and the issue of defective workmanship and warranty items that were not listed by Frank in his clarification in the current -- in the subsequent errata to his clarification.

Shepherd's position, of course, I don't think is consistent with the law. That's just my opinion. I don't think that Frank's award can be res judicata on issues he has clearly stated that were neither presented nor considered

by him, unlike the Brantley case, which Shepherd likes to throw up. It's not what the Brantley case is. I used to represent Brantley until I fired him. So that would be my idea.

You know, Shepherd's idea was all along -- from the time I got in this case I could see what he was trying to set up, which is if you are arbitrate -- this is Shepherd's position: If you arbitrate a case while the job is still going on or at any time, then you are forever and a day foreclosed from any further rights under the contract.

Now, he does -- he finally concedes in his last letter that they would still be subject to liability for latent defects, but then he, of

course, puts in "which were either unknown or should have been known." Of course, you and I both know "should have been known" is, you know, buzz words for I ain't going to do it. There's that.

There's also the issue of the bonding company. I believe that the bonding company as it relates to not only the performance bond, but the

payment bond, is engaged in bad faith. And one example of that would be as it relates to the performance bond, and I'm not so sure it's a bad-faith claim under a payment bond for us, but we can certainly -- I don't remember, off the top of my head, where that law landed. But it seems to -- clearly, in his letter Shepherd says things or gave that information to the bonding company about all of these things having been considered. And this is before Frank issued his clarification.

The bonding company bought into Shepherd's position hook, line, and sinker without any investigation at all. Okay. They made no independent investigation at all. They simply relied, as bonding companies often do, as you know, completely on Shepherd. But now that Shepherd's position has been, I think, undermined

by the arbitrator himself, the bonding company's position, as far as I know, still remains the same.

Additionally, you've got these subcontractors who, you know, Bob and Theresa and

Matt, legitimately want to try to help by getting them paid, but WECCO paid over $100-some thousand for a payment bond to protect those subcontractors, at least in theory, for exactly what's going on and also to protect itself from the mechanic's lien. So, you know, just from a moral standpoint, I don't feel as though WECCO has any moral obligation to take care of the subcontractor liens.

To my mind, it's a question of Shepherd -- and I -- and Trippett Boineau, local counsel, has said as much, that the only leverage that Carter and Carter has is the current cash bond, which is being held by the court. So -- and we have yet to hear from the court.

So my thought would be, I don't know what you think, is that as long as WECCO can stay in the game, if we wait and see what the judge does, because if the judge were to agree that WECCO doesn't even have -- I mean, that Carter and

Carter doesn't have a lien or somehow comes to the conclusion that that lien needs to be reduced by an arbitration award, which is yet to be entered

in as a judgment -- and, of course, it can't be entered into as a judgment as written because it's contingent.

I don't know of any -- I don't know -- I'm unfamiliar with contingent judgments in South Carolina or anywhere else. Either you have a dollar amount or you don't. And this dollar amount, the payment of it is contingent on other events, which I think those other events, like I said earlier, are subject to being arbitrated if there is a dispute about the closeout.

So it is -- there is no question that there are many plates spinning in the air, and there are various different ways to go, depending on, in large part now, I think, depending on what these judges do and what position Carter and Carter takes.

I mean, somebody at some point, I guess, is going to have to move to confirm this arbitration award. Nobody has done that yet. And as I recall the statute, you've got 90 days to file a motion to amend or otherwise alter from the

date of the award, and after that the -- you've got a year to move to confirm it.

So once the 90 days is past, I think the train has left the station on altering or amending, and I don't know that WECCO wants to alter or amend it. I think we've gotten all out of Frank we're going to get out of him. I think he did us a good turn by clarifying his award.

And then Carter and Carter, in order to get paid, is going to have to go down there and say, this award -- we confirm this award, okay. And once they do that, I think they're buying into and have bought into the notion that it's contingent upon these closeout documents and the releases of these subcontractors, and I don't know that I would think it was in WECCO's best interest to do anything other than tell these subcontractors, you know, make a summary judgment motion against your bonding company; they're going to have to pay it.

I don't know -- do you know of a defense the bonding company would have now to a payment bond demand?

MR. BROWN: No, I don't think it is, other than they're going to turn it back over to

Carter and claim there's been no default in payment for whatever reason. I think in the end you're going to get a judgment against the payment bond if they're not otherwise paid.

Now, if they -- if they end up paying a sub, they might claim by subrogation the right to the bond.

MR. BUNDY: Well, sure. I mean -- well --

MR. BROWN: If the bonding company pays, they generally get an assignment from the subs of the sub's rights and claims. It would be anomalous to say that they have a right to collect under the bond, but they will take all of the rights of the subcontractor.

MR. BUNDY: Sure. And they will continue to prosecute -- and if they want to, they can use that to continue to prosecute the mechanic's lien, which subjects them to attorneys' fees.

MR. BROWN: That also is WECCO's money. So they need to get that money, and they need to use it to either pay the portion of the award that

is not going to get changed under the open issues.

MR. BUNDY: Well, that goes back to --

I guess we just have a fundamental sort of disagreement. I think that payment is totally contingent upon closeout. That's what the award says.

MR. BROWN: It is, but I think the question is can we move this along. There's $4 million in there that WECCO needs to get back, and if it all sits frozen, WECCO's $4 million is sitting there versus the sub.

MR. BUNDY: Yeah, I understand that, but that goes back to what the judge is going to do. And it seems to me it's worth waiting on what the judge is going to do before we go to the next step, because if we start paying -- if they start paying subcontractor claims and try to get that 4 million and after they start -- and it comes to some deal, some settlement, then the next day the judge issues an award, an order saying that this lien is no good, then all -- then that leverage is gone from them, and we would have given up the

leverage we had, which is you've got to do all these other things first before we're going to pay it.

Right now we want to pay it to get to the 4 million bucks, right. That's what we want

to do, but if we can get to the 4 million bucks without paying it, then we're back to a condition precedent and don't have to pay anything until the closeout documents are done. It's just a question of the hammer and who can stay in this game the longest.

I know it's been a long time taken these judges to get an award, but we had a conference last week, and I had two circuit judges in the same hearing at the same time. That was a new event for me. And, you know, I got every impression that McLeod was going to give it over to whatever the other lawyer -- judge, Beasley or whatever his name is, and he was going to take care of it fairly quickly. Now, I -- once again, I could be wrong, but I --

MR. BROWN: Did the group choose one of the judges? I understand the judge --

MR. BUNDY: The group -- the group -- the group had no preference, and that was -- that was communicated to the judges. So it's back on the judges' plate.

MS. HODGE: But you had a preference, right? You probably would prefer Dickson --

MR. BUNDY: Absolutely. Personally, I

would prefer Dickson, yes. I think Dickson is more likely to -- one, once he understands it's on his plate, Dickson is more likely to go ahead and make a decision without a lot of hoorah, and he's not going to be pushing people to try to settle it to avoid him doing his job, which is to make a decision.

And if the decision goes against us and he takes the easy route and says no, the lien is fine, then we can go to the next step and start and maybe do go down there and say, all right, well, if we can't yet rid of it that way, at least the amount of money necessary to pay these people, once they have complied -- once the general contractor has complied with the condition

precedent, once we have escrowed the $2.6 million bucks plus whatever attorneys' fees, then that's all they're ever going to get, and the bond needs to be reduced to that amount. If he does that, then we get 4 million bucks the other way.

Now, the judge could say you can't have it both ways; I'll reduce it, but I'm only going to reduce it by the statutory amount, which is the 2.6 times one and a third and that still releases a couple, three million bucks if he does

it that way. So I don't -- you know, to me, going through all of this, to finally have some leverage and give it up without anything in return is not what I would recommend, but, again, it ain't my money.

MR. BROWN: Well, the only way we're going to get the money out of this judge through -- we've got eleven bonds and they can all be dealt with separately. One of the bonds is the 5 million -- five $10 million WECCO bond to Carter (sic).

MR. BUNDY: Right.

MR. BROWN: If the judge is going to do

anything outside of rule on the validity of the lis pendens he's got in front of him, we're going to have to file a motion.

MR. BUNDY: Correct.

MR. BROWN: Now, if we don't do anything about filing a motion, then it's going to sit there until it comes to a complete end on the WECCO side. I don't think that Matt and Theresa want to spend their money helping the subs beyond where we are now. I agree, the subs, they're big boys; they can figure out what to do for themselves.

It would be nice if it was bonded off with a surety bond; we don't care. But it is WECCO's money backing those bonds. So we need some recognition -- I think it would take place automatically -- but recognition that if that money is used to pay, it is counted as a payment to Carter.

MR. BUNDY: Well, sure. Yeah. And I think Carter would agree to that. My only -- the only thing I would say is that, clearly, if we

lose the motion on the lien, that day or the next day, we would file a motion to reduce the bond based on the arbitration award. The reason I haven't filed that motion is because I didn't want to mix apples and oranges.

The motion to extinguish the Carter and Carter lien is not based on any arbitration award at all. Okay. It's purely statutory mechanic's lien law. Okay. I'm of the opinion if you file a motion to reduce it based on the arbitration award that that will slow down any ruling, and you may never get any ruling at all from Judge Beasley on the -- whether or not the lien was properly perfected.

MR. BROWN: Well, it may. It may not.

I think the thing to do -- I think the first thing to do is to move on with getting -- I do think Frank has in the award the question of the 9.10 and the question of the DOT. My concern is if we go to the court and ask him to rule on that and I --

MR. BUNDY: I don't -- I'm not suggesting that. I never have suggested that.

You must have misunderstood me. I'm not going to the court for anything. Those issues are arbitrable. My problem is is that the arbitrator closed the hearing and closed the evidence except for attorneys' fees.

MR. BROWN: Well, he closed the hearing. Closing the record is commonly done with arbitrations, but he left open those two issues. So we still have the opportunity to go before Frank, and I think not just the opportunity; that's where we're going to have to go to close out these remaining issues and put a value on them and further reduce the award.

Now, the -- I think the biggest monetary benefit is moving the award down to where WECCO is the prevailing party, and then they can pick up these as well as reducing the award.

Seems to me that's the biggest chunk of money out there, other than the timing of when they get the money back.

They're going to get back $4 million on the Carter bond, because the money is going to

get paid, and the bond is not going to be needed to reduce and pay any more than, say, a million 2. It's going to come out; the question is when.

MR. BUNDY: Yeah, I understand the math. I understand where we are.

MR. BROWN: Well, I think the issue on that is when does the money come out.

MR. BUNDY: Well, that's one issue. To me, the first issue is whether or not -- whether you're right or I'm right -- and that is whether or not these issues are still in front of Frank Elmore under the arbitration demand that was filed and the case that was tried. Okay.

None of those issues were tried. And if you want me to, I'll write Frank Elmore a letter, or we can try to get him to tell us one way or the other whether or not if we submit this to him he's going to consider it or whether or not we need to file a new arbitration award.

When you file a different arbitration

demand, you simply file -- you can file subsequent arbitration demands. There's no --

MR. BROWN: Do we want to go find

another arbitrator?

MR. BUNDY: I don't know why not. I don't know why not. I mean, I don't know why we wouldn't. I don't know, but that's an -- the question is not whether or not we go find another arbitrator. The first question is do we have to file another arbitration demand. I'm coming from a purely procedural standpoint. It's a matter of contract. It's all a matter of contract.

Shepherd is going to take the position -- and this is why I would bring it up to Frank first. Shepherd is going to take the position, probably, that this is -- one, it's not arbitrable. He's going to take the position it's already been arbitrated. Okay. It's not arbitrable. And his backup position would be that arbitration is over and those issues weren't before you because they aren't -- they weren't listed in the award and the clarification thereof.

MR. BROWN: So then how did they get into Frank's award?

MR. BUNDY: How did what get into

Frank's award?

MR. BROWN: The DOT work and the article --

MR. BUNDY: It's not in the award. It's specifically excluded from the award. The award says he did not consider and it's not part of his award.

MR. BROWN: I don't think it says that.

MR. BUNDY: You got a copy of it. I got a copy of it. We disagree about what it says. But I can tell you this: I'm not going back there and trying that part with the DOT case, because I don't think that's what the award says. It was never part of the claim. I never agreed to represent these people on that claim.

They want to go back in front of Frank and try it, they'll have to get somebody else to do it. You'll do a better job than me.

MR. BROWN: I understand that. I think that's the very reason we're talking, is to move forward from that position.

MR. BUNDY: Okay. Well, I'm perfectly glad to -- we can agree to disagree. That's fine. But once you take over the reins, whatever you do is fine with me. Okay. But as long as -- I just

want my position to be known, considered, and rejected if that's the way it goes, because you're the one that's going to make that decision, not me. I just don't want to have it go forward and you not at least have had whatever benefit my thought is worth. It may be worth nothing, okay, but it's my thought.

MR. BROWN: Frank may say I don't have anything to do with it. We haven't gone backwards. We know where we have to go. But I think we need to get him to say -- I'll be real surprised if he says that, but we'll deal with it.

MR. BUNDY: Okay. That's fine. You know, that's fine. And as long as everybody understands that I think even if he says that he has jurisdiction that there's going to be, I think, a decent argument that you'd have to file another arbitration demand. Okay. But that's -- but it may not prevail, okay.

And I know the judges don't look at arbitration. I mean, I've never had any real success in any appellate court altering any arbitrations at all, okay, because they don't want

320

to fool with it. They don't want to listen to any of it. Okay. So I don't disagree that ultimately

that position might not prevail, but I'm telling you, all I'm saying is it's a position, and we need to be aware of it and give it whatever, you know, credence we deem necessary.

I don't know that Frank wants to continue to be involved in this case. I think Frank is a little tired of it, to be honest with you. But you and Frank may have talked about it. I haven't -- have you talked to Frank about the case?

MR. BROWN: No. I think that would be a little bit inappropriate.

MR. BUNDY: Well, I do, too, but I'm just making sure because you seem to know what Frank is going to do, and I don't know what Frank is going to do.

MR. BROWN: No. I'm looking at the award, and I don't know how he doesn't do it since he's -- they're clearly a part of the case, because they found their way into his award. I

don't see how you say that --

MR. BUNDY: You weren't there, Henry. In the arbitration, we did not present any evidence on that issue, and we told the arbitrator that we didn't consider it to be part of this

arbitration, okay. And his ruling is he didn't rule on it and it's -- it's ripe and it's not ripe and it will be handled -- I think he used the word "not ripe for review."

MR. BROWN: I don't see how it's not ripe. I don't -- I don't see how it's not -- it wasn't before and how we put it in front of another arbitrator if it's objected to.

MR. BUNDY: I think you simply file an arbitration demand -- I think you simply file an arbitration demand, and they will propose an arbitrator. Y'all will propose one, and both parties propose Frank, and he will listen to it. If nobody wants Frank or it's decided to get some other person, that arbitrator would read Frank's award and hear evidence regarding the DOT without regard to scheduling or any of the rest of it, because all of that's been decided.

322

MR. BROWN: Well, the DOT hasn't been decided. Anyway...

MR. BUNDY: I tell you what let's do, you, if you don't mind, could you prepare me the letter you would like me to write to Frank to clear this up, and I'll be more than happy to put my signature underneath it?

MR. BROWN: Well, I'm not sure we're just going to write -- we want to write a letter to Frank right now. I mean, I want to try to -- my thought is to write a letter to Frank telling him that I'm in it and I'll deal with him in terms of the remaining issues.

MR. BUNDY: Perfect. Okay. That suits me even better.

MR. BROWN: And how do we go about dealing with raising the issue? We'll figure that out.

MR. BUNDY: That's probably -- that's a great resolution, because I think Frank is tired of hearing from me, as I'm sure you and my client are.

MR. BROWN: Well, I wouldn't say that. Well, why don't I send out a letter to Frank, certainly talk to Shepherd, and as we then proceed, all of these decisions are going to get made.

MR. BUNDY: All right. How -- let's talk about that a minute. This is very positive. Are you going to inform Frank that he's now to -- is now out of the arbitration and he's to deal with you, and Shepherd the same way? Which I

think would be preferable. I don't think -- not trying to get out, but I don't think having two lawyers and these people being able to whipsaw two lawyers is going to be beneficial to the client.

MR. BROWN: No, it's not going to work to have two different people deciding two different cases or the same case.

MR. BUNDY: So you're going to take over the arbitration, whatever is left of it and whatever follows. What about the current case in Common Pleas?

MR. MUNDY: I don't think that's what's been agreed to, and it's still on the table. So

I'll interject there.

MR. BUNDY: What do you mean? What hasn't been agreed to?

MR. MUNDY: Exactly what I said. It hasn't been agreed to. The arbitration is not over yet. We have to figure out --

MR. BUNDY: You're not agreeing to Henry taking over the arbitration?

MR. MUNDY: I think we're okay with and open to discussion about Henry carrying the rest of the items from defective construction.

MR. BUNDY: Well, I'm certainly not

going to do it. Why don't we deal with one thing at a time, and let -- if you agree that Henry can take over the arbitration, let's let him take it over. If at some point in time you think I'm responsible to handle the -- anything else, then we'll deal with that when it comes up. All you have to do is notify me in writing of your position, and I'll notify you in writing of mine.

MR. MUNDY: Yes. And we've talked about it. I think you put in email that you would

finish off arbitration and just do the DJ action.

MR. BUNDY: Well, yes, that was before I knew Henry was involved, and that was before Henry said he wanted to take over the arbitration.

MR. MUNDY: I think Henry is saying he'll pick up DOT potentially in the defective construction.

MR. BUNDY: Look, I don't want to argue with you about what he said. What he was trying to do, as I understand it, was to write a letter to Frank and find out what Frank was going to do relative to coming back before him on these other issues. Now, if that's now changed, then fine, you know. Tell me what you want to do.

MR. BROWN: Bill, let -- Lynn and I

talked about this --

MR. BUNDY: Okay. That's fine. As it relates to the mechanic's lien, I told you I'd do it, and I will do it. All I was doing was bringing up the issue, because it may well be -- and I don't know what Henry thinks is the best way to go. It may be that Henry thinks it's better for him to take over the mechanic's lien because

he's handling the arbitration.

It doesn't matter to me. I can work with Henry if he handles the arbitration, I handle the mechanic's lien, and we probably would have different ideas about which way to go. We'll present it to the client, and y'all decide what you want us to do. I mean, it ain't that complicated.

MR. BROWN: Well, I think there are a lot of decisions we're not going to make final right now. I think we have a general idea of where we're headed from here on.

MR. BUNDY: Sure. Sure.

MR. BROWN: I think there are things we need to get going on just to do, but as we -- as it unfolds -- and I think Matt has some ideas about where the responsibility ultimately lies,

but let us talk about it.

MR. BUNDY: I'm sure he does. And I'm sure some jury will make that determination at some point.

MR. BROWN: Well, I think we can size

it up a little bit easier than that.

MR. BUNDY: Whatever y'all want to do. If the client wants to direct me to write a letter to Frank Elmore and tell me what he wants in the letter, I'll be glad to do that. You can write the letter for me. I'll sign it. You can do what you said, which is tell Frank you're not involved, or you're involved and I'm not. I'm easy to please; whatever y'all want to do.

MR. BROWN: We're cutting this up into too many small pieces right now. I think we know where we want to go. And talking about a jury one day I don't think is productive. But let's get cranked up and move on with it. They're well aware, Bill, you don't want to be part of the future arbitration and --

MR. BUNDY: Correct. All I want to do is complete the agreement that I have. That's all I want to do, and move on. If we have a dispute later about whether I'm in breach of contract for

failing to do what I said I was going to do, then that's just what we'll have.

MR. BROWN: Well, let's try to -- we

can get along a little better.

MS. HODGE: We just have the notion -- the thought that Frank tied -- well, by using 9.10, he tied these other items into the ruling because they have to be done in order for them to get paid. So we don't know how it all gets separated that easily, you know, if it needs to be tied to get along with prevailing party and everything else.

MR. BUNDY: Well, that's one way to interpret it. I don't read it that way. What I see is that that's an issue for the architect. The architect is going to determine whether or not they've met those conditions precedent. Once the architect says you've got the closeout documents and everything is finished, then y'all got 30 days to pay the award.

MR. BROWN: Shepherd has the right to disagree with the architect, and he said so. We just don't need to decide it all or argue about it or get sideways about it.

MR. BUNDY: I ain't sideways. I'm just

329

telling you what my position is.

MR. BROWN: I understand that, but that's -- the decision sometimes gets sideways, but let's find a way to move on with it. I'll take over that, and I'll talk to Matt and Theresa, and we'll get back to you and give you a little bit better idea here is where we're going.

I do agree with you, there ought to be some coordination between the Circuit Court action and the arbitration. They are somewhat tied together, but not completely.

Hello, Bill? Hello?

MS. HODGE: I'm here.

MR. MUNDY: I'm here.

MR. BROWN: Bill, are you there? Theresa, Matt, do y'all hear Bill?

MS. HODGE: No. We're here.

MR. BROWN: Well why don't the three of us cut off and come back together and chat a little bit.

MS. HODGE: Okay.

ELECTRONICALLY FILED - 2021 Apr 12 8:37 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

NEXSEN|PRUET

Henry W. Brown
Senior Counsel
Admitted in SC

February 24, 2021

VIA ELECTRONIC MAIL ONLY

L. Franklin Elmore, Esquire
felmore@elmoregoldsmith.com
Elmore, Goldsmith, Kelley & DeHoll, P.A.
55 Beattie Place, Suite 1050
PO Box 1887 (29602)
Greenville, SC 29601

Re: WECO River District, LLC /Carter & Carter, LLC
Arbitration

Dear Frank:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

For various reasons I am assuming representation of WECO for the remaining issues in this arbitration. Bill Bundy will continue to be involved, however I will undertake the management of the case and you may correspond with me and look to me as the decision maker for WECO.

Both WECO and Carter are addressing the open claims discussed in your initial award and looking for resolution by agreement. I suspect however that we will not come to agreement as to the DOT issues or the Article 9.10 requirements for contract closeout. To the extent we don't reach agreement we will submit our respective remaining claims for resolution.

I am copying Mr. Sheppard on this letter and expect he will comment as needed.

1230 Main Street
Suite 700 (29201)
PO BOX 2426
Columbia, SC 29202
www.nexsenpruet.com

T (803) 253-8273
F 803.727.1415
E HBrown@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

If it would be productive, we can schedule a conference call to discuss the status and remaining issues to resolve and conclude this arbitration.

Thank you.

Very truly yours,

Henry W. Brown

HWB/mos

cc: William J. Sheppard, Esquire
Bill H. Bundy, Esquire
Bob Mundy
Teresa Hodge
Matt Mundy

ELECTRONICALLY FILED - 2021 Apr 12 8:37 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

ELECTRONICALLY FILED - 2021 Apr 12 8:37 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Sheppard, William J.

From: Teresa Hodge <thodge@estatesinc.com>
Sent: Monday, March 1, 2021 8:07 AM
To: Sheppard, William J.
Cc: Henry Brown; Bill Bundy; Ryan Barnes; Matt Mundy; Bob Mundy; paul.eaves@zurichna.com; Brent Mcdonald
Subject: SCDOT and Deficient Construction
Attachments: 2021 02 18 Project Closeout.pdf

This Message originated outside your organization.

Mr. Sheppard,

This is further notice and information on the deficient construction items for which Carter has been noticed several times with no response. Based on the Architect's letter dated 2/18/21 and the Contractor's non-response to previous notices, WECO will be proceeding with completion of these items per 2.4 of the Contract. As previously clarified by Frank Elmore, these specific items were not included in his ruling if they were not a part of the arbitration. Below you will find a list of the known deficient construction items (independent of the arbitration) as well as the estimated costs for each item. These are all estimates and actual invoices will be provided upon completion.

- Water Intrusion above Storefront Frames at B3
  - $38,000 ----- Estimated Cost for destructive testing at the awnings and waterproofing
- Slipdeck steel is corroding in multiple places- around all screws and at multiple beams. Plans called for welded connections, but Contractor chose to use screws. Water is coming through and corrosion is evident.
  - $57,650---- Estimated Cost for Waterproof Traffic coating, grinding and painting rusted steel areas
- Disconnect that is shown on the plans is missing from retail space in B3
  - $9,000--- Estimated Costs for installing the disconnect

Contractors will commence immediately on the work described above.

Please note our address has changed*

Teresa Hodge
Estates and Companies
2801 Devine Street; Suite 202
Columbia, SC 29205

o: 803-779-1400
m: 803-309-1304

From: Teresa Hodge <thodge@estatesinc.com>
Sent: Friday, February 19, 2021 9:23 AM

333

Bundy McDonald
TRIAL LAWYERS

WALTER H BUNDY
walter@bundymcdonald.com
843 212-0525 (Direct)
843-708-1519 (Cell)

March 2, 2021

Henry W. Brown
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
HBrown@nexsenpruet.com

RE: Weco River District, LLC and Carter and Carter Construction, LLC
Brookland Village, West Columbia, SC

Henry:

I am in receipt of your letter to Frank Elmore dated February 24, 2021 ("Letter"). As a preliminary matter, I want to make clear that I had no involvement in the drafting, review, approval or transmittal of the Letter. After our telephone conversation on Tuesday, February 23, 2021, you and the Client ("Weco") informed me that you would discuss a strategy for moving forward and would then get back with me. No one did get back with me. Instead of communicating with me and without my consent, you sent the Letter and stated that "Bill Bundy will continue to be involved." First, to be clear, you do not have authority to speak on my behalf or define my involvement in anything. My firm has a signed fee agreement with Weco that dictates the terms and extent of my firm's representation. Second, again since I was not involved with the Letter, I am unclear what continued involvement to which you refer. As I made clear on our telephone call of February 23, 2021, the arbitration is over. The only remaining issue in the arbitration is a decision on the award of attorneys' fees, if any. If your statement of my involvement refers only to the final issue of attorneys' fees, then I agree that I will continue to be involved with that issue. If you intended for your statement to refer to any other continued involvement in future arbitrations, you need to let me know immediately so the proper clarification may be made by you or me to Frank Elmore.

The procedure proposed in the Letter is in direct contradiction of my legal advice, as such I am obliged to repeat what was discussed in our telephone conversation on February 23, 2021. Your approach is inconsistent with the arbitration rules, and more importantly, subjects Weco to additional adverse legal and factual arguments that I previously sought to avoid and would have avoided.

Rule 41 of the AAA Construction Industry Arbitration Rules only allows the re-opening of a hearing *before* the award is made. Rule 51 only allows the modification of the award for "clerical, typographical, technical, or computational errors in the award." As such, the arbitrator is not empowered to consider those things you now appear to propose that he arbitrate as a continuation of the arbitration that has already taken place. Carter and Carter ("Carter"), Weco and the Arbitrator would all need to agree and consent to a re-opening of an arbitration in a manner

inconsistent with the Arbitration Rules and, consequently, the Contract. I do not believe based upon the positions taken by Counsel for Carter that Carter will agree to a re-opening of the previous arbitration to address issues and claims, that were not adjudicated in that arbitration, without substantial and unwise concessions by WECO. In fact, based predominantly on the position of Carter that the previous arbitration adjudicated all claims between the parties, I, in numerous consultations with Weco, worked very hard to separate those issues that were not arbitrated (i.e. SCDOT issues, Final Payment Compliance, and defects, etc.) so as to put Weco in the best strategic position to avoid Carter's argument. As such, a demand for a new arbitration must and should be made. Your Letter appears to conflate those issues I separated and upon which I based my legal advice.

In the last call between Frank Elmore, Sheppard and myself. Elmore indicated he was still considering when he would address the issue of attorney fees and would give WECO sufficient time to submit to petition for attorney fees.

Given all the foregoing, *ie* my lack of involvement with the letter and your contrary legal advice and the fact that the issue of attorney fees will not be a topic of the upcoming call, I will not participate.

Sincerely yours,

s/W.H. Bundy, Jr.

W.H. Bundy, Jr.

WHB/kjw
cc: Teresa Hodge
Matt Mundy

WECO River District, LLC
PO Box 11735
Columbia, SC 29211

May 24, 2022

Bundy Mcdonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485

Mr. Bundy,

I enclose herewith a check from Weco River District, LLC in the amount of $ 150,000.00 payable to your law firm.

We are not asking you to sign a release for this payment, you may reserve all rights to your claims and the pending lawsuit. We simply ask that you properly credit this payment against any amount you claim is due. Weco disputes any claim over the amount tendered because we were required to engage other counsel to complete the work.

Weco continues to reserve our rights and defenses to any claims you may continue to pursue.

Respectfully,

Teresa Hodge

Cc: Hank Wall
Henry Brown

PLAINTIFF'S EXHIBIT 20

356

WECO RIVER DISTRICT, LLC dba BROOKLAND APARTMENTS
OPERATING ACCOUNT (803) 779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

BB&T

NO: 0000021375

DATE	VOID AFTER 120 DAYS
05/24/2022	********** $150,000.00

ONE HUNDRED FIFTY THOUSAND AND XX / 100 DOLLARS

PAY TO THE ORDER OF
Bundy McDonald, LLC
1516 Old Trolley Rd., 2nd Floor
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

[redacted]

337

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-32-_____
WECO RIVER DISTRICT, LLC, Plaintiff, vs.	)	**COMPLAINT** **(Jury Trial Demanded on all Issues Triable to a Jury)**
CARTER & CARTER CONSTRUCTION, LLC; EXPRESSWAY PAINTING & RENOVATIONS, LLC; THE ROOF DEPOT, INC.; W. CONSTRUCTION, LLC; B&N MECHANICAL CONTRACTORS, INC.; APEX MASONRY, INC.; CBG, INC.; R.W. FORD COMPANY, INC; APPLETREE LANDSCAPING, INC.; ATLANTIC CONCRETE SERVICES, ATLANTA DESIGN GROUP, INC.; ALL IN BUILIDERS, LLC; AIR ONE SYSTEMS, LLC; APEX ASTERA, INC.; BAYTREE LANDSCAPE CONTRACTORS, INC.; BRABHAM FENCE COMPANY, INC.; BARNHILLS SERVICES, INC.; BILTRITE CORPORATION; BRANDON ZAPATA ELECTRIC, INC.; CUSTOM EXTERIORS OF GEORGIA, LLC CEMPLEX GROUP, LLC; COASTAL ALUMINUM STRUCTURES, LLC; CUSTOM WELDING & FABRICATION, LLC; ELI CONTROLS, LLC; FLOORING SERVICES, LLC; GE APPLIANCES CONTRACT SALES, INC.; HAYWARD BAKER, INC.; HOT SPRINGS POOLS AND SPAS, LLC; LEXINGTON DECORATIVE CONCRETE, LLP; MC METALS, LLC; MODERN EXTERMINATING COMPANY OF COLUMBIA, SC INC.; FIRST FIRE & SAFETY F/K/A NATIONAL FIRE & SAFETY, LLC; PASCON, LLC; PETERSON CONTRACTORS, INC.; P&S	)	

338

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

CONSTRUCTION, INC.; DARBY DOORS, LLC; REAL VALUE, INC.; BUILDERS SERVICES GROUP, INC. D/B/A SPARLING GALE INSULATION; SAVANNAH HARDSCAPES, INC.; STRICKLAND WATERPROOFING CO., INC.; TOWNSEND BUILDING SUPPLY, INC.; THYSSENKRUPP ELEVATOR CORPORATION, INC.; TERRATEC, INC.; TOTAL TRIM, INC.; VALIANT PRODUCTS, INC.; VISION BLINDS, LLC; WATERTIGHT SYSTEMS, INC.; R&R GENERAL CONTRACTORS, INC.; FIDELITY AND DEPOSIT COMPANY OF MARYLAND/ZURICH AMERICAN INSURANCE COMPANY,

Defendants.

Plaintiff Weco River District, LLC (hereinafter "Plaintiff") hereby brings this declaratory judgment action pursuant to S.C. Code Ann. § 15-53-10 *et seq.*, seeking a declaration of rights between the Plaintiff and Defendants and would allege and show as follows:

PARTIES

1. Plaintiff is a limited liability company organized and existing under the laws of the state of South Carolina and at all times relevant hereto was and is the owner of real property which is the subject of this action located in Lexington County, State of South Carolina (the "Property" or "Project").

2. The Project was and is the development and ownership by Plaintiff of an apartment complex known as Brookland apartments.

3. Defendant Carter & Carter Construction, LLC ("Defendant General Contractor") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina that is authorized to do business and

339

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

licensed as a general contractor in the State of South Carolina. Defendant General Contractor contracted to serve as the general contractor for the Project.

4. Defendant General Contractor has filed a mechanic's lien on the title of the Property in the amount of $3,981,919.92.

5. Defendant Expressway Painting, LLC ("Defendant Subcontractor Expressway") is a limited liability company organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

6. Defendant Subcontractor Expressway has filed a mechanic's lien on the title of the Property in the amount of $109,208.12.

7. Defendant The Roof Depot, Inc. ("Defendant Subcontractor Roof Depot") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

8. Defendant Subcontractor Roof Depot has filed a mechanic's lien on the title of the Property in the purported amount of $529,556.83. However, the statement of account attached to the filed lien further states that payments in the amount of $481,090.77 have been received by Defendant Subcontractor Roof Depot. As such, Defendant Subcontractor Roof Depot actually claims a mechanic's lien in the amount of $48,466.06.

9. Defendant W. Construction, LLC ("Defendant Subcontractor W.") is a limited liability company organized and existing under the laws of the State of South

340

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

10. Defendant Subcontractor W. has filed a mechanic's lien on the title of the Property in the amount of $535,111.38.

11. Defendant B&N Mechanical Contractors, Inc. ("Defendant Subcontractor B&N") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

12. Defendant Subcontractor B&N has filed a mechanic's lien on the title of the Property in the amount of $155,695.72.

13. Defendant Apex Masonry, Inc. ("Defendant Subcontractor Apex") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

14. Defendant Subcontractor Apex has sent notice of an intent file a mechanic's lien on the title of the Property in the amount of $78,765.36.

15. Defendant CBG, Inc. ("Defendant Subcontractor CBG") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

341

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

16. Upon information and belief, Defendant CBG contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

17. Defendant R.W. Ford Company, Inc. ("Defendant Subcontractor R.W. Ford") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

18. Upon information and belief, Defendant Subcontractor R.W. Ford contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

19. Defendant Appletree Landscaping, Inc. ("Defendant Subcontractor Appletree") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

20. Upon information and belief, Defendant Subcontractor Appletree contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

21. Defendant Atlanta Design Group, Inc. ("Defendant Subcontractor ADG") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

342

22. Upon information and belief, Defendant Subcontractor AGD contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

23. Defendant All In Builders, LLC ("Defendant Subcontractor AIB") is a limited liability company organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

24. Upon information and belief, Defendant Subcontractor AIB contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

25. Defendant Atlantic Concrete Services, Inc. ("Defendant Subcontractor ACS") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

26. Upon information and belief, Defendant Subcontractor ACS contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

27. Defendant Air One Systems, LLC ("Defendant Subcontractor Air One") is, upon information and belief, a limited liability company organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

343

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

28. Upon information and belief, Defendant Subcontractor Air One contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

29. Defendant Astera, Inc. ("Defendant Subcontractor Astera") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

30. Upon information and belief, Defendant Subcontractor Astera contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

31. Defendant Baytree Landscape Contractors, Inc. ("Defendant Subcontractor Baytree") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

32. Upon information and belief, Defendant Subcontractor Baytree contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

33. Defendant Brabham Fence Company, Inc. ("Defendant Subcontractor Brabham") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

34. Upon information and belief, Defendant Subcontractor Brabham contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

35. Defendant Barnhills Services, Inc. ("Defendant Subcontractor Barnhill") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

36. Upon information and belief, Defendant Subcontractor Barnhill contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

37. Defendant Blyco Glass Company of SC, LLC ("Defendant Subcontractor Blyco") is a limited liability company organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

38. Upon information and belief, Defendant Subcontractor Blyco contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

39. Defendant Biltrite Corporation, d/b/a Bilt Rite Garage Doors ("Defendant Subcontractor Biltrite") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

345

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

40. Upon information and belief, Defendant Subcontractor Biltrite contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

41. Defendant Brandon Zapata Electric, Inc. ("Defendant Subcontractor Zapata") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

42. Upon information and belief, Defendant Subcontractor Zapata contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

43. Defendant Custom Exteriors of Georgia, LLC ("Defendant Subcontractor Custom Exteriors") is, upon information and belief, a limited liability company organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

44. Upon information and belief, Defendant Subcontractor Custom Exteriors contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

45. Defendant Cemplex Group Georgia, LLC ("Defendant Subcontractor Cemplex") is, upon information and belief, a limited liability company organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

346

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

46. Upon information and belief, Defendant Subcontractor Cemplex contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

47. Defendant Coastal Aluminum Structures, LLC ("Defendant Subcontractor Coastal Aluminum") is, upon information and belief, a limited liability company organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

48. Upon information and belief, Defendant Subcontractor Coastal Aluminum contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

49. Defendant Custom Welding & Fabrication, LLC ("Defendant Subcontractor CWF") is a limited liability company organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

50. Upon information and belief, Defendant Subcontractor CWF contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

51. Defendant Eli Controls, LLC ("Defendant Subcontractor Eli") is a limited liability company organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

52. Upon information and belief, Defendant Subcontractor Eli contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

53. Defendant Flooring Services, LLC ("Defendant Subcontractor Flooring Services") is a limited liability company organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

54. Upon information and belief, Defendant Subcontractor Flooring Services contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

55. Defendant GE Appliances Contract Sales, Inc. ("Defendant GE") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

56. Upon information and belief, Defendant Subcontractor GE contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

57. Defendant Hayward Baker, Inc. ("Defendant Subcontractor Hayward Baker") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

58. Upon information and belief, Defendant Subcontractor Hayward Baker contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

59. Defendant Hot Springs Pools & Spas, LLC ("Defendant Subcontractor Hot Springs") is a limited liability company organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

60. Upon information and belief, Defendant Subcontractor Hot Springs contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

61. Defendant Lexington Decorative Concrete, LLP ("Defendant Subcontractor LCD") is a limited liability partnership organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

62. Upon information and belief, Defendant Subcontractor LCD contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

63. Defendant MC Metals, LLC ("Defendant Subcontractor MC") is a limited liability company organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

64. Upon information and belief, Defendant Subcontractor MC contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

65. Defendant Modern Exterminating Company of Columba, SC, Inc. ("Defendant Subcontractor Modern Exterminating") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

66. Upon information and belief, Defendant Subcontractor Modern Exterminating contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

67. Defendant First Fire & Safety f/k/a National Fire & Safety, LLC ("Defendant Subcontractor NFS") is a limited liability company organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

68. Upon information and belief, Defendant Subcontractor NFS contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

69. Defendant Pascon, LLC ("Defendant Subcontractor Pascon") is a limited liability company organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

350

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

70. Upon information and belief, Defendant Subcontractor Pascon contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

71. Defendant Peterson Contractors, Inc. ("Defendant Subcontractor Peterson") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

72. Upon information and belief, Defendant Subcontractor Peterson contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

73. Defendant P&S Construction Company, Inc. ("Defendant Subcontractor P&S") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

74. Upon information and belief, Defendant Subcontractor P&S contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

75. Defendant Darby Doors, LLC ("Defendant Subcontractor Darby") is a limited liability company organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

76. Upon information and belief, Defendant Subcontractor Darby contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

77. Defendant Real Value, Inc. ("Defendant Subcontractor Real Value") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

78. Upon information and belief, Defendant Subcontractor Real Value contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

79. Defendant Builders Services Group, Inc. d/b/a Sparling Gale Insulation ("Defendant Subcontractor Sparling") is a corporation organized and existiag under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

80. Upon information and belief, Defendant Subcontractor Sparling contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

81. Defendant Savannah Hardscapes, Inc. ("Defendant Subcontractor Savannah Hardscape") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

352

82. Upon information and belief, Defendant Subcontractor Savannah Hardscapes contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

83. Defendant Strickland Waterproofing Co., Inc. ("Defendant Subcontractor Strickland") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

84. Upon information and belief, Defendant Subcontractor Strickland contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

85. Defendant Terratec, Inc. ("Defendant Subcontractor Terratec") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

86. Upon information and belief, Defendant Subcontractor Terratec contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

87. Defendant Townsend Building Supply, Inc. ("Defendant Subcontractor Townsend") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

353

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

88. Upon information and belief, Defendant Subcontractor Townsend contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

89. Defendant ThyssenKrupp Elevator Corporation, Inc. ("Defendant Subcontractor Thyssen") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

90. Upon information and belief, Defendant Subcontractor Thyssen contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

91. Defendant Total Trim, Inc. ("Defendant Subcontractor Total Trim") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

92. Upon information and belief, Defendant Subcontractor Total Trim contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

93. Defendant Valiant Products, Inc. ("Defendant Subcontractor Valiant") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

354

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

94. Upon information and belief, Defendant Subcontractor Valiant contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

95. Defendant Vision Blinds, LLC ("Defendant Subcontractor Vision Blinds") is, upon information and belief, a limited liability company organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

96. Upon information and belief, Defendant Subcontractor Vision Blinds contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

97. Defendant Watertight Systems, Inc. ("Defendant Subcontractor Watertight") is a corporation organized and existing under the laws of the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

98. Upon information and belief, Defendant Subcontractor Watertight contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

99. Defendant R&R General Contractors, Inc. ("Defendant Subcontractor R&R") is, upon information and belief, a corporation organized and existing under the laws of a state other than the State of South Carolina and, upon information and belief, contracted with Defendant General Contractor to perform work as a subcontractor on the Project.

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

100. Upon information and belief, Defendant Subcontractor R&R contends that it is owned a sum of money from Defendant General Contractor for work performed or material supplied on the Project.

101. Defendants Expressway Painting & Renovations, LLC; The Roof Depot, Inc.; W. Construction, LLC; B&N Mechanical Contractors, Inc.; Apex Masonry, Inc.; CBG, Inc.; R.W. Ford Company, Inc; Appletree Landscaping, Inc.; Atlantic Concrete Services, Inc., Atlanta Design Group, Inc.; All In Builders, LLC; Air One Systems, LLC; Apex Astera, Inc.; Baytree Landscape Contractors, Inc.; Braham Fence Company, Inc.; Barnhills Services, Inc.; Biltrite Corporation; Brandon Zapata Electric, Inc.; Custom Exteriors Of Georgia, LLC Cemplex Group, LLC; Coastal Aluminum Structures, LLC; Custom Welding & Fabrication, LLC; Eli Controls, LLC; Flooring Services, LLC; GE Appliances Contract Sales, Inc.; Hayward Baker, Inc.; Hot Springs Pools And Spas, LLC; Lexington Decorative Concrete, LLP; MC Metals, LLC; Modern Exterminating Company of Columbia, Sc Inc.; First Fire & Safety F/K/A National Fire & Safety, LLC; Pascon, LLC; Peterson Contractors, Inc.; P&S Construction, Inc.; Darby Doors. LLC; Real Value, Inc.; Builders Services Group, Inc. d/b/a Sparling/Gale Insulation; Savannah Hardscapes, Inc.; Strickland Waterproofing Co., Inc.; Townsend Building Supply, Inc.; Thyssenkrupp Elevator Corporation, Inc.; Terratec, Inc.; Total Trim, Inc.; Valiant Products, Inc.; Vision Blinds, LLC; Watertight Systems, Inc.; and R&R General Contractors, Inc. will hereinafter sometimes collectively be referred to as "Subcontractor Defendants."

102. Defendant Fidelity and Deposit Company of Maryland/Zurich American Insurance Company is, upon information and belief, a legal organization organized and existing

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

under the laws of a state other than South Carolina and at all times relevant hereto was the surety for payment and performance bonds for the Project.

JURISDICTION AND VENUE

103. This Court has jurisdiction over the parties for the claims that are hereinafter set forth in this Complaint and venue is proper in this forum.

BACKGROUND

104. Plaintiff and Defendant General Contractor entered into valid and enforceable contract on May 13, 2017.

105. Upon information and belief, Defendant General Contractor entered into subcontracts with Defendant Subcontractors.

106. On or about April 6, 2018, Defendant General Contractor served a notice of intent to arbitrate certain claims related to the construction of the Project.

107. Plaintiff has denied responsibility for those claims and has made claims against the Defendant General Contractor.

108. The arbitration hearing has not yet occurred.

109. The Project was issued a final certificate of occupancy on December 4, 2019.

110. Based upon the terms of the Contract and the rulings of the initial decision maker, the Architect, Plaintiff owes the Defendant General Contractor $869,390.04 which represents the Contract Balance ("Contract Balance").

111. Upon information and belief, some or all of the Contract Balance is contained in the amount claimed by Defendant General Contractor in its mechanic's lien.

112. Upon information and belief, some or all of the Contract Balance is contained in the amounts claimed by the Subcontractor Defendants.

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

113. Defendant General Contractor has breached its contractual duty to immediately bond off the mechanic's liens filed by the Defendant Subcontractors.

114. On or about December 10, 2019, Plaintiff and the Architect attempted to remit the Contract Balance to Defendant General Contractor in accordance with the terms of the Contract.

115. On or about December 12, 2019, Plaintiff and the Architect attempted to remit the Contract Balance to Defendant General Contractor in accordance with the terms of the Contract.

116. On December 23, 2019, Defendant General Contractor filed its mechanic's lien.

117. On or about January 3, 2020, Plaintiff and the Architect attempted to remit the Contract Balance to Defendant General Contractor in accordance with the terms of the Contract.

118. On or about January 14, 2020, Plaintiff and the Architect attempted to remit the Contract Balance to Defendant General Contractor in accordance with the terms of the Contract.

119. On or about January 15, 2020, Plaintiff and the Architect attempted to remit the Contract Balance to Defendant General Contractor in accordance with the terms of the Contract.

120. Notwithstanding the repeated and ongoing attempts by Plaintiff at remitting the Contract Balance, Defendant General Contractor has refused to comply with basic contractual responsibilities in order to receive the Contract Balance payment.

121. The total of the filed mechanic's liens exceeds the Contract Balance.

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

122. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

123. Plaintiff brings this cause of action pursuant to the South Carolina Declaratory Judgment Act, codified at S.C. Code Ann. § 15-53-10 *et seq.*, seeking a declaration of rights between the Plaintiff and Defendants.

124. There exists a justiciable controversy between Plaintiff and Defendants, to wit: what portion of the Contract Balance is payable to which Defendants pursuant to S.C. Code Ann. Sections 29-5-10 *et seq* and the terms of the Contract.

125. All necessary parties are joined herein.

126. The Plaintiff hereby seeks declarations from this Court as follows:

(a) Declare which Defendants have valid mechanic's liens pursuant to S.C. Code Ann. Sections 29-5-10 *et seq.*;

(b) Declare what portion of the Contract Balance is owned to which Defendant pursuant to S.C. Code Ann. Sections 29-5-10, 29-5-20, 29-5-50, and 29-5-60;

(c) Declare which portions of the mechanic's liens are excessive or duplicative and discharge those portions pursuant to *Sea Pines Co. v. Kiawah Island Co., Inc.*, 268 S.C. 153, 232 S.E.2d 501 (1977).

(b) Declare the rights and obligations of the Plaintiff and Defendants;

(c) Declare such other relief as may be necessary in favor of Plaintiff.

WHEREFORE, Plaintiff respectfully request that this Honorable Court:

1. That this Court enter a Declaratory Judgment that:

359

(a) Declare which Defendants have valid mechanic's liens pursuant to S.C. Code Ann. Sections 29-5-10 *et seq.*;

(b) Declare what portion of the Contract Balance is owned to which Defendant pursuant to S.C. Code Ann. Sections 29-5-10, 29-5-20, 29-5-50, and 29-5-60;

(c) Declare which portions of the mechanic's liens are excessive or duplicative and discharge those portions pursuant to *Sea Pines Co. v. Kiawah Island Co., Inc.*, 268 S.C. 153, 232 S.E.2d 501 (1977).

(b) Declare the rights and obligations of the Plaintiff and Defendants;

(c) Declare such other relief as may be necessary in favor of Plaintiff.

2. Pursuant to S.C. Code Ann. Section 15-53-120, the Court should grant all further relief requested herein to the Plaintiff based upon any declaration issued by the Court in this action.

3. That this Court should award all other relief that is deems just and proper.

[signature page follows]

360

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

ELECTRONICALLY FILED - 2020 Feb 11 12:25 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Respectfully submitted,

s/ W.H. Bundy, Jr.

