THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable Jane H. Merrill, Circuit Court Judge

Appellate Case No. 2025-002252
Trial Court Case No. 2023-CP-04-01493

T. Cox Builders, LLC, ... Appellant,

v.

Piedmont Vacant Properties, LLC and Watson Engineering, Inc., ... Respondents.

APPELLANT T. COX BUILDERS, LLC'S REPLY BRIEF

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INTRODUCTION

Respondents open with a threshold argument that rests on evidence Cox has never seen and that is not before this Court. They then defend the Right-to-Cure ruling on a reading the statute does not bear, and add a ground they never raised below. On the merits, they recast Cox's alternative argument as a concession and Cox's challenge to the measure of damages as a request to reweigh evidence. Cox does not repeat its opening brief. It replies only to what Respondents' brief raises.

I. THE APPEAL IS PROPERLY BEFORE THIS COURT.

Respondents devote their first argument to a question this Court considered and resolved against them in April, and they present the controlling decision — this Court's own — as holding something it does not hold.

A. *Montgomery Holdings* holds that payment of a judgment, standing alone, does not bar an appeal.

This Court addressed the precise question in *Montgomery Holdings, LLC v. Merlo*, 447 S.C. 502, 928 S.E.2d 746 (Ct. App. 2026). A judgment debtor paid a construction judgment; the judgment creditor filed a satisfaction of judgment; and the creditor then urged on appeal that the debtor had waived appellate review, or should be estopped, because he paid instead of posting a bond. This Court disagreed. *Id.* at 512–13, 928 S.E.2d at 751–52.

The Court adopted the federal rule, which it was free to consult as persuasive authority. *Chase Home Fin., LLC v. Risher*, 405 S.C. 202, 213, 746 S.E.2d 471, 477 (Ct. App. 2013). Quoting the Fourth Circuit, the Court held that "[a] payment of a judgment is not necessarily a bar to appeal," and that where payment is made and accepted so as to indicate an intention to settle a disputed claim, "it is the mutual manifestation of an intention to bring the litigation to a definite conclusion upon a basis acceptable to all parties which bars a subsequent appeal, not the bare fact of payment of the judgment." *Montgomery Holdings*, 447 S.C. at 513, 928 S.E.2d at 751 (quoting *Gadsden v. Fripp*, 330 F.2d 545, 548 (4th Cir. 1964)).

The Court further quoted *Woodson v. Chamberlain*, 317 F.2d 245, 246 (4th Cir. 1963): "The usual rule in the federal courts is that payment of a judgment does not foreclose an appeal," and "[u]nless there is some contemporaneous agreement not to appeal, implicit in a compromise of the claim after judgment, and so long as, upon reversal, restitution can be enforced, payment of the judgment does not make the controversy moot." *Id.* And it quoted *Dakota County v. Glidden*, 113 U.S. 222, 224 (1885): "There can be no question that a debtor against whom a judgment for money is recovered, may pay that judgment, and bring a writ of error to reverse it, and if reversed can recover back his money." *Id.*

The Court then stated its holding in terms that answer Respondents' argument directly: "In the absence of South Carolina case law to the contrary, we believe the federal law on point precludes our deciding the case based on waiver, mootness, or estoppel." *Id.* at 513, 928 S.E.2d at 752.

B. The "involuntary payment exception" Respondents describe does not appear in *Montgomery Holdings*.

Respondents tell this Court that *Montgomery Holdings* "turned on a critical fact absent here: the payment was not voluntary," that the appellant there "paid only to avert that imminent forced sale which is a classic case of payment made under duress of legal process," and that the decision is "a straightforward application of the involuntary payment exception." (Resp'ts' Br. 15–16.)

The opinion says otherwise about the state of that record: "Nothing in the record addresses the mindset of the parties in paying or accepting the judgment monies, but circumstances imply Merlo was seeking to avoid the sale of his property and pursue an appeal of the judgment."

Montgomery Holdings, 447 S.C. at 513, 928 S.E.2d at 752. That is a finding that the record was silent, not a finding of duress. The Court made no finding that the payment was involuntary, and the phrase "involuntary payment exception" appears nowhere in the opinion.

