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IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

Case No. 2015-000293

The Greens of Rock Hill, LLC and GRH 2011, LLC, ... Petitioners,

v.

Rizon Commercial Contracting, Inc. and Road Machinery
and Supplies Co., ... Defendants.

Of whom Rizon Commercial Contracting, Inc. is the Respondent.

AMENDED APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2012-213563

The Greens of Rock Hill,
LLC; GRH 2011, LLC,

Respondents,

v.

Rizon Commercial Contracting, Inc., Road
Machinery and Supplies, Co., Defendants,
of whom

Rizon Commercial Contracting, Inc.
is the Appellant.

BRIEF OF THE APPELLANT

November 7, 2013

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN NOT ALLOWING THE PARITES TO ENGAGE IN ANY DISCOVERY BEFORE DISMISSING THE CLAIMS?
2. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT THE APPELLANT MADE A PRIMA FACIE CASE THAT IT WAS A PERSON ENTITLED TO A MECHANICS LIEN AS A LABORER WHO PROVIDED MATERIAL FOR THE IMPROVEMENT OF THE REAL ESTATE AS DEFINED UNDER THE STATUTE?

STATEMENT OF THE CASE

The action was commenced by the filing of a petition and motion to discharge mechanic's liens and for sanctions on May 18, 2012 (R. pp. 16-38). The Plaintiffs sought to have the court discharge the mechanic's lien alleging the existence of a written contract and that the Defendants were not entitled to file a lien on the property, asserting that they had not provided labor, material or supplies for the improvement of the property and were not entitled to a lien. The Plaintiffs also asserted that the Defendants' liens were frivolous (R. pp. 21-38). Plaintiff listed the various liens which the two Defendants had filed against the property located in York County, South Carolina. On June 19, 2012, the Defendant Rizon filed a verified answer and counterclaim seeking to foreclose on the mechanic's lien which was filed and served pursuant to statute. The Defendant attached to its pleadings a description of the property and statement of account which had been properly and timely served on the Plaintiffs (R. pp. 29-53). The Plaintiffs filed a reply to the answer and counterclaim, admitting that the crushed concrete which the defendant Rizon produced was used to improve the property (R. pp. 73-77).

The Plaintiff's motion came before the court originally on June 21, 2012. The defendants objected to the process and procedure of the court, asserting that it had begun foreclosure proceedings and that the Plaintiff had failed to file a verified petition and had not timely filed any affidavits. The Court was going to treat the motion as a summary judgment motion. The court

continued the hearing. The court also denied the Defendant's requests to conduct discovery and ordered the parties to provide and exchange affidavits in support of their various positions and rescheduled the hearing. The court stated that the issue was not how much (crushed rock) was used but whether it was actually used in the improvement of real estate. (R. pp. 145-147) The Plaintiff then filed an amended Affidavit of Dave Williams (R. pp. 191-213) and the Defendants filed the affidavit of Robert Phillips (president of Rizon) (R. pp. 185-186) and Stephanie Phillips (vice president) (R. pp. 187-190). The Affidavits of the Phillips centered on what the court instructed, whether the crushed rock was actually used in the improvement of the real estate.

Attached to Stephanie Phillips affidavit were emails from the city inspector verifying that the crushed rock was used in the development in the roads sidewalks and the Veladrome (R. pp. 185-190). The court held a hearing on August 16, 2012 and issued an order dated September 7, 2012 and filed September 12, 2012 (R. pp. 1-5). The court dismissed the mechanic's lien foreclosure and released the lis pendens. The court in doing so, released the bond as the Plaintiff had bonded the lien off the land.

The Defendants filed a timely Notice of Motion and Motion to Alter or Amend on September 14, 2012 (R. pp. 8-9). Again the Defendant requested the court to reverse the dismissal arguing that the parties had not had the opportunity to engage in discovery and as well as referenced the court to various statutory code sections to support the fact that the court erred in its decision. The Defendant attached to the motion sections from the South Carolina statutes (R. pp. 10-14). The court held a hearing on the motions on September 20, 2012 and issued its decision on November 2, 2012 (R. pp. 6-7, 149-184). The Defendant Rizon filed a timely appeal of the court's orders.

STATEMENT OF FACTS

Plaintiffs, as owners of property known as Riverwalk, hired Celriver Services to demolish a large manufacturing facility, to grade the site and to build roads and infrastructure for the development of the property. The demolition of the manufacturing facility resulted in a large amount of scrap concrete. Celriver hired the appellant to crush the scrap concrete and produce various types of stone which was then used in the building of the roads, sidewalks, parking lots and Velodrome. The roads, sidewalks, parking lots and Veladrome were the projects being constructed on the Plaintiff's property. (R. pp. 185-190) The Appellant Rizon rented the equipment from Road Machinery and Supplies, Inc. and Appellant Rizon provided the operators and fuel for the machinery. The crushed concrete was transported to various locations at the Riverwalk site for use as a base in the roads and sidewalks, etc. (R. pp. 1-5). The crushed concrete was used to improve the property. (R. p. 74) The Appellant Rizon was initially hired in 2010 and completed its original contract in 2010. The Appellant Rizon was hired again in 2011 for purposes of crushing additional concrete (R. pp. 185-186). The contract which the respondents have attached to their petition had expired and the payment and performance bonds attached to that contract were expired as well. Appellant manufactured the stone by recycling and crushing the waste concrete from the old manufacturing facility into different sized particles consistent with state standards for different types of rock. The material (crushed rock) was manufactured to the stated specifications for the City of Rock Hill and the inspector for the city advised when and where the material was used relating to the roads, sidewalk, parking lots, etc. (R. pp. 185-186). The City officials directed where the rock was placed and in various emails confirmed the use of the rock which Appellant manufactured (R. pp. 187-190).

Appellant rented the equipment from Road Machinery. Appellant hired and paid its employees, paid for the fuel to operate the equipment and oversaw the process of manufacturing the stone everyday when the crushing activities were ongoing. Appellant provided labor, services and the equipment for the production of the stone used to improve the property (R. pp. 185-186). After not being paid, Appellant filed a mechanic's lien upon the property for the amount of \$295,591.01, which included the amounts due and owing for the rental of the equipment from Road Machinery (R. pp. 121-130). The Plaintiffs bonded the lien off the property and posted a bond with the Clerk of Court pursuant to statute.

The owners filed this suit (pursuant to Sea Pines Company v. Kiawah Island, Inc 268 S.C. 153, 232 S.E.2d 501 (1977)) to discharge the lien alleging that the Court should dissolve the lien as it had been wrongfully filed. Appellant objected to the court proceeding under the Sea Pines analysis as Appellant had filed a counterclaim and a separate suit to foreclose on its mechanic's lien. Appellant also objected and requested discovery but the Court declined to allow discovery and directed the parties to prepare affidavits for the Court's analysis of this issue, stating that the issue was not how much but whether the material was used to improve the property.

The Court held a hearing and on September 7, 2012 issued an order dissolving the mechanic's lien, releasing the lis pendens and dismissing the foreclosure of the mechanic's lien with prejudice. The court in its decision stated that Appellant "did not provide or do anything to improve the real estate. It provided a service directly to Celriver under a contract not related to Owners' contract with Celriver." (R. pp. 1-5) The court's decision was somewhat different that the analysis for which affidavits had been provided and since discovery was not allowed, there was no way to present or ascertain what the Owners' contract with Celriver covered, despite the

fact that the crushed rock was being used to improve the owner's property pursuant to Celriver's stated obligations of site development.

The Appellant filed a Motion to Alter or Amend, referring to various statutes which the court had not considered. The Appellant also again submitted that the court should have allowed discovery to develop the issues relating to the contract, scope of work and use of the material. The court declined to alter or amend its decision and left this case dismissed with prejudice as to the mechanics lien foreclosure. The Appellant filed a timely appeal of this matter.

ARGUMENT

I. The trial court erred in ordering the parties to submit this issue to the Court for determination based on affidavits and not allowing discovery.

Discovery is permissible pursuant to the South Carolina Rules of Civil Procedure, rules 26 through 37. At the initial hearing on June 21, 2012, appellant requested discovery and to be allowed to exchange discovery. The court declined and at the end of the hearing on June 21, 2012, advised the parties that it would decide the issues based upon affidavits alone. The court advised it was following the procedure set forth in the Sea Pines case. The court was treating the motion as one for summary judgment. The problem with the Court's methodology in proceeding in this fashion is that the Court made findings of fact based upon affidavits and yet those affidavits demonstrated clear questions of fact exist. The court also made findings of fact that are not supported in the record and upon which it based its decisions, such as the statement that the service the appellant provided to Celriver was under a contract not related to the Owners' contract with Celriver. Questions of fact exist as to the existence of a written contract, the terms of the contract, the scope of the work, the necessity of maintaining the construction debris on site, the use of the material, how the property owners played into the development process. Appellant asserts that the original contract had expired. Celriver asserts that the contract from

2010 was governing the relationship. The court made findings of fact as to Appellant's activities of crushing rock, where Appellant was crushing rock, why it was crushing rock, and the process of crushing rock. The transcript from the hearing of September 20, 2012 further demonstrates issues of fact exist as to how the statutes really apply to the facts in this case.

The law is well settled that summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery. The nonmoving party must demonstrate a likelihood that further discovery will uncover additional relevant evidence and that the parties are not merely engaged in a fishing expedition. Dawkins v.

Fields, 354 S.C. 58, 580 S.E.2d 433 (2003) Rehearing Denied. In the case at hand, Appellant requested discovery and the court declined to allow any discovery (R. pp. 131-148). Clearly, discovery in this action would have benefited the court as well as this appellate court in the analysis of Appellant's work, how Appellant's work improved the land and how Appellant's work should be viewed in light of the various mechanic's lien statutes. Discovery would have demonstrated the relationship between Celriver and property owners, Celriver's obligations as far as disposal of the material from the demolished Celanese plant. Discovery would have further enabled the parties to flesh out the relationship between the owner, contractor and the Appellant. (R. pp. 173-177). The Appellant requested to be allowed to conduct discovery and when the court denied it, the Appellant came to Court with the affidavit as directed. However, the court indicated in the June hearing that the issue was whether the material was used in the improvement of the real estate and that is what the affidavits focused upon. The hearing and the court's analysis centered not on whether the crushed rock was used but whether the act of crushing and producing the rock was covered under the statute and whether the Celrivers' contract with the Owner was in any way related to the contract Celriver had with the Appellant.

Had discovery been allowed, these issues could have been developed and the actual contracts and scope of work and other issues related to the scope of work could have been ascertained. For instance, if the material had to be kept on site or removed to a classified land fill, then the owners' contract with Celriver very well may be directly tied to the project and the crushing activities.

In the Motion to Alter or Amend, Appellant again argued that to dismiss this action was premature without discovery. The Court again declined to alter or amend its decision. (September hearing)

The Court erred in not allowing any discovery and the Appellant objected to the court proceeding as it did without discovery. The trial court made findings of fact and conclusions of law relating to contractual issues and applied the statutes to the facts without the benefit of a fully developed record or any developed record. The parties' affidavits demonstrated conflict and disagreement even as to whether there was a written contract and the terms of the contract.

The law is clear that in cases applying the preponderance of evidence burden of proof, the nonmoving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Rosen v. University of South Carolina, 398 S.C. 703, 731 SE.2d 298 (Ct. App. 2011). An example of findings of fact the court made that are not supported by the record is the court's determination that "there is no indication that Celriver's contract with the owners required crushing of the concrete in order that it could be used in the building of roads and sidewalks, and, as indicted above, Celriver did not purchase the crushed stone from Rizon. While crushing the concrete may have been a benefit to Celriver, the work involved in crushing the concrete did not improve the real property." No one knows what the owners required as we did not have the contract between Celriver and the owners. Discovery would

have enabled this issue to be developed. In addition, the owners admitted that the crushed concrete was used to improve the property (R. p. 74). Therefore, the court's finding of fact is in conflict with the pleading.

Furthermore, the court relied upon the contract and reviewed the contract the Respondents provided with their affidavit. The Appellant did not admit that the contract covered this job. Even if it did, the contract provided that the Appellant was a subcontractor of Celriver on the job and yet the court found that the Appellant was not a subcontractor because there was no indication that Celriver's contract with the Owners required crushing of the concrete in order that it could be used in building roads and sidewalks. The problem with the court's analysis is that there is no indication either way because Appellant was not allowed discovery and this in itself becomes a question of fact (R. pp. 1-5).

In the case at hand, the trial court treated the Plaintiff's motion as a motion for summary judgment. As the exchange between the court and Appellant's counsel at the September 20, 2012 hearing demonstrates, questions of fact exist as to how Appellant's work related to the scope of the mechanic's lien statute (R. pp. 149-184). As will be seen in the below argument, the scope of the Appellant's work, how and whether it fell within the statutory scheme was not something that should have been ruled upon without discovery, especially in light of the relatively new statutes addressing the scope of work for which a subcontractor is entitled to a mechanic's lien. Therefore, Appellant submits that the trial court erred in dismissing this action and in refusing to allow discovery before considering and ruling on the motion.

II. The Appellant's work provided material that improved the property and Appellant is a laborer as defined under the statute, both of which entitle the Appellant to a Mechanic's Lien under S.C. Code Section 29-2-20.

In order to understand why Appellant is entitled to a mechanic's lien and why the trial court erred in dismissing the lien, it is necessary to have the language of the applicable statutes and to understand the applicable statutes. South Carolina Code Section 29-5-20 provides as follows:

Every labor, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon, subject to existing liens of which he has actual or constructive notice, to the value of the labor or material so furnished, including the costs of the action..

In addition, S.C. Code Section 29-5-22, which is also applicable, provides:

Any person who supplies tools, appliances, machinery or equipment used as provided in Section 29-5-10(a) is considered to have furnish material for the improvement of real estate in the meaning of Sections 29-5-20 and 29-5-40 to the extent of the reasonable rental value of the tools, appliances, machinery or equipment for the period of actual use.

The additional statutes which are applicable to the analysis of whether the Appellant is entitled to the benefits of the mechanic's lien statutes is S.C. Code Section 29-5-27 which references 44-96-40(6) as well.

Any person providing construction and demolition debris disposal services, as defined in section 44-96-40 (6), including, but not limited to final disposal services provided by construction and demolition landfill, is a labor within the meaning of sections 29-5-20 and 29-5-40. "Person" as used in this section means any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, Association, organization or other entity. (S.C. Code Section 29-5-27)

"Construction and demolition debris" means this card it solid waste resulting from construction, remodeling, repair and demolition of structures, road building and land clearing. The wastes include, but are not limited to, bricks, concrete and other masonry materials, soil, rock, lumber, road spoils, paving material, and tree and brush stumps, but does not include solid waste from agricultural or silvicultural operations. "S.C. Code Section 44-96-40(6).

As the trial court set forth "a mechanic's lien is a creature of statute. The right to a mechanic's lien is wholly dependent on the language of the statute creating the right." Skiba v.

Gressnor, 374 S.C. 208, 648 S.E.2d 605 (2007); Clo-Car Trucking Co., Inc. v. Cliffure Estates of South Carolina, Inc., 282 S.C. 573, 320 S.E.2d 51 (Ct. App. 1984). In South Carolina, however, the courts have found that mechanic's liens, being remedial in nature, should be given liberal construction. Clo-Car Trucking Co., Inc. v. Cliffure Estates of South Carolina, Inc., 282 S.C. 573, 320 S.E.2d 51, 53 (Ct. App. 1984). In the case at hand, the trial court did not construe the statutes liberally at all but construed them very conservatively.

As S.C. Code Section 29-5-20 set forth, to have a right to a mechanic's lien, the party claiming the lien must be a "laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner." The laborer is further expansively defined in South Carolina code section 29-5-27 to specifically include individuals providing construction and demolition debris disposal services as defined under S.C. 44-96-40(6). The reason all of this is relevant is that the Court, in its order of September 7, 2012, specifically found that the Plaintiffs hired Celriver to demolish an existing large manufacturing facility. The court went on to find that in order to make the scrap concrete usable in the project, Celriver contracted with Appellant to crush the scrap concrete. Appellant rented equipment and provided all the labor and fuel and supervision to perform the crushing. The language of the Court's original order in characterizing Appellant's conduct supports the fact that the activities and services the Appellant provided fall squarely within the statutory scheme which grants it a right to a mechanic's lien under 29-5-20.

A further analysis of the statutes demonstrates that construction and demolition debris is defined as solid waste resulting from construction, remodeling, repair and demolition of structures. The trial court found that Celriver hired Appellant to make the scrap concrete usable. The Court found that the concrete was a result of the demolition of a building. By the plain

language of the statute, Appellant is a laborer under section 29-5-20. The Appellant specifically pointed this out to the trial court in the motion to alter or amend and its arguments. (R. pp. 8-16, 150-166). The fact that the staging occurred on other property is irrelevant. The Appellant was involved in the demolition of construction debris from the property that the owners were developing as Riverwalk. In fact, the statute defining labor gives the construction and demolition landfill rights to a mechanic's lien. Appellant submits that certainly it should have and has a right to a mechanic's lien upon the properties in this case because its services not only provided for the demolition of the manufacturing facility but also the demolished material went directly back into the project. Not only does the appellant have a lien based upon the definition of labor, it also has a lien right as an individual who furnished material for the improvement of real estate as was admitted by the respondents in their reply. "Plaintiffs (respondents) admit that the concrete crushed by Defendant (Appellant) was used to improve the property" (R. p. 74). The Appellant supplied the material to the extent that it provided the means, fuel, labor and equipment for the purpose of crushing the chunks of concrete and transforming it into usable stone in the development of Riverwalk.

The trial court made a distinction in asserting that the crushed concrete was never owned by Rizon nor supplied by Rizon. Although it is true that Rizon did not own the concrete as that was material that had been demolished on site, it is also clear that Celriver had the responsibility of removing the demolished facility and as opposed to hauling it to a construction and demolition land fill, Celriver hired Appellant to dispose of the demolition debris through a process whereby Celriver and the owners were able to reuse the material as opposed to taking it to a landfill. The Appellant was clearly a person providing construction and demolition debris disposal services within the statutory scheme which would entitle it to a lien. To find that the Appellant is not

protected and at the same time for the statute on its face to give a landfill a lien is inconsistent and illogical.

The court relied upon Sea Pines in performing an analysis and proceeding to address this situation prior to any discovery and without testimony. However, the Appellate court in Sea Pines reversed the trial court's decision to vacate the mechanic's lien and the lis pendens. The court specifically found, "The facts are disputed and reasonable men may disagree as to whether Sea Pines has been paid for all of the labor and material furnished and used as contemplated by the mechanic's lien statute, A prima facie case for the filing of the mechanic's lien was made to the court and we think the court erred in vacating and discharging the lien" (Emphasis added) Sea Pines Company v. Kiawah Island, Inc 268 S.C. 153, 160, 232 S.E.2d 501, 504 (1977) The court noted that the lien claimant made a prima facie showing that it was entitled to a lien. Appellant submits that it has made a prima facie showing that it is entitled to a mechanic's lien under the statute and that the trial judge erred in vacating the lien and dismissing the suit.

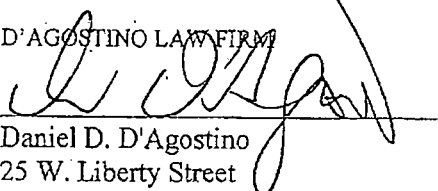
CONCLUSION

The Appellant submits that the trial court erred and it should be reversed with the case being remanded so that the parties can engage in discovery and proceed on to trial. Appellant submits that the court should also rule that the Appellant is an individual who is entitled to a lien under the statute as it is a laborer as defined under the mechanic's lien statutory scheme.

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November 7, 2013

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas
Sixteenth Judicial Circuit

S. Jackson Kimball, Special Circuit Court Judge

Docket No. 2012-CP-46-1815
Appellate Case No. 2012-213563

The Greens of Rock Hill, LLC; GRH 2011, LLC.....Respondent.

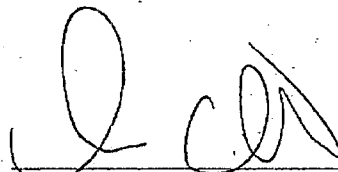
v.

Rizon Commercial Contracting, Inc., Road Machinery and Supplies Co., Defendants, of
whom Rizon Commercial Contracting, Inc. is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Appellant complies with Rule 211(b),
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas
Sixteenth Judicial Circuit

S. Jackson Kimball, Special Circuit Court Judge

Docket No. 2012-CP-46-1815
Appellate Case No. 2012-213563

The Greens of Rock Hill, LLC; GRH 2011, LLC.....Respondent.

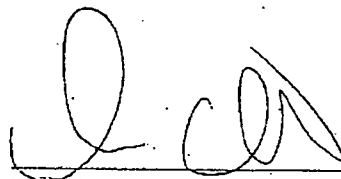
v.

Rizon Commercial Contracting, Inc., Road Machinery and Supplies Co., Defendants, of
whom Rizon Commercial Contracting, Inc. is the Appellant.

CERTIFICATE OF COUNSEL

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

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Appendix000017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas
Sixteenth Judicial Circuit

S. Jackson Kimball, Special Circuit Court Judge

Docket No. 2012-CP-46-1815
Appellate Case No. 2012-213563

The Greens of Rock Hill, LLC; GRH 2011, LLC.....Respondent.

v.

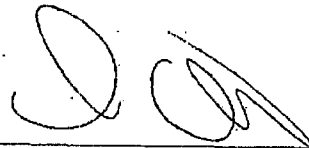
Rizon Commercial Contracting, Inc., Road Machinery and Supplies Co., Defendants, of
whom Rizon Commercial Contracting, Inc. is the Appellant.

PROOF OF SERVICE

I certify that I served the Final Brief and Reply Brief on the respondent by depositing a copy
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Appendix000018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2012-213563

The Greens of Rock Hill, LLC; GRH 2011, LLC,

Respondents,

v.

Rizon Commercial Contracting, Inc., Road Machinery and Supplies Co.,

Appellants.

Respondent's Final Brief

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SC Court of Appeals

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I. <u>Did the trial court properly exercise its “inherent power” to vacate a mechanic’s lien where the undisputed evidence in the record reflects that the lien claimant was not a “laborer, mechanic, subcontractor or persons furnishing material” for the improvement of real property?</u> II. <u>Did the trial court exercise its power to vacate a mechanic’s lien at an appropriate stage of the litigation and in an appropriate manner, where the trial court followed a procedure approved by South Carolina’s Supreme Court, and where the lien claimant has failed to demonstrate that additional discovery might have changed the trial court’s decision?</u> III. <u>Did the trial court properly refuse to consider whether a lien claimant might be entitled to a mechanic’s lien under some other statute, where the claimant did not assert its alleged right to a lien under other statutes until it moved for reconsideration of the trial court’s order, and where the undisputed evidence in the record reveals that the claimant was not entitled to a mechanic’s lien under any other statute?</u>	
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II. The trial court vacated Rizon's lien at an appropriate stage of the litigation, using an appropriate standard, and Rizon has failed to demonstrate that any additional discovery would have changed the outcome below. 6

III. The trial court properly refused to consider whether Rizon was entitled to a mechanic's lien under some other statute, where Rizon did not assert its alleged right to a lien under other statutes until it moved for reconsideration, and where the undisputed evidence in the record revealed that Rizon's activities did not entitle it to a lien under either of the cited statutes. 7

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court properly exercise its "inherent power" to vacate a mechanic's lien where the undisputed evidence in the record reflects that the lien claimant was not a "laborer, mechanic, subcontractor or person furnishing material" for the improvement of real property?
 - II. Did the trial court exercise its power to vacate a mechanic's lien at an appropriate stage of the litigation and in an appropriate manner, where the trial court followed a procedure approved by South Carolina's Supreme Court, and where the lien claimant has failed to demonstrate that additional discovery might have changed the trial court's decision?
-
- III. Did the trial court properly refuse to consider whether a lien claimant might be entitled to a mechanic's lien under some other statute, where the claimant did not assert its alleged right to a lien under other statutes until it moved for reconsideration of the trial court's order, and where the undisputed evidence in the record reveals that the claimant was not entitled to a mechanic's lien under any other statute?

STATEMENT OF THE CASE

On March 30, 2012, Appellant Rizon Commercial Contracting, Inc. ("Rizon") filed a mechanic's lien covering real property ("Property") owned by The Greens of Rock Hill, LLC and GRH 2011, LLC (the "Owners"). In its lien, Rizon alleged that it had provided "labor and materials on [the Property]" pursuant to a contract with Owners' general contractor, Celriver Services, LLC ("Celriver"). (R. p. 122). (hereafter, cited as "Lien"). Rizon asserted that it was entitled to a mechanic's lien under S.C. Code Ann. § 29-5-20 (Law. Co-op. 2007), but did not claim a lien under any other statute. (R. p. 122).

On May 18, 2012, Owners posted a surety bond to have Rizon's lien released from the Property pursuant to S.C. Code Ann. § 29-5-110. (R. 54-72). That same day, Owners filed a petition to discharge Rizon's lien. (R. p.p. 16-38) (hereafter, cited as "Petition"). Owners'

petition alleged that Rizon's lien should be discharged because Rizon did not provide "labor or material for the improvement" of the Property. (R. 18, ¶ 9). Owners sought to invoke "the inherent powers of the court to afford relief where the deprivation imposed by a wrongfully filed mechanic's lien cannot be corrected by statutory methods." (R. p. 17, ¶ 6). (citing Sea Pines o. v. Kiawah Island Co., Inc., 268 S.C. 153, 232 S.E.2d 501 (1977)).

On June 18, 2012, before Owners' petition could be heard, Rizon filed suit to foreclose its mechanic's lien. (R. pp. 78-84). In its complaint, Rizon also asserted claims for breach of contract and quantum meruit against Celriver. Id. Rizon's claims against Celriver are not affected by this appeal, and are proceeding in the circuit court.

On June 21, 2012, Rizon and Owners appeared before the Honorable S. Jackson Kimball, III, Special Circuit Court Judge for York County upon Owners' petition to discharge Rizon's lien. After reviewing Sea Pines with counsel, Judge Kimball continued the hearing and instructed both parties to submit affidavits in support of their respective positions. Owners filed an amended affidavit of Celriver's vice president, Dave Williams. (R. pp. 191-213). (hereafter, cited as "Williams Aff."). Rizon filed affidavits of Robert and Stephanie Phillips, respectively Rizon's president and vice president. (R. pp. 185-190).

Judge Kimball reconvened the hearing on Owner's petition on August 16, 2012. At the conclusion of that hearing, and based upon the affidavits submitted by the parties, Judge Kimball found that "Rizon did not provide anything or do anything to improve ... real estate." (R. p. 3). Consequently, Judge Kimball ordered that Rizon's mechanic's lien should be vacated. Id. Rizon moved for reconsideration, but its motion was denied.

STATEMENT OF FACTS

The material facts of this case are simple and undisputed. Owners are the developers of several parcels of land along the Catawba River in Rock Hill, South Carolina. (R. p.17, ¶ 1).

One of those parcels was the site of an abandoned manufacturing facility, which Owners decided to demolish. Owners hired Celriver to complete the demolition. (R. p. 1). "As a result of the demolition of the manufacturing facility, Celriver was left with large pieces of scrap concrete."

Id.

In 2010, Owners began to develop the Property into a large, mixed-use development known as the "Riverwalk" Community. Id. Celriver served as Owners' general contractor for portions of the construction project, including the installation of roads, sidewalks and other infrastructure. ~~Celriver decided to reuse the on-site scrap concrete as aggregate, and hired Rizon~~ to crush the stockpiled concrete. (R. p. 185; R. p.1) Celriver then transported the crushed concrete to "various locations" throughout Riverwalk, where it used the material as a construction base for roads and sidewalks. (R. p. 1).

STANDARD OF REVIEW

"The authority to vacate a mechanic's lien may be somewhat likened to the judge's authority to grant a summary judgment if there is no genuine issue of material fact to be determined, or [the court's] authority to direct a verdict when the evidence is susceptible of only one reasonable inference. However, the judge to whom application for relief is made may not try disputed facts." Sea Pines v. Kiawah Island Co., 268 S.C. 153, 157, 232 S.E.2d 501, 502 (1977). On appeal, the appellate court applies the same standard of review as the trial court under S.C. R. Civ. P. 56. Cowburn v. Leventis, 366 S.C. 20, 619 S.E.2d 437 (Ct. App. 2005)(citations omitted). The judgment of the trial court should be affirmed where there are no genuine issues of material fact such that the respondents are entitled to judgment as a matter of law. Id.

ARGUMENT

- I. The trial court properly vacated Rizon's lien because the undisputed evidence demonstrates that

Rizon was not a "laborer, mechanic, subcontractor or person furnishing material" for the improvement of real property.

As an initial matter, it is worth noting that Rizon's mechanic's lien was based upon the assertion that Celriver owed Rizon money for "work ... done under contract" between Rizon and Celriver. (R. p. 121). Owners' petition to discharge Rizon's lien did not, in any manner, affect Rizon's breach of contract and quantum meruit claims against Celriver. Nor did the trial court's order impair Rizon's ability to pursue those claims. The trial court's order simply discharged a mechanic's lien that Rizon had no right to file in the first place.

As the trial court recognized, "[a] mechanic's lien is a creature of statute, [and] the right to a mechanic's lien is wholly dependent on the language of the statute creating the right." (R. p. 2) (citing Skiba v. Gressnor, 374 S.C. 208, 648 S.E.2d 605 (2007) and Clo-Car Trucking Co. v. Cliffure Estates of South Carolina, Inc., 282 S.C. 573, 320 S.E.2d 51 (Ct. App. 1984)). Courts are "not at liberty to depart from the plain meaning of [the statute's] language" or to "create a lien where none exists or was intended by the legislature." Clo-Car Trucking Co. v. Cliffure Estates of South Carolina, Inc., 282 S.C. at 576, 320 S.E.2d at 53; *see also* Guignard Brick Works v. Gantt, 251 S.C. 29, 32, 159 S.E.2d 850, 851 (1968) ("It is elementary that statutory liens may not be extended by courts to include the claims of persons not specified by the statute. He who sets up such a lien must bring himself fairly within the expressed intention of the lawmakers.""). Furthermore, courts have the inherent power to vacate "a wrongfully filed mechanic's lien" where the undisputed evidence reveals that a lien claimant has no statutory right to a lien. Sea Pines Co. v. Kiawah Island Co., Inc., 268 S.C. 153, 157, 232 S.E.2d 501, 502 (1977).

On appeal, Rizon does not challenge the court's "inherent power" to vacate a wrongfully filed lien. Rather, Rizon contends the trial court abused that power by vacating Rizon's lien before the factual record was fully developed through discovery. Appellant's Brief at 5. However, no amount of additional discovery would have brought Rizon's claim within the "plain meaning" of the mechanic's lien statutes, and the trial court properly exercised its power to "afford relief . . . [from the] deprivation imposed by [Rizon's] wrongfully filed mechanic's lien" early in the litigation. See Sea Pines, 268 S.C. at 157, 232 S.E.2d at 502.

The statute under which Rizon claimed a mechanic's lien provides that "every laborer, mechanic, subcontractor or person furnishing material for the improvement of real estate . . . has a lien thereon." S.C. Code Ann. § 29-5-20 (Law. Co-op. 2007). The plain language of that statute makes clear that the labor or material must actually *improve real estate* before the claimant will be entitled to a lien. See also George A.Z. Johnson, Jr., Inc. v. Barnhill, 279 S.C. 242, 245, 306 S.E.2d 216, 218 (1983)(surveyor not entitled to a mechanic's lien where the surveyor merely "designated an area [of real property] to be sold," because the surveyor's "service did not go into anything which attached to or become a part of the realty."). As the trial court recognized, Rizon could not satisfy that threshold requirement because Rizon did not actually provide any labor or materials to improve the Property.

The undisputed evidence in the record reveals that Rizon was hired by Celriver to perform a single task -- to "crush concrete" that Celriver had stockpiled at the former Celanese Plant in Rock Hill, South Carolina. (R. p. 185; 191, ¶ 5). Rizon did not furnish the material that it crushed. Rizon did not own the material that it crushed. (R. 192, ¶ 7). As Rizon completed its work, Celriver transported the newly-crushed concrete to "various sites," where Celriver used the material as a paving base for roads, sidewalks and parking lots. (R. 187; 192, ¶ 8). No amount

of additional discovery would change those basic facts. The trial court properly decided the issue as a matter of law, where the parties' affidavits showed that the material facts were not in dispute. See Sea Pines Co. v. Kiawah Island Co., Inc., 268 S.C. 153, 155, 232 S.E.2d 501, 502 (1977).

The parties' affidavits conclusively established that Rizon did not provide labor or materials that improved, or "added value," to the real estate on which Rizon claimed a lien. The nature of Rizon's work simply did not entitle it to a mechanic's lien under the laws of this state, and the trial court properly vacated Rizon's wrongfully filed lien. That ruling should be affirmed on appeal.

II. The trial court vacated Rizon's lien at an appropriate stage of the litigation, using an appropriate standard, and Rizon has failed to demonstrate that any additional discovery would have changed the outcome below.

For more than thirty-five years, South Carolina's Supreme Court has recognized that courts have "inherent powers" to vacate wrongfully filed mechanic's liens "if there is no genuine issue of material fact to be determined," or "when the evidence is susceptible of only one reasonable inference." Sea Pines Co. v. Kiawah Island Co., 268 S.C. 153, 157, 232 S.E. 2d 501, 502 (1977). While Sea Pines cautions that "the judge to whom application for relief is made may not try disputed facts," nothing in Sea Pines dictates when, or how, a trial court should entertain a properly filed motion to vacate a mechanic's lien. Furthermore, nothing in Sea Pines affords a lien claimant a "right" to engage in additional discovery in an effort to support its lien claim or to defeat a motion to vacate the lien. In fact, the procedure utilized by the trial court in this case (consideration of affidavits submitted by the parties) is the same procedure that was utilized by the trial court, and apparently approved by South Carolina's Supreme Court, in Sea Pines. See

268 S.C. at 155, 232 S.E.2d at 502. Rizon has failed to demonstrate that there was anything inherently "unfair" or prejudicial about the manner in which the trial court dealt with Respondent's motion.

More importantly, Rizon has failed to demonstrate that additional factual discovery might have salvaged its mechanic's lien. "A party claiming [a court's ruling] was premature because they did not have a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact." Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (2009). Rizon has not met, and cannot meet, this burden.

In its brief, Rizon poses several vague unanswered questions that, hypothetically, "would have benefitted the [trial] court and this appellate court" in deciding whether to vacate Rizon's lien.¹ Appellant's Brief at 6. However, Rizon has failed to demonstrate how any of those questions, if resolved in Rizon's favor, would have entitled Rizon to a mechanic's lien under § 29-5-20. As the trial court noted in its order, "Rizon's sole task was simply to change the form of the scrap concrete supplied by others into stone usable in the construction of roads." (R. 2); *see also* (R. p. 185; p. 191) ¶ 5. "Rizon did not provide anything or do anything to improve the real estate." (R. p. 3); George A.Z. Johnson, Jr., Inc. v. Barnhill, 279 S.C. 242, 244, 306 S.E.2d 216, 218 (1983). Consequently, Rizon was not entitled to a lien for its work, and no amount of additional discovery could change that result.

III. The trial court properly refused to consider whether Rizon was entitled to a mechanic's lien under some other statute, where Rizon did not assert its alleged

¹ Rizon contends, but fails to demonstrate how, "discovery would have benefitted the court as well as this appellate court in the analysis of Appellant's work, how Appellant's work improved the land and how Appellant's work should be viewed in light of the various mechanic's lien statutes." Appellant's Brief at 6.

right to a lien under other statutes until it moved for reconsideration, and where the undisputed evidence in the record revealed that Rizon's activities did not entitle it to a lien under either of the cited statutes.

After the trial court vacated Rizon's lien, Rizon moved for reconsideration of the court's order. (R. p. 8). In its motion for reconsideration, Rizon asserted, for the first time, that it was entitled to a mechanic's lien because it provided "tools, appliances, machinery or equipment," as described in South Carolina Code § 29-5-22, or because it provided "construction and demolition debris disposal services," as described in § 29-5-27. (R. pp. 155-156). Rizon makes those same arguments on appeal. Appellant's Brief at 9-10. The trial court rejected those arguments, as should this court.

It is well settled that "an issue may not be raised for the first time in a motion to reconsider." Johnson v. Sonoco Products Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009). Yet, that is precisely what Rizon did in this case. (R. p. 171). Rizon's lien did not assert that Rizon had provided "tools, appliances, machinery, equipment" or "construction and demolition debris disposal services." (See R. pp. 121-122). By the same token, neither Rizon's pleadings in this litigation, nor the complaint Rizon filed on June 18, 2012, alleged that Rizon had lien rights under § 29-5-22 or § 29-5-27. (R. 40, ¶ 29). (Rizon "was hired for the purpose of providing materials and services for the improvement of land"); *see also* R. p. 81, ¶ 3 (Rizon provided "services for the production of crushed concrete"). Finally, Rizon did not assert rights under either § 29-5-22 or § 29-5-27 in its opposition to Respondent's motion to vacate Rizon's lien. (R. p. 171). (Court: "It concerns me that . . . I wasn't directed to these newer statutes the first time."). The very first time Rizon claimed lien rights as a "supplier" of tools or machinery or as the provider of "debris disposal" services occurred *after* the trial court issued its order vacating Rizon's mechanic's lien. By then, it was too late for Rizon to make those arguments.

Even if Rizon had timely asserted lien rights under § 29-5-22 or § 29-5-27, the undisputed facts in the record would not support those claimed rights. "He who sets up . . . a lien must bring himself fairly within the expressed intention of the lawmakers." Clo-Car Trucking Co. v. Cliffure Estates of South Carolina, Inc., 282 S.C. 573, 577, 320 S.E.2d 51, 53 (Ct. App. 1984)(quoting Williamson v. Hotel Melrose, 110 S.C. 1, 34, 96 S.E. 407 (1918)). As shown by the record, Rizon was hired only to crush concrete. (R. p. 185). It did not supply tools, machinery or equipment, and until its lien was vacated, Rizon did not claim that it had provided tools, machinery or equipment. Rizon did not provide demolition debris disposal services, and until its lien was vacated, Rizon did not claim that it had provided those services. Rizon is not entitled to a lien under § 29-5-22 or § 29-5-27, and the trial court properly rejected Rizon's untimely arguments to the contrary. So, too, should this court.

CONCLUSION

The trial court properly vacated Rizon's mechanic's lien, because the undisputed factual record revealed that Rizon had not provided any labor or materials for the improvement of Owners' Property. Rizon's only service was to transform Celriver's stockpiled scrap concrete from one form to another. As the trial court noted in its order, "Rizon did not provide anything or do anything to improve real estate." Rizon's remedy, if it has one, lies in a breach of contract action against Celriver. Owners were entitled to have Rizon's wrongfully-filed lien removed from their property, and the trial court had the "inherent power" to provide that relief. The trial court's order should be affirmed.

November 6, 2013

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

RECEIVED
DEC 16 2013
SC COURT OF APPEALS

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2012-213563

The Greens of Rock Hill, LLC; GRH 2011, LLC,

Respondents,

v.

Rizon Commercial Contracting, Inc., Road Machinery and Supplies Co.,

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b),
SCACR.

December 13, 2013

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Appendix000033

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2012-213563

The Greens of Rock Hill, LLC; GRH 2011, LLC,

Respondents,

v.

Rizon Commercial Contracting, Inc., Road Machinery and Supplies Co.,

Appellants.

CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens Ballou & Carroll, LLC certifies that the Respondents' Final Brief was served upon other counsel of record by depositing same in the United States Mail, with sufficient postage affixed and addressed as follows:

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RECEIVED

NOV 07 2013

November 6, 2013


L. Melia Sweatt

SC Court of Appeals

Appendix000034

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2012-213563

NOV 12 2013
CLERK OF APPEALS

The Greens of Rock Hill,
LLC; GRH 2011, LLC,

Respondents,

v.

Rizon Commercial Contracting, Inc., Road
Machinery and Supplies, Co., Defendants,
of whom

Rizon Commercial Contracting, Inc.
is the Appellant.

APPELLANT'S REPLY BRIEF

November 7, 2013

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ARGUMENT

- I. The trial court improperly vacated Rizon's lien because the evidence demonstrates that Rizon was a laborer, subcontractor or person that furnished materials for the improvement of real property as contemplated by S.C. Code 29-5-20, 29-5-22 and 29-5-27.

The trial court's decision to dissolve and dismiss the mechanic's lien is inconsistent with the law as it exists in the State of South Carolina. The Respondent is correct that a mechanic's lien is a creature of statute and the right to a mechanic's lien is dependent on the language of the statute creating that right. The Appellant asserted a mechanic's lien (R. pp. 121-130) pursuant to S.C. Code Section 29-5-20

which provides, "Every laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon, subject to existing liens of which he has actual or constructive notice, to the value of labor or material so furnished, including the costs of the action." The analysis does not end with a reference to S.C. Code Section 29-5-20 but must include a review of the subsequent statutes with which define and elaborate upon the terms used in the lien statute. Specifically, it is necessary to look at Section 29-5-22 in analyzing the plain language of the statute because this section defines terms used in S.C. Code Section 29-5-20. S.C. Code Section 29-5-22 provides, "A person who supplies tools, appliances, machinery, or equipment used as provided in Section 29-5-10(A) is considered to have furnished material for the improvement of real estate within the meaning of section 29-5-20 and 29-5-40 to the extent of the reasonable rental value of the tools, appliances, machinery, or equipment for the period of actual use." As such, the plain language of 29-5-20 must be read in conjunction with 29-5-22 which is part of the same statutory scheme. The legislature has defined a subcontractor's mechanic's lien to cover the person who supplies tools, appliances, machinery or equipment used for the purpose of improving real estate. As such, the statute does not require the labor or material to actually improve real estate but provides a lien to someone who supplies tools, appliances, or machinery for the improvement of the real estate. The

court has held that to recover for rental charges on leased equipment used in the construction, the lessor must supply the equipment operators. Hardin Construction Group, Inc. v. Carlisle Const. Co., 300 S.C. 456, 388 S.E.2d 794 (1990). In the case at hand, the affidavit of Robert Phillips (R. pp. 185-186) established that Rizon provided the labor for the operation of the equipment as well as the fuel and the equipment itself. In addition, Dave Williams provided an affidavit (R. pp. 191-213) for the respondent which substantiates the fact that the Appellant provided the equipment to crush the stone which was used on the site.

In addition, S.C. Code Section 29-5-27 defines a "laborer" and a "person" for reference to S.C. Code Section 29-5-20. The statute specifically provides, "Any person providing construction and demolition debris disposal services, as defined in section 44-96-40(6), including but not limited to final disposal services provided by construction and demolition landfill, is a laborer within the meaning of sections 29-5-20 and 29-5-40. "Person", as used in this section, means "any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization or other entity." As such, laborer is defined to include individuals who provide disposal services which are not directly improving the property.

As argued in the initial brief, the trial court erred in not considering 29-5-22 and 29-5-27 in analyzing the mechanic's lien statute 29-5-20. The evidence presented to the Court by both the Appellant and Respondent established that Rizon rented equipment from RMS Machinery, Rizon provided individuals who worked for the purpose of demolishing and removing construction debris from the site and converting it into usable stone and that Rizon provided the fuel, labor and equipment for this purpose. As such, Rizon was entitled to a lien based upon the statutes and the statutory definitions of the terms.