W. H. Bundy, Jr., Esquire; SC Bar # 1012
M. Brent McDonald, Esquire; SC Bar # 78057
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

Attorneys for Plaintiff

February 11, 2020
Summerville, South Carolina

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-32-00580
WECO RIVER DISTRICT, LLC, Plaintiff, vs. CARTER & CARTER CONSTRUCTION, LLC; EXPRESSWAY PAINTING & RENOVATIONS, LLC; THE ROOF DEPOT, INC.; W. CONSTRUCTION, LLC; B&N MECHANICAL CONTRACTORS, INC.; APEX MASONRY, INC.; CBG, INC.; R.W. FORD COMPANY, INC; APPLETREE LANDSCAPING, INC.; ATLANTIC CONCRETE SERVICES, ATLANTA DESIGN GROUP, INC.; ALL IN BUILIDERS, LLC; AIR ONE SYSTEMS, LLC; ASTERA, INC.; BAYTREE LANDSCAPE CONTRACTORS, INC.; BRABHAM FENCE COMPANY, INC.; BARNHILLS SERVICES, INC.; BILTRITE CORPORATION; BRANDON ZAPATA ELECTRIC, INC.; CUSTOM EXTERIORS OF GEORGIA, LLC CEMPLEX GROUP, LLC; COASTAL ALUMINUM STRUCTURES, LLC; CUSTOM WELDING & FABRICATION, LLC; ELI CONTROLS, LLC; FLOORING SERVICES, LLC; GE APPLIANCES CONTRACT SALES, INC.; HAYWARD BAKER, INC.; HOT SPRINGS POOLS AND SPAS, LLC; LEXINGTON DECORATIVE CONCRETE, LLP; MC METALS, LLC; MODERN EXTERMINATING COMPANY OF COLUMBIA, SC INC.; FIRST FIRE & SAFETY F/K/A NATIONAL FIRE & SAFETY, LLC; PASCON, LLC; PETERSON CONTRACTORS, INC.; P&S	**NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT FOR DISSOLUTION AND REMOVAL OF MECHANIC'S LIEN AND RETURN OF CASH BOND** **(DESIGNATION AS PRIORITY MATTER IS HEREBY REQUESTED)**

362

PLAINTIFF'S EXHIBIT 22

CONSTRUCTION, INC.; DARBY DOORS, LLC; REAL VALUE, INC.; BUILDERS SERVICES GROUP, INC. D/B/A SPARLING GALE INSULATION; SAVANNAH HARDSCAPES, INC.; STRICKLAND WATERPROOFING CO., INC.; TOWNSEND BUILDING SUPPLY, INC.; THYSSENKRUPP ELEVATOR CORPORATION, INC.; TERRATEC, INC.; TOTAL TRIM, INC.; VALIANT PRODUCTS, INC.; VISION BLINDS, LLC; WATERTIGHT SYSTEMS, INC.; R&R GENERAL CONTRACTORS, INC.; FIDELITY AND DEPOSIT COMPANY OF MARYLAND/ZURICH AMERICAN INSURANCE COMPANY,

Defendants.

Weco River District, LLC ("Weco") will move after the passage of ten (10) days for partial summary judgment to dissolve and release Defendant Carter & Carter Construction, LLC's ("Contractor") Mechanic's Lien, recorded on December 23, 2019 in Lexington County Register of Deeds in Book 20850 at pages 1680-1686 ("Lien"), and to relase the cash bond posted by Weco. The grounds for this motion are that Contractor has failed to perfect its Lien pursuant to S.C. Code Ann. § 29-5-120 and the Lien must be dissolved as a matter of law. This motion is further supported by the affidavits of Henry Brown, Esq. and Anna Lacke of Paltar Title Agency, Inc. filed contemporaneously herewith.

Request for Priority Matter

Pursuant to Rule 40(h), SCRCP, Weco hereby requests that this matter be designated a Priority Matter and be set for a hearing as soon as possible after the passage of ten days from the filing of this motion. Weco makes this request due and owing that it was required to post a cash bond in the amount of $5,309,093.83 to bond off the Lien. (a copy of the Cash Bond Receipt is

363

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

attached hereto as Exhibit A). Weco is prejudiced because it is unable to utilize those significant funds in its business while the unperfected Lien remains on record.

Procedural History

Contractor recorded its Lien on December 23, 2019. Affidavit of Henry Brown, Esq. attached hereto as Exhibit B. The Lien expressly states that the last date the Contractor furnished labor and materials at the property which is the subject of this action was December 19, 2019. Id. On February 11, 2020, Weco commenced the present action seeking a declaration, among other relief, as to "which Defendants have valid Mechanic's Liens pursuant to S.C. Code Sections 29-5-10 *et seq.*" On March 23, 2020, Contractor filed an Answer and Counterclaim in this action. Affidavit of Henry Brown, Esq. ¶ 7. Critical to the present motion, Contractor did not file a lis pendens. *See* Affidavit of Henry Brown, Esq. ¶ 8; Affidavit of Anna Lacke of Paltar Title Agency, Inc. ¶ 2 attached to Affidavit of Henry Brown, Esq.; Affidavit of William Sheppard, Esq., counsel for Contractor, attached hereto as Exhibit C.

On May 7, 2020, Weco filed a cash bond in the amount of $5,309,093.83. Affidavit of Henry Brown, Esq. ¶ 10. The cash bond was filed after Contractor filed its Answer and Counterclaim. Therefore, at the time Contractor filed its Lien, the cash bond to release the property had not been filed. Affidavit of Henry Brown, Esq. ¶ 12.

Undisputed Facts

(1) It is undisputed that the Lien expressly states that the last date the Contractor furnished labor and materials at the property which is the subject of this action was December 19, 2019. *See* Contractor's Mechanic's Lien.

(2) It is undisputed that six (6) months have passed since December 19, 2019. *See* Affidavit of William Sheppard, Esq., counsel for Contractor, ¶ 10.

(3) It is undisputed that Contractor did not file a lis pendens within six (6) months. *See* Affidavit of William Sheppard, Esq., counsel for Contractor; *see also* Affidavit of Anna Lacke of Paltar Title Agency, Inc. ¶ 2.

364

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Authority and Argument

I. Standard for Summary Judgment

"Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *Hancock v. Mid-South Management Co., Inc.*, 673 S.E.2d 801, 381 S.C. 326 (S.C. 2009).

Here, there is no issue of material fact in dispute. The sole issue relates only to the plain language of the mechanic's lien statute. It necessarily presents only an issue of law.

II. Law on Dissolution and Release of Mechanic's Lien for Failure to Perfect Lien

S.C. Code Ann. § 29-5-120(A) states "Unless a suit for enforcing the lien is commenced **and notice of pendency of the action is filed** within six months after the person desiring to avail himself of it ceases to labor on or furnish labor or material for the building or structure, the lien **must** be dissolved." (emphasis supplied).

Here, it is without dispute that a lis pendens was not filed within sixth months of the last date Contractor furnished labor and materials. The Lien "must" be dissolved.

Moreover, any argument that the filing of the cash bond negated the plain language of Section 29-5-120(A) in this action is rejected in the Court of Appeals' decision in *Shelley Construction Company, Inc. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 536 S.E.2d 488 (1985).[1] The *Shelley* court held that "Since Section 29-5-110 [the cash bond section] says nothing about filing a notice of pendency of the action, we hold that no such notice must be filed to preserve the lien if, **prior to the commencement of an action to enforce the lien**, the property has been discharged from the lien pursuant to that section. *Id* at 491 (emphasis supplied). At the time

[1] The 1985 holding in *Shelley* has likely been modified by the amendment of Section 29-5-120 to include Subsection (B) which specifically refers to the "release" of mechanic's lien "and associated bonds" when "six months has passed since the lien was attached as no suit or notice of pendency has been filed." This amendment occurred in 2009. However, even if *Shelley* remains good law, a lis pendens in this action was still required

365

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Contractor filed its arbitration demand (April 6, 2018) and at the time of the filing of its counterclaim (March 23, 2020), the property had not been discharged by the cash bond (May 7, 2020). A lis pendens was statutorily required in this action. The Lien "must" be dissolved.

Weco, by and through counsel, previously attempted, pursuant to Section 29-5-120(B), to have the Lien and the cash bond dissolved and released by application and affidavit to the Clerk of the Lexington County Register of Deeds. A copy of the letter is attached hereto as Exhibit D. It is Weco's position that the action of the Clerk to dissolve and release the liens and the cash bond is purely ministerial when presented with the facts outlined in the affidavits. The Clerk has not dissolved or released the Lien or cash bond.

Conclusion

Weco hereby requests this Court, pursuant to S.C. Code Ann. § 29-5-120, to enter partial summary judgment that the Contractor's Mechanic's Lien by dissolved and released for a failure to comply with § 29-5-120, specifically for the failure to file a lis pendens within six months after Contractor ceased to labor on or furnish materials for the property which is the subject of this action. Further, Weco requests that this Court direct the Lexington County Register of Deeds to return the cash bond in the amount of $5,309,093.83 to Weco, together with any and all other relief. This motion may be further supported by a memorandum of law and other additional support.

[signature page follows]

366

BUNDY MCDONALD, LLC

Respectfully submitted,

s/ W.H. Bundy, Jr.

W. H. Bundy, Jr., Esquire; SC Bar # 1012
M. Brent McDonald, Esquire; SC Bar # 78057
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

Attorneys for Plaintiff

October 14, 2020
Summerville, South Carolina

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Lexington County Register of Deeds- Mechanics Lien Cash Bond Receipt

Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Date: 5/7/2020
Receipt Number: 20013210
Instrument Number: 2020018847
Book: 20870
Page: 1310

Payment Method	Check No.
Check	1439

Lien Claimant	Associated Book & Page	Lien Amount	Bond Amount	Submitters Initials
Carter & Carter	Book 20850 Page 1680-1686	$3,981,919.92	$5,309,093.83	

Lexington County Representative
Registrar of Deeds

Tina Guerry

Lexington County Representative
Deputy Registrar of Deeds

Erin Collins

Submitter/Representative

Sheree Rabon

EXHIBIT
A

368

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

2020027683 BK: 20879 PG: 2348 - 2361 14 PGS
AFFIDAVIT
Rec: $10.00 Cnty: $0.00 State: $0.00
July 1, 2020 10:44:41 AM
FILED IN LEXINGTON COUNTY, SC
Tina Garrick

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

OFFICE OF THE REGISTER OF DEEDS

Carter & Carter Construction, LLC

Plaintiff,

vs.

Weco River District, LLC, and Capital Bank Corporation

Defendants,

AFFIDAVIT OF HENRY W. BROWN

Personally appeared before me Henry W. Brown, who being duly sworn, states the following:

1. I am a member of the South Carolina Bar and have been admitted since November 1976.

2. I have personal knowledge of the facts and circumstances stated herein.

3. I am counsel to Weco River District, LLC ("Weco") for general matters and am co-counsel for certain matters in the upcoming arbitration between Weco and Carter & Carter. I am familiar with the facts and circumstances related to Weco's development of the project located in Lexington County known as Brookland Village.

4. Weco contracted with Carter & Carter to construct improvements at Brookland Village.

5. Carter & Carter filed a mechanics lien against the real property owned by Weco. Carter & Carter filed this lien to secure a claim they asserted against WECO for $3,981,919.92. Weco then and does now dispute this claim and denies that it owes this claim.

6. A copy of this lien is attached as **Exhibit A.** It was recorded on December 23, 2019 in Book 20850 at pages 1680-1686, and stated the last work was performed on December 19, 2019. Pursuant to South Carolina law this lien is to be dissolved unless it is perfected by filing a foreclosure action to enforce the lien and a Lis Pendens on or before June 23, 2020, which is the last date for such filing assuming the longest possible period of time.

EXHIBIT B

ALL-STATE LEGAL

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

7. Carter & Carter filed a counterclaim on March 23, 2020 in an action filed by Weco in Lexington County. This counterclaim sought monetary damages and stated that its purpose was to perfect its filed lien. However, a counterclaim seeking money damages without an action to enforce the lien is deficient to perfect a mechanic's lien. In addition, there was no Lis Pendens filed. The counterclaim filed by Carter & Carter was therefore deficient, and did not perfect its lien. This action bears docket number 2020-CP-32-00580.

8. As of the date of the title examination affidavit, June 26, 2020, Carter & Carter has not filed a proper action to enforce its lien nor a Lis Pendens giving notice of its claim to a lien against the real property described in its lien, and the lien is dissolved by the failure to perfect.

9. Section 29-5-120 provides as follows:

> (A) Unless a suit for enforcing the lien is commenced and notice of pendency of the action is filed within six months after the person desiring to avail himself of it ceases to labor on or furnish labor or material for the building or structure, the lien must be dissolved.
>
> (B) A mechanics' lien and associated bonds may be released by a court order, a written affidavit of the bond holder's attorney, or by a written affidavit from the defendant's attorney stating:
>
> (1) six months has passed since the lien was attached and no suit or notice of pendency has been filed; or
>
> (2) the failure of the filing party to take some other timely action required by this chapter. This affidavit must be in the form approved by the appropriate local office where the mechanic's lien was filed and must reference the lien's recording

NPCOL1:
2020027503 RECORD BOOK BK 2079 PG 2349

370

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

information.

(Emphasis added)

Section 29-5-160 states:

> The petition shall contain a brief statement of the contract on which it is founded and of the amount due thereon, with a description of the premises subject to the lien and all other material facts and circumstances, and shall pray that the premises may be sold and the proceeds of the sale applied to the discharge of the demand.

10. Weco filed a Cash Bond on May 7, 2020 in the amount of $5,309,093.83. This Bond by its terms was to stand as collateral for the Carter & Carter lien in place of the real property. The Bond is filed in Book 20870 at pages 1310-1318.

11. The Opinion of the Court of Appeals in Shelley Construction Company, Inc. v. Sea Garden Homes, Inc., 287 S.C. 24, 536 S.E.2d 488 (1985) held that:

> Since Section 29-5-110 says nothing about filing a notice of pendency of the action, we hold that no such notice must be filed to preserve the lien if, prior to commencement of an action to enforce the lien, the property has been discharged from the lien pursuant to that section.
>
> Id at 491.

12. At the time Carter & Carter filed a counterclaim purporting to institute an action to perfect its lien, the Bond to release the real property had not been filed, and the action commenced by Carter & Carter on March 23rd was defective in that (1) it only asked for money damages and did not seek enforcement of the lien and (2) it did not include a Lis Pendens. Weco's Bond filed May 7th did not cure or excuse the deficiencies in Carter & Carter's action.

13. The language of these statutes states that the lien is dissolved if *six months has passed since the lien was attached and no suit or notice of pendency has been filed.* The requirements for a proper suit to enforce the lien as set forth in Section 29-5-120 and 29-5-160 have not been accomplished. The statutes do not provide any exception to the necessity to file a Lis Pendens or a proper pleading to enforce the lien when a bond to release the lien is filed after the action is filed.

NPCOL1:1
202002/883 RECORD BOOK BK 20879 PG 2350

371

14. The Cater & Carter lien has been disolved and the bond should be cancelled and the funds returned to Weco.

15. Attached to this Affidavit as **Exhibit B** is an affidavit regarding the title examination of the Lexington County real property records affirming that no Lis Pendens has been filed by Carter & Carter.

16. This Affidavit is filed pursuant to §29- 5-120 (B) providing for the discharge of the Carter & Carter mechanics liens and bonds.

Henry W Brown

Henry W. Brown

SWORN and subscribed to before me
this 30 day of June, 2020.

Sherri M. Rabon (L.S.)
Notary Public for South Carolina
My Commission Expires: 1-10-25

NPCOL1:
2020027683 RECORD BOOK BK 20879 PG 2351

372

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

2019058128 BK: 20850 PG: 1680 - 1686 7 PGS
MECHANICS LIEN
Rec: $25.00 Cnty: $0.00 State: $0.00
December 23, 2019 10:26:07 AM
FILED IN LEXINGTON COUNTY, SC
Tina Guary

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

REGISTER OF DEEDS OFFICE

Carter & Carter Construction, LLC,

Petitioner,

v.

Weco River District, LLC and
Capital Bank Corporation,

Respondents.

NOTICE AND CERTIFICATION OF MECHANIC'S LIEN

TO: THE RESPONDENT ABOVE-NAMED AND ALL OTHERS CONCERNED:

NOTICE IS HEREBY GIVEN that Carter & Carter Construction, LLC ("Claimant"), is due the sum of Three Million Nine Hundred Eighty-One Thousand Nine Hundred Nineteen and 92/100's Dollars ($3,981,919.92) from Weco River District, LLC (the "Owner"), a statement of just and true account of said indebtedness, with all just credits given, being attached hereto and made a part hereof.

That said debt is due Claimant for labor performed and materials and equipment furnished and used in the erection, alteration, or repair of buildings or structures situated on, and/or otherwise improving the real estate, by virtue of an agreement with, and at the direction and request of the Owner of the real property (the "Property") described on Exhibit A, attached hereto and incorporated herein by reference.

Capital Bank Corporation is the holder of a mortgage on the Property pursuant to that certain "Mortgage, Assignment of Rents and Security Agreement" executed by and between Capital Bank Corporation and the Owner recorded on March 31, 2017, in the Office of the

EXHIBIT
A

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Register of Deeds for Lexington County, South Carolina in Mortgage Book 19105 at Page 87 and that certain "Amended and Restated Mortgage, Assignment of Rents an Security Agreement" executed by and between Capital Bank Corporation and the Owner recorded on June 19, 2018, in the Office of the Registrar of Dees for Lexington County, South Carolina in Mortgage Book 20088, at Page 1.

Claimant labored on and furnished labor and materials for such buildings, structures or improvements within ninety (90) days of the date hereof. The last date of furnishing said labor and materials for such buildings, structures or improvements to the real property was December 19, 2019. No part of the debt has been paid by cash, credit, or otherwise and 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, Claimant has and claims a lien to secure the payment of the debt so due and all the costs and reasonable attorney's fees of enforcing said lien upon the interest in the real estate described above. The Claimant's Contractor License Number is GI17858.

CARTER & CARTER CONSTRUCTION, LLC

By: _____
Name: Collin Carter
Its: Manager

Sworn to and subscribed before me
this 30 day of December, 2019

_____
Notary

JIMMICA SLAUGHTER
Notary Public
Alabama State at Large

My commission expires: My Commission Expires June 8, 2022

2019058128 RECORD BOOK BK 20550 PG 1681

2020027683 RECORD BOOK BK 20879 PG 2353

3 74

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

EXHIBIT A

LEGAL DESCRIPTION

PARCEL NO. 1:

ALL that piece, parcel or lot of land, situate, lying and being at the corner of State Street and Court Avenue, in the Town of West Columbia, Congaree Township, School District No. 29, Lexington County, South Carolina, containing 0.04 acres, more or less, as shown on a plat prepared for the City of West Columbia by Associated B & S, Inc., dated May 6, 2015, recorded on May 21, 2015 and recorded in the Office of the Register of Deeds for Lexington, South Carolina in Plat Book 17653, at page 158 with reference to the plat for the exact metes, bounds, distances and description

DERIVATION: Limited Warranty Deed to City of West Columbia from Ann G. Duncan dated May 26, 2015 and recorded May 26, 2015 in the Office of the Register of Deeds for Lexington, South Carolina in Book 17660, at page 259.

TMS No.: 004647-31-002

PARCEL NO. 2:

ALL that certain piece, parcel or tract of land, with all improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, containing .12 acres, shown by Parcel "A" on Plat prepared for City of West Columbia, prepared by Associated B & S, Inc., dated June 20, 2014, revised July 21, 2014 and recorded August 1, 2014 in the Office of the Register of Deeds for Lexington, South Carolina in Plat Book 17102, at page 183, with reference to the plat for the exact metes, bounds, distances and description.

DERIVATION: Limited Warranty Deed to City of West Columbia from Miles Management, LLC dated July 31, 2014 and recorded August 1, 2014 in the Office of the Register of Deeds for Lexington County in Book 17102, at page 184.

TMS No: 004647-31-003

PARCEL NO. 3:

ALL that certain piece, parcel or tract of land, with any improvements thereon, situate, lying and being in the City of West Columbia, in the County of Lexington, State of South Carolina, being shown and designated as 0.12 Acres, on plat prepared for City of West Columbia by Cox and Dinkins Inc., dated September 27, 2004, and recorded December 22, 2004 in the Office of the Register of Deeds for Lexington, South Carolina Plat Book 9794, a page 332, with reference to the plat for the exact metes, bounds, distances and description.

DERIVATION: Deed to City of West Columbia from Harrelson and Associates, Inc. dated December 20, 2004 and recorded December 22, 2004 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 9794, at page 333.

TMS No.: 004647-31-004

2018058128 RECORD BOOK BK 20850 PG 1682

2020027683 RECORD BOOK BK 20879 PG 2354

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

PARCEL NO. 4:

ALL that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being the City of West Columbia, Lexington County, State of South Carolina, being shown and delineated as 1.18 Acres/51,615 SQ.FT. on plat prepared for City of West Columbia, S.C. by Cox and Dinkins, Inc., dated April 1, 2004 and recorded June 9, 2004 in the Office of the Register of Deeds for Lexington, South Carolina in Plat Book 9327, at page 737 (Slide 768, at page 10), with reference to the plat for the exact metes, bounds, distances and description.

DERIVATION: Deed to City of West Columbia, South Carolina from Larry M. Taylor and Taylor Family Partnership, a General Partnership dated June 3, 2004 and recorded June 9, 2004 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 9327, at page 235.

TMS No: 004647-31-007

PARCEL NO. 5:

ALL that certain piece, parcel or tract of land, with all improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, containing 0.03 acres, shown by Parcel "B" on Plat prepared for City of West Columbia, prepared by Associated E & S, Inc. dated June 20, 2014, revised on July 21, 2014 and recorded August 1, 2014 in the Office of the Register of Deeds for Lexington, South Carolina in Plat Book 17102, at page 183, with reference to the plat for the exact metes, bounds, distances and description.

DEVIRATION: Deed to City of West Columbia, South Carolina from H. Wayne Skipper, Sr. and Lela Jane R. Skipper dated June 25, 2004 and recorded July 9, 2004 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 9400, at page 191 (as to a one-half undivided interest); and Limited Warranty Deed to City of West Columbia from Milea Management, LLC dated July 31, 2014 and recorded August 1, 2014 in said Office in Book 17102, at page 184 (as to a one-half undivided interest).

TMS No: 004647-31-010

PARCEL NO. 6:

ALL that certain piece, parcel, or tract of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, and being more particularly described as 1.09 Acres on a plat prepared for Dr. Charles Thomas Goodson dated November 8, 1995, and prepared by Collingwood Surveying, Inc., Robert Collingwood, R.L.S., recorded in the Office of the Register of Deeds for Lexington County, South Carolina in Plat Book 274, at page 686. Also shown on plat prepared for City of West Columbia, S.C. by Cox and Dinkins, Inc., dated April 1, 2004 and recorded in said Office in Plat Book 10091, at page 220 (Slide 820, at page 5, with reference to the plats for the exact metes, bounds, distances and description.

DERIVATION: Deed to City of West Columbia, a South Carolina Municipal Corporation from

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Diane V. Goodson dated April 28, 2005 and recorded April 29, 2005 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 10091, at page 218.
TMS No.: 004647-31-011

PARCEL NO. 7:

ALL those certain pieces parcels or lots of land, together with improvements thereon, situate, lying and being in the City of West Columbia, Lexington County, State of South Carolina, being shown and delineated as 0.91 Acre/39,816 SQ.FT. and 0.20 Acre/8,847 SQ. FT. and 0.05 Acre/2,391 SQ. FT., all shown on plat prepared for City of West Columbia, S.C. by Cox and Dinkins, Inc., dated April 1, 2004 and recorded in the Office of the Register of Deeds for Lexington County, South Carolina in Plat Book 9400, at page 190 (Slide 773, at page 4), with reference to the plats for the exact metes, bounds, distances and description.

DERIVATION: Deed to City of West Columbia, South Carolina from H. Wayne Skipper, Sr. and Lela Jane R. Skipper dated June 25, 2004 and recorded July 9, 2004 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 9400, at page 191.
TMS No.: 004647-31-012

PARCEL NO. 8:

ALL that certain piece, parcel, or lot of land, with the improvements thereon, situate, lying and being on the northern side of Court Avenue, City of West Columbia, State of South Carolina and being more particularly shown as 0.23 ACRE/10,000 SQ. FT. on that plat prepared for Fred McCary by Associated Engineers and surveyors, Inc., dated February 23, 1994 and recorded in the Office of the Register of Deeds for Lexington County, South Carolina in Plat Book 268, at page 800 with reference to the plat for the exact metes, bounds, distances an description. According to said plat, said lot having the following boundaries and measurements, to-wit: On the West by property now or formerly of H. Wayne Skipper and Doris K. Robinson, whereon it measures a distance of 111.96 feet; On the North by property now or formerly of H. Wayne Skipper and Doris K. Robinson, whereon it measures the distance of 80.31 feet; On the East by property now or formerly of H. Wayne Skipper and Doris K. Robinson, whereon it measures the distance of 137.08 feet; and on the South by the right of way for Court Avenue, whereon it measures the distance of 84.31 feet; be all measurements a little more or less.

DERIVATION: Deed to City of West Columbia, South Carolina from Rhea L. McCary dated September 8, 2005 and recorded September 12, 2005 in the Office of the Register of Deeds for Lexington County, South Carolina in Book 10456, at page 83.
TMS No.: 004647-31-013

20190581:28 RECORD BOOK BK 20860 PG 1684

2020027693 RECORD BOOK BK 20879 PG 2356

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

STATE OF SOUTH CAROLINA **REGISTER OF DEEDS OFFICE**

COUNTY OF LEXINGTON

Carter & Carter Construction, LLC,

Petitioner,

v.

Weco River District, LLC

Respondent.

NOTICE AND CERTIFICATION OF MECHANIC'S LIEN

PERSONALLY APPEARED before me, Collin Carter, who being first duly sworn affirms that he is the Manager for Carter & Carter Construction, LLC, that he has read the foregoing Notice and Certificate of Mechanic's Lien; and that the matters set forth therein are true and accurate and that the amounts alleged therein to be past due and owed to Carter & Carter Construction, LLC, are true and accurate.

CARTER & CARTER CONSTRUCTION, LLC

By: _____
Name: Collin Carter
Its: Manager

Sworn to and subscribed before me
this 20 day of December, 2019.

Jimmica Slaughter
Notary

JIMMICA SLAUGHTER
Notary Public
State of Alabama at Large

My commission expires: My Commission Expires June 8, 2022

2019056129 RECORD BOOK BK 20650 PG 1886

2020027683 RECORD BOOK BK 20879 PG 2357

378

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

REGISTER OF DEEDS OFFICE

Carter & Carter Construction, LLC,

Petitioner,

v.

Weco River District, LLC

Respondent.

NOTICE AND CERTIFICATION OF MECHANIC'S LIEN

Unpaid contract price for labor, materials, and equipment	$3,981,919.92
Unapplied credits	$ 0
Total owed and unpaid	$3,981, 919.92

The undersigned, Collin Carter, the Manager for Carter & Carter Construction, LLC, declares under penalty of law that the above statement is a just and true account of the indebtedness of Weco River District, LLC with all just credits given and that no part of the aforementioned debt has been paid.

CARTER & CARTER CONSTRUCTION, LLC

By: _____
Name: Collin Carter
Its: Manager

Sworn to and subscribed before me
this 20 day of December, 2019.

Jamica Slaughter
Notary

JIMMICA SLAUGHTER
Notary Public
Alabama State at Large

[Seal]

My commission expires: My Commission Expires June 8, 2022

2019058126 RECORD BOOK BK 20650 PG 1686 (LAST PAGE)

2020027683 RECORD BOOK BK 20879 PG 2358

379

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

AFFIDAVIT OF PALTAR TITLE AGENCY, INC.

Personally appeared before me, Anna Lacke as Authorized Agent of Paltar Title Agency, Inc., who being duly sworn, states the following:

1. According to the Register of Deeds for Lexington County, South Carolina, in a search conducted online in the Lexington County Public Records for WECO River District, LLC, the following items have been filed of record since December 19, 2020:
   a. Notice and Certification of Mechanic's Lien listing Carter & Carter Construction, LLC as Petitioner and Weco River District, LLC and Capital Bank Corporation as Respondent dated December 20, 2019 and recorded December 23, 2019 in Book 20850 at Page 1680.
   b. Release of Mechanic's Lien filed by Oldcastle Buildingenvelope, Inc. Charlotte SF dated January 2, 2020 and recorded January 2, 2020 in Book 20851 at Page 3897.
   c. Notice and Certificate of Mechanic's Lien listing W Construction, LLC as Petitioner and WECO River District, LLC, Capital Bank Corporation and Carter & Carter Construction, LLC as the Respondents, dated January 15, 2020 and recorded January 15, 2020 in Book 20853 at Page 1593.
   d. Affidavit and Certification of Mechanic's Lien listing W Construction, LLC as Petitioner and WECO River District, LLC, Capital Bank Corporation and Carter & Carter Construction, LLC as the Respondents, dated January 15, 2020 and recorded January 15, 2020 in Book 20853 at Page 1601.
   e. Statement and Notice of Mechanic's Lien listing B&N Mechanical Contractors, Inc. as Plaintiff and Carter & Carter Construction, LLC, Weco River District, LLC and Capital Bank Corporation as Defendants, dated January 16, 2020 and recorded January 22, 2020 in Book 20853 at Page 5450.
   f. Affidavit of Service filed by Roland Ray Hill dated January 17, 2020 and recorded January 23, 2020 in Book 20854 at Page 1073.
   g. Notice of Mechanic's Lien (Claimant Without Direct Contract with Owner) filed by The Roof Depot, Inc, as Petitioner, and WECO River District LLC as Respondent dated January 24, 2020 and recorded January 28, 2020 in Book 20854 at Page 4716.
   h. Mechanic's Lien filed by Flooring Services, LLC as Petitioner and Carter & Carter Construction, LLC, WECO River District, LLC and Capital Bank as Respondents, dated February 18, 2020 and recorded February 19, 2020 in Book 20857 at Page 5931.
   i. Notice and Certificate of Mechanic's Lien listed ELI Controls, LLC as the Plaintiff and Weco River District, LLC as the Defendant, dated February 20, 2020 and recorded February 21, 2020 in Book 20858 at Page 3100.
   j. Notice of Mechanic's Lien filed by Brandon Zapata Electric, Inc. as Plaintiff and WECO River District, LLC and Carter & Carter Construction, LLC as Defendants, dated March 4, 2020 and recorded March 5, 2020 in Book 20860 at Page 3861.

EXHIBIT
B

380

cc. State of South Carolina Satisfaction of Mortgage dated May 11, 2020 and recorded May 14, 2020 in Book 20871 at Page 1121.

dd. State of South Carolina Satisfaction of Assignment of Rents dated May 11, 2020 and recorded May 14, 2020 in Book 20871 at Page 1325.

ee. Satisfaction of Mortgage Lien dated May 21, 2020 and recorded May 22, 2020 in Book 20872 at Page 3266.

2. According to the Office of the Lexington County Register of Deeds in a search conducted online in the Lexington County Public Records for there has been no Lis Pendens filed by Carter & Carter Construction, LLC against WECO River District, LLC during the time period of December 19, 2019 to June 26, 2020.

Paltar Title Agency, Inc.

By: _____
Anna Lacke, Authorized Agent

SWORN and subscribed to before me
this 30th day of June, 2020.

_____ (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/13/28

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

ELECTRONICALLY FILED - 2020 Oct 14 1:17 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

k. Certificate of Service Certified Mail filed by Barbara K. Craft dated March 3, 2020 and recorded March 6, 2020 in Book 20860 at Page 4517.

l. Statement and Notice of Mechanics Lien filed by CBG, Inc. as Plaintiff and Carter & Carter Construction, LLC, Weco River District, LLC and Capital Bank Corporation as Defendants dated February 28, 2020 and recorded March 6, 2020 in Book 20860 at Page 4524.

m. Certificate of Service Certified Mail filed by Barbara K. Craft dated March 6, 2020 and recorded March 9, 2020 in Book 20861 at Page 202.

n. Partial Satisfaction of Mechanic's Lien filed by the Roof Depot, Inc. dated March 11, 2020 and recorded March 11, 2020 in Book 20861 at Page 2618.

o. Notice and Certificate of Mechanic's Lien filed by Apex Masonry, Inc. as Petitioner and Weco River District, LLC and Carter & Carter Construction, LLC as Respondents, dated March 19, 2020 and recorded March 19, 2020 in Book 20862 at Page 4378.

p. Statement and Notice of Mechanic's Lien filed by Expressway Painting LLC as Plaintiff and Carter & Carter Construction, LLC, Weco River District, LLC and Capital Bank Corporations as Defendants dated March 31, 2020 and recorded April 1, 2020 in Book 20864 at Page 3399.

q. Title to Real Estate Limited Warranty Deed from WECO River District, LLC to WECO River District SPE, LLC dated May 6, 2020 and recorded May 7, 2020 in Book 20870 at Page 1056.

r. Cash Bond to Release Mechanics Lien filed by Expressway Painting LLC, dated May 7, 2020 and recorded May 7, 2020 in Book 20870 at Page 1164.

s. Cash Bond to Release Mechanics Lien filed by Apex Masonry, Inc., dated May 7, 2020 and recorded May 7, 2020 in Book 20870 at Page 1232.

t. Cash Bond to Release Mechanics Lien filed by CBG, Inc., dated May 7, 2020 and recorded May 7, 2020 in Book 20870 at Page 1249.

u. Cash Bond to Release Mechanics Lien filed by B&N Mechanical Contractors, Inc., dated May 7, 2020 and recorded May 7, 2020 in Book 20870 at Page 1258.

v. Cash Bond to Release Mechanics Lien filed by W Construction, LLC, dated May 7, 2020 and recorded May 7, 2020 in Book 20870 at Page 1286.

w. Cash Bond to Release Mechanics Lien filed by Brandon Zapata Electric, Inc. d/b/a BZ Electric, dated May 7, 2020 and recorded May 7, 2020 in Book 20870 at Page 1296.

x. Cash Bond to Release Mechanics Lien filed by Carter & Carter Construction, LLC, dated May 7, 2020 and recorded May 7, 2020 in Book 20870 at Page 1310.

y. Cash Bond to Release Mechanics Lien filed by ELI Controls, LLC, dated May 7, 2020 and recorded May 7, 2020 in Book 20870 at Page 1319.

z. Cash Bond to Release Mechanics Lien filed by The Roof Depot, Inc. dated May 7, 2020 and recorded May 7, 2020 in Book 20870 at Page 1330.

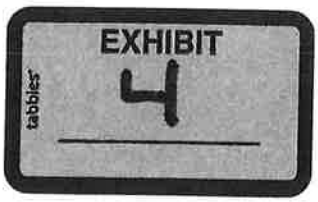
aa. Cash Bond to Release Mechanics Lien filed by Flooring Services, LLC, dated May 7, 2020 and recorded May 7, 2020 in Book 20870 at Page 1338.

bb. Statement and Notice of Mechanic's Lien filed by National Fire & Safety, LLP as Plaintiff and Weco River District, LLC and Carter & Carter Construction, LLC as Defendants dated May 13, 2020 and recorded May 13, 2020 in Book 20871 at Page 448.

ELECTRONICALLY FILED - 2020 Sep 22 1:09 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-32-00580
WECO RIVER DISTRICT, LLC, Plaintiff, vs. CARTER & CARTER CONSTRUCTION, LLC; EXPRESSWAY PAINTING & RENOVATIONS, LLC; THE ROOF DEPOT, INC.; W. CONSTRUCTION, LLC; B&N MECHANICAL CONTRACTORS, INC.; APEX MASONRY, INC.; CBG, INC.; R.W. FORD COMPANY, INC; APPLETREE LANDSCAPING, INC.; ATLANTIC CONCRETE SERVICES, ATLANTA DESIGN GROUP, INC.; ALL IN BUILIDERS, LLC; AIR ONE SYSTEMS, LLC; ASTERA, INC.; BAYTREE LANDSCAPE CONTRACTORS, INC.; BRABHAM FENCE COMPANY, INC.; BARNHILLS SERVICES, INC.; BILTRITE CORPORATION; BRANDON ZAPATA ELECTRIC, INC.; CUSTOM EXTERIORS OF GEORGIA, LLC CEMPLEX GROUP, LLC; COASTAL ALUMINUM STRUCTURES, LLC; CUSTOM WELDING & FABRICATION, LLC; ELI CONTROLS, LLC; FLOORING SERVICES, LLC; GE APPLIANCES CONTRACT SALES, INC.; HAYWARD BAKER, INC.; HOT SPRINGS POOLS AND SPAS, LLC; LEXINGTON DECORATIVE CONCRETE, LLP; MC METALS, LLC; MODERN EXTERMINATING COMPANY OF COLUMBIA, SC INC.; FIRST FIRE & SAFETY F/K/A NATIONAL FIRE & SAFETY, LLC; PASCON, LLC; PETERSON CONTRACTORS, INC.; P&S	**NOTICE OF MOTION AND MOTION TO LIFT THE STAY AND CONFIRM ARBITRATION FINAL AWARD**

382



ELECTRONICALLY FILED - 2020 Sep 22 1:09 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

CONSTRUCTION, INC.; DARBY DOORS, LLC; REAL VALUE, INC.; BUILDERS SERVICES GROUP, INC. D/B/A SPARLING GALE INSULATION; SAVANNAH HARDSCAPES, INC.; STRICKLAND WATERPROOFING CO., INC.; TOWNSEND BUILDING SUPPLY, INC.; THYSSENKRUPP ELEVATOR CORPORATION, INC.; TERRATEC, INC.; TOTAL TRIM, INC.; VALIANT PRODUCTS, INC.; VISION BLINDS, LLC; WATERTIGHT SYSTEMS, INC.; R&R GENERAL CONTRACTORS, INC.; FIDELITY AND DEPOSIT COMPANY OF MARYLAND/ZURICH AMERICAN INSURANCE COMPANY,

Defendants.

Weco River District, LLC ("Weco") will move after the passage of ten (10) days to lift the stay and confirm the final award in the arbitration by and between Weco and Defendant Carter & Carter Construction, LLC ("Contractor") pursuant to S.C. Code Ann. Section 15-48-120 and Section 4.6.6 of the AIA A201 1997 Contract between Weco and Carter.

Procedural History

The contract dispute between the Weco and Contractor was subject to an Arbitration between the parties that occurred on July 7-8, 2020 and July 14-15, 2020. An award in the arbitration is expected to be entered imminently. Thereafter, the Arbitrator will determine whether or not he will award the prevailing party attorney's fees and expenses for the arbitration. Upon that determination, the arbitrator will enter the final award. This Motion will be further supplemented with the final award when it is entered.

383

ELECTRONICALLY FILED - 2020 Sep 22 1:09 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Authority

S.C. Code Ann. Section 15-48-120 states as follows: "Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 15-48-130 and 15-48-140."

Section 4.6.6 of the AIA A201-1997 Contract between Weco and Carter states, in pertinent part, as follows: "The award entered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof."

Therefore, this Court has the authority and jurisdiction to confirm the final award once it is issued by the Arbitrator.

Conclusion

Weco requests the Court to lift the stay in this action and confirm the final award in the arbitration once it is issued by the Arbitrator. This motion will be supplemented with the final award upon its entry. Weco may also present additional briefing and authority for this motion with the final award upon its entry.

[signature page follows]

384

BUNDY MCDONALD, LLC

Respectfully submitted,

s/ W.H. Bundy, Jr.

W. H. Bundy, Jr., Esquire; SC Bar # 1012
M. Brent McDonald, Esquire; SC Bar # 78057
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

Attorneys for Plaintiff

September 22, 2020
Summerville, South Carolina

385

ELECTRONICALLY FILED - 2020 Sep 22 1:09 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Sheppard, William J.

From:	Walter Bundy <walter@bundymcdonald.com>
Sent:	Thursday, January 14, 2021 11:32 AM
To:	Frank Elmore
Cc:	Sheppard, William J.; brent@bundymcdonald.com
Subject:	Re: Carter & Carter Construction v. Weco River District

This Message originated outside your organization.

Frank
As a matter of contract this issue is yours to deal with as the arbitrator and is not part of the pending litigation in Lexington County.
Thanks
Bill

Walter H. Bundy
BundyMcDonald LLC

Business Address:
1516 Old Trolley Road,2nd Floor
Summerville, SC,20485

Mailing Address:
Post Office Box 50427
Summerville, SC 29485

Direct 843-212-0525
Cell 843-708-1519
Fax 888-393-6665
Local Fax 843-712-7318

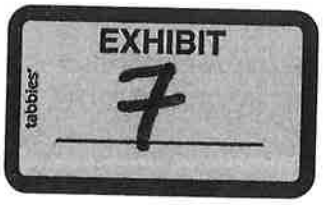
On Tue, Jan 12, 2021 at 6:26 PM Frank Elmore <felmore@elmoregoldsmith.com> wrote:

Bill,

I intended to leave the parties with the option of either having me deal with it or for it to be resolved in the litigation pending in Lexington County

L. Franklin Elmore

Attorney



3 86

felmore@elmoregoldsmith.com

ELMORE, GOLDSMITH, KELLEY & DEHOLL, P.A.

55 Beattie Place, Suite 1050 (29601)

Post Office Box 1887 | Greenville, SC 29602

O (864) 255.9500 | M (864) 420.4156 | F (864) 255.9505

vCard | Website | Blog

CONFIDENTIAL & PRIVILEGED Unless otherwise indicated or obvious from the nature of this communication, the information contained herein is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

From: Sheppard, William J. <WSheppard@wwhgd.com>
Sent: Tuesday, January 12, 2021 4:36 PM
To: Frank Elmore <felmore@elmoregoldsmith.com>
Cc: walter@bundymcdonald.com; brent@bundymcdonald.com
Subject: Carter & Carter Construction v. Weco River District

Mr. Elmore,

I wanted to follow up on the arbitration award that you issued last week. The last page contains the following statement:

"Any award of attorney fees and costs to the prevailing party is expressly reserved for future consideration."

Would you let us know whether you anticipate dealing with that issue or whether you intended for it to be resolved in the litigation pending in Lexington County?

587

By the way, I have changed firms recently. I joined Weinberg, Wheeler, Hudgins, Gunn & Dial in their Atlanta office. My new contact information is below.

Thanks.

Bill Sheppard

WEINBERG WHEELER
HUDGINS GUNN & DIAL
TRIAL LAWYERS

LITIGATION DEPARTMENT
OF THE YEAR ALM'S *DAILY REPORT*
2020 - 2019 - 2018 - 2017 - 2016 - 2014

William J. Sheppard, Attorney
Weinberg Wheeler Hudgins Gunn & Dial
3344 Peachtree Road NE | Suite 2400 | Atlanta, GA 30326
D: 404.591.9606 | F: 404.875.9433
www.wwhgd.com | vCard

The information contained in this message may contain privileged client confidential information. If you have received this message in error, please delete it and any copies immediately.

388

Sheppard, William J.

From: Frank Elmore <felmore@elmoregoldsmith.com>
Sent: Thursday, January 14, 2021 1:38 PM
To: Sheppard, William J.; Bill Bundy; Brent McDonald
Subject: Re: Carter & Carter Construction v. Weco River District

This Message originated outside your organization.

Please submit whatever the parties would like for me to consider

Frank Elmore
Elmore Goldsmith, PA

This message was sent from a handheld device. Please excuse any typographical or punctuation errors.

On Jan 14, 2021, at 11:39 AM, Sheppard, William J. <WSheppard@wwhgd.com> wrote:

> Frank –
>
> I agree that the contract between the parties allows you to determine the prevailing party in the arbitration and award attorneys' fees and expenses in your discretion.
>
> Bill Sheppard
> **From:** Walter Bundy [mailto:walter@bundymcdonald.com]
> **Sent:** Thursday, January 14, 2021 11:32 AM
> **To:** Frank Elmore
> **Cc:** Sheppard, William J.; brent@bundymcdonald.com
> **Subject:** Re: Carter & Carter Construction v. Weco River District
>
> **This Message originated outside your organization.**
>
> ---
>
> Frank
> As a matter of contract this issue is yours to deal with as the arbitrator and is not part of the pending litigation in Lexington County.
> Thanks
> Bill
> Walter H. Bundy
> BundyMcDonald LLC
>
> Business Address:
> 1516 Old Trolley Road,2nd Floor
> Summerville, SC,20485

384

Bundy McDonald
TRIAL LAWYERS

WALTER H. BUNDY
walter@bundymcdonald.com
843-212-0525 (Direct)
843-708-1519 (Cell)

January 19, 2021

Via Email
L. Franklin Elmore
P.O. Box 1887
Greenville, SC 29602
felmore@elmoregoldsmith.com

RE: Weco River District, LLC and Carter and Carter Construction, LLC
Brookland Village, West Columbia, SC

Dear Frank:

In accordance with your Award, enclosed please find correspondence from the Architect of Record ("AOR") identifying the Project Closeout requirements of Section 9.10 of the A201 that remain outstanding. Because these requirements must be complete prior to the issuance of final payment pursuant to the Contract Documents and your Award, it would be premature to make a determination of a prevailing party, if any. As you are aware, this arbitration is merely an extension of the contractual payment provisions (i.e. the Contractor appealed the AOR/Initial Decision Maker's rulings to you as was their right to do). The Contract remains in place. As such, I believe that the proper procedure would be for the Contractor to complete the Project Closeout requirements that previously had not been completed. The AOR will certify proper completion of the Project Closeout requirements and approve Final Payment in accordance with the Contract and your Award. This procedure will allow you to have all the information available to you to assess in your determination of any prevailing party.

Should you desire to have a call to discuss this procedure further, I am available at your request. With kindest regards, I remain.

Sincerely yours,

W.H. Bundy Jr.

WHB/kjw
cc: Enclosure as Noted
William Sheppard, Esq.
Weco River District, LLC

390

EXHIBIT
tabbies
4

WEINBERG WHEELER
HUDGINS GUNN & DIAL
TRIAL LAWYERS

3344 Peachtree Road, NE
Suite 2400
Atlanta, GA 30326

404 876 2700 Office
404 875 9433 Fax

William J. Sheppard
wsheppard@wwhgd.com
Direct 404.591.9606

January 25, 2021

VIA ELECTRONIC MAIL

L. Franklin Elmore, Esq.
Elmore, Goldsmith, Kelley & Deholl
55 Beattie Place
Suite 1050
Greenville, South Carolina 29601

Re: Carter & Carter Construction, LLC v. Weco River District

Dear Mr. Elmore:

As you know, I represent Carter & Carter Construction, LLC ("Carter & Carter") in the above-referenced matter. In the Arbitration Award (the "Award") that you issued recently, you left open the issue of an award of attorneys' fees and expenses in the arbitration. By email dated January 14, 2021, you invited the parties to submit argument on that issue. This letter provides Carter & Carter's response. This letter also responds to the correspondence that Bill Bundy sent to you on January 19, 2021.

Prevailing Party Entitled to Recover Attorneys' Fees and Expenses

Section 4.6.6 of the AIA A201 General Conditions to the contract (the "Contract") between Carter & Carter and Weco River District, LLC (the "Owner") states in pertinent part as follows:

> The arbitrator may award the prevailing party or parties attorneys' fees and expenses of the arbitration . . . .

A copy of the relevant page from the Contract is enclosed as Exhibit 1. South Carolina courts have defined the "prevailing party" as:

> the one who successfully prosecutes the action or successfully defends against, prevailing on the main issue, even though not to the extent of the original contention and is the one in whose favor the decision or verdict is rendered and judgment entered.

Heath v. County of Aiken, 302 S.C. 178, 182-83 (1990) (quoting Buza v. Columbia Lumber Co., 395 P.2d 511, 514 (1964)).

EXHIBIT 8 tabbies

391

EXHIBIT 1 tabbies

In another case, the United States District Court of the District of South Carolina wrote:

> The term "prevailing party" is a legal term of art defined as "a party ion whose favor a judgment is rendered, regardless of the amount of damages awarded ... also terms successful party."

Gossett v. Porsche Cars N. Am., Inc., 2006 WL 3007384, *1 (October 20, 2006, D.S.C.) (quoting BLACK'S LAW DICTIONARY 1145 (8th ed. 2004)). The court went on to say that a "prevailing party must not prevail on all issues but must succeed on a significant issue that is fundamental to the case and establish his entitlement to relief on the merits of his claims." Id. (citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)).

It is clear under those definitions that Carter & Carter is the prevailing party in this arbitration. Cater & Carter demonstrated at the arbitration that it successfully completed its work on the Brookland Village project (the "Project") and that the Owner breached the Contract by failing to pay Carter & Carter the amount it was owed. Carter demonstrated that it was owed "$3,308,931.64 for unpaid amounts due, including unpaid pay applications, change orders, and additional cost claims rejected by Weco which should have been granted." Finally, after deducting setoffs to which the arbitrator found the Owner was due, Carter & Carter received a net award of over $2.6 million. In short, Carter & Carter succeeded on a significant issue that was fundamental to this action and established its entitlement to relief on the merits of its claim.

The South Carolina lien statute also provides some guidance on who is the prevailing party in this instance. Under that statute, when the parties exchange written offers of settlement, the prevailing party is defined as the party whose offer was closest to the ultimate outcome. See S.C. Code Ann. § 29-5-20(C). Prior to the arbitration hearing in this matter, Carter & Carter and the Owner exchanged written offers of settlement. The Owner offered to pay $1,832,725; Carter & Carter offered to accept payment of $3,200,000. Copies of the parties' Offers of Settlement are enclosed with this letter as Exhibits 2 and 3, respectively. When those offers are compared to the principal amount the arbitrator has already awarded, Carter & Carter's offer was $250,000 closer than Weco's offer. Again, Carter & Carter is the prevailing party. There is no reason why the arbitrator should wait to award the attorneys' fees and expenses.

When assessing the amount of a reasonable fee to be awarded to the prevailing party, South Carolina courts considered six (6) factors. They are:

(1) the nature, extent, and difficulty of the services rendered;

(2) the time and labor necessarily devoted to the case;

(3) the professional standing of counsel;

392

(4) the contingency of compensation;

(5) fee customarily charged in the locality for similar services; and

(6) the beneficial results accomplished.