The rule the Court adopted does not turn on compulsion at all. It turns on whether the parties mutually manifested an intention to end the litigation. *Gadsden*, 330 F.2d at 548. Respondents' framing would convert a rule about mutual intent into a rule about duress, and would leave this Court's holding — that federal law "precludes our deciding the case based on waiver, mootness, or estoppel" — with nothing to operate on.

C. There was no contemporaneous agreement not to appeal; Cox gave written notice that it would appeal and proposed a bond to stay execution.

Respondents' Statement of the Case contains the fact that decides this issue. It states: "On October 22, 2025, Cox's trial counsel advised that he 'plan[ned] to fil[e] the Notice of Appeal in the morning' and attached a consent order for posting a bond." (Resp'ts' Br. 3.)

Respondents are bound by that statement. Rule 208(b)(2), SCACR provides that "[i]f a respondent does include his own statement of the case, he shall be bound by the matters stated or alleged in his statement of the case." Respondents elected to include one.

The communication said more than Respondents' summary of it conveys. Writing on October 22, 2025 to both of Respondents' counsel of record, Cox's counsel enclosed "a consent Order for posting a Bond in the full amount for your review and consideration," noted that "[p]er SC Code 18-9-130, the judgment amount is the max the bond can be," and stated: "I'm planning on filing the Notice of Appeal in the morning." The enclosure was captioned "Consent Order for Posting Bond."

That sequence answers the argument Respondents build on it. They say Cox "was plainly aware of this mechanism" and that its decision "to pay the judgment outright rather than post a supersedeas bond reflects a knowing and deliberate choice to satisfy the judgment rather than preserve it for review." (Resp'ts' Br. 16–17.) Cox did not merely know of the mechanism. It invoked it, prepared the order, and sent it to Respondents for their consent. Respondents nowhere assert that they gave it. Two days later, with no stay in place, Cox paid.

The significance of the absent consent is supplied by the statute Cox cited to Respondents at the time. Under section 18-9-130, "[a] notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution." S.C. Code Ann. § 18-9-130. Filing the Notice of Appeal would not have protected Cox from execution on a judgment that had been enforceable since October 6, 2025. A consent order would have. Respondents' account therefore describes an election Cox was never offered: without their agreement, the alternative to payment was not a bond but an unstayed money judgment against a licensed residential builder.

Whatever else that sequence shows, it is not "some contemporaneous agreement not to appeal." *Woodson*, 317 F.2d at 246. It is the opposite: contemporaneous written notice that the judgment would be challenged, coupled with a proposal to secure it pending review.

Respondents' answer is that Cox "never communicated, or even intimated, that the payoff was being tendered under protest." (Resp'ts' Br. 3.) Their own Statement of the Case refutes the premise. And protest is not the test in any event. *Woodson* asks whether there was an agreement not to appeal, and *Gadsden* asks whether the parties mutually manifested an intention to conclude the litigation. Respondents do not contend that Cox ever agreed not to appeal, because Cox never did.

Nor were Respondents misled. The policy Respondents invoke — quoting *Highland Church of Christ v. Powell*, 640 S.W.2d 235, 236 (Tex. 1982) — is protection of a party "into believing that the controversy is over." (Resp'ts' Br. 15.) A party who has been told in writing that a notice of appeal is coming the next morning, and who has been sent a proposed consent order for a bond, has not been led to believe the controversy is over. If Respondents drew that conclusion notwithstanding, they drew it against what their own counsel had been told two days earlier.

The contrast with *Montgomery Holdings* is instructive. There this Court declined to find waiver, mootness, or estoppel even though "[n]othing in the record addresses the mindset of the parties in paying or accepting the judgment monies," resting on circumstances that merely "imply" the appellant was seeking to avoid a sale of his property and to pursue an appeal. 447 S.C. at 513, 928 S.E.2d at 752. Here the record is not silent. It contains a contemporaneous writing, from Cox's counsel to Respondents' counsel, stating an intention to appeal and proposing the means of staying execution while the appeal went forward.