To the extent it is not clear, discovery pursuant to South Carolina Rules of Civil Procedure would have been beneficial and helpful in enabling the court to fully analyze the case more thoroughly.

The respondent asserts that Rizon was hired to crush concrete Celriver stockpiled and after the concrete was crushed, it was transported to various sites on the project and used as paving base for roads, sidewalks and parking lots. The concrete had to be disposed of from the site and Celriver chose to reuse it. The work and services Rizon provided clearly fall within the parameters of the mechanics lien statute. The trial court erred in discharging the lien and erred in not allowing additional discovery to fully develop these issues.

In addition, the Respondent asserts that the affidavits establish Rizon did not provide labor or materials that improved or added value to the real estate. The statute does not require the work to add value. The statute establishes that the individual who furnishes the material for the property is entitled to a lien for the value of the labor or material so provided. The value is what the supplier provided. The lien is inchoate and exists by law. An individual must take steps to perfect its lien but it exists when the labor or material is provided.

II. The Court's decision to discharge Appellant's lien was inappropriate at this stage of the litigation and additional discovery would have benefited the trial court in an analysis.

Appellant submits that the trial judge acted prematurely in discharging the lien and that such a decision was inherently unfair and prejudicial. The grant and/or decision to discharge the lien is the same standard as for granting summary judgment. The court should have denied the motion because there are questions of fact which exist. The Court should have allowed discovery pursuant to South Carolina Rules of Civil Procedure to develop the issues. Appellant, at the very first hearing, was instructed by the trial judge as to what the court was looking for in its analysis. The following are the exchanges which occurred and which are documented at page 16 and 17 (R. pp. 146-147) of the transcript from the June 21, 2012 hearing.

Mr. D'Agostino: Are we allowed to engage in discovery between now and the time the court reconvenes this hearing? And the reason why is because there was a site where the crushing occurred,

the rock crushing occurs. And, then, materials were transported to these various pieces of property.

The Court: That is what I inferred from what I read.

Mr. D'Agostino: Yes sir, Your Honor. Now to know exactly how much it is GRH and the Greens and the seller have to – as to how much was put on a piece of property.

The Court: The question is – the issue is not how much but whether at all.

Mr. D'Agostino: Thank you, Your Honor.

The Court: How much doesn't matter. The question is whether it was actually used in the improvement of real estate. And maybe some more, but – so, no, those don't. I think that will save us all at least one appeal.

As can be seen, the judge said he was looking for whether materials were actually used in the improvement of real estate. Appellant focused the affidavit and arguments on the Court's assertion as to what it was reviewing, whether material was actually used.

Discovery would have helped clarify the work each party was performing and would have enabled the parties to fully develop the facts of the case, including why did Celriver hire Rizon to crush concrete and put it in a form for re-use and was this actually part of the demolition process of the old plant. Discovery would have assisted in the analysis of the scope of Rizon's contractual obligations as well as Celriver's obligations to the owners as it relates to the demolition of the Celanese plant. Had the trial court allowed the parties to fully develop what was actually occurring, summary judgment would have been denied.

Respondent asserts that Rizon has not demonstrated there is anything inherently unfair or prejudicial about the manner in which the trial court dealt with Respondent's motion. In fact, it was inherently unfair because Appellant was not allowed to conduct discovery as to any issue including the issues of demolition and debris removal. The trial court substituted its knowledge and familiarity with construction as opposed to allowing the parties to produce the documents which defined their roles and

allow the parties to develop the record. Discovery would have benefited as to the scope of the job, where the job is being performed and how is being performed. All of these issues would and do support that Rizon's statutory lien was properly filed and should not have been discharged.

III. The trial court failed to properly consider the entire statutory scheme and Respondent is incorrect in asserting that Appellant has attempted to file a lien under the other statutes.

Appellant filed a lien and proceeded to foreclose on the lien pursuant to S.C. Code Section 29-5-20. Respondent filed a Motion to Dismiss and Discharge Lien (R. pp. 16-38) referenced S.C. Code Section 29-5-10, et. seq. Respondent actually argued, at the hearing on August 16, 2012, the court should analyze the lien pursuant to S.C. Code Section 29-5-10. After arguing this position most of the hearing, Respondent changed and argued that Section 29-5-20 was not applicable. There is no transcript from the August hearing. Appellant provided affidavits, pursuant to the Court's instruction as to whether material was used on the property.

As is evident from the statutory scheme, Section 29-5-20 is the statute which creates a lien. Appellant is not attempting to assert a lien exists pursuant to some other statute such as 29-5-22 or 29-5-27. Those statutes do not create a lien but define terms of art used in Section 29-5-20. The trial court erred in not considering the statutory definitions of terms used in S.C. Code Section 29-5-20. The fact that the Court failed to consider the definitions was an error which the Appellant pointed out to the Court in a Motion to Alter or Amend (R. pp. 8-16). Without being repetitious, the lack of discovery contributed to this problem as well as respondent's vague motion referencing one statute and arguing it and halfway through the hearing, changing to another statute.

Appellant is not bringing up a new issue for the first time in the motion to alter or amend. Appellant was requesting that the Court change its mind on discharging a lien because the statutory scheme did not exclude Appellant as a lien claimant but actually included Appellant within the definition of an individual entitled to a lien.

Respondent seems to assert that because there is another lawsuit with breach of contract and quantum meruit as causes of action that Appellant is not harmed by the discharge of the mechanic's lien. The mechanic's lien is an inchoate statutory right. The dismissal of the lien released the security which Appellant had for the collection of its money. Contrary to Respondent's position, one does not assert a lien under 29-5-22 or 29-5-27 based upon the plain language of the statute. The Respondent's failure to appreciate the statutory scheme further substantiates that discovery would have been beneficial in analyzing the facts in this case.

Appellant submits the lien filed and the cause of action to foreclose are both consistent with the statutory scheme. Rizon asserted that labor and materials were provided for the property owned by the The Greens of Rock Hill and GRH (R. pp. 121-130). The lien asserts that labor and materials were performed on the property identified. The lien also asserts that labor and materials were provided with the express knowledge, consent and acquiescence and request of Defendants which included the Greens and GRH. The lien asserts the reasonable value of such labor or materials so performed or so furnished was in a certain amount. As such, Appellant had a statutory right which fell within the statutory scheme.

CONCLUSION

The trial court erred in dismissing and discharging the mechanics lien and such error has materially and appreciably harmed Rizon. Based upon the statutes, Rizon is a proper lien claimant and was entitled to protection pursuant to the mechanics lien statute. At the very least the court should have allowed discovery so that the parties could develop the true relationship between the parties and how and why the concrete was being crushed and removed.

Respectfully submitted.



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Attorney for Appellant

Other counsel of record:

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas
Sixteenth Judicial Circuit

S. Jackson Kimball, Special Circuit Court Judge

Docket No. 2012-CP-46-1815
Appellate Case No. 2012-213563

The Greens of Rock Hill, LLC; GRH 2011, LLC.....Respondent.

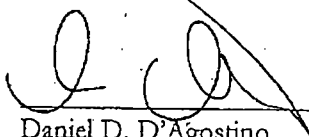
v.

Rizon Commercial Contracting, Inc., Road Machinery and Supplies Co., Defendants, of
whom Rizon Commercial Contracting, Inc. is the Appellant.

CERTIFICATE OF COUNSEL

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

November 7, 2013


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Attorney for Appellant

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NOV 12 2013

SC Court of Appeals

Appendix000045

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas
Sixteenth Judicial Circuit

S. Jackson Kimball, Special Circuit Court Judge

Docket No. 2012-CP-46-1815
Appellate Case No. 2012-213563

The Greens of Rock Hill, LLC; GRH 2011, LLC.....Respondent.

v.

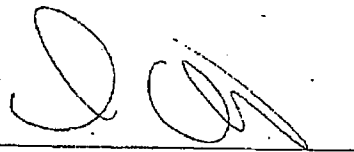
Rizon Commercial Contracting, Inc., Road Machinery and Supplies Co., Defendants, of
whom Rizon Commercial Contracting, Inc. is the Appellant.

PROOF OF SERVICE

I certify that I served the Final Brief and Reply Brief on the respondent by depositing a copy
of it in the United States mail, correctly addressed, postage prepaid, on November 7, 2013,
addressed to

Herb Hamilton
Keith Martens
Hamilton, Martens & Ballou, LLC
P O Box 10940
Rock Hill, SC 29731

November 7, 2013



Daniel D. D'Agostino
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Attorney for Appellant

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NOV 12 2013

SC Court of Appeals

Appendix000046

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2012-213563

The Greens of Rock Hill, LLC;
GRH 2011, LLC,

Respondents,

v.

Rizon Commercial Contracting, Inc., Road
Machinery and Supplies, Co., Defendants,
of whom

Rizon Commercial Contracting, Inc.
is the Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

The Greens of Rock Hill, LLC;)
GRH 2011, LLC,)

Case No.: 2012-CP-46-1815

Petitioners,)

v.)

Rizon Commerical Contracting, Inc.,)
Road Machinery and Supplies Co.,)

Respondents.)

ORDER

FILED-RECEIVED
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DAVID HAMILTON
C.C.P. & CS.
YORK COUNTY, SC

This matter came before me on August 16, 2012, upon a Petition filed by The Greens of Rock Hill, LLC, and GRH 2011, LLC. Plaintiffs were represented by Herbert W. Hamilton and Tracy T. Vann. The Defendant Rizon Commerical Contracting, Inc., ("Rizon") was represented by Daniel D. D'Agostino. Counsel for Plaintiffs stated to the Court that representatives of Road Machinery and Supplies Co. ("RMS") represented to him that RMS had been paid in full, and no longer wished to pursue the mechanic's lien. No one appeared at the hearing on behalf of RMS.

The Petition seeks dismissal of mechanics' liens filed by the Defendants against property owned by the Plaintiffs. The liens have been bonded off the property pursuant to S.C. Code Ann. § 29-5-110 (Rev. 2007), and the mechanics' lien claim is now against the bond. The parties submitted affidavits in support of their respective positions. After consideration of all matters submitted to me and the arguments of counsel, I find and conclude as follows.

Plaintiffs ("Owners") are the owners of property known as the "Riverwalk" Community. Owners contracted with Celriver Services, LLC, ("Celriver") to demolish an existing large manufacturing facility, to grade the property, and to install the roads and infrastructure.

As a result of the demolition of the manufacturing facility, Celriver was left with large pieces of scrap concrete. In order to make the scrap concrete usable in the project, Celriver contracted with Rizon to crush the scrap concrete. Rizon rented equipment from RMC to perform the crushing. The crushing was done on the Riverwalk site by Rizon with RMC machinery. The crushed concrete was never owned by Rizon, no part of it was supplied by Rizon. When crushing was completed, Celriver transported the crushed concrete to various locations on the Riverwalk site for use as a base for roads and sidewalks.

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Owners bring this action seeking to invoke the Court's inherent powers to deal with wrongfully filed mechanic's liens, as described in *Sea Pines Company v. Kiawah Island, Inc.*, 268 S.C. 153, 232 SE2d 501 (1977). In *Sea Pines*, the Court held that the trial court had "... inherent powers to afford relief where the deprivation imposed by a wrongfully filed mechanic's lien cannot be corrected by the statutory methods." *Id.*, 268 S.C. at 157, 232 SE2d at 502.

Rizon argues that *Sea Pines* does not apply since a counterclaim for foreclosure of the mechanic's lien, and a second action for foreclosure of the mechanic's lien, have been filed. In *Sea Pines*, the Court noted that dismissal of the Complaint foreclosing a mechanic's lien and vacation of the Lis Pendens was consistent with the nullification of an improperly filed mechanic's lien. Thus, I find and conclude that it is appropriate for me to consider the propriety of the mechanic's lien filed by Rizon.

Rizon's contract was with Celriver, the general contractor. Consequently, if Rizon has mechanic's lien rights, they arise from S.C. Code Ann. §29-5-20 (1976). § 29-5-20 provides in pertinent part:

Every laborer, mechanic, subcontractor or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon . . . to the value of the labor or material so furnished, . . .

A mechanic's lien is a creature of statute. The right to a mechanic's lien is wholly dependent on the language of the statute creating the right. *Skiba v. Gressnor*, 374 S.C. 208, 648 SE 2d 605 (2007); *Clo-Car Trucking Co., Inc. v. Cliffure Estates of South Carolina, Inc.*, 282 S.C. 573, 320 S.E.2d 51 (Ct.App.1984).

To have a right to a mechanic's lien under § 29-5-20, the party claiming the lien must be a laborer, mechanic, subcontractor or material supplier. In addition, the work for which the party claims a lien must have been for the improvement of real estate.

Rizon is neither a laborer, nor a mechanic. Rizon did not supply materials for the improvement of real estate. Rizon's sole task was simply to change the form of the scrap concrete supplied by others into stone usable in the construction of roads.

Similarly, Rizon was not a subcontractor as it relates to the improvement of the subject real estate. A subcontractor is a party who performs a portion of the general contractor's contract. *Miller v. Cornell-Young Co.*, 171 S.C. 228, 171 S.E. 790, 791 (1933); *Murray v. Aaron Mizell Trucking Co., et. al*, 286 S.C. 351, 355, 334 SE 2d 128, 130 (Ct.App. 1985). Here, there is no indication that Celriver's contract with the Owners required crushing of the concrete in

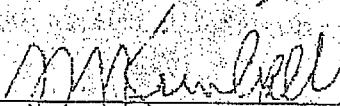
order that it could be used in building roads and sidewalks, and, as indicated above, Celriver did not purchase the crushed stone from Rizon. While crushing the concrete may have been a benefit to Celriver, the work involved in crushing the concrete did not improve the real property.

In summary, Rizon did not provide anything or do anything to improve the real estate. It provided a service directly to Celriver under a contract not related to Owners' contract with Celriver. Thus, based on the discussion herein, I find and conclude that the work performed by Rizon does not give rise to a mechanic's lien under § 29-5-20.

Therefore, it is ordered that the mechanic's liens filed by Rizon and RMS be dismissed. It is further ordered that the counterclaim for foreclosure of the mechanic's lien and the Lis Pendens related to the mechanic's lien likewise be dismissed. Since the only counterclaim asserted by Rizon in this action is for foreclosure of the Mechanics' Liens, this Order addresses all issues raised in the pleadings in this action, so it is further ordered that this case is be dismissed with prejudice.

AND IT IS SO ORDERED.

September 7, 2012


S. Jackson Kimball
Special Circuit Court Judge
York County

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Appendix000052

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-46-1815

The Greens of Rock Hill, LLC; GRH 2011, LLC

Rizon Commercial Contracting, Inc. Road
Machinery and Supplies Co.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Herbert Hamilton

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order.
N/A

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

SCCM 10-1-10 (12/2011)

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Appendix000053

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DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Spec McCall
Circuit Court Judge

3063
Judge Code

9/18/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 12 day of Sept, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 12 day of Sept, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Tracey Vann

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jacqueline N. Davis

ATTORNEY(S) FOR THE DEFENDANT(S)
Claud Hamilton
CLERK OF COURT

Court Reporter:

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP4601815

Greens Of Rock Hill LLC	Rizon Commercial Contracting Inc	Road Machinery And Supplies Co
PLAINTIFF(S)	DEFENDANT(S)	

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before me on September 20, 2012 upon Defendant's motion pursuant to Rule 59(e), S.C.R.C.P., asking the Court to alter or amend the Court's Order filed September 12, 2012. Representing the parties were: Herbert W. Hamilton for Plaintiff; and, Daniel D. D'Agostino for Defendant Rizon Commercial Contracting, Inc.

Upon carefully the memoranda and arguments of counsel, and reviewing the prior order, I find no matter presented that was not addressed by the Court expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the Court's ruling in the prior order. Therefore, it is ordered that Defendant's Motion pursuant to Rule 59(e), S.C.R.C.P., be denied.

AND IT IS SO ORDERED.

ORDER INFORMATION

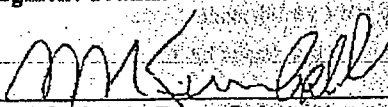
This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

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


Special Circuit Court Judge

3063 10/31/2012
Judge Code Date

For Clerk of Court Office Use Only

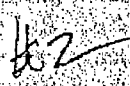
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


David Hamilton - Clerk of Court

Court Reporter: Bonnie Kelly

STATE OF SOUTH CAROLINA
COUNTY OF YORK

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IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

The Greens of Rock Hill, LLC., GRH
LLC.,

C.A. No.: 2012-CP-46-1815

Plaintiffs,

vs.

Rizon Construction and Road Machinery,

Defendants.

NOTICE OF
MOTION AND MOTION TO ALTER
OR AMEND

The Defendant Rizon Construction hereby moves for this Court to alter and amend the Order of the Court dismissing the mechanics lien/bond which has been posted pursuant to South Carolina Code §29 - 5- 20, et. seq. and dismissing the lawsuit the basis of the motion is as follows:

1. Court treated the motion as a summary judgment without allowing the Defendant Rizon Construction discovery. As such, the Defendant could not fully develop the evidence. The facts upon which the court based its decision are not complete.
2. Pursuant to South Carolina Code §29 -5 - 22, the Defendant Rizon was entitled to and is entitled to a lien upon the property as the statute provides for payment through a lien for reasonable rental value of tools, appliances, machinery and equipment.
3. Pursuant to South Carolina code §29 - 5 - 27, Rizon Construction is entitled to a lien upon the property as it is an entity providing construction and demolition debris disposal services as defined under §44 - 96 - 40 (6).
4. Pursuant to South Carolina code §29 - 5 - 20, Rizon Construction was entitled to a lien upon the property as it was providing labor and/or services as defined under the statutes.

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Appendix000057

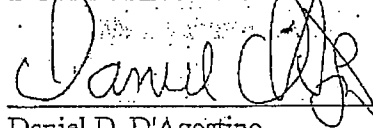
5. The Defendant further requests the court to not dismiss this action with prejudice as the court is aware of a companion suit which alleges additional claims for relief. In addition, the only relief which the Plaintiff requested in his complaint was to discharge the lien. The Defendant filed a timely mechanics lien foreclosure action and was and is entitled to discovery to develop the facts of the case to demonstrate that the work which the defendant did perform falls within the scope of that described for filing a mechanics lien under the statute. To discharge the lien when in fact there is no refuting that the Defendant performed a substantial amount of work at the property for the benefit of the Plaintiffs and with their knowledge and expended a substantial amount of money for the use and rental of equipment for the job does not provide the defendant an opportunity to litigate its claims. To dismiss this action with prejudice, Defendant may be faced with the argument in the companion suit that the claims in that action are barred by res judicata and or collateral estoppel. Defendant has never had the opportunity to develop any claims through discovery and as such to dismiss or potentially dismiss with prejudice is highly prejudicial to the defendant.

For the above reason as will be more fully argued and developed at the hearing, the Defendant requests the court to alter or amend its decision. In the alternative, the Defendant requests the court to issue a supersedeas as to the discharge of the bond.

York, South Carolina

September 12, 2012

D'AGOSTINO LAW FIRM



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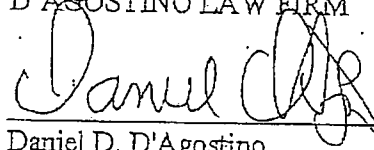
5. The Defendant further requests the court to not dismiss this action with prejudice as the court is aware of a companion suit which alleges additional claims for relief. In addition, the only relief which the Plaintiff requested in his complaint was to discharge the lien. The Defendant filed a timely mechanics lien foreclosure action and was and is entitled to discovery to develop the facts of the case to demonstrate that the work which the defendant did perform falls within the scope of that described for filing a mechanics lien under the statute. To discharge the lien when in fact there is no refuting that the Defendant performed a substantial amount of work at the property for the benefit of the Plaintiffs and with their knowledge and expended a substantial amount of money for the use and rental of equipment for the job does not provide the defendant an opportunity to litigate its claims. To dismiss this action with prejudice, Defendant may be faced with the argument in the companion suit that the claims in that action are barred by res judicata and or collateral estoppel. Defendant has never had the opportunity to develop any claims through discovery and as such to dismiss or potentially dismiss with prejudice is highly prejudicial to the defendant.

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York, South Carolina

September 12, 2012

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000009

Appendix000059

§ 29-5-20

Note 3

ers, Inc. v. von Buedingen (S.C.App. 1994) 316 S.C. 388, 450 S.E.2d 37.

In an action to enforce a mechanics lien, an attorney's fee equal to the amount of the underlying lien was properly awarded to the prevailing defendant where the defendant's attorney provided a detailed affidavit itemizing her time, expenses, and qualifications and the trial court properly considered the factors requisite to an award of

MORTGAGES AND OTHER LIENS

attorney's fees. Trico Surveying, Inc. v. Godley Auction Co., Inc. (S.C. 1993) 314 S.C. 542, 431 S.E.2d 565.

The allowance of attorneys' fees under § 29-5-20 to prevailing claimants in a mechanics' lien action but not to prevailing defendants is an unconstitutional denial of equal protection to the defendants. Southeastern Home Bldg. & Refurbishing, Inc. v. Platt (S.C. 1985) 283 S.C. 602, 325 S.E.2d 328.

§ 29-5-21. Surveyor's services.

A surveyor who surveys real estate by virtue of an agreement with the owner of such real estate shall be considered to have furnished material for the improvement of real estate within the meaning of § 29-5-20.

HISTORY: 1978 Act No. 465, § 1.

Library References

Mechanics' Liens ⇨45.

Westlaw Topic No. 257.

C.J.S. Mechanics' Liens §§ 37 to 42, 46.

Research References

Encyclopedias

S.C. Jur. Architects and Engineers § 35, Mechanics' Lien.

S.C. Jur. Mechanics' Liens § 13, Labor.

Notes of Decisions

In general 1

1. In general

A vendor's property was not subject to the mechanics lien of a surveyor where the purchaser of the property commissioned the survey and then subsequently defaulted on the contract to purchase; the vendor's permission to the purchaser to survey the property did not constitute an agreement between the vendor and the surveyor as contemplated by the mechanics lien statute, § 29-5-21. Trico Surveying, Inc. v. Godley Auction Co., Inc. (S.C. 1993) 314 S.C. 542, 431 S.E.2d 565.

A surveyor was not entitled to a lien for its services in subdividing land into smaller tracts and laying out roads, bridle paths, and drainage ditches, since such labor was not performed in the preparation of the location on which a building was to be placed within the meaning of § 29-5-10, nor did it constitute an improvement to the real estate within the meaning of § 29-5-20, notwithstanding an amendment subsequent to the work performed, by which the Legislature expressly extended the provisions of § 29-5-20 to grant a mechanic's lien to surveyors. George A.Z. Johnson, Jr., Inc. v. Barnhill (S.C. 1983) 279 S.C. 242, 306 S.E.2d 216.

§ 29-5-22. Reasonable rental value of tools, appliances, machinery, and equipment.

A person who supplies tools, appliances, machinery, or equipment used as provided in Section 29-5-10(a) is considered to have furnished material

for the improvement of real estate within the meaning of Sections 29-5-20 and 29-5-40 to the extent of the reasonable rental value of the tools, appliances, machinery, or equipment for the period of actual use.

HISTORY: 1990 Act No. 374, § 1.

Library References

Mechanics' Liens C-47.

Westlaw Topic No. 257.

C.J.S. Mechanics' Liens § 37.

Research References

Encyclopedias

S.C. Jur. Mechanics' Liens § 13, Labor.

Notes of Decisions

In general 1

al charges on leased equipment used in construction when the lessor does not supply the equipment operators. *Hardin Const. Group, Inc. v. Carlisle Const. Co.* (S.C. 1990) 300 S.C. 456, 388 S.E.2d 794.

1. In general

A subcontractor cannot claim a mechanic's lien under § 29-5-20 for rent-

§ 29-5-23. Notice of Project Commencement; location notice; failure to file notice.

Any person entering into a direct agreement with, or with the consent of, an owner for the improvement of real property may file with the clerk of court or register of deeds in the county or counties where the real property is situated a notice of project commencement. The notice of project commencement shall contain the following information:

- (1) the name and address of the person filing the notice of commencement;
- (2) the name and address of the owner or developer;
- (3) a general description of the improvement; and
- (4) the location of the project.

The notice must be filed within fifteen days of the commencement of work and must be accompanied by a filing fee of fifteen dollars to be deposited in that county's general fund. The name and address of the contractor must be posted at the job site. A location notice also must be posted at the job site. The location notice must contain the following statement: "The contractor on the project has filed a notice of project commencement at the county courthouse. Sub-subcontractors and suppliers to subcontractors shall comply with Section 29-5-20 when filing liens in connection with this project." The failure to file a notice of project commencement shall render the provisions of Sections 29-5-20(B) and 29-5-60(B) inapplicable. The failure to file a notice of project commencement shall also render the provisions of Sections 29-5-440, 11-35-3030(2)(c), 57-5-1660(b), and 11-1-120, relating to the require-

ment of a notice of providing labor, materials, or rental equipment inapplicable for a claim against a payment bond furnished by a contractor holding a direct contractual agreement with an owner. The filing of a notice of project commencement shall not constitute a cloud, lien, or encumbrance upon, or defect to, the title of the real property described in the notice, nor shall it alter the aggregate amounts of liens allowable under Section 29-5-40, nor shall it affect the priority of any mortgage filed before or after the notice, nor shall it affect any future advances under any mortgage. The clerk of court or register of deeds in each county shall maintain a separate book and index of all notices of project commencements.

HISTORY: 1992 Act No. 368, § 3; 1997 Act No. 34, § 1; 2000 Act No. 240, § 5.

Editor's Note

1997 Act No. 34, § 1, directed the Code Commissioner to change all references to "Register of Mesne Conveyances" to "Register of Deeds" wherever appearing in the 1976 Code of Laws.

Library References

Mechanics' Liens C-94.

Westlaw Topic No. 257.

C.J.S. Mechanics' Liens §§ 105 to 106; 116.

§ 29-5-25. Private security guard services at site of real estate improvement.

Any person providing private security guard services at the site of the real estate during its improvement shall be deemed to be a laborer within the meaning of §§ 29-5-20 and 29-5-40. "Person" as used in this section shall mean any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization or other such entity.

HISTORY: 1976 Act No. 524, § 2.

Library References

Mechanics' Liens C-39.

Westlaw Topic No. 257.

C.J.S. Mechanics' Liens § 31.

Research References

Encyclopedias

S.C. Jur. Mechanics' Liens § 13, Labor.

§ 29-5-27. Laborer and person defined.

Any person providing construction and demolition debris disposal services, as defined in Section 44-96-40(6), including, but not limited to, final disposal services provided by a construction and demolition landfill, is a laborer within the meaning of Sections 29-5-20 and 29-5-40. "Per-

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son" as used in this section means any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or another entity.

HISTORY: 2003 Act No. 51, § 23.

Library References

Mechanics' Liens § 39.

Westlaw Topic No. 257.

C.J.S. Mechanics' Liens § 31.

§ 29-5-30. Lien against debtor with life estate or whose estate is less than fee simple.

If the person for whom the work is done or materials are furnished has an estate for life or any other estate less than a fee simple in the land or if the property, at the time of recording the statement, is mortgaged or under any other encumbrance, the lien before provided for shall bind his whole estate and interest therein in like manner as a mortgage would have done and the creditor may cause the right of redemption or whatever other right or estate the owner had in the property to be sold and applied to the discharge of his debt, according to the provisions of this chapter.

HISTORY: 1962 Code § 45-253; 1952 Code § 45-253; 1942 Code § 8762; 1932 Code § 8762; Civ. C. '22 § 5674; Civ. C. '12 § 4144; Civ. C. '02 § 3039; G. S. 2331; R. S. 2496; 1869 (14) 223.

Library References

Mechanics' Liens § 187.

Westlaw Topic No. 257.

C.J.S. Mechanics' Liens § 218.

Research References

Encyclopedias

S.C. Jur. Mechanics' Liens § 5, Private Property.

Law Review and Journal Commentaries

Mechanics' Liens in South Carolina. 25 SC L. Rev 817.

§ 29-5-40. Notice to owner before lien attaches when laborer was employed by someone other than owner.

Whenever work is done or material is furnished for the improvement of real estate upon the employment of a contractor or some other person than the owner and such laborer, mechanic, contractor or materialman shall in writing notify the owner of the furnishing of such labor or material and the amount or value thereof, the lien given by § 29-5-20 shall attach upon the real estate improved as against the true owner for the amount of the work done or material furnished. But in no event shall

South Carolina Hazardous Waste Management Act, see §§ 44-56-10 et seq.
 South Carolina Infectious Waste Management Act, see §§ 44-93-10 et seq.
 South Carolina Mining Act, see §§ 48-20-10 et seq.

Research and Practice References—

Health and Environment ⇨ 25.5(5, 5.5).
 WESTLAW Topic No. 199.
 C.J.S. Health and Environment §§ 91 to 92, 106, 109, 129 to 131.

§ 44-96-40. Definitions.

As used in this chapter:

(1) "Beverage" means beer or malt beverages, mineral water, soda water, and similar carbonated soft drinks in liquid form, and all other liquids intended for human consumption, except for liquids marketed for and intended for consumption for medicinal purposes.

(2) "Beverage container" means the individual, separate, and sealed glass, aluminum or other metal, or plastic bottle, can, jar, or carton containing beverage intended for human consumption.

(3) "Collection" means the act of picking up solid waste materials from homes, businesses, governmental agencies, institutions, or industrial sites.

(4) "Compost" means the humus-like product of the process of composting waste.

(5) "Composting facility" means any facility used to provide aerobic, thermophilic decomposition of the solid organic constituents of solid waste to produce a stable, humus-like material.

(6) "Construction and demolition debris" means discarded solid wastes resulting from construction, remodeling, repair and demolition of structures, road building, and land clearing. The wastes include, but are not limited to, bricks, concrete, and other masonry materials, soil, rock, lumber, road spoils, paving material, and tree and brush stumps, but does not include solid waste from agricultural or silvicultural operations.

(7) "County solid waste management plan" means a solid waste management plan prepared, approved, and submitted by a single county pursuant to Section 44-96-80.

(8) "Degradable", with respect to any material, means that the material, after being discarded, is capable of decomposing to components other than heavy metals or other toxic substances after exposure to bacteria, light, or outdoor elements.

(9) "Department" means the South Carolina Department of Health and Environmental Control.

(10) "Discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of solid waste, including leachate, into or on any land or water.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

The Greens of Rock Hill, LLC, GRH 2015 LLC, PHJ2: 32
☐ Plaintiff

v.

Rizon Construction And Road Machinery,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
11-CP-46-1815

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

SG
FILED-RECEIVED
2015 JUL 14
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Plaintiff's Attorney: Bar No. Address: phone: fax: e-mail: other:	Defendant's Attorney: Daniel D. D'agostino, Bar No. 65088 Address: P O Box 1199, York, SC 29745 phone: 803-628-6509 fax: 803-628-7990 e-mail: other:
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- ☒ 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 Alter or Amend

Estimated Time Needed: 15 minutes 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

9/14/12
Date submitted

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: _____

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF YORK)

The Greens of Rock Hill, LLC;
GRH 2011, LLC,

C/A No.: 2012-CP-46- 01815

Petitioners,

PETITION AND MOTION TO
DISCHARGE MECHANIC'S
LIENS AND FOR SANCTIONS

v.

Rizon Commerical Contracting, Inc.,
Road Machinery and Supplies Co.,

Respondents.

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

FILED - RECEIVED
2012 MAY 18 AM 9:59

Petitioners, The Greens of Rock Hill, LLC ("GRH") and GRH 2011, LLC
("GRH2011"), (hereafter, collectively the "Petitioners"), hereby petition and move this
court for an order dissolving and removing from the public record, the following
purported notices and certificates of Mechanic's and Materialmen's liens filed by the
Respondents:

MECHANIC'S LIENS

1. Rizon Commercial Contracting, Inc., - Claimant
filed 3/20/2012 in DR Vol. 223 Page 125-134
2. Road Machinery & Equipment Company -- Claimant
Filed 3/20/2012 in DR Vol. 221, Page 251-260
3. Road Machinery & Equipment Company -- Claimant
Filed 3/20/2012 in DR Vol. 221, Page 261-266
4. Road Machinery & Equipment Company -- Claimant
Filed 3/20/2012 in DR Vol. 219, Page 278-287
5. Road Machinery & Equipment Company -- Claimant
Filed 3/20/2012 in DR Vol. 218, Page 77-83

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6. Road Machinery & Equipment Company – Claimant
Mailed to York County Register of Deeds on

March 14, 2012. Filing information is not available.

This Motion and Petition is filed pursuant to the provisions of S.C. Code Ann. §29-5-10 et. seq. S.C. Code Ann. (Rev. 2007) and “the inherent powers of the court to afford relief where the deprivation imposed by a wrongfully filed mechanic’s lien cannot be corrected by statutory methods.” Sea Pines Co. v. Kiawah Island Co., Inc. 268 S.C. 153, 232 SE 2d 501, 502 (1977). Petitioners respectfully request that this Motion and

Petition be set for hearing on an expedited basis. In support of this Motion and Petition, Petitioners will show:

1. Petitioners are each independently developers of certain tracts of real property located in the area known as the Riverwalk development in Rock Hill, South Carolina.
2. Petitioners contracted with Celriver Services, Inc. (“Celriver”) to act as general contractor for portions of the Riverwalk development project (“Riverwalk”).
3. As a part of the Riverwalk project, Petitioner GRH contracted for the construction of the Velodrome facility; which facility was and is owned by the City of Rock Hill, South Carolina.
4. Celriver contracted with Respondent Rizon Commercial Contracting, Inc., (“Rizon”) for the following services:
 - “ The work to be performed by the subcontractor [Rizon] includes mobilization of all labor, equipment, materials and other items required to crush and screen 30,000 tons of concrete stockpiled at the former Celanese Acetate Plant in Rock Hill. The concrete material is to be crushed and screened, as required, to meet the South Carolina Department of Transportation’s specifications for Graded Aggregate Base as shown in the table in Attachment A.

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Conformance testing of crushed material to ensure that the crushed material meets SCDOT specifications will be performed by the Contractor. All scrap metal generated as a result of crushing activities shall be the property of the Contractor [Celriver]. Additional crushing may be authorized via contract modification at Contractor's discretion".

A complete and accurate copy of the contract between Rizon and Celriver is attached hereto as Exhibit A and incorporated herein.

5. Rizon rented equipment from Road Machinery & Supplies Company ("RMS") to perform the concrete crushing service which was the subject of the contract between Celriver and Rizon.

6. The concrete which was to be crushed by Rizon was owned by Celriver. Rizon had no interest of any kind in the concrete.

7. The concrete to be crushed was not located on any parcel of property upon which Respondents have placed a lien.

8. Upon completion of the concrete crushing, the crushed concrete was removed by Celriver and delivered to various sites as needed in Celriver's sole discretion.

9. Neither Rizon nor RMS provided labor or material for the improvement of real estate upon which the Respondents have placed a lien.

10. Respondent Rizon filed a lien on various parcels or property, including the Velodrome, which is owned by the City of Rock Hill, South Carolina..

11. The mechanic's lien filed and served by Rizon was for \$295,591.01.

12. Petitioners are informed and believe that the dollar amount of the Rizon lien includes any amount due from Rizon to RMS.

13. RMS filed four separate mechanic's liens against four separate parcels of property.

14. The total dollar amount of the liens filed by RMS is \$746,186.95.
15. RMS has not supplied material, labor, or services for the improvement of any parcel of property upon which RMS placed a lien.
16. None of the liens filed by RMS have been served as required by the statute.

FOR A FIRST CAUSE OF ACTION

17. The allegations of Paragraphs 1 through 16 are incorporated herein by reference as if fully set forth.

18. The Respondents did not provide labor, material or supplies for the improvement of real property and are not entitled to a mechanic's lien therefore.

19. The statutory means of removing a wrongfully filed mechanic's lien are not adequate to address the deprivation caused by the wrongfully filed liens.

20. Petitioners are informed and believe that they are entitled to an order dissolving the mechanic's liens filed by Respondents and removing the liens from the public record; and for attorneys' fees and costs of this action.

FOR A SECOND CAUSE OF ACTION

21. The allegations of Paragraphs 1 through 20 are incorporated herein by reference as if fully set forth.

22. The filing of liens against the Velodrome and the filing of liens substantially in excess of the amount due constitutes the filing of a frivolous lien pursuant to §29-5-15 for which the Respondents are subject to a fine of Five Thousand Dollars, the loss of registration or contractor's license, or both.

FOR A THIRD CAUSE OF ACTION

23. The allegations of Paragraph 1 through 22 are incorporated herein by

reference as if fully set forth.

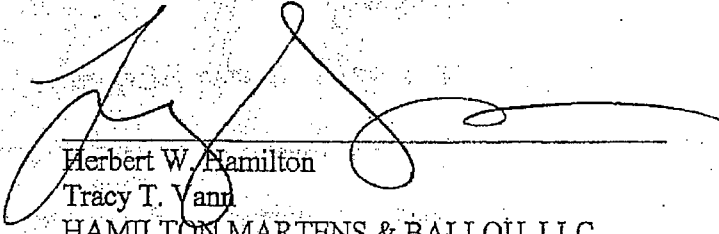
24. The wrongful filing of mechanic's liens as set forth herein have interfered with closings of the sale of the property subject to the lien and constitute slander of title.

25. Petitioners are informed and believe that the Respondents are liable to Petitioners for all direct and consequential damages incurred as a result of the wrongful liens filed by the Respondents.

WHEREFORE, Petitioners pray for the following relief:

1. An order dissolving the mechanic's liens filed by the Respondents; removing the liens from the public record and awarding costs and attorneys' fees for bringing this action.
2. An order finding that the filing of the liens by the Respondents constitutes a violation of Section 29-5-15 of the South Carolina Code and fining Respondents \$5,000 and revoking Respondents' registration, contractors' license or both.
3. For an order awarding Petitioners damages resulting for the wrongful liens filed by the Respondents.
4. For such other relief as the Court deems appropriate.

May 17th, 2012



Herbert W. Hamilton
Tracy T. Vann
HAMILTON MARTENS & BALLOU, LLC
P.O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672
ATTORNEYS FOR PETITIONERS

CONTRACT

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

AGREEMENT

THIS AGREEMENT is made this 21st day of April, 2010 between Celriver Services (hereinafter called "Contractor") and Rizon Construction (hereinafter called "Subcontractor").

WHEREAS, the Subcontractor has carefully inspected the work site and concrete pile and fully understands what is required to successfully prosecute the work and

WHEREAS, the Contractor and Subcontractor desire to enter into an Agreement wherein Subcontract shall provide such services as set forth herein below;

NOW, THEREFORE, for and in consideration of the mutual promises, undertakings and covenants set forth herein, the receipt and sufficiency of which is acknowledged and affirmed by the Contractor and Subcontractor, the parties hereto agree as follows:

SECTION 1 THE CONTRACT DOCUMENTS

1.1 The Contract Documents consist of (1) this Agreement; (2) other documents listed in Section 16 of this Agreement; and (3) Modifications to this Agreement issued after execution of this Agreement. The Agreement represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Section 16.

1.2 The Agreement may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Owner and the Subcontractor, or (2) between any persons or entities other than the Contractor and Subcontractor.

SECTION 2 MUTUAL RIGHTS AND RESPONSIBILITIES

2.1 The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement.

SECTION 3 CONTRACTOR

3.1 SERVICES PROVIDED BY THE CONTRACTOR: None

3.2 COMMUNICATIONS

3.2.1 The Contractor shall promptly make available to the Subcontractor information, which affects this Agreement and which becomes available to the Contractor subsequent to execution of this Agreement.

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3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

3.3 CLAIMS BY THE CONTRACTOR

3.3.1 Liquidated damages for delay, if provided for in Paragraph 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Agreement.

3.3.2 The Contractor's claims for services or materials provided the Subcontractor shall require:

1. seven days' prior written notice except in an emergency;
2. written compilations to the Subcontractor of services and materials provided and charges for such services and materials no later than the fifteenth day of the following month.

3.4 CONTRACTOR'S REMEDIES

3.4.1 If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within three working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after three days following receipt by the Subcontractor of an additional written notice, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

SECTION 4 SUBCONTRACTOR

4.1 EXECUTION AND PROGRESS OF THE WORK

4.1.1 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors or Owner's own forces.

4.1.2 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

4.1.3 The Subcontractor shall submit to the Contractor a schedule of values allocated to the various parts of the Work of this Agreement made out in such detail as the Contractor and Subcontractor may agree upon, and supported by such evidence as the Contractor may require. In applying for payment, the Subcontractor shall submit statements based upon this schedule.

4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Agreement as mutually agreed, including information on the status of materials and equipment which may be in the course of preparation, manufacture or transit.

4.1.5 The Subcontractor agrees that the Contractor will have the authority to reject Work of the Subcontractor which does not conform to the requirements identified in this Agreement.

4.1.6 The Subcontractor shall pay for all materials; equipment and labor used in connection with the performance of this Agreement through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

4.1.7 The Subcontractor shall take necessary precautions to protect the Work of other subcontractors from damage caused by operations under this Agreement.

4.1.8 The Subcontractor shall cooperate with the Contractor on coordinating Work which might interfere with the Subcontractor's Work.

4.2 LAWS, PERMITS, FEES AND NOTICES

4.2.1 The Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work of this Agreement. The Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work.

4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Agreement.

4.3 SAFETY PRECAUTIONS AND PROCEDURES

4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Agreement, shall comply with safety measures initiated by the Contractor and with applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

4.4 CLEANING UP

4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Agreement. The Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors.

4.4.2 If the Subcontractor fails to clean up as provided in the Contract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

4.5 WARRANTY: NONE

4.6 INDEMNIFICATION

4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Agreement, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 4.6.

4.6.2 In claims against any person or entity indemnified under this Paragraph 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 4.6.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

SECTION 5 CHANGES IN THE WORK

5.1 The Contractor may make changes in the Work by issuing Modifications to the Agreement. Upon receipt of such a Modification issued subsequent to the execution of the Agreement, the Subcontractor shall not thereafter perform Work which would be inconsistent with the changes made by the Modification.

5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Agreement, to make changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions, the contract amount and completion schedule being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the contract amount and completion schedule for such revised Work in a manner consistent with requirements of the Contract Documents.

5.3 The Subcontractor shall make all claims within seven calendar days after providing notice to the Contractor for additional costs, extensions of time and damages for delays or other causes. Contractor is not responsible for payment of claims received after the seven calendar day time period has expired.

SECTION 6 MEDIATION AND ARBITRATION

6.1 MEDIATION

6.1.1 Any claim arising out of or related to this Agreement, except claims as otherwise provided in Subparagraph 4.1.6 and except those waived in this Agreement, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

6.2 ARBITRATION

6.2.1 Any claim arising out of or related to this Agreement, except claims as otherwise provided in Subparagraph 4.1.5 and except those waived in this Agreement, shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 6.1.

