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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2024-000788

Balfour Beatty Construction, LLC, Appellant,

v.

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

And

Library Associates, LLC, Third-Party Plaintiff,

v.

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

Of which Library Associates, LLC is the Respondent.

**RESPONDENT'S MOTION TO AMEND
DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

Respondent Library Associates, LLC (“Library”), by and through its undersigned counsel, respectfully submits this filing in response to the Court’s April 29, 2026 Order. Concurrent with this filing, Respondent is providing Appellant with the pinpoint citations to Respondent’s Final Brief required by the Court’s Order (Exhibit A). In addition, Respondent is providing pinpoint citations to those portions of the trial record specifically identified and relied upon by the Master-In-Equity in his Orders and Findings of Fact (Exhibit B). Finally, Respondent moves before this Court for leave to amend its Designation of Matter to be Included in the Record on Appeal to ensure that the record before this Court is adequate for the Court to conduct its review under the applicable standard. The proposed Amended Designation of Matter reduces the printed Record on Appeal from 51 volumes and more than 25,000 pages to approximately 11,546 pages (approximately 23 volumes), and is attached hereto as Exhibit C. As part of that reduction, Respondent requests that the Court permit certain voluminous backup documentation to be preserved and made available in digital format on disk, so that it is accessible to the Court without adding unnecessary volume to the physical record.

As set forth in the proposed Amended Designation, the parties’ designations comprise approximately 4,788 pages designated by Appellant alone, approximately 6,399 pages designated by Respondent alone, and approximately 1,369 pages designated by both parties. Of the matter designated by Appellant, Respondent proposes that the backup invoices to Library Associates’ Filing of Exhibits Pertaining to the March 13, 2024 Hearing be provided on disk in digital format rather than in the printed Record, so that the printed Record would total approximately 11,546 pages.¹ In addition, certain voluminous exhibits, principally the digitized Library Associates exhibits that constitute the backup to the pay applications, together with the complete March 13,

¹ These backup invoices, which were considered by the lower court, are currently located at R-24260 to R-25269 of the previously filed record, approximately 1,010 pages.

2024 hearing-exhibits filing, are submitted in complete form on disk, totaling approximately 8,934 pages, with only the first few pages of each such exhibit appearing in the printed Record. The video deposition of George Michael Baumbach is likewise provided on disk.

Respondent respectfully submits that the Amended Designation should be accepted because it ensures that the record contains the evidence the Master actually relied upon in reaching his decision. It includes the documents and testimony the Master cites in his Orders and Findings of Fact as support for his rulings, most of which Appellant's designation does not include, and it adds the cross-examination of the witnesses whose direct testimony Appellant designated. Together, these materials give the Court a complete and accurate basis for its review, rather than a partial record drawn primarily from one side's submissions.

BACKGROUND

A. Procedural History Regarding the Record on Appeal

On May 21, 2025, Respondent filed its Designation of Matter to be Included in the Record on Appeal. On June 5, 2025, Appellant filed a Motion to Strike or Limit Respondent's Designation. Respondent filed a Return opposing the Motion, arguing that the standard of review in a non-jury case requires the appellate court to examine the totality of the record to determine whether any evidence reasonably supports the trial court's findings; that the Court may affirm the trial court on any ground appearing in the Record on Appeal pursuant to Rule 220(c), SCACR; and that the non-consecutive nature of the 23-day trial meant that context necessary for the Court's review of specific issues was distributed throughout the record.

On August 26, 2025, the Court granted Appellant's Motion *in part*, ordering that Respondent file an amended designation of matter to specify the portions of the videos of deposition testimony using timestamps that Respondent would like for the Court to consider when

deciding the appeal. The Court further noted that should Respondent determine that it would like to cull any matter currently designated, Respondent may do so in an amended designation of matter.

On September 5, 2025, Respondent filed its Amended Designation of Matter pursuant to the Court's Order. Appellant did not object to Respondent's Amended Designation of Matter and thereafter filed the Record on Appeal on November 17, 2025, incorporating both parties' designations.

On March 16, 2026, after review of the Record, this Court entered an Order directing both parties to review the record on appeal, remove unnecessary materials, and include only those materials critical to the appeal. The Court noted that the previously filed record exceeded 25,000 pages across 51 volumes. Respondent acknowledges that the Record was too large and takes this opportunity to provide the Court with a reduced record consisting of materials relevant to this appeal.

Pursuant to the Court's order, the parties engaged in discussions regarding their respective designations. Respondent proposed specific reductions to its designation beginning on April 1, 2026, when Respondent's counsel submitted a revised designation to Appellant's counsel with detailed spreadsheets identifying the specific transcript pages Respondent proposed for inclusion, organized by trial day. Respondent subsequently proposed further reductions, including the removal of trial transcript from additional trial days.

The parties were unable to reach agreement by the original deadline of April 15, 2026. On that date, Appellant provided Respondent's counsel with a draft of proposed correspondence to the Court in the form of a joint report on the parties' negotiations, which attached both parties'

proposed designations as well as a proposed “Combined Designation of Matter.” Appellant, however, did not file this correspondence with the Court.

On April 16, 2026, upon a joint motion by the parties, the Court extended all deadlines in the March 16 Order by seven days to allow the parties additional time to reach agreement on the contents of the amended record. The parties engaged in further discussions regarding their respective designations but were unable to reach agreement by the extended deadline of April 22, 2026.

On April 22, 2026, Appellant filed its amended designation of matter along with a letter to the Court. However, the correspondence Appellant filed was materially different from the proposed joint report draft shared with Respondent’s counsel on April 15. Rather than a joint report, Appellant submitted a letter that presented only Appellant’s position, attached only Appellant’s designation, and mischaracterized Respondent’s proposals and the nature of the parties’ negotiations. In particular, Appellant represented to the Court that Appellant was the only party willing to remove material from the record, despite Respondent having proposed specific reductions during the parties’ negotiations, beginning with its April 1 revised designation and continuing through subsequent communications.

Appellant’s correspondence stated that Respondent would be submitting its own correspondence under separate cover. However, Respondent was unable to do so due to personal circumstances outside of counsel’s control, including the stroke and hospitalization of counsel’s close family member, and counsel’s own hospitalization due to grave illness.²

² Due to the private and sensitive nature of the health conditions and surrounding circumstances, counsel does not address these matters with greater specificity in this filing. Should the Court require additional information, Respondent respectfully requests the opportunity to submit such information under seal for *in camera* review.

On April 29, 2026, the Court directed Appellant to prepare an amended record consisting of: (1) the documents in Appellant's amended designation of matter; and (2) materials cited in Respondent's final brief. The Court directed Respondent to provide Appellant with pinpoint citations where Respondent's final brief cites the first page of a document or exhibit. This Order was entered without the benefit of any submission from Respondent regarding the contents of the amended record. This Motion, filed concurrently with Respondent's pinpoint citations, constitutes that response.

On May 4 and May 7, 2026, Respondent filed its first and second motions for short extensions of time to respond to the Court's April 29 Order. On May 12, 2026, the Court granted the requested extension and extended the deadline for Respondent to respond to May 14, 2026. On May 14, 2026, Respondent filed a third motion for extension of time, disclosing that Respondent's counsel M. Brent McDonald had been hospitalized with a serious medical condition. Mr. McDonald, who was in grave condition, was advised to remain hospitalized for an additional period but discharged against medical advice due to concerns about this case and his other professional obligations. On May 19, 2026, the Court granted the extension to June 4, 2026. On May 21, 2026, the Court clarified the remaining deadlines: the record on appeal shall be prepared and served on Respondent by June 22, 2026, and the amended record on appeal and final briefs shall be filed with the Court by July 13, 2026.

B. Illness of Respondent's Counsel

As set forth above, Respondent's counsel M. Brent McDonald, Esquire, who has served as lead counsel on the appellate record and designation matters throughout this appeal, was hospitalized on or about May 11, 2026, with a serious medical condition.

The undersigned, Jesse Sanchez, Esquire, has recently been retained as additional appellate counsel for Library to assist with this Motion and Respondent's Designation of Matter. Undersigned counsel has reviewed the complete appellate file, all briefs, all orders of this Court, and all correspondence between the parties and the Court relating to the record on appeal. Additionally, undersigned counsel has been working diligently with Respondent and Respondent's trial counsel to designate those matters which are relevant to the appeal and which would assist this Honorable Court in adequately assessing the matters on appeal.

C. Compliance with the April 29 Order

Concurrent with the filing of this Motion, Respondent is providing Appellant with the pinpoint citations required by this Court's April 29, 2026 Order. Those citations identify, with specificity, the pages within each document and exhibit cited in Respondent's Final Brief that are necessary for the Court's review (Exhibit A). Respondent has thus complied with the Court's April 29th Order.

In addition, Respondent is providing pinpoint citations to those portions of the trial record specifically identified and relied upon by the Master-In-Equity in his Orders and Findings of Fact (Exhibit B). These pinpoint citations are essential because the Master's Orders expressly cite and rely upon specific evidence from the trial record in support of his findings. Appellant did not include the majority of this matter in its Designation of Matter. If this Court is to review whether any evidence supports those findings, the evidence the Master himself identified and relied upon must be available for that review.

While Respondent has complied with the Court's April 29 Order, Respondent respectfully submits that compliance alone does not produce a record adequate for this Court's review. Appellant's designation omits the cross-examination of the witnesses whose direct testimony

Appellant designated, as well as additional exhibits the Master considered in reaching his decision. Respondent's proposed Amended Designation, which reduces the printed record from 51 volumes and more than 25,000 pages to approximately 11,546 pages (approximately 23 volumes), supplies those materials and identifies the additional matter necessary for this Court's review. Because an amended record on appeal has not yet been prepared and served, the Court's consideration of Respondent's designation at this stage prejudices no party. Further, Respondent is prepared to bear the cost and burden of preparing the amended record. Respondent therefore moves to amend its designation for the reasons set forth below.

ARGUMENT

A. The Standard of Review Requires a Record Adequate for the Court's Review

This case was tried without a jury before the Master-In-Equity. The standard of review applicable to the Master's findings of fact requires this Court to determine whether there is any evidence that reasonably supports those findings. *Arredondo v. SNH SE Ashley River Tenant, LLC*, 433 S.C. 69, 856 S.E.2d 550 (2021).

Respondent prevailed below, and this Court may affirm a judgment on any ground appearing in the Record on Appeal. Rule 220(c), SCACR. As the party defending the judgment, Respondent is entitled to a Record that permits the Court to consider every ground on which the Master's rulings may be sustained. A Record confined to the materials cited in the appellate briefs, or to the matter Appellant elected to designate, would limit the Court's review to the grounds the challenging party prefers and would deprive Respondent of the benefit of the rule. The evidence the Master considered and relied upon is properly part of the Record whether or not a brief happens to cite it.

These standards presuppose a record of the proceedings below that is adequate for the Court to perform its review. A record limited exclusively to materials cited in the parties' appellate briefs does not contain all of the evidence that the Master considered and relied upon in reaching his findings. Indeed, the Master's Orders expressly cite to evidence and testimony contained in the Record. (See Master's Orders, Exhibit D). The "any evidence" standard asks whether the record of proceedings supports the Master's findings, not whether Respondent's appellate brief, which by its nature cannot include every single matter or encompass every single bit of evidence cited and relied upon by the Master, happens to cite such evidence. That concern carries particular force here, where the appeal challenges a substantial judgment, including an award of punitive damages. The Court's review of those findings should rest on the evidence the Master actually considered, not on a partial record assembled by the party challenging the judgment.

Accordingly, Respondent's proposed Amended Designation identifies the following targeted categories of materials necessary for this Court's review.

B. The Proposed Amended Designation Is Targeted and Specific

Respondent's proposed Amended Designation is both narrower than the prior record and calibrated to the Court's standard of review. Rather than designate the trial record at large, Respondent has limited its designation to what the Court needs in order to determine whether any evidence supports the Master's findings and whether the judgment may be affirmed on any ground. The Amended Designation, attached as Exhibit C, comprises three categories of materials, each tied to that review:

First, materials cited in Respondent's Final Brief, with pinpoint citations to the specific pages within each document and exhibit that are relevant to the Court's review. This category is already encompassed by the Court's April 29 Order.

Second, materials cited or referenced in the Master's Orders and Findings of Fact. The Master-In-Equity issued detailed orders specifically identifying the evidence he considered and relied upon in reaching his findings. If this Court is to review whether "any evidence" supports those findings, the evidence the Master himself identified is the most directly relevant material for that purpose. This category is limited to materials the Master specifically referenced and does not encompass the trial record at large.

Third, a limited number of additional materials that are relevant to the Court's review of the issues on appeal and that support the Master's findings. These materials include the cross-examination of witnesses whose direct testimony Appellant designated, as well as exhibits the Master considered in reaching his decision, which Appellant's designation does not include.

Designating these three categories of materials does not expand the record for its own sake; it is the minimum necessary for the Court to apply the "any evidence" standard to the findings the Master actually made. A record limited to Appellant's designation and the parties' brief citations would, by contrast, ask the Court to assess whether the evidence supports the Master's findings without that evidence before it.

C. Voluminous Backup Documentation Should Be Preserved in Digital Format

Certain categories of evidence in this case, including backup documentation for change orders, accounting records, and related financial documents, are voluminous by nature. These documents include, among other things, financial records, ledgers, and change order documentation upon which Respondent's forensic fraud expert relied in rendering her opinion, which were submitted into evidence at trial, and which the Master considered in reaching his findings. Respondent has conferred with the Clerk of Court, who has confirmed that in cases involving voluminous records, parties have previously moved to submit a traditional Record on

Appeal along with a digitized copy of certain documents on disk. Respondent proposes this same approach here. Respondent respectfully requests that the Court permit these materials to be preserved and made available in digital format rather than included in the printed record on appeal. This approach would allow the Court and individual judges to access and reference these materials if their review requires it, without imposing the burden of incorporating thousands of additional pages into the physical record.

This request is consistent with the Court's expressed concern about the volume of the record and its impact on efficient appellate review. Respondent is not asking this Court to review these materials as a matter of course, but rather to preserve them in a format that is accessible should the Court's examination of the issues require reference to the underlying documentation. Should this case proceed to the South Carolina Supreme Court, these materials would similarly be available for that Court's review.

Respondent is prepared to organize and produce the amended record on appeal at its own expense, including the preparation of both the physical record and the digitized supplemental materials. Therefore, in the interest of fairness and efficiency, Respondent requests that it be afforded the opportunity to prepare the amended record, both physical and digital.

CONCLUSION

Respondent acknowledges that the history of the designation of matter in this appeal has not met this Court's expectations. Counsel's medical condition, which was beyond anyone's control, compounded the difficulty of compliance during a critical period. With the retention of additional appellate counsel, Respondent has now produced the targeted, specific designation that this Court has sought. The proposed Amended Designation reduces the printed record from 51 volumes and more than 25,000 pages to approximately 11,546 pages (approximately 23 volumes),

together with approximately 8,934 pages of voluminous backup documentation preserved on disk. Respondent has complied with the Court's April 29 Order, has gone further by identifying the evidence the Master relied upon, and has proposed a practical solution for preserving voluminous materials in digital format. Respondent respectfully asks the Court to consider these circumstances in exercising its discretion on this Motion.

RELIEF REQUESTED

For the foregoing reasons, Respondent respectfully requests that this Court:

- (1) Accept Respondent's pinpoint citations to Respondent's Final Brief (Exhibit A) and direct that the materials identified therein be included in the amended record on appeal;
- (2) Accept Respondent's pinpoint citations to the Master's Orders and Findings of Fact (Exhibit B) and direct that the materials identified therein be included in the amended record on appeal;
- (3) Grant Respondent leave to amend its Designation of Matter to be Included in the Record on Appeal as set forth in the proposed Amended Designation attached hereto as Exhibit C;
- (4) Permit Respondent to make available certain voluminous backup documentation in digital format on disk for the Court's reference, as described herein; and
- (5) Permit Respondent to prepare the Record on Appeal at its own expense; and
- (6) Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esq. (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
(843) 814-8181 (Phone)
(843) 284-3953 (Fax)
jesse@jessesanchezlaw.com

and

BUNDY MCDONALD, LLC

W.H. Bundy, Jr., Esq. (SC Bar No. 1012)
M. Brent McDonald, Esq. (SC Bar No. 78057)
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

Attorneys for Respondent Library Associates, LLC

June 4, 2026
Mount Pleasant, South Carolina

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Of which Library Associates, LLC is the Respondent.

**EXHIBITS TO RESPONDENT'S MOTION TO AMEND
DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

Exhibit A – Pinpoint Citations to Respondent’s Final Brief.....	01
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Order Awarding Attorneys’ Fees & Costs, filed April 12, 2024.....	89

EXHIBIT A

Pinpoint Citations to Respondent's Final Brief

Pursuant to the Court's April 29, 2026 Order, Respondent provides the following pinpoint citations for the documents, exhibits, and testimony cited in Respondent's Final Brief. For trial testimony, the citation gives both the court reporter pagination (Tr. pp., page:line) and the corresponding Record on Appeal pagination (R. p.). The entries are listed in the order in which the materials appear in the Record on Appeal.

All references in this Exhibit to the Record on Appeal ("R. p." and "R-") are to the previously filed Record on Appeal. Because the Record is being amended, that pagination will change when the amended Record is assembled, and these references will be conformed to the amended Record. References to the court reporter's transcript pagination ("Tr. pp.") are unaffected.

Document, Exhibit, or Testimony	Court Reporter Pagination (Tr. pp.)	Record on Appeal (R. p.)
Orders & Judgments		
Order Granting Owner's Motion for Affirmative Injunction (Mar. 17, 2020)	—	R. p. 7-9
Order to Enforce Audit Provisions (June 17, 2020)	—	R. p. 10-16
Trial Order (Oct. 6, 2023)	—	R. p. 159-160
Order Awarding Attorneys' Fees and Costs (Apr. 12, 2024)	—	R. p. 194-199
Order Awarding Punitive Damages (Apr. 12, 2024)	—	R. p. 200-211
Order Requiring Election of Remedies (Apr. 29, 2024)	—	R. p. 231-233
Final Judgment in Favor of Owner (May 6, 2024)	—	R. p. 234-239
Order Denying Balfour's Motion to Alter or Amend (May 15, 2024)	—	R. p. 240
Pleadings		
Second Amended Summons and Complaint	—	R. p. 509-536
Answer and Counterclaims of Library Associates, LLC	—	R. p. 537-613
Balfour's Motion to Alter or Amend the Punitive Damages Award	—	R. p. 25308
Trial Transcript		
Trial Transcript	Tr. pp. 204:10-21	R. p. 1238:10-21
Trial Transcript	Tr. pp. 385:11-386:21	R. p. 1418:11-1419:21
Trial Transcript	Tr. pp. 392:9-18	R. p. 1426:9-18

Document, Exhibit, or Testimony	Court Reporter Pagination (Tr. pp.)	Record on Appeal (R. p.)
Trial Transcript	Tr. pp. 724:6-7	R. p. 1758:6-7
Trial Transcript	Tr. pp. 808:5-814:3	R. p. 1842:5-1848:3
Trial Transcript	Tr. pp. 2204:13-2207:11	R. p. 3238:13-3241:11
Trial Transcript	Tr. pp. 2274:6-17	R. p. 3308:6-17
Trial Transcript	—	R. p. 3587:22-3588:2
Trial Transcript	Tr. pp. 2607-2609	R. p. 3641-3643
Trial Transcript	Tr. pp. 2615:9-2662:11	R. p. 3649:9-3696:11
Trial Transcript	Tr. pp. 2665	R. p. 3699:12-24
Trial Transcript	Tr. pp. 2666:1-2705:2	R. p. 3700:1-3739:2
Trial Transcript	Tr. pp. 2666:1-2669:19	R. p. 3700:1-3703:19
Trial Transcript	Tr. pp. 2669:20-2674:13	R. p. 3703:20-3708:13
Trial Transcript	Tr. pp. 2671:9-2674:13	R. p. 3705:9-3708:13
Trial Transcript	Tr. pp. 2673:4-2674:13	R. p. 3707:4-3708:13
Trial Transcript	Tr. pp. 2674:16-2675:16	R. p. 3708:16-3709:16
Trial Transcript	—	R. p. 3709:18-3710:11
Trial Transcript	Tr. pp. 2794:2-2871:24	R. p. 3828:2-3865:24
Trial Transcript	Tr. pp. 2949:21	R. p. 3983:21
Trial Transcript	Tr. pp. 2950:19-21	R. p. 3984:19-21
Trial Transcript	Tr. pp. 2968:3-2969:24	R. p. 4002:3-4003:24
Trial Transcript	Tr. pp. 2970:21-2971:15	R. p. 4004:21-4005:15
Trial Transcript	Tr. pp. 3142:12-3148:11	R. p. 4179:12-4185:11
Trial Transcript	Tr. pp. 3154-3155	R. p. 4191:19-4192:20
Trial Transcript	Tr. pp. 3166-3170	R. p. 4203:5-4207:23
Trial Transcript	Tr. pp. 3171-3173	R. p. 4208:8-4210:5
Trial Transcript	Tr. pp. 3175-3179	R. p. 4212:22-4216:22
Trial Transcript	Tr. pp. 3194	R. p. 4231:10-18
Trial Transcript	Tr. pp. 3247:13-3255:18	R. p. 4284:13-4292:18
Trial Transcript	Tr. pp. 3267:9-3272:12	R. p. 4304:9-4309:12
Trial Transcript	Tr. pp. 3817:1-18	R. p. 4854:1-18
Trial Transcript	Tr. pp. 3819:4-3827:7	R. p. 4856:4-4864:7
Trial Transcript	Tr. pp. 3819:4-3827:12	R. p. 4856:4-4864:12
Trial Transcript	Tr. pp. 3890:25-3893:20	R. p. 4927:25-4930:20
Trial Transcript	Tr. pp. 3901:21-25-3902:1-5	R. p. 4938:21-25-4939:1-5
Trial Transcript	Tr. pp. 3907:19-21	R. p. 4944:19-21
Trial Transcript	Tr. pp. 3907:22-3908:13	R. p. 4944:22-4945:13
Trial Transcript	Tr. pp. 3924-3926	R. p. 4961:6-4963:14

Document, Exhibit, or Testimony	Court Reporter Pagination (Tr. pp.)	Record on Appeal (R. p.)
Trial Transcript	Tr. pp. 3926:11-21	R. p. 4963:11-21
Trial Transcript	Tr. pp. 3926:23-3927:9	R. p. 4963:23-4964:9
Trial Transcript	Tr. pp. 3927:17-3928:1	R. p. 4964:17-4965:1
Trial Transcript	Tr. pp. 3929:20-3930:2	R. p. 4966:20-4967:2
Trial Transcript	Tr. pp. 3931:3-8	R. p. 4968:3-8
Trial Transcript	Tr. pp. 3931:9-12	R. p. 4968:9-12
Trial Transcript	Tr. pp. 3931:17-23	R. p. 4968:17-23
Trial Transcript	Tr. pp. 3932:1-3939:20	R. p. 4969:1-4976:20
Trial Transcript	Tr. pp. 3939:21-3941:1	R. p. 4976:21-4978:1
Trial Transcript	Tr. pp. 3941:2-23	R. p. 4978:2-23
Trial Transcript	Tr. pp. 3955:3-3957:19	R. p. 4992:3-4994:19
Trial Transcript	Tr. pp. 4110:9-4111:10	R. p. 5147:9-5148:10
Trial Transcript	Tr. pp. 4111:11-15	R. p. 5148:11-15
Trial Transcript	Tr. pp. 4111:18-21	R. p. 5148:18-21
Trial Transcript	Tr. pp. 4112:7-17	R. p. 5149:17
Trial Transcript	Tr. pp. 4120:24-4121:2	R. p. 5157:24-5158:2
Trial Transcript	Tr. pp. 4149:3-4150:4	R. p. 5186:3-5187:4
Trial Transcript	Tr. pp. 4248:20-4249:1	R. p. 5285:20-5286:1
Trial Transcript	Tr. pp. 4250:10-21	R. p. 5287:10-21
Trial Transcript	Tr. pp. 4250:22-4251:15	R. p. 5287:22-5288:15
Trial Transcript	Tr. pp. 4316:9-12	R. p. 5353:9-12
Trial Exhibits		
Balfour Beatty Construction, LLC's Exhibit 56	—	R. p. 7310-7335; R. p. 7191-7309; R. p. 7269; R. p. 7295; R. p. 7315-7316; R. p. 7333; R. p. 7322-7325; R. p. 7311-7332; R. p. 7314-7319; R. p. 7320; R. p. 7315; R. p. 7317-7319; R. p. 7314-7315; R. p. 7333-7335; R. p. 7277; R. p. 7325; R. p. 7327; R. p. 7328; R. p. 7313; R. p. 7318; R. p. 7276-7277; R. p. 7319; R. p. 7324; R. p. 7326; R. p. 7327-7328; R. p. 7274; R. p. 7276; R. p. 7293; R. p. 7203; R. p. 7260; R. p. 7321; R. p. 7330
Balfour Beatty Construction, LLC's Exhibit 258	—	R. p. 9037-9038
Balfour Beatty Construction, LLC's Exhibit 261	—	R. p. 9039-9043
Library Associates, LLC's Exhibit 11	—	R. p. 13214-14017
Library Associates, LLC's Exhibit 12	—	R. p. 14018-14556

Document, Exhibit, or Testimony	Court Reporter Pagination (Tr. pp.)	Record on Appeal (R. p.)
Library Associates, LLC's Exhibit 13	—	R. p. 14557-15096
Library Associates, LLC's Exhibit 14	—	R. p. 15097-15162
Library Associates, LLC's Exhibit 39	—	R. p. 15590-15711
Library Associates, LLC's Exhibit 50	—	R. p. 15772-15773
Library Associates, LLC's Exhibit 89	—	R. p. 16609-16745
Library Associates, LLC's Exhibit 90	—	R. p. 16746-16771
Library Associates, LLC's Exhibit 91	—	R. p. 16772-16917
Library Associates, LLC's Exhibit 103	—	R. p. 17215-17325
Library Associates, LLC's Exhibit 104	—	R. p. 17326-17331
Library Associates, LLC's Exhibit 105	—	R. p. 17332-17334
Library Associates, LLC's Exhibit 146-B	—	R. p. 23569-23632
Library Associates' (Defendant's) Exhibit 150	—	R. p. 23658-23670
Deposition Testimony		
Video Deposition of George Michael Baumbach	13:5-14:10 (Timestamp 7:28-8:23); 14:24-15:11 (Timestamp 10:00-10:30); 42:12-45:23 (Timestamp 47:40-52:05); 46:22-47:15 (Timestamp 53:27-54:22).	R. p. 25320

EXHIBIT B

Pinpoint Citations to the Master's Trial Order

Respondent provides the following pinpoint citations to the matter on which the Master relied in the Trial Order (R. p. 114 to R. p. 160), together with the record matter underlying the related rulings on attorneys' fees and punitive damages, which is set out in the separate section that follows. Trial testimony is identified by its court reporter pagination (Tr. pp.); the corresponding Record on Appeal pagination (R. p.) is provided where it appears in the materials of record. Documents and exhibits are identified by their Record on Appeal pagination. In the Trial Order table below, the final column identifies the page(s) of the Trial Order on which the Master relied on each item.