Meetze v. Saylors, 2005 WL 7082989, *2 (January 19, 2005, S.C. Ct. App.) (quoting Prevatte v. Asbury Arms, 302 S.C. 413, 416 (S.C. Ct. App. 1990)). This was a complicated case that spanned nearly three years. As set forth in the affidavit submitted with this letter, Carter & Carter's lawyers devoted 833.3 hours in preparing and presenting the case to the arbitrator. We charged hourly rates that are consistent with the rates charged in Greenville, South Carolina for lawyers of comparable skill and experience. And, most importantly, Carter & Carter has received a beneficial award that (when paid) will right the Owner's wrongful action in withholding huge sums that were earned and should have been paid without the need for a protracted arbitration proceeding. Carter & Carter requests that the arbitrator issue a revised award that includes an award of attorneys' fees and expenses in the amount of $290,579.36.

Bill Bundy's January 19 Letter

In a letter dated January 19, 2021, the Owner's counsel provided a letter from Steinberg Dickey Collaborative ("SDC"), the architect on the Project, in which SDC purported to identify documents that constitute the "Project Close Out Documents" referred to in the arbitration award. As explained below, Carter & Carter denies that much of the documentation identified in SDC's letter is required under the Contract and other items require no further action from Carter & Carter.[1]

As-Built Drawings.

As is true with many of the specification sections to which SDC refers, there is no "Section 017000" in the specifications (the "Specifications") on which the Contract was based. A copy of the index to the Specifications is enclosed as Exhibit 4. The closest thing in the Specifications to what SDC references is Section 10700. It is entitled "Execution Specifications." A copy of that section is enclosed as Exhibit 5. It does not contain a section "2.3" as referenced by SDC, and as-built drawings are not referenced anywhere in it.

As-built drawings were referenced in Carter & Carter's comments and clarifications (the "Comments and Clarifications") that were included in the Contract and specifically control over the Specifications. See Contract, Art 1. On page three of the Comment and Clarifications, the parties agreed that "Record drawings / red-line plans that show changes, revisions, and as-built conditions are included and will be provided to the Owner upon

[1] SDC admits that many of the close-out documents have been provided. Those issues are not addressed here.

conclusion of the project." A copy of the relevant page of the Comments and Clarifications is enclosed as Exhibit 6. Carter & Carter has previously provided documents as referenced. An email with another copy of those documents will be delivered to the Owner's counsel.

Lien Waivers and Releases.

As currently written, the award requires Carter & Carter to deliver final lien waivers from all subcontractors and suppliers thirty (30) days prior to the date the Owner is required to pay the award. That requirement results in an inequitable outcome. Specifically, Carter & Carter will be forced to pay its subcontractors without the benefit of the money the Owner owes, which money should be used to pay subcontractors and suppliers. That is particularly true since the Owner should have released most of the balance owed at substantial completion (i.e., over a year ago). Moreover, the Owner could refuse to pay the award after Carter & Carter delivers the lien waivers, forcing Carter & Carter to pursue the Owner further through confirmation of the award and efforts to collect once a judgment is entered. In order to avoid further inequities, Carter & Carter requests that award be modified to require lien waivers in accordance with the standard practice during the course of the project. That would require Carter & Carter and its subcontractors to provided conditional lien waivers prior to receiving payment and then provide a final lien waiver after payment is confirmed. Samples of the lien waivers the parties used during the project are enclosed as composite Exhibit 7.

Test reports and certifications under mechanical and electrical specifications.

The sections to which SDC refers do not exist. See Exhibit 4 enclosed. There is one that is close – 08410 – a copy of which is enclosed as Exhibit 8. But it refers to "aluminum storefronts" and contains nothing that requires testing or certifications for air or water leakage.

SCDOT.

SDC's letter references releases from SCDOT and refers again to a non-existent section in the Specifications. See Exhibit 4. Additionally, the award dealt specifically with SCDOT and included a finding that issues relating to SCDOT were "premature." Carter & Carter objects to the Owner's implicit request for modification of the award as it relates to SCDOT.

394

Verification or Confirmation Concerning Penetrations in Fire-Rated Assemblies.

SDC refers to a non-existent section of the Specifications. See Exhibit 4. The closest section actually in the Specifications is 01400 – a copy of which is enclosed as Exhibit 9. That section states as follows:

> Testing:
>
> The Owner shall employ an independent testing agency to provide testing and evaluation services for the project.

See Exhibit 9. Clearly any testing or verification of penetrations through fire-rated assemblies is the Owner's responsibility, not Carter & Carter's. Carter & Carter and its subcontractors performed all penetrations of fire-rated assemblies in accordance with the approved plans and shop drawings on the project. That fact is confirmed by the issuance of final certificates of occupancy for the buildings on the project, of which the Owner has had beneficial use for over 16 months.

Damper and Duct Detector Operation and Maintenance.

Carter & Carter will provide the operation and maintenance information requested.

Thank you for your attention to this matter. Please call me if you would like to discuss these issues further.

Sincerely,

William J. Sheppard

WJS:wjs
Enclosures
cc: William Bundy, Esq. (via electronic mail; w/ encls.)
Mr. Collin Carter (via electronic mail; w/ encls.)
Mr. Rick Edema (via electronic mail; w/ encls.)

395

NEXSEN|PRUET

Henry W. Brown
Senior Counsel
Admitted in SC

February 24, 2021

VIA ELECTRONIC MAIL ONLY

L. Franklin Elmore, Esquire
felmore@elmoregoldsmith.com
Elmore, Goldsmith, Kelley & DeHoll, P.A.
55 Beattie Place, Suite 1050
PO Box 1887 (29602)
Greenville, SC 29601

Re: WECO River District, LLC /Carter & Carter, LLC
Arbitration

Dear Frank:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

For various reasons I am assuming representation of WECO for the remaining issues in this arbitration. Bill Bundy will continue to be involved, however I will undertake the management of the case and you may correspond with me and look to me as the decision maker for WECO.

Both WECO and Carter are addressing the open claims discussed in your initial award and looking for resolution by agreement. I suspect however that we will not come to agreement as to the DOT issues or the Article 9.10 requirements for contract closeout. To the extent we don't reach agreement we will submit our respective remaining claims for resolution.

I am copying Mr. Sheppard on this letter and expect he will comment as needed.

1230 Main Street
Suite 700 (29201)
PO BOX 2426
Columbia, SC 29202
www.nexsenpruet.com

T (803) 253-8273
F 803.727.1415
E HBrown@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

296

EXHIBIT
13
tabbies

If it would be productive, we can schedule a conference call to discuss the status and remaining issues to resolve and conclude this arbitration.

Thank you.

Very truly yours,

Henry W. Brown

HWB/mos

cc: William J. Sheppard, Esquire
Bill H. Bundy, Esquire
Bob Mundy
Teresa Hodge
Matt Mundy

397

NEXSEN|PRUET

Henry W. Brown
Senior Counsel
Admitted in SC

March 12, 2021

VIA E-MAIL

L. Franklin Elmore, Esquire
felmore@elmoregoldsmith.com
Elmore, Goldsmith, Kelley & DeHoll, P.A.
55 Beattie Place, Suite 1050
PO Box 1887 (29602)
Greenville, SC 29601

Re: Arbitration: Carter & Carter v. Weco

Frank:

Thank you for setting the conference call to discuss our differences with Carter regarding the resolution of the remaining issues left open in your award of January 4, 2021. Carter and Weco sharply disagree as to what is left to resolve, and need your intervention to rule on our dispute.

There are three issues open and that need to be heard and ruled on before there is a final award on the claims presented. The first is the SCDOT claim for damage to the roadway, and the closeout punchlist from the SCDOT. The second is the fulfillment of all of the requirements set forth in Article 9 of the A201.

After these claims are ruled upon and damages determined, the final award can be calculated and the third issue, prevailing party determined and fees, if any, assessed.

You properly referenced functus officio in your supplemental award, but this doctrine clearly recognizes that where issues are left open or subject to later evidence, the arbiter has the right to address these open issues even if other portions of the award are final.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

1230 Main Street
Suite 700 (29201)
PO BOX 2426
Columbia, SC 29202
www.nexsenpruet.com

T (803) 253-8273
F 803.727.1415
E HBrown@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

398

This claim involved a mechanics lien and offers of judgment were filed and exchanged by Weco and Carter. It must be recognized that Weco submitted its offer of Judgment based on its damages that included the SCDOT claim, which claim was not considered in your initial award, as it was deemed not ripe. To determine the prevailing party based on the offers of judgment, the SCDOT claim must be given a value and the award adjusted. Otherwise, the offer of judgment submitted by Weco will not be assessed on Weco's full claim, and the prevailing party will not be fairly determined.

SCDOT

The language of the Award unequivocally leaves the two issues noted open for later adjudication if Carter and Weco cannot reach a negotiated agreement. The Award acknowledges that there will be a *"determination"*, *"if necessary"*, *"in the future"*. Carter states that the SCDOT issue is in fact open for future determination, but by another arbiter or Court. The Award does not suggest this in any way, and to close out this arbitration now and have this issue decided by another arbiter or Court would be an extraordinary exercise of inefficiency and waste.

Weco and Carter were given the opportunity to negotiate a settlement on the SCDOT issues, but have been unable to do so as Carter insists this arbitration is closed. Since the Award, WECO has walked the property with SCDOT and identified the work required by SCDOT to remedy deficiencies. Carter has been a party to several walks with SCDOT where deficiencies were identified. The work improperly performed was within the scope of Carter's contract. Carter was given multiple notices as required by the contract, and did not respond and made no effort to remedy the defects. SCDOT will not close out the encroachment permit until all of these deficiencies are corrected. Weco had the work estimated and advised Carter. Carter continue to ignore the demand by SCDOT to fix the deficiencies. Carter apparently contends it is not responsible.

Work to repair the SCDOT deficiencies will commence promptly and the issue is now ripe. Carter denies any liability and a determination of the issue of Carter's liability and damages is now necessary. A schedule should be set for the submission of evidence by both sides, hear testimony if needed, and rule on this dispute. Futhermore, the SCDOT closeout is part of the section 9.10 as well which is mandatory for completion payment in your ruling. Your ruling, if favorable to Weco would reduce the Award rendered January 4, 2021.

399

Article 9

The Award states the following:

> *I therefore find and award the total amount of $2,640,715.80 to Carter & Carter Construction, LLC to be paid within thirty (30) days after it submits those documents and materials required by Article 9.10 of the AIA 201 General Conditions of the Contractor for Construction (the "Project Close Out Documents").*

The Contract was not repealed by the Award, and it remains of full force and effect, and must be complied with by both sides. The direction to comply with Article 9.10 compels Carter to do no more or less than it contractually agreed to do at the inception of the Contract. If there is a dispute about whether 9.10 has been complied with, then it would be resolved as determined by the contract, which is by arbitration. The Award directs compliance with 9.10 which can take place only after the Award was issued. There is nothing in the Award that defines for both sides the steps and acts necessary to comply with 9.10 so compliance with this contract clause as required by the Award can take place only after the Award is issued. There is no wisdom or efficiency to have you quit on the arbitration midstream and leave the parties to find another arbiter to spend the time, and money, to learn the project as well as you do, and determine if Carter has complied and if not, what are the damages.

In previous correspondence Carter has not commenced any action to comply.

The first requirement of 9.10 is that when the *Architect finds the Work acceptable under the Contract Documents and the Contract fully performed,"* the Architect will issue *"a final certificate for Payment"* stating that *"the Work has been completed in accordance with the terms and conditions of the Contract Documents".*

There is no allowance for incomplete or deficient work, punch list or otherwise.

There are four additional items that are not properly constructed, and must be corrected before the project architect can certify that the Work has been fully performed. These 4 items have been determined to be deficient after the testimony in the arbitration was completed and were not a part of the arbitration. These items and the estimate of cost are:

400

1. Leaks over the store front along State Street. These leaks appear to be associated with the attachment of the awnings to the brick wall. Investigative and corrective cost has been estimated at $38,000

2. Leaks and corrosion at the slip deck also referred to as the two level parking area. Corrective cost has been estimated at $57,000.

3. A missing electrical disconnect at the commercial spaces. The cost of installation is estimated at $9,000.

4. Damage to the Meeting Street roadway. There may be an agreement with SCDOT to forego any current repairs for a year and reevaluate. If Carter refuses to remedy the problem, now or in the future, Meeting Street will have to be priced or otherwise provided for.

In addition, the SCDOT deficiency list must be completed and the permit closed out to achieve full performance of the Contract.

9.10.1 lists documentary items needed for contract close out. Some of these are not performed, but may be resolved.

Carter has been given repetitive notices of these deficiencies and the opportunity to cure and correct and complete its contract. It has not taken any actions in regard to these deficiencies.

Carter can be expected to continue to ignore the remaining obligations of its contract and the opportunity granted it in the Award to remedy them and avoid further offest. Carter is asking for the Award to be closed which will enable it to avoid its remaining obligations and is to counter to the Award stipulations.

After these two open issues are resolved, and Weco receives a building that complies with the Contract Documents, the final award can be calculated, and the final payment can be made and a true and fair determination of prevailing party and attorneys' fees, if any thereafter made.

401

Very truly yours,

Henry W. Brown/SMR

Henry W. Brown

HWB/mos

cc: Bill Sheppard, Esquire
Trippett Boineau, Esquire
W.H. Bundy, Esquire
Teresa Hodge
Bob Mundy
Matt Mundy

WEINBERG WHEELER
HUDGINS GUNN & DIAL
TRIAL LAWYERS

3344 Peachtree Road, NE
Suite 2400
Atlanta, GA 30326

404.876.2700 Office
404.875.9433 Fax

William J. Sheppard
wsheppard@wwhgd.com
Direct 404.591.9606

March 16, 2021

VIA ELECTRONIC MAIL
felmore@elmoregoldsmith.com

Franklin Elmore, Esq.
Elmore Goldsmith
P.O. Box 1887
Greenville, South Carolina 29602

Re: Carter & Carter Construction, LLC v. Weco River District

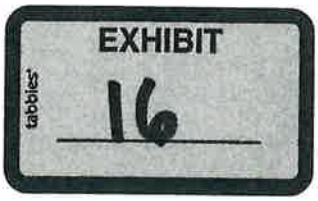
Dear Mr. Elmore:

This letter responds to your request for a description of Carter & Carter Construction, LLC's ("Carter & Carter") position regarding the ongoing disputes with Weco River District, LLC ("Weco") arising from and relating to the Brookland Village project (the "Project"). Carter & Carter believes there are three issues outstanding. They are: (1) the issue of prevailing party attorneys' fees in the arbitration that was conducted last summer (the "Past Arbitration") and for which you issued an award (the "Award") in early January 2021; (2) the "closeout documents" that are required from Carter & Carter in accordance with your Award in the Past Arbitration; and (3) the appropriate means for resolving the new claims that Weco has asserted recently in correspondence based on the Project architect's inspections, including the work that SCDOT is allegedly requiring. I will address each in turn.

1. Prevailing Party Attorneys' Fees.

As you know, the contract (the "Contract") between Carter & Carter contains a provision that empowers you to award attorneys' fees and expenses of the Past Arbitration to the prevailing party. The Contract states in pertinent part as follows:

> § 4.6.2 Claims not resolved by the parties shall be decided by binding arbitration which, unless the parties mutually agree otherwise, shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Any arbitration shall not be administered through the American Arbitration Association but shall be a private arbitration decided by [a] single arbiter unless agreed by all parties joined. [and]
>
> § 4.6.6 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The arbitrator



> may award the prevailing party or parties attorneys' fees and expenses of the arbitration and allocate costs of the arbitration among the parties as justice requires.

[See Carter & Carter Arbitration Exhibit 16 (pp. 79-80).] In your Award, you concluded that Carter & Carter was owed the sum of $2,640,715.80 (which was net of $668,215.84 allowed to Weco as a credit against the balance of the adjusted Contract Price). In the final two sentences of the Award, you wrote as follows:

> Any award of attorney fees and costs to the prevailing party is expressly reserved for future consideration.
>
> The parties shall jointly bear the costs, fees, and expenses of the Arbitrator.

[Award (dated January 4, 2021) p. 3.]

Your Award dealt with the issue of allocation of costs as permitted in the Contract. The decision to defer issuing a ruling on attorneys' fees is consistent with the discussions that you and the parties had near the conclusion of the in-person hearing in Past Arbitration. Specifically, the parties discussed and you agreed that there was no reason to hear testimony on the amount of attorneys' fees until the Award was entered and the outcome was patent. Once the Award was issued, the "prevailing party" issue was ripe for decision.

As set out in my letter to you dated January 25, 2021, Carter & Carter contends that it was clearly the prevailing party in the Past Arbitration. In your Award, you clearly rejected most of Weco's arguments, including that there was no limit on liquidated damages, and concluded that Carter & Carter was owed a net amount of just over $2.64 million for its work on the Project. Accordingly, for the reasons set forth in that letter, Carter & Carter requests that you rule on the issue of the "prevailing party" and award fees and expenses as you deem are required by justice in this matter. Carter & Carter submitted sworn testimony on that issue with my January 25 letter.

2. The "Close-Out Documents."

In the Award, you wrote that Weco was required to pay Carter & Carter the amount awarded "within thirty (30) days after it submits those documents and materials required by Article 9.10 of the AIA A201 General Conditions of the Contract for Construction." [Award (dated January 4, 2021) p. 2.] The documents that Carter & Carter is required to submit are listed in Section 9.10.1.1 as follows:

> .1 Three sets of As-built drawings showing actual construction of all portions of the Work and incorporating all changes and amendments thereto.
>
> .2 Guaranties and Warranties required by specific Sections of the Specifications.

.3 Release and Waiver of Claims – General Contractor, Subcontractors, Sub-subcontractors or Material Suppliers.

.4 All mechanical and electrical installation, operating and maintenance manuals called for under the Specifications.

.5 All test reports certifications required under the Mechanical and Electrical Specifications.

.6 All documents required to be completed by the Contractor by regulatory governmental agencies will need to be completed prior to Substantial Completion, with two (2) copies) delivered to the Architect prior to release of final payment.

.7 Verification of confirmation by the Contractor that All seals for openings around penetrations (conduit, piping, HVAC, ducts, etc.) in any rated wall or floor assembly have been completely sealed with approved materials in an appropriate manner in accordance with the manufacturers' directions to achieve the required fire resistance rating.

.8 Shop Drawing submittals in accordance with Article 3.

.9 A copy of the unconditional Occupancy Permit or Certificate of Compliance issued by local Building Inspection Department having jurisdiction, unless such is not issued for any reason that is not the responsibility of the Contractor under this Contract.

.10 Manufacturer's current detailed information instruction for fire dampers, ceiling radiation dampers, smoke dampers, and duct smoke detectors as applicable to the project.

.11 Two copies of the equipment operational and maintenance manuals.

[Carter & Carter Arbitration Exhibit 16, pp. 89-90.] Section 9.10.1.2 required submission of a final schedule. Section 9.10.2 required Carter & Carter to provide final lien waivers from all subcontractors and a consent of surety. [Id., p. 90.]

With the exception of a signoff from SCDOT and final lien waivers from Carter & Carter and its subcontractors and suppliers, Carter & Carter has provided all of the documents referenced in 9.10.1.1. Weco has the final schedule. In fact, it was discussed at length during the Past Arbitration. As discussed below in Section 3 below, you specifically concluded that the SCDOT claims were premature. [Award (dated January 4, 2021) p. 2.]

As pointed out in prior correspondence to you, the portion of the Award concerning the timing of payment to Carter & Carter is contrary to the terms of the Contract. Under the Contract, Carter &

Carter was entitled to a release of substantially all of the amounts owed to it by Weco at the time Carter & Carter achieved substantial completion of the Project. Specifically, Section 12.1.7.8 of the A102 included in the Contract provides as follows:

> .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less two hundred percent (200%) of such amounts as the Architect shall reasonably determine to be the cost to complete the Work, including punchlist work, retainage applicable to such work and unsettled claims.

[Id. p. 11.] Your Award necessarily required a finding that Carter & Carter achieved substantial completion of its work on the Project. In fact, by the time the Past Arbitration hearings were concluded in August 2020, Weco had been in possession of and had been leasing the entire Project for nearly ten (10) months. Similarly, allegedly incomplete work and Carter & Carter's obligations under the punchlist developed by Weco and its architect were specifically discussed at the Past Arbitration and were necessarily resolved by your Award. Credits for any incomplete and punchlist work that had not been performed were included in the credit that you allowed Weco against the $3.3 million you found Carter & Carter had earned. That conclusion is demanded by the contents of Carter & Carter's post-hearing submission to you. As a reminder, Carter & Carter's Post-Hearing Brief first set out the undisputed parts of the arbitration, including the dates on which Carter & Carter achieved substantial completion of all the buildings. Carter & Carter then set out the disputed issues as follows:

> Based on the evidence presented at the arbitration, the items in dispute can be grouped into six categories:
>
> - The value of work reflected in change orders Carter & Carter submitted for changed work that the Owner wrongfully rejected;
> - The damages the Owner improperly claims based on alleged delay in substantial completion of the Project;
> - Construction administration damages claimed by the Owner which are, in fact, not recoverable under the Contract;
> - The Owner's claims for work it completed that are outside the scope of work included in the Contract;
> - ***The value of Carter & Carter's work the Owner claims is defective or incomplete, including punch list items***; and
> - The time and additional compensation to which Carter & Carter is entitled to as a result of weather and Owner delays on the Project. Each of those issues is discussed in detail below.

In connection with the item highlighted above, Carter & Carter devoted eight (8) pages of text to explaining why Weco's positions in the Past Arbitration were wrong. The parties agreed prior to the hearings in the Past Arbitration that your Award would be a "general" award, as opposed to a "reasoned" one. Therefore, you did not state in your Award which of Weco's claims of defective or incomplete work you accepted and which you rejected. It is clear, however, that ***all*** such claims were encompassed in and resolved by the Award that you issued in January. It is improper for Weco to attempt to re-litigate those issues at this point, notwithstanding the feckless attempts by Weco's captive Project architect to resurrect them.

Under the clear and unambiguous terms of the Contract, Carter & Carter was entitled to the release of virtually every penny owed without the conditions included in the Award relating to final lien waivers and releases or consent of Carter & Carter's surety. Under the Contract, those items were only required at ***final*** payment. At substantial completion, Weco was required to pay substantially all of the money owed so that Carter & Carter can, in turn, pay its subcontractors and obtain lien releases. By deciding otherwise in the Award, you manifestly disregarded the law and the clear and unambiguous terms of the Contract, leaving open the possibility that the Award will be vacated on application by Carter & Carter. See Sun v. Wang, 2014 WL 2957105 (S.C. App., June 25, 2014) (vacating award proper where arbitrator's decision was contrary to express terms of contract between the parties). See also C-Sculptures, LLC v. Brown, 403 S.C. 53, 54 (2103) (vacating arbitration award based on manifest disregard of the law where "the arbitrator exceeded his powers"); Hardee v. Hardee, 355 S.C. 382, 387 (2003) ("The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous.").

There are other issues that provide a basis for vacating the Award. First, the Award was not issued in the time required by the rules of the American Arbitration Association. [AAA Rule 46 ("The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 calendar days from the date of the closing of the hearing, or if oral hearings have been waived, from the due date set for receipt of the parties' final statements and proofs.").] Second, on February 15, 2021 you issued a "clarification" that clearly attempts to avoid the preclusive effect of the Award on issues that existed and should have been presented by Weco during the Past Arbitration. [See Contract p. 80 ("The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.").] See also Palmetto Homes, Inc. v. Bradley, 357 S.C. 485, 495 (2004) ("an arbitration award is conclusive and binding as to all matters submitted to the arbitrators, even though one of the parties neglects to present portions of his claim") (quoting 4 Am. Jur. 2d *Alternative Dispute Resolution* § 214 (1995)).

3. The SCDOT Issues and Weco's "New" Claims."

Weco has now raised the issue of the SCDOT's claims under the punchlist that was discussed during the Past Arbitration. Weco has also raised what its counsel has described as "new claims" based on things Weco allegedly learned after the hearings in the Past Arbitration had occurred. To the extent that those claims are proper and not barred by res judicata, they clearly arise under the Contract and are subject to the dispute resolution mechanisms set out there. Under the Contract,

Weco is required to engage in direct discussions with Carter & Carter. Then, if the parties cannot agree, Weco and Carter & Carter can submit the open claims to mediation before an agreed neutral. If all of the claims are not resolved in mediation, Weco may submit a written demand for arbitration, after which the parties must agree on an arbitrator to hear and decide the claims. There is no basis for you to rule on those claims at this point.

In conclusion, Carter & Carter requests that you act promptly to issue a ruling on the only issue remaining in the Past Arbitration – i.e., the issue of awarding attorneys' fees and expenses (other than your expenses and costs). Please let me know if you need any additional information from me in order to do so.

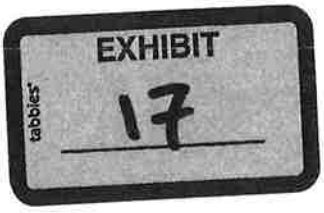
Sincerely,

William J. Sheppard

WJS:wjs
cc: Henry Brown, Esq. (via electronic mail)
Mr. Collin Carter (via electronic mail)
Mr. Rick Edema (via electronic mail)

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS
Weco River District, LLC, Plaintiff, vs. Carter & Carter Construction, LLC; Expressway Painting & Renovations, LLC; The Roof Depot, Inc.; W. Construction, LLC; B&N Mechanical Contractors, Inc.; Apex Masonry, Inc.; CBG, Inc.; R.W. Ford Company, Inc.; Appletree Landscaping, Inc.; Atlantic Concrete Services; Atlanta Design Group, Inc.; All In Builders, LLC; Air One Systems, LLC; Apex Astera, Inc.; Baytree Landscape Contractors, Inc.; Brabham Fence Company, Inc.; Barnhills Services, Inc; Biltrite Corporation; Brandon Zapata Electric, Inc.; Custom Exteriors of Georgia, LLC; et al, Defendants.	Civil Action No. 2020-CP-32-00580 **MOTION TO VACATE ARBITRATION AWARD**

This matter arises out of a construction project known as "Brookland Village" located near the intersection of Meeting Street and State Street in West Columbia, South Carolina (the "Project"). Plaintiff Weco River District, LLC ("Weco") is the owner of the Project. [Complaint ¶ 1.] Carter & Carter Construction, LLC ("Carter & Carter") was the general contractor on the Project pursuant to a contract (the "Contract") dated May 13, 2017. [Complaint ¶¶ 3, 104.] Carter & Carter completed its work on the Project in October 2019 and Weco has been in possession of the Project since that time. [Answer of Carter & Carter ¶ 104 ("Answer").] However, Weco failed and refused to pay Carter & Carter the amount owed under the Contract.



[Answer ¶ 2.]

The Contract required Weco and Carter & Carter to arbitrate all disputes between them that arise out of and relate to the Contract. [Carter & Carter Answer, Ex. A.] Specifically, the Contract states in part as follows:

> § 4.6.1 ***Any Claim[1] arising out of or related to the Contract, that involves any issues between Contractor and the Owner*** except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, ***shall***, after decision by the Architect or 30 days after submission of the Claim to the Architect, ***be subject to arbitration***. . . .
>
> § 4.6.2 Claims not resolved by the parties shall be decided by binding arbitration which, unless the parties mutually agree otherwise, shall be governed by the Construction Industry Rules of the American Arbitration Association currently in effect. Any arbitration shall not be administered through the American Arbitration Association but shall be a private arbitration decided by a single arbitrator unless agreed by all parties joined.
>
> . . .
>
> § 4.6.6 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The arbitrator may award the prevailing party or parties attorneys' fees and expenses of the arbitration and allocate the costs of the arbitration among the parties as justice requires.

[Answer, Ex. A.][2] Pursuant to those provisions of the Contract, Carter & Carter commenced arbitration (the "Arbitration") against Weco. [Answer ¶ 106.]

---

[1] A "Claim" is defined in the Contract as "a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract." Carter & Carter Answer, Ex. A.]

[2] The relevant pages of the Contract are attached hereto as composite Exhibit A. The rules applicable to the Arbitration were the AAA Rules issued effective July 1, 2015. A true and correct copy of the AAA Rules is attached hereto as Exhibit B.

In-person hearings were held in the Arbitration during July 2020. Following the hearings, the parties prepared and submitted post-hearing submissions that summarized the parties' respective positions. Those post-hearing submissions were made on or before August 10, 2020. Upon their submission, the hearing was closed. The arbitrator selected by the parties (the "Arbitrator") issued an award (the "Award") in January 2021. A true and correct copy of the Award is attached hereto and incorporated herein by reference as Exhibit C. Although the Award was dated January 4, 2021, it was not delivered to the parties' counsel until January 11, 2021 at 1:34 pm. A true and correct copy of the email by which the Arbitrator delivered the Award is attached hereto and incorporated herein by reference as Exhibit D.

As stated in the Award, the Arbitrator concluded that Weco owed Carter & Carter the additional sum of $3,308,931.64 under the Contract. The Arbitrator concluded that Weco was entitled to "credits and offsets" in the amount of $668,215.84. Therefore, the net award to Carter & Carter was $2,640,715.80. [Ex. C.] The Arbitrator also found that a claim involving the South Carolina Department of Transportation (the "SCDOT Issue"), which Weco raised during the Arbitration, was "not ripe for review" and would be "expressly reserved to the parties." The Arbitrator decided that the parties would "equally bear the costs, fees, and expenses of the Arbitrator." Finally, the Arbitrator said that "[a]ny award of attorney fees and costs to the prevailing party is expressly reserved for future consideration." [Ex. C.]

On January 12, 2021, one day after receiving the Award, Carter & Carter's counsel sent an email to the Arbitrator asking as follows:

> Mr. Elmore,
>
> I wanted to follow up on the arbitration award that you issued last week. The last page contains the following statement:

> "Any award of attorney fees and costs to the prevailing party is expressly reserved for future consideration."
>
> Would you let us know whether you anticipate dealing with that issue or whether you intended for it to be resolved in the litigation pending in Lexington County.

A true and correct copy of the January 12 email is included in the email chain attached thereto and incorporated herein by reference as Exhibit E. The Arbitrator responded with this statement: "I intended to leave the parties with the option of either having me deal with it or for it to be resolved in the litigation pending in Lexington County." [See Ex. E.] Weco's counsel at the time, Bill Bundy, responded to the Arbitrator two days later as follows:

> Frank,
>
> As a matter of contract this issue is yours to deal with as the arbitrator and is not part of the pending litigation in Lexington County.
>
> Thanks.
>
> Bill

[Ex. E.] Carter & Carter's counsel agreed, saying: "Frank, I agree that the contract between the parties allows you to determine the prevailing party in the arbitration and award attorneys' fees and expenses in your discretion." A true and correct copy of that response is included in the email chain attached hereto as Exhibit F. The Arbitrator then instructed the parties to submit "whatever the parties would like for me to consider." [Ex. F,]

On January 19, 2021, Weco's counsel sent a letter to the Arbitrator in which he asserted that it was "premature to make a determination of a prevailing party" based on "Project Closeout requirements" that Weco's architect (the "Architect") asserted were outstanding. A true and correct copy of that January 19 letter is attached hereto as Exhibit G. On January 25, 2021, Carter & Carter's counsel submitted a letter to the Arbitrator setting forth Carter &

Carter's position on the award of attorneys' fees and costs to the prevailing party. A true and correct copy of that January 25 letter is attached hereto as attached hereto as Exhibit H. In the January 25 letter, Carter & Carter's counsel also responded to the Architect's assertions regarding the "Closeout Documents" and explained in detail why the Architect's assertions were wrong. Among other things, the Architect was relying on specifications that were never part of the Contract. [See Ex. H.] Weco's counsel responded to Carter & Carter's position by letter dated January 29, 2021. A true and correct copy of the January 29 letter is attached as Exhibit I. Carter & Carter's counsel responded by letter dated February 1, 2021. A true and correct copy of that February 1 letter is attached hereto as Exhibit J.

Meanwhile, in an email dated January 27, 2021, Weco sent notice to Carter & Carter reasserting a claim based on the SCDOT Issue. Additionally, Weco identified three items that asserted Weco claimed were "deficient construction items that are not in compliance with the contract documents." Weco demanded that Carter & Carter "address" those items. A copy of the January 27 email is included in the email chain attached hereto as Exhibit K. In a conference call between the Arbitrator and counsel for the parties, Carter & Carter communicated to Weco and the Arbitrator that Carter & Carter denied any liability associated with the SCDOT Issue. Carter & Carter also asserted that claims based on the "items" referenced in the January 27 email were barred by *res judicata* based on the Award. In response, Weco's counsel asserted that *res judicata* did not apply because these were "new" issues not addressed in the prior Arbitration.

Shortly after the parties made those arguments, the Arbitrator issued a document entitled "Clarification of Arbitration Award" dated February 15, 2021 (the "Clarification"). A

true and correct copy of the Clarification is attached hereto as Exhibit L. As the Arbitrator wrote, the Clarification was issued because Weco sought "clarification of, among other things, whether claims of Weco for defective construction were, or were not, presented during these proceedings and considered; and are, or are not, encompassed by the Arbitration Award." [See Ex. L.] In the Clarification, the Arbitrator purported to list the "claims and issues presented and considered, and the amount claimed for each was either allowed, or denied, in whole or in part." The Arbitrator then said that "other than characterized by the Exhibits presented by Weco during this proceeding, no evidence or claims for defective work were presented by Weco and[3] were considered or encompassed by the Arbitration Award." [See Ex. L.]

By letter dated February 24, 2021, a new lawyer made an appearance in the Arbitration on Weco's behalf. A true and correct copy of that February 24 letter is attached hereto as Exhibit N. Weco's new counsel wrote as follows:

> Both WECO and Carter [& Carter] are addressing the open claims discussed in your initial award and looking for resolution by agreement. I suspect however that we will not come to agreement as to the DOT issues or the Article 9.10 requirements for contract closeout. To the extent we don't reach agreement, we will submit our respective remaining claims for resolution.

[Ex. N.] After receiving that letter, the Arbitrator scheduled a telephone conference to discuss the parties' positions. That conference was scheduled for March 3, 2021.

On March 1, 2021, Weco sent another email to Carter & Carter purporting to provide notice of "deficient construction items." A true and correct copy of the March 1 email is attached hereto as Exhibit O. That email assigned dollar amounts to the claims on the three

---

[3] Two days later, on February 17, 2021, the Arbitrator issued an "Errata to Clarification of Arbitration Award" in which he change the word "and" to "or." A copy of that document is attached hereto as Exhibit M.

items that were referenced in the email sent on January 27, 2021. [See Ex. O.]

During the conference call on March 3, counsel for the parties outlined their positions on the status of the Arbitration, the Award, and the claims that Weco was now making. At the conclusion of that call, the Arbitrator requested that the parties set their positions out in writing and submit them. Weco's counsel responded with a letter dated March 12, 2021. A true and correct copy of the March 12 letter is attached hereto as Exhibit P. In that letter, Weco's counsel stated as follows:

> There are three issues open that need to be heard and ruled on before there is a final award on the claims presented. The first is the SCDOT claim for damages to the roadway, and the closeout punchlist from the SCDOT. The second is the fulfillment of all of the requirements set forth in Article 9 of the A201.
>
> After these claims are ruled upon and damages determined, the final award can be calculated and the third issue, prevailing party determined and fees, if any assessed.

[Ex. P.] Later in the same letter, Weco's counsel referred to the "deficient construction items" as "4 items [that were] determined to be deficient after the testimony in the arbitration was completed and were not part of the arbitration." [Ex. P.]

Carter & Carter submitted its written position in a letter dated March 16, 2021. A true and correct copy of the March 16 letter is attached hereto as Exhibit P. Carter & Carter agreed that there were three issues and identified them as follows:

> (1) The issue of prevailing party attorneys' fees in the arbitration that was conducted last summer (the "Past Arbitration") and for which [the Arbitrator] issued an award (the "Award") in early January 2021; (2) the "closeout documents" that are required from Carter & Carter in accordance with [the] Award in the Past Arbitration; and (3) the appropriate means for resolving the new claims that Weco has asserted recently in correspondence based on the Project architect's inspections, including the work that SCDOT is allegedly requiring.

[Ex. Q.]

After receiving those submissions from the parties, the Arbitrator scheduled yet another conference call for April 2, 2021. At the conclusion of that call, the Arbitrator requested that the parties submit proposed awards dealing with the issues they identified. The deadline for those submissions is April 8, 2021. A copy of what Carter & Carter intends to submit is attached hereto as Exhibit R.

ARGUMENT AND CITATION OF AUTHORITIES

Upon motion by a party, a court is required to vacate an arbitration award where, among other things, the arbitrator exceeded his powers and/or manifestly disregarded the law in making the award. See S.C. Code Ann. § 14-48-130(3); C Sculptures, LLC v. Brown, 403 S.C. 53 (2013). See also Patten v. Signator Ins. Agency, Inc., 441 F.3d 230, 234 (4th Cir. 2006) ("The permissible common law grounds for vacating such an award . . . include those circumstances where an award fails to draw its essence from the contract, or the award evidences a manifest disregard of the law."). A manifest disregard of the law exists where the arbitrator "'disregards or modifies unambiguous contract provisions." 441 F.3d at 235 (quoting Mo. River Serv., Inc. v. Omaha Tribe of Ne., 267 F.3d 848, 855 (8th Cir. 2001). In this case, there are at least three grounds for vacating the Award. They are:

1. The Arbitrator manifestly disregarded the applicable law by ignoring clear and unambiguous provisions of the Contract in formulating the Award;

2. The Arbitrator exceeded his powers and failed to follow the rules governing the Arbitration as agreed by the parties; and

3. As it relates to claims arising from the SCDOT Issues and the Weco's new "deficient construction" items, the Arbitrator is overstepping his authority by purporting to decide claims that are

not properly before him and/or attempting to rescue Weco from the effect of *res judicata* as it relates to the "deficient construction" claims.

I. The Award Demonstrates A Manifest Disregard Of The Law.

In the Award, the Arbitrator concluded that Carter & Carter was entitled to payment of just over $2.64 million. The Arbitrator then said that amount was "to be paid within thirty (30) days after [Carter & Carter] submits those documents and materials required by Article 9.10 of the AIA A201 General Conditions of the Contract for Construction, (the 'Project Close Out Documents')." [See Ex. C.] The Section referred to by the Arbitrator is entitled "Final Completion and Final Payment"and deals with the conditions to the "final" payment due under the Contract when the Project is finally complete. [Answer, Ex. A.] But the Contract requires Weco to pay Carter & Carter virtually every penny owed under the Contract at "substantial completion." Specifically, the Contract required Weco to pay "the full amount of the Contract Sum for the building or buildings being granted substantial completion less 200% of such amounts as the Architect shall determine for incomplete Work and unsettled claims. [Answer, Ex. A (AIA A201 General Conditions § 9.8.5).] It was undisputed at the Arbitration that Carter & Carter achieved substantial completion of the entire Project and the Award necessarily includes a finding of that fact.[4] Therefore, Carter & Carter were entitled to payment of nearly all of the $2.64 million without providing the "Project Close Out Documents."

There is a reason for that. The "Project Close Out Documents" include final lien waivers from Carter & Carters subcontractors and suppliers. As found by the Arbitrator, Weco owed

---

[4] Pursuant to the parties' agreement, the Award was issued as a "general award" with no reasoning given for the result. [See Ex. B (AAA Rule R-47 ("The parties may request a specific form of award;" "If the parties agree on the form of award . . . the arbitrator shall provide the form of award agreed upon.")).]

Carter & Carter a huge sum of money that should have been available for Carter & Carter to pay those subcontractors and suppliers so that Carter & Carter could actually get final lien waivers from them. The Arbitrator made that impossible by making payment due of the money owed to Carter & Carter due ***after*** Carter & Carter delivered final lien waivers. That aspect of the Award disregards the clear and unambiguous terms of the Contract. As a result, the Award does not draw its essence from the Contract and demonstrates a manifest disregard of the law.

II. The Award Should Be Vacated The Arbitrator Exceeding Of His Powers.

The Arbitrator has exceeded his power in the Arbitration in at least two ways. The Arbitrator (1) failed to issue the Award within the time required by the AAA Rules; and (2) improperly issued the Clarification.

A. The Award is untimely and void.

The AAA Rules state the following with regard to the timing for an arbitrator to issue an award:

> ***The award shall be made*** promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, ***no later than 30 calendar days from the date of the closing of the hearing***, or if oral hearings have been waived, from the due date set for receipt of the parties final statements and proofs.

[Ex. B (AAA Rule R-46 (emphasis added)).] The hearings at which the parties presented evidence occurred in July 2020. The hearings were officially closed, however, on August 10, 2020 when the parties submitted their post-hearing briefs. Under Rule 46, the Award was due no later than September 9, 2020. The Arbitrator did not deliver the Award to the Parties until

124 days after that deadline.[5] In doing so, the Arbitrator violated the rules governing the Arbitration and exceeded his power. In Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees v. Norfolk Southern Railway, 143 F.2d 1015 (4th Cir. 1944), the court considered a challenge to an arbitration award based on failure of the arbitrators to issue their award within the time required by the applicable statute. The party arguing to uphold the award argued that the late issuance of the award was "only a 'trivial irregularity' and did not go to the substance of the award." The court rejected that argument and "conclude[d] that there was in fact no valid award made in this case." 143 F.2d at 1018. That should be the same result here based on the Arbitrator's failure to follow the rules governing the Arbitration.

B. The Clarification is an improper attempt to redetermine the merits of Weco's claims.

Neither the South Carolina Uniform Arbitration Act (the "Arbitration Act") nor the AAA Rules contemplate "clarifications" of arbitration awards. The AAA Rules do allow "modification" of an award. But such "modifications" are only permitted to "correct any clerical, typographical, technical, or computational errors in the award." [Ex. B (AAA Rule R-51(a)).] Similarly, the Arbitration Act allows a court to "modify or correct" an award where "[t]here has been 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). There is no basis for the Arbitrator to issue the Clarification.

Moreover, the AAA Rules specifically state that an "arbitrator is not empowered to

[5] The parties never consented to such a long delay. In fact, Carter & Carter inquired several times of the Arbitrator when an award would be issued.

redetermine the merits of any claim already decided. [Ex. B (AAA Rule R-51(a)(1)).] That is exactly what the Clarification purports to do. It purports to limit the effect of the original Award - in effect, redetermining the merits of it.

As an excuse for his improper action, the Arbitrator referred to the doctrine of *functus officio* and asserted that his Clarification fell within an exception to that doctrine. [See Ex. L, p. 2.] "The doctrine of *functus officio* is defined as 'having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force of authority.'" Sterling China Co. v. Galss, Molders, Pottery, Plastics & Allied Workers Local 24, 357 F.3d 546, 553 (6th Cir. 2004) (quoting Green v. Ameritech Corp., 200 F.3d 967, 976 (6th Cir. 2000)). Under the doctrine, once an arbitrator has "heard the case, made a final award, and disclosed it to the parties," his duties under the agreement to arbitrate are "discharged and [his] arbitral authority is at an end." Id. at 553-54. There are exceptions, "such as (1) where the arbitrator can 'correct a mistake which is apparent on the face of the award;' (2) where "the award does not adjudicate an issue which has been submitted, then as to the issue the arbitrator has not exhausted his function and it remains open for him for subsequent determination;' and (3) where 'the award, although seemingly complete, leaves doubt where the submission has been fully executed, an ambiguity arises which the arbitrator is entitled to clarify.'" Id. at 554 (quoting Indus. Mut, Ass'n, Inc. v. Amalgamated Workers, Local No. 383, 725 F.2d 406, 412 n.3 (6th Cir. 1984)).

The Clarification issued in this case does not fit within any of those exceptions. There is no apparent mistake in the Award. There is no doubt as to the scope of the Award. Although there was one issue that the Arbitrator left open (i.e., the issue of an award of attorneys' fees

to the "prevailing party"), the Clarification does nothing to address that issue. Instead, the Arbitrator overstepped his authority and attempted to create an argument for Weco regarding the issue of *res judicata* on claims that Weco is now attempting to bring forth.

III. The Arbitrator Decide Issues With Regard To He Has No Authority.

As discussed above, the Contract has a detailed and specific dispute resolution process that must be followed. First, the Architect must offer his opinion on a claim. [Ex. A (A201 General Conditions § 4.4.1).] Then, Weco and Carter & Carter representatives must engage in "direct discussions" or mediation "as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party." [Ex. A (A201 General Conditions § 4.5.1).] Then, if the claim is not resolved, a party must submit a demand for arbitration. [Ex. A (A201 General Conditions § 4.6.1).]

Weco has asserted four claims – one based on the SCDOT Issue, one based on water intrusion at the storefront in one building ("Building 3"), one for alleged corrosion in the slipdeck, and one for a "[d]isconnect that is shown on the plans and is missing from retail space" in Building 3. [See Exs. K, M.] With the exception of the SCDOT Issue (which the arbitrator found previously was "premature"), Carter & Carter contends that all the issues Weco has raised recently were resolved by the prior Arbitration. As the court in Nunnery v. Brantley Constr. Co., Inc., 289 S.C. 205 (1986), stated

> "If a defendant, having a demand against plaintiff, pleads it as a counterclaim in the action, he must make the most of his opportunity and exhibit his whole damage, for the judgment in the action will prevent him from afterward using the same matter, or any part of it, as a separate cause of action against the former plaintiff in any subsequent action between them, whether such counterclaim was allowed or disallowed."

289 S.C. at 210 (quoting Mitchell v. Federal Intermediate Credit Bank of Columbia, 165 S.C. 547, 465-66 (1932)). If Weco's claims were not resolved previously (as Weco clearly contends), then these so-called "new" claims must be pursued using the procedure agreed to by the parties in the Contract, including through the selection of an arbitrator by the mutual assent of the parties. Carter & Carter **does not** assent to the Arbitrator hearing and deciding those claims.[6]

/s/Trippett Boineau
Trippett Boineau, SC Bar No. 73769
MCANGUS GOUDELOCK & CURRIE
1320 Main Street, 10th Floor
Columbia, SC 29201
Telephone: 803.779.2300
Facsimile: 803.748.0526
Trippett.boineau@mgclaw.com

Attorneys for Carter & Carter Construction

Dated: April 5, 2021

[6] Carter & Carter specifically reserves the right in any subsequent arbitration to assert the preclusive effect of *res judicata* and have the new arbitrator determine whether any or all of Weco's claims are barred. See Little Six Corp. v. United Mine Workers of Am., Local No. 8332, 701 F.2d 26, 29 (4th Cir. 1983) ("there is solid, well-reasoned case law holding that the preclusive effect of a prior arbitral award is itself a question for arbitration.")

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.3.1.1 The Contractor's notice of a Claim shall be by written request seeking a Change Order and specifying the grounds thereof and the relief sought.

§ 4.3.1.2 Owner shall be given along with each pay request a list of all requests for change orders from subcontractors not yet agreed to and incorporated in the contract amount.

§ 4.3.1.3 The Contractor acknowledges that its obligation to complete the Work in accordance with the Contract Documents shall be affected as a result of any unresolved, outstanding, or rejected Claims submitted to Owner. The Contractor shall proceed with all Work required under ch Contract Documents or directed to be performed by the Owner, regardless of any unresolved Claims or proceedings to assert a Claim. However, the Owner shall have no rights to withhold undisputed amounts and shall pay any undisputed amounts to the Contractor.

§ 4.3.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

EXHIBIT

AIA Document A201™ – 1997. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1967, 1970, 1976, 1987 and 1997 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by AIA software at 17:04:25 on 03/02/2005 under Order No.1000116892_2 which expires on 5/4/2005, and is not for resale.
User Notes: (3568629462)

From: Walter Bundy
To: Hank Wall
Cc: Brent McDonald
Subject: Weco
Date: Monday, August 30, 2021 6:10:52 PM

It is evident that nothing is going to happen without a hard deadline.

Here it is.

1 My firm is relieved from this action by this Friday .
2. A payment is made on the debt due by the following Friday.

Absent meeting either deadline

I will file the necessary documents to be relieved and file an action to recover the debt owed. If I have reasonable grounds for additional causes of action they will be included.

Once I file I will not compromise or negotiate the amount due.

Friendships , even ours , has its limits.

