STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
SEP 16 2014
S.C. Supreme Court

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Case No. 2009-CP-15-0595

THE SPRIGGS GROUP, P.C., ... Respondent,

v.

GENE R. SLIVKA, ... Petitioner.

BRIEF OF RESPONDENT IN OPPOSITION TO WRIT OF CERTIORARI

James A. Bruorton, IV
Timothy J.W. Muller
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726

Attorneys for Respondent

Other Counsel of Record

Robert T. Lyles, Jr.
Lyles & Lyles, LLC
342 East Bay Street
Charleston, South Carolina 29401
(843) 577-7730
Attorneys for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE TRIAL COURT AND COURT OF APPEALS CORRECTLY HELD THAT RESPONDENT'S LIEN WAS TIMELY FILED AND THAT THE SERVICES PERFORMED BY RESPONDENT CONSTITUTED LABOR PURSUANT TO THE MEANING OF LABOR IN SOUTH CAROLINA CODE OF LAWS SECTION 29-5-10(A).

II. WHETHER THE FACTUAL ISSUE OF WHETHER A REASONABLE INVESTIGATION AND UNDISPUTED PAYMENT WAS MADE PURSUANT TO S.C. CODE ANN. § 27-1-15 WAS PROPERLY SUBMITTED TO THE JURY AND A UNANIMOUS VERDICT WAS RETURNED IN FAVOR OF RESPONDENT.

III. WHETHER RESPONDENT PROPERLY PRESERVED AN APPEAL OF ANY LEGAL ISSUES RELATED TO RESPONDENT'S BREACH OF CONTRACT CLAIM AND ASSOCIATED PRE-JUDGMENT INTEREST.

STATEMENT OF THE FACTS

Petitioner Gene R. Slivka ("Petitioner") approached Respondent The Spriggs Group, P.C. ("Respondent") in the fall of 2006 about a new construction project in which Petitioner was interested in having Respondent provide architectural and engineering services. The project was to be Respondent's new plantation residence ("Project"). (R. p. 206 ln. 3 – p. 209 ln. 19). After communications between Petitioner and Respondent, Respondent attempted to write a scope of work for the project based upon information provided by Petitioner. (R. pp. 400 – 402). Respondent outlined the scope of work for the Project and set forth three assumptions as to critical details about the Project. (R. pp. 400 – 402). First, the project was going to be located in McIntosh County, Georgia on Petitioner's plantation where Respondent had previously done some work. (R. p. 211 ln. 22 – p. 212 ln. 9). Second, Petitioner was going to hire a reputable contractor, JT Turner, to serve as the general contractor for the project. (R. p. 212 ln. 10 – p. 213 ln. 7). Third, Petitioner was going to hire a civil engineer for site work on the project. (R. p. 213 ln. 8 – p. 214 ln. 4). The assumptions impacted the price Respondent conveyed to Petitioner for the scope of design and engineering work on the Project. (R. p. 210 ln 11 – p. 214 ln. 14). Respondent received no indication from Petitioner that the scope outlined by Respondent had any inaccuracies. (R. p. 214 ln. 5-14). In follow-up to Respondent's initial project scope outline, Respondent then prepared and submitted a proposal to Petitioner for the architectural and engineering work for the Project. (R. pp. 346 – 353).

Respondent's proposal letter to Petitioner forms the Agreement ("Agreement") at issue between the parties. (R. pp. 346 – 353). The Agreement provides that the architectural and engineering services would be provided by Respondent for a lump sum fee with restrictions and limitations noted. (R. pp. 346 – 353). Paragraphs 1-13 of the Agreement set forth the obligations

not done. Id. Pursuant to the terms of the Agreement, the parties agreed that once construction documents began, any changes would be performed on an hourly basis. Id. Further, requested construction phase services by Respondent or staff would be billed on an hourly basis. Id. Respondent's expert, Myles Glick, later testified that the contract entered between Respondent and Petitioner provides for a fixed fee with additional services to be compensated at an hourly rate. (R. p. 281 ln. 22 – p. 282 ln. 14). Mr. Glick testified that the fee was derived on a per sheet basis for the number of drawings to be produced to provide a basic set of drawings. He also testified that any services provided by Respondent during construction were to be done on an hourly basis. (R. p. 279 ln. 2 – p. 280 ln. 17).

After the Agreement was entered into between the parties, the three critical project detail assumptions made by Respondent turned out to be different than what Respondent had anticipated based upon the information provided by Petitioner. First, the location of the project was changed from McIntosh County, Georgia to Colleton County, South Carolina. (R. p. 226 ln. 8 – p. 229 ln. 24). The significance of this change to the Project is Colleton County's requirement that a licensed structural engineer must prepare and stamp structural drawings for any structural work performed. (R. p. 138 ln. 3-17 & p. 405 ln. 22 – p. 406 ln. 10). As a result, Respondent was required to hire a structural engineer to produce structural drawings for every building on the Project. (R. p. 210 ln. 12-17). Petitioner failed to pay Respondent for the structural drawings after Respondent provided invoices for such work. (R. p. 238 ln. 23 – p. 240 ln. 20).

Second, Petitioner did not hire a civil engineer for the project. (R. p. 221 ln. 13 – p. 222 ln. 6). The lack of a civil engineer created additional costs for site grading, well, piping, septic tanks, and drainage fields. (R. p. 213 ln. 8 – p. 220 ln. 1). Third, Petitioner fired the general contractor and served as his own general contractor during the course of the project. (R. p. 236 ln.

10-19). The lack of a general contractor made Respondent's involvement in the project expand vastly from what was originally proposed. For example, Respondent was asked to assist in the recommendation of independent contractors to be engaged by Petitioner after Petitioner terminated the general contractor. (R. p. 235 ln. 20 – p. 236 ln. 5). Mr. Glick testified at trial that an architect's work and allocated time increases exponentially when a general contractor is fired. (R. p. 283 ln. 17 – p. 284 ln. 4). Nevertheless, Respondent fulfilled its contractual obligations and designed all buildings on Petitioner's Colleton County Plantation, including a 24,000 sq. ft main house, two 1,500 sq. ft. detached garages with fully finished 700 sq. ft. apartments above them, a 280 sq. ft. potting shed, a 1,000 sq. ft. conservatory, a 4,000 sq. ft. stable, and a 500 sq. ft. grotto. (R. pp. 339 – 340).

In addition to the critical changes in the Project details, Petitioner also requested numerous and complex changes during the course of the Project. Andy Bozeman, an employee of Respondent, spent hours testifying as to all the changes made to the drawings after the initial design had been prepared by Respondent. (R. pp. 138 & 392 – 397). Pursuant to Paragraph 19 of the Agreement, "once we begin construction documents, any changes in room layout, sizes, window locations, door locations, and exterior elevation design will be performed on an hourly basis." (R. pp. 346 – 353). Respondent invoiced Petitioner for the labor associated with Petitioner's numerous changes to the Project, but Petitioner refused to pay Respondent at the completion of Respondent's involvement. (R. pp. 354 – 363).

