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RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA

SC Court of Appeals

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

George S. Nicholson, Jr., Circuit Court Judge

Case No. 2013-001361

L&M, LLC,Appellant,

v.

ROBERT YEARICK,Respondent.

RECORD ON APPEAL

Scotty Sheriff, Esquire
215 East Bay Street
Suite 400A
Charleston, SC 29401
843-991-2222
Attorney for Appellant

Robert C. Wilson, Jr., Esquire
201 Whitsett Street
Greenville, SC 29601
864-242-9488
Attorney for Respondent

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL
THE STATE OF SOUTH CAROLINA**

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v.

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Respondent.

RECORD ON APPEAL INDEX

Appellant proposes the following be included in the Record on Appeal:

1. Order filed May 9, 2013;
2. Summons and Complaint;
3. Yearick's Motion for Summary Judgment;
4. L&M Memorandum in Support of Summary Judgment Against Yearick and in Opposition of Yearick's Summary Judgment Motion.
5. Transcript #1 dated 11-14-12; (See Page 15 line 19 through Page 22 line 9 and 18 line 4-7 and Page 22 line 6-9)
6. Transcript #2 dated 11-15-12; (See Page 48 line 15 through Page 55 line 6)
7. Transcript #3 dated 4-11-13; (See Pages 4-25)
8. Procedural Chronology filed by Defendant Yearick; and

I certify that this designation contains no matter which is irrelevant to this appeal.

April 23, 2014

/s/

Scotty Sheriff, Esquire
Sheriff Law Firm, LLC
215 East Bay Street, Suite 400A
Charleston, South Carolina 29401
(843) 991-2222

1

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
2009-CP-10-5468

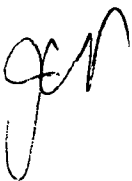
L & M, LLC,)
)
Plaintiff,)
)
vs.)
)
Robert W. Yearick,)
)
Defendant.)
_____)

ORDER

FILED
2013 MAY -9 AM 10:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This case came before this Court on April 11, 2013, at 0930 hrs, for hearing on a award of Attorney's Fees and a Motion to Alter or Amend the damage award of Attorney's fees. At the conclusion of the trial of the case, in November, 2012, Plaintiff had served and filed a Motion to Alter or Amend, essentially asserting that Plaintiff's counsel should receive attorney's fees as the "prevailing party," in this action. Plaintiff relied on *EFCO v. Renaissance on Charleston Harbor*, 370 SC 612, 635 SE2nd 922, (Ct.App. 2006), in support of its Motion. Additionally, counsel for Plaintiff submitted Affidavits, in support of their claims for attorney's fees.

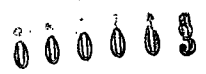
Present for the hearing for Plaintiff was Scotty Sheriff, Esq., of the Charleston Bar.



Present for the Defendant was Robert C. Wilson, Jr., Esq., from Greenville, S.C.

A review of the record of this case shows that this Court had ruled that Defendant should have judgment against Plaintiff in the amount of \$33,501.35

The record further shows that Defendant moved on March 28, 2010, to dismiss Plaintiff's action which sought to dissolve Defendant's Mechanic's Lien. Defendant's Mechanic's Lien had been filed on July 7, 2009. Defendant's Motion to Dismiss an action seeking to dissolve a lien whose time for foreclosure had long expired was well-founded. This Court, therefore, granted Defendant's Motion to Dismiss Plaintiff's action at the outset of the trial of this case, in



November, 2012.

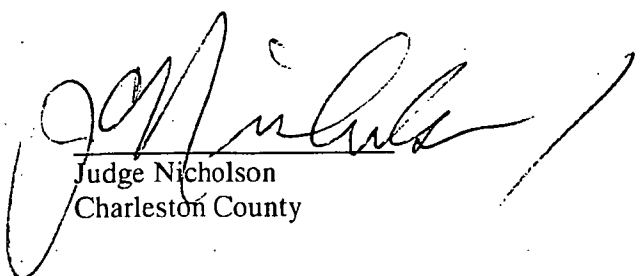
Counsel for Plaintiff, however, sought to alter or amend the order dismissing Plaintiff's case to include provision for an award of attorney's fees for their client, as the "prevailing party," based on *EFCO, supra*. A review of *EFCO, supra*, and the record in this case, shows that counsel for Plaintiff failed to comply with the criteria for an award of attorney's fees; counsel for Plaintiff did not provide detailed accounting of their activities for which they claim an award. Further, counsel for Defendant argued that Defendant was, in fact, the "prevailing party," because the judgment of this Court was closer to the amount sought by Defendant than to the amount sought by Plaintiff.

S.C. Code Ann. § 29-5-10(a) states "for materials furnished and actually used in the erection, alteration, or repair of a building..." The materials furnished by defendant were for decorative purposes only; therefore, attorney's fees under the statute are not proper.

A further review of *EFCO, supra*, shows that an award of attorney's fees is within the sound discretion of the trial court. Consistent with *EFCO, supra*, and with the record in this action, this Court finds as matter of law that neither counsel for Defendant, nor counsel for Plaintiff, shall receive attorney's fees in this action. Accordingly, Plaintiff's Motion to Alter or Amend is denied.

AND IT IS SO ORDERED.

Dated: 5/8/13


Judge Nicholson
Charleston County

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)

L&M, LLC,)
Plaintiff)

CA# 09-CP-10- 5468

v.)

ROBERT K. YEARICK)
Defendant)

COMPLAINT)
(Non-Jury))

BJK

JULIE J. ARMSTRONG
CLERK OF COURT

2009 AUG 28 PM 2:26

FILED

The Plaintiff above named, complaining of the Defendant herein, would show unto this Honorable Court as follows:

JURISDICTION AND PARTIES

1. Plaintiff L&M, LLC, is a limited liability corporation organized under and operating pursuant to the laws of the state of South Carolina, and owns real property located in the City and County of Charleston.
2. Upon information and belief, the Defendant is an individual living and doing business as an interior designer in the state of South Carolina, County of Charleston, and has subjected himself to the personal jurisdiction of this Court by the filing or recordation of a Notice of Mechanics Lien upon and against the property of L&M, LLC.
3. The real property at issue herein is located on Market Street in the City and County of Charleston, state of South Carolina.
4. The parties, property and issues herein all are within the jurisdiction of this Honorable Court.

FACTS

5. The Plaintiff owns certain real property located at 54 North Market Street, Charleston, South Carolina, as more fully described in Exhibit A which is attached hereto and made a part hereof by reference, (hereafter "the Property").

6. Defendant purchased and transported certain decorative items, pieces of furniture, paintings, fabrics and other personal property for the interior of the property, as more full described in Exhibit B, which is attached hereto and made a part hereof by reference. Defendant also alleges to have rendered interior design services to the Plaintiff, for a fee, none of which was agreed to by the Plaintiff.

7. The Defendant filed a Notice of Mechanics Lien on July 7, 2009, encumbering the Property, a copy of which is attached hereto as Exhibit C and made a part hereof as reference. (Hereinafter, "the Lien"), alleging that monies allegedly owed to him by the Plaintiff for furniture, paintings, fabrics and other personal property, and fees allegedly owed to him for interior design services as the basis for said Lien.

7. Plaintiff has requested that the Lien be removed, advising that said Lien is not for any goods and/or services attaching to the Property, as anticipated pursuant to the Laws of the State of South Carolina, but the Defendant has failed and refused to remove said Lien.

AS A FIRST CAUSE OF ACTION
Declaratory Judgment to Set Aside Mechanic's Lien

8. Plaintiff reasserts and realleges all facts and claims of the preceding paragraphs of this Complaint as if set forth verbatim herein.

9. South Carolina Code Sections 29-5-10, pursuant to which the Defendant filed and/or recorded the Notice of Lien, provides for the attachment of mechanics liens only for persons to "...whom



a debt is due for labor performed or furnished or for material furnished and actually used in the erection, alteration or repair of a building or structure upon real estate...”

10. Regardless of the disagreement between the parties regarding amounts owed by the Plaintiff to the Defendant, if any, which is expressly denied by the Plaintiff, Defendant did not perform or furnish any labor or material used in any manner in the erection, alteration or repair of the building on the Property; the basis of each and every item invoiced by the Defendant is related to the acquisition of personal property or interior design services allegedly performed by the Defendant.