Best

Walter H. Bundy
BundyMcDonald LLC

Business Address:
1516 Old Trolley Road,2nd Floor
Summerville, SC,20485

Direct 843-212-0525
Cell 843-708-1519
Fax 888-393-6665
Local Fax 843-712-7318

424

ELECTRONICALLY FILED - 2021 Sep 03 2:54 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS
Weco River District, LLC, Plaintiff, vs. Carter & Carter Construction, LLC; Expressway Painting & Renovations, LLC; The Roof Depot, Inc.; W. Construction, LLC; B&N Mechanical Contractors, Inc.; Apex Masonry, Inc.; CBG, Inc.; R.W. Ford Company, Inc.; Appletree Landscaping, Inc.; Atlantic Concrete Services; Atlanta Design Group, Inc.; All In Builders, LLC; Air One Systems, LLC; Apex Astera, Inc.; Baytree Landscape Contractors, Inc.; Brabham Fence Company, Inc.; Barnhills Services, Inc; Biltrite Corporation; Brandon Zapata Electric, Inc.; Custom Exteriors of Georgia, LLC; et al, Defendants.	Civil Action No. 2020-CP-32-00580

Order Substituting Counsel for Plaintiff

This Court has been advised that counsel for the Plaintiff, Walter H. Bundy, Jr. of the firm of Bundy McDonald, LLC has withdrawn as counsel for Plaintiff and Henry P. Wall of Bruner, Powell, Wall & Mullins, LLC has entered a notice of appearance and been retained to represent the interests of the Plaintiff in this matter. It is therefore Ordered that Walter H. Bundy, Jr. is hereby relieved as counsel for Plaintiff and Henry P. Wall is henceforth substituted as counsel for Plaintiff.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON THE FOLLOWING PAGE]

425

ELECTRONICALLY FILED - 2021 Sep 03 2:54 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Lexington Common Pleas

Case Caption:	Weco River District, Llc VS Carter And Carter Construction, Llc , defendant, et al
Case Number:	2020CP3200580
Type:	Order/Substitution Of Counsel

It Is So Ordered

s/ Walton J. McLeod

426

ELECTRONICALLY FILED - 2021 Nov 23 5:12 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

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

IN THE MATTER OF ARBITRATION BETWEEN

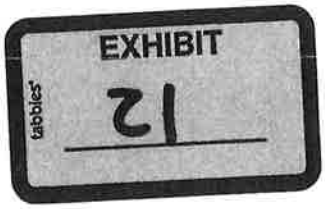
Carter & Carter Construction, LLC, Claimant, vs. Weco River District, LLC, Respondents.	Civil Action No. 2020-CP-32-00580

CONSENT FINAL ARBITRATION AWARD

This matter came before the undersigned arbitrator on the joint request of Carter & Carter Construction, LLC ("Carter & Carter") and Weco River District, LLC ("Weco"). The parties through counsel have advised the undersigned that the parties reached a full and final settlement agreement resolving all claims in this matter based on the terms and conditions hereafter stated. For good cause shown, the undersigned arbitrator enters this Final Arbitration Award on all claims and counterclaims before the arbitrator:

1. The undersigned previously entered an Arbitration Award dated January 4, 2021 (the "Initial Award"), a Clarification of Arbitration Award dated February 15, 2021 (the "Clarification") and an Errata to Clarification of Arbitration Award dated February 17, 2021 (the "Errata") and an additional Clarifying order on April 14, 2021 (collectively the "Interim Award"). In the Interim Award, the undersigned found that Carter & Carter was entitled to recover the sum of $3,308,931.64 for amounts due from Weco under the contract between the parties for the initial phase of the arbitration before taking into account credits and offsets

427



ELECTRONICALLY FILED - 2021 Nov 23 5:12 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

submitted to me for determination. The undersigned further found that Weco was entitled to credits and offsets against the sums owed to Carter & Carter in the amount of $668,215.84, resulting in an Interim Award to Carter & Carter in the amount of $2,640,715.80. The Interim Award covered all claims and counterclaims presented in the hearings held in July 2020 in Summerville, South Carolina ("Phase One"), but did not fully resolve the competing claims of both parties for attorney's fees, costs, and interest. The Interim Award, as clarified, also did not address some of Weco's claims, which were not yet ripe for determination during Phase One and Weco's claims relating to Carter & Carter's compliance with Article 9 of the general conditions to the parties' contract. Those claims (the "Reserved Claims") were scheduled to be presented before me in a second arbitration hearing scheduled to be heard in October 2021 ("Phase Two"). The Arbitrator has been advised that the parties have resolved all claims and counterclaims in both phases and issues this award.

2. First, with respect to the Interim Award for Phase One, I find that the contract allows the arbitrator to award and apportion fees and costs as justice may require, and I find that the amount set aside and reserved by the parties as a reserve for fees and costs, $309,284.20, is reasonable given the nature of the claims in issue. Therefore, it is appropriate to increase the Interim Award for the initial phase by that amount, and the Interim Award to Carter & Carter for Phase One of the arbitration is hereby amended to $2,950,000.00, inclusive of attorney's fees, costs and all other claims.[1] In making this adjustment, I have taken into account the similar

[1] The parties have asked the Arbitrator to identify any liquidated damages that were assessed and included with the credits and offsets due to Weco under the Interim Award. In response to this request, I offer the following:

In preparing the Interim Award, I first considered each Building and assessed:

a. $78,500 in liquidated damages due to delay in the substantial completion of Building 1;
b. $185,500 in liquidated damages due to delay in the substantial completion of Building 2A;
c. $196,000 in liquidated damages due to delay in the substantial completion of Building 2B; and
d. $425,500 in liquidated damages due to delay in the substantial completion of Building 3.

ELECTRONICALLY FILED - 2021 Nov 23 5:12 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP320580

adjustment for Weco concerning the Phase Two award as discussed in paragraph five of this Award.

3. Pursuant to an order (the "Consent Order") entered in the action between the parties pending in the Court of Common Pleas for Lexington County, South Carolina (the "Lexington County Action"), Carter & Carter previously received payment of $1,900,000.00 to be credited against the Interim Award to satisfy all liens of subcontractors. Pursuant to the Consent Order, the sum of $1,050,000.00 (the "Escrow Fund") remains on deposit to be allocated and distributed to the parties.

4. Weco has asserted the following Reserved Claims in the amount of $470,123.00 against Carter & Carter for Phase Two of the arbitration:

a. SCDOT Closeout Scope - $263,947.00, which sum is broken down as follows:

(i) Mobilization - $10,000.00;
(ii) Layout/Engineering/As-Builts - $11,500.00;
(iii) Flat Concrete (sidewalks) - $67,360.00;
(iv) Curb & Gutter- $38,743.00
(v) Control Joints - $3,500.00;
(vi) Loose Brick (pavers) - $1,250.00;
(vii) Catch Basin - $9,000.00;
(viii) Asphalt Roads (Milling) - $16,640.00;
(ix) Asphalt Roads (2" overlay) - $28,454.00;
(x) Marking/Paint/Thermoplastic - $16,000.00;
(xi) Handrail - $9,000.00; and
(xii) Traffic Control - $52,500.00;

b. Landscaping associated with the SCDOT closeout scope - $19,500.00;

These liquidated damages totaled $885,250.

Next, I considered the liquidated damages cap set forth in § 4.3.2 of the A102 Agreement Between Owner and Contractor, which provides that: "In no event shall the liquidated damages provided for in this section with regard to delivery of the entire Work exceed 50% of the Contractor's 4% profit on this Project." I determined that the contract capped or limited the liquidated damages to $615,935.00, which is the amount I then included within the credits and offsets due to Weco under the Interim Award.

ELECTRONICALLY FILED - 2021 Nov 23 5:12 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

c. Costs of investigating and repairing leaks at awnings in the retail spaces on Building 3 - $84,950.00;

d. Costs of repairing the slip deck - $61,170.00;

e. Costs of installing an electrical disconnect for the electrical supply to the retail spaces in Building 3 - $9,800;

f. Oversight of the repair work - $30,756.00; and

g. Weco's claims for attorney's fees and costs for the Reserved Claims.

5. The undersigned finds that Weco is entitled to offsets against the Phase One claims in the full amount of $470,123.00 based upon Weco's incurred costs to complete the project and/or address defective work performed by some of Carter & Carter's subcontractors and that the $470,123.00 includes sums Carter & Carter is paying to extinguish claims against itself and its relevant subcontractors. Furthermore, Weco is also awarded the additional sum of $54,877.00 for its costs, interest and attorney's fees for the Phase Two Arbitration.

6. Based on the foregoing, the undersigned therefore finds that Carter & Carter is entitled to receive the sum of $525,000.00 from the Escrow Fund and that Weco is entitled to receive the sum of $525,000.00. Any accrued interest on the escrowed funds shall be evenly divided between the parties. The parties are directed to prepare and submit to the court in the Lexington County Action a proposed consent order to obtain a release of the Escrow Fund in accordance with this Final Arbitration Award within ten (10) days from the date hereof. All other orders and decisions issued in this case, to the extent not inconsistent with this Award remain in full force and effect. This Award is in full and final settlement of all monetary claims of any kind whatsoever (including attorney's fees, costs and interest) which were or could have been presented to the arbitrator during any phase of this arbitration.

7. The parties have executed a supplemental settlement memorandum containing additional terms which are incorporated by reference and the arbitrator reserves the authority to resolve any disputes or disagreements which may arise from the terms or conditions of the supplemental memorandum.

AND IT IS SO ORDERED this 12th day of November, 2021.

L. Franklin Elmore

431

ELECTRONICALLY FILED - 2021 Nov 23 5:12 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP320580

Bundy McDonald
TRIAL LAWYERS

WALTER H. BUNDY
walter@bundymcdonald.com
843-212-0525 (Direct)
843-708-1519 (Cell)

January 14, 2022

VIA Email & US Mail
Hank Wall
Bruner, Powell, Wall and Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
hwall@brunerpowell.com

Re: Bundy McDonald, LLC v. WECO River District, LLC
Case No.: 2021-CP-18-02008

Dear Hank,

Enclosed for service upon you, please find Plaintiff's First Request For Admission to Weco River District, LLC in the above referenced matter.

With kindest regards, I remain

Very truly yours,

W.H. Bundy, Jr.

WHB/kjw
Enclosure as noted

EXHIBIT
24

432

1730 Pavilion Blvd. Suite 201 Sumter, SC 29150

STATE OF SOUTH CAROLINA **COUNTY OF DORCHESTER**	**IN THE COURT OF COMMON PLEAS FOR THE FIRST CIRCUIT** **CASE NO:. 2021-CP-18-02008**
Bundy McDonald, LLC Plaintiff, vs. WECO River District, LLC Defendant.	**PLAINTIFF'S FIRST REQUEST FOR ADMISSION TO WECO RIVER DISCTRICT, LLC**

TO: HANK WALL, ESQUIRE ATTORNEY FOR THE DEFENDANT WECO RIVER DISTRICT, LLC:

Pursuant to Rule 36 of the S.C.R.C.P., Plaintiff hereby requests Defendant WECO River District, LLC above named serve upon Plaintiff's counsel, within Thirty (30) days of this request, answers to the requests to admit requested herein. Each request to admit shall be answered separately and fully in writing unless objected to, in which event the reasons for objection shall be stated in lieu of an answer.

REQUEST TO ADMIT

1. Admit Exhibits A-I, described below and attached hereto, are a genuine copy of the original documents:

Exhibit A: Arbitration Award, dated January 4, 2021;

Exhibit B: Walter H. Bundy correspondence to Frank Elmore, dated January 19, 2021;

Exhibit C: Walter H. Bundy correspondence to Frank Elmore, dated January 29, 2021;

Exhibit D: Walter H. Bundy correspondence to Frank Elmore, dated February 2, 2021;

Exhibit E: Clarification of Arbitration Award, Filed on February 15, 2021;

Exhibit F: Walter H. Bundy correspondence to Henry Brown, dated March 2, 2021;

433

Exhibit G: Errata to Clarification of Arbitration Award, dated February 17, 2021;

Exhibit H: Addendum Clarifying Order, dated April 14, 2022;

Exhibit I: Consent Final Arbitration Award, Filed on November 23, 2021;

Exhibit J: Email correspondence from Walter Bundy to Henry Brown, dated April 15, 2021, at 11:00 a.m.;

Exhibit K: Email correspondence from Henry Brown to Walter Bundy, dated April 15, 2021, at 11:37 a.m.;

Exhibit L: Email correspondence from Walter Bundy to Henry Brown, dated April 15, 2021, at 12:36 p.m.; and

Exhibit M: Email correspondence from Henry Brown to Walter Bundy dated April 15, 2021, at 1:07 p.m.

W. H. Bundy, Jr., Esq. (SC Bar #1012)
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559
walter@bundymcdonald.com

January 14th, 2022

934

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

IN THE MATTER OF ARBITRATION BETWEEN

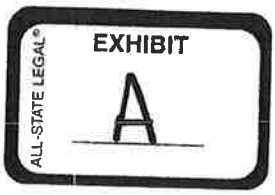
Carter & Carter Construction, LLC, Claimant, -and- Weco River District, LLC, Respondent.	Civil Action No. 2020-CP-32-00580 **ARBITRATION AWARD**

Hearings were held in this matter on July 7, 8, 14, and 15 in Summerville, South Carolina. At the conclusion of the hearings, the parties waived all requests for a reasoned award, and requested the award be limited to any amount found to be due.

Following the hearings, the parties submitted extensive and voluminous post hearing briefs. After consideration of the testimony of the witnesses, the evidence, and exhibits presented, the undersigned finds and concludes as follows.

Claimant Contractor, Carter & Carter Construction, LLC ("Carter & Carter") and Respondent Owner, Weco River District, LLC ("Weco") entered into a modified AIA A102 Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work, Plus a Fee with a Guaranteed Maximum Price (the "GMP Contract") on May 13, 2017. I find that the original Guaranteed Maximum Price under the GMP Contract was $26,748,453.00 before adjustment for any change orders, claims of the Weco or Carter & Carter. During the course of the project, approved change orders were issued totaling $4,177,934.92

435



resulting in a revised Guaranteed Maximum Price of $30,926,387.92. The Owner previously paid $27,934,996.92, leaving a balance of $2,991,391.00 before adjusting for disputed claims and change orders due to the Owner or Contractor.

I find that Carter & Carter is due $3,308,931.64 for unpaid amounts due, including unpaid payment applications, change orders, and additional cost claims rejected by Weco which should have been granted.

I find that Weco is entitled to credits and offsets in the amount of $668,215.84.

I therefore find and award the total amount of **$2,640,715.80** to Carter & Carter Construction, LLC to be paid within thirty (30) days after it submits those documents and materials required by Article 9.10 of the AIA A201, General Conditions of the Contract for Construction (the "Project Close Out Documents"). If the award is not paid within thirty (30) days after submission by Carter & Carter Construction, LLC of the Project Close Out Documents, interest shall accrue thereafter at the rate of eight and three-quarter percent (8 ¾%) until paid pursuant to S. C. Code Ann. §34-31-20.

Whether Carter & Carter is liable, and/or whether Weco has suffered any damages, as a result of any claim by SCDOT for damage to its roadway is not ripe for review. As such, no ruling or determination is made of the liability, if any, of Carter & Carter Construction, LLC on this issue. Determination of the issue, if necessary, in the future, is expressly reserved to the parties.

[SIGNATURE FOLLOWS ON NEXT PAGE]

436

Any award of attorney fees and costs to the prevailing party is expressly reserved for future consideration.

The parties shall equally bear the costs, fees, and expenses of the Arbitrator.

January 4, 2021.

L. Franklin Elmore, Arbitrator

Bundy McDonald
TRIAL LAWYERS

WALTER H. BUNDY
walter@bundymcdonald.com
843-212-0525 (Direct)
843-708-1519 (Cell)

January 19, 2021

Via Email
L. Franklin Elmore
P.O. Box 1887
Greenville, SC 29602
felmore@elmoregoldsmith.com

RE: Weco River District, LLC and Carter and Carter Construction, LLC
Brookland Village, West Columbia, SC

Dear Frank:

In accordance with your Award, enclosed please find correspondence from the Architect of Record ("AOR") identifying the Project Closeout requirements of Section 9.10 of the A201 that remain outstanding. Because these requirements must be complete prior to the issuance of final payment pursuant to the Contract Documents and your Award, it would be premature to make a determination of a prevailing party, if any. As you are aware, this arbitration is merely an extension of the contractual payment provisions (i.e. the Contractor appealed the AOR/Initial Decision Maker's rulings to you as was their right to do). The Contract remains in place. As such, I believe that the proper procedure would be for the Contractor to complete the Project Closeout requirements that previously had not been completed. The AOR will certify proper completion of the Project Closeout requirements and approve Final Payment in accordance with the Contract and your Award. This procedure will allow you to have all the information available to you to assess in your determination of any prevailing party.

Should you desire to have a call to discuss this procedure further, I am available at your request. With kindest regards, I remain.

Sincerely yours,

W.H. Bundy Jr.

WHB/kjw
cc: Enclosure as Noted
William Sheppard, Esq.
Weco River District, LLC

438

EXHIBIT
B

January 14, 2021

Electronically mailed to: Teresa Hodge <thodge@estatesinc.com>

WECO River District, LLC
2801 Devine Street, Suite 202
Columbia, SC 29205
Attn. Teresa Hodge

RE. Brookland Village, West Columbia, Project Closeout

Dear Teresa,

Pursuant to your request, I reviewed Section 9.10 of the General Conditions of Contract for Construction – Project Closeout requirements. Below is a status of the 11 items prerequisite too project completion.

1. **Three Sets of AS BUILT drawings showing actual construction of all portions of the WORK incorporating all changes and amendments thereto.**

Have not received hard copies or link to digital files of Record Drawings per 017000, 2.3 "Record Drawings"

> *Record Prints: Maintain a set of prints of the Contract Drawings and Shop Drawings, incorporating new and revised drawings as modifications are issued. Mark to show actual installation where installation varies from that shown originally. Accurately record information in an acceptable drawing technique.*
> *1. Identify and date each record Drawing; include the designation "PROJECT RECORD DRAWING" in a prominent location.*
> *B. Record Digital Data Files: Immediately before inspection for Certificate of Substantial Completion, review marked-up record prints with Architect. When authorized, prepare a full set of corrected digital data files of the Contract Drawings.*
> *1. Format: Annotated PDF electronic file.*

2. **Guarantees and Warranties required by specific sections of the Specifications**

Completed

439

3. **Release and Waiver of Claims- general contractor, subcontractors, subcontractors or material suppliers**

Per A201 9.10.2 & 5 acceptance of final payment constitutes waiver of claims. Below are certification requirements for final payment.

> *§ 9.10.2 In addition to all other conditions for final acceptance and final payment or release of any remaining retainage contained within the Specifications or other Contract Documents or by Law, neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (a) a final payment affidavit from the Contractor that payrolls, bills and invoices for labor, materials and equipment, and other indebtedness connected with the Work, have been paid or otherwise satisfied, and that itemizes all payees, dates and amounts of all payments made and all payments owed to Subcontractors and Suppliers for the Project, (b) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (c) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (d) consent of surety, if any, to final payment, (e) assignment to the Owner of, and delivery of all information regarding, all warranties and guarantees relating to the Work, (f) all required approvals by public authorities, including certificates of use and occupancy, (g) any other items or documents required of the Contractor by the Specifications, other Contract Documents or the Owner's project closeout/handover procedures, such as record documents, maintenance manuals, BIM models, system studies, equipment manuals, bonds, etc., (h) final releases and affidavits from each Subcontractor and Supplier required under Section 9.6.8, and (i) if requested by the Owner, other documentation establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, in such form and substance as necessary under Law or otherwise designated by the Owner. If a Subcontractor or Supplier refuses to furnish a release or waiver required by the Owner, the Contractor, at the Owner's option, shall furnish and record a bond satisfactory to the Owner to indemnify the Owner against such claim and lien. If such claim or lien remains unsatisfied after payments are made, the Contractor shall refund or otherwise pay to the Owner all money that the Owner is compelled to pay in discharging, or in defense against, such claim or lien, including all costs and reasonable attorneys' fees.*

4. **All mechanical and electrical installation, operating and maintenance manuals called for under the Specs**

Completed

440

5. **All test reports and certifications required under the Mechanical and Electrical specifications**

SDC has not received documentation testing compliance with the below tests.

- Sheet MEP 0.4 & Specification Section 083213, 084113 and 085313 require Building Envelope Certification air leakage tests.
- Specification Section 084113 and 085313 require water leakage tests.

6. **All forms required to be completed by the Contractor by regulatory governmental agencies will need to be completed prior to Substantial Completion, with (2) copies delivered to the Architect prior to release of final payment**

017000, 1.3 - Obtain and submit releases from authorities having jurisdiction permitting Owner unrestricted use of the Work and access to services and utilities. Include occupancy permits, operating certificates, and similar releases.

SCDOT did their punch walk on 1.30.2020 and published a final inspection report on 2.10.2020. Estates and SDC made multiple requests to C&C since requesting a schedule for completion of the final inspection requests. To date, we have not received correspondence from C&C re. schedule to complete punch list items. In the alternative, 3rd party contractor can complete the punch list items and debit the cost from the settlement amount.

On 1.2.2019, SCDOT issued the below terms as part of the Encroachment Permit approval process. So, C&C was aware of the obligation to repair damage to the roadway and deliver an acceptable sidewalk, curb, gutter and paving installation as indicated in the 2.10.2020 SCDOT punch list.

Marcus,
I don't know if you received clarification or a response on this previously sent plan.
After review and discussion with our Traffic Department we are good to go. The same special provisions and notes apply to this version as did the previous version.

- *Contractor shall be responsible for repairing roadway if damaged*
- *Roadway shall be returned to its original condition after closures are removed*
- *Contractor shall immediately remove any traffic hazards present within adjacent travel lanes (State St)*

- *No unauthorized objects permitted in ROW. Contractor shall take all necessary and reasonable precautions to ensure no equipment or materials unexpectedly enter adjacent travel lanes at any time (State St)*
- *Changes to traffic control/closures must be requested in writing and approved before implementation*
- *Traffic control will be monitored periodically by SCDOT personnel for compliance*
- *SCDOT reserves the right to require changes to or removal of closures at any time*
- *Contractor shall be responsible for any necessary changes in traffic control (pavement markings, signal timing, etc.) in the vicinity of the closures to ensure continued safe and efficient operation of surrounding road network. These changes shall be coordinated with District Traffic Engineering*
- *Contractor's failure to comply with any of the above conditions shall be grounds for immediate revocation of the road closure.*

Tyler A. Clark, P.E. – SCDOT
District One Permit Engineer
803.737.4596 (D)
803.737.6660 (O)

7. **Verification or confirmation by the Contractor that all seals for openings around penetrations (conduit, piping, HVAC, ducts, etc) in any rated wall or floor assembly have been completely sealed with approved materials in an appropriate manner in accordance with the manufacturer's directions to achieve the required fire resistance rating.**

Specification Section 014000, 1.1, sets the requirements for test and inspection reports. Have not received certification of conduit, piping, HVAC and duct penetration of fire resistance rating certification compliance with Specification Section 078413.

8. **Shop Drawing submittals in accordance with Article 3.**

Will compile submittal record from ProCore

9. **A copy of the unconditional Occupancy permit or Certificate of Compliance issued by the local Building Inspection Department having jurisdiction, unless such is not issued for any reason that is not the responsibility of the Contractor under this Contract.**

Completed

442

10. **Manufacturer's current detailed installation instructions for fire dampers, ceiling radiation dampers, smoke dampers, and duct smoke detectors as applicable to the Project.**

SDC has not received O&M's for damper and duct detector opertation and maintenance.

11. **Two copies of the equipment operational and Maintenance manuals.**

Completed

Please let me know if you have further questions regarding this question. I can be contacted via email at allend@sdcarchitects.com or via telephone at 713.552.1777.

Regards,

Doug Allen
Project Manager

443

Bundy McDonald
TRIAL LAWYERS

WALTER H. BUNDY
walter@bundymcdonald.com
843 212 0525 (Direct)
843-708-1519 (Cell)

January 29, 2021

Via Email
L. Franklin Elmore
P.O. Box 1887
Greenville, SC 29602
felmore@elmoregoldsmith.com

RE: Weco River District, LLC and Carter and Carter Construction, LLC
Brookland Village, West Columbia, SC

Dear Frank:

As instructed, please allow this to serve as my reply to Carter and Carter Construction, LLC's ("Contractor") response to my letter of January 19, 2021 regarding only the ripeness of any determination of a prevailing party in this matter.

As you are aware, the award has been issued in this matter. Rule R-51(a) of the AAA Construction Industry Arbitration Rules does not allow modification of the award except to correct clerical, typographical, technical or computational errors. Therefore, the award is now complete except for those issues that are outstanding, including but not limited to, the project close out requirements of Section 9.10 of the A201 ("9.10"), which include the SCDOT issues, warranty work and deficiencies.

The award does not dissolve the terms and requirements of the Contract Documents, however. They remain in force. In fact, the very procedure for the issuance of the award was a function of the Contract. In essence, Contractor was appealing the initial decision(s) of the Architect on certain issues. In making that appeal, Contractor made the demand for arbitration prior to completing the project. The award recognizes both that the Contract is still in force and that Contractor must perform the conditions precedent of 9.10 prior to being eligible for payment. The payment of the award is conditioned on Contractor's compliance with the 9.10. If the Contractor does not comply with the requirements of Section 9.10, it is not entitled to payment of any amount of the award.

The initial determination of the requirements of Section 9.10 and compliance therewith is now left to the Architect. Enclosed please find a letter from the Architect outlining the requirements Section 9.10. The Architect has set out what needs to be done and it remains the obligation of the Contractor to perform prior to being entitled to any payment.

444

Given the foregoing, the issue of the determination of a prevailing party, if any, is not yet ripe. A prevailing party, if any, cannot be determined until after the requirements of 9.10 have been met and Contractor is entitled to payment. At that time you will have all the facts before you to make a decision "as justice requires." I request that you continue to hold the issue of a determination of any prevailing party until after the Architect has certified Contractor's compliance with Section 9.10.

With kindest regards, I remain.

Sincerely yours,

W.H. Bundy Jr.

WHB/kjw
cc: Enclosure as Noted
William Sheppard, Esq.
Weco River District, LLC

January 28, 2021

Electronically mailed to: Teresa Hodge <thodge@estatesinc.com>

WECO River District, LLC
2801 Devine Street, Suite 202
Columbia, SC 29205
Attn. Teresa Hodge

RE. Brookland Village, West Columbia, Project Closeout

Dear Teresa,

We are in receipt of Carter & Carter (C&C) Counsel's January 25, 2021 correspondence in response to SDC's January 14, 2021 Project Closeout correspondence. Apparently, Counsel was confused with specification reference numbers used as citation to explain missing project closeout documentation. By way of reference, January 14, 2021 correspondence references the "Issue for Construction" (IFC) specification sections dated January 27, 2017. The IFC specifications are enumerated in the contract as the governing documents.

Based on a review of Section 9.10 of the General Conditions of Contract for Construction – Project Closeout requirements. Below is a status of the 11 items that are prerequisite to project completion.

1. **9.10.1.1.1 - Three Sets of AS BUILT drawings showing actual construction of all portions of the WORK incorporating all changes and amendments thereto.**

SDC has not received hard copies or link to digital files of Record Drawings per 017000, 2.3 as stated below. SDC did receive a link to C&C's as-built drawing submittal on January 27, 2021. As built drawings link contained Civil - Storm Sewer, Security and Plumbing drawings. The Architecture, Remaining Civil, Structural, Mechanical, Electric and Landscape record drawings have not been received.

> *Record Prints: Maintain a set of prints of the Contract Drawings and Shop Drawings, incorporating new and revised drawings as modifications are issued. Mark to show actual installation where installation varies from that shown originally. Accurately record information in an acceptable drawing technique.*
> *1. Identify and date each record Drawing; include the designation "PROJECT RECORD DRAWING" in a prominent location.*
> *B. Record Digital Data Files: Immediately before inspection for Certificate of Substantial Completion, review marked-up record prints with Architect. When authorized,*

446

prepare a full set of corrected digital data files of the Contract Drawings.
1. Format: Annotated PDF electronic file.

9.10.1.1.2 Guarantees and Warranties required by specific sections of the Specifications

Completed

9.10.1.1.3 Release and Waiver of Claims- general contractor, subcontractors, subcontractors or material suppliers

SDC has not received Release and Waiver of Claims pursuant to General Conditions of the contract for construction, 9.10.2 & 5 acceptance of final payment constitutes waiver of claims. Below are certification requirements for final payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

9.10.1.1.4 All mechanical and electrical installation, operating and maintenance manuals called for under the Specs

Completed

9.10.1.1.5 All test reports and certifications required under the Mechanical and Electrical specifications

SDC has not received documentation testing compliance with the IECC building envelope tests.

Sheet A1.04a indicates project to comply with 2012 IECC Energy Code. Sheet MEP 0.4 sets procedural requirements for IECC Building Envelope Certification test compliance. Specification Sections 083213, 2.1, A thru C, 084113, 2.1, C and D, and 085313, 1.3 C and

447

D sets performance requirements for Building Envelope Certification air and water leakage tests.

Building Envelope Testing Requirements

BUILDING COMPONENT CERTIFICATION
- INSULATION R-VALUES AND GLAZING AND DOOR U-FACTORS MUST BE CLEARLY MARKED ON BUILDING PLANS AND SPECIFICATIONS.
- CERTIFICATION OF INSTALLED COMPONENTS IS REQUIRED AND CAN BE ACCOMPLISHED THROUGH ANY OF THE FOLLOWING METHODS:
  - PRODUCT LABELS - FOR EXAMPLE, R-VALUES OF INSULATION PRINTED DIRECTLY ON THE INSULATION, STRIPING CODES, MANUFACTURERS' LABELS ON WINDOWS
  - CONTRACTOR STATEMENTS CERTIFYING THE PRODUCTS THEY HAVE INSTALLED
  - CHECK WITH YOUR LOCAL BUILDING OFFICIAL FOR REQUIREMENTS ON CERTIFYING BUILDING COMPONENTS IN YOUR JURISDICTION.

CERTIFYING INSTALLED INSULATION
- FOR BLOWN OR SPRAYED INSULATION, THE INITIAL INSTALLED THICKNESS, SETTLED THICKNESS, COVERAGE AREA, AND NUMBER OF BAGS USED MUST BE CLEARLY POSTED AT THE JOB SITE.
- FOR COMPONENTS HAVING A MANUFACTURER'S GUARANTEED R-VALUE RATING, THICKNESS MARKERS MUST BE PLACED AT LEAST EVERY 300 FEET.
- FOR COMPONENTS WITHOUT A MANUFACTURE'S GUARANTEED R-VALUE RATING, CONTACT THE INSULATION CONTRACTORS ASSOCIATION OF AMERICA FOR AN APPROVED WAY TO ENSURE PROPER INSULATION LEVELS ARE OBTAINED.
- ALL INSULATION REQUIREMENTS ASSUME THE INSULATION IS INSTALLED AT ITS STANDARD THICKNESS. IF INSULATION IS COMPRESSED, THE R-VALUE IS REDUCED AND THE BUILDING MAY NOT MEET THE REQUIREMENTS.

Section 083213, 2.1, A thru C

2.1 PERFORMANCE REQUIREMENTS

A. Product Standard: AAMA/WDMA/CSA 101/I.S.2/A440.

1. Product Certification: AAMA certified with label attached to each door.

2. Minimum Performance Class: Class LC.

3. Minimum Performance Grade: Grade 35.

B. Thermal Transmittance: NFRC 100 maximum total fenestration product U-factor of 0.65 Btu/sq. ft. x h x deg F.

C. Solar Heat-Gain Coefficient (SHGC): NFRC 200 maximum total fenestration product SHGC of 0.30.

Section 084113, 2.1 C&D

C. Air Infiltration: Limited to 0.06 cfm/sq. ft. of fixed framing and glass area when tested according to ASTM E 283 at a static-air-pressure difference of 6.24 lbf/sq. ft..

D. Water Penetration: Systems do not evidence water leakage when tested according to

448

ASTM E 331 at minimum differential pressure of 20 percent of positive wind-load design pressure but not less than 6.24 lbf/sq. ft..

Section 0853143, 1.3, C&D

C. Structural Test Pressure: Structural test pressure, for uniform load structural test, is equivalent to 150 percent of design pressure.
D. Size of Test Unit: Minimum test size is smallest size permitted for performance class (gateway test size). Products must be tested at minimum test size or at a size larger than minimum test size to comply with requirements for performance class.

9.10.1.1.6 **All forms required to be completed by the Contractor by regulatory governmental agencies will need to be completed prior to Substantial Completion, with (2) copies delivered to the Architect prior to release of final payment**

017000, 1.3, B, 1 - Obtain and submit releases from authorities having jurisdiction permitting Owner unrestricted use of the Work and access to services and utilities. Include occupancy permits, operating certificates, and similar releases.

SDC has not received release from SCDOT for public street improvements. SCDOT scope of work was delineated on Project Civil Engineer "SWA" Sheets 1 thru 17. In addition, SCDOT set the terms for street closure for Court Avenue and State Street. C&C agreed to the terms of the SCDOT road closure as part of the application process.

SCDOT did a punch walk on 1.30.2020 and published a final inspection report of items which did not comply with SCOT scope of work 2.10.2020. WECO and SDC made multiple requests to C&C since requesting a schedule for completion of the final inspection requests. To date, we have not received correspondence from C&C re. schedule to complete punch list items. In the alternative, 3rd party contractor can complete the punch list items and debit the cost from the settlement amount.

On 1.2.2019, SCDOT issued the below terms as part of the Encroachment Permit approval process. So, C&C was aware of the obligation to repair damage to the roadway and deliver an acceptable sidewalk, curb, gutter and paving installation as indicated in the 2.10.2020 SCDOT punch list, as described below.

Marcus,
I don't know if you received clarification or a response on this previously sent plan.

After review and discussion with our Traffic Department we are good to go. The same special provisions and notes apply to this version as did the previous version.

- *Contractor shall be responsible for repairing roadway if damaged*
- *Roadway shall be returned to its original condition after closures are removed*
- *Contractor shall immediately remove any traffic hazards present within adjacent travel lanes (State St)*
- *No unauthorized objects permitted in ROW. Contractor shall take all necessary and reasonable precautions to ensure no equipment or materials unexpectedly enter adjacent travel lanes at any time (State St)*
- *Changes to traffic control/closures must be requested in writing and approved before implementation*
- *Traffic control will be monitored periodically by SCDOT personnel for compliance*
- *SCDOT reserves the right to require changes to or removal of closures at any time*
- *Contractor shall be responsible for any necessary changes in traffic control (pavement markings, signal timing, etc.) in the vicinity of the closures to ensure continued safe and efficient operation of surrounding road network. These changes shall be coordinated with District Traffic Engineering*
- *Contractor's failure to comply with any of the above conditions shall be grounds for immediate revocation of the road closure.*

Tyler A. Clark, P.E. – SCDOT
District One Permit Engineer
803.737.4596 (D)
803.737.6660

Joseph,
Please see the attached drawing from Road Safe for Court Street Closure. Please let me know if this what SCDOT is requesting. If there is any revisions that still need to be made please let me know. Thanks

As previously stated to Tyler, C&C understands all necessary requirements from DOT and will comply to the conditions stated below. If any damages occur due to this closure caused by Carter & Carter, or its subcontractors, we will fix it.

MARCUS GRANT
Project Manager
E: marcus@carter-carter.net | C: 334.714.4007

9.10.1.1.7 **Verification or confirmation by the Contractor that all seals for openings around penetrations (conduit, piping, HVAC, ducts, etc) in any rated wall or floor assembly have been completely sealed with approved materials in an**

450

appropriate manner in accordance with the manufacturer's directions to achieve the required fire resistance rating.

Specification Section 014000, 1.1, sets the procedural requirements for test and inspection reports. SDC has not received certification of conduit, piping, HVAC and duct penetration of fire resistance rating certification compliance with Specification Section 078413,1.3,A thru E, sets the product performance requirements for the above described scope of work.

C. Penetrations in Fire-Resistance-Rated Walls and Horizontal Assemblies: Provide penetration firestopping with ratings determined per ASTM E 814 or UL 1479, based on testing at a positive pressure differential of 0.01-inch wg.
1. F-Rating at Fire-Resistance-Rated Walls: Not less than that of construction penetrated.
2. F-Rating at Horizontal Assemblies: At least 1 hour, but not less than that of construction penetrated.
3. T-Rating at Horizontal Assemblies: At least 1 hour, but not less than the fire-resistance rating of construction penetrated except for penetrations within the cavity of a wall.

9.10.1.1.8 **Shop Drawing submittals in accordance with Article 3.**

Submittal record is enumerated on ProCore. SDC will compile submittal record from ProCore

9.10.1.1.9 **A copy of the unconditional Occupancy permit or Certificate of Compliance issued by the local Building Inspection Department having jurisdiction, unless such is not issued for any reason that is not the responsibility of the Contractor under this Contract.**

Completed

9.10.1.1.10 **Manufacturer's current detailed installation instructions for fire dampers, ceiling radiation dampers, smoke dampers, and duct smoke detectors as applicable to the Project.**

SDC has not received O&M's for damper and duct detector operation and maintenance.

9.10.1.1.11 **Two copies of the equipment operational and Maintenance manuals.**

Completed

45)

Please let me know if you have further questions regarding this question. I can be contacted via email at allend@sdcarchitects.com or via telephone at 713.552.1777.

Regards,

Doug Allen
Project Manager

452

Bundy McDonald
TRIAL LAWYERS

WALTER H. BUNDY
walter@bundymcdonald.com
843-212-0525 (Direct)
843-708-1519 (Cell)

February 2, 2021

Via Email
L. Franklin Elmore
P.O. Box 1887
Greenville, SC 29602
felmore@elmoregoldsmith.com

RE: Weco River District, LLC and Carter and Carter Construction, LLC
Brookland Village, West Columbia, SC

Dear Frank:

In brief response to Carter and Carter Construction's ("Carter") latest response, I offer that the specification sections and substantial completion provisions have nothing to do with Section 9.10 and your award. If Carter does not comply with Section 9.10 and the Owner is forced to self-perform anything under Section 9.10, including SCDOT issues and matters listed in the Architect's letter, then that amount may reduce the final payment. In addition, Owner has notified Carter of defective construction/warranty issues that should be remedied under the terms of the Contract. Should Carter refuse to address these items as well, the final payment may be impacted. As such, any determination of a prevailing party in this action is premature

With kindest regards, I remain.

Sincerely yours,

W.H. Bundy Jr.

WHB/kjw
cc: William Sheppard, Esq.
Weco River District, LLC

453

EXHIBIT
D
ALL-STATE LEGAL®

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

IN THE MATTER OF ARBITRATION BETWEEN

Carter & Carter Construction, LLC, Claimant, -and- Weco River District, LLC, Respondent.	Civil Action No. 2020-CP-32-00580 **CLARIFICATION OF ARBITRATION AWARD**

Respondent Weco River District, LLC ("Weco") seeks clarification of the Arbitration Award dated January 4, 2021. Specifically, Weco seeks clarification of, among other things, whether claims of Weco for defective construction were, or were not, presented during these proceedings and considered; and are, or are not, encompassed by the Arbitration Award.

Initially, the question arises of the authority of the arbitrator to consider Weco's request for clarification. The parties entered into a modified version of AIA Document A102, 2007 edition, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus Fee with a Guaranteed Maximum Price dated May 13, 2017 (the "Agreement"). Article 16.1.2 of the Agreement incorporated by reference a modified version of AIA A201, 1997 edition, which contained the following dispute resolution provision:

> **§4.6.2** Claims not resolved by the parties shall be decided by binding arbitration which, unless the parties mutually agree otherwise, shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Any arbitration shall not be administered through the American

454

EXHIBIT E

ELECTRONICALLY FILED - 2021 Feb 15 3:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

ELECTRONICALLY FILED - 2021 Feb 15 3:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Arbitration Association but shall be a private arbitration decided by single arbitrator unless agreed by all parties joined.

Rule 9(a) of the Construction Industry Rules of the American Arbitration Association provides, in pertinent part:

> (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement.

The United States Supreme Court and South Carolina Appellant Courts have recognized the authority of the arbitrator to rule upon his own power and jurisdiction. *See Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019); *Damico, et. al. v. Lennar Carolinas, LLC*, 844 S.E. 2d 66, 430 S.C. 188 (S.C. App. 2020).

The Third, Fourth, Fifth, Sixth, Seventh, and Ninth Circuits recognize an exception to the functus officio doctrine that, once arbitrators have fully exercised their authority to adjudicate the issues submitted to them, their authority over those questions is ended, and the arbitrators have no further authority, absent agreement by the parties, to redetermine those issues. The exception arises where an arbitral award:

> " "fails to address a contingency that later arises or when the award is susceptible to more than one interpretation." *Sterling China Co. v. Glass, Molders, Pottery, Plastics & Allied Workers Local No. 24*, 357 F.3d 546, 554 (6th Cir. 2004) (internal quotation marks omitted); *Brown v. Witco Corp.*, 340 F.3d 209, 219 (5th Cir. 2003) ("An arbitrator can . . . clarify or construe an arbitration award that seems complete but proves to be ambiguous in its scope and implementation."); *Glass, Molders, Pottery, Plastics & Allied Workers Int'l Union v. Excelsior Foundry Co.*, 56 F.3d 844, 847 (7th Cir. 1995) (same); *Colonial Penn. Ins. Co. v. Omaha Indem. Co.*, 943 F.2d 327, 334 (3d Cir. 1991) ("[W]hen the remedy awarded by the arbitrators is ambiguous, a remand for clarification of the intended meaning of an arbitration award is appropriate."); *McClatchy Newspapers v. Central Valley Typographical Union No. 46*, 686 F.2d 731, 734 n.1 (9th Cir. 1982) (same); *Cannelton Industries, Inc. v. District 17, United Mineworkers of America, Local Union 8843*, 951 F.2d 591 (4th Cir. 1991).

Accordingly, the undersigned has jurisdiction to entertain Weco's request.

455

ELECTRONICALLY FILED - 2021 Feb 15 3:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

In arriving at the arbitration award of $2,640,715.80, the following claims and issues were presented and considered, and the amount claimed for each was either allowed, or denied, in whole or in part:

- Carter & Carter Exhibits 1-121
- Weco Exhibits 1-51
- Original Contract Amount
- Undisputed Change Orders No. 1–18; 20–27; 28-1; and 29-1
- Disputed Change Orders 19, 28, 29, 30, 31, 32, 36
- To the extent not included in the change orders above, the following PCOs are also encompassed by the arbitration award:

029	033	057	057.2
068	116	120	135
137	147	209	33.1
078	045	011	196
181	182	183	085.3
215	238	60	240
242	244	245	246
omitted bond premium		033	012
138	156	047	501
502	503	504	179
187	188	189	

- Payment Application #33
- Owner's claim for liquidated damages (Owner Ex. 29)
- Owners claim(s) for delay damages above the liquidated damages cap (Owner Ex. 29)
- Owner's claim(s) for additional contract administration costs (Owner Ex. 30)
- Owner's claim(s) for damages arising out of Carter & Carter's alleged breach (Owner Ex. 31)
- *Owner's claim(s) for damages arising out of Carter & Carter's deficient, incomplete, and substandard work (Owner Ex. 32)*
- Owner's Claim for Cost of Releasing Mechanic's Lien
- Tenant Car Damage
- Admitted Credit Due Owner
- Architect Issued Deductive Change Orders
- Cost of the Work
- Guaranteed Maximum Price
- Carter & Carter's Fee
- Carter & Carter's Claim for Additional General Conditions Costs
- Carter & Carter's Claim(s) for Time Extensions
- Carter & Carter's Claim for Interest

456

With the exception of any claim by SCDOT for damage to its roadway which is not ripe for review; and, other than those characterized in the Exhibits presented by Weco during this proceeding, no evidence or claims for defective work were presented by Weco and were considered or encompassed by the Arbitration Award.

EXEPT AS HEREIN CLARIFIED, the Arbitration Award dated January 4, 2021 remains in full force and effect.

February 15, 2021

L. Franklin Elmore, Arbitrator

ELECTRONICALLY FILED - 2021 Feb 15 3:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Bundy McDonald
TRIAL LAWYERS

WALTER H. BUNDY
walter@bundymcdonald.com
843-212-0525 (Direct)
843-708-1519 (Cell)

March 2, 2021

Henry W. Brown
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
HBrown@nexsenpruet.com

RE: Weco River District, LLC and Carter and Carter Construction, LLC
Brookland Village, West Columbia, SC

Henry:

I am in receipt of your letter to Frank Elmore dated February 24, 2021 ("Letter"). As a preliminary matter, I want to make clear that I had no involvement in the drafting, review, approval or transmittal of the Letter. After our telephone conversation on Tuesday, February 23, 2021, you and the Client ("Weco") informed me that you would discuss a strategy for moving forward and would then get back with me. No one did get back with me. Instead of communicating with me and without my consent, you sent the Letter and stated that "Bill Bundy will continue to be involved." First, to be clear, you do not have authority to speak on my behalf or define my involvement in anything. My firm has a signed fee agreement with Weco that dictates the terms and extent of my firm's representation. Second, again since I was not involved with the Letter, I am unclear what continued involvement to which you refer. As I made clear on our telephone call of February 23, 2021, the arbitration is over. The only remaining issue in the arbitration is a decision on the award of attorneys' fees, if any. If your statement of my involvement refers only to the final issue of attorneys' fees, then I agree that I will continue to be involved with that issue. If you intended for your statement to refer to any other continued involvement in future arbitrations, you need to let me know immediately so the proper clarification may be made by you or me to Frank Elmore.

The procedure proposed in the Letter is in direct contradiction of my legal advice, as such I am obliged to repeat what was discussed in our telephone conversation on February 23, 2021. Your approach is inconsistent with the arbitration rules, and more importantly, subjects Weco to additional adverse legal and factual arguments that I previously sought to avoid and would have avoided.

Rule 41 of the AAA Construction Industry Arbitration Rules only allows the re-opening of a hearing *before* the award is made. Rule 51 only allows the modification of the award for "clerical, typographical, technical, or computational errors in the award." As such, the arbitrator is not empowered to consider those things you now appear to propose that he arbitrate as a continuation of the arbitration that has already taken place. Carter and Carter ("Carter"), Weco and the Arbitrator would all need to agree and consent to a re-opening of an arbitration in a manner

458

ALL-STATE LEGAL®
EXHIBIT
F

inconsistent with the Arbitration Rules and, consequently, the Contract. I do not believe based upon the positions taken by Counsel for Carter that Carter will agree to a re-opening of the previous arbitration to address issues and claims, that were not adjudicated in that arbitration, without substantial and unwise concessions by WECO. In fact, based predominantly on the position of Carter that the previous arbitration adjudicated all claims between the parties, I, in numerous consultations with Weco, worked very hard to separate those issues that were not arbitrated (i.e. SCDOT issues, Final Payment Compliance, and defects, etc.) so as to put Weco in the best strategic position to avoid Carter's argument. As such, a demand for a new arbitration must and should be made. Your Letter appears to conflate those issues I separated and upon which I based my legal advice.

In the last call between Frank Elmore, Sheppard and myself. Elmore indicated he was still considering when he would address the issue of attorney fees and would give WECO sufficient time to submit to petition for attorney fees.

Given all the foregoing, *ie* my lack of involvement with the letter and your contrary legal advice and the fact that the issue of attorney fees will not be a topic of the upcoming call, I will not participate.

Sincerely yours,

s/W.H. Bundy, Jr.

W.H. Bundy, Jr.

WHB/kjw
cc: Teresa Hodge
Matt Mundy

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

IN THE MATTER OF ARBITRATION BETWEEN

Carter & Carter Construction, LLC, Claimant, -and- Weco River District, LLC, Respondent.	Civil Action No. 2020-CP-32-00580 **ERRATA TO CLARIFICATION OF ARBITRATION AWARD**

With the exception of any claim by SCDOT for damage to its roadway which is not ripe for review ; and, other than those characterized in the Exhibits presented by Weco during this proceeding, no evidence or claims for defective work were presented by Weco ~~and~~ or were considered or encompassed by the Arbitration Award.

February 17, 2021

L. Franklin Elmore, Arbitrator

460

EXHIBIT G

ALL-STATE LEGAL®

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

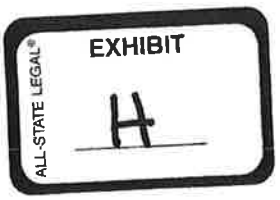
IN THE MATTER OF ARBITRATION BETWEEN

Carter & Carter Construction, LLC, Claimant, -and- Weco River District, LLC, Respondent.	Civil Action No. 2020-CP-32-00580 **ORDER**

Weco River District, LLC ("Weco") and Carter & Carter Construction, LLC ("Carter") disagree as to the finality of the January 4, 2021 Arbitration Award, supplemented by the Clarification of Award dated February 15, 2021.

Weco contends the Award is not final as to the claim referenced in the Award as the DOT claim, as well as claims arising out of the alleged failure of Carter to comply with Article 9.10 of the AIA A201 General Conditions of the Contract for Construction to complete all work in compliance with the Contract Documents. Weco contends Carter's compliance with Article 9.10 is a precondition to Weco's obligation to make final payment. Weco contends it is entitled to submit evidence of its claims related to DOT and Carter's Article 9.10 compliance and for adjustment of the amount of the Award if appropriate. Weco further contends that consideration of prevailing party and fees should not be made until these adjustments have been made as the parties' offers of judgment were made in regard to claims that have not yet been considered such as the DOT claims.

461



Carter contends that the January 4th Award is final as to all claims, including any claims related to the DOT claim and that it is not required to comply with Article 9.10 as a condition precedent to final payment. Carter contends that the undersigned arbitrator has no jurisdiction or right to consider any additional issues other than an award of attorney's fees.

Weco and Carter have been unable to reach a compromise and have submitted written arguments and been given time to argue their positions on these issues.

After consideration of the written submissions and argument, and review of the proceeding, I conclude that the Award is not final as to the DOT claim and the Article 9.10 issues. Weco is entitled to submit its claims. Carter is entitled to submit its evidence in opposition, for a ruling thereon; and, if appropriate, in opposition to the adjustment of the Award based on the conclusions reached.

