

**SUPPLEMENTAL RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

George S. Nicholson, Circuit Court Judge

Case No. 2013-001361

**RECEIVED**

JUN 09 2014

**SC Court of Appeals**

L&M, LLC, Appellant,

v.

Robert W. Yearick, Respondent.

**SUPPLEMENTAL RECORD ON APPEAL**

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

Other Counsel of Record:  
Robert C. Wilson, Jr. Esquire  
201 Whitesett Street  
Greenville, SC 29601  
864-242-9488  
**Attorney for Respondent,  
YEARICK**

## SUPPLEMENTAL RECORD ON APPEAL INDEX

Appellant proposes the following be included in the Supplemental Record on Appeal ("SROA"):

1. Answer and Counterclaim, excluding formal parts, SSROA pp.2-5;
2. Respondent's Motion to Dismiss, filed March 25, 2010, SSROA pp.6-7;
3. Order substituting counsel, excluding formal parts filed January 24, 2012, SSROA pp.8-9;
4. Respondent's Motion to Amend, filed June 1, 2012, SSROA pp.10-12;
5. Respondent's Memorandum, filed November 26, 2012, SSROA pp.13-20; and
6. Order of Court, Judgment for Respondent, filed May 8, 2013, SSROA pp. 21-24.

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. )  
\_\_\_\_\_ )

**ANSWER AND COUNTERCLAIM**

FILED  
2010 MAR 25 PM 2:08  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

Defendant, making a special limited appearance, and answering the Complaint, subject to Defendant's Motion to Dismiss, and by way of Counterclaim, would respectfully show to this Court as follows:

**(FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION:  
FAILURE TO STATE ANY CAUSE OF ACTION  
FOR WHICH RELIEF CAN BE GRANTED)**

I

Defendant alleges that the Complaint of Plaintiff fails to state any cause of action for which relief can be granted, on the grounds of mootness, on the grounds of absolute privilege, on the grounds of improper service, and on the grounds that there is no cognizable cause of action stated for which this Court can grant relief.

**(FOR A SECOND DEFENSE:  
GENERAL DENIAL)**

II

Defendant admits the allegations of Paragraphs 1, 3, 5, 7(the first paragraph numbered 7),

9 of the Complaint of the Plaintiff. Defendant denies the allegations of Paragraphs 2, 4, 6, 7 (the second paragraph numbered 7), 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 of the Complaint of Plaintiff. Defendant hereby expressly denies any and allegations not hereinabove admitted, denied, or otherwise modified.

**(FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM:  
BREACH OF CONTRACT)**

**III**

Plaintiff and Defendant agreed that Defendant would provide services and materials for the decoration and betterment of the real estate parcel owned by Plaintiff, in which Plaintiff intended to operate an eating and drinking establishment. Plaintiff agreed to pay Defendant's expenses and reasonable charges for the services and decorative items provided by Defendant.

**IV**

Defendant, in reliance on Plaintiff's representations, undertook the purchase and delivery of an unique and extensive array items for the improvement of Plaintiff's business location. Likewise, Defendant directed the decoration and betterment of Plaintiff's business location. Plaintiff accepted the fruits of Defendant's detrimental performed in reliance on Plaintiff's inducement to Defendant to purchase decorations and to direct the embellishment of Plaintiff's place of business. Plaintiff, however, has failed, refused, and neglected to honor Plaintiff's obligation to compensate Defendant for the decorative items and services provided by Defendant, pursuant to the parties' agreement. As a consequence of Plaintiff's refusal to pay Defendant, as the parties agreed, Defendant has sustained damages, for which Defendant seeks compensation.

**(FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM  
UNJUST ENRICHMENT)**

V

Defendant has provided services and decorative items to Plaintiff for the betterment of Plaintiff's business establishment. Plaintiff has accepted the benefit of Defendant's services and decorative items. Plaintiff has refused to compensate Defendant for the benefits conferred on Plaintiff by Defendant. Accordingly, Defendant alleges that it is unjust, inequitable, and morally abhorrent that Plaintiff should not be required to compensate Defendant for the *quantum meruit* value of the materials and services provided by Defendant. Defendant, therefore, seeks as alternative relief damages for the *quantum meruit* value of the materials and services which Defendant provided to Plaintiff.

