

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.

RECORD ON APPEAL, VOLUME 2

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INDEX

Order Denying Defendant's Motion to Dismiss filed March 2, 2010	1
Order denying Motion for Summary Judgment dated April 12, 2011	2
Order Denying Defendant's Motion for JNOV and/or For New Trial, filed on September 7, 2011.	4
Order for Award of Interest, Fees, and Costs initially filed on September 7, 2011	14
Order for Award of Interest, Fees, and Costs v and filed on October 3, 2011.	19
Order denying Defendant's Motion to Alter/Amend	24
Court's Order Denying Defendant's Motion for JNOV and/or for New Trial on November 22, 2011.	
Order Denying Defendant's Rule 59 Motion Regarding	26
Award of Interest, Fees and Costs to Plaintiff filed on November 22, 2011.	
Complaint filed July 8, 2009.	31
Answer and Counterclaim filed September 10, 2009.	55
Amended Complaint filed May 5, 2010.	68
Answer and Counterclaim filed May 18, 2010.	94
Transcript of Proceedings	
Volume 1	105
Pre-Trial Motions	106
Gene Raymond Slivka	
Direct by Ms. Ariail	109
Cross by Mr. Lyles	125
Redirect by Ms. Ariail	129

Thomas Anderson Bozeman

Direct by Ms. Ariail	138
Cross by Mr. Lyles	201
Redirect by Ms. Ariail	205

Charles Kenneth Spriggs

Direct by Ms. Ariail	206
Cross by Mr. Lyles	267

Volume 2	271
----------------	-----

Charles Kenneth Spriggs

Cross by Mr. Lyles (Continued)	272
Redirect by Ms. Ariail	278

Myles Ivan Glick

Direct by Mr. Bruorton	279
------------------------------	-----

Motions	285
---------------	-----

Gene Raymond Slivka

Direct by Mr. Lyles	298
Cross by Ms. Ariail	301

Harvey Anthony Scott

Direct by Mr. Lyles	309
Cross by Ms. Ariail	312

Post-Trial Motions	314
--------------------------	-----

Closing Arguments by Plaintiff	320
--------------------------------------	-----

Judge's Charge to the Jury	321
Theume Transcript of Proceedings	332
Verdict.....	337
Plaintiff Exhibits	
2 (Oversized, Main House Site Plan, Sheet A01)	339
3 (Oversized, Main House Site Plan, Sheet A02)	340
6 (Slivka Hand Drawn Sketches)	341
7 (Proposal dated November 27, 2006)	346
8 (Letter dated February 9, 2009 with invoices)	354
8a (Invoice 0609-6 dated May 21, 2009)	364
8b (Invoice 0609-7 dated November 16, 2009)	365
9 (S.C. Code Ann. § 27-1-15 Letter)	366
10 (Mechanic's Lien)	376
11 (Bond to discharge Mechanic's Lien)	387
13 (Oversized, Main House, Basement Plan)	392
14 (Oversized, Main House Plans)	393
15 (Oversized, Permit Plan Set)	394
16 (Oversized, Garage Building Plans)	395
17 (Oversized, Potting Shed Plans)	396
18 (Oversized, Garden Wall and Stair Plans)	397
19 (Email to Kayton Smith)	398
20 (Letter dated October 5, 2006)	400

21 (Timesheets)	403
Defendant's Exhibit	
3 (Handwritten Letter dated June 4, 2009)	437
Plaintiff's Motion to Strike Affirmative Defenses and Counterclaim dated June 23, 2010.	438
Defendant's Motion for Summary Judgment dated January 27, 2011.	449
Plaintiff's Motion for Summary Judgment dated January 31, 2011.	453
Defendant's Offer of Settlement dated July 1, 2011.	461
Plaintiff's Motion to Strike Offer dated July 11, 2011.	462
Plaintiff's Motion for Interest, Fees and Costs dated July 27, 2011 with affidavits and exhibits.	465
Defendant's Motion Notwithstanding the Verdict and/or for a New Trial Absolute or Nisi Remittitur dated August 1, 2011.	522
Defendant's Memorandum in Opposition to Plaintiff's Motion for Attorneys' Fees and Costs dated August 11, 2011 with exhibits.	536
Plaintiff's Memorandum in Opposition to Defendant's Motion for Judgment Notwithstanding the Verdict and/or for a New Trial filed August 12, 2011.	555
Defendant's Rule 59(e) Motion dated September 16, 2011.	567
Plaintiff's Letter to Court Enclosing Letter to Judge Seals dated September 22, 2011.	574
Defendant's Rule 59(e) Motion dated October 7, 2011.	576

Plaintiff's Memorandum in Opposition to	586
Defendant's Motion for Judgment Notwithstanding the Verdict and/or for New Trial with affidavit and exhibits dated October 20, 2011	

Defendant's Notice of Appeal	598
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cc: Jennifer Spear
 Keenan McCubed.

June 4, 2009

RECEIVED

JUN 08 2009

THE SPRIGGS GROUP, P.C.

Gene Sluka
 6938 Whitehall Rd
 Greenville, SC
 29616

Ken Spriggs
 Spriggs Group
 P.O. Box 10062
 Savannah, Ga
 31412

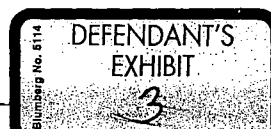
Dear Mr Spriggs,

You are more outrageous than even I imagined. You were advised on December 10, 2008 that I was done fooling around trying to get you to complete your work and on December 11th I picked up whatever incomplete and inadequate work you had. I have ever spoken to you again except on one phone conversation to refute our attempt to charge me beyond our contract price of \$151,000 and to advise you that I would not pay until I received a corrected invoice for the other 50% of the \$151,000. We are now in a lawsuit. We are in a lawsuit over this very kind of billing issue. Why would you think you would provide services to someone who was a stranger to you and then bill me. Why would you have even done the work. I never requested these services, I never requested Compass South to request them on my behalf (see attached letter to Compass South) and therefore I suggest you send a bill to them. Since I certainly owe you nothing.

It is reasonable to say that the poor service from your company is disgusting enough, but your delusional billing is an outrage.

Disgusted and Outraged
 Gene Sluka

200002



STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)
)
THE SPRIGGS GROUP, PC,)
)
)
Plaintiff,)
vs.)
)
GENE R. SLIVKA,)
)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-15-595

**PLAINTIFF'S MOTION TO
STRIKE AFFIRMATIVE
DEFENSES AND COUNTERCLAIMS
FROM DEFENDANT'S ANSWER
AND COUNTERCLAIMS TO
AMENDED COMPLAINT**

2010 JUN 23 PM 12:09
PATRICIA S. GOWRIE
COLLETON COUNTY
COMMON PLEAS

Pursuant to South Carolina Rule of Civil Procedure 12(f), Plaintiff, The Spriggs Group, PC, by and through its counsel, hereby moves this Court for an Order striking certain insufficient, immaterial and redundant affirmative defenses and counterclaims from Defendant's Answer and Counterclaims to the Amended Complaint.

BACKGROUND

Plaintiff, The Spriggs Group, PC ("Plaintiff"), is a professional corporation organized under the laws of the state of Georgia and licensed to do business in the state of South Carolina. Defendant Gene R. Slivka ("Defendant") is, upon information and belief, a resident of the state of South Carolina. The action herein arose out of Defendant's failure and/or refusal to pay Plaintiff for architectural and engineering design services it provided to Defendant for improvements on property known as New Julianton Plantation (also known as the Myrtle Grove Plantation or Myrtle Grove Tract) in Colleton County, South Carolina (the "Project").

LEGAL ANALYSIS

Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order

stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter. Rule 12, SCRPC (2009). Pursuant to this rule, Plaintiff hereby asserts the following affirmative defenses and counterclaims are defective and should be stricken from Defendant's Answer and Counterclaims to Plaintiff's Amended Complaint:

1. Defendant's second affirmative defense asserting statute of limitations and/or repose pertaining to Plaintiff's mechanic's lien. Defendant claims that Plaintiff "judicially admitted" that it ended its work on the project on or before December 31, 2008 and argues that Plaintiff's notice of mechanic's lien in this matter was untimely. This claim has already been addressed and dismissed by the Court. Defendant presented this same argument as the basis for his motion to dismiss and for dissolution of Plaintiff's mechanic's lien, a copy of which is attached hereto as Exhibit A. After considering Defendant's argument and hearing oral arguments on this issue, Defendant's motion was denied by Judge J. Ernest Kinard, Jr. on March 2, 2010. A copy of Judge Kinard's Order is attached hereto as Exhibit B. Contrary to Defendant's allegations and as already observed by the Court, the filed affidavit of Thomas A. Bozeman evidences that work was in fact performed on the project through January 13, 2009, within the required ninety (90) days from the filing of Plaintiff's mechanic's lien and within the applicable statute of limitations. In recognition of this fact, Plaintiff's mechanic's lien was properly upheld and Defendant's motion to dismiss and for dissolution of mechanic's lien was thereby denied. Therefore, because Defendant's affirmative defense only attempts to renew the same allegations previously dismissed by this Court, this affirmative defense should be stricken as a redundant matter and insufficient defense.

2. Defendant's third affirmative defense asserting a material defect in notice of mechanic's lien. Defendant alleges that Plaintiff's claim of right under its mechanic's lien are

barred by the requirements of S.C. Code Ann. Title 29, Chapter 5, including but not limited to § 29-5-90 and § 29-5-120. These statutes require, *inter alia*, that the lien be filed and served within ninety days of the last date of work performed and that the related foreclosure action be filed within six months of the last date of work performed. This matter was likewise addressed by Defendant's motion to dismiss and for dissolution of Plaintiff's mechanic's lien, Exhibit A, and denied by the Order of Judge J. Ernest Kinard, Jr., Exhibit B, whereby the Court dismissed Defendant's motion to dismiss and for dissolution of mechanic's lien based on these same alleged statutory deficiencies. The filed affidavit of Thomas A. Bozeman again establishes that Defendant's notice argument is without merit. Accordingly, because this matter was previously addressed and dismissed by the Court, Defendant's third affirmative defense should be stricken as a redundant matter and an insufficient defense to Plaintiff's Amended Complaint.

3. Defendant's fourth affirmative defense asserting a frivolous lien. Defendant alleges that Plaintiff's mechanic's lien is frivolous because of purported non-compliance with S.C. Code Ann. § 29-5-15. This statutory section went into effect on June 2, 2009, *after* the filing of Plaintiff's mechanic's lien in this matter, and this statute was not retroactive as adopted. Therefore, § 29-5-15 is wholly inapplicable to Plaintiff's mechanic's lien in this lawsuit. For this reason, Defendant's affirmative defense alleging a frivolous lien based the requirements of § 29-5-15 is simply inaccurate, constitutes an insufficient affirmative defense, and should be stricken as a response to Plaintiff's Amended Complaint.

4. Defendant's fifth affirmative defense asserting payment. In this affirmative defense, Defendant claims that Plaintiff "judicially admits" that a previous payment to Plaintiff was made in the amount of \$76,210.00 for work performed and that this should constitute a complete bar to some or all of the claims contained in Plaintiff's Amended Complaint. These

funds are not sought in the action by Plaintiff therefore are completely immaterial to the allegations contained in Plaintiff's Amended Complaint. Because the payment of these funds is immaterial, Defendant's affirmative defense asserting payment for this amount should be deemed an immaterial matter, an insufficient defense, and should be stricken by this Court.

5. Defendant's sixth affirmative defense asserting waiver. In this defense, Defendant alleges that descriptions of certain documents and statements contained in exhibits to Plaintiff's Amended Complaint constitute "judicial admissions" for purposes of waiver, thereby precluding Plaintiff or this Court from interpreting these items in any other manner. For example, Defendant argues that reference to the "contract" as a "proposal" in an exhibit, despite also being identified as a "contract" in Plaintiff's Amended Complaint, serves to unequivocally prove the document is a "proposal" and precludes any other interpretation of this document. While facts contained in a pleading may constitute an evidentiary admission, no law supports Defendant's onerous position here. Defendant's oppressive analysis of waiver appears to substitute the situation here for the effect of a party's "admission" pursuant to the available discovery methods contained in Rule 36 of the South Carolina Rules of Civil Procedure. A contravening reference to a document or statement in an exhibit is not the same as an admission pursuant to a request to admit. Defendant's allegation of a waiver defense hinges on this incorrect analysis. Accordingly, Defendant's affirmative defense of waiver is insufficient and should be stricken as a response to Plaintiff's Amended Complaint.

6. Defendant's seventh affirmative defense asserting modification/ratification. Defendant again argues that Plaintiff's claims should be barred because of a "judicial admissions" made in Plaintiff's Amended Complaint. Defendant extracts individual words from Plaintiff's Amended Complaint, labels them admissions and sweepingly concludes that these

"judicial admissions" preclude any other manner of interpretation by Plaintiff or this Court. Plaintiff's Amended Complaint must be considered as a whole and cannot be dissected word by word and used in a piecemeal fashion by Defendant to support a modification/ratification defense. For the same reasons as described above, Defendant's defense is unsupported, insufficient, and should be stricken by this Court.

7. Defendant's eighth affirmative defense asserting the Statute of Frauds, S.C. Code Ann. § 32-3-10. In this defense, Defendant alleges that because the contracted work was not completed within a year that Plaintiff's claims are barred by the Statute of Frauds, codified as S.C. Code Ann. § 32-3-10. The contract at issue here could have been completed within a year but was in fact delayed because of Defendant's conduct. South Carolina law holds that contracts that could have been performed within a year are not subject to the Statute of Frauds. See, e.g., Florence Printing Co. v. Parnell, 178 S.C. 119, 182 S.E. 313 (1935) ("This statute does not apply except in cases where the contract cannot possibly be performed within the year."). Because the contract at issue could have been performed within one year, Defendant's affirmative defense asserting the Statute of Frauds is insufficient and should be stricken by this Court.

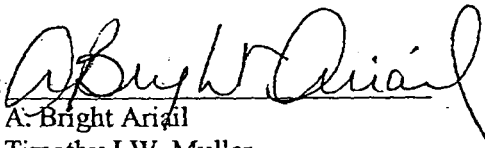
8. Defendant's ninth affirmative defense asserting slander of title. Defendant premises this defense again on his allegation that Plaintiff's mechanic's lien was defective because it was not timely filed and was not filed on the proper real property. As previously detailed, this Court dismissed Defendant's claims relating to alleged deficiencies in Plaintiff's mechanic's lien by Order of Judge J. Ernest Kinard, Jr., Exhibit B. Because this mechanic's lien was properly filed, Plaintiff was entitled to publish its lien and Defendant's defense alleging slander of title on this basis is insufficient. Further, this matter was previously addressed and dismissed by the Court and should likewise be stricken by this Court.

9. Defendant's second counterclaim alleges a violation of the Frivolous Claims Sanctions Act, S.C. Code § 15-36-10. Defendant's counterclaim is insufficient and incomplete as alleged. In his counterclaim, Defendant merely acknowledges that Plaintiff's Complaint and Amended Complaint were signed and litigation has been maintained. Defendant wholly fails to identify any basis how this lawsuit violates the Frivolous Claims Sanctions Act. Accordingly, Defendant's second counterclaim is clearly insufficient to constitute a defense to Plaintiff's Amended Complaint and should be stricken pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure.

10. Defendant's fourth counterclaim alleges a tortious interference with contractual relationships with third parties resulting from an alleged defective notice in Plaintiff's mechanic's lien. In support of this counterclaim, Defendant argues that Plaintiff "falsely" attached its notice of mechanic's lien to Defendant's tract of land. This counterclaim, also presented in Defendant's motion to dismiss and for dissolution of Plaintiff's mechanic's lien, Exhibit A, has been addressed and dismissed by the Order of Judge J. Ernest Kinard, Jr, Exhibit B. Because this matter was previously addressed and dismissed by the Court, Defendant's fourth counterclaim should be stricken as a redundant matter and an insufficient defense.

WHEREFORE, Plaintiff respectfully moves this Court for an Order striking the above-referenced affirmative answers and counterclaims of Defendant and awarding it such other and further relief as this Court may deem just and proper including fees and costs related to this Motion as many of these items have previously been addressed by this Court.

ROSEN, ROSEN & HAGOOD, LLC

By: 
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Timothy J.W. Muller
P.O. Box 893
Charleston, SC 29401
(843) 577-6726

ATTORNEY(S) FOR PLAINTIFF
THE SPRIGGS GROUP, PC

Charleston, South Carolina
June 21, 2010

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC

☐ Plaintiff

v.

GENE R. SLIVKA

☒ Defendant.

IN THE COURT OF COMMON PLEAS

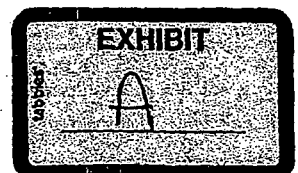
CASE NO.
2009-CP-15-595

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: A. Bright Ariail, Bar No. 69570 Address: P.O. Box 893, Charleston, SC 29402 phone: 843-577-6726 fax: 843-724-8036 e-mail: bariail@rrhlawfirm.com other:		Defendant's Attorney: J. Reaves Mcleod, Bar No. 70283 Address: P.O. Box 230, Walterboro, SC 29488 phone: 843-549-2516 fax: 843-549-2306 e-mail: reavesmcleod22@hotmail.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		Date submitted: 12-14-09	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE: _____	
		CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

PATRICIA J. GRANT
COLLETON COUNTY
COMMON PLEAS

2009 DEC 16 AM 11:24



STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-15-595

THE SPRIGGS GROUP, PC.,

Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

DEFENDANT'S NOTICE OF MOTION
AND MOTION TO DISMISS AND FOR
DISSOLUTION OF MECHANIC'S LIEN

PATRICIA H. GRANT
COLLETON COUNTY
COMMON PLEAS
2009 DECEMBER
AM 11:24

TO THE ABOVE NAMED PLAINTIFF AND ITS ATTORNEY A. BRIGHT ARIAIL:

YOU WILL PLEASE TAKE NOTICE that the undersigned, attorney for the Defendant, will move before the presiding judge of the Fourteenth Judicial Circuit, at the Colleton County Courthouse in Walterboro, South Carolina, on the tenth (10th) day after service hereof, or as soon as counsel may be heard or at such time and place as may be set by the Court, for an Order granting the following relief:

1. Dissolving the Mechanic's Lien filed by the Plaintiff herein; returning the cash bond deposited by Defendant with the Colleton County Clerk of Court to the Defendant with interest added; and, further, Defendant requests that the Plaintiff be ordered to pay the attorney's fees expended by Defendant in connection with defending against said Mechanic's Lien, as provided by law. Defendant seeks to have said Mechanic's Lien dissolved for the following:

a. The Mechanic's Lien was not filed or served within the time required by law;

b. The Complaint for Foreclosure of Mechanic's Lien was not filed or served within the time required by law; and

c. The Mechanic's Lien was filed against a tract of land owned by the Defendant that did not encompass the tract on which the work

was performed and the Complaint for Foreclosure of Mechanic's Lien was also filed on a tract of land that did not encompass the tract on which the work was performed. Further, the Mechanic's Lien and Complaint specifically excluded the tract of land on which the work was performed.

2. Dismissing the Plaintiff's Complaint for Foreclosure of Mechanic's Lien pursuant to SCRCP Rule 12(b)6 for the following reasons:

a. The Mechanic's Lien was not filed or served within the time required by law;

b. The Complaint for Foreclosure of Mechanic's Lien was not filed or served within the time required by law; and

c. The Mechanic's Lien was filed against a tract of land owned by the Defendant that did not encompass the tract on which the work was performed and the Complaint for Foreclosure of Mechanic's Lien was also filed on a tract of land that did not encompass the tract on which the work was performed. Further, the Mechanic's Lien and Complaint specifically excluded the tract of land on which the work was performed.

Dec 14, 2009
Walterboro, South Carolina


J. Reaves McLeod
Attorneys for Defendant
Post Office Drawer 230
Walterboro, SC 29488
(843) 549-2516
(843) 549-2306 facsimile
ATTORNEY FOR DEFENDANT
GENE R. SLIVKA

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2009CP1500595

2010 MAR -2 PM 2:10

PAID
COLLETON COUNTY
COMMON PLEAS

Spriggs Group Pc vs. Gene R Slivka

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

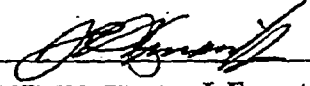
☐ See attached order;

☐ Statement of Judgment by the Court:

The Motion to Strike filed 1/12/10 is withdrawn per J. Reaves McLeod. The Motion to Dismiss filed 12/16/09 is respectfully denied.

Dated at Walterboro, South Carolina, this 2 day of March 2010.

Court Reporter:


PRESIDING JUDGE - J. Ernest Kinard Jr.

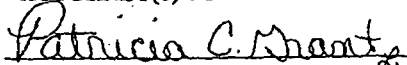
This judgment was entered on the 2d day of March 2010, and a copy mailed first class this 2d day of March 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Anne Bright Ariail Rosen Rosen & Hagood,
LLC P.O. Box 893 Charleston, SC 29402

J. Reaves McLeod McLeod Fraser & Cone
P.O. Box 230 Walterboro, SC 29488

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

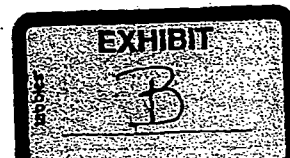


Patricia C Grant - Clerk of Court

SCRPC APP-24/FORM 4

CPFORM4M

RECEIVED
MAR 03 2010



STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

THE SPRIGGS GROUP, P.C.

Plaintiffs,

vs.

GENE R. SLIVKA,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-15-0595

**NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 FEB - 1 AM 10:27

PLEASE TAKE NOTICE the Defendant Gene R. Slivka, by and through its undersigned attorneys, will move before this Honorable Court, ten (10) days after the date hereof, or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 56(b), *SCRCP*, granting summary judgment and/or partial summary judgment as causes of action asserted by the Plaintiffs. This motion is made on the grounds that there are no genuine issues of material fact and the defendant is entitled to a judgment as a matter of law, specifically as follows:

1. The Plaintiff may not recover compensation over and above the basic fee set forth in the terms of the November 27, 2006, Proposal for Services for New Residence and Outbuildings at Julianton Plantation (referred to for the purposes of this motion as "the contract"), which provided that certain specific services were to be compensated on an hourly. Where a contract provides that additional services are to be compensated on an hourly basis above and beyond the compensation for basic services under a contract, the architect's failure to keep any documentation of the time for these additional services performed precludes his recovery. In the matter at hand: (1) the Plaintiff failed to keep time records that itemized the tasks and time to be billed on an hourly basis; (2) the Plaintiff issued no invoices for any

services to be billed on an hourly basis over the approximately two year period of the project; (3) Plaintiff admits that the invoices for services which he contends are billable on an hourly basis are not calculated on an hourly basis; and (4) Plaintiff admits that at no time did they inform the Defendant that services they were providing were not included in the basic services fee under the contract. Therefore Plaintiff has failed to present any evidence to support its claim for payment for hourly services under the terms of its own contract. Therefore Plaintiff is only entitled to the balance owed for the basic services under the flat fee contract as a matter of law.

2. The Plaintiff cannot establish breach of contract given that the Defendant agreed to pay the contract amount.
3. Because the Plaintiff failed to first request and receive approval from the owner for compensation before proceeding with performing services that it now contends are outside of the scope of the contract and in failing to periodically invoice for said hourly services over a two-year period, it cannot establish that Defendant has breached the contract in refusing to pay for services that Plaintiff now contends are over and above the contract amount.
4. Plaintiff cannot establish any fraudulent act on the part of the Defendant and therefore as a matter of law the Plaintiff cannot establish that Defendant has breached any contract with fraudulent intent.
5. The Plaintiff is not entitled to quantum meruit as there is an agreement between the parties that provided a method of compensation for the work that is the subject of this action.
6. The Plaintiff is not entitled to quantum meruit or any other equitable claim as the Plaintiff has unclean hands.

7. Plaintiff cannot establish entitlement to recovery under S.C. Code Ann § 27-1-15, as on March 15, 2010, when it made its demand under the statute: (1) the entire amount of the fees in dispute was on deposit with the court as Plaintiff had filed a mechanic's lien and action to foreclose the same in 2009; and (2) on that date (and still to this date) the Plaintiff has not produced any time records that itemize the tasks and time for which it seeks to be compensated as additional services under its contract. Therefore, Plaintiff has presented no evidence that Defendant unreasonably refused to pay any portion of the claim and cannot establish that the Defendant has failed to make a fair investigation of the claim.

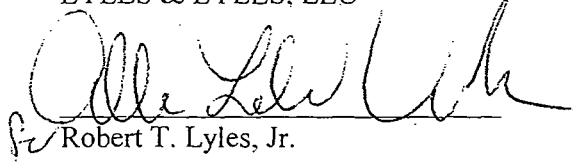
8. Plaintiff failed to timely serve and file the mechanic's lien in this matter.

This motion is supported by the pleadings, discovery, and deposition testimony which is on file and is of record.

[SIGNATURE PAGE FOLLOWS]

Dated this 17th day January, 2011.

LYLES & LYLES, LLC



Robert T. Lyles, Jr.

P.O. Box 773

Charleston, SC 29402

(843) 577-7730

rtl@lylesfirm.com

ATTORNEY FOR DEFENDANT,
GENE R. SLIVKA

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC,
Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2009-CP-15-0595

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR
SUMMARY JUDGMENT**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JAN 31 PM 1:01

Pursuant to South Carolina Rule of Civil Procedure 56(a), Plaintiff, The Spriggs Group PC, by and through its counsel, hereby moves this Court for an Order granting summary judgment and/or partial summary judgment as to causes of action asserted in the above captioned case. This motion is made on the grounds that there are no genuine issues of material fact and the Plaintiff is entitled to a judgment as a matter of law, specifically as follows:

1. The Plaintiff is entitled to recovery under S.C. Code Ann § 27-1-15 as a matter of law. Pursuant to S.C. Code Ann § 27-1-15, Plaintiff demanded that the Defendant make a reasonable and fair investigation of the merits of a demand for monies due and to pay it, or whatever portion of it is determined as valid, within forty five days of the mailing of the demand (which was made on March 15, 2010). Defendant freely admits that he owes the remaining balance of the original agreement of \$76,210 and that he owes Plaintiff for design of the garden step and a two hour construction meeting. Defendant further admits that he did not perform an investigation of the merits of the demand nor has he paid the monies he freely admits are due. As such, the Plaintiff is entitled to payment of the monies that Defendant freely admits are due and to recovery under S.C. Code

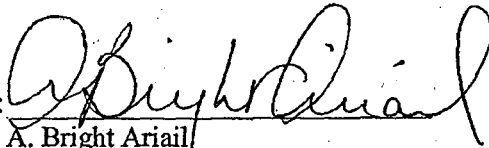
Ann. § 27-1-15 as a matter of law which allows for the recovery of attorneys' fees and interest at the judgment rate from the date of the demand. See Affidavit in Support of Plaintiff's Motion for Summary Judgment p. 1.

2. Defendant may not recover its counterclaim for slander of title. Defendant has admitted that the Plaintiff performed work on the property named in the Notice of Mechanic's Lien. As such, Defendant is not entitled to a claim for slander of title as a matter of law. See Affidavit in Support of Plaintiff's Motion to Strike Affirmative Defenses and Counterclaims From Defendant's Answer and Counterclaims to Amended Complaint pp. 7 - 10.
3. Defendant may not recover its counterclaim for violation of the Frivolous Claims Sanctions Action, S.C. Code Ann. § 15-36-10 as his counterclaim is defective on its face as has not complied with the express terms of that statute. As such, Defendant is not entitled to a claim for violation of the Frivolous Claims Sanctions Act as a matter of law.
4. Defendant may not recover its counterclaim for tortuous interference with contractual relationships dependant upon performance by Plaintiff. Defendant can not establish failure of performance by Plaintiff which has interfered with other contracts between Slivka and third parties. As such, Defendant is not entitled to a claim for tortuous interference with contractual relationships dependant upon performance by Plaintiff as a matter of law.
5. Defendant may not recover its counterclaim for tortuous interference with contractual relationships resulting from a defective Notice of Mechanic's Lien. Again, Defendant has admitted that the Plaintiff performed work on the property

named in the Notice of Mechanic's Lien. As such, Defendant is not entitled to a claim for tortious interference with contractual relationships resulting from a defective Notice of Mechanic's Lien as a matter of law. See Affidavit in Support of Plaintiff's Motion to Strike Affirmative Defenses and Counterclaims From Defendant's Answer and Counterclaims to Amended Complaint pp. 7 – 10.

This motion is supported by the pleadings, affidavits, discovery, and deposition testimony which are on file and of record.

ROSEN, ROSEN & HAGOOD, LLC

By: 

A. Bright Ariail
Timothy J.W. Muller
P. O. Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR PLAINTIFF
THE SPRIGGS GROUP, PC

Charleston, South Carolina

January 31, 2011.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-15-0595

**AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JAN 31 3PM 1:07

PERSONALLY APPEARED before me, A. Bright Ariail, who being duly sworn does
state as follows under the penalty of perjury:

- 1) I am over the age of eighteen years old and am competent in all other respects to execute this Affidavit.
- 2) I have personal knowledge of all matters set forth herein.
- 3) I am an attorney with the law firm of Rosen, Rosen & Hagood, LLC, and am one of the attorneys representing the Plaintiff in this matter.
- 4) In Plaintiff's Motion for Summary Judgment (hereinafter "Motion"), Plaintiff asserts that it is entitled to recovery under S.C. Code Ann § 27-1-15 as a matter of law.. See Motion p. 1.
- 5) By letter of march 15, 2010, I made a proper demand upon Mr. Slivka and his counsel of record pursuant to the requirements of S.C. Code § 27-1-15.
- 6) As grounds for recovery under S.C. Code Ann. § 27-1-15, Plaintiff asserts that Defendant freely admits that he owes the remaining balance of the original agreement of \$76,210 and that he owes Plaintiff for design of the garden step and a two hour construction

meeting. Defendant further admits that he did not perform an investigation of the merits of the demand as required by S.C. Code Ann § 27-1-15 nor has he paid the monies he freely admits are due.

- 7) In further support of Plaintiff's recovery under S.C. Code Ann § 27-1-15 as a matter of law, I submit the following deposition testimony of Defendant which establishes that Defendant admits that he did not perform an investigation of the merits of the demand nor has he paid the monies he freely admits are due. Further, Defendant freely admits that he owes the remaining balance of the original agreement of \$76,210 and that he owes Plaintiff for design of the garden step and a two hour construction meeting.

15 BY MS. ARIAIL:

16 Q. Exhibit 10 is a letter dated March 15 of
17 2010 from me to you and to Mr. McLeod, your prior
18 counsel. Did you receive this document?

19 A. Yes, ma'am.

20 Q. Do you understand this document, the letter?

21 A. I think so.

22 Q. The second paragraph says, "Demands for
23 payment of monies due is hereby made pursuant to SC Code
24 Annotated 27-1-15, which requires the person upon whom
25 the claim is made to make a reasonable and fair

Page 153

1 investigation of the merits of the claim and to pay it
2 or whatever portion of it is determined is valid within
3 45 days from the date of the mailing of this demand."

4 Did you make an investigation of the merits
5 of the claim that's attached or that's included in this
6 letter?

7 A. I don't know.

8 Q. You don't know if you made any type of
9 investigation?

10 A. I don't remember.

11 Q. This was March of this year. Have you made
12 any payments to the Spriggs Group after March 15 of
13 2010?

14 A. I placed \$300,000 into the courts.
15 Q. But you've made no payments directly to the
16 Spriggs Group?
17 A. No, ma'am.
18 Q. Is there a portion of money under your
19 agreement with the Spriggs Group that is due them?
20 A. Yes.
21 Q. And how much is that?
22 A. I don't know the exact amount.
23 Q. What would it include?
24 A. It would certainly include the balance of
25 the contractual agreement, which would be the \$76,000,

Page 154

1 and I don't know if I'm entitled to any kind of offsets
2 for some of the construction issues or not.
3 Q. Have you made a claim for any of the -- for
4 offset of any of the construction issues?
5 A. My attorney would have to answer that for
6 you, because I don't know. I hope he filed a
7 counterclaim.
8 Q. The next sentence reads, "Failure to make a
9 proper investigation or to pay it or whatever portion of
10 it is determined is valid may make you liable for
11 attorney's fees and interest." You are aware of that?
12 A. Yes, ma'am.

Page 155

And then that left the final total at 152,420.
11 And then the agreement was that I would pay half of it
12 up front. So half of that was the 76,210.

Page 57

Tell

13 me, I've heard about there's a garden stair?
14 A. Yes, ma'am.
15 Q. Tell me what that is. I'm having a hard time
16 visualizing that.
17 A. The house is at this level, and the garden is
18 at this level, and it's a step to connect the two.
19 Q. So it's actually a step between? It follows

20 the contour of the land to get you from the level of the
21 garden to the house?
22 A. Yes, ma'am.
23 Q. Who designed that?
24 A. Andy Bozeman.
25 Q. For the Spriggs Group?

Page 27

1 A. Yes, ma'am.
2 Q. Was that part of the original agreement?
3 A. No, ma'am.
4 Q. Was that a change order to the original
5 agreement?
6 A. No, ma'am. I specifically approached them,
7 asked them how much it would cost to do that and if they
8 would do that, and they said they would and told me they
9 would bill me by the hour for it, and spent seven hours
10 on it.
11 Q. So you approved the seven hours?
12 A. Yes, ma'am.
13 Q. Have you paid them for that?
14 A. I asked them for a bill twice. They never
15 presented one to me.

Page 28

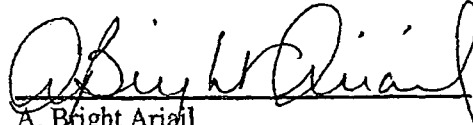
3 Q. And why haven't you made a final payment to
4 the Spriggs Group?
5 A. I asked him to send me an invoice for the
6 balance that I owed them, which was the \$75,000, and
7 would have paid that had he sent me that, along with an
8 invoice for the staircase, and there was a two-hour
9 construction meeting that I had also agreed to pay for.

Page 38

3 Q. Was there someone there from the Spriggs
4 Group?
5 A. Yes, ma'am.
6 Q. Who was there for them?
7 A. I don't remember for sure, but I think that
8 both Ken and Andy were there.

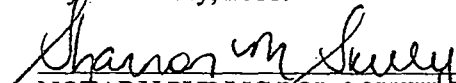
Page 39

FURTHER AFFIANT SAYETH NOT.


A. Bright Ariail

SWORN to before me this 31st

day of January, 2011.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/20/13



STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-15-0595

THE SPRIGGS GROUP, P.C.

Plaintiffs,

vs.

GENE R. SLIVKA,

Defendants.

**OFFER PURSUANT TO
S.C. CODE ANN. § 29-5-20**

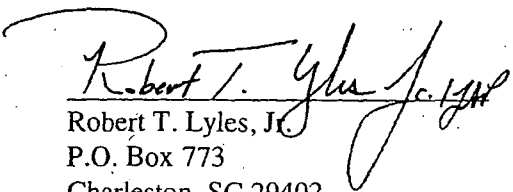
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JUL 11 PM 12:13

YOU WILL PLEASE TAKE NOTICE that Pursuant to South Carolina Code Annotated
29-5-20 *et seq.*, GENE. R. SLIVKA hereby submits an Offer of Settlement in the amount of One
Hundred Thousand and no/100 Dollars (\$100,000.00), exclusive of interest and costs, for the
settlement of the mechanic's lien claimed by Plaintiff and any other claims asserted by Plaintiff
and/or Defendant in the above matter.

If this Offer of Settlement is not timely accepted, Defendant shall seek to recover from
Plaintiff all amounts allowable by law.

Dated this 30th day of June, 2011.

LYLES & LYLES, LLC


Robert T. Lyles, Jr.
P.O. Box 773
Charleston, SC 29402
(843) 577-7730

ATTORNEY FOR PLAINTIFF,
GENE R. SLIVKA

Charleston, South Carolina

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-15-595

Plaintiff,

VS.

GENE R. SLIVKA,

Defendant.

**PLAINTIFF'S MOTION TO STRIKE
DEFENDANT'S OFFER OF
SETTLEMENT**

RECEIVED
JUL 13 PM 3:20
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

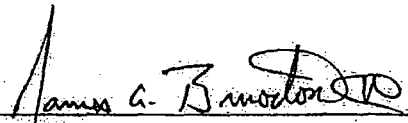
Plaintiff's basis for its motion is that Defendant's Offer of Settlement is not a proper offer pursuant to S.C. Code Ann. § 29-2-10 or § 29-5-20 as cited by Defendant. Specifically, Defendant submitted an "Offer of Settlement in the amount of One Hundred Thousand and no/100 Dollars (\$100,000.00), exclusive of interest and costs, for the settlement of the mechanic's lien claimed by Plaintiff *and any other claims asserted by Plaintiff and/or Defendant in the above matter.*" A copy of Defendant's Offer is attached hereto as Exhibit A. Plaintiff's Complaint alleges causes of action for Foreclosure of Mechanic's Lien, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Quantum Meruit and Violation of S.C. Code Ann. § 27-1-15. Defendant makes no distinction in its Offer of Settlement as to what amount is intended for resolution of the lien claim versus Plaintiff's other causes of action.

Pursuant to S.C. Code Ann. § 29-2-10 or § 29-5-20, “[t]he offer shall state that it is made under this section and specify the amount, exclusive of interest and costs, which the party

serving the offer is willing to agree constitutes a settlement of the lien." Defendant's offer is not in strict compliance with the statute as it fails to indicate what the Defendant is willing to agree constitutes a settlement of the lien. Without such information, it is impossible to make a determination of what amount of Defendant's offer should be used in determining the prevailing party under Plaintiff's mechanic's lien claim.

For the reasons set forth above, Defendant's Offer of Settlement should be stricken and made inapplicable.

ROSEN, ROSEN & HAGOOD, LLC

By: 

A. Bright Ariail
James A. Bruorton IV
Timothy J.W. Muller
134 Meeting Street, Suite 200
Charleston, South Carolina 29401
Ph: (843) 577-6726
Fax: (843) 724-8036

ATTORNEYS FOR PLAINTIFFS

July 11, 2011
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, P.C.

Plaintiffs,

vs.

GENE R. SLIVKA,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-15-0595

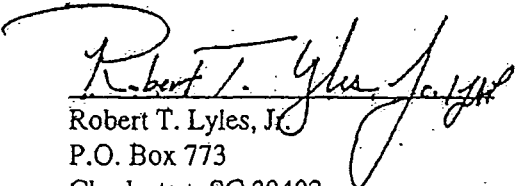
) OFFER PURSUANT TO
) S.C. CODE ANN. § 29-5-20
)
)
)
)
)

YOU WILL PLEASE TAKE NOTICE that Pursuant to South Carolina Code Annotated § 29-5-20 *et seq.*, GENE R. SLIVKA hereby submits an Offer of Settlement in the amount of One Hundred Thousand and no/100 Dollars (\$100,000.00), exclusive of interest and costs, for the settlement of the mechanic's lien claimed by Plaintiff and any other claims asserted by Plaintiff and/or Defendant in the above matter.

If this Offer of Settlement is not timely accepted, Defendant shall seek to recover from Plaintiff all amounts allowable by law.

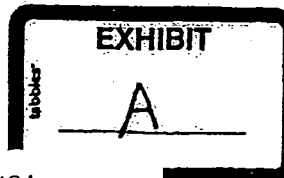
Dated this 30th day of June, 2011.

LYLES & LYLES, LLC


Robert T. Lyles, Jr.
P.O. Box 773
Charleston, SC 29402
(843) 577-7730

ATTORNEY FOR PLAINTIFF,
GENE R. SLIVKA

Charleston, South Carolina



) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2009-CP-15-595

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PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

This matter is before the Court upon the Motion of Plaintiff, The Spriggs Group, PC, for interests, costs and attorney's fees to be added to the verdict rendered on July 22, 2011 against Defendant Gene R. Slivka, pursuant to Rule 54 of the South Carolina Rules of Civil Procedure. The Plaintiff was allowed ten (10) days from the conclusion of trial to present this motion per Judge Seals' instructions from the bench.

Plaintiff obtained a jury verdict against the Defendant Gene R. Slivka in the amount of \$173,990.53 on its claims for foreclosure of mechanic's lien, breach of contract and failure to comply with South Carolina Code Ann. § 27-1-15. Pursuant to S.C. Code Ann. § 29-5-10, et seq., the costs which may arise in enforcing or defending against the lien, including a reasonable attorney's fee, may be recoverable by the prevailing party. See S.C. Code Ann. § 29-5-10. The fee must be determined by the court in which the action is brought but the fee and court costs may not exceed the amount of the lien. *Id.*

For purposes of the award of attorney's fees, the party whose offer is closer to the verdict reached is considered the prevailing party in the action. *Id.* In this case, Plaintiff's offer of \$198,834.53 is closer to the verdict reached than Defendant's offer of \$100,000.00. Thus, the

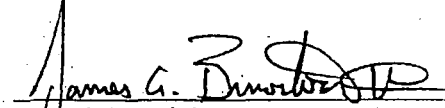
Plaintiff is considered the prevailing party in the action and can be awarded attorney's fees and costs pursuant to the statute. The determination as to the amount of attorney fees which should be awarded under the mechanic's lien statute is addressed to the sound discretion of the trial court and its decision will not be disturbed absent abuse of discretion. See Seckinger v. Vessel Excalibur, 326 S.C. 382, 483 S.E.2d 775 (S.C. App. 1997).