11. Plaintiff seeks an Order of this Court declaring that the Lien filed by the Defendant is not valid pursuant to the Laws of the State of South Carolina; Plaintiff further seeks an Order finding that the Lien filed by the Defendant shall be immediately vacated, and that attorney’s fees and costs should be awarded to the Plaintiff, pursuant to SC Code of Laws, §29-5-10, et seq.

AS A SECOND CAUSE OF ACTION

12. The Plaintiff realleges and reavers the foregoing as fully as if restated verbatim herein.

13. The Defendant has actual and/or constructive notice of the terms and conditions pursuant to which the Laws of the State of South Carolina provide for the filing of a Mechanics Lien upon real property, including, *inter alia*, SC Code of Laws, §29-5-10, et seq. and therefore has actual and/or constructive knowledge that said laws require that goods and services provided must actually be used in the erection, alteration or repair of a building or structure upon real estate.

14. That Defendant knows, or should know, that personal property, such as furniture, paintings, fabrics and other personal property all of which comprises the property allegedly provided by the Defendant, are not goods which attach to or are used in the erection, alteration or repair of a building or structure upon real estate, in general, and which did not and have not attached to nor

were they used in the erection, alteration or repair of the subject Property, such as anticipated by the Mechanics Lien statutes, pursuant to which the Defendant has placed a lien upon the Plaintiff's property.

15. That the Defendant knows, or should know, that interior design services is not labor performed or furnished and actually used in the erection, alteration or repair of a building or structure upon real estate, in general, and which was not performed or furnished and actually used in the erection, alteration or repair of this Property in particular, such as anticipated by the Mechanics Lien statutes, pursuant to which the Defendant has placed a lien upon the Plaintiff's property.

16. That the Defendant has knowingly and willingly filed an invalid lien upon the Plaintiff's property, thereby wrongfully encumbering the Property, and depriving the Plaintiff of its rightful use and enjoyment thereof.

17. That the Plaintiff is entitled to an Order of this Court that the Mechanics Lien filed by the Plaintiff is invalid, and should be immediately vacated, with costs and fees awarded to the Plaintiff, pursuant to SC Code of Laws § 29-5-10, et seq.

AS A THIRD CAUSE OF ACTION

18. That the Plaintiff realleges and reavers the foregoing as fully as if restated verbatim herein.

19. That the Defendant, without justification and due cause, and in direct contravention of the statutes pursuant to which he files his lien, has filed a lien upon the Plaintiff's property, thereby encumbering same, and depriving the Plaintiff of its rightful use and enjoyment thereof.

20. That the lien wrongfully placed upon the Plaintiff's property by the Defendant prevents the Plaintiff from making any disposition of the property, which along with the deprivation of

Plaintiff's right to its rightful use and enjoyment of its property, has and continues to cause the Plaintiff irreparable harm, for which the Plaintiff has not adequate remedy at law.

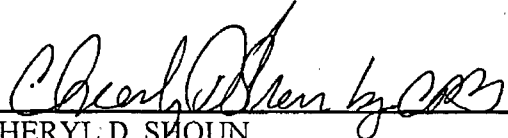
21. That the Plaintiff is entitled to an Order of this Court temporarily and permanently enjoining and restraining the Defendant from continuing to wrongfully encumber the Plaintiff's property, which Order shall further provide for the payment of costs and attorney's fee to the Plaintiff, as the prevailing party.

WHEREFORE, Plaintiff prays for judgment in its favor that the debt at issue is not one from which a mechanics lien may arise and an Order setting aside the Lien, with all costs, including attorney's fees being awarded to this Plaintiff, together with such other relief as this Honorable Court shall deem just and proper.


Charleston, S. C.

TAYLOR, SHOUN, BOWLEY, & BYRD, LLC

August 28, 2009



CHERYL D. SHOUN
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cherylshoun@bellsouth.net



CATHERINE D. BYRD
State Bar # 10245
cbyrdtsbb@bellsouth.net

39 Broad Street, Suite 101
Charleston, SC 29401
(843) 723-4020 (Facsimile: 4021)

ATTORNEYS FOR THE PLAINTIFF

3

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
2009-CP-10-5468

L & M, LLC,)
)
Plaintiff,)
)
vs.)
)
Robert W. Yearick,)
)
Defendant.)
_____)

MOTION FOR SUMMARY JUDGMENT

FILED
2012 OCT -1 PM 2:14
JUDGE J. ARMSTRONG
CLERK OF COURT

To: **L & M, LLC, Plaintiff, and its attorney, Wm. Scotty Sheriff, Esq., 215 E. Bay Street/ Suite 400-A, Charleston, SC 29401**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for Defendant, will move this Honorable Court, on such date and at such time as this Court may designate, for an order, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, which Order will grant summary judgment to Defendant, Robert W. Yearick, dismissing all claims asserted in this action by Plaintiff against Defendant.

The undersigned hereby certifies that, insofar as the Motion presented is dispositive, that it would be futile to attempt to work this matter out with opposing counsel.

Dated: 9/27/12

Robert C. Wilson, Jr.
Robert C. Wilson, Jr.
201 Whitsett Street
Greenville, SC 29601
(864) 242-9488
SC ID 6178
Email: trigor527@aol.com

Attorney for Defendant, Robert
W. Yearick.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
2009-CP-10-5468

L & M, LLC,)
)
Plaintiff,)
)
vs.)
)
Robert W. Yearick,)
)
Defendant.)
_____)

CERTIFICATE OF SERVICE

FILED
2012 OCT -1 PM 2:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The undersigned hereby certifies that he mailed a copy of Defendant's Motion for Summary Judgment to counsel for Plaintiff, on the date set forth below, by US Mail, addressed as follows:

William Scotty Sheriff, Esq.
215 E. Bay Street, Suite 400-A
Charleston, SC 29401

Dated: 9/27/12

Robert C. Wilson, Jr.
Robert C. Wilson, Jr.
201 Whitsett Street
Greenville, SC 29601
(864) 242-9488
SC ID: 6178
Email: trigor527@aol.com

Attorney for Defendant, Robert
W. Yearick.

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 L&M, LLC,)
 Plaintiff,)
)
 vs.)
 ROBERT YEARICK,)
 Defendant)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO. 09-CP-10-5468

**L&M MEMORANDUM IN
 SUPPORT OF SUMMARY JUDGMENT
 AGAINST YEARICK AND IN
 OPPOSITION OF YEARICK'S
 SUMMARY JUDGMENT MOTION**

Plaintiff L&M, LLC hereby submits this Memorandum in support of L&M, LLC's Summary Judgment against the Defendant's Counterclaim against the Plaintiff with prejudice, and in opposition to the Defendant's Motion for Summary Judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure because there is no genuine issue as to any material fact and we are entitled to a judgment. The basis for this Memorandum are as follows:

FACTS

1. WHEREAS, Yearick filed a Counterclaim against the Plaintiff, L&M, LLC;
2. L&M, LLC owns the building that is the subject of the mechanics lien wrongfully filed against L&M, LLC;
3. Yearick did allegedly perform decorative services for L&M, LLC and allegedly produced good such as but not limited to, chairs, tables, dishware and other like items;
4. Yearick, according to SC 29-5-10, should not have placed a lien against L&M, LLC;

ARGUMENT

A lis pendens is merely a notice that a suit is pending and that there is a dispute as to title. It is also defined as a legal notice recorded to show a pending litigation relating to a real

property, and to give notice that anyone acquiring an interest in the property after the date of the lis pendens is filed may be bound by the outcome of litigation. The court of appeals have held that filing of a lis pendens is absolutely privileged by statute and has no existence separate and apart from the litigation of which it gives notice.

A lis pendens is not to be filed before more than 20 days before a summons and complaint verses a mechanics lien which can encumber and cloud a title for 6 months without having to be perfected.

While opposing counsel argues there are not remedies for wrongfully filed lis pendens it should be made clear that lis pendens and Mechanic's Lien are distinctly different and are not the same. The legislature clearly states there are penalties for improper mechanics liens as well as well founded case law. SC 29-5-10 as well as SC 29-5-15 sets out legislative intent and remedies for the law which clearly include attorneys fees and cost. It is undisputed that the mechanic's lien statute at issue here specifically authorizes the recovery of attorney fees and costs. Efco v. Renaissance On Charleston Harbor, 635 S.E.2d 922, 370 S.C. 612 (S.C. App., 2006). The legislature made separate rules and guidelines for mechanics liens as compared to lis pendens as they are different in nature and effect.