6.2.2 Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

6.2.3 A demand for arbitration shall be made within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

6.2.4 Limitation on Consolidation or Joinder. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Agreement shall include, by consolidation or joinder or in any other manner, any person or entity not a party to the Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not the Architect, the Architect's employee, the Architect's consultant, or an employee or agent of any of them. This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

6.2.5 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

6.2.6 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

SECTION 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE AGREEMENT

7.1 TERMINATION BY THE CONTRACTOR

7.1.1 If the Subcontractor persistently or repeatedly fails or neglects to carry out the Work in accordance with Contract Documents or otherwise to perform in accordance with this Agreement and fails within seven days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after seven days following receipt by the Subcontractor of an additional written notice and without prejudice to any other remedy the Contractor may have, terminate the Agreement and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the contract amount exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

7.1.2 Upon receipt of written notice of termination, the Subcontractor shall:

1. cease operations as directed by the Contractor in the notice,
2. take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed.

7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Agreement in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the contract amount and schedule provided for in the Agreement.

7.4 ASSIGNMENT OF THE AGREEMENT

7.4.1 The Subcontractor shall not assign the Work of this Agreement without the written consent of the Contractor, nor subcontract the whole of this Agreement without the written consent of the Contractor, nor further subcontract portions of this Agreement without written notification to the Contractor when such notification is requested by the Contractor.

SECTION 8 THE WORK OF THIS AGREEMENT

The Subcontractor shall execute the following portion of the Work described in the Contract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

The Work to be performed by the Subcontractor includes mobilization of all labor, equipment, materials and other items required to crush and screen 30,000 tons of concrete stockpiled at the former Celanese Acetate Plant in Rock Hill. The concrete material is to be crushed and screened, as required, to meet the South Carolina Department of Transportation specifications for Graded Aggregate Base as shown on the table in Attachment A. Conformance testing of

crushed material to ensure that the crushed material meets SCDOT specifications will be performed by the Contractor. All scrap metal generated as a result of crushing activities shall be the property of the Contractor. Additional crushing may be authorized via contract Modification at Contractor's discretion.

SECTION 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

9.1 The Subcontractor's date of commencement shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

9.2 The Work of this Agreement, less any Modifications, shall be substantially completed not later than 45 calendar days from the date of this Agreement, subject to adjustments of this Agreement Time as provided in the Contract Documents.

9.3 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Agreement.

SECTION 10 PAYMENT AMOUNT

10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Agreement in accordance with the following unit prices:

1. Conforming Material- crushed concrete that conforms to the SCDOT specification referenced herein shall be paid at the rate of \$4.00 per ton as measured by a scale belt and certified by an independent third party no less than every 4 weeks.
2. Non-conforming Material- Crushed concrete that does not conform to the SCDOT specification referenced herein shall be paid at the rate of \$2.50 per ton as measured by a certified belt scale.
3. Performance and Payment Bonds-Lump Sum \$3,600

SECTION 11 PROGRESS PAYMENTS

11.1 Based upon applications for payment submitted to the Contractor by the below and elsewhere in the Contract Documents.

11.2 The first payment application shall cover the first thirty (30) days after mobilization is completed. The remaining period covered by each application for payment shall be one calendar month ending on the last day of the month.

11.3 Each application for payment shall be based upon daily scale receipts provided to the Contractor.

11.4 Applications for payment submitted by the Subcontractor shall indicate the number of units and or percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

11.5 Before issuance of progress payments, the Subcontractor shall submit a waiver of lien evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Subcontractor shall also be required to provide Contractor with a waiver of lien from all equipment vendors and other vendors as requested by the Contractor.

SECTION 12 FINAL PAYMENT

12.1 Final payment, constituting the entire unpaid balance, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Contract Documents

12.2 Before issuance of final payments, the Subcontractor shall submit a waiver of lien evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Subcontractor shall also be required to provide Contractor with a waiver of lien from all Sub-subcontractors, vendors and suppliers and submit them along

SECTION 13 INSURANCE AND BONDS

13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

- (i) Worker's Compensation - statutory limits;
- (ii) Comprehensive General Liability ("CGL") - Property Damage \$1,000,000 per each occurrence; \$1,000,000 annual aggregate; Personal Injury \$1,000,000 per occurrence and \$2,000,000 aggregate;
- (iii) Automotive Liability - Property Damage \$1,000,000 per each occurrence; and

13.2 Coverage's, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Subcontractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor.

13.3 Certificates of Insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Section 13 shall contain a provision that coverage's afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverage's are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Section 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the subcontractor with reasonable promptness according to the Subcontractor's information and belief.

13.6 PERFORMANCE AND PAYMENT BOND:

13.6.1 The Subcontractor shall furnish the following specified bonds. It is distinctly agreed and understood that any change made in the Contract Documents for this work, (whether such changes increase or decrease the amount thereof) or any change in the manner or the time of payments made by the Contractor to the Subcontractor, shall in no way annul, release, or affect the liability of the surety on the bond given by the Subcontractor.

The Subcontractor shall furnish a Performance Bond in the amount of One Hundred Percent (100%) of the amount specified in this Agreement, issued by a Surety Company licensed in South Carolina.

The Subcontractor shall furnish a Payment Bond for the protection of all persons supplying labor and materials, to the Contractor and his subcontractors for the performance of work as specified in this Agreement. The Bond shall be in the amount of One Hundred Percent (100%)

of the amount specified in this Agreement, issued by a Surety Company licensed in South Carolina.

13.7 PROPERTY INSURANCE: OMITTED

13.8 WAIVERS OF SUBROGATION

13.8.1 The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

SECTION 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

The Subcontractor shall be responsible for furnishing any temporary facilities required to perform the Work in accordance with the Contract Documents.

SECTION 15 MISCELLANEOUS PROVISIONS

15.1 Where reference is made in this Agreement to a provision of another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

15.2 Retainage and any reduction thereto are as follows: 10%

15.3 The Subcontractor waives claims against the Contractor for consequential damages arising out of or relating to this Agreement.

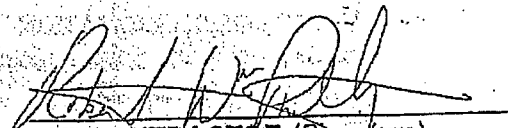
SECTION 16 CONTRACT DOCUMENTS

16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

16.1.2 Scope of Work Dated April 19, 2010

This Agreement entered into as of the day and year first written above.


CONTRACTOR (Signature)


SUBCONTRACTOR (Signature)

DAVE WILSON Vice President
(Printed name and title)

Robert W. Phillips President
(Printed name and title)

Contractor's Address:
Gelriver Services
2850 Cherry Road
Rock Hill, SC 29730

Subcontractor's Address:
Rizon Construction
3358 Lessie Woods Court
Rock Hill, SC 29730

Concrete Crushing
Rock Hill, South Carolina

Subcontract Scope of Work

SUMMARY

The Subcontract Scope of Work includes providing all insurance, performance bonds, scale certifications and mobilizing equipment, personnel and materials to separate, crush, screen concrete in accordance with the South Carolina Department of Transportation (SCDOT), Standard Specifications for Highway Construction, Graded Aggregate Base, attached hereto as Attachment A. The Subcontractor is solely responsible for estimating the quantity of material to be sorted, crushed and screened as described more fully in the Pay Items below.

PAY ITEMS

1.0 Mobilization

Subcontractor shall provide performance and payment bonds, mobilize all supervision, personnel, materials and equipment to crush and stack concrete materials at the former Celanese Acetate Facility located in Rock Hill, SC in accordance with this scope of work. Crushing equipment must be rated by manufacturer to crush a minimum of 200 tons of concrete per hour. Crushing plant must be equipped with a belt scale which has been calibrated and certified in accordance with State of South Carolina requirement. The belt scale to be calibrated every 4 weeks by Subcontractor. Subcontractor to submit scale certification records to Contractor for approval. Subcontractor to provide all permits required for crushing activities.

Payment 1.0: Performance and Payment Bonds: \$3,600

2.0 Concrete Preparation

Size reduce concrete to a dimension required for crushing plant. Segregate any unsuitable materials such as wood, plastic and steel.

Materials that are unsuitable for crushing will be removed by the Contractor.

Payment 2.0: included in Item 3.0

3.0 Concrete Crushing

Subcontractor shall be responsible for providing supervision, equipment, labor, materials and other items required to size reduce, sort, control fugitive dust, crush, screen and stack concrete materials to meet the requirements provided in Attachment A. Subcontractor shall be responsible for complying with all applicable local, state and federal

Concrete Crushing Rock Hill, South Carolina

requirements including the health and safety of the Subcontractor's personnel during the execution of this Work. Subcontractor shall provide Contractor with scale receipts on a daily.

Contractor shall be responsible for: (1) all conformance testing to ensure crushed material meets SCDOT specifications; (2) utility disconnects; and (3) removal and management of any contaminated materials encountered by the Subcontractor during the execution of this Scope of Work.

Payment Item 3.1: Per ton for crushed materials which conforms Subcontract
Specifications \$4.00/ton

Payment Item 3.2 : Per ton for crushed material which does not conform to Subcontract
Specifications \$2.50/ton

Contractor may issue a Modification to Subcontractor to crush additional asphalt and or additional concrete at same price as Pay Item 3.1.

4.0 Demobilization

Demobilization including the cleanup and removal of all contractor equipment and materials from the site.

Payment 4.0: Included in Unit Price

ATTACHMENT "A"

305.2.5.5

(table continued from the previous page)

Marine Limestone Base Course	
Sieve Designation	Percentage by Weight Passing
No. 4	30 - 60
No. 30	17 - 38
No. 200*	0 - 20
Liquid Limit	25 Max.
Plasticity Index	6 Max.

*AASHTO T 11 is used to determine the amount passing the No. 200 sieve.

SPECIFICATION

Recycled Portland Cement Concrete Base Course	
Sieve Designation	Percentage by Weight Passing
2-Inch	100
1½-Inch	95 - 100
1-Inch	70 - 100
½-Inch	48 - 76
No. 4	30 - 60
No. 30	11 - 30
No. 200*	0 - 12
Liquid Limit	25 Max.
Plasticity Index	6 Max.

*AASHTO T 11 is used to determine the amount passing the No. 200 sieve.

305.2.5.6 Asphalt Materials

- 1 Use EA-P Special for priming the base course conforming to the requirements specified in Section 407.

305.3 Equipment

- 1 Ensure that the equipment necessary for the proper construction of the work is on site, in acceptable working condition, and approved by the RCE as to both type and condition before the start of work under this section. Provide sufficient equipment to enable prosecution of the work in accordance with the project schedule and completion of the work in the specified time.
- 2 Use a steel wheel roller capable of developing a pressure of 250 to 350 pounds per inch of roller width in the compression wheel for compaction. If necessary, use other rollers in conjunction with the steel wheel roller. Ac



Western Surety Company

POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 70915556

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint Dale E. Clark, Robert A. Jacobson, Diane Gibson, Wendy M. Lands, Sla Yang and Amy R. Waugh its true and lawful attorneys-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, any surety or fidelity bond in an unlimited amount, and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorneys-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

The penal amount of the bond herein described may be increased if there is attached to this Power, written authority so authorizing in the form of an endorsement, letter or telegram signed by the Senior Underwriting Officer, Underwriting Officer, President, Vice President, Assistant Vice President, Treasurer, Secretary, or Assistant Secretary of Western Surety Company specifically authorizing said increase.

In Witness Whereof, Western Surety Company has caused these presents to be signed by its Senior Vice President, Paul T. Brufat, and its corporate seal to be affixed this 26 day of APRIL, 2010.

STATE OF SOUTH DAKOTA }
COUNTY OF MINNEHAHA } SS

WESTERN SURETY COMPANY

Paul T. Brufat
Paul T. Brufat, Senior Vice President

On this 26 day of APRIL, in the year 2010, before me, a notary public, personally appeared Paul T. Brufat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be his voluntary act and deed of said corporation.

D. KRELL
NOTARY PUBLIC
SOUTH DAKOTA
My Commission Expires 11-30-2012

D. Krell
Notary Public - South Dakota

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 26 day of APRIL, 2010.

WESTERN SURETY COMPANY

Paul T. Brufat
Paul T. Brufat, Senior Vice President



AIA Document A311

Performance Bond

KNOW ALL MEN BY THESE PRESENTS, that

RIZON COMMERCIAL CONTRACTING, INC.
3358 LESSLIE WOODS CT, ROCK HILL, SC 29730

as Principal, hereinafter called Contractor, and

Western Surety Company
101 South Phillips Avenue Sioux Falls, SD 57104-6703

as Surety, hereinafter called Surety, are held and firmly bound unto

CELRIVER SERVICES
2850 CHERRY ROAD ROCK HILL, SC 29730

as Oblige, hereinafter called Owner, in the amount of

ONE HUNDRED TWENTY THOUSAND & 00/100 DOLLARS

(\$120,000.00)

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement dated APRIL 26, 2010, entered into a contract with Owner for

CONCRETE CRUSHING

in accordance with Drawings and Specifications prepared by

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

PERFORMANCE BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1) Complete the Contract in accordance with its terms and conditions, or

2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or

contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

BOND PREMIUM BASED ON FINAL CONTRACT PRICE

Sworn to and subscribed before me

This 29th Day of April, 2010

Nora Tyler

Notary Public of South Carolina

My Commission Expires 01/2016

Signed and sealed this 28 DAY OF APRIL 2010

Nora Tyler
(Witness)

Wendy M. Danks
(Witness)

RIZON COMMERCIAL CONTRACTING, INC.

Richard R. Rishi
(Principal) (Seal)
(Title) officer manager

Western Surety Company

Amy R. Waugh
(Surety) (Seal)
(Title) ATTORNEY IN FACT

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AIA Document A311

Labor and Material Payment Bond

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE
OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS, that

RIZON COMMERCIAL CONTRACTING, INC.
3358 LBSSLIB WOODS CT, ROCK HILL, SC 29730

as Principal, hereinafter called Principal, and

Western Surety Company
101 South Phillips Avenue Sioux Falls, SD 57104-6703

as Surety, hereinafter called Surety, are held and firmly bound unto

CEL RIVER SERVICES
2850 CHERRY ROAD ROCK HILL, SC 29730

as Oblige, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined,
in the amount of

ONE HUNDRED TWENTY THOUSAND & 00/100 DOLLARS

(\$120,000.00)

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated APRIL 26, 2010, entered into a contract with Owner for

CONCRETE CRUSHING

in accordance with Drawings and Specifications prepared by

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

LABOR AND MATERIAL PAYMENT BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the principal for labor, material, or both used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimants work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the

Sworn to and subscribed before me
This 29th Day of April, 2010

Tonia Tyler
Notary Public of South Carolina

My Commission Expires 01/2016

Signed and sealed this 28 DAY OF APRIL 2010

Tonia Tyler
(Witness)

Wendy Rand
(Witness)

RIZON COMMERCIAL CONTRACTING, INC.

Shahin D. Rizon (Principal) (Seal)
(Title) Office Manager

Western Surety Company

Amy R. Waugh (Surety) (Seal)
(Title) ATTORNEY IN FACT

party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED - RECEIVED IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

The Greens of Rock Hill, LLC., GRH 2011, LLC.,

2012 JUN 19 PM 1:50

C.A. No.: 2012-CP-46-1815

Plaintiffs,

DAVID HAMILTON
C.C.P. & GS

YORK COUNTY, SC ANSWER AND COUNTERCLAIM

vs.

Rizon Construction and Road Machinery,

Defendants.

The above-named Defendants, responding to the allegations of the Complaint, would respectfully show unto the Court as follows:

1. All allegations of the Complaint not specifically admitted herein are denied.
2. The Defendants admit the allegations of paragraph 1.
3. The Defendants admit, upon information and belief, the allegations of paragraphs 2 and 3.
4. Responding to the allegations of paragraph 4, the Defendant Rizon admits that in 2010, it entered a contract which contained the language set forth in paragraph 4 of the Complaint but denies that the contract from 2010 covered the work performed in 2011 and 2012.
5. The Defendant denies that Exhibit A is the contract between the parties. Specifically, Exhibit A contains a bond which expired in April 2011.
6. The Defendants admits the allegations of paragraph 5.
7. Responding to the allegations of paragraph 6, the Defendant denies the same. The Defendant had an interest in the concrete pursuant to statute and more specifically the Mechanic's Lien Statute.
8. The Defendants deny the allegations of paragraph 7.
9. Responding to the allegations of paragraph 8, the Defendants admit that Celriver and other subcontractors of Celriver used to crush concrete or improvement of the various lots which are under lien.
10. The Defendants deny the allegations of paragraph 9.
11. The Defendants admit the allegations of paragraph 10.
12. The Defendants admit the allegations of paragraph 11.
13. The Defendants admit the allegations of paragraph 12.
14. The Defendants admit the allegations of paragraph 13.

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15. The Defendants admit the allegations of paragraph 14 but also would show that RMS has released its lien.

16. Responding to the allegations of paragraph 15, RMS upon information and belief provided a piece of equipment which was used for the purpose of crushing stone which was used on the project.

17. The Defendants deny the allegations of paragraph 16.

18. The allegations of paragraph 17 do not require a response.

19. The Defendants deny the allegations of paragraphs 18, 19 and 20.

20. The allegations of paragraph 21 do not require a response.

21. The Defendants deny the allegations of paragraph 22. In addition, the Defendants removed the liens from the City of Rock Hill's property upon being provided the bonds pursuant to the Freedom of Information Act for the property's payment bonds and performance bonds for the property. The filing of the liens was not frivolous.

22. The allegations of paragraph 23 do not require a response.

23. The Defendants deny the allegations of paragraphs 24 and 25.

FOR A SECOND DEFENSE

24. All allegations set forth above not inconsistent herein are incorporated as though copied verbatim.

25. The contract which the Plaintiffs in this action have provided between Celriver Services and the Defendant Rizon Construction Company is not the contract which exists for the work performed. The work performed in this action greatly exceeded those items set forth in the agreement and was for an entirely different area and phase.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM

26. All allegations set forth above not inconsistent herein are incorporated as though copied verbatim.

27. The Defendant is a corporation doing business in the State of South Carolina. The general contractor license for Robert WM Phillip, the qualifier for Defendant's, license number is G103590.

28. The Plaintiffs, The Greens of Rock Hill, LLC and GRH 2011, LLC., are registered to do business in the State of South Carolina and have conducted business in the State of South Carolina.

29. The Defendant was hired for the purpose of providing materials and services for the improvement of land located in York County, South Carolina. The Defendant provided services to include crushing concrete

which was used for the improvement of land owned and used by The Greens of Rock Hill, LLC and GRH 2011, LLC. The Defendants The Greens of Rock Hill, LLC and GRH 2011, LLC knew that the Plaintiffs were providing the services for the production of crushed concrete for their various pieces of property.

30. The Defendant provided all goods and services reasonably requested of it by the Plaintiffs.

31. The services and goods provided improved the property and was used to improve the property including use for the subgrades for roads on the various tracks of land as well as for the Velodrome.

32. The Defendant has demanded payment for all its goods and services provided which have benefited the properties of the Plaintiffs and Celriver.

33. The Plaintiffs have failed and refused and continue to fail and refuse to pay for the goods and services.

34. The Defendant duly filed a Mechanic's Lien upon the property of Plaintiffs The Greens of Rock Hill and GRH 2011, claiming its rights to payment pursuant to South Carolina Code Section 29-5-10 et seq. A copy of the lien is attached hereto. The Plaintiffs The Greens of Rock Hill and GRH 2011, LLC subsequently bonded the lien off the property and the bond is attached hereto as Exhibit B.

35. The Defendant further requests attorney's fees pursuant to statute from Plaintiffs pursuant to statute.

36. A copy of the Mechanic's Lien is attached hereto as Exhibit A and incorporated herein by reference.

37. The Defendant seeks for this Court to Order the foreclosure of Mechanic's Lien against the bond for the goods and services provided to the Plaintiffs.

38. The materials were provided on each Plaintiffs' property and for each Plaintiffs' property and material increased its value.

39. The value of the goods and services provided by the Defendant to the Plaintiffs and the amount of money owed by the Plaintiffs to the Defendant is \$295,591.01.

40. The Plaintiffs were served with the Mechanic's Lien within 90 days of the last work being performed on the property and Defendant has performed work on the property within the last six (6) months.

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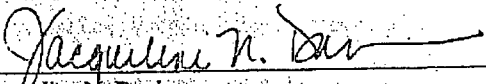
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WHEREFORE, having fully pled, Defendant requests the Court to deny the relief requested, grant the foreclosure as prayed for in the Counterclaim plus attorney's fees and costs.

D'AGOSTINO LAW FIRM

York, South Carolina

June 19, 2012.

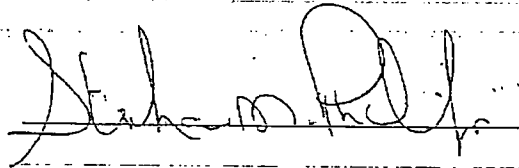

Jacqueline N. Davis
Daniel D. D'Agostino
P.O. Box 1199
25 W. Liberty Street
York, SC 29745
(803) 628-6509
(803) 628-7990 - facsimile

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Appendix000092

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF YORK)

PERSONALLY appeared before me, Rizon Construction, who first being duly sworn,
deposes and says that it is the Defendant in the foregoing action and that the allegations of the
Answer and Counterclaim are true and correct to the best of its knowledge.



SWORN TO AND SUBSCRIBED before me
this 19 day of June, 2012.

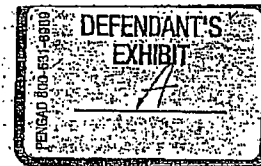
Amy M. Brab

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 6-7-2017

FILED - RECEIVED
2012 JUN 19 PM 1:50
DAVID K. STILTON
C.C.P. & GS
YORK COUNTY, SC

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Appendix000093



STATE OF SOUTH CAROLINA

COUNTY OF YORK

Rizon Commercial Contracting, Inc.,

Plaintiff,

vs.

City of Rock Hill, The Greens of Rock Hill, LLC,
GRH 2011, LLC., Celriver Services, LLC.

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

201290047380

Filed for Record in

YORK COUNTY, SC

DAVID HAMILTON, CLERK OF COURTS

03-30-2012 At 09:59 am.

MECH LIEN 16.00

DE Vol 223 Page 125 - 134

MECHANIC'S LIEN

Robert WM Phillips' General Contractor's
License Number G103590

NOTICE IS HEREBY GIVEN that the Defendant Celriver Services, LLC., entered into an agreement with Plaintiff for certain labor and materials on property owned by Defendants located in York County, South Carolina. The labor and materials were performed on the below described property. The description of said property is located in Deed Book 12065, Page 17, Tax Map # 662-07-01-094; Deed Book 11785, Page 0183, Tax Map #662-07-01-105; Deed Book 10176, Page 0027, Tax Map #663-00-00-080, in the Office of the Clerk of Court of York County, South Carolina. A description of the premises is also attached as Exhibit "A". The work done by the Plaintiff was done under contract with the Defendant Celriver Services, LLC. and all work was performed on or for the Defendants' property. The labor and materials provided by Plaintiff was with the express knowledge, consent, acquiescence, and request of Defendants.

Ninety days have not elapsed since the completion of said work.

That the reasonable price of such labor, materials, so performed or, so furnished was and is the sum of \$295,591.01 (a statement of accounts is attached as Exhibit "B" and is incorporated by reference herein).

Plaintiff, after deducting all the just credits and offsets, now claims mechanic's lien in the amount of \$295,591.01 on the described real property owned by the Defendants, attached as Exhibit "A", and on all buildings and improvements thereon, under the ownership and/or control

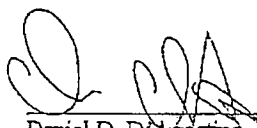
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Appendix000094

of the Defendant, plus attorney's fees and costs of this action as provided by South Carolina Code Annotated, Section 29-5-20 as amended.

D'AGOSTINO LAW FIRM

March 28 2012
York, SC



Daniel D. D'Agostino, Esquire
D'Agostino & D'Agostino
P.O. Box 1199
25 W. Liberty Street
York, SC 29745
(803) 628-6509
(803) 628-7990

000045

Appendix000095

EXHIBIT "A" 1

TMS: 662-07-01-105

All that certain piece, parcel or tract of land lying, being and situate in the City of Rock Hill, County of York, State of South Carolina, and being shown and designated as "Tract B" containing 5.827 acres, more or less, on Subdivision Survey for Greens of Rock Hill, LLC, prepared by Kent Cooper Hudson, PLS #27451, dated November 30, 2010, recorded December 7, 2010, in Plat Book E-70 at Page 4, Office of the Clerk of Court for York County, South Carolina. Reference to said plat is made for a more complete and accurate description.

Being a portion of property conveyed by Celanese Acetate LLC to Greens of Rock Hill LLC by deed recorded October 18, 2005, in Book 7503 at Page 99.

000046

Appendix000096

Exhibit A2

ALL that certain piece, parcel or tract of land situate, lying and being in York County, South Carolina, being shown and designated as "Tract B A Portion of Tax Map # 663-00-00-080 Zoned ID 4.00 Acres +/- Crds." on a plat thereof entitled "Boundary and Recombination Survey For Greens of Rock Hill LLC" prepared by E. Burnett Jenkins, Pittman Professional Land Surveying surveyed April 15, 2008 and recorded in the Office of the Clerk of Court for York County in Plat Book _____, at Page _____; said tract having such size, shape, buttings, boundings and dimensions as are shown on said plat.

BEING a portion of the property conveyed by Calanese Advanced Materials, Inc. to FBI Performance Products, Inc. by Deed dated May 6, 2005 recorded May 10, 2005 in the office of the Clerk of Court for York County in Record Book 7076 at Page 177.

Exhibit A 3

All that certain piece, parcel or lot of land, lying and being in York County, South Carolina being located and bound by US-21 to the north, Catawba River to the east, and Celriver Road and Norfolk Southern Railroad tracks to the south, containing 47.26 acres, and described herein as SC Textile Mill Credit Property of the Riverwalk Development, by Greens of Rock Hill, LLC, and having the following metes and bounds to wit:

Parcel #3

Beginning at a point whose Northing is 1144938.3923 and whose Easting is 2007849.5617;
thence along a curve to the LEFT, having a radius of 385.50 feet, a delta angle of $17^{\circ} 01' 00.68''$, and whose long chord bears N 8-16-54.861 W a distance of 114.07 feet;
thence along a curve to the RIGHT, having a radius of 13.00 feet, a delta angle of $84^{\circ} 01' 21.04''$, and whose long chord bears N 25-13-15.929 E a distance of 17.40 feet;
thence bearing N 67-13-55.312 E a distance of 18.61 feet;
thence along a curve to the LEFT, having a radius of 153.50 feet, a delta angle of $29^{\circ} 59' 34.05''$, and whose long chord bears N 52-14-8.289 E a distance of 79.44 feet;
thence bearing N 37-14-21.266 E a distance of 163.38 feet;
thence along a curve to the LEFT, having a radius of 1028.50 feet, a delta angle of $30^{\circ} 39' 54.42''$, and whose long chord bears N 21-54-24.056 E a distance of 543.91 feet;
thence along a curve to the RIGHT, having a radius of 971.50 feet, a delta angle of $01^{\circ} 11' 03.83''$, and whose long chord bears N 7-9-58.759 E a distance of 20.08 feet;
thence bearing S 78-31-26.766 E a distance of 316.27 feet;
thence bearing S 73-0-45.704 E a distance of 60.00 feet;
thence bearing S 16-59-14.296 W a distance of 25.76 feet;
thence along a curve to the LEFT, having a radius of 137.50 feet, a delta angle of $131^{\circ} 36' 43.13''$, and whose long chord bears S 48-49-7.252 E a distance of 250.84 feet;
thence bearing N 52-37-41.206 W a distance of 20.37 feet;
thence bearing N 26-37-40.475 W a distance of 32.83 feet;
thence bearing N 8-24-35.510 E a distance of 35.94 feet;
thence bearing N 17-5-8.477 E a distance of 14.58 feet;
thence bearing N 55-3-15.152 W a distance of 4.47 feet;
thence bearing N 32-31-26.993 W a distance of 18.11 feet;
thence bearing N 16-28-4.508 E a distance of 7.22 feet;
thence bearing N 1-0-40.496 E a distance of 132.78 feet;
thence bearing N 45-47-20.045 E a distance of 225.85 feet;
thence bearing N 3-56-45.948 W a distance of 119.61 feet;
thence bearing N 54-16-33.596 E a distance of 79.58 feet;
thence bearing N 89-45-10.282 E a distance of 203.97 feet;
thence bearing S 50-1-59.959 E a distance of 337.98 feet;
thence along a curve to the LEFT, having a radius of 573.07 feet, a delta angle of $03^{\circ} 37' 42.91''$, and whose long chord bears S 5-16-24.765 E a distance of 36.29 feet;
thence along a curve to the LEFT, having a radius of 123.19 feet, a delta angle of $24^{\circ} 19' 54.42''$, and whose long chord bears S 19-6-29.449 E a distance of 51.92 feet;
thence along a curve to the LEFT, having a radius of 140.57 feet, a delta angle of $29^{\circ} 46' 46.93''$, and whose long chord bears S 55-52-52.448 E a distance of 72.24 feet;
thence bearing S 67-56-24.065 E a distance of 31.92 feet;
thence bearing S 3-1-28.396 E a distance of 181.34 feet;
thence bearing S 87-2-22.956 W a distance of 200.66 feet;
thence bearing S 41-23-36.594 E a distance of 148.16 feet;
thence along a curve to the RIGHT, having a radius of 60.00 feet, a delta angle of $102^{\circ} 13' 56.47''$, and whose long chord bears S 9-43-21.639 W a distance of 93.41 feet;

thence bearing S 60-50-19.873 W a distance of 31.27 feet;
 thence along a curve to the LEFT, having a radius of 20.00 feet, a delta angle of 92° 08' 23.08", and whose
 long chord bears S 14-46-8.333 W a distance of 28.81 feet;
 thence along a curve to the RIGHT, having a radius of 174.51 feet, a delta angle of 73° 58' 06.31", and whose
 long chord bears S 5-41-5.728 W a distance of 209.97 feet;
 thence bearing S 42-40-14.663 W a distance of 132.11 feet;
 thence along a curve to the RIGHT, having a radius of 174.47 feet, a delta angle of 26° 16' 51.99", and whose
 long chord bears S 55-48-36.082 W a distance of 79.33 feet;
 thence along a curve to the LEFT, having a radius of 12.00 feet, a delta angle of 78° 24' 59.05", and whose
 long chord bears S 29-44-32.552 W a distance of 15.17 feet;
 thence bearing S 70-17-37.336 W a distance of 44.71 feet;
 thence along a curve to the LEFT, having a radius of 145.21 feet, a delta angle of 52° 14' 29.96", and whose
 long chord bears S 31-51-45.945 E a distance of 127.86 feet;
 thence bearing S 58-7-44.997 E a distance of 98.37 feet;
 thence bearing S 31-50-26.263 W a distance of 14.37 feet;
 thence bearing S 16-11-12.443 E a distance of 26.44 feet;
 thence bearing S 5-35-30.685 W a distance of 17.33 feet;
 thence bearing S 8-0-30.309 E a distance of 44.68 feet;
 thence bearing S 84-40-51.137 W a distance of 14.19 feet;
 thence bearing S 41-12-39.809 W a distance of 20.59 feet;
 thence bearing S 34-28-55.936 W a distance of 30.27 feet;
 thence bearing S 15-29-42.034 E a distance of 27.19 feet;
 thence bearing S 58-46-53.006 W a distance of 40.89 feet;
 thence bearing S 10-35-10.550 W a distance of 14.24 feet;
 thence bearing S 12-42-18.567 W a distance of 13.07 feet;
 thence bearing S 77-1-0.052 W a distance of 1.90 feet;
 thence bearing S 24-10-41.765 W a distance of 34.32 feet;
 thence bearing S 9-40-40.050 W a distance of 60.76 feet;
 thence bearing S 68-49-56.686 W a distance of 27.51 feet;
 thence bearing S 22-42-2.787 W a distance of 39.38 feet;
 thence bearing S 68-14-39.957 W a distance of 9.52 feet;
 thence bearing S 34-34-59.692 W a distance of 30.76 feet;
 thence bearing S 28-48-29.412 W a distance of 10.52 feet;
 thence bearing S 17-10-9.294 W a distance of 38.88 feet;
 thence bearing S 26-36-57.466 E a distance of 12.58 feet;
 thence bearing S 9-52-53.614 W a distance of 19.01 feet;
 thence bearing S 66-31-14.978 W a distance of 21.56 feet;
 thence bearing S 16-20-4.816 W a distance of 7.60 feet;
 thence bearing S 40-37-27.359 W a distance of 11.36 feet;
 thence bearing S 34-39-53.012 W a distance of 14.89 feet;
 thence bearing S 19-23-53.711 W a distance of 12.09 feet;
 thence bearing S 4-51-29.606 E a distance of 13.13 feet;
 thence bearing S 40-30-40.513 E a distance of 6.69 feet;
 thence bearing S 50-9-8.760 E a distance of 12.23 feet;
 thence bearing S 17-46-27.005 E a distance of 6.14 feet;
 thence bearing S 36-52-7.563 W a distance of 10.14 feet;
 thence bearing S 20-15-25.164 W a distance of 15.76 feet;
 thence bearing S 23-11-31.621 E a distance of 10.46 feet;
 thence bearing S 25-6-36.343 E a distance of 13.00 feet;
 thence bearing S 21-35-13.640 W a distance of 18.57 feet;
 thence bearing S 18-8-0.284 W a distance of 27.34 feet;
 thence bearing S 70-12-40.479 W a distance of 7.88 feet;
 thence bearing N 83-10-7.580 W a distance of 12.02 feet;

thence bearing S 37-58-4.403 W a distance of 9.20 feet;
 thence bearing S 0-0-0.000 E a distance of 12.59 feet;
 thence bearing S 10-43-6.307 E a distance of 22.99 feet;
 thence bearing S 5-26-25.195 W a distance of 14.58 feet;
 thence bearing S 63-37-34.346 W a distance of 9.38 feet;
 thence bearing S 16-31-41.379 W a distance of 18.64 feet;
 thence bearing S 15-34-28.958 W a distance of 7.52 feet;
 thence bearing S 12-31-55.349 W a distance of 13.45 feet;
 thence bearing S 19-15-25.234 W a distance of 25.70 feet;
 thence bearing S 6-18-51.016 W a distance of 26.50 feet;
 thence bearing S 36-2-50.969 W a distance of 7.75 feet;
 thence bearing S 23-41-8.868 E a distance of 10.18 feet;
 thence bearing S 26-2-24.084 E a distance of 6.20 feet;
 thence bearing S 30-52-56.752 W a distance of 7.13 feet;
 thence bearing S 40-41-11.533 W a distance of 11.59 feet;
 thence bearing S 86-43-28.996 W a distance of 18.08 feet;
 thence bearing S 37-44-31.408 W a distance of 19.39 feet;
 thence bearing S 33-29-14.900 W a distance of 11.34 feet;
 thence bearing S 8-32-37.104 E a distance of 17.16 feet;
 thence bearing S 4-26-46.466 E a distance of 7.77 feet;
 thence bearing S 69-2-4.948 W a distance of 29.79 feet;
 thence bearing S 21-37-23.173 E a distance of 15.57 feet;
 thence bearing S 49-31-15.042 W a distance of 36.58 feet;
 thence bearing S 19-13-33.881 W a distance of 12.60 feet;
 thence bearing S 28-54-8.201 W a distance of 6.61 feet;
 thence bearing S 74-22-33.998 W a distance of 14.91 feet;
 thence bearing S 78-8-30.255 W a distance of 17.38 feet;
 thence bearing S 47-27-32.814 W a distance of 13.99 feet;
 thence bearing S 48-30-58.664 W a distance of 26.90 feet;
 thence bearing S 6-52-33.389 W a distance of 6.11 feet;
 thence bearing S 87-51-48.045 W a distance of 23.31 feet;
 thence bearing S 70-49-13.924 W a distance of 20.56 feet;
 thence bearing N 74-59-34.373 W a distance of 17.65 feet;
 thence bearing S 13-57-8.837 W a distance of 14.93 feet;
 thence bearing S 83-50-46.111 W a distance of 12.36 feet;
 thence bearing S 20-49-39.252 W a distance of 12.99 feet;
 thence bearing N 59-4-33.060 W a distance of 31.51 feet;
 thence bearing S 85-49-57.557 W a distance of 27.92 feet;
 thence bearing S 34-39-0.607 W a distance of 1.21 feet;
 thence bearing S 64-44-15.999 W a distance of 12.63 feet;
 thence bearing S 69-10-24.599 W a distance of 26.90 feet;
 thence bearing S 50-48-47.263 W a distance of 12.70 feet;
 thence bearing S 54-35-25.774 W a distance of 19.38 feet;
 thence bearing S 35-8-48.132 W a distance of 9.71 feet;
 thence bearing S 1-11-55.575 E a distance of 7.46 feet;
 thence bearing S 17-54-28.785 W a distance of 7.56 feet;
 thence bearing S 30-36-46.322 W a distance of 172.00 feet;
 thence bearing N 59-23-13.678 W a distance of 221.59 feet;
 thence along a curve to the RIGHT, having a radius of 321.50 feet, a delta angle of $31^{\circ} 03' 31.53''$, and whose
 long chord bears N 43-51-27.914 W a distance of 172.15 feet;
 thence bearing N 28-19-42.151 W a distance of 11.43 feet;
 thence bearing N 16-40-17.850 E a distance of 4.66 feet;
 thence bearing N 61-40-17.849 E a distance of 19.54 feet;

thence along a curve to the LEFT, having a radius of 174.50 feet, a delta angle of $61^{\circ} 36' 49.98''$, and whose long chord bears N 30-51-52.858 E a distance of 178.74 feet;
 thence bearing N 0-3-27.866 E a distance of 58.11 feet;
 thence along a curve to the RIGHT, having a radius of 125.50 feet, a delta angle of $15^{\circ} 00' 00.00''$, and whose long chord bears N 7-33-27.866 E a distance of 32.76 feet;
 thence bearing N 15-3-27.866 E a distance of 100.25 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $90^{\circ} 00' 00.00''$, and whose long chord bears N 60-3-27.856 E a distance of 28.28 feet;
 thence bearing S 74-56-32.134 E a distance of 61.00 feet;
 thence along a curve to the LEFT, having a radius of 45.00 feet, a delta angle of $90^{\circ} 00' 00.00''$, and whose long chord bears N 60-3-27.866 E a distance of 63.64 feet;
 thence bearing N 15-3-27.866 E a distance of 288.61 feet;
 thence along a curve to the RIGHT, having a radius of 290.00 feet, a delta angle of $05^{\circ} 40' 48.91''$, and whose long chord bears N 17-53-52.319 E a distance of 28.74 feet;
 thence bearing N 20-44-16.771 E a distance of 322.58 feet;
 thence along a curve to the LEFT, having a radius of 50.00 feet, a delta angle of $86^{\circ} 55' 03.23''$, and whose long chord bears N 22-43-14.842 W a distance of 68.78 feet;
 thence bearing N 66-10-46.456 W a distance of 55.94 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $97^{\circ} 28' 42.12''$, and whose long chord bears N 17-26-25.396 W a distance of 30.07 feet;
 thence along a curve to the RIGHT, having a radius of 250.50 feet, a delta angle of $63^{\circ} 27' 04.03''$, and whose long chord bears N 63-1-27.678 E a distance of 263.45 feet;
 thence bearing N 4-44-59.691 E a distance of 54.00 feet;
 thence along a curve to the LEFT, having a radius of 304.50 feet, a delta angle of $65^{\circ} 37' 29.71''$, and whose long chord bears S 61-56-14.835 W a distance of 330.01 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $84^{\circ} 41' 43.57''$, and whose long chord bears S 71-28-21.761 W a distance of 26.95 feet;
 thence bearing N 66-10-46.456 W a distance of 43.15 feet;
 thence along a curve to the LEFT, having a radius of 43.00 feet, a delta angle of $93^{\circ} 04' 56.77''$, and whose long chord bears S 67-16-45.158 W a distance of 62.42 feet;
 thence bearing S 20-44-16.771 W a distance of 82.28 feet;
 thence along a curve to the RIGHT, having a radius of 23.00 feet, a delta angle of $83^{\circ} 19' 21.67''$, and whose long chord bears S 62-23-57.604 W a distance of 30.58 feet;
 thence bearing N 75-56-21.562 W a distance of 64.31 feet;
 thence along a curve to the LEFT, having a radius of 43.00 feet, a delta angle of $85^{\circ} 17' 58.16''$, and whose long chord bears S 61-24-39.355 W a distance of 58.27 feet;
 thence along a curve to the RIGHT, having a radius of 23.00 feet, a delta angle of $66^{\circ} 01' 05.64''$, and whose long chord bears S 51-46-13.095 W a distance of 25.06 feet;
 thence along a curve to the LEFT, having a radius of 43.00 feet, a delta angle of $63^{\circ} 42' 16.12''$, and whose long chord bears S 52-55-37.855 W a distance of 45.38 feet;
 thence bearing S 21-4-29.792 W a distance of 0.40 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $71^{\circ} 44' 33.38''$, and whose long chord bears S 56-56-46.484 W a distance of 23.44 feet;
 thence along a curve to the LEFT, having a radius of 323.50 feet, a delta angle of $03^{\circ} 23' 06.96''$, and whose long chord bears N 88-52-30.305 W a distance of 19.11 feet;
 thence bearing S 89-25-56.214 W a distance of 115.68 feet;
 thence bearing N 45-34-3.786 W a distance of 8.49 feet;
 thence bearing S 89-25-56.214 W a distance of 124.86 feet;
 thence along a curve to the RIGHT, having a radius of 270.50 feet, a delta angle of $20^{\circ} 58' 09.77''$, and whose long chord bears N 80-4-58.901 W a distance of 93.45 feet;
 thence bearing N 69-35-54.016 W a distance of 32.16 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $89^{\circ} 10' 52.51''$, and whose long chord bears N 25-0-27.759 W a distance of 28.08 feet;

PK 12065 P00022

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Appendix000101

thence along a curve to the LEFT, having a radius of 390.00 feet, a delta angle of $16^{\circ} 14' 28.19''$, and whose long chord bears N $11-27-44.402^{\circ}$ E a distance of 110.18 feet; thence bearing N $10-15-42.736^{\circ}$ W a distance of 21.55 feet to the point of beginning and containing 47.26 acres.

Said boundary is subject to City of Rock Hill roadway rights-of-way, including portions of Durkins Ferry Road and Terrace Park, and associated utility easements including storm, water, sewer, and electric.

BEING a portion of the same property conveyed to Greens of Rock Hill, LLC by Deed dated October 7, 2005, and recorded October 18, 2005 in the Register of Deeds Office for York County in Deed Book 7503 at Page 10.

TMS: portion of 662-07-01-094

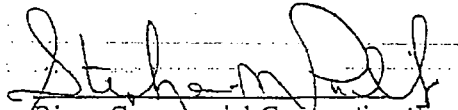
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EXHIBIT "B"

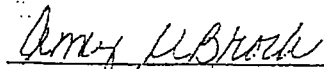
The undersigned hereby certifies that the amount due Rizon, after giving credit for all payments is \$295,591.01.