All references in this Exhibit to the Record on Appeal ("R. p." and "R-") are to the previously filed Record on Appeal. Because the Record is being amended, that pagination will change when the amended Record is assembled, and these references will be conformed to the amended Record. References to the court reporter's transcript pagination ("Tr. pp.") are unaffected.

Matter Relied On by the Master	Court Reporter Pagination (Tr. pp.)	Record on Appeal (R. p.)	Trial Order Page (Order p. / R. stamp)
Trial Transcript			
Trial Transcript	Tr. pp. 385:11-386:21	R. p. 1418:11-1419:21	Order p. 30 (R-143)
Trial Transcript	Tr. pp. 392:9-18	R. p. 1426:9-18	Order p. 11 (R-124)
Trial Transcript	Tr. pp. 724:6-7	R. p. 1758:6-7	Order p. 31 (R-144)
Trial Transcript	Tr. pp. 808:5-814:3	R. p. 1842:5-1848:3	Order p. 31 (R-144)
Trial Transcript	Tr. pp. 852:4-853:5	—	Order p. 5 (R-118), Order p. 40 (R-153)
Trial Transcript	Tr. pp. 1224:2-1225:17	—	Order p. 23 (R-136)
Trial Transcript	Tr. pp. 1230:3-1231:15	—	Order p. 24 (R-137)
Trial Transcript	Tr. pp. 1802:4-6	—	Order p. 6 (R-119)
Trial Transcript	Tr. pp. 2204:13-2207:11	R. p. 3238:13-3241:11	Order p. 8 (R-121), Order p. 11 (R-124), Order p. 29 (R-142)
Trial Transcript	Tr. pp. 2241:15-23	—	Order p. 8 (R-121)
Trial Transcript	Tr. pp. 2274:6-17	R. p. 3308:6-17	Order p. 11 (R-124), Order p. 29 (R-142)
Trial Transcript	Tr. pp. 2378:7-2379:8	—	Order p. 34 (R-147)
Trial Transcript	Tr. pp. 2378:7-2400:3	—	Order p. 34 (R-147)

Matter Relied On by the Master	Court Reporter Pagination (Tr. pp.)	Record on Appeal (R. p.)	Trial Order Page (Order p. / R. stamp)
Trial Transcript	Tr. pp. 2456:4-2459:25	—	Order p. 34 (R-147)
Trial Transcript	Tr. pp. 2607-2609	R. p. 3641-3643	Order p. 31 (R-144)
Trial Transcript	Tr. pp. 2615:9-2662:11	R. p. 3649:9-3696:11	Order p. 31 (R-144)
Trial Transcript	Tr. pp. 2665	R. p. 3699:12-24	Order p. 31 (R-144)
Trial Transcript	Tr. pp. 2666:1-2669:19	R. p. 3700:1-3703:19	Order p. 31 (R-144)
Trial Transcript	Tr. pp. 2666:1-2705:2	R. p. 3700:1-3739:2	Order p. 30 (R-143), Order p. 31 (R-144), Order p. 32 (R-145)
Trial Transcript	Tr. pp. 2669:20-2674:13	R. p. 3703:20-3708:13	Order p. 30 (R-143), Order p. 31 (R-144)
Trial Transcript	Tr. pp. 2671:9-2674:13	R. p. 3705:9-3708:13	Order p. 30 (R-143), Order p. 31 (R-144)
Trial Transcript	Tr. pp. 2673:4-2674:13	R. p. 3707:4-3708:13	Order p. 30 (R-143), Order p. 31 (R-144)
Trial Transcript	Tr. pp. 2674:16-2675:16	R. p. 3708:16-3709:16	Order p. 30 (R-143), Order p. 31 (R-144), Order p. 32 (R-145)
Trial Transcript	Tr. pp. 2675:18-2676:11; 2716:1-2768:25	R. p. 3709:18-3710:11, 3750:1-3802:25	Order p. 31 (R-144), Order p. 32 (R-145)
Trial Transcript	Tr. pp. 2794:2-2871:24	R. p. 3828:2-3865:24	Order p. 32 (R-145)
Trial Transcript	Tr. pp. 2949:21	R. p. 3983:21	Order p. 32 (R-145)
Trial Transcript	Tr. pp. 2950:19-21	R. p. 3984:19-21	Order p. 32 (R-145)
Trial Transcript	Tr. pp. 2968:3-2969:24	R. p. 4002:3-4003:24	Order p. 32 (R-145)
Trial Transcript	Tr. pp. 2970:21-2971:15	R. p. 4004:21-4005:15	Order p. 32 (R-145)
Trial Transcript	Tr. pp. 2973:3-2978:25	—	Order p. 32 (R-145)
Trial Transcript	Tr. pp. 2978:10-2982:14	—	Order p. 32 (R-145)
Trial Transcript	Tr. pp. 2989:8-2992:24	—	Order p. 32 (R-145)
Trial Transcript	Tr. pp. 3002:22-3004:10	—	Order p. 32 (R-145)
Trial Transcript	Tr. pp. 3010:3-3012:11	—	Order p. 32 (R-145)

Matter Relied On by the Master	Court Reporter Pagination (Tr. pp.)	Record on Appeal (R. p.)	Trial Order Page (Order p. / R. stamp)
Trial Transcript	Tr. pp. 3142:12-3148	R. p. 4179:12-4185	Order p. 3 (R-116)
Trial Transcript	Tr. pp. 3154-3155	R. p. 4191:19-4192:20	Order p. 4 (R-117)
Trial Transcript	Tr. pp. 3166-3170	R. p. 4203:5-4207:23	Order p. 4 (R-117)
Trial Transcript	Tr. pp. 3171-3173	R. p. 4208:8-4210:5	Order p. 4 (R-117)
Trial Transcript	Tr. pp. 3175-3179	R. p. 4212:22-4216:22	Order p. 4 (R-117)
Trial Transcript	Tr. pp. 3194	R. p. 4231:10-18	Order p. 4 (R-117)
Trial Transcript	Tr. pp. 3247:13-3255:18	R. p. 4284:13-4292:18	Order p. 42 (R-155)
Trial Transcript	Tr. pp. 3267:9-3272:12	R. p. 4304:9-4309:12	Order p. 42 (R-155)
Trial Transcript	Tr. pp. 3598:24-3600:25	—	Order p. 16 (R-129)
Trial Transcript	Tr. pp. 3602:8-3607:10	—	Order p. 17 (R-130)
Trial Transcript	Tr. pp. 3607:11-25	—	Order p. 17 (R-130)
Trial Transcript	Tr. pp. 3608:21-3622:4	—	Order p. 17 (R-130)
Trial Transcript	Tr. pp. 3622:6-3630:18	—	Order p. 17 (R-130)
Trial Transcript	Tr. pp. 3633:1-3635:19	—	Order p. 18 (R-131), Order p. 24 (R-137)
Trial Transcript	Tr. pp. 3635:20-3636:2	—	Order p. 18 (R-131)
Trial Transcript	Tr. pp. 3638:5-3648:25	—	Order p. 18 (R-131)
Trial Transcript	Tr. pp. 3652:3-25	—	Order p. 18 (R-131)
Trial Transcript	Tr. pp. 3653:1-3655:13	—	Order p. 18 (R-131)
Trial Transcript	Tr. pp. 3655:14-3656:25	—	Order p. 19 (R-132)
Trial Transcript	Tr. pp. 3658:13-24	—	Order p. 19 (R-132)
Trial Transcript	Tr. pp. 3660:5-3664:1	—	Order p. 20 (R-133)
Trial Transcript	Tr. pp. 3664:2-15	—	Order p. 20 (R-133)

Matter Relied On by the Master	Court Reporter Pagination (Tr. pp.)	Record on Appeal (R. p.)	Trial Order Page (Order p. / R. stamp)
Trial Transcript	Tr. pp. 3668:4-3669:25	—	Order p. 21 (R-134)
Trial Transcript	Tr. pp. 3670:17-3671:19	—	Order p. 21 (R-134)
Trial Transcript	Tr. pp. 3672:8-3673:7	—	Order p. 22 (R-135)
Trial Transcript	Tr. pp. 3674:8-3675:13	—	Order p. 23 (R-136)
Trial Transcript	Tr. pp. 3677:3-24	—	Order p. 23 (R-136)
Trial Transcript	Tr. pp. 3680:2-25	—	Order p. 23 (R-136)
Trial Transcript	Tr. pp. 3693:23-3694:25	—	Order p. 24 (R-137)
Trial Transcript	Tr. pp. 3701:3-3702:17	—	Order p. 25 (R-138)
Trial Transcript	Tr. pp. 3705:11-3710:1	—	Order p. 26 (R-139)
Trial Transcript	Tr. pp. 3714:11-3724:11	—	Order p. 27 (R-140)
Trial Transcript	Tr. pp. 3724:12-3731:11	—	Order p. 28 (R-141)
Trial Transcript	Tr. pp. 3735:8-3736:25	—	Order p. 29 (R-142)
Trial Transcript	Tr. pp. 3738:13-16	—	Order p. 29 (R-142)
Trial Transcript	Tr. pp. 3817:1-18	R. p. 4854:1-18	Order p. 42 (R-155)
Trial Transcript	Tr. pp. 3819:4-3827:7	R. p. 4856:4-4864:7	Order p. 42 (R-155)
Trial Transcript	Tr. pp. 3888:8-23	—	Order p. 10 (R-123)
Trial Transcript	Tr. pp. 3890:25-3893:20	R. p. 4927:25-4930:20	Order p. 10 (R-123)
Trial Transcript	Tr. pp. 3901:21-3902:5	R. p. 4938:21-4939:5	Order p. 10 (R-123)
Trial Transcript	Tr. pp. 3907:19-21	R. p. 4944:19-21	Order p. 8 (R-121), Order p. 14 (R-127)
Trial Transcript	Tr. pp. 3907:22-3908:13	R. p. 4944:22-4945:13	Order p. 8 (R-121), Order p. 14 (R-127), Order p. 29 (R-142)
Trial Transcript	Tr. pp. 3910:24-3911:22	—	Order p. 15 (R-128)

Matter Relied On by the Master	Court Reporter Pagination (Tr. pp.)	Record on Appeal (R. p.)	Trial Order Page (Order p. / R. stamp)
Trial Transcript	Tr. pp. 3911:17-19	—	Order p. 15 (R-128)
Trial Transcript	Tr. pp. 3924-3926	R. p. 4961:6-4963:14	Order p. 11 (R-124), Order p. 29 (R-142)
Trial Transcript	Tr. pp. 3926:11-21	R. p. 4963:11-21	Order p. 11 (R-124), Order p. 29 (R-142)
Trial Transcript	Tr. pp. 3926:23-3927:9	R. p. 4963:23-4964:9	Order p. 11 (R-124), Order p. 29 (R-142), Order p. 37 (R-150)
Trial Transcript	Tr. pp. 3927:17-3928:1	R. p. 4964:17-4965:1	Order p. 11 (R-124), Order p. 37 (R-150)
Trial Transcript	Tr. pp. 3929:20-3930:2	R. p. 4966:20-4967:2	Order p. 11 (R-124), Order p. 12 (R-125)
Trial Transcript	Tr. pp. 3931:3-8	R. p. 4968:3-8	Order p. 12 (R-125), Order p. 37 (R-150)
Trial Transcript	Tr. pp. 3932:1-3939:20	R. p. 4969:1-4976:20	Order p. 12 (R-125)
Trial Transcript	Tr. pp. 3939:21-3941:1	R. p. 4976:21-4978:1	Order p. 12 (R-125)
Trial Transcript	Tr. pp. 3941:2-23	R. p. 4978:2-23	Order p. 12 (R-125)
Trial Transcript	Tr. pp. 3945:2-6	—	Order p. 12 (R-125)
Trial Transcript	Tr. pp. 3945:7-3946:11	—	Order p. 13 (R-126)
Trial Transcript	Tr. pp. 3946:23-3947:8	—	Order p. 13 (R-126)
Trial Transcript	Tr. pp. 3947:16-3948:1	—	Order p. 13 (R-126)
Trial Transcript	Tr. pp. 3948:15-17	—	Order p. 13 (R-126), Order p. 34 (R-147)
Trial Transcript	Tr. pp. 3955:3-3957:19	R. p. 4992:3-4994:19	Order p. 15 (R-128), Order p. 44 (R-157)
Trial Transcript	Tr. pp. 3958:8-4104:18	—	Order p. 34 (R-147)
Trial Transcript	Tr. pp. 4008:3-10	—	Order p. 15 (R-128)
Trial Transcript	Tr. pp. 4104:5-18	—	Order p. 35 (R-148)
Trial Transcript	Tr. pp. 4107:17-4108:1	—	Order p. 15 (R-128)
Trial Transcript	Tr. pp. 4110:9-4111:10	R. p. 5147:9-5148:10	Order p. 15 (R-128), Order p. 16 (R-129), Order p. 43 (R-156)

Matter Relied On by the Master	Court Reporter Pagination (Tr. pp.)	Record on Appeal (R. p.)	Trial Order Page (Order p. / R. stamp)
Trial Transcript	Tr. pp. 4111:11-15	R. p. 5148:11-15	Order p. 15 (R-128), Order p. 16 (R-129), Order p. 43 (R-156)
Trial Transcript	Tr. pp. 4120:24-4121:2	R. p. 5157:24-5158:2	Order p. 16 (R-129), Order p. 34 (R-147), Order p. 43 (R-156)
Trial Transcript	Tr. pp. 4149:3-4150:4	R. p. 5186:3-5187:4	Order p. 15 (R-128)
Trial Transcript	Tr. pp. 4248:20-4249:1	R. p. 5285:20-5286:1	Order p. 30 (R-143), Order p. 40 (R-153)
Trial Transcript	Tr. pp. 4250:10-21	R. p. 5287:10-21	Order p. 30 (R-143), Order p. 40 (R-153)
Trial Transcript	Tr. pp. 4250:22-4251:15	R. p. 5287:22-5288:15	Order p. 30 (R-143), Order p. 40 (R-153)
Trial Transcript	Tr. pp. 4316:9-12	R. p. 5353:9-12	Order p. 8 (R-121), Order p. 37 (R-150)
Trial Transcript	Tr. pp. 4402-4410	—	Order p. 9 (R-122)
Trial Transcript	Tr. pp. 4402:8-4411:11	—	Order p. 13 (R-126), Order p. 35 (R-148)
Trial Transcript	Tr. pp. 5036:2-5043:10	—	Order p. 45 (R-158)
Trial Exhibits			
Balfour Beatty Construction, LLC's Exhibit 12	—	R. p. 6113-7088	Order p. 16 (R-129), Order p. 18 (R-131), Order p. 29 (R-142), Order p. 34 (R-147)
Balfour Beatty Construction, LLC's Exhibit 56	—	R. p. 7333-7335	Order p. 3 (R-116), Order p. 4 (R-117), Order p. 5 (R-118), Order p. 7 (R-120), Order p. 10 (R-123), Order p. 21 (R-134), Order p. 33 (R-146)
Balfour Beatty Construction, LLC's Exhibit 258	—	R. p. 9037-9038	Order p. 8 (R-121), Order p. 11 (R-124), Order p. 29 (R-142)
Balfour Beatty Construction, LLC's Exhibit 261	—	R. p. 9039-9043	Order p. 31 (R-144)
Library Associates, LLC's Exhibit 2	—	R. p. 9588-9593	Order p. 5 (R-118)
Library Associates, LLC's Exhibits 11, 12, 13, and 14 (four notebooks)	—	R. p. 13214-15162	Order p. 8 (R-121)

Matter Relied On by the Master	Court Reporter Pagination (Tr. pp.)	Record on Appeal (R. p.)	Trial Order Page (Order p. / R. stamp)
Library Associates, LLC's Exhibit 28	—	R. p. 15204-15207	Order p. 17 (R-130)
Library Associates, LLC's Exhibit 39	—	R. p. 15590-15711	Order p. 3 (R-116)
Library Associates, LLC's Exhibit 44	—	R. p. 15738-15744	Order p. 6 (R-119)
Library Associates, LLC's Exhibit 50	—	R. p. 15772-15773	Order p. 11 (R-124), Order p. 29 (R-142), Order p. 43 (R-156)
Library Associates, LLC's Exhibit 63	—	R. p. 15897-15903	Order p. 18 (R-131), Order p. 24 (R-137)
Library Associates, LLC's Exhibit 69	—	R. p. 15979-15986	Order p. 18 (R-131)
Library Associates, LLC's Exhibit 91	—	R. p. 16772-16917	Order p. 32 (R-145)
Library Associates, LLC's Exhibit 103	—	R. p. 17215-17325	Order p. 3 (R-116)
Library Associates, LLC's Exhibit 144	—	R. p. 23563-23565	Order p. 17 (R-130), Order p. 33 (R-146)
Library Associates, LLC's Exhibit 146B	—	R. p. 23569-23632	Order p. 42 (R-155)
Library Associates, LLC's Exhibit 150	—	R. p. 23658-23670	Order p. 10 (R-123)
Balfour Beatty Construction, LLC's Exhibit 209	—	To be assigned	Order p. 37 (R-150)
Balfour Beatty Construction, LLC's Exhibit 252	—	To be assigned	Order p. 6 (R-119)
Balfour Beatty Construction, LLC's Exhibit 253	—	To be assigned	Order p. 7 (R-120), Order p. 8 (R-121)
Balfour Beatty Construction, LLC's Exhibit 260	—	To be assigned	Order p. 33 (R-146)
Balfour Beatty Construction, LLC's Exhibit 264	—	To be assigned	Order p. 9 (R-122)
Balfour Beatty Construction, LLC's Exhibit 329	—	To be assigned	Order p. 16 (R-129), Order p. 18 (R-131), Order p. 19 (R-132), Order p. 20 (R-133), Order p. 29 (R-142), Order p. 34 (R-147)

Matter Relied On by the Master	Court Reporter Pagination (Tr. pp.)	Record on Appeal (R. p.)	Trial Order Page (Order p. / R. stamp)
Balfour Beatty Construction, LLC's Exhibit 352	—	To be assigned	Order p. 9 (R-122), Order p. 13 (R-126)

Record Matter Underlying the Attorneys' Fees and Punitive Damages Rulings

The following record matter underlies the Order Awarding Attorneys' Fees and Costs and the Order Awarding Punitive Damages, both filed April 12, 2024. Consistent with the Amended Designation of Matter, this matter is designated for completeness of the record on the rulings under appeal and is not offered as pinpoint citations. The Amended Designation lists the orders by title and filing date and does not assign them a Record on Appeal page; the record-page spans below are taken from the Amended Designation.

Document / Exhibit	Record on Appeal (R. p.)
Attorneys' Fees and Costs	
Order Awarding Attorneys' Fees and Costs, filed April 12, 2024	
Transcript of the March 13, 2024 Hearing on Balfour Beatty Construction, LLC's Motion to Alter/Amend Order Granting Judgment to Library Associates, LLC and Library Associates, LLC's Petition for Attorneys' Fees and Costs, in its entirety	
Library Associates, LLC's Filing of Exhibits Pertaining to the March 13, 2024 Hearing (filed April 10, 2024) — complete filing; first pages R-24237 to R-24259 in the printed Record, backup invoices R-24260 to R-25269 on disk	R-24237 to R-25269
Library Associates, LLC's Exhibit 2 — backup to the fee pay applications and invoices; complete exhibit (first 6 pages, R-9588 to R-9593, in the printed Record)	R-9588 to R-9777
Library Associates, LLC's Exhibit 3 — fee backup; complete exhibit (first 6 pages, R-9778 to R-9783, in the printed Record)	R-9778 to R-9996
Library Associates, LLC's Exhibit 4 — fee backup; complete exhibit (first 6 pages, R-9997 to R-10002, in the printed Record)	R-9997 to R-10182
Punitive Damages	
Order Awarding Punitive Damages, filed April 12, 2024	
Transcript of the April 2, 2024 Hearing on Balfour Beatty Construction, LLC's Motion to Require Library Associates, LLC to Elect a Remedy and Library Associates, LLC's Petition for Attorneys' Fees and Costs, pages 1-4 and 29-38	
Transcript of the April 2, 2024 Hearing (same hearing), the remainder of the transcript	
Exhibit admitted at the April 2, 2024 Hearing (on punitive damages and election of remedy) — Exhibit 1	R-960 to R-963
Exhibit admitted at the April 2, 2024 Hearing — Exhibit 2	R-964
Exhibit admitted at the April 2, 2024 Hearing — Exhibit 3	R-965 to R-969
Exhibit admitted at the April 2, 2024 Hearing — Exhibit 4	R-970

Document / Exhibit	Record on Appeal (R. p.)
Exhibit admitted at the April 2, 2024 Hearing — Exhibit 5	R-1032 to R-1034

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2024-000788

Balfour Beatty Construction, LLC, Appellant,

v.

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

And

Library Associates, LLC, Third-Party Plaintiff,

v.

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

Of which Library Associates, LLC is the Respondent.

**RESPONDENT'S AMENDED DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**
(Color-Coded Consolidated Version)

Legend:

Blue – designated by both Appellant and Respondent.

Green – designated by Respondent only.

Red – designated by Appellant only (not among the matter relied upon in Respondent's pin cites).

A parenthetical after a designation shows whether the Final Order, Respondent's Brief, or both cite that document. Some matter (such as the attorney's fees and punitive damages hearings and the related orders) is designated for completeness of the record on the rulings under appeal and carries no citation parenthetical.

Pursuant to Rule 209(c), SCACR, and the Court's Order dated March 16, 2026, this consolidated designation sets forth all matter designated by Appellant together with all matter designated by Respondent Library Associates, LLC, to be included in the Record on Appeal, color-coded by source as shown in the legend above. While Amended Designations of Matter do not necessarily require references to a previously filed Record on Appeal, Respondent's include them here for ease of identification by the parties and the Court. Respondent designates that all matter listed below be include in the Record on Appeal.

