

9

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-15-5 **RECEIVED**

The Spriggs Group, PC

Gene R. Slivka JUL 06 2015

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: <u>James A. Bruorton, IV</u>	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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.  See Page 2 for additional information.
- 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, 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 :

2015 JUN -3 PM 1:02  
PATRICIA C. GRANT  
CLERK OF COURT  
COMMON PLEAS

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)
<u>The Spriggs Group,</u>	<u>Gene R. Slivka</u>	<u>\$ 213,019.12</u>
<u>PC.</u>		\$
		\$

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.

[Signature]  
Circuit Court Judge

2157  
Judge Code

5/30/2015  
Date



Defendant Slivka for the remaining contract balance, as well as additional agreed upon services pursuant to the Contract Agreement. Defendant Slivka has refused to pay Spriggs Group any additional money under the Contract Agreement, despite admitting repeatedly that he owes The Spriggs Group the other half of the original Contract Agreement amount. Finally, on February 9, 2012 a *Partial* Satisfaction of Judgment was entered into between the parties. The balance remained unpaid, and the matter was then appealed by Defendant Slivka.

A history of this case shows that it transgressed through two years of contested litigation culminating in a week-long trial before this court in July 2011. On July 22, 2011, a jury rendered a unanimous verdict in favor of The Spriggs Group in the amount of \$173,990.53 on The Spriggs Group's causes of action for foreclosure of mechanic's lien, breach of contract and failure to comply with South Carolina Statute § 27-1-15. In response to the complaint Defendant Slivka filed a counterclaim for Slander of Title. The jury also found in favor of The Spriggs Group on this counterclaim. As a result of that verdict, The Spriggs Group sought an award of attorney's fees and costs as the prevailing party under South Carolina's Mechanic's lien statute and the statutory authority to recover attorney's fees under S.C. Code Ann. § 27-1-15. This Court awarded The Spriggs Group \$235,500 in attorney's fees and costs without clearly indicating which statute the award was given under or the amount of fees being awarded under each statute. A total judgment was entered against Mr. Slivka in the amount of \$446,434.76 on October 3, 2011.

Defendant Slivka filed an appeal challenging, among other things, the rulings of this Court that (1) construction administrative services performed by an architect are considered labor under the mechanic's lien statute; (2) whether a reasonable and fair investigation was made

under S.C. Code Ann. § 27-1-15 was a question for the jury; and (3) this Court issued an award of attorney's fees that was unreasonable and beyond the limits of what is allowed by statute.

The parties undertook full briefing of the appealed issues and had oral arguments before the Court of Appeals on January 10, 2013. The South Carolina Court of Appeals affirmed the rulings of this Court that construction administrative services performed by an architect are considered labor under the mechanic's lien statute and that whether a reasonable and fair investigation was made under S.C. Code Ann. § 27-1-15 was a question for the jury. In the eyes of this Court, those two issues were the substantive legal arguments presented on appeal. As stated above, the Court of Appeals did remand the attorney's fees and cost award it to this Court for clarification as to which fees were awarded under which of the two statutory authorities. The attorney's fees and cost award was not vacated, nor was any action taken to set aside the judgment entered against Mr. Slivka.

Defendant Slivka further appealed the Court of Appeals affirmation of this Court's rulings that construction administrative services performed by an architect are considered labor under the mechanic's lien statute and that whether a reasonable and fair investigation was made under S.C. Code Ann. § 27-1-15 was a question for the jury to the South Carolina Supreme Court. No further appeal was made of the Court of Appeals' reversal and request for clarification of the attorney's fees and costs award. Again, the parties under took full briefing of the issues before the South Carolina Supreme Court and oral arguments were held on February 3, 2015. On March 18, 2015, the South Carolina Supreme Court issued an Order asking the Court of Appeals to depublish their opinion and dismissing the certiorari as being improvidently granted. The Supreme Court of South Carolina then issued a Remittitur on March 19, 2015 to this Court. Pursuant to that Remittitur, this Court issues this Order.