Under our statutory scheme, the award of fees to the prevailing party in a mechanic's lien action is automatic and mandatory. S.C.Code Ann. §§ 29-5-10 & 20 (1991 & Supp. 2001); T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 402-03, 450 S.E.2d 87, 95 (Ct.App.1994) as stated in a concurring opinion by Hearn, C.J. Lauro v. Visnapuu, 351 S.C. 507, 570 S.E.2d 551 (S.C. App., 2002).

Accordingly, § 29-5-10 entitles Winters to all costs incurred in defending the mechanic's lien action up to the amount of the lien being foreclosed. Muller v. Myrtle Beach Golf and Yacht Club, 438 S.E.2d 248, 313 S.C. 412 (S.C., 1993). S.C.Code Ann. § 29-5-10(a) provides that the prevailing party to an action to foreclose a mechanic's lien shall be awarded attorneys' fees and costs up to the amount of the actual lien award. Brasington Tile Co., Inc. v. Worley, 491 S.E.2d 244, 327 S.C. 280 (S.C., 1997). Winters' actual costs and attorney's fees were \$14,872.57. He concedes that this amount should be reduced to \$10,676, which is the amount of the mechanic's lien foreclosed upon.

Even if the lien is extinguished by not being perfected after six months there is still a remedy for the party that it was placed against as it damages the property it clouds. Our supreme court has defined a "prevailing party" as "one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered."¹⁴ "[I]n a mechanic's lien action the defendant is entitled to an award of attorney fees as the prevailing party if it is determined that a mechanic's lien cannot be enforced against it." Seckinger, 326 S.C. at 388, 483 S.E.2d at 778; *see also Cedar Creek Props. v. Cantelou Assocs.*, 320 S.C. 483, 486, 465 S.E.2d 774, 776 (Ct.App. 1995) (finding a property owner who filed a complaint to dissolve a mechanic's lien was the prevailing party where the contractor filed a cancellation of the lien). Furthermore, *Cedar Creek Props. v. Cantelou* states that even though the lien was voluntarily cancelled it did so only after an action to dissolve it was sought. So although the lien itself was resolved the damage, fees, and cost still remained along with the attorney's fees. As further stated in *Cedar Creek Props. v. Cantelou*, a decision to

offensively seek dissolution of the lien rather than wait for foreclosure cannot be said to act as a waiver to collect attorney's fees.

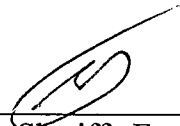
"Mechanic's liens under the statute are not a vehicle for collecting damages for breach of contract" *Sea Pines Company, v. Kiawah Island Company, Inc.* 268 S.C. 153. Cost and Attorneys fees are to deter the wrongful filing of mechanic's liens, as wrongful liens place a cloud over title to property which restricts the ability to use it as collateral. *Cedar Creek Props. v. Cantelou*. The statutory relief is also in place to help guard against unscrupulous claims that curtail the landowners full use and enjoyment of his property. There are bonds to protect the claimant but there are no bonds to secure the landowner against the damages against the claimant's wrongful liens. *Sea Pines Company v. Kiawah Island Company, Inc.*

Plaintiff was damaged greatly by the wrongful mechanics lien which placed a cloud on Plaintiff's property and damaged Plaintiff. Mr. Yearick placed the lien on the property to try to resolve a contract dispute which is prohibited. The damage caused past, present, and future monetary harm to Plaintiff as it relates to financing options and rates that it had to obtain during the time of the lien. The wrongful mechanic's lien caused Plaintiff to obtain worse financial terms than if it were not present.

CONCLUSION

NOW, comes L&M, LLC, hereby requesting that this Honorable Court render a summary judgment in favor of the Plaintiff L&M, LLC and the foregoing Motion be granted in favor of the Plaintiff along with the award of costs, fees, attorneys fees, and damages.

SHERIFF LAW FIRM, LLC



Scotty Sheriff, Esquire
215 East Bay Street, Ste. 400A
Charleston, SC 29401
(843) 991-2222

**ATTORNEY FOR PLAINTIFF L&M,
LLC**

April ____, 2013
Charleston, South Carolina

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1 broader than the code section 29-510, but also ---

2 THE COURT: --- it looks like it's what now?

3 MR. SHERIFF: It's broader than the code section
4 29-510 and it looks as if it has language in there also
5 along the lines of slander of title. That's what those
6 two causes of action would be.

7 THE COURT: So you think the second and the third
8 are the same?

9 MR. SHERIFF: I think they are overlapping, Your
10 Honor.

11 THE COURT: Okay. So we'll call them both slander
12 of title is that correct?

13 MR. SHERIFF: Yes, Your Honor.

14 THE COURT: Can you think of any other name you
15 want to place on them?

16 MR. SHERIFF: Improper placement of mechanics lien
17 and the slander of title I believe Your Honor.

18 THE COURT: Improper placement of mechanics lien,
19 okay. All right. I'll be glad to hear you on the
20 summary judgment.

21 MR. WILSON: Your Honor, I've submitted and I've
22 given my worthy opponent a copy of the Pond Place
23 Partners, Inc. v Poole Francis Marion's kid, Frankie
24 Marion is on the case. I would ask Your Honor to look at
25 the end of the next to the last page is what I've

1 presented. [Reading] We find that the filing of a lis
2 pendens is absolutely privileged in South Carolina ---

3 THE COURT: --- you're talking about the last page?

4 MR. WILSON: Next to the last.

5 [Whereupon, the court reviews documents].

6 THE COURT: The conclusion?

7 MR. WILSON: Yes, sir.

8 THE COURT: Okay.

9 MR. WILSON: They put it in all caps for a reason,
10 Your Honor. The long discussion that goes before that
11 conclusion speaks about the absolute privilege that
12 attends the filings of papers with the court.

13 So if Mr. Sheriff is putting an interpretation of
14 his claim as a slander of title based upon the filing of
15 a mechanics lien or a lis pendens -- lis pendens in that
16 case or a mechanics lien in this case it is absolutely
17 barred by that case and it is law.

18 THE COURT: Well, let me ask you this Mr. Wilson.
19 On the other side of the coin if someone does improperly
20 file a mechanics lien for goods and services delivered or
21 whatever on a person's property and let's say that is
22 during a period of a contract for sale okay the property
23 is actually under a contract for sale and before it
24 closes someone comes in and files a mechanics lien.
25 What's the remedy that that homeowner has to try to get

1 that mechanics lien lifted other than posting a bond to
2 get it released under the statute I think?

3 MR. WILSON: In the discussion, I think it's Judge
4 Anderson -- yes, Ralph King Anderson, it includes a
5 little discussion that the proper remedy would be
6 malicious prosecution and sets forth the elements of that
7 cause of action, which are not presented by the pleadings
8 in this case, Your Honor.

9 THE COURT: So you think a malicious prosecution
10 would be the proper action. You don't think the lien on
11 it could bring an action to ask the mechanics lien to be
12 dissolved?

13 MR. WILSON: I didn't say that. To dissolve it I
14 have no quarrel with those pleadings. But those
15 pleadings are moot because the time for -- the mechanics
16 lien is evaporated, disappeared, and dissolved due to the
17 passage of time.

18 THE COURT: Right.

19 MR. WILSON: But as far as him putting a spin or an
20 interpretation on his pleadings to seek damages for
21 slander of title -- and I presented this case a while
22 back, it's absolutely barred, Your Honor.

23 THE COURT: Okay. I guess under my theory the
24 action would be a third party interference contract and
25 possibly an injunctive relief or something. That was a

1 bad example I gave you; I'm sorry.

2 MR. WILSON: Yes, sir.

3 THE COURT: Okay.

4 MR. WILSON: But as far as -- the emphasis in this
5 case the Poole -- Pond Place Partners, excuse me, was
6 that filings are privileged and you just can't get a
7 slander of title claim out of it at all.

8 THE COURT: All right. Mr. Sheriff, I'll be glad
9 to hear you.

10 MR. SHERIFF: Yes, Your Honor.

11 THE COURT: I assume you've read the case. I guess
12 it's Pond Place Partners Incorporated v David Poole et al
13 at 567 S.E.2d 881 -- where's the date on this thing -- a
14 2002 case.

15 MR. SHERIFF: Yes, Your Honor. And I did find in --
16 I mean there is some case law on litigation of -- under
17 subsection between 510 -- and it is not an absolute bar
18 of that, Your Honor.