D. Restitution is available, so no intervening event has made relief impossible.

Mootness, as Respondents define it by quoting *Protopapas*, arises where "an intervening event renders any grant of effectual relief impossible for the reviewing court." (Resp'ts' Br. 13.) Nothing here does. *Woodson* conditions its rule on restitution being enforceable upon reversal, 317 F.2d at 246, and *Glidden* confirms that a judgment debtor who pays "can recover back his money" if the judgment is reversed, 113 U.S. at 224.

Respondents do not suggest that restitution would be unavailable, or that they could not respond to a judgment of reversal. Reversal would entitle Cox to recover the $152,065.21 it paid on October 24, 2025. Effectual relief remains entirely possible, and the controversy is live.

E. Respondents' South Carolina authorities do not state the rule they are offered for.

Respondents describe "a century of precedent requiring dismissal of this appeal." (Resp'ts' Br. 18.) Three South Carolina decisions are cited, but none supports the proposition. This is why the *Montgomery Holdings* panel could write, in 2026, that there is no "South Carolina case law to the contrary." 447 S.C. at 513, 928 S.E.2d at 752. Two criminal fine cases and a per curiam in a case that had already concluded are not contrary authority.

F. The affidavit on which Respondents' reliance argument depends is not before this Court.

Respondents' argument that they detrimentally relied on Cox's payment rests on a single evidentiary source: an "Affidavit of Tom Scott," cited at pages 3, 12 n.1, 13, and 17 of their brief. It is the only support offered for their asserted understanding that the payoff "concluded the matter with finality."

That affidavit has not been served on Cox. Respondents' Proof of Service certifies service of "Respondents Piedmont Vacant Properties, LLC's and Watson Engineering, Inc.'s Initial Brief and Designation of Matter via electronic mail only" — two documents, not three. Nor does the affidavit appear among the documents Respondents transmitted to the Clerk of this Court on August 7, 2026.

The affidavit is dated August 6, 2026: eleven months after the judgment appealed from, nine months after the Notice of Appeal, and one day before Respondents' brief. It was never presented to the Court of Common Pleas. Rule 209(b), SCACR permits designation only of material "which may be properly included in the Record on Appeal [See Rule 210(c)]," and Rule 210(c), SCACR provides that the Record "shall not . . . include matter which was not presented to the lower court or tribunal." Rule 210(h), SCACR provides that this Court "will not consider any fact which does not appear in the Record on Appeal." Cox has moved separately to exclude the affidavit and to strike the passages resting on it.

When those assertions are set aside, as the rules require, what remains bearing on the parties' mindset is the October 22, 2025 communication recited in Respondents' own Statement of the Case. It points in one direction.

II. THE CIRCUIT COURT WAS REQUIRED TO STAY RESPONDENTS' CONSTRUCTION-DEFECT COUNTERCLAIMS.

Respondents offer four reasons to affirm the denial of the statutory stay. The first two were rejected by the statute's text; the third was not the circuit court's holding; and the fourth was never raised below.

A. The circuit court found the counterclaims to be "actions" under the Act, and Respondents did not appeal that finding.

The circuit court held, "as a threshold matter," that "Defendants' counterclaims are 'actions' as defined in the Act." (Order at 2.) Respondents did not cross-appeal that determination, and they do not challenge it now. It stands.

Respondents nonetheless describe the ruling below as a holding that "the Right to Cure Act does not apply to Respondents' compulsory counterclaims." (Resp'ts' Br. 19.) The order says both things, and the tension between them is the error Cox appeals. Having found the counterclaims to be "actions" within the Act, and no pre-suit notice having been served, the circuit court had one course available: "the court shall stay the action." S.C. Code Ann. § 40-59-830 (Supp. 2024).

B. Rule 13(a), SCRCP does not create an exception to section 40-59-830.

Respondents' principal submission is one of practical incompatibility: a homeowner cannot both plead a compulsory counterclaim within the answer period and serve a notice of claim ninety days "before filing the action." (Resp'ts' Br. 20–21.) The observation has force as a matter of legislative design. It has none as a matter of construction.

Nothing in sections 40-59-820, -830, -840, or -850 distinguishes between plaintiffs and counterclaimants, excepts compulsory counterclaims, or makes the stay turn on who sued first. Section 40-59-830 conditions the stay on one fact — that notice "is not provided before filing an action in court" — and directs that, "on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article."