REASONING

ARTICLE 9.10 CLAIMS

The agreement between WECO and Carter contains the following Arbitration Agreement:

> *§4.6.1 Any Claim arising out of or related to the Contract, that involves any issues between Contractor and the Owner except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes in accordance with the provisions of Section 4.5. In the event the joinder of any third party, including subcontractors or the Architect is necessary for complete adjudication of all rights, arbitration shall not be mandatory but shall be by mutual consent.*
>
> *§4.6.2 Claims not resolved by the parties shall be decided by binding arbitration which, unless the parties mutually agree otherwise, shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Any arbitration shall not be administered through the American Arbitration Association but shall be a private arbitration decided by a single arbitrator unless agreed by all parties joined.*

This agreement is comprehensive and inclusive of all claims arising out of the contract. South Carolina Supreme court opinions have consistently opined that arbitration agreements are to read as inclusive, and in favor of resolution by arbitration. *See Parsons v. John Wieland Homes and Neighborhoods of the Carolinas,* 418 S.C. 1, 791 S.E.2d 128 (2016).

Article 9.10 is part of the Contract, and any dispute related to compliance with Article 9.10 is a dispute arising out of the contract, within the meaning and scope of the agreement to arbitrate. Nothing suggests that the parties agreed to exclude any issues *"arising out of or related to the Contract"* from the issues to be presented in the arbitration. Compliance with Article 9.10 is a contractual precondition to payment. The January 4th Award recognized Carter's obligation to comply with Article 9.10 prior to payment.

A breach of the obligations in Article 9.10 is a claim *"arising from the contract"* and is subject to resolution in this proceeding. A claim related to Carter's breach of 9.10 could not have occurred until the Award was issued and compliance with Article 9.10 became relevant. It is also illogical to presume that Weco would know in advance that Carter would not comply with 9.10 and include these claims in the damages submitted in the prior arbitration. It is illogical to contend that the January 4th Award absolved Carter of its obligations to comply with Article 9.10 when Carter's actions alleged to be a breach could not occur until after the January 4th Award. Complying with the requirements of Article 9.10 could not occur until the Award setting the balance due was issued. Carter's breach arises out of actions it failed to take after the Award was issued, and the Award cannot be preclusive of any claims against Carter based on the assertion it breached Article 9.10. Weco is entitled to have a hearing on its claims that Carter breached Article 9.10.

DOT CLAIM

The DOT claim was submitted as part of the initial package of claims asserted by Weco. At the hearing on the merits, it was determined that the claim was not ripe for adjudication. Carter made no objection that the DOT claim was not yet ripe. The Award dealt with the DOT claim in the following manner:

> *"Whether Carter & Carter is liable, and/or whether Weco has suffered any damages, as a result of any claim by SCOOT for damage to its roadway is not ripe for review. As such, no ruling or determination is made of the liability, if any, of Carter & Carter Construction, LLC on this issue. Determination of this issue, if necessary, in the future, is expressly reserved to the parties."*

It is illogical to consider the Award final as to the DOT claim when the Award describes it as "reserved to the parties" if determination is needed "in the future." The agreement to arbitrate is comprehensive and includes the DOT claim, which "arises out of the contract." The Award is explicit that any damages sustained as a result of the DOT claim is to be determined after the January 4th Award.

Weco's Article 9.10 claim and DOT claim arise out of or relate to the contract which is subject to arbitration. Rule 9 of the American Arbitration Association grants to the arbitrator the power to rule on his or her own jurisdiction. See *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524 (2019). I previously concluded and affirm that the undersigned arbitrator has jurisdiction to consider and adjudicate Weco's claims.

OFFER OF JUDGMENT

Weco contends its Offer of Judgment included consideration of the DOT claim and having the risk of performing the work if the DOT claim was adjudicated. While Weco's contention is subject to meeting its burden of proof, any determination of the prevailing

party and award of attorneys' fees necessarily relies in part upon the determination and outcome of the DOT claim and Article 9.10 compliance claim.

I therefore further clarify the January 4, 2021 Award to expressly reserve jurisdiction over the DOT claim and the Article 9.10 compliance issues; and to consider and rule upon each parties' claims and defenses. Further, jurisdiction exists to adjust the amount of the Award, if appropriate, based on a final determination of Weco's DOT claim and the Article 9.10 claims.

Carter and Weco shall promptly confer as to a prompt schedule to submit and exchange claims and defenses either party desires to assert, arising out of the DOT claim and the Article 9.10 claims and all documents in support thereof. If agreement cannot be reached, a scheduling conference will be held to establish a schedule for a hearing and procedures for exchange of documents and identification of witnesses on the claims and defenses of Weco and Carter related to the DOT claim and the Article 9.10 claims.

This 14th day of April, 2021.

L. Franklin Elmore

L. Franklin Elmore, Arbitrator

ELECTRONICALLY FILED - 2021 Nov 23 5:12 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

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

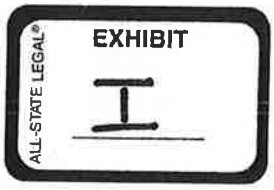
IN THE MATTER OF ARBITRATION BETWEEN

Carter & Carter Construction, LLC, Claimant, vs. Weco River District, LLC, Respondents.	Civil Action No. 2020-CP-32-00580

CONSENT FINAL ARBITRATION AWARD

This matter came before the undersigned arbitrator on the joint request of Carter & Carter Construction, LLC ("Carter & Carter") and Weco River District, LLC ("Weco"). The parties through counsel have advised the undersigned that the parties reached a full and final settlement agreement resolving all claims in this matter based on the terms and conditions hereafter stated. For good cause shown, the undersigned arbitrator enters this Final Arbitration Award on all claims and counterclaims before the arbitrator:

1. The undersigned previously entered an Arbitration Award dated January 4, 2021 (the "Initial Award"), a Clarification of Arbitration Award dated February 15, 2021 (the "Clarification") and an Errata to Clarification of Arbitration Award dated February 17, 2021 (the "Errata") and an additional Clarifying order on April 14, 2021 (collectively the "Interim Award"). In the Interim Award, the undersigned found that Carter & Carter was entitled to recover the sum of $3,308,931.64 for amounts due from Weco under the contract between the parties for the initial phase of the arbitration before taking into account credits and offsets



4666

ELECTRONICALLY FILED - 2021 Nov 23 5:12 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

submitted to me for determination. The undersigned further found that Weco was entitled to credits and offsets against the sums owed to Carter & Carter in the amount of $668,215.84, resulting in an Interim Award to Carter & Carter in the amount of $2,640,715.80. The Interim Award covered all claims and counterclaims presented in the hearings held in July 2020 in Summerville, South Carolina ("Phase One"), but did not fully resolve the competing claims of both parties for attorney's fees, costs, and interest. The Interim Award, as clarified, also did not address some of Weco's claims, which were not yet ripe for determination during Phase One and Weco's claims relating to Carter & Carter's compliance with Article 9 of the general conditions to the parties' contract. Those claims (the "Reserved Claims") were scheduled to be presented before me in a second arbitration hearing scheduled to be heard in October 2021 ("Phase Two"). The Arbitrator has been advised that the parties have resolved all claims and counterclaims in both phases and issues this award.

2. First, with respect to the Interim Award for Phase One, I find that the contract allows the arbitrator to award and apportion fees and costs as justice may require, and I find that the amount set aside and reserved by the parties as a reserve for fees and costs, $309,284.20, is reasonable given the nature of the claims in issue. Therefore, it is appropriate to increase the Interim Award for the initial phase by that amount, and the Interim Award to Carter & Carter for Phase One of the arbitration is hereby amended to $2,950,000.00, inclusive of attorney's fees, costs and all other claims.[1] In making this adjustment, I have taken into account the similar

[1] The parties have asked the Arbitrator to identify any liquidated damages that were assessed and included with the credits and offsets due to Weco under the Interim Award. In response to this request, I offer the following:

In preparing the Interim Award, I first considered each Building and assessed:

a. $78,500 in liquidated damages due to delay in the substantial completion of Building 1;
b. $185,500 in liquidated damages due to delay in the substantial completion of Building 2A;
c. $196,000 in liquidated damages due to delay in the substantial completion of Building 2B; and
d. $425,500 in liquidated damages due to delay in the substantial completion of Building 3.

467

ELECTRONICALLY FILED - 2021 Nov 23 5:12 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

adjustment for Weco concerning the Phase Two award as discussed in paragraph five of this Award.

3. Pursuant to an order (the "Consent Order") entered in the action between the parties pending in the Court of Common Pleas for Lexington County, South Carolina (the "Lexington County Action"), Carter & Carter previously received payment of $1,900,000.00 to be credited against the Interim Award to satisfy all liens of subcontractors. Pursuant to the Consent Order, the sum of $1,050,000.00 (the "Escrow Fund") remains on deposit to be allocated and distributed to the parties.

4. Weco has asserted the following Reserved Claims in the amount of $470,123.00 against Carter & Carter for Phase Two of the arbitration:

a. SCDOT Closeout Scope - $263,947.00, which sum is broken down as follows:

(i) Mobilization - $10,000.00;
(ii) Layout/Engineering/As-Builts - $11,500.00;
(iii) Flat Concrete (sidewalks) - $67,360.00;
(iv) Curb & Gutter- $38,743.00
(v) Control Joints - $3,500.00;
(vi) Loose Brick (pavers) - $1,250.00;
(vii) Catch Basin - $9,000.00;
(viii) Asphalt Roads (Milling) - $16,640.00;
(ix) Asphalt Roads (2" overlay) - $28,454.00;
(x) Marking/Paint/Thermoplastic - $16,000.00;
(xi) Handrail - $9,000.00; and
(xii) Traffic Control - $52,500.00;

b. Landscaping associated with the SCDOT closeout scope - $19,500.00;

These liquidated damages totaled $885,250.

Next, I considered the liquidated damages cap set forth in § 4.3.2 of the A102 Agreement Between Owner and Contractor, which provides that: "In no event shall the liquidated damages provided for in this section with regard to delivery of the entire Work exceed 50% of the Contractor's 4% profit on this Project." I determined that the contract capped or limited the liquidated damages to $615,935.00, which is the amount I then included within the credits and offsets due to Weco under the Interim Award.

468

ELECTRONICALLY FILED - 2021 Nov 23 5:12 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

c. Costs of investigating and repairing leaks at awnings in the retail spaces on Building 3 - $84,950.00;

d. Costs of repairing the slip deck - $61,170.00;

e. Costs of installing an electrical disconnect for the electrical supply to the retail spaces in Building 3 - $9,800;

f. Oversight of the repair work - $30,756.00; and

g. Weco's claims for attorney's fees and costs for the Reserved Claims.

5. The undersigned finds that Weco is entitled to offsets against the Phase One claims in the full amount of $470,123.00 based upon Weco's incurred costs to complete the project and/or address defective work performed by some of Carter & Carter's subcontractors and that the $470,123.00 includes sums Carter & Carter is paying to extinguish claims against itself and its relevant subcontractors. Furthermore, Weco is also awarded the additional sum of $54,877.00 for its costs, interest and attorney's fees for the Phase Two Arbitration.

6. Based on the foregoing, the undersigned therefore finds that Carter & Carter is entitled to receive the sum of $525,000.00 from the Escrow Fund and that Weco is entitled to receive the sum of $525,000.00. Any accrued interest on the escrowed funds shall be evenly divided between the parties. The parties are directed to prepare and submit to the court in the Lexington County Action a proposed consent order to obtain a release of the Escrow Fund in accordance with this Final Arbitration Award within ten (10) days from the date hereof. All other orders and decisions issued in this case, to the extent not inconsistent with this Award remain in full force and effect. This Award is in full and final settlement of all monetary claims of any kind whatsoever (including attorney's fees, costs and interest) which were or could have been presented to the arbitrator during any phase of this arbitration.

7. The parties have executed a supplemental settlement memorandum containing additional terms which are incorporated by reference and the arbitrator reserves the authority to resolve any disputes or disagreements which may arise from the terms or conditions of the supplemental memorandum.

AND IT IS SO ORDERED this 12th day of November, 2021.

L. Franklin Elmore

470

ELECTRONICALLY FILED - 2021 Nov 23 5:12 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Gmail Walter Bundy <walter@bundymcdonald.com>

Re: FW: Carter & Carter - Weco [IWOV-NPCOL1.FID1573864]

1 message

Walter Bundy <walter@bundymcdonald.com> Thu, Apr 15, 2021 at 11:00 AM
To: "Brown, Henry W." <HBrown@nexsenpruet.com>, Brent McDonald <brent@bundymcdonald.com>

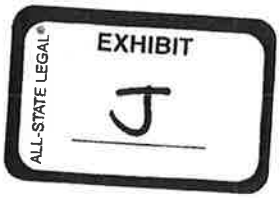
Henry
What role if any does my firm have in the arbitration going forward?
What is the client's position on my firm's outstanding invoice of approximately 340,000.00 .
I am available to discuss at your pleasure.
Bill

Walter H. Bundy
BundyMcDonald LLC

Business Address:
1516 Old Trolley Road,2nd Floor
Summerville, SC,20485

Mailing Address:
Post Office Box 50427
Summerville, SC 29485

Direct 843-212-0525
Cell 843-708-1519
Fax 888-393-6665
Local Fax 843-712-7318



Gmail Walter Bundy <walter@bundymcdonald.com>

RE: Carter & Carter - Weco [IWOV-NPCOL1.FID1573864]

1 message

Brown, Henry W. <HBrown@nexsenpruet.com> Thu, Apr 15, 2021 at 11:37 AM
To: Walter Bundy <walter@bundymcdonald.com>, Brent McDonald <brent@bundymcdonald.com>

I am sorting out the future. I recall your prior letter said you were only handling the fee issue and the DJ action. Weco has previously accepted based on the letter that you no longer represent them in the arbitration except for any fee discussion, and that will be sorted out if and when we get there. You mentioned the DJ action but that is over except for the lispendens motion and Sheppard motion to vacate..Weco will look to me to close out both questions I will be glad to discuss these issues but let me get further down the road. Thanks HB

Henry W. Brown

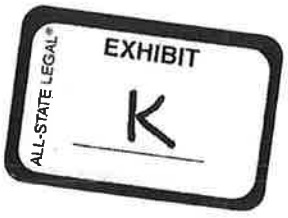
Senior Counsel

Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
Post Office Box 2426 (29202)
T: 803.253.8273, F: 8037271415
HBrown@nexsenpruet.com

www.nexsenpruet.com

NEXSEN PRUET

472



Gmail Walter Bundy <walter@bundymcdonald.com>

Re: Carter & Carter - Weco [IWOV-NPCOL1.FID1573864]

1 message

Walter Bundy <whbundy@att.net> Thu, Apr 15, 2021 at 12:36 PM
To: "Brown, Henry W." <HBrown@nexsenpruet.com>
Cc: Walter Bundy <walter@bundymcdonald.com>, Brent McDonald <brent@bundymcdonald.com>

I'm not sure ,nor do I have any way of knowing how long "further down the road " is .
I do know we have not been paid in about a year.
I can't imagine Weco believes that they owe none of the outstanding invoice.
I'm not prepared to finance this litigation without a partial payment in the very near future and would suggest a supplemental/ amended written fee agreement as to the balance.
If my firm is done we are entitled to get paid.
Please call me anytime after 2 today
Thanks

Walter Bundy

473

ALL-STATE LEGAL® EXHIBIT L

Gmail Walter Bundy <walter@bundymcdonald.com>

RE: Carter & Carter - Weco [IWOV-NPCOL1.FID1573864]

1 message

Brown, Henry W. <HBrown@nexsenpruet.com> Thu, Apr 15, 2021 at 1:07 PM
To: Walter Bundy <whbundy@att.net>
Cc: Walter Bundy <walter@bundymcdonald.com>, Brent McDonald <brent@bundymcdonald.com>

I don't know either. I suspect WECO knows it owes you something. I don't think nothing has ever been considered. I think they were surprised and disappointed when you withdrew from representation. This too will get worked out. Right now we are trying to put together the remaining claims to finish the arbitration. HB

Henry W. Brown

Senior Counsel

Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
Post Office Box 2426 (29202)
T: 803.253.8273, F: 8037271415
HBrown@nexsenpruet.com

www.nexsenpruet.com

NEXSEN PRUET

474

EXHIBIT M

ALL-STATE LEGAL®

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOR THE FIRST CIRCUIT**
COUNTY OF DORCHESTER	)	**CASE NO: 2021-CP-18-02008**
	)	
Bundy McDonald, LLC	)	
	)	**CERTIFICATE OF SERVICE**
Plaintiff,	)	
	)	
vs.	)	
	)	
WECO River District, LLC	)	
	)	
Defendant.	)	

I, Kathy Jo Wentland, paralegal with Bundy McDonald, LLC, hereby certify that true and correct copy of Plaintiff's First Request for Admission to Weco River District, LLC, was served on all parties this 14th day of January 2022, as follows:

VIA Email & US Mail
Hank Wall
Bruner, Powell, Wall and Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
hwall@brunerpowell.com

Kathy Jo Wentland

Kathy Jo Wentland

475

Bundy McDonald
TRIAL LAWYERS

WALTER H. BUNDY
walter@bundymcdonald.com
843-212-0525 (Direct)
843-708-1519 (Cell)

January 18, 2022

VIA Email
Hank Wall
Bruner, Powell, Wall and Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
hwall@brunerpowell.com

Re: WECO Hearing on February 3, 2022

Dear Hank,

I understand that a hearing in the WECO matter is set to be heard on February 3, 2022, at 2:30 p.m. This firm was not involved whatsoever in the Motion before the Court or the Proposed Order that WECO and the other parties apparently are presenting to the Court for signature, which among other things would release funds currently held in escrow, which funds were generated as a direct and approximate result of this firms work in the Arbitration proceeding.

In that regard I direct your attention to Rule 1.15 SAFE KEEPING PROPERTY of the Rules of Professional Conduct, specifically Rule 1.15(e), see also Note 4 under Comments. There are substantial grounds for this dispute, the attached email exchange between myself and Henry Brown and your recent letter to me proves as much.

If I have not received by Noon on Monday, January 24, 2022, a written commitment from you that you will escrow the amount in dispute between WECO and this firm of $347,258.45, I will contact the Court directly and ask for its assistance in this regard. Failing such relief this firm reserves all rights afforded to it per the Professional Rules of Conduct.

With kindest regards, I remain

Very truly yours,

W.H. Bundy, Jr.

WHB/kjw
Enclosure as noted

EXHIBIT
25

476

Gmail Walter Bundy <walter@bundymcdonald.com>

RE: Carter & Carter - Weco [IWOV-NPCOL1.FID1573864]

1 message

Brown, Henry W. <HBrown@nexsenpruet.com> Thu, Apr 15, 2021 at 1:07 PM
To: Walter Bundy <whbundy@att.net>
Cc: Walter Bundy <walter@bundymcdonald.com>, Brent McDonald <brent@bundymcdonald.com>

I don't know either. I suspect WECO knows it owes you something. I don't think nothing has ever been considered. I think they were surprised and disappointed when you withdrew from representation. This too will get worked out. Right now we are trying to put together the remaining claims to finish the arbitration. HB

Henry W. Brown

Senior Counsel

Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
Post Office Box 2426 (29202)
T: 803.253.8273, F: 8037271415
HBrown@nexsenpruet.com

www.nexsenpruet.com

NEXSEN PRUET

Gmail Walter Bundy <walter@bundymcdonald.com>

Re: Carter & Carter - Weco [IWOV-NPCOL1.FID1573864]

1 message

Walter Bundy <whbundy@att.net> Thu, Apr 15, 2021 at 12:36 PM
To: "Brown, Henry W." <HBrown@nexsenpruet.com>
Cc: Walter Bundy <walter@bundymcdonald.com>, Brent McDonald <brent@bundymcdonald.com>

I'm not sure ,nor do I have any way of knowing how long "further down the road " is .
I do know we have not been paid in about a year.
I can't imagine Weco believes that they owe none of the outstanding invoice.
I'm not prepared to finance this litigation without a partial payment in the very near future and would suggest a supplemental/ amended written fee agreement as to the balance.
If my firm is done we are entitled to get paid.
Please call me anytime after 2 today
Thanks

Walter Bundy

Bundy McDonald
TRIAL LAWYERS

WALTER H. BUNDY
walter@bundymcdonald.com
843-212-0525 (Direct)
843-708-1519 (Cell)

January 20, 2022

VIA Email
Hank Wall
Bruner, Powell, Wall and Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
hwall@brunerpowell.com

Re: SCRE Rule 1006
Bundy McDonald, LLC v. WECO River District, LLC
Case No.: 2021-CP-18-02008

Dear Hank,

Enclosed please find a Notice under SCRE 1006 SUMMARY which is intitled WECO River District, LLC Invoice and Payment Spreadsheet.

This document was created by Kathy Wentland, a paralegal at my office at my request. If necessary, she is available for a deposition and will testify at trial to the completeness and accuracy of the information, all of which is based upon documentation in the possession of both parties.

All of the underlying documentation compiled is admissible into evidence as business records pursuant to SCRE Rule 803(6) and the underlying data therein is compiled in the attached spreadsheet.

As set forth in the Notice, to extent WECO needs to see the originals or duplicates of the underlying data, they will be made available as per the Rule.

Additionally, I will be sending Request to Admit the authenticity of each and every underlying document in the near future to avoid authenticity disputes regarding the underlying documents.

Normally I would do this in reverse order, however I wanted WECO to have the summary in hand when answering the outstanding Interrogatories.

I would point out the following information contained in the Summary:

1. WECO has paid Bundy McDonald, LLC $108,429.27 in fees and costs to date, it took (4) months to get the first payment;

2. $117,960.00 of billable time was spent over (4) months following the Amended Fee Agreement, essentially the preparation for and

EXHIBIT
26

attendance at the Arbitration Hearing, none of which was charged to WECO pursuant to the Amended Fee Agreement;

3. Subsequent to October of 2020 Bundy McDonald no longer kept time records because of the existence of the Amended Fee Agreement, which as you know changed the fee to a contingency. Between the first part of November and the time when Bundy McDonald was essentially told to stand down by Henry Brown from representing WECO any further, at least 100 hours were spent in additional time advising the client, defending our legal advice to Henry Brown.

4. Additionally, Bundy McDonald, LLC over the objection of Henry Brown filed a Declaratory Judgment Action, which is the Action that is going to be ended on February 3, 2022, when the Judge signs the Consent Order. I am still waiting to hear from you with regard to whether or not I need to write the Court regarding the escrow of the funds that the Judge will more likely than not release.

5. WECO has not been billed nor have the paid a single dime for all the legal work done by Bundy McDonald, LLC in regard to the Declaratory Judgment Action. I am not sure why we didn't charge WECO for all of this time, however my guess is because Henry Brown was so opposed to our legal advice, which we thought was in the best interest of the client, we provided these legal services at no cost to the client. I will leave it to you as to whether or not the filing of the Declaratory Judgment Action was in fact a good idea, in my opinion it was extremely beneficial to the client. Indeed, if the client had followed our advice regarding the Declaratory Judgment Action which it did not more likely than not WECO would have had to pay no legal fees in this matter to Carter and Carter, because Carter and Carter did not file a Lis Pendens when they filed their foreclosure, at fatal error.

6. WECO has paid nothing since June 11, 2020, which includes $2,773.20 in costs, does WECO now contend that Bundy McDonald, LLC was supposed to not only work for free but finance their litigation?

7. The difference between the contingency fee due less what would have been paid if had the original Agreement stayed in place is at a maximum $230,000.00, and probably much less since we did not keep time after November 2020 and in consideration of all the free legal work provided in the Declaratory Judgment Action.

8. The Amended Fee Agreement was capped at $500,000.00. If the total fees were paid as set forth in the Amended Agreement the total fee paid would approximately $450,0000.00, although this also includes out of pocket costs that are not included in the cap. The point is that the not to exceed figure of $500,000.00 under the Amended Contingency Fee Agreement has not been reached.

9. WECO's decision to ignore our advice and follow Henry Brown's advice has resulted in WECO paying excessive legal fees to Carter & Carter indeed if Henry Brown had pushed for a decision on the effect of WECO's failure to file a Lis Pendens the likely outcome would have been that Carter & Carter's lien would have been dismissed. As such there would have been no legal obligation for WECO to pay any fees at all to Carter & Carter.

10. Additionally, the amount proposed by Bundy McDonald, LLC in an Offer of Settlement to Carter & Carter of $2.2 million dollars was rejected by WECO and instead WECO on its own made an offer of $1.9 million dollars. If WECO had followed Bundy McDonald, LLC's advice even if the mechanics lien had been perfected WECO would have been the prevailing party given the outcome. However, since WECO decided to ignore Bundy McDonald, LLC's legal advice and offer only $1.9 million dollars Carter & Carter became the prevailing party. A result which was directly and proximately caused by WECO's failure to follow Bundy McDonald, LLC's legal advice. If you have any doubt about the truthfulness about this assertion, please ask Teresa Hodge. My recollection is following the Arbitration she admitted that WECO had failed to follow our advice regarding the proposed amount for an Offer of Settlement under the Mechanic Lien Statute.

11. Henry Brown interfered with our Contract by giving contrary advice to WECO, the direct and proximate result was that WECO sustained additional costs and expenses and has resulted in WECO's failure to pay Bundy McDonald, LLC any legal fees since June 11, 2020.

I look forward to your discovery responses and our call on Friday. I will be in a Mediation in my office on Friday but please call and if I am available, I will take your call, if not I will call you back.

With the kindest personal regards, I remain

Sincerely,

W.H. Bundy, Jr.

WHB/kjw
Enclosure as noted

480

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FOR THE FIRST CIRCUIT**
COUNTY OF DORCHESTER	)	
	)	**CASE NO.: 2021-CP-18-02008**
Bundy McDonald, LLC	)	
	)	
Plaintiff,	)	**NOTICE OF SCRE RULE 1006 SUMMARY**
	)	
vs.	)	
	)	
WECO River District, LLC	)	
	)	
Defendant.	)	

PLEASE TAKE NOTICE that Plaintiff hereby submits the attached summary pursuant to SCRE Rule 1006 SUMMARIES.

The originals or duplicates of the underlying data are admissible and shall be made available for examination or copying or both by any other Party at a reasonable time and place.

Respectfully submitted,

W.H. Bundy, Jr.
W. H. Bundy, Jr., Esq. (SC Bar #10122)
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559
walter@bundymcdonald.com

January 21, 2022

481

WECO RIVER DISTRICT, LLC - INVOICE AND PAYMENT SPREADSHEET

INVOICE DATE	INVOICE NUMBER	INVOICE TOTAL AMOUNT	BALANCE DUE	PAYMENTS	PAYMENT DATE	CHECK #	
12.18.2018	10520	$105.00	$105.00				
01.17.2019	10546	$4,420.00	$4,525.00				
02.15.2019	10568	$10,380.00	$14,905.00				
03.15.2019	10590	$4,695.00	$19,600.00				
04.05.2019	10612	$2,945.00	$22,545.00	($22,545.00)	05.23.2019	10486	
			$0.00				
05.22.2019	10636	$9,290.00	$9,290.00	($9,290.00)	06.03.2019	10498	
			$0.00				
06.07.2019	10661	$1,835.00	$1,835.00	($1,835.00)	07.02.2019	10396	
			$0.00				
07.22.2019	10686	$525.00	$525.00				
08.29.2019	10702	$1,310.00	$1,835.00	($1,835.00)	09.30.2019	10748	
			$0.00				
09.25.2019	10720	$2,195.00	$2,195.00				
10.30.2019	10738	$2,120.00	$4,315.00	($4,315.00)	11.20.2019	10890	
			$0.00				
11.15.2019	10759	$7,425.00	$7,425.00	($7,425.00)	11.21.2019	10905	
			$0.00				
12.19.2019	10778	$4,831.17	$4,831.17				
01.15.2020	10818	$3,815.00	$8,646.17	($8,646.17)	01.22.2020	11036	
			$0.00				
02.06.2020	10833	$20,212.38	$20,212.38	($20,212.38)	02.11.2020	11078	
			$0.00				
03.23.2020	10846	$11,471.97	$11,471.97	($11,471.97)	03.30.2020	11199	
			$0.00				
04.24.2020	10850	$7,738.75	$7,738.75				
05.19.2020	10853	$3,830.00	$11,568.75				
06.04.2020	10860	$9,285.00	$20,853.75	($20,853.75)	06.11.2020	20068	
			$0.00				
		$108,429.27		($108,429.27)			
			$0.00				

INVOICE DATE	INVOICE NUMBER	ATTORNEY HOURS NO CHARGE	*No Charge*	COSTS	INVOICE AMOUNT	BALANCE DUE	PAYMENT AMOUNT	PAYMENT DATE	CHECK #
07.22.2020	10895	MBM: 88.50 hrs WHB: 18.50 hrs **Total:**	*$26,550.00* *$7,400.00* ***$33,950.00***	$1,944.85	$1,944.85	$1,944.85	($1,944.85)	08.20.2020 (Check date 8.14.2020)	20214
08.06.2020	10902	MBM: 103.20 hrs WHB 103.20 hrs **Total:**	*$30,960.00* *$41,280.00* ***$72,240.00***	$2,773.20	$2,773.20	$2,773.20			
09.03.2020	10910	MBM: 22 hrs WHB: 11 hrs **Total:**	*$6,600.00* *$4,400.00* ***$11,000.00***						
10.23.2020	10914	MBM: 3 hrs WHB: 80 hrs **Total:**	*$450.00* *$320.00* ***$770.00***						
		Total Attorney Fee's Not Charge	**$117,960.00**		**Amount Still Due**	**$2,773.20**			

FINAL INVOICE	INVOICE NUMBER	INVOICE BREAKDOWN		AMOUNT DUE TO BUNDY MCDONALD, LLC
02.17.2021	21721	Demand Award **Total**	$4,029,749.43 ($2,640,715.64) **$1,389,033.79**	
		Contingency Fee. ($1,389,0339.78 x 25%)	$347,258.45	**$347,258.45**

ELECTRONICALLY FILED - 2022 Feb 08 2:05 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Weco River District, LLC,

Plaintiff,

vs.

Carter & Carter Construction, LLC; Expressway Painting & Renovations, LLC; The Roof Depot, Inc.; W. Construction, LLC; B&N Mechanical Contractors, Inc.; Apex Masonry, Inc.; CBG, Inc.; R.W. Ford Company, Inc.; Appletree Landscaping, Inc.; Atlantic Concrete Services; Atlanta Design Group, Inc.; All In Builders, LLC; Air One Systems, LLC; Apex Astera, Inc.; Baytree Landscape Contractors, Inc.; Brabham Fence Company, Inc.; Barnhills Services, Inc; Biltrite Corporation; Brandon Zapata Electric, Inc.; Custom Exteriors of Georgia, LLC; et al,

Defendants.

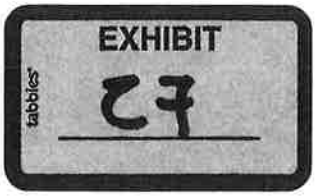
Civil Action No. 2020-CP-32-00580

ORDER CONFIRMING FINAL ARBITRATION AWARD AND DIRECTING CLERK OF COURT TO MAKE PARTIAL DISTRIBUTION OF CASH BOND

This matter arises out of a construction project known as "Brookland Village" located near the intersection of Meeting Street and State Street in West Columbia, South Carolina (the "Project"). Plaintiff Weco River District, LLC ("Weco") is the owner of the Project. [Complaint ¶ 1.] Carter & Carter Construction, LLC ("Carter & Carter") was the general contractor on the Project pursuant to a contract (the "Contract") dated May 13, 2017. [Complaint ¶¶ 3, 104.] Disputes arose between Weco and Carter & Carter relating to Project. Pursuant to the Contract, Weco and Carter & Carter submitted those disputes to binding arbitration before a single arbitrator, L. Franklin Elmore (the "Arbitrator").

On November 12, 2021, the Arbitrator entered a Consent Final Arbitration Award (the "Final Award") in which he decided all disputes between Weco and Carter & Carter. A true and

483



ELECTRONICALLY FILED - 2022 Feb 08 2:05 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

correct copy of the Final Award is attached hereto and incorporated herein by reference as **Exhibit A**. Weco and Carter & Carter have jointly stipulated and requested that the Court confirm the Final Arbitration Award and enter it as judgment of the Court as it relates to the claims between those parties. Further, Weco and Carter & Carter have executed a release and settlement agreement which resolves all claims between those parties.

It further appears, that all other pending matters and perfected claims raised in this lawsuit have been previously resolved or dismissed. Weco joined several of Carter & Carter's subcontractors and suppliers on the Project (collectively the "Subcontractors") as defendants in this action. The record indicates that the following Subcontractors were included as defendants based on their assertion of liens against the property on which the Project is located:

1. Apex Masonry Inc.;
2. B&N Mechanical Contractors, Inc.;
3. Brandon Zapata Electric, Inc.;
4. CBG, Inc.;
5. Eli Controls, Inc.;
6. Expressway Painting, LLC;
7. Flooring Services, Inc.;
8. The Roof Depot, Inc.; and
9. W. Construction, LLC.

The foregoing Subcontractors are referred to hereafter as the "Lien Claimants." Carter & Carter resolved the claims asserted by the Lien Claimants previously in this action and the Lien Claimants have been dismissed from this action by entry of various consent orders. Those consent orders resolved all claims asserted by and/or against the Lien Claimants in this action. Their liens have been satisfied and discharged.

ELECTRONICALLY FILED - 2022 Feb 08 2:05 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

It further appears from the record that no other Subcontractors or parties named in this action have asserted lien claims against the Property or any other claims seeking affirmative relief. Some of the named Subcontractors have not made an appearance in this action. Nonetheless, Weco's claims for declaratory judgment against these parties have been rendered moot by the final arbitration award and settlement agreement and there are no other pending claims for relief asserted by any parties in this action. There are no other claims or issues ripe for adjudication before this Court with the sole exception of a pending disagreement between Carter & Carter and its surety, Zurich, as to their priority in interest in the Carter portion of the arbitration award. This issue arose subsequent to the final arbitration award, and it will be addressed in a separate forthcoming order.

In the meantime, this Court hereby confirms and accepts as a final judgment of this Court, the award of the Arbitrator in this case. No party to the litigation has objected to the immediate distribution of the arbitration award proceeds to Weco. Therefore, one half amount of the cash lien release bond (the sum of $525,000.00) shall be distributed payable Weco in care of its counsel of record Henry P. Wall. The Clerk of Court is hereby directed to immediately release these funds to Weco in accordance with the Arbitration Award and decision of this Court. As to the remaining proceeds of the cash lien release bond in the sum of $525,000.00 awarded to Carter & Carter in the final Arbitration Award, there is a dispute as to whether those funds should be distributed to Carter & Carter or Zurich and the Court has taken this issue (the indemnity issue) under advisement. The Court will issue a separate order concerning the indemnity issue in the near future. Upon This Court's determination as to the indemnity issue, and final distribution of the lien bond proceeds, the Clerk shall cancel the lien bond and dismiss this case.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON THE FOLLOWING PAGE]

ELECTRONICALLY FILED - 2022 Feb 08 2:05 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Lexington Common Pleas

Case Caption: Weco River District, Llc VS Carter And Carter Construction, Llc , defendant, et al

Case Number: 2020CP3200580

Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod

486

ELECTRONICALLY FILED - 2022 Feb 15 9:49 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS
Weco River District, LLC, Plaintiff, vs. Carter & Carter Construction, LLC; Expressway Painting & Renovations, LLC; The Roof Depot, Inc.; W. Construction, LLC; B&N Mechanical Contractors, Inc.; Apex Masonry, Inc.; CBG, Inc.; R.W. Ford Company, Inc.; Appletree Landscaping, Inc.; Atlantic Concrete Services; Atlanta Design Group, Inc.; All In Builders, LLC; Air One Systems, LLC; Apex Astera, Inc.; Baytree Landscape Contractors, Inc.; Brabham Fence Company, Inc.; Barnhills Services, Inc; Biltrite Corporation; Brandon Zapata Electric, Inc.; Custom Exteriors of Georgia, LLC; et al, Defendants.	Civil Action No. 2020-CP-32-00580 **AMENDED ORDER CONFIRMING FINAL ARBITRATION AWARD AND DIRECTING THE REGISTER OF DEEDS TO MAKE PARTIAL DISTRIBUTION OF CASH BOND**

On February 8, 2022, I issued an Order in this matter confirming the arbitration award and directing the Clerk of Court to make a partial distribution of a cash bond in accordance with the arbitration award. After communication from the Clerk's office, the Court has been informed that the cash bond is actually held in the account of the Register of Deeds Office rather than the Clerk of Court's office. Therefore, it has become necessary to amend and correct the prior order to grant the relief intended by the Court and the Court has determined it is appropriate the make this correction on its own initiative pursuant to Rule 60(a) of the South Carolina Rules of Civil Procedure. This order therefore supersedes and corrects the minor clerical error in the prior

ELECTRONICALLY FILED - 2022 Feb 15 9:49 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

order without any other substantive change.

This matter arises out of a construction project known as "Brookland Village" located near the intersection of Meeting Street and State Street in West Columbia, South Carolina (the "Project"). Plaintiff Weco River District, LLC ("Weco") is the owner of the Project. [Complaint ¶ 1.] Carter & Carter Construction, LLC ("Carter & Carter") was the general contractor on the Project pursuant to a contract (the "Contract") dated May 13, 2017. [Complaint ¶¶ 3, 104.] Disputes arose between Weco and Carter & Carter relating to Project. Pursuant to the Contract, Weco and Carter & Carter submitted those disputes to binding arbitration before a single arbitrator, L. Franklin Elmore (the "Arbitrator").

On November 12, 2021, the Arbitrator entered a Consent Final Arbitration Award (the "Final Award") in which he decided all disputes between Weco and Carter & Carter. A true and correct copy of the Final Award is attached hereto and incorporated herein by reference as **Exhibit A**. Weco and Carter & Carter have jointly stipulated and requested that the Court confirm the Final Arbitration Award and enter it as judgment of the Court as it relates to the claims between those parties. Further, Weco and Carter & Carter have executed a release and settlement agreement which resolves all claims between those parties.

It further appears, that all other pending matters and perfected claims raised in this lawsuit have been previously resolved or dismissed. Weco joined several of Carter & Carter's subcontractors and suppliers on the Project (collectively the "Subcontractors") as defendants in this action. The record indicates that the following Subcontractors were included as defendants based on their assertion of liens against the property on which the Project is located:

1. Apex Masonry Inc.;

ELECTRONICALLY FILED - 2022 Feb 15 9:49 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

2. B&N Mechanical Contractors, Inc.;
3. Brandon Zapata Electric, Inc.;
4. CBG, Inc.;
5. Eli Controls, Inc.;
6. Expressway Painting, LLC;
7. Flooring Services, Inc.;
8. The Roof Depot, Inc.; and
9. W. Construction, LLC.

The foregoing Subcontractors are referred to hereafter as the "Lien Claimants." Carter & Carter resolved the claims asserted by the Lien Claimants previously in this action and the Lien Claimants have been dismissed from this action by entry of various consent orders. Those consent orders resolved all claims asserted by and/or against the Lien Claimants in this action. Their liens have been satisfied and discharged.

It further appears from the record that no other Subcontractors or parties named in this action have asserted lien claims against the Property or any other claims seeking affirmative relief. Some of the named Subcontractors have not made an appearance in this action. Nonetheless, Weco's claims for declaratory judgment against these parties have been rendered moot by the final arbitration award and settlement agreement and there are no other pending claims for relief asserted by any parties in this action. There are no other claims or issues ripe for adjudication before this Court with the sole exception of a pending disagreement between Carter & Carter and its surety, Zurich, as to their priority in interest in the Carter portion of the arbitration award. This issue arose subsequent to the final arbitration award and it will be addressed in a separate forthcoming order.

ELECTRONICALLY FILED - 2022 Feb 15 9:49 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

In the meantime, this Court hereby confirms and accepts as a final judgment of this Court, the award of the Arbitrator in this case. No party to the litigation has objected to the immediate distribution of the arbitration award proceeds to Weco. Therefore, one half amount of the cash lien release bond (the sum of $525,000.00) shall be distributed payable Weco in care of its counsel of record Henry P. Wall. The Register of Deeds or the rightful custodian of the cash lien release bond in Lexington County offices is hereby directed to immediately release these funds to Weco in accordance with the Arbitration Award and decision of this Court. As to the remaining proceeds of the cash lien release bond in the sum of $525,000.00 awarded to Carter & Carter in the final Arbitration Award , there is a dispute as to whether those funds should be distributed to Carter & Carter or Zurich and the Court has taken this issue (the indemnity issue) under advisement. The Court will issue a separate order concerning the indemnity issue in the near future. Upon This Court's determination as to the indemnity issue, and final distribution of the lien bond proceeds, the Register of Deeds shall cancel the lien bond and the Clerk of Court shall thereafter dismiss this case.

AND IT IS SO ORDERED.

[E-SIGNATURE ON THE FOLLOWING PAGE]

ELECTRONICALLY FILED - 2022 Feb 15 9:49 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Lexington Common Pleas

Case Caption:	Weco River District, Llc VS Carter And Carter Construction, Llc , defendant, et al
Case Number:	2020CP3200580
Type:	Order/Other

It Is So Ordered

s/ Walton J. McLeod

491

ELECTRONICALLY FILED - 2022 Feb 25 2:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	CASE NUMBER: 2020-CP-32-00580
Weco River District, LLC,	)	
Plaintiff,	)	**ORDER CONFIRMING ARBITRATION AWARD AND DISTRIBUTION**
-vs-	)	
Carter & Carter Construction, LLC et al,	)	
Defendants.	)	

This matter came before the court on February 3, 2021 on a Joint Motion to Confirm Final Arbitration Award and for Dismissal of the Action filed on November 23, 2021. Present and representing the Plaintiff was Henry Pickett Wall, representing the Defendant Carter & Carter Construction, LLC, (Carter & Carter) was John F. McKenzie and representing Defendants Fidelity and Deposit Company of Maryland/Zurich American Insurance Company (Surety) was Jordan Caralisa Connell.

This case arose out of a construction project known as "Brookland Village" located near the intersection of Meeting Street and State Street in West Columbia, South Carolina. On November 12, 2021, the Arbitrator entered a Consent Final Arbitration Award in which he resolved all disputes between Weco River District, LLC and Carter & Carter. The specific matter before the court on a joint motion of the Plaintiff and Defendant Carter & Carter, is to confirm arbitration and dismiss the action by consent after a successful arbitration between Plaintiff and Defendant Carter & Carter. Defendant Surety apparently did not participate in the arbitration.

The Defendant Surety filed a Response and Limited Objection to Joint Motion to Confirm Final Arbitration Award and for Dismissal of Action on January 28, 2022. This filing

492

ELECTRONICALLY FILED - 2022 Feb 25 2:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

came over two (2) months after the Joint Motion was filed before this Court. As of the day of filing this Order, there has been no other filing by Defendant Surety of which this court is aware.

The limited objection appears to be based on a bankruptcy procedure, set out specifically in Rule 3007 of the Federal Bankruptcy Code. There is no "limited objection" in the South Carolina Rules of Civil Procedure, South Carolina Rules of Evidence, nor have any of our appellate courts ever ruled or even discussed the concept of the "limited objection" as far as the court can determine.

Defendant Surety by its filing is clearly seeking relief from the court. If a party wishes to receive a form of relief in South Carolina state courts, then it must either file a pleading seeking the relief or it must file a motion. *See* Rule 7, SCRCP. Neither has been done by Defendant Surety in this matter.

Defendant Surety, by its Answer, never cross-claimed or sought any relief from Defendant Carter & Carter. Defendant Surety has never moved to amend its pleadings to do so. Accordingly, it has not filed a plea for relief and such is not properly before the court.

As to filing a motion, Defendant Surety's filing is not denominated as such nor did Defendant Surety pay the $25.00 filing fee. Defendant Surety's filing is not in compliance with the South Carolina Rules of Civil Procedure. Rule 6(d) SCRCP requires the filing of a motion ten (10) days prior to a hearing. Defendant Surety filed the "Response and Limited Objection" on January 28, 2022, which is fewer than ten (10) days of the date of the scheduled hearing. Defendant Carter & Carter objected to its admission and consideration based upon all these grounds. The court heard arguments subject to the objection which was not waived.

In the hearing, Defendant Surety claimed that it was entitled to approximately fifty thousand ($50,000.00) dollars in South Carolina from Defendant Carter & Carter and over five

ELECTRONICALLY FILED - 2022 Feb 25 2:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

hundred thousand ($500,000.00) dollars in connection with litigation involving the parties in the state of Texas, and therefore wished for the court to place the entire $525,000.00 awarded to Defendant Carter & Carter in the arbitration in trust until both of these matters are concluded.

Even if the limited objection were properly and timely filed, Defendant Surety failed to produce adequate support for these numbers or the validity of its claims. It is not clear how a South Carolina court, without any proof of a loss or proper documentation by pleadings or orders or judgments, and without any jurisdiction over a Texas lawsuit, could withhold monies awarded in a valid arbitration in South Carolina to Defendant Carter & Carter.

Further, Defendant has failed to convince the court that this state is an appropriate or convenient forum to resolve a Texas based dispute between these parties, who are not South Carolina residents, even if the issue had been raised either by the pleadings or a proper motion supported by evidence. If Defendant Surety is entitled to relief from Defendant Carter & Carter, it is not properly before the court here. With that said, should Defendant Surety desire to seek relief after the conclusion of this specific case, then it may do so as the applicable rules of civil procedure authorize and require.

NOW THEREFORE, the Surety's Limited Objection is OVERRULED. The arbitration award in this matter is hereby CONFIRMED and this matter is dismissed with prejudice.

IT IS ORDERED THAT One-half amount of the cash lien release bond (the sum of $525,000.00) shall be distributed payable to Carter & Carter in care of its counsel of record John F. McKenzie.

IT IS FURTHER ORDERED that the Register of Deeds or the rightful custodian of the cash lien release bond in Lexington County offices is hereby directed to immediately release these funds to Carter & Carter in accordance with the Arbitration Award and decision of this

Court.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON THE FOLLOWING PAGE]

ELECTRONICALLY FILED - 2022 Feb 25 2:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

ELECTRONICALLY FILED - 2022 Feb 25 2:23 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3200580

Lexington Common Pleas

Case Caption:	Weco River District, Llc VS Carter And Carter Construction, Llc , defendant, et al
Case Number:	2020CP3200580
Type:	Order/Other

It Is So Ordered

s/ Walton J. McLeod

496

WECO River District, LLC
PO Box 11735
Columbia, SC 29211

May 24, 2022

Bundy Mcdonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485

Mr. Bundy,

I enclose herewith a check from Weco River District, LLC in the amount of $ 150,000.00 payable to your law firm.

We are not asking you to sign a release for this payment, you may reserve all rights to your claims and the pending lawsuit. We simply ask that you properly credit this payment against any amount you claim is due. Weco disputes any claim over the amount tendered because we were required to engage other counsel to complete the work.

Weco continues to reserve our rights and defenses to any claims you may continue to pursue.

Respectfully,

Teresa Hodge

Cc: Hank Wall
Henry Brown

497

BRUNER POWELL

BRUNER POWELL WALL & MULLINS , LLC

Post Office Box 61110
Columbia, South Carolina 29260
Phone: (803) 252-7693
Federal I.D.: 57-0926758
brunerpowell.com

INVOICE

Invoice # 13538
Date: 08/06/2021
Due Upon Receipt

ESTATES & COMPANIES, LLC
2801 Devine Street; Suite 202
COLUMBIA, SC 29205

Statement of Account

Outstanding Balance		New Charges		Total Balance
$0.00	+	$5,768.00	=	$5,768.00

93093.100

Weco River District, LLC v. Carter and Carter, LLC

Date	Timekeeper	Notes	Hours	Rate	Total
07/08/2021	HPW	review of arbitration proceedings and claims; review supplemental information from client and motion to vacate award	2.50	$360.00	$900.00
07/09/2021	HPW	detailed review and assessment of claims notebook, arbitration status and arbitration awards and supplemental decisions	5.00	$360.00	$1,800.00
07/15/2021	HPW	conference with client concerning case status	0.25	$360.00	$90.00
07/23/2021	HPW	review of damages summary and procedural status	0.75	$360.00	$270.00
07/23/2021	HPW	extended conference with client concerning assuming responsibility for case	0.75	$360.00	$270.00
07/23/2021	HPW	follow up conference with project manager concerning assumption of case and conference with John Davidson	0.50	$360.00	$180.00
07/26/2021	HPW	transition conference with John davidson	0.50	$360.00	$180.00
07/28/2021	HPW	visit project and review status; extended meeting and conference with client concerning status and strategy	3.75	$360.00	$1,350.00
07/29/2021	P25	Attention to calendar conference call with Trippett Boineau	0.10	$80.00	$8.00
07/29/2021	HPW	preparation for and participation in conference call with arbitrator, conference with John Davidson and Teresa Hodge (x2); review of arbitration discovery issues	1.75	$360.00	$630.00
07/30/2021	HPW	communication with client concerning status and strategy	0.25	$360.00	$90.00

498

Timekeeper	Hours	Rate	Total
Henry Wall	16.0	$360.00	$5,760.00
Bridget Steele	0.1	$80.00	$8.00
		Subtotal	**$5,768.00**
		Total	**$5,768.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
13538	08/06/2021	$5,768.00	$0.00	$5,768.00
			Outstanding Balance	**$5,768.00**
			Total Amount Outstanding	**$5,768.00**

Kindly remit payment to:
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260

Payment is due upon receipt.

