

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

D&C Builders, Inc.,)

C.A. No.: 2013-CP-23-1833

Plaintiff,)

vs.)

Richard M. Buckley and)

Wells Fargo National Association,)

**DEFENDANT RICHARD M. BUCKLEY'S
ANSWER, COUNTERCLAIMS AND
THIRD-PARTY CLAIM**

Defendants;)

Richard M. Buckley,)

Third-Party Plaintiff,)

vs.)

Scott Dodenhoff,)

Third-Party Defendant.)

FILED IN CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENBACHER
2013 MAY 15 P 4:48

TO: H. STEWART JAMES, ESQ., ATTORNEY FOR PLAINTIFF, D&C BUILDERS, INC.:

Defendant and Third-Party Plaintiff, Richard M. Buckley ("Defendant" and/or "Third-Party Plaintiff"), subject to his Motion to Dismiss filed contemporaneously herewith, hereby answers the Complaint of Plaintiff, D&C Builders, Inc. ("Plaintiff"), by denying each and every allegation not hereinafter specifically admitted, demanding strict proof thereof, and further responds as follows:

1. Upon information and belief, Defendant admits the allegations in paragraph 1 of the Complaint.

2. Defendant admits the allegations of paragraph 2 of the Complaint.

3. Upon information and belief, the Defendant admits only so much of the allegations contained in paragraph 3 of the Complaint in that the Defendant owns property located at 105 Cammer Avenue in the County of Greenville, State of South Carolina, and has mortgaged such property to Wells Fargo Bank. The Defendant craves reference to the records in the Greenville County Register of Deeds Office regarding any further description thereof, such that any allegation contained in paragraph 3 of the Complaint that contradicts said records is hereby denied and strict proof demanded thereof.

4. Upon information and belief, the Defendant admits only so much of the allegations contained in paragraph 4 of the Complaint in that the Defendant owns property located at 105 Cammer Avenue in the County of Greenville, State of South Carolina. The Defendant craves reference to the records in the Greenville County Register of Deeds Office regarding any further description thereof, such that any allegation contained in paragraph 4 of the Complaint that contradicts said records is hereby denied and strict proof demanded thereof.

5. The Defendant denies the allegations of paragraph 5 of the Complaint and demands strict proof thereof. Further, certain allegations of paragraph 5 of the

Complaint contain a legal conclusion such that an answer thereto is not required of the Defendant; however, to the extent an answer is required of the Defendant, the Defendant hereby denies same and demands strict proof thereof.

6. The Defendant denies the allegations of paragraph 6 of the Complaint and demands strict proof thereof. Further, certain allegations of paragraph 6 of the Complaint contain a legal conclusion such that an answer thereto is not required of the Defendant; however, to the extent an answer is required of the Defendant, the Defendant hereby denies same and demands strict proof thereof. The Defendant craves reference to the records in the Greenville County Register of Deeds Office, such that any allegation contained in paragraph 6 of the Complaint that contradicts said records is hereby denied and strict proof demanded thereof.

7. The Defendant denies the allegations of paragraph 7 of the Complaint and demands strict proof thereof. Further, certain allegations of paragraph 7 of the Complaint contain a legal conclusion such that an answer thereto is not required of the Defendant; however, to the extent an answer is required of the Defendant, the Defendant hereby denies same and demands strict proof thereof.

8. The Defendant craves reference to the records in the Greenville County Register of Deeds Office, such that any allegation contained in paragraph 8 of the Complaint that contradicts said records is hereby denied and strict proof demanded thereof. Further, the Defendant denies the remaining allegations of paragraph 8 of the

Complaint and demands strict proof thereof. Further, certain allegations of paragraph 8 of the Complaint contain a legal conclusion such that an answer thereto is not required of the Defendant; however, to the extent an answer is required of the Defendant, the Defendant hereby denies same and demands strict proof thereof. Further still, upon information and belief, the sale of Plaintiff's Mechanic's Lien is not an appropriate remedy for any action brought pursuant to S.C. Code Ann. § 29-5-10, *et seq.*

9. The Defendant denies the allegations of paragraph 9 of the Complaint and demands strict proof thereof. Further, certain allegations of paragraph 9 of the Complaint contain a legal conclusion such that an answer thereto is not required of the Defendant; however, to the extent an answer is required of the Defendant, the Defendant hereby denies same and demands strict proof thereof.

10. The Defendant denies the allegations of paragraph 10 of the Complaint and demands strict proof thereof.

11. The Defendant denies the allegations and prayer(s) for relief found in the "WHEREFORE" section of Plaintiff's Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE
(Failure to state a claim or cause of action)

12. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

13. The Defendant alleges that the complaint fails to sufficiently constitute a cause of action against this answering Defendant or fails to state facts upon which a claim can be based.

FOR A THIRD DEFENSE
(Unclean Hands)

14. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

15. The Defendant alleges that the Plaintiff's action is barred under the equitable doctrine of unclean hands.

FOR A FOURTH DEFENSE
(Plaintiff bad faith)

16. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

17. The Defendant alleges that the Plaintiff's bad faith bars its claims or that any damages must be reduced as a result of Plaintiff's comparative bad faith.