Orders

1. Order Granting Balfour Beatty Construction LLC's Motion to Amend Complaint, filed October 2, 2019
2. Order to Consolidate and Refer to the Charleston County Master-In-Equity, filed November 18, 2019
3. Order Granting Library Associates, LLC's Motion for an Affirmative Injunction, filed March 17, 2020 (Brief)
4. Order Granting Library Associates, LLC's Motion to Enforce the Court Order, filed June 17, 2020 (Brief)
5. Order Granting Strong Tower Construction, LLC d/b/a Koch Corporation's Motion for Partial Summary Judgment, filed September 9, 2021
6. Order Granting Third-Party Defendant Warco Construction, Inc.'s Motion for Partial Summary Judgment, filed September 13, 2021
7. Order Granting Watson Electrical Construction Co., LLC's Motion for Partial Summary Judgment, filed September 13, 2021
8. Order Regarding Multiple Motions, filed October 26, 2021
9. Form 4 Order Judgment Entered in Favor of Premier Exteriors, LLC Against Balfour Beatty Construction, LLC, filed December 22, 2021
10. Order Granting Premier Exteriors, LLC's Motion for Summary Judgment Against Balfour Beatty Construction, LLC, filed December 22, 2021
11. Form 4 Order Judgment in Favor of Library Associates, LLC Against Balfour Beatty Construction, LLC, filed October 6, 2023
12. Trial Order, filed October 6, 2023 (Brief)
13. Form 4 Order Judgment in Favor of Library Associates, LLC Against Balfour Beatty Construction, LLC for Attorneys' Fees and Costs, filed April 12, 2024
14. Order Awarding Attorneys' Fees and Costs, filed April 12, 2024 (Brief)
15. Order Awarding Punitive Damages, filed April 12, 2024 (Brief)
16. Order Amending Post Judgment Interest Amount, filed April 26, 2024

17. [Order on Multiple Motions, filed April 29, 2024](#)
18. [Order Granting, in Part, and Denying in Part, Balfour's Motion to Alter or Amend the Order Awarding Punitive Damages and Motion for Election of Remedy, filed April 29, 2024 \(Brief\)](#)
19. [Form 4 Judgment Order in Favor of Library Associates, LLC Against Balfour Beatty Construction, filed May 6, 2024](#)
20. [Form 4 Order Denying Balfour's Motion to Alter or Amend the October 6, 2023 Order and Balfour's Motion to Alter or Amend the Award of Punitive Damages, filed May 15, 2024; \(Brief\)](#)

Pleadings

21. [Summons and Complaint, C.A. No. 2019-CP-10-01108, filed March 5, 2019](#)
22. [Library Associates, LLC's Answer to Plaintiff's Complaint and Counterclaims, filed May 3, 2019](#)
23. [Amended Answer and Counterclaims of Library Associates, LLC and Third Party Complaint, filed May 15, 2019](#)
24. [Amended Summons and Complaint, C.A. No. 2019-CP-10-01108, filed October 3, 2019](#)
25. [Answer and Counterclaims of Library Associates, LLC to Amended Complaint of Balfour Beatty Construction, LLC and Third Party Complaint, filed October 17, 2019](#)
26. [Second Amended Summons and Complaint, C.A. No. 2019-CP-10-01108, filed October 12, 2020 \(Brief\)](#)
27. [Answer and Counterclaims of Library Associates, LLC to the Second Amended Complaint of Balfour Beatty Construction, LLC and Third Party Complaint, filed October 20, 2020 \(Brief\)](#)

Hearing Transcripts

28. [Transcript of the March 13, 2024 Hearing on Balfour Beatty Construction, LLC's Motion to Alter/Amend Order Granting Judgment to Library Associates, LLC and Library Associates, LLC's Petition for Attorneys' Fees and Costs, in its entirety](#)
29. [Transcript of the April 2, 2024 Hearing on Balfour Beatty Construction, LLC's Motion to Require Library Associates, LLC to Elect a Remedy and Library Associates, LLC's Petition for Attorneys' Fees and Costs, pages 1-4 and 29-38](#)
30. [Transcript of the April 2, 2024 Hearing \(same hearing\), the remainder of the transcript](#)
31. [Exhibits admitted at the April 2, 2024 Hearing \(the hearing on punitive damages and election of remedy\): Exhibit 1 \(R-960 to R-963\); Exhibit 2 \(R-964\); Exhibit 3 \(R-965 to R-969\); Exhibit 4 \(R-970\); and Exhibit 5 \(R-1032 to R-1034\)](#)

Trial Transcript (September 13, 2021 to December 3, 2021)

Page references below are to the court reporter's transcript pagination, with the corresponding Record (Bates) pages shown in parentheses.

32. [Pages designated by both Appellant and Respondent: 724 \(R-1758\); 808-814 \(R-1842 to R-1848\); 2607-2609 \(R-3641 to R-3643\); 2629-2631 \(R-3663 to R-3665\); 2716 \(R-3750\);](#)

2759-2761 (R-3793 to R-3795); 3901 (R-4938); 3924-3941 (R-4961 to R-4978). (Final Order and/or Respondent's Brief)

33. Pages designated by Appellant only: 1-3 (R-1035 to R-1037); 90-164 (R-1124 to R-1198); 215-284 (R-1249 to R-1318); 675-723 (R-1709 to R-1757); 725-807 (R-1759 to R-1841); 815 (R-1849); 1786-1797 (R-2820 to R-2831); 1843-1892 (R-2877 to R-2926); 1916-2046 (R-2950 to R-3080); 2231-2233 (R-3265 to R-3267); 2299-2331 (R-3333 to R-3365); 2554 (R-3588); 2599 (R-3633); 2610-2613 (R-3644 to R-3647); 2714-2715 (R-3748 to R-3749); 2872-2924 (R-3906 to R-3958); 3039 (R-4073); 3040-3061 (R-4077 to R-4098); 3835-3837 (R-4872 to R-4874); 3839-3853 (R-4876 to R-4890); 3856-3860 (R-4893 to R-4897); 3916-3923 (R-4953 to R-4960); 4216-4234 (R-5253 to R-5271); 4275-4296 (R-5312 to R-5333); 4340-4341 (R-5377 to R-5378); 4460-4487 (R-5497 to R-5524).
34. Pages designated by Respondent only: 204 (R-1238); 384-386 (R-1418 to R-1420); 392 (R-1426); 852-853 (R-1886 to R-1887); 1224-1225 (R-2258 to R-2259); 1230-1231 (R-2264 to R-2265); 1802 (R-2836); 2204-2207 (R-3238 to R-3241); 2241 (R-3275); 2274 (R-3308); 2360 (R-3394); 2378-2400 (R-3412 to R-3434); 2456-2459 (R-3490 to R-3493); 2477 (R-3511); 2553 (R-3587); 2579-2582 (R-3613 to R-3616); 2602-2606 (R-3636 to R-3640); 2614-2628 (R-3648 to R-3662); 2632-2713 (R-3666 to R-3747); 2717-2758 (R-3751 to R-3792); 2762-2768 (R-3796 to R-3802); 2781-2784 (R-3815 to R-3818); 2793-2871 (R-3827 to R-3905); 2932 (R-3966); 2935-2938 (R-3969 to R-3972); 2949-2952 (R-3983 to R-3986); 2955-3038 (R-3989 to R-4072); 3096-3099 (R-4133 to R-4136); 3116 (R-4153); 3118-3206 (R-4155 to R-4243); 3208-3298 (R-4245 to R-4335); 3300-3304 (R-4337 to R-4341); 3317-3324 (R-4354 to R-4361); 3333-3334 (R-4370 to R-4371); 3336-3337 (R-4373 to R-4374); 3339-3340 (R-4376 to R-4377); 3342-3344 (R-4379 to R-4381); 3438-3441 (R-4475 to R-4478); 3443-3449 (R-4480 to R-4486); 3453 (R-4490); 3455-3476 (R-4492 to R-4513); 3478-3479 (R-4515 to R-4516); 3530-3531 (R-4567 to R-4568); 3542-3564 (R-4579 to R-4601); 3575-3580 (R-4612 to R-4617); 3587-3591 (R-4624 to R-4628); 3593-3685 (R-4630 to R-4722); 3688-3691 (R-4725 to R-4728); 3693-3785 (R-4730 to R-4822); 3817 (R-4854); 3819-3834 (R-4856 to R-4871); 3868-3869 (R-4905 to R-4906); 3875-3879 (R-4912 to R-4916); 3882 (R-4919); 3888 (R-4925); 3890-3893 (R-4927 to R-4930); 3902-3915 (R-4939 to R-4952); 3942-4113 (R-4979 to R-5150); 4120-4121 (R-5157 to R-5158); 4139-4203 (R-5176 to R-5240); 4210 (R-5247); 4237 (R-5274); 4246-4253 (R-5283 to R-5290); 4255 (R-5292); 4257-4258 (R-5294 to R-5295); 4262 (R-5299); 4316 (R-5353); 4402-4411 (R-5439 to R-5448); 5036-5043 (R-6073 to R-6080). (Final Order and/or Respondent's Brief)
35. Additional portions designated by Respondent (witness cross-examination not designated by Appellant): Alec Dooley (Tr. 356-443); Tim Spano (Tr. 600-603); Nick Starcevic (Tr. 1268-1786); David Simonton (Tr. 2047-2278; and Tr. 2331-2364); Casey Thompson (Tr. 2439-2473; and Tr. 2476-2599); Mark Doran (Tr. 4433-4436)
36. Additional transcript portions designated by Respondent: Tr. 1731-1786 (R-2765 to R-2820); Tr. 4487-4503 (R-5524 to R-5540)

Exhibits – Plaintiff (Balfour Beatty Construction, LLC)

37. Balfour Beatty Construction, LLC's Exhibit 3
38. Balfour Beatty Construction, LLC's Exhibit 11

39. Balfour Beatty Construction, LLC's Exhibit 12 (Order)
40. Balfour Beatty Construction, LLC's Exhibit 26
41. Balfour Beatty Construction, LLC's Exhibit 27 (complete exhibit; BBC Schedule dated May 6, 2019)
42. Balfour Beatty Construction, LLC's Exhibit 42 (only pages 1-2, 8)
43. Balfour Beatty Construction, LLC's Exhibit 46 (only pages 1-2, 18)
44. Balfour Beatty Construction, LLC's Exhibit 56 (Order and Brief)
45. Balfour Beatty Construction, LLC's Exhibit 60, Notice to Proceed
46. Balfour Beatty Construction, LLC's Exhibit 72
47. Balfour Beatty Construction, LLC's Exhibit 81
48. Balfour Beatty Construction, LLC's Exhibit 83
49. Balfour Beatty Construction, LLC's Exhibit 85
50. Balfour Beatty Construction, LLC's Exhibit 111
51. Balfour Beatty Construction, LLC's Exhibit 138 (only pages 1-2)
52. Balfour Beatty Construction, LLC's Exhibit 141
53. Balfour Beatty Construction, LLC's Exhibit 143
54. Balfour Beatty Construction, LLC's Exhibit 150
55. Balfour Beatty Construction, LLC's Exhibit 151
56. Balfour Beatty Construction, LLC's Exhibit 154
57. Balfour Beatty Construction, LLC's Exhibit 201
58. Balfour Beatty Construction, LLC's Exhibit 202
59. Balfour Beatty Construction, LLC's Exhibit 209, Joint Prosecution, Defense, and Tolling Agreements between BBC and subcontractors (relied upon in the Trial Order)
60. Balfour Beatty Construction, LLC's Exhibit 215
61. Balfour Beatty Construction, LLC's Exhibit 226
62. Balfour Beatty Construction, LLC's Exhibit 231
63. Balfour Beatty Construction, LLC's Exhibit 252, Letter from BBC to Jim Clements, 1/25/2019, regarding the Consolidated Claim (relied upon in the Trial Order)
64. Balfour Beatty Construction, LLC's Exhibit 253, Letter from WLA (architect) to BBC responding to the 1/25/2019 letter (relied upon in the Trial Order)
65. Balfour Beatty Construction, LLC's Exhibit 255
66. Balfour Beatty Construction, LLC's Exhibit 257
67. Balfour Beatty Construction, LLC's Exhibit 258 (Order and Brief)
68. Balfour Beatty Construction, LLC's Exhibit 260, AIA G704 Certificate of Substantial Completion issued by WLA, 2/15/2019 (relied upon in the Trial Order)
69. Balfour Beatty Construction, LLC's Exhibit 261 (Order and Brief)

70. Balfour Beatty Construction, LLC's Exhibit 263 (only pages 1-2)
71. Balfour Beatty Construction, LLC's Exhibit 264, Letter from BBC to WLA rejecting the claim and demanding mediation, 4/26/2019 (relied upon in the Trial Order)
72. Balfour Beatty Construction, LLC's Exhibit 292
73. Balfour Beatty Construction, LLC's Exhibit 300 (only pages 1-2, 9-12)
74. Balfour Beatty Construction, LLC's Exhibit 301
75. Balfour Beatty Construction, LLC's Exhibit 303 (only pages 1-4, 16-18)
76. Balfour Beatty Construction, LLC's Exhibit 304 (only pages 1-2, 10)
77. Balfour Beatty Construction, LLC's Exhibit 305 (only pages 1-2, 12-13, 42-43, 45, 57- 59, 90)
78. Balfour Beatty Construction, LLC's Exhibit 312
79. Balfour Beatty Construction, LLC's Exhibit 329, BBC spreadsheet showing total due of \$13,896,741.79 (relied upon in the Trial Order)
80. Balfour Beatty Construction, LLC's Exhibit 350
81. Balfour Beatty Construction, LLC's Exhibit 352, BBC spreadsheet showing total due of \$13,631,888.60 (relied upon in the Trial Order)

Exhibits – Library Associates, LLC

82. Library Associates, LLC's Exhibit 2 (only the first 6 pages, R-9588 to R-9593, are included in the printed Record; the complete exhibit is provided on disk) (Order)
83. Library Associates, LLC's Exhibit 3 (only the first 6 pages, R-9778 to R-9783, are included in the printed Record; the complete exhibit is provided on disk)
84. Library Associates, LLC's Exhibit 4 (only the first 6 pages, R-9997 to R-10002, are included in the printed Record; the complete exhibit is provided on disk)
85. Library Associates, LLC's Exhibit 5 (only the first 7 pages, R-10183 to R-10189, are included in the printed Record; the complete exhibit is provided on disk)
86. Library Associates, LLC's Exhibit 6 (only the first 6 pages, R-10328 to R-10333, are included in the printed Record; the complete exhibit is provided on disk)
87. Library Associates, LLC's Exhibit 11 (Order and Brief)
88. Library Associates, LLC's Exhibit 12 (Order and Brief)
89. Library Associates, LLC's Exhibit 13 (Order and Brief)
90. Library Associates, LLC's Exhibit 14 (Order and Brief)
91. Library Associates, LLC's Exhibit 15
92. Library Associates, LLC's Exhibit 17 (only the first 4 pages, R-15170 to R-15173, are included in the printed Record; the complete exhibit is provided on disk)
93. Library Associates, LLC's Exhibit 18
94. Library Associates, LLC's Exhibit 19
95. Library Associates, LLC's Exhibit 20

96. Library Associates, LLC's Exhibit 21
97. Library Associates, LLC's Exhibit 22
98. Library Associates, LLC's Exhibit 23
99. Library Associates, LLC's Exhibit 24
100. Library Associates, LLC's Exhibit 25
101. Library Associates, LLC's Exhibit 26
102. Library Associates, LLC's Exhibit 27
103. Library Associates, LLC's Exhibit 28 (Order)
104. Library Associates, LLC's Exhibit 29
105. Library Associates, LLC's Exhibit 30
106. Library Associates, LLC's Exhibit 31
107. Library Associates, LLC's Exhibit 32
108. Library Associates, LLC's Exhibit 33
109. Library Associates, LLC's Exhibit 34 (only the first 6 pages, R-15228 to R-15233, are included in the printed Record; the complete exhibit is provided on disk)
110. Library Associates, LLC's Exhibit 35 (only the first 5 pages, R-15415 to R-15419, are included in the printed Record; the complete exhibit is provided on disk)
111. Library Associates, LLC's Exhibit 36
112. Library Associates, LLC's Exhibit 37
113. Library Associates, LLC's Exhibit 38
114. Library Associates, LLC's Exhibit 39 (Order and Brief)
115. Library Associates, LLC's Exhibit 40
116. Library Associates, LLC's Exhibit 41
117. Library Associates, LLC's Exhibit 42
118. Library Associates, LLC's Exhibit 43
119. Library Associates, LLC's Exhibit 44 (Order)
120. Library Associates, LLC's Exhibit 45
121. Library Associates, LLC's Exhibit 46
122. Library Associates, LLC's Exhibit 47
123. Library Associates, LLC's Exhibit 48
124. Library Associates, LLC's Exhibit 49
125. Library Associates, LLC's Exhibit 50 (Order and Brief)
126. Library Associates, LLC's Exhibit 51
127. Library Associates, LLC's Exhibit 52
128. Library Associates, LLC's Exhibit 53

129. Library Associates, LLC's Exhibit 54
130. Library Associates, LLC's Exhibit 55
131. Library Associates, LLC's Exhibit 56
132. Library Associates, LLC's Exhibit 57
133. Library Associates, LLC's Exhibit 58
134. Library Associates, LLC's Exhibit 59
135. Library Associates, LLC's Exhibit 63 (Order)
136. Library Associates, LLC's Exhibit 64
137. Library Associates, LLC's Exhibit 65
138. Library Associates, LLC's Exhibit 66
139. Library Associates, LLC's Exhibit 67
140. Library Associates, LLC's Exhibit 68
141. Library Associates, LLC's Exhibit 69 (Order)
142. Library Associates, LLC's Exhibit 70
143. Library Associates, LLC's Exhibit 71
144. Library Associates, LLC's Exhibit 72
145. Library Associates, LLC's Exhibit 73
146. Library Associates, LLC's Exhibit 74
147. Library Associates, LLC's Exhibit 75
148. Library Associates, LLC's Exhibit 76
149. Library Associates, LLC's Exhibit 77
150. Library Associates, LLC's Exhibit 78
151. Library Associates, LLC's Exhibit 79
152. Library Associates, LLC's Exhibit 80
153. Library Associates, LLC's Exhibit 82
154. Library Associates, LLC's Exhibit 83
155. Library Associates, LLC's Exhibit 84
156. Library Associates, LLC's Exhibit 85
157. Library Associates, LLC's Exhibit 86
158. Library Associates, LLC's Exhibit 87
159. Library Associates, LLC's Exhibit 89 (Brief)
160. Library Associates, LLC's Exhibit 90 (Brief)
161. Library Associates, LLC's Exhibit 91 (Order and Brief)
162. Library Associates, LLC's Exhibit 92

163. Library Associates, LLC's Exhibit 93
164. Library Associates, LLC's Exhibit 94
165. Library Associates, LLC's Exhibit 95
166. Library Associates, LLC's Exhibit 96
167. Library Associates, LLC's Exhibit 97
168. Library Associates, LLC's Exhibit 98
169. Library Associates, LLC's Exhibit 99
170. Library Associates, LLC's Exhibit 100
171. Library Associates, LLC's Exhibit 101
172. Library Associates, LLC's Exhibit 102
173. Library Associates, LLC's Exhibit 103 (Order and Brief)
174. Library Associates, LLC's Exhibit 104 (cited in Respondent's Brief; R-17326 to R-17331)
175. Library Associates, LLC's Exhibit 105 (cited in Respondent's Brief; R-17332 to R-17334)
176. Library Associates, LLC's Exhibit 107 (only the first 6 pages, R-17342 to R-17347, are included in the printed Record; the complete exhibit is provided on disk)
177. Library Associates, LLC's Exhibit 108 (only the first 6 pages, R-17353 to R-17358, are included in the printed Record; the complete exhibit is provided on disk)
178. Library Associates, LLC's Exhibit 109 (only the first 6 pages, R-17369 to R-17374, are included in the printed Record; the complete exhibit is provided on disk)
179. Library Associates, LLC's Exhibit 110 (only the first 6 pages, R-17391 to R-17396, are included in the printed Record; the complete exhibit is provided on disk)
180. Library Associates, LLC's Exhibit 111 (only the first 6 pages, R-17411 to R-17416, are included in the printed Record; the complete exhibit is provided on disk)
181. Library Associates, LLC's Exhibit 112 (only the first 6 pages, R-17455 to R-17460, are included in the printed Record; the complete exhibit is provided on disk)
182. Library Associates, LLC's Exhibit 113 (only the first 6 pages, R-17547 to R-17552, are included in the printed Record; the complete exhibit is provided on disk)
183. Library Associates, LLC's Exhibit 114 (only the first 6 pages, R-17639 to R-17644, are included in the printed Record; the complete exhibit is provided on disk)
184. Library Associates, LLC's Exhibit 115 (only the first 6 pages, R-17696 to R-17701, are included in the printed Record; the complete exhibit is provided on disk)
185. Library Associates, LLC's Exhibit 116 (only the first 6 pages, R-17754 to R-17759, are included in the printed Record; the complete exhibit is provided on disk)
186. Library Associates, LLC's Exhibit 117 (only the first 6 pages, R-17887 to R-17892, are included in the printed Record; the complete exhibit is provided on disk)

187. Library Associates, LLC's Exhibit 118 (only the first 6 pages, R-17989 to R-17994, are included in the printed Record; the complete exhibit is provided on disk)
188. Library Associates, LLC's Exhibit 119 (only the first 7 pages, R-18070 to R-18076, are included in the printed Record; the complete exhibit is provided on disk)
189. Library Associates, LLC's Exhibit 120 (only the first 6 pages, R-18210 to R-18215, are included in the printed Record; the complete exhibit is provided on disk)
190. Library Associates, LLC's Exhibit 121 (only the first 6 pages, R-18293 to R-18298, are included in the printed Record; the complete exhibit is provided on disk)
191. Library Associates, LLC's Exhibit 122 (only the first 3 pages, R-18459 to R-18461, are included in the printed Record; the complete exhibit is provided on disk)
192. Library Associates, LLC's Exhibit 123 (only the first 6 pages, R-18604 to R-18609, are included in the printed Record; the complete exhibit is provided on disk)
193. Library Associates, LLC's Exhibit 124 (only the first 6 pages, R-18721 to R-18726, are included in the printed Record; the complete exhibit is provided on disk)
194. Library Associates, LLC's Exhibit 125 (only the first 6 pages, R-18869 to R-18874, are included in the printed Record; the complete exhibit is provided on disk)
195. Library Associates, LLC's Exhibit 126 (only the first 6 pages, R-19114 to R-19119, are included in the printed Record; the complete exhibit is provided on disk)
196. Library Associates, LLC's Exhibit 127 (only the first 5 pages, R-19312 to R-19316, are included in the printed Record; the complete exhibit is provided on disk)
197. Library Associates, LLC's Exhibit 128 (only the first 6 pages, R-19641 to R-19646, are included in the printed Record; the complete exhibit is provided on disk)
198. Library Associates, LLC's Exhibit 129 (only the first 6 pages, R-19967 to R-19972, are included in the printed Record; the complete exhibit is provided on disk)
199. Library Associates, LLC's Exhibit 130 (only the first 6 pages, R-20240 to R-20245, are included in the printed Record; the complete exhibit is provided on disk)
200. Library Associates, LLC's Exhibit 131 (only the first 8 pages, R-20526 to R-20533, are included in the printed Record; the complete exhibit is provided on disk)
201. Library Associates, LLC's Exhibit 132 (only the first 7 pages, R-20833 to R-20839, are included in the printed Record; the complete exhibit is provided on disk)
202. Library Associates, LLC's Exhibit 133 (only the first 7 pages, R-21130 to R-21136, are included in the printed Record; the complete exhibit is provided on disk)
203. Library Associates, LLC's Exhibit 134 (only the first 6 pages, R-21395 to R-21400, are included in the printed Record; the complete exhibit is provided on disk)
204. Library Associates, LLC's Exhibit 135 (only the first 6 pages, R-21639 to R-21644, are included in the printed Record; the complete exhibit is provided on disk)
205. Library Associates, LLC's Exhibit 136 (only the first 6 pages, R-21869 to R-21874, are included in the printed Record; the complete exhibit is provided on disk)
206. Library Associates, LLC's Exhibit 137 (only the first 6 pages, R-22106 to R-22111, are included in the printed Record; the complete exhibit is provided on disk)