Total \$295,591.01


Rizon Commercial Contracting, Inc.
By: 

SWORN TO BEFORE ME this 29 day

Of March, 2012

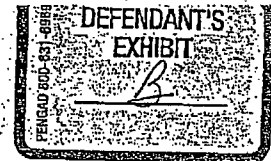


Notary Public for South Carolina

My Commission Expires: 6-7-2017

000053

Appendix000103



STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Rizon Commercial Contracting, Inc.,)
Road Machinery & Supplies, Inc.,)
Claimants,)

UNDERTAKING TO SECURE
RELEASE OF MECHANIC'S LIENS

DR VOL 223, Pg. 125-134

DR VOL 221, Pg. 251-260

DR VOL 221, Pg. 261-266

DR VOL 218, Pg. 77-83

DR VOL 219 Pg. 278-287

v.
The Greens of Rock Hill, LLC;)
GRH 2011, LLC,)
Principals.)

Notice dated March 14, 2012

(Recording information not available)

The Greens of Rock Hill, LLC and GRH 2011, LLC, Principals herein, hereby file this Undertaking in the amount of \$394,121.35 which constitutes 1 1/3 of the total amount of the claims filed by Lien Claimants on property described in Exhibit A, attached hereto. In the event of judgment for the Lien Claimants in a suit to foreclose the referenced mechanic's liens, such judgment shall be paid out of the Surety Bond attached hereto as Exhibit B as security for this Undertaking. Unless suit for enforcement of the lien is commenced as required by §29-5-120 of the South Carolina Code, this Undertaking shall be null and void and the Surety Bond shall be released from the lien.

Upon filing of this Undertaking and Surety Bond, the liens on the property described in the Mechanic's Liens identified in Exhibit A are discharged and the Surety Bond substituted in place of the liens as security for the amount claimed.

April 27, 2012

Herbert W. Hamilton

Tracy T. Vann

HAMILTON MARTENS & BALLOU, LLC

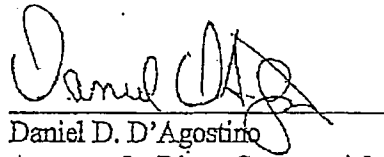
P.O. Box 10940

Rock Hill, South Carolina 29731

(803) 329-7672

ATTORNEYS FOR PRINCIPAL

April 29, 2012



Daniel D. D'Agostino
Attorney for Rizon Commercial Contracting, Inc.
D'Agostino & D'Agostino
P.O. Box 1199
York, SC 29745
(803-628-7990)

~~MAY~~
~~APRIL~~ 8, 2012

Road Machinery & Equipment Company

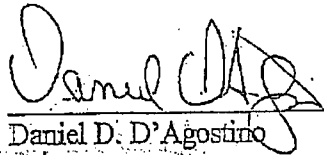
By: 

~~Thomas E. McKeon~~ THOMAS J. BURKE

Its: ~~District Credit Manager~~
Claimant

PUNNETZ DEMOLITION &
CONCRETE RECYCLING, LLC

April 29, 2012



Daniel D. D'Agostino
Attorney for Rizon Commercial Contracting, Inc.
D'Agostino & D'Agostino
P.O. Box 1199
York, SC 29745
(803-628-7990)

Road Machinery & Equipment Company

April _____, 2012

By: _____
Thomas E. McKeon
Its: District Credit Manager
Claimant

EXHIBIT

A

EXHIBIT "A" 1

TMS: 662-07-01-105

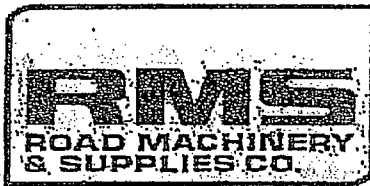
All that certain piece, parcel or tract of land lying, being and situate in the City of Rock Hill, County of York, State of South Carolina, and being shown and designated as "Tract B" containing 5.827 acres, more or less, on Subdivision Survey for Greens of Rock Hill, LLC, prepared by Kent Cooper Hudson, PLS #27451, dated November 30, 2010, recorded December 7, 2010, in Plat Book E-70 at Page 4, Office of the Clerk of Court for York County, South Carolina. Reference to said plat is made for a more complete and accurate description.

Being a portion of property conveyed by Calanese Acetate LLC to Greens of Rock Hill LLC by deed recorded October 18, 2005, in Book 7303 at Page 99.

Instrument Vol Page
201270047380 OR 223 127

000057

- Appendix000107



201290046880
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
03-20-2012 At 10:51 am.
MECH LTEN 12.00
OR Vol 221 Page 261 - 266

RE:
Register of Deeds
2 South Congress St.
York, SC. 29745

Date: March 8, 2012

Before me, the undersigned authority, personally appeared Thomas McKeon, who after being duly sworn deposes and says that regarding the job known as: Concrete Crushing, Brakefield Event Venue Parking lot, located at: Brakefield Dr (2.68) Event Venue, Rock Hill, SC. the following is true:

Materials Furnished: Rental Equipment- KPI Impactor, FT 4240

Materials to be Furnished: DPI Impactor, FT 4240

Labor or Services Performed: Rental Equipment

Labor or Services to be Performed: Rental Equipment

Amount Paid on Account to Date: \$00.00

Amount Still Owing as of 03/07/2012: \$149,237.39

Amount to Become Due: NA

State of MN.
County of Scott

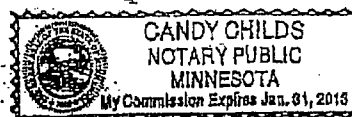
Road Machinery & Equipment Co.

BY: [Signature]
Printed Name: Tom McKeon District Credit Mgr

Sworn to and subscribed before me by Thomas E. McKeon who is personally known and who did take an oath this _____

Instrument
201290046880 OR Vol 221 Page 261

[Signature]
Notary Public
My Commission Expires:



000058

Appendix000108



201290045783
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
03-05-2012 At 11:09 am.
HECH LIEN 13.00
OR Val 218 Page 77 - 83

Register of Deeds
2 South Congress St.
York, SC 29745

Date: February 27, 2012

Before me, the undersigned authority, personally appeared Thomas McKeon, who after being duly sworn deposes and says that regarding the job known as: Concrete Crushing, Calriver Services/Riverwalk, located at 2850 Cherry Road, Rock Hill, SC 29730, the following is true:

Materials Furnished: Rental Equipment- KPI Impactor, FT 4240

Materials to be Furnished: DPI Impactor, FT 4240

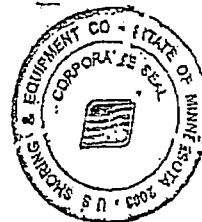
Labor or Services Performed: Rental Equipment

Labor or Services to be Performed: Rental Equipment

Amount Paid on Account to Date: \$110,000.00

Amount Still Owing as of 2/27/12: \$149,237.39

Amount to Become Due: NA

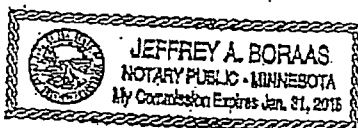


State of:
County of:

Road Machinery & Equipment Co.

BY: Thomas E. McKeon
Printed Name: Tom McKeon District Credit Mgr

Sworn to and subscribed before me by Thomas E. McKeon who is personally known and who did take an oath this 2/27/12



Jeffrey A. Boraas
Notary Public
My Commission Expires:

Instrument
201290045783 OR
Vol Page
218 77

000059

Appendix000109



RE:
Register of Deeds
2 South Congress St.
York, SC, 29745

Date: March 7, 2012

201290046282
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
03-09-2012 At 09:49 AM.
REC'D LHM 16.00
DR Vol 219 Page 278 - 287

Before me, the undersigned authority, personally appeared Thomas McKeon, who after being duly sworn deposes and says that regarding the job known as: Concrete Crushing, Riverwalk/Gloriana Velodrome, located at 1000 Riverwalk Pkwy, Rock Hill, SC, the following is true:

Materials Furnished: Rental Equipment- KPI Impactor, FT 4240

Materials to be Furnished: DPI Impactor, FT 4240

Labor or Services Performed: Rental Equipment

Labor or Services to be Performed: Rental Equipment

Amount Paid on Account to Date: \$00.00

Amount Still Owing as of 03/07/2012: \$149,237.39

Amount to Become Due: NA

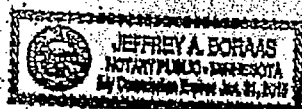
State of
County of:

Road Machinery & Equipment Co.

BY: Thomas F. McKeon

Printed Name: Tom McKeon District Credit Mgr

Sworn to and subscribed before me by Thomas F. McKeon who is personally known and who did take an oath this _____

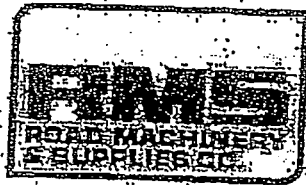


Instrument
201290046282 DR Vol Page
219 278

Jeffrey A. Boras
Notary Public
My Commission Expires:

000060

Appendix000110



201290042879
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
03-20-2012 at 10:51 am.
MGR LIEN 18.00
OR Vol 221 Page 251 - 260

RE:
Register of Deeds
2 South Congress St.
York, SC, 29745

Date: March 14, 2012

Before me, the undersigned authority, personally appeared Thomas McKeon, who after being duly sworn deposes and says that regarding the job known as: Concrete Crushing. Various fill for roads, sidewalks, parking lots, on 32.19 AC/ Lot 3 at 2850 Cherry Road, Rock Hill, SC, the following is true:

Materials Furnished: Rental Equipment- KPI Impactor, FT 4240

Materials to be Furnished: DPI Impactor, FT 4240

Labor or Services Performed: Rental Equipment

Labor or Services to be Performed: Rental Equipment

Amount Paid on Account to Date: \$00.00

Amount Still Owing as of 03/07/2012: \$149,237.39

Amount to Become Due: NA

State of: MN
County of: Scott

Road Machinery & Equipment Co.

BY: *Thomas E. McKeon*

Printed Name: Tom McKeon District Credit Mgr

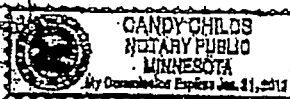
Sworn to and subscribed before me by Thomas E. McKeon who is personally known and who did take an oath this _____

Vol Page
221 251

Candy Childs

Notary Public

My Commission Expires



000061

Appendix000111



March 14, 2012
Thomas McKeon
US Shoring & Equipment
5633 W Hwy. 13
Savage, MN. 55378

Register of Deeds
2 South Congress St.
York, SC 29745

Overnight Mail

GRH 2001 LLC
2850 Cherry Road
Rock Hill, SC 29730

Owner

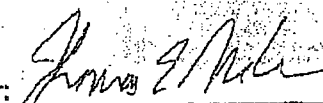
RE: RiverWalk-Celriver Project

Register of Deeds,

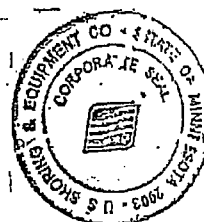
Between September 22, 2011 and January 01/06/12 we supplied rental equipment to Rizon Commercial Contracting, for the improvement of the River Walk/Celriver project, located at 2850 Cherry Road, Rock Hill, SC. To date we have not been paid for the remaining \$149,237.39 due for the months of September-December, 2011.

In order to protect our interests we are requesting a mechanic's lien be placed against the improved property as described in the York County Property report as parcel number 6620701108 as located in Deed book 12065, page 17. The owner of the property is, GRH 2011 LLC, located at 2850 Cherry Road, Rock Hill, South Carolina, 29730.

The amount of the claim of lien will be \$149,237.39, as detailed in the attached sworn statement of account.

By: 
Thomas E. McKeon

Seal



000062

Appendix000112

STATE OF SOUTH CAROLINA
COUNTY OF YORK
Bizon Commercial Contracting, Inc.
Plaintiff

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

201270047380
Filed for Record in
YORK COUNTY, SC
DAVID HARTLEY, Clerk of Courts
02-50-2612 AC 02-57 10.
REC'D 1151 11-16-98
MECHANIC'S LIEN Pina 125 = 134

City of Rock Hill, The Greens of Rock Hill, LLC
GRB 2011, LLC, Celriver Services, LLC,
Defendants.

Robert Way Phillips, General Contractor,
License Number G163599

NOTICE IS HEREBY GIVEN that the Defendant Celriver Services, LLC, entered into an agreement with Plaintiff for certain labor and materials on property owned by Defendants located in York County, South Carolina. The labor and materials were performed on the below described property. The description of said property is located in Deed Book 12065, Page 17, Tax Map # 562-07-01-094; Deed Book 11785, Page 8183, Tax Map #562-07-01-105; Deed Book 10176, Page 0027, Tax Map #661-00-00-080, in the Office of the Clerk of Court of York County, South Carolina. A description of the premises is also attached as Exhibit "A". The work done by the Plaintiff was done under contract with the Defendant Celriver Services, LLC, and all work was performed on or for the Defendants' property. The labor and materials provided by Plaintiff was with the express knowledge, consent, acquiescence, and request of Defendants.

Ninety days have not elapsed since the completion of said work.

That the reasonable price of such labor, materials, so performed or so furnished was and is the sum of \$295,591.01 (a statement of accounts is attached as Exhibit "B" and is incorporated by reference herein).

Plaintiff, after deducting all the just credits and offsets, now claims mechanic's lien in the amount of \$295,591.01 on the described real property owned by the Defendants, attached as Exhibit "A", and on all buildings and improvements thereon, under the ownership and/or control

Index Number 201270047380 Vol. Page 223 125

223 / 125

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Appendix 000113

of the Defendant, plus attorney's fees and costs of this action as provided by South Carolina
Code Annotated, Section 29-5-20 as amended.

D'AGOSTINO LAW FIRM

March 28, 2012
York, SC


Daniel D. D'Agostino, Esquire
D'Agostino & D'Agostino
P.O. Box 1199
25 W. Liberty Street
York, SC 29745
(803) 628-5509
(803) 628-7950

Instrument 20129004380 DB
Doc. Fees 233.12

000064

Appendix 000114

EXHIBIT A-1

TMS: 662-09-01-105

All that certain piece, parcel or tract of land lying, being and situate in the City of Rock Hill, County of York, State of South Carolina, and being shown and designated as Tract B containing 5.327 acres, more or less, on Subdivision Survey for Greens of Rock Hill, LLC, prepared by Kent Conner Hudson, PLS #27451, dated November 30, 2010, recorded December 7, 2010, in Plat Book E-70 at Page 4, Office of the Clerk of Court for York County, South Carolina. Reference to said plat is made for a more complete and accurate description.

Being a portion of property conveyed by Celanese Acetate LLC to Greens of Rock Hill LLC by deed recorded October 13, 2005, in Book 7593 at Page 99.

Instrument 2012-0047384 of Vol. 223 Page 127

000065

Appendix000115

EXHIBIT "A"

TMS: 662-07-01-103

All that certain piece, parcel or tract of land lying, being and situate in the City of Rock Hill, County of York, State of South Carolina, and being shown and designated as "Tract B" containing 5.827 acres, more or less, on Subdivision Survey for Greens of Rock Hill, LLC, prepared by Kent Cooper Hudson, PLS #27451, dated November 30, 2010, recorded December 7, 2010, in Plat Book B-70 at Page 4, Office of the Clerk of Court for York County, South Carolina. Reference to said plat is made for a more complete and accurate description.

Being a portion of property conveyed by Calanese Acquire LLC to Greens of Rock Hill LLC by deed recorded October 18, 2005, in Book 7503 at Page 99.

Instrument Vol. Page
200290047380 223 127

000066

Appendix000116

Exhibit A2

ALL that certain piece, parcel or tract of land situated, lying and being in York County, South Carolina, being shown and designated as "Tract B - A Portion of Tax Map # 653-00-00-080 Zoned ID: 4.00 Acres +/- Grds," on a plat thereof entitled "Boundary and Recombination Survey For Greens of Reek Hill, LLC" prepared by B. Burnett Jenkins, Pittman Professional Land Surveying surveyed April 15, 2008 and recorded in the Office of the Clerk of Court for York County in Plat Book _____, at Page _____, said tract having such size, shape, buildings, boundaries and dimensions as are shown on said plat.

BEING a portion of the property conveyed by Colanest Advanced Materials, Inc. to PBI Performance Products, Inc. by Deed dated May 6, 2005 recorded May 10, 2005 in the office of the Clerk of Court for York County in Record Book 7076 at Page 177.

Instrument 201100043380 OR Vol 223 Page 122

EX-10-176 PRO001

000067

Exhibit A 3

All that certain piece, parcel or lot of land, lying and being in York County, South Carolina, being located and bounded by US-21 to the north, Catawba River to the east, and Calhoun Road and Norfolk Southern Railroad tracks to the south, containing 47.26 acres, and described herein as 30 Textile Mill Credit Property of the Riverwalk Development by Orinda B. Rock Hill, LLC, and having the following metes and bounds to-wit:

Parcel #3

thence along a survey line which intersects the 1000.00' x 1000.00' section boundary at 1000.00' feet, bearing N 16° 54' 36" W a distance of 114.07 feet; thence along a curve to the RIGHT, having a radius of 13.00 feet, a delta angle of 84° 01' 21.04", and whose long chord bears N 25° 13' 59.29" E a distance of 17.10 feet; thence bearing N 67° 13' 53.12" E a distance of 18.61 feet; thence along a curve to the LEFT, having a radius of 13.00 feet, a delta angle of 29° 39' 34.05", and whose long chord bears N 32° 14' 28.92" E a distance of 19.44 feet; thence bearing N 37° 27' 27.60" E a distance of 163.38 feet; thence along a curve to the RIGHT, having a radius of 1023.50 feet, a delta angle of 30° 39' 54.42", and whose long chord bears N 21° 32' 24.05" E a distance of 243.91 feet; thence along a curve to the RIGHT, having a radius of 971.50 feet, a delta angle of 01° 17' 03.83", and whose long chord bears N 7° 58' 59.34" E a distance of 20.08 feet; thence bearing S 73° 11' 26.76" E a distance of 110.47 feet; thence bearing S 73° 04' 45.70" E a distance of 66.00 feet; thence bearing S 10° 58' 34.29" W a distance of 27.19 feet; thence along a curve to the LEFT, having a radius of 117.50 feet, a delta angle of 117° 18' 41.11", and whose long chord bears S 48° 49' 22.52" E a distance of 210.84 feet; thence bearing N 25° 37' 41.20" W a distance of 20.37 feet; thence bearing S 26° 37' 40.47" W a distance of 22.51 feet; thence bearing N 8° 24' 53.10" E a distance of 33.34 feet; thence bearing N 10° 58' 47.71" E a distance of 11.38 feet; thence bearing N 55° 41' 53.12" W a distance of 1.47 feet; thence bearing S 12° 11' 24.99" W a distance of 18.11 feet; thence bearing N 16° 28' 43.08" E a distance of 7.24 feet; thence bearing N 1° 04' 40.46" E a distance of 132.78 feet; thence bearing N 45° 47' 20.04" E a distance of 225.85 feet; thence bearing N 3° 56' 43.94" W a distance of 11.51 feet; thence bearing N 3° 46' 33.59" E a distance of 79.58 feet; thence bearing N 29° 45' 10.28" E a distance of 203.97 feet; thence bearing S 50° 45' 59.59" E a distance of 371.98 feet; thence along a curve to the LEFT, having a radius of 313.67 feet, a delta angle of 03° 37' 42.91", and whose long chord bears S 54° 02' 24.76" E a distance of 36.29 feet; thence along a curve to the LEFT, having a radius of 121.19 feet, a delta angle of 24° 17' 54.42", and whose long chord bears S 19° 52' 28.14" E a distance of 57.52 feet; thence along a curve to the LEFT, having a radius of 140.57 feet, a delta angle of 29° 45' 46.93", and whose long chord bears S 33° 52' 55.41" E a distance of 72.24 feet; thence bearing S 87° 56' 24.06" E a distance of 71.32 feet; thence bearing S 1° 28' 49.61" E a distance of 281.34 feet; thence bearing S 87° 32' 52.56" W a distance of 200.86 feet; thence bearing S 41° 23' 35.19" E a distance of 143.66 feet; thence along a curve to the RIGHT, having a radius of 50.00 feet, a delta angle of 102° 13' 56.47", and whose long chord bears S 44° 02' 03.91" W a distance of 93.41 feet;

Instrument 201200042300 OR Vol Page 223 139

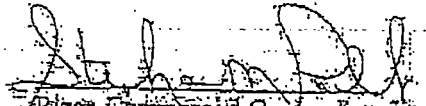
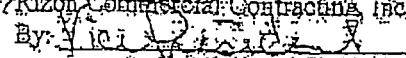
AKJ2065 000019

000068

EXHIBIT B

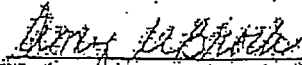
The undersigned hereby certifies that the amount due Rizon, after giving credit for all payments is \$295,591.01.

Total \$295,591.01


Rizon Commercial Contracting, Inc.
By: 

SWORN TO BEFORE ME this 24 day

of March, 2013



Notary Public for South Carolina

My Commission Expires 6-17-2017

Instrument Vol Page
201290043880 223 234

000069

Appendix000119

EXHIBIT

B

TRANSFER OF LIEN BOND

Pursuant to §713.24, F.S.

WE, The Greens of Rock Hill, LLC as Principal, and Lexon Insurance Company (insert name of surety), as Surety, are bound unto Rizon Commercial Contracting, Inc. (insert name of lienor) and Road Machinery Supply, Inc. ("Lienor"), as Obligee, in the sum of \$ 394,121.35 (insert statutory bond amount), for the payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Lienor has recorded a Claim of Lien in Book SEE ATTACHED, Page , of the Office of the Clerk of Court Of York Cnty, SC, in the amount of \$ 394,121.35 (insert face amount of lien filed by Lienor), against real property owned by The Greens of Rock Hill, LLC (insert name of owner of lien property), who desires to LLC and GRH 2011 transfer the Claim of Lien from said real property to this bond.

THE CONDITION OF THIS BOND, is that if the above Principal shall pay any judgment or decree which may be rendered for the satisfaction of the lien for which the Claim of Lien was recorded, then this bond is void, otherwise it remains in force.

DATED: 4/25/2012

BOND No. 1074316

(Name of Surety) Lexon Insurance Company

By: Anthony G. Balzano, Attorney-in-Fact
Anthony G. Balzano

David C. W.
Principal The Greens of Rock Hill, LLC

APPROVED BY ME ON THIS
____ DAY OF _____, 2012

(Clerk)(Deputy Clerk)

POWER OF ATTORNEY

LX-107834

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint:

Anthony George Balzano, Deborah Mary Roth, Jacqueline Demeter,

Cheryl L. Beard *****

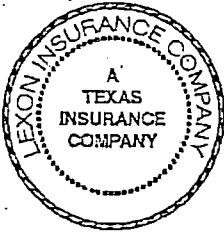
its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$2,500,000.00, Two-million five hundred thousand dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.



LEXON INSURANCE COMPANY

BY

David E. Campbell
President

ACKNOWLEDGEMENT

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who being duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

"OFFICIAL SEAL"
MAUREEN K. AYE
Notary Public, State of Illinois
My Commission Expires 09/21/13

Maureen K. Aye
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Woodridge, Illinois this 25th Day of April, 20 12



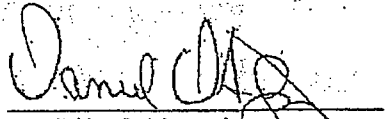
000071

Philip G. Lauer
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information known to be materially false, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

Appendix 000121

April 29 2012



Daniel D. D'Agostino
Attorney for Rizon Commercial Contracting, Inc.
D'Agostino & D'Agostino
P.O. Box 1199
York, SC 29745
(803-628-7990)

Road Machinery & Equipment Company

MAY
April 8 2012

By:



Thomas E. McKeon

Its:

District Credit Manager
Claimant

THOMAS J. BURKE

PUMPER DEMOLITION &
CONCRETE RECYCLING, LLC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

The Greens of Rock Hill, LLC;)
GRH 2011, LLC,)
Petitioners,)

C/A No.: 2012-CP-46-1815

REPLY TO COUNTERCLAIM

v.)

Rizon Commercial Contracting, Inc.,)
Respondents.)

The Plaintiffs, the Greens of Rock Hill, LLC and GRH 2011, LLC (collectively, "Plaintiffs") respond to the Defendant Rizon Commercial Contracting, Inc.'s ("Defendant") Answer and Counterclaim as follows:

FOR A FIRST DEFENSE

1. Any and all allegations contained in Defendant's Answer and Counterclaim not hereinafter expressly admitted, modified, or explained are denied.
2. Paragraphs 1-26 of Defendant's Answer do not require a response from Plaintiffs as they form a part of Defendant's Answer to Plaintiffs' Complaint.
3. Responding to Paragraph 27, Plaintiffs are without sufficient information to form an opinion or belief as to the truth of the allegations set forth therein and therefore deny the same.
4. Paragraph 28 is admitted.
5. Responding to Paragraph 29, Plaintiffs admit that Defendant provided services for crushing concrete. The remainder of Paragraph 29 is denied.
6. Paragraph 30 is denied.

000073

Appendix000123

7. Responding to Paragraph 31, Plaintiffs admit that the concrete crushed by Defendant was used to improve the property. Plaintiff denies that the concrete was supplied by Defendant. The remainder of Paragraph 31 is denied.

8. Paragraph 31 is denied.

9. Plaintiffs admit that Defendant has "demanded" payment. Plaintiffs deny that any payment is due and owing to Defendant. Paragraph 32 is admitted, on information and belief.

10. Plaintiffs admit that they have refused to pay for services for which Defendant is not entitled.

11. Paragraph 34 is admitted.

12. Paragraph 35 is admitted; provided, however, Plaintiffs deny that Defendant is entitled to attorneys fees.

13. Paragraph 36 is admitted.

14. Paragraph 37 is admitted, on information and belief; provided, however, Plaintiffs deny Defendant's entitlement to foreclose upon the Lien and/or Bond.

15. Paragraph 38 is denied.

16. Paragraph 39 is denied.

17. At this time, Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 40 and therefore deny the same.

FOR A SECOND DEFENSE

18. Plaintiffs incorporate all allegations and defenses set forth above, to the extent not inconsistent herewith.

19. Defendant's claim is barred by the doctrine of payment.

-000074

Appendix000124

FOR A THIRD DEFENSE

20. Plaintiffs incorporate all allegations and defenses set forth above, to the extent not inconsistent herewith.

21. Defendant's claim is barred by the doctrine of accord and satisfaction.

FOR A FOURTH DEFENSE

22. Plaintiffs incorporate all allegations and defenses set forth above, to the extent not inconsistent herewith.

23. Defendant's claim is barred by one or more of the doctrine of waiver, laches, and/or equitable estoppel.

FOR A FIFTH DEFENSE

24. Plaintiffs incorporate all allegations and defenses set forth above, to the extent not inconsistent herewith.

25. Defendant's claim is barred by the doctrine of unclean hands.

FOR A SIXTH DEFENSE

26. Plaintiffs incorporate all allegations and defenses set forth above, to the extent not inconsistent herewith.

27. Defendant's Complaint should be dismissed pursuant to Rule 12(b)(7), S.C. R. Civ. P. for failure to join a party under Rule 19 who is needed for just adjudication of the claims herein.

FOR A SEVENTH DEFENSE

28. Plaintiffs incorporate all allegations and defenses set forth above, to the extent not inconsistent herewith.

000075

Appendix000125

29. Defendant's claim is barred for failure to comply with one or more provisions of the South Carolina Mechanic's Lien Statute, S.C. Code Ann. § 29-5-10, *et seq.*

FOR AN EIGHTH DEFENSE

30. Plaintiffs incorporate all allegations and defenses set forth above, to the extent not inconsistent herewith.

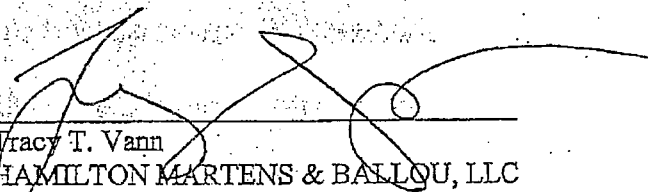
31. Defendant's claim is barred based upon Defendant's material breach of the parties' contract.

FOR AN NINTH DEFENSE

32. Plaintiffs incorporate all allegations and defenses set forth above, to the extent not inconsistent herewith.

33. Plaintiffs have failed to comply with Paragraph 6.2 of the parties' Contract.

WHEREFORE, having fully answered Defendant's Counterclaim, Plaintiffs pray for dismissal of the Counterclaim, for judgment on their claim, for costs and reasonable attorney's fees, and for such other and further relief as the Court deems just and proper.


Tracy T. Vann
HAMILTON MARTENS & BALLOU, LLC
Post Office Box 10940
Rock Hill, South Carolina 29731
803/329-7672

ATTORNEYS FOR PLAINTIFFS
THE GREENS OF ROCK HILL, LLC and
GRH 2011, LLC

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CERTIFICATE OF SERVICE

The undersigned employee of Hamilton Martens & Ballou, LLC certifies that the within Reply to Counterclaim was served upon the Defendant's counsel by depositing same in the United States Mail, with sufficient postage affixed and addressed as follows:

Daniel D. D'Agostino
D'Agostino Law Firm
PO Box 1199
York, SC 29745

This the 19th day of July, 2012.

K. Alex Kropp
K. Alex Kropp

4848-5160-0656, v. 1

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Appendix000127

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

Rizon Commercial Contracting, Inc., **FILED - RECEIVED** CIVIL ACTION COVERSHEET

Plaintiff(s)
2012 JUN 19 PM 1:54

12 - CP - 46 - 2285

vs.

DAVID HAMILTON
C.C.P. & GS

The Greens of Rock Hill, LLC., GREENTOP LLC., Celriver Services, LLC., and City of Rock Hill,

Defendant(s)

(Please Print)

Submitted By: Daniel D. D'Agostino,
Address: P O Box 1199
York, SC 29745

SC Bar #: 65088
Telephone #: 803-628-6509
Fax #: 803-628-7990
Other:
E-mail: dan@ddllplaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action Is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299) | Torts - Personal Injury
☐ Assent/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799) | Administrative Law/Relief
☐ Reinstates Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Other (699) | | |

Submitting Party Signature: Dequell N. D.

Date: June 19, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Rizon Commercial Contracting, Inc.,

Plaintiff,

vs.

The Greens of Rock Hill, LLC, GRH 2011, LLC,
Celriver Services, LLC, and City of Rock Hill,

Defendants.

FILED - RECEIVED IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2012 JUN 19 14:54

2012 CP 46 2005

DAVID HAMILTON
C.C.C. & CS
YORK COUNTY, SC

SUMMONS

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Summons and Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at his office at 25 West Liberty St., Post Office Box 1199, York, South Carolina 29745, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

D'AGOSTINO LAW FIRM

York, South Carolina

June 18, 2012

Gregory N. Davis
Daniel D. D'Agostino

P.O. Box 1199

25 W. Liberty Street

York, SC 29745

(803) 628-6509

(803) 628-7990 - facsimile

Daniel D. D'Agostino

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Appendix000130

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Rizon Commercial Contracting, Inc.,

Plaintiff,

vs.

The Greens of Rock Hill, LLC, GRH 2011, LLC,
Celriver Services, LLC, and City of Rock Hill,

Defendants.

FILED - RECEIVED

2012 JUN 19 PM 1:54

DAVID HAMILTON
C.C.P. & SS
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2012 CP 46 2085

COMPLAINT

The above named Plaintiffs, complaining of the above named Defendants, would allege and show unto the Court as follows:

1. The Plaintiff is a corporation doing business in the State of South Carolina. The general contractor license for Robert WM Phillip, the qualifier for Plaintiff, license number is G103590.
2. The Defendants The Greens of Rock Hill, LLC, GRH 2011, LLC, and Celriver Services, LLC, are all registered to do business in the State of South Carolina and have conducted business in the State of South Carolina. The Defendant City of Rock Hill owns the Veladrome.
3. The Plaintiff was hired by the Defendant Celriver for the purpose of providing materials and services for the improvement of land located in York County, South Carolina. The Plaintiff provided services for Celriver Services to include crushing concrete which was used for the improvement of land owned and used by The Greens of Rock Hill, LLC, GRH 2011, LLC as well as the City of Rock Hill. The Defendants The Greens of Rock Hill, LLC, GRH 2011, LLC, and City of Rock Hill knew that the Plaintiff was providing the services for the production of crushed concrete for their various pieces of property.
4. The Plaintiff provided all goods and services reasonably requested of it by the Defendant Celriver.
5. The services and goods provided improved the property and was used to improve the property including use for the subgrades for roads on the various tracks of land as well as for the Veladrome.
6. The Plaintiff has demanded payment for all its goods and services provided which have benefited the properties of the Defendants and Celriver.
7. The Defendants have failed and refused and continue to fail and refuse to pay for the goods and services.

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8. The Plaintiff duly filed a Mechanic's Lien upon the property of Defendant The Greens of Rock Hill and GRH 2011, claiming its rights to payment pursuant to South Carolina Code Section 29-5-10 et seq. A copy of the lien is attached hereto. The Defendant The Greens of Rock Hill and GRH 2011, LLC subsequently bonded the lien off the property and the bond is attached hereto as Exhibit B. The City of Rock Hill provided copies of the payment bonds and performance bonds which are attached hereto as Exhibit C and the Plaintiff released the lien on the City's property.

9. The Plaintiff further requests attorney's fees pursuant to statute from each Defendant pursuant to statute.

10. A copy of the Mechanic's Lien is attached hereto as Exhibit A and incorporated herein by reference.

11. The Plaintiff seeks for this Court to Order the foreclosure of Mechanic's Lien against the bond for the goods and services provided to the Defendants.

12. The materials were provided on each Defendant's property and for each Defendant's property and material increased its value.

13. The value of the goods and services provided by the Plaintiff to the Defendants and the amount of money owed by the Defendants to the Plaintiff is \$295,591.01.

14. The Defendants were served with the Mechanic's Lien within 90 days of the last work being performed on the property and Plaintiff has performed work on the property within the last six (6) months.

FOR A SECOND CAUSE OF ACTION

15. All allegations set forth above not inconsistent herein are incorporated as though copied verbatim.

16. The Plaintiff entered a contract with Celriver Services, LLC for purposes of providing services and materials for the improvement of land.

17. The Defendants agreed to pay the Plaintiff for all services at the rate of \$6.00 per ton for ABC and \$7.00 per ton for 57 or 67 stone.

18. The Defendant Celriver has failed and refused and continues to fail and refuse to pay for the goods and services provided for the crushing of stone.

19. The Plaintiff is owed \$295,591.01 for the services and materials used for the improvement of the property.

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Appendix000132

20. The Plaintiff requests a judgment against the Defendant Celriver for breach of contract in the amount of \$295,591.00 plus costs and attorney's fees.

FOR A THIRD CAUSE OF ACTION

21. All allegations set forth above not inconsistent herein are incorporated as though copied verbatim.

22. The Plaintiff performed services to include crushing of stone which was subsequently used by the Greens of Rock Hill, LLC, GRH 2011 and the City of Rock Hill.

23. The Greens of Rock Hill, LLC and GRH 2011, LLC of Rock Hill contracted with Celriver Services, LLC. for acquiring the stone which was crushed by the Plaintiff and used for the improvement of the Defendant's properties.

24. The use of the stone has increased the value of the property owned by the various Defendants.

25. Each Defendant benefited from the use of the stone.

26. The Plaintiff provided a service and did not provide that service gratuitously.

27. The Plaintiff expected to be paid and compensated for all of its services provided in the crushing of the stone.

28. The Plaintiff believes and requests this Court to grant it a judgment against the Defendants in quantum meruit for the amount of \$295,591.01 plus prejudgment interest and the cost of this action.

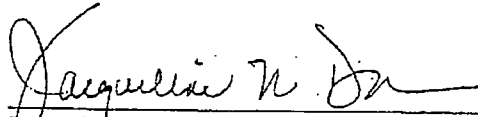
WHEREFORE, having fully plead, Plaintiff requests the Court to grant it a judgment against the Defendant Celriver and The Greens of Rock Hill, GRH 2011 and the City of Rock Hill, grant judgment against the property as set forth in the Mechanic's Lien and to Order the foreclosure on the bond first applying the proceeds from the sale of the property to the debt owed by the Defendants to the Plaintiff.

Respectfully submitted.

D'AGOSTINO LAW FIRM

York, South Carolina

June ____, 2012


Jacqueline N. Davis
Daniel D. D'Agostino
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25 W. Liberty Street
York, SC 29745
(803) 628-6509
(803) 628-7990 - facsimile

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Appendix000133

2012 CP 46 2285

FILED - RECEIVED

2012 JUN 19 PM 1:54

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

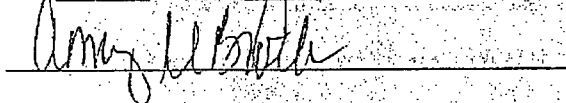
VERIFICATION

PERSONALLY appeared before me, Rizon Commercial Contracting, Inc., who first being duly sworn, deposes and says the allegations in the Complaint are correct of its own knowledge, except for those matters and things alleged on information and belief if any, and as to those, it believes same to be true.



SWORN TO AND SUBSCRIBED before me

this 19 day of June 2012.



NOTARY PUBLIC FOR S.C.

MY COMMISSION EXPIRES: 6-7-2017

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Appendix000134

PLAINTIFF'S
EXHIBIT

A

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Rizon Commercial Contracting, Inc.,)

Plaintiff,)

vs.)

City of Rock Hill, The Greens of Rock Hill, LLC,
GRH 2011, LLC., Celriver Services, LLC.)

Defendants.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

201290047380

Filed for Record in

YORK COUNTY, SC

DAVID HAMILTON, CLERK OF COURTS

03-30-2012 At 09:59 am.

MECH LIEN 16.00

DR. Vol. 223 Page 125 - 134

MECHANIC'S LIEN

Robert WM Phillips' General Contractor's
License Number G103590

NOTICE IS HEREBY GIVEN that the Defendant Celriver Services, LLC., entered into an agreement with Plaintiff for certain labor and materials on property owned by Defendants located in York County, South Carolina. The labor and materials were performed on the below described property. The description of said property is located in Deed Book 12065, Page 17, Tax Map # 662-07-01-094; Deed Book 11785, Page 0183, Tax Map #662-07-01-105; Deed Book 10176, Page 0027, Tax Map #663-00-00-080, in the Office of the Clerk of Court of York County, South Carolina. A description of the premises is also attached as Exhibit "A". The work done by the Plaintiff was done under contract with the Defendant Celriver Services, LLC., and all work was performed on or for the Defendants' property. The labor and materials provided by Plaintiff was with the express knowledge, consent, acquiescence, and request of Defendants.

Ninety days have not elapsed since the completion of said work.

That the reasonable price of such labor, materials, so performed or, so furnished was and is the sum of \$295,591.01 (a statement of accounts is attached as Exhibit "B" and is incorporated by reference herein).

Plaintiff, after deducting all the just credits and offsets, now claims mechanic's lien in the amount of \$295,591.01 on the described real property owned by the Defendants, attached as Exhibit "A", and on all buildings and improvements thereon, under the ownership and/or control

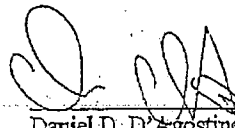
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Appendix000135

of the Defendant, plus attorney's fees and costs of this action as provided by South Carolina
Code Annotated, Section 29-5-20 as amended.

D'AGOSTINO LAW FIRM

March 28, 2012
York, SC



Daniel D. D'Agostino, Esquire
D'Agostino & D'Agostino
P.O. Box 1199
25 W. Liberty Street
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(803) 628-7990

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Appendix000136

EXHIBIT "A" 1

TMS: 662-07-01-105

All that certain piece, parcel or tract of land lying, being and situate in the City of Rock Hill, County of York, State of South Carolina, and being shown and designated as "Tract B" containing 5.827 acres, more or less, on Subdivision Survey for Greens of Rock Hill, LLC, prepared by Kent Cooper Hudson, PLS #27451, dated November 30, 2010, recorded December 7, 2010, in Plat Book E-70 at Page 4, Office of the Clerk of Court for York County, South Carolina. Reference to said plat is made for a more complete and accurate description.

Being a portion of property conveyed by Celanese Acetate LLC to Greens of Rock Hill LLC by deed recorded October 18, 2005, in Book 7503 at Page 99.

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Exhibit A2

ALL that certain piece, parcel or tract of land situate, lying and being in York County, South Carolina, being shown and designated as "Tract B A Portion of Tax Map # 663-00-00-080 Zoned ID 4.00 Acres +/- Crds." on a plat thereof entitled "Boundary and Recombination Survey For Greens of Rock Hill LLC" prepared by E. Burnett Jenkins, Pittman Professional Land Surveying surveyed April 15, 2008 and recorded in the Office of the Clerk of Court for York County in Plat Book _____, at Page _____; said tract having such size, shape, buttings, boundings and dimensions as are shown on said plat.

BEING a portion of the property conveyed by Celanese Advanced Materials, Inc. to PBI Performance Products, Inc. by Deed dated May 6, 2005 recorded May 10, 2005 in the office of the Clerk of Court for York County in Record Book 7076 at Page 177.