FOR A FIFTH DEFENSE
(Laches, Estoppel and/or Waiver)

18. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

19. The Defendant alleges that the Plaintiff's claims are barred by the doctrines of laches, waiver and/or estoppel.

FOR A SIXTH DEFENSE
(Intervening Factors and/or Acts)

20. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

21. The Defendant alleges that the Plaintiff's claims are barred by intervening factors and/or intervening acts and wrongdoing of parties other than Defendant, which were the actual and proximate cause of Plaintiffs' alleged damages.

FOR A SEVENTH DEFENSE
(Failure to Mitigate)

22. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

23. The Defendant alleges that Plaintiff's claims are barred due to the Plaintiff's failure to mitigate their damages.

FOR AN EIGHTH DEFENSE
(No Proximate Cause)

24. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

25. The Defendant alleges that Plaintiff's claims are barred due to the lack of proximate cause between Plaintiff's alleged damages and the actions/inactions of the Defendant.

FOR A NINTH DEFENSE
(Defendants obligations, if any, void or excused)

26. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

27. The Defendant would allege that, to the extent Plaintiff alleges Defendant had any obligation as to which full performance has not been rendered or excused, that obligation did not exist or was based upon acts or omissions that were void or otherwise extinguished.

FOR A TENTH DEFENSE
(Failure of condition precedent to performance)

28. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

29. The Defendant would allege that, to the extent Plaintiff alleges Defendant had any obligation or duty as to which full performance has not been rendered or excused, not all conditions precedent to said obligations or duties occurred.

FOR AN ELEVENTH DEFENSE
(Offset)

30. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

31. The Defendant would allege that, to the extent Plaintiff alleges Defendant had any obligation or duty as to which full performance has not been rendered or excused, the Defendant is due an offset equal to a portion of, all, or more of the debt alleged by the Plaintiff.

FOR AN ELEVENTH DEFENSE
(Plaintiff's Negligence)

32. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

33. The Defendant alleges that Plaintiff's claims are barred in whole or in part due to Plaintiff's negligent work.

FOR A TWELFTH DEFENSE
(Plaintiff's Breach of Contract)

34. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

35. The Defendant would allege that, to the extent Plaintiff alleges the existence of valid enforceable contract, Plaintiff's claims are barred in whole or in part due to Plaintiff's breach of the contract.

FOR A THIRTEENTH DEFENSE
(Right to add additional affirmative defenses)

36. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

37. The Defendant alleges that because the complaint is couched in conclusionary terms, answering Defendant cannot fully anticipate all affirmative defenses that may be applicable to the within action. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

FOR A FOURTEENTH DEFENSE
BY WAY OF COUNTERCLAIMS & THIRD-PARTY CLAIM

38. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

39. Defendant and Third-Party Plaintiff is a citizen and resident of the State of South Carolina, and owns property in Greenville County, State of South Carolina with an address of 105 Cammer Avenue (the "Property").

40. Upon information and belief, the Plaintiff is a corporation existing and doing business in Greenville County, State of South Carolina.

41. Upon information and belief, the Third-Party Defendant, Scott Dodenhoff ("Dodenhoff"), is a citizen and resident of the County of Greenville and State of South Carolina.

42. The Property which is at the center of this dispute is located in Greenville County, South Carolina.

43. Venue and jurisdiction are proper in this Court.

FACTUAL BACKGROUND

44. The Plaintiff was contacted in late 2011 by Matt Buckley, the son of Defendant, whereby the Plaintiff was informed of Defendant's desire to improve the residence on the Property.

45. Dodenhoff was the party who dealt primarily with the Defendant and the representatives of Defendant- Defendant's son, Matt Buckley, and Defendant's daughter-in-law, Pamela Burns-Byers Buckley, regarding all aspects of the Project at issue.

46. Prior to the facts giving rise to the claims herein, Scott Dodenhoff and Matt Buckley were lifelong friends.

47. Upon first contacting Scott Dodenhoff, Matt Buckley informed Dodenhoff of the facts giving rise to the Defendant's desire to improve the Property.

48. As communicated to Dodenhoff in late 2011, the facts giving rise to the Defendant's desire to improve the Property were as follows:

- (a) the Property had been the location of Defendant's and Defendant's wife's primary residence for the past forty-four (44) years at that time;
- (b) the Defendant was at that time, and remains so today, elderly and in declining health (82 years old);
- (c) the Defendant's wife ("Frances Buckley") was elderly and in poor health;
- (d) the Defendant was the sole caretaker for his elderly and sick wife;
- (e) the Defendant's wife desired to spend her remaining days with the Defendant at their residence on the Property;
- (f) the Defendant desired for his wife to spend her remaining days alongside him at their residence on the Property;
- (g) the Defendant felt he was no longer physically able to care for his wife by himself at their residence on the Property and he needed help in order to satisfy their joint desire to have her spend her remaining days at their residence together;
- (h) the Defendant contacted his son and daughter-in-law, Matt and Pamela Buckley, explained the above to them and reluctantly asked for their assistance;
- (i) the Defendant asked Matt and Pamela Buckley if they would agree to move their family of six (6) from Charleston, South Carolina to the residence on the Property in order to help the Defendant and Frances Buckley through the remaining days of their lives (the Defendant, his wife and the family of Matt and Pamela Buckley, collectively hereinafter: the "Buckleys");
- (j) the Defendant told Matt and Pamela Buckley that he would be willing to obtain a loan against the remaining equity in the Property in order to construct improvements thereon to allow the space necessary for Matt and Pamela Buckley's family to move in; and

(k) Matt and Pamela Buckley agreed to the Defendant's request.

