

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY.
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

APPELLATE CASE NO: 2015-001457

RECEIVED
DEC 10 2015
SC Court of Appeals

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

v.

GENE R. SLIVKA, ... Appellant.

RECORD ON APPEAL

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Defendant.

**ORDER FOR AWARD OF INTEREST
FEES AND COSTS TO PLAINTIFF**

HARRIS, A. C. GRANT,
COLLETON COUNTY
COMMON PLEAS
2011 SEP 27 AH 10: 29
53

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

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

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

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

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2/13

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

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

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

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2/15

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

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

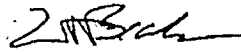
Plaintiff is also entitled to an award of prejudgment interest on the verdict reached in the amount of \$37,413.92 being calculated at the legal rate of interest as set forth in S.C. Code Ann. § 34-31-20(A) from February 9, 2009.

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

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

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



The Honorable William H. Seals, Jr.
Presiding Judge

Defendant.

ORDER FOR AWARD OF INTEREST FEES AND COSTS TO PLAINTIFF

PATRICIA C. GRANI
COLLETON COUNTY
COMMON PLEAS
2011 OCT -3 PM 1:47

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

#1 2/18

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

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

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

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

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

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

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

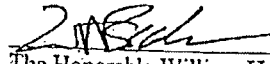
This Court finds that Plaintiff is entitled to the recovery of attorney's fees and costs in this matter pursuant to S.C. Code Ann. § 29-5-10 and S.C. Code Ann. § 27-1-15 in the amount of \$235,030.31. Further, this Court finds that the attorney's fees and costs awarded are reasonable based upon the six criteria established by the Supreme Court of South Carolina for determining attorney's fees. There is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment. See Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998). South Carolina courts have approved awards of attorney's fees where the fee substantially exceeded the actual 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).

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

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

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

IT IS SO ORDERED this 12th day of ~~August~~ September, 2011.


The Honorable William H. Seals, Jr.
Presiding Judge

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-15-595

The Spriggs Group, PCGene R. Slivka

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: James A. Bruorton, IV

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

James A. Bruorton, IV
Circuit Court Judge2157
Judge Code5/30/2015
Date

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON	)	CASE NO.: 2009-CP-15-595
	)	
THE SPRIGGS GROUP, PC.	)	
	)	
Plaintiff,	)	
	)	ORDER FOR AWARD OF ATTORNEY'S
v.	)	FEES TO PLAINTIFF
	)	
GENE R. SLIVKA	)	
	)	
Defendant.	)	

PATRICIA C. GRANT
 COLLETON COUNTY
 COMMON PLEAS
 2015 JUN-3 PM 1:03

This matter came before the Court for a hearing after remand from the South Carolina Court of Appeals to clarify a prior award of attorney's fees and costs awarded to the Plaintiff in this matter on October 3, 2011. The South Carolina Court of Appeals has ordered this Court to clearly identify the statutory authority for its award and the fees incurred under each statute. Further, The Spriggs Group now seeks an award of fees pursuant to S.C. Code Ann. § 27-1-15 for those fees incurred by The Spriggs Group during the 3 ½ year course of appeal.

This case has a tortious history dating back to April 13, 2009 when The Spriggs Group filed a mechanic's lien on property owned by Defendant Gene R. Slivka resulting from Mr. Slivka's failure to pay The Spriggs Group for work performed during the design and construction phase of Mr. Slivka's plantation home located on New Julianton Plantation in Colleton County, South Carolina. New Julianton consists of several buildings including an approximate 24,000 sq. ft. main house which included a built in doggy wash, two 1,500 sq. ft. detached garages with fully finished 700 sq. ft. apartments above them, a 280 sq. ft. potting shed, a 1,000 sq. ft. conservatory, a 4,000 sq. ft. stable with four horse stalls, and a 500 sq. ft. grotto. Per the Contract Agreement between the parties, Defendant Slivka paid Spriggs Group one half of the Contract Agreement amount at the start of the design process. Spriggs Group invoiced

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LVS

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

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WHS

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 undertook 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.

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WTS

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

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WJB

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.

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LWT

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 counsel 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

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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

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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

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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

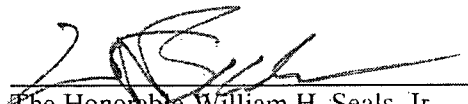
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partial satisfaction of judgment was filed. The amount of interest added to the judgment amount of \$427,606.00 is \$10,919.15 for a total judgment of \$438,525.15 as of February 9, 2012.

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 diam 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

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009CP-15-545

The Spriggs Group, PC

Gene R. Slivka

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: James A. Brumton, IV

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. ☐ See Page 2 for additional information.
- ☐ **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 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

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, P.C.

Plaintiff,

v.

GENE R. SLIVKA

Defendant.

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

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

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**ORDER DENYING DEFENDANT'S
MOTION TO ALTER/AMEND COURT'S
JUNE 3, 2015 ORDER**

This matter is before the Court upon the Defendant's motion pursuant to SCRCP 59(e) to alter/amend the Court's Order of May 11, 2015 clarifying this Court's original attorneys' fees award in this case to Plaintiff, The Spriggs Group, P.C. and amending the judgment previously entered against Defendant Gene Slivka. Having carefully considered the arguments set forth in Defendant's motion, this Court sees no basis to alter or amend its prior Order issued on May 11, 2015 and filed June 3, 2015.

THEREFORE, Defendant's SCRCP 59(e) motion regarding the Court's June 3, 2015 Order is hereby denied.

IT IS SO ORDERED this 21 day of June, 2015.


The Honorable William H. Seals, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

The Spriggs Group, P.C.

Plaintiff,

vs.

Gene R. Slivka,

Defendant.

C/A NO. 2009-CP-15-000595

Verdict

1. With regard to the PLAINTIFF's claim for foreclosure of a mechanic's lien against the Defendant, we find:

☐ For the Defendant.
☒ For the Plaintiff.

2. With regard to the PLAINTIFF's breach of contract claim against the Defendant, we find:

☐ For the Defendant.
☒ For the Plaintiff.

3. With regard to the PLAINTIFF's Claim based on Defendant's failure to comply with South Carolina Statute § 27-1-15, we find:

☐ For the Defendant.
☒ For the Plaintiff.

4. With regard to the DEFENDANT's Slander of Title claim against the Plaintiff, we find:

☒ For the Plaintiff.
☐ For the Defendant.

Continued on Following Page.

If you find for the Plaintiff on Questions 1, 2, or 3 you should consider Question 5.

5. We award the Plaintiff # 173,990.53 in actual damages.

If you find for the Defendant on Question 4, you should consider Question 6.

6. We award the Defendant 0 in actual damages.

I certify that this decision is the unanimous decision of the jury.

Mathrell H. Causey
Foreperson

July 22, 2011

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON
THE SPRIGGS GROUP, PC

Plaintiff,

vs.

GENE R. SLIVKA

Defendant.

IN THE COURT OF COMMON PLEAS

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

PARTIAL SATISFACTION OF
JUDGMENT

2012 FEB -9 AM 11:34
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

WHEREAS on July 22, 2011 a judgment was entered in the above matter in favor of the Plaintiff, The Spriggs Group, PC, against Defendant Gene R. Slivka in the amount of One Hundred Seventy Three Thousand, Nine Hundred and Ninety Dollars and 53/100 Dollars (\$173,990.53) based on a trial held from July 18 - 22, 2011; and

WHEREAS on October 3, 2011 an Order for Award of Interest, Fees and Costs increased the judgment amount to Four Hundred Forty Six Thousand, Four Hundred and Thirty Four and 76/100 Dollars (\$446,434.76); and

WHEREAS the Colleton County Register of Deeds issued a check releasing the bond posted for the Release of Mechanic's Lien filed in connection with the above-referenced matter in the amount of Two Hundred Sixty Nine Thousand, Seventy and 83/100 Dollars (\$269,070.83) which partially satisfies the judgment in this matter; and

WHEREAS a remainder of the judgment exists which totals One Hundred and Ninety Thousand, One Hundred and Seven and 13/100 Dollars (\$190,107.13) as follows:

Judgment Amount and Date: \$173,990.53 judgment entered on 7/22/11

\$446,434.76 total judgment entered on 10/3/11

Interest owed:
(through 1/10/12)

\$2,574.11 - calculated from 7/22/11 through 10/2/11

\$9,081.58 - calculated from 10/3/11 through 1/10/12

Judgment & Interest: \$458,090.45 (as of 1/10/12)
(through 1/10/12)

Partial Satisfaction
of Judgment
(Paid 1/11/12): -\$269,070.83

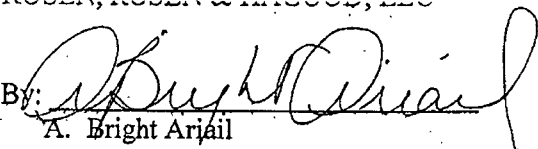
Remaining Judgment
& interest owed after
application of Partial
Satisfaction of Judgment: \$189,019.62 (as of 1/11/12)

Interest owed: \$1,087.51 (calculated from 1/11/12 through 2/8/12)

Total Judgment & Interest: \$190,107.13 (as of 2/8/12)

NOW, THEREFORE, I, A. Bright Ariail, as attorney for Plaintiff, hereby attests the amount due and owing the Plaintiff with interest is \$190,107.13, plus accruing interest from February 8, 2012, until paid in full.

ROSEN, ROSEN & HAGOOD, LLC

By: 

A. Bright Ariail
James A. Bruorton, IV
Timothy J.W. Muller
134 Meeting Street, Suite 200
Charleston, SC 29401
(843) 577-6726

ATTORNEY FOR PLAINTIFFS

February 8, 2012.
Charleston, South Carolina

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The Spriggs Group, P.C., Respondent,

v.

Gene R. Slivka, Appellant.

Appellate Case No. 2011-204366

Appeal From Colleton County
William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2013-UP-497
Heard January 10, 2013 – Filed February 6, 2013

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Robert T. Lyles, Jr., of Lyles & Lyles, LLC, of
Charleston, for Appellant.

A. Bright Ariail and James Atkinson Bruorton, IV, both
of Rosen Rosen & Hagood, LLC, of Charleston, for
Respondent.

LOCKEMY, J.: In this action for foreclosure of a mechanic's lien and breach of contract, Gene Slivka argues the circuit court erred in (1) submitting a question involving the interpretation of section 29-5-10(a) of the South Carolina Code

(2007) to the jury; (2) failing to direct a verdict; and (3) awarding The Spriggs Group, P.C. (Spriggs) attorney's fees, costs, and interest. We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL BACKGROUND

This case arises from a dispute between Slivka and Spriggs regarding Spriggs' provision of architectural services for Slivka's home. Spriggs designed all of the buildings on Slivka's Colleton County plantation (the property), including the main house, two detached garages with apartments, potting shed, conservatory, stable, and grotto. Pursuant to a November 17, 2006 written proposal (the Agreement), Spriggs was to receive a fixed fee of \$161,500 for its architectural and engineering design services, and hourly fees for any additional services. The fixed fee was subsequently reduced to \$152,402. Slivka paid half of the fee at the start of the design process and agreed to pay the remainder upon completion of the project.

According to Slivka, he terminated Spriggs on December 12, 2008. Slivka contends he picked up the remaining drawings from Spriggs' office and told Spriggs he did not want any more drawings. Spriggs, however, continued to perform its services under the Agreement. According to Ken Spriggs, principal of Spriggs, he was unaware Slivka had allegedly terminated Spriggs. In February 2009, Spriggs submitted four invoices totaling \$198,834.53 to Slivka for payment in accordance with the terms of the Agreement. Slivka admitted he owed Spriggs \$76,201, the balance of the Agreement price, but disputed the additional charges and refused to pay Spriggs. Spriggs provided services to Slivka pursuant to the Agreement through May 2009.

As a result of Slivka's failure to pay Spriggs in accordance with the terms of the Agreement, Spriggs filed a mechanic's lien against the property on April 13, 2009. Slivka continued to refuse to pay Spriggs and posted a \$265,112.71 cash bond to remove the lien from the property. Thereafter, on July 8, 2009, Spriggs commenced a foreclosure action on the lien. In an amended complaint filed in May 2010, Spriggs asserted claims for foreclosure of mechanic's lien, breach of contract, breach of contract accompanied by a fraudulent act, quantum meruit, and failure to comply with section 27-1-15 of the South Carolina Code (2007). Slivka counterclaimed for slander of title, violation of the Frivolous Claims Sanctions Act, tortious interference with contractual relationships with third parties dependent upon performance by Spriggs, and tortious interference with contractual relationships with third parties resulting from defective notice of mechanic's lien.

On June 30, 2011, Slivka offered to settle the case for \$100,000, but Spriggs did not accept the offer. Prior to trial, Spriggs filed a motion to strike Slivka's affirmative defenses and counterclaims. Thereafter, Slivka filed a motion for summary judgment as to all of Spriggs' causes of action. Spriggs countered with its own motion for summary judgment. At the motions hearing, Slivka agreed to withdraw certain counterclaims, and the circuit court denied both motions for summary judgment.

The parties proceeded to trial on all of Spriggs' causes of action and on Slivka's counterclaims for slander of title, tortious interference with contractual relationships with third parties dependent upon performance by Spriggs, and tortious interference with contractual relationships with third parties resulting from defective notice of mechanic's lien. At trial, Spriggs asserted the additional charges in its invoices were a result of Slivka's demands and changes, and they were billed pursuant to the Agreement. Slivka maintained the additional charges were not contemplated when the Agreement was made and Spriggs had a duty to advise him before performing and charging for additional work.

At the conclusion of Spriggs' case, the circuit court denied Slivka's directed verdict motions as to Spriggs' causes of action for foreclosure of mechanic's lien, breach of contract, and failure to comply with section 27-1-15. The circuit court also denied Spriggs' motion for a directed verdict as to the section 27-1-15 claim. Spriggs withdrew its claims for breach of contract accompanied by a fraudulent act and quantum meruit. Following Slivka's case, the circuit court denied Spriggs' motion for a directed verdict as to Slivka's slander of title claim. Slivka also renewed his directed verdict motions as to Spriggs' causes of action for foreclosure of mechanic's lien and failure to comply with section 27-1-15. The circuit court ruled both causes of action would be submitted to the jury.

Spriggs' foreclosure of mechanic's lien, breach of contract, and failure to comply with section 27-1-15 claims were submitted to the jury, along with Slivka's slander of title claim.¹ Following deliberations, the jury returned a verdict in favor of Spriggs on all three of its causes of action and on Slivka's slander of title cause of action. The jury awarded Spriggs \$173,990.53 in actual damages. Slivka made a post-trial motion seeking a judgment notwithstanding the verdict (JNOV) and/or a new trial on Spriggs' foreclosure of mechanic's lien and failure to comply with

¹ Slivka withdrew both of his tortious interference with contractual relationships claims.

section 27-1-15 claims.² The circuit court denied Slivka's JNOV motion and his subsequent Rule 59(e), SCRCP, motion to alter or amend. Spriggs made a post-trial motion seeking attorney's fees, costs, and interest. The circuit court granted the motion and awarded Spriggs \$235,030.31 in attorney's fees and costs and \$37,413.92 in prejudgment interest. Thereafter, the circuit court denied Slivka's Rule 59(e) motion to alter or amend. This appeal followed.