Exhibit A 3

All that certain piece, parcel or lot of land, lying and being in York County, South Carolina being located and bound by US-21 to the north, Catawba River to the east, and Calriver Road and Norfolk Southern Railroad tracks to the south, containing 47.26 acres, and described herein as SC Textile Mill Credit Property of the Riverwalk Development, by Greens of Rock Hill, LLC, and having the following metes and bounds to wit:

Parcel #3

Beginning at a point whose Northing is 1144938.3923 and whose Easting is 2007849.5617;
thence along a curve to the LEFT, having a radius of 385.50 feet, a delta angle of 17° 01' 00.68", and whose long chord bears N 8-16-54.861 W a distance of 114.07 feet;
thence along a curve to the RIGHT, having a radius of 13.00 feet, a delta angle of 84° 01' 21.04", and whose long chord bears N 25-13-15.929 E a distance of 17.40 feet;
thence bearing N 67-13-55.312 E a distance of 18.61 feet;
thence along a curve to the LEFT, having a radius of 153.50 feet, a delta angle of 29° 59' 34.05", and whose long chord bears N 52-14-8.289 E a distance of 79.44 feet;
thence bearing N 37-14-21.266 E a distance of 163.38 feet;
thence along a curve to the LEFT, having a radius of 1028.50 feet, a delta angle of 30° 39' 54.42", and whose long chord bears N 21-34-24.056 E a distance of 543.91 feet;
thence along a curve to the RIGHT, having a radius of 971.50 feet, a delta angle of 01° 11' 03.83", and whose long chord bears N 7-9-38.759 E a distance of 20.08 feet;
thence bearing S 78-31-26.766 E a distance of 316.27 feet;
thence bearing S 73-0-45.704 E a distance of 60.00 feet;
thence bearing S 16-59-14.296 W a distance of 25.76 feet;
thence along a curve to the LEFT, having a radius of 137.50 feet, a delta angle of 131° 36' 43.13", and whose long chord bears S 48-49-7.252 E a distance of 250.84 feet;
thence bearing N 52-37-41.206 W a distance of 20.37 feet;
thence bearing N 26-37-40.475 W a distance of 32.83 feet;
thence bearing N 8-24-35.510 E a distance of 35.94 feet;
thence bearing N 17-5-8.477 E a distance of 14.58 feet;
thence bearing N 55-3-15.152 W a distance of 4.47 feet;
thence bearing N 32-31-26.993 W a distance of 18.11 feet;
thence bearing N 16-28-4.508 E a distance of 7.22 feet;
thence bearing N 1-0-40.496 E a distance of 132.78 feet;
thence bearing N 45-47-20.045 E a distance of 225.85 feet;
thence bearing N 3-56-45.948 W a distance of 119.61 feet;
thence bearing N 54-16-33.596 E a distance of 79.58 feet;
thence bearing N 89-45-10.282 E a distance of 203.97 feet;
thence bearing S 50-1-59.959 E a distance of 337.98 feet;
thence along a curve to the LEFT, having a radius of 573.07 feet, a delta angle of 03° 37' 42.91", and whose long chord bears S 5-16-24.765 E a distance of 36.29 feet;
thence along a curve to the LEFT, having a radius of 123.19 feet, a delta angle of 24° 19' 54.42", and whose long chord bears S 19-6-29.449 E a distance of 51.92 feet;
thence along a curve to the LEFT, having a radius of 140.57 feet, a delta angle of 29° 46' 46.93", and whose long chord bears S 55-52-52.448 E a distance of 72.24 feet;
thence bearing S 67-56-24.065 E a distance of 31.92 feet;
thence bearing S 3-1-28.396 E a distance of 181.34 feet;
thence bearing S 87-2-22.956 W a distance of 200.66 feet;
thence bearing S 41-23-36.594 E a distance of 148.16 feet;
thence along a curve to the RIGHT, having a radius of 60.00 feet, a delta angle of 102° 13' 56.47", and whose long chord bears S 9-43-21.639 W a distance of 93.41 feet;

BK 12065 P00019

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Appendix 000139

thence bearing S 60-50-19.873 W a distance of 31.27 feet;
 thence along a curve to the LEFT, having a radius of 20.00 feet, a delta angle of 92° 08' 23.08", and whose
 long chord bears S 14-46-8.333 W a distance of 28.81 feet;
 thence along a curve to the RIGHT, having a radius of 174.51 feet, a delta angle of 73° 58' 06.31", and whose
 long chord bears S 5-41-5.728 W a distance of 209.97 feet;
 thence bearing S 42-40-14.663 W a distance of 132.11 feet;
 thence along a curve to the RIGHT, having a radius of 174.47 feet, a delta angle of 26° 16' 51.99", and whose
 long chord bears S 55-48-36.082 W a distance of 79.33 feet;
 thence along a curve to the LEFT, having a radius of 12.00 feet, a delta angle of 78° 24' 59.05", and whose
 long chord bears S 29-44-32.552 W a distance of 15.17 feet;
 thence bearing S 70-17-37.336 W a distance of 44.71 feet;
 thence along a curve to the LEFT, having a radius of 145.21 feet, a delta angle of 52° 14' 29.96", and whose
 long chord bears S 31-51-45.945 E a distance of 127.86 feet;
 thence bearing S 58-7-44.997 E a distance of 98.37 feet;
 thence bearing S 31-50-26.263 W a distance of 14.37 feet;
 thence bearing S 16-11-12.443 E a distance of 26.44 feet;
 thence bearing S 5-35-30.685 W a distance of 17.33 feet;
 thence bearing S 8-0-30.309 E a distance of 44.68 feet;
 thence bearing S 84-40-51.137 W a distance of 14.19 feet;
 thence bearing S 41-12-39.809 W a distance of 20.59 feet;
 thence bearing S 34-28-55.936 W a distance of 30.27 feet;
 thence bearing S 15-29-42.034 E a distance of 27.19 feet;
 thence bearing S 58-46-53.006 W a distance of 40.89 feet;
 thence bearing S 10-35-10.550 W a distance of 14.24 feet;
 thence bearing S 12-42-18.667 W a distance of 13.07 feet;
 thence bearing S 77-1-0.052 W a distance of 1.90 feet;
 thence bearing S 24-10-41.765 W a distance of 34.32 feet;
 thence bearing S 9-40-40.050 W a distance of 60.76 feet;
 thence bearing S 68-49-56.686 W a distance of 27.51 feet;
 thence bearing S 22-42-2.787 W a distance of 39.38 feet;
 thence bearing S 68-14-39.937 W a distance of 9.52 feet;
 thence bearing S 34-34-59.692 W a distance of 30.76 feet;
 thence bearing S 28-48-29.412 W a distance of 10.52 feet;
 thence bearing S 17-10-9.294 W a distance of 38.88 feet;
 thence bearing S 26-36-57.466 E a distance of 12.58 feet;
 thence bearing S 9-52-53.614 W a distance of 19.01 feet;
 thence bearing S 66-31-14.978 W a distance of 21.56 feet;
 thence bearing S 16-20-4.816 W a distance of 7.60 feet;
 thence bearing S 40-37-27.359 W a distance of 11.36 feet;
 thence bearing S 34-39-53.012 W a distance of 14.89 feet;
 thence bearing S 19-23-53.711 W a distance of 12.09 feet;
 thence bearing S 4-51-29.606 E a distance of 13.13 feet;
 thence bearing S 40-30-40.513 E a distance of 6.69 feet;
 thence bearing S 50-9-8.760 E a distance of 12.23 feet;
 thence bearing S 17-46-27.005 E a distance of 6.14 feet;
 thence bearing S 36-52-7.563 W a distance of 10.14 feet;
 thence bearing S 20-15-25.164 W a distance of 15.76 feet;
 thence bearing S 23-11-31.621 E a distance of 10.46 feet;
 thence bearing S 25-6-36.343 E a distance of 13.00 feet;
 thence bearing S 21-35-13.640 W a distance of 18.57 feet;
 thence bearing S 18-8-0.284 W a distance of 27.34 feet;
 thence bearing S 70-12-40.479 W a distance of 7.88 feet;
 thence bearing N 83-10-7.580 W a distance of 12.02 feet;

thence bearing S 37-58-4.403 W a distance of 9.20 feet;
 thence bearing S 0-0-0.000 E a distance of 12.59 feet;
 thence bearing S 10-43-6.307 E a distance of 22.99 feet;
 thence bearing S 5-26-25.195 W a distance of 14.58 feet;
 thence bearing S 63-37-34.346 W a distance of 9.38 feet;
 thence bearing S 16-31-41.379 W a distance of 18.64 feet;
 thence bearing S 15-34-28.958 W a distance of 7.52 feet;
 thence bearing S 12-31-55.349 W a distance of 13.45 feet;
 thence bearing S 19-15-25.234 W a distance of 25.70 feet;
 thence bearing S 6-18-51.016 W a distance of 25.50 feet;
 thence bearing S 36-2-50.969 W a distance of 7.75 feet;
 thence bearing S 23-41-8.868 E a distance of 10.18 feet;
 thence bearing S 26-2-24.084 E a distance of 6.20 feet;
 thence bearing S 30-52-56.752 W a distance of 7.13 feet;
 thence bearing S 40-41-11.533 W a distance of 11.59 feet;
 thence bearing S 86-45-28.996 W a distance of 18.08 feet;
 thence bearing S 37-44-31.408 W a distance of 19.39 feet;
 thence bearing S 33-29-14.900 W a distance of 11.84 feet;
 thence bearing S 8-32-37.104 E a distance of 17.16 feet;
 thence bearing S 4-26-46.466 E a distance of 7.77 feet;
 thence bearing S 69-2-4.948 W a distance of 29.79 feet;
 thence bearing S 21-37-23.173 E a distance of 15.57 feet;
 thence bearing S 49-31-15.042 W a distance of 36.58 feet;
 thence bearing S 19-13-33.881 W a distance of 12.60 feet;
 thence bearing S 28-54-8.201 W a distance of 6.61 feet;
 thence bearing S 74-22-33.998 W a distance of 14.91 feet;
 thence bearing S 78-8-30.255 W a distance of 17.38 feet;
 thence bearing S 47-27-32.814 W a distance of 13.99 feet;
 thence bearing S 48-30-58.664 W a distance of 26.90 feet;
 thence bearing S 6-52-33.389 W a distance of 6.11 feet;
 thence bearing S 87-51-48.045 W a distance of 23.31 feet;
 thence bearing S 70-49-13.924 W a distance of 20.56 feet;
 thence bearing N 74-59-34.373 W a distance of 17.65 feet;
 thence bearing S 13-57-8.837 W a distance of 14.93 feet;
 thence bearing S 83-50-46.111 W a distance of 12.36 feet;
 thence bearing S 20-49-39.252 W a distance of 12.59 feet;
 thence bearing N 59-4-33.060 W a distance of 31.51 feet;
 thence bearing S 85-49-57.557 W a distance of 27.92 feet;
 thence bearing S 34-39-0.607 W a distance of 1.21 feet;
 thence bearing S 64-44-15.999 W a distance of 12.63 feet;
 thence bearing S 69-10-24.599 W a distance of 26.90 feet;
 thence bearing S 50-48-47.263 W a distance of 12.70 feet;
 thence bearing S 54-35-25.774 W a distance of 19.38 feet;
 thence bearing S 35-8-48.132 W a distance of 9.71 feet;
 thence bearing S 1-11-55.575 E a distance of 7.46 feet;
 thence bearing S 17-54-28.785 W a distance of 7.56 feet;
 thence bearing S 30-36-46.322 W a distance of 172.00 feet;
 thence bearing N 59-23-13.678 W a distance of 221.59 feet;
 thence along a curve to the RIGHT, having a radius of 321.50 feet, a delta angle of 31° 03' 31.53", and whose
 long chord bears N 43-51-27.914 W a distance of 172.15 feet;
 thence bearing N 28-19-42.151 W a distance of 11.43 feet;
 thence bearing N 16-40-17.850 E a distance of 4.66 feet;
 thence bearing N 61-40-17.849 E a distance of 19.54 feet;

thence along a curve to the LEFT, having a radius of 174.50 feet, a delta angle of $61^{\circ} 36' 49.98''$, and whose long chord bears N 30-51-52.858 E a distance of 178.74 feet;
 thence bearing N 0-3-27.866 E a distance of 58.11 feet;
 thence along a curve to the RIGHT, having a radius of 125.50 feet, a delta angle of $15^{\circ} 00' 00.00''$, and whose long chord bears N 7-33-27.866 E a distance of 32.76 feet;
 thence bearing N 15-3-27.866 E a distance of 100.25 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $90^{\circ} 00' 00.00''$, and whose long chord bears N 60-3-27.866 E a distance of 28.28 feet;
 thence bearing S 74-56-32.134 E a distance of 61.00 feet;
 thence along a curve to the LEFT, having a radius of 45.00 feet, a delta angle of $90^{\circ} 00' 00.00''$, and whose long chord bears N 60-3-27.866 E a distance of 63.64 feet;
 thence bearing N 15-3-27.866 E a distance of 288.61 feet;
 thence along a curve to the RIGHT, having a radius of 290.00 feet, a delta angle of $05^{\circ} 40' 48.91''$, and whose long chord bears N 17-53-52.319 E a distance of 28.74 feet;
 thence bearing N 20-44-16.771 E a distance of 322.68 feet;
 thence along a curve to the LEFT, having a radius of 50.00 feet, a delta angle of $86^{\circ} 55' 03.23''$, and whose long chord bears N 22-43-14.842 W a distance of 68.78 feet;
 thence bearing N 66-10-46.456 W a distance of 55.94 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $97^{\circ} 28' 42.12''$, and whose long chord bears N 17-26-25.396 W a distance of 30.07 feet;
 thence along a curve to the RIGHT, having a radius of 250.50 feet, a delta angle of $63^{\circ} 27' 04.03''$, and whose long chord bears N 63-1-27.678 E a distance of 263.45 feet;
 thence bearing N 4-44-59.691 E a distance of 54.00 feet;
 thence along a curve to the LEFT, having a radius of 304.50 feet, a delta angle of $65^{\circ} 37' 29.71''$, and whose long chord bears S 61-56-14.835 W a distance of 330.01 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $84^{\circ} 41' 43.57''$, and whose long chord bears S 71-28-21.761 W a distance of 26.95 feet;
 thence bearing N 66-10-46.456 W a distance of 43.15 feet;
 thence along a curve to the LEFT, having a radius of 43.00 feet, a delta angle of $93^{\circ} 04' 56.77''$, and whose long chord bears S 67-16-45.158 W a distance of 62.42 feet;
 thence bearing S 20-44-16.771 W a distance of 82.28 feet;
 thence along a curve to the RIGHT, having a radius of 23.00 feet, a delta angle of $83^{\circ} 19' 21.67''$, and whose long chord bears S 62-23-57.604 W a distance of 30.58 feet;
 thence bearing N 75-56-21.562 W a distance of 64.31 feet;
 thence along a curve to the LEFT, having a radius of 43.00 feet, a delta angle of $85^{\circ} 17' 58.16''$, and whose long chord bears S 61-24-39.355 W a distance of 58.27 feet;
 thence along a curve to the RIGHT, having a radius of 23.00 feet, a delta angle of $66^{\circ} 01' 05.64''$, and whose long chord bears S 51-46-13.095 W a distance of 25.06 feet;
 thence along a curve to the LEFT, having a radius of 43.00 feet, a delta angle of $63^{\circ} 42' 16.12''$, and whose long chord bears S 52-55-37.855 W a distance of 45.38 feet;
 thence bearing S 21-4-29.792 W a distance of 0.40 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $71^{\circ} 44' 33.38''$, and whose long chord bears S 56-56-46.484 W a distance of 23.44 feet;
 thence along a curve to the LEFT, having a radius of 323.50 feet, a delta angle of $03^{\circ} 23' 06.96''$, and whose long chord bears N 88-52-30.305 W a distance of 19.11 feet;
 thence bearing S 89-25-56.214 W a distance of 119.68 feet;
 thence bearing N 45-34-3.786 W a distance of 8.49 feet;
 thence bearing S 89-25-56.214 W a distance of 124.86 feet;
 thence along a curve to the RIGHT, having a radius of 270.50 feet, a delta angle of $20^{\circ} 58' 09.77''$, and whose long chord bears N 80-4-58.901 W a distance of 98.45 feet;
 thence bearing N 69-35-54.016 W a distance of 32.16 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $89^{\circ} 10' 52.51''$, and whose long chord bears N 25-0-27.759 W a distance of 28.08 feet;

Said boundary is subject to City of Rock Hill roadway rights-of-way, including portions of Dunkins Ferry Road and Terrace Park, and associated utility easements including storm, water, sewer, and electric.

BEING a portion of the same property conveyed to Greens of Rock Hill, LLC by Deed dated October 7, 2005, and recorded October 18, 2005 in the Register of Deeds Office for York County in Deed Book 7503 at Page 10.

TMS: portion of 662-07-01-094

PK 12065 P80-023

000093

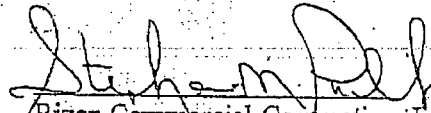
Appendix000143

EXHIBIT "B"

The undersigned hereby certifies that the amount due Rizon, after giving credit for all payments is \$295,591.01.

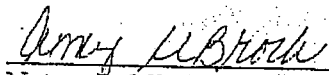
Total

\$295,591.01


Rizon Commercial Contracting, Inc.
By: Vice President

SWORN TO BEFORE ME this 29 day

Of March, 2012



Notary Public for South Carolina

My Commission Expires: 6-7-2017

000094

Appendix000144

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Rizon Commercial Contracting, Inc.,)
Road Machinery & Supplies, Inc.,)
Claimants,)

UNDERTAKING TO SECURE
RELEASE OF MECHANIC'S LIENS

v.)

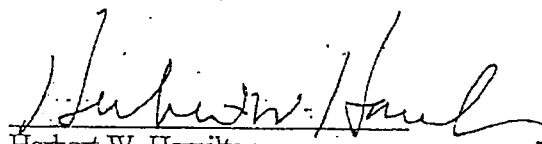
The Greens of Rock Hill, LLC;)
GRH 2011, LLC,)
Principals.)

DR VOL 223, Pg. 125-134
DR VOL 221, Pg. 251-260
DR VOL 221, Pg. 261-266
DR VOL 218, Pg. 77-83
DR VOL 219 Pg. 278-287
Notice dated March 14, 2012
(Recording information not available)

The Greens of Rock Hill, LLC and GRH 2011, LLC, Principals herein, hereby file this Undertaking in the amount of \$394,121.35 which constitutes 1 1/3 of the total amount of the claims filed by Lien Claimants on property described in Exhibit A, attached hereto. In the event of judgment for the Lien Claimants in a suit to foreclose the referenced mechanic's liens, such judgment shall be paid out of the Surety Bond attached hereto as Exhibit B as security for this Undertaking. Unless suit for enforcement of the lien is commenced as required by §29-5-120 of the South Carolina Code, this Undertaking shall be null and void and the Surety Bond shall be released from the lien.

Upon filing of this Undertaking and Surety Bond, the liens on the property described in the Mechanic's Liens identified in Exhibit A are discharged and the Surety Bond substituted in place of the liens as security for the amount claimed.

April 27, 2012



Herbert W. Hamilton

Tracy T. Vann

HAMILTON MARTENS & BALLOU, LLC

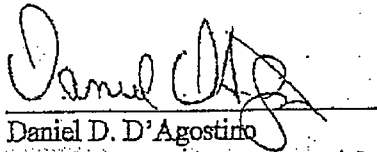
P.O. Box 10940

Rock Hill, South Carolina 29731

(803) 329-7672

ATTORNEYS FOR PRINCIPAL

April 29, 2012



Daniel D. D'Agostino
Attorney for Rizon Commercial Contracting, Inc.
D'Agostino & D'Agostino
P.O. Box 1199
York, SC 29745
(803-628-7990)

MAY
April 8, 2012

Road Machinery & Equipment Company

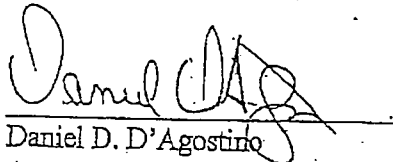
By: 

Thomas E. McKeon
Its: District Credit Manager
Claimant

THOMAS J. BURKE

PUMMEZ DEMOLITION &
CONCRETE RECYCLING, LLC

April 29, 2012



Daniel D. D'Agostino
Attorney for Rizon Commercial Contracting, Inc.
D'Agostino & D'Agostino
P.O. Box 1199
York, SC 29745
(803-628-7990)

Road Machinery & Equipment Company

April _____, 2012

By: _____
Thomas E. McKeon
Its: District Credit Manager
Claimant

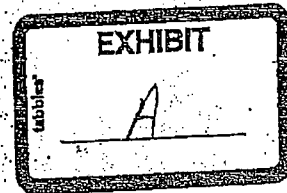


EXHIBIT "A"

TMS: 662-07-01-105

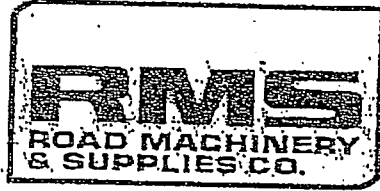
All that certain piece, parcel or tract of land lying, being and situate in the City of Rock Hill, County of York, State of South Carolina, and being shown and designated as "Tract B" containing 5.827 acres, more or less, on Subdivision Survey for Greens of Rock Hill, LLC, prepared by Kent Cooper Hudson, PLS #27451, dated November 30, 2010, recorded December 7, 2010, in Plat Book E-70 at Page 4, Office of the Clerk of Court for York County, South Carolina. Reference to said plat is made for a more complete and accurate description.

Being a portion of property conveyed by Celanese Acetate LLC to Greens of Rock Hill LLC by deed recorded October 18, 2005, in Book 7503 at Page 99.

Instrument: 201290047380 OR Vol Page
233 127

0000398

Appendix000148



201290046880
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
03-20-2012 At 10:51 am.
NECH LIEN 12.00
OR Vol 221 Page 261 - 266

RE:
Register of Deeds
2 South Congress St.
York, SC. 29745

Date: March 8, 2012

Before me, the undersigned authority, personally appeared Thomas McKeon, who after being duly sworn deposes and says that regarding the job known as: Concrete Crushing, Brakefield Event Venue Parking lot, located at Brakefield Dr (2.68) Event Venue, Rock Hill, SC. the following is true:

Materials Furnished: Rental Equipment- KPI Impactor, FT 4240

Materials to be Furnished: DPI Impactor, FT 4240

Labor or Services Performed: Rental Equipment

Labor or Services to be Performed: Rental Equipment

Amount Paid on Account to Date: \$00.00

Amount Still Owing as of 03/07/2012: \$149,237.39

Amount to Become Due: NA

State of MN.
County of Scott

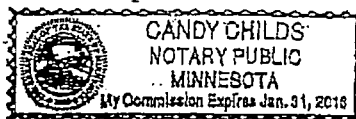
Road Machinery & Equipment Co.

BY: Thomas E. McKeon
Printed Name: Tom McKeon District Credit Mgr

Sworn to and subscribed before me by Thomas E. McKeon who is personally known and who did take an oath this _____

Instrument
201290046880 OR Vol Page
221 261

Candy Childs
Notary Public
My Commission Expires:



000099

Appendix000149



201290045783
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
03-05-2012 At 11:09 am.
RECH LIEN 13.00
OR Vol 218 Page 77 - 83

Register of Deeds
2 South Congress St.
York, SC 29745

Date: February 27, 2012

Before me, the undersigned authority, personally appeared Thomas McKeon, who after being duly sworn deposes and says that regarding the job known as: Concrete Crushing, Celriver Services/Riverwalk, located at 2850 Cherry Road, Rock Hill, SC 29730, the following is true:

Materials Furnished: Rental Equipment- KPI Impactor, FT 4240

Materials to be Furnished: DPI Impactor, FT 4240

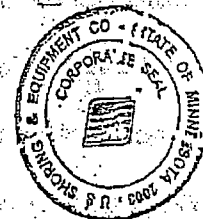
Labor or Services Performed: Rental Equipment

Labor or Services to be Performed: Rental Equipment

Amount Paid on Account to Date: \$110,000.00

Amount Still Owing as of 2/27/12: \$149,237.39

Amount to Become Due: NA



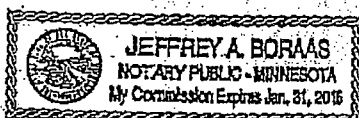
State of:
County of:

Road Machinery & Equipment Co.

BY:

Thomas E. McKeon
Printed Name: Tom McKeon District Credit Mgr

Sworn to and subscribed before me by Thomas E. McKeon who is personally known and who did take an oath this 2/27/12



Jeffrey A. Boraas
Notary Public
My Commission Expires:

Instrument
201290045783 OR
Vol 218 Page 77

000100

Appendix000150



RE:
Register of Deeds
2 South Congress St.
York, SC 29745

Date: March 7, 2012

201290046282
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
01-09-2012 At 09:49 AM
REC'D LIER 16.00
OR Vol 219 Page 278 - 287

Before me, the undersigned authority, personally appeared Thomas McKeon, who after being duly sworn deposes and says that regarding the job known as: Concrete Crushing, Riverwalk/Gloriana Veladrome, located at 1000 Riverwalk Pkwy, Rock Hill, SC, the following is true:

Materials Furnished: Rental Equipment- KPI Impactor, FT 4240

Materials to be Furnished: DPI Impactor, FT 4240

Labor or Services Performed: Rental Equipment

Labor or Services to be Performed: Rental Equipment

Amount Paid on Account to Date: \$00.00

Amount Still Owed as of 03/07/2012: \$149,237.39

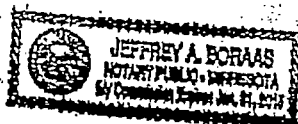
Amount to Become Due: NA

State of
County of

Road Machinery & Equipment Co.

BY: Thomas E. McKeon
Printed Name: Tom McKeon District Credit Mgr

Sworn to and subscribed before me by Thomas E. McKeon who is personally known and who did take an oath this _____



Jeffrey A. Boraas
Notary Public
My Commission Expires:

Instrument
201290046282 OR Vol Page
219 278

000101

Appendix000151



20129004879
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
03-20-2012 At 10:51 am.
NECH LIEN 18.00
DR-Vol 221 Page 251 - 280

RE:
Register of Deeds
2 South Congress St.
York, SC. 29745

Date: March 14, 2012

Before me, the undersigned authority, personally appeared Thomas McKeon, who after being duly sworn deposes and says that regarding the job known as: Concrete Crushing, Various fill for roads, sidewalks, parking lots, on 32.19 AC/ Lot 3 at 2850 Cherry Road, Rock Hill, SC, the following is true:

Materials Furnished: Rental Equipment- KPI Impactor, FT 4240

Materials to be Furnished: DPI Impactor, FT 4240:

Labor or Services Performed: Rental Equipment

Labor or Services to be Performed: Rental Equipment

Amount Paid on Account to Date: \$00.00

Amount Still Owing as of 03/07/2012: \$149,237.39

Amount to Become Due: NA

State of: *SC*
County of: *York*

Road Machinery & Equipment Co.

BY: *Thomas E. McKeon*

Printed Name: Tom McKeon District Credit Mgr

Sworn to and subscribed before me by *Thomas E. McKeon* who is personally known and who did take an oath this *14th* day of *March* 2012.

Vol. Page
221 251

Candy Childs
Notary Public

My Commission Expires



000102 000181

Appendix000152



March 14, 2012
Thomas McKeon
US Shoring & Equipment
5633 W Hwy. 13
Savage, MN. 55378

Register of Deeds
2 South Congress St.
York, SC 29745

Overnight Mail

GRH 2001 LLC.
2850 Cherry Road
Rock Hill, SC 29730

Owner

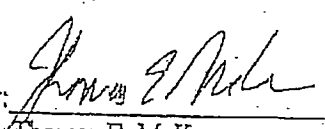
RE: RiverWalk-Celriver Project

Register of Deeds,

Between September 22, 2011 and January 01/06/12 we supplied rental equipment to Rizon Commercial Contracting, for the improvement of the River Walk/Celriver project, located at 2850 Cherry Road, Rock Hill, SC. To date we have not been paid for the remaining \$149,237.39 due for the months of September- December, 2011.

In order to protect our interests we are requesting a mechanic's lien be placed against the improved property as described in the York County Property report as parcel number 6620701108 as located in Deed book 12065, page 17. The owner of the property is, GRH 2011 LLC, located at 2850 Cherry Road, Rock Hill, South Carolina, 29730.

The amount of the claim of lien will be \$149,237.39, as detailed in the attached sworn statement of account.

By: 
Thomas E. McKeon

Seal



000103

Appendix000153

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Elzon Commercial Contracting, Inc.,

Plaintiff

City of Rock Hill, The Greens of Rock Hill, LLC,
GREENHILL, LLC, Celriver Services, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

201290037380

Filed for Record in

YORK COUNTY, SC

DAVID HAMILTON, CLERK OF COURTS

03:50:2012 AT 03:57 on

HEGH LIEN 15:00

MECHANIC'S LIEN PAGE 125 of 134

Robert WM Phillips, General Contractor,
License Number C103590

NOTICE IS HEREBY GIVEN that the Defendant Celriver Services, LLC, entered into an agreement with Plaintiff for certain labor and materials on property owned by Defendants located in York County, South Carolina. The labor and materials were performed on the below described property. The description of said property is located in Deed Book 12065, Page 17; Tax Map # 662-07-01-094; Deed Book 11283, Page 0183; Tax Map #662-07-01-105; Deed Book 10176, Page 0027; Tax Map #663-00-00-080, in the Office of the Clerk of Court of York County, South Carolina. A description of the premises is also attached as Exhibit "A". The work done by the Plaintiff was done under contract with the Defendant Celriver Services, LLC, and all work was performed on or for the Defendants' property. The labor and materials provided by Plaintiff was with the express knowledge, consent, acquiescence, and request of Defendants.

Ninety days have not elapsed since the completion of said work.

That the reasonable price of such labor, materials, so performed or, so furnished was and is the sum of \$295,591.01 (a statement of accounts is attached as Exhibit "B" and is incorporated by reference herein).

Plaintiff, after deducting all the just credits and offsets, now claims mechanic's lien in the amount of \$295,591.01 on the described real property owned by the Defendants, attached as Exhibit "A", and on all buildings and improvements thereon, under the ownership and/or control

Instr. Dwnr. Vol. Page
201290037380 223 125

223 / 125

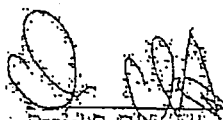
000104

Appendix000154

of the Defendant, plus attorney's fees and costs of this action as provided by South Carolina
Code Annotated, Section 29-5-20 as amended.

D'AGOSTINO LAW FIRM

March 18, 2014
York, SC


Daniel D. D'Agostino, Esquire
D'Agostino & D'Agostino
P.O. Box 1198
25 W. Liberty Street
York, SC 29745
(803) 628-5509
(803) 628-7980

Enclosure Del. Fees
20140047380 DR 233 P28

000105

Appendix000155

20140047380

EXHIBIT "A"

TMS: 662-07-01-103

All that certain piece, parcel or tract of land lying, being and situate in the City of Rock Hill, County of York, State of South Carolina, and being shown and designated as "Tract B" containing 5.827 acres, more or less, on Subdivision Survey for Greens of Rock Hill, LLC, prepared by Kent Cooper Hudson, P.L.S. #27451, dated November 10, 2010, recorded December 7, 2010, in Plat Book 5-70 at Page 4, Office of the Clerk of Court for York County, South Carolina. Reference to said plat is made for a more complete and accurate description.

Being a portion of property conveyed by Celanese Acetate LLC to Greens of Rock Hill LLC by deed recorded October 13, 2005, in Book 7503 at Page 99.

Instrument 20120017586 dtc Vol 223 Page 127

000106

Appendix 000156

EXHIBIT "A"

TMS: 562-07-01-105

All that certain piece, parcel or tract of land lying, being and situate in the City of Rock Hill, County of York, State of South Carolina, and being shown and designated as "Tract B" containing 5.827 acres, more or less, on Subdivision Survey for Greens of Rock Hill, LLC, prepared by Kent Cooper Hudson, PLS #27451, dated November 30, 2010, recorded December 7, 2010, in Plat Book B-70 at Page 4, Office of the Clerk of Court for York County, South Carolina. Reference to said plat is made for a more complete and accurate description.

Being a portion of property conveyed by Celanese Acetate LLC to Greens of Rock Hill LLC by deed recorded October 18, 2005, in Book 7301 at Page 99.

Instrument Vol Page
20120042380 238 127

000107

Appendix000157

Exhibit A2

ALL that certain piece, parcel or tract of land situate, lying and being in York County, South Carolina, being shown and designated as "Tract B A Portion of Tax Map # 663-00-00-080 Zoned ID: 4.00 Acres +/- Crds" on a plat thereof entitled "Boundary and Recombination Survey For Greens of Rock Hill LLC" prepared by B. Burnett Jenkins, Pittman Professional Land Surveying surveyed April 15, 2008 and recorded in the Office of the Clerk of Court for York County in Plat Book _____ at Page _____; said tract having such size, shape, bearings, boundaries and dimensions as are shown on said plat.

BEING a portion of the property conveyed by Colanese Advanced Materials, Inc. to RPI Performance Products, Inc. by Deed dated May 6, 2003 recorded May 10, 2003 in the office of the Clerk of Court for York County in Record Book 7076 at Page 177.

Instrument Vol Page
2008-2200-7380 DR 223 122

BR10175 PRO001

1000108

Appendix000158

Exhibit A 3

All that certain piece, parcel or lot of land, lying and being in York County, South Carolina, being located and bounded by US-21 to the north, Catfish River to the east and Solriver Road and Yorkville Southern Railway tracks to the south, comprising 47.26 acres and described herein as G.G. Textile Mill Credit Property of the Riverways Development, by Order of Rock Hill, S.C. and having the following metes and bounds to-wit:

Parcel B3

Starting from the intersection of the line of the old road and the line of the old road, bearing S 16° 5' 34" W a distance of 114.07 feet; thence along a curve to the RIGHT, having a radius of 13.00 feet, a deflection angle of 84° 01' 21.03", and whose long chord bears N 25° 13' 52.29" E a distance of 17.10 feet; thence bearing N 67° 13' 35.31" E a distance of 1.82 feet; thence along a curve to the LEFT, having a radius of 13.00 feet, a deflection angle of 29° 59' 34.05", and whose long chord bears N 32° 16' 28.91" E a distance of 39.43 feet; thence bearing N 47° 47' 21.70" E a distance of 33.38 feet; thence along a curve to the LEFT, having a radius of 13.00 feet, a deflection angle of 30° 33' 52.25", and whose long chord bears N 21° 54' 24.05" E a distance of 50.91 feet; thence along a curve to the RIGHT, having a radius of 13.00 feet, a deflection angle of 11° 11' 03.83", and whose long chord bears N 7° 52' 59.91" E a distance of 20.08 feet; thence bearing S 78° 11' 26.76" E a distance of 116.27 feet; thence bearing S 73° 04' 45.70" E a distance of 66.60 feet; thence bearing S 68° 34' 22.61" E a distance of 24.76 feet; thence along a curve to the LEFT, having a radius of 13.00 feet, a deflection angle of 11° 36' 43.13", and whose long chord bears S 42° 14' 22.52" E a distance of 23.04 feet; thence bearing N 32° 33' 41.40" W a distance of 20.37 feet; thence bearing N 26° 37' 40.47" W a distance of 23.21 feet; thence bearing N 8° 24' 55.10" E a distance of 35.34 feet; thence bearing N 17° 55' 47.19" E a distance of 11.33 feet; thence bearing N 35° 34' 15.21" W a distance of 1.67 feet; thence bearing N 122° 11' 24.82" W a distance of 16.11 feet; thence bearing N 16° 28' 45.03" E a distance of 7.22 feet; thence bearing N 1° 54' 49.61" E a distance of 12.78 feet; thence bearing N 45° 47' 20.04" E a distance of 275.85 feet; thence bearing N 3° 56' 45.94" W a distance of 115.61 feet; thence bearing N 34° 16' 13.39" E a distance of 79.38 feet; thence bearing N 29° 48' 10.82" E a distance of 213.87 feet; thence bearing S 30° 43' 59.53" E a distance of 337.98 feet; thence along a curve to the LEFT, having a radius of 573.67 feet, a deflection angle of 63° 17' 42.91", and whose long chord bears S 3° 16' 24.76" E a distance of 36.29 feet; thence along a curve to the LEFT, having a radius of 121.09 feet, a deflection angle of 24° 17' 54.62", and whose long chord bears S 19° 06' 29.44" E a distance of 51.32 feet; thence along a curve to the LEFT, having a radius of 140.57 feet, a deflection angle of 29° 26' 48.93", and whose long chord bears S 35° 52' 25.44" E a distance of 12.44 feet; thence bearing S 67° 06' 24.06" E a distance of 71.32 feet; thence bearing S 5° 24' 29.61" E a distance of 131.34 feet; thence bearing S 27° 2' 52.36" W a distance of 200.66 feet; thence bearing S 41° 28' 36.34" E a distance of 118.16 feet; thence along a curve to the RIGHT, having a radius of 30.00 feet, a deflection angle of 102° 12' 55.47", and whose long chord bears S 4° 40' 21.63" W a distance of 293.41 feet.

Instrument 2012004280 DE 401 Page 129

EX 12065 100.019

000109

EXHIBIT "B"

The undersigned hereby certifies that the amount due Rizon, after giving credit for all payments is \$295,591.01.

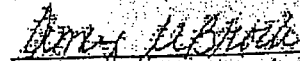
Total

\$295,591.01


Stephen D. Del
Rizon Commercial Contracting, Inc.
By: 

SWORN TO BEFORE ME this 27 day

of March, 2012


Notary Public for South Carolina
My Commission Expires 6-10-2017

Instrument
20120047380 DE

Vol. Page
222 434

000110

Appendix000160

ARIZ

EXHIBIT

tabbier

B

TRANSFER OF LIEN BOND
Pursuant to §713.24, F.S.

WE, The Greens of Rock Hill, LLC as Principal, and Lexon Insurance Company (insert name of surety), as Surety, are bound unto Rizon Commercial Contracting, Inc. (insert name of lienor) and Road Machinery Supply, Inc. ("Lienor"), as Obligees, in the sum of \$ 394,121.35 (insert statutory bond amount), for the payment of which we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

WHEREAS, Lienor has recorded a Claim of Lien in Book SEE ATTACHED, Page of the office of the Clerk of Court of York City, SC, in the amount of \$ 394,121.35 (insert face amount of lien filed by Lienor), against real property owned by The Greens of Rock Hill, LLC and GRE 2011 (insert name of owner of lien property), who desires to transfer the Claim of Lien from said real property to this bond.

THE CONDITION OF THIS BOND, is that if the above Principal shall pay any judgment or decree which may be rendered for the satisfaction of the lien for which the Claim of Lien was recorded, then this bond is void, otherwise it remains in force.

DATED: 4/25/2012

BOND No. 1074316

(Name of Surety) Lexon Insurance Company

By: Anthony G. Balzano, Attorney-in-Fact
Anthony G. Balzano

[Signature]

Principal The Greens of Rock Hill, LLC

APPROVED BY ME ON THIS
____ DAY OF _____ 2012

(Clerk)(Deputy Clerk)

POWER OF ATTORNEY

LX-107834

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Anthony George Balzano, Deborah Mary Roth, Jacqueline Demeter,

Cheryl L. Beaird *****

its true and lawful Attorney(s)-in-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-in-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$2,500,000.00, Two-million-five hundred thousand dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-in-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-in-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile, to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.



BY

LEXON INSURANCE COMPANY

David E. Campbell
President

ACKNOWLEDGEMENT

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who being duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.

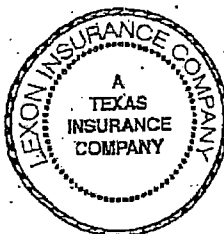
"OFFICIAL SEAL"
MAUREEN K. AYE
Notary Public, State of Illinois
My Commission Expires 09/21/13

Maureen K. Aye
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Woodridge, Illinois this 25th Day of April, 20 12.



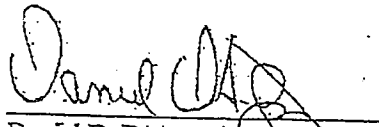
000112

Phillip G. Lauer
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

Appendix 000162

April 29 2012



Daniel D. D'Agostino
Attorney for Rizon Commercial Contracting, Inc.
D'Agostino & D'Agostino
P.O. Box 1199
York, SC 29745
(803-628-7990)

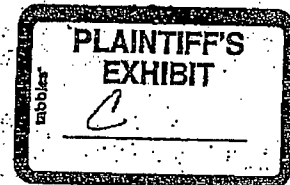
MAY 8 2012

Road Machinery & Equipment Company

By: 

Thomas H. McKeon
Its: District Credit Manager
Claimant
THOMAS J. BURKE
PUNNETZ DEMOLITION &
CONCRETE RECYCLING, LLC

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. 2098325

AIA Document A312

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Simon & Watson Construction, Inc.
1223 Quarry Overlook Drive *ste 101*
Fort Mill, SC 29715-8904

OWNER (Name and Address):

The Greens of Rock Hill, LLC
2850 Cherry Road
Rock Hill, SC 29730

SURETY (Name and Principal Place of Business):

North American Specialty Insurance Company
650 Elm Street
Manchester, NH 03101

CONSTRUCTION CONTRACT

Date: June 2, 2011

Amount: Two Million Three Hundred Eighty Five Thousand Nine Hundred Eighty Six Dollars and 73/100 \$2,385,986.73

Description (Name and Location): Velodrome Finish Line Building and Landscaping at Riverwalk, Rock Hill, SC

BOND

Date (Not earlier than Construction Contract Date):

June 2, 2011

Amount: Two Million Three Hundred Eighty Five Thousand Nine Hundred Eighty Six Dollars and 73/100 \$2,385,986.73

Modifications to this Bond:

☐ None

☒ See Page 3

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

Simon & Watson Construction, Inc.

Signature:

Name and Title:

J. Daniel Watson Jr.
President

(Any additional signatures appear on page 3)

SURETY

Company:

(Corporate Seal)

North American Specialty Insurance Company

Signature:

Name and Title:

Tammy M. Laub
Attorney-in-Fact

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

Knauft Insurance Agency, Inc.
1001 Morehead Square Drive, Suite 400
Charlotte, NC 28203
704-375-8000

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):



1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

SEE ATTACHED DUAL OBLIGEE RIDER

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title: _____

Address: _____

Signature: _____

Name and Title: _____

Address: _____

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. 2098326

AIA Document A312

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Simon & Watson Construction, Inc.

1223 Quarry Overlook Drive *Ste 101*

Fort Mill, SC 29715-8904

OWNER (Name and Address):

The Greens of Rock Hill, LLC

2850 Cherry Road

Rock Hill, SC 29730

CONSTRUCTION CONTRACT

Date: June 2, 2011

Amount: Two Million Three Hundred Eighty Five Thousand Nine Hundred Eighty Six Dollars and 73/100 \$2,385,986.73

Description (Name and Location): Velodrome Finish Line Building and Landscaping at Riverwalk, Rock Hill, SC

BOND

Date (Not earlier than Construction Contract Date): June 2, 2011

Amount: Two Million Three Hundred Eighty Five Thousand Nine Hundred Eighty Six Dollars and 73/100 \$2,385,986.73

Modifications to this Bond:

☐ None

☒ See Page 6

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

Simon & Watson Construction, Inc.

Signature:

Name and Title:

J. Daniel Watson, Jr.
J. Daniel Watson, Jr.
President

(Any additional signatures appear on page 6)

SURETY

Company:

(Corporate Seal)

North American Specialty Insurance Company

Signature:

Name and Title:

Tammy M. Laub
Tammy M. Laub
Attorney-in-Fact

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

Knauff Insurance Agency, Inc.

1001 Morehead Square Drive, Suite 400

Charlotte, NC 28203

704-375-8000

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):



000117

Appendix000167

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnities and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly, and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 60 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

6.3 The surety's failure to discharge its obligations under this Section 6 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a claim. However, if the Surety fails to discharge its obligations under this Section 6, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs to recover any sums found to be due and owing to the Claimant.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone

service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

SEE ATTACHED DUAL OBLIGEE RIDER

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company:

(Corporate Seal)

SURETY
Company:

(Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

Signature: _____
Name and Title: _____
Address: _____

**NORTH AMERICAN
SPECIALTY INSURANCE
COMPANY**

650 Elm Street
Manchester, New Hampshire, 03101

Dual Obligor Rider

TO BE ATTACHED TO AND FORM PART OF Performance and Payment Bond No. 2098325
dated concurrently with the execution of this Rider, issued by North American Specialty Insurance Company, a New
Hampshire Corporation, as Surety, on behalf of Simon & Watson Construction, Inc.
as Principal, and in favor of The
Greens of Rock Hill, LLC as Obligor.

IT IS HEREBY UNDERSTOOD AND AGREED that the above described bond is amended to include City of Rock
Hill, SC, the Rock Hill Cycling Facilities Corporation and Carolina First Community Development Corporation
as additional Obligor(s)

IT IS FURTHER UNDERSTOOD AND AGREED that the above described bond is amended to include the following
Paragraphs:

Notwithstanding anything contained herein to the contrary, the Principal and Surety shall not be liable under this
bond to the Obligors or either of them, unless the said Obligors, or either of them, shall make payment to the Principal, or to
the Surety in the case it arranges for completion of the Contract upon default of the Principal, strictly in accordance with the
terms of said contract as to payments, and shall perform all the other obligations to be performed under said contract and
bond at the time and in the manner therein set forth, provided however, that if said contract or bond shall be deemed
unenforceable for any reason, this Rider shall likewise be deemed unenforceable.