In addition to the attorney's fees and costs allowable under the verdict on Plaintiff's foreclosure of mechanic's lien claim, the verdict reached as to Defendant's failure to comply with S.C. Code Ann. § 27-1-15 also provides for a recovery of attorney's fees and interest at the judgment rate on the money claimed due. See S.C. Code Ann. § 27-1-15. The express provisions of S.C. Code Ann. § 27-1-15 does not limit the recovery of attorney's fees to a maximum amount like the mechanic's lien statute. Id. In this case, the allowable attorney's fees and costs should not be capped by the amount of the mechanic's lien, because the verdict reached allows for attorney's fees for Defendant's failure to comply with S.C. Code Ann. § 27-1-15.

Plaintiff's claim for interest, attorney's fees and costs are supported by the Affidavit of A. Bright Ariail, Esq., attached hereto as **Exhibit 1**, and the Affidavit of N. Keith Emge, Jr., Esq. attached hereto as **Exhibit 2**, and being filed contemporaneously herewith. Plaintiff respectfully request that an award of \$235,030.31 for attorney's fees and costs, plus interest in the amount of \$37,413.92 be added to the verdict reached and a total judgment of \$446,434.76 be entered against the Defendant in favor of the Plaintiff.

Respectfully submitted by,

ROSEN, ROSEN & HAGOOD, LLC

A handwritten signature in dark ink, appearing to read "James A. Bruorton, IV", is written over a horizontal line.

A. Bright Ariail
James A. Bruorton, IV
134 Meeting Street, Suite 200
P. O. Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
July 26, 2011

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.

Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2009-CP-15-0595

AFFIDAVIT OF A. BRIGHT ARIAIL

PERSONALLY APPEARED before me, A. Bright Ariail, who being duly sworn does
state as follows:

1. I am an attorney for the Plaintiff in the above captioned action.
2. I am member of the firm of Rosen, Rosen & Hagood, LLC, and have been a member of the South Carolina Bar since 2001.
3. The Plaintiff has entered into a fee agreement with the law firm of Rosen, Rosen & Hagood, LLC. Under the terms of this agreement, the Plaintiff is charged an hourly rate of \$250.00 per hour for my time in the case. Other members of my staff bill at their normal hourly rates, including James A. Bruorton IV who assisted with the trial of this matter at \$210.00 per hour. I keep itemized billing and accounting records for every case.
4. Rosen, Rosen & Hagood, LLC's representation of Plaintiff began on April 10, 2009.
5. Since the inception of this case, Defendant Gene R. Slivka by and through his first legal counsel created unnecessary delays, filed meritless motions, and forced Plaintiff to incur additional attorney's fees and costs above and beyond what would otherwise have been incurred on a case like this. For example, Defendant filed a Motion to Dismiss specifically related to his

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JUN 27 AM 11:22

EXHIBIT

position that the property upon which the Plaintiff performed its work was all contained within a five acre area expressly excluded from the property description contained in the mechanic's lien. Plaintiff incurred additional costs for new title work, additional preparation of survey information by the defendant's original surveyor, and a lengthy Memorandum in Opposition to the Motion to Dismiss. When the Court heard the Motion to Dismiss, which required travel on the part of Plaintiff's attorney, the Defendant did not argue this issue as a basis for his motion.

The Defendant filed a motion to strike affidavits of Kenneth Spriggs, Thomas Bozeman (an employee of the Plaintiff) and David Youmans (a surveyor that had performed some work for Defendant) based on an allegation that they were improper because they did not include the wording "upon the threat of perjury" based on an article contained in The South Carolina Lawyer. Two of the three affidavits were amended and refiled (Mr. Spriggs affidavit could not be refiled as it would then be untimely as it supported the mechanic's lien). At the hearing on Defendant's motion to strike, these motions were withdrawn.

The Defendant filed a Motion to Quash a subpoena issued for financial records in the possession of the Defendant's banker. Before filing the motion, the Defendant's first attorney sent the banker a letter informing him not to release the documents because "his client had instructed him to object to the production of the documents". Additional time was expended by plaintiff's counsel communicating with the subpoenaed party and defending a motion to quash that had no legal basis.

The Defendant was uncooperative regarding his deposition, postponing it on several occasions, and once indicating at the last minute that he would not appear after several requests by him that it again be postponed. In response, Plaintiff was forced to file a Motion to Compel and/or Motion for Sanctions and Finding of Contempt (See Exhibit A, without Exhibits)

concerning Defendant's deposition. Contained within an Order to be Relieved as Counsel issued after the hearing on August 12, 2010, the Court ordered "...due to concerns raised during the hearing by A. Bright Ariail, attorney for the Plaintiff, about the timing of the Scheduling Order previously entered into by the parties and the completion of discovery, counsel for the Plaintiff may move for appropriate remedies if Defendant Gene R. Slivka fails to appear for depositions without adequate reasons or if discovery is hindered." (See **Exhibit B** for Order filed August 25, 2010.)

Finally, the defendant filed several unfounded affirmative defenses which required additional fees and costs to be expended on behalf of the plaintiff. Specifically, he filed a violation of the Frivolous Claims Sanction Act which expressly requires the party alleging its violation to notify the court and all parties of the conduct that constitutes a violation of its provision and that it explain the basis for the potential sanction. The defendant's claim was general in nature with no specific allegations. Defendant also plead an affirmative defense based on S.C. Code Ann. § 29-5-15 which was not in effect at the time that the mechanic's lien was filed and therefore did not apply. Defendant later withdrew these motions after Plaintiff had incurred the cost of filing a motion to strike.

6. At the trial of this case, Plaintiff obtained a verdict against Defendant on its claim for foreclosure of mechanic's lien under the South Carolina Mechanic's Lien Statute, S.C. Code Ann. § 29-5-10, et. seq, Breach of Contract and failure to comply with South Carolina Code Ann. § 27-1-15. Both S.C. Code Ann. § 29-5-10 and S.C Code Ann. § 27-1-15 provider for a recovery of attorney's fees and costs.

7. Under the South Carolina Mechanic's Lien statute, the costs which may arise in enforcing or defending against the lien, including a reasonable attorney's fee, may be

recoverable by the prevailing party.

8. Defendant filed an Offer of Settlement in the amount of \$100,000.00, which is made exclusive of interest and costs, under the Mechanic's Lien Statute. Plaintiff did not file an Offer of Settlement; therefore, the amount prayed for in Plaintiff's complaint, \$198,834.53, is considered Plaintiff's final Offer of Settlement. For purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. The party whose offer is closer to the verdict reached is considered the prevailing party in the action. Thus, Plaintiff is considered the prevailing party by virtue of the \$173,990.53 verdict being closer to Plaintiff's prayed mechanic's lien amount of \$198,834.53 than Defendant's \$100,000.00 Offer of Settlement. Under South Carolina's Mechanic's Lien Statute, the fees and court costs may not exceed the amount of the lien.

9. Under S.C. Code Ann. § 27-1-15, the Defendant is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand pursuant to the statute, which was March 15, 2010, as set forth by Plaintiff's Trial Exhibit 9. Under S.C. Code Ann. § 27-1-15 there is no restriction to the fees and court costs so long as they are determined as reasonable by the Court.

10. Plaintiff has incurred legal fees in this action to date in the total amount of \$207,639.60. Attached hereto as Exhibit C are the billing records for this case.

11. I am also estimating that James A. Bruorton IV will spend an additional 7 hours preparing Plaintiff's Petition for Attorney's Fees, Costs and Interest, supporting affidavits and responding to Defendant's Post Trial Motions. The additional fees for legal services are estimated to be \$1,470.00.

12. Plaintiff has been billed legal costs by my firm through the trial of this action in

the total amount of \$11,100.84. Attached hereto as Exhibit D are the cost records for this case. Plaintiff will also incur additional legal costs for the expert services of Myles Glick in the amount of \$13,150.00. A copy of Mr. Glick's invoice for architectural consulting services is attached as Exhibit E. In addition, Plaintiff has paid legal costs directly to vendors for copy, scanning, title work and surveying in the amount of \$1,669.87. A copy of these invoices is attached as Exhibit F.

13. Plaintiff's Complaint prays for prejudgment interest on the money owed by Defendant from the date the money became due, which would be February 9, 2009 as indicated in Plaintiff's Trial Exhibit 8. Also, S.C. Code Ann. § 27-1-15 allows for a recovery of interest at the judgment rate from the date of the March 15, 2010 demand. Interest on the \$173,990.53 judgment at 8 3/4 % since February 9, 2009 is \$37,413.92.

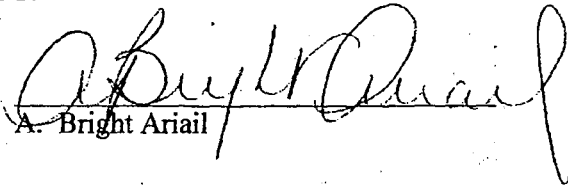
14. I am respectfully requesting that the Court award attorney's fees in the amount of \$209,109.60 to the Plaintiff as the prevailing party on its foreclosure of mechanic's lien pursuant to the S.C. Mechanic's Lien statute and pursuant to S.C. Code Ann. § 27-1-15.

15. I am respectfully requesting that the Court award costs in the amount of \$25,920.71 to the Plaintiff as the prevailing party on its foreclosure of mechanic's lien, pursuant to the S.C. Mechanic's Lien statute.

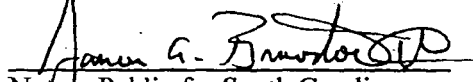
16. I am respectfully requesting that the Court award interest on the money awarded Plaintiff on the verdict reached in the amount of \$37,413.92 in accordance with S.C. Code Ann. § 34-31-20.

17. The total award sought for attorney's fees and cost is \$235,030.31, plus interest in the amount of \$37,413.92, to be added to the verdict amount of \$173,990.53 for a total judgment in favor of Plaintiff against the Defendant in the amount of \$446,434.76.

FURTHER AFFIANT SAYETH NOT.


A. Bright Ariail

SWORN to before me this
26th day of July, 2011.


James G. Brewster

Notary Public for South Carolina

My commission expires: 9/22/13

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)
)
THE SPRIGGS GROUP, PC.)
)
Plaintiff,)
)
vs.)
)
GENE R. SLIVKA,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

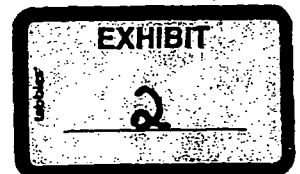
CASE NO: 2009-CP-15-0595

AFFIDAVIT OF N. KEITH EMGE JR.

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JUL 27 AM 11:22

PERSONALLY APPEARED before me, N. Keith Emge, Jr., who being duly sworn, do state as follows:

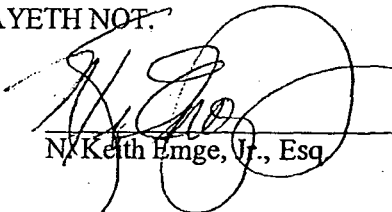
1. I am partner with the law firm Carlock Copeland & Stair, LLP located at 40 Calhoun Street, Suite 400, Charleston, South Carolina.
2. I obtained an undergraduate degree from Duke University in 1985 and a Juris Doctorate degree from the University of Virginia in 1990.
3. I am admitted to practice before all state and federal courts in South Carolina and I am a member of the Virginia Bar. I served as a law clerk to the Honorable Falcon B. Hawkins, Chief Judge, U.S. District Court, District of South Carolina from 1990-1992.
4. In my 19 years of legal practice I have handled a wide variety of legal cases, including complex and class action litigation. My practice focuses on construction and business litigation, including representation of several architectural and engineering firms. I am also a certified mediator for both the State and Federal Courts in South Carolina.
5. I am aware of the hourly fees charged by the law firm of Rosen, Rosen & Hagood, LLC in its representation of The Spriggs Group, PC in the above referenced matter. Specifically, I am aware of the following hourly rates being charged:



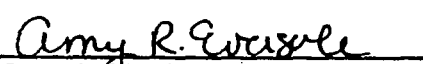
- A. Bright Ariail (Member) - \$250.00 per hour
- James A. Bruorton IV (Member) - \$210.00 per hour
- R. Britton Kelly (Associate) - \$190.00 per hour
- Timothy J. Muller (Associate) - \$175.00 per hour
- Shannon S. Skelly (Paralegal) - \$125.00 per hour
- Law clerks - \$110.00 per hour

6. The hourly rates charged by the law firm of Rosen, Rosen & Hagood, LLC are reasonable and comparable to similar rates charged for legal representation of architects and construction clients within the Charleston County Bar.

7. FURTHER AFFIANT SAYETH NOT.


N. Keith Emge, Jr., Esq

SWORN to before me this
26th day of July, 2011.


Notary Public for South Carolina
My commission expires: March 16, 2017

Embossed Hereon Is My
State Of South Carolina Notary Public Seal
My Commission Expires March 16, 2017
AMY R. EVERSOLE

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
THE SPRIGGS GROUP, PC,)
Plaintiff,)
vs.)
GENE R. SLIVKA,)
Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2009-CP-15-0595

**PLAINTIFF'S MOTION TO
COMPEL AND/OR MOTION
FOR SANCTIONS AND FINDING
OF CONTEMPT**

(Expedited Hearing Requested)

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2010 AUG -6 PM 1:29

TO: J. REAVES McLEOD, ESQUIRE, ATTORNEY FOR DEFENDANT GENE R. SLIVKA:

YOU WILL PLEASE TAKE NOTICE that Plaintiff, The Spriggs Group, PC ("Spriggs"), moves, pursuant to Rules 37(d) and 45 of the South Carolina Rules of Civil Procedure for an Order compelling Defendant, Gene R. Slivka ("Slivka") to comply with a Notice of Deposition and Subpoena served upon him by A. Bright Ariail, counsel for The Spriggs Group, PC, or in the alternative, for an Order sanctioning Mr. McLeod and his client, Gene R. Slivka, and finding them in contempt of this court for failing to comply with the subpoena. The grounds for this Motion are as follows:

(1) Spriggs, through their undersigned counsel, served a Notice of Deposition and Subpoena upon J. Reaves McLeod, Esquire, counsel for Slivka, on July 22, 2010, seeking the deposition of Slivka pursuant to Rule 30 of the South Carolina Rules of Civil Procedure on August 3, 2010. *See Exhibit "A" attached hereto.*

(2) On July 26, 2010 the administrative assistant for Slivka's counsel contacted Counsel for Spriggs advising that Mr. McLeod holds Court as a Magistrate in Colleton County on Tuesdays of every week and would not be able to accommodate the start time of 10 a.m. as



set forth in the Notice of Deposition and Subpoena dated July 22, 2010 (aforementioned Exhibit "A"). Subsequently, a series of telephone calls and e-mail communications took place between the assistants to both counsel in an attempt to secure a date and time for Slivka's deposition that suited all parties. Eventually, August 9, 2010 was deemed an acceptable date for the deposition by all. *See Exhibit "B" attached hereto.*

(3) On July 27, 2010, Spriggs, through their undersigned counsel, served an Amended Notice of Deposition and Amended Subpoena upon J. Reaves McLeod, Esquire, counsel for Slivka, seeking the deposition of Slivka pursuant to Rule 30 of the South Carolina Rules of Civil Procedure on August 9, 2010. *See Exhibit "C" attached hereto.*

(4) On July 29, 2010 Slivka's Counsel requested that the Defendant's deposition scheduled for August 9, 2010 be postponed as Slivka was seeking new counsel for the defense of this matter. *See Exhibit "D" attached hereto.*

(5) Pursuant to the Consent Scheduling Order filed in this case on June 4, 2010, discovery must be complete on or before September 2, 2010 and the case must be mediated on or before September 13, 2010. *See Exhibit "E" attached hereto.*

(6) In response and by letter of August 2, 2010, Counsel for Spriggs indicated that she would agree to postpone the deposition if a Consent Order of Substitution and a revised Consent Scheduling Order were executed by the parties and signed by the Administrative Judge for this circuit extending the deadlines for discovery, mediation and trial of this matter by thirty days. *See Exhibit "F" attached hereto.*

(7) A series of letters and e-mail communications ensued between Counsel for Spriggs and Counsel for Slivka regarding the request to postpone Slivka's deposition. *See Exhibit "G" attached hereto.*

(8) By email dated August 4, 2010, Counsel for Slivka indicated that defendant Slivka was not available for his deposition noticed for August 9, 2010 as he was going on vacation. *See Exhibit "H" attached hereto.*

WHEREFORE, Plaintiff Spriggs requests the following relief:

(a) That the Court issue an Order compelling Defendant Slivka to comply with the Subpoena served upon him on July 27, 2010 through Defendant's counsel, or, in the alternative, that the Court issue an Order sanctioning Mr. McLeod and his client, and finding them in contempt of this Court for failing to obey the subpoena;

(b) That the Court issue an Order granting Plaintiff Spriggs all relief sought in it's Amended Complaint;

(c) That the Court award Spriggs the fees and costs incurred in filing, bringing, preparing and arguing this motion;

That the Court award such other and further relief as the Court deems appropriate.

ROSEN, ROSEN & HAGOOD, LLC

By 

A. Bright Ariail
Timothy J.W. Muller
P.O. Box 893
Charleston, SC 29401
(843) 577-6726

ATTORNEY(S) FOR PLAINTIFF
THE SPRIGGS GROUP, PC

Charleston, South Carolina
August 6, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
THE SPRIGGS GROUP, PC,)
Plaintiff,)
vs.)
GENE R. SLIVKA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-15-0595

ORDER TO BE RELIEVED AS COUNSEL

FILED
COLLETON COUNTY
COMMON PLEAS
2010 AUG 25 PM 1:02

THIS MATTER comes before the Court on the motion of J. Reaves McLeod, attorney for Gene R. Slivka, to be relieved as counsel of record for Defendant Gene R. Slivka; such hearing having been held before me on August 12, 2010 with J. Reaves McLeod and A. Bright Ariail, attorney for the Plaintiff, being present. Defendant Gene R. Slivka was notified of the time, date and place of hearing but was not present for the hearing.

#1
PMB
IT APPEARING that J. Reaves McLeod and his client, Defendant Gene R. Slivka, are not able to effectively communicate and J. Reaves McLeod is unable to provide his client with effective legal counsel and, therefore, J. Reaves McLeod moves to be relieved as counsel for Gene R. Slivka. Therefore,

IT IS HEREBY ORDERED that J. Reaves McLeod be relieved as counsel for Defendant Gene R. Slivka. Defendant Gene R. Slivka is hereby given thirty (30) days from the date of this hearing to obtain new counsel, to be on or before September 10, 2010. The Defendant shall, in writing, advise the Clerk of Court and attorney for the Plaintiff of his new counsel and the address of his new counsel by September 10, 2010. Should Defendant Gene R. Slivka fail to obtain new counsel within the thirty (30) days, the case will proceed with Defendant Gene R. Slivka being *Pro Se*.

EXHIBIT

B

IT IS FURTHER ORDERED that, due to concerns raised during the hearing by A. Bright Arial, attorney for the Plaintiff, about the timing of the Scheduling Order previously entered into by the parties and the completion of discovery, counsel for the Plaintiff may move for appropriate remedies if Defendant Gene R. Slivka fails to appear for depositions without adequate reasons or if discovery is hindered. Counsel for the Plaintiff may amend the standing Scheduling Order if it appears that the Defendant Gene R. Slivka's new counsel, or lack of counsel, prevents compliance with the Scheduling Order.

IT IS FURTHER ORDERED that J. Reaves McLeod serve upon Defendant Gene R. Slivka and counsel for the Plaintiff the Order to be Relieved as Counsel and he shall file the proof of service with the Clerk of Court.

IT IS SO ORDERED.

Walterboro, South Carolina
August 23, 2010

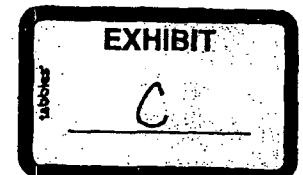

The Honorable Perry M. Buckner
Administrative Judge
Fourteenth Judicial Circuit

I consent:


Gene R. Slivka
6938 Whitehall Road
Green Pond, SC 29446

Detail Fee Transaction File List
Rosen, Rosen & Hagood, LLC
Client ID 9016.000 The Spriggs Group, PC, C. Kenneth Spriggs

Client	Trans Date	Tmkr	H P	Rate	Hours Worked	Hours to Bill	Amount	Description
9016	10/07/2009	HBH	A	325.00	0.50	0.50	162.50	Conference with ABA to review plats received from client.
9016	11/09/2009	HBH	A	325.00	0.40	0.40	130.00	Conference with ABA re: lien issues.
Subtotal for Timekeeper HB				Billable	0.90	0.90	292.50	H. Brewton Hagood
9016	11/03/2009	DGJ	A	250.00	0.50	0.50	125.00	Conference with ABA; review file
9016	11/09/2009	DGJ	A	250.00	0.50	0.50	125.00	Conference with ABA; review plats
Subtotal for Timekeeper DG				Billable	1.00	1.00	250.00	David G. Jennings
9016	06/27/2011	CAB	A	210.00	0.60	0.60	126.00	Conference with ABA regarding trial strategy
9016	06/27/2011	CAB	A	210.00	0.70	0.70	147.00	Review Amended Complaint; Review mediation power point presentation; Prepare questions for witness interviews
9016	06/29/2011	CAB	A	210.00	0.30	0.30	63.00	(Attempted) telephone call to Ron Horton, David Miller and Clark Hughes; Email communications with ABA regarding trial strategy meeting and witness communications; strategize regarding Offer of Settlement, pre trial motions, and other trial procedures
9016	06/30/2011	CAB	A	210.00	1.50	1.50	315.00	Telephone conference with Ron Horton; Trial Strategy meeting with ABA, TJM and SMS
9016	07/01/2011	CAB	P	210.00	0.10	0.10	21.00	Review emails regarding trial; Attempted phone call to Chatham Concrete
9016	07/07/2011	CAB	P	210.00	0.70	0.70	147.00	Review emails regarding Spriggs trial preparation; Phone conference with Clark Hughes; Phone call to David Miller; Phone call to ABA; Email communications with ABA
9016	07/08/2011	CAB	P	210.00	0.20	0.20	42.00	Receipt/review email from ABA regarding Slivka position on mechanic's lien; Email communications with ABA regarding trial prep meeting; Review email from RBK
9016	07/09/2011	CAB	P	210.00	2.00	2.00	420.00	Review deposition transcript of Spriggs in preparation of trial
9016	07/10/2011	CAB	P	210.00	2.50	2.50	525.00	Review Spriggs deposition transcript; Review Slivka deposition transcript; Outline differences in Slivka and Spriggs testimony regarding work scope
9016	07/11/2011	CAB	P	210.00	8.20	8.20	1,722.00	Review Slivka deposition; Trial preparation; Prepare motion to strike offer of settlement; Revision of motion for jury visitation; revision of settlement letter to Lyles; Phone conference with Clark Hughes; Strategize with ABA regarding settlement potential
9016	07/12/2011	CAB	P	210.00	3.50	3.50	735.00	Review Slivka deposition; Review



								email from Bright regarding settlement negotiations; Conference with ABA regarding judgment potential; Preparation of additional work spreadsheet; Trial preparation; Email communications regarding exclusion of witness arguments
9016	07/13/2011	CAB	P	210.00	5.60	5.60	1,176.00	Prepare Voir Dire; Trial preparation of witness outlines; Review and revision of motions in limine
9016	07/14/2011	CAB	P	210.00	6.80	6.80	1,428.00	Prepare for trial; meeting with Spriggs, Bozeman and ABA in preparation of trial; Phone conference with Ron Horton; Phone conference Clark Hughes
9016	07/15/2011	CAB	P	210.00	0.80	0.80	168.00	Review Slivka pre-trial brief; Phone conference with Skip Utsey; Phone call to Dave Miller; Phone conference with SMS; Email communications with ABA regarding trial prep; Email communication with TJM regarding motion to strike legal support
9016	07/16/2011	CAB	P	210.00	0.20	0.20	42.00	E-mail communications with ABA regarding settlement preparation
9016	07/17/2011	CAB	P	210.00	6.50	6.50	1,365.00	Trial preparation
9016	07/18/2011	CAB	P	210.00	14.50	14.50	3,045.00	Prepare for Trial; Travel to Walterboro for trial; Pretrial motions; Jury selection; Pretrial; Preparation of Motion for Directed Verdict; Preparation of Jury Charges; Email jury charges to clerk
9016	07/19/2011	CAB	P	210.00	15.00	15.00	3,150.00	Trial; Trial prep
9016	07/20/2011	CAB	P	210.00	14.50	14.50	3,045.00	Trial Trial prep
9016	07/21/2011	CAB	P	210.00	12.80	12.80	2,688.00	Trial; Trial prep
9016	07/22/2011	CAB	P	210.00	9.50	9.50	1,995.00	Trial; Return travel from Trial
9016	07/25/2011	CAB	P	210.00	2.80	2.80	588.00	Telephone conference with Chip Emge regarding Affidavit to Support Petition for Attorney's fees; Prepare Affidavit of Attorney's Fees and Petition for Costs, Fees and Interest
Subtotal for Timekeeper CA				Billable	109.30	109.30	22,953.00	Chip A. Bruorton
9016	11/03/2009	RBK	A	190.00	0.10	0.10	19.00	Conference with ABA
9016	07/20/2011	RBK	P	190.00	1.50	1.50	285.00	Legal research per CAB and ABA to assist with trial and defense to motions for directed verdict
9016	07/21/2011	RBK	P	190.00	0.20	0.20	38.00	Legal research on mechanic's lien; E-mail with CAB & ABA re: trial
Subtotal for Timekeeper RB				Billable	1.80	1.80	342.00	R. Britt Kelly
9016	04/10/2009	ABA	A	250.00	1.20	1.20	300.00	Telephone conference with Spriggs; E-mail Spriggs; Prepare Affidavit of Mechanic's Lien.
9016	04/13/2009	ABA	A	250.00	3.20	3.20	800.00	Telephone conference with Spriggs; Conference with SMS; Prepare Notice of Mechanic's Lien; Various conferences with SMS; E-mail Spriggs; Telephone conference with Spriggs.
9016	06/25/2009	ABA	A	250.00	2.10	2.10	525.00	E-mail Spriggs; Prepare Complaint; Legal research.

9018	06/26/2009	ABA	A	250.00	0.20	0.20	50.00	E-mail Ken.
9016	06/29/2009	ABA	A	250.00	0.40	0.40	100.00	E-mail/conference with SMS; E-mail Slivka.
9016	07/01/2009	ABA	A	250.00	2.80	2.80	700.00	Prepare Complaint; E-mail Spriggs; Prepare lis pendens; Telephone conference with Spriggs.
9016	07/07/2009	ABA	A	250.00	1.90	1.90	475.00	Review title examiner documents; Revise Complaint; Telephone conference with Spriggs.
9018	09/10/2009	ABA	A	250.00	0.10	0.10	25.00	Review documents; Answer due date
9016	09/16/2009	ABA	A	250.00	2.00	2.00	500.00	Review Answer and Counterclaim; Review file and documents; E-mail Spriggs; Prepare Reply
9016	09/23/2009	ABA	A	250.00	2.10	2.10	525.00	Conf w/ HBH; PC w/ Spriggs; Legal Research; Prepare letter
9016	10/02/2009	ABA	A	250.00	0.10	0.10	25.00	E-mail Spriggs.
9016	10/05/2009	ABA	A	250.00	0.20	0.20	50.00	E-mail Spriggs.
9016	10/06/2009	ABA	A	250.00	0.30	0.30	75.00	Review documents.
9016	10/07/2009	ABA	A	250.00	1.10	1.10	275.00	E-mail Spriggs; Telephone conference with Spriggs; Conference with HBH.
9016	10/08/2009	ABA	A	250.00	0.20	0.20	50.00	Telephone conference with McLeod; Conference with SMS.
9016	10/09/2009	ABA	A	250.00	0.50	0.50	125.00	E-mail Spriggs; Conference with SMS.
9018	10/15/2009	ABA	A	250.00	0.50	0.50	125.00	CW SMS; Email Spriggs
9016	10/19/2009	ABA	A	250.00	0.20	0.20	50.00	Email Spriggs; Review Correspondence
9016	11/02/2009	ABA	A	250.00	1.50	1.50	375.00	Review title work surveys and tax map records; Email Spriggs.
9016	11/03/2009	ABA	A	250.00	1.80	1.80	450.00	Review Documents; Conference with DGJ; Email Spriggs; Phone Conference with Spriggs; Conference with RBK; Review Documents;
9016	11/04/2009	ABA	A	250.00	0.10	0.10	25.00	Email Spriggs;
9016	11/05/2009	ABA	A	250.00	0.40	0.40	100.00	E-mail Spriggs;
9016	11/06/2009	ABA	A	250.00	0.80	0.80	200.00	Email Spriggs; Phone Conversation with McLeod; Email Bozeman; Review Plat; Email DGJ;
9018	11/09/2009	ABA	A	250.00	2.70	2.70	675.00	Conference with DGJ; Review Documents; Email HBH; Prepared Reply;
9016	11/16/2009	ABA	A	250.00	3.60	3.60	900.00	Email Spriggs; Prepared discovery requests and Subpoena; Review Invoice;
9016	11/17/2009	ABA	A	250.00	0.90	0.90	225.00	Email Spriggs; Prepare Discovery; Conference with SMS;
9016	11/23/2009	ABA	A	250.00	0.10	0.10	25.00	Phone Conversation with Surveyor;
9016	11/24/2009	ABA	A	250.00	0.60	0.60	150.00	Conference with SMS; Email Spriggs;
9016	12/03/2009	ABA	A	250.00	0.10	0.10	25.00	Review Correspondence;
9016	12/07/2009	ABA	A	250.00	2.90	2.90	725.00	Review Correspondence; Prepare Letter; Email Spriggs; Email McLeod; Review Beaufort Surveying Documents; Phone Conversation with McLeod;
9016	12/29/2009	ABA	A	250.00	0.40	0.40	100.00	Email McLeod
9016	01/11/2010	ABA	A	250.00	0.80	0.80	200.00	Review Slivka discovery, Email Spriggs
9018	01/13/2010	ABA	A	250.00	0.40	0.40	100.00	Review Motion; Review Affidavit; Email Spriggs;
9016	01/14/2010	ABA	A	250.00	0.20	0.20	50.00	Conference with Bozeman;
9016	01/15/2010	ABA	A	250.00	0.20	0.20	50.00	Review Plats;
9016	01/26/2010	ABA	A	250.00	3.00	3.00	750.00	Review documents, Prepare Affidavits, Phone conversation with Bozeman, Phone Conversation with Youmans;
9016	01/27/2010	ABA	A	250.00	4.00	4.00	1,000.00	Prepare Affidavits; Various emails and Phone Conversations with Bozeman and Youmans; Prepare memo in opposition; Conference with TJM;
9016	01/28/2010	ABA	A	250.00	3.50	3.50	875.00	Prepared Memo in Opposition and

9016	01/29/2010	ABA	A	250.00	4.00	4.00	1,000.00	Exhibits; Prepare Memo/Various Emails and Phone conversations;
9016	02/11/2010	ABA	A	250.00	0.30	0.30	75.00	Conference with SMS; Emails with Scott
9016	02/17/2010	ABA	A	250.00	0.60	0.60	150.00	Legal research- Affidavits
9016	02/18/2010	ABA	A	250.00	0.30	0.30	75.00	Conference with TJM;
9016	02/22/2010	ABA	A	250.00	2.50	2.50	625.00	Conference with HBH; Conference with TJM; Email with Bogeman; Email with Youmans; Revised memo in Opposition; Conference with SMS.
9016	02/23/2010	ABA	A	250.00	0.30	0.30	75.00	Review Affidavits; Conference with SMS;
9016	02/24/2010	ABA	A	250.00	0.30	0.30	75.00	Conference with SMS;
9016	02/26/2010	ABA	A	250.00	1.00	1.00	250.00	Conference with TJM, LR, Review
9016	03/01/2010	ABA	A	250.00	0.80	0.80	200.00	Prepare Motion;
9016	03/02/2010	ABA	A	250.00	6.40	6.40	1,600.00	Travel to and From Motion Hearing; Various Emails;
9016	03/03/2010	ABA	A	250.00	0.50	0.50	125.00	Email Spriggs; Conference with SMS;
9016	03/04/2010	ABA	A	250.00	1.50	1.50	375.00	Email Ken Spriggs; Review Documents
9016	03/10/2010	ABA	A	250.00	2.20	2.20	550.00	Prepare discovery responses; Email Spriggs;
9016	03/11/2010	ABA	A	250.00	1.80	1.80	450.00	Review Correspondence; Email Spriggs; Phone conversation with Spriggs; Phone conversation with McLeod; Prepare Note; Prepare Letters;
9016	03/15/2010	ABA	A	250.00	5.20	5.20	1,300.00	Phone conversation with Spriggs; Various emails; Prepare Motion to Amend; Review Complaint;
9016	03/16/2010	ABA	A	250.00	4.00	4.00	1,000.00	Prepare Motion to Amend Complaint; Prepare discovery responses;
9016	03/18/2010	ABA	A	250.00	0.30	0.30	75.00	Review Correspondence; Prepare response;
9016	03/22/2010	ABA	A	250.00	1.90	1.90	475.00	Review Correspondence; Emails with McLeod; Prepare Letter to Enterprise;
9016	03/31/2010	ABA	A	250.00	0.50	0.50	125.00	E-mail Clerk of Court; Conference with SMS; E-mail Spriggs.
9016	04/01/2010	ABA	A	250.00	0.10	0.10	25.00	Email Spriggs.
9016	04/02/2010	ABA	A	250.00	0.30	0.30	75.00	Email Spriggs; Email McLeod;
9016	04/08/2010	ABA	A	250.00	1.00	1.00	250.00	Conference with TJM; Conference with SMS re: Motion Hearing;
9016	04/26/2010	ABA	A	250.00	0.80	0.80	200.00	Various emails; Conference with TJM; Review Orders;
9016	04/27/2010	ABA	A	250.00	1.20	1.20	300.00	Revise Amended Complaint; Prepare letter to Duffe; Email Spriggs;
9016	04/28/2010	ABA	A	250.00	0.20	0.20	50.00	Prepare Amended Complaint;
9016	05/05/2010	ABA	A	250.00	0.10	0.10	25.00	Email McLeod;
9016	05/11/2010	ABA	A	250.00	0.10	0.10	25.00	Email Spriggs;
9016	05/12/2010	ABA	A	250.00	0.20	0.20	50.00	E-mail Spriggs; email McLeod
9016	05/20/2010	ABA	A	250.00	0.50	0.50	125.00	Review correspondence; email McLeod; Conference with SMS re: Sch Order
9016	05/21/2010	ABA	A	250.00	2.00	2.00	500.00	Review Answer to Amended Complaint, Preparation of Reply to Counterclaims to Amended Complaint; Legal Research
9016	05/25/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail McLeod
9016	05/28/2010	ABA	A	250.00	0.50	0.50	125.00	Conference with Tim Muller; Review Counterclaims
9016	06/15/2010	ABA	A	250.00	0.80	0.80	200.00	Conference with TJM; Legal research; Review motion.
9016	06/21/2010	ABA	A	250.00	3.60	3.60	900.00	Preparation of Motion to Strike.
9016	06/24/2010	ABA	A	250.00	1.00	1.00	250.00	Build litigation file in Casemap.
9016	06/29/2010	ABA	A	250.00	2.50	2.50	625.00	Prepare Casemap litigation information; review documents; conference with SMS.
9016	07/16/2010	ABA	A	250.00	2.00	2.00	500.00	Review Spriggs documents.

9016	07/19/2010	ABA	A	250.00	2.80	2.80	700.00	Review documents; preparation of casemap.
9016	07/20/2010	ABA	A	250.00	1.10	1.10	275.00	E-mail Spriggs; review documents.
9016	07/21/2010	ABA	A	250.00	0.80	0.80	200.00	E-mail Spriggs; review complaint; conference with TMJ; conference with SMS.
9016	07/22/2010	ABA	A	250.00	0.50	0.50	125.00	Telephone conference with Duffie; prepare letter regarding mediation; review deposition notice.
9016	07/28/2010	ABA	A	250.00	2.30	2.30	575.00	Review complaint and E-mail Spriggs regarding answer; review documents and prepare casemap.
9016	07/29/2010	ABA	A	250.00	5.00	5.00	1,250.00	Conference with TJM; review documents and prepare case map.
9016	07/30/2010	ABA	A	250.00	6.00	6.00	1,500.00	Review documents; prepare case map; conference with TJM; E-mail Spriggs; review correspondence.
9016	08/02/2010	ABA	A	250.00	5.30	5.30	1,325.00	conference with Shannon Skelly; prepare letter; E-mails with McLeod; Review documents and prepare case map.
9016	08/03/2010	ABA	A	250.00	2.00	2.00	500.00	Review documents and prepare casemap.
9016	08/04/2010	ABA	A	250.00	7.60	7.60	1,900.00	Review files; prepare casemap; various E-mails to McLeod; prepare letter to McLeod; E-mails to TJM; conference with TJM; Conference with Spriggs and Bozeman.
9016	08/05/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail Spriggs.
9016	08/06/2010	ABA	A	250.00	2.40	2.40	600.00	Telephone conference with Oberski; revision of Motion to Compel; conference with SMS; E-mails with mediator; E-mail SMS regarding subpoena.
9016	08/09/2010	ABA	A	250.00	0.50	0.50	125.00	Review Motion; conference with SMS; E-mails with Clerk of Court.
9016	08/10/2010	ABA	A	250.00	5.00	5.00	1,250.00	Prepare Casemap information from notes from meeting with Spriggs and Bozeman; E-mail McLeod; Review correspondence and Motion; E-mails to court; conference with SMS.
9016	08/11/2010	ABA	A	250.00	1.70	1.70	425.00	conference with SMS regarding preparation; prepare casemap information; E-mail Spriggs.
9016	08/12/2010	ABA	A	250.00	5.90	5.90	1,475.00	Prepare, travel, and attend Motion Hearing; E-mail and conference with SMS regarding document subpoenas; conference with SMS regarding pending motions; E-mail Spriggs and McLeod; review proposed order.
9016	08/23/2010	ABA	A	250.00	0.20	0.20	50.00	Review correspondence and proposed order.
9016	08/25/2010	ABA	A	250.00	0.50	0.50	125.00	Conferences with SMS and E-mail regarding Motions on September 8.
9016	08/31/2010	ABA	A	250.00	0.20	0.20	50.00	Review Order relieving counsel; E-mail McLeod.
9016	09/01/2010	ABA	A	250.00	0.30	0.30	75.00	E-mail SMS; E-mail Court.
9016	09/02/2010	ABA	A	250.00	0.20	0.20	50.00	E-mail Court.
9016	09/07/2010	ABA	A	250.00	0.20	0.20	50.00	Conference with SMS.
9016	09/15/2010	ABA	A	250.00	0.70	0.70	175.00	Prepare letter to Spriggs; E-mail Spriggs.
9016	09/16/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail Ken.
9016	09/23/2010	ABA	A	250.00	0.10	0.10	25.00	Telephone conference with Lyles. Email Lyles.
9016	09/28/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail Spriggs.
9016	09/30/2010	ABA	A	250.00	1.30	1.30	325.00	Telephone call Robert Lyles. Conference with SMS. Conference with HBH. Email Spriggs.