LAW/ANALYSIS

I. Statutory Interpretation

Slivka argues the circuit court erred in submitting the question of whether the services provided by Spriggs in January 2009 fell within the definition of "labor" contained in section 29-5-10(a) of the South Carolina Code (2007) to the jury. We agree but find no reversible error.

Pursuant to section 29-5-90 of the South Carolina Code (2007), a mechanic's lien

shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner . . . a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien. . . .

Section 29-5-10(a) states:

[L]abor performed or furnished in the erection, alteration, or repair of any building or structure upon any real estate includes the preparation of plans, specifications, and design drawings and the work of making the real estate suitable as a site for the building or structure. The work is considered to include, but not be limited to, the grading, bulldozing, leveling, excavating, and filling of land (including the furnishing of fill soil), the grading and paving of curbs and sidewalks and all asphalt paving, the construction of ditches and other drainage facilities, and

² Slivka did not appeal the jury's verdict on Spriggs' breach of contract claim.

the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes, and the disposal of any construction and demolition debris, as defined in Section 44-96-40(6), including final disposal by a construction and demolition landfill. Any private security guard services provided by any person at the site of the building or structure during its erection, alteration, or repair is considered to be labor performed or furnished within the meaning of this section. . . .

For its lien to be timely, Spriggs must have performed labor, within the definition contained in section 29-5-10(a), on or after January 13, 2009. According to Andy Bozeman, a Spriggs employee, Spriggs addressed a plumbing subcontractor's request to substitute the size of plumbing lines used on the project on January 13, 2009. Bozeman also communicated with a mechanical engineer and answered questions regarding the plumbing line substitution.

At trial, Slivka argued that while the timeliness of the lien was a question of fact for the jury to decide, whether the construction administration services performed by Spriggs on January 13, 2009, fell within the statutory definition of labor was a question of statutory interpretation for the court. In response, Spriggs argued the question before the jury was one of timeliness, and the services it provided on January 13, 2009, were clearly within the definition of labor. The circuit court decided,

as to the mechanic's lien itself, I'm just going to submit it to the jury. I'm going to read them the statute. I'm going to give them the charge It's kind of long and redundant but y'all can argue whether that is service that falls within the mechanic's lien statute. And of course you can argue the timeliness and all of that kind of stuff.

Slivka contends the question of whether Spriggs' work fell within the purview of the mechanic's lien statute was erroneously submitted to the jury. Spriggs maintains the jury was properly instructed to determine whether its lien was valid and timely. Spriggs also notes the circuit court ruled post-trial it was "implausible that construction administration services would be excluded from the description of labor performed or furnished in the erection, alteration, or repair of any building."

We find the circuit court erred in submitting the question of whether Spriggs' work fell within the purview of the mechanic's lien statute to the jury. *See Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) (holding the issue of interpretation of a statute is a question of law for the court). However, this error was harmless because, as discussed below, we find the construction administration services proved by Spriggs fell within the definition of labor contained in 29-5-10(a).

II. Timeliness of the Lien

Slivka argues the circuit court erred in denying his motion for directed verdict because Spriggs' lien was not timely. We disagree.

"When reviewing the denial of a motion for directed verdict or JNOV, this Court must employ the same standard as the [circuit] court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Welch v. Epstein*, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000). "The [circuit] court must deny the motions when the evidence yields more than one inference or its inference is in doubt." *Id.* at 300, 536 S.E.2d at 418. "This Court will reverse the [circuit] court only when there is no evidence to support the ruling below." *Id.* "When considering directed verdict and JNOV motions, neither the [circuit] court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Id.* at 300, 536 S.E.2d at 419.

First, Slivka contends the work performed by Spriggs on January 13, 2009, does not fall within the definition of labor contained in section 29-5-10(a) because none of Spriggs' work involved "the preparation of plans, specifications, and design drawings." Slivka maintains none of the work performed by Bozeman occurred on site, and the work only amounted to construction administration services. Slivka argues the circuit court erred in relying on *Williamson v. Hotel Melrose*, 110 S.C. 1, 96 S.E. 407 (1918), in finding construction administration services are a type of labor for which a mechanic's lien may be filed under the mechanic's lien statute. In *Williamson*, our supreme court determined an architect who furnished plans and specifications and "superintended" the construction of a project had performed labor within the meaning of the mechanic's lien statute. 110 S.C. at 1, 96 S.E. at 411. At the time, the mechanic's lien statute did not include the definition of labor contained in the current statute. The statute at the time afforded a lien to "any person to whom a debt is due for labor performed or furnished." *Id.*

Slivka maintains *Williamson* is not applicable because the current version of the mechanic's lien statute, section 29-5-10(a), contains specific activities determined by the legislature to be "labor" and does not include construction administration services. Slivka argues the legislature could have included off-site construction administration services of a design professional in its definition of labor but it chose not to. Furthermore, Slivka maintains Spriggs was not on-site directing the work on the property like the architect in *Williamson*. Ken Spriggs testified he was not directing any work or supervising the construction.

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

Slivka also contends the circuit court erred in finding work performed by Spriggs in May 2009 supported the timeliness of the lien filed on April 13, 2009. At trial, Bozeman testified he provided design sketches for an appraisal of the property in May 2009. Slivka argues this work could not support the timeliness of Spriggs' lien because it was allegedly performed after the lien was filed. We find the circuit court did not err because the court's order does not explicitly say, as alleged by Slivka, that the May 2009 services were performed within ninety days of April 13, 2009. While the circuit court order mentions the May 2009 services, it notes these services were performed after the lien was filed. The court also specifically notes the lien was filed within ninety days of January 13, 2009. Accordingly, we affirm the circuit court's denial of Slivka's motion for a directed verdict on Spriggs' mechanic's lien claim.

III. Attorney's Fees, Costs, and Interest

"A party cannot recover attorney's fees unless authorized by contract or statute." *Cullen v. McNeal*, 390 S.C. 470, 491, 702 S.E.2d 378, 389 (Ct. App. 2010). Here, sections 27-1-5 and 29-5-10 of the South Carolina Code (2007) both authorize an award of attorney's fees to Spriggs. Pursuant to section 27-1-15,

[w]hen a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real

property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within forty-five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand.

Additionally, pursuant to section 29-5-10(a), "[t]he costs which may arise in enforcing or defending against the lien. . . , including a reasonable attorney's fee, may be recovered by the prevailing party." "The fee must be determined by the court in which the action is brought but the fee and court costs may not exceed the amount of the lien." *Id.*

The following six factors should be considered when determining reasonable attorney's fees: "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). "The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009). "An abuse of discretion occurs when the conclusions of the [circuit] court are either controlled by an error of law or are based on unsupported factual conclusions." *Id.* "Similarly, the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.*

A. Section 27-1-15

Slivka argues the circuit court erred in denying his motion for a directed verdict on Spriggs' failure to comply with the section 27-1-15 claim. We disagree.

Slivka contends Spriggs failed to present any evidence Slivka did not perform a fair and reasonable investigation because at the time Spriggs made its demand

under the statute the parties were involved in litigation initiated by Spriggs. We find whether a fair and reasonable investigation of Spriggs' claim has been made and whether a valid portion of the claim was paid in a timely manner are questions of fact for the jury. *See Hardaway Concrete Co., Inc. v. Hall Contracting Corp.*, 374 S.C. 216, 229, 647 S.E.2d 488, 495 (Ct. App. 2007) (holding whether a party made a fair and reasonable investigation of the merits of a claim is a question of fact).

Additionally, Slivka argues at the time the demand was made it was impossible to determine the "valid" amount due because of the parties' pending claims against each other for damages. Finally, Slivka maintains his failure to make a payment at the time of the demand was not unreasonable because he had already paid the court a cash bond exceeding the amount of Spriggs' claim. Slivka fails to cite any legal precedent to support these arguments. Accordingly, we find these arguments are abandoned on appeal. *See Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006) (noting when an appellant fails to cite any supporting authority for his position and makes conclusory arguments, the appellant abandons the issue on appeal).

B. Amount of Attorney's Fees and Costs

Slivka argues the circuit court erred in awarding Spriggs \$235,030.31 in attorney's fees and costs. We agree.

The circuit court determined Spriggs was entitled to \$235,030.31 in attorney's fees and costs pursuant to sections 29-5-10 and 27-1-15. The court further found the fees and costs awarded were reasonable based upon the six criteria established by the supreme court. The circuit court noted, "[Spriggs] was required to expend considerably more time and effort on this case due to specific actions of [Slivka] who created unnecessary delays, filed meritless motions, and forced [Spriggs] to incur additional attorney's fees and costs above and beyond what would otherwise have been incurred."

First, Slivka argues Spriggs was not entitled to recover \$28,619.25 in staff member fees as part of its attorney's fees award. We find the circuit court did not abuse its discretion in including staff member fees in its award of attorney's fees. We note Slivka fails to cite any legal precedent to support this argument. Additionally, this court has upheld attorney's fees awards which included paralegal fees. *See McElveen v. McElveen*, 332 S.C. 583, 602, 506 S.E.2d 1, 11 (Ct. App. 1998);

Charleston Lumber Co. v. Miller Housing Corp., 318 S.C. 471, 484, 458 S.E.2d 431, 439 (Ct. App. 1995).

Next, Slivka contends Spriggs' total recovery is limited to the amount of the cash bond he posted with the clerk of court. Slivka argues that pursuant to section 29-5-110 of the South Carolina Code (2007), the total payment to Spriggs is limited to \$266,012.71, the amount of the cash bond he paid to the clerk of court. Therefore, Slivka maintains because Spriggs' verdict was \$173,990.53, any award of attorney's fees under the mechanic's lien statute is limited to a maximum of \$92,022.18. We disagree. Section 29-5-110 relates to the amount of the judgment and makes no mention of attorney's fees. Attorney's fees are specifically addressed in section 29-5-10, which provides that the costs and fees incurred in enforcing or defending against the lien may be recoverable by the prevailing party up to the amount of the lien. *See* § 29-5-10(a).

Finally, Slivka argues 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. Although the amount of attorney's fees awarded in this case, compared to the jury award, may not shock the conscience of this court, the needle is definitely moving on the seismograph. The circuit court order is unclear as to which fees were awarded under which statutory authority. We note the court's award exceeds the amount permitted under the mechanic's lien statute. Further, although theoretically possible, it is improbable an attorney's fee of almost \$250,000 would be awarded for a net recovery of approximately \$75,000 above the \$100,000 settlement offered by Slivka under section 27-1-15. The circuit court may have combined the two statutes to reach the figure, although the legality of that procedure is not addressed in this decision. Moreover, the trial court surely did not award fees for the two causes of action it dismissed or for the breach of contract claim. Thus, because we find the circuit court's order is unclear, we reverse the court's award of \$235,030.31 in attorney's fees to Spriggs and remand the issue of attorney's fees to the circuit court for reconsideration. We order the circuit court to clearly identify the statutory authority for its award and the fees incurred under each statute.

C. Prejudgment Interest

Slivka argues the circuit court's award of \$37,413.92 in prejudgment interest to Spriggs was not supported by statute. We disagree.

The law permits the award of prejudgment interest when a monetary obligation is a sum certain, or is capable of being reduced to certainty, accruing from the time payment may be demanded either by the agreement of the parties or the operation of law. *Butler Contr., Inc. v. Court St., LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258 (2006). Generally, prejudgment interest may not be recovered on an unliquidated claim in the absence of agreement or statute. *Id.* The fact that the amount due is disputed does not render the claim unliquidated for purposes of awarding prejudgment interest. *Id.* Rather, the proper test is "whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose." *Id.* "The award of prejudgment interest will not be disturbed on appeal unless the [circuit] court committed an abuse of discretion." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 435, 673 S.E.2d 448, 457-58 (2009).

We find the circuit court did not err in awarding Spriggs prejudgment interest. We note the court's award of prejudgment interest was not limited to Spriggs' cause of action for failure to comply with section 27-1-15. The court also awarded interest on Spriggs' breach of contract claim, which was not appealed and is the law of the case. Accordingly, we affirm the circuit court's award of prejudgment interest.

CONCLUSION

We find the construction administration services provided by Spriggs fell within the definition of labor contained in section 29-5-10(a). Additionally, we affirm the circuit court's award of prejudgment interest and denial of Slivka's directed verdict motions as to Spriggs' section 27-1-15 and mechanic's lien claims. We reverse the circuit court's award of attorney's fees and remand for reconsideration.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

SHORT and KONDUROS, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The Spriggs Group, P.C., Respondent,

v.

Gene R. Slivka, Petitioner.

Appellate Case No. 2013-000800

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Colleton County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 27508
Heard February 3, 2015 – Filed March 18, 2015

**DEPUBLISH THE OPINION OF THE COURT OF
APPEALS AND DISMISS CERTIORARI AS
IMPROVIDENTLY GRANTED**

Robert T. Lyles, Jr., of Lyles & Lyles, L.L.C., of
Charleston, for Petitioner.

James Atkinson Bruorton, IV and Timothy James Wood
Muller, of Rosen Rosen & Hagood, L.L.C., of
Charleston, for Respondent.

PER CURIAM: We granted the petition for a writ of certiorari to review the Court of Appeals' decision in *The Spriggs Group, P.C. v. Slivka*, 402 S.C. 42, 738 S.E.2d 495 (Ct. App. 2013). We first direct the Court of Appeals to depublish its opinion and assign the matter an unpublished opinion number. The above opinion shall no longer have any precedential effect. Next, we dismiss as improvidently granted the writ of certiorari.

Accordingly, we

**DEPUBLISH THE OPINION OF THE COURT OF APPEALS AND
DISMISS CERTIORARI AS IMPROVIDENTLY GRANTED.**

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

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

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2015 APR 15 PM 12:29
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
Attorney General's Office
Knox County

1. Court of Appeals Opinion on Fees & Costs

41

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). The decision to award or deny attorneys' fees under a state 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). In this case, the Court of Appeals found no abuse of discretion by the Circuit Court.

Slivka made several arguments on appeal with regards to the attorneys' fees award that were addressed by the Court of Appeals. First, Slivka argued that the Spriggs 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 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 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 did not find that the attorney's fees award shocked the conscience of the Court. See Ct. of Appeals Opinion Pg. 10. The Court of Appeals did find that the circuit court order is unclear as to which fees were awarded under which statutory authority as the fee award exceeds the amount permitted under the mechanic's lien statute. See Ct. of Appeals Opinion Pg. 10.

The Court of Appeals in its decision did not find the amount of attorneys' fees awarded by the Circuit Court to Spriggs to be unreasonable, nor did it find that the Circuit Court abused its discretion in awarding the fees to Spriggs. 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.

2. Plaintiff is entitled to recover all of its fees and costs as it prevailed under S.C. Code Ann. § 29-5-10 and S.C. Code Ann. § 27-1-15.

Plaintiff is entitled to recover all of its fees and costs by the cumulative affect of reading both statutes. Under South Carolina's mechanic's lien statute, the prevailing party S.C. Code Ann. § 29-5-10, et seq., the costs which may arise in enforcing or defending against the lien, including a reasonable attorneys' fee, may be recoverable by the prevailing party up to the amount of the lien. See S.C. Code Ann. § 29-5-10. The verdict reached as to Defendant's failure to comply with S.C. Code Ann. § 27-1-15 provides for a recovery of attorneys' fees without any limitation as to the maximum amount that can be awarded under the statute. See S.C. Code Ann. § 27-1-15.