**WHEREFORE**, having fully answered the Complaint of Plaintiff, Defendant prays that the Complaint be dismissed forever with prejudice; Defendant further prays that he have judgment against Plaintiff in such amount as this Court deems just and proper; Defendant additionally prays for such other and further relief as this Court may find appropriate.

Dated: 3/22/10

Robert C. Wilson, Jr.  
Robert C. Wilson, Jr.  
201 Whitsett Street  
Greenville, SC 29601  
(864) 242-9488  
SC ID 6178  
Email: [trigor527@aol.com](mailto: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, )  
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Plaintiff, )  
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vs. )  
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Robert W. Yearick, )  
 )  
Defendant. )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

BY \_\_\_\_\_  
JULIE J. ARMSTRONG  
CLERK OF COURT  
2010 MAR 25 PM 2: 08

FILED

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

**Cheryl D. Shoun, Esq.,  
Catherine D. Byrd, Esq.,  
39 Broad Street, Suite 101,  
Charleston, SC 29401**

Dated: 3/22/10

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

**MOTION TO DISMISS**

FILED  
2010 MAR 25 PM 2:08  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**TO: L & M, LLC, Plaintiff, and its attorneys, Cheryl D. Shoun, Esq., Catherine D. Byrd, Esq., 39 Broad Street, Suite 101, Charleston, SC 29401**

10-5074  
**YOU WILL PLEASE TAKE NOTICE** that the undersigned, as counsel for Defendant, will at such place and at such time as this Honorable Court may designate, move this Honorable Court, pursuant to Rules 12(b)(5) and (6) of the SC Rules of Civil Procedure, to dismiss Plaintiff's causes of action on the grounds of mootness, on the grounds that they fail to state a cause of action for which relief may be granted, on the grounds of absolute privilege and on the grounds of improper service.

Insofar as the within motion seeks the dismissal of all of Plaintiff's claims in this action, the undersigned has not conferred with counsel for Plaintiff to seek a consensual dismissal of Plaintiff's claims.

Dated: 3/22/10

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

Attorney for Defendant, Robert  
W. Yearick.

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

L&M, LLC,  
Plaintiff

Case No. 2009-CP-10-5468

v.

CONSENT MOTION AND ORDER  
SUBSTITUTING LEGAL COUNSEL

ROERT K. YEARICK  
Defendant

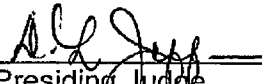
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J. ARMSTRONG  
CLERK OF COURT


FILED

This matter is before the Court on the motion of Plaintiff, L&M, LLC, that its attorney Cheryl D. Shoun, Esq. of the law firm of Nexsen Pruet, LLC, be relieved as counsel in the above-captioned case due to a possible conflict of interest in the representation and that Scotty Sheriff of the Sheriff Law Firm, LLC be substituted as counsel, for Defendant L&M, LLC.

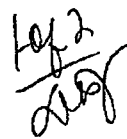
THEREFORE, IT IS ORDERED that Cheryl D. Shoun of the law firm of Nexsen Pruet, LLC, is relieved as counsel, and Scotty Sheriff of the Sheriff Law Firm, LLC is hereby substituted as counsel for the Plaintiff, L&M, LLC.

AND IT IS SO ORDERED.

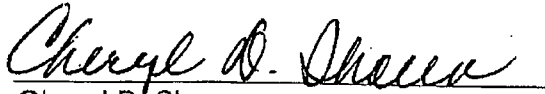
  
\_\_\_\_\_  
Presiding Judge  
Ninth Judicial Circuit

 Jan.  
December 19, 2011 2012

Charleston, South Carolina

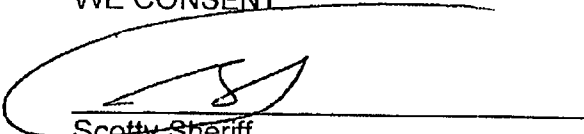
Page 2  


WE CONSENT:

