FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2005-CP-10-2537

Liollio Associates, LLC
PLAINTIFF(S)

Ashley River Properties, I, LLC et al.
DEFENDANT(S)

Submitted by:	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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 PUBLIC 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)
Liollio Associates, LLC	Ashley River Properties, I, LLC and Ashley River Properties, II, LLC	$131,426.48

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.**

Circuit Court Judge

2117
Judge Code

6/5/15
Date

SCRCP Form 4C

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2005-CP-10-2537
	)	
Liollio Associates, LLC,	)	
	)	
Plaintiff	)	
	)	
vs	)	Opinion and Order
	)	
Ashley River Properties, I, LLC, Ashley River Properties, II, LLC and Kriti Management, I n c .	)	
	)	
Defendants	)	
	)	

Plaintiff Liollio Associates, LLC, is a design firm. Plaintiff's complaint, which sounds in contract and quasi-contract, alleges that the Defendants owe it the sum of $68,628.79 for architectural services it rendered and for which it has not been paid. A non-jury trial was held on February 9, 2015. After hearing the testimony and argument of the parties, and reviewing the exhibits, the Court concludes that the Defendants are jointly and severally liable to Plaintiff for the unpaid balance on its services.

This action arises from design services performed on a project to be known as Ripley Light. At the time Plaintiff was originally retained, this project consisted of two parcels of real property which were being developed together. At the outset, both parcels were owned by Stuart Longman. By the time of Plaintiff's involvement, one parcel was owned by Defendant ARP-I, which was owned entirely by Stuart Longman. The other parcel was owned by Defendant ARP-II, owned 70% by Longman and 30% by Davidson Williams.

Plaintiff was first hired to provide conceptual architectural design for both parcels. Although it was hired directly by Longman, two of its invoices were paid by Williams. Plaintiff was expressly told throughout the performance of its work that the two parcels could only be

developed in accordance with the planned use and design would be if they were developed as a single unit, regardless of ownership. At first there appeared to be no difference between the two entities; Plaintiff's services extended to the entire project and it was paid by either ARP-I or ARP-II without regard to the specific location of its designs. In fact, Rick Brownyard, acting as attorney for both sets of Defendants, attempted to have the property line between the parcels set aside and both parcels combined into a single lot. This action was undertaken with the consent of both Defendants. Lastly, Defendants do not contend that Plaintiff's prices are unreasonable, nor do they dispute that the quality of the work performed was good.

On October 4, 2004, Plaintiff received a letter from Davidson Williams requesting that future invoices be divided between the two parcels. Specifically, the letter stated that "it is important for you to remember that there are different ownership interests in this project..." Although the letter requested that invoices show separate accounts, "because of our ownership structure," it continued to refer to a single project. Further, it stated that "ARP-II will arrange for the payment of all work through the approval process."

At some unknown point in time, well after Plaintiff's full performance, the relationship between Longman and Williams deteriorated and the parties parted ways. Plaintiff was not paid for the final portion of the work performed on the ARP-I property, work which was performed pursuant to a contract for services entered into by ARP-II. As it was not the signatory to the contract, ARP-I now argues it is not liable for this work; ARP-II, on the other hand, contends that it is not responsible as it earlier disavowed any liability for ARP-I's expenses. Taken together, it is essentially the position of the two ARP entities that nobody was responsible. Plaintiff brought suit under two theories: breach of contract and *quantum meruit*.

It is clear that Plaintiff was retained by Longman, a member of both ARP-I and ARP-II. It was made aware that, at all relevant times, Longman owned all of or a majority interest in both of the LLCs involved in the Ripley Light Project. Furthermore, Plaintiff was also made aware of the fact that the project, as a whole, could not proceed at all unless both parcels were developed as though they were one. Its work, which was satisfactory to the Defendants, was entirely predicated upon development of the two parcels together. Finally, Plaintiff was, at different times, paid by both ARP-I and ARP-II, without regard for the actual ownership of the particular parcel upon which design services were rendered.

Even though Davidson Williams requested, on October 4, 2004, that Plaintiff's future invoices reflect the ownership of the real property upon which it was working, that same letter continued to refer to the development of a single project incorporating both parcels. Despite the fact that Defendants acknowledge that Plaintiff's work was satisfactory and its prices reasonable, Plaintiff's final invoices remain unpaid.

Based on these findings of fact, I hereby make the following conclusions of law: As noted, Plaintiff was retained to perform its work by a member of both ARP-I and ARP-II. A member of an LLC can bind the LLC. S.C. Code § 33-44-301(a)(1) ("Each member [of an LLC] is an agent of the limited liability company for the purpose of its business, and an act of a member, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.). Although this agency can be changed by the terms of the Operating Agreement of the LLC – which is precisely what Defendants argue in this case – Plaintiff had no

knowledge of the terms of that purely internal agreement, and had no reason to believe that one member could not bind both Defendants.