The Circuit Court's award of attorneys' fees and costs to Spriggs in the total original amount of \$235,030.21 was reasonable and not an abuse of discretion on the part of the Circuit Court. Pursuant to the express language of the two statutes applicable to Spriggs' claim to attorneys' fees, Spriggs is entitled to an attorney's fees and costs award of \$198,834.53 as the prevailing party under the South Carolina Mechanic's Lien Statute. Further, Spriggs is entitled to an attorneys' fees and costs award of \$36,195.68 under S.C. Code Ann. § 27-1-15. Spriggs has previously briefed this Court and submitted Affidavits in support of the attorneys' fees and costs sought. Spriggs relies on those original filings as support of the Court's prior attorneys'

fees and costs award¹. Spriggs further relies upon the Court's previous orders issued in this case awarding and affirming the award of attorney's fees to Spriggs².

3. Plaintiff is entitled to an award of additional attorneys' fees

Since the issuance of the Circuit Court's Order awarding fees and costs to Spriggs, substantial fees and costs have been incurred by Spriggs in defending the appeals brought by Slivka in the South Carolina Court of Appeals and the South Carolina Supreme Court. While Mr. Slivka, as a litigant, does have a right to appeal, such appeal caused additional financial harm to Spriggs by way of additional attorney's fees and costs, which he is now entitled to recovery from Slivka in accordance with South Carolina Law.

Specifically, 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 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). 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 and 29-5-10 of the South Carolina Code both authorize an award of attorneys' fees to

¹ See (1) Sprigg's Motion for Award of Attorney's Fees, Interest and Cost filed July 27, 2011; (2) Affidavit of A. Bright Atrial filed July 27, 2011; (3) Affidavit of N. Keith Emge, Jr. filed July 27, 2011; (4) Sprigg's Memorandum in Opposition to Defendant's Motion for Judgment Notwithstanding the Verdict and/or for New Trial filed August 12, 2011; (5) Sprigg's Memorandum in Opposition to Defendant's Motion for Judgment Notwithstanding the Verdict and/or for New Trial filed October 20, 2011 (as to fees and costs); and (6) Second Affidavit of A. Bright Atrial filed October 20, 2011.

² See (7) Order for Award of Interest, Fees and Costs filed September 7, 2011; (8) Order Denying Defendant's Motion for JNOV and/or For New Trial filed September 7, 2011; (9) Revised Order for Award of Interest Fees and Costs filed October 3, 2011; and (10) Order Denying Defendant's Motion to Alter/Amend Award of Interest, Fees & Costs filed November 22, 2011.

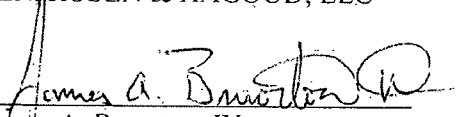
Spriggs in this case. Given that Spriggs is entitled to attorneys' fees under statutory authority, Spriggs is entitled to recover its appellate and post appellate fees and costs under that same statutory authority and have the additional award added to the original judgment amount.

Since the Circuit Court's Order of November 22, 2011 finalizing the award of fees and costs to Spriggs in the amount of 235,030.21, Spriggs has incurred \$61,335.85 in additional attorney's fees and \$3,155.05 in additional litigation costs in defending the 3 ½ year appeal. See Affidavit of James A. Bruorton IV. Having prevailed on all the legal issues that entitled him to the jury verdict of \$173,990.53, pre-judgment interest award of \$37,413.92, and authorized the original award of attorney's fees and costs, Spriggs moves this court for an additional award of attorney's fees and costs incurred in defending the appeal in the amount of \$65,541.80. See Affidavit of James A. Bruorton IV. While Spriggs has maximized the amount of attorneys' fees and costs allowable under S.C. Code Ann. § 29-5-10, Spriggs is still entitled to recovery the appellate and post-appellate fees and costs pursuant to S.C. Code Ann. § 27-1-15.

CONCLUSION

For the above reasons, Spriggs moves this Court for an award of [1] Trial Court Fees & Costs pursuant to S.C. Code Ann. § 29-5-10 in the amount of \$198,834.53; [2] Trial Court Fees & Costs pursuant to S.C. Code Ann. § 27-1-15 in the amount of \$36,195.68; and [3] Appellate/ Post-Appellate Fees & Costs pursuant to S.C. Code Ann. § 27-1-15 in the amount of \$65,541.80.

ROSEN, ROSEN & HAGOOD, LLC

By: 

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

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
April 10, 2015

Defendant.

CERTIFICATE OF SERVICE

PATRICIA O. GRANT
COLLETON COUNTY
COMMON PLEAS
2015 APR 15 PM 12:20

46

ROSEN | HAGOOD

Laura S. Croft
lcroft@rrhlawfirm.com

April 13, 2015

Colleton County Clerk of Court
101 Hampton Street, P.O. Box 620
Walterboro, SC 29488

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

Dear Clerk:

Enclosed, please find one original and one copy of Plaintiff's Memorandum in Support of Attorney's Fees and Costs Award, regarding the above referenced matter. Please file the original and return the filed stamped copy to me in the enclosed, pre-paid envelope.

With kindest regards, I am

Sincerely yours,



Laura S. Croft
Paralegal

/lsc
Enclosures

cc: Robert Lyles (via email w/ enclosures)

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
CASE NO. 2009-CP-15-0595

The Spriggs Group, P.C.

☐ Plaintiff

v.

Gene R. Shvka, et al.

☒ Defendant

MOTION INFORMATION FORM
AND COVER SHEET

<u>name, SC Bar no. and address of plaintiff's attorney</u> James Bruorton, IV, Esquire. Rosen, Rosen & Hagood, LLC 151 Meeting Street, Suite 400 P.O. Box 893 Charleston, South Carolina 29402-0893 telephone: 843-266-8117 fax: 843-724-8036 e-mail: cbruorton@rhlawfirm.com		<u>name, SC Bar no. and address of defendant's attorney</u> Robert T. Lyles, Jr., Esq. Lyles & Lyles, P.O. Box 773 Charleston, S.C. 29402 telephone: 843-577-7730 fax: 843-577-7172 e-mail: rtl@lylesfirm.com	
☐ 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: <u>Notice of Motion and Motion for Reconsideration of Award of Attorney's Fees.</u>			
Estimated Time Needed: <u>30 min</u>		Court Reporter Needed: <u>YES</u> / <u>NO</u>	
SECTION II: Motion Type			
☒ Written motion attached ☐ Form Motion --			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
<u>4/24/15</u>		<u>Robert T. Lyles, Jr.</u> Signature of Attorney for Plaintiff/Defendant	
Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: <u>\$25.00</u>			
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ 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: _____	

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

2015 APR 28 AM 10:22

CLERK'S VERIFICATION

DATE FILED

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, P.C.

Plaintiffs,

vs.

GENE R. SLIVKA,

Defendants.

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

) **NOTICE OF MOTION AND**
) **MOTION FOR RECONSIDERATION**
) **OF AWARD OF ATTORNEY'S FEES**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2015 APR 28 AM 10:22

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

PLEASE TAKE NOTICE the Defendant Gene R. Slivka, by and through its undersigned attorneys, will move before this Honorable Court, ten (10) days after the date hereof, or as soon thereafter as counsel may be heard, for an Order pursuant to the South Carolina Rules of Civil Procedure 50, 59 and 60¹, amending or reconsidering the previous award of attorney's fees pursuant to the order of the South Carolina Court of Appeals Opinion No. 5081 (Appellate Case No. 2011-204366, filed February 6, 2013) and providing relief from the Judgment entered in this matter.

BACKGROUND

This matter commenced via a mechanic's lien filed by the Spriggs Group, P.C. (hereinafter "Spriggs") against the home of Defendant Gene R. Slivka, known as New Julianton Plantation and located in Colleton County, SC. New Julianton consists of several buildings

¹ Slivka filed motions pursuant to SCRCP 50 following trial which were denied. He then filed a motion pursuant to SCRCP 59 regarding his motion of a JNOV and/or a new trial. Said motions were denied by way of the Court's Order Denying Defendant's Rule 59 Motion Regarding Award of Interest, Fees, and Costs to Plaintiff, filed November 22, 2011. A judgment was entered thereafter on July 22, 2011 to which Slivka seeks relief.

including a main house, two garages, a conservatory, a grotto, and a barn, all of new construction but built in the historical style. Pursuant to an agreement, Spriggs was to provide architectural design services. The Notice of Mechanic's Lien in the amount of \$193,834.53 was filed on April 13, 2009. (Spriggs Submission Tab D 2) The lien was bonded off by Mr. Slivka pursuant to his payment of \$269,070.83 to the clerk of court. Plaintiff filed suit to foreclose on said lien on July 8, 2009. On March 15, 2010, Spriggs made a demand for payment pursuant to SCRPC §27-1-15. In May 2010 the complaint was amended to add causes of action including a failure to comply with SCRPC § 27-1-15. Slivka made an offer of settlement in the amount of \$100,000.00 on June 30, 2011, which the Plaintiff did not respond to.

The case was tried before a jury in Colleton County beginning on July 18, 2011 through July 22, 2011. The jury entered a verdict in favor of Spriggs on the causes of action under the mechanic's lien statute, breach of contract, and failure to comply with SCRPC §27-1-15. Additionally, the jury found in favor of Spriggs on Slivka's slander of title action. (Spriggs submission Tab D 1) The amount awarded was \$173,990.53 (\$20,000.00 less than the amount of the mechanic's lien and \$73,990.53 more than Slivka's pre-trial settlement offer pursuant to the mechanic's lien statute.) By way of an order filed on September 7, 2011, which was amended and filed on October 3, 2011, the court additionally awarded \$37,413.92 in prejudgment interest and attorney's fees in the amount of \$235,030.31. A judgment in the amount of \$446,434.76 was entered. Plaintiff received a partial satisfaction of judgment upon payment of the court bond on January 11, 2012, in the amount of \$269,070.83. (Partial Satisfaction of Judgment, attached as Exhibit A hereto).

Mr. Slivka appealed the judgment in part, specifically on the grounds that (1) the court

erred in submitting the question of interpretation of § 29-5-10(a) to the jury; (2) failing to direct a verdict; and (3) awarding Spriggs attorney's fees, costs and interest. The court affirmed the verdict of \$173,990.53 and the award of \$437,413.92 in pre-judgment interest. (Spriggs Submission Tab E 1) However, the award of \$235,030.31 was reversed and remanded back to this court for reconsideration. Certiorari was granted by the Supreme Court and oral arguments held, but the Supreme Court then issued an order that the opinion of the Court of Appeals be de-published and certiorari was dismissed. (Spriggs Submission Tab E 2)

GROUNDS FOR RECONSIDERATION

The grounds for this motion are as follows:

1. **The award of attorney's fees includes fees, interest and costs not authorized by S.C. Code Ann. § 27-1-15.**

This statute provides:

Whenever a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within forty-five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for **reasonable attorney's fees and interest at the judgment rate from the date of the demand.** (emphasis added)

The award of attorney's fees is not supported by this statute for the following reasons:

- a. Said award included fees, costs and interest that pre-dated the Plaintiff's demand under the statute made on March 15, 2010.
- b. Said award includes costs which are not authorized by the statute.
- c. Said award is not reasonable as required by the statute.

- d. Said award includes costs and fees incurred in the prosecution of other causes of action.

2. The award of attorney's fees includes fees, interest and costs not authorized by S.C. Code Ann. § 29-5-10(a).

The statute provides:

(a) A person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate or the boring and equipping of wells, by virtue of an agreement with, or by consent of, the owner of the building or structure, or a person having authority from, or rightfully acting for, the owner in procuring or furnishing the labor or materials shall have a lien upon the building or structure and upon the interest of the owner of the building or structure in the lot of land upon which it is situated to secure the payment of the debt due to him. **The costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party. The fee must be determined by the court in which the action is brought but the fee and the court costs may not exceed the amount of the lien...**(emphasis added)

The award of attorney's fees is not supported by this statute for the following reasons:

- a. Said award exceeds the amount of the lien;
- b. Said award includes fees and costs incurred in prosecuting causes of action other than the mechanic's lien;
- c. Said award is not reasonable.

3. The award as a whole includes fees and costs incurred in prosecuting causes of action that were dismissed and/or that do not support an award of attorney's fees.

A party cannot recover attorney's fees unless authorized by contract or statute. *Cullen v. McNeal*, 390 S.C. 470, 491, 702 S.E. 2d 378, 289 (Ct. App. 2010). While Plaintiff's causes of action under SCRCF § 27-1-15 and § 29-5-10 authorize the award of attorney's fees, Plaintiff's cause of action for breach of contract, as well as Plaintiff's causes of action for breach of contract

with fraudulent intent and *quantum meruit* (which were ultimately voluntarily dismissed) do not. As the court awarded all fees and costs incurred by Spriggs, some portion of the awarded fees include fees and costs incurred in the prosecution of these causes of action which do not entitle Spriggs to an award of attorney's fees. Additionally, as evidenced by the billing records submitted by Spriggs, significant fees were incurred in prosecuting arguments and testimony which were abandoned, such as calling other individuals who had payment disputes with Slivka as witnesses at trial and their counsel. The court should divide a reasonable attorney's fee among all of the plaintiff's causes of action and abandoned efforts to properly reflect those incurred in the prosecution of 27-1-15 and 29-5-10.

4. The award of attorney's fees, as a whole, was not reasonable.

The following factors should be considered when determining reasonable attorney's fees: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). The court awarded \$235,030.31 in attorney's fees which was reversed and remanded by the Court of Appeals, noting that the "needle is definitely moving on the seismograph" with respect to the conscience of the court being shocked and pointed out that the recovery was only \$75,000 over the settlement offer made under the mechanic's lien statute.

5. No post-judgment interest to date should be awarded.

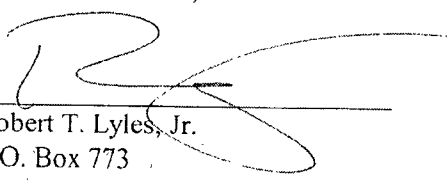
Under *SC Code Ann.* § 34-31-20 a money decree or judgment of a court enrolled or entered must draw interest according to law. South Carolina recognizes the majority rule that a judgment creditor is not entitled to interest on the judgment obtained during the pendency of an

unsuccessful appeal. *Sears v. Fowler*, 293 S.C. 43, 358 S.E.2d 574 (1987). The verdict in the amount of \$173,990.53, as well as the pre-judgment interest in the amount of \$37,413.92, was satisfied in full on January 11, 2012, when Plaintiff received the \$269,070.83 cash payment from the clerk of court. (Plaintiff has actually received \$57,666.38 *over and above* the portion of the judgment that was not reversed.) The only outstanding portion of the judgment pertains to the attorney's fees award, which was reversed by the Court of Appeals. Therefore, no post-judgment interest should be recovered against it.

[Signature Page to Follow]

Dated this 24th day of April, 2015.