While Respondent admitted that it did not notify Petitioner every time an additional service was being billed to the contract, Petitioner's expert testified that the contract between the parties does not set forth a notice requirement when additional services are being billed. (R. p. 312 ln. 13 – p. 313 ln. 24). Each additional service requested by Petitioner was billed on an hourly basis

pursuant to Paragraphs 18 or 19 of the Agreement. At the end of the project, Respondent billed for the remaining contract balance, which included the construction administration services, additional design services, and reimbursable expenses for the project, but was not paid. (R. pp. 354 – 365 & p. 278). Petitioner admitted at trial that he owed Respondent at least a portion of the remaining contract balance and would have paid it had an invoice been submitted for only the amount he agreed was owed. (R. p. 110 ln. 8-12 & p. 114 ln. 1 – p. 115 ln. 3). Petitioner admitted at trial that he asked Respondent to design a garden wall, but then refused to pay Respondent for the designs. (R. p. 111 ln. 23 – p. 113 ln. 6). Likewise, Petitioner admitted at trial that he had agreed to pay Respondent for a two hour construction meeting, but failed to pay Respondent for the work. (R. p. 113 ln 7 – 25). Despite his own admissions of amounts owed, Petitioner refused to pay Respondent anything following his initial payment in February 2007.

Petitioner testified that he allegedly terminated Respondent in December 2008. (R. p. 118 ln. 16-18). Mr. Spriggs testified that a termination was never communicated to Respondent. (R. p. 265 ln. 20 – p. 266 ln. 5). As a result, Respondent continued to perform construction administration services under the Agreement with Petitioner. For example, Respondent took a call from Petitioner's plumbing contractor on January 13, 2009 and Respondent worked through the details for approving a substitution of the plumbing pipe on the Project. (R. p. 198 ln. 23 – p. 200 ln. 11; pp. 398 – 399; pp. 403 – 436). In approving the substitution of the plumbing pipe, Mr. Spriggs testified that he had to consider the percentage of toilets, sinks and fixtures being used to analyze whether a reduction in pipe size would be workable. (R. p. 230 ln. 19 – p. 232 ln. 11). Mr. Spriggs then testified that the plumbing engineer was consulted to assess the amount of water flow with the substituted pipe in order to determine whether it was acceptable. (R. p. 232 ln. 12-15).

Furthermore, in May 2009, Respondent provided labor in the preparation of an Appraisal that was requested by Petitioner. (R. p. 196 ln. 11-25). Petitioner admitted that Respondent was authorized to perform this type of labor on the Project. (R. p. 132 ln 21-25). Petitioner further admitted that he never communicated to Respondent not to respond to calls from contractors in the field. (R. pp. 131 – 134 & pp. 303 – 309). Respondent provided labor on the Project through May 2009 not knowing it had allegedly been terminated. Respondent invoiced Petitioner for its labor performed in May 2009 pursuant to the Agreement but was likewise not paid. (R. pp. 354 – 365).

Despite Petitioner's claim that Respondent was terminated from the project, the drawings prepared by Respondent were the sole drawings used by Petitioner to obtain permits for construction. (R. p. 129 ln. 17 – p. 130 ln. 8). Respondent served as the only design professional on the Project, and Petitioner used the drawings solely prepared by Respondent to construct all the buildings on his Colleton County plantation. (R. p. 129 ln. 17-23 & p. 137 ln. 22-25). Petitioner had a complete set of design drawings when he allegedly terminated Respondent from the project. As of the date of the alleged termination, all buildings on the Project had been built with the exception of the 500 sq. ft. grotto. (R. p. 118 ln. 6 – p. 119 ln. 4).

In February 2009, Respondent submitted invoices to the Petitioner for payment in accordance with the terms of the Agreement. (R. pp. 354 – 363). Respondent testified what labor was performed related to each invoice and if the invoice related to additional labor or expenses, why it was considered additional under the Agreement. (R. p. 232 ln. 4 – p. 258 ln. 15). Mr. Spriggs testified that at the time he sent the invoices for payment in February 2009, he was unaware of Respondent's alleged termination by Petitioner. (R. p. 258 ln. 16 – 19). Respondent sent additional invoices to Petitioner in May 2009 and in November 2009 capturing all construction

administration time for the close out of the project. (R. p. 259 ln. 2 – p. 263 ln. 21). Petitioner testified that upon receipt of the invoices in February, he called Respondent and disputed the amount owed. (R. p. 299 ln. 7-9). Petitioner specifically told Respondent to send a corrected invoice for only the amount Petitioner agreed he owed and he would pay it. (R. pp. 121 – 122). Petitioner similarly admitted at trial that he owed Respondent at least a portion of the remaining contract balance. (R. p. 110 & pp. 114 – 115). Despite knowing he owed Respondent money under the terms of the Agreement, Petitioner continually refused to pay Respondent anything unless a "corrected" and presumably discounted invoice was submitted. Ironically, Petitioner paid Respondent the first half of the contract balance towards the beginning of the project without an invoice having been submitted. (R. p. 123 ln. 20 – p. 124 ln. 21).

As a result of Petitioner's refusal to pay Respondent in accordance with the terms of the Agreement, Respondent placed a mechanic's lien on Petitioner's property. (R. pp. 376 – 386) Petitioner continued to refuse to pay Respondent. Instead, Petitioner chose to post a cash bond to remove Respondent's lien from the property. (R. pp. 387 – 391). Respondent filed a lawsuit to foreclose on the mechanic's lien and asserted additional causes of action. (R. pp. 31 – 54). All of Respondent's claims related to the debt Petitioner owed Respondent for labor performed pursuant to the Agreement.

STATEMENT OF THE CASE

This is a breach of contract lawsuit accompanied by a mechanic's lien foreclosure under S.C. Code Ann. § 29-5-10 *et seq.* and demand for payment of attorneys' fees under S.C. Code Ann. § 27-1-15 related to architectural services rendered pursuant to a written agreement dated November 17, 2006 between the Respondent and the Petitioner. (R. pp. 346 – 351). In accordance with the Agreement, Respondent was paid one half of the Agreement amount at the start of the

design process. Respondent invoiced Petitioner for the remaining contract balance, as well as additional agreed upon services pursuant to the Agreement and has not been paid in full. (R. pp. 354 – 365). Petitioner, admittedly, has not paid Respondent any additional money since the initial one half payment in 2007. Respondent filed a mechanic's lien against Petitioner's property on April 13, 2009 and commenced a foreclosure action on the lien on July 8, 2009, asserting claims of foreclosure of mechanic's lien, breach of contract, and quantum meruit/unjust enrichment. (R. pp. 376 – 386 & pp. 31 - 35). Petitioner's subsequent Motion to Dismiss Respondent's Complaint was denied. (R. p. 1). Petitioner counterclaimed against Respondent for slander of title, violation of the Frivolous Claims Sanctions Act (S.C. Code Ann. § 15-36-10), tortious interference with contractual relations with third parties dependent upon performance by Plaintiff, and tortious interference with contractual relations resulting from defective notice of mechanic's lien. (R. pp. 55 – 67).

On March 15, 2010, Respondent, by and through its counsel, made a demand on Petitioner pursuant to S.C. Code Ann. § 27-1-15 asking Petitioner to make a reasonable and fair investigation of Respondent's claim and paying the portion of Respondent's claim Petitioner deemed valid. (R. pp. 366 – 375). Despite admittedly knowing he owed Respondent money, Petitioner refused to make any payment to Respondent, later using the fact that the parties were involved in a lawsuit as his justification for not making payment to Respondent. Respondent then amended its complaint to add a cause of action for failure to comply with S.C. Code Ann. § 27-1-15 and breach of contract accompanied by a fraudulent act. (R. pp. 68 – 93).