A stay is the very device that reconciles the two timetables Respondents say cannot be reconciled. The counterclaim is pleaded when Rule 13(a), SCRCP requires; it is preserved against the preclusion *Crestwood* describes; and its litigation pauses while the notice-and-cure process runs. Nothing is forfeited. That is what a stay does, and it is what the General Assembly directed.

Respondents' contrary reading requires this Court to write an exception into a statute that contains none. A court may not resort to a forced construction that limits or expands a statute whose language is plain, nor read into a statute words the General Assembly omitted. *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). *Grazia* does not assist Respondents: it describes the Act as supplying "a new procedural timeline for asserting existing litigation rights," *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 573, 703 S.E.2d 197, 202 (2010), which is precisely what a stay preserves rather than defeats.

C. The waiver rationale rests on an arbitration case and on a limitation the statute does not contain.

Respondents rely on *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 647 S.E.2d 249 (Ct. App. 2007), for the proposition that a party may waive "a mechanism designed to suspend judicial proceedings" by participating in litigation. (Resp'ts' Br. 24.) *Rhodes* concerned a contractual right to arbitrate. Waiver doctrine applies naturally to a right one party holds against another by agreement. Section 40-59-830 is not such a right. It is a mandatory command addressed to the court, triggered by a fact — the absence of pre-suit notice — and expressed in the word "shall."

Respondents' prejudice showing has the same difficulty. The prejudice they describe is the cost of litigating counterclaims that, on Cox's reading, should have been stayed at the outset. That is the consequence of the error, not a reason to excuse it.

Blevins v. Habersham Pools, Inc., No. 21EV003382B, 2023 Ga. State LEXIS 521 (State Ct. Fulton Cnty. Jan. 6, 2023), is an unpublished decision of a Georgia county trial court construing a Georgia statute. It does not bear on the meaning of section 40-59-830.

Finally, the timeliness rationale conflates strategy with preservation. Cox pleaded Respondents' non-compliance in its Reply to Counterclaims, moved for the statutory stay at the close of the evidence, obtained a ruling, and renewed the issue under Rule 59(e), SCRCP. (Order at 1–3, 12 ¶ 33.) The question is not whether Cox sought the stay at the optimal moment. It is whether the circuit court had authority to deny a mandatory statutory stay on limitations the statute does not contain.

D. The argument that Piedmont is not a "claimant" is new, unsupported by the Record, and self-defeating.

Respondents argue for the first time on appeal that the Act does not reach Piedmont because Piedmont is neither a homeowner nor a subsequent purchaser and so is not a "claimant" under section 40-59-820(2). (Resp'ts' Br. 26–28.) They offer it as an additional sustaining ground under Rule 220(c), SCACR and *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

Rule 220(c), SCACR permits affirmance "upon any ground(s) appearing in the Record on Appeal." The ground Respondents advance does not appear in the Record. It rests on the absence of a finding on a question no party litigated and no witness was asked about, as Respondents themselves acknowledge: "Cox did not claim, yet alone establish, that Piedmont was the owner or subsequent purchaser of the Home." (Resp'ts' Br. 27.) An unlitigated evidentiary gap is not a ground appearing in the record; it is the absence of one.

The argument is also self-defeating. The circuit court found that Cox "did not establish that Watson Engineering was the record owner of the Home." (Order at 18–19 ¶¶ 50–52.) If Piedmont falls outside the Act because it was not shown to be the owner, and Watson was not shown to be the owner either, then on Respondents' own theory neither Respondent is a "claimant" — although both pleaded construction-defect counterclaims and both took judgment on them.

And it cannot be reconciled with the finding Respondents left unchallenged. An "action" under the Act is one "asserting a claim for injury or loss to a dwelling . . . caused by an alleged defect." S.C. Code Ann. § 40-59-820 (Supp. 2024). The circuit court found Respondents' counterclaims to be exactly that. (Order at 2.)

III. RESPONDENTS DEFEND THE DRAW 6 RULING BY RECASTING COX'S ALTERNATIVE ARGUMENT AS A CONCESSION.

Respondents report that Cox "even now admits that '[t]he contract made each draw payable upon completion of its designated milestone,' a pivot from its position throughout trial." (Resp'ts' Br. 29.)