LYLES & LYLES, LLC



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

ATTORNEY FOR DEFENDANT,
GENE R. SLIVKA

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PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

Gives M3 gel

Exhibit “A”

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC

Plaintiff,

vs.

GENE R. SLIVKA

Defendant.

IN THE COURT OF COMMON PLEAS

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

PARTIAL SATISFACTION OF
JUDGMENT

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2012 FEB -9 AM 11:34

WHEREAS on July 22, 2011 a judgment was entered in the above matter in favor of the Plaintiff, The Spriggs Group, PC, against Defendant Gene R. Slivka in the amount of One Hundred Seventy Three Thousand, Nine Hundred and Ninety Dollars and 53/100 Dollars (\$173,990.53) based on a trial held from July 18 - 22, 2011; and

WHEREAS on October 3, 2011 an Order for Award of Interest, Fees and Costs increased the judgment amount to Four Hundred Forty Six Thousand, Four Hundred and Thirty Four and 76/100 Dollars (\$446,434.76); and

WHEREAS the Colleton County Register of Deeds issued a check releasing the bond posted for the Release of Mechanic's Lien filed in connection with the above-referenced matter in the amount of Two Hundred Sixty Nine Thousand, Seventy and 83/100 Dollars (\$269,070.83) which partially satisfies the judgment in this matter; and

WHEREAS a remainder of the judgment exists which totals One Hundred and Ninety Thousand, One Hundred and Seven and 13/100 Dollars (\$190,107.13) as follows:

Judgment Amount and Date: \$173,990.53 judgment entered on 7/22/11
\$446,434.76 total judgment entered on 10/3/11

Interest owed:
(through 1/10/12)

\$2,574.11 - calculated from 7/22/11 through 10/2/11
\$9,081.58 - calculated from 10/3/11 through 1/10/12

Judgment & Interest: \$458,090.45 (as of 1/10/12)
(through 1/10/12)

Partial Satisfaction
of Judgment
(Paid 1/11/12): -\$269,070.83

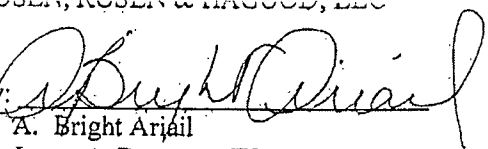
Remaining Judgment
& interest owed after
application of Partial
Satisfaction of Judgment: \$189,019.62 (as of 1/11/12)

Interest owed: \$1,087.51 (calculated from 1/11/12 through 2/8/12)

Total Judgment & Interest: \$190,107.13 (as of 2/8/12)

NOW, THEREFORE, I, A. Bright Ariail, as attorney for Plaintiff, hereby attests the amount due and owing the Plaintiff with interest is \$190,107.13, plus accruing interest from February 8, 2012, until paid in full.

ROSEN, ROSEN & HAGOOD, LLC

By: 

A. Bright Ariail

James A. Bruorton, IV

Timothy J.W. Muller

134 Meeting Street, Suite 200

Charleston, SC 29401

(843) 577-6726

ATTORNEY FOR PLAINTIFFS

February 8, 2012.
Charleston, South Carolina

LYLES & LYLES, LLC

ATTORNEYS AT LAW

342 East Bay Street

P.O. Box 773 (29402)

Charleston, South Carolina 29401

Telephone: (843) 577-7730

Facsimile: (843) 577-7172

Erica M. Boyd
Paralegal

Direct: (843) 577-7730
E-mail: eb@lylesfirm.com

April 24, 2015

VIA Fed-Ex

Ms. Patricia C. Grant
Colleton County Clerk of Court
Post Office Box 620
101 Hampton Street
Walterboro, S.C. 29488

Re: *The Spriggs Group, P.C. vs. Slivka*,
CA No. 2009-CP-15-0595

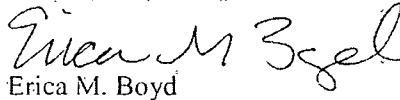
Dear Ms. Grant:

Enclosed please find the original and one (1) copy of the Notice of Motion and Motion for Reconsideration of Award of Attorney's Fees regarding the above-referenced matter. I would appreciate your filing the original Notice of Motion and Motion for Reconsideration of Award of Attorney's Fees and returning the file-stamped copy to me in the envelope enclosed for your convenience. Should you have any questions concerning this matter, please do not hesitate to contact me.

Thank you in advance for your assistance, and with kindest regards, I remain.

Sincerely,

LYLES & LYLES, LLC


Erica M. Boyd

/eb

Enclosure

Cc: Chip Bruerton
Gene Slivka

NO ENV

IN THE COURT OF COMMON PLEAS
CASE NO. 2009-CP-15-0595

☐ Plaintiff

v.

MOTION INFORMATION FORM AND COVER SHEET

☒ Defendant

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2015 JUN -8 PM 1:55

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.

Plaintiff,

v.

GENE R. SLIVKA

Defendant.

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

) NOTICE OF MOTION AND MOTION TO
) ALTER OR AMEND THE ORDER
) GRANTING AWARD OF
) ATTORNEYS' FEES TO PLAINTIFF
) PURSUANT TO RULE 59(e), SCRPC
)
)

2015 JUN -8 PM 1:55
PATRICIA D. EVANS
COLLETON COUNTY
COMMON PLEAS

YOU WILL PLEASE TAKE NOTICE that within ten (10) days or as soon thereafter as counsel may be heard, counsel for the Defendant, Gene R. Slivka, (hereinafter referred to "Slivka") will, before the Honorable William H. Seals, Jr., Judge of the Circuit Court for the Fifteenth Judicial Circuit, at the Marion County Courthouse in Marion, South Carolina, move, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, for the alteration or amendment of the Judgment and/or Order dated May 11th, 2015 and received by Slivka on May 27, 2015.

The basis of this motion is that the Order issued by the Court is in error in several particulars, including, but not limited to the following:

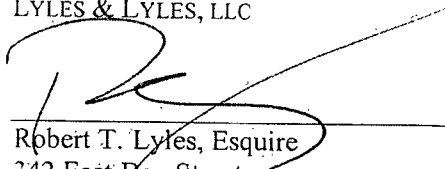
- a. In making its award, the Court abused its discretion by considering and relying upon erroneous factors for awarding attorneys fees, including the alleged financial hardship on Spriggs as a result of the litigation he filed and Mr. Slivka's exercise of his rights as a litigant; the Court's use of attorneys' fees as a sort of punishment of Slivka for litigation conduct by Slivka during the course of the litigation years before; and the Court's use of the attorneys' fee award to discourage and deter Slivka from exercising his rights as a litigant to lawfully appeal this Court's decisions.
- b. Awarding Defendant attorneys' fees of \$213,715.25 under the § 27-1-15 ("Demand for Payment statute") is grossly excessive given that only \$76,000.00 was alleged to have been unreasonably withheld, a recovery of

only \$173,990.53 in damages, all of which was paid, in full on January 11, 2012.

- c. In awarding attorneys' fees under § 27-1-15 when that statute limits fees to the recovery of undisputed sums, which were paid in full on January 11, 2012.
- d. In awarding the recovery of attorneys' fees incurred by defending or protecting an award of attorneys' fees.
- e. Awarding attorneys' fees under SCRP § 27-1-15 that were incurred to defend counterclaims unrelated to that statute are not recoverable under the statute.
- f. In awarding attorneys' fees incurred while the matter was on appeal when 1) all sums awarded by the jury under the Demand for Payment Statute had been paid in full as of January 11, 2012; and 2) when Spriggs was not the prevailing party on the appeal, which is substantiated by the denial of Spriggs' motion for attorneys' fees by the appellate courts (Copy of Order Denying Attorneys' Fees dated May 20, 2015 is attached).
- g. In awarding interest on fees awarded for Spriggs' appeal, from October 3, 2011, when the fees were not incurred until after that date and were not awarded until May 2015.
- h. In awarding Spriggs attorneys' fees for an appeal in which the only issue was the defense or protection of his attorneys' fee award, as the jury verdict had been paid in full as of January 11, 2012.

This motion is supported by the pleadings on file, the discovery conducted, and a memorandum to be filed at a later date.

LYLES & LYLES, LLC


Robert T. Lyles, Esquire
342 East Bay Street
Post Office Box 773 (29402)
Charleston, South Carolina 29401
T: 843.577.7730
F: 843.577.7172
rtl@lylesfirm.com

*Attorneys for Defendant
Gene R. Slivka*

*Charleston, South Carolina
Jan 5, 2015*

The Supreme Court of South Carolina

The Spriggs Group, P.C., Respondent,

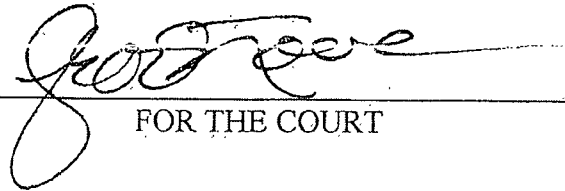
v.

Gene R. Slivka, Petitioner.

Appellate Case No. 2013-000800

ORDER

Pursuant to Rule 222 of the South Carolina Appellate Court Rules, the Motion for Costs filed by Respondent is denied.



FOR THE COURT C.J.

Columbia, South Carolina

May 20, 2015

cc:

Robert T. Lyles, Jr., Esquire
James Atkinson Bruorton, IV, Esquire
Lawrence Caldwell Melton, Esquire
Brian A. Autry, Esquire
Timothy James Wood Muller, Esquire
Patricia C. Grant

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

THE SPRIGGS GROUP, P.C.)

Plaintiffs,)

vs.)

GENE R. SLIVKA,)

Defendants.)

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

CERTIFICATE OF SERVICE

2015 JUN -8 PM 1:55

PAUL J. HARRIS
COLLETON COUNTY
COMMON PLEAS

The undersigned hereby certifies that a true copy of **Notice of Motion and Motion to Alter or Amend the Order Granting Attorneys' Fees to Plaintiff Pursuant to Rule 59(e)**, **SCRCP** has been served upon the counsel of record via U.S. Mail on this 5th day of June, 2015.

James Bruorton, IV
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401

Brooke Turner

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

June 5, 2015

The Honorable Patricia C. Grant
Colleton County Clerk of Court
101 Hampton Street
Walterboro, S.C. 29488

Re: *The Spriggs Group, P.C. vs. Slivka*,
CA No. 2009-CP-15-0595

Dear Ms. Grant:

Enclosed please find the original and one (1) copy of the Defendant's Notice of Motion to Alter or Amend the Order Granting Award of Attorneys' Fees to Plaintiff Pursuant to Rule 59(e) regarding the above-referenced matter, along with a Motion Slip and this firm's check in the amount of \$25.00. I would appreciate your filing the original Motion and returning the file-stamped copy to me in the envelope provided.

Should you have any questions concerning this matter, please do not hesitate to contact me. Thank you in advance for your assistance, and with kindest regards, I remain

Very truly yours,

LYLES & LYLES, LLC

Robert Lyles /RTL

Robert T. Lyles, Jr.

RTL/bt
Enclosures

cc: James Bruorton, IV, Esquire.
Gene Slivka

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	2009-CP-15-00595
	)	
	)	
The Spriggs Group	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Gene R. Slivka	)	)
<u>DEFENDANT</u>	)	May 7, 2015
		Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE.

A P P E A R A N C E S:

JAMES BRUORTON, ESQ.
Attorney for the Plaintiff

ROBERT T. LYLES, JR., ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, there were no witnesses called.)

1 THE COURT: Good morning. If you would for the
2 record, just again introduce yourselves and who you
3 represent.

4 MR. BRUORTON: Your Honor, Chip Bruorton here on
5 behalf of the Spriggs Group and with me is Ken Spriggs.

6 THE COURT: All right.

7 MR. LYLES: Robert Lyles for Gene Slivka.

8 THE COURT: All right. I'll allow you to go
9 first and you go second. Now, keep in mind, it's been a
10 long time since I seen this case, take your time. I will
11 not interrupt you. I'm in no hurry, just give it to me in
12 baby steps and I'll allow you to do the same.

13 MR. BRUORTON: First thing, I had sent you a
14 notebook and I gave Mr. Lyles this this morning. There's
15 been a couple of things filed since that notebook. He
16 filed a motion for reconsideration on April 24th and I
17 filed a motion to compel on May the 1st, which I think we
18 both e-mailed you. So that's just -- we added section G
19 to that, so that's a new table of contents. And you give
20 me just one second I like to set this easel up.

21 THE COURT: Take as long as you want. You all
22 don't have a picture of the house, do you? I been telling
23 Kathleen about it. I just wanted to show it to her.

24 MR. BRUORTON: I had one and the Court of
25 Appeals kept it.

1 THE COURT: You don't have one either?

2 MR. LYLES: I been going to therapy to try to
3 get it out of my head, Judge.

4 THE COURT: I had one I could not find it.

5 MR. BRUORTON: So we do not have one. It's
6 quite impressive. If you drive between Charleston and
7 Beaufort and you're crossing over one those bridges and
8 the marshes out on the left, you can actually see it way
9 off to the left because it's enormous. It stands -- it
10 has about six chimneys and it stands back there in the
11 back. You ready, Your Honor.

12 THE COURT: I am just go slowly.

13 MR. BRUORTON: Again, Chip Bruorton here for the
14 Spriggs Group, Your Honor, who was the plaintiff in this
15 action that we tried back in July of 2011. We spent a
16 wonderful week together down in Colleton County and here
17 we are four years later still trying to work this thing
18 out. And I wanted to kind of show you kind where we are,
19 but before I get into this, you gave specific instructions
20 to us as to what you wanted to see and what you wanted to
21 consider for today. The reason that we're here is for the
22 attorney's fees award that was issued in October of 2011.
23 The mechanic's lien statute whether the labor that was
24 done is considered labor under the mechanic's lien, that
25 issue has been resolved. Mr. Spriggs prevailed at the

1 trial court level. He prevailed at the Court of Appeals
2 and the Supreme Court really didn't address that issue.
3 They just asked that the Court of Appeals depublish their
4 opinion, so it's still the law of the case.

5 THE COURT: It made me feel a little better
6 anyway.

7 MR. BRUORTON: I thought your order was much
8 better than the Court of Appeals' opinion. But as for the
9 27-1-15 and whether Mr. Slivka acted reasonably and
10 complied with that statute, that's been put to rest as
11 well. Mr. Spriggs won at the trial level, won at the
12 appellate court level and the Supreme Court didn't address
13 that at all. All we're dealing with is the reversal of
14 the attorney's fees award. And I'll talk about that a
15 good bit.

16 The award was not vacated. It was simply
17 reversed and remanded for clarification. But in your
18 e-mail to the parties on February 13th, you set forth
19 exactly what you wanted to see and what you wanted to
20 consider. And one of the things that you were specific
21 about was that you wanted a five page brief addressing
22 kind of the arguments between the parties as to what
23 statutes the fees were awarded -- could be awarded under,
24 the amount of the fees and relevant case law and
25 authority. And you were specific in saying that any brief

1 exceeding five pages would not be considered. I sent you
2 a notebook about two weeks ago laying all this out. We've
3 had this hearing set for a while. I got a 13-page brief
4 last night at seven o'clock after I left the office. And
5 with all due respect to Mr. Lyles, I would just ask that
6 you not consider that brief based off of your instructions
7 or just read the first five pages of it.