Prior to trial, Petitioner filed a Motion for Summary Judgment as to all causes of action asserted by Respondent on January 17, 2011. (R. pp. 449 – 452). Respondent countered with its own Motion for Summary Judgment on January 31, 2011. (R. pp. 453 – 460). At the hearing on

these motions, Petitioner withdrew certain counterclaims and the parties' respective motions for summary judgment were denied. (R. pp. 2 – 3). The parties proceeded to trial on all of Respondent's causes of action and on Petitioner's counterclaims for slander of title, tortious interference with contractual relations with third parties dependent upon performance by Plaintiff, and tortious interference with contractual relations resulting from defective notice of mechanic's lien.

The Honorable William H. Seals, Jr. and the jury heard three (3) full days of testimony from witnesses for both parties. Respondent voluntarily withdrew its claims for breach of contract accompanied by a fraudulent act and quantum meruit. Petitioner voluntarily withdrew its claims for tortious interference with contractual relations with third parties dependent upon performance by Plaintiff and tortious interference with contractual relations resulting from defective notice of mechanic's lien. At the conclusion of Respondent's case in chief and at the conclusion of trial, Judge Seals denied Petitioner's motion for directed verdict as to Respondents causes of action of foreclosure of mechanic's lien and failure to comply with S.C. Code Ann. § 27-1-15. The Court also denied Respondent's motion for directed verdict as to Petitioner's slander of title cause of action. Petitioner failed to seek a directed verdict as to Respondent's breach of contract claim. Respondent's claims of foreclosure of mechanic's lien, breach of contract and failure to comply with S.C. Code Ann. § 27-1-15 were submitted to the jury along with Petitioner's claim for slander of title. After hours of deliberation, the jury returned a unanimous verdict in favor of the Respondent on all three of its causes of action and in favor of the Respondent as to Petitioner's slander of title claim.

Petitioner made a post-trial motion seeking judgment notwithstanding the verdict as a matter of law on Respondent's foreclosure of mechanic's lien claim and as to Respondent's claim

for failure to comply with S.C. Code Ann. § 27-1-15. (R. pp. 522 – 535). Importantly, Petitioner failed to make a post-trial motion as to the verdict rendered on Respondent's breach of contract action. The trial court denied Petitioner's post-trial motion seeking judgment notwithstanding the verdict. (R. pp. 24 – 25). Petitioner then filed a motion pursuant to Rule 59(e) asking the trial court to alter, amend or reconsider its order. (R. pp. 567 – 573). Respondent submitted a written reply to the Court and Petitioner's motion was denied. (R. pp. 26 – 30 & 574 – 575).

Respondent filed a post-trial motion seeking attorneys' fees and costs based on both S.C. Code Ann. § 27-1-15 and the Mechanic's Lien Statute, as well as interest pursuant to S.C. Code Ann. § 34-31-20(A). (R. pp. 465 – 521). The trial court awarded the Respondent attorneys' fees and costs in the amount of $235,030.31 pursuant to S.C. Code Ann. § 27-1-15 and the mechanic's lien statute. (R. pp. 19 – 23). The trial court awarded Respondent pre-judgment interest in the amount of $37,413.92 pursuant to S.C. Code Ann. § 34-31-20(A), making the total judgment ordered against the Petitioner $446,434.76. (R. pp. 19 – 23). Petitioner filed a motion to reconsider the trial court's order awarding interest, fees and costs, which was thereafter denied. (R. pp. 26 – 30).

Petitioner appealed Judge Seals' denial of Petitioner's motion for directed verdict and subsequent post-trial motions on Respondent's causes of action for foreclosure of mechanic's lien and failure to comply with S.C. Code Ann. § 27-1-15 and Judge Seals' post-trial award of interest, fees and costs to Respondent. (R. pp. 598 – 600). After receiving briefs and hearing oral arguments by Counsel, the Court of Appeals issued a unanimous decision determining that Respondent's services fell within the definition of labor contained in Section 29-5-10(a) and affirming the trial court's award of pre-judgment interest and denial of Petitioner's directed verdict motions as to Respondent's Section 27-1-15 and mechanic's lien claims. See Spriggs Grp., P.C.

v. Slivka, 402 S.C. 42, 738 S.E.2d 495, 502 (Ct. App. 2013). The Court of Appeals reversed the trial court's award of attorney's fees and remanded the issue for further consideration. Id. Specifically, the Court of Appeals ordered the trial court to identify the statutory authority for its award and the fees incurred under each statue. Id. Petitioner then submitted a petition to the Court of Appeals for a rehearing, which subsequently was denied. Spriggs Grp., P.C. v. Slivka, Appellate Case No. 2011-204366 (unpublished) (Ct. App. Mar. 22, 2013). Next, Petitioner submitted his Writ of Certiorari and Respondent submitted its Return. This Court granted Petitioner's Writ of Certiorari on July 14, 2014. Petitioner's Brief in Support of Writ of Certiorari, dated August 15, 2014, was then served on Respondent by deposit in U.S. Mail on August 15, 2014, thirty-two (32) days after the date the petition was granted by this Court.[1]

ARGUMENT

I. THE TRIAL COURT AND COURT OF APPEALS CORRECTLY HELD THAT RESPONDENT'S LIEN WAS TIMELY FILED AND THAT THE SERVICES PERFORMED BY RESPONDENT CONSTITUTED LABOR PURSUANT TO THE MEANING OF LABOR IN SOUTH CAROLINA CODE OF LAWS SECTION 29-5-10(A).

In his Writ of Certiorari, Petitioner argues that the portion of S.C. Code Ann § 29-5-10 relied upon by the Court of Appeals in its Order is inapplicable to this case. In his Brief in Support of Writ of Certiorari, Petitioner instead argues that the relevant labor and services Respondent

[1] Respondent submits that Petitioner's Brief in Support of Writ of Certiorari fails to comply with SCACR Rule 242(i) and should thereby be excluded. As detailed in the Statement of the Case, the date the petition was granted by this Court was July 14, 2014. Petitioner's Brief in Support of Writ of Certiorari is dated August 15, 2014 and was served upon Respondent by deposit in U.S. Mail on August 15, 2014, thirty-two (32) days after the petition was granted by this Court. Rule 242(i), SCACR provides:

> Petitioner shall have thirty (30) days from the date the petition is granted to serve a copy of his brief on all parties to the appeal, and file with the Clerk of the Supreme Court fifteen (15) copies of his brief, along with proof of service.

Rule 242(i), SCACR. Accordingly, Petitioner's Brief in Support of Writ of Certiorari was untimely filed and served.

performed for Petitioner are not lienable, and by extension, untimely under South Carolina's Mechanic's Lien Statute. Petitioner's interpretation of S.C. Code Ann. § 29-5-10 under both arguments is misguided because the list of lienable services is expressly neither exclusive nor exhaustive. The statute provides as follows:

> As used in this section, **labor performed or furnished in the erection**, alteration, or repair of any building or structure upon any real estate **includes** the preparation of plans, specifications, and design drawings **and the work of making the real estate suitable as a site for the building or structure.** The work is **considered to include, but not be limited to**, the grading, bulldozing, leveling, excavating, and filling of land (including the furnishing of fill soil), the grading and paving of curbs and sidewalks and all asphalt paving, the construction of ditches and other drainage facilities, and the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes, and the disposal of any construction and demolition debris, as defined in Section 44-96-40(6), including final disposal by a construction and demolition landfill. Any private security guard services provided by any person at the site of the building or structure during its erection, alteration, or repair is considered to be labor performed or furnished within the meaning of this section.