The decision to award or deny attorney's fees under a statute will not be disturbed on appeal absent an abuse of discretion. Kiriakides v. Sch. Dist. Of Greenville County, 382 S.C. 8, 675 S.E.2d 439 (2009). Despite reversing the attorney's fees award in this matter, the Court of Appeals did make several rulings as to the attorney's fees award that are relevant in this Court's current consideration. First, Slivka argued that the Spriggs Group was not entitled to recover \$28,619.25 in staff member fees as part of its attorneys' fees award. The Court of Appeals found that these fees are recoverable by Spriggs Group and that the Circuit Court did not abuse its discretion in awarding them. See Ct. of Appeals Opinion Pg. 9. Second, Slivka argued that Spriggs Group total recovery of fees is limited to the amount of the cash bond Slivka posted with the Clerk of Court pursuant to S.C. Code Ann. § 29-5-110. The Court of Appeals rejected this argument and specifically noted that the attorneys' fees awarded under the mechanic's lien statute are recoverable by the prevailing party up to the amount of the lien, which in this case is for \$198,834.53. See Ct. of Appeals Opinion Pg. 9-10. Finally, Slivka argues that the attorney's fees awarded by the circuit court are not reasonable and the circuit court order fails to specify which fees were awarded pursuant to which statute.

The Court of Appeals in its decision did not find the amount of attorneys' fees awarded by the Circuit Court to Spriggs Group to be unreasonable, nor did it find that the Circuit Court abused its discretion in awarding the fees to Spriggs Group. Instead, the Court of Appeals found the Circuit Court's Order to be unclear, so it reversed the attorney's fees award and remanded the issue of attorneys' fees to the Circuit Court for reconsideration ordering the Circuit Court to clearly identify the statutory authority for its award and the fees incurred under each statute.

As stated in the Court of Appeals' decision, S.C. Code Ann. § 27-1-15 and § 29-5-10 of the South Carolina Code both authorize an award of attorney's fees to Spriggs in this case. See

Ct. of Appeals Opinion Pg. 7. In determining the award of attorneys' fees, the trial court considered six factors: (1) nature, extent, and difficulty of legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in locality for similar services; and (6) beneficial results obtained. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997). Consideration should be given to all six criteria in establishing reasonable attorney's fees; none of these factors is considered controlling. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974)).

To support its original Motion for Attorney's fees, Plaintiff submitted an Affidavit of A. Bright Ariail and N. Keith Emge, Jr., a Second Affidavit of A. Bright Ariail, and now an Affidavit of James A. Bruorton IV to support its Motion for Appellate Fees and Costs. Included in the Affidavits of A. Bright Ariail, Affidavit of James A. Bruorton IV and Motion for Appellate Fees and Costs are detailed bills for legal services rendered setting forth each task performed, who performed the task and the amount of time spent on each task shown in six minute increments. As stated in my prior Order of October 3, 2011, Plaintiff was required to expend *considerably more time and effort* on this case due to specific actions of the Defendant who created unnecessary delays, filed meritless motions, as well as obtained new counsel during the course of the litigation, thus forced the Plaintiff to incur additional attorney's fees and costs above and beyond what would otherwise have been incurred. See Ariail Affidavit ¶ 5. Further, Plaintiff has now endured 3 ½ years of appeals, with oral arguments at both the Court of Appeals and Supreme Court level prevailing on the substantive legal issues that were appealed. Henceforth, further appeals are expected.

A review of the procedural case history shows that Defendant Slivka filed seven (7) motions in this case, of which four (4) separate hearings had to be held. Six of these motions and three of these hearings took place before Mr. Lyles had been substituted in for Defendant Slivka's prior counsel. Defendant Slivka did not prevail on any substantive motion he made before the circuit court. This Court is informed that Defendant Slivka failed to show up for his scheduled deposition and after rescheduling his deposition numerous times, Plaintiff found it necessary to file a motion to compel for the production of Defendant Slivka for his deposition. Defendant Slivka finally appeared for his deposition after it had been scheduled for the fourth time. The detail of the motions and discovery difficulties Plaintiff had with Defendant Slivka are outlined in the Affidavit of A. Bright Ariail filed July 27, 2011. See Ariail Affidavit ¶ 5.