8 MR. LYLES: Just let me say, Your Honor, I
9 apologize for that, that was an oversight on my office's
10 part.

11 THE COURT: I'm fine. I'm okay. I'm going to
12 pretty much base everything on what I hear today.

13 MR. LYLES: Thank you, Your Honor.

14 MR. BRUORTON: And I did talk to Mr. Lyles about
15 that before, I didn't want to blindside him and bring it
16 up in the court. As I said earlier, Your Honor, why we're
17 back here is the Court of Appeals -- and I've provided the
18 opinion to you. They reversed the attorney's fees award
19 that was awarded because they said it was unclear as to
20 which statute the fees have been awarded under because
21 there's a cap under the mechanic's lien statute and
22 obviously the amount that was awarded exceeds that cap.
23 They did not vacate your award. They did not say that
24 your award was unreasonable, shock the conscience. They
25 just asked you to clarify it. So they still made findings

1 that I think are specifically relevant to that award. And
2 I want to look at those three things that they did find
3 that were brought up on appeal by Mr. Slivka.

4 The first is that Mr. Slivka challenged whether
5 staff member fees could be awarded as part of the
6 attorney's fees award. Court of Appeals in their opinion
7 found that staff member fees are recoverable and that you
8 did not abuse your discretion in awarding those fees.
9 Second, Mr. Slivka raise the argument that because he had
10 posted a cash bond, any award should be capped at the
11 amount of the bond. Court of Appeals specifically
12 rejected that argument and stated that the mechanic's lien
13 statute specifically says that you can be awarded up to
14 the lien amount, which is more than the cash bond that was
15 posted, so they rejected that offer.

16 Third is that they stated that the amount of the
17 reward did not shock the conscience. There is nothing in
18 the Court of Appeals opinion that states that what you
19 awarded to begin with was unreasonable and quite frankly I
20 feel like you got it right, but we're here today to talk
21 about that. And Mr. Lyles has brought some things up
22 during the course of this case that I think have some
23 legitimacies that relates to the numbers that were
24 presented before you. So I kind of want to work through
25 those.

1 If you look at the Court of Appeals opinion, it
2 implies in their opinion you can award fees under both the
3 statutes under mechanic's lien and under 27-1-15. I have
4 not found any case law in support of that. I have not
5 found any case law against that to say that you cannot do
6 that. So I want talk to about that today, I guess, since
7 it's kind of some of the options, but what the Court of
8 Appeals is because we find the Circuit Court's order is
9 unclear. We reverse the Court's award of 235,030.31 and
10 attorney's fees to Spriggs and remand the issue of
11 attorney's fees to the circuit court for reconsideration.
12 What they did is order the circuit court to clearly
13 identify the statutory authority for it's award and the
14 fees incurred under each statute. So to me that implies
15 that you can do it under both. You can split it and do
16 some kind of hybrid some fees under one, some fees under
17 the other. Again, they did not make a finding that what
18 you did was unreasonable. So I want to look to kind of
19 where we are and then I'll get back to the break down of
20 the original award.

21 Robert, I don't know if you can see this from
22 there or not. I can move it back a little bit.

23 THE COURT: I can see it.

24 MR. BRUORTON: On July 22nd 2011, there was a
25 unanimous verdict for \$173,990.53, that was a unanimous

1 verdict on the breach of contract claim that Mr. Spriggs
2 brought with Mr. Slivka on the mechanic's lien statute and
3 on under 27-1-15 for failure to comply with the payments
4 statute. You awarded prejudgment interest on the verdict
5 amount of \$37,413.92, which gave a total of 211,404.45.
6 That's really not in question here today. What we're
7 dealing with is what's above the 211,404.45. You awarded
8 attorney's fees for \$235,030.31, which made a total
9 judgment of 446,434.76.

10 The bond that was put into the court was
11 \$265,112.71. Your order in 2011 requested that the court
12 release that bond to my firm for Mr. Spriggs, which left
13 an unpaid balance of 181,322.05 a partial satisfaction was
14 actually filed against that judgment for 265,112.71. So
15 this is kind of what is unpaid.

16 Now, I know Mr. Lyles will argue that
17 Mr. Spriggs, who drove up from Savannah today to be here
18 because this is very important to him and this has been
19 going on for quite a period of time, has had the benefit
20 of that money and everything, you know, above that and
21 more than what he got from the verdict. But as you are
22 aware, we provided an affidavit of attorney's fees back in
23 the beginning. Mr. Spriggs had an hourly fee agreement.
24 He's been paying hourly fees. So to say that he's had the
25 benefit and been made whole by what's happened so far is

1 completely incorrect. All that has ever been released in
2 this case is the 211 without getting into how much our
3 firm took of that and how much Mr. Spriggs got of that, I
4 can assure you that he is extremely still deep in the
5 hole.

6 And part of the reason that you awarded the fees
7 that you did is kind of what Mr. Slivka did in this case
8 throughout its course. And I provided you with a
9 procedural history which you asked us to do and that was
10 tab C of the notebook that we sent. And you can kind of
11 see Mr. Slivka obviously has the right through the course
12 of litigation to defend the case that's brought against
13 him. I think he has taken that liberty and gone well
14 beyond that and that's the reason that the fees have
15 gotten to be where they are.

16 Quite frankly this could have been a \$30,000
17 case if Mr. Slivka was the defendant. I think Mr. Spriggs
18 probably would have still had to spend the same amount of
19 money whether it was a million dollars or whether it was
20 \$30,000. Mr. Slivka was never going to pay Mr. Spriggs
21 what he was owed. He was going to draw this out as long
22 as he possibly could. He continues to. He's not trying
23 -- not without getting into settlement discussions or
24 anything like that, we wouldn't be here today if we could
25 have gotten this matter resolved. So, obviously, we

1 haven't been able to and we're before you.

2 And if you look at the case history, he's filed
3 seven motions during the course of this case. He filed a
4 motion to dismiss which he lost. He filed a motion to
5 dissolve the mechanic's lien which he lost. He filed
6 motions to strike affidavits which he withdrew on the date
7 of the hearing. He filed a motion to quash a discovery
8 subpoena which he lost. He filed a motion for an
9 extension of the scheduling order. He filed a motion to
10 substitute counsel taking out Mr. McLeod substituting in
11 Mr. Lyles. And he filed a motion for summary judgment
12 when he lost. He even opposed Spriggs' motion to amend
13 and required a hearing on that motion to amend. In total,
14 that's seven motions that were filed. There's been four
15 hearings in this case before we even got to the week-long
16 trial. And the trial took a week simply because of the
17 number of changes that Mr. Slivka made during the design
18 process of this house.

19 There was 140 something sheets that we had up on
20 the board that we just continued to flip through and
21 Mr. Boseman, who worked with Mr. Spriggs, documented each
22 one of those changes as we went along. And just -- I
23 don't know how much you want me to get back into the
24 history of the case, but Mr. Spriggs gave Mr. Slivka a
25 very gracious, friendly discount to design this house that

1 ended up costing about seven million dollars to build on
2 this 600 something square footage track of land that he
3 calls Julian Plantation. There was another plantation in
4 Georgia that Mr. Spriggs had designed for him that this
5 design was replicated on. So it wasn't like they were
6 starting over, but there was a lot of the different
7 finishes and different things that got taken into the
8 design.

9 The total amount of the original contract in
10 rough numbers cause it's been a long time and I didn't
11 write them down specifically was around \$160,000.

12 Mr. Slivka paid Mr. Spriggs half of that, that's all he's
13 ever paid him is half of that contract. Mr. Spriggs went
14 above and beyond with his design. The complete design
15 that Mr. Spriggs did for this house is what the house was
16 built off of. Mr. Slivka admitted that he owed him the
17 other half, but he wasn't going to pay Mr. Spriggs any
18 more because he didn't send him the proper invoice for the
19 proper amount. What Spriggs had done is invoiced him for
20 all of these changes which was allowed by the contract for
21 him to invoice him for additional work and Mr. Slivka said
22 he wasn't going to pay him until he send him the right
23 invoice for that half and he wasn't going to pay him for
24 the rest of it. So all he's ever gotten is the \$70,000
25 that was initially build and paid by Mr. Slivka.

1 So during the course of the case like I said,
2 we've had four hearings three of those took place before
3 Mr. Lyles was ever in the case on behalf of Mr. Slivka.
4 And each time there was one of those hearings, someone
5 from our firm had to drive down to Colleton County and
6 appear for that hearing.

7 Mr. Slivka during discovery we were forced to
8 file a motion to compel his deposition. He didn't show up
9 for it the first time that it was noticed and it had to be
10 rescheduled four times before he actually appeared. He's
11 fought everything at every step of the way that he could
12 all along the way and he continues to lose, but to his
13 credit, he doesn't give up. He's continuing to fight this
14 thing and that's continuing to cost my client,
15 Mr. Spriggs, substantial amounts of money.

16 So what can we do today to reconcile this issue
17 and move forward on the attorney's fees that have been
18 awarded. Your initial award for 235 -- 235,030.31
19 included 209,109.60 of fees, 25,920.71 of costs. Now,
20 Mr. Lyles has raised issues in what he has submitted to
21 the Court in his briefing that under 27-1-15 there is no
22 allowance for cost. It's only an allowance for attorney's
23 fees. Going back through reading the statute, I would
24 agree with him on that that 27-1-15 doesn't allow you to
25 get costs. But the mechanic's lien statute does allow you

1 to get costs, but the mechanic's lien has a cap at the
2 amount of the lien. The amount of the lien was
3 \$198,834.53. So for the purposes of the mechanic's lien,
4 that is your cap. So with the fees of \$209,109.60, we
5 exceed that cap. So you can give all the fees up to the
6 cap and not award any costs. And under 27-1-15, he can't
7 get cost anyway. So we're not even going to talk about
8 costs for the purposes of your award. So I think the
9 Court of Appeals the way that they've written the opinion
10 gives you liberty to award it under both statutes, but
11 knowing Mr. Slivka whatever happens here today, it's
12 probably going to get appealed. So I want it to be as
13 clean as it can as to what we're doing. So if you want to
14 award strictly under the mechanic's lien statute, the
15 attorney's fees award could be 198,834.53, plus interest
16 at the judgment rate on the unpaid balance of 181,322.05
17 cause I don't think you can go back and add to that amount
18 back from 2011 and calculate interest. I think you just
19 got to do it based off of that unpaid balance that we
20 looked at earlier, which is roughly around \$55,000. If
21 you decide to award it straight under 27-1-15, Mr. Lyles
22 has raise the argument that you cannot get fees prior to
23 the date of the demand. The demand was made I believe
24 March the 10th of 2010 or 2009 something like that.

25 MR. LYLES: Ten.

1 MR. BRUORTON: Is it ten?

2 MR. LYLES: Ten.

3 MR. BRUORTON: We gone back and looked at it.

4 And prior to that date if you look at the detail fees and
5 costs report that's attached to Ms. Ariail's affidavit
6 that's I believe under tab A2 in the notebook. There's
7 \$24,260.25 of fees that were incurred prior to the date of
8 the demand. So you take those out, you take the cost out.
9 The fees award can be \$184,849.35 under 27-1-15.

10 Now, in my brief that I submitted, I suggested
11 the hybrid approach that I believe the Court of Appeals
12 has indicated that you can do. So if you awarded
13 198,834.53 under the mechanic's lien, I think you can give
14 roughly another \$10,000 under 27-1-15 to get back to this
15 209,109.20 amount. Now, also the case law in South
16 Carolina as it relates to appellate fees and
17 post-appellate fees also provides that Mr. Spriggs is
18 entitled to recover the additional fees that he's incurred
19 throughout the course of this three and a half year
20 appeal.

21 If you look at the case of Austin vs. Stokes
22 Craven Holding Corporation, which is 406 South Carolina
23 187, a party is entitled to recover attorney's fees and
24 costs for appellate and post-appellate work, not limited
25 by the amount provided for in the appellate court rule

1 when the party is otherwise entitled to recover such fees
2 and costs under the statute. And McDowell vs. South
3 Carolina Department of Social Services, which is 304 South
4 Carolina 539 and Muller vs. Myrtle Beach Golf and Yacht
5 Club, which is 313 South Carolina 412, the authority of
6 appellate to grant fees under the appellate rules and the
7 circuit court's authority to grant appellate fees under
8 the statutory authority are not mutually exclusive or are
9 mutually exclusive, which means that what we applied for
10 the Supreme Court the \$3,000.34 something like that that's
11 mandated by the appellate court rules has no effect on
12 what you can do today in awarding additional fees under --
13 for appellate work and post-appellate work.

14 Now, Mr. Lyles is likely to argue that we're not
15 entitled to additional fees because the Court of Appeals
16 reversed your fees award and sent it back to the lower
17 court level, but the fees award was really not the
18 substitutive issues in this case. The substitutive issues
19 in the case were number one was the labor that was
20 performed by the Spriggs Group considered labor under the
21 mechanic's lien statute. The answer to that question
22 which you found in the trial court level was, yes, and
23 that's what the appellate court level found as well. And
24 to me that's the substitutive legal issue that Mr. Spriggs
25 has prevailed on. And by a matter of right under the

1 statute, he's entitled to recover his attorney's fees.
2 And I think he can get his appellate fees as well, but
3 we've already exceeded the cap. So if you're going to
4 award appellate fees, they have to be awarded under
5 27-1-15 in my opinion. But another substitutive issue was
6 whether Mr. Slivka did a -- made a reasonable and fair
7 investigation into debt owed and paid any undisputed
8 amounts in compliance with 27-1-15 which it was evidence
9 from the record and the unanimous verdict by the jury that
10 he did not. And whether that determination of whether a
11 reasonable and fair investigation was made was determined
12 to be a question for the jury by you at the trial court
13 level and agreed to by the Court of Appeals at the
14 appellate court level. So again another substitutive
15 legal issue that Mr. Spriggs has prevailed on that
16 entitles him to recover attorney's fees under 27-1-15.

17 So what we're asking for is during the three and
18 a half years of this appeal, we spent \$61,335.85 in legal
19 fees. We had a briefing at the Court of Appeals level.
20 We're required to go for an oral argument. Then the
21 Supreme Court granted cert. We had a briefing at the
22 Supreme Court level and we're required to go have an oral
23 argument before they issued their opinion stating that the
24 writ assert had been improvidently granted and that the
25 Court of Appeals should depublish their opinion.

1 So where I think we are is if you award
2 198,834.53 under the mechanic's lien statute, then I would
3 ask that you award \$61,335 under 27-1-15 for a total of
4 \$260,170.38 plus interest at the judgment rate today.
5 Option two is to award everything under 27-1-15 which
6 would be 184,849.35 that we looked at earlier, plus the
7 \$61,335 additional appellate fees for a total of
8 246,185.20 plus interest at the judgment rate.