In addition, to the extent that the contract between Plaintiff and ARP-II might be considered to be ambiguous with regard to the identity of one of the parties, the meaning of an ambiguous contract may be determined by examination of the course of dealing of those parties. *Carter v. American Fruit Growers*, 130 S.C. 280, 125 S.E.641 (1924). The Defendants, through a course of dealing, demonstrated that each was responsible for the invoices submitted by Plaintiff regardless of the identity of the owner of any specific parcel of property upon which services were being rendered. *Id.* Throughout the progress of Plaintiff's services, it was paid by either ARP-I or ARP-II, regardless of the ownership of any parcel. The Defendants acted in all respects as though they were, with respect to the services being provided by Plaintiff, both bound by the contract. Plaintiff has, consequently, demonstrated that both ARP-I and ARP-II are liable to it for payment for the services rendered pursuant to the contract.

Furthermore, Defendants are liable under a theory of *quantum meruit.* Under the theory of *quantum meruit,* the Plaintiff must establish 1) a benefit conferred on the defendant by the plaintiff; 2) realization of that benefit by the defendant; and 3) retention by the defendant under conditions that make it unjust for him to retain the benefit without making payment therefor. *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616 – 17, 703 S.E.2d 221, 225 (2010). Both ARP-I and ARP-II, which were developing a single project to be constructed on property owned by them, benefited from Plaintiff's services. Plaintiff has shown that both Defendants are liable to it under a theory of *quantum meruit.*

Finally, Plaintiff's invoice reflects that the amount due to it was liquidated. A claim is liquidated if it is for a sum certain or capable of being reduced to certainty. *Babb v. Rothrock*,

310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). By statute, in those cases where the damages are liquidated, the plaintiff is entitled to prejudgment interest at the rate of eight and three-fourths percent per annum. S.C. Code § 34-31-20(A).

Plaintiff is entitled to recover from either or both of the Defendants the principal sum of $68,628.79. In addition, as this amount is liquidated, Plaintiff is entitled to recover pre-judgment interest at the rate allowed by law, or 8.75% per annum. S.C. Code § 34-31-20(A). As this interest began to run as of the date of Plaintiff's last invoice, either or both of the Defendants are liable to Plaintiff for interest in the amount of $62,797.69.

IT IS SO ORDERED!

Honorable J.C. Nicholson, Jr.

6/5, 2015
Charleston, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2005-CP-10-2537

Liollio Associates, LLC
PLAINTIFF(S)

Ashley River Properties, I, LLC et al.
DEFENDANT(S)

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

FILED
2015 JUL -7 PM 2:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY
DC

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 PUBLIC 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)
Liollio Associates, LLC	Ashley River Properties, I, LLC, Ashley River Properties, II, LLC, and Kriti Management, Inc.	$131,426.48

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.**

Circuit Court Judge | 2117 **Judge Code** | 7/2/15 **Date**

SCRCP Form 4C

Exhibit B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2005-CP-10-2537
	)	
Liollio Associates, LLC,	)	
	)	
Plaintiff	)	
	)	
vs	)	Amended Opinion and Order
	)	
Ashley River Properties, I, LLC, Ashley River Properties, II, LLC and Kriti Management, Inc.	)	
	)	
Defendants	)	
	)	

FILED
2015 JUL -7 PM 2:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Plaintiff Liollio Associates, LLC, is a design firm. Plaintiff's complaint, which sounds in contract and quasi-contract, alleges that the Defendants owe it the sum of $68,628.79 for architectural services it rendered and for which it has not been paid. A non-jury trial was held on February 9, 2015. After hearing the testimony and argument of the parties, and reviewing the exhibits, the Court concludes that the Defendants are jointly and severally liable to Plaintiff for the unpaid balance on its services. This Order amends this Court's previous Order that corrects a clerical error on the last page.

This action arises from design services performed on a project to be known as Ripley Light. At the time Plaintiff was originally retained, this project consisted of two parcels of real property which were being developed together. At the outset, both parcels were owned by Stuart Longman. By the time of Plaintiff's involvement, one parcel was owned by Defendant ARP-I, which was owned entirely by Stuart Longman. The other parcel was owned by Defendant ARP-II, owned 70% by Longman and 30% by Davidson Williams.

Plaintiff was first hired to provide conceptual architectural design for both parcels. Although it was hired directly by Longman, two of its invoices were paid by Williams. Plaintiff

was expressly told throughout the performance of its work that the two parcels could only be developed in accordance with the planned use and design would be if they were developed as a single unit, regardless of ownership. At first there appeared to be no difference between the two entities; Plaintiff's services extended to the entire project and it was paid by either ARP-I or ARP-II without regard to the specific location of its designs. In fact, Rick Brownyard, acting as attorney for both sets of Defendants, attempted to have the property line between the parcels set aside and both parcels combined into a single lot. This action was undertaken with the consent of both Defendants. Lastly, Defendants do not contend that Plaintiff's prices are unreasonable, nor do they dispute that the quality of the work performed was good.

On October 4, 2004, Plaintiff received a letter from Davidson Williams requesting that future invoices be divided between the two parcels. Specifically, the letter stated that "it is important for you to remember that there are different ownership interests in this project..." Although the letter requested that invoices show separate accounts, "because of our ownership structure," it continued to refer to a single project. Further, it stated that "ARP-II will arrange for the payment of all work through the approval process."