499

BRUNER POWELL

BRUNER POWELL WALL & MULLINS , LLC

FILE COPY

Post Office Box 61110
Columbia, South Carolina 29260
Phone: (803) 252-7693
Federal I.D.: 57-0926758
brunerpowell.com

INVOICE

Invoice # 13724
Date: 09/10/2021
Due Upon Receipt

ESTATES & COMPANIES, LLC
2801 Devine Street; Suite 202
COLUMBIA, SC 29205

Statement of Account

Outstanding Balance		New Charges		Total Balance
$0.00	+	$5,310.00	=	$5,310.00

93093.100

Weco River District, LLC v. Carter and Carter, LLC

Date	Timekeeper	Notes	Hours	Rate	Total
08/02/2021	HPW	conferences with opposing counsel and review status with client and preparation for arbitration	2.25	$360.00	$810.00
08/03/2021	HPW	numerous conferences with client and opposing counsel; prep for arbitration	1.50	$360.00	$540.00
08/05/2021	HPW	review of claims and orders; preparation for arbitration	2.25	$360.00	$810.00
08/06/2021	HPW	review information concerning subcontractors; discovery status, claims docs and prep for arbitration	1.50	$360.00	$540.00
08/09/2021	HPW	conference with client concerning status	0.25	$360.00	$90.00
08/11/2021	HPW	meeting with client and preparing case for hearing	1.75	$360.00	$630.00
08/12/2021	HPW	extended conference with Bob Mundy concerning status and strategy	0.75	$360.00	$270.00
08/17/2021	HPW	review claims and preparation for arbitration	0.75	$360.00	$270.00
08/18/2021	HPW	conference with opposing counsel concerning Weco position on mediation	0.25	$360.00	$90.00
08/19/2021	HPW	extended call with client concerning mediation	0.75	$360.00	$270.00
08/19/2021	HPW	review of subcontract payment analysis	0.25	$360.00	$90.00
08/19/2021	HPW	conference with opposing counsel and review of damages summary and requirement for additional accounting information	0.50	$360.00	$180.00
08/20/2021	HPW	review of discovery issues, communication with Bob Mundy, communication with Teresa Hodge concerning mediation; review	0.75	$360.00	$270.00

500

		damages			
08/24/2021	HPW	conference with opposing counsel concerning mediation and discovery follow up; conference with John Davidson concerning discovery requests	0.50	$360.00	$180.00
08/26/2021	HPW	review inquires from client and prepare status report	0.50	$360.00	$180.00
08/26/2021	HPW	communications with opposing counsel concerning discovery status	0.25	$360.00	$90.00

Timekeeper	Hours	Rate	Total
Henry Wall	14.75	$360.00	$5,310.00
		Subtotal	**$5,310.00**
		Total	**$5,310.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
13724	09/10/2021	$5,310.00	$0.00	$5,310.00
			Outstanding Balance	**$5,310.00**
			Total Amount Outstanding	**$5,310.00**

Kindly remit payment to:
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260

Payment is due upon receipt.

501

BRUNER POWELL

BRUNER POWELL WALL & MULLINS , LLC

FILE COPY

Post Office Box 61110
Columbia, South Carolina 29260
Phone: (803) 252-7693
Federal I.D.: 57-0926758
brunerpowell.com

INVOICE

Invoice # 13926
Date: 10/05/2021
Due Upon Receipt

ESTATES & COMPANIES, LLC
2801 Devine Street; Suite 202
COLUMBIA, SC 29205

Statement of Account

Outstanding Balance		New Charges		Total Balance
$0.00	+	$5,990.46	=	$5,990.46

93093.100

Weco River District, LLC v. Carter and Carter, LLC

Hours

Date	Timekeeper	Notes	Hours	Rate	Total
09/01/2021	P25	Attention to e-filing Notice of Appearance, Motion to substitute counsel and proposed order	0.30	$80.00	$24.00
09/01/2021	P25	Receipt and review electronic notice from State Court RE filed 2021.09.01 - Motion to Relieve and Substitute Counsel for Plaintiff	0.10	$80.00	$8.00
09/02/2021	HPW	attn to order of substitution; conference with opposing counsel concerning mediation and discovery; update client on status	0.50	$360.00	$180.00
09/07/2021	HPW	extended call with Teresa concerning status	0.50	$360.00	$180.00
09/07/2021	HPW	extended call with Bob Mundy concerning status	0.75	$360.00	$270.00
09/07/2021	HPW	review information for opposing counsel and attn to discovery	0.50	$360.00	$180.00
09/09/2021	P25	Receipt and review electronic notice from State Court RE filed 2021.09.03 - Order Substituting Counsel for Plaintiff	0.10	$80.00	$8.00
09/13/2021	HPW	preparation for arbitration - extended review of claims notebook and preparation of letter to carter concerning discovery and subcontractor cost information	1.50	$360.00	$540.00
09/14/2021	HPW	communications with opposing counsel and client concerning discovery and preparation for arbitration	0.75	$360.00	$270.00
09/15/2021	HPW	review of claim documents and follow up communications with opposing counsel; extended status and strategy call with client	1.25	$360.00	$450.00

502

09/16/2021	HPW	review and evaluation of discovery responses and financial responses from carter and carter; prepare update to client	0.50	$360.00	$180.00
09/20/2021	HPW	extended call with client concerning case status and strategy	1.00	$360.00	$360.00
09/20/2021	HPW	conference with counsel for carter concerning mediation and depositions	0.25	$360.00	$90.00
09/20/2021	HPW	review documents in preparation for and anticipation of depositions of expert and scdot	1.00	$360.00	$360.00
09/23/2021	HPW	attention to discovery; draft letter to opposing counsel concerning project closeout	0.75	$360.00	$270.00
09/24/2021	HPW	revise letter to opposing counsel- review scdot claim and documents from client concerning scdot -	0.75	$360.00	$270.00
09/27/2021	HPW	communications with client and opposing counsel concerning discovery and depositions	0.50	$360.00	$180.00
09/28/2021	P25	Prepare email invite with call-in information to Clients for conference call scheduled for today at 4pm	0.10	$80.00	$8.00
09/28/2021	HPW	extended conference with client; preparation for arbitration	1.00	$360.00	$360.00
09/29/2021	HPW	prep for and attend status conference with arbitrator; follow up communications with client and opposing counsel; preparation for arbitration	1.75	$360.00	$630.00
09/30/2021	HPW	extended conferences with client concerning status and strategy, review of damages claims; review of attorney fee issues; review of subcontractor releases and claims; preparation for mediation and arbitration	3.25	$360.00	$1,170.00
				Services Subtotal	**$5,988.00**

Expenses

Date	Notes	Quantity	Rate	Total
09/30/2021	Postage for: September 2021	1.00	$1.06	$1.06
09/30/2021	Printing/Copies: September 2021	4.00	$0.35	$1.40
		Expenses Subtotal		**$2.46**

Timekeeper	Hours	Rate	Total
Henry Wall	16.5	$360.00	$5,940.00
Bridget Steele	0.6	$80.00	$48.00
		Subtotal	**$5,990.46**
		Total	**$5,990.46**

502

FILE COPY

BRUNER POWELL

BRUNER POWELL WALL & MULLINS , LLC

Post Office Box 61110
Columbia, South Carolina 29260
Phone: (803) 252-7693
Federal I.D.: 57-0926758
brunerpowell.com

INVOICE

Invoice # 14259
Date: 11/05/2021
Due Upon Receipt

ESTATES & COMPANIES, LLC
2801 Devine Street; Suite 202
COLUMBIA, SC 29205

Statement of Account

Outstanding Balance		New Charges		Total Balance
$0.00	+	$15,668.00	=	$15,668.00

93093.100

Weco River District, LLC v. Carter and Carter, LLC

Date	Timekeeper	Notes	Hours	Rate	Total
10/01/2021	HPW	preparation for depositions and arbitration; extended review of attorney fee issue; preparation of pre hearing order; extended calls with client	4.00	$360.00	$1,440.00
10/04/2021	HPW	review of DJ pleadings and determination of issues still in dispute and motions (note this time in Bundy Scope)	2.25	$360.00	$810.00
10/04/2021	HPW	pre mediation meeting with client	1.50	$360.00	$540.00
10/04/2021	HPW	preparation for mediation	0.75	$360.00	$270.00
10/05/2021	HPW	preparation for mediation	0.50	$360.00	$180.00
10/06/2021	HPW	mediation and meeting with client to prepare for depositions	6.00	$360.00	$2,160.00
10/07/2021	P25	Receipt and review electronic notice from State Court RE filed 2021.10.06 - Consent Order to Dismiss Claims - All in Builders and TK Elevator	0.10	$80.00	$8.00
10/07/2021	HPW	preparation for arbitration and depositions	1.25	$360.00	$450.00
10/08/2021	HPW	preparation for depositions and arbitration	1.50	$360.00	$540.00
10/10/2021	HPW	preparation for arbitration and deposition	2.00	$360.00	$720.00
10/11/2021	HPW	prep for and attend scdot deposition	4.50	$360.00	$1,620.00
10/12/2021	HPW	preparation for arbitration	0.75	$360.00	$270.00
10/14/2021	HPW	preparation for arbitration	1.25	$360.00	$450.00
10/15/2021	HPW	preparation for arbitration	0.75	$360.00	$270.00

504

10/18/2021	HPW	extended calls with client concerning case evaluation and status; preparation for arbitration	1.75	$360.00	$630.00
10/19/2021	HPW	extended call client concerning settlement	0.75	$360.00	$270.00
10/21/2021	HPW	preparation of settlement docs and review of prior orders and attorney's fee issues	1.25	$360.00	$450.00
10/22/2021	HPW	preparation of and final award and settlement agreement	3.50	$360.00	$1,260.00
10/22/2021	HPW	conference with client concerning status of settlement	0.50	$360.00	$180.00
10/25/2021	HPW	attn to preparation and revision to settlement docs; extended conference with client	1.75	$360.00	$630.00
10/26/2021	HPW	preparation and negotiation of final settlement docs	3.25	$360.00	$1,170.00
10/27/2021	HPW	review of lien release information and communication with client	1.25	$360.00	$450.00
10/28/2021	HPW	attn to settlement loose ends	0.75	$360.00	$270.00
10/28/2021	HPW	review subcontract claims and advise client	0.50	$360.00	$180.00
10/29/2021	HPW	attn to settlement issues and inquiries from client	1.25	$360.00	$450.00

Timekeeper	Hours	Rate	Total
Henry Wall	43.5	$360.00	$15,660.00
Bridget Steele	0.1	$80.00	$8.00
		Subtotal	**$15,668.00**
		Total	**$15,668.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
14259	11/05/2021	$15,668.00	$0.00	$15,668.00
			Outstanding Balance	**$15,668.00**
			Total Amount Outstanding	**$15,668.00**

Kindly remit payment to:
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260

Payment is due upon receipt.

505

FILE COPY

BRUNER POWELL

BRUNER POWELL WALL & MULLINS , LLC

Post Office Box 61110
Columbia, South Carolina 29260
Phone: (803) 252-7693
Federal I.D.: 57-0926758
brunerpowell.com

INVOICE

Invoice # 14614
Date: 12/08/2021
Due Upon Receipt

ESTATES & COMPANIES, LLC
2801 Devine Street; Suite 202
COLUMBIA, SC 29205

Statement of Account

Outstanding Balance		New Charges		Total Balance
$0.00	+	$5,771.18	=	$5,771.18

93093.100

Weco River District, LLC v. Carter and Carter, LLC

Hours

Date	Timekeeper	Notes	Hours	Rate	Total
11/01/2021	P25	Receipt and review invoice from Esquire Deposition Solutions for the transcript of Joseph Fredendall	0.10	$80.00	$8.00
11/01/2021	HPW	legal research and consultation concerning atty fee issue	1.50	$360.00	$540.00
11/01/2021	HPW	attn to loose ends and resolution of Declaratory judgment matter	1.00	$360.00	$360.00
11/01/2021	HPW	attn to final review and execution of settlement docs.	0.75	$360.00	$270.00
11/02/2021	P25	Prepare email to Client to send invoice from Esquire RE deposition of Joseph Fredendall.	0.10	$80.00	$8.00
11/02/2021	P25	Prepare email to Client to send invoice from Arbitrator.	0.10	$80.00	$8.00
11/02/2021	HPW	attn to settlement docs and final agreement; multiple communications with client and opposing counsel; communication with arbitrator	1.25	$360.00	$450.00
11/03/2021	HPW	attn to final settlement docs and settlement deliverables	0.75	$360.00	$270.00
11/04/2021	HPW	attn to proposed arbitration award	0.25	$360.00	$90.00
11/05/2021	HPW	attn to settlement status	0.25	$360.00	$90.00
11/09/2021	HPW	attn to settlement agreement and research concerning attorney fee liability, attn to resolution of DJ action	1.50	$360.00	$540.00
11/15/2021	HPW	attn to resolution of declaratory judgment claims and coordination of final	0.50	$360.00	$180.00

506

		arbitration award			
11/16/2021	HPW	attn to dj settlement	0.50	$360.00	$180.00
11/17/2021	HPW	preparation of final order of distribution (DJ action); review bundy lawsuit, cf with client concerning same	2.00	$360.00	$720.00
11/22/2021	HPW	conference with client concerning status; conference with opposing counsel; review and attn to Bundy Complaint	0.50	$360.00	$180.00
11/23/2021	HPW	attn to settlement and final motion to confirm arbitration award	1.00	$360.00	$360.00
11/24/2021	HPW	attn to settlement and consent order approving arbitration award	0.50	$360.00	$180.00
11/25/2021	HPW	preparation of detailed status report letter to client	1.50	$360.00	$540.00
11/29/2021	P25	Receipt and review electronic notice from State Court RE filed Joint Motion for Final Arbitration Award and exhibits	0.10	$80.00	$8.00
11/29/2021	HPW	review and revise status report letter to client	0.75	$360.00	$270.00
11/29/2021	HPW	prep of letter to counsel for all subs in DJ action seeking immediate consent to order of dismissal	0.50	$360.00	$180.00
11/29/2021	P25	Prepare multiple emails to counsel for all subs seeking consent for order of dismissal	0.50	$80.00	$40.00
11/30/2021	HPW	attn to settlement and dismissal of dj action	0.50	$360.00	$180.00
				Services Subtotal	**$5,652.00**

Expenses

Date	Notes	Quantity	Rate	Total
11/01/2021	Westlaw research for: November 2021	1.00	$60.11	$60.11
11/23/2021	Electronic filing fee to: Lexington County Clerk of Court for: Joint Motion to Confirm Final Arbitration Award; and Dissmissal of the Action	1.00	$57.36	$57.36
11/30/2021	Postage for: November 2021	1.00	$1.36	$1.36
11/30/2021	Printing/Copies: November 2021	1.00	$0.35	$0.35
		Expenses Subtotal		**$119.18**

Timekeeper	Hours	Rate	Total
Henry Wall	15.5	$360.00	$5,580.00
Bridget Steele	0.9	$80.00	$72.00
		Subtotal	**$5,771.18**
		Total	**$5,771.18**

507

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
14614	12/08/2021	$5,771.18	$0.00	$5,771.18
			Outstanding Balance	$5,771.18
			Total Amount Outstanding	$5,771.18

Kindly remit payment to:
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260

Payment is due upon receipt.

SOB

FILE COPY

BRUNER POWELL

BRUNER POWELL WALL & MULLINS, LLC

Post Office Box 61110
Columbia, South Carolina 29260
Phone: (803) 252-7693
Federal I.D.: 57-0926758
brunerpowell.com

INVOICE

Invoice # 14849
Date: 01/06/2022
Due Upon Receipt

ESTATES & COMPANIES, LLC
2801 Devine Street; Suite 202
COLUMBIA, SC 29205

Statement of Account

Outstanding Balance		New Charges		Total Balance
$0.00	+	$3,870.00	=	$3,870.00

93093.100

Weco River District, LLC v. Carter and Carter, LLC

Date	Timekeeper	Notes	Hours	Rate	Total
12/01/2021	HPW	attn to settlement issues	0.25	$360.00	$90.00
12/02/2021	HPW	conference with client concerning status	0.25	$360.00	$90.00
12/03/2021	HPW	conference with opposing counsel concerning settlement status	0.25	$360.00	$90.00
12/06/2021	HPW	attn to dj action settlement	0.75	$360.00	$270.00
12/08/2021	HPW	attn to dj settlement extended cf with client	0.50	$360.00	$180.00
12/09/2021	HPW	attn to settlement status of dj action	0.50	$360.00	$180.00
12/13/2021	HPW	attn to settlement of dj action- extended cf with client	1.00	$360.00	$360.00
12/14/2021	HPW	attn to settlement of dj action	0.75	$360.00	$270.00
12/15/2021	HPW	attn to settlement of DJ action	0.50	$360.00	$180.00
12/16/2021	HPW	conference with client and follow up concerning settlement of DJ action	0.25	$360.00	$90.00
12/17/2021	HPW	attn to settlement loose ends	0.50	$360.00	$180.00
12/20/2021	HPW	negotiations and attention to settlement and resolution of DJ action	0.50	$360.00	$180.00
12/21/2021	HPW	negotiations with subs for case dismissal	0.25	$360.00	$90.00
12/22/2021	HPW	negotiations with surety on contract closeout	0.75	$360.00	$270.00
12/27/2021	HPW	attn to project closeout; dismissal of DJ action and negotiations with subs, surety and carter	1.25	$360.00	$450.00

WECO_SUPP_000012

J09

12/28/2021	HPW	attn to resolution of dj action	1.25	$360.00	$450.00
12/29/2021	HPW	attn to negotiations with subs and surety for resolution of DJ matter	0.50	$360.00	$180.00
12/30/2021	HPW	extended conference with surety concerning consent to final payment and resolution of dj action	0.75	$360.00	$270.00

Timekeeper	Hours	Rate	Total
Henry Wall	10.75	$360.00	$3,870.00
		Subtotal	**$3,870.00**
		Total	**$3,870.00**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
14849	01/06/2022	$3,870.00	$0.00	$3,870.00
			Outstanding Balance	**$3,870.00**
			Total Amount Outstanding	**$3,870.00**

Kindly remit payment to:
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260

Payment is due upon receipt.

SJD

BRUNER POWELL

BRUNER POWELL WALL & MULLINS , LLC

Post Office Box 61110
Columbia, South Carolina 29260
Phone: (803) 252-7693
Federal I.D.: 57-0926758
brunerpowell.com

INVOICE

Invoice # 15085
Date: 02/04/2022
Due Upon Receipt

ESTATES & COMPANIES, LLC
2801 Devine Street; Suite 202
COLUMBIA, SC 29205

Statement of Account

Outstanding Balance		New Charges		Total Balance
$0.00	+	$6,608.57	=	$6,608.57

93093.100

Weco River District, LLC v. Carter and Carter, LLC

Hours

Date	Timekeeper	Notes	Hours	Rate	Total
01/03/2022	HPW	extend conference with client concerning settlement status, cf with pender concerning position of w construction; cf with boineau concerning case resolution	1.25	$360.00	$450.00
01/05/2022	HPW	attn to resolution of subcontractor objections to claims	0.50	$360.00	$180.00
01/05/2022	HPW	conference with client concerning case status and issues involving surety	0.75	$360.00	$270.00
01/07/2022	P25	Prepare email to Motion's Clerk to request a hearing on our Motion to Confirm Final Arbitration Award	0.10	$80.00	$8.00
01/07/2022	HPW	Conference with client concerning status, negotiations with counsel for surety and carter and carter; attention to calendaring motions hearing	1.25	$360.00	$450.00
01/10/2022	P25	Receipt and review electronic notice from Lexington County RE Motion hearing scheduled for February 3, 2022 at 2:30pm. Attention to calendar same	0.20	$80.00	$16.00
01/10/2022	HPW	prep for hearing on arbitration award; communications with client; prep of extended email to counsel for surety and Carter	0.75	$360.00	$270.00
01/11/2022	HPW	attn to settlement of DJ action	0.25	$360.00	$90.00
01/12/2022	HPW	attn to resolution of DJ matter; status conference with client	0.50	$360.00	$180.00
01/14/2022	P25	Attention to e-filing Notice of Appearance and Answer in McDonald v. Weco	0.30	$80.00	$24.00

WECO_SUPP_000014

511

01/14/2022	HPW	[redacted]	1.25	$360.00	$450.00
01/17/2022	P25	[redacted]	0.20	$80.00	$16.00
01/17/2022	HPW	attn to prep for motion hearing and approval of final settlement agreement; communications with client concerning status	0.75	$360.00	$270.00
01/18/2022	HPW	[redacted]	0.75	$360.00	$270.00
01/19/2022	HPW	review docs and discovery from Bundy; extended conference with client concerning status and strategy; follow up communications with Sheppard and counsel for surety	1.75	$360.00	$630.00
01/20/2022	HPW	[redacted]	0.25	$360.00	$90.00
01/21/2022	HPW	[redacted]	1.50	$360.00	$540.00
01/22/2022	HPW	[redacted]	1.50	$360.00	$540.00
01/24/2022	P21	Office conference with partner regarding research assignment on attorneys fees	0.60	$80.00	$48.00
01/24/2022	HPW	consult with counsel for surety; review legal research on attorney fee claims	0.75	$360.00	$270.00
01/25/2022	P25	Receipt and review electronic notice from State Court RE time change and the hearing has been changed to Virtual instead of in-person (due to covid numbers); attention to update calendar on time changed from 2:30pm to 3:00pm	0.20	$80.00	$16.00
01/25/2022	HPW	[redacted]	0.75	$360.00	$270.00
01/25/2022	HPW	[redacted]	0.50	$360.00	$180.00
01/26/2022	HPW	[redacted]	0.25	$360.00	$90.00
01/27/2022	HPW	[redacted]	0.50	$360.00	$180.00
01/28/2022	P21	Attn to email to partner regarding research findings on recovery of contingent fees	0.20	$80.00	$16.00
01/28/2022	P21	[redacted]	1.90	$80.00	$152.00
01/28/2022	HPW	[redacted]	0.75	$360.00	$270.00
01/31/2022	P25	Receipt and review electronic notice from State Court RE filed Fidelity & Deposit's Response and Limited Objection to Joint Motion and exhibit	0.10	$80.00	$8.00
01/31/2022	HPW	[redacted]	1.00	$360.00	$360.00

Services Subtotal **$6,604.00**

Expenses

Date	Notes	Quantity	Rate	Total

512

01/31/2022	Postage for: January 2022	1.00	$2.12	$2.12
01/31/2022	Printing/Copies: for January 2022	7.00	$0.35	$2.45
			Expenses Subtotal	$4.57

Timekeeper	Hours	Rate	Total
Henry Wall	17.5	$360.00	$6,300.00
Law Clerk1	2.7	$80.00	$216.00
Bridget Steele	1.1	$80.00	$88.00
		Subtotal	$6,608.57
		Total	$6,608.57

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
15085	02/04/2022	$6,608.57	$0.00	$6,608.57
			Outstanding Balance	$6,608.57
			Total Amount Outstanding	$6,608.57

Kindly remit payment to:
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260

Payment is due upon receipt.

513

BRUNER POWELL

BRUNER POWELL WALL & MULLINS , LLC

Post Office Box 61110
Columbia, South Carolina 29260
Phone: (803) 252-7693
Federal I.D.: 57-0926758
brunerpowell.com

INVOICE

Invoice # 15404
Date: 03/04/2022
Due Upon Receipt

ESTATES & COMPANIES, LLC
2801 Devine Street; Suite 202
COLUMBIA, SC 29205

Statement of Account

Outstanding Balance		New Charges		Total Balance
$0.00	+	$6,548.64	=	$6,548.64

93093.100

Weco River District, LLC v. Carter and Carter, LLC

Hours

Date	Timekeeper	Notes	Hours	Rate	Total
02/01/2022	HPW	[redacted]	2.75	$360.00	$990.00
02/01/2022	HPW	prep of detailed letter to Judge McLeod concerning merits of Bundy lien claim	2.00	$360.00	$720.00
02/02/2022	P21	Office conference with partner and saved documents in file for review	0.20	$80.00	$16.00
02/02/2022	HPW	prep for hearing and communications with client; counsel for surety and counsel for carter	1.75	$360.00	$630.00
02/03/2022	HPW	preparation for hearing before judge Mcleod	0.75	$360.00	$270.00
02/03/2022	HPW	attend hearing and argue motion, meet review and assess status with client	1.00	$360.00	$360.00
02/04/2022	HPW	reveiw and revise order of distribution	1.00	$360.00	$360.00
02/04/2022	HPW	review indemnity agreement, advise client on same	0.50	$360.00	$180.00
02/07/2022	HPW	attn to final resolution of dj matter	0.50	$360.00	$180.00
02/07/2022	HPW	[redacted]	0.10	$80.00	$8.00
02/08/2022	P25	Receipt and review electronic notice from State Court RE filed Order Confirming Final Arbitration Award	1.00	$80.00	$80.00
02/08/2022	P25	[redacted]			

514

		Requests			
02/08/2022	HPW	[redacted]	0.75	$360.00	$270.00
02/10/2022	P25	Telephone call to Lexington's Clerk of Court to check status of the Arbitration Award. Per the Clerk's office, information has been sent to Accounting and as soon as the check is ready, they will call for us to pick it up.	0.10	$80.00	$8.00
02/10/2022	HPW	attn to completion of DJ action; review and revision of discovery; prep of motions and amended answer	1.50	$360.00	$540.00
02/11/2022	HPW	[redacted]	0.75	$360.00	$270.00
02/14/2022	P25	Attention to e-filing Amended Answer and Motion to Dismiss	0.30	$80.00	$24.00
02/14/2022	HPW	[redacted]	1.25	$360.00	$450.00
02/14/2022	HPW	attn to getting bond money released from clerk of court	0.50	$360.00	$180.00
02/15/2022	P25	Receipt and review electronic notice from State Court RE filed Amended Order Confirming Final Arbitration	0.10	$80.00	$8.00
02/15/2022	P25	Receipt and review electronic notice from State Court RE filed Motion to Dismiss and Amended Answer	0.10	$80.00	$8.00
02/15/2022	HPW	[redacted]	0.75	$360.00	$270.00
02/15/2022	HPW	attn to conclusion of dj action and obtaining check from clerk of court; revision to order	0.50	$360.00	$180.00
02/16/2022	HPW	attn to obtaining release of bond proceeds from court	0.75	$360.00	$270.00
02/22/2022	P25	Receipt and review electronic notice from State Court RE filed 2022.02.21 - Carter's Motion be Relieved as Counsel	0.10	$80.00	$8.00
02/25/2022	P25	Receipt and review electronic notice from State Court RE filed Order Confirming Arbitration	0.10	$80.00	$8.00

Services Subtotal **$6,468.00**

Expenses

Date	Notes	Quantity	Rate	Total
02/01/2022	Westlaw research for: January 2022	1.00	$22.94	$22.94
02/16/2022	Electronic filing fee to: Dorchester County Clerk of Court for Motion to Dismiss or in the Alternative to Change Venue	1.00	$31.74	$31.74
02/16/2022	Mileage (2022): reimbursement to runner for travel to/from Lexington County Register of Deeds/Estates & Company	35.00	$0.585	$20.48
02/28/2022	Postage for: February 2022	1.00	$0.93	$0.93
02/28/2022	Printing/Copies: February 2022	13.00	$0.35	$4.55

Expenses Subtotal **$80.64**

Timekeeper	Hours	Rate	Total

515

Henry Wall	17.5	$360.00	$6,300.00
Law Clerk1	0.2	$80.00	$16.00
Bridget Steele	1.9	$80.00	$152.00
		Subtotal	**$6,548.64**
		Total	**$6,548.64**

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
15404	03/04/2022	$6,548.64	$0.00	$6,548.64
			Outstanding Balance	**$6,548.64**
			Total Amount Outstanding	**$6,548.64**

Kindly remit payment to:
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260

Payment is due upon receipt.

516

10-950
GKS
5.11.21

NEXSEN PRUET

IRS # 570386425

Remit Address:
Post Office Box 2426
Columbia, SC 29202

Estates, Inc.
c/o Janet K. Safran
Post Office Box 11739
Columbia SC 29211

Matter No.	021146-00128
Invoice No.	535861067
Invoice Date	April 8, 2021
Attorney	L Lord

Re: Purchase and Development of West Columbia Site

For Professional Services Rendered Through March 31, 2021

Previous Balance	$18,914.76
Less Payments Received	$-5,879.00
Current Charges	$10,485.70 ✓
New Balance	$23,521.46

GL 3905-legal WECO (10950) 10,485 70

mam 5-13-21

ALL BILLS ARE DUE AND PAYABLE IN FULL UPON RECEIPT OF THIS INVOICE. A LATE PAYMENT CHARGE OF 1 ½% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE BILLING DATE.

Invoice Date: 04/08/2021 Invoice No. 535861067 Matter No. 021146-00128

FEES

Date	Timekeeper	Description	Hours	Amount
03/01/21	HWB	review award, brief submitted by Bundy, discussion with Teresat and matt, review additinona defective work, discuss motion to Elmore	2.00	600.00
03/01/21	JWD	Receive comments from Teresa Hodge regarding Armstrong contract; review and revise same; email to Teresa Hodge regarding same.	2.00	900.00
03/02/21	AL	Send requested documents to M. Mundy regarding SCDOT.	0.25	57.50
03/02/21	JWD	Revise draft Armstrong contract; emails regarding same.	1.00	450.00
03/02/21	SMR	Organization of materials related to arbitration with Carter	0.50	120.00
03/03/21	HWB	call mr Roquemore, prepare letter to Bundy, letter to ELmore, call to Trippett, discussion with teresa et al, discuss options related to money in court, rview pleadings, outline orders	2.25	675.00
03/04/21	JCB	Prepare amendment to Lease Agreement with Gentlemen's Quarters barbershop.	0.75	255 00
03/04/21	SMR	Review bond totals with Mr. Brown; produced filed lien bonds to Mr. Sheppard, counsel for Carter	0.50	120.00
03/05/21	HWB	call with Mundy group call with Sheppard, call with Trippet, review award, prepare agreement and order, correct and forward, correspondence re chanages and agreement effect	3.25	975.00
03/05/21	SMR	Work on proposed letter agreement and proposed consent order for disbursement of funds relating to dispute with Carter; forward same to Ms. Hodge, Messrs Mundy	2.75	660.00
03/08/21	SMR	Revise and finalize letter to Mr. Shepherd and Mr. Boineau forwarding proposed consent order for release of funds; revisions to proposed consent order; mail same;	1.75	420.00
03/09/21	SMR	Discussion with Mr. Brown regarding documents needed for release of cash from Lexington County	2.25	540.00

Date	Timekeeper	Description	Hours	Amount
		ROD; emails with Ms. Collins of ROD office regarding same; work on proposed letter to counsel for Carter regarding payments to carter and release of funds from ROD; emails same to client for review and comment; work on proposed agreement for disbursement		
03/11/21	SMR	Review and revise proposed letter to Frank Elmore regarding outstanding arbitration issues; forward same to client for review and approval; work on agreement to disburse funds and consent order regarding same	1.00	240.00
03/12/21	JWD	Revise draft contract for SCDOT work with Armstrong; correspondence to client regarding same.	1.00	450.00
03/12/21	SMR	Finalize letter to Frank Elmore outlining remaining issues relating to arbitration; email same	0.50	120.00
03/15/21	JWD	Review status and motions regarding Carter/WeCO dispute and SCDOT work.	2.75	1,237.50
03/15/21	SMR	Organization of project documents, materials related to arbitration and pending litigation; update correspondence	3.00	720.00
03/16/21	SMR	Work on letter to Mr. Sheppard forwarding proposed agreement for disbursement; revisions to proposed agreement finalize and email same;	2.00	480.00
03/17/21	SMR	Work on proposed agreement for disbursement of funds; forward to Ms. Hodge for execution; forward proposed consent for surety to Mr. Bundy for review and comment; finalize proposed consent order for disbursement; forward same to Judge Mcleod's clerk for review and approval by Judge McLeod	2.00	480.00
03/18/21	SMR	Forward executed agreement for disbursement of funds to counsel for Carter	0.25	60.00
03/22/21	SMR	Email to judge's clerk regarding status of consent order to disburse funds; download same; forward to client; emails with register of deeds regarding issuance of checks based on Order;	0.50	120.00
03/23/21	SMR	Emails with Ms. Collins regarding executed consent order to disburse funds; record consent order with ROD office;	0.50	120.00
03/26/21	SMR	Organization of documents relating release of cash	0.50	120.00

519

Date	Timekeeper	Description	Hours	Amount
		bond funds		
03/29/21	SMR	Telephone calls with Ms. Hodge and Lexington County ROD regarding disbursement of cash bond forms; telephone call to counsel for Carter & Carter regarding disbursement of funds; emails with Mr. Elmore's office regarding conference call to discuss pending arbitration matters; assemble materials for review by Mr. Davidson in preparation for call	1.25	300.00
03/31/21	SMR	Organization of documents relating to SC DOT issue with Carter in preparation for conference call with Mr. Elmore	1.00	240.00
Total Fees:				$10,460.00

EXPENSES

Date	Description	Amount
03/15/21	Color Copies	1.40
03/15/21	Copies	4.90
03/27/21	VENDOR: SIMPLIFILE LC; INVOICE#: SCT4EH-03272021; DATE: 3/27/2021 Filed consent order to diburse funds (Weco v Carter)	14.50
03/29/21	Copies	4.90
Total Expenses:		$25.70

TIME SUMMARY RECAP

Timekeeper	Title	Hours	Rate	Amount
J Davidson	Partner	6.75	$450.00	$3,037.50
J Bruton	Partner	0.75	$340.00	$255.00
S Rabon	Paralegal	20.25	$240.00	$4,860.00
A Lacke	Paralegal	0.25	$230.00	$57.50
H Brown	Senior Counsel	7.50	$300.00	$2,250.00
Total:		35.50		$10,460.00

520

10-950
GL 3905

NEXSEN PRUET

JKS 5-11-21

IRS # 570386425

Remit Address:
Post Office Box 2426
Columbia, SC 29202

Estates, Inc.
jsafran@estatesinc.com
c/o Janet K. Safran
P. Bo Box 11739
Columbia SC 29211

Matter No.	021146-00128
Invoice No.	535866167
Invoice Date	May 7, 2021
Attorney	L Lord

Re: Purchase and Development of West Columbia Site

For Professional Services Rendered Through April 30, 2021

7956.40

WECO (10950) GL 3905 - Legal

Previous Balance	$23,521.46
Current Charges	$7,956.40
New Balance	**$31,477.86**

Pay

Jan inv ✓4680.35 — combine
Feb inv ✓8355.41 - (1,125.00)
Mar inv ✓10,485.70
Apr inv ✓7956.40
31,477.86 — see attached for allocation of invoices

5/13/21

Mail 5-13-21

ALL BILLS ARE DUE AND PAYABLE IN FULL UPON RECEIPT OF THIS INVOICE. A LATE PAYMENT CHARGE OF 1 ½% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE BILLING DATE.

Invoice Date: 05/07/2021 Invoice No. 533866167 Matter No. 021146-00128

FEES

Date	Timekeeper	Description	Hours	Amount
04/01/21	JWD	Review WECO arbitration orders and potential SCDOT work claim information.	1.50	675.00
04/02/21	JWD	Prepare for and attend telephone discussion with arbitrator regarding SCDOT and defective construction matters.	2.00	900.00
04/05/21	JCB	Prepare Lease Agreement for Pilates Studio.	1.00	340.00
04/05/21	JWD	Outline proposed arbitration order.	1.00	450.00
04/06/21	JWD	Review and revise draft proposed order.	0.75	337.50
04/06/21	SMR	Receipt and review Carter's motion to vacate arbitration award; create index to exhibits in same; forward motion to Mr. Bundy, Mrs. Hodge and Messrs Mundy	0.50	120.00
04/07/21	JWD	Finish revisions to draft WECO/Carter proposed order.	1.50	675.00
04/07/21	SMR	Work on proposed order for Frank Elmore relating to remaining arbitration issues; forward same to client for review and comment; prepare letter forwarding same to Mr. Elmore for execution; finalize and email same	1.75	420.00
04/08/21	SMR	Emails to coordinate site inspection	0.25	60.00
04/12/21	HWH	review lien waivers, call to Frank Smith, note to Teresa et al, review claims and order sought	0.50	150.00
04/21/21	SMR	Schedule meeting to discuss SCDOT issues	0.25	60.00
04/22/21	JWD	Meet with Estates regarding Carter matters and review of current claims documents; review same.	2.50	1,125.00
04/22/21	SMR	Assist with meeting regarding outstanding DOT issues	0.50	120.00
04/23/21	JWD	Review additional information from Matt Mundy regarding Carter; review same.	1.50	675.00
04/25/21	JCB	Review requests and client's comments on draft Lease Agreement with Sunnyside Pilates LLC.	0.50	170.00

522

Date	Timekeeper	Description	Hours	Amount
04/28/21	SMR	Receipt and review photos produced by Carter after site inspection	0.50	120.00
04/28/21	SMR	Discussion with Mr. Brown regarding materials needed for upcoming meeting with Messrs Mundy and Ms. Hodge; reserve conference room for same; begin assembling materials; reviw award and offers of judgment numbers and create chart showing prevailing party for fees under different scenarios	1.75	420.00
04/29/21	SMR	Review action pending in Lexington County for summary judgment motions; discussion with Mr. Brown regarding same; download copy of same	0.50	120.00
04/30/21	JWD	Meeting with Estates regarding revised claim notebook for SCDOT and defective construction issues; brief review of same.	1.75	787.50
04/30/21	SMR	Download awning pictures from client; emails with Ms. Hodge regarding copying of SC DOT issue binder	0.75	180.00
Total Fees:				**$7,905.00**

EXPENSES

Date	Description	Amount
04/05/21	Copies	4.30
04/06/21	Copies	7.40
04/06/21	Copies	6.40
04/06/21	Copies	3.90
04/06/21	Color Copies	2.10
04/07/21	VENDOR: PACER SERVICE CENTER; INVOICE#: 5389984-Q12021 DATE: 4/7/2021	0.50
04/22/21	Color Copies	0.70
04/22/21	Color Copies	14.70
04/29/21	Copies	11.40
Total Expenses:		**$51.40**

TIME SUMMARY RECAP

Timekeeper	Title	Hours	Rate	Amount
J Davidson	Partner	12.50	450.00	5,625.00
J Bruton	Partner	1.50	340.00	510.00
S Rabon	Paralegal	6.75	240.00	1,620.00
H Brown	Senior Counsel	0.50	300.00	150.00
Total:		**21.25**		**$7,905.00**

7905

7956.40

523

10-950
GL 3905

NEXSEN|PRUET

IRS # 570386425

Remit Address:
Post Office Box 2426
Columbia, SC 29202

Estates, Inc.
jsafran@estatesinc.com
c/o Janet K. Safran
P.O. Box 11739
Columbia SC 29211

Matter No.	021146-00128
Invoice No.	535870600
Invoice Date	June 7, 2021
Attorney	L Lord

Re: Purchase and Development of West Columbia Site

For Professional Services Rendered Through May 31, 2021

Previous Balance	$31,477.86
Less Payments Received	$-31,477.86
Current Charges	$21,938.56
Courtesy Discount	-$2,070.00
New Balance	$19,868.56

-1126

GR

mam 6/10/21

EO's 5,212.50 JD/HB duplicate costs

- JD rate increased from $400 to $450 ?

KS 7.15.21

ALL BILLS ARE DUE AND PAYABLE IN FULL UPON RECEIPT OF THIS INVOICE. A LATE PAYMENT CHARGE OF 1 ½% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE BILLING DATE.

☐ CHECK HERE IF MOBILE DEPOSIT

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
* RESERVED FOR FINANCIAL INSTITUTION USE *

This security feature [illegible] as well as those not listed, is [illegible] guidelines.

Security Features

Results of document alteration

- Acts harder to document security items
- Skin or spot appear with chemical reaction
- Chemical stain or erasure [illegible]
- Absence of "Void" message on back of check

- Special ink [illegible] and look signature look, normally with a [illegible] look appears as dark or stained

Artificial Watermark

- Artificial watermark not visible on back of check when held at 45° angle

Colored Fibers

- Visible only [illegible] Cannot be photocopied or scanned

Security Paragraph

- The [illegible] contains a secret [illegible]

Void Feature

- The [illegible] will [illegible] and [illegible] or

FEDERAL RESERVE BOARD OF GOVERNORS REG. CC

525

Invoice Date: 06/07/2021 Invoice No. 535870600 Matter No. 021146-00128

FEES

Date	Timekeeper	Description	Hours	Amount
03/08/21	HWB	review records and amend agreement, calls with Teresa etal re changes, amend, discuss through multiple changes, call with Mr Mundy re status, forward agreement and order to Mr Boineau and Sheppard	2.50	750.00
03/15/21	HWB	review messages, Bundy letters, outline process, calls with Ms Hodge, Munddy and Mundy, review and amend agreement and order, LT Elmore, review award, review arbitration law for position on completion, review bond , review Sheppard amendments, call with Bundy, and WECO, calls with Bundy re process and additional claims, forward for review, callls with Boineau	5.50	1,650.00
03/19/21	HWB	meet with Mr Mundy and Mr Mundy to discuss future handling of case and preparation for issues	1.00	300.00
04/06/21	HWB	call among WECO reps, review status, review motion to vacate, discuss motion, review state and federal statute re grounds to vacate, call to Mr Sheppard re motions and agreement,call with mr Elmore and Sheppard re continued hearing on issues, outline ruling, draft ruleing, foeward for review, amend and finalize, RR Sheppard resonse re denial, call among WECO reps, Calls to Trippett, call to Frank Smith, reivew messages to court re sub settlement, discuss reviiew of property by Carter, preparation of claim and documentation	5.75	1,725.00
04/08/21	HWB	calls to review and set up inspection, call to Ms Hodge, call with Mr Mundy, call to Mr Smith, review sub settlements	1.25	375.00
04/15/21	HWB	discussions with Tereesa et al re Award allowing next claims, disucss preparation, review Barnes preparations, review order for Lexington dismissal, forward Elmore award, review possible exhibits, calls with Mundy et al, general preparations	4.00	1,200.00
04/19/21	HWB	call to Sheppard, discuss preparations, call to Teresa et al, outline choices, assess Lexington case, response, review Bundy call discuss fee issues	2.00	600.00
04/20/21	HWB	note from Sheppard re process, forward to Teresa	0.75	225.00

526

Date	Initials	Description	Hours	Amount
		with comments, call with T etal		
04/21/21	HWB	calls re claim preparatoin, meeting with MUndy etal, organizae records, call to Mr Sheppard and Boineau	1.50	450.00
04/29/21	HWB	call with Mr Boineau, review Lexington actoin, review materials for meeting, meet with Hodge and Barnes, review note to Sheppard, outline hearing	2.25	675.00
04/30/21	HWB	review claim book from Teresa,call to Mr Mundy, review call, review Lexington action,	1.00	300.00
05/03/21	HWB	calls, det up claim, discuss motionn note to Mr Muedy re decission on motion note re jay rogers, discuss prticipation and response	2.00	600.00
05/03/21	SMR	Arrange for copying of SC DOT claim binder for submission to Mr. Elmore; discussion with Mr. Brown regarding same; calendar claim submission due date	0.75	180.00
05/04/21	HWB	discussion of leaks and documnetation with Mr Barnes, with Ms Hodge, review records, communications with Mr Sheppard and Boineau, response re motion, call with Mr Mundy and Ms Hodge re dismissal of motion, initial review of claim documents	2.75	825.00
05/04/21	JWD	Review building 4 architect's agreement; draft comments for review by Teresa Hodge.	2.50	1,125.00
05/04/21	SMR	Update and organize file documents; receipt and review photographs taken during rain event; forward same to counsel for Carter & Carter	1.00	240.00
05/05/21	HWB	review and study claiim book, amend, note changess, call to Teresa and Ryan, set up index, study for understanding, and finalize	4.25	1,275.00
05/05/21	SMR	Emails with Ms. Hodge regarding SCDOT claim binder	0.25	60.00
05/06/21	HWB	review records and initial draft of claims book, meet with Ms Hodge, Smith and Mundy and mundy to clean up claims book and correct omissions, revirew book at conclusion with Ms Smith, outline letters	2.25	675.00 (1)
05/06/21	JWD	Review WECO claim book draft; meeting regarding same.	2.25	1,012.50 (1)

527

Date	Timekeeper	Description	Hours	Amount
05/06/21	SMR	Download updates to claim notebook; begin review and organization of binder in preparation for submittal to arbitrator, Frank Elmore	2.75	660.00
05/07/21	SMR	Telephone calls with Ms. Hodge and Mr. Barnes regarding claim notebook to be submitted to arbitrator; review and update same	1.50	360.00
05/12/21	HWB	Lt Mr Elmore sending claims manual, discuss with Ms Hodge, contents, review records with Ms Smith to conclude damages manual, note from Mr Boineau, review current damages outline for inclusion review documents listed and catagories	2.00	600.00
05/13/21	HWB	review assembled claims book, discuss with Laura for changes, amend and deliver letter to Elmore, discuss, review suggested adds from Ms Hodge, review letter for amendmentss, meet with MS Hodge during review and correction of claims manual	2.50	750.00
05/13/21	JWD	Review and propose revisions to WECO claim cover letter to Frank Elmore.	1.00	450.00
05/14/21	HWB	revise letter to Elmore, review and amend, forward to Ms Hodge, revew new categories for damagess, reivew pay applications, review claim book in final form, review service with Ms Smith	2.50	750.00
05/14/21	JWD	Final review of WECO claim submittal.	1.50	675.00
05/20/21	JWD	Continue review of WECO claim documents.	2.25	1,012.50
05/25/21	HWB	follow up submission,, review Lexington case status, set deadlines	1.00	300.00
05/28/21	HWB	calls to Ms Hodge re status, note from Mr Boineau, letter from Mr ELmore, letter re awning completion, final payment,response re amendment of claim	0.75	225.00
05/28/21	JWD	Review awning information; emails regarding same.	1.50	675.00
Total Fees:				**$20,700.00**

EXPENSES

Date	Description	Amount
05/03/21	Copies	23.70
05/03/21	Color Copies	71.75
05/03/21	Copies	6.50
05/03/21	Color Copies	12.25
05/04/21	Color Copies	0.35

528

Date	Description	Amount
05/06/21	Color Copies	0.35
05/07/21	Copies	0.20
05/10/21	Copies	11.80
05/10/21	Copies	29.20
05/10/21	Color Copies	113.40
05/11/21	Copies	29.20
05/11/21	Color Copies	83.30
05/12/21	Copies	0.10
05/12/21	Color Copies	2.80
05/12/21	Color Copies	1.40
05/12/21	Copies	0.50
05/12/21	Color Copies	18.20
05/12/21	Copies	0.40
05/12/21	Color Copies	21.70
05/12/21	Color Copies	0.35
05/13/21	Copies	1.20
05/13/21	Copies	0.40
05/13/21	Copies	0.10
05/13/21	Copies	1.20
05/13/21	Color Copies	2.80
05/13/21	Color Copies	4.20
05/13/21	Copies	0.80
05/13/21	Copies	0.20
05/13/21	Copies	31.60
05/13/21	Color Copies	141.40
05/13/21	Copies	16.70
05/13/21	Color Copies	103.60
05/13/21	Copies	5.40
05/13/21	Color Copies	40.60
05/14/21	Copies	0.10
05/14/21	Color Copies	4.20
05/14/21	Copies	32.00
05/14/21	Color Copies	121.80
05/14/21	Copies	5.00
05/14/21	Color Copies	59.50
05/14/21	Copies	19.00
05/14/21	Color Copies	63.70
05/14/21	Copies	0.60
05/14/21	VENDOR: FEDERAL EXPRESS INVOICE#: 7-378-67440 DATE: 5/21/2021 Ship Dt: 20210514; To: WILLIAMSHEPPARD; From: HENRY BROWN; Client/Matter: 021146/00128	85.58
05/14/21	VENDOR: FEDERAL EXPRESS INVOICE#: 7-378-67440 DATE: 5/21/2021 Ship Dt: 20210514; To: FRANK ELMORE; From: HENRY BROWN; Client/Matter: 021146/00128	69.43
Total Expenses:		**$1,238.56**

TIME SUMMARY RECAP

Timekeeper	Title	Hours	Rate	Amount
J Davidson	Partner	11.00	450.00	4,950.00

529

10-930
GL
3905

NEXSEN|PRUET

IRS # 570386425

Remit Address:
Post Office Box 2426
Columbia, SC 29202

Estates, Inc.
jsafran@estatesinc.com
c/o Janet K. Safran
P.O. Box 11739
Columbia SC 29211

Matter No.	021146-00128
Invoice No.	535876538
Invoice Date	July 13, 2021
Attorney	L Lord

Re: Purchase and Development of West Columbia Site

For Professional Services Rendered Through June 30, 2021

Previous Balance	$19,868.56 ✓
Current Charges	✓ $17,250.20
New Balance	$37,118.76

TOTAL DUE

ΣO's 7912.50 JD/HB duplicate costs
SCTHC p2 to code $2,925.00 to 5000 FOREST
SCTHC p3 to code $675 to CONVERSTONE & MCKELVEY
GL 3905 (10550) 5000 Forest 2,925.00
675.00
Mam GL 1243 (10860) Conversta 13,650.20
8/10/21 (10950) WECO
GL 3905 9K5 17,250.20

ALL BILLS ARE DUE AND PAYABLE IN FULL UPON RECEIPT OF THIS INVOICE. A LATE PAYMENT CHARGE OF 1 ½% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE BILLING DATE.