9 So, Your Honor, again this has been obviously a
10 long process as it relates to this case. This is a
11 relatively simple case. We shouldn't be here talking
12 about fees that are this amount. They are large. There's
13 no doubt about that, but you did an analysis in your
14 original order that went through all of the factors, the
15 six factors that you determined when looking at an
16 attorney's fee award. And each one of those factors --
17 hold on one second -- find your order. The order of
18 October the 3rd 2011, which awarded interest, fees and
19 costs to the plaintiff states that in determining an award
20 of attorney's fees the Court considers six factors the
21 nature, extent and difficulty of the legal services
22 rendered time and labored devoted to the case. The
23 professional standing of counsel, the contingency of
24 compensation kind, the fee customarily of charge and
25 locality for similar services and the beneficial results

1 obtained. We had two affidavits that were submitted. One
2 by Bright Ariail one of my former law partners and one by
3 Keith Emge, who was another attorney locally in
4 Charleston, that testified that the rates that were being
5 charged were reasonable. In your order, you stated that
6 the plaintiff was required to expend considerably more
7 time and effort on this case due to specific actions of
8 the defendant who create unnecessary delays, filed
9 meritless motions and forced the plaintiff to incur
10 additional attorney's fees and costs above and beyond what
11 would otherwise have been incurred. I would ask this
12 court not give Mr. Slivka a discount for his actions based
13 on the fact that we've had to come back on a reversal of
14 prior order from the Court of Appeals. They did not ask
15 you to change the amount. They did not say that the
16 amount was unreasonable or that the amount shocked the
17 conscience. They just asked for clarification as to the
18 statutory authority.

19 Obviously, I'm here today giving a little bit of
20 concessions on those numbers based on what I put up in
21 front of you to try to help things in the future should
22 this case go further as I expect it will based on
23 Mr. Slivka's prior history. So I appreciate your time. I
24 know Mr. Spriggs appreciates your time who obviously
25 considers this to be very important. He could address the

1 Court as to the impact that this has had on his business,
2 that's up to you as to whether or not you want to let him
3 do that.

4 THE COURT: Why don't we go ahead and do that
5 briefly, so I can hear it.

6 MR. BRUORTON: Sure.

7 You want to kind of let Judge Seals know what
8 this has done to you, Ken.

9 MR. SPRIGGS: Thank you, Judge. I had the
10 privilege of sitting next to your bench for five and a
11 half hours on a Thursday and one and a half hours for the
12 next day due to Mr. Slivka's attorney. We had to carry
13 over \$200,000 of costs. I personally had to use a life
14 savings annuity to put up money to continue to run the
15 firm for those costs. Eventually, as this played out, I
16 also lost my office building to foreclosure losing another
17 \$250,000. None of this would have happened if we had had
18 a simple case finished and over. And so it had been a
19 burden to me financially and a burden to the office. So
20 that gives you an overview of what's transpired since
21 then. And it's been very difficult, but one thing I can
22 say is we've survived. But that's about the most I can
23 say. Thank you very much.

24 MR. BRUORTON: Thank you, Your Honor. I don't
25 have anything further.

1 THE COURT: Mr. Lyles.

2 MR. LYLES: Yes, sir, thank you. I come from a
3 family of architects. A line of two ahead of me and I
4 grew up in obviously a house full of architects and a
5 person who went to the office with his grandfather every
6 day until I was about 13 and had worked closely with my
7 father who's still practicing in Columbia ever since.
8 Done a little bit of legal work for him but not much. So
9 I certainly sympathize with Mr. Spriggs' situation.

10 THE COURT: Do you and Chip buy your ties at the
11 same place?

12 MR. BRUORTON: We're both wearing purple.

13 THE COURT: It looks exactly alike.

14 MR. LYLES: Having said that, one of the things
15 that struck me in listening to Mr. Bruorton's argument and
16 listening to Mr. Spriggs' was the simplicity of this case
17 that was complicated grievously according to them by
18 Mr. Slivka. The truth of the matter is that we tried this
19 case in Colleton County. Obviously, the jury didn't do
20 exactly what we wanted them to do, but the jury also ruled
21 at least by implication that Mr. Spriggs overbilled
22 Mr. Slivka. He didn't receive the amount of the lien. He
23 didn't receive the amount of his demand. He came up some
24 20 or \$25,000 short of what he wanted. It was plenty of
25 merit to Mr. Slivka's defense.

1 Mr. Spriggs talks about carrying cost for a
2 substantial period of time and I would remind, Your Honor,
3 that one of the critical issues in this case was that the
4 parties entered a flat-fee agreement for the design work
5 to be done by Mr. Spriggs. The flat-fee agreement for
6 Mister -- was about \$152,000 as I recall, call for
7 Mr. Slivka to pay Mr. Spriggs \$76,000 before Mr. Slivka
8 ever got anything from him and he did that. After the
9 services were terminated at the end of 2008 I believe,
10 Mr. Slivka picked up his plans. And it wasn't until two
11 months later that Mr. Spriggs invoiced him for \$173,000 in
12 additional charges. The charges that went all the way
13 back 2006. It may have been beneficial for Mr. Spriggs to
14 have billed Mr. Slivka continually during the course of
15 his work on that project and that might have avoided what
16 we have here.

17 The other thing I would call to the Court is
18 this Mr. Spriggs brought five different causes of action
19 against Mr. Slivka breach of contract, mechanic's lien,
20 ultimately the demand for payment claim, but he also
21 brought a claim for quantum meruit and he brought a claim
22 for breach of contract accompanied by fraudulent act. So
23 the simple claim that Mr. Bruorton and Mr. Spriggs were
24 referring to was greatly complicated by the fact that both
25 of them in their efforts against Mr. Slivka were trying

1 mightly all the way up and through our pretrial motions to
2 impose punitive damages liability on Mr. Slivka.

3 To criticize Mr. Slivka for vigorously defending
4 a case in a mechanic's lien that he did not believe and
5 still doesn't believe was timely, to criticize him for
6 vigorously defending a claim for what he believed to be
7 about \$100,000 of overcharges that he was never informed
8 of. And to criticize him for vigorously defending a claim
9 in which Mr. Spriggs sought to impose significant punitive
10 damages on Mr. Slivka seems to me to be a little
11 unrealistic.

12 We took our slicks after going at and trying
13 this case for a week. We didn't get the results we wanted
14 but that's how it works. And I don't think it's fair to
15 demonize Mr. Slivka.

16 Procedural history as it was provided by Mr.
17 Bruorton I think is good and I think that what it shows is
18 that both parties were vigorously working on this case. I
19 know my office drove all the way down to Colleton County
20 to argue a motion for summary judgment that had been filed
21 by Mr. Spriggs that was denied in about ten minutes by
22 Judge Kinard. I didn't file a motion for costs or
23 expenses for that, that's what happens in cases. If
24 Mr. Slivka's conduct was so egregious as to be essentially
25 sanctionable, which is what they're asking for now. Why

1 didn't they make a motion then for cost and sanctions.
2 And I don't know what happened before I got involved in
3 the case, but I got involved pretty early. And I can tell
4 you that from the point of my involvement through the
5 trial of the case, I don't think anybody did anything that
6 was egregious or untoward or otherwise out of the ordinary.

7 I want to touch on that before I begin my
8 arguments about the fees. I want to touch on this
9 appellate issue. Mr. Spriggs won the substitutive
10 arguments on mechanic's lien and the demand for payment
11 statute. We didn't appeal the breach of contract, that
12 was never an issue. Our appeals were very simple because
13 we didn't believe that the statutory claims which
14 authorize the attorney's fees were valid. What was
15 appealed was the right to the attorney's fees, which is
16 exactly what we're here for today.

17 Long before the arguments were made in the
18 appellate courts either one of them, Mr. Spriggs was paid
19 for his verdict on the breach of contract, mechanic's lien
20 and the demand for payment statute. He received the
21 money. He has been sitting on \$26,000 in change forgive
22 me if I'm off a few cents, but he's been sitting on
23 \$265,000 since 2012, which exceeds the amount of the
24 verdict that he got which was not appealed by \$90,000.
25 The attorney's fees and the right to the attorney's fees

1 was the issue on appeal and your award was reversed and
2 remanded. There is no question that in the Court of
3 Appeals the outcome benefited Mr. Slivka not Mr. Spriggs.

4 With regard to the attorney's fees, the Court of
5 Appeals has directed you to reconsider the award first and
6 foremost, which is why we filed our motion. The second
7 thing that the Court of Appeals directed you to do is to
8 allocate any award of fees by the specific statute that
9 authorizes the fees. We had requested that four years ago
10 because we believed that if you had done that we would
11 have been able to assess more rightly the appropriateness
12 of the fees and to make some other legal arguments. I do
13 think though it's important to reflect on the context in
14 which the Court of Appeals has ordered you to reconsider
15 the award. They note that the award exceeds the amount
16 that's permitted under the mechanic's lien statute.

17 The Court of Appeals says further although
18 theoretically possible it is improbably in attorney's fees
19 of almost \$250,000 will be awarded for a net recovery of
20 approximately \$75,000 above the \$100,000 settlement
21 offered by Slivka. And they said under 27-1-15 it's
22 actually a mechanic's lien statute. So Mr. Bruorton is
23 right they have not vacated your award, but they have
24 certainly expressed some skepticism about the amount
25 relative to the result.

1 The Court then goes on to say this circuit court
2 may have combined the two statutes to reach figure,
3 although the legality of that procedure is not addressed
4 in this decision and something I want to address. And
5 then they said moreover the trial court surely did not
6 award fees for the two causes of action that dismissed or
7 for the breach of contract claim. When in fact, that's
8 exactly what happened. Mr. Slivka excuse me --
9 Mr. Spriggs brought five claims. You awarded them 100
10 cents on the dollar for all of the attorney's fees that
11 they spent during the course of this litigation to
12 prosecute all five claims. So that's the context in which
13 the Court has sent it back down to you to reconsider the
14 award.

15 First, I want to address the Court of Appeals
16 reference to the legality of awarding fees under the two
17 different statutes and then combining them. We believe
18 that an election of remedies is appropriate. Mr. Spriggs
19 obtained one verdict, it's \$173,000. He incurred fees to
20 do that. He obtained that verdict on the mechanic's lien
21 statute. He obtained that verdict under the demand for
22 payment statute both of which authorized the payment of
23 attorney's fees. To award attorney's fees under each
24 different statute as a way to maximize his recovery, that
25 is to give him fees that neither statute alone would give

1 him would be patently unfair. And it is allowing at least
2 in my opinion a double dipping for Mr. Spriggs.

3 If Mr. Spriggs wanted to recover attorney's fees
4 under each statute, then Mr. Spriggs should have asked the
5 jury to break out their verdict. How much are you
6 awarding under the mechanic's lien statute, how much are
7 you awarding under the demand for payment statute, that
8 did not occur. So he spent his attorney's fees to recover
9 \$173,000. And your award of attorney's fees should be
10 based on that result and it would be improper to allow
11 Mr. Spriggs to exceed the attorney's fees recovery for
12 example under the mechanic's lien statute by combining
13 those fees with the demand for payment statute.

14 Now, in reconsidering your award, I think that
15 your first obligation is to assess what fees are
16 reasonable. The Court of Appeals touched on this, and
17 Mr. Bruorton is right, they specifically said it didn't
18 shock the conscience, but they did note that the needle
19 started to move on the ---

20 THE COURT: I appreciate that too.

21 MR. LYLES: And it was interesting to me to look
22 at the Court of Appeals opinion because what the Court of
23 Appeals did is they, you know, Mr. Bruorton right along
24 with many of the factors you are to consider awarding
25 attorney's fees. And I will tell you up front that I have

1 no problem with the rates that were charged by my opposing
2 counsel. I think the world of the law firm. I think the
3 world of Mr. Bruorton. They're excellent lawyers. I have
4 no issue there. We have raised some concern about the
5 fact that there were two partners on this file for a week.
6 We raised some concerns about whether or not it was
7 appropriate to have additional partners two associates
8 working on the file. And it was an expensive case to try.
9 As we went back and look through the numbers and this was
10 reinforced this morning when Mr. Bruorton's remarks
11 Mr. Spriggs incurred \$104,000 in attorney's fees between
12 July 10th of 2011 and the end of trial July 22nd, so all
13 this talk about all this bad conduct to Mr. Slivka over
14 early part of this litigation. In 12 days, Mr. Spriggs
15 incurred \$104,000 in attorney's fees. So I think that the
16 management of the firm they did obviously a great job, but
17 I don't think that the fees relative to the manpower on
18 the firm were reasonable.

19 The Court of Appeals in doing their analysis
20 they looked at the result or the beneficial result I think
21 is what the factor Mr. Bruorton mentioned earlier. And
22 what the Court of Appeals said is, you know, \$250,000 in
23 fees and costs for a net recovery of approximately \$75,000
24 over the \$100,000 settlement offer seemed high. That's
25 one way to look at the result. If you look at the result

1 like that, then what's been awarded to them is \$300,000
2 excuse me -- 300 percent fee. You can look at the result
3 in otherwise ways. If look at the result strictly as I
4 mentioned it earlier, he filed a mechanic's lien for
5 \$193,000. I think that they black-boarded a number
6 somewhat higher than that at trial and he received 173 --
7 173,990. Again, I think the jury found that he overbilled
8 Mr. Slivka and he didn't get all he wanted. He didn't get
9 all he demanded. And so it was a good result, but it
10 wasn't, you know, a knock it out of the park result. No
11 punitive damages or anything like that. And I think that
12 there's another way to look at the result too and I think
13 this is interesting. This is I think an important way to
14 look at the result. You know their theory of the case --
15 and the only way evidently they got this case on the
16 demand for payment statute to a jury was they argued over
17 and over and over again that Mr. Slivka admitted that he
18 owed Mr. Spriggs \$76,000. You may recall that. He
19 admitted that he owed him \$76,000 before they ever filed
20 suit and there's no disagreement about that.

21 So the result they got was not \$97,000 more than
22 Mr. Slivka agreed to pay before they ever filed a lawsuit.
23 So they spent \$235,000 in fees and costs to recover to
24 \$97,000, that's 250 percent fee. So I think as you
25 reconsider your award, those at least three different ways

1 to view how beneficial the results. And I'm not -- I
2 acknowledge awhile ago and I'll continue to acknowledge we
3 took our licks in court. The jury came back higher than
4 we want them to. And it was a good result and one of the
5 statute's or the other certainly calls for a reasonable
6 attorney fee. And that's another point I want to make.
7 Both statutes refer to an award of a reasonable attorney
8 fee, neither statute says a prevailing party gets all his
9 fees. So you have a function of determining what was
10 reasonable in light of those six factors not simply giving
11 them all the fees that they incurred.

12 There's some cases in South Carolina that we
13 cited in which the court actually rejects the 40 percent
14 fee agreement between a prevailing party and his lawyer.
15 And the Court says, you know, that might be your fee
16 agreement with your lawyer, but we think a reasonable fee
17 is 33 and a third. And so that function of deciding
18 what's reasonable relative to the total recovery is an
19 essential function on your part. With respect to what a
20 reasonable fee may be, I think that the 33 and a third is
21 a very good measure. That is a measure of an award of an
22 appropriate attorney's fee in numerous cases in South
23 Carolina where the courts have found that a 33 and a third
24 percent fee to be a reasonable fee again, even when it is
25 contrary to what the prevailing party actually agreed to

1 pay his lawyer. A 33 and a third percent fee is
2 recognized in a number of statutes as being a reasonable
3 fee.