49. In 2011, the Defendant initiated contact with his bank, Defendant Wells Fargo Bank ("Wells Fargo"), to determine the maximum loan amount he could obtain against the equity in the Property in order to use such loan monies for the construction of improvements thereon.

50. The Defendant received confirmation from Wells Fargo that Wells Fargo would lend \$78,000.00 to Defendant via a home equity line of credit.

51. Matt Buckley contacted Dodenhoff, Matt's childhood friend, to determine if Dodenhoff would agree to make certain improvements to the residence on the Property according to the plans and specifications of the Defendant and under the facts as aforesaid.

52. Matt Buckley explained to Dodenhoff that the maximum amount of money that could be spent for the improvements was the \$78,000.00 in loan funds that the Defendant had been approved for.

53. In late 2011, Dodenhoff told the Buckleys that Plaintiff could construct the Project for that maximum possible amount under a cost plus 10% basis.

54. In or about January 2012, Defendant entered into an agreement with Plaintiff via Dodenhoff (the "Contract") whereby the Plaintiff agreed as follows:

- a) to construct improvements to the residence on the Property according to the specifications and design of the Defendant (the "Project");

- b) to construct the Project on a cost-plus 10% basis with a guaranteed maximum possible amount of \$78,000.00; and
- c) to construct the Project by the end of July 2012.

55. Upon the Plaintiff's initiation of work on the Project in January 2012, Dodenhoff physically appeared on-site to supervise and coordinate the work on the Project pursuant to his obligations as the purported general contractor for the Project.

56. As construction on the Project progressed beyond January 2012, Dodenhoff repeatedly failed to physically appear on-site at the Project to supervise and/or coordinate the work on the Project.

57. Upon information and belief, the Plaintiff hired unqualified and unlicensed contractors to perform work on the Project.

58. After construction was initiated on the Project, the Plaintiff would not bill the Defendant for consistent periods of time.

59. As the deadline for the completion of the Project approached in the summer of 2012, the Plaintiff began to send more billing information to the Defendant.

60. The bills that Plaintiff ultimately sent to the Defendant were outdated, not truthful representations of the work completed and not in accordance with the Contract.

61. The cumulative amount of the alleged debt represented by Plaintiff in all of the bills ultimately produced by Plaintiff to Defendant was in excess of the Contract amount.

62. The Plaintiff and the Defendant did not agree to any amendment to the amount or nature of the Contract, such that any debt alleged by Plaintiff in excess of the guaranteed maximum possible amount of \$78,000.00 is unjustified.

63. After construction was initiated on the Project, and amid the Buckleys' concerns regarding the quality and oversight of the work being performed, together with the billing practices of Plaintiff, the Buckleys made attempts to contact Plaintiff to determine the status of construction and to discuss the Buckleys' issues with Plaintiff's construction of the Project, including the quality, conformity to the Defendant's design and specifications, evidence of costs, and timeliness of construction, many times to no avail as Dodenhoff was rarely in town and rarely on the Project site during the majority of Plaintiff's construction of the Project.

64. Despite being provided adequate notice and opportunity to cure the various construction defects plainly apparent on the Project, the Plaintiff has failed to do so.

65. Despite being provided adequate notice and opportunity to produce the backup information to support the costs Plaintiff has represented as being incurred for the Project, the Plaintiff has failed to do so.

66. Despite being provided adequate notice and opportunity to cure the various work of Plaintiff which is not in conformance with the plans and specifications for the Project, the Plaintiff has failed to do so.

67. Despite adequate notice of the foregoing, the Plaintiff unilaterally ceased construction on the Project in October 2012 and has never returned to the Project.

**FOR A FIRST COUNTERCLAIM
(Breach of Contract)**

68. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

69. Pursuant to their agreement, the Defendant and Plaintiff agreed and understood that:

- (a) the Defendant's residence was to be built as substantially similar to the certain plans and specifications agreed upon by the Defendant and Plaintiff, with such additions and modifications that were subsequently agreed upon by the Defendant and Plaintiff;
- (b) the contract completion deadline would be end of July 2012
- (c) the payment to Plaintiff by Defendant would be on a cost-plus basis with a guaranteed maximum possible amount of \$78,000.00, and pursuant to Plaintiff's representations to the Defendant of work being complete in accordance with the agreement between Defendant and Plaintiff;
- (d) the Project was to be built pursuant to applicable building codes, norms, customs, standards and laws; and
- (e) the improvements to Defendant's Property was to be built free of defective and negligent labor and materials.