S.C. Code Ann. § 29-5-10 (emphasis added). In this case, the Court of Appeals held:

> We find the construction administration services provided by [Respondent] are labor pursuant to the definition of labor in section 29-5-10(a). While the statute provides labor includes the preparation of plans, specification, and design drawings, it also states labor includes the work of making the real estate suitable as a site for the building or structure. Here [Respondents'] discussions with the plumber and engineer in January 2009 were part of its architectural services overseeing the proper construction of the property.

Spriggs Grp., P.C. v. Slivka, 402 S.C. 42, 738 S.E.2d 495, 501 (Ct. App. 2013), reh'g denied (Mar. 22, 2013).

The statute defines labor broadly as "the work of making the real estate suitable as a site for the building or structure." S.C. Code Ann. § 29-5-10(a). The record fully supports the fact that Respondent's services from January 2009 were labor within the meaning of the statutory language. See (R. p. 199 ln 1 – p. 200 ln 11; p. 230 ln. 19 – p. 232 ln. 3; pp. 354 – 364; pp. 398 –

399; pp. 435 – 436). On that basis, the trial court and Court of Appeals correctly determined that Respondent's services constituted labor under Section 29-5-10(a). Therefore, Petitioner's arguments concerning the applicability of Section 29-5-10(a) and the timeliness of Respondent's lien are not grounds for a new trial or for reversal of the verdict in this case.

A. The evidence presented in this case supports the findings of the trial court and Court of Appeals that Respondent's services constituted labor under South Carolina Code Section 29-5-10 and that Respondent's mechanic's lien was timely filed.

Petitioner argues that no evidence exists that Respondent performed work which entitled it to a lien within ninety days of filing the lien that is the subject of this action. Petitioner asserted several variations of this same argument before the trial court and Court of Appeals but supplements in his Writ of Certiorari and supporting Brief that, as a threshold matter, the services provided by Respondent were allegedly not performed or furnished in the erection, alteration, or repair of any building or structure upon any real estate. In his Brief, Petitioner goes further by suggesting that an architect's labor under Section 29-5-10 may only constitute the preparation of design plans, drawings, and specifications, while ignoring the remaining language of Section 29-5-10. Petitioner's arguments do not align with the statutory language, the findings of the trial court and Court of Appeals or the facts of this case. As a preliminary matter, Respondent would have had no reason to perform such services on Petitioner's behalf if not for the purposes stated in Section 29-5-10.

Respondent presented evidence by way of invoices, timesheets, emails and testimony that Respondent performed work on this project up to January 13, 2009 and then again in May 2009 for 3.5 hours. (R. p. 196 ln. 11 – p. 200 ln. 11; p. 364; pp. 398 – 399; pp. 403 – 436). Petitioner testified that the Respondent was authorized to respond to questions from the field from various

contractors and he admitted that he never told Respondent to stop responding to these questions prior to the labor performed on January 13, 2009. (R. p. 302 ln 24 – p. 303 ln 18). Respondent's mechanic's lien was filed on April 13, 2009, which is within ninety (90) days of January 13, 2009 and prior to the work performed in May 2009. (R. p. 376 ln. 2 – p. 386 ln. 25). Further, Petitioner testified that he asked for the appraisal which Respondent submitted details for in May 2009. (R. pp. 135 – 136). Mr. Spriggs testified that Respondent's final work effort was after the first month of 2009. (R. p. 230 ln. 17 – p. 232 ln. 3).

Both the trial court and the Court of Appeals correctly determined that the evidence supported the conclusion that Respondent's January 2009 services were lienable under § 29-5-10. Because Respondent properly filed the mechanic's lien in accordance with S.C. Code Ann. § 29-5-10 for services furnished in the erection, alteration, and repair of Petitioner's building within ninety days of the last work performed, the lien was timely filed. See Butler Contracting, Inc. v. Court Street, LLC, 369 S.C. 121, 131, 631 S.E.2d 252, 257 (2006) ("The deadline to serve and record a mechanic's lien begins running from the date the last material was furnished or work performed, ***regardless of whether such material or work is insignificant and regardless of whether the final work is delayed***, provided the reason for the delay is not to improperly extend the period for perfecting the lien.") (emphasis added).

In his Brief, Petitioner further suggests that the labor performed by Respondent in January 2009 is not part of the invoices specified in the Respondent's mechanic's lien. Under S.C. Code Ann. § 29-5-100, "no inaccuracy in such statement relating to the property to be covered by the lien, if the property can be reasonably recognized, or ***in stating the amount due for labor*** or materials shall invalidate the proceedings, unless it appear that the person filing the certificate has willfully and knowingly claimed more than is his due." Respondent's mistake in the amount stated

for labor due does not invalidate the proceedings. Mr. Spriggs testified the invoice submitted in November for January's work was part of picking up the construction phase services after the first of the year. (R. p. 261). The only requirement of the law is that the statement of account be filed within ninety (90) days after person seeking a lien ceases to labor on or furnish labor or materials for such building or structure. See Wood v. Hardy, 235 S.C. 131, 110 S.E.2d 157 (1959). Regardless of when the invoices were submitted, the Respondent's timesheets, emails and testimony of both Andy Bozeman and Ken Spriggs showed evidence that Respondent labored on the project within ninety (90) days of the date in which the mechanic's lien was filed on Defendant's property. (R. pp. 403 – 436); (R. pp. 199 – 200). Mr. Spriggs testified that while the dollar value of the labor from January 2009 was not included in the lien amount, the time was expended and documented. (R. p. 270).

Evidence was presented before the trial court that Respondent properly followed the statutory requirements and Petitioner failed to pay for labor and services provided by Respondent within the scope of the mechanic's lien statute. Respondent's cause of action under S.C. Code of Laws § 29-5-10, *et seq.* against Petitioner, as well as Petitioner's counterclaim for slander of title were properly submitted to the jury and a unanimous verdict was returned in favor of Respondent.

B. Construction administration services performed by Respondent are within South Carolina's Mechanic Lien Statue's meaning of labor.

In his Writ of Certiorari and Brief in Support of Writ of Certiorari, Petitioner sets forth the argument he presented to the trial court and Court of Appeals – that South Carolina's Mechanic's lien statute does not provide for any lien rights associated with the performance of construction administration services. Petitioner insinuates that because Section 29-5-10(a) specifies labor to include the preparation of plans, specifications, and design drawings that it somehow excludes

contract administration services from the type of labor for which a lien is allowed. Petitioner likewise chooses to ignore the remaining statutory language including labor as the work of making the real estate suitable as a site for the building or structure. As revealed in Petitioner's Writ and Brief, no South Carolina law supports Petitioner's position that construction administration services are not deemed labor under Section 29-5-10(a).

The language in Section 29-5-10(a) is not exclusive; rather, it is meant to illustrate. In fact, the illustrative list of services that constitute labor even provides "[a]ny private security guard services provided by any person at the site of the building or structure during its erection, alteration, or repair is considered to be labor performed or furnished within the meaning of this section." S.C. Code Ann. 29-5-10(a). Under Petitioner's absurd interpretation of Section 29-5-10(a), security guard services during construction may be deemed services for which a lien is created but not architectural services overseeing and supporting proper construction of a residence. Construction administration supports erection, alteration, or repair of any building based upon plans and specifications, which are specifically identified as labor giving right to a lien. See S.C. Code Ann. § 29-5-10. Construction administration labor is instrumental in delivering an appropriate residence or structure, which the statute includes in its definition of "labor." Id. Indeed, construction administration labor actually supports the erection of a building even more so than the preparation of plans, specifications and design drawings related to the project.