19 In this case specifically the defendant knew that
20 Mr. Chiagkouris was trying to get a loan for that piece
21 of property, L & M, and he was not able to get a loan for
22 that property. He was doing this to just -- just to tie
23 up that piece of property and try to get paid off on the
24 debt collection -- This had nothing to do actually with
25 his company not necessarily having anything to do with

1 his claims to begin with. And I would go into with our
2 motion next but just as far as this particular motion for
3 summary judgment we have -- it has -- it should be seen
4 that because of the damages done L & M did have to -- pay
5 for a bond to have that lien taken off.

6 And they did have to pay for an attorney to file
7 this action and they did have damages from not having
8 their loan go through because there was a lien on the
9 property until that lien was dissolved so there was the
10 timeframe that there was a cloud on ---

11 THE COURT: --- well the bond -- when he posted the
12 bond then the lien was gone right?

13 MR. SHERIFF: Well, the lien is not gone ---

14 THE COURT: --- how much was the cost of the bond?

15 MR. SHERIFF: Well, it does that in effect, Your
16 Honor, but if you go ---

17 THE COURT: --- well he could go ahead and borrow
18 the money.

19 MR. SHERIFF: Well he -- that's not correct, Your
20 Honor. Whenever you're -- especially with how the
21 economy was at that time if you go and borrow money and
22 there is a lien on your property it's going to raise many
23 red flags to any kind of loan officer or anyone else that
24 there are going to be problems maybe down the road. And
25 there is also litigation with that as well -- and they

1 don't want to get involved with any type of high amount
2 of a loan that this would have been, a very high amount
3 for a bond for the piece of property to get it adjusted.
4 So it's not ---

5 THE COURT: --- that's a lender's problem not a
6 legal problem whether he's going to lend the money or not
7 but ---

8 MR. SHERIFF: --- but ---

9 THE COURT: --- once you post the bond the lien is
10 gone.

11 MR. SHERIFF: In essence it's gone but it's still
12 shown on and ---

13 THE COURT: --- it's what?

14 MR. SHERIFF: It's still shown on record even
15 though they ---

16 THE COURT: --- well, I understand that but it's
17 gone once you post the bond. If the bank won't accept
18 that that's the bank's problem.

19 MR. SHERIFF: Yes, Your Honor. Banks, investors;
20 no one will accept it.

21 THE COURT: Pardon?

22 MR. SHERIFF: You're right, Your Honor. The banks
23 and investors ---

24 THE COURT: --- I mean that's the bank -- that's
25 the lender and the bank's problem if they won't accept

1 the fact that they posted a bond and the lien is gone.
2 But there are a lot of things that bank's do
3 administratively that doesn't -- necessarily proper under
4 the loan. Why would that entitle you to damages under
5 the slander of title in this case I'm looking at?

6 MR. SHERIFF: Because ---

7 THE COURT: --- where it very clearly says -- very
8 clearly says that because of recording of a lis pendens
9 specifically authorized by statute has no existence
10 separate and apart from litigation, which gives notice
11 filing a lis pendens cannot form the basis of an action
12 of slander of title.

13 MR. SHERIFF: Yes, Your Honor. In this case it was
14 a mechanics lien and it was on there and it was one on
15 for the wrong party just to have -- having it being paid
16 out. So it was done maliciously and it was done to
17 specifically tie up the property.

18 THE COURT: That may be true in that cause of
19 action to elicit prosecution.

20 MR. SHERIFF: And the damage on that would be the
21 monies expended to pay off that bond. So that would be a
22 set amount as well as attorney's fees to file an action
23 to have it removed, Your Honor. So those two are set
24 damages.

25 THE COURT: Okay. Anything else Mr. Sheriff?

1 MR. SHERIFF: No, Your Honor.

2 THE COURT: All right. Mr. Wilson, I'll be glad
3 to hear from you.

4 MR. WILSON: I think I've stated what I need to
5 state, Your Honor.

6 THE COURT: All right. Based on this case I'm
7 going to grant the summary judgment as to the -- based on
8 the case and the arguments I'm going to grant the summary
9 judgment as to the complaint. Now the next motion is
10 what to amend? What's your motion to amend at this late
11 date?

12 MR. WILSON: Actually, Your Honor, I filed it June
13 the 1st, 2012.

14 THE COURT: Oh, okay so you filed it a while back?

15 MR. WILSON: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. WILSON: I'm old and slow but not quite that
18 slow. The motion seeks to join M-L and A and Mr.
19 Chiagkouris personally. And Your Honor ---

20 THE COURT: --- well, why not do this? Why not
21 hear the testimony and I'll take it under advisement and
22 if you think you need to hear a motion for the pleadings
23 to conform to the evidence then I'll listen to you at
24 that time.

25 MR. WILSON: Thank you, sir.

6

1 LLC, but I will bring him in as to the Counterclaim
2 personally based upon the arguments offered by Mr. Wilson.
3 Any other motion on behalf---

4 MR. WILSON: I think that's all I've got. And, if
5 I can -- I'll submit the deposition.

6 THE COURT: Yeah. If you will submit that
7 deposition and mark it, I believe, as Court's Exhibit No.
8 1.

9 MR. WILSON: Yes, sir.

10 THE COURT: All right. Do you have any other
11 motions?

12 MR. WILSON: I have nothing else, Your Honor.

13 THE COURT: All right. Mr. Sheriff, do you have
14 any motions?

15 MR. SHERIFF: Yes, sir, just a Motion for
16 Reconsideration, Your Honor.

17 THE COURT: On what?

18 MR. SHERIFF: On the previous ruling on the Summary
19 Judgment?

20 THE COURT: On the Summary Judgment?

21 MR. SHERIFF: Yes, Your Honor.

22 THE COURT: I'll be glad to hear you. You said you
23 came up with some law that was different than what you did
24 yesterday, I'll be glad to hear you on that?

25 MR. SHERIFF: Yes, Your Honor.

1 MR. WILSON: Excuse me, Your Honor, if I could just
2 hand this to the Court Reporter.

3 THE COURT: Yes, just mark that as Court's Exhibit
4 No. 1.

5 (WHEREUPON, Court's: Exhibit No. 1 was marked
6 for identification and received into evidence.)

7 THE COURT: All right. And, also referring to Six
8 J. Street LLC -vs- Art Design Construction Company which
9 is opinion number 27107 April 14, 2012. The Supreme Court
10 held that the LLC only protects non tort fees and members
11 and by vicarious liability and does not insulate the
12 tortfeasors and self and personal liability for his
13 action. Even though it is not a tortfeasor in this
14 particular case, it's a breach of contract and I think
15 that same theory would apply on bringing him into this
16 lawsuit personally based upon the testimony and the
17 deposition that I have heard today. All right, I will be
18 glad to hear you on the reconsideration on the summary
19 judgment as to your cloud on title and cause of action.

20 MR. SHERIFF: Yes, Your Honor. Yesterday on that
21 motion, it was off of the case that was stated by the Lis
22 Pendens is an absolute privilege and it has been held
23 that by the Court of Appeals. However, a Lis Pendens is
24 not a Mechanic's Lien. And, the legislature through the
25 intent has specifically stated that through 29510 as well

1 as numerous case law, that there is a cause of action for
2 damages, attorney's fees, and cost for the second 29510 as
3 well as under our -- the statutory scheme the award for
4 the obeying the party's Mechanics Lien action is automatic
5 and mandatory which is held by TW Horton Builders. The
6 same as Eco -vs- Renaissance where it's undisputed a
7 Mechanic's Lien statute is here specifically authorized---

8 *THE COURT:* That's wasn't brought the Counterclaim
9 when the Mechanic's Lien would be executed, right?

10 *MR. SHERIFF:* Yes, Your Honor, and the last one is
11 specifically---

12 *THE COURT:* Any other cases addresses the lien---

13 *MR. SHERIFF:* ---yes, sir---

14 *THE COURT:* ---cloud on title?

15 *MR. SHERIFF:* ---yes, Your Honor. Those two
16 mentioned it, but also specifically to that is even the
17 lien is distinguished and not being perfected, but after
18 six months there is still remedy for a party that it is
19 placed against. The Supreme Court has to defined the
20 prevailing party as one who successfully prosecutes the
21 action and successfully defends against it, the
22 prevailing---

23 *THE COURT:* That would be involved -- that statute
24 -- that would be involved when the -- when they have
25 executed or foreclosed on the lien?