At some unknown point in time, well after Plaintiff's full performance, the relationship between Longman and Williams deteriorated and the parties parted ways. Plaintiff was not paid for the final portion of the work performed on the ARP-I property, work which was performed pursuant to a contract for services entered into by ARP-II. As it was not the signatory to the contract, ARP-I now argues it is not liable for this work; ARP-II, on the other hand, contends that it is not responsible as it earlier disavowed any liability for ARP-I's expenses. Taken together, it is essentially the position of the two ARP entities that nobody was responsible. Plaintiff brought suit under two theories: breach of contract and *quantum meruit*.

It is clear that Plaintiff was retained by Longman, a member of both ARP-I and ARP-II. It was made aware that, at all relevant times, Longman owned all of or a majority interest in both of the LLCs involved in the Ripley Light Project. Furthermore, Plaintiff was also made aware of the fact that the project, as a whole, could not proceed at all unless both parcels were developed as though they were one. Its work, which was satisfactory to the Defendants, was entirely predicated upon development of the two parcels together. Finally, Plaintiff was, at different times, paid by both ARP-I and ARP-II, without regard for the actual ownership of the particular parcel upon which design services were rendered.

Even though Davidson Williams requested, on October 4, 2004, that Plaintiff's future invoices reflect the ownership of the real property upon which it was working, that same letter continued to refer to the development of a single project incorporating both parcels. Despite the fact that Defendants acknowledge that Plaintiff's work was satisfactory and its prices reasonable, Plaintiff's final invoices remain unpaid.

Based on these findings of fact, I hereby make the following conclusions of law: As noted, Plaintiff was retained to perform its work by a member of both ARP-I and ARP-II. A member of an LLC can bind the LLC. S.C. Code § 33-44-301(a)(1) ("Each member [of an LLC] is an agent of the limited liability company for the purpose of its business, and an act of a member, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.). Although this agency can be changed by the terms of the Operating Agreement of the LLC – which is precisely what Defendants argue in this case – Plaintiff had no

knowledge of the terms of that purely internal agreement, and had no reason to believe that one member could not bind both Defendants.

In addition, to the extent that the contract between Plaintiff and ARP-II might be considered to be ambiguous with regard to the identity of one of the parties, the meaning of an ambiguous contract may be determined by examination of the course of dealing of those parties. *Carter v. American Fruit Growers*, 130 S.C. 280, 125 S.E.641 (1924). The Defendants, through a course of dealing, demonstrated that each was responsible for the invoices submitted by Plaintiff regardless of the identity of the owner of any specific parcel of property upon which services were being rendered. *Id.* Throughout the progress of Plaintiff's services, it was paid by either ARP-I or ARP-II, regardless of the ownership of any parcel. The Defendants acted in all respects as though they were, with respect to the services being provided by Plaintiff, both bound by the contract. Plaintiff has, consequently, demonstrated that both ARP-I and ARP-II are liable to it for payment for the services rendered pursuant to the contract.

Furthermore, Defendants are liable under a theory of *quantum meruit*. Under the theory of *quantum meruit,* the Plaintiff must establish 1) a benefit conferred on the defendant by the plaintiff; 2) realization of that benefit by the defendant; and 3) retention by the defendant under conditions that make it unjust for him to retain the benefit without making payment therefor. *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616 – 17, 703 S.E.2d 221, 225 (2010). Both ARP-I and ARP-II, which were developing a single project to be constructed on property owned by them, benefited from Plaintiff's services. Plaintiff has shown that both Defendants are liable to it under a theory of *quantum meruit.*

Finally, Plaintiff's invoice reflects that the amount due to it was liquidated. A claim is liquidated if it is for a sum certain or capable of being reduced to certainty. *Babb v. Rothrock*,

310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). By statute, in those cases where the damages are liquidated, the plaintiff is entitled to prejudgment interest at the rate of eight and three-fourths percent per annum. S.C. Code § 34-31-20(A).

Plaintiff is entitled to recover from either or all of the Defendants the principal sum of $68,628.79. In addition, as this amount is liquidated, Plaintiff is entitled to recover pre-judgment interest at the rate allowed by law, or 8.75% per annum. S.C. Code § 34-31-20(A). As this interest began to run as of the date of Plaintiff's last invoice, either or all of the Defendants are liable to Plaintiff for interest in the amount of $62,797.69.

IT IS SO ORDERED!

Honorable J.C. Nicholson, Jr.

7/2, 2015
Charleston, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2005-CP-10-2537

Liollio Associates, LLC
PLAINTIFF(S)

Ashley River Properties, I, LLC et al.
DEFENDANT(S)

Submitted by:	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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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.

FILED
2015 JUL 20 PM 1:16
JULIE J. ARMSTRONG
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This Court receiver the Defendant's Motion to reconsider, filed on June 25, 2015. This motion is denied without a hearing.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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.**

Circuit Court Judge | 2117 **Judge Code** | 7/17/15 **Date**

SCRCP Form 4C

Exhibit C