530

☐ CHECK HERE IF MOBILE DEPOSIT

DO NOT WRITE, STAMP OR SIGN BELOW THIS LIN
* RESERVED FOR FINANCIAL INSTITUTION USE *

The security features listed below, as well as those not listed, exceed industry guidelines.

Security Features:	Results of document alteration
Padlock	• Alerts teller to correct before using check
Chemical Protection	• Stains or spots appear with chemical alteration
Chemical Erasure Protection	• Altered parts appear lighter than originally placed or erased
Security Screen	• Absence of "Original Document" verbiage on back of check
Microprint	• Small type in check border and bank signature lines reveals text if magnifying lens, copiers or scanners
Artificial Watermark	• Artificial watermark not visible on back of check when held at a 45° angle
Prerelease Paper	• Alerts teller to altered type, chemical or erasure
Original Paper	• The back of the check contains a colored check background
Void Pantograph	• The back of check will say "void" when tested with a c

FEDERAL RESERVE BOARD OF GOVERNORS REG. CC

531

Date	Timekeeper	Description	Hours	Amount
06/15/21	HWB	review claim manual, set up and prepare for call with Elmore, call and adjourn until 16	1.50	450.00 (1)
06/15/21	JWD	Call with Henry Brown regarding arbitration; call with parties and arbitrator.	1.00	450.00 (1)
06/16/21	HWB	lengtly call with Elmore and Carter counsel to determine sub joinder and hearing on claims re DOT,, Awning and slip deck, adjourn call to the 17th, discuss call and possible agreements with Mr Mundy and MS Hodge, discuss possible agreemens with Mr Davidson	2.50	750.00
06/17/21	HWB	call among counsel and Mr Elmore to finalize agreement for remaining issues and and sub joinder, discuss agreemen with Mr Mundy and Ms Hodge, discuss preparations with Mr Davidson	1.50	450.00 (1)
06/17/21	JWD	Attend follow up call with arbitrator to set schedule for claims; follow up calls and discussion with Henry Brown regarding same and response and document request.	2.25	1,012.50 (1)
06/18/21	JWD	Attend meeting with client and SCDOT representatives following inspection of road repair work; discussion of work done and reasons for repairs; review materials from SCDOT meeting.	3.00	1,350.00
06/25/21	JWD	Review disbursement agreement; call to Trippet Boineau regarding sub payments; call with Teresa Hodge regarding document request from Sheppard; review document request.	1.25	562.50
06/25/21	JWD	Work on arbitration issues and review of claim book.	3.50	1,575.00 (1)
06/28/21	JWD	Prepare document request to SCDOT regarding road work and repair; calls to Trippet Boineau regarding sub payment status.	1.25	562.50
06/28/21	SMR	Emails with Ms. Hodge regarding assembling of claim documentation; arrange for reproduction of claims manual	0.25	60.00
06/30/21	JWD	Calls and emails to Trippet Boineau regarding Carter payments to subs; call with Teresa Hodge regarding same; discussion of document requests.	1.00	450.00
06/30/21	JWD	Work on building 4 contract draft.	1.50	675.00
Total Fees:				$17,077.50

add to compile emails.

532

Invoice Date: 07/13/2021 Invoice No. 535876538 Matter No. 021146-00128

FEES

Date	Timekeeper	Description	Hours	Amount
06/01/21	HWB	discussion with Mr Boineau re sub joinder and resonse by Carter , nore to Mundy et al re Boineau position, review responses outline response	2.00	600.00
06/01/21	JWD	Mediation of Axiom lawsuit; prepare for same and call with Henry Brown; follow up with Steve Pharr regarding deposition notices.	6.50	2,925.00
06/02/21	HWB	Carter communications among estates, LT Mr Boineau re agreement proposed, rejection of joinder Lt Mr ELmore re conclusion of case, discussion of response, RR letter from Mr Sheppard, confernce call to discuss response to Sheppard letter	2.75	825.00
06/02/21	JWD	Various emails regarding addition of Carter subs to arbitration; call with Henry Brown regarding same.	1.25	562.50
06/02/21	JWD	Review claim book and issues regarding same.	4.75	2,137.50
06/02/21	SMR	Download subcontract agreements produced by counsel for Carter	0.50	120.00
06/03/21	HWB	assess Sheppard letter, discuss response, review claims and time limits	1.00	300.00
06/04/21	HWB	messages to and from Ms Hodge, determine response To Carter and Elmore	1.00	300.00
06/04/21	SMR	Review and organize subcontractor agreements produced by Carter for review by Mr. Brown	0.75	180.00
06/07/21	HWB	note from Mr Mundy re process, response re Sheppard, assess response to Elmore	0.50	150.00
06/08/21	HWB	call with Ms Hodge, review prior letters, lt Mr Elmore re call and pushing arbitration	0.75	225.00
06/08/21	JWD	Call with Henry Brown regarding communication with arbitrator and proposal for schedule of arbitration.	0.50	225.00
06/09/21	SMR	Assemble claim documents for review by Mr. Brown; emails to Mr. Elmore regarding availability for administrative conference call to discussion arbitration issues	0.75	180.00

533

EXPENSES

Date	Description	Amount
06/24/21	Copies	2.50
06/28/21	Copies	16.00
06/28/21	Color Copies	106.75
06/28/21	Copies	12.00
06/28/21	Color Copies	35.35
06/29/21	Copies	0.10
Total Expenses:		$172.70

TIME SUMMARY RECAP

Timekeeper	Title	Hours	Rate	Amount
J Davidson	Partner	27.75	450.00	12,487.50
S Rabon	Paralegal	2.25	240.00	540.00
H Brown	Senior Counsel	13.50	300.00	4,050.00
Total:		**43.50**		**$17,077.50**

-645
-2928
13,427

534

NEXSEN|PRUET

9/23/21

IRS # 570386425

Remit Address:
Post Office Box 2426
Columbia, SC 29202

Estates, Inc.
jsafran@estatesinc.com
c/o Janet K. Safran
P.O. Box 11739
Columbia SC 29211

Matter No.	021146-00128
Invoice No.	535886245
Invoice Date	September 16, 2021
Attorney	L Lord

Re: Purchase and Development of West Columbia Site

10950
WECO

For Professional Services Rendered Through August 31, 2021

Previous Balance	$7423.75
Current Charges	$640.00
New Balance	$8,063.75

GL 3905- Legal Due 640.00

Cindy Bradshaw
2:00 on 9/27/21

9/27/2021

ALL BILLS ARE DUE AND PAYABLE IN FULL UPON RECEIPT OF THIS INVOICE. A LATE PAYMENT CHARGE OF 1 ½% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE BILLING DATE.

FEES

Date	Timekeeper	Description	Hours	Amount
07/19/21	SMR	Review file for proposed dismissal orders for all lien claimants; forward same to Mr. Davidson; compare dismissals to list of lien claimants	1.00	240.00
07/20/21	SMR	Assemble materials for use by Mr. Davidson at upcoming meeting with Ms. Hodge, Mr. Bob Mundy and Mr. Matt Mundy; download all filed orders regarding disbursement of funds to subcontractors	0.75	180.00
08/05/21	SMR	Emails with Mr. Wall regarding action pending in Lexington County with Carter; forward caption for same	0.25	60.00
08/09/21	SMR	Pull final executed contracts for review by Mr. Davidson	0.25	60.00
08/24/21	JWD	Call with Hank Wall regarding document requests; locate and forward same to Hank Wall.	0.25	100.00
Total Fees:				**$640.00**

TIME SUMMARY RECAP

Timekeeper	Title	Hours	Rate	Amount
J Davidson	Partner	0.25	400.00	100.00
S Rabon	Paralegal	2.25	240.00	540.00
Total:		**2.50**		**$640.00**

536

A/P Vendor Activity

Activity between January 1, 2010 and June 14, 2023

Date	CD	PO/Contract	Invoice	Due Date	Disc. Due	Voucher	Check	Description	Discount	Amount	Property
12/11/2020	PY		0003035674-202			79790	0000010521	REAL PROPERTY TAXES		1,831.35	10850
12/31/2020	PY		0003035674-202			79790	0000010521	REAL PROPERTY TAXES		(1,831.35)	10850
								Total Payments for Vendor buncom	0.00	76,102.30	
(bundy)	*Bundy McDonald, LLC*										
05/23/2019	PY		10520			70735	0000010486	√LEGAL		105.00	10950
05/23/2019	PY		10546			70736	0000010486	√LEGAL		4,420.00	10950
05/23/2019	PY		10568			70737	0000010486	√LEGAL	$22,545	10,380.00	10950
05/23/2019	PY		10590			70746	0000010486	√ LEGAL		4,695.00	10950
05/23/2019	PY		10612			70745	0000010486	√LEGAL		2,945.00	10950
06/03/2019	PY		10636			70860	0000010498	√LEGAL		9,290.00	10950
07/02/2019	PY		10661			71373	0000010396	√LEGAL		1,835.00	10950
09/30/2019	PY		10686			73063	0000010748	√LEGAL		525.00	10950
09/30/2019	PY		10702			73064	0000010748	√LEGAL	$1835	1,310.00	10950
11/20/2019	PY		10720			73963	0000010890	√LEGAL		2,195.00	10950
11/20/2019	PY		10738			73962	0000010890	√LEGAL	$4,315	2,120.00	10950
11/21/2019	PY		10759			73999	0000010905	√LEGAL		7,425.00	10950
01/22/2020	PY		10818			74853	0000011036	√LEGAL		8,646.17	10950
02/11/2020	PY		10833			75188	0000011078	√LEGAL		20,212.38	10950
03/30/2020	PY		10846			75900	0000011199	√ LEGAL		11,471.97	10950
06/11/2020	PY		10850			77101	0000020068	√ LEGAL		7,738.75	10950
06/11/2020	PY		10853			77102	0000020068	√ LEGAL	$20,853.75	3,830.00	10950
06/11/2020	PY		10860			77103	0000020068	√LEGAL		9,285.00	10950
08/14/2020	PY		10895			78054	0000020214	√LEGAL		1,944.85	10950
05/24/2022	PY		5/24/22			86036	0000021375	LEGAL FEES		150,000.00	10950

Total: 260,374.12

EXHIBIT 23

825

05/23/2019

CHECK NO: 0000010486 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10520	05/23/2019	LEGAL	$105.00
10950	1243	10546	05/23/2019	LEGAL	$4,420.00
10950	1243	10568	05/23/2019	LEGAL	$10,380.00
10950	1243	10590	05/23/2019	LEGAL	$4,695.00
10950	1243	10612	05/23/2019	LEGAL	$2,945.00
					$22,545.00

05/23/2019

CHECK NO: 0000010486 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10520	05/23/2019	LEGAL	$105.00
10950	1243	10546	05/23/2019	LEGAL	$4,420.00
10950	1243	10568	05/23/2019	LEGAL	$10,380.00
10950	1243	10590	05/23/2019	LEGAL	$4,695.00
10950	1243	10612	05/23/2019	LEGAL	$2,945.00
					$22,545.00

WECO RIVER DISTRICT, LLC dba BROOKLAND
OPERATING ACCOUNT (803)779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

CAPITAL BANK

NO: 0000010486

DATE	VOID AFTER 120 DAYS
05/23/2019	********** $22,545.00

TWENTY-TWO THOUSAND FIVE HUNDRED FORTY-FIVE AND XX / 100 DOLLARS

PAY TO THE ORDER OF
Bundy McDonald, LLC
PO Box 50427
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

Security features included. Details on back.

[redacted]

NEW VENDOR

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared ~~for Weco River District~~

Re: Brookland

Previous Balance	~~$4,525.00~~
Current Charges	$10,380.00
New Balance	$14,905.00
Adjustments	$0.00
Payments	$0.00
Now Due	$14,905.00
Trust Account	$0.00

PD
C/L. LEGAL 1243 PVC
AMOUNT. 14.905.00/

NOTE
TO BE APPLIED AGAINST
$100.000 CAPPING ~~FEE~~
OUT OF POCKET.

5/14
NOT

MAM
5/22/19

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	$0.00
Current Charges	$105.00
New Balance	$105.00
Adjustments	$0.00
Payments	$0.00
Now Due	$105.00
Trust Account	$0.00

mam 5/22/19

GL 1243 - legal

See approval on inv #10568 /mam

540

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: December 28, 2018
Invoice Number: 10520
Invoice Amount: $105.00

Matter: Brookland

Attorney's Fees				
11/21/2018	Preliminary review of Carter & Carter info on SC Sec of state and SCLLR and C&C website	M.B.M.	.30	$105.00
SUBTOTAL:			0.30	$105.00

Costs		
SUBTOTAL:		$0.00

Matter Ledgers		
12/28/2018	Balance before last invoice	$0.00
12/28/2018	Invoice 10520	$105.00
SUBTOTAL:		$105.00

Trust Account		
12/28/2018	Previous Balance	$0.00
Available in Trust:		$0.00

TOTAL $105.00
PREVIOUS BALANCE DUE $0.00

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	$105.00
Current Charges	$4,420.00
New Balance	$4,525.00
Adjustments	$0.00
Payments	$0.00
Now Due	$4,525.00
Trust Account	$0.00

GL [redacted] 1293 - legal

mam 5/22/19

see approval on inv. #10568 /mam

542

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: January 17, 2019
Invoice Number: 10546
Invoice Amount: $4,420.00

Matter: Brookland

Attorney's Fees

12/5/2018	Read and review document binder number 1.	B.B.	1.50	$600.00
12/6/2018	Telephone Conference with Teresa re: Kor meeting and lien	M.B.M.	.20	$70.00
12/6/2018	Telephone conference with Theresa and MBM	B.B.	.20	$80.00
12/7/2018	Reviewed RCO #18; Telephone Conference with WHB re: his meeting with client today and RCO 18	M.B.M.	.30	$105.00
12/7/2018	Telephone conference with MBM re: Change Order	B.B.	.20	$80.00
12/10/2018	Telephone conference with Bill Shepard and Frank Elmore	B.B.	.60	$240.00
12/10/2018	Telephone conference call with Theresa Hodge, Bob Mundy and Matt Mundy regarding conference call with Bill Shepard and Frank Elmore.	B.B.	.60	$240.00
12/10/2018	Telephone Conference with G Query re: service as an expert; reviewed contract documents on LDs; Telephone Conference with T. Hodge re: LD charge question, meeting with Kor, and Query; Telephone Conference with WHB re: LD strategy; Telephone Conference with Teresa re: scheduling expert and LDs	M.B.M.	.80	$280.00
12/10/2018	Telephone conference with MBM re LDs	B.B.	.20	$80.00
12/12/2018	Reviewed letter from Sheppard; reviewed Grady Q proposal; sent email re: Grady Q. proposal; Telephone Conference with Teresa re: pay App 22; reviewed contract language re: pay app certs; Telephone Conference with B Munday and team;	M.B.M.	1.80	$630.00

543

	reviewed architect letter on pay App. 22			
12/13/2018	Telephone Conference with client re: Pay App 22	M.B.M.	.40	$140.00
12/14/2018	Reviewed emails from client; reviewed redlined pay app 22; Telephone Conference with WHB re: update; prepared for client call; client call; Telephone Conference with WHB re: response to Sheppard	M.B.M.	2.10	$735.00
12/14/2018	Telephone conference with MBM re: Update; Telephone conference with MBM re: Client call; Client call; Telephone Conference with MBM re: Sheppard	B.B.	1.60	$640.00
12/17/2018	Drafted letter for WHB to Sheppard	M.B.M.	.30	$105.00
12/18/2018	Made changes to letter to Contractor re: Pay Application #22	M.B.M.	.10	$35.00
12/27/2018	Reviewed contract on consequential damages; Telephone Conference with clients re: consequential damages; Telephone Conference with WHB re: update and meeting with	M.B.M.	.80	$280.00
12/27/2018	Telephone conference with MBM re: Consequential damages.	B.B.	.20	$80.00
SUBTOTAL:			11.90	$4,420.00

Costs

SUBTOTAL:		$0.00

Matter Ledgers

1/17/2019	Balance before last invoice	$0.00
12/28/2018	Invoice 10520	$105.00
1/17/2019	Invoice 10546	$4,420.00
SUBTOTAL:		$4,525.00

TOTAL $4,420.00

PREVIOUS BALANCE DUE $105.00

CURRENT BALANCE DUE AND OWING $4,525.00

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: February 15, 2019
Invoice Number: 10568
Invoice Amount: $10,380.00

Matter: Brookland

Attorney's Fees

1/2/2019	Telephone Conference with WHB re: Grady and completion of client doc review; sent and received emails re: call with Grady and client and Clement	M.B.M.	.30	$105.00
1/3/2019	Telephone conference with MBM re call with Teresa; Telephone conference with Teresa re: Pay Application 23, Revised Grady Report; Telephone conference with MBM re: Report; Client call with Grady; Telephone conference with MBM re: Grady call and strategy.	B.B.	2.00	$800.00
1/3/2019	Prepared for client call with Teresa; Telephone Conference with WHB re: overview of issues for call with Teresa in am; Call with Teresa re: pay App. 23; prepared for Grady call, reviewed Grady report; call with client and Grady	M.B.M.	1.80	$630.00
1/4/2019	Telephone Conference with Teresa re: meeting with other owners	M.B.M.	.10	$35.00
1/7/2019	Telephone conference with MBM re: client meeting; Telephone conference with MBM re: Outline for meeting; Prepared for client meeting.	B.B.	1.00	$400.00
1/7/2019	Continue to review client docs; Telephone Conference with WHB re: client meeting; prepared outline for client meeting; Telephone Conference with WHB re: client meeting	M.B.M.	3.50	$1,225.00
1/8/2019	Travel to and from client meeting; Telephone conference with MBM re: client meeting; prepared for client meeting; attended client meeting.	B.B.	3.00	$1,200.00

1/8/2019	Updated meeting outline; reviewed emails re: COR #11 and Phase II design delay claim from Kor; prepared for client call; Telephone Conference with WHB re: overview of meeting; Telephone Conference with client; Telephone Conference with WHB re: Strategy	M.B.M.	3.40	$1,190.00
1/9/2019	Telephone Conference with Clement and Teresa re: sink and faucet CO	M.B.M.	.10	$35.00
1/11/2019	Reviewed Draft letter to bonding company.	B.B.	.20	$80.00
1/11/2019	Sent email to M. Mundy re: agenda for Kor meeting	M.B.M.	.20	$70.00
1/14/2019	Telephone Conference with WHB re: Supplementing forces; Telephone Conference with clients re: supplementing forces and Kor meeting	M.B.M.	.40	$140.00
1/15/2019	Met with MBM re: Grady meeting.	B.B.	.40	$160.00
1/15/2019	Prepared for Grady meeting; met with WHB re: Grady Meeting	M.B.M.	1.00	$350.00
1/16/2019	Met with MBM re: Grady meeting; Travel to and from client meeting; client meeting.	B.B.	5.00	$2,000.00
1/16/2019	Telephone Conference with Teresa re: Kor Meeting; Met with WHB re: Grady meeting; attended client meeting via phone	M.B.M.	3.80	$1,330.00
1/17/2019	Telephone Conference with WHB re: timelines and trial presentation; reviewed emails and correspondence re: cell lifts and grouting; Telephone Conference with WHB re: cap on Lds and Article 3	M.B.M.	.80	$280.00
1/18/2019	Reviewed letter re: pay App 23; sent email re: pay App 23	M.B.M.	.20	$70.00
1/21/2019	Telephone Conference with Clement re: handrails and engineer; Telephone Conference with Teresa re: handrails and engineer and change orders outstanding	M.B.M.	.30	$105.00
1/22/2019	Telephone Conference with Teresa re: pool deck	M.B.M.	.20	$70.00
1/31/2019	Telephone Conference with Teresa re: Grady report; Telephone Conference with WHB re: update	M.B.M.	.30	$105.00
SUBTOTAL:			28.00	$10,380.00

Costs

SUBTOTAL:		$0.00

Matter Ledgers

12/28/2018	Balance before last invoice	$105.00
1/17/2019	Invoice 10546	$4,420.00
2/15/2019	Invoice 10568	$10,380.00
SUBTOTAL:		$14,905.00

Trust Account

2/15/2019	Previous Balance	$0.00
Available in Trust:		$0.00

TOTAL $10,380.00
PREVIOUS BALANCE DUE $4,525.00

CURRENT BALANCE DUE AND OWING $14,905.00

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	$14,905.00
Current Charges	$4,695.00
New Balance	$19,600.00
Adjustments	$0.00
Payments	$0.00
Now Due	$19,600.00
Trust Account	$0.00

already have invoice for. Will cut check

HBD c/L. LEGAL

5/21

PLEASE TRACK. DO NOT PAY MORE THAN $100K.

538

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: March 15, 2019
Invoice Number: 10590
Invoice Amount: $4,695.00

Matter: Brookland

Attorney's Fees

2/5/2019	Reviewed new Grady report; met with WHB re: Grady report	M.B.M.	.50	$175.00
2/6/2019	Prepared for client meeting; reviewed letter from Sheppard re: increased bond costs; Telephone conference with WHB re: issues with increased bond costs; drafted email to Teresa re: questions on increased bond costs	M.B.M.	1.00	$350.00
2/6/2019	Reviewed Sheppard letter; Telephone conference with MBM re: Contract language and bond costs	B.B.	.50	$200.00
2/7/2019	Drafted agenda for call; prepared for client call; Telephone conference with WHB re: client call; Telephone conference with Hodge re: adjacent landowner and percentage billing on garage; client call	M.B.M.	2.40	$840.00
2/7/2019	Telephone conference with MBM re: Client call; prepared for client call; Client call.	B.B.	1.80	$720.00
2/8/2019	Drafted response letter to Sheppard	M.B.M.	.20	$70.00
2/11/2019	Reviewed changes to Grady report; Telephone conference with Teresa re: concrete claim and sub bond communications	M.B.M.	.40	$140.00
2/12/2019	Telephone conference with Teresa re: architect communications	M.B.M.	.10	$35.00
2/15/2019	Reviewed CO log	M.B.M.	1.00	$350.00
2/15/2019	Telephone conference with MBM re: LD cap claim strategy.	B.B.	.30	$120.00

2/18/2019	Prepared for client call; Telephone conference with WHB re: overview of client call issues; call with client; reviewed emails from Matt and Teresa; Telephone conference with Teresa re: 2A LD language	M.B.M.	1.90	$665.00
2/18/2019	Telephone conference with MBM re: Update; Telephone conference with client.	B.B.	1.00	$400.00
2/19/2019	Reviewed emails on delay facts and issues; completed pulling contract sections; Telephone conference with Teresa re: C&C response to LD claim and draft letter to architect on LD cap	M.B.M.	1.00	$350.00
2/22/2019	Completed first draft of LD cap letter to Architect	M.B.M.	.40	$140.00
2/28/2019	Telephone conference with Teresa re: Architect and LD cap; Telephone conference with WHB re: architect and LD cap; Telephone conference with Teresa re: architect and LD cap and FOIA requests	M.B.M.	.40	$140.00
SUBTOTAL:			12.90	$4,695.00

Matter Ledgers

1/17/2019	Balance before last invoice	$4,525.00
2/15/2019	Invoice 10568	$10,380.00
3/15/2019	Invoice 10590	$4,695.00
SUBTOTAL:		$19,600.00

TOTAL $4,695.00

PREVIOUS BALANCE DUE $14,905.00

CURRENT BALANCE DUE AND OWING $19,600.00

3/21

540

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	$19,600.00
Current Charges	$2,945.00
New Balance	$22,545.00
Adjustments	$0.00
Payments	$0.00
Now Due	$22,545.00
Trust Account	$0.00

KUPP C/L. LEGAL.

PLEASE MATCH. DO NOT PAY MORE THAN $100.000 IN TOTAL

541

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: April 5, 2019
Invoice Number: 10612
Invoice Amount: $2,945.00

Matter: Brookland

Attorney's Fees

3/11/2019	Prepared for client call; client call; contract review on schedule of values changes; Telephone conference with WHB re: SV issues; Telephone conference with Teresa re: SV and buyout savings	M.B.M.	1.80	$630.00
3/11/2019	Telephone conference with MBM re: SV	B.B.	.30	$120.00
3/12/2019	Met with staff re: COR notebook	M.B.M.	.30	$105.00
3/19/2019	Client call	M.B.M.	.80	$280.00
3/20/2019	Telephone conference with WHB re: proposed discovery requests and scheduling dates; Telephone conference with Sheppard and WHB re: proposed dates and discovery; Telephone conference with Teresa re: claim deadlines and call with Sheppard	M.B.M.	.60	$210.00
3/20/2019	Telephone conference with MBM re: Sheppard call; Sheppard an MBM call.	B.B.	.50	$200.00
3/21/2019	Reviewed Clement email; Telephone conference with T Hodge re: pool deck	M.B.M.	.30	$105.00
3/27/2019	Reviewed emails from Sheppard and Elmore re: Scheduling order	M.B.M.	.20	$70.00
3/28/2019	Reviewed emails and OAC minutes and listened to meeting audio re: ribbon curb and water proofing; Telephone conference with client re: response to C&C and Architect; reviewed emails from client re: bonding co	M.B.M.	.70	$245.00
3/29/2019	Reviewed letter from carter and carter re: nonpayment; Telephone conference with M Mundy	M.B.M.	.30	$105.00

	re: response to C&C letter			
3/30/2019	Worked on response to C&C letter; Telephone conference with M. Mundy re: timeline; reviewed timeline from Lisa	M.B.M.	1.00	$350.00
3/31/2019	Worked on response to C&C re: nonpayment	M.B.M.	1.50	$525.00
SUBTOTAL:			8.30	$2,945.00

Matter Ledgers

2/15/2019	Balance before last invoice	$14,905.00
3/15/2019	Invoice 10590	$4,695.00
4/5/2019	Invoice 10612	$2,945.00
SUBTOTAL:		$22,545.00

TOTAL $2,945.00

PREVIOUS BALANCE DUE $19,600.00

CURRENT BALANCE DUE AND OWING $22,545.00

06/03/2019

CHECK NO: 0000010498 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
1950	1243	10636	06/03/2019	LEGAL	$9,290.00
					$9,290.00

06/03/2019

CHECK NO: 0000010498 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10636	06/03/2019	LEGAL	$9,290.00
					$9,290.00

WECO RIVER DISTRICT, LLC dba BROOKLAND
OPERATING ACCOUNT (803)779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

CAPITAL BANK

NO: 0000010498

DATE	VOID AFTER 120 DAYS
06/03/2019	********** $9,290.00

NINE THOUSAND TWO HUNDRED NINETY AND XX / 100 DOLLARS

PAY TO THE ORDER OF
Bundy McDonald, LLC
1516 Old Trolley Rd., 2nd Floor
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

Security features included. Details on back.

[redacted]

544

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	$22,545.00 Pd.
Current Charges	$9,290.00
New Balance	$31,835.00
Adjustments	$0.00
Payments	$0.00
Now Due	$31,835.00
Trust Account	$0.00

WECO
(10950)

GL 1243 - legal

mam 5/28/19

545

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: May 22, 2019
Invoice Number: 10636
Invoice Amount: $9,290.00

Matter: Brookland

Attorney's Fees

4/1/2019	Prepared for client call; met with WHB re: update on suspension notice and other issues; client call; worked on changes to C&C response letter	M.B.M.	2.00	$700.00
4/1/2019	Meeting with WHB re: update on suspension notice and other issues; Telephone conference with client	B.B.	1.50	$600.00
4/3/2019	Prepared for client call on Grady report; Client call on Grady Report; Telephone Conference with Matt and Lisa re: schedule of values; sent and received emails on Grady report; Telephone Conference with WHB re: update	M.B.M.	1.50	$525.00
4/3/2019	Telephone conference with MBM re: Updates	B.B.	.30	$120.00
4/4/2019	Telephone Conference with WHB re: SoV and changes from other line items	M.B.M.	.30	$105.00
4/4/2019	Telephone conference with MBM re: Schedule of Values	B.B.	.30	$120.00
4/8/2019	Continue to work on cover letter for Grady Report; Telephone Conference with Matt re: cover letter for Grady report; Telephone Conference with Matt and Teresa re: response to Sheppard letter and letter to Sheppard re: audit docs	M.B.M.	.70	$245.00
4/9/2019	Prepared for Grady call; Call with Matt and Teresa and Grady; drafted response letter to Sheppard letter; Telephone Conference with Teresa re: response to Marcus Pay App letter	M.B.M.	2.30	$805.00
4/10/2019	Made changes to draft letter from Teresa to Marcus	M.B.M.	.60	$210.00

	re: pay app; responded to Frank Elmore re: consultation call			
4/11/2019	Call with Grady and Clients; prepared for call on RCOs; RCO call; reviewed draft letter from Lisa	M.B.M.	2.80	$980.00
4/12/2019	Sent and received emails re: Bonding company letter; drafted second draft of cover letter for Grady report; sent email re: Grady report cover letter; drafted letter to Sheppard re: audit docs	M.B.M.	1.00	$350.00
4/15/2019	Made changes to letter to architect; met with WHB re: update; Telephone Conference with Teresa re: cover letter to Architect for Grady report	M.B.M.	1.50	$525.00
4/15/2019	Met with MBM re: Status of all issues and case.	B.B.	1.00	$400.00
4/16/2019	Reviewed bond for letter to bonding company; Telephone Conference with WHB re: bonding company notice; Telephone Conference with client re: bonding company notice and pay apps; Telephone Conference with WHB re: bonding company notice	M.B.M.	1.90	$665.00
4/16/2019	Telephone conference with MBM re: Bond; Telephone conference with MBM re: Notice requirements; Telephone conference with clients; Telephone conference with MBM	B.B.	1.00	$400.00
4/17/2019	Telephone Conference with Teresa re: Gardy report	M.B.M.	.10	$35.00
4/23/2019	Reviewed emails on Pay apps and SOV; Telephone Conference with WHB re: update; Telephone Conference with T. Hodge re: update	M.B.M.	.30	$105.00
4/24/2019	Reviewed change order log; Telephone Conference with T. Hodge re: new issues on SOV	M.B.M.	.30	$105.00
4/25/2019	Telephone Conference with T. Hodge re contractor meeting; reviewed docs in preparation for client call; Telephone Conference with WHB re: overview of issues with SOV and meeting with Contractor; client call	M.B.M.	2.30	$805.00
4/25/2019	Telephone conference with MBM re: Status of meeting and SOV changes; Prepared for client call; Telephone conference with client.	B.B.	2.00	$800.00
4/26/2019	Telephone Conference with Teresa and Lisa re: pay applications	M.B.M.	.20	$70.00
4/29/2019	Reviewed updated SOV for client call	M.B.M.	.30	$105.00
4/30/2019	Prepared for client call; client call on updated SOV; Telephone Conference with Lisa; Telephone Conference with Matt and Lisa	M.B.M.	.90	$315.00
4/30/2019	Prepared for telephone conference with client; Telephone conference with client.	B.B.	.50	$200.00
SUBTOTAL:			25.60	$9,290.00

Costs

SUBTOTAL:	$0.00

Matter Ledgers

3/15/2019	Balance before last invoice	$19,600.00
4/5/2019	Invoice 10612	$2,945.00
5/22/2019	Invoice 10636	$9,290.00
SUBTOTAL:		$31,835.00

Trust Account

5/22/2019	Previous Balance	$0.00
Available in Trust:		$0.00

TOTAL $9,290.00

PREVIOUS BALANCE DUE $22,545.00

CURRENT BALANCE DUE AND OWING $31,835.00

07/02/2019

CHECK NO: 0000010396 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10661	07/02/2019	LEGAL	$1,835.00
					$1,835.00

07/02/2019

CHECK NO: 0000010396 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10661	07/02/2019	LEGAL	$1,835.00
					$1,835.00

WECO RIVER DISTRICT, LLC
CONSTRUCTION ACCOUNT (803) 779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

CAPITAL BANK

NO: 0000010396

DATE	VOID AFTER 120 DAYS
07/02/2019	********** $1,835.00

ONE THOUSAND EIGHT HUNDRED THIRTY-FIVE AND XX / 100 DOLLARS

PAY TO THE ORDER OF
Bundy McDonald, LLC
1516 Old Trolley Rd., 2nd Floor
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

Security features included. Details on back

549

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	$0.00
Current Charges	$1,835.00
New Balance	$1,835.00
Adjustments	$0.00
Payments	($31,835.00)
Now Due	$1,835.00
Trust Account	$0.00

(10950) WECO
GL 1243 - Legal

6/20/19

560

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: June 07, 2019
Invoice Number: 10661
Invoice Amount: $1,835.00

Matter: Brookland

Attorney's Fees

5/1/2019	Reviewed emails from Plyler and M. Mundy re: language for Bonding Company letter	M.B.M.	.20	$70.00
5/8/2019	Client call re: App 27 and defense to contractor claim of design deficiencies; call with Teresa re: parking garage issue	M.B.M.	1.10	$385.00
5/9/2019	Met with MBM re: Slip deck issue.	B.B.	.50	$200.00
5/9/2019	Telephone conference with Teresa re: slip deck issue; reviewed emails and architect letter on slip deck issue; drafted letter to Sheppard on slip deck issue; met with WHB re: update and overview of slip deck issue	M.B.M.	1.00	$350.00
5/10/2019	Met with MBM re: Bonding company letter; Reviewed and made changes	B.B.	.50	$200.00
5/10/2019	Drafted letter to Bonding Company re: overruns and damages; Telephone conference with M. Mundy re: letter; made changes to letter; Telephone conference with M. Mundy re: letter; met with WHB re: letter	M.B.M.	1.40	$490.00
5/14/2019	Reviewed email from Mundy and forwarded email from C&C	M.B.M.	.10	$35.00
5/16/2019	Telephone conference with Teresa re: Steel Change Order	M.B.M.	.10	$35.00
5/24/2019	Telephone conference with T Hodge re: Architects response to delay; Telephone conference with Hodge re: Plaza deck subcontractor.	M.B.M.	.20	$70.00
SUBTOTAL:			5.10	$1,835.00

561

Costs

SUBTOTAL:		$0.00

Matter Ledgers

4/19/2019	Balance before last invoice	$22,545.00
5/22/2019	Invoice 10636	$9,290.00
5/29/2019	Payment on Invoices: 10520, 10546, 10568, 10590, 10612	($22,545.00)
6/7/2019	Payment on invoice 10636	($9,290.00)
6/7/2019	Invoice 10661	$1,835.00
SUBTOTAL:		$1,835.00

Trust Account

6/7/2019	Previous Balance	$0.00
Available in Trust:		$0.00

TOTAL $1,835.00

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $1,835.00

562

09/30/2019

CHECK NO: 0000010748 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
0950	1243	10686	09/30/2019	LEGAL	$525.00
0950	1243	10702	09/30/2019	LEGAL	$1,310.00
					$1,835.00

09/30/2019

CHECK NO: 0000010748 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10686	09/30/2019	LEGAL	$525.00
10950	1243	10702	09/30/2019	LEGAL	$1,310.00
					$1,835.00

WECO RIVER DISTRICT, LLC dba BROOKLAND
OPERATING ACCOUNT (803)779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

CAPITAL BANK

NO: 0000010748

DATE	VOID AFTER 120 DAYS
09/30/2019	********** $1,835.00

ONE THOUSAND EIGHT HUNDRED THIRTY-FIVE AND XX / 100 DOLLARS

PAY TO THE ORDER OF
Bundy McDonald, LLC
1516 Old Trolley Rd., 2nd Floor
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

Security features included. Details on back.

[redacted]

563

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	~~$1,835.00~~
Current Charges	$525.00
New Balance	~~$2,360.00~~
Adjustments	$0.00
Payments	$0.00
Now Due	$2,360.00
Trust Account	$0.00

GL 1243- legal

mam
9/18/19

564

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: July 22, 2019
Invoice Number: 10686
Invoice Amount: $525.00

Matter: Brookland

Attorney's Fees

6/10/2019	Telephone conference with client and Jim re: Plaza deck	M.B.M.	.40	$140.00
6/14/2019	Prepared for client call; call with Teresa and Matt	M.B.M.	.80	$280.00
6/21/2019	Reviewed language from Tereasa to send to Carter	M.B.M.	.30	$105.00
SUBTOTAL:			1.50	$525.00

Costs

SUBTOTAL:	$0.00

Matter Ledgers

6/7/2019	Balance before last invoice	$0.00
6/7/2019	Invoice 10661	$1,835.00
7/22/2019	Invoice 10686	$525.00
SUBTOTAL:		$2,360.00

TOTAL $525.00
PREVIOUS BALANCE DUE $1,835.00

CURRENT BALANCE DUE AND OWING $2,360.00

565

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	$2,360.00
Current Charges	$1,310.00
New Balance	$3,670.00
Adjustments	$0.00
Payments	$0.00
Now Due	$3,670.00
Trust Account	$0.00

GL 1243 - Legal

mail 9/16/19

J66

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: August 29, 2019
Invoice Number: 10702
Invoice Amount: $1,310.00

Matter: Brookland

Attorney's Fees

7/3/2019	Telephone conference with Teresa and Matt	M.B.M.	.30	$105.00
7/9/2019	Telephone conference with Clement re: weather delays on owner performed work; sent email to matt re: damages call; Telephone conference with WHB re: damages	M.B.M.	.50	$175.00
7/10/2019	Prepared for client call; Client call with WHB; Telephone conference with WHB re: damages buckets and strategy	M.B.M.	1.30	$455.00
7/10/2019	Telephone conference with clients re: Damages; Telephone conference with MBM re: Strategy for claimed damages.	B.B.	1.00	$400.00
7/31/2019	Reviewed emails and correspondence from M Mundy re: building 3 retail space; sent and received emails to Mundy re: Building 3 questions	M.B.M.	.50	$175.00
SUBTOTAL:			3.60	$1.310.00

Matter Ledgers

6/7/2019	Balance before last invoice # 10661 pd 7/2/19	$1.835.00
7/22/2019	Invoice 10686	$525.00
8/29/2019	Invoice 10702	$1,310.00
SUBTOTAL:		$3,670.00

567

TOTAL $1,310.00
PREVIOUS BALANCE DUE $2,360.00

CURRENT BALANCE DUE AND OWING $3,670.00

11/20/2019

CHECK NO: 0000010890 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
0950	1243	10720	11/19/2019	LEGAL	$2,195.00
.0950	1243	10738	11/19/2019	LEGAL	$2,120.00
					$4,315.00

11/20/2019

CHECK NO: 0000010890 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10720	11/19/2019	LEGAL	$2,195.00
10950	1243	10738	11/19/2019	LEGAL	$2,120.00
					$4,315.00

WECO RIVER DISTRICT, LLC dba BROOKLAND
OPERATING ACCOUNT (803)779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

CAPITAL BANK

NO: 0000010890

DATE	VOID AFTER 120 DAYS
11/20/2019	********** $4,315.00

FOUR THOUSAND THREE HUNDRED FIFTEEN AND XX / 100 DOLLARS

PAY TO THE ORDER OF
Bundy McDonald, LLC
1516 Old Trolley Rd., 2nd Floor
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

Security features included. Details on back

[redacted]

569

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: September 25, 2019
Invoice Number: 10720
Invoice Amount: $2,195.00

(10950) WECO

Matter: Brookland

Attorney's Fees

8/1/2019	Sent, received and reviewed emails re: damages call and Building 3	M.B.M.	.30	$105.00
8/5/2019	Prepared for client call; Client call; Telephone conference with WHB re: update on damages	M.B.M.	2.00	$700.00
8/5/2019	Telephone conference with MBM re: Damages call and client meeting	B.B.	.40	$160.00
8/26/2019	Prepared for client call; client call	M.B.M.	.50	$175.00
8/27/2019	Met with MBM re: Overview for Damages meeting	B.B.	1.00	$400.00
8/29/2019	Reviewed letter from Sheppard re: scheduling order	M.B.M.	.20	$70.00
8/30/2019	Reviewed emails from Teresa; Reviewed contract language for Substantial completion sections; T/C with Teresa re: substantial completion sections; Telephone conference with WHB re: status and new issues and Sheppard letter; reviewed draft letter by Teresa; sent email to Teresa re: changes to draft letter	M.B.M.	1.10	$385.00
8/30/2019	Telephone conference with MBM re Overview of issues with substantial completion	B.B.	.50	$200.00
SUBTOTAL:			6.00	$2,195.00

Mam 10/31/19

GL 1243-Legal

Matter Ledgers

7/26/2019	Balance before last invoice	$2,360.00
8/29/2019	Invoice 10702	$1,310.00
9/18/2019	Payment made on for Invoice 10661	($1,835.00)

Pd. 9/30 CK 10748

570

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: October 30, 2019
Invoice Number: 10738
Invoice Amount: $2,120.00

(10950) WECO

Matter: Brookland

Attorney's Fees

9/5/2019	Travel and Meeting with Weco; Telephone conference with MBM re: Update	B.B.	2.50	$1,000.00
9/5/2019	Telephone Conference with WHB re: client meeting overview	M.B.M.	.50	$175.00
9/6/2019	Reviewed language for letter to C&C and responded to emails	M.B.M.	.30	$105.00
9/12/2019	Reviewed language form Clement on his role; sent email to TH re: changes	M.B.M.	.30	$105.00
9/13/2019	Telephone Conference with WHB re: SO; reviewed proposed SO; sent and received emails re: SO	M.B.M.	.30	$105.00
9/16/2019	Reviewed new Scheduling Order; sent email re: SO	M.B.M.	.30	$105.00
9/25/2019	Reviewed damages notebook and prepared for client call	M.B.M.	1.00	$350.00
9/26/2019	Prepared for client call; Telephone Conference with M Mundy re: damages notebook	M.B.M.	.50	$175.00
SUBTOTAL:			5.70	$2,120.00

Matter Ledgers

GL 1243 legal

8/29/8/2019	Balance before last invoice	$0.00
9/25/2019	Invoice 10720	$2,195.00
10/30/2019	Invoice 10738	$2,120.00
SUBTOTAL:		$4,315.00

mam 10/31/19

TOTAL $2,120.00
PREVIOUS BALANCE DUE $2,195.00

CURRENT BALANCE DUE AND OWING $4,315.00

571

11/21/2019

CHECK NO: 0000010905 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10759	11/21/2019	LEGAL	$7,425.00
					$7,425.00

11/21/2019

CHECK NO: 0000010905 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10759	11/21/2019	LEGAL	$7,425.00
					$7,425.00

WECO RIVER DISTRICT, LLC dba BROOKLAND
OPERATING ACCOUNT (803)779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

CAPITAL BANK

NO: 0000010905

DATE	VOID AFTER 120 DAYS
11/21/2019	********** $7,425.00

SEVEN THOUSAND FOUR HUNDRED TWENTY-FIVE AND XX / 100 DOLLARS

PAY TO THE ORDER OF
Bundy McDonald, LLC
1516 Old Trolley Rd., 2nd Floor
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

Security features included. Details on back.

572

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

(10950)
WECO

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	$4,315.00
Current Charges	$7,425.00
New Balance	$11,740.00
Adjustments	$0.00
Payments	$0.00
Now Due	$11,740.00
Trust Account	$0.00

573

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: November 15, 2019
Invoice Number: 10759
Invoice Amount: $7,425.00

Matter: Brookland

Attorney's Fees

10/2/2019	Telephone conference with Teresa re: update and outstanding issues; reviewed subpoenas from Carter lawyer	M.B.M.	.50	$175.00
10/3/2019	Prepared for client call; client call; met with WHB re: update	M.B.M.	1.50	$525.00
10/3/2019	Met with MBM re: update	B.B.	.50	$200.00
10/8/2019	Prepared for client call/meeting; telephone conference with WHB re: client call and meeting	M.B.M.	1.00	$350.00
10/8/2019	Telephone conference with MBM re: client call and meeting	B.B.	.40	$160.00
10/10/2019	Prepared for client meeting; Travel to Client meeting; attended Client meeting; Telephone conference with MBM re: Strategy.	B.B.	2.40	$960.00
10/10/2019	Prepared for client call; Client call; telephone conference with WHB re: strategy and to do list; worked on discovery requests	M.B.M.	2.50	$875.00
10/10/2019	telephone conference with MBM re: strategy and to do list	B.B.	.50	$200.00
10/14/2019	Worked on discovery requests; reviewed emails re: discovery requests	M.B.M.	2.00	$700.00
10/15/2019	Prepared for call with Teresa; Call with Teresa re: document requests and other issues; made changes to document requests and sent out; telephone conference with WHB re: Document requests; telephone conference with Teresa re: subpoena docs from investor; made additional changes to document request; finalized document request; reviewed email	M.B.M.	3.30	$1,155.00

	from Sheppard re: search terms and emails			
10/15/2019	Telephone conference with MBM re: Document requests;	B.B.	.30	$120.00
10/16/2019	Telephone conference with WHB re: Subpoena to investor; telephone conference with T. Hodge re: Subpoena to investor and email protocol; reviewed subpoena responses from Estates	M.B.M.	.60	$210.00
10/16/2019	Telephone conference with MBM re: Subpoena to investor	B.B.	.20	$80.00
10/17/2019	Telephone conference with WHB re: investor subpoena; Called and left message for Sheppard re: investor subpoena; drafted email to Sheppard re: extension	M.B.M.	.40	$140.00
10/17/2019	Telephone conference with MBM re: investor subpoena	B.B.	.20	$80.00
10/18/2019	Worked on extension for investor; telephone conference with Sheppard's office; telephone conference with Teresa re: extension; sent and received emails re: extension; worked on electronic discovery protocol	M.B.M.	1.50	$525.00
10/21/2019	Telephone conference with Sheppard re: extension for investor and electronic protocol; telephone conference with Teresa re: update	M.B.M.	.30	$105.00
10/22/2019	Telephone conference with Teresa re: electronic protocol	M.B.M.	.20	$70.00
10/24/2019	Reviewed emails from client; telephone conference with client	M.B.M.	.50	$175.00
10/29/2019	Met with MBM re: Elmore and Objections	B.B.	.40	$160.00
10/29/2019	Telephone conference with Matt and Teresa re: documents requests and subpoena responses; met with WHB re: letter to Elmore; drafted letter to Elmore re: document objections	M.B.M.	1.00	$350.00
10/29/2019	Met with MBM re: letter to Elmore	B.B.	.10	$40.00
10/30/2019	Telephone conference with Teresa re: document request and subpoena	M.B.M.	.20	$70.00
SUBTOTAL:			20.50	$7,425.00

Matter Ledgers

9/25/2019	Balance before last invoice	Pd $2,195.00
10/30/2019	Invoice 10738	Pd $2,120.00
11/15/2019	Invoice 10759	$7,425.00
SUBTOTAL:		$11,740.00

TOTAL $7,425.00

PREVIOUS BALANCE DUE $4,315.00

CURRENT BALANCE DUE AND OWING $11,740.00

01/22/2020

CHECK NO: 0000011036 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10818	01/22/2020	LEGAL	$8,646.17
					$8,646.17

01/22/2020

CHECK NO: 0000011036 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10818	01/22/2020	LEGAL	$8,646.17
					$8,646.17

WECO RIVER DISTRICT, LLC dba BROOKLAND
OPERATING ACCOUNT (803)779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

CAPITAL BANK

NO: 0000011036

DATE	VOID AFTER 120 DAYS
01/22/2020	********** $8,646.17

EIGHT THOUSAND SIX HUNDRED FORTY-SIX AND 17 / 100 DOLLARS

PAY TO THE ORDER **Bundy McDonald, LLC**
1516 Old Trolley Rd., 2nd Floor
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

Security features included. Details on back.