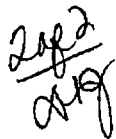


Cheryl D. Shoun  
NEXSEN PRUET, LLC  
205 King Street, Suite 400 (29401)  
P.O. Box 486  
Charleston, SC 29402  
843.577.9440

WE CONSENT:



Scotty Sheriff  
Sheriff Law Firm, LLC  
215 East Bay St., Suite 400A  
Charleston SC 29401  
Office: 843-991-2222



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 TO AMEND**

BY  
JWS

JULIE J ARMSTRONG  
CLERK OF COURT

2012 JUN -1 PM 1:43

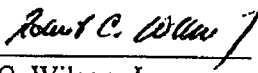
FILED

**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 15 of the South Carolina Rules of Civil Procedure, which Order will allow Defendant to join M L & A, LLC, and Leo Chiagkouris as Third-Party Defendants, and to assert claims against said Third-Party Defendants for the liability, sought by Defendant against Plaintiff, on the grounds of successor in interest liability, on *alter ego* corporate misconduct, and on piercing the corporate veil. Defendant asserts that the Amendment sought hereunder will serve the ends of justice and will not prejudice the other party.

The undersigned hereby certifies that he has unsuccessfully attempted to work this matter out with opposing counsel.

Dated: 5/29/12

  
Robert C. Wilson, Jr.  
201 Whitsett Street  
Greenville, SC 29601  
(864) 242-9488  
SC ID 6178  
Email: [trigor527@aol.com](mailto: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, )  
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Plaintiff, )  
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vs. )  
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Robert W. Yearick, )  
 )  
Defendant. )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2012 JUN -1 PM 1:43

FILED

The undersigned hereby certifies that he mailed a copy of Defendant's Motion to Amend 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: 5/29/12

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

FILED  
2012 NOV 26 PM 2:08  
JULIE J. ARMSTRONG  
CLERK OF COURT

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

BY  
DS

**DEFENDANT'S MEMORANDUM  
IN OPPOSITION TO PLAINTIFF'S  
MOTION TO ALTER OR AMEND**

This case came before this Court on November 14, 2012, for a bench trial.

Plaintiff's Complaint, (TAB 1), asserted three causes of action, essentially seeking relief from the Notice of Mechanic's Lien filed by Defendant on July 7, 2009, against the real property of Plaintiff. Counsel for Plaintiff also asserted that Plaintiff should be entitled to consequential damages resulting from Defendant's slander of the title of the real property, as a result of Defendant's filing of his Notice of Mechanic's Lien.

Defendant asserted, (TAB 2), a general denial as to Plaintiff's causes of action. Defendant also counterclaimed against Plaintiff for the costs of decorative items and services provided for the re-decoration of Henry's House. Henry's House is a restaurant/bar which occupies the real property, which was the subject of Defendant's Notice of Mechanic's lien. Defendant never commenced any timely action to foreclose his Mechanic's Lien.

Prior to the commencement of the trial, Defendant argued his Motion for Summary Judgment, seeking dismissal of the claims of Plaintiff, on grounds of mootness and on grounds of absolute privilege. Defendant's Motion for Summary Judgment was filed on October 1, 2012,

(TAB 3).

In support of his Motion for Summary Judgment, Defendant first asserted that he had never taken any action to execute his Notice of Mechanic's Lien by foreclosure or other legal action. Defendant argued that, due to the passage of time without Defendant taking any action to enforce his lien, the Notice of Mechanic's lien had, by operation of law, become of no force and effect. Defendant cited §29-5-120, SC Code of Laws, 1976, as amended, (TAB 4), as authority that, in the absence of any enforcement of the Mechanic's Lien by foreclosure, the lien had been dissolved and released by operation of law. Defendant's argument was first based on the mootness of the claims due to the dissolution and release of the lien by operation of law<sup>1</sup>.