- 207. Library Associates, LLC's Exhibit 138 (only the first 6 pages, R-22282 to R-22287, are included in the printed Record; the complete exhibit is provided on disk)
- 208. Library Associates, LLC's Exhibit 139 (only the first 6 pages, R-22471 to R-22476, are included in the printed Record; the complete exhibit is provided on disk)
- 209. Library Associates, LLC's Exhibit 140 (only the first 13 pages, R-22675 to R-22687, are included in the printed Record; the complete exhibit is provided on disk)
- 210. Library Associates, LLC's Exhibit 141 (only the first 5 pages, R-23085 to R-23089, are included in the printed Record; the complete exhibit is provided on disk)
- 211. Library Associates, LLC's Exhibit 142 (only the first 5 pages, R-23230 to R-23234, are included in the printed Record; the complete exhibit is provided on disk)
- 212. Library Associates, LLC's Exhibit 143 (only the first 5 pages, R-23430 to R-23434, are included in the printed Record; the complete exhibit is provided on disk)
- 213. Library Associates, LLC's Exhibit 144 (Order)
- 214. Library Associates, LLC's Exhibit 145
- 215. Library Associates, LLC's Exhibit 146-B (Order and Brief)
- 216. Library Associates, LLC's Exhibit 147 (only the first 2 pages, R-23633 to R-23634, are included in the printed Record; the complete exhibit is provided on disk)
- 217. Library Associates, LLC's Exhibit 148 (only the first 2 pages, R-23641 to R-23642, are included in the printed Record; the complete exhibit is provided on disk)
- 218. Library Associates, LLC's Exhibit 149 (only the first 2 pages, R-23649 to R-23650, are included in the printed Record; the complete exhibit is provided on disk)
- 219. Library Associates, LLC's Exhibit 150 (Order and Brief)
- 220. Library Associates, LLC's Exhibit 152
- 221. Library Associates, LLC's Exhibit 153
- 222. Library Associates, LLC's Exhibit 154
- 223. Library Associates, LLC's Exhibit 155
- 224. Library Associates, LLC's Exhibit 157
- 225. Library Associates, LLC's Exhibit 160
- 226. Library Associates, LLC's Exhibit 161
- 227. Library Associates, LLC's Exhibit 162
- 228. Library Associates, LLC's Exhibit 163

Other Documents

- 229. Balfour's Proposed Order, Submitted to the Master May 23, 2023
- 230. Library's Proposed Order, Submitted to the Master May 23, 2023
- 231. Balfour Beatty Construction, LLC's Motion to Alter/Amend Order Granting Judgment to Library Associates, LLC, filed October 16, 2023

232. Balfour Beatty Construction, LLC's Motion to Require Library to Elect a Remedy, filed October 16, 2023
233. Library Associates, LLC's Petition for Attorneys' Fees and Costs, filed November 6, 2023
234. Balfour Beatty Construction, LLC's Memorandum in Opposition to Library Associates, LLC's Petition for Attorneys' Fees and Costs, filed March 7, 2024
235. Balfour Beatty Construction, LLC's Memorandum in Support of its Motion to Require Library to Elect a Remedy, filed March 7, 2024
236. Balfour Beatty Construction, LLC's Memorandum in Support of Motion to Alter/Amend the Order Granting Judgment to Library Associates, filed March 7, 2024
237. Library Associates, LLC's Memorandum in Support of its Petition for Attorneys' Fees and Costs and Pursuant to the Declaratory Judgment Act, Additional Interest Payments, Past and Future, as Direct Costs Incurred and for Prejudgment Interest as Provided by Law; and in Support of Pending Rule 52(b) and 59(e) Motions to Alter or Amend and Make Additional Findings, filed March 7, 2024
238. Balfour Beatty Construction, LLC's Amended Motion to Require Library Associates, LLC to Elect a Remedy, filed March 8, 2024;
239. Balfour Beatty Construction, LLC's Memorandum in Response to Library Associates, LLC's Memorandum in Support of its Petition for Attorneys' Fees and Costs and Pursuant to the Declaratory Judgment Act, Additional Interest Payments, Past and Future, as Direct Costs Incurred and for Prejudgment Interest as Provided by Law; and in Support of Pending Rule 52(b) and 59(e) Motions to Alter or Amend and Make Additional Findings, filed March 11, 2024
240. Balfour Beatty Construction, LLC's Motion to Strike Affidavit of Marvin D. Infinger, filed March 11, 2024
241. Library Associates, LLC's Reply to Balfour Beatty Construction, LLC's Memorandum in Opposition to its Petition for Attorneys' Fees and Costs, filed March 11, 2024
242. Revised Affidavit of Marvin D. Infinger, filed March 11, 2024
243. Affidavit of Franklin E. Worrell, filed March 28, 2024
244. Balfour Beatty Construction, LLC's Motion in Limine Regarding Hearing on Punitive Damages, filed April 1, 2024
245. Library Associates, LLC's Filing of Exhibits Pertaining to the March 13, 2024 Hearing, filed April 10, 2024 (first pages, R-24237 to R-24259, designated for the printed Record; backup invoices, R-24260 to R-25269, provided on disk in digital format)
246. Library Associates, LLC's Supplemental Petition for Attorneys' Fees and Costs; and in Addition Other Relief Pursuant to Declaratory Judgment Cause of Action, filed April 10, 2024
247. Supplemental Affidavit of Kimberly Bennett Brown, filed April 10, 2024
248. Balfour Beatty Construction, LLC's Motion to Alter or Amend the Order Awarding Punitive Damages and Election of Remedy Pursuant to Rule 59(e), filed April 22, 2024

249. Library Associates, LLC's Notice of Election of Remedy, filed May 6, 2024
250. Balfour Beatty Construction, LLC's Motion to Alter or Amend Pursuant to Rule 59(e), filed May 9, 2024
251. Balfour Beatty Construction, LLC's Notice and Certificate of Mechanic's Lien, filed January 25, 2019;
252. Balfour Beatty Construction, LLC's Notice and Certificate of Amended Mechanic's Lien, filed July 23, 2019
253. Video Deposition Testimony of George Michael Baumbach (placeholder at R-25320; video submitted electronically via the Court of Appeals' OneDrive) (Brief): 13:5-14:10 (Timestamp 7:28-8:23); 14:24-15:11 (Timestamp 10:00-10:30); 42:12-45:23 (Timestamp 47:40- 52:05); 46:22-47:15 (Timestamp 53:27-54:22)

Documents Provided on Disk in Digital Format

Consistent with the parties' digitization of the Record and the Court's instructions to reduce the physical Record, the following are submitted in complete form electronically, on disk. The Library Associates exhibits listed below constitute the voluminous backup to the pay applications and backup invoices for Respondent's attorneys fees and costs. For the exhibits, only the first pages noted in the exhibit list above appear in the printed Record:

1. Library Associates, LLC's Exhibit 2, pages R-9588 to R-9777 (complete exhibit)
2. Library Associates, LLC's Exhibit 3, pages R-9778 to R-9996 (complete exhibit)
3. Library Associates, LLC's Exhibit 4, pages R-9997 to R-10182 (complete exhibit)
4. Library Associates, LLC's Exhibit 5, pages R-10183 to R-10327 (complete exhibit)
5. Library Associates, LLC's Exhibit 6, pages R-10328 to R-10471 (complete exhibit)
6. Library Associates, LLC's Exhibit 17, pages R-15170 to R-15177 (complete exhibit)
7. Library Associates, LLC's Exhibit 34, pages R-15228 to R-15414 (complete exhibit)
8. Library Associates, LLC's Exhibit 35, pages R-15415 to R-15572 (complete exhibit)
9. Library Associates, LLC's Exhibit 88, pages R-16255 to R-16608 (complete exhibit)
10. Library Associates, LLC's Exhibit 107, pages R-17342 to R-17352 (complete exhibit)
11. Library Associates, LLC's Exhibit 108, pages R-17353 to R-17368 (complete exhibit)
12. Library Associates, LLC's Exhibit 109, pages R-17369 to R-17390 (complete exhibit)
13. Library Associates, LLC's Exhibit 110, pages R-17391 to R-17410 (complete exhibit)
14. Library Associates, LLC's Exhibit 111, pages R-17411 to R-17454 (complete exhibit)
15. Library Associates, LLC's Exhibit 112, pages R-17455 to R-17546 (complete exhibit)
16. Library Associates, LLC's Exhibit 113, pages R-17547 to R-17638 (complete exhibit)
17. Library Associates, LLC's Exhibit 114, pages R-17639 to R-17695 (complete exhibit)
18. Library Associates, LLC's Exhibit 115, pages R-17696 to R-17753 (complete exhibit)
19. Library Associates, LLC's Exhibit 116, pages R-17754 to R-17886 (complete exhibit)

20. Library Associates, LLC's Exhibit 117, pages R-17887 to R-17988 (complete exhibit)
21. Library Associates, LLC's Exhibit 118, pages R-17989 to R-18069 (complete exhibit)
22. Library Associates, LLC's Exhibit 119, pages R-18070 to R-18209 (complete exhibit)
23. Library Associates, LLC's Exhibit 120, pages R-18210 to R-18292 (complete exhibit)
24. Library Associates, LLC's Exhibit 121, pages R-18293 to R-18458 (complete exhibit)
25. Library Associates, LLC's Exhibit 122, pages R-18459 to R-18603 (complete exhibit)
26. Library Associates, LLC's Exhibit 123, pages R-18604 to R-18720 (complete exhibit)
27. Library Associates, LLC's Exhibit 124, pages R-18721 to R-18868 (complete exhibit)
28. Library Associates, LLC's Exhibit 125, pages R-18869 to R-19113 (complete exhibit)
29. Library Associates, LLC's Exhibit 126, pages R-19114 to R-19311 (complete exhibit)
30. Library Associates, LLC's Exhibit 127, pages R-19312 to R-19640 (complete exhibit)
31. Library Associates, LLC's Exhibit 128, pages R-19641 to R-19966 (complete exhibit)
32. Library Associates, LLC's Exhibit 129, pages R-19967 to R-20239 (complete exhibit)
33. Library Associates, LLC's Exhibit 130, pages R-20240 to R-20525 (complete exhibit)
34. Library Associates, LLC's Exhibit 131, pages R-20526 to R-20832 (complete exhibit)
35. Library Associates, LLC's Exhibit 132, pages R-20833 to R-21129 (complete exhibit)
36. Library Associates, LLC's Exhibit 133, pages R-21130 to R-21394 (complete exhibit)
37. Library Associates, LLC's Exhibit 134, pages R-21395 to R-21638 (complete exhibit)
38. Library Associates, LLC's Exhibit 135, pages R-21639 to R-21868 (complete exhibit)
39. Library Associates, LLC's Exhibit 136, pages R-21869 to R-22105 (complete exhibit)
40. Library Associates, LLC's Exhibit 137, pages R-22106 to R-22281 (complete exhibit)
41. Library Associates, LLC's Exhibit 138, pages R-22282 to R-22470 (complete exhibit)
42. Library Associates, LLC's Exhibit 139, pages R-22471 to R-22674 (complete exhibit)
43. Library Associates, LLC's Exhibit 140, pages R-22675 to R-23084 (complete exhibit)
44. Library Associates, LLC's Exhibit 141, pages R-23085 to R-23229 (complete exhibit)
45. Library Associates, LLC's Exhibit 142, pages R-23230 to R-23429 (complete exhibit)
46. Library Associates, LLC's Exhibit 143, pages R-23430 to R-23562 (complete exhibit)
47. Library Associates, LLC's Exhibit 146, pages R-23569 to R-23632 (complete exhibit)
48. Library Associates, LLC's Exhibit 147, pages R-23633 to R-23640 (complete exhibit)
49. Library Associates, LLC's Exhibit 148, pages R-23641 to R-23648 (complete exhibit)
50. Library Associates, LLC's Exhibit 149, pages R-23649 to R-23657 (complete exhibit)
51. Library Associates, LLC's Filing of Exhibits Pertaining to the March 13, 2024 Hearing (filed April 10, 2024), pages R-24237 to R-25269 (complete filing)
52. Listed above, to be submitted Electronically: Deposition Testimony of George Michael Baumbach (placeholder at R-25320; video submitted electronically via the Court of

Appeals' OneDrive) (Brief): 13:5-14:10 (Timestamp 7:28-8:23); 14:24-15:11 (Timestamp 10:00-10:30); 42:12-45:23 (Timestamp 47:40- 52:05); 46:22-47:15 (Timestamp 53:27-54:22).

Page Count (approximate):

1. **Physical (printed) Record:** 11,546 pages.
2. **Voluminous Backup Documents (invoices, receipts, and pay application backup) to be provided on disk (digital format):** 8,934 pages.
3. **Video deposition of George Michael Baumbach:** To be provided on disk.

This Amended Designation reduces the previously submitted Record on Appeal by approximately 28 Volumes.

CERTIFICATION

The undersigned hereby certifies, pursuant to Rule 209(c), SCACR, that Respondent's Amended Designation of Matter to be included in the Record on Appeal contains no matter which is irrelevant to the appeal.

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esq. (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
(843) 814-8181 (Phone)
(843) 284-3953 (Fax)
jesse@jessesanchezlaw.com

and

BUNDY MCDONALD, LLC

W.H. Bundy, Jr., Esq. (SC Bar No. 1012)
M. Brent McDonald, Esq. (SC Bar No. 78057)
1516 Old Trolley Rd, 2nd Floor
Summerville, SC 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

Attorneys for Respondent, Library Associates,
LLC

June 4, 2026
Summerville, South Carolina

EXHIBIT D

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

) NINTH JUDICIAL CIRCUIT

) CASE NO.: 2019-CP-10-01108

Balfour Beatty Construction, LLC

)

)

)

Plaintiff,

)

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v.

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)

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

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)

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Defendants.

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)

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Library Associates, LLC,

)

)

Third-Party Plaintiff,

)

)

v.

)

)

Lithko Contracting, LLC, Watson Electrical
Construction, Co., LLC, Old North State Masonry,
LLC,

)

)

)

)

Third-Party Defendants.

)

)

This matter was tried before this Court on non-consecutive days beginning on September 13, 2021 and concluding on December 3, 2021¹ and filed by Plaintiff Balfour Beatty Construction, LLC (hereinafter “Contractor”) against Library Associates, LLC (hereinafter “Owner”). Owner answered, counterclaimed, and filed a third-party complaint against various subcontractors and material suppliers. Numerous additional actions were filed by subcontractors and material

¹ The Court’s Order was delayed in obtaining the completed transcript. The Court wishes to acknowledge the parties and counsel’s patience in awaiting the transcript – which the Court finds to be well-prepared.

suppliers to Contractor that were consolidated with the above captioned case. Most of those subcontractors and material suppliers are no longer parties hereto.²

Contractor pursued the following causes of action (1) foreclosure of a mechanic's lien against Owner's Property; (2) breach of contract against Owner; (3) quantum meruit/quasi contract; (4) attorneys' fees pursuant to S.C. Code Section 27-1-15; (5) abandonment, waiver, and/or estoppel; (6) cardinal change; (7) indemnity; (8) breach of implied warranty of plans and specifications; (9) first to breach; and (10) breach of contract accompanied by a fraudulent act.

Owner pursued the following causes of action against Contractor (1) breach of contract; (2) breach of contract accompanied by a fraudulent act; (3) indemnification; (4) declaratory relief; (5) unfair trade practices; and (6) civil conspiracy.

Owner additionally pursued causes of action against Third Party Defendants Lithko Contracting, LLC ("Subcontractor Lithko"), Old North State Masonry, LLC ("Subcontractor ONSM") and Watson Electrical Construction, LLC ("Subcontractor Watson") for (1) declaratory relief and (2) civil conspiracy.

Prior to the scheduled presentation of their cases in chief, Subcontractors Lithko, ONSM, and Watson dismissed their claims against Owner. Subcontractors Lithko and ONSM dismissed their respective mechanic's liens. As such, Owner is hereby deemed the prevailing party and is entitled to attorneys' fees and costs, pursuant to S.C. Code Ann. Section 29-5-10, et seq, as to those parties.

Based upon all the evidence and weighing the credibility of the witnesses, this Court makes the following findings of fact and conclusions of law.

² Some of these subcontractors have summary judgment orders in their favor that are subject to pending Rule 59(e), SCRC motions filed by Contractor. This Order does not address those claims and rulings on those pending motions will be made by separate order. Each of those Subcontractors have dismissed any and all claims against Owner.

I. The Contract

This case arises out of the construction of a luxury hotel in downtown Charleston, South Carolina known as the Hotel Bennett (“Project”). The contract for the construction of the Project is what is known in the industry as a “Cost Plus with a Guaranteed Max” contract. It is on a form originally created by the American Institute of Architects “AIA”. Plaintiff’s Ex. 56. The underlying forms in this matter consist of AIA-A133 (“Agreement”), Exhibit A to the Agreement, and the General Conditions known as AIA-A201. Id. In addition to the Agreement and the General Conditions, the Contract Documents include “Drawings, Specifications, Addenda issued prior to the execution of the contract, other documents listed in the Agreement and Modifications issued after the execution of the Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the work issued by the Architect.” See Section 1.1.1 of the AIA-A201. These will sometimes be collectively referred to as the “Contract Documents.”

At its essence, this contract provides that Contractor is entitled to be paid for eligible costs (“Costs of the Work”) incurred for the work on the project plus a fee subject to a maximum amount (“GMP”). Section 2.2.1 of the AIA-A133. To be clear, the maximum amount is just that—it is not a minimum amount. Unlike a lump sum contract, Contractor is entitled only to the lesser of the “Cost of the Work” plus a fee or the “GMP”. Section A.1.1 of Exhibit A to AIA-A133; Section 2.2.1 of the AIA-A133; Article 6 of the AIA-A133.

Owner, along with Owner’s Representative Jim Clements, issued a request for proposal (“RFP”) for this Project to interested bidders. Defendant’s Ex. 103; Transcript, pp. 3142-3148. Contractor responded to the RFP. Defendant’s Ex. 39. On September 22, 2014, Owner and Contractor entered into the Agreement-AIA-A133. Plaintiff’s Ex. 56. Though the parties utilized

the AIA form, significant changes were made to the contract terms through extensive negotiations. Deposition Testimony of Mike Baumbach.

The AIA-A133 Agreement was broken down into two phases. The first phase was preconstruction phase to develop the GMP. Section 2.1 and 2.2 of AIA-A133; Transcript pp. 3154-3155. Contractor was paid a separate fee for the preconstruction phase. Article 4 of AIA-A133. The preconstruction portion stated that Contractor “shall, through preconstruction, review the constructability of the Architect’s plans and specifications and shall notify the Owner and Architect in writing of any discovered defects, deficiencies, or recommended changes.” Section 2.1.8.1 of the AIA-A133. Contractor, in fact, approached Owner and requested an additional \$36,000.00 in preconstruction costs to further develop and evaluate the design development documents. Transcript, pp. 3166-3170. The Owner paid Contractor the additional preconstruction costs for “higher cost security.” Id. Contractor and the Architect “worked in conjunction with each other” during the preconstruction period. Id.

The second phase of the AIA-133 Agreement was the construction phase. Section 2.3 of the AIA-A133. This phase began once the Contractor submitted the GMP and the Owner agreed to proceed. Section 2.2.1 of the AIA-A133. The GMP and the project schedule or duration are both created by Contractor. Transcript, pp. 3171-3173. Just prior to the submission of the GMP, Contractor informed Owner that it needed to add an additional \$870,000.00 for general conditions to the GMP. Transcript, pp. 3175-3179. The Owner agreed to the additional sums. Id. In March of 2015, Exhibit A to the AIA-A133 was executed which included a GMP of \$59,344,747.00 and a project duration of 28 months from the Notice to Proceed. Plaintiff’s Ex. 56. Owner did not have any involvement in the creation of the schedule for the Project. Transcript, p. 3194. The Contractor was “solely responsible” for the schedule. Section 3.10.4.7 of the AIA-A201.

The Notice to Proceed was issued on March 19, 2015. Defendant's Ex. 2.

II. The Role of This Court

The Contract Documents expressly acknowledge that claims and disputes will arise during the construction of the Project. Section 4.3 of the AIA-A201. "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." Section 4.3.1 of the AIA-A201. "The term 'Claim' also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract." Id. "Claims must be initiated by written notice." Id. "The responsibility to substantiate Claims shall rest with the party making the Claim." Id.

There are two contractual time limitations on Claims. Claims must be initiated within thirty (30) days, except for claims involving a claimed delay, and a request for extension of time which must be initiated within twenty (20) days. Sections 4.3.2 and 8.3.4 of the AIA-A201.

An initial decision by the Architect on all timely Claims, arising prior to the date Final Payment is due, is a condition precedent to either party instituting litigation. Section 4.4.1 of the AIA-A201. After an initial decision by the Architect, this Court then has jurisdiction to review that decision. Section 9.2 of the AIA-A133.

III. Failure of Condition Precedent

Section 4.4 of the AIA-A201 deals with resolution of claims and disputes between Contractor and Owner. Plaintiff Ex. 56. Section 4.4.1 states in pertinent part as follows:

"Decision of the Architect. Claims, including those alleging an error or omission by the Architect^[3] but excluding those arising under sections 10.3 through 10.5^[4], shall be referred

³ As more fully explained herein, the only architect to testify at the trial of this matter, James McAuliffe, was called by Contractor over the objection of Owner; however, Mr. McAuliffe testified that he was not, and could not, testify that the Architect for this project committed an error or omission. Transcript pp. 852-853.

⁴ These sections relate to hazardous materials. No claims have been made related to hazardous materials in this action.

initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the claim has been referred to the Architect with no decision having been rendered by the Architect.”

On January 25, 2019, Contractor submitted a letter to Jim Clements that was identified as Contractor’s “Consolidated Claim (Preliminary).” Plaintiff Exhibit 252. This will be referred to herein as the “four-page letter.” The Architect was copied on the letter. Id. The four page letter contained no supporting documentation. Id. The letter stated, in part, that it was “based on a preliminary accounting of costs that have been incurred through the noted dates; however, because work on the Project continues a final accounting of costs presentable to the Owner cannot be done. Once the work by Balfour Beatty and its subcontractors is completed a full accounting of those additional costs will be provided by supplement or amendment.” Id. There are no specific claims identified within the four page letter. Id. It does not refer to any specific requests for change order or unpaid certified pay applications. Id. The four page letter does, however, contain an “aggregate” amount of \$22,452,282.51 for the claim.

Also on January 25, 2019, Contractor filed a mechanic’s lien on Owner’s property in the amount of \$8,409,658.54. Defendant’s Ex. 44. Contractor filed the mechanic’s lien on the same day that it represented “work on the Project continues...”. Plaintiff Ex. 252. Moreover, Mr. David Simonton testified on behalf of the Contractor that the last day of work on the project was April 26, 2019. Transcript, p. 1802.

To perfect and enforce a lien, one must timely complete the following three steps found in sections 29–5–90 and 29–5–120 of the South Carolina Code: (1) serve and file a notice or certificate of the lien, (2) commence a lawsuit to enforce the lien, and (3) file a lis pendens. *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., LLC*, 409 S.C. 331, 762 S.E.2d 561, 566-67 (2014). **“The trigger for determining when all three of these events must be performed**

is the date when the supplier ceases furnishing labor or materials.” Id. (emphasis supplied).

“Section 29–5–90 requires that, **within ninety days after he ceases to furnish labor or materials** for a building or structure, the party asserting a lien must serve upon the owner (or person in possession of the property) and file with the register of deeds or clerk of court a notice or a certificate that includes a statement of the amount due him, together with a description of the property intended to be covered by the lien, the name of the owner of the property, if known, and other required information.” (emphasis supplied).

I find that Contractor failed to perfect its Mechanic’s Lien pursuant to S.C. Code Ann. Section 29-5-90.

Section 4.4.2 of the AIA-A201 states in pertinent part as follows:

“The Architect will review Claims and within ten days of receipt of the claim take one or more of the following actions: (1) request additional supporting data from the claimant...”

Plaintiff Ex. 56.

Section 4.4.4 of the AIA-A201 states in pertinent part as follows:

“If the Architect requests a party to...furnish additional supporting data, such party shall respond within ten days after the receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or additional supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.”