Respondent through the preparation of its design plans and specifications and its construction administration services during construction played an integral part in the erection of Petitioner's main house, garages, stable, potting shed, grotto and conservatory. (R. pp. 339 – 340). The labor provided by Respondent on January 13, 2009 – January 15, 2009 includes design development services during the construction phase of the project to verify and discuss details in

support of construction. (R. p. 364 & pp. 403 – 436). Specifically, labor on January 13, 2009 dealt with Respondent addressing the plumbing subcontractor's request to substitute the size of plumbing lines used on the project. (R. pp. 199 ln 1 – p. 200 ln 11 & p. 230 ln. 19 – p. 231 ln. 19); (R. pp. 398 – 399). In approving the substitution of the plumbing pipe, Mr. Spriggs testified that he had to consider the percentage of toilets, sinks and fixtures being used to analyze whether a reduction in pipe size would be workable. (R. p. 230 ln. 19 – p. 232 ln. 11). Mr. Spriggs then testified that the plumbing engineer was consulted to assess the amount of water flow with the substituted pipe in order to determine whether it was acceptable. (R. p. 232 ln. 12-15).

In a 1918 decision, this Court held that an architect who furnished the plans and specifications and supervised the construction of a building had furnished labor within the meaning of South Carolina's mechanic's lien statute. Williamson v. Hotel Melrose, 110 S.C. 1, 96 S.E.2d 407 (1918). In so holding, the Court ruled that "labor furnished" was not limited to manual labor, but also encompassed mental labor. Id. Respondent is unaware of a single South Carolina case where construction administration services were excluded as the type of labor for which a lien can be filed under South Carolina's Mechanic's Lien Statute.

In his Brief, Petitioner alleges that the statutory language contained in Section 29-5-10(a) negates this Court's holding in Williamson concerning lienable architectural services. Williamson and Section 29-5-10(a) are not in conflict and Petitioner has provided no authority for such a theory. Petitioner's argument once again relies on the flawed premise that the meaning of labor contained in Section 29-5-10(a) is exclusive to the preparation of plans, specifications, and design drawings. Under Petitioner's analysis, any work performed, including services making the real estate suitable as a site for the building or structure, would necessarily require further explicit description to be deemed labor and therefore lienable under Section 29-5-10(a). Such an

interpretation would require an exhaustive statutory listing of possible services that constitute labor under Section 29-5-10(a)'s broad definition of labor as work making the real estate suitable as a site for the building or structure. This interpretation further does not comport with the language of Section 29-5-10(a), which demonstrates the legislature's non-exclusive intent of the statute. Accordingly, the trial court and Court of Appeals properly rejected Petitioner's argument concerning Williamson and determined that Respondent's services made the real estate suitable as a site for the building or structure under Section 29-5-10(a).

Other jurisdictions provide for contract administration services to support a lien and specifically exclude the preparation of plans, specifications and design drawings from the labor for which lien rights arise. In Pennsylvania, an architect had no lien rights for merely drawing plans and specifications for the building but did so for providing construction administration services that furthers the plans and specifications prepared. See Lee v. Du-Rite Products, Co., Inc., 366 Pa. 548, 79 A.2d 218 (1951). South Carolina follows the rule that mechanic's lien statutes, being remedial, are to be given liberal construction and the law is to be construed in a most liberal and comprehensive manner in favor of lien claimants. Clo-Car Trucking Co., Inc v. Cliffure Estates of S.C., 282 S.C. 573, 575, 320 S.E.2d. 51 (Ct. App. 1984). The court can apply the rule of liberal construction to create a lien where one is intended by the legislature. Id. at 576. To infer that South Carolina's legislature would allow a lien for preparation of plans, specifications and design drawings but not the services that further and support the design is contrary to legislative intent, illogical and without merit.

C. Neither the trial court nor the Court of Appeals applied Respondent's May, 2009 services as justification for the filing of Respondent's mechanic lien.

In his Brief, Petitioner revives an argument rejected by the Court of Appeals in claiming

that the trial court erred in holding Respondent's May, 2009 services provided the basis for Respondent to file its lien. As the Court of Appeals aptly observed:

> Slivka argues this work could not support the timeliness of Spriggs' lien because it was allegedly performed after the lien was filed. We find the circuit court did not err because the court's order does not explicitly say, as alleged by Slivka, that the May 2009 services were performed within ninety days of April 13, 2009. While the circuit court order mentions the May 2009 services, it notes these services were performed after the lien was filed. The court also specifically notes the lien was filed within ninety days of January 13, 2009. Accordingly, we affirm the circuit court's denial of Slivka's motion for a directed verdict on Spriggs' mechanic's lien claim.

Spriggs Grp., 402 S.C. at 52, 738 S.E.2d at 501. Because the trial court relied on Respondent's services performed in January, 2009, and not those performed in May, 2009, as Petitioner continues to allege, Petitioner's argument on this issue is without merit.

D. In the event this Court reverses the trial court and Court of Appeals on the issue of Respondent's mechanic's lien or any other issue in this matter, Petitioner is not entitled to a new trial on all matters as a matter of law since Petitioner has not preserved any issues for appeal on the verdict rendered as to Respondent's breach of contract claim.

In the event that this Court alters the findings of the trial court and Court of Appeals on the issue of Respondent's mechanic's lien or any of the other issues identified in Petitioner's Writ of Certiorari, Petitioner is not entitled to a new trial on all matters as he contends in his Brief. The evidence submitted at trial supports Respondent's claim for breach of contract and a unanimous verdict in the amount of $173,990.53 that was returned by the jury. (R. p. 337). The trial court then assessed pre-judgment interest in the amount of $37,413.92 to the verdict based upon Respondent's prayer for pre-judgment interest on the amount claimed due under all causes of action. (R. pp. 14 – 23). Thus, the total verdict as to Respondent's breach of contract action is $211,404.45. Petitioner failed to raise any legal issues in his post-trial motions or on appeal to challenge the verdict as to Respondent's breach of contract theory.

An issue cannot be raised for the first time on appeal, but must have been raised to the trial court and ruled upon by the trial judge to be preserved for appellate review. Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 598 S.E.2d 712 (2004); United Student Aid Funds, Inc. v. South Carolina Dep't of Health and Envt'l Control, 356 S.C. 266, 588 S.E.2d 599 (2003); I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000); Austin v. Specialty Transp. Services, Inc., 358 S.C. 298, 594 S.E.2d 867 (Ct. App.2004); see also Ellie, Inc. v. Miccichi, 358 S.C. 78, 594 S.E.2d 485 (Ct. App.2004) (noting it is axiomatic than an issue cannot be raised for the first time on appeal). An issue is not preserved where the trial court does not explicitly rule on an argument and the appellant does not make a Rule 59(e) motion to alter or amend the judgment. Hawkins v. Mullins, 359 S.C. 497, 597 S.E.2d 897 (Ct.App.2004).