Second, Defendant asserted that *Pond Place Partners, Inc. v. Poole*, 567 SE 2d 881, (Ct.App. 2002), (TAB 6), established an absolute privilege which bars any action in South Carolina for slander of title, based upon pleadings filed in court, such as a *Lis Pendens*. Defendant asserted that *Pond Place* operates, in this case, to bar Plaintiff's claim for damages arising from Defendant's alleged slander of the title of Plaintiff's real property.

After argument by the parties' counsel, the Court granted Defendant's Motion for Summary Judgment, dismissing Plaintiff's claims for dissolution of the Mechanic's Lien and dismissing Plaintiff's claim for damages arising from Defendant's slander of title.

At the conclusion of testimony, on Thursday, November 15, 2012, Plaintiff made a Motion to Alter or Amend. By its Motion, Plaintiff sought to impose attorneys fees and costs on

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<sup>1</sup>Defendant notes that the lien against Plaintiff's real property was discharged by Plaintiff's filing a bond, as provided by §29-5-110, SC Code of Laws, 1976, as amended. (TAB 5)

Defendant for the dissolved Notice of Mechanic's Lien. Plaintiff also sought leave to re-assert its claim for slander of title. In support of its Motion, Plaintiff cited the case of *EFCO v. Renaissance of Charleston Harbor, LLC*, 635 SE 2<sup>nd</sup> 922, (Ct.App. 2006), (TAB 7), for the proposition that, although Defendant's Notice of Mechanic's Lien had not been enforced by foreclosure, nor executed by any other action, Plaintiff was a "prevailing party" under the Mechanic's Lien statutory scheme. Plaintiff argued that, as a "prevailing party," it was entitled to costs and attorney's fees. Plaintiff also argued that it was entitled to assert a claim for slander of title against Defendant, under *EFCO*.

This Court kindly granted counsel for Defendant an opportunity to submit written authority in response to Plaintiff's Motion to Alter or Amend.

#### **QUESTIONS PRESENTED**

**WHERE PARTY FILING NOTICE OF MECHANIC'S LIEN DOES NOT TAKE ANY ACTION TO ENFORCE LIEN, DOES LIEN BECOME DISSOLVED AND RELEASED BY OPERATION OF LAW?**

**WHERE LIEN IS DISSOLVED BY INACTION OF LIENOR, DOES PROPERTY OWNER BECOME A "PREVAILING PARTY?"**

**IS TRIAL COURT, IN ITS SOUND DISCRETION, EMPOWERED TO AWARD ATTORNEY'S FEES AND COSTS TO "PREVAILING PARTY," WITHIN LIMITS ESTABLISHED BY STATUTE AND BY COMMON LAW?**

#### **ARGUMENT**

1. Under *EFCO*, despite lack of any action by lienor to enforce Mechanic's Lien, Plaintiff may assert in this case a claim for attorney's fees and costs, subject to the sound discretion of the Trial Court.

Defendant concedes that the holding in *EFCO, supra*, confers on a property owner the right to claim attorney's fees against the Defendant, as a "prevailing party," even though the Defendant took no action to enforce his Notice of Mechanic's Lien. Defendant argues, however, that the property owner may be granted attorney's fees only in the sound discretion of the trial court. In this case, Defendant argues that the Plaintiff has been already found to be "incredible," by this Court in its preliminary ruling from the bench. Defendant respectfully submits that Plaintiff's lack of credibility fatally taints any claims that Plaintiff may assert, including claims for attorney's fees. Accordingly, Defendant submits that an award of attorney's fees to Plaintiff in this case might not be appropriate.

**2. Under *EFCO* and the mechanic's lien statute, there are strict guidelines for award of attorney's fees.**

*EFCO, supra* at p. 926, sets forth the following criteria for the award of attorney's fees to a "prevailing party:"

1. The nature, extent and difficulty of the case;
2. The time necessarily devoted to the case;
3. Professional standing of counsel;
4. Contingency of counsel;
5. Beneficial results obtained; and
6. Customary legal fees for similar services.

*EFCO, supra*, held that there must be sufficient evidence in the record to support **each** factor, *EFCO, supra* at p. 927. Additionally, *EFCO, supra* at p. 927, noted with approval that counsel provided a **detailed** time sheet outlining the time spent on and the tasks performed for the case.