Pursuant to Sections 4.4.1, 4.4.2, and 4.4.4, the Architect responded on February 4, 2019 and requested “additional supporting data.” Plaintiff Ex. 253. Specifically, the Architect stated:

“We have thoroughly analyzed the content of the letter. In the absence of any detail supporting the claim, we can draw no conclusion as to the legitimacy of the claim, except to say it appears to be grossly overstated. The owner disputes the claim. We have a duty to render an initial decision on this disputed claim within 10 days of receipt. To exercise that duty, we request additional supporting data on the claim. Please provide complete and verifiable detail substantiating each and every element of the claim. We must have specificity concerning the detail of impact on contract time and amount that might be your basis of any component of the claim. You have a

duty to reply to this response to you [sic] claim within 10 days, however, given the serious nature and complexity of the claim, in this case only, we extend the deadline to 30 days.”

Plaintiff Exhibit 253.

Contractor commenced this litigation on March 5, 2019,

- (1) prior to the passage of 30 days from the Architect’s February 4, 2019 letter;
- (2) prior to the submission of the requested “additional supporting data”;
- (3) prior to any initial decision rendered by the Architect on the January 25, 2019 claim;
- (4) prior to the submission of a “final claim” or “final accounting” by Contractor as identified in the January 25, 2019 letter;
- (5) prior to the submission by Contractor of a final payment request or the documentation required pursuant to Section 7.2.1 of the AIA133⁵;
- (6) prior to the submission by BBC of a final accounting pursuant to Section 7.2.2 of the AIA133⁶;
- (7) while Contractor was still working on the Project;
- (8) AFTER cutting off Owner’s access to the project documents on the EGNYTE website (Transcript, pp. 2204-2207; Plaintiff’s Ex. 258) and
- (9) while there were no certified pay requests that required payment by the Owner (Transcript p. 2241; Transcript, p. 4316).

On March 6, 2019, subsequent to commencing the present litigation, Contractor submitted four volumes of additional documents “in response to the [Architect’s] letter dated February 4, 2019.” Defendant Ex. 11, 12, 13, and 14.

⁵ Hadley testified a request for Final payment pursuant to Section 7.2.1 of the AIA133 has never been submitted. Transcript p. 3907.

⁶ Hadley testified a request for Final accounting pursuant to Section 7.2.2 of the AIA133 has never been submitted. Transcript p. 3908.

On April 26, 2019, Contractor wrote to the Architect and stated that: (1) requesting further information is not a rejection of the claim; (2) Contractor considers the Architect to have rejected its claim on April 24, 2019 (which was 50 days after it commenced litigation); and (3) that it demanded mediation pursuant to Section 15.2.6.1 of the AIA-A201. Plaintiff Ex. 264.

“If a contract contains a condition precedent, that condition must either occur or it must be excused before a party's duty to perform arises.” *McGill v. Moore*, 672 S.E.2d 571, 381 S.C. 179 (2009) see also *Worley v. Yarborough Ford, Inc.*, 317 S.C. 206, 210, 452 S.E.2d 622, 624 (Ct.App.1994) (recognizing that a condition precedent is a fact other than the lapse of time, which, unless excused, must exist or occur before a duty of immediate performance arises).

I find that Contractor failed to comply with the condition precedent of obtaining an initial decision from the Architect prior to commencing the present litigation. I find nothing to indicate that the condition precedent was excused by Owner. I further find, as will be discussed in more detail herein, that the “final claim” that was ultimately presented before this Court was submitted only in Contractor’s reply case without any testimony from a witness authenticating, explaining, or swearing to the “final claim.” Since the “final claim” was not created until sometime after November 4, 2021, the Architect did not and could not render an initial decision on the “final claim.” Transcript pp. 4402-4410; Plaintiff’s Exhibit 352. Furthermore, since the Contractor has never submitted a request for final payment, no final payment would be due and an initial ruling would still be required under the Contract Documents. Section 4.4.1 of the AIA-A201.

Though the failure of the condition precedent is fatal to the Contractor’s claim, the Court will continue to make findings of fact and conclusions of law as additional and alternative support for the rulings contained herein.

IV. Hadley Audit

At the trial, Owner offered the testimony of Ms. Sandra “Sam” Hadley as an expert in “accounting and auditing, construction accounting and auditing, and damage compilation in construction projects.” Transcript pp. 3901-3902. Hadley was qualified as an expert in those fields without objection. *Id.* Hadley was employed by Cotton and Company and CPMI—construction accounting firms that are hired to “evaluate costs incurred on a project to ensure they complied with contract terms” on both private and public construction projects. Transcript p. 3888. Hadley is a certified public accountant, a certified government financial manager, certified fraud examiner, and certified in financial forensics. Transcript pp. 3890-3893; Defendant’s Ex. 150.

I find Hadley was qualified, prepared, reliable, present at virtually the entire trial, and credible for every aspect of the testimony she provided. Additionally, I find Hadley performed the only audit or accounting that was done on this Project. Contractor did not provide a final accounting or an audit for the Project—notwithstanding the mandatory, fundamental, and unambiguous requirements the Contract Documents required it to do. Plaintiff Ex. 56.

Section 6.11.1 of the AIA133 states as follows:

“The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of four (4) years after final payment, or for such longer period as may be required by law.”

Moreover, Section 7.1.11 of the AIA133 states as follows:

“The Owner has the right, at its sole discretion, to perform periodic examinations, audits, and verifications of the Construction Manager’s cost accounting records and other Project documentation. The Contractor shall make all its records available to the Owner upon reasonable

advance notice and shall provide the Owner with copies of specific records from time to time upon reasonable request.”

See also Sections 7.2.2 and 7.2.3 of the AIA-A133.

Pursuant to the foregoing sections of Contract Documents, on April 22, 2019, Hadley wrote to Contractor requesting specific documentation required to perform an audit of the project costs or “cost of the work” as that term is defined at Article 6 of the AIA-A133. Transcript pp. 3923-3925. On April 30, 2019, Contractor responded that it was refusing to produce any documentation, data, or response to support the contractually required audit. Defendant’s Ex. 50; Transcript p. 3926; Transcript p. 2274.

As a direct and proximate result of Contractor’s refusal to produce documents, data or accountings, Hadley was forced to rely on anecdotal information available to Owner. Transcript pp. 3926-3927. At the time of Contractor’s refusal to produce documents, Contractor had also shut down Owner’s access to the Egnyte document repository for the Project. Transcript, pp. 2204-2207; Plaintiff’s Ex. 258. Contractor’s witness Alec Dooley testified that the Egnyte site was a shared folder service that contained “everything”. Transcript, p. 392. Based solely upon that anecdotal information, Hadley concluded, as of June 11, 2019, that there was approximately \$7,700,000.00 of duplicative and potentially excessive mechanic’s lien amounts. Transcript pp. 3926-3927. At this time, Contractor and its subcontractors had filed mechanic’s liens in the total amount of \$26,341,655.00. Transcript pp. 3927-3928.

As of September 17, 2019, Hadley was able to conclude that approximately \$13,800,000.00 of the mechanic’s lien amounts were duplicative and potentially excessive. Transcript pp. 3929-3930. All the while, Contractor continued to refuse to comply with the contractually required audit procedures. Id.

On October 2, 2019, the Court⁷ issued an order directing Contractor and certain subcontractors to produce specific documents related to the lien amounts. Transcript p. 3930. As a result of the October 2, 2019 Order, Hadley received responses from Contractor and subcontractors. Id. On November 27, 2019, Hadley was able to identify \$17,400,000.00 in duplicative, potentially excessive, and uncorrelated mechanic's lien amounts. Transcript, p. 3931. Meanwhile, Contractor continued to refuse to comply with the audit provisions mandated by the Contract Documents. Id.

On March 17, 2020, upon motion of Owner, this Court entered an Order directing Contractor to comply with the audit provisions of the Contract Documents. March 17, 2020, Order Granting Owner's Motion for Affirmative Injunction; Transcript p. 3931.

On June 17, 2020, again upon motion of Owner, this Court issued an Order to Enforce which, for the second time, directed Contractor to comply with the audit provisions of the Contract Documents. June 17, 2020, Order to Enforce; Transcript, p. 3931. The Order to Enforce expressly found that the audit was a matter of "contract" and not "discovery" in litigation. Id.

During the month of July 2020, Hadley attempted to conduct the audit as required by the Contract Documents and twice ordered by this Court. Transcript pp. 3932-3939.

On August 3, 2020, Hadley again notified the Court and Contractor that Contractor was not allowing Hadley to perform the audit. Transcript, pp. 3939-3940. As of November 16, 2020, Hadley was unable to finish the audit work. Transcript, p. 3941. As of December 16, 2020, twenty (20) months after attempting to audit the records of Contractor, the only claim amount Hadley had from Contractor was the January 25, 2019, four-page claim letter in the amount of \$22,452,287.00. Transcript, p. 3945.

⁷ The Honorable Bentley Price issued this ruling prior to this action being referred to this Court.

On September 10, 2021, over two and a half years after the January 25, 2019 four page claim letter in the amount of \$22,452,287.00 and three days prior to the trial, Contractor submitted a new claim⁸ in the amount of \$11,872,194.00. Transcript, pp. 3945-3946. Two days later, on Sunday, September 12, 2021 (the day before the trial began) Contractor submitted yet another new claim in the amount of \$13,064,917.00 Transcript, pp. 3946-3947.

As of the first week of trial, Hadley testified that Owner still did not have sufficient information from the Contractor for the Contractor's claim. Transcript, pp. 3947-3948. On September 20, 2021, Contractor submitted another new claim in the amount of \$13,569,659.00. Id.

The next day, on September 21, 2021, Contractor submitted its fourth (4th) claim in eleven (11) days in the amount of \$13,896,742.00. Transcript, p. 3948. This was the last "claim" that was provided to Hadley for audit and testimony⁹. Id. The September 21, 2021, claim was NOT the final claim submitted by Contractor, however. The final claim submitted by Contractor was on November 29, 2021 in Contractor's case in reply. No witness was offered to testify about, authenticate, explain, or swear to the final claim documents. Transcript pp. 4402-4411. The November 29, 2021 final claim was in the amount of \$13,631,888.60. Plaintiff's Ex. 352.

Section 7.2.1 of the AIA133 states as follows:

"Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

⁸ Due and owing to the fact that the Contractor failed to provide a final accounting and failed to provide supporting documentation for the January 25, 2019 "claim" and the September 10, 2021 "claim" (as well as the four [4] subsequent "claims"), this Court does not draw a distinction between a "new claim" and a "new claim amount."

⁹ Ms. Hadley testified on November 2-3, 2021 in the trial of this matter.

- .3 all close-out documents as required by the Contract Documents, including but not limited to, as-built drawings in paper and electronic format, instructions to the Owner's representatives on all building systems, and completion of all punch list items outstanding; and
- .4 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

The Construction Manager's final accounting is a complete and full accounting of costs incurred by the Construction Manager in performance of the Work, organized according to the Construction Manager's schedule of values and cost codes and correlated to the costs to be reimbursed under Article 6 of this Agreement."

I find that Contractor NEVER submitted a final payment request or the documentation required pursuant to Section 7.2.1 of the AIA133, prior to the commencement of the trial.

Transcript p. 3907.

Moreover, Section 7.2.2 of the AIA133 states as follows:

"The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 60 days after delivery or the final accounting to the Architect by the Construction Manager. The Construction Manager's final accounting is a complete and full accounting of costs incurred by the Construction Manager in performance of the Work, organized according to the Construction Manager's schedule of values and cost codes and correlated to the costs to be reimbursed under Article 6 of this Agreement Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting."

I find that Contractor NEVER submitted a final accounting or the documentation required pursuant to Section 7.2.2 of the AIA133. Transcript p. 3908.

This Court has been perplexed as to why the Contractor refused and failed to perform the accounting or provide the documentation for the audit. Transcript p. 4008.¹⁰ Owner has incurred \$530,000.00 in costs from Cotton and Company to perform an audit of a contractually required final accounting that the Contractor failed to do. Transcript, pp. 3954-3955. In fact, during the trial, Hadley sat in the rear of the courtroom and continued to try and audit the Project and the numerous iterations of the new claims submitted by Contractor during trial. Transcript, pp. 3955-3957; Transcript pp. 4149-4150.

After two and a half years of attempting to audit the Contractor's records, Hadley, who this Court found both impressive and credible, concluded and testified to a reasonable degree of accounting and auditing certainty as follows:

- (1) There were two guaranteed maximum price ("GMP") portions of this contract. Transcript, pp. 3910-3911. A GMP contract is a cost reimbursable contract that allows a contractor to get reimbursed for eligible costs of the work subject to the GMP. *Id.* The first GMP in this contract relates to the general conditions for Contractor. Transcript, p. 3911. The second GMP in this contract relates to the primary portion of the work which is the bulk of the costs paid to the subs. *Id.*
- (2) The final reconciliation of the eligible costs of the work and the GMP for the general conditions is \$3,319,212.00. Transcript, pp. 4109-4110.
- (3) The final reconciliation of the eligible costs of the work and the GMP for the primary portion is \$55,544,734.00. Transcript, pp. 4107-4108.
- (4) Contractor was also due \$66,779.00 for preconstruction services. Transcript, pp. 4110-4111.
- (5) Contractor was entitled to a fee of 2.5 percent of the GMP. Transcript, pp. 4110-4111. The Contractor's fee would be in the amount of \$1,483,090.00. *Id.*
- (6) The total of the final reconciliations of the eligible costs of the work and the GMP for the general conditions and the primary portion of the contract as well as the preconstruction and construction fees is \$60,413,815.00. Transcript, pp. 4110-4111.
- (7) The Contractor has been paid \$59,994,390.00 to date. Transcript, p. 4111.

¹⁰ One of this Court's concerns stated during the trial was that Contractor's actions during the construction indicated to this Court that they had either not read the Contract or chose to follow their usual procedures rather than follow the express terms of the written Contract.

- (8) Therefore, prior to the award of any set off amounts for liquidated or other damages, there remains a “delta” or maximum balance potentially owed to the Contractor of \$419,425.00. Transcript, p. 4111; Transcript, pp. 4120-4121.

I find Hadley’s conclusions to be credible, reasonable and consistent with the terms of the Contract Documents. I further find that, due and owing to the Contractor’s failure to perform a final accounting for the Project and its repeated obfuscation of the auditing process, Hadley’s conclusions are adopted as this Court’s findings by the greater weight of the evidence.

V. Contractor’s Requests for Change Order

At the outset, to the extent the costs contained in these requests for change orders (“RCO”) are properly “costs of the work” as defined by the Contract Documents, Ms. Hadley has already included the costs of the RCO in her audit conclusions which have been adopted by this Court. Notwithstanding the foregoing, the Court herein considers the terms of the RCOs as additional support for its ruling or, as alternative findings of amounts due, in the event that a subsequent review of this Court’s findings is required.

Article 7 of the AIA-A201 provides that the Contract Sum and Contract Time can only be adjusted by Change Order, Construction Change Directive or minor changes by Architect.

Contractor submitted two exhibits related to requests for change orders (“RCO”) on the Project-Plaintiff’s Ex. 329 and Plaintiff’s Exhibit 12. Plaintiff’s Ex. 329 is an excel spreadsheet that contains no supporting documentation or data. It simply contains an “RCO” column in the amount of \$2,306,397. Plaintiff’s Ex. 12 is a notebook containing numerous RCOs with some supporting documentation and data. However, the amounts for RCOs in Plaintiff’s Ex. 12 and Plaintiff’s Ex. 329 do not correlate to one another. Transcript pp. 3598-3600. Since Plaintiff’s Ex. 329 contains no supporting documentation, the Court considers Plaintiff’s Ex. 12 and the RCO’s contained therein.

RCO 27: This RCO is dated on January 13, 2016 in the amount of \$124,089.00. It purports to relate to the “1000 Year Storm Delay & Recovery Cost”. It is unexecuted. The RCO has no supporting documentation or subcontractor invoices. Owner, however, produced the actual executed change order 27 dated January 26, 2016 in the amount of \$0.00 for the same “1000 year Storm Delay.” Defendant’s Ex. 144. Moreover, the \$115,969.21 contained in the unexecuted RCO 27 was actually already paid by the Owner. Transcript, pp. 3602-3607.

Ruling: Contractor is not entitled to resubmit an RCO that predates an executed change order for the same work. Section 7.2.1 of the AIA-A201. Moreover, Contractor is not entitled to be paid twice. RCO 27 is denied. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 75: This RCO is undated in the amount of \$5,989.93. It contains no supporting documentation or subcontractor invoices. It is unexecuted. Transcript, p. 3607.

Ruling: Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. Since this RCO is undated, Contractor cannot meet its burden to show that it complied with the contractual time limitations. Contractor also failed to show that the Architect gave an initial ruling on RCO 75 as required. Section 4.4.1 of the AIA-A201. Additionally, Contractor must provide sufficient information to support the RCO. Section 7.1.2 of the AIA-A201; Section 7.2.2 of the AIA-A201. RCO 75 is denied.

RCO 88R1: This RCO is dated March 7, 2019—two days after this action was filed by Contractor—in the amount of \$56,414.30. It is unexecuted. It does contain supporting documentation from Subcontractor Lithko. However, the supporting documentation is dated from 2015-2016—in excess of three (3) years prior to the date of RCO 88R1. Moreover, RCO 88R1 does not include any back charges to Subcontractor Lithko as recognized by Contractor. Transcript, pp. 3608-3622; Defendant’s Exhibit 28. Finally, Subcontractor Lithko withdrew its claims at the trial of this action.

Ruling: The RCO postdates the filing of this action by the Contractor. It necessarily follows that the Architect could not and did not give an initial ruling on RCO 88R1 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. Based upon the supporting documentation, this claim is in excess of three (3) years old. RCO 88R1 is also not proper due and owing to the internal change order (Defendant’s Ex. 28) where the back charges that were for the Owner’s benefit were “internally” deleted by Contractor and Subcontractor Lithko. Section 6.7.3 of the AIA-A133. The deleted back charges exceed the amount of RCO 88R1. Finally, Lithko no longer has a claim, and, therefore, the amounts claimed in RCO 88R1 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. RCO 88R1 is denied.

RCOs 103R1 and 118: These RCOs are dated December 16, 2017 and June 6, 2017. They are in the amounts of \$290,257.91 and \$21,036.56, respectively. They are unexecuted. They both relate to invoices from Subcontractor BMCC. Subcontractor BMCC dismissed its claim in this action, and was actually paid directly by Owner. Transcript, pp. 3622-3630.

Ruling: Subcontractor BMCC dismissed its claim after being paid directly by the Owner; therefore, the amounts claimed in RCOs 103R1 and 188 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCOs 103R1 and 118 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and these RCOs would be granted.

RCO 122R1: This RCO is dated November 27, 2017. It states it is for a “structural delay claim.” The RCO is in the amount of \$1,012,042.00. It is unexecuted. The breakout of the RCO has Contractor “General Conditions” in the amount of \$321,255.00. There is no supporting documentation for this General Conditions amount. It contains \$119,277.00 for “hoisting, staging and logistics.” The remainder of the RCO is for Subcontractors Watson Electrical, PASCO, BMCC, and Lithko. All of these subs have dismissed their claims. Watson Electrical was granted Summary Judgment against Contractor; however, Watson Electrical’s attorney swore under oath that the amounts awarded for Summary Judgement did not involve the Owner. See September 9, 2021 Affidavit of Don Terry, Esq.; see also September 13, 2021 Order (citing to Section 10.D. of Watson’s Subcontract); see Defendant ONSM Ex. 2 (containing Section 10.D. and only providing for attorneys’ fees on “claims not involving the Owner”). With regard to PASCO, Contractor’s Subcontractor Status Report shows that PASCO is owed nothing on this Project and, in fact, owes Contractor \$107,261.19 for back charges. Defendant’s Ex. 63; Transcript, pp. 3633-3635. With regard to BMCC, Owner has paid that subcontractor directly. Transcript, pp. 3635-3636. Finally, Lithko’s back up documentation for their portion of RCO122R1 is inadequate and predates a lien waiver it executed for September 30, 2016 saying there were no claims outstanding as of that date and all were waived. Defendant’s Ex. 69; Transcript pp. 3638-3648.

Ruling: Subcontractors Watson Electrical, Lithko, PASCO, and BMCC dismissed their claims; therefore, the amounts claimed in RCO 122R1 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Additionally, Contractor must provide sufficient information to support the RCO. Section 7.1.2 of the AIA-A201; Section 7.2.2 of the AIA-A201. There is no back up documentation for the “General Conditions” or “hoisting, staging and logistics.” Finally, the extended “General Conditions” could only be recoverable if it was shown that the requested changes “directly impact the critical path.” Section 5.3.1 of the AIA-A133. Contractor did not provide any testimony related to RCO 122R1’s impact on the critical path. There are no actual dates even listed on the RCO. Contractor failed to even attempt to enter into evidence any project schedules for that rough time period in 2016. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid in the amount of \$487,321.00 and this RCO would be granted.

RCO 159: This RCO is August 21, 2017. It is in the amount of \$242,633.32. It is unexecuted. It states it is for FFE changes. The Subcontractor involved is Westley Contracting; however, Westley Contracting has never made a claim. Indeed, Plaintiff’s Ex. 329 does not show any RCO money going to Westley. Transcript, p. 3652. Moreover, of the nineteen (19) entries on the cover letter, the work for sixteen (16) of them was never done. Transcript, p. 3652. None of the attachments purportedly backing up RCO 159 are attached to the copy in Plaintiff’s Ex. 12. Transcript, pp. 3653-3655.

Ruling: Subcontractor Westley Contracting never made a claim; therefore, the amounts claimed in RCO 159 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Moreover, it is undisputed that the vast majority of the claims work was never done. Additionally, Contractor must provide sufficient information to support the RCO. Section 7.1.2 of the AIA-A201; Section 7.2.2 of the AIA-A201. It failed to even attempt to include the attachments outlined in the cover letter. Contractor also failed to show that the Architect gave an initial ruling on RCO 159 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and RCO would be granted.

RCO 161: This RCO is dated August 26, 2017. It is unexecuted. It is in the amount of \$17,376.00. The subcontractors involved are Subcontractor BMCC and Subcontractor Precision Walls. Both subcontractors have dismissed their claims after being paid directly by the Owner. Transcript, pp. 3655-3656. The supporting documentation dates from 11 months to 20 months prior to the date of the RCO.

Ruling: Subcontractors Precision Walls and BMCC dismissed their claims; therefore, the amounts claimed in RCO 161 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Moreover, Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This claim is untimely. Contractor also failed to show that the Architect gave an initial ruling on RCO 161 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 178: This RCO is dated October 10, 2017 in the amount of \$2,142.00. It is unexecuted. The subcontractor involved is Subcontractor Westley Contracting; however, Westley Contracting has never made a claim. Indeed, Plaintiff’s Ex. 329 does not show any RCO money going to Westley Contracting. Transcript, p. 3658.

Ruling: Subcontractor Westley Contracting never made a claim; therefore, the amounts claimed in RCO 178 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 178 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 184: This RCO is dated November 9, 2017 in the amount of \$57,467.82. It is unexecuted. It states that it is for Hurricane Irma Prep and Recovery. The subcontractor’s involved are Subcontractor Premier Exteriors and Subcontractor First Choice Glass. Both of those subcontractors have dismissed their claims. BBC claims direct expenses and an increase in the contract sum in the amount of \$15,515.00. However, even if this were a delay under the Contract Documents, it would be a Class 2 delay for weather and no increase in the contract price is recoverable when a delay is a Class 2 delay. See Sections 8.3.2 and 8.3.3 of the AIA-A201.

Ruling: Subcontractors Premier Exteriors and First Choice Glass have dismissed their claims; therefore, the amounts claimed in RCO 184 could never be “costs of the work” as defined by the

Contract Documents. Section 6.3 of the AIA-A133. Moreover, a Class 2 delay can never result in an increase in contract price. See Sections 8.3.2 and 8.3.3 of the AIA-A201. Contractor also failed to show that the Architect gave an initial ruling on RCO 184 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to one (1) day extension and for Contractor's cost of work.

RCO 212R1: This RCO is dated October 19, 2018 in the amount of \$21,253.00. It is executed by the Owner. The subcontractor involved is Subcontractor Robert Thomas. The Owner paid Subcontractor Robert Thomas directly, and Subcontractor Robert Thomas dismissed its claim. Transcript, pp. 3660-3664.

Ruling: Because the Owner paid Subcontractor Robert Thomas directly, in RCO 212R1 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. RCO 212R1 is denied.