70. During the course of Plaintiff's attempted construction of the improvements on Defendant's Property, the Plaintiff breached its agreement with the Defendant inasmuch as:

- (a) the Project was not constructed pursuant to the certain plans and specifications agreed upon by the Defendant and Plaintiff, and Plaintiff made unapproved, negligent, unreasonable and/or irrational deviations from said plans and specifications that have adversely affected the use and function of the residence;
- (b) the construction completion deadline was exceeded as the construction of the house was never completed by Plaintiff in accordance with its agreement with Defendant as Plaintiff unilaterally ceased construction and left the job without returning in October 2012;
- (c) Plaintiff wrongfully terminated its contract with Defendant by refusing to complete the construction of the residence pursuant to the agreed upon terms of its agreement with the Defendant, by refusing to provide the Defendant with any substantive evidence of the costs incurred by Plaintiff to construct the residence and by refusing to return to the Defendant's residence to complete the construction, all despite requests made by Defendant;
- (d) Plaintiff failed to construct the residence pursuant to applicable building codes, norms, customs, standards and laws, including, without limitation, Plaintiff's hiring and employment of unqualified, unskilled, and/or illegal laborers;
- (e) Despite requests by the Defendant and despite the inherent obligations of Plaintiff as a licensed contractor, Plaintiff failed to construct the residence free of defective and negligent labor and materials as evidenced by, without limitation, the following:
 - (i) improper, defective and/or inadequate waterproofing;
 - (ii) improper, defective and/or inadequate flooring;
 - (iii) improper, defective and/or inadequate cabinetry;
 - (iv) improper, defective and/or inadequate framing of structure;
 - (v) improper, defective and/or inadequate molding and trim work;
 - (vi) improper, defective and/or inadequate painting;

- (vii) improper, defective and/or inadequate drywall;
- (viii) improper, defective and/or inadequate electrical system(s);
- (ix) improper, defective and/or inadequate doors;
- (x) improper, defective and/or inadequate cleaning of interior and exterior of residence;
- (xi) improper, defective and/or inadequate phone line(s);
- (xii) improper, defective and/or inadequate HVAC system;
- (xiii) improper, defective and/or inadequate doorframes;
- (xiv) improper, defective and/or inadequate bathtubs;
- (xv) improper, defective and/or inadequate toilets;
- (xvi) improper, defective and/or inadequate staining;
- (xvii) improper, defective and/or inadequate stairs;
- (xviii) improper, defective and/or inadequate insulation;
- (xix) improper, defective and/or inadequate windows.

71. As a direct and proximate result of said breaches, the Defendant has suffered actual, consequential and special damages in an amount to be determined by a jury, which are hereby prayed for, together with interest, costs, and attorneys fees.

FOR A SECOND COUNTERCLAIM
(Negligence)

72. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

73. Associated with the construction of the residence, the Plaintiff owed a duty to Defendant to complete the construction in accordance with local building codes and consistent with local norms, customs, standards and laws, including, without limitation and at a minimum, compliance with manufacturers' installation guidelines.

74. Plaintiff, in failing to exercise due care in the construction on Defendant's residence, was negligent, willful, wanton and reckless in one or more of the following particulars:

- (a) the Project was not constructed pursuant to the certain plans and specifications agreed upon by the Defendant and Plaintiff, and Plaintiff made unapproved, negligent, unreasonable and/or irrational deviations from said plans and specifications that have adversely affected the use and function of the residence;
- (b) the construction completion deadline was exceeded as the construction of the house was never completed by Plaintiff in accordance with its agreement with Defendant as Plaintiff unilaterally ceased construction and left the job without returning in October 2012;
- (c) Plaintiff wrongfully terminated its contract with Defendant by refusing to complete the construction of the residence pursuant to the agreed upon terms of its agreement with the Defendant, by refusing to provide the Defendant with any substantive evidence of the costs incurred by Plaintiff to construct the residence and by refusing to return to the Defendant's residence to complete the construction, all despite requests made by Defendant;

- (d) Plaintiff failed to construct the residence pursuant to applicable building codes, norms, customs, standards and laws, including, without limitation, Plaintiff's hiring and employment of unqualified, unskilled, and/or illegal laborers;
- (e) Despite requests by the Defendant and despite the inherent obligations of Plaintiff as a licensed contractor, Plaintiff failed to construct the residence free of defective and negligent labor and materials as evidenced by, without limitation, the following:
 - (i) improper, defective and/or inadequate waterproofing;
 - (ii) improper, defective and/or inadequate flooring;
 - (iii) improper, defective and/or inadequate cabinetry;
 - (iv) improper, defective and/or inadequate framing of structure;
 - (v) improper, defective and/or inadequate molding and trim work;
 - (vi) improper, defective and/or inadequate painting;
 - (vii) improper, defective and/or inadequate drywall;
 - (viii) improper, defective and/or inadequate electrical system(s);
 - (ix) improper, defective and/or inadequate doors;
 - (x) improper, defective and/or inadequate cleaning of interior and exterior of residence;
 - (xi) improper, defective and/or inadequate phone line(s);
 - (xii) improper, defective and/or inadequate HVAC system;
 - (xiii) improper, defective and/or inadequate doorframes;
 - (xiv) improper, defective and/or inadequate bathtubs;
 - (xv) improper, defective and/or inadequate toilets;

- (xvi) improper, defective and/or inadequate staining;
- (xvii) improper, defective and/or inadequate stairs;
- (xviii) improper, defective and/or inadequate insulation;
- (xix) improper, defective and/or inadequate windows.