Defendant Slivka certainly has the right to litigate this matter to the fullest, which he undoubtedly has. However, I am certain with the Defendant's business acumen and council from a very competent lawyer in Mr. Lyles, that he fully understood he had a right to litigate this matter to the fullest, but at the same time must appreciate the risk as outlined in S.C. Code Ann. § 27-1-15 and the mechanic's lien statute that he could be held responsible for the attorney's fees incurred by Plaintiff during the course of the litigation. These statutes have this provision for a reason. It is more than apparent to this Court, and as stated in the record at the remand hearing, this case has been an arduous undertaking by the Plaintiff with tremendous negative repercussions as a result. These negative repercussions in the eyes of this Court have been driven by what appears to be the calculative and intentional actions of Defendant Slivka.

After careful consideration of the documents presented and the arguments made before this Court, I hereby award the Plaintiff \$152,380.25 in attorney's fees for legal services rendered at the circuit court level and \$61,335 in attorney's fees for legal services rendered at the appellate

court level all under S.C. Code Ann. § 27-1-15 along with interest at the judgment rate from the date of the original judgment, October 3, 2011. The total attorney's fees award of \$213,715.25 is added to the original judgment amount against Defendant Slivka of \$211,404.45 for a total judgment amount of \$425,117.70.

In this regard, I reviewed the Rosen Hagood cumulative invoice in detail for many hours over the weekend and in the evenings after court and have discounted the fees by more than \$32,000.00 so that the above total does not include an award of fees for the two causes of action the court dismissed or for the breach of contract claim. All the attorney's fees awarded to the Plaintiff are for attorney's fees incurred after the date of the S.C. Code Ann. § 27-1-15 demand, which was made on March 15, 2010. The attorney's fees award does not include an award of any costs to the Plaintiff, as cost are not allowed to be recovered under the statute.

A review of the billing records submitted by Plaintiff clearly indicates that they are properly detailed and that the time and labor spent by Plaintiff's counsel is both reasonable for the effort required to litigate this case and not duplicative in any manner. Plaintiff's team of legal counsel consists of experienced, skilled attorneys, of high professional standing in the community and in good standing with the Bar of this State. The fees charged in this matter were on an hourly basis and not based upon a contingency of compensation. The hourly fees charged by Plaintiff's counsel are of those customarily charged in the locality for similar legal services. Further, Plaintiff obtained a substantial benefit from the legal services provided by receiving an award in close proximity to the total damages claimed and avoiding thousands of dollars in liability on Defendant's counterclaims.

Under South Carolina Law, a party is entitled to recover attorneys' fees and costs for appellate and post-appellate work not limited by the amount provided for in the appellate court

7  
LRS

rule when the party is otherwise entitled to recover such fees/costs under a statute. See Austin v. Stokes-Craven Holding Corp., 406 S.C. 187 (2013). Once remittitur is issued from an appellate court, the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling. Id. at 199. Circuit courts are then vested with jurisdiction to hear motions for statutory attorney fees and trial costs after remittitur has been issued. Id. The authority of the appellate court to grant fees under appellate rules and the circuit court's authority to grant appellate fees under statutory authority are not mutually exclusive. Id. at 199; see also McDowell v. South Carolina Department of Social Services, 304 S.C. 539 (1991); Muller v. Myrtle Beach Golf and Yacht Club, 313 S.C. 412 (1993). As previously found by this Court and upheld by the Appellate Courts, S.C. Code Ann. § 27-1-15 of the South Carolina Code authorizes an award of attorney's fees to Spriggs in this case.

To this Court, the above seems fair, equitable and just under the circumstances. Further, this Court finds that the attorney's fees awarded are reasonable based upon the six criteria established by the Supreme Court of South Carolina for determining attorney's fees. There is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment. See Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998). In fact, in an action litigated like this one, it does not even seem probable. South Carolina courts have often approved awards of attorney's fees where the fee substantially exceeded the actual recovery. Id. at 582; see also Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989)(finding that trial court did not abuse its discretion in awarding attorney fees to Plaintiff greater than recovery realized by Plaintiff). In this case, such an award is reasonable.