As to the first criterion set forth above, Defendant submits that there is no difficulty presented where counsel for Plaintiff did nothing that resulted in the dissolution and release of the lien under §29-5-120, SC Code of Laws, 1976, as amended, (TAB 4). Indeed, it is difficult to imagine a simpler task for counsel than to let time elapse for the dissolution of the lien, as presented in this case.

As to the second criterion set forth above, it is difficult to imagine any time spent in defending against a Notice of Mechanic's lien which expired due to the passage of time and due to the inaction of Defendant, in this case.

As to the third criterion set forth above, Defendant cannot assert any knowledge of the professional standing of counsel for Plaintiff, because Defendant and his counsel are not from the Charleston area.

As to the fourth criterion set forth above, Defendant cannot assert any knowledge on which to base any argument.

As to the fifth criterion set forth above, Defendant asserts that no beneficial results came from any **action** by counsel for Plaintiff.

As to the sixth criterion set forth above, Defendant asserts that legal fees for taking no action to defend the Notice of Mechanic's Lien should be minimal.

Defendant, based on the foregoing, respectfully suggests that it would be appropriate for the trial court to award no, or nominal, attorney's fees to Plaintiff for the dissolution of the Notice of Mechanic's Lien.

**3. EFCO and related cases limit Plaintiff's recovery as a prevailing party to attorney's fees; Plaintiff is barred from a claim for slander of title in this action.**

Plaintiff asserts rights to attorney's fees under *EFCO, supra*, (TAB 7). *EFCO* only authorizes the Court to award attorney's fees and costs to the "prevailing party." *EFCO* does not authorize the award of anything other than attorney's fees and costs. Plaintiff, however, is additionally claiming that it has a right to claim damages for slander of title under §29-5-120, SC Code of Laws, 1976, as amended, (TAB 4) and under *EFCO*. In *Mozingo & Wallace Architects, LLP v. Grand*, 666 SE 2<sup>nd</sup> 267 (Ct.App. 2008), (TAB 8), the Court of Appeals held:

We hold that the legislature intended to limit the award of fees and costs to the amount set forth in the notice and certificate of mechanic's lien. *Mozingo, supra*, p. 271.

Clearly, *Mozingo, supra*, and *EFCO, supra*, contemplate only the award of attorney's fees, and costs to a "prevailing party." Of the cases which deal with an award to a "prevailing party," none allow the award of anything other than attorney's fees and costs, limited to the amount in controversy under the mechanic's lien, *Mozingo, supra*.

Plaintiff's efforts to expand the holding of *EFCO, supra*, (TAB 7), to authorize a claim for slander of title runs afoul of the clear<sup>2</sup> import of *Pond Place Partners, supra*, (TAB 6). Indeed, there is **no** authority for the notion that mechanic's lien statute authorizes the assertion of a claim for slander of title. On the contrary, it is established precedent that the mechanic's lien statute contemplates only the award of attorney's fees and costs as sufficient deterrence for misuse of the mechanic's lien statute:

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<sup>2</sup>Defendant notes that the Court in *Pond Place Partners, supra*, (TAB 6), emphasizes the absolute privilege given to pleadings by bold, capitalization of the term "**absolutely**" and the term "**cannot**" to drive home the emphasis of the Court's holding that pleadings **cannot** be the basis for an action for slander of title.

Clearly the intent of the legislature in allowing the prevailing party in an action brought under the mechanic's lien statute to recover attorney fees and costs stems from a desire to deter both the wrongful filing of liens and unjustified refusal to pay debts subject to mechanic's liens." *Cedar Creek Properties v. Cantelou Associates, Inc.*, 465 SE 2<sup>nd</sup> 774, (Ct.App. 1995)(TAB 9) **Accord:** *Crenshaw's TV and Radio Service, Inc. v. Jocassee Partners Holdings, LLC*, Unpublished Opinion No. 2012-UP-610 (Ct.App. Nov. 14, 2012)(TAB 10)<sup>3</sup>.