4 It's certainly I think that -- I know you been
5 practicing law and been on the bench for quite a while
6 now, it is a customary fee to charge where there has been
7 a reasonably good result as there was here. So I would
8 posit to the Court that a reasonable fee in this case in
9 light of everything is a 33 and a third percent fee. That
10 results in a \$57,000 fee in rough numbers. A little bit
11 more than that maybe \$58,000. One of the things that the
12 Court of Appeals mentioned specifically and Mr. Brewer did
13 not mention is that the law in South Carolina is I think
14 abundantly clear that you cannot award fees for the
15 non-statutory claims that were asserted by Mr. Spriggs.
16 There's two cases that we cited the F-CO (sic) case and
17 pardon me -- I lost my train of thought, let me find it.

18 THE COURT: Tell me again what were the five
19 causes of action mechanic's lien, breach of contract...

20 MR. LYLES: Mechanic's lien, breach contract,
21 the demand for payment which are the three that went to
22 the jury. Then there was a claim for quantum meruit,
23 which was dismissed and a claim for breach of contract
24 basically the fraudulent intent.

25 THE COURT: Okay.

1 MR. LYLES: The case I'm referring to is
2 Utilities Construction vs. Wilson. So what's very clear
3 by the Court of Appeals order and those cases is that you
4 cannot award fees. They were incurred in prosecuting the
5 non-statutory, what I call the non-statutory claims.

6 The reason that four years ago we asked for a
7 specific finding relative to the fees awarded for each of
8 the statutory claims was that we wanted to be able to
9 understand your analysis relative to the non-statutory
10 claims because clearly significant amount of effort and
11 work went into the non-statutory claims. And I'll preface
12 this by saying or interject here that if you look at the
13 law firm billing records and they're not much different
14 than my own billing records will be, so this is not a
15 criticism of the billing records themselves. But if you
16 look at the billing records, its very difficult for you to
17 ascertain what tasks went to the statutory claims. I
18 think it's virtuously impossible the way the bills are
19 laid out. But again, I don't find that to be a criticism
20 of the billing. I think it is more a reflection of the
21 difficulty that was created by the interjection into what
22 they described as a simple case of not simple claims. But
23 it is their burden to establish to you what fees they
24 incurred in prosecuting the statutory claims. And I don't
25 think that you can do that based on the bills. What you

1 can do based on the bills is you can see a substantial
2 amount of work that went into the non-statutory claims.
3 And specifically if you look and you may remember this in
4 our motions in limine the day before trial that Monday, we
5 moved to exclude six or eight witnesses that they intended
6 to call. They were people that they alleged Mr. Slivka
7 owed money to. And they wanted to bring them into court
8 in this simple case and have each of these people testify
9 about their payment disputes with Mr. Slivka. And you
10 ruled that they would not be allowed to bring those
11 witnesses in. Well, over the course of this litigation,
12 they contacted witnesses. They meet with the witnesses.
13 They prepared them for the trial. They did whatever they
14 had to do to bring that claim all in an effort to expose
15 Mr. Slivka to these punitive damages or this punitive
16 damages theory all for naught. But clearly those
17 witnesses wouldn't have supported the mechanic's lien
18 claim or the demand for payment claim, neither of which
19 entitles you to punitive damages.

20 Something else you can glean from the bills is that
21 they spent a substantial amount of time with an expert.
22 Well, you know a mechanic's lien, breach of contract and
23 demand for payment claim is not a whole lot of need for an
24 expert. They retained an expert by the name of Miles Glit
25 (sic) because what they wanted to do was they wanted Mr.

1 Glit to establish that Mr. Spriggs was not limited to the
2 recovery of the billed fees. His theory of the case was
3 that Mr. Spriggs was in fact entitled to a fee for his
4 services based on the cost of construction, which would
5 have been substantially higher than the billed fees, again
6 not part of the lien, not part of the demand for payment
7 statute, but that those are two things that I can remember
8 very specifically I saw in their bills that related to the
9 non-statutory claims. But other than that, I don't know
10 how you can look at their bills and make an assessment as
11 the Court of Appeals has directed you to do of which fees
12 were incurred to prosecute the statutory claims.

13 I think that the equitable and fair way to do that
14 given the bill that we have is one I think you can take
15 the fees out that were incurred for the non-statutory
16 claims to the extent they can be identified. Number two I
17 think after you assess a reasonable fee in light of the
18 result that was obtained, I think you do a pro rata split
19 of that fee among the five causes of action. And I don't
20 know any other way to allocate in any sort of fair manner
21 the fees such that you can segregate out what is awardable
22 under the statutory claims and the non-statutory claims.

23 I would also point out to you this is in response to
24 Mr. Bruorton's remarks earlier. He suggests that you
25 limit the amount recoverable under the mechanic's lien

1 statute to I think -- he says 198,000. I'm not sure where
2 that comes from. The original amount of the lien was I
3 think 193, I might be wrong about that. And I'm not
4 quibbling with Mr. Bruorton. It is what it is. But the
5 jury decided he was only entitled to 173, so I don't know
6 -- I don't know -- I don't think that you could under any
7 circumstances award attorney's fees under the mechanic's
8 lien statute to exceed what the jury believed was actually
9 owed under the statute.

10 I will say this I don't think that that fee is
11 reasonable for many of the reasons I've already discussed.
12 I recognize that the mechanic's lien statute does have a
13 hard line prohibition against an award of fees exceeding
14 the amount of the lien, but the statute also refers to the
15 bond process by which a party is able to relinquish his
16 property from the effects of the lien by posting the full
17 amount of the lien plus one third for attorney's fees and
18 that's what Mr. Slivka did here. I think that clearly the
19 measure of one third as an attorney fee is a reasonable
20 fee.

21 I think that the prohibition against attorney's fees
22 above the amount of the lien and I admit the statute
23 doesn't say this, but I've -- I'm sure you've seen plenty
24 of mechanic's liens since you been on the bench and
25 probably before. I have too. Most mechanic's liens

1 probably the vast majority of them are very small \$500, a
2 thousand dollars, \$2,000. And so for people who file
3 small liens and have to hire a lawyer to do that it would
4 be very quick for them to run up an attorney's fee. And I
5 think what the legislature has just said is absolutely,
6 you know, you can award fees, but they cannot exceed the
7 amount of the lien. But in this case I think that that
8 prohibition will be at 173. Although, I hope that you
9 don't find that that's a reasonable fee under the
10 circumstances.

11 Finally, I'll just like to reiterate on these
12 appellate court fees, that I think that Mr. Slivka clearly
13 prevailed substitutively up in the Court of Appeals. Had
14 Mr. Spriggs not been paid in full and then some for his
15 mechanic's lien victory and his demand for payment victory
16 on the verdict amount, I think that they would have a
17 better argument to the effect that they were the
18 prevailing party in the Court of Appeals. But the sole
19 issue up there was attorney's fees. And so I think that
20 the \$61,335 spent by them during the appellate process to
21 wind up back here with this argument about the real issue
22 up on appeal establishes that that was not money that was
23 well spent.

24 I also point out and Mr. Bruorton has cited some
25 cases that certainly bear consideration, but he's made a

1 request for attorney's fees and costs in the appellate
2 courts. We've opposed that on that basis that in fact we
3 were the prevailing part or there was a no call as it was
4 in the Supreme Court. So I would strenuously object to
5 the awarding of those additional fees.

6 And very briefly just to make sure I haven't missed
7 anything in this excessively long memorandum. I know that
8 there was a request earlier. I have not had a chance to
9 look at his board. There was a request of interest at the
10 judgment rate as part of his attorney fee request. Again,
11 you know, attorney's fees have not been awarded as of this
12 point in time and so I don't know what he would be
13 entitled to, what sort of prejudgment interests he would
14 be entitled to on any award of attorney's fees that's made
15 today. He's recovered 265,000 in change which is more
16 than any judgment amount that exists as of this proceeding
17 and so I would object to that as well.

18 THE COURT: Mr. Bruerton gave me some numbers in
19 a simple fashion. Why don't you give me some numbers that
20 you think are appropriate from your perspective instead of
21 just general terms like 33 and a third?

22 MR. LYLES: \$58,000 is a one third attorney's
23 fee amount. And I think that the beauty of that number is
24 one it is certainly something that is well founded and
25 custom in case law and in statutory law in terms of a

1 reasonable fee. Number two, it also eliminates the
2 problem of the non-statutory claims. In other words, if
3 he gets an attorney's fee award of \$58,000, we all would
4 recognize that he spent more than that. And so \$58,000 I
5 would have no problem living with the fact that \$58,000
6 doesn't include any work that was done on the
7 non-statutory claims. In other words, I would not at that
8 award argue that needs to be divided among the five causes
9 of action. I think that would be a fair award for what
10 they got under the mechanic's lien section. And it's
11 already been paid.

12 THE COURT: All right. I really don't need a
13 reply. Unless, you just want to do it for the record.

14 MR. BRUORTON: I do have some things and I
15 apologize to the Court for dragging this on, but there's
16 some things that I think that were incorrect that need to
17 be addressed and I'll try to do it quickly. The essential
18 issues on appeal -- I mean to stand up here and say that
19 it was purely about attorney's fees is just completely not
20 accurate or correct. I mean the central core issues to
21 this case were whether labor was considered -- was
22 considered lienable under the mechanic's lien statute or
23 whether a reasonable and fair investigation was done under
24 27-1-15. Had we lost either one of those causes of
25 action, Mr. Lyles will be standing up here in front of you

1 asking for you to award him fees. So to say that that was
2 the essential issue I believe is wrong. That's a
3 secondary issue that my client is entitled to those fees
4 as a matter of right under the statutory authority by
5 being prevailing parties under those statutes.

6 The judgment has never been vacated. It's never
7 been set aside. The judgment has been in place. Interest
8 has been running on that judgment. There was no bond
9 filed to prevent interest from running on that judgment
10 and it's been in place since October the 3rd of 2011. So
11 I believe interest is proper at the judgment rate on the
12 amount of the remaining balance that hasn't been paid
13 under the initial judgment. The amount of the lien I put
14 a copy of the lien in the notebook. It's under tab D2.
15 The amount of the original lien was 198,834.53, which is
16 what we had put up on the board. And the statute is
17 specific that the fees that can be awarded are capped at
18 the amount of the lien not the amount of the verdict.

19 THE COURT: How do you reply to his argument
20 about the other causes of action that ---

21 MR. BRUORTON: That's another thing I wanted to
22 address, Your Honor. He says they can't be separated out.
23 They are separated out under Bright Ariail's second
24 affidavit, which is tab 6 in the notebook. The amount
25 money per her affidavit which is sworn affidavit before

1 the court \$5,750 which is attributable to the breach of
2 contract accompanied by fraudulent act claim. And he
3 talks about all these other witnesses that we were going
4 to bring to trial that are additional witnesses that
5 Mr. Slivka didn't pay and we were going to put that in
6 front of the Court that this is kind of a pattern and
7 behavior. None of those witnesses were ever deposed. We
8 didn't talk to them until a couple of weeks before trial
9 on the phone. We spent very little money prosecuting that
10 action. All these claims are -- ancillary claims to each
11 other. There's no way you can separate out the breach of
12 contract from the mechanic's lien. The mechanic's lien is
13 simply just a right that Mr. Spriggs has to get security
14 in the property or security in the bond once it was posted
15 because the contract was breached and he wasn't paid the
16 money under the contract. They are one in the same
17 essentially.

18 The quantum meruit claim was never furthered.
19 The Court was not going to consider the actual cost of
20 construction, that never came into evidence. That's not
21 what Mr. Glit was brought in to testify about. He was
22 brought in to testify about whether the additional
23 services under the contract were payable to Mr. Spriggs
24 and whether the work that was done for the additional
25 services were payable to Mr. Spriggs and whether they were

1 reasonable. That's what he testified about. That's what
2 their expert Mr. Harvey, who they retained an expert also,
3 came in to try to say that they were outside of the
4 standard of the ethical codes of an architect. So that
5 was the dispute, it wasn't about the cost of construction.
6 You know, if we wanted to talk about the cost of
7 construction and reasonable fees, you know, seven and a
8 half percent of seven million dollars is a whole heck of a
9 lot more than 150,000, which is what he did this design
10 for.

11 What is reasonable. We talked a lot about that.
12 This is not a contingency case. It was an hourly fee
13 agreement. We filed a motion to compel Mr. Slivka's fees.
14 We don't know what those are. I can't imagine he's only
15 spent \$58,000 during the course of five years of
16 litigation. And Mr. Lyles there were not shenanigans or
17 anything done after he got involved in the case. And I
18 have just as much respect for Mr. Lyles as he talked about
19 for our firm here today. He's a great attorney. I enjoy
20 being in cases with him and I don't criticize him for any
21 step of the way of anything that's been done. There was a
22 lot done before he got involved. There were three motion
23 hearings before he ever got involved. So, you know, in
24 talking with one of his associates, she says that their
25 fees are substantial less than ours. Well, how much less

1 and I would expect them to be cause it was a lot done
2 before they ever got in the case. So for him to say that
3 \$58,000 is a reasonable number, the court's already
4 rejected that that argument because a third attorney's fee
5 would be the cash bond cap, which they've already said
6 doesn't effect the total amount that can be awarded under
7 the reasonable attorney fee. It would cap it at the bond
8 amount, which is already been rejected by the court and
9 they said you can award it up to the mechanic's lien
10 amount.

11 We're not up here asking for you to sanction
12 Mr. Slivka or asking for you to award attorney's fees that
13 he's entitled to under the statutes that he was the
14 prevailing party under. As far as a pro rata split among
15 the five causes of action, again that Ms. Ariail talks
16 about the amount that was spent on the breach of contract
17 or fraudulent intent claim. You know, the original fee
18 award was 209,109. Under the mechanic's lien, we're
19 asking for 198,834, that's already eaten up in the gap, so
20 you're not awarding that anyway. And I think you can make
21 that specific in your order that looking at the detail in
22 her affidavit, there was money spent in prosecution of
23 those claims but that's not what you're awarding. So
24 again, I appreciate your time, Your Honor. And we'll be
25 happy to do whatever this court decides from the

1 preparation of order.

2 THE COURT: You want to brief reply? You don't
3 need to, if you want to.

4 MR. LYLES: Just very briefly. The Court of
5 Appeals addressed whether or not the bond limited the
6 amount of the judgment, that's all it addressed and it
7 rule that it did not. It certainly did not opine as to
8 the reasonableness of a 33 and a third percent fee. With
9 regard to -- just jumping ahead to his motion to compel
10 just very briefly, I don't know the relevance of
11 Mr. Slivka's attorney's fees and costs if you would like
12 to see them and Mr. Bruorton wants you to see them, I just
13 want to make sure what I need to get him which I think
14 would be all ---

15 THE COURT: I'm not even going to deal with that
16 at this hour, I don't need to.

17 MR. LYLES: Okay. The -- as I indicated
18 earlier, if I misspoke about the amount of the lien and I
19 may have, the lien is what the lien is. If it's 198
20 instead of 193, all that tells me is that jury awarded
21 them \$25,000 less than they had claimed. And there was a
22 moreover billing than I had initially believed in terms of
23 the final result. And finally with respect to Ms. Ariail,
24 I mean after the fact she can come in and give some belief
25 about what fees were incurred for what. And I think that

1 the bills speaks for themselves. And it is going to be
2 virtually impossible for you to go through and make a
3 determination about what fees were incurred for which
4 causes of action.