The aggregate liability of the surety hereunder to Obligors is limited to the penal sum above stated and Surety,
upon making payment hereunder, shall be subrogated to, and shall be entitled to an assignment of all rights of the payee,
either against principal or against any other party liable to the payee on the discharged obligation. Surety shall be liable for
only a single payment for each single breach or default.

Nothing herein contained shall be held to change, alter or vary the terms of the above described bond(s) except as
hereinbefore set forth.

SIGNED, SEALED AND DATED this 2nd day of June, 2011

DOB Uha
First Additional Obligor (City of Rock Hill, SC)

DOB Uha
Second Additional Obligor
(Rock Hill Cycling Facilities Corporation)

DOB Uha
Obligor (The Greens of Rock Hill, LLC)

Third Additional Obligor
(Carolina First Community Development Corporation)

By: J. Daniel Watson, Jr.
Principal (Simon & Watson Construction, Inc.)

NORTH AMERICAN SPECIALTY INSURANCE COMPANY

By: Tammy M. Laub
Tammy M. Laub, Attorney-in-Fact

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

Rizon Commercial Contracting, Inc.,

Plaintiff,

vs.

City of Rock Hill, The Greens of Rock Hill, LLC,
GRH 2011, LLC, Celriver Services, LLC.

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

201290047380

Filed for Record in
YORK COUNTY, SC

DAVID HAMILTON, CLERK OF COURTS

03-30-2012 At 09:59 am.

MECH LIEN 16.00

MECHANIC'S LIEN Page 125 - 134

Robert WM Phillips' General Contractor's
License Number G103590

NOTICE IS HEREBY GIVEN that the Defendant Celriver Services, LLC., entered into an agreement with Plaintiff for certain labor and materials on property owned by Defendants located in York County, South Carolina. The labor and materials were performed on the below described property. The description of said property is located in Deed Book 12065, Page 17, Tax Map # 662-07-01-094; Deed Book 11785, Page 0183, Tax Map #662-07-01-105; Deed Book 10176, Page 0027, Tax Map #663-00-00-080, in the Office of the Clerk of Court of York County, South Carolina. A description of the premises is also attached as Exhibit "A". The work done by the Plaintiff was done under contract with the Defendant Celriver Services, LLC. and all work was performed on or for the Defendants' property. The labor and materials provided by Plaintiff was with the express knowledge, consent, acquiescence, and request of Defendants.

Ninety days have not elapsed since the completion of said work.

That the reasonable price of such labor, materials, so performed or, so furnished was and is the sum of \$295,591.01 (a statement of accounts is attached as Exhibit "B" and is incorporated by reference herein).

Plaintiff, after deducting all the just credits and offsets, now claims mechanic's lien in the amount of \$295,591.01 on the described real property owned by the Defendants, attached as Exhibit "A", and on all buildings and improvements thereon, under the ownership and/or control

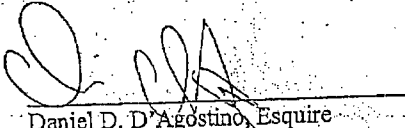
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of the Defendant, plus attorney's fees and costs of this action as provided by South Carolina Code Annotated, Section 29-5-20 as amended.

D'AGOSTINO LAW FIRM

March 28, 2012
York, SC


Daniel D. D'Agostino, Esquire
D'Agostino & D'Agostino
P.O. Box 1199
25 W. Liberty Street
York, SC 29745
(803) 628-6509
(803) 628-7990

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EXHIBIT "A" 1

TMS: 662-07-01-105

All that certain piece, parcel or tract of land lying, being and situate in the City of Rock Hill, County of York, State of South Carolina, and being shown and designated as "Tract B" containing 5.827 acres, more or less, on Subdivision Survey for Greens of Rock Hill, LLC, prepared by Kent Cooper Hudson, PLS #27451, dated November 30, 2010, recorded December 7, 2010, in Plat Book E-70 at Page 4, Office of the Clerk of Court for York County, South Carolina. Reference to said plat is made for a more complete and accurate description.

Being a portion of property conveyed by Celanese Acetate LLC to Greens of Rock Hill LLC by deed recorded October 18, 2005, in Book 7503 at Page 99.

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Exhibit A 2

ALL that certain piece, parcel or tract of land situate, lying and being in York County, South Carolina, being shown and designated as "Tract B A Portion of Tax Map # 663-00-00-080 Zoned ID 4.00 Acres +/- Crds." on a plat thereof entitled "Boundary and Recombination Survey For Greens of Rock Hill LLC" prepared by E. Burnett Jenkins, Pittman Professional Land Surveying surveyed April 15, 2008 and recorded in the Office of the Clerk of Court for York County in Plat Book _____, at Page _____; said tract having such size, shape, buttings, boundings and dimensions as are shown on said plat.

BEING a portion of the property conveyed by Celanese Advanced Materials, Inc. to PBI Performance Products, Inc. by Deed dated May 6, 2005 recorded May 10, 2005 in the office of the Clerk of Court for York County in Record Book 7076 at Page 177.

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BX 10176 P00031

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Exhibit A 3

All that certain piece, parcel or lot of land, lying and being in York County, South Carolina being located and bound by US-21 to the north, Catawba River to the east, and Celriver Road and Norfolk Southern Railroad tracks to the south, containing 47.26 acres, and described herein as SC Textile Mill Credit Property of the Riverwalk Development, by Greens of Rock Hill, LLC, and having the following metes and bounds to wit;

Parcel #3

Beginning at a point whose Northing is 1144938.3923 and whose Easting is 2007849.5617;
thence along a curve to the LEFT, having a radius of 385.50 feet, a delta angle of $17^{\circ} 01' 00.68''$, and whose
long chord bears N 8-16-54.861 W a distance of 114.07 feet;
thence along a curve to the RIGHT, having a radius of 13.00 feet, a delta angle of $84^{\circ} 01' 21.04''$, and whose
long chord bears N 25-13-15.929 E a distance of 17.40 feet;
thence bearing N 67-13-55.312 E a distance of 18.61 feet;
thence along a curve to the LEFT, having a radius of 153.50 feet, a delta angle of $29^{\circ} 59' 34.05''$, and whose
long chord bears N 52-14-8.289 E a distance of 79.44 feet;
thence bearing N 37-14-21.266 E a distance of 163.38 feet;
thence along a curve to the LEFT, having a radius of 1028.50 feet, a delta angle of $30^{\circ} 39' 54.42''$, and whose
long chord bears N 21-54-24.056 E a distance of 543.91 feet;
thence along a curve to the RIGHT, having a radius of 971.50 feet, a delta angle of $01^{\circ} 11' 03.83''$, and whose
long chord bears N 7-9-58.759 E a distance of 20.08 feet;
thence bearing S 78-31-26.766 E a distance of 316.27 feet;
thence bearing S 73-0-45.704 E a distance of 60.00 feet;
thence bearing S 16-59-14.296 W a distance of 25.76 feet;
thence along a curve to the LEFT, having a radius of 137.50 feet, a delta angle of $131^{\circ} 36' 43.13''$, and whose
long chord bears S 48-49-7.252 E a distance of 250.84 feet;
thence bearing N 52-37-41.206 W a distance of 20.37 feet;
thence bearing N 26-37-40.475 W a distance of 32.83 feet;
thence bearing N 8-24-35.510 E a distance of 35.94 feet;
thence bearing N 17-5-8.477 E a distance of 14.58 feet;
thence bearing N 55-3-15.152 W a distance of 4.47 feet;
thence bearing N 32-31-26.993 W a distance of 18.11 feet;
thence bearing N 16-28-4.508 E a distance of 7.22 feet;
thence bearing N 1-0-40.496 E a distance of 132.78 feet;
thence bearing N 45-47-20.045 E a distance of 225.85 feet;
thence bearing N 3-56-45.948 W a distance of 119.61 feet;
thence bearing N 54-16-33.596 E a distance of 79.58 feet;
thence bearing N 89-45-10.282 E a distance of 203.97 feet;
thence bearing S 50-1-59.959 E a distance of 337.98 feet;
thence along a curve to the LEFT, having a radius of 573.07 feet, a delta angle of $03^{\circ} 37' 42.91''$, and whose
long chord bears S 5-16-24.765 E a distance of 36.29 feet;
thence along a curve to the LEFT, having a radius of 123.19 feet, a delta angle of $24^{\circ} 19' 54.42''$, and whose
long chord bears S 19-6-29.449 E a distance of 51.92 feet;
thence along a curve to the LEFT, having a radius of 140.57 feet, a delta angle of $29^{\circ} 46' 46.93''$, and whose
long chord bears S 55-52-52.448 E a distance of 72.24 feet;
thence bearing S 67-56-24.065 E a distance of 31.92 feet;
thence bearing S 3-1-28.396 E a distance of 181.34 feet;
thence bearing S 87-2-22.956 W a distance of 200.66 feet;
thence bearing S 41-23-36.594 E a distance of 148.16 feet;
thence along a curve to the RIGHT, having a radius of 60.00 feet, a delta angle of $102^{\circ} 13' 56.47''$, and whose
long chord bears S 9-43-21.639 W a distance of 93.41 feet;

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thence bearing S 60-50-19.873 W a distance of 31.27 feet;
 thence along a curve to the LEFT, having a radius of 20.00 feet, a delta angle of 92° 08' 23.08", and whose
 long chord bears S 14-46-8.333 W a distance of 28.81 feet;
 thence along a curve to the RIGHT, having a radius of 174.51 feet, a delta angle of 73° 58' 06.31", and whose
 long chord bears S 5-41-5.728 W a distance of 209.97 feet;
 thence bearing S 42-40-14.663 W a distance of 132.11 feet;
 thence along a curve to the RIGHT, having a radius of 174.47 feet, a delta angle of 26° 16' 51.99", and whose
 long chord bears S 55-48-36.082 W a distance of 79.33 feet;
 thence along a curve to the LEFT, having a radius of 12.00 feet, a delta angle of 78° 24' 59.05", and whose
 long chord bears S 29-44-32.552 W a distance of 15.17 feet;
 thence bearing S 70-17-37.336 W a distance of 44.71 feet;
 thence along a curve to the LEFT, having a radius of 145.21 feet, a delta angle of 52° 14' 29.96", and whose
 long chord bears S 31-51-45.945 E a distance of 127.86 feet;
 thence bearing S 58-7-44.997 E a distance of 98.37 feet;
 thence bearing S 31-50-26.263 W a distance of 14.37 feet;
 thence bearing S 16-11-12.443 E a distance of 26.44 feet;
 thence bearing S 5-35-30.685 W a distance of 17.33 feet;
 thence bearing S 8-0-30.309 E a distance of 44.68 feet;
 thence bearing S 84-40-51.137 W a distance of 14.19 feet;
 thence bearing S 41-12-39.809 W a distance of 20.59 feet;
 thence bearing S 34-28-55.936 W a distance of 30.27 feet;
 thence bearing S 15-29-42.034 E a distance of 27.19 feet;
 thence bearing S 58-46-53.006 W a distance of 40.89 feet;
 thence bearing S 10-35-10.550 W a distance of 14.24 feet;
 thence bearing S 12-42-18.667 W a distance of 13.07 feet;
 thence bearing S 77-1-0.052 W a distance of 1.90 feet;
 thence bearing S 24-10-41.765 W a distance of 34.32 feet;
 thence bearing S 9-40-40.050 W a distance of 60.76 feet;
 thence bearing S 68-49-56.686 W a distance of 27.51 feet;
 thence bearing S 22-42-2.787 W a distance of 39.38 feet;
 thence bearing S 68-14-39.957 W a distance of 9.52 feet;
 thence bearing S 34-34-59.692 W a distance of 30.76 feet;
 thence bearing S 28-48-29.412 W a distance of 10.52 feet;
 thence bearing S 17-10-9.294 W a distance of 38.88 feet;
 thence bearing S 26-36-57.466 E a distance of 12.58 feet;
 thence bearing S 9-52-53.614 W a distance of 19.01 feet;
 thence bearing S 66-31-14.978 W a distance of 21.56 feet;
 thence bearing S 16-20-4.816 W a distance of 7.60 feet;
 thence bearing S 40-37-27.359 W a distance of 11.36 feet;
 thence bearing S 34-39-53.012 W a distance of 14.89 feet;
 thence bearing S 19-23-53.711 W a distance of 12.09 feet;
 thence bearing S 4-51-29.606 E a distance of 13.13 feet;
 thence bearing S 40-30-40.513 E a distance of 6.69 feet;
 thence bearing S 50-9-8.760 E a distance of 12.23 feet;
 thence bearing S 17-46-27.005 E a distance of 6.14 feet;
 thence bearing S 36-52-7.563 W a distance of 10.14 feet;
 thence bearing S 20-15-25.164 W a distance of 15.76 feet;
 thence bearing S 23-11-31.621 E a distance of 10.46 feet;
 thence bearing S 25-6-36.343 E a distance of 13.00 feet;
 thence bearing S 21-35-13.640 W a distance of 18.57 feet;
 thence bearing S 18-8-0.284 W a distance of 27.34 feet;
 thence bearing S 70-12-40.479 W a distance of 7.88 feet;
 thence bearing N 83-10-7.580 W a distance of 12.02 feet;

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thence bearing S 37-58-4.403 W a distance of 9.20 feet;
 thence bearing S 0-0-0.000 E a distance of 12.59 feet;
 thence bearing S 10-43-6.307 E a distance of 22.99 feet;
 thence bearing S 5-26-25.195 W a distance of 14.58 feet;
 thence bearing S 63-37-34.346 W a distance of 9.38 feet;
 thence bearing S 16-31-41.379 W a distance of 18.64 feet;
 thence bearing S 15-34-28.958 W a distance of 7.52 feet;
 thence bearing S 12-31-55.349 W a distance of 13.45 feet;
 thence bearing S 19-15-25.234 W a distance of 25.70 feet;
 thence bearing S 6-18-51.016 W a distance of 26.50 feet;
 thence bearing S 36-2-50.969 W a distance of 7.75 feet;
 thence bearing S 23-41-8.868 E a distance of 10.18 feet;
 thence bearing S 26-2-24.084 E a distance of 6.20 feet;
 thence bearing S 30-52-56.752 W a distance of 7.13 feet;
 thence bearing S 40-41-11.533 W a distance of 11.59 feet;
 thence bearing S 86-43-28.996 W a distance of 18.08 feet;
 thence bearing S 37-44-31.408 W a distance of 19.39 feet;
 thence bearing S 33-29-14.900 W a distance of 11.84 feet;
 thence bearing S 8-32-37.104 E a distance of 17.16 feet;
 thence bearing S 4-26-46.466 E a distance of 7.77 feet;
 thence bearing S 69-2-4.948 W a distance of 29.79 feet;
 thence bearing S 21-37-23.173 E a distance of 15.57 feet;
 thence bearing S 49-31-15.042 W a distance of 36.58 feet;
 thence bearing S 19-13-33.881 W a distance of 12.60 feet;
 thence bearing S 28-54-8.201 W a distance of 6.61 feet;
 thence bearing S 74-22-33.998 W a distance of 14.91 feet;
 thence bearing S 78-8-30.255 W a distance of 17.38 feet;
 thence bearing S 47-27-32.814 W a distance of 13.99 feet;
 thence bearing S 48-30-58.664 W a distance of 26.90 feet;
 thence bearing S 6-52-33.389 W a distance of 6.11 feet;
 thence bearing S 87-51-48.045 W a distance of 23.31 feet;
 thence bearing S 70-49-13.924 W a distance of 20.56 feet;
 thence bearing N 74-59-34.373 W a distance of 17.65 feet;
 thence bearing S 13-57-8.837 W a distance of 14.93 feet;
 thence bearing S 83-50-46.111 W a distance of 12.36 feet;
 thence bearing S 20-49-39.252 W a distance of 12.99 feet;
 thence bearing N 59-4-33.060 W a distance of 31.51 feet;
 thence bearing S 85-49-57.557 W a distance of 27.92 feet;
 thence bearing S 34-39-0.607 W a distance of 1.21 feet;
 thence bearing S 64-44-15.999 W a distance of 12.63 feet;
 thence bearing S 69-10-24.599 W a distance of 26.90 feet;
 thence bearing S 50-48-47.263 W a distance of 12.70 feet;
 thence bearing S 54-35-25.774 W a distance of 19.38 feet;
 thence bearing S 35-8-48.132 W a distance of 9.71 feet;
 thence bearing S 1-11-55.575 E a distance of 7.46 feet;
 thence bearing S 17-54-28.785 W a distance of 7.56 feet;
 thence bearing S 30-36-46.322 W a distance of 172.00 feet;
 thence bearing N 59-23-13.678 W a distance of 221.59 feet;
 thence along a curve to the RIGHT, having a radius of 321.50 feet, a delta angle of 31° 03' 31.53", and whose
 long chord bears N 43-51-27.914 W a distance of 172.15 feet;
 thence bearing N 28-19-42.151 W a distance of 11.43 feet;
 thence bearing N 16-40-17.850 E a distance of 4.66 feet;
 thence bearing N 61-40-17.849 E a distance of 19.54 feet;

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thence along a curve to the LEFT, having a radius of 174.50 feet, a delta angle of $61^{\circ} 36' 49.98''$, and whose long chord bears N 30-51-52.858 E a distance of 178.74 feet;
 thence bearing N 0-3-27.866 E a distance of 58.11 feet;
 thence along a curve to the RIGHT, having a radius of 125.50 feet, a delta angle of $15^{\circ} 00' 00.00''$, and whose long chord bears N 7-33-27.866 E a distance of 32.76 feet;
 thence bearing N 15-3-27.866 E a distance of 100.25 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $90^{\circ} 00' 00.00''$, and whose long chord bears N 60-3-27.866 E a distance of 28.28 feet;
 thence bearing S 74-56-32.134 E a distance of 61.00 feet;
 thence along a curve to the LEFT, having a radius of 45.00 feet, a delta angle of $90^{\circ} 00' 00.00''$, and whose long chord bears N 60-3-27.866 E a distance of 63.64 feet;
 thence bearing N 15-3-27.866 E a distance of 288.61 feet;
 thence along a curve to the RIGHT, having a radius of 290.00 feet, a delta angle of $05^{\circ} 40' 48.91''$, and whose long chord bears N 17-53-52.319 E a distance of 28.74 feet;
 thence bearing N 20-44-16.771 E a distance of 322.68 feet;
 thence along a curve to the LEFT, having a radius of 50.00 feet, a delta angle of $86^{\circ} 55' 03.23''$, and whose long chord bears N 22-43-14.842 W a distance of 68.78 feet;
 thence bearing N 66-10-46.456 W a distance of 55.94 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $97^{\circ} 28' 42.12''$, and whose long chord bears N 17-26-25.396 W a distance of 30.07 feet;
 thence along a curve to the RIGHT, having a radius of 250.50 feet, a delta angle of $63^{\circ} 27' 04.03''$, and whose long chord bears N 63-1-27.678 E a distance of 263.45 feet;
 thence bearing N 4-44-59.691 E a distance of 54.00 feet;
 thence along a curve to the LEFT, having a radius of 304.50 feet, a delta angle of $65^{\circ} 37' 29.71''$, and whose long chord bears S 61-56-14.835 W a distance of 330.01 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $84^{\circ} 41' 43.57''$, and whose long chord bears S 71-28-21.761 W a distance of 26.95 feet;
 thence bearing N 66-10-46.456 W a distance of 43.15 feet;
 thence along a curve to the LEFT, having a radius of 43.00 feet, a delta angle of $93^{\circ} 04' 56.77''$, and whose long chord bears S 67-16-45.158 W a distance of 62.42 feet;
 thence bearing S 20-44-16.771 W a distance of 82.28 feet;
 thence along a curve to the RIGHT, having a radius of 23.00 feet, a delta angle of $83^{\circ} 19' 21.67''$, and whose long chord bears S 62-23-57.604 W a distance of 30.58 feet;
 thence bearing N 75-56-21.562 W a distance of 64.31 feet;
 thence along a curve to the LEFT, having a radius of 43.00 feet, a delta angle of $85^{\circ} 17' 58.16''$, and whose long chord bears S 61-24-39.355 W a distance of 58.27 feet;
 thence along a curve to the RIGHT, having a radius of 23.00 feet, a delta angle of $66^{\circ} 01' 05.64''$, and whose long chord bears S 51-46-13.095 W a distance of 25.06 feet;
 thence along a curve to the LEFT, having a radius of 43.00 feet, a delta angle of $63^{\circ} 42' 16.12''$, and whose long chord bears S 52-55-37.855 W a distance of 45.38 feet;
 thence bearing S 21-4-29.792 W a distance of 0.40 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $71^{\circ} 44' 33.38''$, and whose long chord bears S 56-56-46.484 W a distance of 23.44 feet;
 thence along a curve to the LEFT, having a radius of 323.50 feet, a delta angle of $03^{\circ} 23' 06.96''$, and whose long chord bears N 88-52-30.305 W a distance of 19.11 feet;
 thence bearing S 89-25-56.214 W a distance of 119.68 feet;
 thence bearing N 45-34-3.786 W a distance of 8.49 feet;
 thence bearing S 89-25-56.214 W a distance of 124.86 feet;
 thence along a curve to the RIGHT, having a radius of 270.50 feet, a delta angle of $20^{\circ} 58' 09.77''$, and whose long chord bears N 80-4-58.901 W a distance of 98.45 feet;
 thence bearing N 69-35-54.016 W a distance of 32.16 feet;
 thence along a curve to the RIGHT, having a radius of 20.00 feet, a delta angle of $89^{\circ} 10' 52.51''$, and whose long chord bears N 25-0-27.759 W a distance of 28.08 feet;

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thence along a curve to the LEFT, having a radius of 390.00 feet, a delta angle of $16^{\circ} 14' 28.19''$, and whose long chord bears N 11-27-44.402 E a distance of 110.18 feet; thence bearing N 10-15-42.736 W a distance of 21.55 feet to the point of beginning and containing 47.26 acres.

Said boundary is subject to City of Rock Hill roadway rights-of-way, including portions of Dunkins Ferry Road and Terrace Park, and associated utility easements including storm, water, sewer, and electric.

BEING a portion of the same property conveyed to Greens of Rock Hill, LLC by Deed dated October 7, 2005, and recorded October 18, 2005 in the Register of Deeds Office for York County in Deed Book 7503 at Page 10.

TMS: portion of 662-07-01-094

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RK 12065 000023

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EXHIBIT "B"

The undersigned hereby certifies that the amount due Rizon, after giving credit for all payments is \$295,591.01.

Total

\$295,591.01

Stephen D. Hall
Rizon Commercial Contracting, Inc.
By: Vice President

SWORN TO BEFORE ME this 29 day
Of March, 2012

Amy L. Brock
Notary Public for South Carolina
My Commission Expires: 10-7-2017

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Appendix000180

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF YORK

2012-CP-46-01815

GREENS OF ROCK HILL, LLC,

Plaintiff,

-VS-

RIZON COMMERCIAL CONTRACTING,
INC.,

Defendant.

TRANSCRIPT OF RECORD

June 21, 2012
York, South Carolina

Ordered: October 20, 2012

Delivered: October 25, 2012

B E F O R E:

THE HONORABLE S. JACKSON KIMBALL, III, Presiding Judge.

A P P E A R A N C E S:

MR. HERB HAMILTON, Esquire
Attorney Appearing for the Plaintiff

MR. DANIEL D'AGOSTINO, Esquire
Attorney Appearing for the Defendants

Pamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

000181

Appendix000181

E X H I B I T S

Plaintiff's Exhibits:

Marked:

Received:

(None)

Defendants' Exhibits:

Marked:

Received:

(None)

Court's Exhibits:

Marked:

Received:

(None)

Page:

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Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

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(Off-the-Record Comments)

THE COURT: All right. Go ahead, Mr. Hamilton. I'm sorry. I panicked un -- unnecessarily.

MR. HAMILTON: Your Honor, for the record, I'm Herb Hamilton. We represent the -- the two Plaintiffs in this case, The Greens of Rock Hill, LLC, GRH 2011, LLC (phonetic).

These are two of the entities that own parcels of property at the River Walk (phonetic) development out on 21 by the river.

THE COURT: Okay.

MR. HAMILTON: This is an action pursuant to the authority that the Supreme Court addressed in the *Sea Pines vs. Kiawah Island* (phonetic) regarding the summary of consideration of a -- of mechanics liens and the ability of the Court to deal with mechanics liens that are not properly filed.

And this is an action to dismiss what, at the time of the filing of the pleading, was a mechanics lien.

The mechanics lien subsequently was bonded off and now it is an action on the bond. And what we're seeking is an order dismissing the claim -- the -- the bond based on the -- our argument that the mechanics lien is not proper in this case.

THE COURT: Uh-huh (affirmative).

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

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1 MR. HAMILTON: Now -- and I -- I think counsel had
2 some procedural issues, concerns about how to proceed.

3 MR. D'AGOSTINO: I do, Your Honor.

4 MR. HAMILTON: We -- we -- we ---

5 THE COURT: Well, do you think I need to hear those
6 first?

7 MR. HAMILTON: I think it might be worthwhile.

8 THE COURT: All right.

9 MR. HAMILTON: We -- we filed an affidavit to -- to
10 -- to support basically -- it's nothing more than an
11 verification of allegations of the pleadings.

12 THE COURT: Uh-huh (affirmative).

13 MR. HAMILTON: I don't think, in terms of the issues
14 before the Court that deals with propriety of this
15 mechanics lien, there's really that much of a dispute
16 about factually what occurred out there, what his client
17 did. And I think it's a legal issue of whether it falls
18 under the terms of a mechanics lien.

19 THE COURT: So the reason -- let me -- let me -- let
20 me get myself on the right -- on the right framework here.

21 This -- this was filed under the Sea Pines case,
22 under the authority of the Sea Pines case, because there
23 was as yet no suit brought to foreclose the mechanics
24 lien?

25 MR. D'AGOSTINO: Correct.

1 THE COURT: And -- and that's -- okay.

2 MR. HAMILTON: And that's why we're here. And now
3 counsel ---

4 THE COURT: Right.

5 MR. HAMILTON: Counsel has filed a counterclaim in
6 this action seeking to foreclose the mechanics lien. And
7 that's my understanding. And they filed a -- and for
8 procedural reasons and his reasons they filed a separate
9 lawsuit doing essentially the same thing.

10 But we'll -- we'll resolve that. The -- the issue
11 before the Court today is not going to make the dispute go
12 away. There is a dispute between my clients ---

13 THE COURT: I understand.

14 MR. HAMILTON: --- and his clients concerning the
15 amount of money that he is due. And that's going to --
16 that's going to remain.

17 Our contention is that the services he provided and
18 the work he did was not something that was subject to the
19 mechanics lien statute.

20 And we've provided affidavit in that regard. And
21 counsel has served on us an affidavit today that I think
22 essentially -- and we have some differences of opinion
23 about some details, but I don't think it differs in terms
24 of -- of what he's ---

25 MR. D'AGOSTINO: And I have not handed that up yet.

1 THE COURT: You have not.

2 MR. HAMILTON: The only significance is of the issue
3 before the Court today is we assumed that an affidavit was
4 the way to proceed.

5 Out of some concern, we have a witness here if we
6 need to have live testimony. But the Sea Pines case was
7 decided on affidavits and we assumed that affidavits were
8 the proper way to go.

9 THE COURT: Well let's -- let me hear from him about
10 the procedural problems if any.

11 MR. D'AGOSTINO: Your Honor, may it please the
12 Court? The action was commenced and served in time for my
13 response to the summons and complaint because that's the
14 way it was filed. It was filed as a -- let me get the
15 right one -- as a ---

16 THE COURT: Petition and motion.

17 MR. D'AGOSTINO: --- petition and motion to
18 discharge. But, then, you've got various -- then it's --
19 what it is, is first cause -- first, second, third causes
20 of action.

21 THE COURT: Right.

22 MR. D'AGOSTINO: It's an unverified petition. It's
23 an -- there's -- there's no evidence before the Court --
24 there was no evidence before the Court for the Court to
25 make any findings of fact or conclusions of law in order

1 to grant any type of relief.

2 THE COURT: I've got -- I've got affidavits attached
3 to what I have.

4 MR. D'AGOSTINO: You have not an affidavit, Your
5 Honor. You have got a copy of the contract.

6 THE COURT: I think I do.

7 MR. D'AGOSTINO: The copy I have only had a copy of
8 the contract and the payment bond. Now -- unless I'm
9 missing something, Your Honor. But there were no
10 affidavits. There is no verification to the petition.

11 THE COURT: Well, that is a true statement.

12 MR. D'AGOSTINO: And the only affidavit I've
13 received was faxed to me on Tuesday night. So, when I
14 talked to opposing counsel yesterday, this -- I became
15 concerned because I suddenly got an affidavit.

16 I did file my response, my responsive pleading, my
17 answer and counterclaim, and mine is verified. And I did
18 file and served that on Tuesday as well.

19 THE COURT: Well, let's back up a minute.

20 MR. D'AGOSTINO: Yes, sir.

21 THE COURT: Do you -- do you contend that the --
22 that a proceeding of this nature under the authority of
23 the Sea Pines/Kiawah case is improper?

24 MR. D'AGOSTINO: For the relief that they have
25 requested, yes, sir, Your Honor.

1 THE COURT: Why?

2 MR. D'AGOSTINO: Well, number one, no affidavits.
3 Nothing was served as far as evidence that could be --
4 that would require the Court to make any determination as
5 to whether what we filed as a mechanics lien was
6 appropriate.

7 Number two, the time for our filing at -- and
8 foreclosing upon a mechanics lien had not yet expired.

9 THE COURT: That doesn't -- that doesn't matter I
10 don't believe.

11 MR. D'AGOSTINO: Well, we have since filed our
12 mechanics -- we have since foreclosed upon the mechanics
13 lien. We did it in two separate actions;

14 As a counterclaim to this action because of the
15 property owners. But, because there are two other
16 entities, the City of Rock Hill and the seller (phonetic),
17 who are not parties to this lawsuit, we simultaneously
18 filed a separate lawsuit also seeking to foreclose upon
19 the bond.

20 So, as it relates to where we are with this, Your
21 Honor, the reason why I have procedural issues is --

22 THE COURT: You haven't answered my question yet.
23 Do you concede that -- that -- that proceeding under the
24 -- under the case, *Sea Pines/Kiawah* case, is a -- is an
25 appropriate method of dealing with a mechanics --

1 dismissal of a mechanics lien where there has been no
2 action filed?

3 MR. D'AGOSTINO: Where there had been no action
4 filed, yes, sir. But now we have an action filed.

5 THE COURT: Well, it wasn't at the time this
6 petition was filed.

7 MR. D'AGOSTINO: I understand, but the issues are
8 joined in ---

9 THE COURT: But sometimes you've got to get rid of
10 these things on an emergency basis.

11 MR. D'AGOSTINO: I understand that, Your Honor.
12 They bonded it off and there was just -- the problem was
13 there was a discussion going on about trying to address
14 these. But understand that.

15 That's why I went ahead and filed my counterclaim and
16 filed my ---

17 THE COURT: So, your objection is that -- that the
18 -- that the manner of proceeding doesn't conform to Sea
19 Pines because -- because there was no affidavit filed with
20 the petition?

21 MR. D'AGOSTINO: Yes, sir, Your Honor. There is no
22 way to -- for the Court to make findings of fact or
23 conclusions of law.

24 THE COURT: What about the affidavit you received
25 Tuesday?

1 MR. D'AGOSTINO: The affidavit I received Tuesday,
2 and the affidavit I've prepared for today in event the
3 Court went forward, would enable the Court to understand
4 our position and the -- both The Greens' and GRH of Rock
5 Hill's position, Your Honor.

6 THE COURT: Well, you ---

7 MR. D'AGOSTINO: I'll be glad to hand up my
8 affidavit.

9 THE COURT: Well, let me -- Mr. Hamilton, apparently
10 I am wrong. I -- I read the -- read the petition and went
11 through it and marked it up as if it were an affidavit.
12 And I do not have an affidavit. I can't find one in the
13 file.

14 MR. HAMILTON: And -- and it's not verified. And
15 there is no affidavit except for the one that we filed on
16 Tuesday.

17 THE COURT: Well, I don't have that one either.

18 MR. HAMILTON: Oh, okay. Well, we have that right
19 here.

20 (Documents handed up.)

21 THE COURT: Go off the record a minute.

22 (Off-the-Record Discussion)

23 THE COURT: Okay. Ready?

24 COURT REPORTER: Yes sir.

25 THE COURT: All right. Back on. The ---

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

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1 (Brief Pause)

2 THE COURT: Okay. So, the first question is
3 whether to go ahead with this hearing.

4 (Brief Pause)

5 THE COURT: Mr. Hamilton, what is your position
6 about that?

7 MR. HAMILTON: The -- the -- the affidavits, to my
8 knowledge there's no rule that addresses when the
9 affidavits have to be filed in terms of something like
10 this.

11 The -- the affidavits that were used in the Sea
12 Pines case, from reading the context of that case, where
13 not filed -- or they were filed and actually -- actually
14 the Court sent them back and asked them to file another
15 one to see if they could support their contention that
16 what they did qualified for an lien under the statute.
17 And he ruled it didn't.

18 But, so ---

19 THE COURT: I haven't read that case in a long
20 time.

21 MR. HAMILTON: I have it right here if you want it.

22 THE COURT: Let me see that right quick.

23 (Document handed up.)

24 (Brief pause while the Court reviews document.)

25 (Off-the-Record Comments)

1 THE COURT: Okay. Mr. D'Agostino, state precisely
2 what your objection is to this proceeding today.

3 MR. D'AGOSTINO: Your Honor, my objection number
4 one is there was no affidavit verification filed to show
5 that this Court needed or should be entertaining the
6 relief requested.

7 In Sea Pines they filed an affidavit requesting a
8 rule to show cause. Also they don't have a rule, there
9 is nothing until Tuesday. And I received ---

10 THE COURT: So, are -- are you saying -- are you
11 saying that an affidavit, in your view, needs to be filed
12 with the petition?

13 MR. D'AGOSTINO: An affidavit ---

14 THE COURT: Or a verified petition?

15 MR. D'AGOSTINO: Yes, sir, Your Honor, yes, sir.
16 The second thing, Your Honor, because they're treating it
17 like a summary judgment. And we're here today and ---

18 THE COURT: No, they're not.

19 MR. D'AGOSTINO: Well, with any motion, it's my
20 understanding of the Rules, that a motion has to be
21 supported by affidavits. And the motion -- the
22 affidavits have to be filed ten (10) days before the
23 hearing ---

24 THE COURT: No, sir. They -

25 MR. D'AGOSTINO: --- or filed contemporaneously

1 with the motion.

2 THE COURT: --- have to be filed contemporaneously
3 with the motion.

4 MR. D'AGOSTINO: Yes, sir. Which was not done;
5 that's number one. Number two, *Sea Pines* addresses and
6 says there are four ways in which to discharge a lien
7 from the property. They filed a lien on the property in
8 this case, but the lien is no longer on the property.

9 And *Sea Pines* dealt with -- they could not tell from
10 the face of the complaint they were canceling or that the
11 work had anything to do with the land in question
12 attached to the mechanics lien.

13 And what I filed was -- let me just double check,
14 Your Honor.

15 (Brief Pause)

16 MR. D'AGOSTINO: I attached to my mechanics lien
17 -- there is a statement attached to the account verified
18 by my client that the -- the work was related to the
19 property.

20 THE COURT: What does it say specifically?

21 (Brief Pause)

22 MR. D'AGOSTINO: In my mechanics lien, I said the
23 work was related to the property: "A description of the
24 premises, work done by the Plaintiff was done under
25 contract with Defendant for the services. And all work

1 was performed on or for the Defendant property.

2 "The labor and materials were provided by the
3 Plaintiff with the expressed knowledge and consent,
4 acquiescence, and request of the Defendant."

5 THE COURT: Is there a description of the property?

6 MR. D'AGOSTINO: A description of the property was
7 attached as Exhibits A1, 2, and 3. And then it's
8 verified by the vice president of the company, Rizon.
9 And, on the face of the mechanics lien, is our RW Robert
10 Felt -- the contractor's license for Rizon Construction,
11 which is required under the mechanics lien statute now
12 that it has been amended.

13 So, I complied with the terms. Then, if we get into
14 the motion itself -- let me just see if I can find my
15 mechanics lien.

16 (Brief Pause)

17 THE COURT: Well, first of all, the Sea Pines case
18 says there is no specific -- no -- no -- no exclusive I
19 should say way to discharge a mechanics lien when there's
20 been no action filed, at least when there's been no
21 action filed.

22 It also says that -- and -- and I'm reading it here
23 -- and, if I miss something let me know, Mr. Hamilton --
24 that I can't resolve issues of fact that may be raised by
25 the -- by the -- by affidavit.

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Appendix000194

1 Let me... All right. I'm looking at Page 3 of --
2 of the decision, the second paragraph, the second full
3 paragraph after the beginning of -- of what would be Page
4 157 of The South Carolina Reporter, the second sentence
5 of the second paragraph, "However, the judge to whom the
6 application for relief if may -- or may not try disputed
7 facts.

8 "These are reserved under 45-27-3 now 29-5..." or
9 whatever, "...for the jury." And then he quotes the --
10 quotes the -- the statute.

11 Here's what I think I need to do: I do not believe
12 there is an exclusive way to -- to deal with the problem.
13 I do not think that the fact that the bond has -- a bond
14 has been filed to -- to relieve the prop -- the property
15 of the burden of the lien renders this proceeding
16 inappropriate.

17 I think it's -- it's still appropriate since no
18 action had been filed at the time. I'm a little
19 concerned that we ought to go by some rule, some
20 structure, about when the affidavits were filed.

21 And I -- I think that in -- in -- in -- with -- the
22 petition was filed in May, May the 18th, and an affidavit
23 filed Tuesday.

24 I'm going to do what Judge Singletary (phonetic) did
25 here in this case for the first time; and that is, post -

1 - continue the hearing on the motion -- on the petition;
2 give the parties ten (10) days to file any affidavits.

3 And, Mr. D'Agostino, part of that is -- is that the
4 plaintiff is going to have to file an affidavit outlining
5 specifically the facts that tie the provision of labor
6 and materials to this property. The Court approved what
7 Judge Singletary did, and that's what he did.

8 That will be one of the affidavits. And the rest of
9 them just what affidavits you want to file. And, then,
10 we'll reset it.

11 That -- I think that's the best way to do this.
12 It'll save us a whole lot of time in the long run I
13 believe.

14 MR. D'AGOSTINO: May -- may I address the Court,
15 Your Honor?

16 THE COURT: Yes, sir.

17 MR. D'AGOSTINO: Are we allowed to engage in
18 discovery between now and the time the Court reconvenes
19 this hearing? And the reason why is because there was a
20 site where the crushing occurred, the rock crushing
21 occurs. And, then, the materials were transported to
22 these various pieces of property.

23 THE COURT: That is what I inferred from what I
24 read.

25 MR. D'AGOSTINO: Yes, sir, Your Honor. Now to know

1 exactly how much it is GRH and The Greens and the seller
2 have to -- as to how much was put on a piece of property.

3 THE COURT: The question is -- the issue is not how
4 much but whether at all.

5 MR. D'AGOSTINO: Thank you, Your Honor.

6 THE COURT: How much doesn't matter. The question
7 is whether it was actually used in the improvement of
8 real estate. And maybe some more, but -- so, no, those
9 don't -- I think that will save us all at least one
10 appeal.

11 MR. D'AGOSTINO: Thank you.

12 MR. HAMILTON: I assume, then, from this discussion
13 that we are going to be able to do this by
14 affidavits ---

15 THE COURT: Yes, sir, that's right.

16 MR. HAMILTON: Okay. Good.

17 THE COURT: And -- and in the context of Sea Pines.

18 MR. D'AGOSTINO: Yes, sir.

19 THE COURT: Yes, sir.

20 MR. HAMILTON: That's what I thought. All right.

21 Thank you.

22 THE COURT: Yes, sir.

23 MR. D'AGOSTINO: Thank you, Your Honor.

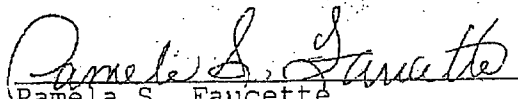
24 (Whereupon, the proceeding concluded.)
25

REPORTER'S CERTIFICATE

I, the undersigned PAMELA FAUCETTE, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 17, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

October 29, 2012


Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

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Appendix000198

State of South Carolina) In the Court of Common Pleas
County of York) 16th Judicial Circuit
2012-CP-46-01815

The Greens of Rock Hill, LLC,))
et al,))
Plaintiff,))

vs.)

Transcript of Record

Rizon Commercial Contracting,))
Inc.))

Defendant.))

September 20, 2012
York, South Carolina

B E F O R E:

The Honorable S. Jackson Kimball, III, Judge

A P P E A R A N C E S:

Daniel D. D'Agostino, Esq.
Attorney for the Plaintiff

Herbert W. Hamilton, Esq.
Attorney for the Defendant

Bonnie H. Kelly
Circuit Court Reporter

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EXHIBITS

No exhibits entered.

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1 THE COURT: Okay. We got two motions: one in -- in
2 Case No. 2012-2285; the other in Case No. 2012 -- wait a
3 minute -- 1815. Yes.

4 THE COURT REPORTER: 1815.

5 THE COURT: Yeah. Is that right?

6 MR. D'AGOSTINO: That's --

7 THE COURT: I got that right?

8 MR. D'AGOSTINO: That is correct, Your Honor.

9 MR. HAMILTON: It -- it is right. If -- if the -- if
10 your order in the first case stands, it makes the motion,
11 for the most part, in the second case moot.

12 THE COURT: All right. Well, we'll deal with the
13 motions to alter or amend first. Go ahead, Mr. D'Agostino.

14 MR. D'AGOSTINO: May it please the Court, Your Honor.
15 Your Honor, the Court heard arguments in this case several
16 weeks back. It was actually the second time that the
17 parties were before the Court.

18 At that time, Mr. Hamilton -- the first time the Court
19 continued the hearing to enable us to provide affidavits to
20 the Court as it relates to this issue of providing
21 material, as I understood it, for the benefit of the
22 property.

23 And when we got to court, we -- we argued those
24 motions, and then the Court granted a -- entered an order,
25 using summary judgement standard, discharging the lien,

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1 finding that my client, as a subcontractor, did not qualify
2 under the mechanics's lien statutes to be able to pursue a
3 lien in this case and foreclose upon its lien.

4 Your Honor, in going back and reviewing the mechanics
5 lien statutes -- and the Courts went through in it's
6 decision and it's conclusion, finding, No. 1, that the --
7 what my client was doing was basically -- it even used the
8 word "demolish," I believe, at some point. Let me get to
9 the right word.

10 THE COURT: Let -- let me get my order. Just hang on
11 just a second.

12 (Brief pause.)

13 THE COURT: Here it is. Okay. Go ahead.

14 MR. D'AGOSTINO: The Court talked about how -- the
15 fact that Rizon was crushing concrete that had resulted
16 from the demolition of the old Celanese plant; and that the
17 -- Rizon did not own the concrete; and that Rizon crushed
18 it from this demolished building; and that Cel-River
19 subsequently reused it for the roads at the project.