**THEREFORE**, this Court hereby awards Plaintiff \$152,380.25 in attorney's fees at the circuit court level and \$61,335 in appellate fees under S.C. Code Ann. § 27-1-15 for a total

attorney's fees award of \$213,713.25 along with interest at the judgment rate from the date of the original judgment, October 3, 2011. The total judgment amount against Defendant Slivka shall be \$425,117.70, consisting of the verdict amount of \$173,990.53, pre-judgment interest previously awarded by this Court on that amount of \$37,413.92 and the attorney's fees awarded pursuant to this Order of \$213,713.25. When the judgment is finalized, whether in a lower court or in an appellate court, the post-judgment interest on that amount, whether it has been modified upward or downward or remains the same, runs from the date of the original judgment. *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000).

**THEREFORE**, post-judgment interest at the rate established by the South Carolina Supreme Court is to be applied to the amount of the total judgment from the date of the original judgment, with credits and adjustments made for added awards and partial satisfactions. The published rate of post-judgment interest adopted by the South Carolina Supreme Court has been 7.25% compounded annually since the day of the initial judgment to the present.

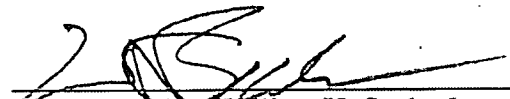
**THEREFORE**, the initial verdict amount of \$173,990.53 accrued interest at 7.25% until October 3, 2011 when this Court issued its award of pre-judgment interest and attorney's fees. The total interest accrued between July 22, 2011 and October 3, 2011 is \$2,488.30. Through this Order, the Court is reducing its attorney's fees and costs award from \$235,030.31 to an attorney's fees award of \$213,713.25. Thus, the judgment amount against Defendant Slivka as of October 3, 2011 is \$427,606.00, which includes the verdict amount of \$173,990.53, accrued interest of \$2,488.30 on the verdict amount through October 3, 2011, the pre-judgment interest award of \$37,413.92 on the verdict amount made by this Court on October 3, 2011, plus the stated attorney's fee award of \$213,713.25 set forth herein. The judgment amount of \$427,606.00 accrued interest at the post-judgment rate of 7.25% until February 9, 2012 when a

partial satisfaction of judgment was filed. The amount of interest added to the judgment amount of \$427,606.00 is \$10,919.15 for a total judgment of \$438,525.15 as of February 9, 2012.

The Court takes judicial notice that Defendant Slivka posted a Lien Release Bond on May 12, 2009 with the Colleton County Clerk of Court in the amount of \$265,112.71 which was transferred to the Register of Deeds office and recorded in Book 1742, pg. 276 to remove the mechanic's lien filed against his property by The Spriggs Group. That bond amount, with accrued interest, was released from the Court to Spriggs Group's counsel per my October 3, 2011 Order. The total Lien Release Bond, plus accrued interest, amounted to \$269,070.83, which was applied to the judgment amount as a partial satisfaction of judgment on February 9, 2012. The partial satisfaction reduced the amount of the judgment against Defendant Slivka to \$168,931.42. The remaining balance of \$169,454.32 has been accruing interest at the post-judgment rate of 7.25% compounded annually from February 9, 2012 to the present. To date, the interest accrued on the remaining judgment balance is \$43,564.80. Thus, the current amount of judgment against Defendant Slivka is \$213,019.12.

**IT IS THEREFORE ORDERED** that Clerk of Court for Colleton County enter an amended judgment against Defendant Gene Slivka on May 11, 2015 in the amount of \$213,019.12 with interest accruing at the per diem rate of \$41.62 until the judgment is fully satisfied.

**IT IS SO ORDERED** this 11th day of May, 2015.

  
The Honorable William H. Seals, Jr.  
Presiding Judge

Marion, South Carolina  
May 11, 2015

5

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NO. 2009 CP-15-545

The Spriggs Group, PC

Gene R. Slivka

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: James A. Briverton, IV

Attorney for:  Plaintiff  
or  
 Self-Represented Litigant

**RECEIVED**  
JUL 06 2015  
SC Court of Appeals

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.  See Page 2 for additional information.
- 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:

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:		

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.

[Signature]  
Circuit Court Judge

2157  
Judge Code

6/21/15  
Date