75. Plaintiff's negligence, as alleged above, directly and proximately caused resulting damage to Defendant, including damage to materials and other work furnished outside the scope of Plaintiff's work that were supplied by other contractors, thus causing Defendant to incur damages.

76. Therefore, Defendant is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury, which are hereby prayed for, together with interest, costs, and attorneys fees.

**FOR A THIRD COUNTERCLAIM
(Conversion)**

77. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

78. Upon information and belief, the money Defendant paid Plaintiff was placed in trust of Plaintiff to be used solely to satisfy the costs of the Project.

79. Upon information and belief, Plaintiff converted Defendant's accounts to his own use and exercised ownership of the accounts.

80. Plaintiff's use of the Defendant's payments was without express or implied permission from the Defendant and was a breach of Plaintiff's fiduciary obligation to Defendant.

81. Plaintiff's unauthorized exercise of dominion over the accounts was to the exclusion of the Defendant's rights of ownership of the accounts and violated the trust created by virtue of the representations and declarations that labor was completed and materials paid for as certified by payments processed and submitted by Plaintiff.

82. As a direct and proximate result of Plaintiff's conduct, Defendant has suffered actual, consequential and special injuries, including costs and attorneys' fees associated with prosecuting this litigation, for which Defendant hereby sues.

83. Upon information and belief, Plaintiff's conduct was willful and so outrageous as to warrant an award of punitive damages.

**FOR A FOURTH COUNTERCLAIM
(Fraud)**

84. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

85. Upon information and belief, Plaintiff knew or should have known of the false representations and statements to Defendant on several occasions including, but not limited to, the false affirmations and representations on pay applications, concerning the amount of Plaintiff's payables that were due and owing ("Fraudulent Payables").

These Fraudulent Payables misrepresented and falsely stated that certain labor and materials had been furnished for the Project.

86. Upon information and belief, Plaintiff also made representations and statements on several occasions concerning the amount of Plaintiff's payables that were due and owing which Plaintiff knew or should have known were false and misleading, thus being the direct and proximate cause of such Fraudulent Payables.

87. Upon information and belief, the Fraudulent Payables did not represent legitimate payables of Plaintiff and were material to the transactions between Plaintiff and the Defendant.

88. Upon information and belief, Plaintiff either knew or should have known of the fraudulent nature of the misrepresentations concerning the amount of Plaintiff's payables.

89. Upon information and belief, Plaintiff intended for the Defendant to act in response to the Fraudulent Payables and directed such Fraudulent Payables to his own personal use.

90. The Defendant were unaware of the fraudulent nature of the Fraudulent Payables and believed them to be legitimate payables of Plaintiff and did in fact rely upon Plaintiff's representations.

91. As a direct and proximate result of Plaintiff's conduct, the Defendant has suffered actual, consequential and special injuries, including, but not limited to costs

associated with bringing this action and attorney's fees, for which Defendant hereby sues.

92. Upon information and belief, Plaintiff's conduct was willful and so outrageous as to warrant an award of punitive damages.

**FOR A FIFTH COUNTERCLAIM
(Negligent Misrepresentation)**

93. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

94. Plaintiff was in the business of residential construction. In the course of performing such residential construction services on the Project, Plaintiff made implicit and/or explicit representations to Defendant with the intent that the Defendant would rely thereon.

95. Upon information and belief, Plaintiff knew or should have known of the numerous false representations concerning the status of accounts, payments made on accounts and the invalidity of payables charged to the Defendant. Such misrepresentations caused Plaintiff to breach its Fiduciary Duty to Defendant.

96. Upon information and belief, Plaintiff had a pecuniary interest in making these misrepresentations.

97. Plaintiff had a duty to see that truthful and accurate information was communicated to the Defendant.

98. Plaintiff breached its duty of care to the Defendant by failing to exercise due care.

99. The Defendant justifiably relied upon Plaintiff to communicate truthful information and justifiably relied upon Plaintiff's representations.

100. As a direct and proximate result of the Defendant's reliance upon Plaintiff's misrepresentations, Defendant has suffered a pecuniary loss in the form of actual, consequential and special injuries, including, but not limited to the costs associated with bringing this action and attorney's fees, for which the Defendant hereby sues.

101. Upon information and belief, Plaintiff's conduct was willful and so outrageous as to warrant an award of punitive damages.

**FOR A SIXTH COUNTERCLAIM
(Constructive Fraud)**

102. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

103. Plaintiff impliedly and/or expressly represented, or misrepresented, to the Defendant that certain labor and materials had been furnished for the Project and that Plaintiff incurred certain costs for the same.