1 *MR. SHERIFF:* Well, not always, Your Honor. Your
2 Honor, in this one it was found for a property owner whose
3 complaint to dissolve the Mechanics Lien was the
4 prevailing party. And, where the contractor filed, the
5 contractor filed and canceled---

6 *THE COURT:* In that case, the contractor had
7 executed on -- foreclosed on the lien, is that correct?

8 *MR. SHERIFF:* He did not. No, Your Honor, he did
9 not.

10 *THE COURT:* He did not. Okay. All right. Go
11 ahead.

12 *MR. SHERIFF:* He did not foreclose on the lien.

13 *THE COURT:* Okay.

14 *MR. SHERIFF:* But it shows that there is a cloud on
15 title because that's why it's written through 29510 and
16 it's different than the Lis Pendens. The Lis Pendens you
17 have to file the Summons and Complaint within 20 days.
18 However, under 29510 the Mechanic Lien is a greater risk
19 of doing so because it clouds title for up to six months,
20 so there is a difference, the legislature -- and that's
21 why they put the law into place and to show damages and
22 attorney's fees and cost from the other party on the
23 actual reason of the lien being placed or not and not just
24 if it is perfected or not.

25 That lien does affect the property throughout, Your

1 Honor, as opposed to the Lis Pendens that's only for 20
2 days and the title is for six months.

3 *THE COURT:* Okay. Mr. Sheriff, you have got the
4 statute here, okay.

5 *MR. SHERIFF:* Yes, sir.

6 *THE COURT:* All right, Mr. Wilson, I will be glad
7 to hear you on that issue.

8 *MR. WILSON:* Once Cheryl Shoun, the original
9 counsel for Mr. Chiagkouris, filed this action seeking to
10 lift the lien, she took no further action at all. I think
11 that you have got to take some affirmative steps to
12 enforce your rights to become a prevailing party under
13 that statute. In the absence of any -- of prosecuting her
14 claim to lift the lien---

15 *THE COURT:* Well, I mean, she is here today to lift
16 them. I mean, that was the purpose of the trial.

17 *MR. WILSON:* But, the lien is dissolved if you fail
18 to commence a foreclosure action.

19 *THE COURT:* But that's your party that filed that
20 lien that applies to him.

21 *MR. WILSON:* Yes, sir, but in order to be a
22 prevailing party to lift the lien, she has---

23 *THE COURT:* I understand that's why I asked Mr.
24 Sheriff and I presumed and I haven't looked at these
25 cases, I presumed in all of those arose after the person

1 that filed the Mechanics Lien and foreclosed on it.

2 *MR. WILSON:* Yes, sir.

3 *THE COURT:* I don't know if that's true or not. He
4 says it's not.

5 *MR. WILSON:* Well, and maybe I am just old and we
6 can all agree about that. But I am -- I still think to be
7 a prevailing party, you have got to take some action, go
8 to Court and have a ruling in your favor. There is no
9 ruling in their favor that this lien was unfounded or
10 anything else.

11 *THE COURT:* Well, that's because I granted your
12 Summary Judgment motion against their cause of action
13 based upon your case so on cause of action against cloud
14 of title.

15 *MR. WILSON:* Sure. But in the meantime---

16 *THE COURT:* He is saying now he has a statutory
17 right under the statute is what he is saying. Yesterday
18 he didn't say that. He said cloud of title.

19 *MR. WILSON:* Right.

20 *THE COURT:* But today he is saying, he has got a
21 statutory right to have the lien lifted so that's what he
22 is doing here.

23 *MR. WILSON:* Yes, sir.

24 *THE COURT:* And, although it's a Counterclaim which
25 is involved in it.

1 MR. WILSON: Sure.

2 THE COURT: Is that right a wrong?

3 MR. WILSON: Well, I agree with your analysis by
4 and large except to the extent that the statute that
5 provides for him for attorney's fees and---

6 THE COURT: I think that's strict on the execution
7 statute.

8 MR. WILSON: Sure. And, I am just not able -- let
9 me be frank, I can't get my mind around the notion that
10 they are entitled to any damages if they haven't done
11 anything to merit, you know, work through the -- there is
12 no prevailing---

13 THE COURT: Well, they filed a lawsuit.

14 MR. WILSON: But, they didn't prosecute the
15 lawsuit.

16 THE COURT: Well, they did prosecute it. They are
17 here today to prosecute it.

18 MR. WILSON: Well---

19 THE COURT: ---I just granted your Summary Judgment
20 motion on the cloud to title and I still think that's
21 right, but he has taken a different tact today.

22 MR. WILSON: Could I ask Your Honor to take it
23 under advisement and give me a chance to get some law
24 together?

25 THE COURT: Well---

1 MR. WILSON: I hate to do that?

2 THE COURT: Yeah, I can -- could probably do that,
3 but if I am reading his brief and listening to him, I
4 think he is probably correct. I wish he had taken this
5 tact yesterday, but I haven't read the cases. But, I will
6 be happy for you to send me a memorandum on that issue.

7 MR. WILSON: If Your Honor please, I'd appreciate a
8 day or two, I won't get back tonight and get on it.

9 THE COURT: Now, do you have any other motions?

10 MR. SHERIFF: No, Your Honor.

11 THE COURT: All right, now let me say this. As far
12 as your damages under that, if I rule in your favor, I am
13 going to have -- I am going to continue the case to
14 receive testimony concerning the damages. The only thing
15 that I have seen is in an email where there is \$1,500 and
16 some odd dollars for the posting of the lifting of the
17 Mechanic's Lien.

18 MR. SHERIFF: Yes, Your Honor, that's what we
19 couldn't get into so...

20 THE COURT: I understand you couldn't get into it.
21 What I am saying is that if I rule in your favor on this
22 motion---

23 MR. SHERIFF: ---we will be able to provide you
24 with---

25 THE COURT: ---then I would have to -- y'all would

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PROCEEDINGS

THE COURT: Mr. Sheriff?

MR. SHERIFF: Yes, Your Honor?

THE COURT: Are y'all here?

MR. SHERIFF: Yes, Your Honor.

THE COURT: You and Mr. Wilson, if y'all want to come around, I'll be glad to hear you on your issue of attorney's fees in the case of L&M, LLC., versus Robert Yearick, 2009-CP-10-5468.

Mr. Sheriff, I have read your affidavit, I've read your proposed order, concerning attorney's fees in the case that we tried, what, six months ago?

MR. SHERIFF: It was November, sir.

THE COURT: November?

MR. SHERIFF: Yes.

THE COURT: Okay. About six months ago. And you were asking for \$14,975 in attorneys fees.

MR. SHERIFF: Also, the other attorney's fees that include --

THE COURT: Pardon?

MR. SHERIFF: There's more than one. There's for the previous attorney, as well, Your Honor.

THE COURT: That was \$5,790?

MR. SHERIFF: Yes, Your Honor.

THE COURT: All right. Mr. Wilson, you wanted

1 to address the issue of his affidavit and the legality
2 of the issue of some attorney's fees in this
3 particular case; is that correct?

4 MR. WILSON: I appreciate, Your Honor, the
5 privilege of doing so. Thank you, Your Honor.

6 He relies upon the case of -- I refer to it as
7 EFCO v. Renaissance, as the case that he tendered,
8 that he relies upon for a claim of attorney's fees.

9 EFCO basically -- and if Your Honor would allow
10 me. EFCO dealt with a lien one and then a lien two.
11 The parties foreclosed on lien two. The defendants
12 got lien one dismissed and got attorney's fees for
13 lien one, even though the claim of lien one had
14 carried over to lien two.

15 THE COURT: Right.

16 MR. WILSON: This case is -- I submitted a
17 chronology -- is a little bit different in on July the
18 7th, '09, my fellow filed his mechanic's lien. August
19 the 28th, '09, 29th, '09, Carol Shannon [phonetic]
20 filed a declaratory judgment action seeking to
21 dissolve or lift the lien. She couldn't barely get
22 certified so she had to do it by publication over the
23 winter, and in March of '10, I filed an answer and a
24 counterclaim. The answer denied her claim to lift the
25 lien, didn't seek to enforce the lien, and it also

1 included counterclaims, one for contract and one
2 for -- declaratory lien.