20 In going back and -- and looking at mechanics's lien
21 statute, the Court took notice, and -- and during
22 arguments, referenced the fact that the mechanics lien
23 statute, 29-5 ---

24 THE COURT: 5-20.

25 MR. D'AGOSTINO: --- 5-10 had been amended a number of

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1 times, but that 29-5-20 had not followed the same
2 amendments as it relates to subcontractors. But in looking
3 at the following statute subsequent to 29-5-20, you have
4 29-5-22, which ---

5 THE COURT: All right. Hang on. Hang on.

6 MR. D'AGOSTINO: And I've attached those to my motion,
7 Your Honor. I photocopied those sections of the statute
8 for the Court's reference.

9 THE COURT: You don't -- you don't have -- do you have
10 an extra copy of 20?

11 MR. D'AGOSTINO: No, sir.

12 THE COURT: All right. Let me get it.

13 MR. D'AGOSTINO: I did not copy that one.

14 (Brief pause.)

15 THE COURT: Okay.

16 MR. D'AGOSTINO: In -- in looking at 29-5-22, the
17 legislature, subsequent to some of the cases that were
18 referenced and argued when we were here the second time,
19 enacted 29-5-22, which says that (as read): "A person who
20 supplies tools, appliances, machinery, or equipment used,
21 as provided in 29-5-10(a), is considered to have furnished
22 material for the improvement of real estate within the
23 meaning of sections 29-5-20 and 29-5-40."

24 THE COURT: All right. Let me read that. We didn't
25 read that at all.

1 MR. D'AGOSTINO: No, sir.

2 THE COURT: That wasn't raised the first time out.

3 (Brief pause.)

4 THE COURT: Okay. Go ahead.

5 MR. D'AGOSTINO: And when we -- as the Court may
6 recall, when we were arguing the motion in the first part
7 of our argument, the plaintiff in this case was referring
8 to 29-5-10 --

9 THE COURT: Yes.

10 MR. D'AGOSTINO: -- as it relates to it. And see,
11 what's important to note is that our legislature did
12 subsequently enact this statute, section -- subsection 29-
13 5-22, to encompass this idea of providing tools,
14 appliances, machinery, or equipment used for a project.
15 And it expanded it so that 29-5-20 has the same meaning as
16 29-5-10 as it relates to subcontractors.

17 And what's important to note is that it is clear, and
18 the Court found in -- in -- and it's part of the record --
19 is that my client RM -- RM Road Machinery, that company
20 Road Machinery -- RMS, I believe is what it was -- they had
21 originally tried to assert a claim, a lien as well, for the
22 \$88,000. That's the money that my client subsequently paid
23 to that -- that -- that equipment. That's the equipment my
24 client supplied and used on this site. And the evidence is
25 uncontradicted that my client rented this equipment. Your

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1 order even found that my client rented this equipment and
2 used the equipment for the purpose of demolishing -- of --
3 of -- of transforming this crushed, demolished concrete
4 into stone that was subsequently used on the roads, which
5 your court order found.

6 THE COURT: Uh-huh.

7 MR. D'AGOSTINO: Now, in addition to 29-5-22, we also
8 have 29-5-27, which talks about a laborer and person
9 defined. And that's attached to my motion as well. And
10 it's -- does the Court need me to read that?

11 THE COURT: Yeah, I do. Hold on.

12 MR. D'AGOSTINO: It's --

13 THE COURT: No. Let me read it. I'll just read it
14 right here.

15 (Brief pause.)

16 THE COURT: Okay.

17 MR. D'AGOSTINO: And so, the legislature, in 2003,
18 enacted this section that defines laborer and person as it
19 relates to 29-5-20 and 29-5-40, to include (as read): "An
20 individual who is on the property for the purpose of
21 demolition."

22 And -- and what my client's actions were, as defined
23 under the contract and as also referenced in the Court's
24 order, my client was demolishing the old Cel-River plant.

25 THE COURT: This says "demolition debris disposal

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1 services."

2 MR. D'AGOSTINO: It says "including but not limited
3 to."

4 THE COURT: Final dis --

5 MR. D'AGOSTINO: Final disposal services.

6 THE COURT: -- disposal services provided ---

7 MR. D'AGOSTINO: That's right. That's as if a company
8 comes in and is hired to remove it entirely. Well, what my
9 client was hired to do was to transform it, which is the
10 same as removal, because Cel-River subsequently just reused
11 it.

12 But there's no question, based upon their affidavits,
13 the contract that exists, and the Court's order that talks
14 about the demolition of the old Cel-River plant, and the
15 reuse -- the use of that demolished material for the roads
16 and the sidewalks on this property, that this section
17 expanded 29-5-20 to include and cover the kind of conduct
18 that my client was performing at the very least, Your
19 Honor.

20 THE COURT: Let me -- let me pose this: If -- if --
21 if your client had -- had been on another piece of property
22 and had this concrete debris carried to it, crushed it, and
23 picked up by another -- the -- the contractor on the job,
24 in this case Mr. -- Mr. Hamilton's client, who then used it
25 in the -- in -- in the roads, would these statutes apply?

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Appendix000207

1 Is that too complicated?

2 MR. D'AGOSTINO: If -- if I can -- make -- make sure I
3 understand it: If there's a piece of property over here
4 that has a demolished building, and my client sets up a
5 staging area on a wholly separate piece of property. And
6 the demolished material is brought to my client's property,
7 my client demolishes it as part of the removal process, and
8 then the -- as part of the demolition process. And then
9 that property -- that material is transported to other
10 property, would my client still have a lien on that other -
11 - on the ---

12 THE COURT: Uh-huh. Uh-huh.

13 MR. D'AGOSTINO: --- subsequent property?

14 THE COURT: Uh-huh.

15 MR. D'AGOSTINO: It may. It just depends.

16 THE COURT: On what?

17 MR. D'AGOSTINO: In this case -- well, it depends on
18 how that other property was involved in this case -- in --
19 in -- in -- where the material was. Because in this case -

20 -
21 THE COURT: Does it matter where the construction
22 debris came from?

23 MR. D'AGOSTINO: It matters where it came from, but --
24 but see, in this case, Your Honor, what is -- the
25 construction debris came from the same property where it

1 ended up as well.

2 THE COURT: Well, that -- I'm -- I don't -- I mean,
3 that -- that's a distinction without a difference to me.
4 The debris -- the fact that the debris was -- was part of
5 another transaction where somebody demolished something and
6 then reused it, I don't think -- I don't think that has
7 anything to do with 22 and 27.

8 Now, I'm not dismissing your whole argument. I'm just
9 saying I don't believe the fact that what they crushed was
10 part of the old Celanese plant matters for the purposes of
11 22 and 27.

12 MR. D'AGOSTINO: How would it not -- I guess I don't
13 understand how it would not.

14 THE COURT: Well, because it's not limited to debris
15 from a -- from -- from the property. I mean, your people
16 didn't dispose of debris from the property. They didn't
17 dispose of anything.

18 MR. D'AGOSTINO: My clients demolished -- I mean, my
19 clients were part of the demolition process as defined.

20 THE COURT: As defined by what?

21 MR. D'AGOSTINO: As defined by section -- as defined
22 by 44-96-40, which is also attached by my -- to my motion.
23 Because the statute talking --

24 THE COURT: What is that -- what -- what's -- what
25 section is that in? Waste ---

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1 MR. D'AGOSTINO: Your Honor, 29-5-27 ---

2 THE COURT: --- management?

3 MR. D'AGOSTINO: --- refers to 44-96-40, subparagraph

4 6.

5 THE COURT: Hold on. Hold on. I'm sorry. All right.

6 Let me look.

7 MR. D'AGOSTINO: And --

8 THE COURT: Let me look.

9 (Brief pause.)

10 THE COURT: All right. Go ahead.

11 MR. D'AGOSTINO: Your Honor, and -- and my argument is
12 at the very least, since the Court had to treat this as a
13 summary judgement motion filed by the -- the property
14 owners, the Greens, the plaintiffs in this case, under the
15 Sea Pines analysis, which I believe what we said,
16 considering all the facts in the light most favorable to my
17 client, since we haven't even had discovery, in order to
18 get to this point, I believe that the statutory scheme, the
19 contract, in the Court's understanding of what my client
20 was doing on the property, the fact that this was the old
21 Celanese plant, it was concrete, it was debris on the
22 property that was crushed and reused for other parts of the
23 property, at least at the very minimum creates an issue of
24 fact, which would preclude summary judgement, which would
25 preclude the dismissal and the reliefs of the lien and/or

1 the bond. Because that's what we got is a bond upon the
2 property.

3 And that's what I'm asking the Court to do is to allow
4 the bond to stay in place at least -- it doesn't foreclose
5 them from making a motion for summary judgement sometime
6 down the road. But Your Honor, the statute -- we -- I
7 submit my client, who's expended almost \$300,000 in -- in
8 its complaint, verified complaint, and also the mechanics
9 lien that we filed for this property, for which it's not
10 paid -- been paid anything, is entitled to pursue its
11 mechanics lien --

12 THE COURT: Tell -- tell me how under 44-96-40 this
13 concrete that was used is discarded solid waste, emphasis
14 on the word "discarded."

15 MR. D'AGOSTINO: Because the -- it is the debris from
16 the demolition of those buildings --

17 THE COURT: But it's not discarded.

18 MR. D'AGOSTINO: Cel-River's argument or -- excuse me
19 -- The Greens' and the plant's arguments was that they
20 owned it, and they had to get rid of it. And they chose to
21 reuse it. So obviously, it was discarded from the
22 property.

23 THE COURT: It wasn't discarded. It never left the
24 property.

25 MR. D'AGOSTINO: But Your Honor, the conduct that my

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1 client did was demolition and it's part of the demolition
2 process. It had to be -- it either had to be gotten off
3 the property, or reused on the property.

4 But see, that's what -- that's why I'm saying there's
5 an issue of fact that we need to flesh out in discovery at
6 the very least, Your Honor. Because we don't know what
7 they were required to do with that material. Were they
8 required to discard it and get it off the property, and did
9 my client transform its form so that they could reuse it
10 and save the cost?

11 Because my client's a subcontractor of the -- of the
12 owner. So the owner didn't want it anymore. The owner
13 hired Cel-River to get rid of it. Cel-River reused it.

14 THE COURT: Your -- your client fundamentally, doesn't
15 seem to me, was involved in providing construction and
16 demolition debris disposal services as that term would be --
17 - as I think it's plainly understood. But go ahead.

18 Nor -- nor was the -- was the -- was the concrete
19 discarded.

20 I mean, it's no different from digging dirt on one
21 part of the property to fill in a -- taking -- cutting dirt
22 from one part of the property, and taking it and using it
23 for fill on another.

24 MR. LAGOSTINO: No. I submit that it is a
25 substantial difference, Your Honor, because my client had

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1 to use equipment, use a lot of its own resources to
2 transform this item from chunks of concrete into a
3 reasonable form.

4 THE COURT: We know what he did. There isn't any
5 question about what -- what he did.

6 MR. D'AGOSTINO: Your Honor --

7 THE COURT: Keep going. I'm listening. I -- but the
8 problem I'm having here is -- first of all is that -- that
9 this wasn't brought to my attention first time around. And
10 -- and -- and I'll grant you it makes -- makes a finer
11 distinction -- makes the distinction finer, is the way I
12 should say that, to -- to include in the equation
13 consideration of the application of -- of -- of these
14 sections, these new sections, in trying to apply 29-5-20.
15 I agree with you about that.

16 MR. D'AGOSTINO: And Your Honor, the reason why I
17 didn't -- when we were here the first time, we were arguing
18 under 29-5-10, and -- and the -- the -- it was not clear to
19 me what the plaintiffs were pursuing the very first time we
20 were here. Then the Court said "no discovery; give
21 affidavits as to how the material was provided for the
22 benefit -- or was material provided."

23 And we came back and we're arguing 29-5-10. And then,
24 mid-argument, we switched to sub 20, and I didn't have the
25 statute book with me, so I did not focus on those two

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1 additional statutes.

2 As it relates to the -- the statutes, Your Honor, it's
3 -- it's our position that the conduct -- I mean, if you
4 read under 29-5-27 (as read): "Any person providing
5 construction and demolition debris disposal services as
6 defined under section 44-96-40(6), including but not
7 limited to final disposal services provided by a
8 construction and demolition landfill is a laborer within
9 the meaning of section 29-5-20 and 40."

10 Unless I'm reading that wrong, that is saying that a
11 separate landfill, separate and apart, has a lien upon the
12 property for demolition or -- or disposal of products that
13 came from that property.

14 Now, how ---

15 THE COURT: Well, I -- let me say this: I note that
16 except for 25 -- 29-5-22, none of these new -- newly
17 introduced sections has any case cited in -- as --
18 annotated at the end of -- at the end of the section.

19 Do you know what the case of Harden -- I'm looking at
20 20 -- 22 now, Dan. Do you know what -- what the case of
21 Harden Construction Group, Inc. against Carlisle
22 Construction ---

23 MR. D'AGOSTINO: No, sir, Your Honor.

24 THE COURT: --- does?

25 MR. D'AGOSTINO: I do not have that.

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1 THE COURT: That's the only case I see sited, and
2 that's under 22.

3 MR. D'AGOSTINO: Yes, sir.

4 THE COURT: And I read that to say -- I'm just looking
5 at the -- at the -- the short blurb there, that the mere
6 rental of equipment, under 20 -- mere rental of equip --
7 equipment, when the lessor does not supply the equipment
8 operators, would not qualify under 22.

9 MR. D'AGOSTINO: But my -- yes, sir, Your Honor. But
10 my client -- my client was the one who leased the
11 equipment; my client provided all the operators for the
12 equipment; and my client's the one who paid for all that
13 equipment ---

14 THE COURT: And -- and --

15 MR. D'AGOSTINO: --- and is claiming the lien.

16 THE COURT: The -- the company who was paid 88,000 is
17 the one that leased -- was the lessor of the equipment.

18 MR. D'AGOSTINO: Yes. And -- and they're out of it.
19 But my client ---

20 THE COURT: I understand.

21 MR. D'AGOSTINO: Yes, sir, Your Honor. That is
22 correct.

23 THE COURT: All right. Go ahead.

24 MR. D'AGOSTINO: So, Your Honor, what my position is
25 if a -- if a demolition company --

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1 THE COURT: Well, I think I understand your position.

2 MR. D'AGOSTINO: Yes, sir. I'm sorry.

3 THE COURT: It's all about these statutes.

4 MR. D'AGOSTINO: Yes, sir.

5 THE COURT: Let me hear from -- let me hear from Mr.

6 Hamilton.

7 MR. HAMILTON: Your Honor, the -- the *Harden* case is
8 the case that was decided before 22 was passed. And that
9 was the ---

10 THE COURT: Looks like it. Yes.

11 MR. HAMILTON: --- that was the case that made them
12 have to come back and pass a legislative -- pass an
13 amendment to the statute that says rental equipment is --
14 can be used as a mechanics lien.

15 THE COURT: All right. All right.

16 MR. HAMILTON: And that's -- that's part of what we
17 talked about the first time was this amendment, whether
18 it's 10, 20, or the following statutes, the Courts have
19 interpreted the language very strictly according to what
20 the words are. And where those things didn't fit in, the
21 legislature has come back time and time again and added
22 things in there ---

23 THE COURT: That's right.

24 MR. HAMILTON: --- that they thought was appropriate.

25 THE COURT: And he thinks it covers him now.

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1 MR. HAMILTON: Well, he thinks he does, but I don't
2 see where in any of this it says crushing services are
3 covered.

4 THE COURT: Well, I -- these statutes are -- are
5 written more broadly than 10 -- 10, for example, as it's
6 been amended all those times.

7 MR. HAMILTON: Well, what's really interesting, and I
8 don't understand why this is this way, because if you look
9 at 29-5-21 and right before 22 it refers to ---

10 THE COURT: I don't have that. Yes, I do. I'm sorry.
11 Go ahead.

12 MR. HAMILTON: It -- it talks about using services (as
13 read): "... shall be considered furnished material for the
14 improvement of real estate within the meaning of 29-5-20."
15 It talks about 20.

16 THE COURT: Yes.

17 MR. HAMILTON: And then 22 comes down and says (as
18 read): "A person who supplies tools used as provided in
19 29-5-10(a)."

20 So if you're going to qualify under 22, you've got to
21 qualify under 10(a).

22 THE COURT: What about -- it goes on to say "for the
23 improvement of real estate within the meaning of sections
24 29-5-20 and 29-5-40."

25 MR. HAMILTON: Correct. And trying to figure out what

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1 that means is a -- is a challenge. But I think what that
2 means is 29-5-10 requires that the materials and equipment
3 be used in the erection of a structure on -- on the
4 property.

5 THE COURT: Except -- except for -- except as it has
6 been amended to include other people like grading
7 contractor.

8 MR. HAMILTON: Correct. And that's -- that -- because
9 that -- those amendments were required because the Court
10 specifically said you've got to have a building or a
11 structure, and -- and -- and grading a road didn't fit. So
12 they had to come back in and -- and amend it.

13 So -- so my position is that 29-5-22 requires that it
14 be -- the equipment be used in -- in the erection of a
15 structure to -- to fit into the meaning of 29-5-20; which
16 says "for the improvement of real estate." I know.

17 The -- the -- 24, to -- to me, clearly refers to
18 removal of -- of debris to a construction disposal -- a
19 waste treatment --

20 THE COURT: Landfill.

21 MR. HAMILTON: -- landfill for -- seeing that he --
22 landfill. And if you go back ---

23 THE COURT: You mean 27.

24 MR. HAMILTON: Twenty-seven. What did I --

25 THE COURT: You said 24.

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1 MR. HAMILTON: I'm sorry.

2 THE COURT: Okay.

3 MR. HAMILTON: Twenty-seven talk -- clearly, if you go
4 back to the definition -- definition that he refers to in
5 44-96-46, it -- it's clearly in that part of the -- of the
6 statute that it talks about construction debris landfills.

7 So if these folks had come in, picked up this -- the
8 concrete, delivered it to a landfill, that service of
9 delivery; under 29-5-27, would be considered the labor that
10 -- for which they could file a mechanics lien.

11 That's not what happened here.

12 THE COURT: Well, and I -- I mean, I -- I tend to
13 think that -- that that -- site to -- to the -- to the
14 waste management title that I don't -- just -- I don't --
15 the question is, under that definition, was this material
16 discarded material?

17 MR. HAMILTON: Well, it -- it certainly wasn't
18 discarded. It was actually ---

19 THE COURT: It was actually used.

20 MR. HAMILTON: --- utilized on -- on the property.
21 There's no question about that. The -- the service that --
22 there are cases that talk about the kind of -- of labor and
23 material that -- that generates the right to a mechanics
24 lien. And they talk about the -- the -- the service having
25 to add some benefit, some value to -- to the project.

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1 When they crushed this material, the concrete, that --
2 at that point in time there was no value added to the -- to
3 the project at all. And only value came when that concrete
4 was taken and then delivered to the site and disposed of or
5 used on the roads, neither -- none of which was done by the
6 -- the plaintiffs in this -- I mean, by Rizon in this case.

7 So section 20 requires that ---

8 THE COURT: Well, all stone is crushed before use in
9 roads.

10 MR. HAMILTON: Well, correct.

11 THE COURT: I mean ---

12 MR. HAMILTON: But the crushing service itself does
13 not add a value at all to it. It only becomes valuable
14 when that's taken and delivered and used on the project.

15 THE COURT: I -- I -- well, I think it adds value to
16 the stone.

17 MR. HAMILTON: Well, it -- it does add value to the
18 stone.

19 THE COURT: I'm not sure that's where we're -- where --
20 -- where we are though.

21 MR. HAMILTON: That's correct.

22 THE COURT: Go ahead.

23 MR. HAMILTON: So the position we have now is no
24 different than it was argued before: That they have a
25 contract claim; there is a dispute about the amount they're

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1 owed; whether they can bring the suit in contract. It just
2 -- by definition just simply does not fall within the terms
3 of the mechanics lien statute as I read the cases and argue
4 this point.

5 THE COURT: Well, I've got to ask this, although I
6 don't want to: What -- what is -- it concerns me -- it
7 concerns me that -- that I didn't -- wasn't directed to
8 these -- these new -- newer statutes the first time. But
9 Mr. D'Agostino was correct in saying that we -- we
10 proceeded a long way with the argument, operating under --
11 under 29-5-10.

12 What -- did the original motion say 29-5-10? Do you
13 remember?

14 MR. D'AGOSTINO: I don't think ---

15 THE COURT: Don't think it specified? Well anyway,
16 you -- you see this is a 59(e) motion. I'm -- I'm asked to
17 consider these other statutes. What is your position about
18 that?

19 MR. HAMILTON: Well, we didn't argue them because we
20 didn't think they applied.

21 THE COURT: No. I think -- that's right. I mean,
22 that's ---

23 MR. HAMILTON: So -- so -- and I -- and I still -- as
24 -- as I say, I still contend that they -- they don't change
25 anything about what the plaintiffs did and how that fits

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1 into the -- to the mechanics lien statute.

2 I think the case was scheduled once, it was continued;
3 had an opportunity to provide any affidavits, other
4 authority he wished to provide to argue to the Court. You
5 know, the fact that -- I mean, they've gone back and found
6 a couple of other statutes which he wishes to add in
7 support of his position, I don't think changes anything
8 about the Court's interpretation of whether or not what he
9 did fits into the mechanics lien statute.

10 THE COURT: All right. Yes, sir.

11 MR. D'AGOSTINO: May it ---

12 THE COURT: Briefly.

13 MR. D'AGOSTINO: --- please the Court, Your Honor.

14 First, we did come here the first time; you did tell us to
15 go back and provide affidavits. And that was because under
16 the first -- when the motion was scheduled the first time,
17 they had not provided affidavits with the motion, and I
18 hadn't been provided anything til the day of the hearing or
19 the day before the hearing.

20 So those -- those affidavits provided by the
21 plaintiffs, the very first time we were here, were not
22 timely. So the Court adjourned, told me to go back, and
23 told both of us to go back and get affidavits.

24 The motion -- and I'm trying to find the original
25 motion -- but I don't believe the original motion was clear

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1 on what it was seeking.

2 THE COURT: Well, it was clear as what it was seeking

3 MR. D'AGOSTINO: It was seeking, but under what basis
4 it was seeking.

5 And then you've got the -- the problem or the concern
6 I have, Your Honor, is we -- in the Court's order, second
7 to last paragraph (as read): "In summary, Rizon did not
8 provide anything or do anything to improve the real estate.
9 It provided a service directly to Cel-River under a
10 contract not related to owner's contract with Cel-River.
11 Thus based on the discussions here, I find and conclude
12"

13 Your Honor, the problem -- and -- and what I'm trying
14 to get at is that I have had no discovery, and there are --
15 that there -- there is not a clear --

16 THE COURT: Well, what -- tell me what discovery would
17 provide? I mean, we know -- everybody knows the facts.

18 MR. D'AGOSTINO: The discovery that would be clear is
19 what was the relationship between Cel-River and the
20 property owners; what was Cel-River's obligations as far as
21 disposal of the material, the demolished Celanese plant.

22 If Cel-River was hired to dispose of that demolished
23 plant, and then Cel-River was hired under another contract
24 put in the roads and everything else, they're hiring my
25 client to convert that property, that -- that -- that

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1 material into stone that they could reuse was part of the
2 demolition process.

3 And -- and that -- that goes directly to the issue of
4 the owner ---

5 THE COURT: Well, that begs the question as to whether
6 your client was in the business of disposing. Because
7 you're saying if -- if -- if the -- if the -- if the Greens
8 was -- et al -- was -- was hired to dispose, and instead of
9 disposing they got your client to convert, your client
10 can't possibly been in -- been -- have been in the business
11 of disposing --

12 MR. D'AGOSTINO: No. The Greens only ---

13 THE COURT: -- logically.

14 MR. D'AGOSTINO: --- the Greens hired Cel-River to
15 dispose --

16 THE COURT: Right.

17 MR. D'AGOSTINO: -- and then Cel-River hired my client
18 ---

19 THE COURT: Yeah. Yeah.

20 MR. D'AGOSTINO: --- Cel-River hired my client to --
21 in the disposal process, the purpose of getting it off the
22 property to convert it to something they could use, that's
23 part of the disposal of the -- I mean ---

24 THE COURT: I understand -- I understand your
25 argument. I just don't agree with you.

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1 MR. D'AGOSTINO: What's the difference between Cel-
2 River -- I mean, the Greens paying Cel-River to take it to
3 a landfill, and then getting the landfill to convert it --
4 to -- to crush that stone; and then Cel-River bringing it
5 back to the site?

6 THE COURT: Because a landfill's like a grave site:
7 You don't do anything with the body but bury it.

8 MR. D'AGOSTINO: So what this did was save Cel-River
9 transportation cost. They did it on site, as opposed to
10 disposing of this material. Because if you look at the
11 contract, Cel-River had an obligation ---

12 THE COURT: It didn't save them a thing. They charged
13 them \$300,000 ---

14 MR. D'AGOSTINO: Yeah, but Cel-River ---

15 THE COURT: --- that they haven't been paid. That's
16 the issue.

17 MR. D'AGOSTINO: But Cel-River was going to have to
18 pay to get that stuff off site and also pay to bring the
19 stone back on site.

20 THE COURT: So what?

21 MR. D'AGOSTINO: It's part of the disposal ---

22 THE COURT: No. No. I disagree with that.

23 MR. D'AGOSTINO: If -- if you look at the contracts --
24

25 THE COURT: I disagree with that. Let's move on with

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1 that.

2 MR. D'AGOSTINO: Can I point one thing out in the
3 contract, Your Honor?

4 THE COURT: Yes, sir.

5 MR. D'AGOSTINO: It says (as read): "Materials that
6 are unsuitable for crushing will be removed by the
7 contractor." So ---

8 THE COURT: Uh-huh.

9 MR. D'AGOSTINO: --- this goes specifically to the
10 fact that Cel-River had an obligation to get materials off
11 the property that could not be used on the property.

12 THE COURT: Do I already have the contract?

13 MR. D'AGOSTINO: Yes, sir, Your Honor.

14 THE COURT: Okay. Well, then that was in the record.

15 MR. D'AGOSTINO: Yes, sir, Your Honor. That is in the
16 record.

17 THE COURT: All right.

18 MR. D'AGOSTINO: That -- that part of the -- the
19 contract, the plaintiffs provided that.

20 THE COURT: So we don't need to discover that.

21 MR. D'AGOSTINO: No. That's the contract between Cel-
22 River and my client. I'm talking about the ---

23 THE COURT: Well, read it to me again.

24 MR. D'AGOSTINO: (As read) "Materials that are
25 unsuitable for crushing will be removed by the contractor."

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1 THE COURT: And which contractor is that?

2 MR. D'AGOSTINO: That would be Cel-River.

3 THE COURT: Cel-River.

4 MR. D'AGOSTINO: Yes, sir, Your Honor. So this is all
5 part of the process of the demolition and removal of the
6 construction.

7 Your Honor, that's my position as to why I believe
8 that it is premature to dismiss the lien to discharge the
9 bond that was filed on the property. The Court ought to at
10 least enable us -- allow the plaintiff or allow Rizon to
11 develop the facts as it relates to this overall transaction
12 and what did go on with regard to the property. It's --
13 it's -- it's premature to discharge the lien at this time
14 under a summary judgement standard in this situation.

15 In the alternative, Your Honor, since a dismissal or
16 discharge of the lien would effectively enable the -- the --
17 -- Cel-River or the Greens and the other plaintiff to obtain
18 its monies back, we would ask for a supersedeas and not
19 allow it to be dismissed, so I can pursue an appeal to
20 address this issue since there's very limited case law
21 dealing with this issue in South Carolina on these other
22 two statutes, Your Honor. Because if you were to discharge
23 the lien, and then I were to write 18 months down the road,
24 the bond, the money, everything's gone by then.

25 THE COURT: Well, this is just a 59(e) motion.

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1 MR. D'AGOSTINO: It is, 59(e). That's why I ask for a
2 supersedeas as well, Your Honor.

3 THE COURT: Well, no, you didn't in the motion, did
4 you?

5 MR. D'AGOSTINO: Yes, sir, Your Honor. The very last
6 sentence (as read): "In the alternative, defendant request
7 the Court issue a supersedeas as to the discharge of the
8 bond."

9 THE COURT: Which -- which would mean that you're -- I
10 -- I got to read -- I got to read the statute about that.

11 What -- what you're saying is your client would put up
12 enough -- would have to put up something. It's your ---

13 MR. D'AGOSTINO: No. What I'm asking ---

14 THE COURT: --- supersedeas; not theirs.

15 MR. D'AGOSTINO: What I'm asking for is the Court to
16 not give them the money back that's with the Court, pending
17 an immediate appeal, for the Supreme Court to or the Court
18 of Appeals to address ---

19 THE COURT: Which is the bond.

20 MR. D'AGOSTINO: Yes, sir, Your Honor. Not let them
21 have the bond back at this time.

22 THE COURT: What -- you don't site a code section or a
23 rule. What -- what are you talking about?

24 (Brief pause.)

25 THE COURT: It's rule, like, 62 or something that has

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1 to do with what the circuit court can do.

2 MR. D'AGOSTINO: Yes, sir, Your Honor.

3 THE COURT: Yeah.

4 MR. D'AGOSTINO: Sixty-two. Yes, sir, Your Honor.

5 (Brief pause.)

6 MR. D'AGOSTINO: It would also be covered under rule
7 241 of the Appellate Court rules, Your Honor.

8 THE COURT: Well, that's -- I think that's their
9 business, isn't it?

10 (Brief pause.)

11 MR. D'AGOSTINO: I believe I'm premature, Your Honor.
12 I have to actually file an appeal first, then I'd have to
13 come back to the Court. I apologize.

14 THE COURT: That's what I mean. That's -- that's --
15 that's their province.

16 MR. D'AGOSTINO: Yes, sir. Yes, sir.

17 THE COURT: Mine has to do -- what -- what the Circuit
18 Court can do is -- is to stay an act based upon the party
19 appealing, providing a supersedeas bond.

20 MR. D'AGOSTINO: Yes, sir.

21 THE COURT: What would that be in this instance?

22 MR. D'AGOSTINO: I believe that if I were to appeal
23 this, Your Honor, the question would become whether -- if
24 the appeal stays the discharge of the lien or not --
25 discharge of the bond or not.

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1 Your discharge -- your order's discharging the bond
2 and dismissing the law suit.

3 THE COURT: Right.

4 MR. D'AGOSTINO: If I were to appeal it --

5 THE COURT: What security -- the question is what
6 security would the plaintiff give -- I'm sorry -- well,
7 we're -- we're in the other case now -- would the defendant
8 give -- no, I'm in the right case -- the plaintiff --
9 Rizon, what security would Rizon give pending an appeal of
10 my order dismissing the bond? That's the question.

11 MR. D'AGOSTINO: I --

12 THE COURT: I don't know how you would do that.

13 MR. D'AGOSTINO: I -- I believe the question becomes --
14 -- I understand -- as I understand my motion -- my -- my
15 request for a supersedeas is premature.

16 THE COURT: Right.

17 MR. D'AGOSTINO: The question is whether an appeal
18 stays the discharge of the -- of the -- stops the discharge
19 of the bond ---

20 THE COURT: And I don't believe it does. Look under
21 rule ---

22 MR. D'AGOSTINO: And in that case -- and that's why I
23 was asking the Court to not allow them to have the money
24 back until we can at least address ---

25 THE COURT: Let me -- let me conclude all this. I'm --

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1 - I want to read these statutes that have been sited now.
2 I'm concerned that -- that -- that they weren't considered
3 in the initial hearing where I granted the defendant's
4 motion.

5 But let me look at them and see what I think I --
6 where I --- what -- what sort of predicament I'm in, and
7 then I'll let you know.

8 MR. D'AGOSTINO: Yes, sir. In light of that, Your
9 Honor, can we continue the motion on the next case, since
10 the motion -- your decision in this case impacts the motion
11 in the next case?

12 MR. HAMILTON: The motion on the other case, which is
13 -- is already another case pending.

14 THE COURT: That's right.

15 MR. HAMILTON: And so it -- it's not pending any more.

16 THE COURT: Well --

17 MR. HAMILTON: It's moot. But -- so it depends on
18 what you rule.

19 THE COURT: Yeah. Well, it -- it is still pending.

20 MR. HAMILTON: Right. Right now.

21 THE COURT: Let's just -- let's just stay -- let's
22 continue that.

23 MR. D'AGOSTINO: And Your Honor, if you decide -- the
24 other part of my motion, motion to alter or amend, was your
25 decision to dismiss this action with prejudice, the only

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1 relief that was requested by the -- by the plaintiffs in
2 this action ---

3 THE COURT: Was the dismissal of the lien. --

4 MR. D'AGOSTINO: --- was dismissal of the lien. And I
5 don't want to get in a situation ---

6 THE COURT: No. You're correct. You're correct about
7 that.

8 MR. D'AGOSTINO: Thank you.

9 THE COURT: Let me see how I said it. It says (as
10 read): "Since the only counterclaim asserted by Rizon in
11 this action is for foreclosure ..." --

12 This order is in 1815. That's right.

13 MR. HAMILTON: Yes, sir.

14 THE COURT: I can't keep them straight. Yeah. Yeah.

15 (As read) "Since the only counterclaim asserted by
16 Rizon in this action is for foreclosure of the mechanics
17 liens, the order addresses all issues raised in the
18 pleadings in this action."

19 So I think that is -- I think that is technically
20 correct.

21 MR. D'AGOSTINO: I just don't want ---

22 THE COURT: Actually correct.

23 MR. D'AGOSTINO: Yes, sir. I think the Court can
24 understand I did not want anyone to say that these were --
25 the claims I raised in the companion case, which also dealt

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1 with other defendants, were compulsory counterclaims in
2 this action, such that ---

3 THE COURT: Well ---

4 MR. D'AGOSTINO: --- it be res judicata or ---

5 THE COURT: --- Mr. Hamilton has acknowledged that
6 this does not dispose of your contract claim.

7 MR. D'AGOSTINO: Thank you.

8 THE COURT: Right?

9 MR. HAMILTON: Yes, sir.

10 THE COURT: Okay. Thank you. That's it.

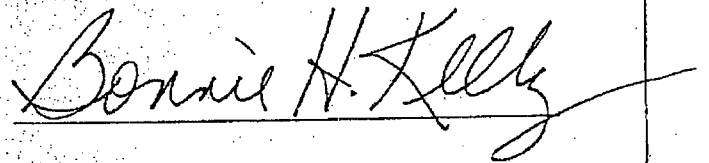
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CERTIFICATE

I, the undersigned, Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for York County, South Carolina, on the 20th day of September, 2012.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



Bonnie H. Kelly,
Court Reporter

Columbia, South Carolina

February 19, 2013

000184

STATE OF SOUTH CAROLINA

COUNTY OF YORK

The Greens of Rock Hill, LLC., GRH 2011, LLC.,

Plaintiffs,

vs.

Rizon Construction and Road Machinery,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-46-1815

Phillips
AFFIDAVIT OF ROBERT RIZON

PERSONALLY APPEARED BEFORE ME, Robert *Phillips* ~~Rizon~~, who first being duly sworn, deposes and says:

I am an owner of Rizon Construction.

Celriver hired Rizon in 2010 to crush concrete at the old Celanese plant on Cherry Road. We completed the job under the contract which existed in 2010.

In 2011, we were contacted by Celriver and asked to crush concrete. Celriver used the concrete for building roads and other infrastructure. It provided the crushed concrete to the City of Rock Hill, GRH, LLC. And the Greens. The contract from 2010 was not the contract under which we were working. In fact the bond attached to that for my company expired by the time we started doing the work in 2011. Rizon Construction manufactured the material by recycling the waste concrete from the old Celriver Plant. All materials were made consistent with the specifications from the City of Rock Hill. The City of Rock Hill inspector advised Rizon Construction of when and where the material was used relating to roads, sidewalks, parking lots, etc. We manufactured the crushed concrete for the use and improvement of the land.

In crushing concrete, Rizon Construction rented equipment from RMS. I also had employees on the job site every day when the crushing activities were ongoing. I paid for the labor. I paid for the fuel to operate the equipment. It was responsible for the equipment rental. I was responsible for having the equipment calibrated and tested for Celriver.

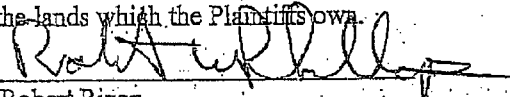
Rizon provided labor, services and material for the improvement of property owned by GRH and The Greens of Rock Hill as well as the City of Rock Hill.

The crushed concrete was used for the building of roads, the base for the Veladrome and other grading/subsurface infrastructure. The Plaintiffs constructed improvements and have sold those improvements to include buildings on the property where the crushed concrete was used.

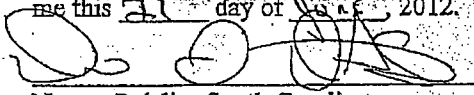
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Appendix000235

I believe I have a right and just lien upon the properties for the labor, services and materials provided by Rizon Construction for the improvement of the lands which the Plaintiffs own.


Robert Rizon

Sworn to and subscribed before
me this 21 day of Nov, 2012.



Notary Public, South Carolina

My Commission Expires: 12/2013

STATE OF SOUTH CAROLINA
COUNTY OF YORK

The Greens of Rock Hill, LLC, GRH 2011, LLC, C.P. 2011, SC

Plaintiffs,

vs.

Rizon Construction and Road Machinery,

Defendants.

FILED-RECEIVED

2012 JUL -2 AM 11:02

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-46-1815

AFFIDAVIT OF STEPHANIE PHILLIPS,
V.P. OF RIZON CONSTRUCTION

PERSONALLY APPEARED BEFORE ME, Stephanie Phillips, who first being duly sworn, deposes and says:

I am the Vice President of Rizon and am familiar with its jobs, including the one involving the Plaintiffs. The services which Rizon Construction provided included the preparation of stone which was used for the subgrade on the roads.

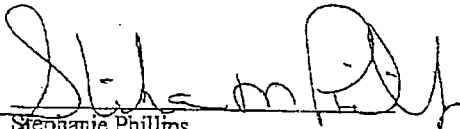
I am attaching a copy of an email from Ken Pomerantz (Exhibit 1) who works for the City of Rock Hill. As can be seen, the City had to inspect and accept the stone which was used on the properties. The stone was made in Phase 1C.1 which was paved on 8-12-2011; Phase 1E.2 had a stone base on October 30, 2011, and paved on November 23, 2011 and November 28, 2011; the Breakfield parking lot stone base was done on December 6, 2011, with an average depth of 6 to 7 inches and paved on January 6, 2012; the Veladrome parking lot stone base began on December 19, 2011, and finished January 12, 2012, and paved on February 6, 2012 through February 16, 2012. The stone base on all public roadways and Veladrome site entrance was 10 plus inches.

In addition, attached is an email from Jake Tinkler (Exhibit 2) which sets forth the Veladrome's tax map number, Breakfield Event Center and parking lot tax number and roads in the area tax map number. These are the properties which have been liened.

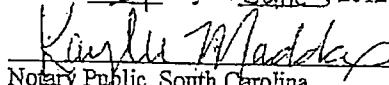
In addition, there was also four to six inches of stone under all the sidewalk. The undercut area's back fill was stone as well. These are in emails which I attach from either Ken Pomerantz or Jake Tinkler.

As such, the stone which we provided was used in the development of this project and used on the property which Rizon has liened. It was used on all three properties.

AND FURTHER DEPONENT SAYETH NOT.


Stephanie Phillips

Sworn to and subscribed before
me this 29 day of June, 2012.


Notary Public, South Carolina

My Commission Expires: 12/8/21.

000187

Appendix000237

Exhibit 1
Daniel D'Agostino

From: Rizon <rizon@comporium.net>
Sent: Thursday, June 21, 2012 1:14 PM
To: Daniel D'Agostino
Subject: Fw: Fwd: Riverwalk

From: Jake Tinkler
Sent: Wednesday, March 07, 2012 5:00 PM
To: Bob Phillips
Subject: Fwd: Riverwalk

Sent from my iPhone

Begin forwarded message:

From: KPomerantz@cityofrockhill.com
Date: March 7, 2012 2:48:05 PM EST
To: Jake Tinkler <jaketinkler@comporium.net>
Subject: Re: Riverwalk

no, Velodrome is 6620701105, Brakefield event center and its parking lot is 6620701124, and the roads in that area are 6620701108

Kenneth Pomerantz
Development Services
Engineering Technician III
City of Rock Hill
155 Johnston Street
P.O. Box 11706
Rock Hill, SC 29731-1706
803-329-5558 Business
803-329-7228 Fax
803-448-9861 Cell
kpomerantz@cityofrockhill.com

From: Jake Tinkler <jaketinkler@comporium.net>
To: "KPomerantz@cityofrockhill.com" <KPomerantz@cityofrockhill.com>
Date: 03/07/2012 12:58 PM
Subject: Re: Riverwalk

10-4. Do you know if the roads and the parking lot at the Brakefield have the same tax map ID as the Velodrome?

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Appendix000238

Sent from my iPhone

On Mar 7, 2012, at 7:35 AM, KPomerantz@cityofrockhill.com wrote:

Just remembered they also placed 4-6" of stone under all sidewalk. Undercut areas backfilled with stone as well.

Kenneth Pomerantz
Development Services
Engineering Technician III
City of Rock Hill
155 Johnston Street
P.O. Box 11706
Rock Hill, SC 29731-1706
803-329-5558 Business
803-329-7228 Fax
803-448-9861 Cell
kpomerantz@cityofrockhill.com

From: Jake Tinkler <jaketinkler@comportum.net>
To: "KPomerantz@cityofrockhill.com" <KPomerantz@cityofrockhill.com>
Date: 03/06/2012 03:48 PM
Subject: Re: Riverwalk

Thanks Ken

Sent from my iPhone

On Mar 6, 2012, at 3:45 PM, KPomerantz@cityofrockhill.com wrote:

PH 1C.1 was paved on 8/12 stonebase was down about 20 days prior.
Ph1E.2 stonebase began 10/30 and paved on 11/23 & 28
Brakefield parking lot stonebase was done on 12/6 avg. depth 6-7". Paved 1/6/12
Velodrome parking lot stonebase began 12/19 and finished about 1/12/12. Paved 2/6-16/12

The stonebase on all public roadway and velodrome HD entrance was 10+"

Kenneth Pomerantz
Development Services
Engineering Technician III
City of Rock Hill
155 Johnston Street
P.O. Box 11706
Rock Hill, SC 29731-1706
803-329-5558 Business
803-329-7228 Fax
803-448-9861 Cell

kpomerantz@cityofrockhill.com "Email correspondence along with any related attachments to and from this address may be subject to the South Carolina Freedom of Information Act and may be disclosed to third parties in accordance with applicable law."

"Email correspondence along with any related attachments to and from this address may be subject to the South Carolina Freedom of Information Act and may be disclosed to third parties in accordance with applicable law."

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

COUNTY OF YORK)

The Greens of Rock Hill, LLC;
GRH 2011, LLC,)

2012-CP-46-01815

Petitioners,)

v.)

AMENDED
AFFIDAVITRizon Commercial Contracting, Inc.)
Road Machinery and Supply, Inc.,)

Respondents.)