104. Said misrepresentations were false in that construction of the Project was not completed to the same level represented by Plaintiff, that certain labor and materials

were not furnished by Plaintiff and that certain costs for the same were not incurred by Plaintiff.

105. Plaintiff knew or should have known of the falsity of the representations.

106. Said representations were material in that the representations induced the Defendant to disburse monies for labor and materials that were not provided to the Project and/or for costs not incurred by Plaintiff for the same.

107. Plaintiff fully intended that the false representations be acted upon by Defendant.

108. The Defendant was completely ignorant of the falsity of the representations.

109. The Defendant reasonably relied on these representations and had a right to rely on the representations.

110. As a direct and proximate result of the false representations made by Plaintiff, Defendant has suffered a pecuniary loss in the form of actual, consequential and special injuries, including, but not limited to the costs associated with bringing this action and attorney's fees, for which the Defendant hereby sues.

**FOR A SEVENTH COUNTERCLAIM
(Slander of Title)**

111. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

112. By the filing by Plaintiff in the public records of Greenville County of its purported Mechanics Lien together with the Plaintiff's filing in the public records of Greenville County of the underlying lawsuit to foreclose on its purported Mechanics Lien, the Plaintiff has published a statement affecting the Defendant's title to the Property.

113. Said statements published by the Plaintiff within its purported Mechanics Lien and its purported Mechanics Lien foreclosure lawsuit are false, derogatory to Defendant's title to the Property and were made with malice.

114. As a direct and proximate result of the false representations published by Plaintiff in the public records of Greenville County, Defendant has suffered a pecuniary loss in the form of actual, consequential and special injuries, including, but not limited to the costs associated with bringing this action and attorney's fees, for which the Defendant hereby sues.

**FOR AN EIGHTH COUNTERCLAIM
(Declaratory Judgment)**

115. The Defendant incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

116. Upon information and belief, Plaintiff did not have a functioning corporate structure, was incapable of making independent decisions, and did not follow the

corporate formalities applicable to a South Carolina corporation at all pertinent times herein.

117. Upon information and belief, Plaintiff was insolvent prior to, and/or during construction of the Project.

118. Upon information and belief, Plaintiff was grossly undercapitalized prior to and during construction of the Project.

119. Upon information and belief, Dodenhoff controlled Plaintiff at all pertinent times mentioned herein.

120. Upon information and belief, Dodenhoff treated the debts and assets of the Plaintiff as his personal debts and assets.

121. Upon information and belief, Dodenhoff had such control of Plaintiff that he completely dominated Plaintiff, not only completely dominating Plaintiff's finances, but also the policy and business practice of Plaintiff, so that Plaintiff operated merely as an instrumentality and facade for the operations of Dodenhoff.

122. Upon information and belief, Dodenhoff used such control to commit fraud, to perpetrate the violation of a positive legal duty owed to Defendant/Third-Party Plaintiff, and to engage in such dishonest, wrongful and unjust acts upon, and in contravention of, Defendant/Third-Party Plaintiff's legal rights.

123. Upon information and belief, Dodenhoff received and used monies from Defendant/Third-Party Plaintiff with full awareness as to the fraudulent and unjust nature of the transfer of the funds.

124. Upon information and belief, Dodenhoff knew that the monies obtained from Defendant/Third-Party Plaintiff were obtained fraudulently, but Dodenhoff allowed the monies to be obtained fraudulently so he could to continue to operate merely as a vehicle to fraudulently further his own interests to the detriment of Defendant/Third-Party Plaintiff.

125. Upon information and belief, Dodenhoff caused the commingling of the Plaintiff's finances with his personal finances, including the monies he fraudulently received from the Project, resulting in the siphoning, transferring and diversion of those monies of Plaintiff for the personal benefit of Dodenhoff and to Defendant/Third-Party Plaintiff's detriment.

126. Upon information and belief, Dodenhoff and the Plaintiff have shown a reckless disregard for those damages to Defendant/Third-Party Plaintiff that were proximately caused by, and are a result of, the Plaintiff's negligent construction of the Project.

127. Upon information and belief, Plaintiff and Dodenhoff were aware of Defendant/Third-Party Defendant's potential claims against the Plaintiff; yet, despite such awareness, the Plaintiff and Dodenhoff acted in a self-serving manner with regard to the property of the corporation, or lack thereof, and in disregard to the Defendant/Third-Party Plaintiff's claim in the property.

128. Upon information and belief, Dodenhoff breached his positive legal duty and this breach, coupled with his aforesaid control of Plaintiff, proximately caused damages to Defendant/Third-Party Plaintiff.

129. Based on the foregoing it would be inequitable, unjust and fundamentally unfair for Dodenhoff to use the corporate shield of another entity (Plaintiff) in order to hide from the normal consequences of his actions and to benefit personally from perpetrating the violation of his positive legal duties in contravention of Defendant/Third-Party Plaintiff's legal rights and in violation of Dodenhoff's obligations, including, without limitation, his fiduciary obligations, to Defendant/Third-Party Plaintiff.