9016	10/04/2010	ABA	A	250.00	0.30	0.30	75.00	Review Notice of Appearance. Conference with SMS re: meeting with Lyles.
9016	10/06/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail Spriggs.
9016	10/07/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail SMS re: Slivka deposition notice.
9016	10/08/2010	ABA	A	250.00	1.00	1.00	250.00	Conference with SMS. Phone conference with Lyles.
9018	10/19/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail Lyles re: Slivka depo.
9016	10/21/2010	ABA	A	250.00	0.30	0.30	75.00	E-mails Lyles. Email Spriggs.
9016	10/26/2010	ABA	A	250.00	0.30	0.30	75.00	Conference with SMS re: depositions and scheduling order.
9016	10/28/2010	ABA	A	250.00	0.20	0.20	50.00	Conference with SMS. Email Lyles.
9016	11/03/2010	ABA	A	250.00	1.30	1.30	325.00	Various emails SMS. Draft letter to Lyles concerning depositions, document production and concerning Motion to Strike.
9016	11/04/2010	ABA	A	250.00	0.30	0.30	75.00	E-mail SMS re: deposition notice. Finalize letter to Lyles.
9016	11/10/2010	ABA	A	250.00	0.10	0.10	25.00	Conference with SMS re: motion hearing.
9016	11/12/2010	ABA	A	250.00	0.40	0.40	100.00	Review deposition notices, email Spriggs re: deposition schedule, case events, etc.
9016	11/22/2010	ABA	A	250.00	0.20	0.20	50.00	Conference with SMS.
9016	11/23/2010	ABA	A	250.00	5.40	5.40	1,350.00	Prepare for deposition of Slivka, review documents, email Lyles, email Spriggs.
9016	11/24/2010	ABA	A	250.00	3.80	3.80	950.00	Prepare for Slivka deposition, review documents, telephone conference with Spriggs and Bozeman. Email Spriggs.
9016	11/28/2010	ABA	A	250.00	3.20	3.20	800.00	Prepare for Slivka deposition.
9016	11/29/2010	ABA	A	250.00	8.00	8.00	2,000.00	Prepare for/attend Slivka deposition. Conference with Spriggs re: The Spriggs Group 30b6 depo.
9016	11/30/2010	ABA	A	250.00	9.00	9.00	2,250.00	Prepare for/attend 30b6 depo for The Spriggs Group, PC.
9018	12/02/2010	ABA	A	250.00	0.50	0.50	125.00	Various emails and conversations with SMS re: mediation. Emails to/from Lyles. Emails to/from Spriggs.
9018	12/06/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail SMS re: mediation.
9016	12/13/2010	ABA	A	250.00	0.10	0.10	25.00	E-mail Clerk of Court re: Motion Hearing.
9016	12/16/2010	ABA	A	250.00	4.20	4.20	1,050.00	Review Slivka depo transcript. Prepare discovery request related to documents in possession of Slivka.
9018	12/17/2010	ABA	A	250.00	7.00	7.00	1,750.00	Review drawings. Prepare for mediation.
9016	12/20/2010	ABA	A	250.00	5.00	5.00	1,250.00	Review Slivka deposition. Conference with TJM re: preparation of affidavit related to Slivka testimony and motion to strike. Review drawings in preparation for mediation. Conference with SMS re: mediation.
9016	12/21/2010	ABA	A	250.00	6.30	6.30	1,575.00	Review drawings. Prepare for mediation. Prepare casemap info.
9016	12/22/2010	ABA	A	250.00	0.20	0.20	50.00	Conference with TJM re: Affidavit and Motion to Strike.
9016	12/28/2010	ABA	A	250.00	0.40	0.40	100.00	Prepare Affidavit. Conferences and emails to/from SMS.
9016	01/03/2011	ABA	A	250.00	4.50	4.50	1,125.00	Prepare for Motion hearing. Emails to/from SMS. Various emails to/from Lyles.
9016	01/04/2011	ABA	A	250.00	2.70	2.70	675.00	Prepare for Motion to Strike. Conference with SMS. Various emails

								with Lyles and the Court concerning continuance of motion hearing. Review Consent Motion of Continuance.
9016	01/05/2011	ABA	A	250.00	0.30	0.30	75.00	Conferences with SMS re: mediation setup. Email Spriggs.
9016	01/06/2011	ABA	A	250.00	7.80	7.80	1,950.00	Prepare for mediation.
9016	01/07/2011	ABA	A	250.00	4.60	4.60	1,150.00	Prepare for mediation.
9016	01/09/2011	ABA	A	250.00	0.50	0.50	125.00	Prepare for mediation.
9016	01/10/2011	ABA	A	250.00	6.00	6.00	1,500.00	Prepare for and attend mediation.
9016	01/11/2011	ABA	A	250.00	0.50	0.50	125.00	E-mail Spriggs. Conference with HBH. Conference with SMS.
9016	01/24/2011	ABA	A	250.00	0.10	0.10	25.00	Review Correspondence Lyles.
9016	01/27/2011	ABA	A	250.00	1.10	1.10	275.00	E-mails to/from Spriggs. Review Sivka Motion for Summary Judgment. Review pleadings.
9016	01/28/2011	ABA	A	250.00	6.00	6.00	1,500.00	Prepare Motion for Summary Judgment. Email SMS re: Letter regarding Motion to Compel. Various emails Spriggs re: discovery. Conference with TJM re: Defense of Sivka Motion for Summary Judgment. Review Sivka depo transcript re: testimony regarding 2-1-15.
9016	01/31/2011	ABA	A	250.00	1.60	1.60	400.00	Prepare Affidavit in Support of Motion for Summary Judgment. Conference with SMS.
9016	02/01/2011	ABA	A	250.00	0.50	0.50	125.00	E-mail Spriggs and Bozeman. Conference with SMS re: Motions for Summary Judgment and Continuance of Motion to Strike. Review Consent Order.
9016	02/02/2011	ABA	A	250.00	0.40	0.40	100.00	Emails to/from Spriggs. Review/sign Motion for Continuance.
9016	02/14/2011	ABA	A	250.00	1.10	1.10	275.00	Conference with SMS. Emails to/from Spriggs. Review discovery requests. Review court roster. Email SMS. Email Lyles.
9016	02/17/2011	ABA	A	250.00	0.50	0.50	125.00	E-mails to/from Spriggs. Email Lyles.
9016	02/22/2011	ABA	A	250.00	0.20	0.20	50.00	Phone Call Lyles. Conference with SMS.
9016	02/23/2011	ABA	A	250.00	0.20	0.20	50.00	E-mails Lyles.
9016	02/27/2011	ABA	A	250.00	0.40	0.40	100.00	E-mails to/from Spriggs - review additional witness info.
9016	03/01/2011	ABA	A	250.00	0.60	0.60	150.00	Various emails re: discovery responses. Review info on ftp site. Email Bozeman.
9016	03/07/2011	ABA	A	250.00	2.30	2.30	575.00	Prepare discovery responses. Various emails to/from Spriggs and Bozeman.
9016	03/08/2011	ABA	A	250.00	0.50	0.50	125.00	Various emails Spriggs and Bozeman. Phone call Lyles. (NC) Prepare letter to Judge Buckner re: Motion hearing (NC).
9016	03/09/2011	ABA	A	250.00	0.50	0.50	125.00	Prepare Discovery Responses.
9016	03/10/2011	ABA	A	250.00	0.20	0.20	50.00	Various emails, Spriggs, Colleton Co. Court
9016	03/11/2011	ABA	A	250.00	5.40	5.40	1,350.00	Various emails with Spriggs, Lyles and Court. Prepare outline for motion hearing.
9016	03/22/2011	ABA	A	250.00	0.20	0.20	50.00	E-mails to/from SMS, Spriggs and Bozeman re: continuation of 30b6 deposition.
9016	03/23/2011	ABA	A	250.00	0.10	0.10	25.00	Email Court re: motions hearing.
9016	03/31/2011	ABA	A	250.00	5.00	5.00	1,250.00	Prepare for motions hearing.
9016	04/04/2011	ABA	A	250.00	1.60	1.60	400.00	Prepare for Motions hearing.
9016	04/05/2011	ABA	A	250.00	2.50	2.50	625.00	Conference with SMS. Prepare exhibits for motion hearing.

9016	04/11/2011	ABA	A	250.00	2.00	2.00	500.00	Prepare for motion hearing.
9016	04/12/2011	ABA	A	250.00	5.50	5.50	1,375.00	Prepare, travel and attend motion hearing. Conference with SMS and TMJ. Email Clerk of Court. Email Lyles. conference with HBH.
9016	04/20/2011	ABA	A	250.00	0.10	0.10	25.00	E-mail Spriggs.
9016	04/21/2011	ABA	A	250.00	0.20	0.20	50.00	E-mails to/from Spriggs.
9016	04/25/2011	ABA	A	250.00	0.50	0.50	125.00	E-mails to/from Glick. Prepare for meeting with Glick.
9016	04/26/2011	ABA	A	250.00	3.70	3.70	925.00	Prepare for and attend conference with Glick. Review documents. Emails Glick.
9016	04/27/2011	ABA	A	250.00	0.60	0.60	150.00	E-mail Glick. Prepare supplemental discovery. Email Ken. Conference with SMS.
9016	05/09/2011	ABA	A	250.00	0.80	0.80	200.00	E-mail Ken Spriggs. Email Glick. Review Sivka documents.
9016	05/11/2011	ABA	A	250.00	2.70	2.70	875.00	E-mail Glick. Email Murdaugh. Phone call Murdaugh. Emails to/from Spriggs. Voicemail Glick. Prepare discovery request. Draft Reply to Counterclaims.
9016	05/17/2011	ABA	A	250.00	0.10	0.10	25.00	Conference with CAB.
9016	05/17/2011	ABA	A	250.00	0.50	0.50	125.00	Review Supplemental Discovery response. Email Glick. Phonecall Glick.
9016	05/19/2011	ABA	A	250.00	0.40	0.40	100.00	E-mail Glick. Emails to TJM.
9016	06/08/2011	ABA	A	250.00	0.30	0.30	75.00	Various emails to/from Myles and to/from Lyles.
9016	06/12/2011	ABA	A	250.00	0.20	0.20	50.00	E-mail Glick. Email Dupree.
9016	06/15/2011	ABA	A	250.00	0.10	0.10	25.00	E-mail Glick.
9016	06/16/2011	ABA	A	250.00	0.30	0.30	75.00	Emails to/from Glick. Emails to/from Spriggs. Phone call Glick.
9016	06/17/2011	ABA	A	250.00	0.40	0.40	100.00	Conference with TJM. Review case law.
9016	06/20/2011	ABA	A	250.00	2.70	2.70	675.00	Review file. Review Harvey depo. Prepare for Harvey depo.
9016	06/23/2011	ABA	A	250.00	4.00	4.00	1,000.00	Prepare for depositions of experts. Meet with Glick.
9016	06/24/2011	ABA	A	250.00	8.00	8.00	2,000.00	Prepare for/attend depositions of expert witnesses.
9016	06/27/2011	ABA	A	250.00	1.00	1.00	250.00	Conference with SMS. Conference with CAB. Various emails to/from Spriggs.
9016	06/28/2011	ABA	A	250.00	6.00	6.00	1,500.00	E-mails to/from Spriggs and Glick. Conference with SMS. Conference with CAB. Email CAB and TJM. Trial prep.
9016	06/29/2011	ABA	A	250.00	4.80	4.80	1,200.00	Prepare for trial.
9016	06/30/2011	ABA	A	250.00	5.00	5.00	1,250.00	Emails to/from Lyles. Emails to/from Spriggs. Review deposition notice. Review rules. Meet with trial team. Prepare for trial.
9016	07/01/2011	ABA	P	250.00	5.60	5.60	1,400.00	Prepare for trial.
9016	07/05/2011	ABA	P	250.00	7.00	7.00	1,750.00	Email to Spriggs. Trial prep.
9016	07/05/2011	ABA	P	250.00	1.10	1.10	275.00	Review transcripts. Email Spriggs.
9016	07/06/2011	ABA	P	250.00	11.30	11.30	2,825.00	Prepare for trial. Conference call with Ken and Andy. Review various letters from Lyles/Dupree. Conferences with trial team members. Review transcripts.
9016	07/07/2011	ABA	P	250.00	6.00	6.00	1,500.00	Trial Preparation.
9016	07/08/2011	ABA	P	250.00	10.60	10.60	2,650.00	Prepare for trial. Conference with Glick. Phone call with Spriggs. Emails to/from Spriggs and Bozeman. Review Spriggs documents.
9016	07/09/2011	ABA	P	250.00	11.30	11.30	2,825.00	Prepare for trial. Various emails to Spriggs and Bozeman. Prepare

								witness outlines. Review drawings and do drawing count summary. Email Glick. Review Spriggs documents.
9016	07/10/2011	ABA	P	250.00	6.30	6.30	1,575.00	Prepare for trial. Emails to/from Lyles. Emails to/from Spriggs. Review documents. Review case facts from initial casemap data.
9016	07/11/2011	ABA	P	250.00	8.30	8.30	2,075.00	Prepare for trial. Meet with trial team. Conference call with CAB, TJM and Spriggs. Prepare settlement letter. Review trial exhibits.
9016	07/12/2011	ABA	P	250.00	8.60	8.60	2,150.00	Prepare
9016	07/13/2011	ABA	P	250.00	9.30	9.30	2,325.00	Prepare for trial.
9016	07/14/2011	ABA	P	250.00	10.30	10.30	2,575.00	Prepare for trial. Meet with Spriggs and Bozeman. Prepare witnesses for trial. Prepare witness outlines. Prepare damages summary. Conference with trial team re: exhibits, trial brief, motions in limine, document production.
9016	07/15/2011	ABA	P	250.00	8.30	8.30	2,075.00	Prepare for trial. Prepare witness outlines, exhibits, emails to TSG. Phone conversation with Glick. Review defendant's motions, pretrial brief.
9016	07/16/2011	ABA	P	250.00	7.20	7.20	1,800.00	Prepare for trial. Prepare witness outlines, prepare exhibits. Prepare opening statement.
9016	07/17/2011	ABA	P	250.00	10.00	10.00	2,500.00	Prepare for trial.
9016	07/18/2011	ABA	P	250.00	15.30	15.30	3,825.00	Travel and attend trial -roster meeting, motions and jury selection. Trial Prep.
9016	07/19/2011	ABA	P	250.00	15.00	15.00	3,750.00	Attend Trial, trial prep.
9016	07/20/2011	ABA	P	250.00	14.50	14.50	3,625.00	Attend trial.
9016	07/21/2011	ABA	P	250.00	13.00	13.00	3,250.00	Trial; Trial prep
9016	07/22/2011	ABA	P	250.00	10.30	10.30	2,575.00	Prepare for and attend trial. Travel to Charleston.
9016	07/25/2011	ABA	P	250.00	1.80	1.80	450.00	Conference with CAB. Prepare/review Affidavit of attorney's fees. Emails to/from Glick.
Subtotal for Timekeeper AB				Billable	508.20	508.20	127,050.00	Anne Bright Atrial
9016	07/15/2011	CC	P	110.00	5.10	5.10	561.00	Legal research- Researched issue on aggregation of compensatory damages for punitive damages award for the upcoming trial in the Spriggs matter. Wrote a memo for Attorney Tim Muller on my findings.
Subtotal for Timekeeper CC				Billable	5.10	5.10	561.00	Charles Condon
9016	01/26/2010	TJM	A	175.00	0.25	0.25	43.75	Conference with ABA re: necessary research
9016	01/27/2010	TJM	A	175.00	1.75	1.75	306.25	Research mechanic liens statute; CJS, Am Jur., ALR for law on defective property descriptions in mechanics liens; conference with ABA
9016	01/28/2010	TJM	A	175.00	2.10	2.10	367.50	Conference with ABA, review memo in opposition to motion to dismiss; affidavits; draft legal standard, revise
9016	02/02/2010	TJM	A	175.00	0.50	0.50	87.50	Review memo to strike affidavit, article
9016	02/18/2010	TJM	A	175.00	2.25	2.25	393.75	Pull law cited by McLead; pull 4th circuit S.C. law on affidavits; search secondary sources; conference

9016	02/22/2010	TJM	A	175.00	1.00	1.00	175.00	with ABA Draft bullet point overview re: affidavits
9016	03/18/2010	TJM	A	175.00	0.30	0.30	52.50	Review email from ABA re: required research, check notes
9016	03/19/2010	TJM	A	175.00	1.70	1.70	297.50	Review letter to Enterprise Bank from ABA; review letter from McLead; letter from bank; research rules regarding subpoenas to non-parties and how to properly object
9016	03/21/2010	TJM	A	175.00	1.40	1.40	245.00	Draft letter to Enterprise Bank based on research re: objecting to subpoena to non-priority; email ABA
9016	03/22/2010	TJM	A	175.00	0.60	0.60	105.00	Review and revise letter to Enterprise Bank, conference with SMS
9016	04/08/2010	TJM	A	175.00	0.40	0.40	70.00	Conference with ABA re: upcoming motion hearings before Judge Mullen
9016	04/20/2010	TJM	A	175.00	1.80	1.80	315.00	Prepare for motion hearing; review documents & pleadings
9016	04/20/2010	TJM	A	175.00	1.40	1.40	245.00	Pull law on legal standards
9016	04/20/2010	TJM	A	175.00	1.40	1.40	245.00	Draft outline for hearing conference with SMS
9016	04/21/2010	TJM	A	175.00	5.50	5.50	962.50	Travel to and from Walterboro for motion hearing, attend motion to amend and Defendants motion to quash
9016	04/21/2010	TJM	A	175.00	1.10	1.10	192.50	Draft proposed order denying Defendant's motion to quash; emails to ABA
9016	04/22/2010	TJM	A	175.00	0.70	0.70	122.50	Revise proposed order; conference with SMS, draft email to Judge
9016	04/28/2010	TJM	A	175.00	0.20	0.20	35.00	Email from judge/conference with SMS
9016	05/28/2010	TJM	A	175.00	0.40	0.40	70.00	Conference with ABA re: motion to strike
9016	06/01/2010	TJM	A	175.00	0.70	0.70	122.50	Review pleadings, file motion to strike law
9016	06/03/2010	TJM	A	175.00	2.40	2.40	420.00	Review pleadings, begin drafting motion to strike affirmative answers and counterclaims of Defendant
9016	06/04/2010	TJM	A	175.00	3.40	3.40	595.00	Draft motion to strike defendant's review/research law related to motion to strike
9016	06/08/2010	TJM	A	175.00	2.90	2.90	507.50	Continue drafting motion to strike Defendant's affirmative answers and counterclaims
9016	06/08/2010	TJM	A	175.00	0.70	0.70	122.50	Research re: judicial admissions; pull cases
9016	06/14/2010	TJM	A	175.00	1.40	1.40	245.00	Review/revise motion to strike
9016	06/15/2010	TJM	A	175.00	2.75	2.75	481.25	Conference with ABA; review and revise motion to strike
9016	06/15/2010	TJM	A	175.00	0.50	0.50	87.50	Review SCRCP Rule 12 for necessity of filing answer; review citing references
9016	06/21/2010	TJM	A	175.00	1.50	1.50	262.50	Draft letter to Enterprise Bank enclose copies of order, original communication
9016	07/21/2010	TJM	A	175.00	0.20	0.20	35.00	Conference with ABA re: needed research, review email
9016	07/23/2010	TJM	A	175.00	1.00	1.00	175.00	Review pleadings and mechanics lien statutes; search on secondary sources
9016	07/26/2010	TJM	A	175.00	0.40	0.40	70.00	Research re: tax lien
9016	07/28/2010	TJM	A	175.00	0.20	0.20	35.00	Email/conference to law clerk with legal research
9016	07/30/2010	TJM	A	175.00	0.60	0.60	105.00	Conference with ABA re: research, pull sources and review research from law clerk
9016	08/04/2010	TJM	A	175.00	1.10	1.10	192.50	Review/legal research re: motion to compel; motion for judgment for

								failure to attend deposition; conference with ABA; review proposed motion to compel
9016	12/20/2010	TJM	A	175.00	0.25	0.25	43.75	Conference with ABA re: needed affidavit
9016	12/22/2010	TJM	A	175.00	2.75	2.75	481.25	Review deposition testimony of Gene Slivka, review pleadings, draft affidavit in support of motion to strike
9016	12/23/2010	TJM	A	175.00	2.70	2.70	472.50	Work on second section of Affidavit in support of motion to strike
9016	01/04/2011	TJM	A	175.00	0.20	0.20	35.00	Conference with ABA re motion
9016	01/04/2011	TJM	A	175.00	0.40	0.40	70.00	Research proper filing of motion to strike affidavit
9016	01/06/2011	TJM	A	175.00	0.30	0.30	52.50	Research interest rate calculation for ABA and email findings
9016	01/28/2011	TJM	A	175.00	0.40	0.40	70.00	Conference with ABA regarding necessary work on motion for summary judgment; second conf w/ ABA re depo transcript
9016	01/31/2011	TJM	A	175.00	1.75	1.75	306.25	Research questions related to motion for summary judgment; review motion; find and read section on Architectural Handbook of Professional Services concerning billing; locate and research S.C. Code section on architects related to billing; locate and research S.C. Reg section on architects related to billing
9016	01/31/2011	TJM	A	175.00	0.60	0.60	105.00	Review deposition of K. Spriggs for purpose of motion for summary judgment
9016	02/01/2011	TJM	A	175.00	0.50	0.50	87.50	Review (continued) of deposition for motion for summary judgment;
9016	03/03/2011	TJM	A	175.00	2.25	2.25	393.75	research summary judgment topics Review Spriggs depo (continued); review issues for research, begin drafting topic memo re motion for summary judgment; research issues
9016	03/04/2011	TJM	A	175.00	1.80	1.80	315.00	Work on Spriggs research for motion for summary judgment; continue review of deposition transcript, continue draft of research topics
9016	03/07/2011	TJM	A	175.00	2.50	2.50	437.50	Review Spriggs depo compared to billing issues in MSJ; westlaw search on various research topics
9016	03/07/2011	TJM	A	175.00	2.20	2.20	385.00	Draft research memo
9016	03/08/2011	TJM	A	175.00	3.75	3.75	656.25	Research motion for summary judgment issues; work on research memo
9016	03/09/2011	TJM	A	175.00	1.50	1.50	262.50	Research quantum meruit issues, continue draft of research memo
9016	03/10/2011	TJM	A	175.00	0.40	0.40	70.00	Review and revise memo
9016	03/11/2011	TJM	A	175.00	2.25	2.25	393.75	Work on research memo for B. Ariail; supplement research on statute, westlaw search, pull sources, email B. Ariail research
9016	03/31/2011	TJM	A	175.00	0.40	0.40	70.00	E-mail from B. Ariail re AIA Handbook section research; pull material up online for printing; email B. Ariail with link to material
9016	03/31/2011	TJM	A	175.00	1.80	1.80	315.00	Review research question from B. Ariail; review cause of action book; review secondary sources re slander of title and mechanics liens; pull SC case law relevant to topic; draft email with research findings and attachment

9016	04/11/2011	TJM	A	175.00	2.00	2.00	350.00	Conference with B. Ariail re needed research; review SC Jurisprudence, SCRPC and citing references, research SC case law on attorney's reference to depositions not identified by affidavit; email to and from B. Ariail with research findings and case law attachments; review Colleton County docket for transcript filings per rule; email B. Ariail further research findings and update on Colleton County Docket
9016	05/10/2011	TJM	A	175.00	3.25	3.25	568.75	Research secondary sources, westlaw (case law and statutes, citing references) pertaining to recoverable amounts under statute (lien); pull citing sources; review trial court orders
9016	05/11/2011	TJM	A	175.00	0.30	0.30	52.50	E-mails from ABA; conf w/ B. Ariail re research conducted
9016	05/12/2011	TJM	A	175.00	0.70	0.70	122.50	Research (con't)
9016	05/13/2011	TJM	A	175.00	0.80	0.80	140.00	Research supplement regarding recoverable amounts under mechanics lien
9016	05/16/2011	TJM	A	175.00	0.50	0.50	87.50	Research continued on mechanic lien
9016	05/19/2011	TJM	A	175.00	0.30	0.30	52.50	Review emails from B. Ariail, emails from Miles Glick, review docs needed for completion during next 2 weeks
9016	05/20/2011	TJM	A	175.00	0.50	0.50	87.50	Review and pull research related to lien
9016	05/31/2011	TJM	A	175.00	0.30	0.30	52.50	Review ltr, prepare reply for filing
9016	06/01/2011	TJM	A	175.00	0.20	0.20	35.00	Conference with SMS re notice of deposition; email to SMS
9016	06/02/2011	TJM	A	175.00	0.25	0.25	43.75	Conference with S. Skelly re subpoena, notice of depo, review email
9016	06/07/2011	TJM	A	175.00	0.10	0.10	17.50	E-mail to and from B. Ariail
9016	06/13/2011	TJM	A	175.00	1.20	1.20	210.00	Conference with B. Ariail; continue research of architect related costs lienable nationwide; pull sources
9016	06/14/2011	TJM	A	175.00	0.50	0.50	87.50	Review research sources, ALR section for conf w/ B. Ariail
9016	06/17/2011	TJM	A	175.00	0.20	0.20	35.00	Conference with B. Ariail re research conducted
9016	06/30/2011	TJM	A	175.00	1.20	1.20	210.00	Conference with C. Bruorton and B. Ariail re trial prep
9016	06/30/2011	TJM	A	175.00	0.20	0.20	35.00	Review Casemap file; email re trial brief
9016	07/06/2011	TJM	P	175.00	5.25	5.25	918.75	Conference with ABA re required research x3; Research mechanics lien statute for offer of settlement; prevailing party for attorney fees; emails re further research required; email to clerks; pull all research; work on elements of causes of action in casemap (trial prep)
9016	07/07/2011	TJM	P	175.00	2.10	2.10	367.50	Trial preparation - upload elements; research to case map; conf w/ staff; conf w/ ABA re: further work needed; conf w/ clerk and review research
9016	07/08/2011	TJM	P	175.00	3.40	3.40	595.00	Trial preparation - Casemap work; upload sources; supplement research; emails; conf w/ staff; continue upload and linking of research; expand elements
9016	07/08/2011	TJM	P	175.00	2.20	2.20	385.00	Trial preparation - review ltr; samples of trial briefs; review existing documents for content;

								emails to ABA re research; conf re trial brief
9016	07/08/2011	TJM	P	175.00	1.60	1.60	280.00	Trial preparation - review topics of motion in limine; begin draft
9016	07/09/2011	TJM	P	175.00	3.50	3.50	612.50	Trial preparation - work on motions in limine; research in support
9016	07/11/2011	TJM	P	175.00	7.50	7.50	1,312.50	Trial preparation; pull research materials; attend conference with legal team; draft motion for jury visit; revise motion in limine; draft motion in limine with respect to new witness offered; review settlement ltr; conf w/ ABA re further work
9016	07/12/2011	TJM	P	175.00	1.20	1.20	210.00	Conference with ABA; draft confidentiality agreement re Miles Glick documents; draft email to Lyles encl agreement
9016	07/12/2011	TJM	P	175.00	4.75	4.75	831.25	Trial preparation - work on Trial Brief; research for legal issues involved
9016	07/13/2011	TJM	P	175.00	7.75	7.75	1,356.25	Trial preparation - Continue draft and research with pretrial brief, conf w/ ABA; emails; review and revise motion in limine; conf w/ CAB re research needed and motion concerning evidentiary issues
9016	07/14/2011	TJM	P	175.00	7.30	7.30	1,277.50	Trial preparation (Draft memorandum in opposition to D's motion in limine; research); (Conf w/ clerks and team); (emails, review of Myles Glick documents, redact; update confidentiality agreement)
9016	07/15/2011	TJM	P	175.00	8.25	8.25	1,443.75	Trial preparation - Draft/revise pleadings
9016	07/17/2011	TJM	P	175.00	7.50	7.50	1,312.50	Trial preparation
9016	07/18/2011	TJM	P	175.00	6.40	6.40	1,120.00	Trial - Review/research directed verdict forms; emails; research issues from trial team; review research from clerks; draft and revise jury charges
9016	07/19/2011	TJM	P	175.00	2.40	2.40	420.00	Conference with SMS; trial prep, begin draft of motion; email; draft/review/revise verdict form for jury
9016	07/20/2011	TJM	P	175.00	0.75	0.75	131.25	Conference with SMS re jury charges; review and research case law
Subtotal for Timekeeper TJ				Billable	157.55	157.55	27,571.25	Timothy JW Muller
9016	04/10/2009	SMS	A	125.00	0.40	0.40	50.00	Conferences with Ariail regarding lien to be filed and served in Colleton County; Telephone message for process server; Research on Myrtle Grove Plantation
9016	04/13/2009	SMS	A	125.00	2.50	2.50	312.50	Conferences with Ariail; Telephone conferences with process server; Finalize notice and certificate of mechanic's lien; Draft letter to Siivka; Prepare instructions and directions for process server
9016	06/29/2009	SMS	A	125.00	0.10	0.10	12.50	Conference with Ariail regarding foreclosure to be filed and need for copy of any mortgages
9016	06/30/2009	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail; Telephone conference with Edisto Title; E-mail title search request to Edisto Title

9016	07/02/2009	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail; Telephone conference with Edisto Title
9016	07/06/2009	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding Colleton County title work; E-mail communication with Edisto Title; Telephone conference with Edisto Title
9016	07/07/2009	SMS	A	125.00	2.00	2.00	250.00	Conferences with Ariail regarding title work from Colleton County, filing of complaint and bonding of lien; Prepare summons and civil cover sheet; Request check for filing fee; Draft letter to Slivka serving complaint via process server; Finalize complaint for filing and service; Telephone conference with process server; Prepare instructions on filing and service for process server
9016	07/08/2009	SMS	A	125.00	0.25	0.25	31.25	Telephone conference with process server regarding filing and service of complaint; Conference with Ariail
9016	07/09/2009	SMS	A	125.00	0.50	0.50	62.50	Telephone conference with Ariail; Telephone conference with process server regarding status of filing and service; Telephone conference with Reeves McLeod regarding acceptance service of complaint for Slivka; E-mail communications with Ariail
9016	07/15/2009	SMS	A	125.00	0.25	0.25	31.25	Draft letter to clerk forwarding affidavit of service and acceptance of service for filing
9016	07/15/2009	SMS	A	125.00	0.10	0.10	12.50	E-mail Spriggs regarding service of complaint on Slivka
9016	09/16/2009	SMS	A	125.00	0.50	0.50	62.50	Conference with Ariail; Draft cover letter for filing reply
9016	09/23/2009	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding case status, reply to counter-claim, possible amended complaint
9016	10/01/2009	SMS	A	125.00	0.20	0.20	25.00	E-mail communication with Ariail regarding upcoming Reply and Amended Answer
9016	10/05/2009	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding contact with Spriggs and upcoming reply and/or amended complaint
9016	10/08/2009	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding contact with McLeod and need for Colleton County title abstractor
9016	10/09/2009	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding various title work to be requested; E-mail communication with Edisto Title; E-mail Ariail
9016	10/11/2009	SMS	A	125.00	0.10	0.10	12.50	E-mail Edisto Title regarding request for records search in Colleton County
9016	10/13/2009	SMS	A	125.00	0.25	0.25	31.25	Telephone conference with Cheryl Schlessner regarding request for title work on Slivka property; Fax requested information to Schlessner
9016	10/22/2009	SMS	A	125.00	0.30	0.30	37.50	Telephone conference with title abstractor Schlessner; E-mail communication with Ariail; Conference with Ariail
9016	10/27/2009	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding results of requested title work;

9016	10/28/2009	SMS	A	125.00	0.30	0.30	37.50	Telephone message for title abstractor Schlesser
9016	11/03/2009	SMS	A	125.00	0.30	0.30	37.50	Telephone conference with title abstractor Cheryl Schlesser; Review file regarding due date for responsive pleading; Conference with Ariail
9016	11/05/2009	SMS	A	125.00	0.20	0.20	25.00	Conferences with Ariail regarding results of title work, conferences with Jennings and Spriggs
9016	11/06/2009	SMS	A	125.00	1.25	1.25	156.25	Conferences with Ariail regarding information from client and upcoming reply
9016	11/10/2009	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding filing and service of reply; Prepare cover letter per Ariail's instructions; Prepare certificate of service
9016	11/17/2009	SMS	A	125.00	1.50	1.50	187.50	Conferences with Ariail regarding filing of reply
9016	11/19/2009	SMS	A	125.00	0.40	0.40	50.00	E-mail communication with Ariail regarding discovery requests; Finalize first interrogatories and request for production of documents to be served on defendant Slivka; Prepare certificate of service; Draft letter to McLeod forwarding discovery requests; Conference with Ariail; Index discovery and organize file
9016	11/20/2009	SMS	A	125.00	1.30	1.30	162.50	Draft document subpoena to Beaufort Surveying, Inc.
9016	11/24/2009	SMS	A	125.00	1.50	1.50	187.50	Prepare letter to David Youmans forwarding document subpoena; Finalize document subpoena and attachment; Prepare certified mailing; Update discovery and correspondence files
9016	12/02/2009	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding documents from Youmans and Spriggs; Telephone conferences with Youmans; E-mail communication with Youmans to coordinate copying and pick up of documents
9016	12/07/2009	SMS	A	125.00	0.50	0.50	62.50	Conference with Ariail; Coordinate production of Youmans' documents
9016	12/28/2009	SMS	A	125.00	0.75	0.75	93.75	Conferences with Ariail regarding documents produced by Youmans (Beaufort Surveying) per document subpoena; Review documents and invoice from ProLegal Copies; Conference with Ariail regarding motion to dismiss; Draft letter to McLeod regarding overdue discovery responses; Update pleadings and correspondence
9016	01/07/2010	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding client documents
9016	01/11/2010	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding status of receiving client documents
9016	01/26/2010	SMS	A	125.00	1.50	1.50	187.50	Conferences with Ariail regarding upcoming motion to dismiss mechanic's lien, affidavits and memo to be filed; Review motions roster; Review defendant's motion to dismiss lien; Telephone conference with clerk's office regarding motions hearing; Misc. preparation for

9016	01/27/2010	SMS	A	125.00	1.25	1.25	156.25	upcoming motions hearing Conferences with Ariail; Telephone conference with Beaufort Surveying regarding Youmans affidavit; Misc. preparation for upcoming motions hearing
9016	01/28/2010	SMS	A	125.00	2.75	2.75	343.75	Conferences with Ariail; Prepare for motions hearing; Finalize exhibits for memo in opposition and affidavits; E-mail communication with Judge Mullen's clerk; Prepare cover letters to Judge and clerk of court
9018	01/29/2010	SMS	A	125.00	4.00	4.00	500.00	Conferences with Ariail; Finalize memo in opposition to Slivka's motion to dismiss for filing with court and service on McLeod; E-mail communication with Judge Mullen's clerk;
9018	02/09/2010	SMS	A	125.00	0.10	0.10	12.50	Conference with Ariail regarding upcoming motions hearings
9016	02/22/2010	SMS	A	125.00	1.75	1.75	218.75	Conferences with Ariail; Review motions roster for any instructions from sitting judge, Kinard; E-mail communication with Judge Kinard's law clerk regarding submission of amended memo in opposition, amended affidavits and exhibits; E-mail communication with Youmans' office regarding forwarding amended affidavit; Review pleadings and discovery filings
9016	02/23/2010	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding amended affidavits; Review amended affidavits of Youmans and Bozeman
9016	02/24/2010	SMS	A	125.00	2.50	2.50	312.50	Conferences with Ariail regarding filing and service of amended memo in opposition and amended affidavits; Finalize amended memo in opposition and amended affidavits with proper exhibits for earch for filing
9018	02/25/2010	SMS	A	125.00	2.00	2.00	250.00	Conferences with Ariail; Finalize letter to clerk filing amended memo in opposition and amended affidavits; Prepare documents to be filed with clerk and set to be served on McLeod;
9016	02/28/2010	SMS	A	125.00	1.00	1.00	125.00	Update pleadings, discovery, correspondence and organize file Prepare for upcoming motions hearing; Update pleadings
9018	03/01/2010	SMS	A	125.00	1.70	1.70	212.50	Conferences with Ariail regarding Slivka affidavit and preparation for motions hearing; Review Slivka affidavit; Update pleadings and correspondence; Prepare for 3/2/10 motions hearings
9016	03/02/2010	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding results of motions hearing
9018	03/03/2010	SMS	A	125.00	0.75	0.75	93.75	Conferences with Ariail; Review complaint regarding request for jury trial; Review mandated Alternative Dispute Resolution rules for specified counties within South Carolina; Calculate time since filing of complaint in conjunction with ADR rules

9016	03/04/2010	SMS	A	125.00	0.10	0.10	12.50	Review fax from McLeod regarding motion to strike
9016	03/11/2010	SMS	A	125.00	0.25	0.25	31.25	Review letter from McLeod with settlement offer; Conferences with Ariail
9016	03/15/2010	SMS	A	125.00	1.20	1.20	150.00	E-mail communications with Ariail regarding motion to amend complaint and subpoena for Slivka financial records; Conferences with Ariail; Prepare motion information cover sheet; Begin letter to clerk for forwarding motion to amend complaint; Review subpoena issued by Utsey; Review SC Judicial Dept. calendar regarding upcoming terms of motions hearings
9016	03/16/2010	SMS	A	125.00	1.30	1.30	162.50	Work on finalizing motion to amend complaint; Review proposed amended complaint; Prepare certificate of service and cover letter to clerk of court; Conferences with Ariail;
9016	03/17/2010	SMS	A	125.00	2.00	2.00	250.00	Prepare document subpoena for Enterprise Bank of SC for financial records of Slivka; Prepare cover letter and certified mailing to bank; Conferences with Ariail; Review answers to defendant's interrogatories per Ariail's instructions
9016	03/18/2010	SMS	A	125.00	2.25	2.25	281.25	Prepare certificate of service and cover letter for discovery responses; Finalize discovery responses to be served on McLeod; Conferences with Ariail; Corrections to motion information cover sheet per request of clerk's office; Resend motion to amend complaint to clerk's office for filing; Review fax from Enterprise Bank of SC in response to document subpoena
9016	03/22/2010	SMS	A	125.00	0.30	0.30	37.50	Conference with Muller regarding letter to Enterprise Bank; Email Spriggs
9016	03/23/2010	SMS	A	125.00	0.50	0.50	62.50	Review civil cover sheet and Alternate Dispute Resolution instructions; Conferences with Ariail regarding mediation requirements; E-mail Muller
9016	03/29/2010	SMS	A	125.00	0.30	0.30	37.50	E-mail communications with Ariail and Muller regarding upcoming motions hearing for Spriggs' motion to amend complaint and Slivka's motion to quash subpoena to Enterprise Bank; Conference with Ariail
9016	03/31/2010	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding Colleton County Jury Mediations Roster; Review Jury Mediations roster and updated rules and instructions for mediation roster
9016	04/08/2010	SMS	A	125.00	0.10	0.10	12.50	Conferences with Ariail regarding possible mediator
9016	04/19/2010	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail regarding upcoming motions hearings; Conference with Muller; Review Colleton County motions roster for updates and notations
9016	04/20/2010	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail and Muller regarding motions hearing;

9016	04/23/2010	SMS	A	125.00	0.25	0.25	31.25	Preparation for motions hearing Conference with Muller regarding form order received from Court regarding results of motions hearing; Restore file subsequent motions hearing
9016	04/26/2010	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail regarding results of motions hearing, need for scheduling order
9016	04/27/2010	SMS	A	125.00	0.50	0.50	62.50	Conference with Ariail regarding amended complaint to be filed and served; Forward correspondence and proposed order to McLeod
9016	04/28/2010	SMS	A	125.00	1.50	1.50	187.50	Draft letter to clerk forwarding amended complaint for filing and service on McLeod; Finalize amended complaint for filing and service; E-mail Spriggs forwarding correspondence to clerk and copy of amended complaint; Conference with Muller regarding order in connection with subpoena issued to Enterprise Bank of SC
9016	04/29/2010	SMS	A	125.00	1.00	1.00	125.00	Draft consent scheduling order; Conferences with Ariail regarding scheduling order dates; Revisions to scheduling order; E-mail McLeod forwarding proposed consent scheduling order;
9016	05/03/2010	SMS	A	125.00	0.80	0.50	62.50	Review McLeod letter regarding extension of time to answer amended complaint; Review rules of procedure regarding time to answer pleadings; Conference with Ariail
9016	05/04/2010	SMS	A	125.00	1.25	0.25	31.25	Conferences with Ariail regarding extension of time requested by McLeod, status of consent scheduling order; Letter to McLeod, via fax and mail, regarding extension of time to answer amended complaint;
9016	05/05/2010	SMS	A	125.00	1.00	1.00	125.00	Organize file - drawings, CKS documents and documents from Youmans - reconstitute and relocate files
9016	05/06/2010	SMS	A	125.00	0.10	0.10	12.50	Review filed copy of amended complaint received from clerk's office
9016	05/11/2010	SMS	A	125.00	0.75	0.50	62.50	Update pleadings, discovery and correspondence
9016	05/17/2010	SMS	A	125.00	0.25	0.25	31.25	E-mail communication with McLeod regarding scheduling order; Conference with Ariail
9016	05/20/2010	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding proposed consent scheduling order; Review upcoming schedule of Judge Buckner
9016	05/21/2010	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail regarding proposed consent scheduling order; Review Colleton County roster news; E-mail communications with Judge Buckner's clerk regarding Judge's preferences on proposed orders; E-mail communications with McLeod
9016	05/24/2010	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail; Draft letter to McLeod requesting extension to file reply to Defendant's counterclaims; E-mail McLeod forwarding request for extension of time