Petitioner cites Section 29-5-10(b) for his argument that this Court should reverse the entire matter, including the verdict in favor of Respondent on its breach of contract claim and associated pre-judgment interest. Section 29-5-10(b) does not support Petitioner's position. Section 29-5-10(b) provides "[f]or purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. One verdict assumes some entitlement to the mechanic's lien and the consideration of compulsory counterclaims." S.C. Code Ann. § 29-5-10(b). Nothing in this subsection entitles Petitioner, as a matter of law, to a new trial on all matters where Petitioner failed to preserve any issue concerning the trial court's verdict in favor of Respondent on its breach of contract claim and award of pre-judgment interest.

A ruling of untimeliness as to Respondent's mechanic's lien does not thwart the jury's finding that the Petitioner breached his contract with Respondent. No legal basis exists to challenge the jury's verdict as to Respondent's breach of contract cause of action and Petitioner has taken no action to do so. The parties do not dispute that a contract existed and the issue as to

whether the contract had been breached was a factual issue for the jury. As a result, the verdict in favor of Respondent as to its breach of contract claim and the court's subsequent award of pre-judgment interest on that amount must not be altered.

II. THE FACTUAL ISSUE OF WHETHER A REASONABLE INVESTIGATION AND UNDISPUTED PAYMENT WAS MADE PURSUANT TO S.C. CODE ANN. § 27-1-15 WAS PROPERLY SUBMITTED TO THE JURY AND A UNANIMOUS VERDICT WAS RETURNED IN FAVOR OF RESPONDENT

In this case, a factual issue existed as to whether a fair and reasonable investigation was made by Petitioner in compliance with S.C. Code Ann. § 27-1-15 and the issue was properly submitted to the jury. Under S.C. Code Ann. § 27-1-15, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, ***or whatever portion of it is determined valid***, within forty-five days from the date of mailing the demand. See S.C. Code Ann. § 27-1-15. If a person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand. Id.

The issue as to whether a reasonable and fair investigation of Respondent's claim has been made and whether a valid portion of the claim was paid in a timely manner ***is a question of fact.*** See Hardaway Concrete Company, Inc. v. Hall Contracting Corporation, 374 S.C. 216, 229, 647 S.E.2d 488, 495 (Ct. App. 2007) (emphasis added) (citing Moore Elec. Supply, Inc. v. Ward, 316 S.C. 367, 450 S.E.2d 96 (Ct. App. 1994). After three full days of listening to the evidence in this case, the jury correctly and unanimously determined that Petitioner had not made a reasonable and fair investigation of the claim and paid the proper portion to Respondent within forty-five days of the date of the demand. (R. p. 337). As the Court of Appeals correctly noted in this case, "[w]e find whether a fair and reasonable investigation of Spriggs' claim has been made and whether a

valid portion of the claim was paid in a timely manner are questions of fact for the jury." Spriggs Grp., 402 S.C. at 53, 738 S.E.2d at 502 (citing Hardaway, 374 S.C. at 229, 647 S.E.2d at 495 (Ct. App. 2007)).

Petitioner admitted at trial that he owed Respondent at least a portion of the remaining contract balance and would have paid it had an invoice been submitted for only the amount he agreed was owed. (R. p. 110 ln. 8-12; p. 114 ln. 1 – p. 115 ln. 3). This fact alone confirms that Petitioner determined at least a portion of the amount owed to Respondent was valid and outstanding as contemplated by Section 27-1-15, but no payment was made within the time limit from the demand. Petitioner admitted at trial that he asked Respondent to design a garden wall, but he has not paid Respondent for it. (R. pp. 111 – 113). Likewise, Petitioner admitted at trial that he agreed to pay Respondent for a two hour construction meeting but has not paid Respondent for the work. (R. p. 113). Petitioner's continual explanation for why he did not pay Respondent was that he had paid his money by depositing funds into escrow with the court. However, Petitioner wrote Respondent a letter in June of 2009, after he had paid money into the Court, indicating he would pay 50% of the $151,000 upon receipt of a corrected invoice. (R. p. 340). Petitioner provides no legal precedent that payment into the court constitutes compliance with S.C. Code Ann § 27-1-15.

Petitioner also provides no support for the argument presented in his Writ of Certiorari, that the Court of Appeals erred in holding that the question of Petitioner's investigation, after receiving the § 27-1-15 demand, was a question of fact for the jury. Instead, Petitioner merely concludes that a jury is not qualified or competent to make such a determination but cannot cite to any legal precedent in support of his position. In addition, Petitioner appears to have abandoned this argument in his Brief in Support of Writ of Certiorari. As the Court of Appeals correctly

observed, Petitioner's argument is inconsistent with South Carolina law and this Court should therefore affirm the trial court and Court of Appeals on the issue Respondent's § 27-1-15 claim.

III. THE COURT OF APPEALS CORRECTLY FOUND THAT PETITIONER ABANDONED HIS ARGUMENTS RELATED TO SOUTH CAROLINA CODE § 27-1-15, NONE OF WHICH ARE SUPPORTED BY SOUTH CAROLINA LAW

Petitioner contends that the arguments he asserted on appeal related to Respondent's § 27-1-15 demand should not have been deemed abandoned on appeal. On appeal, Petitioner argued that submission of Respondent's failure to comply with S.C. Code Ann. § 27-1-15 cause of action to the jury is reversible error for the following three reasons: (1) Respondent failed to present any evidence that Petitioner did not perform a fair and reasonable investigation; (2) because claims were pending between the parties at the time Respondent's demand was made, there is no way to conclude what would have been a "valid" amount to be paid to Respondent; and (3) because Petitioner had paid an amount which exceeded the entire amount of Respondent's claim into the court, his failure to make a payment at the time the statutory demand was made cannot be said to be unreasonable. In his Writ of Certiorari and Brief in Support of Writ of Certiorari, Petitioner has modified these arguments slightly by substituting the first argument with his allegation that good faith discovery in active litigation "as a matter of law" satisfies the reasonable investigation requirement of § 27-1-15. See Writ of Certiorari, pp. 15-16; Brief in Support of Writ of Certiorari, pp. 16-21.

None of Petitioner's arguments concerning § 27-1-15 were supported by legal precedent on appeal and Petitioner presented only conclusory arguments on each theory. As the Court of Appeals notes related to Petitioner's defenses to Respondent's § 27-1-15 cause of action, "Slivka fails to cite any legal precedent to support these arguments. Accordingly, we find these arguments are abandoned on appeal." Spriggs Grp., 402 S.C. at 54, 738 S.E.2d at 502 (citing Bennett v.

Investors Title Ins. Co., 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006) (noting when an appellant fails to cite any supporting authority for his position and makes conclusory arguments, the appellant abandons the issue on appeal).

Furthermore, even if Petitioner's arguments were properly preserved for appeal, they would have been issues of fact which would have been determined by the jury. See Hardaway, 374 S.C. 216, 647 S.E.2d 488 (Ct. App. 2007). The statute requires payment of whatever portion of the claim is deemed proper to be paid within forty-five days. Petitioner admitted he never made payment to Respondent after receipt of the demand despite admitting he owed Respondent a portion of the remaining contract balance as well as for attendance at a construction meeting and design of garden wall. These admissions, along with Petitioner's claim that ongoing litigation and money deposited with the court made it impossible for him to make payment to the Respondent presents an underlying question of fact as to whether Petitioner made a reasonable and fair investigation of Respondent's claim. The jury made a unanimous decision based upon the evidence presented that Petitioner had not made a reasonable and fair investigation and rendered a verdict in favor of Respondent. (R. p. 337). The trial court property submitted Respondent's cause of action for failure to comply with S.C. Code Ann. § 27-1-15 to the jury; therefore, an award of attorney's fees and interest against Respondent was proper.