3 Now, the reason I didn't attempt to foreclose
4 the mechanic's lien, which it was more than six months
5 after the filing of the lien, I also filed a motion to
6 dismiss at that same time, March of '10. Things
7 rocked along. Mr. Sheriff was -- became substitute
8 counsel I believe in 2012 in the case, well after any
9 possible action could have been taken on the
10 mechanic's lien.

11 My first position and argument, Your Honor --
12 and thank you again for hearing this, is that the EFCO
13 case is different from this case. The EFCO case
14 involved a motion to dismiss a foreclosure or a lien
15 after another foreclosure had started. In this case
16 no foreclosure was ever brought. There was never an
17 adversarial proceeding to enforce the mechanic's lien
18 filed in July of '09. For that reason, I think the
19 EFCO case is distinct from this case in that this case
20 was presented purely a contract action, a collection
21 action, in effect to -- Your Honor, should not call
22 into play the statutory provisions for attorney's
23 fees. That's my first position.

24 My second position is that if Your Honor does
25 decide that EFCO applies to this case, there are two

1 subparts to this argument. Forgive me for --

2 THE COURT: Wait a minute. Do you have a copy
3 of the case?

4 MR. WILSON: I do --

5 THE COURT: Because it's been six months since
6 I've heard this case.

7 [Whereupon, Mr. Wilson proffers documents to the
8 Court]

9 THE COURT: Direct me to the Renaissance part
10 of the case where you're talking about, if you would,
11 Mr. Wilson, please, sir.

12 MR. WILSON: It says, facts, August, '01,
13 Renaissance fired a contractor. February 4th, 02,
14 EFCO filed a mechanic's lien. That's lien one.
15 That's on the front page, Your Honor.

16 THE COURT: Okay.

17 MR. WILSON: Page 2 it says that on June 10,
18 '03, EFCO files a new mechanic's lien number two. The
19 sum allegedly included amounts of the lien one.
20 Renaissance then filed a motion for summary judgment
21 going back against lien one. Okay? No foreclosure on
22 lien one.

23 THE COURT: Okay. There was no foreclosure.
24 Then filed another lien?

25 MR. WILSON: And the second lien goes forward.

1 And during the period of this case, the second lien is
2 still pending.

3 THE COURT: Okay.

4 MR. WILSON: It hasn't been adjudicated.
5 Renaissance, based upon the defendant dissolving the
6 lien, files an affidavit for attorney's fees, which
7 are granted.

8 THE COURT: Right.

9 MR. WILSON: But in this case no -- the motion
10 -- I made the motion for summary judgment --

11 THE COURT: Right.

12 MR. WILSON: -- to dismiss the lien.

13 THE COURT: Right.

14 MR. WILSON: They didn't -- they never did
15 anything affirmative to dismiss the lien. For that
16 reason, I don't think EFCO applies, Your Honor.

17 THE COURT: Okay. All right.

18 MR. WILSON: And then on number two --

19 THE COURT: What's your -- what's your other
20 argument?

21 MR. WILSON: Excuse me.

22 THE COURT: What's your other argument,
23 Mr. Wilson?

24 MR. WILSON: My other argument is if you do
25 apply EFCO, Your Honor, first of all, that means it is

1 a mechanic's lien case that Your Honor heard --

2 THE COURT: Right.

3 MR. WILSON: -- in which case Your Honor has to
4 enter in and determine who was the prevailing party.
5 And the plaintiff, which is Mr. Sheriff's group --
6 person, excuse me, entity. The plaintiff got zero,
7 the defendant got \$33,000. That was Your Honor's
8 instruction from the bench. His original claim was --

9 THE COURT: That was on the counterclaim; right?

10 MR. WILSON: Yes, sir.

11 THE COURT: Right.

12 MR. WILSON: And the statute that talks about
13 attorney's fees says there is a final -- in the
14 calculation of the final verdict, you have to take
15 into account compulsory counterclaims. If you take
16 into account my compulsory counterclaim in your ruling
17 from the bench on it, of \$33,000, that's closer to
18 forty-eight than it is closer to the zero of his, I'm
19 the prevailing party, I'm entitled to the attorney's
20 fees. They're looking for \$19,000 for getting
21 overwhelming -- prevailing on a mechanic's lien
22 that was never foreclosed, Your Honor, that I made
23 the motion to dismiss. I respectfully submit that
24 I'll accept -- I don't have an affidavit, but I'll
25 accept -- I'll reduce my attorney's fees to what

1 they're claiming, Your Honor. That's point number
2 one.

3 Point number two is that their affidavits are
4 deficient. Can I direct you to a certain part of this
5 case, Your Honor? They have to show --

6 THE COURT: Let me look at the affidavit.

7 MR. WILSON: Yes, sir.

8 THE COURT: They've got 59.9 attorney fee hours
9 at two fifty per hour and 5.2 on a paralegal. Let me
10 see. Do they address the successful rate of the
11 lawsuit, as well as --

12 MR. WILSON: No, sir.

13 THE COURT: -- the amount in the community?

14 MR. WILSON: Well, he does say that. But as
15 Your Honor knows, there are six --

16 THE COURT: Where does he say that?

17 MR. WILSON: I think he says --

18 THE COURT: Okay. Normal and customary, under
19 paragraph 11.

20 MR. WILSON: Yes, sir.

21 THE COURT: Okay. Why is it deficient?

22 MR. WILSON: Well, if Your Honor look at page --
23 the next to the last page it says, attorney's fees
24 awarded on the case. There are six factors: nature,
25 extent and difficulty, time necessarily devoted to the

1 case, professional standing of counsel, contingency of
2 compensation, beneficial result obtained, the
3 customary fees for similar services. The attorney's
4 fees -- the time for contesting the attorney's fee
5 elapsed long before Mr. Sheriff got in the case.
6 Nothing he could have done, Your Honor, could have
7 resulted in a favorable dismissal of the lien because
8 it was already dead. It was road-kill. I put a
9 bullet in the road-kill when I made my motion to
10 dismiss it.

11 Now, I have another difficulty with his
12 affidavit, Your Honor. It says at the third paragraph
13 on that -- the next to the last page, Your Honor.

14 THE COURT: Okay.

15 MR. WILSON: It says: in this case the circuit
16 court considered each of the requisite factors,
17 and the record supports the Court's findings.
18 Initially -- and this is Goolsby -- initially, we note
19 Renaissance provided a detailed time sheet outlining
20 the time spent on and the task performed for this
21 case.

22 It's here, Your Honor. Right here [indicates].

23 There's no detailed time sheet. There's no
24 support for it. There's nothing that supports the
25 notion that Mr. Sheriff or his predecessor in this

1 case in any way did anything that resulted in the
2 dismissal of the case. How can I possibly argue about
3 the detailed time sheet without a detailed time sheet?
4 Which goes me back -- which carries me back to my
5 first observation, which that -- was that Mr. Sheriff
6 got in the case after the lien was dead, after it was
7 road-kill. How can he claim the kill? How can he
8 take home the road-kill and make supper?

9 THE COURT: Refresh my memory procedurally about
10 the case. Okay?

11 MR. WILSON: Just in 7/07/09, lien filed.
12 August 28th or 29th, I can't remember which, Carol
13 Shannon --

14 THE COURT: All right. The lien was -- the lien
15 was filed by L&M?

16 MR. WILSON: The lien was filed by Mr. Yearick.

17 THE COURT: Yearick. Excuse me.

18 MR. WILSON: Yes, sir.

19 THE COURT: Lien filed by Mr. Yearick; right?

20 MR. WILSON: I think it might -- if Your Honor
21 please, I did a little chronology of this thing.

22 THE COURT: I would love to look at it, because
23 I'm trying to refresh my memory. I remember it about
24 he was collecting all these items up and down the
25 eastern seaboard and stored them and put them in the

1 building.

2 [Whereupon, Mr. Wilson proffers documents to the
3 Court]

4 THE COURT: Okay. Thank you, so very much.

5 MR. WILSON: Your Honor, 7/07/09 is when Yearick
6 files his mechanic's lien. 8/28/09 is when attorney
7 Shannon files his action seeking -- it's a declaratory
8 judgment action. It's not a foreclosure of judgment
9 -- of mechanic's lien. 10/07/09 is when the deadline
10 for filing the suit to enforce the mechanic's lien.
11 After that date, the mechanic's lien is a dead duck.
12 Road-kill, as I keep calling it.