9016	05/25/2010	SMS	A	125.00	0.80	0.80	100.00	Conferences with Ariail; E-mail communications with McLeod regarding signature page for scheduling order; Revise consent scheduling order to reflect agreed upon dates
9016	05/26/2010	SMS	A	125.00	1.25	1.25	156.25	Conferences with Ariail regarding consent scheduling order; E-mail communications with McLeod; Finalize consent scheduling order for review by Judge Buckner; Prepare motion and order information cover sheet; Prepare letter to Judge Buckner; Update pleadings/correspondence
9016	06/01/2010	SMS	A	125.00	0.50	0.50	62.50	E-mail filed scheduling order to McLeod; Update pleadings and correspondence
9016	06/07/2010	SMS	A	125.00	0.80	0.80	100.00	Conferences with Ariail regarding motion to strike to be filed; Prepare motion and order information cover sheet
9016	06/18/2010	SMS	A	125.00	0.60	0.60	75.00	Conferences with Ariail; Finalize motion to strike for filing and service; Draft letter to clerk for filing motion to strike
9016	06/22/2010	SMS	A	125.00	0.70	0.70	87.50	Conference with Ariail; Motion to Strike to clerk for filing with copy to McLeod
9016	06/25/2010	SMS	A	125.00	0.40	0.40	50.00	Conference with Muller regarding letter to Enterprise Bank; Update pleadings with filed motion to strike
9016	06/29/2010	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding client documents
9016	07/20/2010	SMS	A	125.00	0.10	0.10	12.50	Conference with Ariail regarding noticing deposition of Slivka
9016	07/21/2010	SMS	A	125.00	0.10	0.10	12.50	Conference with Ariail regarding date for deposing Slivka;
9016	07/22/2010	SMS	A	125.00	1.40	1.40	175.00	Prepare notice of deposition, subpoena to appear at deposition/ produce documents and certificate of service for Gene Slivka; Draft letter to McLeod forwarding notice of deposition; Conference with Ariail; E-mail Spriggs forwarding deposition notice and letter regarding mediation; E-mail Carolina Realtime forwarding notice of deposition; Update discovery index
9016	07/26/2010	SMS	A	125.00	2.75	2.75	343.75	E-mail communication with Ariail and Fagerstrom regarding Slivka deposition date and date for mediation; Multiple telephone conferences with McLeod's office regarding scheduling of Slivka deposition and confirming date for mediation; Multiple telephone conferences with Duffie's office regarding confirmation of date for mediation; Prepare case caption document for mediator; E-mail amended pleadings and case caption to mediator;
9016	07/27/2010	SMS	A	125.00	1.00	1.00	125.00	Multiple conferences with Ariail Telephone conference with McLeod regarding change to date for Slivka deposition; Prepare amended deposition notice, subpoena and certificate of service; Draft letter

								to McLeod; E-mail McLeod; E-mail Spriggs with updated schedule; Conferences with Ariail
9016	08/02/2010	SMS	A	125.00	0.30	0.30	37.50	Review Ariail letter to McLeod regarding status of Slivka deposition; Conferences with Ariail
9016	08/03/2010	SMS	A	125.00	0.10	0.10	12.50	Update on status of Slivka deposition
9016	08/04/2010	SMS	A	125.00	1.50	1.50	187.50	Conferences with Ariail regarding status of Slivka deposition, possible motion to compel; Conference with Muller regarding motion to compel production of witness; E-mail Jennifer Bell in McLeod's office forwarding correspondence on status of Slivka deposition; Research on motion to compel production of witness at deposition and review similar motion from closed matter; E-mail Ariail and Muller regarding motion to compel
9016	08/05/2010	SMS	A	125.00	2.25	2.25	281.25	Conferences with Ariail regarding Slivka deposition and drafting motion to compel production of witness; Draft motion to compel; Prepare motion and order information cover sheet; Draft letter to clerk for filing of motion; Review 9/8/10 motions roster for Colleton County
9016	08/06/2010	SMS	A	125.00	1.50	1.50	187.50	Conferences with Ariail regarding motion to be filed; Review additional exhibits for motion to compel production of witness; Finalize motion for filing and service; Instructions to courier on filing and service of motion;
9016	08/09/2010	SMS	A	125.00	1.25	1.25	156.25	Draft subpoena and cover letter to Compass South, Inc. for appraisal documents; Conferences with Ariail; Update pleadings and discovery indexes; Review Colleton County motions roster for 9/8/10 for expedited motion to compel; Review McLeod motion to be relieved
9016	08/10/2010	SMS	A	125.00	1.20	1.20	150.00	Conferences with Ariail; Ariail e-mail on document subpoena to Colleton County planning department; Review McLeod e-mail and letter regarding expedited hearing before Judge Buckner on motion to be relieved; E-mail communication with Judge Buckner's clerk regarding motions hearing and request for our expedited motions to be heard; Review Colleton County roster news regarding continuances
9016	08/11/2010	SMS	A	125.00	2.00	2.00	250.00	Work on document subpoena to Philip Slayter at Colleton County planning and development office for files on Slivka property; Draft letter to Slayter forwarding subpoena; Conferences with Ariail; Prepare for motions hearing on McLeod's motions to be relieved and to extend scheduling order
9016	08/12/2010	SMS	A	125.00	0.75	0.75	93.75	E-mail communication and telephone

9016	08/13/2010	SMS	A	125.00	0.25	0.25	31.25	conferences with Philip Slayter at Colleton County planning department regarding document subpoena for files on Slivka's property; Conferences with Ariail; E-mail communication with Slayter at Colleton County planning department regarding document subpoena; E-mail Ariail regarding contact with Slayter in response to subpoena for files on Slivka's property
9016	08/20/2010	SMS	A	125.00	0.25	0.25	31.25	Review documents produced by Compass South in response to document subpoena
9016	08/23/2010	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail regarding documents produced by Compass South; Letter to Compass South forwarding check for payment of copies of documents produced and federal express shipping of documents requested in subpoena; Conference with Ariail regarding upcoming motions hearings; Review roster information
9016	08/24/2010	SMS	A	125.00	0.80	0.80	100.00	E-mail communication with Weiss at Colleton County clerk's office and Judge Mullen's clerk regarding status of upcoming motions; Review current motions roster and roster news
9016	08/25/2010	SMS	A	125.00	0.25	0.25	31.25	Review signed and filed Order relieving McLeod as counsel for Slivka; E-mail Weiss at Colleton County clerk's office
9016	08/27/2010	SMS	A	125.00	0.30	0.30	37.50	Review motions roster for term on 9/8/10 regarding notations for motions to compel, sanctions and strike; E-mail Weiss at Colleton County clerk's office regarding notations on motions hearing; Conference with Ariail
9016	08/30/2010	SMS	A	125.00	0.60	0.60	75.00	E-mail communications with Weiss in Colleton Co. clerk's office regarding motion to strike; Conference with Ariail
9016	08/31/2010	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding status of upcoming motions hearing; Review motions roster on Colleton Co. site; E-mail communication with Judge Buckner's clerk; E-mail communications with Weiss in Colleton Co. clerk's office; Telephone conference with Judge Buckner's clerk regarding continuation of motion to strike
9016	09/01/2010	SMS	A	125.00	1.00	1.00	125.00	Review e-mail from Judge Buckner's law clerk regarding continuation of motion to strike; Review roster notice for notation on continuation; Conference with Ariail
9016	09/07/2010	SMS	A	125.00	0.25	0.25	31.25	Review public case index regarding potential new counsel for defendant Slivka; Conference with Ariail
9016	09/13/2010	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail regarding document subpoena issued to Colleton County planning department
9016	09/14/2010	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding case/file status
9016	09/16/2010	SMS	A	125.00	0.10	0.10	12.50	

9016	09/21/2010	SMS	A	125.00	0.50	0.50	62.50	Research on Colleton County case records search for any filings regarding new counsel for Slivka; Conference with Ariail
9016	09/29/2010	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail regarding Slivka representation; Review e-mail from Ariail regarding pleadings to be forwarded to Lyles; Review pleadings and update profiles; E-mail Wetzig in Lyles' office forwarding pleadings per Ariail's instructions
9016	09/30/2010	SMS	A	125.00	1.75	1.50	187.50	E-mail communication with Wetzig in Lyles' office; Telephone conference with Wetzig regarding case status and meeting between Lyles and Ariail; Coordinate meeting for Lyles and Ariail; Conferences with Ariail; Review Lyles' notice of appearance; Update pleadings index; Notes for upcoming meeting with Lyles
9016	10/07/2010	SMS	A	125.00	1.75	1.75	218.75	E-mail communications with Lyles' office confirming meeting; Conferences with Ariail; Draft notice of deposition for Slivka, subpoena to appear at deposition and produce documents and certificate of service; Draft letter to Lyles delivering notice of deposition and subpoena; Prepare for Ariail meeting with Lyles
9016	10/08/2010	SMS	A	125.00	1.50	1.50	187.50	Prepare for Ariail meeting with Lyles; Update file - correspondence, pleadings and discovery indexes; Conferences with Ariail; E-mail to Lyles forwarding copies of the notice of deposition and subpoena for Slivka with copy to Spriggs;
9016	10/19/2010	SMS	A	125.00	0.10	0.10	12.50	Review Ariail e-mail to Lyles regarding deposition of Slivka and need to amended scheduling order
9016	10/21/2010	SMS	A	125.00	0.20	0.20	25.00	E-mail communication with Ariail regarding contact with Lyles on deposition dates
9016	11/02/2010	SMS	A	125.00	0.25	0.25	31.25	Review Lyles' letter and 30b6 deposition notice for Spriggs Group; Conferences with Ariail
9016	11/03/2010	SMS	A	125.00	1.50	1.50	187.50	E-mail communications with Ariail and Croft regarding notice of deposition for Spriggs 30b6; Review letters to Lyles and Spriggs; Draft 4th amended notice of deposition, subpoena to appear and certificate of service
9016	11/04/2010	SMS	A	125.00	1.00	1.00	125.00	Conference with Ariail; Finalize 4th amended notice of deposition and subpoena for Slivka; Forward fourth amended notice of deposition and subpoena for Slivka to Lyles via e-mail and US Mail
9016	11/09/2010	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail; Review Spriggs e-mail
9016	11/10/2010	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding depositions and motion to strike; Review Colleton County terms of court
9016	11/11/2010	SMS	A	125.00	0.10	0.10	12.50	Conference with Ariail on upcoming depositions and scheduling motion to

								strike
9016	11/12/2010	SMS	A	125.00	0.20	0.20	25.00	Review judicial calendar for terms of motions in Colleton County
9016	11/15/2010	SMS	A	125.00	0.50	0.50	62.50	Review motion to strike and previous e-mail communications with Colleton County clerk of court regarding hearing date for motion; E-mail Weiss in Colleton County clerk of court's office regarding motion to strike and new hearing date;
9016	11/18/2010	SMS	A	125.00	1.80	1.80	225.00	Telephone conference with Welzig in Lyles' office regarding upcoming depositions of Slivka and Spriggs; E-mail communications with Ariail regarding documents to be produced; Telephone conference with Welzig regarding drawings to be reviewed; Prepare for document review and duplicate CDs of documents to be produced
9016	11/19/2010	SMS	A	125.00	2.00	2.00	250.00	Prepare invoice to Lyles for production of CDs of Spriggs documents; Conferences with Welzig regarding project drawings, pleadings and discovery indexes; Update discovery index; Coordinate production/copying of pleadings and discovery files for Lyles
9016	11/22/2010	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail regarding upcoming depositions, preparation with client and review of documents by Lyles' office; Telephone conference with Spriggs; E-mail communications with Welzig in Lyles' office regarding index of drawings; Revise invoice for production of Spriggs documents to Lyles
9016	11/23/2010	SMS	A	125.00	1.75	1.75	218.75	Conferences with Ariail; Telephone conferences with Welzig in Lyles' office regarding index of drawings; E-mail communications with Welzig regarding drawings and PST files; Review CD of PST files; Preparation for deposition of Slivka; Telephone conference with Colleton County clerk's office regarding motion to strike
9016	11/29/2010	SMS	A	125.00	1.75	1.75	218.75	Slivka deposition
9016	11/30/2010	SMS	A	125.00	1.25	1.25	156.25	Spriggs' deposition
9016	12/01/2010	SMS	A	125.00	1.00	1.00	125.00	Organize file - post depositions; Review drawings entered as exhibits for depositions of Spriggs and Slivka; Conferences with Ariail
9016	12/07/2010	SMS	A	125.00	0.25	0.25	31.25	E-mail communications with Welzig regarding drawings submitted as deposition exhibits and date for mediation;
9016	12/10/2010	SMS	A	125.00	0.25	0.25	31.25	E-mail all parties regarding mediation
9016	12/13/2010	SMS	A	125.00	1.75	1.75	218.75	Receipt/review digital transcript of Slivka deposition; Download transcript and exhibits from court reporting repository; Conferences with Ariail regarding upcoming motions hearing and listings for motions to strike and defendant's motion to extend scheduling order; Review motions

9016	12/16/2010	SMS	A	125.00	0.80	0.80	100.00	roster; E-mail Ariail pertinent portions of roster
9016	12/17/2010	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail regarding rescheduling mediation, upcoming motions hearing, additional motion to file and amending memo in support of motion to strike
9016	12/20/2010	SMS	A	125.00	1.00	1.00	125.00	Telephone conferences with Welzig in Lyles' office; Conferences with Ariail; Pull project drawings per Ariail's request
9016	12/28/2010	SMS	A	125.00	1.25	1.25	156.25	E-mail Spriggs regarding mediation; Conferences with Ariail; E-mail communications with Welzig on upcoming motions and roster information; Review Colleton County rosters
9016	01/03/2011	SMS	A	125.00	2.00	2.00	250.00	Review affidavit of Bright Ariail in support of motion to strike affirmative defenses; Finalize affidavit for filing and service; Draft letter to clerk forwarding affidavit for filing; Conference with Ariail; E-mail Lyles forwarding affidavit
9016	01/04/2011	SMS	A	125.00	4.00	4.00	500.00	Update pleadings and correspondence; Conferences with Ariail; Preparation for motions hearing
9016	01/05/2011	SMS	A	125.00	0.20	0.20	25.00	Conferences with Ariail regarding preparation for motions hearing; Telephone conferences and e-mail communications with Lyles regarding motions hearing; Preparation for motions hearing; Telephone conferences and e-mail communications with Judge Buckner's office regarding continuatin of motions hearings; Prepare consent order of continuance, cover sheet and cover letter for continuation of motions; Multiple communications with Judge's law clerk regarding status of motions
9016	01/06/2011	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding motions hearing and preparation for upcoming mediation; Conference with Ariail regarding mediation preparation;
9016	01/07/2011	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding preparation for mediation
9016	01/10/2011	SMS	A	125.00	0.25	0.25	31.25	Conference with Ariail regarding mediation; Review correspondence for McLeod letter on subpoena to bank for use in mediation
9016	01/11/2011	SMS	A	125.00	0.20	0.20	25.00	Follow up on responses to discovery requests issued by Lyles/Slivka; E-mail Spriggs forwarding Slivka discovery requests for review
9016	01/12/2011	SMS	A	125.00	0.20	0.20	25.00	Update pleadings
9016	01/14/2011	SMS	A	125.00	0.75	0.75	93.75	Review Walker letter, invoice for mediation and Proof of ADR form; Update pleadings with Proof of ADR
9016	01/18/2011	SMS	A	125.00	0.50	0.50	62.50	Review February motions roster; Conference with Muller regarding upcoming motion to strike
9016	01/19/2011	SMS	A	125.00	0.20	0.20	25.00	Review Bozeman affidavit
9016	01/24/2011	SMS	A	125.00	0.25	0.25	31.25	Review Lyles letter regarding

9016	01/28/2011	SMS	A	125.00	1.00	1.00	125.00	discovery responses and request to depose Bozeman; Conferences with Ariail
9016	01/31/2011	SMS	A	125.00	2.50	2.50	312.50	Conferences with Ariail regarding upcoming motions hearing; Draft overdue discovery letter to Lyles per Ariail's instructions; E-mail Lyles forwarding Ariail letter on previously requested documents
9016	02/01/2011	SMS	A	125.00	2.50	2.50	312.50	Conferences with Ariail regarding motion for summary judgment to be filed; Finalize motion for summary judgment and Ariail affidavit in support for filing and service; Draft letter to clerk forwarding motion for summary judgment for filing; Review of Colleton County motions roster and roster notes regarding upcoming term of motions and service of affidavits; E-mail Riley in clerk's office regarding additional motion to be heard; E-mail from Lyles' office regarding request for additional documents; E-mail Lyles forwarding motion for summary judgment
9016	02/14/2011	SMS	A	125.00	1.75	1.75	218.75	E-mail communication with Weiss at Colleton County clerk's office regarding plaintiff's motion for summary judgment; Conferences with Ariail regarding upcoming term of motions, information from clerk's office and possible postponement of motions; Telephone conference with Lyles' office regarding defendant's motion for summary judgment; Prepare motion and order information cover sheet; Begin draft letter to Judge Buckner; Conferences with Ariail regarding discovery responses, scheduling order and trial roster; Review March 14, 2011 trial roster; Review SC Judicial site for upcoming terms of court in Colleton County; E-mail Ariail regarding terms of court; Draft amended scheduling order; E-mail Lyles with proposed amended scheduling order
9016	02/15/2011	SMS	A	125.00	0.50	0.50	62.50	Telephone conference with Welzig in Lyles' office regarding copy of Stivka documents; E-mail Ariail; Conference with Ariail regarding Stivka documents and dates for Bozeman deposition; E-mail communication with Welzig in Lyles' office regarding Bozeman and what capacity they want to depose him
9016	02/16/2011	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail regarding scheduling order; E-mail communication with Lyles regarding consent scheduling order
9016	02/18/2011	SMS	A	125.00	0.30	0.30	37.50	E-mail Lyles' office forwarding consent scheduling order and consent order of protection for signature; Telephone conferences with Lyles' office; E-mail communication with

9016	02/22/2011	SMS	A	125.00	0.40	0.40	50.00	Arial Telephone conference with Welzig in Lyles' office regarding consent scheduling order; Conferences with Arial regarding contact with Lyles and status of orders to be forwarded to Judge Buckner for consideration; E-mail communications with Lyles' office regarding proposed orders
9016	02/23/2011	SMS	A	125.00	0.40	0.40	50.00	Conferences with Arial following up on status of consent scheduling order; Telephone conferences and e-mail communications with Lyles' office regarding status of consent scheduling order
9016	02/24/2011	SMS	A	125.00	0.80	0.80	100.00	Draft letter to Judge Buckner forwarding proposed consent scheduling order for consideration; E-mail communication with Judge Buckner's law clerk with copy to Lyles; Prepare motion and order cover sheet for filing of scheduling order; Conferences with Arial
9016	02/28/2011	SMS	A	125.00	0.20	0.20	25.00	Conferences with Arial regarding upcoming motions and outstanding discovery requests
9016	03/03/2011	SMS	A	125.00	0.25	0.25	31.25	E-mail communications with Arial regarding scheduling order; Review Colleton County case records search; E-mail communication with Judge Buckner's clerk regarding scheduling order
9016	03/07/2011	SMS	A	125.00	0.10	0.10	12.50	Conference with Arial regarding additional documents from Spriggs
9016	03/08/2011	SMS	A	125.00	0.25	0.25	31.25	Conference with Arial; Review letter to Judge Buckner; E-mail Judge Buckner's clerk regarding request on motions to be heard
9016	03/09/2011	SMS	A	125.00	2.50	2.50	312.50	Conference with Arial regarding discovery responses; Review responses to defendant's discovery requests and finalize for service; Prepare certificate of service and cover letter to Lyles; E-mail Lyles; Conference with Arial regarding upcoming motions hearing and change of location; Update file
9016	03/10/2011	SMS	A	125.00	0.60	0.60	75.00	Conference with Arial regarding upcoming motions hearings; Update file in preparation of motions hearings
9016	03/15/2011	SMS	A	125.00	0.20	0.20	25.00	Conference with Arial regarding motions for strike and summary judgment; Review Colleton County motions roster - notation of motions continued
9016	03/23/2011	SMS	A	125.00	0.20	0.20	25.00	E-mail communication with Arial regarding Colleton County motions roster; Review April 12, 2011 motions roster
9016	03/30/2011	SMS	A	125.00	0.10	0.10	12.50	Conference with Arial regarding upcoming motions hearing and preparation for motions hearing
9016	04/04/2011	SMS	A	125.00	0.50	0.50	62.50	Conferences with Arial regarding preparations for upcoming motions hearing, amended affidavit to be filed and deposition dates for Bozeman; Review Colleton County

9016	04/05/2011	SMS	A	125.00	1.25	1.25	156.25	roster news; Conference with Ariail to prepare for upcoming motions hearing; Review and revise amended affidavit in support of motion for summary judgment; Prepare letter to clerk forwarding amended affidavit for filing; E-mail Lyles forwarding amended affidavit
9016	04/07/2011	SMS	A	125.00	0.30	0.30	37.50	E-mail communication with Welzig in Lyles' office regarding exhibits to Slivka deposition and forward electronic copy of transcript with linked exhibits; Receipt and review of filed amended affidavit of Bright Ariail
9016	04/08/2011	SMS	A	125.00	3.00	3.00	375.00	Prepare for upcoming motions hearing - create notebook of materials per Ariail's instructions; Update pleadings and correspondence
9016	04/11/2011	SMS	A	125.00	2.50	2.50	312.50	Conferences with Ariail; Misc. preparation for motions hearings;
9016	04/12/2011	SMS	A	125.00	0.70	0.70	87.50	Conferences with Ariail regarding motions hearing; Review pleadings and case record search for amended consent scheduling order; Review SC Supreme Court site regarding grievance filings
9016	04/14/2011	SMS	A	125.00	1.25	1.25	156.25	E-mail communications with Ariail regarding filed copy of amended consent scheduling order; Telephone conference with Colleton County clerk's office; Letter to Colleton County requesting clocked copy of amended consent scheduling order; Case records search in Colleton County for foreclosure cases against Gene Slivka per Ariail's request
9016	04/18/2011	SMS	A	125.00	1.00	1.00	125.00	Conferences with Ariail regarding receipt of filed amended consent scheduling order and form order issued on recent motions hearing; Review form order on motions for summary judgment; Update pleadings index; E-mail Lyles forwarding filed copy of amended consent scheduling order
9016	04/26/2011	SMS	A	125.00	0.25	0.25	31.25	E-mail from Ariail regarding transcript for Glick; Condensed deposition transcript of Spriggs for Glick; Conference with Ariail
9016	04/27/2011	SMS	A	125.00	1.50	1.50	187.50	Update pleadings and discovery and reconstitute file with motions hearing materials; Prepare certificate of service and cover letter for supplemental interrogatory answers naming Glick as expert; Conference with Ariail regarding supplemental discovery responses; Server supplemental interrogatory answer on Lyles
9016	05/09/2011	SMS	A	125.00	0.20	0.20	25.00	Conferences with Ariail regarding case status and discovery to issue
9016	05/11/2011	SMS	A	125.00	0.30	0.30	37.50	Conference with Ariail regarding supplemental discovery to issue to Lyles; Finalize second set of interrogatories and request for production of documents; Prepare

								certificate of service and cover letter
9016	05/12/2011	SMS	A	125.00	0.50	0.50	62.50	Prepare second set of interrogatories and request for production of documents to be served on Lyles; Conference with Ariail; E-mail Lyles
9016	05/25/2011	SMS	A	125.00	0.25	0.25	31.25	Update discovery
9016	06/01/2011	SMS	A	125.00	0.20	0.20	25.00	Conference with Muller regarding reply to counterclaims to amended complaint and need for notice of deposition for Scott Harvey of ABS
9016	06/02/2011	SMS	A	125.00	2.00	2.00	250.00	Conferences with Muller regarding Reply and Harvey deposition to be noticed; Prepare notice of deposition and subpoena duces tecum for Scott Harvey (expert named by Slivka); Prepare letter and certificate of service to Lyles; Update pleadings and discovery indexes; E-mail Lyles forwarding copy of Reply, Harvey deposition notice and subpoena with copy to Spriggs and Glick; E-mail Ariail
9016	06/07/2011	SMS	A	125.00	0.20	0.20	25.00	Receipt/review notice of deposition for Glick; Conference with Ariail
9016	06/08/2011	SMS	A	125.00	0.20	0.20	25.00	Conference with Ariail regarding notice of deposition for Glick;
9016	06/09/2011	SMS	A	125.00	0.20	0.20	25.00	E-mail communication with Ariail and Welzig on depositions of Harvey and Glick
9016	06/16/2011	SMS	A	125.00	0.50	0.50	62.50	Conference with Ariail regarding upcoming depositions and discovery responses due from defendant; Draft letter to Lyles requesting responses to discovery requests; E-mail Lyles
9016	06/20/2011	SMS	A	125.00	0.50	0.50	62.50	Conference with Ariail regarding upcoming depositions of Harvey and Glick; Review database for depositions of Scott Harvey in other actions
9016	06/22/2011	SMS	A	125.00	0.75	0.75	93.75	Conference with Ariail regarding trial roster for week of July 18, 2011; Receipt/review filed copy of reply; Letter to Lyles forwarding filed copy of reply; E-mail Lyles
9016	06/23/2011	SMS	A	125.00	0.25	0.25	31.25	Conferences with Ariail;
9016	06/24/2011	SMS	A	125.00	1.50	1.50	187.50	Update pleadings index; Misc. for depositions of Harvey and Glick; Conferences with Ariail; Review SC Judicial site for upcoming terms of court for August and September, 2011
9016	06/27/2011	SMS	A	125.00	0.50	0.50	62.50	Conferences with Ariail; E-mail communication with Lyles regarding responses to second discovery requests; Review Colleton County Clerk of Court site and roster news for July 18th term of court; E-mail Polly Riley in Colleton Clerk's office regarding jury list and juror information for July 18th term
9016	06/28/2011	SMS	A	125.00	2.00	2.00	250.00	Conferences with Ariail regarding photos of plantation to produce, motion to compel to draft regarding defendant's lack of discovery responses and miscellaneous items for trial preparation;

9016	06/29/2011	SMS	A	125.00	0.75	0.75	93.75	Letter to Lyles producing photos of plantation; Review Lyles' discovery responses to plaintiff's second set of interrogatories and request for production of documents
9016	06/30/2011	SMS	A	125.00	3.00	3.00	375.00	Conferences with Ariail regarding motion to compel; Review Lyles offer of settlement; E-mail communication with court reporter regarding Harvey and Glick transcripts
9016	07/01/2011	SMS	P	125.00	2.00	2.00	250.00	Attend trial preparation meeting with Ariail, Bruorton, Muller and Dawson; E-mail Judge Seals clerk regarding pre-trial submissions; Spriggs and Slivka transcripts for Bruorton per his instructions; Download Harvey and Glick transcripts with linked exhibits as well as condensed versions for Ariail copies
9016	07/02/2011	SMS	P	125.00	0.50	0.50	62.50	Draft motion to compel discovery responses from Defendant; Conferences with Ariail; Prepare motion cover sheet, cover letter and certificate of service for motion to compel; Review e-mail from Judge Seals clerk regarding pre-trial submissions
9016	07/06/2011	SMS	P	125.00	5.00	5.00	625.00	Update file
9016	07/07/2011	SMS	P	125.00	2.50	2.50	312.50	Trial preparation
9016	07/08/2011	SMS	P	125.00	5.00	5.00	625.00	Trial preparation
9016	07/09/2011	SMS	P	125.00	1.00	1.00	125.00	Trial preparation
9016	07/11/2011	SMS	P	125.00	5.00	5.00	625.00	Trial preparation
9016	07/12/2011	SMS	P	125.00	4.00	4.00	500.00	Trial preparation
9016	07/13/2011	SMS	P	125.00	4.00	4.00	500.00	Trial preparation
9016	07/14/2011	SMS	P	125.00	6.50	6.50	812.50	Trial preparation
9016	07/15/2011	SMS	P	125.00	5.00	5.00	625.00	Trial preparation
9016	07/16/2011	SMS	P	125.00	4.50	4.50	562.50	Trial preparation
9016	07/17/2011	SMS	P	125.00	7.50	7.50	937.50	Trial preparation
9016	07/18/2011	SMS	P	125.00	8.00	8.00	1,000.00	Trial (with travel to and from Walterboro)
9016	07/19/2011	SMS	P	125.00	0.50	0.50	62.50	Conferences with Hagood and Muller regarding status of trial; Telephone conference with Ariail; Reimbursement spreadsheet
9016	07/20/2011	SMS	P	125.00	1.00	1.00	125.00	Trial; Coordinate exhibit boards for closing argument
9016	07/21/2011	SMS	P	125.00	0.50	0.50	62.50	Trial - misc regarding exhibit boards for closing argument
Subtotal for Timekeeper SM				Billable	228.05	224.25	28,031.25	Shannon M. Skelly
9016	06/10/2011	CGW	A	125.00	0.10	0.10	12.50	Prepare Reply to Defendant's Counterclaim and file with clerk of court.
9016	07/08/2011	CGW	P	125.00	1.30	1.30	162.50	Trial prep including preparation of document f and research for use in trial and case management system.
Subtotal for Timekeeper CG				Billable	1.40	1.40	175.00	Claire Whitsett
9016	07/07/2011	BD	P	110.00	1.09	1.09	119.90	Legal research re: admissibility of depositions at trial
9016	07/11/2011	BD	P	110.00	0.10	0.10	11.00	Legal research re: 2007 AIA Code of

9016	07/14/2011	BD	P	110.00	1.57	1.57	172.70	Ethics Legal research re: strict construction of SC mechanics' lien statute
9016	07/18/2011	BD	P	110.00	0.70	0.70	77.00	Legal research re: admissibility of other lawsuits into evidence
9016	07/25/2011	BD	P	110.00	0.30	0.30	33.00	Legal research re: pre-judgment interest rate applicable to mechanic's lien
Subtotal for Timekeeper BD								
			Billable	3.76	3.76	413.60		Brandon Dawson
			Billable	1,015.06	1,013.26	207,639.60		The Spriggs Group, PC, C. Kenneth Spriggs v. Gene Silvka
			Total	1,015.06	1,013.26	207,639.60		

Detail Cost Transaction File List
Rosen, Rosen & Hagood, LLC
Client ID 9016.000 The Spriggs Group, PC, C. Kenneth Spriggs

Client	Trans Date	Tmkr	H P	Rate	Amount	Description
9016	04/21/2009	ABA	A		282.54	Process Service, Inc. service fee per Shannon Skelly.
9016	04/30/2009	ABA	A		0.42	Postage to date
9016	04/30/2009	ABA	A		0.42	Postage to date
9016	04/30/2009	ABA	A		0.42	Postage to date
9016	07/07/2009	ABA	A		150.00	Coffey County Clerk of Court filing fee per Shannon Skelly
9016	07/07/2009	ABA	A	0.22	18.04	In house photocopies to date
9016	07/08/2009	ABA	A		128.50	Edisto Title Services, Inc invoice# 155118B limited title examination per Shannon Skelly
9016	07/15/2009	ABA	A		205.50	Process Service, Inc invoice# 2009002346 service of process per Shannon Skelly
9016	07/15/2009	ABA	A	0.22	1.54	In house photocopies to date
9016	07/16/2009	ABA	A	0.22	0.22	In house photocopies to date
9016	07/20/2009	ABA	A		0.61	Postage to date
9016	07/20/2009	ABA	A		0.44	Postage to date
9016	09/23/2009	ABA	A	0.22	0.44	In house photocopies to date
9016	09/23/2009	ABA	A		0.44	Postage to date
9016	10/08/2009	ABA	A	0.22	3.08	In house photocopies to date
9016	10/20/2009	ABA	A		12.74	West Payment Center invoice# 819194273 computer research charges for September 2009 per Robert Hodges
9016	10/30/2009	ABA	A		205.25	Abstracts Unlimited, Inc statement 10/29/09 professional services per Shannon Skelly
9016	11/09/2009	ABA	A	0.22	6.16	In house photocopies to date
9016	11/09/2009	ABA	A		3.73	Postage to date
9016	11/16/2009	ABA	A		0.61	Postage to date
9016	11/17/2009	ABA	A	0.22	1.98	In house photocopies to date
9016	11/20/2009	ABA	A	0.22	1.76	In house photocopies to date
9016	11/20/2009	ABA	A		6.15	Postage to date
9016	12/07/2009	ABA	A	0.22	0.22	In house photocopies to date
9016	12/07/2009	ABA	A	0.22	0.22	In house photocopies to date
9016	12/07/2009	ABA	A		0.44	Postage to date
9016	12/09/2009	ABA	A		372.42	Pro-Legal Copies, Inc invoice# 13897 Outside copy charges per Shannon Skelly
9016	12/09/2009	ABA	A	0.22	0.66	In house photocopies to date
9016	12/09/2009	ABA	A		0.44	Postage to date
9016	12/14/2009	ABA	A		24.92	West Payment Center Invoice# 819581858 computer research charges for November 2009 per Robert Hodges
9016	12/14/2009	ABA	A		1.73	Postage to date
9016	12/28/2009	ABA	A	0.22	0.22	In house photocopies to date
9016	12/28/2009	ABA	A		0.44	Postage to date
9016	01/20/2010	ABA	A	0.22	10.78	In house photocopies to date
9016	01/26/2010	ABA	A		90.30	Pro-Legal Copies, Inc invoice# 106639 Outside copy charges per Bright Atrial
9016	01/26/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	01/26/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	01/27/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	01/27/2010	ABA	A	0.22	1.10	In house photocopies to date
9016	01/27/2010	ABA	A	0.22	5.94	In house photocopies to date
9016	01/28/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	01/28/2010	ABA	A	0.22	1.32	In house photocopies to date
9016	01/28/2010	ABA	A	0.22	0.88	In house photocopies to date
9016	01/28/2010	ABA	A	0.22	0.88	In house photocopies to date
9016	01/28/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	01/29/2010	ABA	A		4.04	Pro-Legal Copies, Inc invoice# 106713 Outside copy charges per Shannon Skelly
9016	01/29/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	01/29/2010	ABA	A	0.22	20.24	In house photocopies to date
9016	01/29/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	02/04/2010	ABA	A	0.5	51.50	Dan Oberski reimbursement for mileage to and from Waterboro on 02/01/10
9016	02/11/2010	ABA	A	0.22	1.98	In house photocopies to date
9016	02/22/2010	ABA	A		166.80	West Payment Center, invoice# 819989171, computer research charges for January 2010 per Robert Hodges.
9016	02/22/2010	ABA	A	0.22	9.02	In house photocopies to date
9016	02/24/2010	ABA	A		4.04	Pro-Legal Copies, Inc invoice# 107423 Outside copy charges per Shannon Skelly
9016	02/24/2010	ABA	A	0.22	3.52	In house photocopies to date
9016	02/24/2010	ABA	A	0.22	19.36	In house photocopies to date.



9016	02/25/2010	ABA	A		14.37	Federal Express, Inv # 9-501-59785 package sent to Bright Atrial by Melinda Cator on 01/27/10
9016	02/25/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	02/28/2010	ABA	A	0.22	14.52	In house photocopies to date
9016	02/28/2010	ABA	A	0.22	10.56	In house photocopies to date
9016	02/28/2010	ABA	A	0.22	0.88	In house photocopies to date
9016	03/01/2010	ABA	A	0.22	1.76	In house photocopies to date
9016	03/11/2010	ABA	A	0.5	51.00	Dan Oberski reimbursement for mileage to Walterboro Court Submittal
9016	03/11/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	03/12/2010	ABA	A		0.44	Postage to date
9016	03/12/2010	ABA	A		11.42	Postage to date
9016	03/15/2010	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	03/15/2010	ABA	A	0.22	3.52	In house photocopies to date
9016	03/16/2010	ABA	A	0.22	7.92	In house photocopies to date
9016	03/16/2010	ABA	A		0.78	Postage to date
9016	03/16/2010	ABA	A		1.73	Postage to date
9016	03/17/2010	ABA	A		89.89	West Payment Center invoice# 820160067 computer research charges for February 2010 per Robert Hodges
9016	03/17/2010	ABA	A	0.22	1.76	In house photocopies to date
9016	03/17/2010	ABA	A		6.15	Postage to date
9016	03/18/2010	ABA	A	0.22	1.54	In house photocopies to date
9016	03/18/2010	ABA	A	0.22	5.06	In house photocopies to date
9016	03/18/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	03/18/2010	ABA	A		3.12	Postage to date
9016	03/22/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	03/22/2010	ABA	A		5.54	Postage to date
9016	03/23/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	03/23/2010	ABA	A		0.44	Postage to date
9016	03/23/2010	ABA	A		5.54	Postage to date
9016	03/29/2010	ABA	A		14.30	Federal Express, inv # 7-022-59319 package sent to Bright Atrial by Melinda Cato on 02/22/10
9016	03/29/2010	ABA	A	0.5	48.00	Bright Atrial reimbursement for mileage to Colleton County Court House on 03/02/2010
9016	04/15/2010	ABA	A		6.46	West Payment Center invoice# 820344349 computer research charges for March 2010 per Robert Hodges
9016	04/19/2010	ABA	A	0.22	17.60	In house photocopies to date
9016	04/23/2010	ABA	A	0.5	48.00	Timothy J. Muller reimbursement for mileage to Walterboro on 04/21/10
9016	04/27/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	04/27/2010	ABA	A	0.22	0.88	In house photocopies to date
9016	04/27/2010	ABA	A		0.88	Postage to date
9016	04/27/2010	ABA	A		0.88	Postage to date
9016	04/28/2010	ABA	A	0.22	3.96	In house photocopies to date
9016	04/28/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	04/28/2010	ABA	A	0.22	23.98	In house photocopies to date
9016	04/28/2010	ABA	A		1.56	Postage to date
9016	04/28/2010	ABA	A		2.58	Postage to date
9016	04/28/2010	ABA	A		14.63	Postage to date
9016	04/30/2010	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	05/04/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	05/04/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	05/04/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	05/04/2010	ABA	A		0.44	Postage to date
9016	05/10/2010	ABA	A	0.22	1.10	In house photocopies to date
9016	05/10/2010	ABA	A		0.61	Postage to date
9016	05/13/2010	ABA	A		13.07	West Payment Center invoice# 820546830 computer research charges for April 2010 per Robert Hodges
9016	05/21/2010	ABA	A	0.22	3.08	In house photocopies to date
9016	05/26/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	05/26/2010	ABA	A	0.22	1.54	In house photocopies to date
9016	05/26/2010	ABA	A		0.44	Postage to date
9016	05/26/2010	ABA	A		1.22	Postage to date
9016	05/28/2010	ABA	A	0.22	3.08	In house photocopies to date
9016	06/11/2010	ABA	A		33.44	West Payment Center invoice no. 820725267 computer research charges for May 2010 per Robert Hodges
9016	06/21/2010	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	06/21/2010	ABA	A	0.22	11.00	In house photocopies to date
9016	06/21/2010	ABA	A		7.37	Postage to date
9016	06/22/2010	ABA	A	0.22	8.58	In house photocopies to date

9016	06/22/2010	ABA	A		0.78	Postage to date
9016	06/22/2010	ABA	A		1.73	Postage to date
9016	06/22/2010	ABA	A		0.78	Postage to date
9016	07/08/2010	ABA	A		966.85	Pro-Legal Copies Inc invoice no. 110751 Outside copy charges per Shannon Skelly
9016	07/13/2010	ABA	A		17.99	West Payment Center invoice no. 820907041 computer research charges for June 2010 per Robert Hodges
9016	07/22/2010	ABA	A	0.22	1.54	In house photocopies to date
9016	07/22/2010	ABA	A		1.05	Postage to date
9016	07/22/2010	ABA	A		1.05	Postage to date
9016	07/27/2010	ABA	A	0.22	1.32	In house photocopies to date
9016	07/27/2010	ABA	A		0.61	Postage to date
9016	08/02/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	08/02/2010	ABA	A		0.44	Postage to date
9016	08/04/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	08/04/2010	ABA	A	0.22	10.56	In house photocopies to date
9016	08/04/2010	ABA	A		0.44	Postage to date
9016	08/05/2010	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	08/05/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	08/05/2010	ABA	A	0.22	0.88	In house photocopies to date
9016	08/06/2010	ABA	A	0.22	1.32	In house photocopies to date
9016	08/06/2010	ABA	A	0.22	21.12	In house photocopies to date
9016	08/06/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	08/06/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	08/09/2010	ABA	A	0.22	1.76	In house photocopies to date
9016	08/09/2010	ABA	A		5.71	Postage to date
9016	08/09/2010	ABA	A		0.61	Postage to date
9016	08/11/2010	ABA	A	0.5	50.50	Dan Oberski reimbursement for mileage to Walterboro on 08/06/10
9016	08/11/2010	ABA	A		25.00	Dan Oberski reimbursement for Colleton County Clerk of Common Pleas filing fee for motion on 08/06/10
9016	08/11/2010	ABA	A	0.22	1.76	In house photocopies to date
9016	08/11/2010	ABA	A		0.44	Postage to date
9016	08/11/2010	ABA	A		5.71	Postage to date
9016	08/12/2010	ABA	A		22.83	West Payment Center invoice no. 821085786 computer research for July 2010 per Robert Hodges
9016	08/23/2010	ABA	A		75.00	Compass South, Inc. copies and fed x of file per Bright Atrial
9016	08/23/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	08/23/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	08/24/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	08/24/2010	ABA	A		0.44	Postage to date
9016	09/09/2010	ABA	A	0.50	49.00	Bright Atrial reimbursement for mileage to Colleton Co. Courthouse on 08/12/10
9016	09/15/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	09/15/2010	ABA	A		0.44	Postage to date
9016	09/23/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	10/07/2010	ABA	A		0.61	Postage to date
9016	10/08/2010	ABA	A	0.22	1.76	In house photocopies to date
9016	10/08/2010	ABA	A	0.22	12.54	In house photocopies to date
9016	10/08/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	10/15/2010	ABA	A	0.22	0.66	In house photocopies to date
9016	10/15/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	10/15/2010	ABA	A		0.61	Postage to date
9016	11/04/2010	ABA	A	0.22	1.54	In house photocopies to date
9016	11/04/2010	ABA	A		0.61	Postage to date
9016	11/23/2010	ABA	A	0.22	11.44	In house photocopies to date
9016	11/23/2010	ABA	A	0.22	5.28	In house photocopies to date
9016	11/24/2010	ABA	A	0.22	29.04	In house photocopies to date
9016	11/24/2010	ABA	A	0.22	1.76	In house photocopies to date
9016	11/24/2010	ABA	A	0.22	1.32	In house photocopies to date
9016	11/29/2010	ABA	A	0.22	6.82	In house photocopies to date
9016	11/29/2010	ABA	A	0.22	3.52	In house photocopies to date
9016	11/29/2010	ABA	A	0.22	0.22	In house photocopies to date
9016	11/30/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	12/09/2010	ABA	A		453.91	Carolina Realtime, LLC invoice no. 5435 deposition transcript per Shannon Skelly
9016	12/13/2010	ABA	A		877.94	Carolina Realtime, LLC invoice no. 5438 deposition transcript per Shannon Skelly
9016	12/17/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	12/20/2010	ABA	A	0.22	0.44	In house photocopies to date
9016	12/20/2010	ABA	A		0.44	Postage to date