The sentence quoted appears in Section II.B of Cox's brief, which begins: "Even accepting the court's ambiguity premise, its construction improperly rewrote the payment provisions." (Appellant's Br. 16.) It is an alternative argument offered arguendo. Cox's primary position, stated in Section II.A, is that "10%—vinyl/gutters" is not capable of more than one meaning and must be enforced as written. *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997).

More importantly, the sentence is not the concession Respondents need it to be. Cox's position has not moved: Draw 6 became payable upon completion of the milestone the Draw Schedule designated for Draw 6 — the vinyl and gutter work — and not upon completion of prior-draw work, satisfaction with the project as a whole, or a percentage of overall completion imported from outside the Draw Schedule. Saying that each draw is payable on completion of its designated milestone is Cox's argument. It is not Respondents'.

That distinction is what the circuit court's three asserted ambiguities pass over. (Order at 14 ¶ 38.) The course of dealing Respondents emphasize illustrates the point rather than answering it. Each invoice certified the milestone designated for that draw and nothing more: "Framing complete" for Draw 2, rough-ins "complete" for Draw 3, "Finish brick" for Draw 4, "Drywall complete, trim installed, first coat of paint" for Draw 5. (Order at 8–9 ¶ 19.) None certified completion of earlier draws, freedom from punch-list items, or any overall percentage. The parties' practice was milestone-for-draw, which is what the writing says.

IV. THE DAMAGES AWARD REMAINS UNSUPPORTED BY A FINDING OF NET LOSS.

A. Respondents' own description of the award confirms that it mixes repair with completion.

Respondents answer the offset point by asserting that "the $249,200.00 that remained unpaid corresponded to later draws for work Cox never performed, whereas the repair costs redressed defective work Cox had already been paid to complete." (Resp'ts' Br. 33.)

That answer would be complete if the award were confined to repair. It is not. Respondents describe the $89,261.32 as "the reasonable cost Respondents incurred to repair and complete the very work" at issue (Resp'ts' Br. 32), and the circuit court awarded "the cost to repair and complete the work for which Cox had already been paid in previous draws" (Order at 17 ¶ 45; Order at 23 ¶

69). Completion, by definition, is work not previously performed — and, on Respondents' own account of the unpaid balance, work for which Cox was never paid.

To the extent the award compensates Respondents for completing work funded by draws they never paid, it is not a loss. It is the price of the bargain they made. The measure of contract damages remains "the loss actually suffered by the contractee as a result of the breach." *S.C. Fin. Corp. of Anderson v. West Side Fin. Co.*, 236 S.C. 109, 113, 113 S.E.2d 329, 330 (1960). A finding that the expenditures were reasonable and mitigated (Order at 17 ¶ 45) is not a finding of net, compensable loss under the fixed-price contract the parties made.

B. The eighteen-month date remains a contractual term the parties did not write. Respondents say the circuit court "did not invent that figure"; it "drew the number directly from Cox's own testimony" and "adopted the outer limit most favorable to Cox." (Resp'ts' Br. 33–34.) That addresses where the number came from. It does not address the use to which it was put.

Cox does not dispute that where a contract fixes no time for performance, the law implies a reasonable time. *Drews Co. v. Ledwith-Wolfe Assocs., Inc.*, 296 S.C. 207, 209, 371 S.E.2d 532, 533 (1988). The error is that the circuit court converted a reasonable-time standard into a date certain and then measured every component of the consequential award from it — rental costs of $10,627.20 and $10,500.00, increased financing costs of $37,200.89, and increased material costs of $2,350.00. (Order at 17 nn.10–11.) The court twice found that no fixed time was set and that the point was undisputed. (Order at 5 ¶ 6; Order at 11 ¶ 29.)

That the same damages model was found partly speculative compounds the difficulty. The court rejected Respondents' loss-of-use damages as "speculative." (Order at 17 n.10.) A model the factfinder found unreliable in part cannot be assumed reliable as to its remaining components, each of which required proof to a reasonable certainty. *Drews Co.*, 296 S.C. at 209–10, 371 S.E.2d at 533.