13 THE COURT: What is it? They've got one year;
14 is that correct?

15 MR. WILSON: Yes, sir.

16 She had not filed anything to enforce the
17 mechanic's lien. She had filed something to dissolve
18 it.

19 THE COURT: Right.

20 MR. WILSON: Then on 12/21, you know, as I said,
21 he was -- apparently, they had to get cert by
22 publication. In March of '10, I filed an answer and a
23 counterclaim. I also filed a motion to dismiss the
24 action to moot -- for mootness on the mechanic's lien.
25 Never been foreclosed. As I said, it's absolutely

1 moot. In April I get a reply to the counterclaim. In
2 January there's an order substituting Scotty Sheriff
3 as counsel. Scotty Sheriff gets in the case, Lord, I
4 don't know -- I couldn't count on my feet -- some year
5 and change, almost two years, after the mechanic's
6 lien is dead. Since I don't have a -- since I don't
7 have a detailed time sheet that says what he did that
8 resulted in a beneficial result for his client, I can
9 only infer, from the fact that he got in the case
10 after the death of the mechanic's lien, that nothing
11 he did was beneficial for his client with regard to
12 dismissing the attorney's fee -- the mechanic's lien.

13 I've got another case. May I show it to Your
14 Honor?

15 THE COURT: Yes, sir.

16 MR. WILSON: Walt McIntosh -- Jack McIntosh, the
17 lawyer, had Sandy Stern and Jim Logan in front of him
18 arguing about mechanic's liens and --

19 [Whereupon, Mr. Wilson proffers documents to the
20 Court]

21 MR. WILSON: -- mechanic's lien and attorney's
22 fees. And Jim Logan -- in this case Jim Logan got an
23 offer of half the amount due -- the total amount due,
24 and Logan told Sandy Stern that he wasn't going to
25 take it unless he got attorney's fees. No foreclosure

1 had been commenced yet. So he doesn't get the
2 attorney's fees voluntarily from Sandy Stern. He
3 starts a foreclosure action. Lawton gives him the
4 attorney's fees. He goes to the Court of Appeals and
5 they say, well, because there was an offer, because in
6 effect the lien could have been dead, didn't need to
7 be foreclosed on, didn't need to be foreclosed on,
8 because there was an offer to pay it off, those
9 attorneys -- they went through the attorney's fees
10 and --

11 THE COURT: Well, doesn't the statute require an
12 offer and a rejection and then you've got to go above
13 that and below that to prevail?

14 MR. WILSON: I have that statute with me, too,
15 Your Honor.

16 THE COURT: That's okay. But go ahead.

17 MR. WILSON: Well, it says that they may -- it's
18 in the -- they may follow that procedure.

19 THE COURT: Right.

20 MR. WILSON: But it says that if they don't,
21 then the Court looks at what the prayer of the
22 plaintiff is and the prayer of the defendant.

23 THE COURT: Right.

24 MR. WILSON: And the prayer for the plaintiff
25 was zero.

1 THE COURT: Okay.

2 MR. WILSON: And I'm the defendant, and my
3 prayer was for forty-eight grand. And Your Honor
4 found for me at thirty-three. So I'm closer to the
5 ultimate -- the final verdict that was determined in
6 that statute, Your Honor. I'm closer to the -- my --
7 the final verdict was closer to my asking price than
8 it was to theirs. And for that reason, again, I would
9 suggest that I'm the prevailing party.

10 THE COURT: You should received the attorney's
11 fees?

12 MR. WILSON: I should get the attorney's fees.
13 And they're asking for twenty grand and I'll take it.

14 THE COURT: Okay. All right. Anything else?

15 MR. WILSON: That's all I have.

16 THE COURT: All right, Mr. Sheriff. I'll be
17 glad to hear you.

18 MR. SHERIFF: Yes. Thank you, Your Honor.

19 Your Honor, in taking piece by piece what
20 Mr. Wilson was stating on there: under wrongful
21 actions, wrongful liens, there's a couple of different
22 parts there, Your Honor. It's not so much a matter of
23 the collateral items involved. As it's shown in much
24 case law, the EFCO case, as well as --

25 THE COURT: Well, do you think you're entitled

1 to attorney's fees by statute?

2 MR. SHERIFF: By statute and case law, Your
3 Honor.

4 THE COURT: All right. By what statute?

5 MR. SHERIFF: By statute of the wrongful filing
6 of liens, 29-5-10, 29-5-15. And throughout that
7 statute, Your Honor, it speaks about attorney's fees
8 for -- and you're right. Partially --

9 THE COURT: But there was never any finding that
10 the statute was wrongfully filed, was there?

11 MR. SHERIFF: Yes, Your Honor. Well, Your
12 Honor, that's what we -- that's what we were trying to
13 do before summary judgment was issued on it is --

14 THE COURT: Well, I understand. But there's
15 never been any court finding about whether it was
16 rightful or wrongful filing, has there?

17 MR. SHERIFF: I don't believe that we were able
18 to be heard on that statute, Your Honor.

19 THE COURT: All right. So that determination
20 has never been made; right?

21 MR. SHERIFF: Not -- from my understanding, we
22 did have some discussion on it. But I don't believe
23 that section was ruled on, Your Honor.

24 THE COURT: All right. So and why would you be
25 entitled under that theory, since there's never been

1 any finding by the Court, that there was a wrongful
2 claim filed? Really, it expired through time.

3 MR. SHERIFF: Well, Your Honor, that's only
4 partially correct. The case law states in there that
5 wrongful filing of attorney's liens is not a vehicle
6 for contractual claims. That opens the door for
7 anyone, any contractual claim, to go file a mechanic's
8 lien. That's not what that's for. That's why there's
9 specific punishments, that are costs and attorney's
10 fees and damages in here, because you cannot just for
11 any contract claim go cloud someone's title for their
12 property. I have a memorandum in support of this that
13 -- I submitted one right before the trial, now, and I
14 have another copy right here, that states how
15 specifically the cases, EFCO, as well as Sea Pines
16 and -- and there's a couple --

17 May I approach, Your Honor?

18 THE COURT: Yes, sir.

19 [Whereupon, Mr. Sheriff proffers documents to
20 the Court]

21 MR. SHERIFF: -- a couple of other cases that,
22 in fact, show that the wrongful filing of mechanic's
23 liens are not the way to go about contractual claims.
24 And even if the contractual claims are met, that
25 should have no bearing on wrongful filing of

1 attorney's fees because what that, in fact, does is it
2 clouds the title and prohibits the employment of the
3 property --

4 THE COURT: I don't remember any testimony about
5 any difficulty of the property owner because of that
6 possible cloud on the title. Because it expires by
7 statute after one year if it's not foreclosed on.

8 MR. SHERIFF: Exactly, Your Honor. But --

9 THE COURT: Is that correct or incorrect?

10 MR. SHERIFF: Well, only partially correct, Your
11 Honor.

12 We tried at the beginning, but you ruled in
13 summary judgment against us. Do we could not put on
14 the testimony for the damages, which we would be happy
15 to do so, Your Honor.

16 THE COURT: Okay. What's your other theory of
17 attorney's fees?

18 MR. SHERIFF: Well, the failure for the wrongful
19 attorney's fees is based off of, if there's a wrongful
20 lien on the property through the case that he said,
21 EFCO. It shows that there are -- the amounts --

22 THE COURT: Well, let me -- let me ask you this,
23 Mr. Sheriff. How can there be a wrongful lien filed
24 by Mr. Urich when he was successful in his contract
25 action to the tune of \$33,000 against your client?

1 MR. SHERIFF: Your Honor, because --

2 THE COURT: How could that possibly have been a
3 wrongful filing --

4 MR. SHERIFF: Because the --

5 THE COURT: -- even though it wasn't foreclosed
6 on?

7 MR. SHERIFF: Because the contractual lien, by
8 statute and by case law, is not allowed to be filed
9 against a contractual claim. Wrongful liens are based
10 only off the structural erection of property, and the
11 fixtures of property that are being built, and not
12 about contractual claim. It states clearly in case
13 law. And in almost all of these cases, it's stated
14 clearly that it cannot be a vehicle for contractual
15 claims. They're two separate entities. That's why
16 there's specific punishments on wrongful filing of
17 claims, because --

18 THE COURT: Well, part of his claim -- part of
19 his claim, if I remember, was a contract to refurbish
20 Henry's; right?