PERSONALLY APPEARED BEFORE ME Dave Williams, who being duly sworn, deposes and says:

1. I am over the age of eighteen (18) and competent to make this affidavit.
2. I am Vice President of Celriver Services, Inc.
3. I make this affidavit based on my own personal knowledge and the business records of Celriver Services, Inc. maintained in the ordinary course of its business.
4. Celriver Services contracted with the Plaintiffs to perform certain development and construction services as general contractor for portions of the "Riverwalk" development project in Rock Hill, SC
5. As a part of Celriver's work, Celriver subcontracted with Rizon Commercial Contracting, Inc. for the following services:
"the work to be performed by the subcontractor [Rizon] includes mobilization of all labor, equipment, materials and other items required to crush and screen 30,000 tons of concrete stockpiled at the former Celanese Acetate Plant in Rock Hill. The concrete material is to be crushed and screened, as required, to meet the South Carolina Department of Transportation's specifications for Graded Aggregate Base as shown in the table in Attachment A."

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Appendix000241

Exhibit 2

Daniel D'Agostino

From: Rizon <rizon@comporium.net>
Sent: Thursday, June 21, 2012 1:14 PM
To: Daniel D'Agostino
Subject: Fw: Fwd: Riverwalk

From: Jake Tinkler
Sent: Tuesday, March 06, 2012 4:46 PM
To: Bob Phillips
Subject: Fwd: Riverwalk

Sent from my iPhone

Begin forwarded message:

From: KPomerantz@cityofrockhill.com
Date: March 6, 2012 3:45:14 PM EST
To: jaketinkler@comporium.net
Subject: Riverwalk

PH 1C.1 was paved on 8/12 stonebase was down about 20 days prior.
PH1E.2 stonebase began 10/30 and paved on 11/23 & 28
Brakefield parking lot stonebase was done on 12/6 avg. depth 6-7". Paved 1/6/12
Velodrome parking lot stonebase began 12/19 and finished about 1/12/12. Paved 2/6-16/12

The stonebase on all public roadway and velodrome HD entrance was 10+"

Kenneth Pomerantz
Development Services
Engineering Technician III
City of Rock Hill
155 Johnston Street
P.O.Box 11706
Rock Hill, SC 29731-1706
803-329-5558 Business
803-329-7228 Fax
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kpomerantz@cityofrockhill.com "Email correspondence along with any related attachments to and from this address may be subject to the South Carolina Freedom of Information Act and may be disclosed to third parties in accordance with applicable law."

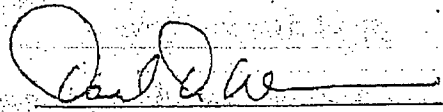
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A true and accurate copy of the Contract between Celriver and Rizon is attached hereto as Exhibit A.

6. On information and belief, Rizon leased equipment from Road Machines and Supplies Co., Inc. (RMS) to perform the crushing services required by the contract between Celriver and Rizon.
7. The concrete stocked piled at the former Celanese Acetate Plant in Rock Hill was not owned by Rizon.
8. Upon completion of the crushing, the crushed concrete was removed by Celriver and delivered to various sites as needed.
9. Our information and belief, neither Rizon or RMS provided labor or materials for the improvement of real estate upon which the Respondents have placed a lien.
10. Rizon filed a Mechanic's Lien on various parcels of property including the Velodrome which is owned by the City of Rock Hill.
11. The mechanic's lien filed by Rizon was for \$295,591.01.
12. RMS filed four separate mechanic's lines against four separate parcels of property
13. Petitioners filed a written undertaking as required by S. C. Code Section 29-5-100 (2007) to remove the lien from the real property and substitute a surety bond as security for the claim.
14. On information and belief, counsel for the Petitioner has been informed by RMS that RMS has been paid in full and no longer asserts a claim on the real property or the surety bond.

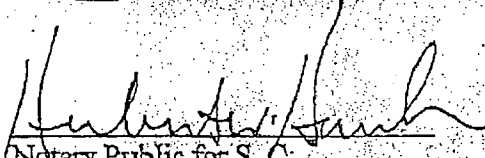
15. Attached hereto as Exhibit B is a plat showing ownership of various parcels and property subject to the mechanic's liens. The plat also shows the location of the crushing operation.

This the 2 day of July, 2012.


Dave Williams

Sworn to and subscribed by me

This 2 day of July, 2012



Notary Public for S. C.

My Commission expires: 7/19/15

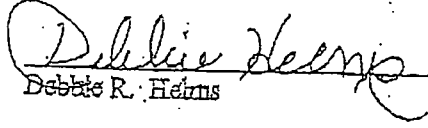
4848-0229-3007, v. 1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the within Affidavit of Dave Williams was served and on all parties of record by depositing a copy of same in the United States mail, with sufficient postage annexed thereto, addressed as follows:

Daniel D. D'Agostino
D'Agostino & D'Agostino
PO Box 1199
York, SC 29745

This the 19th day of June, 2012.


Debbie R. Harris

4814-3210-4975, v. 1

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Appendix000245

CONTRACT

STATE OF SOUTH CAROLINA

COUNTY OF YORK

AGREEMENT

THIS AGREEMENT is made this 26th day of April, 2010 between Calriver Services (hereinafter called "Contractor") and Rizon Construction (hereinafter called "Subcontractor").

WHEREAS, the Subcontractor has carefully inspected the work site and concrete pile and fully understands what is required to successfully prosecute the work; and

WHEREAS, the Contractor and Subcontractor desire to enter into an Agreement wherein Subcontract shall provide such services as set forth herein below;

NOW, THEREFORE, for and in consideration of the mutual promises, undertakings and covenants set forth herein, the receipt and sufficiency of which is acknowledged and affirmed by the Contractor and Subcontractor, the parties hereto agree as follows:

SECTION 1 THE CONTRACT DOCUMENTS

1.1 The Contract Documents consist of (1) this Agreement; (2) other documents listed in Section 18 of this Agreement; and (3) Modifications to this Agreement issued after execution of this Agreement. The Agreement represents the entire and integrated Agreement between the parties hereto and supercedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Section 18.

1.2 The Agreement may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Owner and the Subcontractor, or (2) between any persons or entities other than the Contractor and Subcontractor.

SECTION 2 MUTUAL RIGHTS AND RESPONSIBILITIES

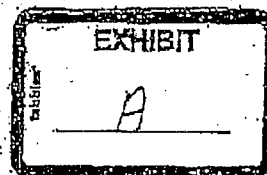
2.1 The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement.

SECTION 3 CONTRACTOR

3.1 SERVICES PROVIDED BY THE CONTRACTOR: None

3.2 COMMUNICATIONS

3.2.1 The Contractor shall promptly make available to the Subcontractor information, which affects this Agreement and which becomes available to the Contractor subsequent to execution of this Agreement.



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3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

3.3 CLAIMS BY THE CONTRACTOR

3.3.1 Liquidated damages for delay, if provided for in Paragraph 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Agreement.

3.3.2 The Contractor's claims for services or materials provided the Subcontractor shall require:

1. seven days' prior written notice except in an emergency;
2. written compilations to the Subcontractor of services and materials provided and charges for such services and materials no later than the fifteenth day of the following month.

3.4 CONTRACTOR'S REMEDIES

3.4.1 If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within three working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after three days following receipt by the Subcontractor of an additional written notice, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

SECTION 4 SUBCONTRACTOR

4.1 EXECUTION AND PROGRESS OF THE WORK

4.1.1 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors or Owner's own forces.

4.1.2 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors.

4.1.3 The Subcontractor shall submit to the Contractor a schedule of values allocated to the various parts of the Work of this Agreement made out in such detail as the Contractor and Subcontractor may agree upon, and supported by such evidence as the Contractor may require. In applying for payment, the Subcontractor shall submit statements based upon this schedule.

4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Agreement as mutually agreed, including information on the status of materials and equipment which may be in the course of preparation, manufacture or transit.

4.1.5 The Subcontractor agrees that the Contractor will have the authority to reject Work of the Subcontractor which does not conform to the requirements identified in this Agreement.

6.1.2 The parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

6.2 ARBITRATION

6.2.1 Any claim arising out of or related to this Agreement, except claims as otherwise provided in Subparagraph 4.1.5 and except those waived in this Agreement, shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 6.1.

6.2.2 Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

6.2.3 A demand for arbitration shall be made within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

6.2.4 Limitation on Consolidation or Joinder. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Agreement shall include, by consolidation or joinder or in any other manner, any person or entity not a party to the Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not the Architect, the Architect's employee, the Architect's consultant, or an employee or agent of any of them. This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

6.2.5 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

6.2.6 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

SECTION 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE AGREEMENT**7.1 TERMINATION BY THE CONTRACTOR**

7.1.1 If the Subcontractor persistently or repeatedly fails or neglects to carry out the Work in accordance with Contract Documents or otherwise to perform in accordance with this Agreement and fails within seven days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after seven days following receipt by the Subcontractor of an additional written notice and without prejudice to any other remedy the Contractor may have, terminate the Agreement and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the contract amount exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

7.1.2 Upon receipt of written notice of termination, the Subcontractor shall:

1. ~~cease operations as directed by the Contractor in the notice;~~
2. take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed.

7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Agreement in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the contract amount and schedule provided for in the Agreement.

7.4 ASSIGNMENT OF THE AGREEMENT

7.4.1 The Subcontractor shall not assign the Work of this Agreement without the written consent of the Contractor, nor subcontract the whole of this Agreement without the written consent of the Contractor, nor further subcontract portions of this Agreement without written notification to the Contractor when such notification is requested by the Contractor.

SECTION 8 THE WORK OF THIS AGREEMENT

The Subcontractor shall execute the following portion of the Work described in the Contract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

The Work to be performed by the Subcontractor includes mobilization of all labor, equipment, materials and other items required to crush and screen 30,000 tons of concrete stockpiled at the former Calanese Asphalts Plant in Rock Hill. The concrete material is to be crushed and screened, as required, to meet the South Carolina Department of Transportation specifications for Graded Aggregate Base as shown on the table in Attachment A. Conformance testing of

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Appendix000251

crushed material to ensure that the crushed material meets SCDOT specifications will be performed by the Contractor. All scrap metal generated as a result of crushing activities shall be the property of the Contractor. Additional crushing may be authorized via contract Modification at Contractor's discretion.

SECTION 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

9.1 The Subcontractor's date of commencement shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Contractor.

9.2 The Work of this Agreement, less any Modifications, shall be substantially completed not later than 45 calendar days from the date of this Agreement, subject to adjustments of this Agreement Time as provided in the Contract Documents.

9.3 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Agreement.

SECTION 10 PAYMENT AMOUNT

10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Agreement in accordance with the following unit prices:

1. Conforming Material- crushed concrete that conforms to the SCDOT specification referenced herein shall be paid at the rate of \$4.00 per ton as measured by a scale belt and certified by an independent third party no less than every 4 weeks.
2. Non-conforming Material- Crushed concrete that does not conform to the SCDOT specification referenced herein shall be paid at the rate of \$2.50 per ton as measured by a certified belt scale.
3. Performance and Payment Bonds-Lump Sum \$3,600

SECTION 11 PROGRESS PAYMENTS

11.1 Based upon applications for payment submitted to the Contractor by the below and elsewhere in the Contract Documents.

11.2 The first payment application shall cover the first thirty (30) days after mobilization is completed. The remaining period covered by each application for payment shall be one calendar month ending on the last day of the month.

11.3 Each application for payment shall be based upon daily scale receipts provided to the Contractor.

11.4 Applications for payment submitted by the Subcontractor shall indicate the number of units and or percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

11.5 Before issuance of progress payments, the Subcontractor shall submit a waiver of lien evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Subcontractor shall also be required to provide Contractor with a waiver of lien from all equipment vendors and other vendors as requested by the Contractor.

SECTION 12 FINAL PAYMENT

12.1 Final payment, constituting the entire unpaid balance, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Contract Documents.

12.2 Before issuance of final payments, the Subcontractor shall submit a waiver of lien evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied. Subcontractor shall also be required to provide Contractor with a waiver of lien from all Sub-subcontractors, vendors and suppliers and submit them along.

SECTION 13 INSURANCE AND BONDS

13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

- (i) Worker's Compensation - statutory limits;
- (ii) Comprehensive General Liability ("CGL") - Property Damage \$1,000,000 per each occurrence; \$1,000,000 annual aggregate; Personal Injury \$1,000,000 per occurrence and \$2,000,000 aggregate;
- (iii) Automotive Liability - Property Damage \$1,000,000 per each occurrence; and

13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Subcontractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor.

13.3 Certificates of Insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Section 13 shall contain a provision that coverage's afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverage's are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Section 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the subcontractor with reasonable promptness according to the Subcontractor's information and belief.

13.6 PERFORMANCE AND PAYMENT BOND:

13.6.1 The Subcontractor shall furnish the following specified bonds. It is distinctly agreed and understood that any change made in the Contract Documents for this work, (whether such changes increase or decrease the amount thereof) or any change in the manner or the time of payments made by the Contractor to the Subcontractor, shall in no way annul, release, or affect the liability of the surety on the bond given by the Subcontractor.

The Subcontractor shall furnish a Performance Bond in the amount of One Hundred Percent (100%) of the amount specified in this Agreement, issued by a Surety Company licensed in South Carolina.

The Subcontractor shall furnish a Payment Bond for the protection of all persons supplying labor and materials, to the Contractor and his subcontractors for the performance of work as specified in this Agreement. The Bond shall be in the amount of One Hundred Percent (100%)

of the amount specified in this Agreement, issued by a Surety Company licensed in South Carolina.

13.7 PROPERTY INSURANCE: OMITTED

13.8 WAIVERS OF SUBROGATION

13.8.1 The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

SECTION 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

The Subcontractor shall be responsible for furnishing any temporary facilities required to perform the Work in accordance with the Contract Documents.

SECTION 15 MISCELLANEOUS PROVISIONS

15.1 Where reference is made in this Agreement to a provision of another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

15.2 Retainage and any reduction thereto are as follows: 10%

15.3 The Subcontractor waives claims against the Contractor for consequential damages arising out of or relating to this Agreement.

SECTION 16 CONTRACT DOCUMENTS

16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

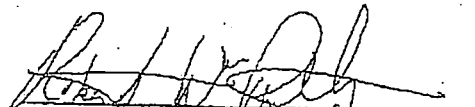
16.1.2 Scope of Work Dated April 19, 2010

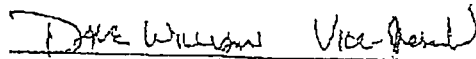
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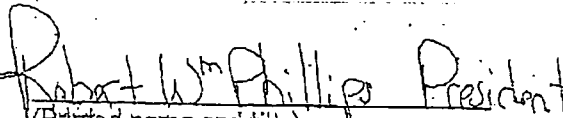
Appendix000254

This Agreement entered into as of the day and year first written above.


CONTRACTOR (Signature)


SUBCONTRACTOR (Signature)


(Printed name and title)


(Printed name and title)

Contractor's Address.
Celriver Services
2850 Cherry Road
Rock Hill, SC 29730

Subcontractor's Address.
Rizon Construction
3358 Leslie Woods Court
Rock Hill, SC 29730

h00204

Appendix000255

PERFORMANCE BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations hereunder, the Surety may promptly remedy the default, or shall promptly

1) Complete the Contract in accordance with its terms and conditions, or

2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a suspension of default under the Contract or

contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

BOND PREMIUM BASED ON
FINAL CONTRACT PRICE

Sworn to and subscribed before me

This 29th Day of April, 2010

Tona Tyler

Notary Public of South Carolina

My Commission Expires 01/2016

Signed and sealed this 25 DAY OF APRIL 2010

Tona Tyler
(Witness)

Wendy M. Dadds
(Witness)

RIZON COMMERCIAL CONTRACTING, INC.

(Principal)

(Seal)

Debra R. Rilli
(Title) Office Manager

Western Surety Company

(Surety)

(Seal)

Aray R. Wagh
(Title)

Aray R. Wagh ATTORNEY IN FACT

THE AMERICAN INSTITUTE OF ARCHITECTS

Bond #
70915556

AIA Document A311

Labor and Material Payment Bond

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE
OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS, that

RIZON COMMERCIAL CONTRACTING, INC.
3358 LESSLIE WOODS CT, ROCK HILL, SC 29730

as Principal, hereinafter called Principal, and

Western Surety Company
101 South Phillips Avenue Sioux Falls, SD 57104-6703

as Surety, hereinafter called Surety, are held and firmly bound unto

CHERRY RIVER SERVICES
2850 CHERRY ROAD ROCK HILL, SC 29730as Obligees, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined,
in the amount of

ONE HUNDRED TWENTY THOUSAND & 00/100 DOLLARS

(\$120,000.00)

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated APRIL 26, 2010, entered into a contract with Owner for

CONCRETE CRUSHING

in accordance with Drawings and Specifications prepared by

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

LABOR AND MATERIAL PAYMENT BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may file on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the

Sworn to and subscribed before me
This 29th day of April, 2010

Notary Tyler
Notary Public of South Carolina

My Commission Expires 01/20/16

party to whom the materials were furnished, or for whom the work of labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this 28 DAY OF APRIL 2010

Notary Tyler
(Witness)

Wesley Rando
(Witness)

NIZON COMMERCIAL CONTRACTING, INC.

Shahin Rishi
(Principal) (Seal)
Office Manager

Western Surety Company

Amy R. Waugh
(Surety) (Seal)
(Title) ATTORNEY IN FACT

Concrete Crushing Rock Hill, South Carolina

Subcontract Scope of Work

SUMMARY

The Subcontract Scope of Work includes providing all insurance, performance bonds, scale certifications and mobilizing equipment, personnel and materials to separate, crush, screen concrete in accordance with the South Carolina Department of Transportation (SCDOT), Standard Specifications for Highway Construction, Graded Aggregate Base, attached hereto as Attachment A. The Subcontractor is solely responsible for estimating the quantity of material to be sorted, crushed and screened as described more fully in the Pay Items below.

PAY ITEMS

1.0 Mobilization

Subcontractor shall provide performance and payment bonds, mobilize all supervision, personnel, materials and equipment to crush and stack concrete materials at the former Celanese Acetate Facility located in Rock Hill, SC in accordance with this scope of work. Crushing equipment must be rated by manufacturer to crush a minimum of 200 tons of concrete per hour. Crushing plant must be equipped with a belt scale which has been calibrated and certified in accordance with State of South Carolina requirement. The belt scale to be calibrated every 4 weeks by Subcontractor. Subcontractor to submit scale certification records to Contractor for approval. Subcontractor to provide all permits required for crushing activities.

Payment 1.0: Performance and Payment Bonds: \$3,600

2.0 Concrete Preparation

Size reduce concrete to a dimension required for crushing plant. Segregate any unsuitable materials such as wood, plastic and steel.

Materials that are unsuitable for crushing will be removed by the Contractor.

Payment 2.0: included in Item 3.0

3.0 Concrete Crushing

Subcontractor shall be responsible for providing supervision, equipment, labor, materials and other items required to size reduce, sort, control fugitive dust, crush, screen and stack concrete materials to meet the requirements provided in Attachment A. Subcontractor shall be responsible for complying with all applicable local, state and federal

Concrete Crushing Rock Hill, South Carolina

requirements including the health and safety of the Subcontractor's personnel during the execution of this Work. Subcontractor shall provide Contractor with scale receipts on a daily.

Contractor shall be responsible for: (1) all conformance testing to ensure crushed material meets SCDOT specifications; (2) utility disconnects; and (3) removal and management of any contaminated materials encountered by the Subcontractor during the execution of this Scope of Work.

Payment Item 3.1: Per ton for crushed materials which conforms Subcontract Specifications \$4.00/ton

Payment Item 3.2 : Per ton for crushed material which does not conform to Subcontract Specifications \$2.50/ton

Contractor may issue a Modification to Subcontractor to crush additional asphalt and or additional concrete at same price as Pay Item 3.1.

4.0 Demobilization

Demobilization including the cleanup and removal of all contractor equipment and materials from the site.

Payment 4.0: Included in Unit Price

ATTACHMENT "A"

305.2.5.5

(table continued from the previous page)

Marine Limestone Base Course	
Sieve Designation	Percentage by Weight Passing
No. 4	30 - 60
No. 30	17 - 30
No. 200*	0 - 20
Liquid Limit	25 Max.
Plasticity Index	6 Max.

*AASHTO T 11 is used to determine the amount passing the No. 200 sieve.

SPECIFICATION

Recycled Portland Cement Concrete Base Course	
Sieve Designation	Percentage by Weight Passing
2-Inch	100
1 1/2-Inch	85 - 100
1-Inch	70 - 100
3/4-Inch	48 - 75
No. 4	30 - 60
No. 30	11 - 30
No. 200*	0 - 12
Liquid Limit	25 Max.
Plasticity Index	6 Max.

*AASHTO T 11 is used to determine the amount passing the No. 200 sieve.

305.2.5.6 Asphalt Materials

- 1 Use EA-P, Special for priming the base course conforming to the requirements specified in Section 407.

305.3 Equipment

- 1 Ensure that the equipment necessary for the proper construction of the work is on site, in acceptable working condition, and approved by the RCE as to both type and condition before the start of work under this section. Provide sufficient equipment to enable prosecution of the work in accordance with the project schedule and completion of the work in the specified time.
- 2 Use a steel wheel roller capable of developing a pressure of 280 to 350 pounds per inch of roller width in the compression wheel for compaction. If necessary, use other rollers in conjunction with the steel wheel roller. As



Western Surety Company

POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 70915566

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint Dale E. Clark, Robert A. Jacobson, Diane Gibson, Wendy M. Landa, Sha Yang and Amy Ry-Waugh its true and lawful attorneys-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, any surety or fidelity bond in an unlimited amount, and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorneys-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of this Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

The penal amount of the bond hereto described may be increased if there is attached to this Power, written authority so authorizing in the form of an endorsement, letter or telegram signed by the Senior Underwriting Officer, Underwriting Officer, President, Vice President, Assistant Vice President, Treasurer, Secretary, or Assistant Secretary of Western Surety Company specifically authorizing said increase.

In Witness Whereof, Western Surety Company has caused these presents to be signed by its Senior Vice President, Paul T. Bruffat, and its corporate seal to be affixed this 26 day of APRIL, 2010.



WESTERN SURETY COMPANY

Paul T. Bruffat
Paul T. Bruffat, Senior Vice President

On this 26 day of APRIL in the year 2010, before me, a notary public, personally appeared Paul T. Bruffat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.



D. Krell
Notary Public - South Dakota

I, the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is inviolable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereto set my hand and seal of Western Surety Company this 26 day of APRIL, 2010.

WESTERN SURETY COMPANY

Paul T. Bruffat
Paul T. Bruffat, Senior Vice President

THE AMERICAN INSTITUTE OF ARCHITECTS

Bond #
70915556

AIA Document A311

Performance Bond

KNOW ALL MEN BY THESE PRESENTS, that

RIZON COMMERCIAL CONTRACTING, INC.
3358 LESSLIE WOODS CT, ROCK HILL, SC 29730

as Principal, hereinafter called Contractor, and

Western Surety Company

161 South Phillips Avenue Sioux Falls, SD 57104-6703

as Surety, hereinafter called Surety, are held and firmly bound unto

CELRIVER SERVICES
2850 CHERRY ROAD ROCK HILL, SC 29730

as Obligor, hereinafter called Owner, in the amount of

ONE HUNDRED TWENTY THOUSAND & 00/100 DOLLARS

(\$120,000.00)

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement dated APRIL 26, 2010, entered into a contract with Owner for

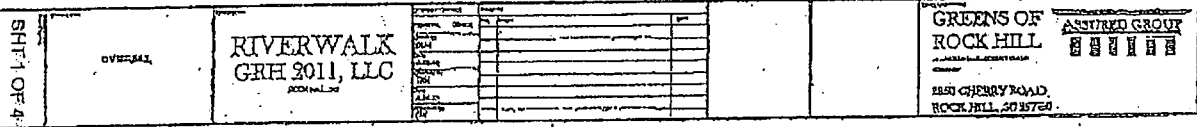
CONCRETE CRUSHING

in accordance with Drawings and Specifications prepared by

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract

000212

Appendix000263



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
In the Court of Common Pleas
Sixteenth Judicial Circuit

S. Jackson Kimball, Special Circuit Court Judge

Docket No. 2012-CP-46-1815
Appellate Case No. 2012-213563

The Greens of Rock Hill, LLC; GRH 2011, LLC.....Respondent.

v.

Rizon Commercial Contracting, Inc., Road Machinery and Supplies Co., Defendants, of
whom Rizon Commercial Contracting, Inc. is the Appellant.

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.

October 17, 2013



Daniel D. D'Agostino
D'Agostino Law Firm
25 W. Liberty St.
York, South Carolina 29745
(803) 628-6509
Attorney for Appellant

00214

Appendix000265

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The Greens of Rock Hill, LLC and GRH 2011, LLC,
Respondents,

v.

Rizon Commercial Contracting, Inc. and Road
Machinery and Supplies Co., Defendants,

of whom Rizon Commercial Contracting, Inc. is the
Appellant.

Appellate Case No. 2012-213563

Appeal From York County
S. Jackson Kimball, III, Special Circuit Court Judge,

Opinion No. 5281
Heard September 10, 2014 – Filed December 3, 2014

REVERSED AND REMANDED

Daniel Dominic D'Agostino, D'Agostino Law Firm, of
York, for Appellant.

Herbert W. Hamilton and Walter Keith Martens,
Hamilton Martens Ballou & Carroll, LLC, of Rock Hill;
and Tracy Thompson Vann, Nexsen Pruet, LLC, of
Charlotte, NC, all for Respondents.

FEW, C.J.: Rizon Commercial Contracting, Inc. appeals the circuit court's order vacating its mechanic's liens and dismissing its counterclaim for foreclosure. We

find the circuit court erred in determining as a matter of law that Rizon was not a "laborer" that performed work "for the improvement of real estate" under subsection 29-5-20(A) of the South Carolina Code (2007). We reverse and remand for foreclosure proceedings.

I. Facts and Procedural History

In 2010, the Greens of Rock Hill, LLC and GRH 2011, LLC (collectively the "owners") initiated the "Riverwalk development project," which involved developing several pieces of property on the Catawba River in Rock Hill into a large, mixed-use community. The owners hired Celriver Services, LLC to serve as the general contractor for portions of the development project, which included demolishing an abandoned manufacturing facility on the property, grading the land, and installing roads and infrastructure.

Following the demolition of the manufacturing facility, large pieces of "scrap concrete" remained on the property. Celriver hired Rizon to crush this concrete into usable material. Specifically, the contract¹ between the parties provided,

The Work to be performed by the Subcontractor [Rizon] includes mobilization of all labor, equipment, materials and other items required to crush and screen 30,000 tons of concrete stockpiled [on the property]. The concrete material is to be crushed and screened, as required, to

¹ The owners included with their petition to vacate the mechanic's liens a written contract between Celriver and Rizon dated 2010. Rizon's owner claimed in an affidavit, however, that "the contract from 2010 was not the contract under which [Rizon was] working." At oral argument, Rizon told the court Celriver initially hired Rizon in 2010 to crush the scrap concrete, and the 2010 contract covered the work performed by Rizon for that year. Rizon explained, however, that there was no written contract covering the work performed in 2011, which is the work relevant to this litigation. Notwithstanding this, Rizon admitted that the terms of the oral contract established in 2011 were "substantially the same" as those provided in the 2010 written contract. This is supported by the affidavit of Dave Williams, Vice President of Celriver, which used the same language contained in the 2010 contract to describe the work to be performed by Rizon under the 2011 contract.

meet the South Carolina Department of Transportation specifications for Graded Aggregate Base

Rizon paid for the rental equipment used to crush the concrete and for all expenses incurred in completing the contract, including labor and operating costs. Upon completion of the work, Celriver moved the crushed concrete to "various sites" on the property, where it was used as a paving base for roads, sidewalks, and parking lots.

Rizon subsequently filed mechanic's liens against the Riverwalk property pursuant to section 29-5-20, claiming it was owed \$295,591 for the work it performed. The owners filed a petition to vacate the liens, claiming Rizon "did not provide labor, material, or supplies for the improvement of real property" and was thus "not entitled to a mechanic's lien." Rizon filed an answer and counterclaim seeking foreclosure.

The trial court issued an order vacating Rizon's mechanic's liens and dismissing its foreclosure claim. The court found Rizon was not a laborer because it "did not . . . do anything to improve the real estate." Although the court acknowledged that "crushing the concrete may have been a benefit to Celriver," it determined this work, by itself, "did not improve the real property." Based on this finding, the circuit court ruled as a matter of law Rizon did not meet the requirements for a mechanic's lien under section 29-5-20.

II. Rizon's Entitlement to Mechanic's Liens

Mechanic's liens "are purely statutory and may be acquired and enforced only in accordance with the terms and conditions set forth in the statutes creating them." *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C.*, 409 S.C. 331, 340, 762 S.E.2d 561, 565 (2014). According to subsection 29-5-20(A), "[e]very laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate . . . has a lien thereon . . . to the value of the labor or material so furnished." The purpose of subsection 29-5-20(A) "is to protect a party who provides labor or materials for the improvement of property but does not have a contractual relationship with the property owner." *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 121, 659 S.E.2d 158, 165 (2008).

The circuit court vacated Rizon's mechanic's liens based on the procedure approved by the supreme court in *Sea Pines Co. v. Kiawah Island Co.*, 268 S.C. 153, 157, 232 S.E.2d 501, 502 (1977), which allows the circuit court to consider

the propriety of a mechanic's lien under a standard that "may be . . . likened to the [court]'s authority to grant a summary judgment if there is no genuine issue of material fact to be determined." We hold the circuit court erred by vacating the liens. Viewing the evidence in the light most favorable to Rizon, we find Rizon was a "laborer" that performed work "for the improvement of real estate," which entitles it to a mechanic's lien under subsection 29-5-20(A). See *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013) (stating that when considering a motion for summary judgment, "the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party").

The owners admit the concrete crushed by Rizon "was used to improve the property," but contend the sole task for which Rizon contracted did not, by itself, improve the real estate. We disagree. Celriver hired Rizon to accomplish two tasks: (1) rid the property of the demolition debris so construction could continue; and (2) convert concrete blocks into fragments that could be used in paving the roadways on the property. Rizon rented equipment and provided all the labor, fuel, and supervision necessary to remove the scrap concrete from the property—a component of the work necessary for the development project to continue—by crushing it into a material that went directly back into the project. We find these facts, when viewed in the light most favorable to Rizon, demonstrate that Rizon was a laborer under section 29-5-20 because the work it performed was necessary to the development project and generated a product that was used to improve the property. See *A.V.A. Constr. Corp. v. Santee Wando Constr.*, 303 S.C. 333, 336, 400 S.E.2d 498, 500 (Ct. App. 1990) ("We think the [mechanic's lien] statute sufficiently broad to encompass labor . . . absolutely essential to the owner's development of his properties.").

We find further support for our holding in certain sections of the mechanic's lien statute. As this court stated in *A.V.A.*, "There has been over the years a tendency of the General Assembly to liberalize the mechanic's lien statute, making available each time a lien to additional providers of labor and materials." 303 S.C. at 335, 400 S.E.2d at 500. The legislature has expanded the scope of the mechanic's lien statute to cover persons performing a component of the labor necessary to complete construction and development projects, even though "the labor performed [did not] go into something which has attached to and become a part of the real estate." *George A.Z. Johnson, Jr., Inc. v. Barnhill*, 279 S.C. 242, 245, 306 S.E.2d 216, 218 (1983). For example, a person "who provides a landscape service," which includes "land clearing, grading, filling, plant removal, natural obstruction removal, or other preparation of land," is entitled to a mechanic's lien under section

29-5-20. S.C. Code Ann. § 29-5-26 (Supp. 2013). Additionally, South Carolina Code section 29-5-27 (2007) states, "Any person providing construction and demolition debris disposal services, . . . including, but not limited to, final disposal services . . . is a laborer within the meaning of Section[] 29-5-20."

We need not determine whether Rizon's work is covered by these specific statutes because we find it is entitled to a lien under section 29-5-20. Nevertheless, we find these sections of the mechanic's lien statute helpful to our analysis. They demonstrate the legislative intent that a person who performs a component of the work involved in development and construction projects should be considered a "laborer" that performed work "for the improvement of real estate." § 29-5-20(A). Accordingly, we conclude Rizon was entitled to a mechanic's lien under section 29-5-20.²

III. Conclusion

We hold the circuit court erred in vacating Rizon's mechanic's liens and dismissing its foreclosure action as a matter of law. Therefore, the order of the circuit court is **REVERSED** and the case **REMANDED** for the court to hold foreclosure proceedings consistent with this decision.

LOCKEMY, J., concurs.

² The circuit court also found (1) Rizon did not furnish the material that was used to improve the property because "Rizon's sole task was simply to change the form of the scrap concrete supplied by others into stone usable in the construction of roads"; and (2) "Rizon was not a subcontractor as it relates to the improvement of the subject real estate" because "there is no indication that Celriver's contract with the Owners required crushing of the concrete in order that it could be used in building roads and sidewalks." We decline to address these findings because our conclusion that Rizon is a laborer under subsection 29-5-20(A) is sufficient to support our holding. See § 29-5-20(A) (providing a mechanic's lien to "[e]very laborer, mechanic, subcontractor, or person furnishing material" (emphasis added)). We also do not address Rizon's argument that the circuit court erred in ruling on the owners' petition without allowing discovery because our holding is dispositive of this issue. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address other issues raised by appellant because resolution of a prior issue was dispositive).

THOMAS, J., dissenting: I respectfully dissent, as I would hold that the work performed by Rizon does not entitle it to mechanic's liens under section 29-5-20 of the South Carolina Code (2007). See *Clo-Car Trucking Co. v. Cliffure Estates of S.C., Inc.*, 282 S.C. 573, 576, 320 S.E.2d 51, 53 (Ct. App. 1984) ("[A] claim may not be sustained when that can be done only by a forced and unnatural interpretation of the language of the statute [We will] not . . . apply the rule of liberal construction to create a lien where none exists or was intended by the legislature." (second, third, and fourth alterations in original) (quoting 53 Am. Jur. 2d *Mechanics' Liens* § 18 at 535 (1970)); *id.* ("Statutory liens, then, will not be extended by us to permit a claim not specified by the statute."); *id.* ("He who sets up such a lien must bring himself fairly within the expressed intention of the lawmakers." (quoting *Williamson v. Hotel Melrose*, 110 S.C. 1, 34, 96 S.E. 407, 415 (1918)) (internal quotation marks omitted)).

"[S]ection 29-5-20(A) . . . provides in relevant part: 'Every laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon, subject to existing liens of which he has actual or constructive notice, to the value of the labor or material so furnished' *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C.*, 409 S.C. 331, 340-41, 762 S.E.2d 561, 566 (2014) (third alteration in original) (quoting S.C. Code Ann. § 29-5-20(A) (2007)). All of the evidence in the record reveals that Rizon was hired for the task of crushing concrete stockpiled at the former Celanese Acetate Plant. While it is undisputed that some of this crushed concrete was used by Celriver to improve the property, there is no evidence that the work performed by Rizon improved the real estate upon which its mechanic's liens were placed. I disagree with the majority as to the work performed by Rizon in that I find the evidence in the record reveals Rizon's only task was to crush concrete that it neither owned nor used to improve the real estate.³

While Rizon did pay for the labor, services, and material used in crushing the stockpiled concrete, these activities do not amount to furnishing material for the

³ I have found no evidence in the record to support the majority's statement that one reason Celriver hired Rizon was to rid the property of demolition debris so construction could continue. At oral argument, Rizon admitted that the terms of the oral contract in 2011 were "substantially the same" as the terms of the 2010 contract provided in the record, and that contract simply states that Rizon was hired for the purpose of crushing stockpiled concrete.

improvement of real estate within the meaning of section 29-5-20, as these materials were not actually used in the improvement of the real estate. *See* S.C. Code Ann. § 29-5-22 (2007) ("A person who supplies tools, appliances, machinery, or equipment used *as provided in Section 29-5-10(a)* is considered to have furnished material for the improvement of real estate within the meaning of Sections 29-5-20" (emphasis added)); S.C. Code Ann. § 29-5-10(a) (2007) ("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* . . . shall have a lien upon the building or structure"); *id.* ("As used in this section, materials furnished and actually used include tools, appliances, machinery, or equipment *supplied for use on the building or structure* to the extent of their reasonable rental value during their actual use.").

Moreover, Rizon did not dispose of discarded solid wastes and therefore does not fall within the ambit of "construction and debris disposal services" under section 29-5-27. *See* S.C. Code Ann. § 29-5-27 (2007) ("Any person providing construction and demolition debris disposal services, as defined in Section 44-96-40(6), including, but not limited to, final disposal services provided by a construction and demolition landfill, is a laborer within the meaning of Sections 29-5-20"); S.C. Code Ann. § 44-96-40(6) (2002) ("Construction and demolition debris' means discarded solid wastes resulting from construction, remodeling, repair and demolition of structures, road building, and land clearing.").

Based on the foregoing, I would affirm the order of the circuit court.

74517

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Appellate Case No. 2012-213563

The Greens of Rock Hill, LLC; GRH 2011, LLC,

Respondents,

v.

Rizon Commercial Contracting, Inc., Road Machinery and Supplies Co.,

Appellants.

PETITION FOR REHEARING

RECEIVED

DEC 18 2014

SC Court of Appeals

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Appendix000273

Respondent files this Petition for Rehearing as provided in Rule 221(a) of the Appellate Court Rules. The opinion of the Court of Appeals reversing the Trial Court and remanding this case was filed on December 3, 2014. Respondent respectively submits that the following points were overlooked or misapprehended by the Court:

1. **Rizon was only hired to crush concrete.**

The only contract in the record states that Rizon's scope of work was:

The Work to be performed by the Subcontractor includes mobilization of all labor, equipment, materials and other items required to crush and screen 30,000 tons of concrete stockpiled at the former Celanese Acetate Plant in Rock Hill. The concrete material is to be crushed and screened, as required, to meet the South Carolina Department of Transportation specifications for Graded Aggregate Base as shown on the table in Attachment A. Conformance testing of crushed material to ensure that the crushed material meets SCDOT specifications will be performed by the Contractor. All scrap metal generated as a result of crushing may be authorized via contract Modification at Contractor's discretion.

While Rizon argues that the contract in the record is not the contract which covers the work for which the mechanic's lien was filed, it was conceded that the applicable contract was essentially the same. Rizon's only task was to "separate, crush, screen concrete" in accordance with South Carolina Department of Transportation standard specifications. (R p.31).

There is no requirement that Rizon deliver any material to the Project. There is no requirement that Rizon remove material from the crushing site after the concrete was crushed. Specifically, there is nothing in the contract that obligates Rizon to "rid the property of demolition debris so construction could continue". To the contrary, the contract specifically states that if any concrete is to be removed from the project, the

concrete is to be removed by the contractor (Celriver), not Rizon. There is nothing in the record to support the conclusion that Rizon removed any concrete from the Project.

It is undisputed that Rizon did not own the concrete it crushed. (R. 192). It is undisputed that Rizon did not deliver the scrap concrete to the crushing site. (R. 192). It is undisputed that Rizon did not deliver the crushed concrete to be used in the Project.

2. The Mechanic's Lien statute has been expanded from the crushing site to other parts of the Project by the General Assembly, not the Courts.

The Court's opinion cites A.V.A. Construction Corp. v. Santee Wando Construction, 303 S.C. 333, 400 SE2d 498 (ct. app., 1990) and George A. F. Johnson, Jr., Inc. v. Barnhill, 279 S.C. 242, 306 SE2d 216 (1983) as support for its holding. While Respondent concedes that the scope of the mechanic's lien has been expanded over the years, the expansion has been accomplished by the General Assembly. The Courts are still subject to the "settled principle that statutory liens may not be extended by Courts to claims not specified in the statute; and a claimant must bring himself within the expressed intention of the lawmakers." Guignard Brick Works v. Gannt, 251 S.C. 29, 159 SE2d 850 (1968).

Respondent submits that neither case supports the Court's conclusion that expansion of the mechanic's lien by the Court is appropriate. In A.V.A. the Court found that the existing language of the statute covered the work for which the mechanic's lien was filed. George A.F. Johnson Jr., Inc., supports the proposition that expansion of the mechanic's lien statute should be accomplished by the General Assembly.

The Johnson case involved a claim for surveyor's service. The Court noted that the mechanic's lien statute had been amended by the General Assembly to give surveyors the right to a mechanic's lien. However, the amendment occurred after the work had been

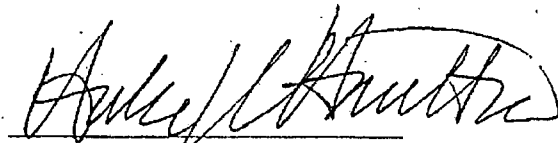
done for which the mechanic's lien was filed. Consequently, the Court noted that the amendment could have no effect on the decision. Citing Guignard, the Court found that there was no language in the statute which expressly or by implication indicated a legislative intent that surveyor services were covered by mechanic's lien statutes.

Respondent respectfully submits that there is no language in the mechanic's lien statute which indicates a legislative intent to provide the right to a mechanic's lien to a party that only provides concrete crushing services. As the court indicated in Johnson, if the Legislature wishes to provide mechanic's lien rights for the type of service provided by Rizon, the statute should be amended. Until that happens, however, the Courts should not expand the coverage of the statute by court order.

Conclusion

For the forgoing reasons, the Respondent respectfully requests that the Court withdraw its opinion and affirm the Trial Court.

December 18, 2014



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THE STATE OF SOUTH CAROLINA
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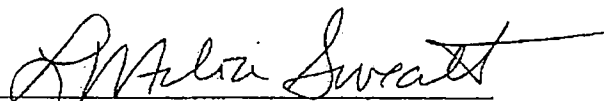
SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens Ballou & Carroll, LLC certifies that the Respondent's Petition for Rehearing was served upon other counsel of record by depositing same in the United States Mail, with sufficient postage affixed and addressed as follows:

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ATTORNEYS FOR APPELLANT

December 18, 2014


L. Melia Sweatt

Appendix000277

The South Carolina Court of Appeals

The Greens of Rock Hill, LLC, and GRH 2011, LLC,
Respondents,

v.

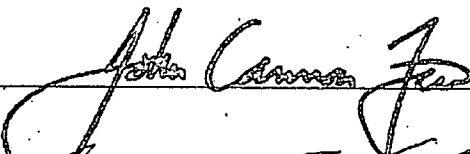
Rizon Commercial Contracting, Inc. and Road
Machinery and Supplies Co., Defendants,

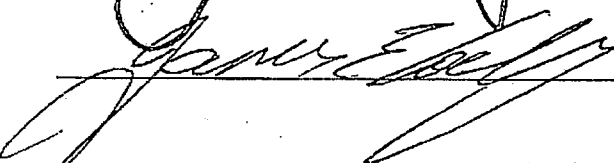
of whom Rizon Commercial Contracting, Inc. is the
Appellant.

Appellate Case No. 2012-213563

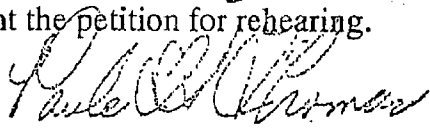
ORDER

After careful consideration of Appellant's petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.

 J.

I adhere to my dissent, and I would grant the petition for rehearing.

 J.

Columbia, South Carolina

cc:

Daniel Dominic D'Agostino, Esquire

Herbert W. Hamilton, Esquire

Tracy Thompson Vann, Esquire

Walter Keith Martens, Esquire

The Honorable S. Jackson Kimball, III

FILED

Jan 14, 2015