In his Writ of Certiorari and Brief, the essence of Petitioner's argument is that because the factual basis surrounding Respondent's § 27-1-15 claim and Respondent's purported defenses existed at the time of trial, Respondent should be able to freely raise these issues on appeal, despite his failure to provide any support for these theories at trial or on appeal. Petitioner further argues § 27-1-15 is not intended to award attorneys' fees to a prevailing party, yet ignores the plain language of § 27-1-15 related to liability for attorney's fees from the date of the demand. See S.C.

Code Ann. § 27-1-15. Petitioner again provides no legal precedent for his arguments concerning § 27-1-15. Moreover, § 27-1-15 contains no statutory language or legislative history that supports the desired result of all of Petitioner's arguments – his entitlement to an exemption from following the clear and unambiguous process and required payment detailed in § 27-1-15.

Petitioner argues that because litigation was pending between the parties, through discovery Petitioner was engaged in an investigation of the merits of all claims. In this case, Respondent's demand pursuant to S.C. Code Ann § 27-1-15 was made ten months after the initial lawsuit was filed, but sixteen months prior to trial. (R. pp. 366 – 375) (R. pp. 31 – 54). The Amended Complaint adding Respondent's § 27-1-15 claim was filed less than two months from the date of demand. (R. pp. 68 – 93). In Hardaway, the Plaintiff's claim under S.C. Code Ann. § 27-1-15 was not made known to the Defendant until June 27, 2005 and the trial commenced on August 29, 2005. Hardaway, 374 S.C. at 227, 647 S.E.2d at 493-94. The parties in Hardaway were just as much in the throes of litigation at the time the demand under S.C. Code Ann. § 27-1-15 was made as the parties in this case. The trial court in Hardaway found that not only had the Defendant not made a fair and reasonable investigation, but that despite discovery having been ongoing, the Defendant had intentionally refused to pay Plaintiff its rightful charges in contravention of the agreement between the parties. Id. As in Hardaway, the Petitioner here has failed to make a fair and reasonable investigation and intentionally refused to pay Respondent its rightful charges in contravention of the agreement between the parties. Thus, there is no merit in Petitioner's argument claiming that litigation or discovery provides a shield from his compliance with S.C. Code Ann. § 27-1-15.

In his Writ of Certiorari and Brief in Support of Writ of Certiorari, Petitioner cites Carolina Steel Corporation v. Palmetto Bridge Construction, 444 F.Supp.2d 577 (D.S.C. 2006). In his Brief,

Petitioner uses Carolina Steel to suggest that Respondent may not be entitled to the recovery of fees under the statute. On Appeal, Petitioner relied on Carolina Steel for his argument that discovery in the lawsuit amounts to a fair and reasonable investigation into Respondent's claims under the statute. In Carolina Steel, the Defendant made an investigation of the claims of the Plaintiff prior to Plaintiff's demand under the statute and paid what was considered valid. Id. at 581. This case is distinguishable from Carolina Steel in that Petitioner never paid Respondent either prior to Respondent's demand or after Respondent's demand despite admitting he owed Respondent a portion of the original contract amount and additional services for a construction meeting and design of garden wall. Thus, Carolina Steel does not support any of Petitioner's arguments.

Petitioner has also argued that Respondent failed to present any evidence that Petitioner did not perform a fair and reasonable investigation. "Whether a party's steps taken were "reasonable and fair" is a question of fact." Hardaway, 374 S.C. at 229, 647 S.E.2d at 495. Petitioner testified at trial that at the time he received the demand a lawsuit had been filed and he had hired an attorney to defend the lien and the parties were engaged in discovery. (R. p. 128). As noted, Petitioner made several admissions at trial that he owed Respondent at least a portion of the remaining contract balance and for additional services of a construction meeting and design of a garden wall. The determination of whether discovery in a lawsuit alone is a reasonable and fair investigation is a question of fact to be decided by the finder of fact, which in this case was the jury. In Hardaway, the Appellate Court determined, the evidence, which included several party admissions, supported the trial court's finding that Defendant had acted in bad faith and not made a reasonable and fair investigation. Id. at 231. Likewise, in this case the jury made a unanimous determination that Petitioner had not made a reasonable and fair investigation based upon the

evidence presented at trial.

Petitioner also argues that his posting of a bond to lift Respondent's Mechanic Lien somehow constitutes payment for amounts owed under § 27-1-15. Under Petitioner's interpretation, § 27-1-15 is rendered meaningless. Any party subject to a mechanic's lien could avoid a reasonable and fair investigation of the merits of the claim and payment required under a § 27-1-15 demand by simply issuing a bond and paying money into escrow, thereby forcing the demanding party to pursue admittedly valid amounts owed through litigation. Such a result defeats the purpose and effect of § 27-1-15. Furthermore, the issuance of a bond or payment into escrow does not fulfill the required payment to the party making the demand as specifically required by § 27-1-15. There is no precedent for Petitioner's argument and this Court should not allow such an interpretation of § 27-1-15. See Hinton v. S.C. Dep't of Probation, Parole and Pardon Servs., 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004) (the court should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless).

Petitioner concludes that as a matter of law Petitioner cannot be said to have violated § 27-1-15 for failing to pay what he may not have owed. Petitioner misunderstands the very purpose of § 27-1-15. Petitioner chose not to pay what, at a minimum, he admittedly owed Respondent. Petitioner took the risk of failing to perform a fair and reasonable investigation of Respondent's demand or pay ***any*** amount he admittedly owed to Respondent. Based on these facts, the jury determined that Petitioner failed to make a fair investigation or otherwise unreasonably refused to pay the claim or proper portion of Respondent's demand and Petitioner was determined liable under § 27-1-15 by a jury in accordance with South Carolina law. Accordingly, because Petitioner's conclusory arguments concerning Respondent's § 27-1-15 claim are not supported by legal precedent, conflict with the purpose and statutory language of § 27-1-15, and were not

preserved for appeal, this Court should affirm the trial court and Court of Appeals on the issue of Respondent's § 27-1-15 claim.

IV. THE COURT OF APPEALS CORRECTLY UPHELD THE TRIAL COURT'S RULING THAT RESPONDENT WAS ENTITLED TO RECOVER PARALEGAL FEES AS PART OF ITS ATTORNEY'S FEE AWARD.

On appeal and in his Writ of Certiorari, Petitioner argues that time spent by paralegals is not recoverable in Respondent's claim for attorneys' fees as the prevailing party under the mechanic's lien statute nor under an award pursuant to S.C. Code Ann. § 27-1-15. Petitioner has apparently since abandoned this argument by failing to address it in his Brief in Support of Writ of Certiorari. Nevertheless, in his Writ of Certiorari, Petitioner sets forth no legal basis for this assertion and South Carolina case law precedent is to the contrary. In Charleston Lumber Co. v. Miller Housing Corp., the South Carolina Court of Appeals reviewed an award of attorneys' fees that included paralegal fees in an action upon a promissory note. 318 S.C. 471, 482-83, 458 S.E.2d 431, 438 (Ct. App. 1996); see also McElveen v. McElveen, 332 S.C. 583 (Ct. App. 1998). The Charleston Lumber court ruled that the trial court did not abuse its discretion in awarding the attorney's fees, including the paralegal fees, because the note authorized an award of "reasonable attorney's fees." Id. The language "reasonable attorney's fees" found in the note is the same exact language found in the mechanic's lien statute.