130. A justiciable controversy exists as to whether Dodenhoff is estopped from asserting the defense of the corporate shield and is personally liable to Defendant/Third-Party Plaintiff.

**FOR A FIRST THIRD-PARTY CLAIM
(Fraud)**

131. The Defendant/Third-Party Plaintiff incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

132. Upon information and belief, Dodenhoff knew or should have known of the false representations and statements to Defendant/Third-Party Plaintiff on several occasions including, but not limited to, the false affirmations and representations on pay

applications, concerning the amount of the payables that were purportedly due and owing on the Project ("Fraudulent Payables"). These Fraudulent Payables misrepresented and falsely stated that certain labor and materials had been furnished for the Project.

133. Upon information and belief, Dodenhoff also made representations and statements on several occasions concerning the amount of payables that were purportedly due and owing which Dodenhoff knew or should have known were false and misleading, thus being the direct and proximate cause of such Fraudulent Payables.

134. Upon information and belief, the Fraudulent Payables did not represent legitimate payables on the Project and were material to the transactions between Plaintiff and Defendant/Third-Party Plaintiff.

135. Upon information and belief, Dodenhoff either knew or should have known of the fraudulent nature of the misrepresentations concerning the amount of payables.

136. Upon information and belief, Dodenhoff intended for the Defendant/Third-Party Plaintiff to act in response to the Fraudulent Payables and Dodenhoff directed such Fraudulent Payables to his own personal use.

137. The Defendant/Third-Party Plaintiff was unaware of the fraudulent nature of the Fraudulent Payables and believed them to be legitimate payables and did in fact rely upon Dodenhoff's representations.

138. As a direct and proximate result of Dodenhoff's conduct, the Defendant/Third-Party Plaintiff has suffered actual, consequential and special injuries, including, but not limited to costs associated with bringing this action and attorney's fees, for which Defendant/Third-Party Plaintiff hereby sues.

139. Upon information and belief, Dodenhoff's conduct was willful and so outrageous as to warrant an award of punitive damages.

**FOR A SECOND THIRD-PARTY CLAIM
(Constructive Fraud)**

140. The Defendant/Third-Party Plaintiff incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

141. Dodenhoff impliedly and/or expressly represented, or misrepresented, to the Defendant/Third-Party Plaintiff that certain labor and materials had been furnished for the Project and that Dodenhoff incurred certain costs for the same.

142. Said misrepresentations were false in that construction of the Project was not completed to the same level represented by Dodenhoff, that certain labor and materials were not furnished by Dodenhoff and that certain costs for the same were not incurred by Dodenhoff.

143. Dodenhoff knew or should have known of the falsity of the representations.

144. Said representations were material in that the representations induced monies to be disbursed for labor and materials that were not provided to the Project and/or for costs not incurred by Dodenhoff for the same.

145. Dodenhoff fully intended that the false representations be acted upon by Defendant/Third-Party Plaintiff.

146. The Defendant/Third-Party Plaintiff was completely ignorant of the falsity of the representations.

147. The Defendant/Third-Party Plaintiff reasonably relied on these representations and had a right to rely on the representations.

148. As a direct and proximate result of the false representations made by Dodenhoff, the Defendant/Third-Party Plaintiff was damaged in that Dodenhoff received proceeds from the Defendant/Third-Party Plaintiff, including the proceeds obtained by Defendant/Third-Party Plaintiff from the aforesaid bank loan, that Dodenhoff was not due and that Defendant/Third-Party Plaintiff did not owe. As such, the Defendant/Third-Party Plaintiff is entitled to an award of actual, consequential, special and punitive damages in an amount to be determined by a jury.

**FOR A THIRD THIRD-PARTY CLAIM
(Negligent Misrepresentation)**

149. The Defendant/Third-Party Plaintiff incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

150. Doderhoff was in the business of residential construction. In the course of performing such residential construction services on the Project, Doderhoff made implicit and/or explicit representations to Defendant/Third-Party Plaintiff with the intent that the Defendant/Third-Party Plaintiff would rely thereon.

151. Upon information and belief, Doderhoff knew or should have known of the numerous false representations concerning the status of accounts, payments made on accounts and the invalidity of payables charged to the Defendant/Third-Party Plaintiff. Such misrepresentations caused Defendant/Third-Party Plaintiff to breach his Fiduciary Duty to Defendant/Third-Party Plaintiff.

152. Upon information and belief, Doderhoff had a pecuniary interest in making these misrepresentations.

153. Doderhoff had a duty to see that truthful and accurate information was communicated to the Defendant/Third-Party Plaintiff.

154. Doderhoff breached his duty of care to the Defendant/Third-Party Plaintiff by failing to exercise due care.

155. The Defendant/Third-Party Plaintiff justifiably relied upon Doderhoff to communicate truthful information and justifiably relied upon Doderhoff's representations.

156. As a direct and proximate result of the Defendant/Third-Party Plaintiff's reliance upon Doderhoff's misrepresentations, Defendant/Third-Party Plaintiff has suffered a pecuniary loss in the form of actual, consequential and special injuries,

including, but not limited to the costs associated with bringing this action and attorney's fees, for which Defendant/Third-Party Plaintiff hereby sues.