21 MR. SHERIFF: Exactly right. It was for --

22 THE COURT: And part of that was his time and
23 labor; correct?

24 MR. SHERIFF: Yes, Your Honor, which cannot be
25 for this wrongful lien --

1 THE COURT: If you've got time and labor he put
2 into refurbishing Henry's, why wouldn't that be a
3 legitimate mechanic's lien?

4 MR. SHERIFF: Because mechanic's liens are very
5 specific in nature. They are for the erection and
6 they are for the building of the property, not
7 decorating it --

8 THE COURT: So you don't think they're for labor
9 performed on the property --

10 MR. SHERIFF: No.

11 THE COURT: You don't think refurbishing is
12 labor and doing something --

13 MR. SHERIFF: There's no --

14 THE COURT: -- to improve the property?

15 MR. SHERIFF: -- there's no refurbishing, Your
16 Honor.

17 THE COURT: It was refurbishing by the interior;
18 putting in new --

19 MR. SHERIFF: It was curtains --

20 THE COURT: -- tables, chairs, walls. I don't
21 remember if they --

22 MR. SHERIFF: It was --

23 THE COURT: -- redid the wallpaper or not.

24 MR. SHERIFF: No, sir.

25 You know what? It was curtains, it was chairs,

1 it was silverware, it was antlers, it was mirrors.
2 That --

3 THE COURT: Okay.

4 MR. SHERIFF: -- that is completely decorative
5 in nature and does not rise to the fact of having it
6 for a mechanical lien, Your Honor.

7 And it states specifically -- there's other
8 cases, as well, that show that buildings and the dirt
9 around it, to construct the building is not enough.
10 And it's very specific in nature on what can be done
11 and what is considered contractually available to
12 erect and for the structure, Your Honor.

13 THE COURT: Go ahead. I'm listening.

14 MR. SHERIFF: It is very specific on that.

15 And decorating items is not to the rise of being
16 able to file a mechanic's lien. It's not anyone that
17 goes in there and changes out some of the curtains can
18 go bind the property. And that binding of the
19 property can cause other damages, and that's not what
20 this tool is used for. And it states specifically,
21 statutorily and case law, in all the case law, that
22 that's not the reason for that action, Your Honor.

23 THE COURT: Okay. Anything else?

24 MR. SHERIFF: One more item. And --

25 THE COURT: Anything else, Mr. Sheriff?

1 MR. SHERIFF: Yes, Your Honor, one more item.

2 And even though, as Mr. Wilson pointed out, that
3 he voluntarily -- or by statute that it went away,
4 under Cedar Creek Properties and Cantalou [phonetic],
5 it shows that even though it can be offensively taken
6 off, it does not relieve the person from the damage of
7 the lien because it doesn't cloud the property. It's
8 not the same as filing a lawsuit.

9 THE COURT: I don't remember any testimony at
10 all about any damage that your client may have
11 suffered as a result of the lien being filed.

12 MR. SHERIFF: Well, Your Honor, we --

13 THE COURT: He didn't try to sell the property.

14 MR. SHERIFF: Your Honor --

15 THE COURT: I remember no testimony whatsoever.
16 I don't even remember it being addressed by the Court.

17 MR. SHERIFF: Yes, Your Honor, because we -- we
18 had the witnesses here and then you ruled against us
19 and we were not allowed to have those people testify
20 to that nature. And if -- and we tried to go into
21 that portion but it was brought up that we were not
22 allowed to cross over into that section of damages,
23 Your Honor.

24 THE COURT: Okay. Anything else?

25 MR. SHERIFF: No, Your Honor.

1 THE COURT: Mr. Wilson, very briefly.

2 MR. WILSON: Yes, sir.

3 Your Honor, Pond Place Partners v. David Pool
4 was the basis of Your Honor's ruling. I only have one
5 copy of that case with me. If Your Honor please, I'll
6 be glad to hand it up to you.

7 THE COURT: No. That's okay.

8 MR. WILSON: That case shows lis pendens and all
9 filed -- I've lost it, too.

10 THE COURT: I'm sorry. What?

11 MR. WILSON: I've lost it, too -- I apologize.

12 [Whereupon, Mr. Wilson reviews documents]

13 Pond Place Partners was that case that said that
14 you could not bring an action for slander of title for
15 filing lis pendens and mechanic's liens. I mean, that
16 was the basis of Your Honor's ruling. That's why Your
17 Honor didn't hear any testimony. That's why it was
18 dismissed. That's why Mr. Sheriff is getting farther
19 afield than he needs --

20 THE COURT: The motion for attorney's fees is
21 denied.

22 Mr. Wilson, if you'll send me a proposed order,
23 please, sir, laying out the facts of the case --

24 MR. WILSON: Yes, sir.

25 THE COURT: -- and the basis of why you do not

1 think the attorney's fees are appropriate.

2 MR. WILSON: Thank you, Your Honor.

3 THE COURT: And let me say this. The issue of
4 wrongful lien I don't think was ever adjudicated.
5 Okay? So I don't think there's any basis for
6 attorney's fees. And whatever else you feel is
7 appropriate, put in the order, please. Thank y'all
8 very much.

9 MR. WILSON: Thank you, Your Honor.

10 MR. SHERIFF: Thank you, Your Honor.

11 [HEARING CONCLUDES AT 10:14 A.M.]

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
 2009-CP-10-5468

BY _____
 JULIE S. ARMSTRONG
 CLERK OF COURT
 2013 MAR 28 PM 1:07

FILED

L & M, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Robert W. Yearick,)
)
 Defendant.)
 _____)

PROCEDURAL CHRONOLOGY

The following chronology in this action appears in the records of the Clerk of Court,
 Charleston County:

7/07/09	Yearick files Notice of Mechanic's Lien (Yearick never filed an action to foreclose); deadline to foreclose Mechanic's Lien: 90 days from date of filing
8/28/09	Atty Shoun files this action in Common Pleas to dissolve Yearick's Notice of Mechanic's Lien
10/07/09	Deadline for enforcement of Mechanic's Lien. Yearick brought no action for foreclosure by this date, so there could not have been any adversarial proceeding on which Plaintiff could "prevail."
12/21/09	Order for Service of Summons/Complaint by Publication
3/25/10	Defendant Yearick files Answer, Counterclaim
3/25/10	Defendant Yearick files Motion to Dismiss Plaintiff's action due to mootness, because deadline for enforcing Mechanic's Lien by foreclosure expired 6 months earlier.
4/21/10	Plaintiff replies to Yearick's counterclaims
1/17/12	Order substituting Atty. Sheriff as counsel for Plaintiff

Dated: 5/25/13

Robert C. Wilson, Jr.

Robert C. Wilson, Jr.
201 Whitsett Street
Greenville, SC 29601
(864) 242-9488
SC ID 6178
Email: trigor527@aol.com

Attorney for Defendant, Robert
W. Yearick.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
2009-CP-10-5468

L & M, LLC,)
)
Plaintiff,)
)
vs.)
)
Robert W. Yearick,)
)
Defendant.)
_____)

2013 MAR 28 PM 1:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he mailed a copy of "Procedural Chronology"
to counsel for Plaintiff, on the date set forth below, by US Mail, addressed as follows:

William Scotty Sheriff, Esq.
215 E. Bay Street, Suite 400-A
Charleston, SC 29401

Dated: 3/26/13

Robert C. Wilson, Jr.
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SC ID 6178
Email: trigor527@aol.com

Attorney for Defendant, Robert
W. Yearick.

RECEIVED
MAY 01 2014
SC Court of Appeals

PROOF OF SERVICE OF APPELLANT RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

George S. Nicholson, Jr., Circuit Court Judge

Case No. 2013-001361

L&M, LLC,
Appellant,

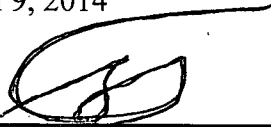
v.

Robert Yearick,
Respondent:

PROOF OF SERVICE OF APPELLANT RECORD ON APPEAL

I certify that I have served the Appellant Record on Appeal to Respondent by depositing a copy of it in the United States Mail, postage prepaid, on April 9, 2014 addressed to Respondent's attorney of record, Robert C. Wilson, Esquire, 201 Whitsett Street, Greenville, SC 29601.

April 9, 2014

s/ 

Scotty Sheriff, Esquire
215 East Bay Street, Suite 400A
Charleston, SC 29001
(843) 991-2222
Attorney for Appellant

RECEIVED

APR 14 2014

SC Court of Appeals

ORIGINAL