The Affidavits of A. Bright Arial filed in this case show that the paralegal performing work on the file was (1) qualified through education, training or work experience to perform substantive legal work, (2) the substantive legal work was performed at the direction and supervision of an attorney, (3) the nature of the legal work performed, (4) the hourly rate being charged for the legal assistant, and (5) the number of hours expended in the performance of the services by the legal assistant. (R. pp. 593 – 595). The Affidavits of A. Bright Ariail satisfy the five requirements set

forth and noted by Petitioner in Gill Sav. Asso. v. International Supply Co., 759 S.W.2d 697 (Tex. App. Dallas 1998).

In this action, the time spent by paralegals in support of Respondent's counsel represents $29,180.85 of the total attorney's fee award. (R. pp. 593 – 595). Both paralegals, Ms. Skelly and Mrs. Whitsett, are qualified legal professionals with thirty (30) years of combined paralegal experience whose time billed in this matter supported the legal services provided and furthered the prosecution of the case. (R. p. 595 ¶¶ 6-7). In addition, 8.76 hours were billed to Plaintiff at $110.00 per hour for legal research performed by law clerks. (R. pp. 593 – 595). Thus, the trial court's discretion in awarding paralegal fees as part of the overall attorneys' fees award is proper under the mechanic's lien statute and under S.C. Code Ann. § 27-1-15 and correctly upheld by the Court of Appeals.

V. THE COURT OF APPEALS CORRECTLY FOUND THAT THE FEES AWARDED UNDER THE MECHANIC'S LIEN STATUTE ARE NOT LIMITED TO THE AMOUNT OF THE CASH BOND POSTED BY PETITIONER WITH THE CLERK OF COURT.

In his Writ of Certiorari, Petitioner argues that the cash bond posted with the Court pursuant to S.C. Code Ann. § 29-5-110 limited Respondent's total recovery to the amount of the bond. Petitioner provides no legal support for this argument and again abandons this argument by failing to address it in his Brief in Support of Writ of Certiorari. The statutory language quoted by Petitioner in his Writ is misconstrued and nothing within the quoted language limits the judgment to the amount of the cash bond posted. See S.C. Code Ann. § 29-5-110. The statute notes that judgment shall be paid out of the cash deposited. Id. It does not contain language indicating that the cash deposited caps the amount of recovery. See id.

Furthermore, as the Court of Appeals noted, § 29-5-110 relates to the amount of the

judgment and makes no mention of attorney's fees. Spriggs Grp., P.C. v. Slivka, 402 S.C. 42, 738 S.E.2d 495, 502 (Ct. App. 2013). Under South Carolina's Mechanic's Lien Statute, the cost which may arise in enforcing or defending against the lien, including a reasonable attorney's fee, may be recoverable by the prevailing party ***up to the amount of the lien***. See S.C. Code Ann. § 29-5-10 (emphasis added). The express language of the statute indicates that a party is entitled to a judgment up to twice the amount of the lien.

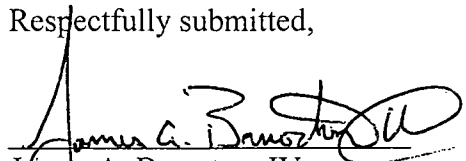
Petitioner's filing of a bond pursuant to S.C. Code Ann. § 29-5-110 does not void the express language of the South Carolina Mechanic's Lien Statute. Under Petitioner's theory, a claimant would only be entitled to attorney's fees in the amount of one third of the lien amount under all circumstances.[2] This theory is clearly in contradiction to the legislative intent of the attorney's fees provision within the mechanic's lien statute. Petitioner's interpretation of S.C. Code Ann. § 29-5-110 is inconsistent with the express language of S.C. Code Ann. § 29-5-10. Thus, the Court of Appeals was correct in finding that Respondent's recovery under the mechanic's lien statute should not be reduced to the amount of the cash bond.

CONCLUSION

For the above mentioned reasons, this Court should affirm the trial court's verdict in favor of Respondent and the Court of Appeals Order filed on February 6, 2013.

[2] Pursuant to S.C. Code Ann. § 29-5-110, the amount of the cash bond includes the amount of the lien plus one-third.

Respectfully submitted,



James A. Bruorton, IV
Timothy J.W. Muller
Rosen, Rosen & Hagood, LLC
151 Meeting St., Suite 400
Charleston, SC 29401
(843) 577-6726
Attorneys for Respondent

September 12, 2014
Charleston, SC

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Case No. 2009-CP-15-0595

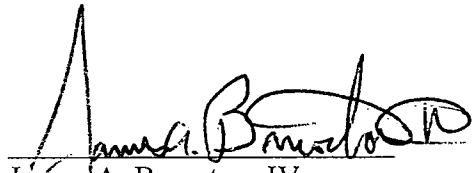
THE SPRIGGS GROUP, P.C.,..... Respondent,

v.

GENE R. SLIVKA, ... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondents complies with Rule 211(b), SCACR.



James A. Bruorton, IV
Timothy J.W. Muller
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
SEP 16 2014
S.C. Supreme Court

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Case No. 2009-CP-15-0595

THE SPRIGGS GROUP, P.C.,..... Respondent,

v.

GENE R. SLIVKA, ... Appellant.

PROOF OF SERVICE

I certify that I have served Respondent's Brief by depositing a copy of it in the United States Mail, postage prepaid, on September 12, 2014, addressed to their attorney of record, Robert T. Lyles, Jr., Esquire, Lyles & Lyles, LLC, 342 East Bay Street, Post Office Box 773, Charleston, South Carolina, 29402.

September 12, 2014

James A. Bruorton, IV
Timothy J.W. Muller
Rosen Hagood
PO Box 893
Charleston, SC 29402
(843) 577-6726
cbruorton@rrhlawfirm.com
tmuller@rrhlawfirm.com
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM COLLETON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Case No. 2009-CP-15-0595

THE SPRIGGS GROUP, P.C.,..... Respondent,

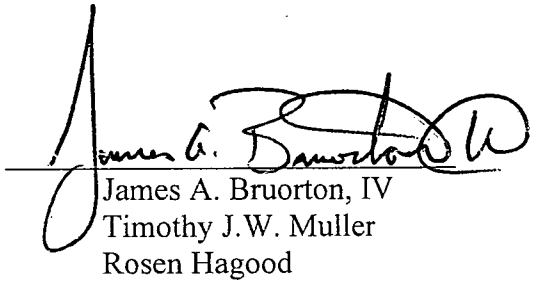
v.

GENE R. SLIVKA, ... Appellant.

PROOF OF SERVICE

I certify that I have served Respondent's Brief by depositing a copy of it in the United States Mail, postage prepaid, on September 12, 2014, addressed to their attorney of record, Robert T. Lyles, Jr., Esquire, Lyles & Lyles, LLC, 342 East Bay Street, Post Office Box 773, Charleston, South Carolina, 29402.

September 12, 2014



James A. Bruorton, IV
Timothy J.W. Muller
Rosen Hagood
PO Box 893
Charleston, SC 29402
(843) 577-6726
cbruorton@rrhlawfirm.com
tmuller@rrhlawfirm.com
Attorneys for Respondent