C. The negligence finding is not an unchallenged independent ground.

Respondents contend that the negligence award "independently sustains" the judgment and that Cox "does not meaningfully challenge" it, invoking *Anderson v. S.C. Department of Highways & Public Transportation*, 322 S.C. 417, 472 S.E.2d 253 (1996). (Resp'ts' Br. 34–35.)

Cox challenged both grounds. Section III.C of the opening brief is directed to the negligence award by name and explains why relabeling the same figure as tort damages does not repair the defect in its measure. (Appellant's Br. 18–19.)

Anderson addresses affirmance where an appellant fails to appeal a cause of action supporting a general verdict. This is a non-jury judgment with itemized findings, and Cox has appealed both theories. The two awards are not independent in any event: the circuit court entered the identical $149,939.41 on each, and both rest on the same repair-and-completion invoices and the same eighteen-month date. Cost of repair is a recognized measure of a builder's tort liability, *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 94, 344 S.E.2d 869, 873 (Ct. App. 1986), but only to the extent it compensates for a loss actually sustained. The negligence label does not supply what the damages proof lacked.

V. THE EQUITABLE AND ACCOUNT-STATED CLAIMS.

A. Respondents no longer defend the ground the circuit court gave first.

The circuit court dismissed Cox's quantum meruit claim primarily because "a valid contract exists between Plaintiff and Defendant PVP that covers the issue of compensation." (Order at 18 ¶ 50.) Respondents now accept that this reasoning cannot reach Watson, a stranger to that contract, and rest instead on the court's alternative grounds. (Resp'ts' Br. 35.) The concession matters: the court's stated primary basis for dismissing the claim against Watson was a legal error, and what remains are grounds the court gave in the alternative.

B. The value-of-benefit ruling applied a measure; it was not a bare failure of proof.

Respondents recast the ruling as "a complete failure of proof on an essential element." (Resp'ts' Br. 36.) The order describes something narrower — the application of a legal measure, value to the owner, to evidence of the labor and materials Cox incorporated into the Home. (Order at 18–19 ¶ 51.) Cox's submission is that the evidence of what it furnished was probative of the value Watson retained, and that treating it as categorically incapable of establishing benefit was error. Recovery is measured by the value of the benefit unjustly retained. *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009).

This claim sounds in equity, and this Court may find facts in accordance with its own view of the preponderance of the evidence, while giving due regard to the trial court's superior position on credibility. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

C. Unclean hands requires prejudice to the party invoking it.

The doctrine bars equitable relief where the claimant's inequitable conduct related to the matter in litigation and worked to the prejudice of the party invoking it. *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998); *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000). The conduct the circuit court identified — Cox's demands on Piedmont over the disputed draw and its representations about the percentage of completion — concerned Cox's dealings with Piedmont over payment. (Order at 18–19 ¶ 52.) Respondents' answer is that the findings establish misconduct "directed at and prejudicing Respondents collectively." (Resp'ts' Br. 37.) The findings they cite describe the payment dispute and the construction deficiencies; they do not identify inequitable conduct toward Watson with respect to the benefit Watson retained without paying for it.

D. The differing figures reflect different periods and different components.

Respondents treat Cox's demands of $35,600.00, $71,200.00, and $92,000.00 as "shifting and inconsistent sums for unchanged work." (Resp'ts' Br. 38.) They are not the same demand three times. The first was a proposed half draw offered to advance the work to its next phase; the second was the full contractual draw the Draw Schedule provided; the third was a later balance that included the change orders Cox asserted. (Order at 7 ¶ 17; Order at 12 ¶ 32.) Cox's account stated claim is advanced, as the opening brief stated, as a secondary alternative theory.

CONCLUSION

Cox respectfully requests that this Court decline Respondents' invitation to dismiss the appeal; reverse the denial of the statutory stay under S.C. Code Ann. § 40-59-830 and remand with instructions to apply the Notice and Opportunity to Cure Construction Dwelling Defects Act according to its terms; reverse the denial of Cox's breach-of-contract claim for Draw 6 and remand for construction of the contract under the language of the written Draw Schedule; vacate the damages award and remand for a determination of the loss actually suffered; reverse the dismissal of Cox's quantum meruit claim against Watson Engineering, Inc. and remand for further proceedings; and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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