RCO 215: This RCO is dated August 14, 2018 in the amount of \$14,937.63. It is unexecuted. It states that it is for "Lutron Lighting Control Revision." The subcontractor involved is Subcontractor Watson Electrical. Plaintiff's Ex. 329 does not show any RCO money going to Watson Electrical. Transcript, p. 3664. Further, Subcontractor Watson Electrical has dismissed its claims in this action. Watson Electrical was granted Summary Judgment against Contractor; however, Watson Electrical's attorney swore under oath that the amounts awarded for Summary Judgment did not involve the Owner. See September 9, 2021 Affidavit of Don Terry, Esq.; see also September 13, 2021 Order (citing to Section 10.D. of Watson's Subcontract); see Defendant ONSM Ex. 2 (containing Section 10.D. and only providing for attorneys' fees on "claims not involving the Owner"). Finally, the supporting documentation is dated thirteen (13) months before the RCO.

Ruling: Subcontractor Watson Electrical has dismissed their claims; therefore, the amounts claimed in RCO 215 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This claim is untimely. Contractor also failed to show that the Architect gave an initial ruling on RCO 215 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid for cost of work and this RCO would be granted.

RCO 221: RCO 221 is dated February 6, 2018 in the amount of \$846.12 for window tinting. The subcontractor involved is Subcontractor Koch/Strongtower. They are no longer pursuing claims against the Owner. Subcontractor Koch/Strongtower was granted summary judgment for claims against Contractor not involving the Owner. See Koch/Strongtower December 1, 2021 Memorandum (adopting Low Country Case & Millwork's explanation of Section 10.D. of Subcontracts that only provide for attorneys' fees on "claims not involving the Owner").

Ruling: Subcontractor Koch/Strongtower has dismissed their claims; therefore, the amounts claimed in RCO 221 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 221 as required. Section 4.4.1 of the AIA-A201. RCO 221 is denied.

RCO 223: This RCO is undated and unsigned by the Contractor in the amount of 3,304.78. It is unexecuted. It contains no supporting documentation.

Ruling: Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. Since this RCO is undated, Contractor cannot meet its burden to show that it complied with the contractual time limitations. Contractor also failed to show that the Architect gave an initial ruling on RCO 223 as required. Section 4.4.1 of the AIA-A201. Additionally, Contractor must provide sufficient information to support the RCO. Section 7.1.2 of the AIA-A201; Section 7.2.2 of the AIA-A201. RCO 223 is denied.

RCO 227: This RCO is dated April 19, 2018 in the amount of \$9,169.01. It states it is for “warehousing and handling-mirrors for a period beginning on May 22, 2017. The Contract Documents say that installation of the Owner provided mirrors is included in the original contract sum. Plaintiff Ex. 56; Transcript, pp. 3668-3669.

Ruling: Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Further, the Contractor failed to meet its burden that this was a change. Plaintiff Ex. 56; Transcript, pp. 3668-3669. Contractor also failed to show that the Architect gave an initial ruling on RCO 223 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid for cost of work and this RCO would be granted.

RCO 246: This RCO is dated September 4, 2018 in the amount of \$31,157.12. It is unexecuted. It states it is for “elevators cab finishes.” The subcontractors involved are Subcontractor Low Country Case & Millwork and Subcontractor Watson Electrical. They are no longer pursuing claims against the Owner. Subcontractor Low Country was granted summary judgment for claims against Contractor not involving the Owner. See October 19, 2021 Memorandum of Low Country Case & Millwork with explanation of Section 10.D. of Subcontracts that only provide for attorneys’ fees on “claims not involving the Owner”). Subcontractor Watson Electrical has dismissed its claims in this action. Watson Electrical was granted Summary Judgment against Contractor; however, Watson Electrical’s attorney swore under oath that the amounts awarded for Summary Judgment did not involve the Owner. See September 9, 2021 Affidavit of Don Terry, Esq.; see also September 13, 2021 Order (citing to Section 10.D. of Watson’s Subcontract); see Defendant ONSM Ex. 2 (containing Section 10.D. and only providing for attorneys’ fees on “claims not involving the Owner”). The change was also necessitated due and owing to an error in the shop drawings that was the responsibility of the Contractor. Transcript, pp. 3670-3671.

Ruling: Subcontractors Low Country and Watson have dismissed their claims; therefore, the amounts claimed in RCO 246 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 246 as required. Section 4.4.1 of the AIA-A201. Further, the Contractor failed to meet its burden that this was a change. Contractor also failed to show that the Architect gave an initial ruling on RCO 223 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid for cost of work and this RCO would be granted.

RCO 249: This RCO is dated August 10, 2018 in the amount of \$5,129.09. It is unexecuted. The subcontractor for this RCO is Subcontractor Premier Exteriors. They have dismissed their claims in this action.

Ruling: Subcontractor Premier Exteriors has dismissed their claims; therefore, the amounts claimed in RCO 249 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 249 as required. Section 4.4.1 of the AIA-A201. RCO 249 is denied.

RCO 250: This RCO is dated August 13, 2018 in the amount of \$1,462.80. It is unexecuted. The subcontractor involved in this RCO is Subcontractor First Choice Glass. They have dismissed their claims in this action. The supporting documentation is from 2016. Transcript, pp. 3672-3673.

Ruling: Subcontractor First Choice Glass has dismissed their claims; therefore, the amounts claimed in RCO 250 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 250 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. RCO 250 is denied.

RCO 251: This RCO is dated August 31, 2018 in the amount of \$22,305.58. It is unsigned by Contractor. It is unexecuted. It states it is for “Dining Room Millwork Change.” The subcontractor involved is Subcontractor Low Country Case & Millwork. They are no longer pursuing claims against the Owner. Subcontractor Low Country was granted summary judgment for claims against Contractor not involving the Owner. See October 19, 2021 Memorandum of Low Country Case & Millwork with explanation of Section 10.D. of Subcontracts that only provide for attorneys’ fees on “claims not involving the Owner”).

Ruling: Subcontractor Low Country has dismissed their claims; therefore, the amounts claimed in RCO 251 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 251 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 253: This RCO is dated August 14, 2018 in the amount of \$10,055.16. It is unexecuted. It states it is for “Add Crown at Dome Rotundas.” The subcontractor involved is Subcontractor Low Country Case & Millwork. They are no longer pursuing claims against the Owner. Subcontractor Low Country was granted summary judgment for claims against Contractor not involving the Owner. See October 19, 2021 Memorandum of Low Country Case & Millwork with explanation of Section 10.D. of Subcontracts that only provide for attorneys’ fees on “claims not involving the Owner”).

Ruling: Subcontractor Low Country has dismissed their claims; therefore, the amounts claimed in RCO 253 could never be “costs of the work” as defined by the Contract Documents. Section 6.3

of the AIA-A133. Further, Contractor failed to meet its burden of proof that this was a change. Transcript, pp. 3674-3675. RCO 253 is denied.

RCO 254: This RCO in the amount of \$41,082.30 was withdrawn at trial by Contractor. Transcript, pp. 1224-1225.

Ruling: RCO 254 is WITHDRAWN.

RCO 255: This RCO is dated August 31, 2018 in the amount of \$11,789.32. It is unexecuted. It states it is for “Add Trim to Conceal Pocket Door Header” The subcontractor involved is Subcontractor Low Country Case & Millwork. They are no longer pursuing claims against the Owner. Subcontractor Low Country was granted summary judgment for claims against Contractor not involving the Owner. See October 19, 2021 Memorandum of Low Country Case & Millwork with explanation of Section 10.D. of Subcontracts that only provide for attorneys’ fees on “claims not involving the Owner”). The supporting documentation for the RCO is nine (9) months prior. Moreover, the reason given for the change was to conceal faulty work. Transcript, p. 3677.

Ruling: Subcontractor Low Country has dismissed their claims; therefore, the amounts claimed in RCO 255 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 255 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Finally, Contractor failed to meet its burden of proof that this was a change. RCO 255 is denied.

RCO 258: This RCO is dated March 28, 2019—three weeks after this action was filed by Contractor—in the amount of \$65,782.09. It is unexecuted. It states it is for additional mock-up revisions. Each of the subcontractors involved in the RCO have either made no claims or have dismissed their claims. Moreover, the back-up documentation 2017 and 2018. Finally, the Owner actually performed the demolition of the mock-up with its own contractor. Transcript, p. 3680.

Ruling: The RCO postdates the filing of this action by the Contractor. It necessarily follows that the Architect could not and did not give an initial ruling on RCO 258 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. Based upon the supporting documentation, this claim is untimely. Further, because the subcontractors have dismissed their claims, the amounts claimed in RCO 258 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor failed to meet its burden that it even performed the work. Contractor also failed to show that the Architect gave an initial ruling on RCO 258 as required. Section 4.4.1 of the AIA-A201. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 259: This RCO is dated August 30, 2018 in the amount of \$33,398.68. It is unexecuted. It states it is for “Hudson Street Storm Repair.” The Subcontractor involved is Gulf Stream. They have dismissed their claims.

Ruling: Because Gulf Stream have dismissed their claims, the amounts claimed in RCO 259 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 259 as required. Section 4.4.1 of the AIA-A201. RCO 259 is denied.

RCO 260: This RCO is dated March 1, 2019 in the amount of \$5,586.12. It is unsigned by the Contractor. It is unexecuted. The subcontractor involved is Subcontractor Quantum. They have dismissed their claims. The supporting documentation is from November 27, 2018.

Ruling: Because Quantum has dismissed their claims, the amounts claimed in RCO 260 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 260 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. Based upon the supporting documentation, this claim is untimely. RCO 260 is denied.

RCO 261: This RCO in the amount of \$71,723.42 was withdrawn by Contractor at the trial of this matter. Transcript, pp. 1230-1231.

Ruling: RCO 261 is WITHDRAWN.

RCO 262: This RCO is dated August 31, 2018 in the amount of \$15,635.00. It states it is for “TV wall revisions.” It is unexecuted. The subcontractors involved are Subcontractor Precision Walls and Subcontractor Watson Electrical. Each has dismissed their claims in this action. The supporting documentation is dated August 2017 and January 2018.

Ruling: Subcontractors Precision Walls and Watson Electrical have dismissed their claims; therefore, the amounts claimed in RCO 262 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 262 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid for GMP and cost of work and this RCO would be granted.

RCO 264: This RCO is dated September 4, 2018 in the amount of \$14,390.21. It is unsigned by the Contractor. It is unexecuted. It states it is for “sprinkler heads in TV walls.” The subcontractor involved is Subcontractor PASCO. They were responsible for the selection of the sprinkler head locations. Transcript, pp. 3693-3694. Subcontractor PASCO has dismissed its claims in this action. The supporting documentation is from January 8, 2018. Contractor’s Subcontractor Status Report shows that PASCO is owed nothing on this Project and, in fact, owes Contractor \$107,261.19 for back charges. Defendant’s Ex. 63; Transcript, pp. 3633-3635.

Ruling: Subcontractor PASCO dismissed their claims; therefore, the amounts claimed in RCO 264 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-

A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 264 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Contractor failed to meet its burden that the Owner is responsible for this work. RCO 264 is denied.

RCO 266: This RCO is dated September 7, 2018 in the amount of \$2,203.74. It is unexecuted. It states that it is for “additional framing and sheetrock requests.” The subcontractor involved in Subcontractor Precision Walls. They have dismissed their claims in this action. The supporting documentation is dated April 2017.

Ruling: Subcontractor Precision Walls has dismissed their claims; therefore, the amounts claimed in RCO 266 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 266 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. RCO 266 is denied.

RCO 267: This RCO is dated September 7, 2018 in the amount of \$7,922.44. It is not signed by the Contractor. It is not executed. It states it is for “Rooftop Bar Millwork.” The subcontractor involved is Subcontractor Low Country Case & Millwork. The supporting documentation is from June 14, 2017.

Ruling: Subcontractor Low Country has dismissed their claims; therefore, the amounts claimed in RCO 267 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 267 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. RCO 267 is denied.

RCO 268: This RCO is dated September 24, 2018 in the amount of \$51,979.21. It is unexecuted. It states it is for “allowance reconciliation.” The subcontractors involved in this RCO are Subcontractors Low Country, SEAS, and First Choice Glass. They have all dismissed their claims in this action. Transcript, pp. 3701-3702. The supporting documentation is from July of 2018.

Ruling: Subcontractors Low Country, SEAS, and First Choice Glass have dismissed their claims; therefore, the amounts claimed in RCO 268 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 268 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 270: This RCO is dated March 12, 2019—a week after this action was filed by Contractor—in the amount of \$49,885.72. It is unexecuted. It states it is for “framing and drywall change

orders.” The subcontractor involved is Subcontractor Precision Walls. They have dismissed their claims. Moreover, the supporting documentation is from 2017 and 2018.

Ruling: Subcontractor Precision Walls has dismissed their claims; therefore, the amounts claimed in RCO 270 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 270 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 271: This RCO is dated March 12, 2019—a week after this action was filed by Contractor—in the amount of \$41,394.11. It is unexecuted. It states it is for “painting change orders.” The subcontractor involved is Subcontractor Quantum. They have dismissed their claims. Moreover, the supporting documentation is from 2018. Finally, the supporting documentation references back charges to other subcontractors and defective work of other subcontractors. Transcript, pp. 3705-3710.

Ruling: Subcontractor Quantum has dismissed their claims; therefore, the amounts claimed in RCO 271 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 271 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Finally, Contractor failed to meet its burden of proof to show that the work in RCO 271 was the responsibility of the Owner. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 272: This RCO is dated March 7, 2019—two days after this action was filed—in the amount of \$19,286.37. It is unexecuted. It states that it is for “ornamental metal change orders”. The subcontractor involved is Subcontractor Tate Ornamental. They have never made a claim. The supporting documentation is from 2017- 2018.

Ruling: Subcontractor Tate Ornamental has never made a claim for these costs; therefore, the amounts claimed in RCO 272 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 272 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 273: This RCO is undated, unsigned and is addressed to and from the same person at Contractor. It is in the amount of \$111,644.29. The subcontractor involved is Subcontractor David Allen. They have dismissed their claims in this action. It contains insufficient supporting documentation to understand when the alleged costs were incurred or how they may have been a or who is responsible for the change.

Ruling: Contractor failed to meet its burden in all regards on RCO 273, including all notice provisions in the Contract Documents. Subcontractor David Allen has dismissed their claims; therefore, the amounts claimed in RCO 273 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 273 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Finally, Contractor failed to meet its burden of proof to show that the work in RCO 273 was the responsibility of the Owner. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 274: This RCO is undated, unsigned and is addressed to and from the same person at Contractor. It is in the amount of \$30,537.68. The subcontractor involved is Subcontractor Quantum. They have dismissed their claims in this action. The supporting documentation is from 2018.

Ruling: Contractor failed to meet its burden in all regards on RCO 274, including all notice provisions in the Contract Documents. Subcontractor Quantum has dismissed their claims; therefore, the amounts claimed in RCO 274 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 274 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Finally, Contractor failed to meet its burden of proof to show that the work in RCO 274 was the responsibility of the Owner. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 275: This RCO is dated April 12, 2019—five weeks after this lawsuit was filed. It is in the amount of \$67,384.91. It is not signed by the Contractor. It is unexecuted. The subcontractors involved are Subcontractors David Allen, Quantum, Precision Walls, BMCC, and Low Country. All have dismissed their claims. The supporting documentation for the RCO is from late 2017 to early 2018. Finally, the supporting documentation reveals that the costs claimed in RCO 275 is related to defective work. Transcript, pp. 3714-3724.

Ruling: Subcontractors David Allen, Quantum, Precision Walls, BMCC, and Low Country have dismissed their claims; therefore, the amounts claimed in RCO 275 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 275 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Finally, Contractor failed to meet its burden of proof to show that the work in RCO 275 was the responsibility of the Owner. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 276: This RCO is dated March 13, 2019—eight (8) days after this lawsuit was filed by Contractor. It is in the amount of \$78,632.10. It is unexecuted. The subcontractor involved is

Subcontractor Low Country Case & Millwork. They have dismissed their claims against the Owner. Subcontractor Low Country was granted summary judgment for claims against Contractor not involving the Owner. See October 19, 2021 Memorandum of Low Country Case & Millwork with explanation of Section 10.D. of Subcontracts that only provide for attorneys' fees on "claims not involving the Owner"). The supporting documentation is from 2017-2018. Finally, RCO 276 contains amounts previously paid by the Owner and amounts contained in other RCOs. Transcript, pp. 3724-3731.

Ruling: Subcontractor Low Country dismissed their claims; therefore, the amounts claimed in RCO 276 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 276 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Contractor failed to meet its burden of proof to show that the work in RCO 276 was the responsibility of the Owner. Contractor has already been paid for costs it claims in the RCO. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 277: This RCO is dated March 13, 2019—eight (8) days after this lawsuit was filed by Contractor. It is in the amount of \$138,304.56. It is unexecuted. The subcontractor involved is Subcontractor Miscellaneous Steel Industries. They have never made a claim for any of these amounts. The supporting documentation is dated 2015-2017.

Ruling: Subcontractor Miscellaneous Steel Industries has never made a claim for these costs; therefore, the amounts claimed in RCO 277 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 277 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 278: This RCO is dated March 29, 2019—three (3) weeks after this lawsuit was filed by Contractor. It is in the amount of \$8,511.80. It is unexecuted. The subcontractor involved is Subcontractor Koch/Strongtower. They are no longer pursuing claims against the Owner. Subcontractor Koch/Strongtower was granted summary judgment for claims against Contractor not involving the Owner. See Koch/Strongtower December 1, 2021 Memorandum (adopting Low Country Case & Millwork's explanation of Section 10.D. of Subcontracts that only provide for attorneys' fees on "claims not involving the Owner"). The supporting documentation is from June 25, 2018.

Ruling: Subcontractor Koch/Strongtower has dismissed their claims; therefore, the amounts claimed in RCO 278 could never be "costs of the work" as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 278 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the

AIA-A201. This RCO is untimely. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

RCO 279: This RCO is undated and unsigned by the Contractor. It is unexecuted. It is in the amount of \$228,811.20. In the cover letter there is a chart with 43 line entries. Attached to the cover letter are tabs A through X. Transcript, p. 3735-3736. All of the subcontractors identified on Tabs A through X have dismissed their claims. This RCO was never submitted to the Owner. Transcript, p. 3738.

Ruling: Contractor failed to meet its burden in all regards on RCO 279, including all notice provisions in the Contract Documents. All subcontractors involved dismissed their claims; therefore, the amounts claimed in RCO 279 could never be “costs of the work” as defined by the Contract Documents. Section 6.3 of the AIA-A133. Contractor also failed to show that the Architect gave an initial ruling on RCO 279 as required. Section 4.4.1 of the AIA-A201. Contractor must submit all claims for RCOs within thirty (30) days after the events giving rise to such claim. Section 4.3.2 of the AIA-A201. This RCO is untimely. Finally, Contractor failed to meet its burden of proof to show that the work in RCO 279 was the responsibility of the Owner. However, had Contractor followed the terms of the Contract, Contractor would have been entitled to be paid and this RCO would be granted.

For all the reasons stated herein, I find that Contractor is NOT contractually entitled to recover for any of the RCOs contained in Plaintiff’s Ex. 12. I further find that the Contractor submitted forty-one (41) requests for change orders, totaling in excess of \$2.3 million,¹¹ for which it had no entitlement due to its failure to follow the Contract terms. This is particularly true given:

- (1) Contractor refused to perform a final accounting. Transcript p. 3908;
- (2) Contractor refused to comply with the contractually required audit for the entirety of this action. Defendant’s Ex. 50; Transcript p. 3926; Transcript p. 2274;
- (3) Contractor purposefully shut down Owner’s access to the Egnyte site. Transcript, pp. 2204-2207; Plaintiff’s Ex. 258;
- (4) Contractor came into this Court and sought to recover amounts it had previously been paid by Owner, but it had not in turn paid to subcontractors as it certified that it had paid and as was required by law to do so. See Testimony of Kim Brown and Sam Hadley;
- (5) Every single subcontractor that filed a mechanic’s lien dismissed it and withdrew their claims prior to or during the trial of this action; and
- (6) Balfour failed to put up a single subcontractor witness to explain the forty-one (41) RCOs, notwithstanding the fact that the subcontractors that either never made a claim or dismissed their claims made up in excess of 90% of the RCO amounts.

¹¹ As stated above the amounts for RCOs contained in Plaintiff’s Ex. 12 and Plaintiff’s Ex. 329 do not match. Therefore, the Court does not have an exact number.

Contractor's Critical Path Schedule

The Contract Documents expressly require what is known as a “Critical Path Method” or “CPM” schedule. Section 3.10.4.2 of the AIA-A201. The Contractor is “solely responsible” for the schedule. Section 3.10.4.7 of the AIA-A201. Contractor must show that any changes “directly impact the critical path.” Section 5.3.1 of the AIA-A133. On this Project, Contractor employed Joe Lauricella, an in-house scheduling manager to create and manage the CPM schedule. Transcript, pp. 384-385. This Court notes that Mr. Lauricella was not presented as a witness by Contractor at trial and was informed he was no longer employed by the Plaintiff.

Contractor was required to submit an initial schedule that, if followed, would allow Contractor to complete the work by the substantial completion date of July 2017. Section 3.10.4.1 of the AIA-A201; Transcript pp. 4248-4249. This initial schedule was required to be submitted to the Architect and Owner within fourteen (14) days of the Notice to Proceed. Section 3.10.4.1 of the AIA-A201. This initial CPM schedule is referred to as the “as-planned schedule.” Transcript, p. 4250. In Contractor’s “as-planned schedule,” there was a four (4) month bust because it failed to include the removal of the tower crane required to set the ninth-floor pool in place. Transcript pp. 4250-4251; Transcript pp. 2671-2674. This bust in the as-planned schedule by Contractor impacted all portions of the Contractor’s updated schedules that were required by Section 3.10.4.5 of the AIA-A201; Transcript, pp. 2673-2674. In fact, it took Contractor nineteen (19) months—over two-thirds of the as-planned project duration of twenty-eight (28) months—before they inserted it into the logic of an updated schedule. *Id.*¹² This practice of changes in the logic of the CPM schedules, removal of restraints and the reduction and increases in durations by the

¹² The Court further finds this project delay accounted for the Contractor’s decision to recall David Simonton from retirement in December 2017 to try and put the Project back on track to completion by taking over as its Project Manager.

Contractor - without notice to the Owner - was systemic on this Project and will be discussed more specifically below.

In the absence of Lauricella, Contractor offered the testimony of Mark Doran—a scheduling expert. Doran testified that the Project was originally scheduled to be completed by July 30, 2017. Transcript, p. 724. He testified that the Project was not complete until December 28, 2021—a difference of 516 days. *Id.* He concluded that, of the five hundred and sixteen (516) days of delay to the Project, Owner was responsible for four hundred and ninety-four (494) days, neither party was responsible for twenty-one (21) days, and Contractor was responsible for a single (1) day of delay. Transcript, pp. 808-814.

Owner offered the testimony of Mark Boe, who was qualified as an expert in the field of scheduling, delay claims, and construction claims. Transcript, pp. 2607-2609. Boe gave several opinions.

1. He concluded that the “four notebooks” submitted on March 6, 2019 were essentially useless. Transcript, pp. 2615-2662; Plaintiff’s Ex. 261.
2. Boe concluded that Doran used the wrong CPM methodology. Transcript, p. 2665. The methodology utilized by Doran to essentially conclude that the Contractor was not responsible for any delay on this Project failed to meet industry standards for CPM scheduling as recognized in learned treatises. Transcript, pp. 2667-2705; Defendant’s Exs. 89-90.
3. Boe concluded that Doran made a significant error even when employing a rejected methodology as Doran ignored the Contractor’s own critical path as identified by the Contractor’s own employees and schedulers contemporaneously with the work itself. Transcript, pp. 2666-2669. Doran was forced to ignore or reject the Contractor’s actual schedules in order to reach his conclusion. *Id.*
4. Boe concluded that, like Contractor’s as-planned schedule, Doran failed to consider the removal of the tower crane in his conclusions of the critical path and delay analysis. Transcript, pp. 2669-2674. This was a significant error because Doran had the tower crane on his critical path. *Id.*
5. Boe concluded that even with Doran’s improper methodology he failed to identify any cause and effect for any of his delay claim. Transcript, pp. 2674-2675.

6. And finally, Boe concluded that Doran ignored significant delays and manpower problems caused by the Contractor's subcontractors. Transcript, pp. 2675-2676; 2716-2768; Defendant's Ex. 91; Transcript, pp. 2794-2871.

Owner also offered the testimony of Grady Query, III, who was also qualified as an expert in scheduling, delay claims, and construction claims. Transcript, p. 2949. Query actually dealt with Lauricella during the Project. Transcript, p. 2950. Unlike Doran, Query analyzed Contractor's actual contemporaneous CPM schedules and gave several opinions.