[redacted]

576

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District

Re: Brookland

Previous Balance	$0.00
Current Charges	$4,831.17
New Balance	$4,831.17
Adjustments	$0.00
Payments	($11,740.00)
Now Due	$4,831.17
Trust Account	$0.00

577

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: December 19, 2019
Invoice Number: 10779
Invoice Amount: $4,831.17

Matter: Brookland

Attorney's Fees

11/1/2019	Sent and received emails re: call with Sheppard; Call with Sheppard; Call with M Mundy re: Mickel documents and discovery	M.B.M.	1.00	$350.00
11/4/2019	Prepared for client call; Client call; drafted email to Sheppard; reviewed email from Teresa re: missing docs and prepared for call with Sheppard	M.B.M.	1.50	$525.00
11/5/2019	Telephone conference with MBM re: Sheppard telephone call.	B.B.	.30	$120.00
11/6/2019	Prepared for call with Sheppard; met with WHB re: call with Sheppard; call with Sheppard	M.B.M.	1.30	$455.00
11/15/2019	Telephone Conference with Teresa re: update, discovery, and list of needs to Sheppard	M.B.M.	.40	$140.00
11/18/2019	Prepared for call with Sheppard; updated list of docs and items needed.	M.B.M.	.50	$175.00
11/19/2019	Prepared for Sheppard call; Telephone Conference with WHB re: Sheppard call; call with Sheppard	M.B.M.	1.30	$455.00
11/20/2019	Prepared for client call; client call; Telephone Conference with WHB re: strategy; Telephone Conference with client and WHB	M.B.M.	1.50	$525.00
11/20/2019	Telephone conference with MBM re: Update and settlement; Reviewed pay application 33 with MBM; Client telephone conference; Telephone conference with MBM re: Settlement Structure; Client telephone conference.	B.B.	1.20	$480.00
11/22/2019	Reviewed letter from Carter attorney; Telephone	M.B.M.	.50	$175.00

	Conference with WHB re: counteroffer and meeting with client; sent email to client			
11/25/2019	Prepared for client call; client call	M.B.M.	1.00	$350.00
11/26/2019	Worked on discovery responses	M.B.M.	.50	$175.00
11/27/2019	Worked on document production; produced document production	M.B.M.	2.50	$875.00
SUBTOTAL:			13.50	$4,800.00

Costs

11/27/2019	Federal Express Charge	$31.17
SUBTOTAL:		$31.17

Matter Ledgers

10/30/2019	Balance before last invoice	$4,315.00
11/15/2019	Invoice 10759	$7,425.00
12/6/2019	Payment on invoices 10720, 10738	($4,315.00)
12/6/2019	Payment on invoice 10759	($7,425.00)
12/19/2019	Invoice 10779	$4,831.17
SUBTOTAL:		$4,831.17

TOTAL $4,831.17

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $4,831.17

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	$4,831.17
Current Charges	$3,815.00
New Balance	$8,646.17
Adjustments	$0.00
Payments	~~$0.00~~
Now Due	$8,646.17
Trust Account	$0.00

(10950)
WECO

GL 1243 - legal

1/16/2020

580

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: January 15, 2020
Invoice Number: 10818
Invoice Amount: $3,815.00

Matter: Brookland

Attorney's Fees

12/3/2019	Met with MBM re: Substantial Completion Payment.	B.B.	.50	$200.00
12/3/2019	Met with WHB re: Substantial Completion Payment.	M.B.M.	.50	$175.00
12/4/2019	Prepared for client call; client call with WHB	M.B.M.	.50	$175.00
12/4/2019	Telephone conference with MBM re: Client call; Client call	B.B.	.50	$200.00
12/9/2019	Received dropbox link from Jimma Slaughter for Carter & Carter production of documents. Downloaded documents and began to convert documents into a viewable format.	K.W.	1.50	$150.00
12/9/2019	Activated link provided by Carter & Carter to ProCore in preparation for counsel to review document production.	K.W.	1.00	$100.00
12/10/2019	Telephone Conference with M Mundy re: update	M.B.M.	.20	$70.00
12/11/2019	Reviewed docs from Carter; Telephone Conference with Teresa re: docs from Carter; prepared for call with Elmore; reviewed email from Teresa	M.B.M.	.60	$210.00
12/12/2019	Drafted and sent correspondence to Elmore; prepared for Elmore call; Telephone Conference with Elmore; Telephone Conference with Shepards office; sent and received emails with Sheppard and Elmore	M.B.M.	1.00	$350.00
12/13/2019	Prepared for Elmore Call; Telephone Conference with Bundy re: update; Elmore Call with Sheppard; Client call; Sent and received emails with client and	M.B.M.	2.50	$875.00

	Sheppard			
12/13/2019	Telephone conference with MBM re: Update	B.B.	.50	$200.00
12/18/2019	Telephone Conference with Teresa and Mundy re: update	M.B.M.	.30	$105.00
12/20/2019	Prepared for Frank Elmore call; Frank Elmore call; call with Teresa re: update	M.B.M.	1.00	$350.00
12/27/2019	Client call	M.B.M.	.30	$105.00
12/31/2019	Met with staff re: Sheppard hard drive; Telephone Conference with Teresa re: Sheppard hard drive; Telephone Conference with WHB re: overview and status	M.B.M.	1.00	$350.00
12/31/2019	Telephone conference with MBM re: Update	B.B.	.50	$200.00
SUBTOTAL:			12.40	$3,815.00

Matter Ledgers

12/19/2019	Invoice 10799	$4,831.17
1/15/2020	Invoice 10818	$3,815.00
SUBTOTAL:		$8,646.17

TOTAL $3,815.00

PREVIOUS BALANCE DUE $4,831.17

CURRENT BALANCE DUE AND OWING $8,646.17

582

02/11/2020

CHECK NO: 0000011078 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10833	02/11/2020	LEGAL	$20,212.38
					$20,212.38

02/11/2020

CHECK NO: 0000011078 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10833	02/11/2020	LEGAL	$20,212.38
					$20,212.38

WECO RIVER DISTRICT, LLC dba BROOKLAND
OPERATING ACCOUNT (803)779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

CAPITAL BANK

NO: 0000011078

DATE	VOID AFTER 120 DAYS
02/11/2020	********** $20,212.38

TWENTY THOUSAND TWO HUNDRED TWELVE AND 38 / 100 DOLLARS

PAY TO THE ORDER OF
Bundy McDonald, LLC
1516 Old Trolley Rd., 2nd Floor
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

Security features included. Details on back

[redacted]

583

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	~~$0.00~~
Current Charges	$20,212.38
New Balance	~~$20,212.38~~
Adjustments	$0.00
Payments	($8,646.17)
Now Due	$20,212.38
Trust Account	$0.00

(10950)
WECO

GL 1243 - Legal

2/6/2020

2/6/2020 - Budget remaining $44,109 /mam

584

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: February 06, 2020
Invoice Number: 10833
Invoice Amount: $20,212.38

Matter: Brookland

Attorney's Fees

1/2/2020	Read 2017 timeline; began reviewing email production from C&C	M.B.M.	3.00	$1,050.00
1/3/2020	Prepared for client call; Call with WHB re: update client call; call with WHB re: strategy	M.B.M.	1.00	$350.00
1/3/2020	Telephone conference with MBM re: Update; Client call; Telephone conference with MBM re: Action items.	B.B.	.60	$240.00
1/6/2020	Researched and finalized subpoenas; reviewed objections from Teresa	M.B.M.	1.50	$525.00
1/7/2020	Telephone conference with WHB re: objections to production; finalized subpoenas; prepared for Rosen Meeting (Timeline IT guy)	M.B.M.	1.50	$525.00
1/8/2020	Travel and meeting with Rosen; Telephone conference with WHB re: objection update	M.B.M.	2.70	$945.00
1/8/2020	Telephone conference with Teresa and Matt re: document production by Carter & Carter; Telephone conference with MBM re: schedule and document production.	B.B.	1.50	$600.00
1/8/2020	Telephone conference with MBM re: Liens and Strategy	B.B.	.50	$200.00
1/10/2020	Client call; Travel and met with Grady	M.B.M.	2.20	$770.00
1/10/2020	Telephone conference with Teresa re: Update and strategy.	B.B.	.50	$200.00
1/14/2020	Telephone conference with WHB re: letter on C&C discovery responses; Telephone conference with	M.B.M.	.50	$175.00

	Teresa re: C&C discovery responses; finalized WHB letter on responses			
1/14/2020	Telephone conference with MBM re: Letter on C&C discovery responses; finalized letter with MBM on responses.	B.B.	.50	$200.00
1/15/2020	Prepared for client meeting; pulled Grady report; marked up outline; Telephone conference with Teresa re: consent of Surety	M.B.M.	3.00	$1,050.00
1/16/2020	Travel and client meeting	M.B.M.	8.00	$2,800.00
1/16/2020	Travel and attending meeting with Teresa and Matt.	B.B.	5.50	$2,200.00
1/17/2020	Sent and reviewed correspondence related to W Construction lien	M.B.M.	.20	$70.00
1/20/2020	Telephone conference with Teresa re: update; reviewed contract language for bond section; sent and received emails re: bond demand	M.B.M.	.50	$175.00
1/21/2020	Met with WHB re: update; drafted letter to Elmore re: discovery	M.B.M.	.50	$175.00
1/22/2020	Telephone conference with WHB lien and offer of Judgment; Telephone conference with Matt re: Update	M.B.M.	.60	$210.00
1/22/2020	Telephone conference with MBM re: Strategy	B.B.	.40	$160.00
1/22/2020	Receipt of CWF document production pursuant to record subpoena request, download documents and prepare for review by counsel, sent client copy of same via dropbox.	K.W.	.30	$30.00
1/22/2020	Receipt of hard copy of All In Builders document production pursuant to record subpoena request, scan documents and prepare for review by counsel, sent client copy of same via dropbox.	K.W.	.40	$40.00
1/22/2020	Telephone calls with County Clerks of Court for the requirements and procedures for each state and county for the domestication of record subpoenas to Air One Systems (GA), Baseline Construction (AL), Coastal Alum (FL) and R&R Construction (TN).	K.W.	1.50	$150.00
1/23/2020	Prepared for Elmore call; Telephone conference with WHB re: Elmore call; Elmore call	M.B.M.	1.50	$525.00
1/23/2020	Telephone conference with MBM re: Elmore; Telephone conference with Elmore, MBM and Sheppard; Telephone conference with MBM re To Do from Elmore telephone conference.	B.B.	1.00	$400.00
1/24/2020	Telephone conference with Matt Mundy re: update	M.B.M.	.20	$70.00
1/24/2020	Prepare record subpoenas and email to Frank Elmore for his signature for the domestication of record subpoenas to Air One Systems (GA), Baseline Construction (AL), Coastal Alum (FL) and R&R Construction (TN).	K.W.	1.00	$100.00
1/28/2020	Travel and Client meeting	M.B.M.	7.30	$2,555.00
1/28/2020	Travel and attend WECO meeting.	B.B.	6.00	$2,400.00
1/29/2020	Send County Clerks of Court the domestication of record subpoenas for Air One Systems (GA),	K.W.	1.00	$100.00

	Baseline Construction (AL), Coastal Alum (FL) and R&R Construction (TN) and copy all counsel of record with same.			
1/29/2020	Prepare record subpoena to Savannah Hardscapes, send to Frank Elmore for signature and serve Savannah Hardscapes via Certified Mail and copy all counsel of record with same.	K.W.	.20	$20.00
1/30/2020	Telephone conference with Teresa; Telephone conference with MBM re: Sheppard Letter.	B.B.	2.50	$1,000.00
SUBTOTAL:			57.60	$20,010.00

Costs

1/8/2020	WHB - Mileage to and From Meeting (92 miles @ .58 per mile)	$53.36
1/16/2020	WHB - Mileage to and From Meeting (92 miles @ .58 per mile)	$53.36
1/28/2020	WHB - Mileage to and From Meeting (92 miles @ .58 per mile)	$53.36
1/31/2020	Postage for Certified Mail.	$42.30
SUBTOTAL:		$202.38

Matter Ledgers

1/13/2020	Balance before last invoice	$4,831.17
1/15/2020	Invoice 10818	$3,815.00
1/28/2020	Payment on Invoice 10818	($8,646.17)
2/6/2020	Invoice 10833	$20,212.38
SUBTOTAL:		$20,212.38

TOTAL $20,212.38

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $20,212.38

587

03/30/2020

CHECK NO: 0000011199 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10846	03/30/2020	LEGAL	$11,471.97
					$11,471.97

03/30/2020

CHECK NO: 0000011199 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10846	03/30/2020	LEGAL	$11,471.97
					$11,471.97

WECO RIVER DISTRICT, LLC dba BROOKLAND
OPERATING ACCOUNT (803)779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

CAPITAL BANK

NO: 0000011199

DATE	VOID AFTER 120 DAYS
03/30/2020	********** $11,471.97

ELEVEN THOUSAND FOUR HUNDRED SEVENTY-ONE AND 97 / 100 DOLLARS

PAY TO THE ORDER OF
Bundy McDonald, LLC
1516 Old Trolley Rd., 2nd Floor
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

Security features included. Details on back.

[redacted]

580

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	$0.00
Current Charges	$11,471.97
New Balance	$11,471.97
Adjustments	$0.00
Payments	($20,212.38)
Now Due	$11,471.97
Trust Account	$0.00

(10950)
WECO

GL 1243 - legal

See TH attached approval /mam

mam
3/30/2020

589

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: March 23, 2020
Invoice Number: 10846
Invoice Amount: $11,471.97

Matter: Brookland

Attorney's Fees				
2/5/2020	Drafted DJ pleading; Telephone Conference with WHB re: DJ pleading; prepared for client meeting	M.B.M.	6.40	$2,240.00
2/6/2020	Travel and meeting with Client and MBM	B.B.	3.00	$1,200.00
2/6/2020	Travel and client meeting	M.B.M.	6.30	$2,205.00
2/7/2020	Telephone conference with MBM re: Sheppard email	B.B.	.20	$80.00
2/7/2020	Reviewed Sheppard email; Telephone Conference with WHB re: Sheppard email; Telephone Conference with M Mundy re: Sheppard email; worked on DJ complaint	M.B.M.	1.00	$350.00
2/10/2020	Pull registered agents information from Secretary of State in preparation for service of the Summons & Complaint.	K.W.	2.50	$250.00
2/11/2020	Finalized complaint; Telephone Conference with WHB re: complaint	M.B.M.	2.00	$700.00
2/11/2020	Continue to pull registered agents information from Secretary of State in preparation for service of the Summons & Complaint.	K.W.	2.00	$200.00
2/11/2020	Telephone conference with MBM re: Complaint	B.B.	1.00	$400.00
2/12/2020	Prepare cover letters and serve Registers Agents of Defendants with the Filed Summons & Complaint.	K.W.	3.50	$350.00
2/13/2020	Continue to prepare cover letters and serve Registers Agents of Defendants with the Filed Summons & Complaint.	K.W.	3.00	$300.00
2/18/2020	Begin to review and prepare an index of the	K.W.	4.00	$400.00

590

06/11/2020

CHECK NO: 0000020068 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10850	06/11/2020	LEGAL	$7,738.75
10950	1243	10853	06/11/2020	LEGAL	$3,830.00
10950	1243	10860	06/11/2020	LEGAL	$9,285.00
					$20,853.75

06/11/2020

CHECK NO: 0000020068 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10850	06/11/2020	LEGAL	$7,738.75
10950	1243	10853	06/11/2020	LEGAL	$3,830.00
10950	1243	10860	06/11/2020	LEGAL	$9,285.00
					$20,853.75

WECO RIVER DISTRICT, LLC dba BROOKLAND APARTMENTS
OPERATING ACCOUNT (803) 779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

BB&T

NO: 0000020068

DATE	VOID AFTER 120 DAYS
06/11/2020	********** $20,853.75

TWENTY THOUSAND EIGHT HUNDRED FIFTY-THREE AND 75 / 100 DOLLARS

PAY TO THE ORDER
Bundy McDonald, LLC
1516 Old Trolley Rd., 2nd Floor
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

Security features included. Details on back.

⑈0000020068⑈ ⑆[redacted]⑆ [redacted]⑈0000

591

	documents received from W Construction pursuant to the Record Subpoena.			
2/18/2020	Continue to review and update the index of the documents received from W Construction pursuant to the Record Subpoena.	K.W.	1.50	$150.00
2/21/2020	Continue to review and update the index of the documents received from W Construction pursuant to the Record Subpoena.	K.W.	3.00	$300.00
2/26/2020	Telephone conference with Client	B.B.	.50	$200.00
2/26/2020	Prepared for client call; client call	M.B.M.	.70	$245.00
2/27/2020	Client call re deponents; sent and received emails re: depositions and scheduling orders; met with WHB re: depositions	M.B.M.	.50	$175.00
2/27/2020	Telephone conference with MBM re: Depositions	B.B.	.50	$200.00
SUBTOTAL:			41.60	$9,945.00

Costs

2/28/2020	Copies	$368.00
2/28/2020	Postage - Certified Mail Restricted Delivery Return Receipt Requested	$678.65
2/28/2020	Court Filing Fee - Summons & Complaint	$180.32
2/28/2020	Custom Welding & Fabrication Fee for Document Production	$300.00
SUBTOTAL:		$1,526.97

Matter Ledgers

1/28/2020	Balance before last invoice	$0.00
2/6/2020	Invoice 10833	$20,212.38
2/21/2020	Payment on Invoice 10833	($20,212.38)
3/23/2020	Invoice 10846	$11,471.97
SUBTOTAL:		$11,471.97

TOTAL $11,471.97

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $11,471.97

592

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

Prepared for Weco River District
Re: Brookland

(10951)
WECO

Previous Balance	$0.00
Current Charges	$7,738.75
New Balance	$7,738.75
Adjustments	$0.00
Payments	($11,471.97)
Now Due	$7,738.75
Trust Account	$0.00

GL 1243 - Legal

Mam
6-5-20

593

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: April 24, 2020
Invoice Number: 10850
Invoice Amount: $7,738.75

Matter: Brookland

Attorney's Fees				
3/2/2020	Made changes to letter to Carter with cc to subs; met with WHB re: changes	M.B.M.	.50	$175.00
3/2/2020	Met with MBM re: Changes	B.B.	.20	$80.00
3/3/2020	Telephone Conference with M. Mundy re: update	M.B.M.	.30	$105.00
3/5/2020	Prepared for and attended client call; call with M. Mundy	M.B.M.	1.00	$350.00
3/6/2020	Telephone Conference with Teresa re: update; completed draft of Bank letter	M.B.M.	2.30	$805.00
3/10/2020	Prepared for client call; client call; sent and received emails re: scheduling	M.B.M.	1.50	$525.00
3/12/2020	Prepared for client meeting; travel; client meeting	M.B.M.	5.50	$1,925.00
3/12/2020	Travel; Client meeting	B.B.	3.00	$1,200.00
3/17/2020	Telephone Conference with lawyer for Atlanta Design	M.B.M.	.30	$105.00
3/18/2020	Telephone Conference with T. Hodge re: depos; Telephone Conference with WHB re: depos	M.B.M.	.20	$70.00
3/18/2020	Telephone conference with MBM re: Depositions	B.B.	.20	$80.00
3/20/2020	Telephone Conference with F. Smith re: CBG	M.B.M.	.30	$105.00
3/23/2020	Worked on F. Smith/CBG list; Telephone Conference with Teresa re: CBG list and response to Yates	M.B.M.	.50	$175.00
3/23/2020	Sent and received emails re: Bank call; Telephone Conference with Trippett B re: carter and Carter and DJ action	M.B.M.	1.00	$350.00
3/24/2020	Sent and received emails on depos; reviewed Carter	M.B.M.	.80	$280.00

594

	answer and counterclaim to DJ action			
3/26/2020	Prepare for and telephone conference with Client and Bankers	B.B.	.75	$300.00
SUBTOTAL:			18.35	$6,630.00

Costs

3/12/2020	Prolegal Invoice - Scan of W Construction documents.	$1,108.75
SUBTOTAL:		$1,108.75

Matter Ledgers

2/21/2020	Balance before last invoice	$0.00
3/23/2020	Invoice 10846	$11,471.97
4/8/2020	Payment on invoice 10846	($11,471.97)
4/24/2020	Invoice 10850	$7,738.75
SUBTOTAL:		$7,738.75

TOTAL $7,738.75
PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $7,738.75

595

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

(10950) WEZO

Prepared for Weco River District
Re: Brookland

Previous Balance	~~$7,738.75~~
Current Charges	$3,830.00
New Balance	$11,568.75
Adjustments	$0.00
Payments	$0.00
Now Due	$11,568.75
Trust Account	$0.00

GL 1243- legal

Pmam 6-5-20

596

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: May 19, 2020
Invoice Number: 10853
Invoice Amount: $3,830.00

Matter: Brookland

Attorney's Fees

4/1/2020	Telephone Conference with Teresa re: update	M.B.M.	.20	$70.00
4/2/2020	Reviewed correspondence from client and Sheppard; Telephone Conference with WHB re: correspondence request	M.B.M.	.40	$140.00
4/2/2020	Telephone conference with MBM: re: Correspondence request.	B.B.	.20	$80.00
4/8/2020	Worked on getting extensions in order to file amended complaint	M.B.M.	1.00	$350.00
4/9/2020	Met with staff re: Court reporters' system for remote depositions	M.B.M.	.30	$105.00
4/10/2020	Prepared for and attended client call	M.B.M.	.80	$280.00
4/10/2020	Telephone conference with Client	B.B.	.60	$240.00
4/15/2020	Telephone Conference with Matt M re: indemnity agreement; research on real party in interest; Telephone Conference with WHB re: indemnity agreement; client call	M.B.M.	1.50	$525.00
4/15/2020	Read Indemnity language; Telephone conference with MBM re: Issues; Telephone conference with Matt Mundy, Leighton, and MBM re: issues with Indemnity language.	B.B.	1.20	$480.00
4/17/2020	Drafted letter to Sheppard; sent and received emails re: extension of time to reply to carter CC; drafted 30(b)(6) topics; Telephone Conference with Teresa re: 30(b)(6) topics	M.B.M.	2.00	$700.00
4/28/2020	Telephone Conference with WHB re: letter to	M.B.M.	1.00	$350.00

	Sheppard; Telephone Conference with Teresa re: letter to Sheppard and response back to Sheppard as Contractor's Rep; drafted letter to Sheppard			
4/28/2020	Telephone conference with MBM re: Letter to Sheppard	B.B.	.20	$80.00
4/29/2020	Telephone Conference with Teresa and Matt and Henry; Telephone Conference with Matt and B. Mundy; Telephone Conference with WHB re Update	M.B.M.	1.00	$350.00
4/29/2020	Telephone conference with MBM re: Update	B.B.	.20	$80.00
SUBTOTAL:			10.60	$3,830.00

Matter Ledgers

4/8/2020	Balance before last invoice	$0.00
4/24/2020	Invoice 10850	$7,738.75
5/19/2020	Invoice 10853	$3,830.00
SUBTOTAL:		$11,568.75

TOTAL $3,830.00

PREVIOUS BALANCE DUE $7,738.75

CURRENT BALANCE DUE AND OWING $11,568.75

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

Account Statement

(10950)
WECO

Prepared for Weco River District
Re: Brookland

Previous Balance	$11,568.75
Current Charges	$9,285.00
New Balance	$20,853.75
Adjustments	$0.00
Payments	$0.00
Now Due	$20,853.75
Trust Account	$0.00

GL 1243 - Legal

mam
6-5-20

599

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: June 04, 2020
Invoice Number: 10860
Invoice Amount: $9,285.00

Matter: Brookland

Attorney's Fees				
5/4/2020	Drafted letter to Sheppard for WHB	M.B.M.	.30	$105.00
5/7/2020	Prepared for call with Elmore and Sheppard; Telephone Conference with WHB re: call with Elmore; call with Elmore; call with WHB re: overview and dates; call with client re: update	M.B.M.	1.80	$630.00
5/7/2020	Telephone conference with MBM re: Call with Frank; call with Sheppard and Frank.	B.B.	.70	$280.00
5/8/2020	Replied to counterclaims of Zapata; Apex and Roof Depot	M.B.M.	1.50	$525.00
5/8/2020	E-File Responses to Apex, Roof Depot, and Zapata's Counterclaim and serve all counsel of record with same.	K.W.	.50	$50.00
5/14/2020	Worked on responsive pleadings to W Construction	M.B.M.	1.00	$350.00
5/18/2020	Worked on arbitration scheduling; met with WHB re: prep for client call	M.B.M.	.50	$175.00
5/18/2020	Met with MBM re: Witness List	B.B.	.30	$120.00
5/19/2020	Prepared for client call; client call	M.B.M.	1.00	$350.00
5/19/2020	Telephone conference with Client re: Updates & Witness List	B.B.	.50	$200.00
5/20/2020	Completed witness list and call with client; reviewed Carter Witness list; Telephone Conference with WHB re: carter witnesses and strategy	M.B.M.	1.50	$525.00
5/20/2020	Reviewed Witness List; Telephone conference with MBM re: Witness List	B.B.	.50	$200.00
5/21/2020	Drafted amended complaint	M.B.M.	1.00	$350.00

600

5/22/2020	Finalized amended complaint	M.B.M.	.50	$175.00
5/26/2020	Review Court E-File system and update Pleading Index accordingly.	K.W.	.30	$30.00
5/26/2020	Telephone Conference with WHB re: Motion hearing	M.B.M.	.40	$140.00
5/26/2020	Telephone conference with MBM re: Motion Hearing	B.B.	.40	$160.00
5/27/2020	Gather documents for WHB in preparation for Motion Hearing.	K.W.	.50	$50.00
5/27/2020	Prepared for motion hearing; Telephone Conference with WHB re: Motion hearing; prepared for client call; client call; Call with M. Mundy; prepared for Motion Hearing	M.B.M.	3.30	$1,155.00
5/27/2020	Prepared for Motion Hearing; Telephone conference with MBM re: Motion Hearing	B.B.	1.00	$400.00
5/28/2020	Prepared for hearing and attended hearing; Telephone Conference with Teresa re: update	M.B.M.	1.70	$595.00
5/28/2020	Telephone Conference with M Mundy re: depositions.	M.B.M.	.20	$70.00
5/28/2020	Prepared for and attended Motion Hearing	B.B.	2.00	$800.00
5/30/2020	Prepared for Depositions.	M.B.M.	3.00	$1,050.00
5/31/2020	Prepared for Depositions	B.B.	2.00	$800.00
SUBTOTAL:			26.40	$9,285.00

Matter Ledgers

4/24/2020	Balance before last invoice	$7,738.75
5/19/2020	Invoice 10853	$3,830.00
6/4/2020	Invoice 10860	$9,285.00
SUBTOTAL:		$20,853.75

TOTAL $9,285.00

PREVIOUS BALANCE DUE $11,568.75

CURRENT BALANCE DUE AND OWING $20,853.75

08/14/2020

CHECK NO: 0000020214 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10895	08/14/2020	LEGAL	$1,944.85
					$1,944.85

08/14/2020

CHECK NO: 0000020214 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	1243	10895	08/14/2020	LEGAL	$1,944.85
					$1,944.85

WECO RIVER DISTRICT, LLC dba BROOKLAND APARTMENTS
OPERATING ACCOUNT (803) 779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

BB&T

NO: 0000020214

DATE	VOID AFTER 120 DAYS
08/14/2020	**********$1,944.85

ONE THOUSAND NINE HUNDRED FORTY-FOUR AND 85 / 100 DOLLARS

PAY TO THE ORDER **Bundy McDonald, LLC**
1516 Old Trolley Rd., 2nd Floor
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

Security features included. Details on back.

[redacted]

602

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

(10950)
WECO

Account Statement

Prepared for Weco River District
Re: Brookland

Previous Balance	~~$0.00~~
Current Charges	$1,944.85
New Balance	~~$1,944.85~~
Adjustments	$0.00
Payments	($20,853.75)
Now Due	$1,944.85
Trust Account	$0.00

4/13/20

GL 1243- Legal

Pam
4/13/20

603

BUNDY MCDONALD, LLC

1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559 | Fax: 888-393-6665

INVOICE

Weco River District

Invoice Date: July 22, 2020
Invoice Number: 10895
Invoice Amount: $1,944.85

Matter: Brookland

Attorney's Fees

6/1/2020	Prepared for depos; Telephone Conference with WHB re: depo prep	M.B.M.	2.50	No Charge
6/1/2020	Telephone conference with MBM re: Deposition Preparations	B.B.	.50	No Charge
6/2/2020	Prepared for and attended depos	M.B.M.	4.50	No Charge
6/2/2020	Prepare for and attend the deposition of Mr. Skinner and Mr. Harkin	B.B.	4.50	No Charge
6/3/2020	Prepared for 30(b)(6) depo; attended 30(b)(6) depo; Telephone Conference with client re: depos; Telephone Conference with M. Mundy re: depos	M.B.M.	3.50	No Charge
6/4/2020	Prepared for meeting with client and Hodge Depo	M.B.M.	3.50	No Charge
6/8/2020	Travel and meeting with client and Hodge depo prep	M.B.M.	8.00	No Charge
6/9/2020	Travel and site visit and meeting with client and Hodge depo prep	M.B.M.	8.00	No Charge
6/10/2020	Travel and Hodge depo and meeting with client	M.B.M.	7.00	No Charge
6/11/2020	Travel and meeting with client	M.B.M.	7.00	No Charge
6/12/2020	Worked on narratives; Telephone Conference with WHB re: trial prep and on site meeting	M.B.M.	2.00	No Charge
6/12/2020	Telephone Conference with MBM re: trial prep and on site meeting	B.B.	.50	No Charge
6/15/2020	Worked on Timelines	M.B.M.	2.00	No Charge
6/16/2020	Trial Prep and prep for site visit	M.B.M.	5.00	No Charge
6/17/2020	Trial Prep and prep for site visit	M.B.M.	3.00	No Charge
6/18/2020	Travel and site visit and client meeting	M.B.M.	5.00	No Charge
6/18/2020	Travel and site visit with experts and clients.	B.B.	3.50	No Charge

6/19/2020	Client call; trial prep	M.B.M.	2.00	No Charge
6/19/2020	Telephone conference with MBM re: Offer of Settlement; Telephone conference with client re: Offer of Settlement	B.B.	1.00	No Charge
6/22/2020	Client call re offer of settlement; drafted offer of settlement language; Telephone Conference with WHB re: offer of settlement; drafted reply to All In Builders CC; Telephone Conference with F Smith re: CBG and B&N; Trail prep	M.B.M.	2.50	No Charge
6/22/2020	Telephone Conference with MBM re: offer of settlement;	B.B.	.50	No Charge
6/24/2020	Trial Prep; worked on offer of Judgment and Telephone Conferences with WHB, clients and Henry Brown	M.B.M.	1.00	No Charge
6/24/2020	Telephone Conferences with MBM, clients and Henry Brown	B.B.	1.00	No Charge
6/25/2020	Trail preparation	M.B.M.	5.00	No Charge
6/26/2020	Trial Pep; calls with WHB and client	M.B.M.	2.50	No Charge
6/26/2020	Trial Pep; calls with MBM and client	B.B.	2.00	No Charge
6/29/2020	Travel and client meeting; trial prep	M.B.M.	8.50	No Charge
6/30/2020	Trial prep; met with RLT timeline	M.B.M.	6.00	No Charge
6/30/2020	Trial Prep	B.B.	5.00	No Charge
SUBTOTAL:			107.00	$0.00

Costs

6/30/2020	Cost of Deposition Transcript of David Skinner and Darrell Harkin	$1,066.25
6/30/2020	Deposition transcript of Rick Edema	$277.50
6/30/2020	Certified copy of the deposition transcript of Teresa Hodge	$601.10
SUBTOTAL:		$1,944.85

Matter Ledgers

5/19/2020	Balance before last invoice	$11,568.75
6/4/2020	Invoice 10860	$9,285.00
6/12/2020	Payment on Invoices 10850, 10853, 10860	($20,853.75)
7/22/2020	Invoice 10895	$1,944.85
SUBTOTAL:		$1,944.85

TOTAL $1,944.85

PREVIOUS BALANCE DUE $0.00

CURRENT BALANCE DUE AND OWING $1,944.85

05/24/2022

CHECK NO: 0000021375 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
0950	3905	5/24/22	05/24/2022	LEGAL FEES	$150,000.00
					$150,000.00

05/24/2022

CHECK NO: 0000021375 Bundy McDonald, LLC (bundy) Customer ID:

Prope	Expense Co	Invoice Number	Invoice Date	Description	Amount Paid
10950	3905	5/24/22	05/24/2022	LEGAL FEES	$150,000.00
					$150,000.00

WECO RIVER DISTRICT, LLC dba BROOKLAND APARTMENTS
OPERATING ACCOUNT (803) 779-1400
PO BOX 11739
COLUMBIA, SC 29211-1739

BB&T

NO: 0000021375

DATE	VOID AFTER 120 DAYS
05/24/2022	********** $150,000.00

ONE HUNDRED FIFTY THOUSAND AND XX / 100 DOLLARS

PAY TO THE ORDER OF
Bundy McDonald, LLC
1516 Old Trolley Rd., 2nd Floor
SUMMERVILLE, SC 29485

AUTHORIZED SIGNATURE

Security features included. Details on back.

[redacted]

606

WECO River District, LLC
PO Box 11735
Columbia, SC 29211

May 24, 2022

(10950)
WECO

Bundy Mcdonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485

Payable to:

Mr. Bundy,

I enclose herewith a check from Weco River District, LLC in the amount of $ 150,000.00 payable to your law firm.

We are not asking you to sign a release for this payment, you may reserve all rights to your claims and the pending lawsuit. We simply ask that you properly credit this payment against any amount you claim is due. Weco disputes any claim over the amount tendered because we were required to engage other counsel to complete the work.

Weco continues to reserve our rights and defenses to any claims you may continue to pursue.

Respectfully,

Teresa Hodge

GL 3905 - Legal Fees

Cc: Hank Wall
Henry Brown

mam
5/24/22

607

Lexington County Register of Deeds- Mechanics Lien Cash Bond Receipt

Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Date: 5/7/2020
Receipt Number: 20013210
Instrument Number: 2020018847
Book: 20870
Page: 1310

Payment Method	Check No.
Check	1439

Lien Claimant	Associated Book & Page	Lien Amount	Bond Amount	Submitters Initials
Carter & Carter	Book 20850 Page 1680-1686	$3,981,919.92	$5,309,093.83	

Lexington County Representative
Registrar of Deeds

Tina Guerry

Lexington County Representative
Deputy Registrar of Deeds

Erin Collins

Submitter/Representative

Sheree Rabon

608

EXHIBIT
34

Lexington County Register of Deeds- Mechanics Lien Cash Bond Receipt

Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Date: 5/7/2020
Receipt Number: 20013199
Instrument Number: 2020018829
Book:20870
Page: 1164

Payment Method			Check No.	
Check			1434	
Lien Claimant	Associated Book & Page	Lien Amount	Bond Amount	Submitters Initials
Expressway Painting, LLC	Book 20864 Page 3399-3405	$109,208.12	$145,607.19	

Lexington County Representative
Registrar of Deeds

Tina Guerry

Lexington County Representative
Deputy Registrar of Deeds

Erin Collins

Submitter/Representative

Sheree Rabon

609

Lexington County Register of Deeds- Mechanics Lien Cash Bond Receipt

Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Date: 5/7/2020
Receipt Number: 20013202
Instrument Number:2020018836
Book: 20870
Page: 1232

Payment Method	Check No.
Check	1432

Lien Claimant	Associated Book & Page	Lien Amount	Bond Amount	Submitters Initials
Apex Masonry, Inc.	Book 20862 Page 4378-4384	$78,765.36	$105,017.85	

Lexington County Representative
Registrar of Deeds

Tina Guerry

Lexington County Representative
Deputy Registrar of Deeds

Erin Collins

Submitter/Representative

Sheree Rabon

610

Lexington County Register of Deeds- Mechanics Lien Cash Bond Receipt

Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Date: 5/7/2020
Receipt Number: 20013205
Instrument Number: 2020018841
Book: 20870
Page: 1249

Payment Method			Check No.	
Check			1433	
Lien Claimant	Associated Book & Page	Lien Amount	Bond Amount	Submitters Initials
CBG, Inc.	Book 20860 Page 4524-4530	$78,953.40	$105,268.57	

Lexington County Representative
Registrar of Deeds

Tina Guerry

Lexington County Representative
Deputy Registrar of Deeds

Erin Collins

Submitter/Representative

Sheree Rabon

Lexington County Register of Deeds- Mechanics Lien Cash Bond Receipt

Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Date: 5/7/2020
Receipt Number: 20013209
Instrument Number:2020018846
Book: 20870
Page: 1296

Payment Method	Check No.
Check	1437

Lien Claimant	Associated Book & Page	Lien Amount	Bond Amount	Submitters Initials
Brandon Zapata Elect.	Book 20860 Page 3861-3872	$165,204.89	$220,267.68	

Lexington County Representative
Registrar of Deeds

Tina Guerry

Lexington County Representative
Deputy Registrar of Deeds

Erin Collins

Submitter/Representative

Sheree Rabon

612

Lexington County Register of Deeds- Mechanics Lien Cash Bond Receipt

Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Date: 5/7/2020
Receipt Number:
Instrument Number:
Book:
Page:

Payment Method			Check No.	
Check			1430	
Lien Claimant	Associated Book & Page	Lien Amount	Bond Amount	Submitters Initials
ELI Controls,LLC	Book 20858 Page 3100-3108	$42,647.74	$56,862.23	

Lexington County Representative
Registrar of Deeds

Tina Guerry

Lexington County Representative
Deputy Registrar of Deeds

Erin Collins

Submitter/Representative

Sheree Rabon

Sheree Rabon

613

Lexington County Register of Deeds- Mechanics Lien Cash Bond Receipt

Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Date: 5/7/2020
Receipt Number: 20013213
Instrument Number: 2020018850
Book: 20870
Page: 1338

Payment Method	Check No.
Check	1435

Lien Claimant	Associated Book & Page	Lien Amount	Bond Amount	Submitters Initials
Flooring Services, Inc	Book 20857 Page 5931-5936	$117,297.92	$156,393.32	

Lexington County Representative
Registrar of Deeds

Tina Guerry

Lexington County Representative
Deputy Registrar of Deeds

Erin Collins

Submitter/Representative

Sheree Rabon

614

Lexington County Register of Deeds- Mechanics Lien Cash Bond Receipt

Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Date: 5/7/2020
Receipt Number: 20013206
Instrument Number: 2020018842
Book: 20870
Page: 1258

Payment Method			Check No.	
Check			1436	
Lien Claimant	Associated Book & Page	Lien Amount	Bond Amount	Submitters Initials
B & N Mechanical Contractors	Book 20853 Page 5450-5456	$155,695.72	$207,589.10	

Lexington County Representative
Registrar of Deeds

Tina Guerry

Lexington County Representative
Deputy Registrar of Deeds

Erin Collins

Submitter/Representative

Sheree Rabon

615

Lexington County Register of Deeds- Mechanics Lien Cash Bond Receipt

Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Date: 5/7/2020
Receipt Number: 20013208
Instrument Number: 2020018845
Book: 20870
Page: 1286

Payment Method	Check No.
Check	1438

Lien Claimant	Associated Book & Page	Lien Amount	Bond Amount	Submitters Initials
W Construction LLC	Book 20853 Page 1593-1600	$535,111.38	$713,464.00	

Lexington County Representative
Registrar of Deeds

Tina Guerry

Lexington County Representative
Deputy Registrar of Deeds

Erin Collins

Submitter/Representative

Sheree Rabon

616

Lexington County Register of Deeds- Mechanics Lien Cash Bond Receipt

Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Date: 5/7/2020
Receipt Number: 20013212
Instrument Number: 2020018849
Book: 20870
Page: 1330

Payment Method			Check No.	
Check			1431	
Lien Claimant	Associated Book & Page	Lien Amount	Bond Amount	Submitters Initials
The Roof Depot	Book 20854 Page 4716-4720	$529,556.83	$64,619.80	

Lexington County Representative
Registrar of Deeds

Tina Guerry

Lexington County Representative
Deputy Registrar of Deeds

Erin Collins

Submitter/Representative

Sheree Rabon

617

Outlook

Re: SCDOT work

From Walter Bundy <walter@bundymcdonald.com>
Date Wed 2/17/2021 9:58 AM
To Teresa Hodge <thodge@estatesinc.com>; Brent McDonald <brent@bundymcdonald.com>; Matt Mundy <mmundy@estatesinc.com>; Bob Mundy <bmundy@estatesinc.com>

Tersa

Per the award, it did not determine DOT liability or damages ,because the matter was not ripe for review.

This is a new claim, (for liability and damages) , that I believe (however you need to run this by your new attorney) is also subject to arbitration. our fee agreement does not include another arbitration/ litigation on any issue , including but not limited to , the DOT , warranty , deficient construction work or any other issues not adjudicated in the completed July 2020 arbitration , as set forth in the Award and Clarification thereof.

The only remaining arbitration issue on which we are representing Weco is attorneys fees, which we will handle once the arbitrator advises us to do so.

I would recommend that you give Carter and Carter, the Architect, the Bonding Company and the DOT notice, that you are proceeding with the work and hire an attorney to advise you on my notice recommendation and on whether you need file an arbitration demand or other action to establish liability and damages and on whether, without an adjudication of liability and damages , the advisability of deducting any amount prior thereto.

That attorney also may wish to consider and advise you regarding the institution of an action against the bonding company and filing an arbitration demand for defective work and warranty items and any other matters that were not part of Frank's award, which, I believe are and remain, subject to arbitration.

We will continue to handle the DJ action as agreed.

Regards

618

Walter H. Bundy
BundyMcDonald LLC

Business Address:
1516 Old Trolley Road,2nd Floor
Summerville, SC,20485

Mailing Address:
Post Office Box 50427
Summerville, SC 29485

Direct 843-212-0525
Cell 843-708-1519
Fax 888-393-6665
Local Fax 843-712-7318

On Tue, Feb 16, 2021 at 9:32 AM Teresa Hodge <thodge@estatesinc.com> wrote:

Bill,

Regarding the SCDOT work, we have placed Carter and the bonding company on notice twice (per the contract) with no response. We have spoken with the contractor that priced the work and they can start late this week or early next week. We plan to move forward with getting this work done and will deduct it from final payment as allowed correct?

I plan to send a letter to Carter telling them WECO is proceeding to remedy the DOT work given Carters failure to respond in regard to the notice. I understood from the Friday call that you don't want to be involved in the other warranty/deficient construction work. However, for the SCDOT, this seems to be directly related to Frank's ruling and the requirements under 9.10 so I wanted to run this by you.

Please call me for a quick discussion. Thank you.

Please note our address has changed

Teresa Hodge
Estates and Companies
2801 Devine Street; Suite 202
Columbia, SC 29205

o: 803-779-1400
m: 803-309-1304

619

total payments on initial invoices	110372.1
less expenses	-1944.85
	-1108.75
	-1526.97
	-202.38
	-31.17
fees paid	105558
hourly fee cap	100000
overpayment of hourly invoices	5558

620

Nexsen Pruet

Invoice no.	Fees
535861067	$8,405.00
535866167	$7,395.00
535870600	$16,875.00
535876538	$13,252.50
535886245	$580.00

Total NP fees: $ 46,907.50

BPWM

Invoice no.	Fees
13538	$5,768.00
13724	$5,310.00
13926	$5,988.00
14259	$15,668.00
14614	$5,472.00
14849	$3,870.00
15085	$3,156.00
15404	$3,934.00

Total BPWM fees: $ 49,166.00

Total NP & BPWM: $ 95,073.50

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

IN THE MATTER OF ARBITRATION BETWEEN

Carter & Carter Construction, LLC, Claimant, -and- Weco River District, LLC, Respondent.	Civil Action No. 2020-CP-32-00580 **ORDER**

Weco River District, LLC ("Weco") and Carter & Carter Construction, LLC ("Carter") disagree as to the finality of the January 4, 2021 Arbitration Award, supplemented by the Clarification of Award dated February 15, 2021.

Weco contends the Award is not final as to the claim referenced in the Award as the DOT claim, as well as claims arising out of the alleged failure of Carter to comply with Article 9.10 of the AIA A201 General Conditions of the Contract for Construction to complete all work in compliance with the Contract Documents. Weco contends Carter's compliance with Article 9.10 is a precondition to Weco's obligation to make final payment. Weco contends it is entitled to submit evidence of its claims related to DOT and Carter's Article 9.10 compliance and for adjustment of the amount of the Award if appropriate. Weco further contends that consideration of prevailing party and fees should not be made until these adjustments have been made as the parties' offers of judgment were made in regard to claims that have not yet been considered such as the DOT claims.

622

Carter contends that the January 4th Award is final as to all claims, including any claims related to the DOT claim and that it is not required to comply with Article 9.10 as a condition precedent to final payment. Carter contends that the undersigned arbitrator has no jurisdiction or right to consider any additional issues other than an award of attorney's fees.

Weco and Carter have been unable to reach a compromise and have submitted written arguments and been given time to argue their positions on these issues.

After consideration of the written submissions and argument, and review of the proceeding, I conclude that the Award is not final as to the DOT claim and the Article 9.10 issues. Weco is entitled to submit its claims. Carter is entitled to submit its evidence in opposition, for a ruling thereon; and, if appropriate, in opposition to the adjustment of the Award based on the conclusions reached.

REASONING

ARTICLE 9.10 CLAIMS

The agreement between WECO and Carter contains the following Arbitration Agreement:

> *§4.6.1 Any Claim arising out of or related to the Contract, that involves any issues between Contractor and the Owner except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes in accordance with the provisions of Section 4.5. In the event the joinder of any third party, including subcontractors or the Architect is necessary for complete adjudication of all rights, arbitration shall not be mandatory but shall be by mutual consent.*
>
> *§4.6.2 Claims not resolved by the parties shall be decided by binding arbitration which, unless the parties mutually agree otherwise, shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Any arbitration shall not be administered through the American Arbitration Association but shall be a private arbitration decided by a single arbitrator unless agreed by all parties joined.*

This agreement is comprehensive and inclusive of all claims arising out of the contract. South Carolina Supreme court opinions have consistently opined that arbitration agreements are to read as inclusive, and in favor of resolution by arbitration. *See Parsons v. John Wieland Homes and Neighborhoods of the Carolinas,* 418 S.C. 1, 791 S.E.2d 128 (2016).

Article 9.10 is part of the Contract, and any dispute related to compliance with Article 9.10 is a dispute arising out of the contract, within the meaning and scope of the agreement to arbitrate. Nothing suggests that the parties agreed to exclude any issues *"arising out of or related to the Contract"* from the issues to be presented in the arbitration. Compliance with Article 9.10 is a contractual precondition to payment. The January 4th Award recognized Carter's obligation to comply with Article 9.10 prior to payment.

A breach of the obligations in Article 9.10 is a claim *"arising from the contract"* and is subject to resolution in this proceeding. A claim related to Carter's breach of 9.10 could not have occurred until the Award was issued and compliance with Article 9.10 became relevant. It is also illogical to presume that Weco would know in advance that Carter would not comply with 9.10 and include these claims in the damages submitted in the prior arbitration. It is illogical to contend that the January 4th Award absolved Carter of its obligations to comply with Article 9.10 when Carter's actions alleged to be a breach could not occur until after the January 4th Award. Complying with the requirements of Article 9.10 could not occur until the Award setting the balance due was issued. Carter's breach arises out of actions it failed to take after the Award was issued, and the Award cannot be preclusive of any claims against Carter based on the assertion it breached Article 9.10. Weco is entitled to have a hearing on its claims that Carter breached Article 9.10.

624

party and award of attorneys' fees necessarily relies in part upon the determination and outcome of the DOT claim and Article 9.10 compliance claim.

I therefore further clarify the January 4, 2021 Award to expressly reserve jurisdiction over the DOT claim and the Article 9.10 compliance issues; and to consider and rule upon each parties' claims and defenses. Further, jurisdiction exists to adjust the amount of the Award, if appropriate, based on a final determination of Weco's DOT claim and the Article 9.10 claims.

Carter and Weco shall promptly confer as to a prompt schedule to submit and exchange claims and defenses either party desires to assert, arising out of the DOT claim and the Article 9.10 claims and all documents in support thereof. If agreement cannot be reached, a scheduling conference will be held to establish a schedule for a hearing and procedures for exchange of documents and identification of witnesses on the claims and defenses of Weco and Carter related to the DOT claim and the Article 9.10 claims.

This 14th day of April, 2021.

L. Franklin Elmore

L. Franklin Elmore, Arbitrator

626

DOT CLAIM

The DOT claim was submitted as part of the initial package of claims asserted by Weco. At the hearing on the merits, it was determined that the claim was not ripe for adjudication. Carter made no objection that the DOT claim was not yet ripe. The Award dealt with the DOT claim in the following manner:

> *"Whether Carter & Carter is liable, and/or whether Weco has suffered any damages, as a result of any claim by SCOOT for damage to its roadway is not ripe for review. As such, no ruling or determination is made of the liability, if any, of Carter & Carter Construction, LLC on this issue. Determination of this issue, if necessary, in the future, is expressly reserved to the parties."*

It is illogical to consider the Award final as to the DOT claim when the Award describes it as "reserved to the parties" if determination is needed "in the future." The agreement to arbitrate is comprehensive and includes the DOT claim, which "arises out of the contract." The Award is explicit that any damages sustained as a result of the DOT claim is to be determined after the January 4th Award.

Weco's Article 9.10 claim and DOT claim arise out of or relate to the contract which is subject to arbitration. Rule 9 of the American Arbitration Association grants to the arbitrator the power to rule on his or her own jurisdiction. See *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524 (2019). I previously concluded and affirm that the undersigned arbitrator has jurisdiction to consider and adjudicate Weco's claims.

OFFER OF JUDGMENT

Weco contends its Offer of Judgment included consideration of the DOT claim and having the risk of performing the work if the DOT claim was adjudicated. While Weco's contention is subject to meeting its burden of proof, any determination of the prevailing

625

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE LEXINGTON COUNTY COURT OF COMMON PLEAS
Walton J. McLeod, Circuit Court Judge
Case No.: 2022-CP-32-01932
Appellate Case No. 2025-000905

Bundy McDonald, LLC, Appellant,

vs.

WECO River District, LLC, Respondent.

RECEIVED
Mar 10 2026
SC Court of Appeals

RULE 210(g) CERTIFICATION

The undersigned hereby certifies that on March 10, 2026, a copy of The Record on Appeal contains all material proposed to be included by any of the parties to this appeal in accordance with SCACR 210(g)

Attorney for Respondent:

Hank Wall
Bruner, Powell, Wall and Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
hwall@brunerpowell.com

Attorney for Defendant WECO River District, LLC

[Signature Page Follows]

BUNDY MCDONALD, LLC

s/M. Brent McDonald
W. H. Bundy, Jr., Esq. (SC Bar #1012)
M. Brent McDonald, Esq. (SC Bar #78057)
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
Phone: 888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com
Attorneys for Plaintiff/Appellant

March 10, 2026