9016	12/28/2010	ABA	A	0.22	2.42	In house photocopies to date
9016	12/28/2010	ABA	A	0.22	4.62	In house photocopies to date
9016	12/28/2010	ABA	A		0.70	Postage to date
9016	12/28/2010	ABA	A		0.61	Postage to date
9016	12/28/2010	ABA	A		1.73	Postage to date
9016	01/03/2011	ABA	A	0.22	6.60	In house photocopies to date
9016	01/03/2011	ABA	A	0.22	20.24	In house photocopies to date
9016	01/04/2011	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9018	01/04/2011	ABA	A	0.22	8.14	In house photocopies to date
9016	01/04/2011	ABA	A	0.22	1.10	In house photocopies to date
9016	01/04/2011	ABA	A	0.22	23.32	In house photocopies to date
9016	01/04/2011	ABA	A		1.05	Postage to date
9016	01/07/2011	ABA	A	0.22	0.44	In house photocopies to date
9016	01/07/2011	ABA	A	0.22	0.66	In house photocopies to date
9016	01/10/2011	ABA	A	0.22	0.22	In house photocopies to date
9016	01/14/2011	ABA	A	0.22	0.44	In house photocopies to date
9016	01/14/2011	ABA	A		0.44	Postage to date
9016	01/18/2011	ABA	A		879.19	Pratt-Thomas Walker, PA 1/2 balance of statement dated 01/11/11 for mediation services per Shannon Skelly
9016	01/18/2011	ABA	A	0.22	0.44	In house photocopies to date
9016	01/26/2011	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	01/27/2011	ABA	A		0.44	Postage to date
9016	01/28/2011	ABA	A	0.22	1.76	In house photocopies to date
9016	01/28/2011	ABA	A	0.22	0.68	In house photocopies to date
9016	01/31/2011	ABA	A	0.22	6.38	In house photocopies to date
9016	01/31/2011	ABA	A		0.61	Postage to date
9016	02/01/2011	ABA	A	0.51	51.51	Ketley Andrews reimbursement for mileage to and from Walterboro Courthouse on 01/31/11
9016	02/01/2011	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	02/02/2011	ABA	A	0.22	1.10	In house photocopies to date
9016	02/02/2011	ABA	A		1.05	Postage to date
9016	02/08/2011	ABA	A		20.83	West Payment Center invoice no. 822226128 computer research charges for January 2011 per Robert Hodges
9016	02/17/2011	ABA	A		150.77	Pro-Legal Copies Inc invoice no. 115758 outside copy charges per Shannon Skelly
9018	02/18/2011	ABA	A		25.00	Colleton County Clerk of Court filing fee per Shannon Skelly
9016	02/23/2011	ABA	A	0.22	0.66	In house photocopies to date
9016	02/23/2011	ABA	A		0.44	Postage to date
9016	02/24/2011	ABA	A	0.22	1.10	In house photocopies to date
9016	02/24/2011	ABA	A		0.61	Postage to date
9016	02/25/2011	ABA	A	0.22	1.32	In house photocopies to date
9016	02/25/2011	ABA	A		0.61	Postage to date
9016	03/08/2011	ABA	A		1.39	Postage to date
9016	03/09/2011	ABA	A	0.22	4.40	In house photocopies to date
9016	04/05/2011	ABA	A	0.22	11.66	In house photocopies to date
9016	04/05/2011	ABA	A		4.24	Postage to date
9016	04/07/2011	ABA	A	0.22	7.48	In house photocopies to date
9016	04/08/2011	ABA	A	0.22	26.62	In house photocopies to date
9016	04/08/2011	ABA	A	0.22	25.98	In house photocopies to date
9016	04/08/2011	ABA	A	0.22	12.32	In house photocopies to date
9016	04/11/2011	ABA	A	0.22	1.98	In house photocopies to date
9016	04/11/2011	ABA	A	0.22	10.78	In house photocopies to date
9016	04/11/2011	ABA	A	0.22	24.86	In house photocopies to date
9016	04/11/2011	ABA	A	0.22	5.50	In house photocopies to date
9016	04/13/2011	ABA	A		214.28	West Payment Center invoice no. 822571304 computer research charges for March 2011 per Robert Hodges
9016	04/14/2011	ABA	A	0.22	0.22	In house photocopies to date
9016	04/14/2011	ABA	A		0.44	Postage to date
9016	04/19/2011	ABA	A	0.51	52.02	Bright Atrial reimbursement for mileage to and from Colleton County Courthouse on 04/12/11
9016	04/27/2011	ABA	A	0.22	0.88	In house photocopies to date
9016	04/27/2011	ABA	A		0.44	Postage to date
9016	05/12/2011	ABA	A	0.22	1.76	In house photocopies/scans to date
9016	05/12/2011	ABA	A		0.64	Postage to date
9016	05/13/2011	ABA	A		158.83	West Payment Center invoice no. 822756764 computer research charges during April 2011 per Robert Hodges
9016	06/02/2011	ABA	A		0.64	Postage to date
9016	06/10/2011	ABA	A		1.72	Postage to date
9016	06/13/2011	ABA	A		16.87	West Payment Center invoice no. 8229403989 computer

					research charges for May 2011 per Robert Hodges
9016	06/16/2011	ABA	A	0.22	0.22 In house photocopies/scans to date
9016	06/16/2011	ABA	A		0.44 Postage to date
9016	06/22/2011	ABA	A		0.20 Sally Graham reimbursement for postage at USPS on 06/22/11
9016	06/22/2011	ABA	A	0.22	0.88 In house photocopies/scans to date
9016	06/22/2011	ABA	A		0.44 Postage to date
9016	06/23/2011	ABA	A	0.22	10.56 In house photocopies/scans to date
9016	06/24/2011	ABA	A	0.22	10.56 In house photocopies/scans to date
9016	06/24/2011	ABA	A	0.22	1.98 In house photocopies/scans to date
9016	06/24/2011	ABA	A	0.22	15.84 In house photocopies/scans to date
9016	06/24/2011	ABA	A	0.22	0.88 In house photocopies/scans to date
9016	06/24/2011	ABA	A	0.22	1.54 In house photocopies/scans to date
9016	06/28/2011	ABA	A	0.50	1.00 In house color photocopies to date
9016	06/28/2011	ABA	A		0.44 Postage to date
9016	06/29/2011	ABA	A	0.22	0.66 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	1.98 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	1.76 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	1.10 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	0.66 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	2.20 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	1.98 In house photocopies/scans to date
9016	06/29/2011	ABA	A	0.22	2.20 In house photocopies/scans to date
9016	06/30/2011	ABA	A		790.52 Carolina Realtime, LLC invoice no. 5709 for digital transcript of Harvey and Glick depositions per Shannon Skelly
9016	06/30/2011	ABA	A	0.22	14.08 In house photocopies/scans to date
9016	07/01/2011	ABA	P		25.00 Colleton County Clerk of Court filing fee per Shannon Skelly
9016	07/01/2011	ABA	P	0.22	1.10 In house photocopies/scans to date
9016	07/01/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/01/2011	ABA	P	0.22	14.52 In house photocopies/scans to date
9016	07/01/2011	ABA	P		1.48 Postage to date
9016	07/01/2011	ABA	P		2.48 Postage to date
9016	07/06/2011	ABA	P	0.22	1.10 In house photocopies/scans to date
9016	07/06/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/07/2011	ABA	P		35.00 Colleton County Clerk of Court charge for jury list, return information and copy fee per Shannon Skelly
9016	07/08/2011	ABA	P	0.22	33.22 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.88 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	1.10 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	2.20 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	1.32 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	1.32 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.88 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.44 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	0.44 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	2.42 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	1.32 In house photocopies/scans to date
9016	07/08/2011	ABA	P	0.22	1.10 In house photocopies/scans to date
9016	07/09/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/09/2011	ABA	P	0.5	1.00 In house color photocopies to date
9016	07/09/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/09/2011	ABA	P	0.22	0.44 In house photocopies/scans to date
9016	07/11/2011	ABA	P		50.00 Colleton County Clerk of Court filing fee per Shannon Skelly
9016	07/11/2011	ABA	P	0.22	2.64 In house photocopies/scans to date
9016	07/11/2011	ABA	P	0.22	5.72 In house photocopies/scans to date
9016	07/11/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/11/2011	ABA	P		2.96 Postage to date
9016	07/12/2011	ABA	P	0.22	0.22 In house photocopies/scans to date
9016	07/12/2011	ABA	P	0.22	4.18 In house photocopies/scans to date
9016	07/12/2011	ABA	P	0.22	3.08 In house photocopies/scans to date
9016	07/13/2011	ABA	P	0.22	0.66 In house photocopies/scans to date
9016	07/13/2011	ABA	P	0.22	0.88 In house photocopies/scans to date
9016	07/13/2011	ABA	P	0.22	0.44 In house photocopies/scans to date
9016	07/14/2011	ABA	P		25.00 Colleton County Clerk of Court filing fee per Shannon Skelly
9016	07/14/2011	ABA	P		10.44 Pro-Legal Copies Inc invoice no. 119041 outside copy

					charges per Bright Atrial	
9016	07/14/2011	ABA	P	0.22	0.66	In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	1.32	In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	3.52	In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	0.88	In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	6.60	In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	2.20	In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	1.76	In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	0.66	In house photocopies/scans to date
9016	07/14/2011	ABA	P	0.22	12.10	In house photocopies/scans to date
9016	07/15/2011	ABA	P	0.22	39.16	In house photocopies/scans to date
9016	07/15/2011	ABA	P	0.22	0.22	In house photocopies/scans to date
9016	07/15/2011	ABA	P	0.22	0.22	In house photocopies/scans to date
9016	07/15/2011	ABA	P	0.22	6.60	In house photocopies/scans to date
9016	07/15/2011	ABA	P	0.22	8.80	In house photocopies/scans to date
9016	07/16/2011	ABA	P	0.22	22.44	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	0.66	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	18.26	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.5	5.00	In house color photocopies to date
9016	07/17/2011	ABA	P	0.22	60.28	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	7.70	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	27.72	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	49.50	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	0.22	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	0.88	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	1.32	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	0.22	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	0.22	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	2.86	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	2.64	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	1.32	In house photocopies/scans to date
9016	07/17/2011	ABA	P	0.22	29.04	In house photocopies/scans to date
9016	07/18/2011	ABA	P		629.30	Pro-Legal Copies Inc invoice no. 119091 outside copy charges per Shannon Skelly
9016	07/19/2011	ABA	P	0.555	59.22	Shannon Skelly reimbursement for mileage to and from Walterboro on 07/18/11
9016	07/19/2011	ABA	P		25.00	Shannon Skelly reimbursement for Colleton County Clerk of Court motion filing fee on 07/18/11
9016	07/20/2011	ABA	P		25.60	West Payment Center invoice no. 823052669 computer research charges for June 2011 per Robert Hodges
9016	07/21/2011	ABA	P		260.40	Pro-Legal Copies Inc invoice no. 119204 professional services per Shannon Skelly
9016	07/25/2011	ABA	P	0.555	114.33	Chip Bruorton reimbursement for mileage to and from Walterboro for trial and to and from courthouse from hotel on 07/18/11 - 07/22/11
9016	07/25/2011	ABA	P	0.555	67.71	Bright Atrial reimbursement for mileage to and from Colleton County Courthouse and hotel on 07/18/2011 - 07/22/2011
9016	07/25/2011	ABA	P		400.00	Cash - Quality Inn conference room for trial per Bright Atrial on 07/22/2011
9016	07/26/2011	ABA	P		1,101.66	American Express, Bright Atrial reimbursement for lodging expenses during trial at Quality Inn from 07/18/11 - 07/21/2011
		Billable		11,100.84		The Spriggs Group, PC, C. Kenneth Spriggs v. Gene Silva
		Billable		11,100.84		GRAND TOTALS

MYLES I. GLICK, AIA ARCHITECTURAL CONSULTANT

Tax ID #26-0472288

To: Ms. Bright Ariail, Esq.

July 23, 2011

Attorney

Rosen, Rosen & Hagood, LLC

134 Meeting Street

P.O. Box 893

Charleston, South Carolina, 29402-0893

Re: The Spriggs Group, PC vs. Gene R. Slivka

Colleton County, South Carolina

Due at this time:

Attorney Phone Calls / emails	1.0
Initial Attorney Meeting to review case	2.0
Phones calls with Mr. Spriggs (3)	1.0
File Research (depositions etc.)	4.0
Deposition Preparation	3.5
Deposition and attendance at Harvey deposition	5.0
Trial preparation with Attorney	1.5
Trial preparation	4.0

22 Hours x \$325/ hour = \$7,150.00

Trial (Two day charge)

\$6,000.00

Due \$13,150.00

Thank you,

Please remit to: Myles Glick Architect LLC

66 Rebellion Road

Charleston, SC, 29407

66 Rebellion Road, Charleston, South Carolina 29407 843-696-2264



Coastal Digital

Reprographics & Design, Inc.
P.O. Box 30567
Savannah, GA. 31410

12/19/10 3/19/10 12/19/10

RECEIVED

JAN 04 2010

THE OFFICE GROUP, P.C.

Invoice

Date	Invoice #
12/28/2009	32155

Bill To	Ship To
SPRIGGS GROUP P.O. BOX 10062 SAVANNAH, GA 31412	SPRIGGS GROUP 545 E. YORK ST. SAVANNAH, GA 31410

P.O. Number	Rep	DATE	Ship Via	Contact	Project
06094	D	12/28/2009	DELIVERY	ANDY	
Item Code	Description		Quantity	Price Each	Amount
XB6	24 X 36 BOND PRINT		620	1.50	930.00T
XB3	18 X 24 BOND PRINT		289	0.75	216.75T
QC1	8.5 X 11 COPY		58	0.10	5.80T
QC3	11 X 17 COPY		9	0.20	1.80T
XB9	30 X 42 BOND PRINT		5	2.25	11.25T
XB2	2 SQ/FT XEROX BOND		5	0.50	2.50T

POOLER: Tower Plaza
1057 Highway 80 East @ Coleman Blvd.
Pooler, GA 31322
912-330-9900 or 912-233-4400
Please DO NOT FORGET, we will still offer
pick-up/delivery to downtown customers!

EXHIBIT

F



BEAUFORT SURVEYING, INC.

1613 Paris Ave.
Port Royal, SC 29935
(843) 524-3261

INVOICE

DATE	INVOICE #
10/15/2009	13203RES

ATTENTION
THE SPRIGGS GROUP, PC 545 EAST YORK STREET SAVANNAH, GA 31412-0262

*pd 26 Oct 2009
12560*

P. O. NO.	TERMS	DUE DATE
	Due on receipt	10/15/2009

DESCRIPTION	AMOUNT
RESEARCH GENE SLIVKA FILE TO GET RELATIONSHIP OF HOUSE AND 5.0 ACRES PARCEL	150.00
JULIANTON PLANTATION COLLETON COUNTY	
It's been a pleasure working with you!	
Total	
\$150.00	

Nov. 11/16/09



BEAUFORT SURVEYING, INC.

1613 Paris Ave.
Port Royal, SC 29935
(843) 524-3261

INVOICE

DATE	INVOICE #
11/11/2009	13203ADD

ATTENTION
THE SPRIGGS GROUP, PC 545 EAST YORK STREET SAVANNAH, GA 31412-0262

RECEIVED

NOV 13 2009

THE SPRIGGS GROUP, P.C.

P. O. NO.	TERMS	DUE DATE
	Due on receipt	11/11/2009

DESCRIPTION	AMOUNT
SKETCH OF JULIANTON PLANTATION	150.00
GENE SLIVKA COLLETON COUNTY	

THE SPRIGGS GROUP, P.C.
545 E. YORK STREET
SAVANNAH, GA 31401

Wachovia
Wachovia Bank, N.A.
wachovia.com
64-22/810

12579

PAY TO THE ORDER OF
Beaufort Surveying Inc.
One Hundred and Fifty

Date 16 Nov 2009
\$ 150.00
00/100 DOLLARS

Details on Back

Memo Slivka, Colleton County

C. Lynette Spriggs
AUTHORIZED SIGNATURE

⑆06⑆000227⑆2000187891266⑆ 2579

It's been a pleasure working with you.

Total 5150.00

Colleton County Assessor's Office

Harrelson Building Room 307 - 31 Klein Street

PO Box 1166 - Walterboro, SC 29488

Ph (843)549-1213 - Fax (843)549-6185

email: wcraven@colletoncounty.org

Receipt

Customer
Spriggs Kenneth

Date	10/5/2009
Sale No.	3161
Rep	WOC
Payment Method	Check
Check No.	2153
GIS Invoice No	1761

Item	Description	Tax Map Number	Qty	Rate	Amount
Color 17x22	Color 17x22	Scanning to digital	10	7.00	70.00
Misc	GIS		10	5.00	50.00
			</		

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

THE SPRIGGS GROUP, P.C.

Plaintiffs,

vs.

GENE R. SLIVKA,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-15-0595

NOTICE OF MOTION AND
MOTION FOR JUDGMENT
NOTWITHSTANDING THE
VERDICT AND/OR FOR A
NEW TRIAL ABSOLUTE OR
NISI REMITTUR

2011 AUG - 1 PM 5: 04

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

TO: THE HONORABLE WILLIAM H. SEALS, JR., PRESIDING JUDGE

PLEASE TAKE NOTICE the Defendant Gene R. Slivka, by and through his undersigned attorneys, will move before this Honorable Court, ten (10) days after the date hereof, or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 50, *SCRCP*, granting a judgment notwithstanding the verdict and/or in the alternative, for a new trial pursuant to *SCRCP* 50(b)¹ and *SCRCP* 59. Under Rule 59(a) a new trial may be granted on all or part of the issues in an action which has been tried for a jury for any of the reasons for which new trials have been granted in actions at law in the courts of the State.

- 1. The Defendant is entitled to a judgment notwithstanding the verdict as to Plaintiff's claims pursuant to S.C. Code Ann. § 27-1-15 as the evidence was undisputed that an investigation had taken place into the Plaintiff's claim and the Defendant did not unreasonably refuse to pay the claim upon the demand.**

¹Under *SCRCP* 50(b), whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A Party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party may move for a judgment in accordance with a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed.

A trial court should grant JNOV when the evidence is insufficient to support the verdict. *Helms Realty, Inc., v. Gibson-wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (S.Ct., 2005). In deciding motions for a directed verdict or judgment notwithstanding the verdict, the trial judge must consider the evidence in the light most favorable to the nonmoving party. *Dunsil v. E.M. Jones Chevrolet Co.*, 268 S.C. 291, 233 S.E.2d 101 (1977). However, where only one reasonable inference can be drawn from the evidence, the motion must be granted. *Young v. Tide Craft Inc.*, 270 S.C. 453, 242 S.E.2d 671 (1978).

S.C. Code Ann. § 27-1-15 provides:

Whenever a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, 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 as valid, within forty-five days from the date of mailing the demand. If the 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.

- a. **At the time the Plaintiff made its demand under §27-1-15, litigation was primarily between the parties and investigation of the merits of all claims was underway by way of discovery in that lawsuit, the Defendant is entitled to judgment as a matter of law despite the fact that he did not prevail.**

Where a Defendant has made a fair and reasonable investigation into a Plaintiff's claims under the statute, he is not liable for attorneys fees pursuant to *S.C. Code Ann.* § 27-1-15, even if the court ultimately finds against the Defendant and the investigation had taken place prior to the demand pursuant to the statute. *Carolina Steel Corporation v. Palmetto Bridge Constructors*, 444 F.Supp.2d 577 (D.S.C. 2006). 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 they considered valid. The Defendant did not prevail on all of the issues raised with the Plaintiff's claims, but the court found that because an investigation had occurred and a dispute existed, no attorneys fees pursuant to the statute would be awarded.

Litigation between the parties was officially commenced by the filing of the Plaintiff's mechanic's lien on April 13, 2009. A cash bond was posted by the Defendant on May 12, 2009, and Plaintiff's Complaint was filed on July 8, 2009. In his Answer, the Defendant denied liability to Plaintiff, asserted numerous affirmative defenses, including those related to the Plaintiff's non-conformance with the mechanic's lien statute, and asserted counterclaims seeking to recover damages from the Plaintiff. Plaintiff's demand under § 27-1-15 occurred on March 15, 2010, while the litigation, and discovery, was ongoing.

Mr. Slivka testified at trial that when he received the demand he had already hired an attorney to defend the pending litigation, was incurring costs associated with the bond and had asserted compulsory counterclaims against the Plaintiff. His attorney and the Plaintiff's counsel were actively involved in discovery which he testified was his investigation, which was the proper form of investigation between two parties involved active litigation. The Plaintiff selected the form of investigations in this matter when it initiated formal litigation prior to making a demand under the statute.

Additionally, a genuine dispute existed between the parties as to the merits of their respective claims and any amounts owed. Mr. Slivka had pending counterclaims including costs to correct and complete the Defendant's work as well as costs associated with the encumbrance of his property and attorney's fees, all of which were recoverable against the Plaintiff. These disputes continued

throughout the litigation and Plaintiff's motion for summary judgment was denied by Judge Kinard by Order dated April 12, 2011. Even, at trial, claims between the parties were recognized by the court as valid, and involving questions of fact, when it denied Plaintiff's motion for directed verdict and submitted not only the Plaintiff's claims to the jury, but also the Defendants' counterclaims.

Plaintiff argues that even with the previous claim, Slivka acknowledged he owed the other half of the agreed upon fee. This is erroneous as the opposing claims meant that, under appropriate circumstance, set off would apply, and Slivka's obligations to Spriggs would only be finally determined when the court and the trier of fact decided all pending claims between the parties.²

The fact that the Defendant did not prevail does not entitle the Plaintiff to recovery under the statute. Even the jury found that a valid dispute existed as to the amount owed to the Plaintiff when it found a verdict in the amount of \$173,990.53, an amount less than the \$199,919.53 demanded by the Plaintiff in its letter issued pursuant to Section 27-1-15 and the amount set forth in the Plaintiff's lien. As the law clearly states that a party is not entitled to recovery where an investigation is made and a valid dispute exists, Defendant is entitled to judgment as a matter of law as to § 27-1-15.

- b. **Defendant is entitled to judgment as a matter of law because he had paid both the contested and uncontested fees into the court pursuant to the mechanic's lien statute at the time the Plaintiff made its demand under S.C. Code Ann. § 27-1-15.**

The statute provides for recovery of attorney's fees and interest only if the "person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion." *S.C. Code Ann. § 27-1-15* (emphasis added). In this matter the Plaintiff chose the mechanic's lien

²A setoff...becomes a part of a single controversy between the parties, requiring only *one verdict and one judgment* according to the facts. Generally, if an established setoff or counterclaim less than the plaintiff's demand, the plaintiff has a judgment for the residue only. 20 A.Jur.2d *Counterclaim, Recoupment & Setoff* § 88 (1995).

statute as his method of recovery. On May 15, 2009, the Plaintiff recorded a Notice of Mechanic's Lien in the amount of \$198,834.53 encumbering the Defendant's property. To release the mechanic's lien on his property and in an effort to mitigate his damages as a result of an untimely lien, the Defendant posted a cash bond with the Clerk of Court in the amount of \$265,012.71 on May 12, 2009 pursuant to §29-5-10 of the South Carolina Mechanic's Lien Statute. At this time, Mr. Slivka was not only deprived of the use of this money, but was incurring the cost of interest at the annual rate of six percent (6%). At no time prior to filing the mechanic's lien, or the payment of the cash bond, did Plaintiff make a demand for payment pursuant to the procedures outlined in *S.C. Code Ann. § 27-1-15*. It was only ten months after Mr. Slivka had made the payment as a cash bond did Plaintiff's counsel make the statutory demand.

Nothing in *S.C. Code Ann. § 27-1-15* can be read to require Mr. Slivka to pay any sum he deemed "valid" twice. To the contrary, the statute specifically only allows recovery of attorneys fees when a party **unreasonably** refuses to pay. To require Mr. Slivka to pay even the portion of the claim which he did admit was due, specifically the \$76,210.00 balance of the fee would not have been reasonable, as at the time the demand was made Mr. Slivka had claims pending against the Plaintiff to which the doctrine of setoff would apply.

Additionally Mr. Slivka made an offer to pay \$100,000.00 pursuant to the mechanic's lien statute. As both payment and offers to pay had been made pursuant to the statutory course initially selected by the Plaintiff, the Defendant is entitled to judgment as a matter of law on the Plaintiff's claims under § 27-1-15.

- 2. Defendant is entitled to judgment notwithstanding the verdict on Plaintiff's claim under the mechanic's lien statute as there was no evidence that Plaintiff performed**

work which entitled it to a lien within ninety days prior to filing the lien that is the subject of this action.

The work that was the subject of the invoices specified in the Plaintiff's mechanic's lien concluded in December, 2008, more than ninety days prior to the filing of the mechanic's lien on April 13, 2009. Under *S.C. Code Ann.* § 29-5-90 (1976, as amended), a mechanic's lien is dissolved unless person filing the lien does so within ninety days after he ceases to labor on, or furnish labor or materials for, such building or structure. "When a party files a notice of lien under Section 29-5-90 he is asserting that at a time within ninety days before the notice he has performed **work for which he is entitled to assert a lien.**" *Preferred Savings and Loan Association, Inc., V. Royal Garden Resort, Inc.*, 295 S.C. 268, 272, 368 S.E.2d 78, 81 (Ct. App. 1988). Plaintiff contends that contract administration work performed in January 2009 satisfies the requirement of work for which it is entitled to assert a lien performed within ninety days of filing its lien. This claim is not supported by the mechanic's lien statute.

Section 29-5-10 states as follows:

A person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate or the boring and equipping of wells, by virtue of an agreement with, or by consent of, the owner of the building or structure, or a person having authority from, or rightfully acting for, the owner in procuring or furnishing the labor or materials shall have a lien upon the building or structure and upon the interest of the owner of the building or structure in the lot of land upon which it is situated to secure the payment of the debt due to him....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. (Emphasis added.)

"A mechanic's lien exists only by virtue of statute; therefore, one's right to a mechanic's lien is wholly dependent upon the language of the statute creating it." *Clo-Car Trucking Co., Inc. v.*

Cliffure Estates of South Carolina, Inc., 282 S.C. 573, 320 S.E.2d 51 (Ct.App.1984). “We are not at liberty to depart from the plain meaning of the mechanic lien's statutory language.” *Id.* As noted by the *Clo-Car* court, “statutory liens, then, will not be extended by us to permit a claim not specified by the Statute.” *Id.* Our Supreme Court has consistently limited recovery under the mechanic's lien statute to work specifically authorized by the statute. *George A.Z. Johnson, JR., Inc. v. Barnhill*, 279 S.C. 242, 306 S.E.2d 216 (S.Ct. 1983)(Court rejected a surveyor's claim that the work of surveying and laying out lines in a subdivision was not a basis for the filing of a mechanic's lien against the property as such services were not specified in the statute).

With regard to design professionals, the legislature specifically included, in the definition of “labor,” “the preparation of plans, specifications, and design drawings” It is undisputed that Plaintiff's work in January, 2009, was not of that nature. Instead, the Plaintiff contends that contract administration work that he performed in January, 2009, is work for which he may assert a lien even though the statute clearly does not include, in its definition of “labor” contract administration or other various tasks a design professional may perform. Plaintiff's counsel argued that it only “makes sense that contract administration would be included as work entitling a design professional to a lien. Had the legislature decided to include other types of work that a design professional may perform in its definition of “labor” it could have done so. It did not and the Plaintiff asks this Court to do what it cannot do, which is to expand the statute beyond its plain language. It is not within the authority of this Court to expand the lien to include work not spelled out in the statute. Therefore, the Plaintiff's lien was not timely and the Defendant is entitled to judgment as a matter of law.

3. **The Defendant is entitled to a judgment notwithstanding the verdict or in the alternative a new trial because it was not proper to submit the question of whether contract administration is included in the mechanic's lien statute to the jury.**

The issue of interpretation of a statute is a question of law for the court. *State v. Sweat*, 379 S.C. 367, 665 S.E.2d (645 S.C.App., 2008). In this case the jury was asked to interpret whether contract administration by a design professional is included in the definition of "labor" under § 29-5-90. As discussed herinabove, this is a question of statutory interpretation requiring the application of the rules of statutory construction and was therefore not a question for the jury.

4. **The Plaintiff is entitled to a new trial because the Court failed to charge Defendant's Request to Charge Number 6.**

The Defendant requested that the following be charged to the jury in its Request to Charge Number 6 (attached as Exhibit "A" to this motion):

Where a Defendant has made a fair and reasonable investigation into a Plaintiff's claims under the statute, he is not liable for attorneys fees pursuant to S.C. Code Ann. § 27-1-15, even if the court ultimately finds against the Defendant and the investigation had taken place prior to the demand pursuant to the statute. *Carolina Steel Corporation v. Palmetto Bridge Constructors*, 444 F.Supp.2d 577 (D.S.C. 2006).

A trial judge is required to charge only the current and correct law of South Carolina; ordinarily a trial judge has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence. *Fernanders v. Marks Const. Of S.C., Inc.*, 330 S.C. 2470, 499 S.E.2d 509 (S.C. App. 1998) citing *Brown v. Smalls*, 325 S.C. 547, 554-55, 481 S.E.2d 444, 448 (Ct.App. 19987). To warrant reversal for refusal to give a requested charge a party must show both error and prejudice. *Cohens v. Atkins*, 333 S.C. 345, 509 S.E.2d 286 (S.C. App. 1998).

While the Defendant contends that this cause of action should not have been submitted to the jury because a directed verdict was appropriate relevant to this claim, for reasons set forth previously, the Court should have given the requested charge.

The Court recognized that the requested charge included the current and correct law of South Carolina and is clearly applicable to the facts and issues. By claiming only the statute, and not the interpretation and explanation of it to the jury, the Court adjudicates its duty to interpret the statute. The requested charge, which addresses the timing of the investigation made by a Defendant pursuant to the statute, as well as explaining that Defendant may not have violated the statute simply because the jury did not find in his favor, is central to the core issues of this case. As set forth hereinabove, the facts of the case warranted the charge. Defendant is therefore entitled to new trial absolute as to the Plaintiff's claim pursuant to *S.C. Code Ann. 27-1-10*.

5. The Plaintiff is entitled to a new trial absolute pursuant to the Thirteenth Juror Doctrine.

Under the thirteenth juror doctrine a trial court may grant a new trial if the judge determines the jury's verdict is "contrary to the preponderance of the evidence." *R.C. McEntire v. Mooreguard Exterminating Servs., Inc.*, 353 S.C. 629, 633, 578 S.E.2d 746, 748 (2003). The trial court's decision to grant or deny a new trial as the thirteenth juror is very broad. "As often has been said, the trial judge is the thirteenth juror, possessing the veto power to the Nth degree." *Worrell v. S.C. Power Co.*, 186 S.C. 306, 313-14, 195 S.E. 638, 641 (1938). The trial court sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case. *Youmans ex rel. Elmore v. South Carolina Dept. of Transp.*, 280 S.C. 263, 272 (Ct.Ap. 2008)(citing *Graham v.*

Whitaker, 282 S.C. 393, 321 S.E.2d 40(1984). Because the jury's verdict is contrary to the evidence presented at trial, the Defendant is entitled to a new trial.

- a. **The jury's verdict is contrary to the preponderance of the evidence as to the Plaintiff's claim for breach of contract (and therefore all of Plaintiff's causes of action), as the Plaintiff did not comply with the duty of good faith and fair dealing implied in its contract.**

There exists in every contract an unspoken, but legally enforceable, promise of good faith and fair dealing. *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 473 S.E.2d 52 (1996). Fraud, misrepresentation and bad faith in performance of one's contractual duties would give rise to a violation of the implied obligation of good faith and fair dealing. *U.S. for Use and Benefit of Williams Elec. Co., Inc. v. Metric Constructors, Inc.*, 325 S.C. 129, 480 S.E.2d 477 (1997). It is an elementary principle that one who seeks to recover damages for the breach of a contract, to which he was a party, must show that the contract has been performed on his part, or at least that he was at the appropriate time able, ready and willing so to perform it. *Parks v. Lyons*, 219 S.C. 40, 64 S.E.2d 123 (S.Ct. 1951).

It is undisputed that Plaintiff did not comply with the covenant of good faith and fair dealing in its billing practices with the Defendant. The testimony of the Plaintiff's own employee, Andy Bozeman, as well as that of the Plaintiff's expert, Myles Glick, and the Defendant's expert, Scott Harvey, established that it was inappropriate for the Spriggs Group to bill the Plaintiff for the production of documents that The Spriggs Group did not produce. Yet, it was Ken Spriggs' own testimony that Invoice # 2 include charges for sheets prepared by engineering consultants that The Spriggs Group admits it did not prepare.³ Even though the drawings were prepared by engineers,

³These charges should have been billed as a line item, as proposed by Spriggs in his November 26, 2006 agreement.

Spriggs billed them as, and at the same rate at which he billed sheets prepared by the Spriggs Group themselves. Not only was this unethical, but Mr. Glick also testified that the cost to produce engineering drawings was less than the cost to produce architectural drawings, meaning that Spriggs over-billed for these drawings. Additionally, Spriggs' Invoice #2 included fees for consultants in the amount of \$20,535. Thus, The Spriggs Group billed twice for drawings prepared by consultants, billing it as both their own work and that of a consultant.

Additionally, the Plaintiff clearly admitted that it did not inform the Defendant over a period of two years that any services performed over a two year period would be billed to him as additional services. The Plaintiff did not obtain any approval from the Defendant to perform any "additional services." The Defendant's expert, Scott Harvey, testified that prior to billing for additional services, an architect is required, by the applicable standard of care and by the AIA, to advise the client that the architect was performing additional services and to obtain the client's consent. Mr. Bozeman and Mr. Glick agreed that this was good practice. It is undisputed that The Spriggs Group failed to do this, thereby breaching the obligation of good faith and fair dealing as a matter of law. For the foregoing reasons, the evidence is uncontroverted that the Plaintiff failed to comply with the implied covenant of good faith and fair dealing.

b. The jury's verdict under S.C. Code Ann. § 27-1-15 is contrary to the evidence.

Where a Defendant has made a fair and reasonable investigation into a Plaintiff's claims under the statute, he is not liable for attorneys fees pursuant to S.C. Code Ann. § 27-1-15. *Carolina Steel Corporation v. Palmetto Bridge Constructors*, 444 F.Supp.2d 577 (D.S.C. 2006) For the reasons set forth in section 1 of this motion (incorporated by reference herein), the jury's finding under this statute is contrary to the evidence. There is no evidence that the Plaintiff failed to

investigate the claim or that he unreasonably failed to pay it. The fact that the Plaintiff's demand under the statute was made after the Plaintiff had initiated litigation and required the Defendant had posted a cash bond for a mechanic's lien, together with the jury's verdict in the amount of \$173,990.53, an amount less than the amount invoiced by the Plaintiff and less than the amount asserted in the Plaintiff's mechanic's lien, establishes that the Defendant did not unreasonably fail to investigate and/or pay the uncontested portion of the Plaintiff's claim.

c. The jury's finding that the Plaintiff's lien was timely is contrary to the evidence.

As discussed herein above, for a mechanic's lien to be timely the claimant must have performed **work for which he is entitled to assert a lien** within ninety days of when he files his lien." *Preferred Savings and Loan Association, Inc., V. Royal Garden Resort, Inc.*, 295 S.C. 268, 272, 368 S.E.2d 78, 81 (Ct. App. 1988). The mechanic's lien law permits a lien to be asserted for preparation of plans, specifications, and design drawings. *S.C. Code Ann.* 29-5-10.

As set forth in section two of this motion (which is incorporated herein by reference) the Plaintiff did not perform work entitling it to a lien during the ninety day period before the lien was filed. The Plaintiff's invoices which form the basis of its lien cover a time period through December, 2008. The Plaintiff's lien was filed on April 13, 2009, more than ninety days after the time period covered by the invoices. Any services performed after December 2008 were in the nature of contract administration. No construction supervision or other labor on the project site was performed. As contract administration is not included in the definition of labor performed on the project under the statute, the Plaintiff did not present evidence that it performed work entitling it to a lien during that time. The jury's finding that the mechanic's lien was timely is contrary to the evidence and the Defendant is entitled to a new trial.

- d. **Because the Plaintiff's mechanic's lien was untimely as a matter of law the Defendant is entitled to a new trial on his claim for slander of title.**

A wrongfully filed lien may serve as a basis for an action for slander of title. *Huff v. Jennings*, 319 S.C. 142, 459 S.E.2d 886 (S.C.App.,1995). As discussed herein, Plaintiff's lien was untimely and therefore wrongfully filed. The Plaintiff is therefore entitled to recovery under his counterclaim for slander of title as a matter of law.

6. **The Defendant is entitled to a new trial absolute or in the alternative, a new *trial nisi remittitur*," as the jury's verdict was excessive.**

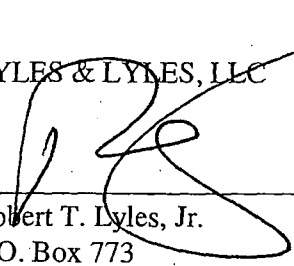
"If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute. *James v. Horace Mann Ins. Co.*, 371 S.C. 187, 638 S.E.2d 667, (2006). In the alternative to the Defendant's motion for a new trial, the Defendant asks for a *nisi remittitur*. "A motion for a new trial *nisi remittitur* asks the court to reduce the verdict because the verdict is merely excessive." *Id.* "The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented." *Proctor v. Depot of Health and Envtl. Control*, 368 S.C. 297, 320, 628 S.E.2d 496 (Ct. App. 2006).

The jury's verdict of \$173,990.53 is not supported by the Plaintiff's own testimony and is therefore the result of some factor outside of the evidence warranting a new trial. In its discovery responses Plaintiff indicated that it sought payment for its Invoice #s 2-7 (which total \$200,357.03). With respect the work included in Invoice #2, even using the "by the sheet" billing formula of \$2,520.00 per sheet asserted by the Plaintiff, the Plaintiff only prepared three Architectural sheets in addition to those anticipated in its fee agreement for \$152,420.00. Three sheets at this rate would add a charge of \$7,560.00 to the agreed upon fee, totaling \$159,980.00. The balance remaining after

Mr. Slivka's initial payment of \$76,210.00 would then be \$83,770.00. Invoices #3-7 total \$36,783.03. Added to the other half of the agreed upon fee, plus the three extra "A" sheets, would result in a maximum due to the Plaintiff's own testimony of \$120,553.03. Therefore the jury's verdict of \$173,990.53 is not supported by any evidence and warrants a new trial. Alternatively, the jury's verdict is excessive warranting *remittitur*.

Dated this 1 day August, 2011.

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ATTORNEY FOR DEFENDANT,
GENE R. SLIVKA

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, P.C.

Plaintiffs,

vs.

