

STATE OF SOUTH CAROLINA
 COUNTY OF Oconee
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2005-CP-37-00788

Tri-County Development Inc, et al

Christopher A. Pierce

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
N/A	N/A	\$N/A
N/A	N/A	\$N/A
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/Alexander S. Macaulay

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01/13/14

Circuit Court Judge

Judge Code

Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Tri-County Development, Inc. and)
 Melinda Holbrooks,)
)
 Plaintiffs,)
)
 vs.)
)
 Christopher A. Pierce,)
)
 Defendant.)
)
 and)
)
 Christopher A. Pierce,)
)
 Third Party Plaintiff,)
)
 vs.)
)
 Jeff Gray,)
)
 Third Party Defendant.)

IN THE COURT OF COMMON PLEAS


C.A. No.: 2005-CP-37-788

ORDER AWARDING PLAINTIFFS ATTORNEYS' FEES

FILED OCONEE, SO
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2013 MAR 26 PM 4:10

After the trial of this case, Plaintiffs moved for an award of attorneys' fees and costs pursuant to S.C. Code §29-5-10, and pre-judgment interest. Plaintiffs filed a Mechanic's Lien and sought foreclosure of their lien at trial. Plaintiffs filed an Offer of Settlement of zero in March of 2010. That Offer of Settlement was to resolve the pending Complaint against Defendant, the Defendant's Counterclaim against Plaintiffs and the Defendant's Third-Party Complaint against Tri-County Development, Inc.'s owner, Jeff Gray. The jury returned a verdict in favor of Plaintiffs in the amount of \$23,591.07 on November 29, 2011. Plaintiffs' counsel submitted an Affidavit for Attorneys' Fees and Costs incurred by Plaintiff, Tri-County Development, Inc., by his firm alone.

First, in applying S.C. Code § 29-5-10(b), I find that Plaintiffs are the prevailing

1.07


party. Without considering the Offer of Settlement or Defendant's Counterclaim, it is clear that Plaintiffs are the prevailing party. The amount of the lien was \$34,000.00. The jury award is closer to the lien amount than zero or the amount of Defendant's Counterclaim. Therefore, the Plaintiffs are the prevailing party and are entitled to an award of attorneys' fees and costs.

The amount sought by Plaintiffs was a liquidated amount not contested by Defendant, excepting only that Defendant alleged the contract had not been fully earned and that Defendant had back charges of damages to offset the amount sought by Plaintiffs.

I find that Plaintiffs are entitled to pre-judgment interest at the rate of 8 3/4 % from the date of the lien (September 26, 2005) to the date of jury award on November 29, 2011.

The jury award was in the sum of \$23,591.07, times the pre-judgment rate of 8.75% equals \$2,064.22 in yearly interest.

2005	\$ 542.92
2006	\$2,064.22
2007	\$2,064.22
2008	\$2,064.22
2009	\$2,064.22
2010	\$2,064.22
2011	<u>\$1,887.10</u>

Total Interest \$12,751.12 (to be added to the judgment).

As to the attorneys' fees requested by Plaintiffs, the Court reviewed the Affidavit of counsel and Defendant's response. The Court's file shows that Plaintiffs had engaged other counsel to file the lien and lawsuit. It was not until approximately 1 1/2

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years after the filing of the lawsuit that Plaintiffs' present counsel became involved in this action.

In May of 2008, approximately 2 ½ years after the lawsuit was filed, Defendant sought to have his counsel relieved from representation and to proceed Pro Se, which the Court granted. This Court presided over a number of hearings from 2008 up until the trial of this matter. These hearings tended to be tedious and inefficient due to the fact that the Defendant relieved his counsel and insisted on proceeding Pro Se without effective assistance of counsel.

The record reflects that prior to Plaintiffs' current counsel becoming involved, there were no court hearings. After current counsel became involved, there was only one hearing brought by Defendant's counsel on a motion for summary judgment based on a licensing issue. That motion was denied. Subsequently, Defendant's counsel was relieved and Defendant decided to proceed Pro Se.

Since the Defendant began to proceed Pro Se, numerous motions were filed. Plaintiffs filed two Summary Judgment Motions, one before depositions and one after depositions. Several court hearings were required to secure a site visit by Plaintiffs to take pictures of the house. Defendant filed several motions and appealed several Orders. Those appeals were quickly dismissed by the Court of Appeals for being premature.

In April of 2009, Plaintiffs requested an inspection of Defendant's residence, to which Defendant responded with a request to inspect the Third-Party Defendant's residence in May of 2009. Plaintiffs filed a Motion to Quash Defendant's request for a

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site inspection in June 2009. Defendant then filed a Motion to Quash Plaintiffs' Request for a Site Inspection in June 2009. The site inspection did not take place until April 2010. Both Defendant and Plaintiffs filed several Motions to Compel.

In October 2009, counsel for Plaintiffs attended a hearing on the site inspection issue and on Defendant's Motion to Compel.

In December 2009, yet another hearing was held about trying to schedule depositions.