### CONCLUSION

Based on the foregoing, Defendant respectfully submits that it is within the sound discretion of this Court whether to award no attorney's fees to a Plaintiff who has been found "incredible," as a matter of law. Should, however, this Court determine to award attorney's fees and costs, Defendant respectfully suggests that this Court should rigorously apply the criteria set forth in *EFCO, supra*, and that this Court should look for detailed billing statement in support of Plaintiff's application for attorney's fees and costs, as presented by counsel in *EFCO, supra*. Defendant argues that under the criteria articulated in *EFCO*, an award of no, or nominal, attorney's fees would be appropriate in this case. Finally, Defendant strongly asserts that there is no authority for the use of the mechanic's lien statute, under *EFCO*, as a basis for asserting a claim for damages resulting from an alleged slander of title, in light of the clear, strong holding in *Pond Place Partners* against actions for slander of title based on filings in Court.

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<sup>3</sup>Defendant notes that the *Crenshaw* case is an unpublished opinion, of no precedential value; the *Crenshaw* case does, however, suggest that *Cedar Creek*, cited above, is still dispositive that an award of attorney's fees and costs is the limit that may be awarded in actions arising from mechanic's liens.

Dated: 11/23/12

Respectfully Submitted,

Robert C. Wilson, Jr.

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

Attorney for Defendant, Robert  
W. Yearick.

STATE OF SOUTH CAROLINA )  
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IN THE COURT OF COMMON PLEAS  
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L & M, LLC, )  
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Plaintiff, )  
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vs. )  
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Robert W. Yearick, )  
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Defendant. )  
\_\_\_\_\_ )

ORDER

BY \_\_\_\_\_  
JULIE J. ARMSTRONG  
CLERK OF COURT  
2013 MAY -8 PM 4:06

FILED

This case came before this Court for a bench trial on November 14, 2012. Present for the Plaintiff was William Scotty Sheriff, Esq., of the Charleston Bar. Counsel for Defendant was Robert C. Wilson, Jr., from Greenville, S.C. The Court had before it the file of all pleadings, Motions, and other file materials.

Essentially, this case arose from Defendant's claim for his services and materials provided for the redecoration of a restaurant and bar named Henry's. Henry's is located on a real estate parcel owned by Plaintiff. Plaintiff is an LLC whose sole member was, at all times pertinent to this matter, Leo Chiagkouris.

Defendant Yearick testified to the terms and conditions of his alleged contract with the Plaintiff. Yearick testified that the parties' contract provided for Yearick to provide interior design services for Henry's. Yearick further stated that he was to receive \$200.00 per hour for his services as an interior designer.

Additionally, Yearick testified that he was to be reimbursed for the cost of the various decorative items which he purchased for the redecoration of Henry's. Yearick stated that all the

items for which he claimed reimbursement in this action had been delivered to, and retained by Chiagkouris, for Plaintiff's benefit. Yearick presented a separate accounting for his services and a separate accounting for the costs of the decorative items. Yearick also introduced a summary of the total accounting for services and materials. The summary accounting had been attached to Yearick's Notice of Mechanic's Lien, filed against Plaintiff. Yearick seeks reimbursement of \$49,301.35.

Yearick introduced, as Defendant's Exhibits 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, a series of e-mails which showed the history of the relationship between Yearick and Plaintiff during the period of redecoration and after the redecoration.

David LeBoutillier testified. LeBoutillier testified that he had been retained by Chiagkouris to supervise the redecoration of Henry's, to upgrade the menu of Henry's, and to supervise the marketing of the newly-renovated Henry's. LeBoutillier stated that he had been authorized by Chiagkouris to hire Yearick. LeBoutillier testified that he and Yearick had agreed that Yearick would be compensated at a rate of \$200.00 per hour for his services. LeBoutillier also testified that Yearick was to be reimbursed for all decorative items which were delivered to, and accepted by, Plaintiff. LeBoutillier corroborated Yearick's testimony in all material respects.

Mark Maresca, a notable Charleston architect who has also worked as a professional interior designer, appeared as a witness. Counsel established to the satisfaction of this Court that Maresca was an expert in interior design. Maresca confirmed, to a reasonable degree of professional certainty, that Yearick's charges for decorative items were reasonable. Maresca also testified that Yearick's rate of compensation was reasonable.