GENE R. SLIVKA,

Defendants.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2009-CP-15-0595

DEFENDANT'S MEMORANDUM

IN OPPOSITION TO PLAINTIFF'S

MOTION FOR INTEREST

FEES, AND COSTS

PATRICIA C. GRAHAM
COLLETON COUNTY
COMMON PLEAS
2011 AUG 11 PM 2:51

This matter comes before the Court by way of the Plaintiff's Motion for Interest Fees and Costs dated July 26, 2011. Defendant submits this memorandum in opposition to said motion as follows:

STANDARD FOR AWARD

Attorney's fees are not recoverable unless authorized by contract or by statute. *South Carolina Dept. of Social Services v. Tharp*, 312 S.C. 243, 439 S.E.2d 854 (S.Ct. 1994); *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 243 S.E.2d 443 (S.Ct. 1978). In this matter there is no contractual provision for recovery of attorneys fees by contract. Therefore, Plaintiff may only recover attorneys fees which are specifically authorized by statute. The determination as to the amount of attorney's fees that should be awarded is addressed to the sound discretion of the trial court. *Keeney's Metal Roofing, Inc., v. Palmieri*, 345 S.C. 550, 548 S.E.2d 900 (Ct. App. 2001) citing *D.A. Davis Constr. Co. V. Palmetto Proper., Inc.*, 281 S.C. 415, 315 S.E.2d 370 (S.Ct. 1984). When determining the reasonableness of attorneys fees under a statute mandating the award of attorneys fees, the contract between the client and his counsel does not control the determination of reasonable attorneys fees. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997).

ARGUMENT

The Plaintiff is not entitled to attorneys fees and costs in the requested amount of \$235,030.31, or interest in the amount of \$37,413.92. First, for the reasons set forth at trial and in *Defendant's Notice of Motion and Motion for Judgment Notwithstanding the Verdict and/or for a New Trial Absolute or Nisi Remittitur* (filed on August 1, 2011), Plaintiff is not entitled to an award of attorney's fees under either the South Carolina Mechanic's Lien Statute (*S.C. Code Ann. § 29-5-10, et. seq.*) or under § 27-1-15. Second, if the Court awards fees, for the reasons set forth below, the amount of fees requested, \$209,109.60, is not legally supportable under either statute, is not customary and is grossly excessive.

I. Plaintiff seeks to recover attorneys fees associated with its non-statutory claims and its defense of counterclaims, neither of which are authorized by statute.

Plaintiff requests that the Court award attorneys fees in the amount of \$209,109.60 pursuant to two statutes: *S.C. Code Ann. § 27-1-15* and *§ 29-5-10*. *Affidavit of A. Bright Ariail*, dated July 26, 2011, at ¶ 14 (hereinafter "Ariail Affidavit"). This amount includes the total amount of legal fees incurred in this action through the date of the affidavit \$207,639.60 with anticipated future costs. *Id.* at ¶ 10. This would therefore include all time expended on all causes of action asserted by the Plaintiff, as well as all time expended in defense of counterclaims.

A. Plaintiff may not recover fees pursuant to the Mechanic's Lien Statute which are not related to the mechanic's lien claim.

In this matter the Plaintiff asserted multiple causes of action: (1) Foreclosure under the Mechanic's Lien Statute; (2) Breach of Contract; (3) Breach of Contract with Fraudulent Intent; (4) *Quantum Meruit*; and (5) Recovery under *S.C. Code Ann. § 27-1-15*. Under the mechanic's lien

statute, a party may only recover attorneys fees related to the mechanic's lien action. *Utilities Const. Co., Inc., v. Wilson*, 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996). *See also. EFCO Corp. V. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 635 S.E.2d 922 (S.C. App. 2006). In *Utilities Construction* counsel for the prevailing party, the Defendant, submitted an affidavit of the total fee for services rendered through trial. The court found that some "substantial portion" of the attorneys time had been spent on other causes of action. 321 S.C. at 250. The court found that to award the full fees in this case constituted an abuse of discretion and remanded the case back for an entry of an award based upon the time the attorney spent "in defending the mechanic's lien cause of action only." *Id.*

Likewise in this case counsel for the Plaintiff asserts, "Plaintiff has incurred legal fees in this action to date in the total amount of \$207,639.60." *Ariail Affidavit*, ¶ 10. Documentation supporting the amount of these fees was submitted to the Court by Plaintiff's counsel in the form of billing records. *See. Exhibit "C" to Plaintiff's Motion for Interest, Fees, and Costs.* These billing records make it clear that substantial portion of the fees are related to causes of action other than the Plaintiff's mechanic's lien action and to the defense of counterclaims.

For example (and this is not to be considered exhaustive), the fees requested include time spent contacting other individuals with whom Mr. Slivka had payment disputes. These witnesses included Clark Hughes, David Miller, and Ron Horton, all employees of entities with whom Plaintiff alleges the Defendant is involved in payment disputes. The objective of calling these witnesses was clearly related to the Plaintiff's claim for punitive damages under breach of contract with fraudulent intent and not to the mechanic's lien action. The Plaintiff is not entitled to recover attorneys fees related to pursuing that cause of action.

Additionally, Plaintiff aggressively pursued presenting an alternative basis for valuing the services rendered by the Plaintiff, specifically based on the cost of construction. This was not the basis of the fees sought in the Plaintiff's mechanic's lien action, but would only have been relevant to Plaintiff's claim for *quantum meruit* (which was eventually withdrawn).

The entries also establish that the Plaintiff spent considerable time doing research for those other claims as well as preparing, filing, and arguing motions relative to the non-statutory claims and to the defenses and counterclaims asserted by Defendant.

Finally, the majority of the time entries for the Plaintiff make it impossible to determine whether the time spent involved the mechanic's lien action, the defense of counterclaims, or the pursuit of other causes of action. The Plaintiff should only be allowed to recover fees which can be demonstrated as related to the mechanic's lien action.

B. Plaintiff may not recover fees under S.C. Code Ann. § 27-1-15 which are not related to its claim under this statute.

Similarly, S.C. Code Ann. § 27-1-15 authorizes recovery of certain fees after the demand was made pursuant to the statute on March 15, 2010. The statute does not provide for recovery of attorneys fees related to seeking recovery of anything other than the amount sought in the statutory demand. The statute states:

Whenever a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute; 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 as valid, within forty-five days from the date of mailing the demand. If the 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. (emphasis added)

Based on an analysis of the time records produced by the Plaintiff, \$24,785.25 of the fees sought by the Plaintiff were incurred prior to the Plaintiff's statutory demand on March 15, 2010. These fees are clearly not recoverable under this statute. The statute makes no mention of recovery for defense of counterclaims (which, importantly, were not related to this claim), the pursuit of other causes of action that permit recovery of punitive damages, or the pursuit of equitable remedies such as *quantum meruit*. It only includes attorneys fees incurred to recover the portion of the claim that Plaintiff contend should have been paid by Defendant upon receipt of the demand.

Also, the Court may recall that Plaintiff's counsel argued to the Court and the jury that Slivka was liable under *S.C. Code Ann. § 27-1-15* because he "admitted he owed" the other half of the agreed-upon fees, totaling \$76,210.00. Thus, if entitled to anything, Plaintiff would be entitled to recover fees related to the recovery of that sum only (and interest on that sum only) from March 15, 2010, and then, any award must be limited to time entries that are demonstrably related to Plaintiff's claims under this statute.

II. The fees sought by the Plaintiff are not reasonable.

Both the Mechanic's Lien Statute and § 27-1-15 allow the recovery of some degree of "reasonable" attorneys fees. While the Defendant denies that the Plaintiff is entitled to any award under either statute, the fees sought by the Plaintiff under any theory are not reasonable. "[T]he court should consider the following six factors when determining a reasonable attorney's fee: (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 compensation; (5) beneficial results obtained; and (6)

customary legal fees for similar services.” *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). See also. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993); *Taylor v. Medenica*, 331, S.C. 575, 503 S.E.2d 458 (S.Ct. 1998). Consideration should be given to all six factors; none of the factors is controlling. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). When considering these factors, the total fees of \$209,109.60 sought by the Plaintiff in this matter is excessive.

A. The nature and difficulty of the case do not warrant the time devoted to the case and the fees sought.

As an initial matter, and relevant in some degree to all six factors, the fees sought by the Plaintiff, \$209,109.60, exceed the amount of the Plaintiff’s claim (\$198,834.53 under the Mechanic’s Lien Statute and \$199,919.33 under § 27-1-15). The fees sought are more than 120% of the award.

With respect to difficulty, this breach of contract case involved only two parties and a total of five witnesses. Plaintiff seeks attorneys fees for the work of two partners (both of which participated in the trial of the case), two associates, as well as law clerks and staff, which is excessive given the nature of the case or its difficulty.

To the extent the case was complex or difficult, it was made so by Plaintiff’s vigorous pursuit of difficult and unsupportable causes of action in an attempt to recover sums over and above the invoices it had submitted to the Plaintiff. These causes of action included *quantum meruit*, in which Plaintiff spent time and effort to develop damages based upon alternative values for its services, and breach of contract accompanied by a fraudulent act so that Plaintiff could recover punitive damages. The Plaintiff was not successful on either of those claims and ultimately withdrew them, but those claims themselves, and the witness Plaintiff sought to bring to trial, did complicate the case

substantially. There is no legal basis on which Plaintiff can claim fees for fees associated with these efforts and any recovery should be limited to time entries that do not relate to those claims.

B. The result obtained by Plaintiff's counsel do not justify the amount sought.

As noted, when Plaintiff made its § 27-1-15 demand on March 15, 2010, its fees totaled \$24,785.25 (per billing records produced by Plaintiff). On July 11, 2011 (one week prior to trial), Plaintiff represented that it had incurred fees from March 15, 2010 to July 11, 2011 of \$81,372.74. *Correspondence of A. Bright Ariail* dated July 11, 2011, attached as Exhibit "A". Thus, between the Notice of Lien, on April 15, 2009 and one week before trial, Plaintiff had incurred only \$106,157.99 in fees.

On June 30, 2011, Defendant made an offer of \$100,000.00 pursuant to *S.C. Code Ann* § 29-5-20 in an effort to settle the case. Plaintiff refused to counter under the statute and instead elected to incur additional costs by filing a Motion to Strike Defendant's Offer (which was denied by the Court). Plaintiff then proceeded to trial in an effort to recover the difference between Defendant's offer (\$100,000.00) and their Mechanic's Lien claim (\$198,834.53), essentially going to trial over \$98,834.53. In doing so, Plaintiff apparently incurred an additional \$101,481.61 in fees and only recovered an additional \$73,990.53. This result certainly does not warrant recovery of the cost of trial.

Plaintiff's counsel asserts in her affidavit that the Defendant created unnecessary delays, filed meritless motions and forced the Plaintiff to incur fees over what would generally be incurred on a similar case. *Ariail Affidavit* ¶ 5. Even if the Court concludes that this is true, then costs were included in the \$106,157.99 in fees that had been incurred prior to July 11, 2011. (It should also be stated that Plaintiff filed motions to strike affirmative defenses and counterclaims which were denied

by the Court and filed and argued a substantial Motion for Summary Judgment which was denied by Judge Kinard on April 12, 2011.

As set forth above, the majority of the fees were incurred for a trial in which Plaintiff was clearly seeking to conduct a meritless campaign against the Defendant for punitive damages and to try and seek recovery of amounts over and above that included in what was invoiced. These claims were eventually excluded by the Court or withdrawn. Plaintiff did not even recover the total sums sought in this action. Thus, attorneys' fees in excess of the claim and the award is certainly not justified by the result.

C. Plaintiff has not presented evidence as to the contingency of the fee.

In ¶ 3 of the *Ariail Affidavit* Plaintiff's counsel asserts that the Plaintiff has entered into a fee agreement under which he is charged an hourly rate of \$250.00 per hour for her services. While she references a fee agreement, no fee agreement has been produced outlining any terms or conditions that may relate to the services. No invoices or evidence of payment of any fees by the Plaintiff has been presented. The *Ariail* affidavit only asserts that the Plaintiff has been billed for costs incurred by the firm through trial. Thus the rates of the fee agreement itself, and whether Plaintiff has paid or even been billed for fees is unknown at this time, and Plaintiff has failed to provide a requisite element of an award of fees.

D. The fee of \$209,109.60 is not customary for similar services.

The Plaintiff offers no evidence that a fee that a fee, which is over 105 % of the amount claimed in a lien (and over 120 % of actual recovery) is customary for similar services. Plaintiff offers the affidavit of N. Keith Emge, Jr., dated July 25, 2011, previously filed with this Court (hereinafter "Emge Affidavit") in support of its contention that the requested fees are customary.

In his affidavit Mr. Emge asserts that the hourly rates charged by the firm of Rosen Rosen & Hagood, LLC, are reasonable and comparable to similar rates charged for legal representation of architects and construction clients within the Charleston County Bar. Neither he nor Plaintiff counsel address the total amount of the fees sought by the Plaintiff or on points specifically including, whether it is customary to have two partners of a firm participate at trial of a claim of this nature, whether it is customary to have two associates participate in the preparation of the case, whether the number of hours spent on the case is customary or reasonable.

Courts have recognized that a fee equal to one-third ($33\frac{1}{3}\%$) of the Plaintiff's total award is customary. *Global Protection Corp. V. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998)(In awarding attorneys fees under the South Carolina Unfair Trade Practices Act the Court awarded one-third of the total damages although attorney's fee contract provided for a fee 40% of any recovery.) The mechanic's lien statutes of South Carolina recognize this as a reasonable ceiling for recovery of attorneys fees in that a mechanic's lien may be discharged by filing a cash bond in an amount equal to one and one-third times the amount claimed in a lien. *S.C. Code Ann.* § 29-5-110.

Other statutes recognize similar limits. South Carolina law provides for attorneys fees where an insurer had refused to pay a claim in bad faith, but it specifically limits that said fees may not exceed one-third of the amount of the judgment. *S.C. Code Ann.* § 38-59-40 The Worker's Compensation Statutes of South Carolina provide for recovery of attorneys fees in certain circumstances, but said fees may not exceed one third of the total claim amount paid by the carrier to the injured employee. *S.C. Code Ann.* § 42-1-560.

Per custom, the Plaintiff's fees should be capped at one-third of the amount of the judgment and per the language of the statutes, Plaintiff should only be able to recover a reasonable amount, within that limit, that can be demonstrated attributable to the mechanic's lien action or Plaintiff's claim under *S.C. Code Ann.* § 27-1-15.

III. Under the South Carolina Mechanic's Lien Statute, total recovery is limited to the amount of the cash bond posted by the Defendant with the Clerk of Court.

Under the mechanic's lien statute the Plaintiff is only entitled to payment from the cash posted by the Defendant with the court pursuant to *S.C. Code Ann.* § 39-5-110. This statute states:

At any time after service and filing of the statement required under § 29-5-90 the owner or any other person having an interest in or lien upon the property involved may secure the discharge of such property from such lien by filing in the office of clerk of court or register of deeds where such lien is filed his written undertaking, in an amount equal to one and one-third times the amount claimed in such statement, secured by the pledge of United States or State of South Carolina securities, by cash or by a surety bond executed by a surety company licensed to do business in this State, and upon the filing of such undertaking so secured **the lien shall be discharged and the cash, securities or surety bond deposited shall take the place of the property upon which the lien existed** and shall be subject to the lien. In the event of judgment for the person filing such statement in a suit brought pursuant to the provisions of this chapter, **such judgment shall be paid out of the cash deposited** or, in event of pledge of securities, it shall be paid from the proceeds of a sale of so much of the pledged securities as shall be necessary to satisfy such judgment or, in event of the filing of a surety bond, the surety company issuing such bond shall pay such amount found due, not to exceed the amount of the bond. Unless suit for enforcement of the lien is commenced as required by § 29-5-120, the undertaking herein required shall be null and void and the principal therein shall have the right to have it canceled and such cash or securities deposited or pledged or surety bond filed shall be released from the lien herein provided. (emphasis added)

Pursuant to this statute, the Defendant deposited \$266,012.71 in cash with the clerk of court on May 12, 2009 and the Plaintiff's mechanic's lien was released. (Order Accepting Bond and Releasing Mechanic's Lien Filed attached hereto as Exhibit "B"). Upon making this deposit the Plaintiff's

mechanic's lien was discharged and the cash deposited took the place of the Plaintiff's property. Per the statute, the total payment to the Plaintiff under the mechanic's lien statute is limited to the \$266,012.71 deposited by the Defendant with the Clerk of Court. The Plaintiff's verdict was \$173,990.53. Therefore, any award of attorneys fees under the Mechanic's Lien Statute is limited to a maximum of \$92,022.18¹.

IV. The Plaintiff may not recover attorneys fees for staff members.

Plaintiff includes \$28,619.25 in fees for time spent by staff members. Both the statutory claims of the Plaintiff provide for recovery of "attorneys fees." Whether these statutes allow for the recovery of fees related to service by staff members has not been specifically addressed in South Carolina. "We are not at liberty to depart from the plain meaning of the mechanic lien's statutory language." *Clo-Car Trucking Co., Inc. v. Cliffure Estates of South Carolina, Inc.*, 282 S.C. 573, 320 S.E.2d 51 (Ct.App.1984). Therefore, the Plaintiff may not include fees related to staff members in its claims for attorneys fees under the statute.

Even in jurisdictions where recovery of fees related to staff members has been allowed under the mechanic's lien laws, the claimant is required to show: (1) that the legal assistant was qualified through education, training or work experience to perform substantive legal work (2) the substantive legal work was performed under the direction and supervision of an attorney; (3) the nature of the legal work which was 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. *Gill Sav. Asso. v. International Supply Co.* 759 S.W.2d 697 (Tex. Appl Dallas 1998). Plaintiff makes no such

¹For the reasons set forth herein, the sum is excessive but represents the Plaintiff's maximum recovery of attorney's fees under the South Carolina Mechanic's Lien Statute.

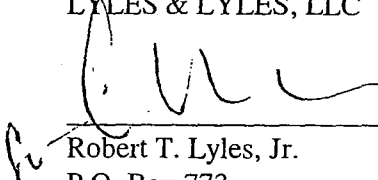
showing in this matter. Furthermore, timesheets included in Exhibit "C" to the *Plaintiff's Motion for Interest, Fees and Costs* show that routine tasks such as filing by staff members is included. Therefore, the Plaintiff is not entitled to recover these fees.

CONCLUSION

While the Defendant denies that Plaintiff is entitled to fees, costs and/or interest pursuant to the South Carolina Mechanic's Lien Statute or S.C. Code Ann. § 27-1-15, the Plaintiff's motion for fees and costs in the requested amount of \$235,030.31 must be denied, as this amount includes fees and costs that the Plaintiff is not entitled to recovery under either of these statutes. Any fees awarded must be demonstrably attributable to the claims under the statutes by which any award is made. Additionally, the fees sought by the Defendants are excessive and unreasonable.

Dated this 11th day of August, 2011.

LYLES & LYLES, LLC


Robert T. Lyles, Jr.

P.O. Box 773
Charleston, SC 29402
(843) 577-7730
rtl@lylesfirm.com

ATTORNEY FOR DEFENDANT,
GENE R. SLIVKA

Charleston, South Carolina

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

A. Bright Ariail
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www.rthlawfirm.com

July 11, 2011

VIA EMAIL ONLY

Robert T Lyles, Jr., Esquire
Lyles & Lyles, LLC
P. O. Box 773
Charleston, SC 29402

Re: The Spriggs Group, P.C. v. Gene Slivka

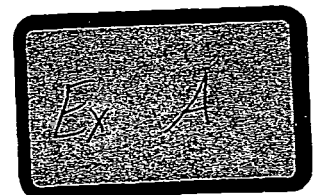
FOR SETTLEMENT DISCUSSIONS ONLY

Dear Robert:

I received your email yesterday in which you inquired what it would take to settle this case. Since returning to the office today and reviewing certain pertinent information, I wanted to share the following information with you to see if there is any possibility that this case can be settled rather than tried.

Based on the testimony contained in Mr. Slivka's deposition, he admits that he owes The Spriggs Group, PC the balance for basic fees per the original agreement which total \$76,210.00. He admits that he owes for a two hour coordination meeting attended by both Mr. Spriggs and Mr. Bozeman as well as for seven (7) hours of time during which Mr. Bozeman prepared drawings for the garden wall. In addition, Mr. Slivka testified that The Spriggs Group was authorized to perform construction administration services on his behalf which total an additional \$19,532.50. Applying an hourly rate for Mr. Spriggs of \$175 per hour and an hourly rate for Mr. Bozeman of \$105 per hour, the minimum admitted amount due The Spriggs Group totals \$97,037.50.

Mr. Slivka testified that he received the demand made pursuant to S.C. Code Ann §27-1-15 dated March 15, 2010 but recalls no investigation of the amounts due The Spriggs Group as required by that statute. Further, he admits the he has made no payments to The Spriggs Group related to the project except for the initial \$76,210.00. Per the statute, Mr. Slivka will be liable for attorney's fees and interest from the date of the demand to present. Interest at the statutory rate of 8.75% totals \$20,517.45 and fees from that date through yesterday total \$81,372.74. The total of fees Mr. Slivka admits he owes The Spriggs Group combined with attorney's fees and interest to date totals \$198,927.69 which is the absolute minimum we believe is recoverable



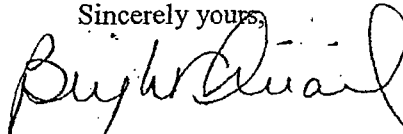
July 11, 2011

Page 1

under this case. This amount does not account for the additional services The Spriggs Group was required to perform on the project due to owner changes, the location of the project, material selection, etc..

With our additional claims for foreclosure of the mechanic's lien, breach of contract, breach of contract with fraudulent intent, and quantum merit, other damages may be awarded including punitive damages. Obviously each additional day of trial preparation and the fees and costs related to the actual trial will greatly increase the claim. I would request that you review this information with your client and contact me if there is any opportunity to settle this case. At this time, I am authorized to settle this action for the sum of One Hundred and Ninety One Thousand Dollars (\$191,000.00.) Given the time sensitivity of the pending trial, this offer may be revoked at any time.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Bright Ariail".

A. Bright Ariail

ABA/aba

cc: The Spriggs Group, P.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	
THE SPRIGGS GROUP, PC,	)	
	)	
Plaintiff,	)	ORDER ACCEPTING BOND
	)	AND RELEASING MECHANIC'S LIEN
vs.	)	FILED IN BK 1742 PG 276
	)	
GENE R. SLIVKA,	)	
	)	
Defendant.	)	

IT APPEARING TO THE COURT, that Patricia C. Grant, Clerk of the Court of Common Pleas for Colleton County, has acknowledged receipt of the bond of Gene R. Slivka in this matter and cash in the amount of Two Hundred Sixty-Five Thousand Twelve and 71/100 Dollars (\$265,112.71) from Gene R. Slivka as security for said bond.

#1
PMS THEREFORE, sufficient bond and cash security having been posted for the payment of debt evidenced by a mechanic's lien recorded at Volume 1742, Page 276 in the Office of the R.O.D. for Colleton County, South Carolina,

IT IS ORDERED that said mechanic's lien is hereby released and there is substituted therefor the bond of Gene R. Slivka and the cash security posted with said bond; and

IT IS FURTHER ORDERED that any *Lis Pendens* filed in connection with the foreclosure of said mechanic's lien is hereby released; and

IT IS FURTHER ORDERED that the ROD for Colleton County shall mark the County records so as to reflect the posting of the bond and the release of the Mechanic's Lien and *Lis Pendens* filed in connection therewith, if any; and

IT IS FURTHER ORDERED that said funds be deposited in an



interest bearing account, with the accrued interest being added to the cash posted as security for the bond for the benefit of the parties as their interests may be determined by the Court; and

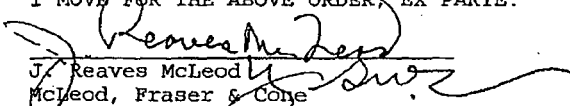
IT IS FURTHER ORDERED that the posting of the bond and cash security shall not prejudice the right of Defendant to contest the correctness or timeliness of the filing, perfecting or foreclosing of the lien, including without limiting the generality of the foregoing, the right to contest the timeliness of filing of the Mechanic's Lien and the Lis Pendens for the foreclosure thereof and if successful from receiving an Order cancelling the bond and directing the Clerk of Court to refund to Defendant the cash security posted.

AND IT IS SO ORDERED the 12th day of May, 2009.

Walterboro, South Carolina


Judge, Court of Common Pleas
Fourteenth Judicial Circuit

THE ABOVE ORDER BEING ALLOWED BY
S.C. CODE ANN. § 29-5-110 (2008),
I MOVE FOR THE ABOVE ORDER, EX PARTE.


J. Reaves McLeod
McLeod, Fraser & Cone
Post Office Drawer 230
Walterboro, SC 29488
(843) 549-2516
(843) 549-2306 facsimile
SC Bar No. 70283

200900011894
Filed For Record in
COLLETON COUNTY SC
KARLA DADDIECO
05-12-2009 At 03:17 PM.
REL MECH LN 10.00
DR Volume 1751 Page 115 - 118

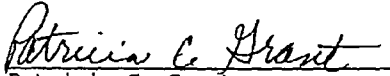
200900011894
MCLEOD FRASER & CONE
ATTORNEY AT LAW

Attorneys for Defendant

MAY 12, 2009
Walterboro, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
THE SPRIGGS GROUP, PC,	)	
Plaintiff,	)	RECEIPT FOR BOND POSTED FOR THE
vs.	)	RELEASE OF MECHANIC'S LIEN
GENE R. SLIVKA,	)	FILED IN BK 1742 PG 276
Defendant.	)	

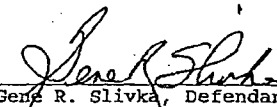
I, Patricia C. Grant, Clerk of the Court of Common Pleas for Colleton County, do hereby acknowledge receipt of the bond of Gene R. Slivka in this matter and cash in the amount of Two Hundred Sixty-Five Thousand One Hundred Twelve and 71/100 Dollars (\$265,112.71) from Gene R. Slivka as security for said bond.


Patricia C. Grant
Clerk of Court for Colleton
County

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	
THE SPRIGGS GROUP, PC,	)	
	)	
Plaintiff,	)	BOND FOR RELEASE OF
	)	MECHANIC'S LIEN
vs.	)	FILED IN BK 1742 PG 276
	)	
GENE R. SLIVKA,	)	
	)	
Defendant.	)	

I, Gene R. Slivka, the undersigned, do hereby stand fully bound to the Plaintiff for the payment of any judgment obtained in this matter and do herewith post with the Clerk of Court for Colleton County, as security for said bond cash in the amount of Two Hundred Sixty-Five Thousand One Hundred Twelve and 71/100 Dollars (\$265,112.71), said amount being one and one-third (1 1/3) times the amount of the lien recorded at Volume 1742 at Page 276 in the Office of the ROD for Colleton County, South Carolina, as required by S.C. Code Ann. § 29-5-110 (2008).

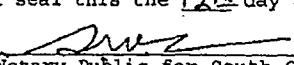
In witness whereof I have hereunto set my hand and seal this 12th day of May 2009.


Gene R. Slivka, Defendant

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

ACKNOWLEDGMENT

I G. W. Cone, a Notary Public, do hereby certify that Gene R. Slivka, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.
Witness my hand and official seal this the 12th day of May 2009.

 (Seal)
Notary Public for South Carolina
My Commission Expires: 6/7/16

200900012007
Filed for Record in
COLLETON COUNTY SC
KARLA DADDIECCO
05-15-2009 At 03:43 PM
AGREE NYC
OR Volume 1753 Page 81

200900012007
MCLEOD FRASER & CONE
ATTORNEYS AT LAW

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
THE SPRIGGS GROUP, PC,)
Plaintiff,)
vs.)
GENE R. SLIVKA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

RECEIPT FOR BOND POSTED FOR THE
RELEASE OF MECHANIC'S LIEN
FILED IN BK 1742 PG 276

WHEREAS, Gene R. Slivka previously deposited cash in the amount of Two Hundred Sixty-Five Thousand One Hundred Twelve and 71/100 Dollars (\$265,112.71) with Patricia S. Grant, Clerk of Court for Colleton County, South Carolina as security for his bond in this matter; and

WHEREAS, no suit has been filed to foreclose the Mechanic's Lien in this matter and the Clerk of Court wishes to transfer the funds deposited with her to the ROD for Colleton County, South Carolina in whose office the Mechanic's Lien is filed; NOW, THEREFORE,

I, Karla Daddiecco, ROD for Colleton County do hereby acknowledge receipt of the cash security for the bond of Gene R. Slivka referenced above in the amount of Two Hundred Sixty-Five Thousand One Hundred Twelve and 71/100 Dollars (\$265,112.71) from Patricia S. Grant, Clerk of Court for Colleton County, South Carolina.

Karla Daddiecco
Karla Daddiecco,
ROD for Colleton County

Date: 5/15/09

Defendant.

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S MOTION
FOR JUDGMENT NOTWITHSTANDING
THE VERDICT and/or FOR NEW TRIAL**

Defendant argues that it was undisputed that an investigation had taken place into the Plaintiff's claim and the Defendant did not unreasonably refuse to pay the claim upon the demand. Clearly, a factual issue existed as to whether a fair and reasonable investigation was made by the Defendant. Defendant admitted on several occasions during trial that he owed Plaintiff at least half of \$151,000. Defendant admitted he received the March 15, 2010 demand letter under S.C. Code Ann § 27-1-15 and did not pay the amount he admits was undisputed. Defendant's explanation for not paying was that he had paid the money into the Court. Further, Defendant wrote Plaintiff a letter in June of 2009, after he had paid money into the Court.

money into the Court

RECEIVED

AUG 15 2011

By JS

indicating he would pay 50% of the \$151,000 upon receipt of a corrected invoice. Defendant has provided no legal precedent that payment into the Court constitutes compliance with S.C. Code Ann § 27-1-15. The issue as to whether a reasonable and fair investigation of Plaintiff's claim had been made is one for the jury to decide and the issue of whether a valid portion of Plaintiff's claim, to the extent one exists, was paid in a timely manner in compliance with the statute is an issue for the jury to decide. After a full week of listening to the evidence in this case, the jury correctly unanimously determined that the Defendant had not made a reasonable and fair investigation of Plaintiff's claim and failed to properly pay the proper portion of Plaintiff's claim deemed valid.

Defendant argues that discovery in the lawsuit amounts to a fair and reasonable investigation into Plaintiff's claims under the statute. Defendant relies upon Carolina Steel Corporation v. Palmetto Bridge Construction, 444 F.Supp.2d 577 (D.S.C. 2006) stating that the court found that because an investigation had occurred and a dispute existed, no attorneys fees pursuant to the statute would be awarded. 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. This case is distinguishable from Carolina Steel in that the Defendant never paid Plaintiff either prior to Plaintiff's demand or after Plaintiff's demand despite readily admitting he owes Plaintiff at a minimum one half of \$151,000.00. Defendant provides no legal authority that litigation prior to a demand under S.C. Code Ann. § 27-1-15 bars recover of attorney's fees for Defendant's failure to comply with the statute. Further, Defendant provides no legal authority that payment to the Court by bonding off a mechanic's lien, constitutes compliance with S.C. Code Ann. § 27-1-15.

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. Defendant admits to owing Plaintiff at a minimum one half of \$151,000 and admits he never made any payment to Plaintiff after the initial contract payment in February 2007. 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. See S.C. Code Ann. § 27-1-15. Defendant has never made payment to the Plaintiff of the undisputed amount he admits he owes to the Plaintiff; therefore, the verdict rendered as to Plaintiff's claim for failure to comply with S.C. Code Ann. § 27-1-15 is supported by the evidence presented and Plaintiff should be award reasonable attorney's fees and interest against the Defendant.

2. Defendant is not entitled to judgment notwithstanding the verdict on Plaintiff's claim under the mechanic's lien statute as the evidence supports the jury's verdict.

Defendant argues that there was no evidence that Plaintiff performed work which entitled it to a lien within ninety days to filing the lien that is the subject of this action. Plaintiff presented evidence by way of invoices, timesheets, emails and testimony that Plaintiff performed work on this project up to January 14, 2009 and then again in May 2009 for 3.5 hours. See Plaintiff's Exhibits 8(a), 19, and 21. The Defendant testified that the Plaintiff was authorized to respond to questions from the field from various contractors and admitted that he never told Plaintiff to stop responding to these questions prior to the services performed in January 2009. Plaintiff's mechanic's lien was filed on April 13, 2009, which is within ninety (90) days of January 14, 2009 and prior to the work performed in May 2009. See Plaintiff's Exhibit 10.

Plaintiff's claim against a mechanic's lien in this matter arises out of statutory law. Because Plaintiff provided extensive labor and services connected with Defendant's construction project and Defendant refused to pay for these services, Plaintiff is entitled to a claim under the

mechanic's lien statute. In accordance with § 29-5-10, Plaintiff properly filed a mechanic's lien for services furnished in the erection, alteration, and repair of Defendant's building within ninety days of the last work performed. 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).

Defendant argues that the services performed by Plaintiff in January 2009 are not part of the invoices specified in the Plaintiff'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 wilfully and knowingly claimed more than is his due." Plaintiff's error in the amount stated for labor due does not invalidate the proceedings. In fact, Plaintiff testified the invoices submitted in November for January's work was part of project closeout and capturing of time spent on the project since January 1, 2009 for construction administration services that had not yet been billed. The only requirement of the law is that the account be filed within ninety (90) days after person seeking 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 Plaintiff's timesheets, emails and testimony of both Andy Bozeman and Ken Spriggs show that the Plaintiff labored on the project within ninety (90) days of the date in which the mechanic's lien was filed on Defendant's property. Because Plaintiff properly followed the statutory requirements and Defendant has failed to pay for labor and services provided by

Plaintiff within the scope of the mechanic's lien statute, Plaintiff has a cause of action under S.C. Code of Laws § 29-5-10, *et al.* against Defendant.

Defendant further argues that the services performed by Plaintiff in January 2009 are not the type of services for which a lien is allowed. However, Defendant has not argued that the services performed in May 2009 by Plaintiff are not the type of services for which a lien is allowed¹. Defendant's argument as to the January 2009 services is that the S.C. Mechanic's lien statute does not provide for lien rights associated with the performance of construction administration services. Defendant insinuates that because the statute defines 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. 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."

See S.C. Code Ann. 29-5-10 (emphasis added).

Defendant's argument is disingenuous and not supported by South Carolina law. Inclusion language in this section is clearly not exclusive; rather, it is meant to illustrate. How

¹ Plaintiff provided design sketches for an appraisal of Defendant's property. Andy Bozeman testified he was contacted by an appraiser for the Defendant and asked to provide floor plan sketches and room name information for preparation of the appraisal of Defendant's home.

could security guard services during construction be services for which a lien is created but not architectural services overseeing and supporting proper construction of a residence? Likewise, it is implausible that construction administration services would be excluded from the description of "labor performed or furnished in the erection, alteration, or repair of any building." Clearly, construction administration work is instrumental in delivering an appropriate residence or structure.

In a 1918 decision, the South Carolina Supreme 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. Plaintiff 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 and actually supports the erection, alteration or repair of a building more so than the preparation of plans, specifications and design drawings related to the project.

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 has no lien for merely drawing plans and specifications for the building, but does have rights to a lien 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). 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 and without merit.

(3) Defendant is not entitled to a judgment notwithstanding the verdict or a new trial as the jury was asked to determine only whether the lien filed by Plaintiff was timely.

Defendant argues that the jury was asked improperly to interpret whether contract administration by a design professional is included in the definition of "labor" under § 29-5-90. The jury was properly charged as to what the law in South Carolina is as it relates to filing and enforcing a mechanic's lien. Both the Plaintiff and the Defendant were in agreement as to the charge given to the jury on the mechanic's lien law. The jury was asked to determine whether Plaintiff's lien was valid and timely. The jury unanimously determined that based upon the evidence presented, Plaintiff's lien was valid.

(4) Plaintiff is not entitled to a new trial because the Court properly charged the Jury as to the law.

Defendant argues that the Court omitted Defendant's Charge Number 6 related to Plaintiff's claim for failure to comply with S.C. Code Ann. § 27-1-15. Defendant argues that the Court should have included language from Carolina Steel Corporation v. Palmetto Bridge Constructors, 444 F.Supp.2d 577 (D.S.C. 2006) related to a fair and reasonable investigation. As discussed previously, the Defendant in Carolina Steel made payment to the Plaintiff for the undisputed amount. The Court held the Defendant was not subject to attorneys fees because an investigation had occurred and a dispute exists. The Defendant's requested charge would have been misleading to the jury given the distinguishing characteristics of this case from Carolina Steel.

A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. Yolanda Burroughs v. John W. Worsham, 352 S.C. 382, 574 S.E.2d 215 (Ct. App. 2002)(citing Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 514 S.E.2d 570 (1999)). "The substance of the law is what must be instructed to the

jury, not any particular verbiage.” *Id.* at 392. “A jury charge which is substantially correct and covers the law does not require reversal.” *Id.* The charge given by the Court as to S.C. Code Ann. § 27-1-15 was substantially correct and covered the law of the statute. To warrant reversal for refusal to give a requested charge a part must show both error and prejudice. Cohens v. Atkins, 333 S.C. 345, 509 S.E.2d 286 (Ct. App. 1998). Regardless of whether an error in the charge exists, which is disputed, Defendant has not set forth the prejudice such error had on the Defendant.

(5) Defendant is not entitled to a new trial based upon the Thirteenth Juror Doctrine as the evidence supports the verdict rendered.

Defendant argues that the jury’s verdict is contrary to the preponderance of the evidence because (a) the Plaintiff did not comply with the duty of good faith and fair dealing implied in its contract, (b) the Defendant made a fair and reasonable investigation of Plaintiff’s claims under S.C. Code Ann. § 27-1-15, (c) the work performed subject to the mechanic’s lien is not work for which Plaintiff is entitled to assert a lien, and (d) Plaintiff’s mechanic’s lien was untimely as a matter of law. After two years of highly contested litigation and a full week’s worth of trial on the merits, a competent jury of eleven unanimously found that the evidence presented by both the Plaintiff and the Defendant when weighed together tipped the scale in favor of the Plaintiff. Therefore, Plaintiff met its burden of proof as to all causes of action submitted to the jury.

(a) The Jury rightfully found that Plaintiff complied with the duty of good faith and fair dealing.

Defendant argues that “it is undisputed that Plaintiff did not comply with the covenant of good faith and fair dealing in its billing practices with the Defendant.” If the facts were undisputed as represented by the Defendant, a trial on the merits would not have been necessary. Whether the Plaintiff complied with the covenant of good faith and fair dealing in its billing practices with the Defendant is an issue of fact to be determined by the jury. Based upon the

evidence presented at trial, a legitimate dispute as to the terms of the contract existed and eleven respectable jurors made a competent decision after a week of testimony that the Plaintiff was entitled to a verdict in the amount of \$173,990.53.

Testimony was presented at trial by Plaintiff's expert Myles Glick and Defendant's expert, Scott Harvey that the Plaintiff can bill for the work of its consultants. Further, Plaintiff representatives, Ken Spriggs and Andy Bozemen both testified that the Plaintiff was involved in the preparation of the structural, electrical, plumbing and mechanical drawings which were invoiced on a per sheet basis in Invoice # 2. Testimony was presented at trial that a per sheet cost formula was established in the contract between the parties and Defendant relied upon this formula to remove the boathouse building from the contract. Ken Spriggs testified he used the same per sheet formula for additional drawings added to the contract that Defendant used in removing drawings from the contract.

While the Plaintiff admits that it did not notify Defendant every time an additional service was being billed to the contract, Defendant's expert admitted that the contract between the parties does not set forth a notice requirement when additional services are being billed. Contract provisions 18 and 19 allow for additional services to be billed at an hourly rate as testified to by Andy Bozeman, Ken Spriggs, Myles Glick, Gene Slivka and Scott Harvey. Each additional service requested by the Defendant was billed on an hourly basis pursuant to provision 18 or 19 of the stipulated contract. Also, Mr. Spriggs and Mr. Slivka both testified that the remaining contract balance was to be billed at contract completion. Plaintiff billed for the remaining contract balance, which included the construction administration services, additional design services, and reimbursable expenses for the project, at the end of the project. See Plaintiff's Exhibits 8, 8(a) and 8(b).

Defendant's expert Scott Harvey relied upon three documents in formulating his opinion that Plaintiff breached the standard of care of an architect. First, Mr. Harvey relied upon an AIA form contract, which set forth notice obligations for additional services. Mr. Harvey admitted that the contract between Plaintiff and Defendant was not an AIA contract and did not contain the boilerplate notice language for additional services. Second, Mr. Harvey relied upon the notice guidelines for changes in services set forth in the AIA Handbook, 14th edition. Mr. Harvey admitted that the 14th edition did not come into existence until after the contract was entered into between Plaintiff and Defendant and that the 13th edition of the AIA Handbook did not address any guidelines for changes in services. Finally, Mr. Harvey relied upon an Architect's Ethics Advisory Opinion stating that a member is required to give notice when it changes the contract with a client. Mr. Harvey admitted that the term "member" as set forth in the Advisory Opinion referred to the Plaintiff. Evidence was presented at trial that the only person who requested changes to the contract between Plaintiff and Defendant was the Defendant. Therefore, the Architect's Ethics Advisory Opinion is inapplicable.