In December 2009, Plaintiffs had to file a Motion to Compel Defendant to allow Plaintiffs to conduct a site inspection, in which a hearing was held and the Court ruled on in February 2010.

In April 2010, Mediation was conducted, the site inspection was held and Plaintiffs' depositions were finally taken.

In May 2010, Defendant deposed Jeff Gray and Melinda Holbrooks over a 2 day period.

In July 2010, Plaintiffs' counsel worked on a Summary Judgment Memorandum to narrow down the issues.

In November 2010, the hearing on Summary Judgment was held.

In April 2011, counsel for Plaintiffs traveled to Walhalla for a supplemental deposition of Jeff Gray that Defendant did not show up for.

In June 2011, Defendant resumed the deposition of Jeff Gray.

During this time Defendant also took several depositions of non-parties which Plaintiffs' counsel did not attend in order to save Plaintiffs money.

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What has persuaded this Court to award Plaintiffs' attorneys fees and costs as requested is the otherwise inequitable result. Since 2008, Defendant proceeded on his own and incurred no attorneys' fees to file the various motions, attend hearings and depositions. Based on this Court's personal experience in dealing with the Defendant at numerous hearings, this Court believes that grounds exist and that discretion justifies the attorneys' fees and costs incurred by Plaintiffs for its current counsel be awarded pursuant to S.C. Code § 29-5-10.

The attorneys' fee provision of S.C. Code § 29-5-10 has been modified by the Legislature in response to circumstances presented in the Appellate Courts that display inequitable and, at times, unconstitutional application of the statute.

In 1985, our Supreme Court ruled the attorneys' fee provision of the mechanic's lien statute unconstitutional in *Southeastern Home Building & Refurbishing, Inc. v. Platt*, 282 SC 602, 325 SE2d 328 (1985) because it only provided for a recovery to a builder asserting a lien and not an owner successfully defending one. In response, the Legislature amended the law in 1986 to fix this inequality.

In *T.W. Morton Builders, Inc. v. vonBuedinger*, 316 SC 388, 450 SE2d 87 (Ct. App. 1994), the Court of Appeals looked at the 1986 amendment. The Court in *Morton* noted that the amount of the fees awarded by the Court was left to the sound discretion of the Court, subject to the guidance set forth in S.C. Code § 29-5-10 as to who was the prevailing party.

The Courts have consistently recognized that the amount of the attorneys' fees is discretionary with the Court. *Utilities Construction v. Wilson*, 321 SC 244, 468 SE2d 1

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(Ct. App. 1996). Further, the Courts have recognized that the intent of the Legislature in allowing the prevailing party to recover attorneys' fees and costs is to deter both the wrongful filing of liens and unjustified refusal to pay debts subject to the mechanic's lien. *Cedar Creek Prop. v. Cantelou*, 320 SC 483, 465 SE2d 774 (Ct. App. 1995). To foster resolution of lien disputes, the Legislature included a method of using Offers of Settlement to manipulate what would be required to prevail on at trial in determining the prevailing party. The use of Offers of Settlement forced parties to consider the consequences if they did not settle.

After *Seckinger v. Vessel*, 326 SC 382, 483 SE2d 775 (Ct. App. 1998), the Legislature, in 1999, further amended S.C. Code § 29-5-10(b) to make the use of prevailing party more easily available, by having a way for a prevailing party to be determined if no written Offer of Settlement was made by a party.

Importantly, the 1999 amendment to S.C. Code § 29-5-10 also fixed the problem where an owner counterclaimed. The statute had not taken into account the amount of the counterclaim in determining the prevailing party.

Applying the clear Legislative intent in the award of attorneys' fees and costs in mechanic's lien cases to deter wrongfully filed liens and wrongfully withheld payments, and to foster resolution of these types of cases, this Court finds that the Plaintiffs are properly entitled to an award of attorney's fees and costs. However, while § 29-5-10 leaves the amount of attorney's fees and costs to the discretion of the Court, the statute goes on to state that "the fee and the court costs may not exceed the amount of the lien." S.C. Code Ann. § 29-5-10. Therefore, the court costs and attorney's fees awarded

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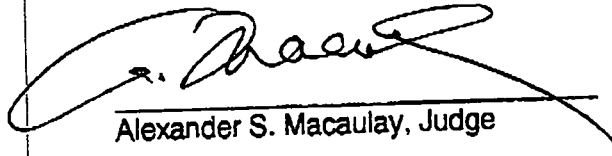
are limited to the amount of the lien.

I find that Plaintiffs are entitled to an award as follows:

- 1) The sum of \$34,000 in attorneys' fees and costs; and
- 2) The sum of \$12,751.12 in pre-judgment interest.

IT IS THEREFORE ORDERED THAT Defendant shall pay Plaintiffs the sum of \$34,000 in attorneys' fees and costs and the sum of \$12,751.12 in pre-judgment interest for a total award of \$46,751.12.

IT IS SO ORDERED.


 Alexander S. Macaulay, Judge

Walhalla, South Carolina
Dated: March 26, 2013

FILED OCOONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

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A TRUE COPY
 MAR 26 2013
 CLERK OF COURT - OCOONEE COUNTY