1. Contractor deleted activities and actual dates from its schedules which hindered the ability to review Contractor's schedules. Transcript pp. 2968-2969.
2. He concluded that the Contractor's schedule "has such significant fatal flaws that it is neither an effective forecasting or coordination tool." Transcript, pp. 2970-2971.
3. Query explained how predecessor and successor activities worked on a CPM schedule. Transcript, pp. 2973-2978. He explained how Contractor manipulated the predecessor and successor activities with "restraints" or "constraints." Transcript, pp. 2978-2982. Query concluded that Contractor's use of inappropriate constraints on one-third of all its activities gave false information and makes an activity appear critical when it is not. *Id.* Query testified that the use of even a single inappropriate constraint on a federal project would lead to the rejection of the schedule. *Id.* He concluded that Contractor used an exorbitant amount of restraints or constraints that inappropriately dictated logic and gave false data on the scheduled activities. Transcript, pp. 2989-2992. These inappropriate changes in the logic of the schedule violated the terms of the Contract Documents. *Id.*; Section 4.10.4.1 of the AIA-A201.
4. Query concluded that Contractor was changing activity ID codes in the schedule. Transcript, pp. 3002-3004. This practice changes how a given activity appears on the critical path and it is a "serious problem." *Id.*
5. He concluded that critical milestones listed in the schedule were inaccurate. Transcript, pp. 3008-3009.
6. Query concluded that the schedules the Contractor employed could never "accurately predict" when the Contractor was going to finish the job. Transcript, pp. 3010-3012.
7. And finally, Query concluded that the failure to accurately schedule the completion of the Project directly impacted the Owner's ability to hire staff and supply services for the opening of the Project. *Id.*

I find that the Contractor failed to comply with its scheduling obligations under Section 3.10 of the AIA-A201. I find that, as a direct result of the Contractor's failure to schedule the

Project in accordance with the terms of the Contract Documents, the only witness who testified as to scheduling for Contractor, Doran, ignored all the Contractor's schedules.¹³ I further find that the methodology utilized by Doran violated industry standards and contained numerous errors that significantly impacted any weight this Court could give to Doran's conclusions. As such, I find that the Contractor failed to meet its burden of proof to support an extension of Contract Time. I find the testimony of Boe and Query to be more credible, informative and supported by the greater weight of the evidence. Finally, I find the Contract Time extension was not included in the RCOs submitted to this Court and was not ruled upon by the Architect as required by Section 4.4.1 of the AIA-A201.

Section 2.3.1.3 of the AIA-A133 provides "In the event the Construction Manager does not achieve Substantial Completion of the Work within the Contract Time, including approved extensions, the Contractor shall pay to the Owner as liquidated damages and not as a penalty the (*sic*) Nine Thousand Five Hundred Dollars (\$9,000.00)¹⁴ per day for each calendar day the actual time of performance to achieve Substantial Completion exceeds the authorized contract time, which amount shall not exceed the amount of the Contractor's stated Fee."

The Project had an initial Substantial Completion date of July 30, 2017. Plaintiff's Ex. 56. The Contract Time was extended by twenty (20) days to August 19, 2017. Defendant's Ex. 144. Contractor did not achieve Substantial Completion until February 15, 2019. Plaintiff's Ex. 260. This is a period of Five Hundred and Forty-Five Days. Given the duration of the delay and the

¹³ Doran analogized the initial critical path schedule to the cooking of the turkey and preparation of Thanksgiving dinner – a good analogy but apparently not followed by the Contractor on this project.

¹⁴ The Court notes the \$9,500.00 difference between the written amount and the numerical amount. However, because the Contract contained a cap on the amount of liquidated damages and the cap is reached due to the duration of the delay, the discrepancy need not be resolved.

cap on liquidated damages, Hadley did the calculation of liquidated damages in the amount of \$1,483,090.00. Transcript, pp. 4120-4121.

I find that the amount of liquidated damages is \$1,483,090.00. While entitlement to liquidated damages was disputed, the record contains no contradictory calculation of the amount.

VI. Contractor's Claims

I find that the Contractor failed to meet its burden of proof on any of its causes of action. This failure, coupled with Hadley's audit conclusions, demonstrates that Contractor is not entitled to any additional payments under the Contract Documents.

A. Damages

In addition to the RCO Notebook (Plaintiff's Ex. 12) discussed above, Contractor submitted two damage claims into evidence—both over the objection of the Owner. The first were Plaintiff's Exs. 329¹⁵, 330 and 331 excel spreadsheets produced to the Defendant during the trial on September 21, 2021 ("September 21, 2021 Claim"). Transcript, p. 3948. The documents contain no supporting documentation. Plaintiff's Ex. 329 contains the most information; however, the testimony offered by Contractor regarding Plaintiff's Ex. 329 was very limited. Transcript, pp. 2378-2400. No testimony was offered as to how the Plaintiff's Ex. 329 related to any requests for change orders or any of the testimony of Contractor's other witnesses. It was simply described by Contractor's comptroller as a total cost claim plus interest.¹⁶ Transcript, pp. 2378-2379; Transcript, pp. 2456-2459.

On the contrary, Hadley spent a considerable amount of time and effort evaluating the September 21, 2021 Claim within the context of her audit. Transcript, pp. 3958-4104. Hadley discovered duplication, accounting irregularities, double charges, deletion of back charges that

¹⁵ Contractor's Project manager for the entire Project had no role in the preparation of Plaintiff's Ex. 329.

¹⁶ As this is a GMP Contract, the Court allowed this Exhibit into evidence, but discounts its weight as evidence.

were for the Owner's benefit, payments made to Contractor by Owner that were not paid to Subcontractors and were claimed again before this Court, failure of documentation, and inconsistencies with documentation that was provided when she performed her audit in the courtroom during trial. Id. At the conclusion of her review of the September 21, 2021 claim and her audit, Hadley concluded, to a reasonable degree of accounting and auditing certainty:

"So given the magnitude of errors and the fact that there's a lot of money on there that Library [Owner] has already paid, and there is a significant amount of money that's duplicative of other amount on there, you can't rely on this document to make payments to BBC [Contractor] because I have identified duplication errors and unsupported documents that are too significant to rely on it in part or in whole."

Transcript, p. 4104.

I find by a greater weight of the evidence that the September 21, 2021 claim is unreliable. I find, given the lack of supporting documentation, the magnitude of errors, and the fact that there is no proximate causation for Contractor's submission of "total costs," this Court gives no weight to the September 21, 2021 claim. As such, Contractor failed to meet its burden of proof for its claim. Section 4.3.1 of the AIA-A201.

The second damage claim submitted into evidence, over the Owner's objection, was offered in Contractor's reply case on November 29, 2021. Plaintiff's Exs. 352-353. "Any Plaintiff in a civil action must first produce and disclose the entire evidence in support of his case; after the defendant has offered all of his evidence, the plaintiff may reply. Reply testimony should be limited to rebuttal of matters raised in defense; it should not be used to complete plaintiff's case in chief." *McGaha v. Mosley*, 283 S.C. 268, 322 S.E.2d 461 (S.C. App. 1984). There was not a witness offered to explain it, authenticate it, swear to its accuracy, or to be cross-examined on it. It was simply handed up to the Court by the attorney for Contractor. Transcript, pp. 4402-4411. Owner had no ability or opportunity to compare it to the September 21, 2021 claim.

I find, given the unreliability of Contractor's September 21, 2021 claim, the submission of the November 29, 2021 claim in reply and without any testimony to explain it, and the fact that there is no proximate causation for Contractor's submission of "total costs," this Court gives no weight to the November 29, 2021 claim. As such, Contractor failed to meet its burden of proof for its claim. Section 4.3.1 of the AIA-A201.

I further find that Contractor's failure to perform the contractually required final accounting, failure to submit a final pay application, and failure to comply with the audit provisions of the contract for over two years supports the Court's conclusion that the spreadsheet claims are unreliable.

This Court is unable to determine that any of the amounts on the September 21, 2021 and November 29, 2021 claims constitute "costs of the work" due to the lack of supporting documentation for the two claims. See Article 6 of the AIA-A133.

This litigation started with the January 25, 2019 "four page letter" claim in the amount of \$22,452,287.00 that had no supporting documentation. Notwithstanding the fact that the Contractor filed this action prior to submitting what it contended was the supporting documentation to the Architect as contractually required, the only supporting data for any of the claims is the "four notebooks." Defendant's Exs. 11, 12, 13, 14. Contractor testified in its SCRCR Rule 30(b)(6) deposition that everything anyone needed to analyze the claim was in the "four notebooks" Contractor 30(b)(6) Deposition, pp. 107-109. However, the Contractor failed to put up a witness to adequately explain, describe or show any causal connection between any of the claims and the "four notebooks." Neither Jim Clements, Hadley, or Boe gave the "four notebooks" any weight. Likewise, this Court is unable to make a correlation or proximate causation of any

kind between the “four notebooks” and the Contractor’s September 21, 2021 and November 29, 2021 claims.

Finally, I find that the existence and terms of the Joint Prosecution and Defense Agreements between Contractor and certain subcontractors make difficult any determination that any of the amounts claimed in the September 21, 2021 and November 29, 2021 claims could be “costs of the work.” Plaintiff Ex. 209.

B. Lien Foreclosure

Due and owing to the fact that the Contractor is not owed any amounts under the Contract, it follows that Contractor’s foreclosure action must be dismissed. The Court does not ignore however that, for over two years, over \$26,341,655.00 of mechanic’s liens were filed on Owner’s property. Transcript pp. 3927-3928. The testimony is that the mechanic’s liens were excessive and duplicative. Transcript, p. 3931.

Owner is hereby deemed the prevailing party and is entitled to attorneys’ fees and costs pursuant to S.C. Code Ann. Section 29-5-10, et seq.

C. Breach of Contract

“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).

Here, the only element met by Contractor is the existence of the contract. Owner is not in breach of the contract as no breach has been shown. In fact, Contractor’s representative, David Simonton testified that all certified payment applications were paid. Transcript, p. 4316. Moreover, Contractor failed to demonstrate that it is owed any sums under the contract. Contractor’s breach of contract cause of action is dismissed.

D. Quantum Meruit/Quasi Contract

“Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.” *Webb v. First Federal Savings and Loan Ass’n.*, 300 S.C. 507, 388 S.E.2d 823 (Ct.App.1989). “If the tasks the plaintiff is seeking compensation for under a quantum meruit theory are encompassed within the terms of an express contract which has not been abandoned or rescinded, the plaintiff may not recover under quantum meruit.” *Swanson v. Stratos*, 564 S.E.2d 117, 350 S.C. 116 (S.C. App. 2002).

Here, we have an express contract under which no money is owed. Contractor may not then recover under a theory of quantum meruit/quasi contract. Otherwise, the terms of a cost plus contract with a guaranteed maximum price could never be enforceable. Accordingly, Contractor’s quantum meruit/quasi contract cause of action is dismissed.

E. Section 27-1-15 Claim

S.C. Code Section 27-1-15 states as follows:

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

Here, there is no evidence that Owner failed to “reasonably” and “fairly” investigate the merits of Contractor’s claims. In fact, the evidence is that Owner attempted to investigate and audit the claims for over two years. This effort was undertaken by Owner despite Contractor’s

contractual duty to perform the audit. Contractor's S.C. Code Section 27-1-15 cause of action is dismissed.

F. Waiver

"A waiver is the intentional relinquishment of a known right." *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 338, 676 S.E.2d 139, 145 (Ct. App. 2009).

There was no evidence in this case the Owner intentionally waived any rights. In fact, the Contract Documents specifically do not allow for waiver unless there is a signed writing, which I do not find in the record. Section 13.4.2 of the AIA-A201. Contractor's waiver cause of action is dismissed.

G. Cardinal Change

Cardinal Change is not a cause of action. See Rule 12(b)(6), SCRCPP. Moreover, out of the forty-one (41) RCOs submitted by Contractor it could not prove entitlement to a single one. Contractor's Cardinal Change cause of action is dismissed.

H. Indemnity

The only indemnity provision in the Contract Documents is found at Section 3.18 of the AIA-A201. However, none of the language of that section applies to any of the damages sought by Contractor. Moreover, due and owing to the fact that Contractor has not proven entitlement to any damages, there necessarily could NOT be any amounts to recover for indemnification. Contractor's indemnification cause of action is dismissed.

I. Breach of Warranty of Plans and Specifications

In South Carolina, there exists an implied warranty of fitness of plans and specifications. *Hill v. Polar Pantries*, 219 S.C. 263, 64 S.E.2d 885 (1951). Here, however, none of the plans and specifications were entered into evidence by the Contractor. The Contractor did not provide any

expert testimony that the Architect's plans or specifications fell below the standard of care. In fact, the only witness offered by the Contractor testified that he was NOT going to testify the Architect's plans fell below the standard of care. Transcript pp. 852-853.¹⁷ Further, Contractor's failure to prove any damages is also fatal to this cause of action. Contractor's breach of implied warranty of fitness of plans and specifications is dismissed.

J. First To Breach

There is not a cause of action in South Carolina for "First to Breach." See Rule 12(b)(6), SCRCPP. Additionally, the evidence is that Contractor first breached the contract within fourteen (14) days of the Notice to Proceed by submitting a busted as-planned schedule that omitted the removal of the tower crane. Transcript, pp. 4246-4251. Contractor's first to breach cause of action is dismissed.

K. Breach of Contract Accompanied by A Fraudulent Act

The elements of a claim for breach of contract accompanied by a fraudulent act as "(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach." *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002). In the present case, Contractor has failed to prove even a breach of the contract. There is also no evidence that Owner engaged in any fraudulent acts at any time. Contractor's breach of contract accompanied by a fraudulent act is dismissed.

¹⁷ While Contractor complained at length that the Architect's plans were neither "100% +" nor were they "Bimmed," Contractor had reviewed the plans in the pre-construction phase before proceeding and further acknowledged that the Contract did not require the plans to be "Bimmed."

VII. Owner's Claims Against Contractor and Subcontractors

In addition to the liquidated damages to be awarded to the Owner in the amount of \$1,483,090.00, I find that Owner met its burden of proof as follows:

A. Breach of Contract

“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 Owner and Contractor entered into a valid and enforceable contract. I find that Contractor breached the following provisions of the Contract:

1. Contractor “accepted the relationship of trust and confidence” and “covenant[ed] with the Owner to cooperate with the Architect and exercise [Contractor’s] skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish and supply at all times an adequate supply of workers and materials; and to perform the work in an expeditious and economical manner consistent with the Owner’s interests. Section 1.2 of the AIA-A133.
2. Contractor was to be “solely responsible for the acts and omissions of its subcontractors.” Section 2.1.6 of the AIA-A133. Contractor was to make the Owner an intended third party beneficiary of “all agreements” between Contractor and subcontractors. *Id.* I find that Contractor breached this provision.
3. Contractor is solely responsible for scheduling, phasing and coordination of the work. Section 2.3.1.4 of the AIA-A133; Section 3.10 of the AIA-A201. I find that Contractor breached this provision.
4. Contractor “shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes.” I find Contractor breached this provision.
5. Contractor was required to account for back charges to be assessed between its subcontractors for the benefit of the Owner. Section 6.7.3 of the AIA-A133. I find Contractor breached this provision.
6. Contractor was required to keep “full and detailed accounting records” and to “substantiate all costs incurred.” Section 6.11.1 of the AIA-A133. I find the Contractor breached this provision.
7. Contractor was required to submit to an audit of its books and records. Sections 6.11.1 and 7.1.11 of the AIA-A133. I find the Contractor breached this provision.

8. Contractor was required to summarize its cost records and maintain complete “back up documentation.” Section 7.1.4 of the AIA-A133. I find the Contractor breached this provision.
9. Contractor was required to submit a final accounting for the Project. Section 7.2 of the AIA-A133. I find the Contractor breached this provision.
10. Contractor was required to provide all “management staff with whatever additional supervisory personnel are required to ensure that the Work will be completed by the Contractual date of Substantial Completion. Section 3.3.4 of the AIA-A201.
11. Contractor was required to employ a competent superintendent and necessary assistants. Section 3.9.1 of the AIA-A201.
12. Contractor was required to be solely responsible for all of the scheduling requirements. Section 3.10.1 of the AIA-A201. I find Contractors breached these provisions.
13. Contractor was required to bond-off subcontractor liens. Section 9.3.1.2 of the AIA-A201. I find Contractor breached this provision.
14. Contractor was required to promptly, and at its own expense, correct defective work. Section 12.2.1 of the AIA-A201. I find the Contractor breached this provision.

Section 2.4 of the AIA-A201 states, in pertinent part, that “If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents” and the Owner provides notice to the Contractor of such failure, Owner may proceed to perform the work itself. Owner put Contractor on notice of the defective work. Defendant’s Exs. 104 and 105. Owner then performed the work through other contractors. Transcript, pp. 3819-3827. Owner incurred costs performing work or self-performing work that Contractor was contractually required to perform, but Contractor either failed to perform the work or the work was defective and not in compliance with the Contract Documents. Defendant’s Ex. 146B; Transcript, p. 3817. This work included warranty work, laundry costs, labor, cleaning fees, repair work, painting work, punch list repair work, fixtures, and pool repairs. Transcript, pp. 3819-3827; Transcript pp. 3247-3255; Transcript, pp. 3267-3272. Defendant’s Exhibit 146B contains proper and complete supporting documentation. The total amount of the Owner supplied work is \$2,256,764.00.

I find the Owner was required to perform work that the Contractor failed to perform. I find that the amount of \$2,256,764.00 is reasonably supported and directly and proximately caused by the Contractor's failure to perform the contractually agree to work.

B. Breach of Contract Accompanied by a Fraudulent Act

The elements of a claim for breach of contract accompanied by a fraudulent act as "(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach." *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002).

I find Contractor's failure to perform its own accounting and repeated obfuscation of the accounting and audit process constituted not only a breach of the contract but that it was accompanied by fraudulent intent. I find that the true purpose of trying to avoid the audit was not for the reasons stated by Contractor in Defendant's Ex. 50, but instead to avoid, for as long as possible, the discovery that Contractor's claim was not \$22,452,287.00 or any of the iterations of Contractor's spreadsheets. The actual claim, once Hadley was finally able to perform her work, is determined to be \$419,425.00. Transcript, p. 4111; Transcript, pp. 4120-4121. This amount is prior to the award of any amounts of set off for liquidated damages or other damages.

Ultimately, I find that the Contractor is owed nothing. I find that Contractor breached this Contract, and the breach was accompanied by a fraudulent act. The Court asks:

What is the purpose of filing duplicative and excessive liens? What is the legitimate purpose of refusing to do an accounting or allow one's books and records to be audited?

The Court concludes that there is not a legitimate one. The only purpose would be to attempt to force an Owner into submission. This is especially true given Contractor's repeated

assertions that the Owner did not have sufficient funds to pay their claim. See Paragraph 52 of Plaintiff's Second Amended Complaint.

I further find the Contractor's undisclosed internal change orders violate the express terms of the Contract Documents and the essence of a cost-plus contract to be further evidence of fraudulent intent.

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

C. Declaratory Relief/Indemnification

I find and do declare, pursuant to S.C. Code Sections 15-53-30 and -40, based upon the accounting work and audit performed by Hadley, the mechanic's liens filed by Contractor and Subcontractors Lithko, Watson and ONSM are or were duplicative and excessive. The only remaining mechanic's lien is the Contractor's lien which is dismissed pursuant to the Court's rulings herein. As such, I order, pursuant to S.C. Code Ann. Section 15-53-100, Contractor and Subcontractors Lithko, Watson and ONSM to pay all costs incurred by Owner for the services of Hadley. At the trial, Ms. Hadley stated that her costs incurred were in the approximate amount of \$530,000.00. Transcript, pp. 3954-3955. Owner shall prepare and file an affidavit of Hadley's costs within thirty (30) days from the entry of this Order.

D. Unfair Trade Practices

To recover in an action under the UTPA, the claimant must show: (1) the opposing party engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the claimant suffered monetary or property loss as a result of the opposing party's unfair or deceptive act(s). S.C. Code Ann. §§ 39-5-10 to -560; *Wright v. Craft*, 640 S.E.2d 486, 372 S.C. 1 (Ct. App. 2006).

I find that Contractor engaged in acts which were unfair and deceptive in the conduct of trade or commerce. I find that these acts which were capable of repetition, were in fact repeated; however, I find that this is a private contract dispute between these parties which does not affect the public interest. Accordingly, this cause of action is dismissed.

E. Civil Conspiracy

“[A] plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff.” *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (S.C. 2021).

I find that Contractor combined with Subcontractors Lithko, ONSM, and Watson entered into a Joint Defense and Prosecution Agreement. Owner contends the Agreement, by itself, was lawful, but sought to achieve an unlawful purpose of extorting money from the Owner.

The Court finds the communications undertaken through this Agreement to be privileged under the Common Interest Rule. Transcript pp. 5036-5043. Because the defense and prosecution of claims among co-Defendants is recognized as a legitimate legal process, I find no overt act in furtherance of the Agreement, in this instance, will support a recovery under the civil conspiracy cause of action. See *Tobaccoville USA v. McMaster*, 387 S.C. 287, 692 S.E.2d 526 (2010). Also *Paradis v. Charleston Cnty. Sch. Dist.*, *supra*.

IT IS THEREFORE ORDERED AS FOLLOWS:

- I. Judgment is to be entered in favor of Library Associates, LLC on its breach of contract cause of action against Balfour Beatty Construction, LLC in the amount of **\$3,320,329.00**. This amount is arrived at by adding the liquidated damages sum (\$1,483,090.00) and the cost to complete damages (\$2,256,764.00) for a subtotal of

- \$3,739,854.00. The contract balance of \$419,425.00 is then subtracted for a setoff to arrive at the judgment amount of \$3,320,329.00.
- II. Judgment is to be entered in favor of Library Associates, LLC on breach of contract accompanied by a fraudulent act cause of action against Balfour Beatty Construction in the amount of **\$3,320,329.00**.
 - III. A hearing on punitive damages will be set by future Order of this Court.
 - IV. Library Associates, LLC is hereby instructed to submit its attorneys' fees and costs petition as the prevailing party against Balfour Beatty Construction, LLC, Lithko Contracting, LLC, Watson Electrical Construction, Co., LLC and Old North State Masonry, LLC under the mechanic's lien statute, S.C. Code Section 29-5-10, et seq., within thirty (30) days of the date of this Order.
 - V. Library Associates, LLC is further instructed to submit an affidavit of Hadley's costs pursuant to S.C. Code Ann. Section 15-53-100 within thirty (30) days of this Order.

IT IS SO ORDERED!

Mikell R. Scarborough
Charleston County Master-In-Equity

_____, 2023



Charleston Common Pleas

Case Caption: Balfour Beatty Construction LLC VS Library Associates LLC ,
defendant, et al

Case Number: 2019CP1001108

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2023-10-06 13:53:11 page 47 of 47

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2019-CP-10-01108
Balfour Beatty Construction, LLC,	)	
Plaintiff,	)	
v.	)	PUNITIVE DAMAGES ORDER
Library Associates, LLC; and Metropolitan	)	
Life, a New York Corporation	)	
Defendants,	)	
	)	
Library Associates, LLC,	)	
Third-Party Plaintiff,	)	
v.	)	
Lithko Contracting, LLC, <i>et al.</i>	)	
Third-Party Defendants.	)	
	)	

This matter came before the Court on April 2, 2024 for a hearing to determine punitive damages. This Court's Order entered October 6, 2023 found Plaintiff Balfour Beatty Construction, LLC (hereinafter "Balfour Beatty") liable to Defendant Library Associates on its counterclaims for breach of contract and breach of contract accompanied by a fraudulent act. The Order found Balfour Beatty liable for \$3,320,329.00 in actual damages on each theory. I then bifurcated the hearing for punitive damages, citing S.C. Code Section 15-35-510 et seq., to determine the amount of punitive damages and provide the parties procedural due process in order to prepare for the hearing. This process was discussed further at the Rule 59(e) hearing held on March 13, 2024.