Expert testimony constitutes evidence to be considered by the jury in connection with all of the other testimony and evidence in the case. See RALPH KING ANDERSON, JR., SOUTH CAROLINA REQUESTS TO CHARGE-CIVIL 2002, §1-6. A jury may consider the expert's opinion just as it does all other evidence in the case and give it such weight as the jury in its experience and discretion may determine appropriate. Id. While evidence was presented at trial as to good billing practices, it is a factual issue as to whether the billing practices of the Plaintiff fail to comply with Plaintiff's obligation of good faith and fair dealing. The Defendant shares an equal obligation of good faith and fair dealing. The jury determined that based upon the evidence presented, Plaintiff is entitled to a verdict of \$173,990.53 on its claim for breach of contract.

(b) Jury's verdict is not contrary to the evidence as to Defendant's failure to comply with S.C. Code Ann. § 27-1-15.

Defendant reiterates its prior argument that Defendant made a fair and reasonable investigation into Plaintiff's claims under S.C. Code Ann. § 27-1-15 and therefore should not be liable for attorneys fees under the statute. Plaintiff relies upon its arguments presented previously in this memorandum in supporting the Jury's verdict rendered on Defendant's failure to comply with S.C. Code Ann. § 27-1-15 cause of action.

(c) Jury's verdict is not contrary to the evidence as to Plaintiff's mechanic's lien being timely

Defendant reiterates its prior argument that Plaintiff's work included in its mechanic's lien is not work for which Plaintiff is entitled to assert a lien; therefore, Plaintiff's lien is untimely. Plaintiff relies upon its arguments presented previously in this memorandum in supporting the Jury's verdict rendered on Plaintiff's mechanic's lien cause of action. Because Plaintiff's lien is timely, Defendant has no basis for its slander of title claim. Therefore, Defendant is not entitled to recovery under his counterclaim for slander of title.

(6) The Jury's verdict rendered is not excessive

Defendant argues it is entitled to a new trial because the amount of the jury's verdict is grossly inadequate or excessive. In the alternative, Defendant asks the court to reduce the jury's verdict because it is excessive in light of the evidence presented. As stated by Defendant, "the consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented." Proctor v. Dept. of Health and Env. Control, 368 S.C. 297, 628 S.E.2d 496 (Ct. App. 2006).

An excessive verdict is one that results from the jury's passion or prejudice and thereby shocks the court's conscience. See Black's Law Dictionary, 7th Edition (1999). Under the evidence presented at trial, the jury's verdict is clearly not excessive and should not shock the

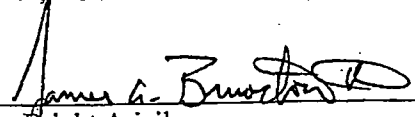
court's conscience as it is less than the amount of actual damages claimed by the Plaintiff. Plaintiffs claimed actual damages for design services due in the total dollar amount of \$201,773.03. See Plaintiff's Exhibit 23. Plaintiff provided evidence through testimony, drawings, time sheets and invoices to substantiate each and every dollar claimed. See Plaintiff's Exhibits 8, 8(a), 8(b), 13-18, 21 & 23. After listening to the testimony and reviewing the evidence presented, the jury determined that Plaintiff is entitled to a verdict in the amount of \$173,990.53. While the jury's verdict is not equal to the actual damages claimed by the Plaintiff, the verdict rendered is supported by the evidence presented at trial.

CONCLUSION

For the reasons set forth above, Defendant's Motion for Judgment Notwithstanding the Verdict and/or For a New Trial should be denied.

Respectfully submitted by,

ROSEN, ROSEN & HAGOOD, LLC

By: 

A. Bright Ariail
James A. Bruorton, IV
134 Meeting Street, Suite 200
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ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
August 11, 2011

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

THE SPRIGGS GROUP, P.C.

Plaintiffs,

vs.

GENE R. SLIVKA,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-15-0595

DEFENDANT'S NOTICE OF
MOTION PURSUANT TO SCRPC
59(e) REGARDING THE COURT'S
ORDER DENYING DEFENDANT'S
MOTION FOR JNOV and/or
FOR NEW TRIAL

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 SEP 19 PM 3:04

Defendant makes this motion pursuant to *SCRPC* 59(e) regarding the Order Denying Defendant's Motion for JNOV and/or for New Trial (hereinafter "Order"). Defendant received said Order on Friday, September 2, 2011. Under *SCRPC* 59(e) a party may move to alter or amend a judgment and may also ask for reconsideration of issues and arguments. *Elam v. South Carolina Dept. Of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (S.C. 2004). For the reasons set forth in its *Notice of Motion and Motion for JNOV and/or for New Trial*, incorporated by reference herein, and for the reasons set forth below, the Defendant asks this Court to alter or amend its Order and/or to reconsider its award.

I. The Order contains an error of law in its ruling that the lien that is the subject of this action was timely filed.

To assert a lien under *S.C. Code Ann.* § 29-5-90 the claimant must have performed work for which he is entitled to assert a lien, specifically labor within the meaning of the statute, at a time within ninety days before the notice. *Preferred Savings and Loan Association, Inc., V. Royal Garden Resort, Inc.*, 295 S.C. 268, 272, 368 S.E.2d 78, 81 (Ct. App. 1988).

The Order finds that Plaintiff was entitled to assert a lien for work performed in January, 2009, specifically answering questions of contractors regarding the project. The Court relies on *Williamson v. Hotel Melrose*, 110 S.C. 1, 96 S.E. 407 (1918) as authority to support its finding that this work is included in the definition of "labor" under S.C. Code Ann. § 29-5-10. The Court's Order in this regard, and its reliance on *Williamson*, is in error.

In *Williamson*, decided under a prior and different version of the Mechanic's Lien statute, the Court specifically sought to determine whether service provided by an architect was within the scope of the lien statute which existed at the time. The Court specifically found that the architect who not only furnished plans and specifications but also "supervised" and "superintended" the construction of the project had performed labor within the meaning of that version of the statute. *Id.* at 408 and 411. "Superintend" is defined as "to oversee and direct work" or "to exercise supervision over."¹

The actual activities by The Spriggs Group that the Order relies on as work justifying the lien do not even fit within the definition of "labor" set forth in *Williamson*. At trial, Mr. Spriggs testified on cross-examination that "contract administration" services, such as conversing with subcontractors on the telephone, is different than "construction observation", and is also different than "supervision" of construction. The Court may recall that Mr. Spriggs testified that "contract administration" and the term "supervision" are terms of art and have specific meaning in architectural contracts and in the architectural industry. Mr. Spriggs testified that he avoids performing "supervision" because he does not want to be responsible for the errors and omissions of contractors in the actual erection of improvements to real property. He testified that he did not "supervise" the construction on this

¹*The Random House College Dictionary*, Revised Edition, © 1984.

project and was only at the site three times and not at all in 2009. Thus, unlike *Williamson*, it cannot be said that Spriggs “supervised” or “superintended” the work because he testified that he did not.

More importantly, since *Williamson*, the South Carolina Legislature has enacted a new mechanic’s lien statute which reads:

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)

The new version of the statute specifically added “preparation of plans, specifications, and design drawings” to its definition of “labor.” The legislature declined to include in its definition of labor other services commonly performed by architects such as “contract administration” services. Because other types of services were omitted from the statute, it is improper, and in error, for the Court to expand the statute to include services the legislature did not include. *Clo-Car Trucking Co., Inc. v. Cliffure Estates of South Carolina, Inc.*, 282 S.C. 573, 320 S.E.2d 51 (Ct. App.1984)(A mechanic's lien exists only by virtue of statute; therefore, one's right to a mechanic's lien is wholly dependent upon the language of the statute creating it and we are not at liberty to depart from the plain meaning of the mechanic lien's statutory language.)

The Order also finds that work performed in May, 2009, justifies the lien which was filed on April 13, 2009. This is also a clear error. First, referencing the May, 2009 work, the Court finds, "Plaintiff provided design sketches for an appraisal of Defendant's property. Andy Bozeman testified he was contacted by an appraiser for the Defendant and asked to provide floor plan sketches and room name information for preparation of the appraisal of Defendant's home." *Order Denying Defendant's Motion for JNOV and/or for New Trial*, dated September 7, 2011, P. 5, FN1. The language of the Order itself establishes that this work was not for the "erection, alteration, or repair" of any building and, therefore, is not covered by the lien statute.

Second, this work was performed after the Plaintiff filed its mechanic's lien on April 13, 2009. "When a party files a notice of lien under Section 29-5-90, he is asserting that at a time **within ninety days before the notice he has performed work for which he is entitled to assert a lien.**" *Preferred Savings and Loan Association, Inc., v. Royal Garden Resort, Inc.*, 295 S.C. 268, 272, 368 S.E.2d 78, 81 (Ct. App. 1988)(emphasis added). The work done in May, 2009, cannot, as a matter of law, support the lien filed by Spriggs before the work was done.

Third and finally, to be subject to the Mechanic's Lien Statute, work must be performed at the request or with knowledge of the owner. *Wood v. Hardy*, 235 S.C. 131, 140, 110 S.E.2d 157, 161 (S.Ct. 1959). There was no evidence that the work was done at the request or with the knowledge of the Defendant. Rather, Spriggs and Bozeman both testified that they simply "assumed" that Slivka was aware of the appraiser's request. Slivka, however, denied authorizing the appraiser's request and testified that he did not know of it until he received Spriggs' June, 2009 invoice.

II. The Defendant's failure to pay undisputed funds after receiving the demand from the Plaintiff pursuant to S.C. Code Ann. § 27-1-15 was not unreasonable and the Defendant is entitled to judgment under this claim as a matter of law.

In the Order, the Court finds that since the Defendant did not pay to the Plaintiff one half of the agreed upon \$151,000.00 fee, the Defendant is not entitled to a judgment notwithstanding the verdict on the Plaintiff's claim under *S.C. Code Ann. § 27-1-15*. This is in error for several reasons.

First, the *S.C. Code Ann. § 27-1-15* demand was made on March 15, 2010, eight months after the Plaintiff commenced the lawsuit and ten months after Defendant had deposited \$265,012.71 to bond off the untimely lien. Thus, because the Plaintiff filed the mechanic's lien action, any amount which may have been an undisputed amount (which is denied) had been deposited with the Court. There is no legal obligation for Slivka to pay both a bond into the court and any undisputed amount. Given the fact that a mechanic's lien action was pending, and a bond had been deposited, there is nothing to support a finding that Slivka immediately failed to pay any sum under *S.C. Code Ann. § 27-1-15*.

In support of its ruling, the Court's Order states, "Further, Defendant wrote Plaintiff 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." That letter is immaterial and irrelevant on the issue of liability under § 27-1-15 for two reasons. First, it pre-dated the demand under § 27-1-15 by more than eight months and during which much had changed between the parties. While the letter was certainly written and sent in June, 2009, it is undisputed that Spriggs refused to accept that sum in satisfaction of his claim. Instead, Spriggs chose to file suit, in July, 2009, thereby obligating Mr. Slivka to continue to incur additional and significant attorney's fees and costs associated with the

litigation, as well as damages related to the cost of the money that had been deposited with the Court. In other words, when Spriggs failed to accept the settlement proposal in June 2009, and filed suit, Slivka's damages associated with the untimely filing of the lien increased and Slivka filed his counterclaim. Of critical importance to the disposition of the § 27-1-15 claim, Slivka's counterclaim was recognized as having factual support and Mr. Slivka's claims for damages was submitted to the jury upon the denial of the Plaintiff's Motion for Directed Verdict.

As a matter of law, when this entire "dispute" was submitted to the jury on Friday, July 22, 2011, no one, not Mr. Spriggs, not Mr. Slivka, and not even the Court could say that an "undisputed" amount was due and owing to Mr. Spriggs. The fact that it was submitted to the jury establishes that it was all, very much, in dispute. Had some amount due to Spriggs by Slivka been undisputed, the Court would have directed a verdict in favor of Spriggs in that amount, which the Court did not do. When the Court denied Plaintiff's motions for directive verdict, as a matter of law, it established that Slivka had no liability under § 27-1-15.

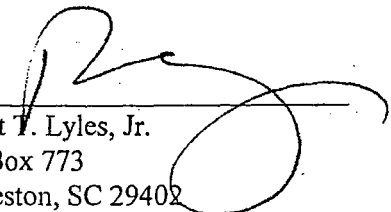
The same result is reached by the analysis of the statute in *Carolina Steel Corporation v. Palmetto Bridge Construction*, 444 F.Supp.2d 577 (D.S.C. 2006). It is undisputed that when the demand was made under § 27-1-15, the parties were engaged in discovery with claims pending against each other. This satisfies the requirement of an investigation, as a matter of law, and as stated above, as of the time this matter was submitted to the jury, all amounts, and who owed them, were in dispute.

CONCLUSION

For the foregoing reasons, Slivka requests that the Court remand its earlier rulings and grant the post-trial motions made by Slivka.

Dated this ___ day Sept 16, 2011.

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ATTORNEY FOR DEFENDANT,
GENE R. SLIVKA

Charleston, South Carolina

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September 22, 2011

VIA EMAIL AND U.S. MAIL

Patricia Grant
Colleton County Clerk of Court
101 Hampton Street
Walterboro, SC 29488

Re: The Spriggs Group, P.C. v. Gene Slivka
Case No.: 2009-CP-15-595

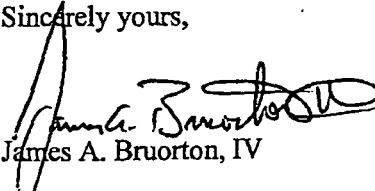
Dear Clerk:

Enclosed for filing, please find The Spriggs Group, P.C.'s reply to Defendant Gene Slivka's Rule 59(e) Motion to Alter or Amend the Court's Order denying Defendant's Motion for JNOV and/or for New Trial. I ask that you please file the original and return a filed stamped copy in the enclosed envelope.

I appreciate your attention in this matter.

With kindest regards, I am

Sincerely yours,



James A. Bruorton, IV

CAB/lsc
Enclosures

cc: Robert T. Lyles, Jr.

ROSEN, ROSEN & HAGOOD, LLC

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September 22, 2011

The Honorable William H. Seals, Jr.
Court of Common Pleas of Colleton County
101 Hampton Street
Walterboro, SC 29488

Re: The Spriggs Group, P.C. v. Gene Slivka
Case No.: 2009-CP-15-595

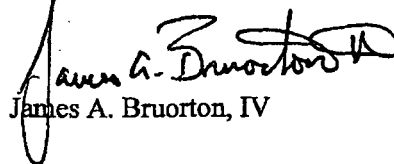
Dear Judge Seals:

I am in receipt of Defendant Gene Slivka's Rule 59(e) Motion seeking to alter or amend your Order denying Defendant's Motion for JNOV and/or for New Trial. I am also in receipt of your law clerk's email indicating that the motion will be ruled upon based upon the written record and any response to the motion should be submitted to the Court for consideration within ten (10) days. Having reviewed the most recent motion made by the Defendant in comparison with the Defendant's original Motion for JNOV and/or for a New Trial, I do not believe a response is necessary from the Plaintiff. Mr. Slivka's counsel raises and reiterates the arguments previously submitted to the court related to the timeliness of Plaintiff's mechanic's lien and as to the reasonableness of Defendant's actions under S.C. Code Ann. § 27-1-15. Plaintiff has previously submitted a brief to the Court addressing these issues in its Memorandum in Opposition to Defendant's Motion for Judgment Notwithstanding the Verdict and/or For New Trial. I believe the Court has correctly ruled on these issues before and do not see any basis set forth in Defendant's most recent motion that would warrant a modification to the Court's prior Order.

Plaintiff will rely upon the written record already submitted to the Court and respectfully requests that Defendant's Rule 59(e) Motion to Alter or Amend be denied. If you have any further questions or concerns, please feel free to contact our office.

With kindest regards, I am

Sincerely yours,


James A. Bruorton, IV

CAB/cab
cc: Robert T. Lyles, Jr.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-15-0595

**DEFENDANT'S NOTICE OF
MOTION PURSUANT TO SCRPC
59 RE ORDER FOR
AWARD OF INTEREST, FEES AND
COSTS TO PLAINTIFF**

VS.

Defendant.

PATRICIA C. GRANT
COLLETON COUNTY
COMMON WEALTH
608
C
and or
2008 OCT 12 9 41 AM
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Lien Statute or S.C. Code Ann. §27-1-15.

576

Courts must interpret statutes that grant the power to award attorney's fees narrowly because these laws have been enacted in derogation of the common law. *Harris-Jankins, et al. v. Nissan Cr Mart, Inc.*, 348 S.C. 171, 557 S.E.2d 708 (Ct. App. 2001), *citing Dowaliby v. Chambless*, 344 S.C. 558, 562, 544 S.E.2d 646, 648 (Ct. App. 2001). Because the Court is basing its award on one or both of the referenced statutes, it must specify what fees are awarded under which statute. Otherwise, Defendant is deprived of the right to assess whether the award of fees is proper under either statute. That is particularly so where, as here, the award, on its face, is not proper under either statute and each statutes has limitations which would prohibit the Court from awarding Plaintiff all fees it incurred in this action, or fees in the amount awarded.

Here, Court has issued an award of attorneys fees in the single amount of \$235,030.31, which are all fees incurred by Plaintiff from the Notice of Mechanic's Lien in April, 2009 through the trial of the case in July, 2011. This award not only exceeds the amount of the verdict, \$173,990.53 (which is itself impermissible, as discussed below), but also exceeds the amount that is authorized by the applicable statutes. Neither statute provides for the recovery of fees and costs incurred in the defense of counterclaims (which, importantly, were not related to this statutory claim), the pursuit of other causes of action that permit recovery of punitive damages, or the pursuit of equitable remedies such as *Quantum Meruit*, all of which were prosecuted by Plaintiff and which were without merit and were withdrawn.

It is undisputed that Plaintiff asserted and prosecuted several causes of action against Defendant that were separate from its claims under the Mechanics Lien Statute and *S.C. Code Ann.* §27-1-15, including Breach of Contract, Breach of Contract Accompanied by Fraudulent Acts, and Unjust Enrichment/*Quantum Meruit*. Plaintiff's attorney's billing records indicate that they spent

substantial time and effort, up through trial, prosecuting all of those causes of action. This included the development of evidence of other suits against Defendant and preparing witnesses to come forward at trial to testify against Defendant with respect to these claims.¹ At trial, the Plaintiff's causes of action for Breach of Contract Accompanied by Fraudulent Acts and Unjust Enrichment/*Quantum Meruit* were withdrawn since they had no merit. Additionally, Plaintiff defended Defendant's counterclaims for Slander of Title, Violation of the Frivolous Claims Sanction Act - *S.C. Code Ann.* §15-36-10, Tortious Interference with Contractual Relationships with Third Parties Dependent Upon Performance by Plaintiff, and Tortious Interference with Contractual Relationships with Third Parties Resulting from Defective Notice of Mechanic's Lien. These claims were not withdrawn until trial, either.

By awarding Plaintiff all fees incurred by Plaintiff's counsel, from the filing of the Notice of Lien through trial, the Court has awarded Plaintiff fees for the prosecution of those causes of action other than the Mechanic's Lien Statute and § 27-1-15, and for the costs of defending Plaintiff's counterclaims, none of which are recoverable under either statute.

A. Mechanic's Lien Statute Limitations

Under the mechanic's lien statute, there are two significant limitations on the amount of an attorneys fee award to the prevailing party. First, the amount of the award of attorney's fees may not exceed the amount of the lien. *S.C. Code Ann.* 29-5-10(a). Second, under the Mechanic's Lien Statute, as noted previously by Defendant, a party may only recover attorneys fees related to the mechanic's lien action. *Utilities Const. Co., Inc., v. Wilson*, 321 S.C. 244, 468 S.E.2d 1 (Ct. App.

¹Only during the week of trial did the Court prohibit these witnesses from testifying, meaning that they had been prepared for trial by Plaintiff's counsel.

1996). Notwithstanding these express and established limitations, the Court's Order awards attorneys fees and costs in the amount of \$235,030.31, which both exceeds the amount of the claimed mechanic's lien by \$36,195.78 (and the amount of the lien established by the jury, by \$61,039.78).

As noted above, the amount awarded includes all of the fees incurred by Plaintiff, including those incurred to prosecute non-mechanic's lien causes of action and the defense of Slivka's counterclaims. Accordingly these fees are improper under the Mechanic's Lien Statute.

B. Limitations in S.C. Code Ann. § 27-1-15

The fees awarded by the Court also exceed, on its face, the amount of fees recoverable under S.C. Code Ann. § 27-1-15.

S.C. Code Ann. § 27-1-15. states, in part:

If the 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**. (emphasis added)

Plaintiff made its demand pursuant to S.C. Code Ann. § 27-1-15 on March 15, 2010, eight months after litigation commenced between the parties. The amount awarded includes all fees and costs incurred by the Plaintiff in this action, including those that were undisputedly incurred during the eight months before the § 27-1-15 demand was even made which is clearly not authorized by § 27-1-15.

It should also be noted that the Court has not stated or determined what amount, allegedly due to Plaintiff by Defendant, was a "proper portion" on March 15, 2010. That is important in that, if that sum is the \$76,201.00 Defendant agreed to pay, in a letter dated June 4, 2009, then the fees awarded are over 300% that amount which is patently improper.

II. The fees and costs awarded by the Plaintiff are excessive.

The attorneys fees awarded in the Order in this matter exceed the amount of the verdict awarded to the Plaintiff in this matter, as well as the amount authorized by statute and customary fees. See. *Defendant's Memorandum In Opposition to Plaintiff's Motion for Interest, Fees and Costs*, which is incorporated into this motion by reference.

The Order issued by the Court recognizes that awards of attorneys fees which exceed the verdict have been upheld. *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (S.Ct. 1998). However, the award made in *Taylor v. Medenica* was made pursuant to the South Carolina Unfair Trade Practices Act and not pursuant to either of the statutes at issue in this case. The object of the Unfair Trade Practices Act is to discourage parties who are repeatedly using deceptive acts and practices in the conduct of trade or commerce. *Id.* Under the Unfair Trade Practices Act the attorneys fees provision is a tool to effect the object of the statute and encourage Plaintiff's to fight the use of unfair trade practices even in cases where their damages may be minimal. *Id.* The Unfair Trade Practices Act is clearly a punitive statute which also awards treble damages. *S.C. Code Ann.* § 39-5-140. The recovery of treble damages and attorneys fees encourages claimants to pursue claims against those practicing unfair or deceptive trade practices where the actual damages which might be recovered may be minimal.

The objective of the provisions awarding attorneys fees in the statutes at issue in this case is to facilitate resolution of disputes rather to punish or deter particular conduct. The legislature placed very specific limitations on the attorneys fees which can be awarded under the Mechanic's Lien Statute, specifically limiting any such award to the amount of the lien. *S.C. Code Ann.* § 29-5-10. Additionally, under the Mechanic's Lien Statute, either party to the dispute may be forced to pay

attorneys fees, depending on who prevails. *S.C. Code Ann.* § 29-5-10. "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 wrongful filing of liens and unjustified refusal to pay debts subject to mechanic's liens." *Cedar Creek Properties v. Cantelou Assoc., Inc.*, 320 S.C. 483, 465 S.E.2d 774 (Ct. App. 1995).

Likewise, the purpose of *S.C. Code Ann.* § 27-1-15 is not punitive. The statute also contains specific limitations as the award of attorneys fees is limited to those incurred after the date of the statutory demand. The obvious purpose of the statute is to avoid litigation by promoting pre-suit investigation with the threat of recovery of attorneys fees before the use of the courts is required (although Plaintiff in this matter waited until he had initiated a lien on the Defendant's property, the Defendant had already posted a sizeable cash bond, and Plaintiff had already initiated litigation). The purpose of this statute is to promote investigation of claims and resolution of portions of the claims which are not disputed. *Id.* A finding against the Defendant with respect to the claim does not even mandate an award of attorneys fees under this statute. *Carolina Steel Corp. v. Palmetto Bridge Constructors*, 44 F.Supp.2d 577 (D.S.C. 2006).

III. The Order does not contain sufficient reasonable factual findings to support the finding of reasonableness with respect to the amount of the fees awarded.

Both the Mechanic's Lien Statute and § 27-1-15 allow the recovery of some degree of "reasonable" attorneys fees. While the Defendant denies that the Plaintiff is entitled to any award under either statute, the fees sought by the Plaintiff under any theory are not reasonable. "[T]he court should consider the following six factors when determining a reasonable attorney's fee: (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 compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). See also. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993); *Taylor v. Medenica*, 331, S.C. 575, 503 S.E.2d 458 (S.Ct. 1998). Consideration should be given to all six factors; none of the factors is controlling. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). The Order does not set forth reasonable factual support for awarding a total amount that exceeds the Plaintiff’s recovery in this matter by \$61,039.88. For the reasons set forth in *Defendant’s Memorandum In Opposition to Plaintiff’s Motion for Interest, Fees and Costs* which is incorporated herein verbatim, the total fees and costs of \$235,030.41 awarded to the Plaintiff in this matter are excessive. The Court’s order fails to set forth facts to justify the total amount of the award under the aforementioned factors.

IV. The Order awards a judgment which exceeds that authorized by the Mechanic’s Lien Statute where total recovery is limited to the amount of the cash bond posted by the Defendant with the Clerk of Court.

The Order enters a judgment in the total amount of \$446,434.76. Under the mechanic’s lien statute the Plaintiff is only entitled to payment from the cash posted by the Defendant with the court pursuant to *S.C. Code Ann. § 39-5-110*. This statute states:

At any time after service and filing of the statement required under § 29-5-90 the owner or any other person having an interest in or lien upon the property involved may secure the discharge of such property from such lien by filing in the office of clerk of court or register of deeds where such lien is filed his written undertaking, in an amount equal to one and one-third times the amount claimed in such statement, secured by the pledge of United States or State of South Carolina securities, by cash or by a surety bond executed by a surety company licensed to do business in this State, and upon the filing of such undertaking so secured the lien shall be discharged and the cash, securities or surety bond deposited shall take the place

of the property upon which the lien existed and shall be subject to the lien. In the event of judgment for the person filing such statement in a suit brought pursuant to the provisions of this chapter, **such judgment shall be paid out of the cash deposited** or, in event of pledge of securities, it shall be paid from the proceeds of a sale of so much of the pledged securities as shall be necessary to satisfy such judgment or, in event of the filing of a surety bond, the surety company issuing such bond shall pay such amount found due, not to exceed the amount of the bond. Unless suit for enforcement of the lien is commenced as required by § 29-5-120, the undertaking herein required shall be null and void and the principal therein shall have the right to have it canceled and such cash or securities deposited or pledged or surety bond filed shall be released from the lien herein provided. (emphasis added)

Pursuant to this statute, the Defendant deposited \$266,012.71 in cash with the clerk of court on May 12, 2009 and the Plaintiff's mechanic's lien was released. Upon making this deposit the Plaintiff's mechanic's lien was discharged and the cash deposited took the place of the Plaintiff's property. Per the statute, the total payment to the Plaintiff under the mechanic's lien statute is limited to the \$266,012.71 deposited by the Defendant with the Clerk of Court. The Plaintiff's verdict was \$173,990.53. Therefore, any award of attorneys fees under the Mechanic's Lien Statute is limited to a maximum of \$92,022.18.

These arguments are set forth in more detail in *Defendant's Memorandum In Opposition to Plaintiff's Motion for Interest, Fees and Costs* which is incorporated herein verbatim.

V. The Order awards fees for staff members which are not authorized to be recovered by either statute.

The Order awards the total fees incurred by Plaintiff's counsel which includes time spent by staff members. Both the statutory claims of the Plaintiff provide for recovery of "attorneys fees." Whether these statutes allow for the recovery of fees related to service by staff members has not been specifically addressed in South Carolina. "We are not at liberty to depart from the plain meaning of the mechanic lien's statutory language." *Clo-Car Trucking Co., Inc. v. Cliffure*

Estates of South Carolina, Inc., 282 S.C. 573, 320 S.E.2d 51 (Ct.App.1984). Therefore, the Plaintiff may not include fees related to staff members in its claims for attorneys fees under the statute.

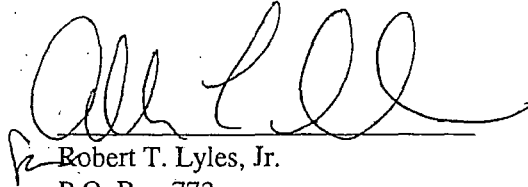
These arguments are set forth in more detail in *Defendant's Memorandum In Opposition to Plaintiff's Motion for Interest, Fees and Costs* which is incorporated herein verbatim.

VI. The Order awards attorneys fees, costs and prejudgment interest to which Plaintiff is not entitled.

The Order awards attorneys fees and costs pursuant to S.C. Code Ann. 29-5-10 and S.C. Code Ann. 27-1-15. Additionally, the Order awards prejudgment interest in the amount pursuant to S.C. Code Ann. 27-1-15. For reasons set forth in *Defendant's Notice of Motion and Motion for Judgment Notwithstanding the Verdict and/or for a New Trial Absolute or Nisi Remittitur* the Plaintiff is not entitled to recovery of attorneys fees, costs, or prejudgment interest under these statutes.

Dated this 7th day October, 2011.

LYLES & LYLES, LLC

A handwritten signature in black ink, appearing to read "R. T. Lyles, Jr.", written over a horizontal line.

Robert T. Lyles, Jr.

P.O. Box 773

Charleston, SC 29402

(843) 577-7730

rtl@lylesfirm.com

ATTORNEY FOR DEFENDANT,
GENE R. SLIVKA

Charleston, South Carolina

prevailing party up to the amount of the lien. See S.C. Code Ann. § 29-5-10. The verdict reached as to Defendant's failure to comply with S.C. Code Ann. § 27-1-15 provides for a recovery of attorney's fees and interest at the judgment rate on the money claimed due, but the express provisions of the statute do not limit the recovery of attorney's fees to a maximum amount like the mechanic's lien statute. See S.C. Code Ann. § 27-1-15. Thus, Plaintiff is entitled to attorney's fees and costs up to the amount of the mechanic's lien. Fees and costs over and above the amount of the mechanic's lien are recoverable under S.C. Code Ann. § 27-1-15. Based upon the express provisions of the statute, Plaintiff's full amount of fees and costs since March 15, 2010 can be awarded under S.C. Code Ann. § 27-1-15.

Defendant also argues that Plaintiff asserted and prosecuted several causes of action against Defendant which were separate from its claims under the Mechanic's Lien Statute and S.C. Code Ann. § 27-1-15. All claims submitted by Plaintiff were ancillary to Plaintiff's mechanic's lien action, which serves as the primary basis for the damages sought by Plaintiff. The prosecution of the Plaintiff's case is directly related to professional services provided pursuant to its contract with the Defendant for which Plaintiff's mechanic's lien rights were triggered as a result of Defendants non-payment. See Ariail Second Affidavit ¶ 4. Plaintiff's quantum meruit/unjust enrichment and breach of contract causes of action rely upon the same facts and seek the same damages as those sought under the mechanic's lien cause of action. See Ariail Second Affidavit ¶ 4. Attorney's fees and costs related to these causes of action are indistinguishable from those incurred related to the mechanic's lien action. See Ariail Second Affidavit ¶ 4. Of the \$209,109.60 worth of attorney's fees submitted in this action, approximately \$5,750.00 (5 hours at \$250.00 per hour; 13.1 hours at \$210.00 per hour; and 10 hours at \$175.00 per hour) is attributable to the prosecution of Plaintiff's breach of contract accompanied by a fraudulent act cause of action, which sought additional damages based upon

additional facts outside of the services provided by Plaintiff to Defendant. See Ariail Second Affidavit ¶ 5.

Plaintiff did spend a substantial amount of time defending against the counterclaims filed by Defendant. However, all but one of Defendant's counterclaims relate to the mechanic's lien action. Defendant's counterclaims for Slander of Title, Violation of the Frivolous Claims Sanction Act, and Tortious Interference with Contractual Relationships with Third-Parties Resulting from Defective Notice of Mechanic's Lien all relate to the mechanic's lien action brought by Plaintiff. The Mechanic's Lien statute allows for a party to recover attorney's fees related to the mechanic's lien action: See S.C. Code Ann. § 29-5-10, et seq.

The intent of the Legislature in allowing the prevailing party in an action brought under the mechanic's lien statute to recover attorney's fees and costs stems from a desire to deter both wrongful filing of liens and unjustified refusal to pay debts subject to the mechanic's lien. Cedar Creek Properties v. Cantelou Associates, Inc., 326 S.C. 483, 465 S.E.2d 774 (S.C. App. 1995). In this action, Defendant's unjustified failure to pay the debt owed to Plaintiff, which is subject to the mechanic's lien, is the root cause of the fees and costs incurred by Plaintiff in this action. Determination as to the amount of attorney's fees which should be awarded under the mechanic's lien statute is addressed to the sound discretion of the trial court. Seckinger v. Vessel Excalibur, 326 S.C. 382, 483 S.E.2d 775 (S.C. App. 1997).

Defendant further argues that S.C. Code Ann. § 27-1-15 only allows for recovery of attorney's fees and costs from the date of the demand. Plaintiff incurred attorney's fees in the amount of \$24,260.25 and costs in the amount of \$1,962.27 prior to the S.C. Code Ann. § 27-1-15 demand being made on March 15, 2010. See Ariail Second Affidavit 5. Attorneys fees in the amount of \$184,849.35 and costs in the amount of \$23,958.44 were incurred by the Plaintiff after the S.C. Code Ann. § 27-1-15 demand was made on March 15, 2010. See Ariail Second

Affidavit ¶ 5. Plaintiff continues to incur attorney's fees and costs in defending the numerous post trial motions being made by the Defendant. Even if the Plaintiff is found not entitled to recover attorney's fees and costs prior to March 15, 2010 under S.C. Code Ann. § 27-1-15, those attorney's fees and costs are recoverable by the Plaintiff as the prevailing party under the mechanic's lien statute.

2. The fees and costs awarded to the Plaintiff are reasonable and not excessive

In determining the award of attorney's fees, the court considered six factors: (1) nature, extent, and difficulty of legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in locality for similar services; and (6) beneficial results obtained. See Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961); Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993); Dedes v. Stickland, 307 S.C. 155, 414 S.E.2d 134 (1992). The Court gave consideration to all six criteria in establishing the attorney's fees awarded and none of these factors was controlling. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974)). The Court based its award on the evidence presented through the Affidavits of A. Bright Ariail and N. Keith Emge along with its impression of the case presented by Plaintiff's counsel at trial. It is without question that when an action cannot be resolved prior to a trial, the fees and costs associated with the preparation of the case for trial and the time spent at trial greatly increases the fees and costs incurred. The Court sufficiently analyzed all six factors under Collins and made specific findings as to each factor, which supports the award given.

3. The total recovery under the Mechanic's Lien Statute is not limited to the amount of the cash bond posted by the Defendant.

Defendant argues that a bond was posted with the Court pursuant to S.C. Code Ann. § 39-5-110 which limits Plaintiff's total recovery to the amount of the lien. The statutory language quoted by Defendant is misconstrued and nothing within the quoted language limits the judgment to the amount of the cash bond posted. See S.C. Code Ann. § 39-5-110. Under South Carolina's Mechanic's Lien Statute, the costs 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. The express language of the statute indicates that a party is entitled to a judgment up to twice the amount of the lien. For example, if the mechanic's lien is for \$100,000, the prevailing party can be awarded up to \$100,000 in attorney's fees making the total judgment \$200,000.

Defendant's filing of a bond pursuant to S.C. Code Ann. § 39-5-110 does not void the express language of the South Carolina Mechanic's Lien Statute. Under Defendant's theory, Plaintiff would only be entitled to attorney's fees in the amount of one third of the lien amount in all circumstances. Defendant provides no legal support for this argument and Defendant's argument is in contradiction to the express provisions of South Carolina's Mechanic's Lien Statute.

4. The South Carolina Mechanic's Lien Statute does not exclude staff members from the definition of attorney's fees.

Defendant argues that time spent by staff members is not recoverable in its claim for attorney's fees under the statutes. Defendant provides no legal authority for its position other than reliance on the term "attorney's fees" set forth in the statute. South Carolina's Mechanic's Lien Statute does not define what is considered to be included as attorney's fees. Attorneys fees, as defined by Black's Law Dictionary, is the charge to a client for services performed for the

client, such as an hourly fee, a flat fee, or a contingent fee. See Black's Law Dictionary 7th Edition (1999). The definition does not restrict the charge to a client solely to services provided by an attorney. Plaintiff's fee agreement with counsel sets forth that time billed by attorneys, paralegals and law clerks are part of the legal services being provided. See Ariail Second Affidavit ¶ 3.

In this action, the time spent by staff members of Plaintiff's counsel represents only \$29,180.85 of the total attorney's fee award. See Ariail Second Affidavit ¶ 5. The staff member time includes 226.5 hours of billable time at \$125.00 per hour from Shannon S. Skelly, the primary paralegal assigned to the file and 1.4 hours of billable time at \$125.00 per hour from a second paralegal, Claire G. Whitsett. See Ariail Second Affidavit ¶ 5. Both 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. See Ariail Second Affidavit ¶¶ 6-7. In addition, 8.76 hours were billed to Plaintiff at \$110.00 per hour for legal research performed by law clerks. See Ariail Second Affidavit ¶ 5. Attorney hours represent over 75% of the hours billed to the Plaintiff in this matter. See Ariail Second Affidavit ¶ 5.

5. Plaintiff is entitled to an award of pre-judgment interest

Defendant argues that the Court awarded pre-judgment interest in an amount pursuant to S.C. Code Ann. § 27-1-15. The award of pre-judgment interest is based upon Plaintiff's demand in its Complaint and is calculated from February 9, 2009 per the South Carolina interest statute. See S.C. Code Ann. § 34-31-20(A). The Court's award of prejudgment interest is not based upon S.C. Code Ann. § 27-1-15. Even if Plaintiff had not prevailed under its claim for failure to comply with S.C. Code Ann. § 27-1-15, it would still be entitled to pre-judgment interest based upon South Carolina's Interest Statute. Plaintiff's breach of contract claim allows for recovery

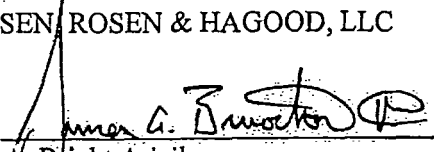
of prejudgment interest based upon the pleadings. South Carolina law allows prejudgment interest on obligations to pay money from time when payment is demandable, if sum due is capable of being reduced to certainty. See GTR Rental, LLC v. DalCanton, 547 F.Supp.2d 510 (2008). The fact that a sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id.

CONCLUSION

For the reasons set forth above, Defendant's Motion Pursuant to SCRPC 59 Re Order For Award of Interest, Fees and Costs to Plaintiff should be denied.

Respectfully submitted by,

ROSEN, ROSEN & HAGOOD, LLC

By: 

A. Bright Ariail
James A. Bruorton, IV
134 Meeting Street, Suite 200
P. O. Box 893
Charleston, SC 29402
(843) 577-6726

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
October 18, 2011

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.

Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2009-CP-15-0595

SECOND AFFIDAVIT OF
A. BRIGHT ARIAIL

2011 OCT 20 AM 10:29

FATIMAH C. GRANT
COLLETON COUNTY
COMMON PLEAS

PERSONALLY APPEARED before me, A. Bright Ariail, who being duly sworn does
state as follows:

1. I am an attorney for the Plaintiff in the above captioned action.
2. I am member of the firm of Rosen, Rosen & Hagood, LLC, and have been a member of the South Carolina Bar since 2001.
3. The Plaintiff entered into a fee agreement, attached as Exhibit A, with the law firm of Rosen, Rosen & Hagood, LLC. Under the terms of this agreement, the Plaintiff is charged an hourly rate for attorneys, paralegals and law clerks as part of the legal services provided for under the fee agreement.
4. The prosecution of the Plaintiff's case is directly related to professional services provided pursuant to its contract with the Defendant for which Plaintiff's mechanic's lien rights were triggered as a result of Defendants non-payment. Plaintiff's quantum meruit/unjust enrichment and breach of contract causes of action rely upon the same facts and seek the same damages as those sought under the mechanic's lien cause of action. Attorney's fees and costs related to these causes of action are indistinguishable from those incurred related to the

mechanic's lien action.