157. Upon information and belief, Dodenhoff's conduct was willful and so outrageous as to warrant an award of punitive damages.

**FOR A FOURTH THIRD-PARTY CLAIM
(Breach of Fiduciary Duty)**

158. The Defendant/Third-Party Plaintiff incorporates herein by reference, and realleges, the allegations of the preceding paragraphs consistent herewith as if fully stated verbatim herein.

159. The payments described herein from Defendant/Third-Party Plaintiff were made for the express purpose of Dodenhoff placing same in trust to be used for the express purposes of paying for certain costs of labor and material provided on the Project upon the Plaintiff actually providing such labor and material and actually incurring the certain costs and to otherwise properly possess, account for, and maintain the funds.

160. The Defendant/Third-Party Plaintiff reposed special confidence in Dodenhoff to act in equity and in good conscience in properly using the monies paid by Defendant/Third-Party Plaintiff such that Dodenhoff was bound to act in good faith and with due regard to the interests of Defendant/Third-Party Plaintiff.

161. Dodenhoff accepted the special confidence placed in him by the Defendant/Third-Party Plaintiff such that he knew or should have know that he was bound to act in good faith as the fiduciary of Defendant/Third-Party Plaintiff.

162. Despite Dodenhoff accepting the fiduciary obligations to place the payments made from Defendant/Third-Party Plaintiff in trust to be used for the express purposes of paying for certain costs of labor and material provided on the Project upon the Plaintiff actually providing such labor and material and actually incurring the certain costs and to otherwise properly possess, account for, and maintain the funds, the Defendant breached its fiduciary obligations by not properly possessing, accounting, maintaining and/or applying the monies paid to him in trust by Defendant/Third-Party Plaintiff.

163. As a direct and proximate result of Dodenhoff's conduct, Defendant/Third-Party Plaintiff has suffered a pecuniary loss in the form of actual, consequential and special injuries, including, but not limited to the costs associated with bringing this action and attorney's fees, for which Defendant/Third-Party Plaintiff hereby sues.

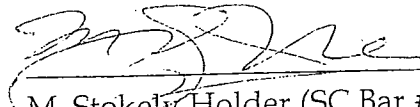
164. Upon information and belief, Dodenhoff's conduct was willful and so outrageous as to warrant an award of punitive damages.

WHEREFORE, the Defendant and Third-Party Plaintiff, Richard M. Buckley, prays for the following relief:

1. That the Plaintiff's Complaint be dismissed in its entirety, and award Richard M. Buckley his attorneys' fees, costs and such further relief as this Court deems just and proper;
2. On the First Counterclaim, for judgment against the Plaintiff in an amount to be determined by a jury, with interest, attorney's fees and costs as determined by this Court;
3. On the Second Counterclaim, for judgment against the Plaintiff in an amount to be determined by a jury, with interest, attorney's fees and costs as determined by this Court;
4. On the Third Counterclaim, for judgment against the Plaintiff in an amount to be determined by a jury, including punitive damages, with interest, attorney's fees and costs as determined by this Court;
5. On the Fourth Counterclaim, for judgment against the Plaintiff in an amount to be determined by a jury, including punitive damages, with interest, attorney's fees and costs as determined by this Court;
6. On the Fifth Counterclaim, for judgment against the Plaintiff in an amount to be determined by a jury, including punitive damages, with interest, attorney's fees and costs as determined by this Court;
7. On the Sixth Counterclaim, for judgment against the Plaintiff in an amount to be determined by a jury, including punitive damages, with interest, attorney's fees and costs as determined by this Court;
8. On the Seventh Counterclaim, for judgment against the Plaintiff in an amount to be determined by a jury, including punitive damages, with interest, attorney's fees and costs as determined by this Court;
9. On the Eighth Counterclaim, a judicial declaration from this Court of the rights, legal status and obligations of the parties and a declaration of the legal rights of the Defendant concerning D&C Builders, Inc.;
10. On the First Third-Party Claim, for judgment against the Third-Party Defendant, Scott Dodenhoff, in an amount to be determined by a jury, including punitive damages, with interest, attorney's fees and costs as determined by this Court;

11. On the Second Third-Party Claim, for judgment against the Third-Party Defendant, Scott Dodenhoff, in an amount to be determined by a jury, including punitive damages, with interest, attorney's fees and costs as determined by this Court;
12. On the Third Third-Party Claim, for judgment against the Third-Party Defendant, Scott Dodenhoff, in an amount to be determined by a jury, including punitive damages, with interest, attorney's fees and costs as determined by this Court;
13. On the Fourth Third-Party Claim, for judgment against the Third-Party Defendant, Scott Dodenhoff, in an amount to be determined by a jury, including punitive damages, with interest, attorney's fees and costs as determined by this Court;
14. For interest, attorney's fees and reasonable costs; and,
15. For such other and further relief and the Court deems just and proper.

Respectfully submitted,



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May 15th, 2013
Greenville, SC