Prior to the hearing, Balfour Beatty filed a Motion in Limine, arguing that the Court should not have a hearing as no further evidence should be admitted following the conclusion of the trial in December 2021. At the hearing, the Court cited the recent case of *Portrait Homes v. Penn Mutual* wherein the Court of Appeals affirmed the actions of the "learned trial court,"

Judge Roger M. Young, in holding a subsequent hearing to determine punitive damages post-trial. *Portrait Homes- South Carolina v. Pennsylvania National Mutual Ins. Co.*, Op. No. 6038 filed Dec. 13, 2023 (SC App 2023). Accordingly, Plaintiff's Motion in Limine was DENIED.¹

At the hearing, Library Associates presented five exhibits and the testimony of Library's principal, Michael Bennett. Objection was made to the exhibits on the basis that the documents referenced a separate subsidiary entity, Balfour Beatty Communities, LLC (hereinafter "BBC") of the parent company Balfour Beatty Companies, PLC (the British parent company), than Balfour Beatty Construction, LLC, the unsuccessful Plaintiff in this action. Other than filing and arguing for the Motion in Limine, objection to the exhibits offered, and limited cross-examination of Mr. Bennett, Balfour Beatty presented no evidence at the punitive damages hearing.

Due to the similar nature of the facts presented in the exhibits and the proximity in time to the events of this case (both concluded in December 2021), the Court allowed into evidence the Exhibits numbered 1, 3, 4 & 5. The Court allowed the proffer of Exhibit 2, a 2005 finding against Balfour Beatty Construction (not this LLC) for fraud involving claims brought on behalf of Amtrak. The Court has not taken Exhibit 2 into consideration in its decision but finds the actions of the Balfour Beatty entity from the 2021 criminal guilty plea of major fraud against the United States military (18 USC 1031(a)1) to be both highly relevant and factually similar.

Those similarities are:

1. a. The events between the parties in this case took place from 2014 when the parties entered into their contract until 2019 when Balfour Beatty filed suit against Library Associates.
- b. The events alleged in the federal information and plea agreement between BBC and the United States of America occurred between 2013 and 2019.

¹ See also Rule 42(b), SCRPC.

2. a. The trial of this case took place over five weeks in the fall of 2021 and concluded on December 3, 2021.
b. The guilty plea, civil restitution, and court ordered penalty entered into between BBC and the United States of America occurred on December 21, 2021.
3. a. In this case, Library complained repeatedly to Balfour Beatty that the job was taking too long and was not being managed properly. Exhibit 5 was a letter introduced through Mr. Bennett wherein he wrote to the CEO of Balfour Beatty asking him to investigate the management of this job in order to finalize and complete the project which was many months behind schedule. No satisfactory response was given to Mr. Bennett from the CEO. Instead, he was advised by email to speak to the regional Supervisor and emphasized that the job was progressing according to plan.
b. The factual recitation for the guilty plea states that BBC failed and refused to timely and adequately respond to complaints it received when the military housing authorities requested information and proof of compliance with their housing services contract.
4. a. In this case, upon receipt of complaints from Library Associates and commensurate with the filing of the Lis Pendens just prior to the commencement of this action, Balfour Beatty cut off access to the Egnyte computer software system site where all documents pertaining to the construction of the Hotel Bennett were kept for all parties involved to review. This was a major source of litigation during the discovery phase of this trial as the Egnyte site was never re-opened for use by the owner Library Associates.
b. In the federal action, Balfour Beatty used its property management software system, known as Yardi, to keep its data. The federal government was able to determine that the data in the Yardi software system was manipulated in order to benefit Balfour Beatty and

was used to the detriment of the United States of America. This included the submission of false and fraudulent material data which allowed Balfour Beatty to satisfy its performance objectives to receive quarterly bonus payments from the federal government.

5. a. As cited in item 3 above, Mr. Bennett's attempts to notify executives at Balfour Beatty of problems with the construction project were left unanswered. In addition, Mr. Bennett testified one of the reasons he entered into the contract with Balfour Beatty was that he felt comfortable with one of the Balfour Beatty executives he initially met with in Charlotte, Mike Bombach; however, by the time construction commenced on the Hotel Bennett, Mr. Bombach was no longer employed with Balfour Beatty.

b. A finding in the factual attachment to the plea agreement was that Balfour Beatty lacked adequate controls at the corporate regional and executive levels. In addition, the factual attachment stated the former Chief Operating Official of Balfour Beatty pressured his regional leaders for the collection of performance incentive fees.
6. a. While this Court found the actual damages incurred by Library Associates in this case amount to \$3,320,329.00, Mr. Bennett testified that damages are closer to \$50 million, as he has been unable to refinance the hotel because of the Lis Pendens which remains a lien upon the property. Rather than taking out the construction loan with permanent financing when interest rates were in the 3-4% range, today the rates are closer to 10% and will result in much greater carrying costs to the Hotel as an on-going concern.

b. In the federal housing case, the loss determined to the government was \$18.7 million dollars. The criminal penalty adjudged was \$33.6 million dollars and restitution was set at \$31.8 million dollars - a total of almost \$65 million dollars. Separately, BBC settled a False Claims Act (qui tam) action and was allowed to credit the civil liability of \$35 million

dollars against the amounts owed under the criminal plea. Unlike in this action, as part of the federal court's probationary sentence, BBC was also ordered to undergo oversight and review by an independent compliance monitor for a period of three years to ensure no further violations of the government housing contracts occurred. This compliance period is still running at this time.

Paragraphs enumerated 1-6 above are this Court's findings on the similarities between these cases. While the federal case arises from a guilty plea to 18 USC 1031(a)1, our state jurisprudence has long allowed for the recovery of punitive damages when a breach of contract is accompanied by both a fraudulent intent and fraudulent conduct. *Welborn v Dixon*, 70 S.C. 108 (1904). See also *Floyd v. Country Squire Mobile Homes*, 287 S.C. 51 (S.C. Ct. App. 1985). In addition, the burden of proof to award punitive damages requires "clear and convincing evidence." *Armstrong v. Collins*, 366 S.C. 204 (2005). The Court finds the evidence here meets that standard and the factual allegations in these two cases are quite similar.

Furthermore, some of the quotes from Exhibit 1, a press release issued by the federal government announcing the entry of the guilty plea and the court-imposed fine, illustrate the level of conduct shown by BBC in its dealings with the federal government. If willing to treat the United States military and its service members in this fashion, what likelihood does a private citizen have to avert a similar fate? This answers some of the questions raised by the Court in its October 6, 2023 Order. See Paragraph 7(B), page 43.

While noting that the BBC action, *USA v. Balfour Beatty Communities, LLC* (Criminal No. 21-CR-742 (EGS)) involved constructing and maintaining military housing, the Court finds the following comments relevant and applicable to the conduct of Balfour Beatty in this case:

"This pervasive fraud was a consequence of BBC's broken corporate culture, which valued profit over the welfare of servicemembers." Deputy Atty Gen. Lisa Monaco.

“In defrauding our country’s military services, BBC took advantage of their unique position as a military housing provider and put greed and personal profit above our service members.” FBI Deputy Director Paul Abbate.

“Balfour Beatty’s scheme to delay service request entries into their electronic tracking system to increase their performance-based award violated their contract and wasted valuable taxpayer money.” Special Agent Thomas Cannizo of NCIS Southeast Filed Office.

“That BBC would not only fail to deliver this service, but also falsify information to line their own pockets is despicable.” David Estes US Attorney for the Southern District of Georgia.

As stated in this Court’s Order, “I find Contractor’s failure to perform its own accounting and repeated obfuscation of the accounting and audit process constituted not only a breach of contract but that it was accompanied by a fraudulent intent.” Order p. 43. This raised the questions cited above in which the Court Order answered: “The only purpose would be to attempt to force an Owner into submission.” Id.

STANDARD OF REVIEW

Since *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991), our jurisprudence has considered due process as a part of the review of an award of punitive damages. The United States Supreme Court expounded upon this in *BMW of North America v. Gore*, 517 U.S. 559 at 575 (1996), where it held “constitutional jurisprudence dictate(s) that a person receive notice not only of the conduct that will subject him to punishment, but also the severity of the penalty that a state may impose.” “While states possess discretion over the imposition of punitive damages, it is well established that there are procedural and substantive constitutional limitations on these awards.” *State Farm v. Campbell*, 538 U.S. 408 (2003).

In South Carolina, our Supreme Court set forth eight factors to consider in a due process review of a punitive damages award. See *Gamble v. Stevenson*, 305 S.C. 104 at 111-112 (1991).

The factors are:

1. Degree of culpability
2. Duration of the conduct

3. Awareness of concealment
4. Existence of similar conduct
5. The likelihood the award will deter others from like conduct
6. Is the award reasonably related to the harm likely to result from the conduct
7. Ability to pay; and
8. Any other appropriate factors.

In *Mitchell, Jr. v. Fortis*, 385 S.C. 570 (2009), our Supreme Court ruled that trial courts must consider both the *Gamble* and *Gore* factors in the review of a punitive damages award. In *Mitchell*, the court then undertook an analysis of 3 factors:

1. Reprehensibility
2. Ratio (Punitive damages to actual damages) and
3. Comparative Penalty awards.

ANALYSIS

Similar to *Mitchell*, this case involves economic rather than physical harm. Also, in this instance, Library Associates was and remains financially vulnerable due to the added cost and loss of time from the delay in construction of the hotel as well as the additional carrying costs incurred as a result of the liens placed upon the hotel. Again, as in *Mitchell*, there were repeated acts of deliberate indifference towards Library Associates as it sought to complete construction of the hotel. Mr. Bennett's letter to CEO Blondin (Ex. 5) resulted in no assistance whatsoever.

Balfour Beatty sought to deny and obfuscate information due to Library Associates when it shut down the Egnyte software site so that information could no longer be shared between the owner and contractors working on the hotel. Clearly, this failure to assist with completing the hotel, coupled with Balfour Beatty's decision to file the Mechanics Lien and bring suit, shows it was aware of its wrongdoing. The facts in the criminal case in which BBC defrauded the US Government shows the existence of similar conduct by a separate subsidiary of the same parent corporation and provides an additional basis for the award of punitive damages. See *Magnolia North POA, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348 (S.C. Ct. App. 2012).

“Under the settled rule prevailing in this state punitive damages are awarded not only as punishment for a wrong, but also as vindication of a private right, and when under proper allegations a plaintiff proves a wilful, wanton, reckless, or malicious violation of his rights, it is not only the right but the duty of the jury to award damages.”

Magnolia North citing to *Sample v. Gulf Ref. Co.*, 183 S.C. 399 at 410 (1937).

“Punitive damages should only be awarded if the defendant’s culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence.”

Magnolia North citing to *Campbell v. State Farm*, 538 U.S. at 419, *supra*.

Accordingly, as the court finds Balfour Beatty’s behavior to be willful and wanton and proven by clear and convincing evidence, reprehensible behavior is established and punitive damages are appropriate.

S.C. Code Section 15-32-510 et seq.

Since *Mitchell* and *Magnolia North* were decided, the SC General Assembly enacted legislation addressing the award of punitive damages. The statutory scheme is set forth in S.C. Code Section 15-32-510 et seq. Also, our Supreme Court issued an excellent discussion of the statutes relevant to an award of punitive damages in *Garrison v. Target Corp.* 435 S.C. 566 (2022).

A. Section 15-32-530 (A) provides for an award of punitive damages not to exceed three times the amount of compensatory damages unless the court finds that Sections B or C apply. In the event the court finds the terms of Section B apply, the court may award punitive damages not to exceed four times the amount of compensatory damages. Under Section C, there is no cap on punitive damages when the court finds that any one of the three factors cited there are present.

B.1. Analyzing 15-32-530 (B) to the facts of this case, subsection 1 requires the court to prove the wrongful conduct was motivated primarily by financial gain and that the unreasonably dangerous nature of the conduct was known or approved by the managing agent responsible for policy decisions at the culpable party. While Mr. Bennet’s letter to CEO Blondin was notice of the problems associated with the contract terms being fulfilled, while the Court finds management

knew or should have known of the problems, it finds there is a lack of evidence that Balfour Beatty's decision makers approved the conduct.

B.2. Section 15-32-530 (B)(2) requires the court find "the defendant's actions could subject the defendant to conviction of a felony and that act or course of conduct is a proximate cause of the plaintiff's damages." While this test is in essence an attempt to determine if Balfour Beatty's actions were criminal, as noted above, a separate BBC entity has been convicted of criminal activity for very similar conduct. This is exactly what Balfour Beatty's motion in limine sought to exclude. While the test does not require a finding of criminal liability, it only requires that it "could subject" Balfour Beatty Construction, LLC to a felony conviction. The Court finds the conduct very similar and so the first part of this test is met.

The second part of the test is that the "act or course of conduct is a proximate cause of the plaintiff's damages." While it would be very difficult to find that Balfour Beatty's course of conduct in shutting down the Egnyte site, in failing to keep the project on time and on task as General Contractor and filing greatly exaggerated mechanic's liens, was THE proximate cause of Library Associates damages, it is not difficult to find that this conduct was certainly A proximate cause of Library Associates' damages which, as testified to by Mr. Bennett, continue to this day.

I conclude that Balfour Beatty's actions satisfy an award of punitive damages under Section 15-32-530 (B)(2). Accordingly, punitive damages must not exceed the greater of four times the amount of compensatory damages in this case.

C. Section 15-32-530 (C) provides for no cap on punitive damages under the three tests there. Only subsection 1 is relevant here as Balfour Beatty has not been convicted of a felony and no allegation of acts under the influence of alcohol or drugs apply. Under the first section, the test requires a showing that "at the time of the injury the defendant had an intent to harm and ... that

the defendant's conduct did in fact harm the claimant." While the court finds that the conduct of Balfour Beatty did harm Library Associates, the court does not find by clear and convincing evidence that it was their intent to harm Library Associates at the time of breach of the contract. As the Court stated a number of times during the course of this trial, it appeared that Balfour Beatty's employees failed to read the contract and follow its terms during the course of administration of the contract during construction. While this has caused the Owner damage, I find it does not rise to the level of "intent to harm" as that term is used in the statute.

CONCLUSION

As the Court has found an award of up to four times the amount of compensatory damages is applicable in this case, and the amount of actual damages came to \$3,320,329, the maximum amount of punitive damages allowed in this case is \$13,281,316. The Court hereby exercises its discretion and awards the sum of \$10 Million Dollars in punitive damages against Balfour Beatty.

IT IS THEREFORE ORDERED that Library Associates is hereby awarded \$3,320,329 dollars in actual damages and \$10 Million dollars in punitive damages on its cause of action for Breach of Contract accompanied by a fraudulent act for a total sum of \$13,320,329 dollars.

IT IS FURTHER ORDERED that Library Associates has previously been awarded the sum of \$3,320,329 in actual damages on its claim for Breach of Contract.

IT IS FURTHER ORDERED that Library Associates is hereby required to elect its remedy between these causes of action and shall have twenty (20) days in which to elect. At that time, the Court shall enter its Final Form 4 Order setting forth the full amount of the judgment herein.

It is Further Ordered that the Court shall issue its award of Attorney's Fees and Costs by separate order herein.

IT IS SO ORDERED!

Mikell R. Scarborough
Master in Equity, Charleston County

_____, 2024



Charleston Common Pleas

Case Caption: Balfour Beatty Construction LLC VS Library Associates LLC ,
defendant, et al

Case Number: 2019CP1001108

Type: Order/Damages

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2024-04-12 11:19:18 page 12 of 12

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

)

CASE NO.: 2019-CP-10-01108

Balfour Beatty Construction, LLC,
Plaintiff,

)

v.

)

**ORDER AWARDING ATTORNEYS'
FEES & COSTS**Library Associates, LLC; and Metropolitan
Life, a New York Corporation

)

Defendants,

)

Library Associates, LLC,

)

Third-Party Plaintiff,

)

v.

)

Lithko Contracting, LLC, *et al.*

)

Third-Party Defendants.

)

)

This matter came before the Court on Library Associates, LLC's Petition for Attorneys' Fees and Costs, filed November 6, 2023. In its Petition, Library provided William H. Bundy Jr.'s affidavit to support its claim for attorneys' fees and costs in the amount of \$2,026,278.55. Library also provided the affidavit of Marvin D. Infinger, Esquire to support the reasonableness of its claim to attorneys' fees. A hearing was held on April 2, 2024 at which time Mr. Infinger testified.

REASONABLENESS OF FEES AND COSTS

Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991) set forth the six-factor test to determine the award of attorneys' fees based upon: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Applying these factors to this case, I find:

1. This has been a very complex construction case which required protracted litigation. This matter involved multiple subcontractor claims and mechanics liens. This case was filed in 2019 and subsequently involved a five-week trial in the Fall of 2021.
2. Library's counsel devoted thousands of hours in its efforts to resolve this case.
3. Library's counsel of record, William H. Bundy, Jr. and Brent McDonald, maintain an excellent professional reputation in the South Carolina Bar.
4. The contingency of compensation factor is not relevant as Library's counsel was paid an hourly rate not conditioned upon the outcome of the case.
5. The outcome obtained by Library's counsel was a beneficial result for their client. The Order of October 6, 2023 awarded a judgment of \$3,320,329.00 in favor of Library Associates, LLC against Balfour Beatty Construction, LLC under the breach of contract and breach of contract accompanied by a fraudulent act causes of action. Significant to this court's determination of attorney fees, Library successfully defended against a Mechanic's Lien cause of action sought by Plaintiff Balfour Beatty Construction, LLC.
6. Mr. Bundy and Mr. McDonald's hourly rates of \$400 and \$350 are below the customary hourly rate charged for litigation of this nature and complexity and by attorneys of similar professional standing. As testified by Marvin D. Infinger, (who this court finds both highly credible and imminently qualified), a customary hourly rate for an attorney of Mr. Bundy's caliber is \$600 and \$450 for Mr. McDonald – a 50% increase above the billed hourly rate.

Based upon these findings, the court concludes Library Associates, as the prevailing party in the defense of the mechanic's lien case, is entitled to an award of attorney's fees. SC Code §15-27-10 (a).

REDUCTION OF FEES AND LODESTAR ENHANCEMENT

After the hearing, and despite its objection to Mr. Infinger's affidavit as untimely, Balfour Beatty submitted the Affidavit of Franklin Worrell, a certified financial forensic accountant and CPA. Mr. Worrell reviewed the invoices submitted by Library's counsel and placed the invoices into 5 Groups which he concluded led to a 74.5% overstatement in the amount of time expended in defending the mechanics lien claim. This court disagrees with his assessment.

In *Maybank v. BB&T Corporation*, 416 S.C. 541, 787 S.E.2d 498 (2016), the Supreme Court approved a twenty percent fee reduction after a showing of unrelated or unreasonable costs. This Court adopts the Supreme Court's ruling in *Maybank* and reduces Library Associates' award of attorneys' fees by thirty percent (30%). The court concludes a 30% reduction in fees is warranted based upon the fact multiple claims were presented and tried in this matter; however, the clear majority of time expended by the parties during the 5 week trial of this case was spent trying the Plaintiff's mechanics lien foreclosure action on which Defendant's prevailed.

Also in *Maybank*, the Supreme Court upheld a lodestar fee enhancement of fifty percent. While the facts in this case differ from *Maybank*, "a lodestar figure is designed to reflect the reasonable time and effort involved in litigating a case and is calculated by multiplying a reasonable hourly rate by the reasonable time expended." *Layman v. State*, 376 S.C. 434, 457, 658 S.E.2d 320, 332 (2008).

Upon review of the memorandum, affidavit and testimony of Marvin Infinger, this Court finds there exists good cause, considering the complex litigation and successful outcome achieved by Library's counsel, to award a lodestar fee enhancement of fifty percent to the rate of the attorneys' fees incurred. Accordingly, Mr. Bundy's hourly rate is hereby set at \$600 per hour and Mr. McDonald's at \$450 per hour.

ASSESSMENT OF ATTORNEY'S FEES AND COSTS

Library Associates' Petition for Attorneys' Fees was submitted on November 6, 2023 in the amount of \$2,026,278.55. Substantial other costs were included in its petition which ultimately sought over \$50 Million Dollars in damages.

After application of the thirty percent fee reduction to Library's requested amount of \$2,026,278, the court finds the sum of \$1,418,395 as the amount of attorney's fees. This sum is then subject to the lodestar fee enhancement of Fifty Percent, which this Court finds results in an award of \$2,127,592 in attorney's fees.

In addition, the court grants Library Associates' Petition for an award of Costs in the amount of \$655,197 which is the amount of costs submitted by Sam Hadley as Library's financial expert witness. Ms. Hadley's testimony was crucial to understanding the amounts of time and figures placed into the record and finds this cost to be reasonable and properly awarded in this action. See *Maybank*, supra. The remaining costs, the majority of which include loan costs both past and projected, are denied as consequential damages not allowed under the parties' contract.

Upon review of the memoranda, affidavits, and invoices submitted by Library Associates' counsel and in application of the *Glasscock* factors, and in consideration of the arguments, memoranda and affidavits submitted, this Court determines that an award of \$2,782,789 in attorneys' fees and costs is both reasonable and equitable to award Library Associates.

IT IS THEREFORE ORDERED that this Court hereby awards the sum of \$2,782,789.00 in attorneys' fees and costs to Library Associates and hereby issues its Form 4 Order in that amount as judgment on the attorney's fees and costs.¹

¹ Following the preparation of this order, the Court received a Supplemental Affidavit of Additional costs and fees from Kim Brown on behalf of Library Associates. The affidavit seeks an additional \$191,369.90 for costs incurred since submission of the attorney's fees and affidavit of November 6, 2023. The majority of these fees and costs were

IT IS SO ORDERED!

Mikell R. Scarborough
Master in Equity, Charleston County

spent preparing for and attending the post-trial motions hearing held on April 2, 2024. The Court will not award these additional fees and costs at this time but reserves a decision on their award at a later time.



Charleston Common Pleas

Case Caption: Balfour Beatty Construction LLC VS Library Associates LLC ,
defendant, et al

Case Number: 2019CP1001108

Type: Order/Attorney Fees

So Ordered

s/Mikell R. Scarborough 3062

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Jun 04 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master-In-Equity

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

Balfour Beatty Construction, LLC,

Appellant,

v.

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

And

Library Associates, LLC,

Third-Party Plaintiff,

v.

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

Of which Library Associates, LLC is the Respondent.

PROOF OF SERVICE

I, the undersigned, hereby certify that, concurrent with the filing of the foregoing *Respondent's Motion to Amend Designation of Matter to be Included in the Record on Appeal*, together with the accompanying *Exhibits A through D*, and *Notice of Appearance*, I served a true

and correct copy of the same upon all counsel of record by electronic mail at their respective email addresses designated in the South Carolina Attorney Information System (AIS), as follows:

James Werner, Esq. — jimwerner@parkerpoe.com
Thomas C. Hildebrand, Jr., Esq. — tomhildebrand@parkerpoe.com
Robert C. Byrd, Esq. — bobbybyrd@parkerpoe.com
William Greyson Land, Esq. — greysonland@hlpwlaw.com
Katon E. Dawson, Jr., Esq. — katondawson@parkerpoe.com

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/ Jesse Sanchez
Jesse Sanchez, Esq. (SC Bar No. 101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
(843) 814-8181 (Phone)
(843) 284-3953 (Fax)
jesse@jessesanchezlaw.com

Attorney for Respondent Library Associates, LLC

June 4, 2026
Mount Pleasant, South Carolina

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Jun 04 2026

SC Court of Appeals



June 4, 2026

VIA EMAIL (ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

**Re: Balfour Beatty Construction, LLC v. Library Associates, LLC, et al.
Appellate Case No. 2024-000788**

Dear Ms. Kitchings:

On behalf of Respondent Library Associates, LLC, enclosed for filing in the above-referenced appeal, please find the following:

1. Notice of Appearance of Jesse Sanchez, Esq.;
2. Respondent's Motion to Amend Designation of Matter to be Included in the Record on Appeal with Court-Ordered Pinpoint Citations;
3. Respondent's separately filed Exhibits A through D (Exhibits to Respondent's Motion); and
4. Proof of Service.

The fifty-dollar (\$50.00) filing fee has been deposited in today's mail.

Should you have any questions or require anything further, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

s/Jesse Sanchez

Jesse Sanchez (SC Bar No. 101906)

Counsel for Respondent Library Associates, LLC

Attachments (as stated)

cc (via email):

James Werner, Esq.
Thomas C. Hildebrand, Jr., Esq.
Robert C. Byrd, Esq.
William Greyson Land, Esq.
Katon E. Dawson, Jr., Esq.
W.H. Bundy, Jr., Esq.
M. Brent McDonald, Esq.

THE LAW OFFICE OF JESSE SANCHEZ, LLC

751 Johnnie Dodds Blvd., Suite 200, Mount Pleasant, SC 29464 P: 843.814.8181 F: 843.284.3953
jesse@jessesanchezlaw.com jessesanchezlaw.com