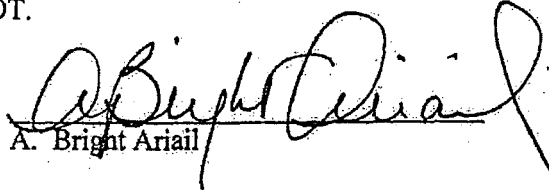
5. I have reviewed in detail the Detail Fee Transaction File List and Detail Cost Transaction File List, which were attached as Exhibits C and D to my July 27, 2011 Affidavit submitted in the above referenced case. Based upon my review, and discussions with the attorneys and paralegals whose time has been billed to the file, I have made the following determinations as to the legal services provided:

- Of the \$209,109.60 worth of attorney's fees submitted in this action, approximately \$5,750.00 (5 hours at \$250.00 per hour; 13.1 hours at \$210.00 per hour; and 10 hours at \$175.00 per hour) is attributable to the prosecution of Plaintiff's breach of contract accompanied by a fraudulent act cause of action.
- Attorney's fees in the amount \$24,260.25 and costs in the amount of \$1,962.27 were billed to Plaintiff prior to the S.C. Code Ann. § 27-1-15 demand being made to Defendant on March 15, 2010.
- Attorney's fees in the amount of \$184,849.35 and costs in the amount of \$23,958.44 have been incurred by the Plaintiff since the S.C. Code Ann. § 27-1-15 demand was made to Defendant on March 15, 2010.
- The time spent by non-attorney staff members of Plaintiff's counsel represents \$29,180.85 of the total attorney's fees claimed. The staff member time includes 226.5 hours of billable time at \$125.00 per hour from the primary paralegal on the file, Shannon S. Skelly, and 1.4 hours of billable time at \$125.00 per hour from paralegal, Claire G. Whitsett. In addition, 8.76 hours were billed to the Plaintiff at \$110.00 per hour for legal research performed by law clerks. The attorney hours billed to the matter represent over 75% of the hours billed to the Plaintiff.

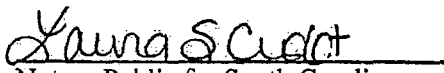
6. Ms. Skelly has over eighteen (18) years of experience as a paralegal. She is a 1992 graduate of the University of South Carolina and has a bachelor of science (cum laude) in Criminal Justice. Additionally, Ms. Skelly holds a certificate of completion (May, 1993) for the Lawyer's Assistant Program of The National Center for Paralegal Training. Ms. Skelly has been a paralegal with my firm for ten years.

7. Mrs. Whitsett has over twelve (12) years of experience as a paralegal. She attended Lander University in Greenwood, South Carolina as English major. She completed the post-graduate paralegal certification program at the ABA approved National Center for Paralegal Training in Atlanta, GA in 1989. Mrs. Whitsett has been a paralegal with my firm for 4 years.

FURTHER AFFIANT SAYETH NOT.


A. Bright Ariail

SWORN to before me this
10th day of October, 2011.


Notary Public for South Carolina
My commission expires: 5-28-2018

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

134 MEETING STREET, SUITE 200

P.O. Box 893

CHARLESTON, SOUTH CAROLINA 29402

PHONE (843) 577-6726

FAX (843) 724-8036

www.rrhlawfirm.com

A. Bright Ariail
bariaail@rrhlawfirm.com

April 14, 2009

C. Kenneth Spriggs, AIA
The Spriggs Group, P.C.
545 East York Street
P.O. Box 10062
Savannah, GA 31412

Re: The Spriggs Group, P.C. v. Gene Slivka

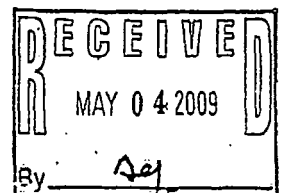
Dear Ken:

I've enjoyed speaking with you over the last few days and look forward to working with you on the above referenced matter. As discussed, I have filed a mechanic's lien on Mr. Slivka's property in Colleton County, as requested, and will continue to assist with collection of the monies due The Spriggs Group, PC for architectural and engineering services that you performed for him. As we discussed, the lien must be foreclosed within six months of the date that you last performed work on the project. I will file a foreclosure action and pursue other legal remedies on your behalf, if necessary.

We will handle this matter on an hourly basis. My time will be billed at \$250.00 per hour. Should another attorney within the firm be employed in this matter, such attorney's fees will be charged at the regular hourly rate for services of a similar nature. Paralegal time will be charged at \$125.00 per hour. Legal research may be accomplished by law clerks which are charged at \$110.00 per hour. In the event the firm should change its hourly rates, the new rates shall be effective and deemed substituted in this letter on written notice to you of such change.

In addition to hourly rates, you will also be billed for all costs and expenses incurred on your behalf. Customary costs include filing fees, service fees, copy costs, case costs, expert witness fees, investigators' fees, deposition costs, travel costs, facsimile transmissions, computer based research, and long distance telephone calls.

We request that you forward a \$3000.00 retainer at your earliest convenience. This retainer will be charged against until it is depleted at which time a new retainer should be deposited on your account. You will receive monthly statements reflecting the status of your account.

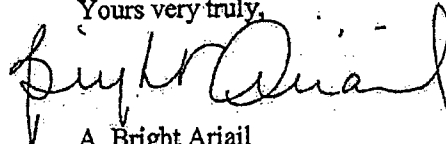


If the account is outstanding for more than 60 days, we may move to be relieved as counsel. If you fail to pay all amounts owed, then you agree to reimburse us for all costs incurred in collecting these amounts, including reasonable attorney's fees and costs. If legal action is brought to collect, you agree to the jurisdiction of the courts located in South Carolina.

Please review the above paragraphs closely and if they are agreeable, please sign the enclosed copy of this agreement on the space provided and return it to me. If the fee arrangement is unclear in any way or if you have any questions, please do not hesitate to call me.

We look forward to working with you.

Yours very truly,

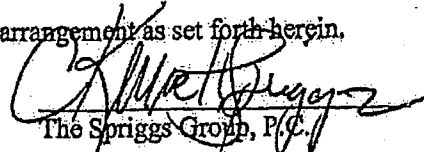


A. Bright Ariail

ABA/aba

Enclosures

I hereby acknowledge and accept the fee arrangement as set forth herein.



The Spriggs Group, P.C.

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-15069

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

v.

GENE R. SLIVKA, ... Appellant.

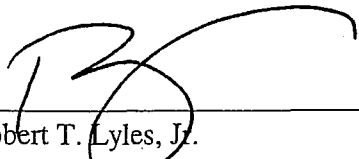
NOTICE OF APPEAL

Gene R. Slivka appeals the verdict and judgment in this matter including but not limited to the rulings of the court as follows:

1. Order Denying Defendant's Motion for JNOV and/or For New Trial, filed on September 7, 2011;
2. Order for Award of Interest, Fees, and Costs initially filed on September 7, 2011, then amended and filed on October 3, 2011,
3. Order denying Defendant's Motion to Alter/Amend Court's Order Denying Defendant's Motion for JNOV and/or for New Trial; and
4. Order Denying Defendant's Rule 59 Motion Regarding Award of Interest, Fees and Costs to Plaintiff filed on November 22, 2011.

Appellant received notice of the Order Denying Defendant's Motion to Alter/Amend Court's Order Denying Defendant's Motion for JNOV and/or for New Trial and Order Denying Defendant's Rule 59 Motion Regarding Award of Interest, Fees, and Costs to Plaintiff on November 22, 2011.

December 2, 2011



Robert T. Lyles, J.
LYLES & LYLES, LLC
P.O. Box 773
Charleston, SC 29402
(843) 577-7730
Rtl@lylesfirm.com
Attorney for Appellant

Other Counsel of Record

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Rosen, Rosen & Hagood, LLC
134 Meeting Street, Suite 200
Post Office Box 893
Charleston, S.C. 29402
(843) 577-6726
bariail@rrhlawfirm.com
Attorney for Respondent

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

RECEIVED
DEC 06 2011
SC Court of Appeals

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 the Notice of Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on November 17, 2011, addressed to their attorneys of record, A. Bright Ariail, Esquire, Rosen, Rosen & Hagood, LLC, 134 Meeting Street, Suite 200, Post Office Box 893, Charleston, S.C. 29402.

December 2, 2011



Robert T. Lyles, Jr.
Lyles & Lyles, LLC
342 East Bay Street (29401)
Post Office Box 773
Charleston, South Carolina 29402
(843) 577-7730
Rtl@lylesfirm.com
Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.

Plaintiff,

v.

GENE R. SLIVKA

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-1695

RECEIVED
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SC Court of Appeals

ORDER DENYING DEFENDANT'S
MOTION FOR JNOV and/or FOR NEW
TRIAL

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PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

This matter is before the Court upon the Defendant's Motion for Judgment Notwithstanding the Verdict and/or For New Trial. Plaintiff obtained a jury verdict against the Defendant Gene R. Slivka in the amount of \$173,990.53 on its claims for foreclosure of mechanic's lien, breach of contract and failure to comply with S.C. Code Ann. § 27-1-15. Defendant now seeks to have that verdict set aside for various reasons.

1. Defendant is not entitled to judgment notwithstanding the verdict as to Plaintiff's claims pursuant to S.C. Code Ann. § 27-1-15 as the evidence supports the jury's verdict.

Defendant argues that it was undisputed that an investigation had taken place into the Plaintiff's claim and the Defendant did not unreasonably refuse to pay the claim upon the demand. Clearly, a factual issue existed as to whether a fair and reasonable investigation was made by the Defendant. Defendant admitted on several occasions during trial that he owed Plaintiff at least half of \$151,000. Defendant admitted he received the March 15, 2010 demand letter under S.C. Code Ann § 27-1-15 and did not pay the amount he admits was undisputed. Defendant's explanation for not paying was that he had paid the money into the Court. Further, Defendant wrote Plaintiff 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. The issue as

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to whether a reasonable and fair investigation of Plaintiff's claim had been made is one for the jury to decide. Likewise, the issue of whether a valid portion of Plaintiff's claim, to the extent one exists, was paid in a timely manner in compliance with the statute is an issue for the jury to decide. After a full week of listening to the evidence in this case, the jury unanimously determined that the Defendant had not made a reasonable and fair investigation of Plaintiff's claim and failed to properly pay the proper portion of Plaintiff's claim deemed valid.

Defendant argues that discovery in the lawsuit amounts to a fair and reasonable investigation into Plaintiff's claims under the statute. Defendant relies upon Carolina Steel Corporation v. Palmetto Bridge Construction, 444 F.Supp.2d 577 (D.S.C. 2006) stating that the court found that because an investigation had occurred and a dispute existed, no attorney's fees pursuant to the statute would be awarded. 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. This court finds Carolina Steel distinguishable from this case in that the Defendant never paid Plaintiff either prior to Plaintiff's demand or after Plaintiff's demand despite admitting he owes Plaintiff at a minimum one half of \$151,000.00. This Court finds that recovery under S.C. Code Ann. § 27-1-15 is not barred when a demand under the statute is made after litigation has commenced. Further, this Court finds that payment to the Court to bond off a mechanic's lien claim does not constitute compliance with S.C. Code Ann. § 27-1-15.

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. Defendant admitted owing Plaintiff a minimum of one half of \$151,000 and admitted he made no further payments to Plaintiff after the initial contract payment in February 2007. 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. See S.C. Code Ann. § 27-1-15. Defendant never made payment to the Plaintiff of the undisputed amount he admits he owes to the Plaintiff; therefore, the verdict rendered as to Plaintiff's claim for failure to comply with S.C. Code Ann. § 27-1-15 is supported by the evidence presented.

2. Defendant is not entitled to judgment notwithstanding the verdict on Plaintiff's claim under the mechanic's lien statute as the evidence supports the jury's verdict.

Defendant argues there was no evidence that Plaintiff performed work which entitled it to a lien within ninety days of filing the mechanic's lien that is the subject of this action. Plaintiff presented evidence by way of invoices, timesheets, emails and testimony that Plaintiff performed work on this project up to January 14, 2009 and then again in May 2009 for 3.5 hours. See Plaintiff's Exhibits 8(a), 19, and 21. The Defendant testified that the Plaintiff was authorized to respond to questions from the field from various contractors and admitted that he never told Plaintiff to stop responding to these questions prior to the services performed in January 2009. Plaintiff's mechanic's lien was filed on April 13, 2009, which is within ninety (90) days of January 14, 2009 and prior to the work performed in May 2009. See Plaintiff's Exhibit 10.

Plaintiff's claim against a mechanic's lien in this matter arises out of statutory law. It is undisputed that the Plaintiff provided labor and services connected with Defendant's construction project. In accordance with § 29-5-10, Plaintiff properly filed a mechanic's lien for services furnished in the erection, alteration, and repair of Defendant's building within ninety days of the last work performed based upon the evidence presented. 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*

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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).

Defendant argues that the services performed by Plaintiff in January 2009 are not part of the invoices specified in the Plaintiff’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 wilfully and knowingly claimed more than is his due.” Plaintiff’s error in the amount stated for labor due does not invalidate its lien. The only requirement of the law is that the account be filed within ninety (90) days after person seeking 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 Plaintiff presented evidence by way of timesheets, emails and testimony of Andy Bozeman and Ken Spriggs showing that the Plaintiff labored on the project within ninety (90) days of the date in which the mechanic’s lien was filed on Defendant’s property. Because Plaintiff properly followed the statutory requirements and Defendant has failed to pay for labor and services provided by Plaintiff within the scope of the mechanic’s lien statute, the evidence supports the verdict rendered on Plaintiff’s cause of action under S.C. Code of Laws § 29-5-10, *et al.*

Defendant further argues that the services performed by Plaintiff in January 2009 are not the type of services for which a lien is allowed. However, the Defendant did not argue that the services performed in May 2009 by Plaintiff were not the type of services for which a lien is

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allowed¹. Defendant's argument as to the January 2009 services is that the S.C. Mechanic's lien statute does not provide for lien rights associated with the performance of construction administration services. Defendant argues that because the statute defines labor to include the preparation of plans, specifications, and design drawings that it excludes contract administration services from the type of labor for which a lien is allowed. 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."

See S.C. Code Ann. 29-5-10 (emphasis added).

This Court finds that it is implausible that construction administration services would be excluded from the description of "labor performed or furnished in the erection, alteration, or repair of any building." Clearly, construction administration work is instrumental in delivering an appropriate residence or structure. In a 1918 decision, the South Carolina Supreme 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.

¹ Plaintiff provided design sketches for an appraisal of Defendant's property. Andy Bozeman testified he was contacted by an appraiser for the Defendant and asked to provide floor plan sketches and room name information for preparation of the appraisal of Defendant's home.

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This Court finds that construction administration services are the type of labor for which a lien can be filed under South Carolina's mechanic's lien statute as those services actually support the erection, alteration or repair of a building more so than the preparation of plans, specifications and design drawings related to the project.

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 has no lien for merely drawing plans and specifications for the building, but does have rights to a lien 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). To infer that South Carolina's legislature allows a lien for preparation of plans, specifications and design drawings but excludes the services that further and support the design and actually result in improvements to the building or structure is contrary to legislative intent and without merit. Thus, the evidence presented supports the jury's verdict on Plaintiff's mechanic's lien cause of action.

3. Defendant is not entitled to a judgment notwithstanding the verdict or a new trial as the jury was presented with factual issue of whether Plaintiff's lien is valid and timely.

Defendant argues that the jury was asked improperly to interpret whether contract administration by a design professional is included in the definition of "labor" under § 29-5-90. At the conclusion of the trial, the jury was charged as to what the law in South Carolina is as it relates to filing and enforcing a mechanic's lien. At that time, both the Plaintiff and the Defendant indicated they were in agreement as to the charge given to the jury on the mechanic's lien law. The jury was asked to determine whether Plaintiff's lien was valid and timely. The jury unanimously determined that based upon the evidence presented, Plaintiff's lien was valid.

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4. Defendant is not entitled to a new trial based upon the Court omission of Defendant's Charge Number 6 as the Court properly charged the Jury as to the law.

Defendant argues that the Court omitted Defendant's Charge Number 6 related to Plaintiff's claim for failure to comply with S.C. Code Ann. § 27-1-15. Defendant argues that the Court should have included language from Carolina Steel Corporation v. Palmetto Bridge Constructors, 444 F.Supp.2d 577 (D.S.C. 2006) related to a fair and reasonable investigation. As discussed previously, the Defendant in Carolina Steel made payment to the Plaintiff for the undisputed amount. The Court held the Defendant was not subject to attorneys fees because an investigation had occurred, undisputed fees had been paid, and a dispute existed concerning the remaining fees. Id. The Defendant's requested charge would have been misleading to the jury given the distinguishing characteristics of this case from Carolina Steel.

A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. Yolanda Burroughs v. John W. Worsham, 352 S.C. 382, 574 S.E.2d 215 (Ct. App. 2002)(citing Keaton ex rel. Foster v. Greenville Hosp. Sys., 334 S.C. 488, 514 S.E.2d 570 (1999)). "The substance of the law is what must be instructed to the jury, not any particular verbiage." Id. at 392. "A jury charge which is substantially correct and covers the law does not require reversal." Id. The charge given by the Court as to S.C. Code Ann. § 27-1-15 was substantially correct and covered the law of the statute. To warrant reversal for refusal to give a requested charge, a party must show both error and prejudice. Cohens v. Atkins, 333 S.C. 345, 509 S.E.2d 286 (Ct. App. 1998). Defendant has not presented this Court with any evidence of prejudice based upon the alleged incorrect charge. Plaintiff's recovery of interest and attorney's fees are provided for by the jury's verdict on Plaintiff's cause of action for foreclosure of mechanic's lien and breach of contract and not solely dependent upon the cause of action for failure to comply with S.C. Code Ann. § 27-1-15.

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5. Defendant is not entitled to a new trial based upon the Thirteenth Juror Doctrine as the evidence supports the verdict rendered.

Defendant argues that the jury's verdict is contrary to the preponderance of the evidence because (a) the Plaintiff did not comply with the duty of good faith and fair dealing implied in its contract, (b) the Defendant made a fair and reasonable investigation of Plaintiff's claims under S.C. Code Ann. § 27-1-15, (c) the work performed subject to the mechanic's lien is not work for which Plaintiff is entitled to assert a lien, and (d) Plaintiff's mechanic's lien was untimely as a matter of law.

Specifically, Defendant argues that "it is undisputed that Plaintiff did not comply with the covenant of good faith and fair dealing in its billing practices with the Defendant." Whether the Plaintiff complied with the covenant of good faith and fair dealing in its billing practices with the Defendant is an issue of fact to be determined by the jury. Based upon the evidence presented at trial, a legitimate dispute as to the terms of the contract existed and eleven respectable jurors made a competent decision after a week of testimony that the Plaintiff was entitled to a verdict in the amount of \$173,990.53. Defendant's arguments as to S.C. Code Ann. § 27-1-15 and the entitlement to a mechanic's lien have previously been addressed by this Court within this Order.

The arguments presented by the Defendant that the verdict is contrary to the preponderance of the evidence all present issues of fact to be determined by the jury. Plaintiff in this action bears the burden to prove its claims by the greater weight or preponderance of the evidence. See Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992)(findings of fact based upon a preponderance of the evidence are those supported by the greatest weight, amount, credibility of truth, as reflected by the whole of the evidence before the court, or evidence which convinces as to its truth). After a full week trial on the merits, a competent jury of eleven unanimously found that the evidence presented by both the

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Plaintiff and the Defendant when weighed together tipped the scale in favor of the Plaintiff. Plaintiff met its burden of proof as to all causes of action submitted to the jury and the verdict rendered is supported by the evidence.

6. The Jury's verdict rendered is not excessive.

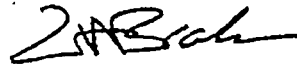
Defendant argues it is entitled to a new trial because the amount of the jury's verdict is grossly inadequate or excessive. In the alternative, Defendant asks the court to reduce the jury's verdict because it is excessive in light of the evidence presented. "The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented." Proctor v. Dept. of Health and Env. Control, 368 S.C. 297, 628 S.E.2d 496 (Ct. App. 2006). An excessive verdict is one that results from the jury's passion or prejudice and thereby shocks the court's conscience. See Black's Law Dictionary, 7th Edition (1999).

Under the evidence presented at trial, the jury's verdict is clearly not excessive and does not shock the court's conscience as it is less than the amount of actual damages claimed by the Plaintiff. Plaintiffs claimed actual damages for design services due in the total dollar amount of \$201,773.03. See Plaintiff's Exhibit 23. Plaintiff provided evidence through testimony, drawings, time sheets and invoices to substantiate the dollars claimed. See Plaintiff's Exhibits 8, 8(a), 8(b), 13-18, 21 & 23. After listening to the testimony and reviewing the evidence presented, the jury determined that Plaintiff is entitled to a verdict in the amount of \$173,990.53. While the jury's verdict is not equal to the actual damages claimed by the Plaintiff, the verdict rendered is supported by the evidence presented at trial.

THEREFORE, for the reasons set forth herein, Defendant's Motion for Judgment Notwithstanding the Verdict and/or For a New Trial is denied.

IT IS SO ORDERED this 30th day of August, 2011.

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The Honorable William H. Seals, Jr.
Presiding Judge

.) IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2009-CP-15-595

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COLLETON COUNTY
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Pursuant to S.C. Code Ann. § 29-5-10, et seq., the costs which may arise in enforcing or defending against the lien, including a reasonable attorney's fee, may be recoverable by the prevailing party. See S.C. Code Ann. § 29-5-10. The fee must be determined by the court in which the action is brought but the fee and court costs may not exceed the amount of the lien. Id. For purposes of the award of attorney's fees, the party whose offer is closer to the verdict

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reached is considered the prevailing party in the action. Id. In this case, Plaintiff's offer of \$198,834.53 is closer to the verdict reached than Defendant's offer of \$100,000.00, which was filed with the Court in accordance with the S.C. Mechanic's Lien Statute prior to the commencement of trial. Thus, the Plaintiff is the prevailing party in the action and can be awarded attorney's fees and costs pursuant to the statute. The determination as to the amount of attorney fees which should be awarded under the mechanic's lien statute is addressed to the sound discretion of the trial court. See Seckinger v. Vessel Excalibur, 326 S.C. 382, 483 S.E.2d 775 (S.C. App. 1997).

In addition to the attorney's fees and costs allowable under the verdict rendered on Plaintiff's foreclosure of mechanic's lien claim, S.C. Code Ann. § 27-1-15 also provides for a recovery of attorney's fees and interest at the judgment rate on the money claimed due. See S.C. Code Ann. § 27-1-15. The express provisions of S.C. Code Ann. § 27-1-15 do not limit the recovery of attorney's fees to the amount of the lien as expressed in the S.C. Mechanic's Lien Statute. Id. Thus, the allowable attorney's fees and costs are not required to be capped by the amount of the mechanic's lien.

Also, Plaintiff sought pre-judgment interest in its complaint as to all causes of action against Defendant and has moved the Court for an award of the same. See Ariail Affidavit ¶ 13. South Carolina law allows prejudgment interest on obligations to pay money from time when payment is demandable, if sum due is capable of being reduced to certainty. See GTR Rental, LLC v. DalCanton, 547 F.Supp.2d 510 (2008). S.C. Code Ann. § 27-1-15 provides for interest to be awarded from the date of the demand being sent pursuant to the statute. In this case, the evidence in the record indicates that the sum due Plaintiff was demandable as of February 9, 2009. In addition, Plaintiff sent a demand to Defendant pursuant to S.C. Code Ann. § 27-1-15 on

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March 15, 2010. Under South Carolina law, the fact that a sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id.

In determining an award of attorney's fees, the court considers six factors: (1) nature, extent, and difficulty of legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in locality for similar services; and (6) beneficial results obtained. See Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961); Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993); Dedes v. Stickland, 307 S.C. 155, 414 S.E.2d 134 (1992). Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these factors is considered controlling. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974)).

To support its Motion for Interest, Attorney's Fees and Costs, Plaintiff submitted the Affidavits of A. Bright Ariail and N. Keith Emge, Jr. Included in the Affidavit of A. Bright Ariail are detailed bills for legal services rendered setting forth each task performed, who performed the task and the amount of time spent on each task shown in six minute increments. Upon evaluation of the nature, extent and difficulty of the legal services rendered, Plaintiff was required to expend considerably more time and effort on this case due to specific actions of the Defendant who created unnecessary delays, filed meritless motions, and forced Plaintiff to incur additional attorney's fees and costs above and beyond what would otherwise have been incurred. See Ariail Affidavit ¶ 5. A review of the billing records submitted by Plaintiff clearly indicates that they are properly detailed and that the time and labor spent by Plaintiff's counsel is both reasonable for the effort required to litigate this case and not duplicative in any manner. See Exhibits C-F of Ariail Affidavit. Plaintiff's team of legal counsel consists of experienced, skilled

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attorneys, of high professional standing in the community and in good standing with the Bar of this State. The fees charged in this matter were on an hourly basis and not based upon a contingency of compensation. The hourly fees charged by Plaintiff's counsel are of those customarily charged in the locality for similar legal services. See Emge Affidavit ¶¶ 5-6. Plaintiff obtained a substantial benefit from the legal services provided by receiving an award in close proximity to the total damages claimed and avoiding thousands of dollars in liability on Defendant's counterclaims.

This Court finds that Plaintiff is entitled to the recovery of attorney's fees and costs in this matter pursuant to S.C. Code Ann. § 29-5-10 and S.C. Code Ann. § 27-1-15 in the amount of \$235,030.31. Further, this Court finds that the attorney's fees and costs awarded are reasonable based upon the six criteria established by the Supreme Court of South Carolina for determining attorney's fees. There is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment. See Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998). South Carolina courts have approved awards of attorney's fees where the fee substantially exceeded the actual recover. Id. at 582; see also Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(finding that trial court did not abuse its discretion in awarding attorney fees to Plaintiff greater than recovery realized by Plaintiff).

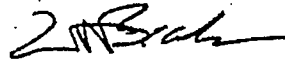
Plaintiff is also entitled to an award of prejudgment interest on the verdict reached in the amount of \$37,413.92 being calculated at the legal rate of interest as set forth in S.C. Code Ann. § 34-31-20(A) from February 9, 2009.

THEREFORE, judgment in the total amount of \$446,434.76 is to be entered in this matter against the Defendant in favor of the Plaintiff.

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FURTHER, the Bond for Release of Mechanic's Lien deposited with the Court in the amount of \$265,112.71 and filed with the Register of Deeds Office in Colleton County at Book 1742 at Page 276 shall be released to the Plaintiff in full, along with any interest accrued thereon.

IT IS SO ORDERED this 30th day of August, 2011.



The Honorable William H. Seals, Jr.
Presiding Judge

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2009-CP-15-595

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PATRICIA C. GRANT
COLLETON COUNTY
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reached is considered the prevailing party in the action. Id. In this case, Plaintiff's offer of \$198,834.53 is closer to the verdict reached than Defendant's offer of \$100,000.00, which was filed with the Court in accordance with the S.C. Mechanic's Lien Statute prior to the commencement of trial. Thus, the Plaintiff is the prevailing party in the action and can be awarded attorney's fees and costs pursuant to the statute. The determination as to the amount of attorney fees which should be awarded under the mechanic's lien statute is addressed to the sound discretion of the trial court. See Seckinger v. Vessel Excalibur, 326 S.C. 382, 483 S.E.2d 775 (S.C. App. 1997).

In addition to the attorney's fees and costs allowable under the verdict rendered on Plaintiff's foreclosure of mechanic's lien claim, S.C. Code Ann. § 27-1-15 also provides for a recovery of attorney's fees and interest at the judgment rate on the money claimed due. See S.C. Code Ann. § 27-1-15. The express provisions of S.C. Code Ann. § 27-1-15 do not limit the recovery of attorney's fees to the amount of the lien as expressed in the S.C. Mechanic's Lien Statute. Id. Thus, the allowable attorney's fees and costs are not required to be capped by the amount of the mechanic's lien.

Also, Plaintiff sought pre-judgment interest in its complaint as to all causes of action against Defendant and has moved the Court for an award of the same. See Atrial Affidavit ¶ 13. South Carolina law allows prejudgment interest on obligations to pay money from time when payment is demandable, if sum due is capable of being reduced to certainty. See GTR Rental, LLC v. DalCanton, 547 F.Supp.2d 510 (2008). S.C. Code Ann. § 27-1-15 provides for interest to be awarded from the date of the demand being sent pursuant to the statute. In this case, the evidence in the record indicates that the sum due Plaintiff was demandable as of February 9, 2009. In addition, Plaintiff sent a demand to Defendant pursuant to S.C. Code Ann. § 27-1-15 on

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March 15, 2010. Under South Carolina law, the fact that a sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id.

In determining an award of attorney's fees, the court considers six factors: (1) nature, extent, and difficulty of legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in locality for similar services; and (6) beneficial results obtained. See Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961); Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993); Dedes v. Stickland, 307 S.C. 155, 414 S.E.2d 134 (1992). Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these factors is considered controlling. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974)).

To support its Motion for Interest, Attorney's Fees and Costs, Plaintiff submitted the Affidavits of A. Bright Ariail and N. Keith Emge, Jr. Included in the Affidavit of A. Bright Ariail are detailed bills for legal services rendered setting forth each task performed, who performed the task and the amount of time spent on each task shown in six minute increments. Upon evaluation of the nature, extent and difficulty of the legal services rendered, Plaintiff was required to expend considerably more time and effort on this case due to specific actions of the Defendant who created unnecessary delays, filed meritless motions, and forced Plaintiff to incur additional attorney's fees and costs above and beyond what would otherwise have been incurred. See Ariail Affidavit ¶ 5. A review of the billing records submitted by Plaintiff clearly indicates that they are properly detailed and that the time and labor spent by Plaintiff's counsel is both reasonable for the effort required to litigate this case and not duplicative in any manner. See Exhibits C-F of Ariail Affidavit. Plaintiff's team of legal counsel consists of experienced, skilled

attorneys, of high professional standing in the community and in good standing with the Bar of this State. The fees charged in this matter were on an hourly basis and not based upon a contingency of compensation. The hourly fees charged by Plaintiff's counsel are of those customarily charged in the locality for similar legal services. See Emge Affidavit ¶¶ 5-6. Plaintiff obtained a substantial benefit from the legal services provided by receiving an award in close proximity to the total damages claimed and avoiding thousands of dollars in liability on Defendant's counterclaims.

This Court finds that Plaintiff is entitled to the recovery of attorney's fees and costs in this matter pursuant to S.C. Code Ann. § 29-5-10 and S.C. Code Ann. § 27-1-15 in the amount of \$235,030.31. Further, this Court finds that the attorney's fees and costs awarded are reasonable based upon the six criteria established by the Supreme Court of South Carolina for determining attorney's fees. There is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment. See Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998). South Carolina courts have approved awards of attorney's fees where the fee substantially exceeded the actual recover. Id. at 582; see also Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(finding that trial court did not abuse its discretion in awarding attorney fees to Plaintiff greater than recovery realized by Plaintiff).

Plaintiff is also entitled to an award of prejudgment interest on the verdict reached in the amount of \$37,413.92 being calculated at the legal rate of interest as set forth in S.C. Code Ann. § 34-31-20(A) from February 9, 2009.

THEREFORE, judgment in the total amount of \$446,434.76 is to be entered in this matter against the Defendant in favor of the Plaintiff.

FURTHER, the Bond for Release of Mechanic's Lien deposited with the Court and transferred to the Register of Deeds for Colleton County in the amount of \$265,112.71 as documented by the Receipt for Bond Posted for the Release of Mechanic's Lien Filed in BK 1742 PG 276 that is and filed with the Register of Deeds Office in Colleton County at Book 1742 1753 at Page 276-81 shall be released by the Register of Deeds for Colleton County to the Plaintiff in full, along with any interest accrued thereon.

IT IS SO ORDERED this ¹²12 day of August~~September~~, 2011.


The Honorable William H. Seals, Jr.
Presiding Judge

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-15-595

) CASE NO.: 2009-CP-15-595

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IT IS SO ORDERED this 3 day of September, 2011.


The Honorable William H. Seals, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.

Plaintiff,

v.

GENE R. SLIVKA

Defendant.

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

) CASE NO.: 2009-CP-15-595

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**ORDER DENYING DEFENDANT'S
RULE 59 MOTION REGARDING AWARD
OF INTEREST, FEES AND COSTS TO
PLAINTIFF**

This matter is before the Court upon the Defendant's motion pursuant to SCRC 59 regarding the Court's Order awarding interest, fees and costs to the Plaintiff. This Court has previously denied Defendant's motion pursuant to SCRC 59 regarding a motion for judgment and/or for new trial. Plaintiff obtained a jury verdict against the Defendant Gene R. Slivka in the amount of \$173,990.53 on its claims for foreclosure of mechanic's lien, breach of contract and failure to comply with S.C. Code Ann. § 27-1-15. Plaintiff was determined to be the prevailing party by the Court and awarded attorney's fees and costs pursuant to the South Carolina Mechanic's Lien Statute. Additionally, Plaintiff was awarded fees and costs pursuant to S.C. Code Ann. § 27-1-15. Finally, Plaintiff was awarded prejudgment interest pursuant to S.C. Code Ann. § 34-31-20.

Defendant's motion sets forth several arguments related to the reasonableness of the fees and costs awarded, limitations that should be placed on the fees and costs awarded, the types of fees and costs awarded and Plaintiff's entitlement to fees, costs and prejudgment interest. Having carefully reviewed Defendant's Motion Pursuant SCRC Rule 59 RE Order for Award of Interests, Fees, and Costs to Plaintiff and Plaintiff's Memorandum in Opposition, along with

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PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

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the Second Affidavit of A. Bright Ariail in support thereof, this Court finds that Defendant's Motion is denied for the following reasons:

1. Plaintiff is entitled to recover all of its fees as it prevailed under the Mechanic's Lien Statute and S.C. Code Ann. § 27-1-15.

Determination as to the amount of attorney's fees which should be awarded under the mechanic's lien statute is addressed to the sound discretion of the trial court. Seckinger v. Vessel Excalibur, 326 S.C. 382, 483 S.E.2d 775 (S.C. App. 1997). Defendant argues that because the Court is basing its award on one or both of the referenced statutes, it must specify what fees are awarded under which statute. Plaintiff is entitled to recover all of its fees and costs by the cumulative affect of reading both statutes. Under South Carolina's mechanic's lien statute, the prevailing party S.C. Code Ann. § 29-5-10, et seq., the costs 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. The verdict reached as to Defendant's failure to comply with S.C. Code Ann. § 27-1-15 provides for a recovery of attorney's fees and interest at the judgment rate on the money claimed due, but the express provisions of the statute do not limit the recovery of attorney's fees to a maximum amount like the mechanic's lien statute. See S.C. Code Ann. § 27-1-15. Thus, Plaintiff is entitled to attorney's fees and costs up to the amount of the mechanic's lien. Additionally, any fees and costs over and above the amount of the mechanic's lien are recoverable under S.C. Code Ann. § 27-1-15. Alternatively, Plaintiff could have recovered all fees and costs incurred after March 15, 2010 under S.C. Code Ann. § 27-1-15 if its mechanic's lien action had failed.

Defendant also argues that Plaintiff asserted and prosecuted and defended several causes of action which are separate from the claims under the Mechanic's Lien Statute and S.C. Code Ann. § 27-1-15. All claims submitted by Plaintiff were ancillary to Plaintiff's mechanic's lien

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action, which serves as the primary basis for the damages sought by Plaintiff. Plaintiff's quantum meruit/unjust enrichment, which was voluntarily dismissed at trial, and breach of contract causes of action relied upon the same facts and seek the same damages as those sought under the mechanic's lien cause of action. See Ariail Second Affidavit ¶ 4. Attorney's fees and costs related to these causes of action are indistinguishable from those incurred related to the mechanic's lien action. See Ariail Second Affidavit ¶ 4. Defendant's counterclaims for Slander of Title, Violation of the Frivolous Claims Sanction Act, and Tortious Interference with Contractual Relationships with Third-Parties Resulting from Defective Notice of Mechanic's Lien all relate to the mechanic's lien action brought by Plaintiff. The Mechanic's Lien statute allows for a party to recover attorney's fees related to the mechanic's lien action. See S.C. Code Ann. § 29-5-10, et seq.

2. The fees and costs awarded to the Plaintiff are reasonable and not excessive

In determining the award of attorney's fees, the court considered six factors: (1) nature, extent, and difficulty of legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in locality for similar services; and (6) beneficial results obtained. See Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961); Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993); Dedes v. Stickland, 307 S.C. 155, 414 S.E.2d 134 (1992). The Court gave consideration to all six criteria in establishing the attorney's fees awarded and none of these factors was controlling. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974)). The Court based its award on the evidence presented through the Affidavits of A. Bright Ariail and N. Keith Emge along with its impression of the case presented by Plaintiff's counsel at trial. The Court analyzed all six factors under Collins thoroughly and made specific findings as to each factor, which supports the award given.

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3. The total recovery under the Mechanic's Lien Statute is not limited to the amount of the cash bond posted by the Defendant.

Defendant argues that a bond was posted with the Court pursuant to S.C. Code Ann. § 39-5-110 which limits Plaintiff's total recovery to the amount of posted bond. The statutory language of S.C. Code Ann. § 39-5-110 does not limit a mechanic's lien judgment to the amount of the cash bond posted. See S.C. Code Ann. § 39-5-110. Under South Carolina's Mechanic's Lien Statute, the costs 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. The express language of the Mechanic's Lien Statute indicates that a party is entitled to a judgment up to twice the amount of the lien. Defendant's interpretation of S.C. Code Ann. § 39-5-110 is inconsistent with the express language of S.C. Code Ann. § 29-5-10.

4. The South Carolina Mechanic's Lien Statute does not exclude staff members from the definition of attorney's fees.

Defendant argues that time spent by staff members is not recoverable in its claim for attorney's fees under the statutes. South Carolina's Mechanic's Lien Statute does not define what is considered to be included as attorney's fees. Attorneys fees, as defined by Black's Law Dictionary, is the charge to a client for services performed for the client, such as an hourly fee, a flat fee, or a contingent fee. See Black's Law Dictionary 7th Edition (1999). The definition does not restrict the charge to a client solely to services provided by an attorney. Plaintiff's fee agreement with counsel sets forth that time billed by attorneys, paralegals and law clerks are part of the legal services being provided. See Ariail Second Affidavit ¶ 3.

#4
WLB

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. See Ariail Second Affidavit ¶¶ 6-7. The hours spent by law clerks in performing legal research in support of the case also constitutes legal services performed on behalf of the client. The Court finds that the fees incurred by the Plaintiff for attorney, paralegal and law clerk time are the types of legal services intended to be included in the attorney's fees award pursuant to S.C. Code Ann. § 29-5-10 and S.C. Code Ann. § 27-1-15.

5. Plaintiff is entitled to an award of pre-judgment interest

This Court's award of pre-judgment interest is based upon Plaintiff's demand in its Complaint and is calculated from February 9, 2009 per the South Carolina interest statute. See S.C. Code Ann. § 34-31-20(A). Plaintiff's breach of contract claim allows for recovery of prejudgment interest based upon the pleadings. South Carolina law allows prejudgment interest on obligations to pay money from time when payment is demandable, if the sum due is capable of being reduced to certainty. See GTR Rental, LLC v. DalCanton, 547 F.Supp.2d 510 (2008). The fact that a sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id.

THEREFORE, Defendant's SCRCP 59 motion regarding the Court's Order For Award of Interest, Fees and Costs to Plaintiff is hereby denied.

IT IS SO ORDERED this 3 day of ~~October~~^{Nov.}, 2011.



The Honorable William H. Seals, Jr.
Presiding Judge

CERTIFICATE OF COUNSEL

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

July 19, 2012



Robert T. Lyles, Jr.
Lyles & Lyles, LLC
342 East Bay Street
Charleston, SC 29401
(843) 577-7730
Attorney for Appellant

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,

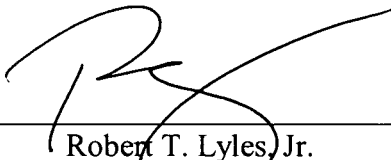
v.

GENE R. SLIVKA, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Final Record on Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on July 19, 2012, addressed to their attorneys of record, A. Bright Ariail, Esquire, Rosen, Rosen & Hagood, LLC, 151 Meeting Street, Suite 400, Charleston, S.C. 29402.

July 19, 2012



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SC Court of Appeals

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July 19, 2012

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

Re: *The Spriggs Group, P.C. vs. Slivka*,
Colleton County Case No. 2009-CP-15-0595
Court of Appeals Case Number: 2011204366

Dear Ms. Gee:

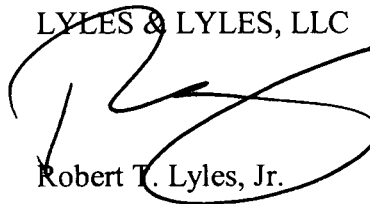
Enclosed for filing with regard to the above referenced matter, please find fifteen (15) copies of the following:

- 1) Final Brief of Appellant with Proof of Service;
- 2) Final Reply Brief of Appellant with Proof of Service; and
- 3) Record on Appeal with Proof of Service.

If you have any questions, please feel free to give me a call. With kind regards, I remain

Very truly yours,

LYLES & LYLES, LLC



Robert T. Lyles, Jr.

RTL/daw

Enclosures

cc: A. Bright Ariail Esquire
Gene R. Slivka

RECEIVED
JUL 20 2012
SC Court of Appeals