Yearick rested his case.

At the conclusion of Yearick's case, Counsel for Plaintiff moved for a directed verdict, seeking to dismiss Yearick's claims on the grounds that Yearick had brought his action against the wrong party. Counsel for Yearick, however, presented copies of Plaintiff's Reply to Yearick's claims. Plaintiff's Reply admitted that there had been an agreement between the Plaintiff and Yearick. Counsel for Yearick asserted the doctrine of judicial estoppel, arguing that Plaintiff could not argue against the written admission of a contract contained in Plaintiff's reply. Based on Plaintiff's admission of a contract in the Reply, this Court denied Plaintiff's Motion for a Directed Verdict.

Counsel for Yearick then argued that this Court grant leave for Yearick to Amend his pleadings to join Leo Chiagkouris personally and M L & A, LLC, as parties Plaintiff. Counsel presented a persuasive argument that Chiagkouris had disregarded corporate formalities. As a result, the Court allowed Yearick to join Leo Chiagkouris, individually, as a party Plaintiff, subject to Yearick's claims. This Court denied Yearick's Motion to Amend to join M L & A, LLC, as a party Plaintiff.

Leo Chiagkouris then took the witness stand. Chiagkouris denied that there had been any deal with Yearick. Chiagkouris testified that Yearick's work and the decorative items were of no use to Plaintiff. In short, Chiagkouris testified that he had paid for all decorative items and that he had not received any benefit from Yearick's work.

Based on the foregoing, the Court makes the following factual findings and conclusions of law:

1. There was an agreement between Yearick and Plaintiff.
2. Yearick was to receive \$200.00 per hour for his services; Yearick was to be

reimbursed for the costs of the decorative items purchased for use in Henry's.

3. The Reply of Plaintiff to Yearick's Counterclaim (which presented Yearick's claims) admitted the existence of an agreement.

4. Chiagkouris' oral testimony was directly contradicted by his own emails, (Defendant's Exhibits 3A-3H).

5. Chiagkouris' oral testimony was particularly contradicted by Defendant's Exhibit 3G: "it is a home run..."

6. Based on the Reply and based on the disparity between Chiagkouris' oral testimony and Chiagkouris' contemporaneous email record, Chiagkouris' oral testimony given in Court is incredible and this Court must reject his testimony altogether.

7. This Court finds and concludes that Yearick is entitled to the sum of \$17,601.35 for the decorative items delivered and kept by Plaintiff.

8. This Court finds and concludes that Yearick's claim for the number of hours expended on the redecoration project is unduly high. This Court, accordingly, reduces Yearick's compensation for his hours spent on the project to the sum of \$15,900.00.

Accordingly, it is

**ORDERED, ADJUDGED, AND DECREED** that Defendant Yearick have judgment against Plaintiff and against Leo Chiagkouris, individually, in the amount of \$33,501.35, <sup>212</sup> ~~together~~ ~~with costs.~~ *JCN*

**AND IT IS SO ORDERED.**

Dated: 5/7/13

*JCN*  
Hon. J. C. Nicholson  
Judge, Charleston County Court  
of Common Pleas

**PROOF OF SERVICE OF [SUPPLEMENTAL] RECORD ON APPEAL  
TO RESPONDENT**

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 [SUPPLEMENTAL] RECORD ON APPEAL  
TO RESPONDENT**

I certify that I have served the Supplemental Record on Appeal to Respondent by depositing a copy of it in the United States Mail, postage prepaid, on June 5, 2014, addressed to Respondent's attorney of record, Robert C. Wilson, Esquire, 201 Whitesett Street, Greenville, SC 29601.

June 5, 2014

s/

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

**RECEIVED**

JUN 09 2014

**SC Court of Appeals**

Certificate of Counsel

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The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 3, 2014

  
\_\_\_\_\_

Scotty Sheriff, Esquire  
215 East Bay Street, Suite 400A  
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Attorney for Appellant L&M, LLC