5 And then finally with respect to the comment
6 that the mechanic's lien case and the breach of contract
7 claim are inextricably are one in the same I think is what
8 he said. I refer you back to the Court of Appeals order
9 where it said moreover the trial court surely did not
10 award fees for the two causes of action to dismiss or for
11 the breach of contract claim. And so there has to be some
12 assessment on your part about some separation of those
13 claims. Thank you very much, Judge.

14 THE COURT: I'll let you all know something real
15 soon. Thank you.

16 MR. BRUORTON: Thank you, Your Honor.

17 THE COURT: Thank you.

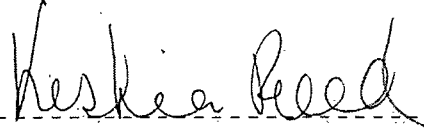
18 END OF REQUESTED TRANSCRIPT
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 45, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of Common Pleas for Florence
County, South Carolina, on the 7th day of May, 2015.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 20th
day of August 2015.



Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.

Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2009-CP-15-0595

AFFIDAVIT OF A. BRIGHT ARIAIL

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

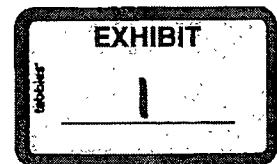
1. I am an attorney for the Plaintiff in the above captioned action.
2. I am member of the firm of Rosen, Rosen & Hagood, LLC, and have been a member of the South Carolina Bar since 2001.

3. The Plaintiff has entered into a fee agreement with the law firm of Rosen, Rosen & Hagood, LLC. Under the terms of this agreement, the Plaintiff is charged an hourly rate of \$250.00 per hour for my time in the case. Other members of my staff bill at their normal hourly rates, including James A. Bruorton IV who assisted with the trial of this matter at \$210.00 per hour. I keep itemized billing and accounting records for every case.

4. Rosen, Rosen & Hagood, LLC's representation of Plaintiff began on April 10, 2009.

5. Since the inception of this case, Defendant Gene R. Slivka by and through his first legal counsel created unnecessary delays, filed meritless motions, and forced Plaintiff to incur additional attorney's fees and costs above and beyond what would otherwise have been incurred on a case like this. For example, Defendant filed a Motion to Dismiss specifically related to his

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



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

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

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

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

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

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

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

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

recoverable by the prevailing party.

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

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

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

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

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

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

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

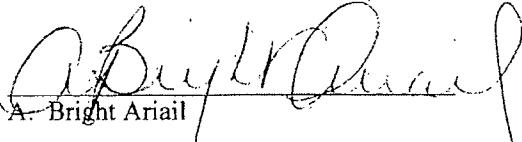
14. I am respectfully requesting that the Court award attorney's fees in the amount of \$209,109.60 to the Plaintiff as the prevailing party on its foreclosure of mechanic's lien pursuant to the S.C. Mechanic's Lien statute and pursuant to S.C. Code Ann. § 27-1-15.

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

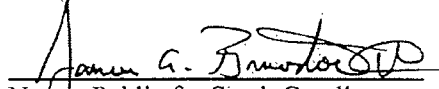
16. I am respectfully requesting that the Court award interest on the money awarded Plaintiff on the verdict reached in the amount of \$37,413.92 in accordance with S.C. Code Ann. § 34-31-20.

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

FURTHER AFFIANT SAYETH NOT.


A. Bright Ariail

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



Notary Public for South Carolina

My commission expires: 9/22/13

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON)

CASE NO: 2009-CP-15-0595

THE SPRIGGS GROUP, PC.)

Plaintiff,)

AFFIDAVIT OF N. KEITH EMGE JR.

vs.)

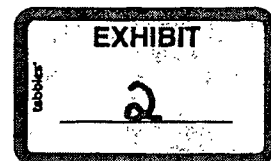
GENE R. SLIVKA,)

Defendant.)

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

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

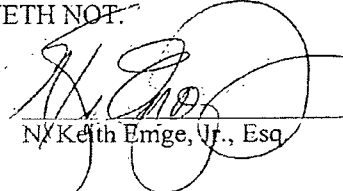
1. I am partner with the law firm Carlock Copeland & Stair, LLP located at 40 Calhoun Street, Suite 400, Charleston, South Carolina.
2. I obtained an undergraduate degree from Duke University in 1985 and a Juris Doctorate degree from the University of Virginia in 1990.
3. I am admitted to practice before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



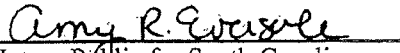
- A. Bright Ariail (Member) - \$250.00 per hour
- James A. Bruorton IV (Member) - \$210.00 per hour
- R. Britton Kelly (Associate) - \$190.00 per hour
- Timothy J. Muller (Associate) - \$175.00 per hour
- Shannon S. Skelly (Paralegal) - \$125.00 per hour
- Law clerks - \$110.00 per hour

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

7. FURTHER AFFIANT SAYETH NOT.


N. Keith Emge, Jr., Esq.

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


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

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

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

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

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

(Expedited Hearing Requested)

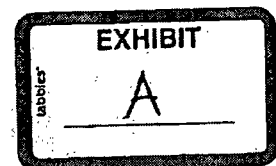
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PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

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

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

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

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



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

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

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

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

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

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

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

WHEREFORE, Plaintiff Spriggs requests the following relief:

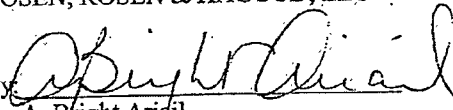
(a) That the Court issue an Order compelling Defendant Slivka to comply with the Subpoena served upon him on July 27, 2010 through Defendant's counsel, or, in the alternative, that the Court issue an Order sanctioning Mr. McLeod and his client, and finding them in contempt of this Court for failing to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

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

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

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

ROSEN, ROSEN & HAGOOD, LLC

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

ATTORNEY(S) FOR PLAINTIFF
THE SPRIGGS GROUP, PC

Charleston, South Carolina
August 6, 2010

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE SPRIGGS GROUP, PC.

Plaintiff,

vs.

GENE R. SLIVKA,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2009-CP-15-0595

SECOND AFFIDAVIT OF
A. BRIGHT ARIAIL

2011 OCT 20 AM 10:29

PATRICIA D. GRANT
COLLETON COUNTY
COMMON PLEAS

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

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

mechanic's lien action.

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

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

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

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

FURTHER AFFIANT SAYETH NOT.


A. Bright Ariail

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


Notary Public for South Carolina
My commission expires: 6.28.2018

ROSEN, ROSEN & HAGOOD, LLC

ATTORNEYS AND COUNSELLORS AT LAW

134 MEETING STREET, SUITE 200

P.O. Box 893

CHARLESTON, SOUTH CAROLINA 29402

PHONE (843) 577-6726

FAX (843) 724-8036

www.rrhlawfirm.com

A. Bright Ariail
bariail@rrhlawfirm.com

April 14, 2009

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

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

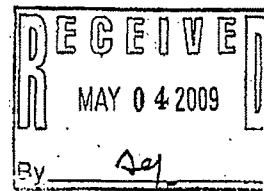
Dear Ken:

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

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

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

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

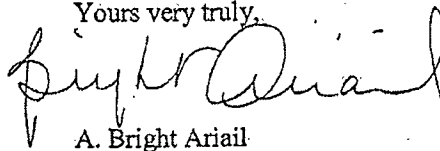


If the account is outstanding for more than 60 days, we may move to be relieved as counsel. If you fail to pay all amounts owed, then you agree to reimburse us for all costs incurred in collecting these amounts, including reasonable attorney's fees and costs. If legal action is brought to collect, you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

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

We look forward to working with you.

Yours very truly,

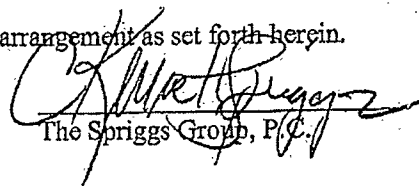


A. Bright Ariail

ABA/aba

Enclosures

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


The Spriggs Group, P.C.

Defendant.

CERTIFICATE OF SERVICE

130

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

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

**AFFIDAVIT OF
JAMES A. BRUORTON IV**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2015 APR 16 AM 10:30

PERSONALLY APPEARED before me, James A. Bruorton IV, who being duly sworn
does state as follows:

1. I am an attorney for the Plaintiff in the above captioned action.
2. I am member of the firm of Rosen, Rosen & Hagood, LLC, and have been a member of the South Carolina Bar since 2003.
3. On October 3, 2011, the Circuit Court awarded my client \$235,030.31 in attorney's fees and costs as the prevailing party in this action and pursuant to S.C. Code Ann. § 29-6-10 and § 27-1-15. The award of attorney's fees and costs was based upon a review of the fee agreement Plaintiff has with the law firm of Rosen, Rosen & Hagood, LLC, which has been previously submitted to the Court. Under the terms of the agreement, the Plaintiff is charged an hourly rate for attorneys, paralegals and law clerks as part of the legal services provided for under the fee agreement.
4. Defendant Slivka moved to alter or amend the Court's Order of October 3, 2011 and that motion was denied on 11/3/2011.
5. Since the Court's affirming its attorney's fees and costs award on 11/3/2011,

Defendant Slivka appealed the findings of this Court as to all legal issues in the case, including the attorney's fees award, to the Court of Appeals and then the South Carolina Supreme Court. As a result, my client has continued to incur significant attorney's fees and costs in defending Defendant Slivka's appeals. Full briefing, development of the record on appeal and oral arguments were held at the South Carolina Court of Appeals level. Full briefing and oral arguments was also held at the South Carolina Supreme Court level after the Court granted Defendant Slivka's petition for writ of certiorari.

6. In total, Plaintiff has incurred \$61,335.85 in appellate attorney's fees and \$3,155.15 costs (not provided for in Plaintiff's motion for taxation of costs) defending the appeal of Defendant Slivka. Plaintiff continues to incur post-appellate attorney's fees and costs in preparation of its support for the award of attorney's fees and costs previously granted by this Court that Defendant Slivka continues to challenge. A detail of the attorney's fees and costs incurred by Plaintiff in defense of Defendant Slivka's appeal can be provided to the Court.

7. I am respectfully requesting that this Court uphold its previous attorney's fees and cost award in the amount of \$235,030.31 by awarding \$198,834.53 in attorney's fees and cost to the Plaintiff as the prevailing party pursuant to S.C. Code Ann. § 29-5-10, which allows attorney's fees to be awarded up to the amount of the mechanic's lien and award \$36,195.68 to the Plaintiff as authorized by S.C. Code Ann. § 27-1-15.

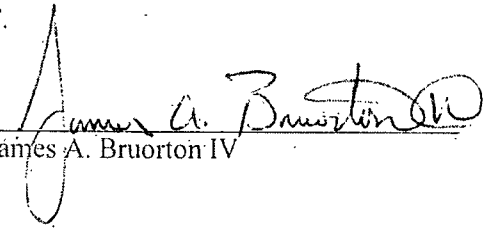
8. Further, I respectfully request that this Court award Plaintiff additional attorney's fees and costs in the amount of \$64,491.80 under S.C. Code Ann. § 27-1-15 for the defense of Defendant Slivka's 3 ½ year appeal pursuant to the law of the State of South Carolina.

9. Finally, I am estimating additional fees for legal services provided in conjunction with a hearing on this matter in the amount of \$1,050.00, which I am asking the Court to award

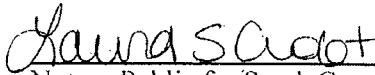
to the Plaintiff pursuant to S.C. Code Ann. § 27-1-15.

10. The total award sought for attorney's fees and cost for appellate and post-appellate legal services is \$65,541.80 under S.C. Code Ann. § 27-1-15 to be added to the Court's previous award of \$235,030.21.

FURTHER AFFIANT SAYETH NOT.


James A. Bruorton IV

SWORN to before me this
10th day of April, 2015.


Notary Public for South Carolina
My commission expires: 5/28/18

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

THE SPRIGGS GROUP, PC.,)

Plaintiff,)

vs.)

GENE R. SLIVKA,)

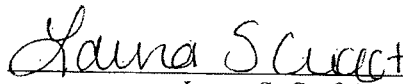
Defendant.)

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Affidavit of James A. Bruorton, IV has been served upon the counsel of record by mailing a copy, with sufficient postage affixed thereto this 13th day of April, 2015, properly addressed to the following:

Robert T. Lyles, Jr., Esquire
Allen L. DuPre, Esquire
Lyles & Lyles, LLC
PO Box 773
Charleston, SC 29402



Laura S. Croft
Paralegal

2015 APR 16 AM 10:00
PATRICIA J. GRANT
COLLETON COUNTY
COMMON PLEAS

ROSEN | HAGOOD

Laura S. Croft
lcroft@rrhlawfirm.com

April 13, 2015

Colleton County Clerk of Court
101 Hampton Street, P.O. Box 620
Walterboro, SC 29488

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

Dear Clerk:

Enclosed, please find one original and one copy of the Affidavit of James A. Bruorton, IV, regarding the above referenced matter. Please file the original and return the filed stamped copy to me in the enclosed, pre-paid envelope.

With kindest regards, I am

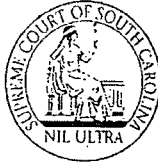
Sincerely yours,



Laura S. Croft
Paralegal

/lsc
Enclosures

cc: Robert Lyles (via email w/enclosures)



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERSAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

March 19, 2015

The Honorable Patricia C. Grant
PO Box 620
Walterboro SC 29488-0028

REMITTITUR

Re: The Spriggs Group v. Gene Slivka
Lower Court Case No. 2009CP1500595
Appellate Case No. 2013-000800

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc: Robert T. Lyles, Jr., Esquire
James Atkinson Bruorton, IV, Esquire
Lawrence Caldwell Melton, Esquire
Brian A. Autry, Esquire
Timothy James Wood Muller, Esquire

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The Spriggs Group, P.C., Respondent,

v.

Gene R. Slivka, Petitioner.

Appellate Case No. 2013-000800

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Colleton County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 27508
Heard February 3, 2015 – Filed March 18, 2015

**DEPUBLISH THE OPINION OF THE COURT OF
APPEALS AND DISMISS CERTIORARI AS
IMPROVIDENTLY GRANTED.**

Robert T. Lyles, Jr., of Lyles & Lyles, L.L.C., of
Charleston, for Petitioner.

James Atkinson Bruorton, IV and Timothy James Wood
Muller, of Rosen Rosen & Hagood, L.L.C., of
Charleston, for Respondent.

PER CURIAM: We granted the petition for a writ of certiorari to review the Court of Appeals' decision in *The Spriggs Group, P.C. v. Slivka*, 402 S.C. 42, 738 S.E.2d 495 (Ct. App. 2013). We first direct the Court of Appeals to depublish its opinion and assign the matter an unpublished opinion number. The above opinion shall no longer have any precedential effect. Next, we dismiss as improvidently granted the writ of certiorari.

Accordingly, we

**DEPUBLISH THE OPINION OF THE COURT OF APPEALS AND
DISMISS CERTIORARI AS IMPROVIDENTLY GRANTED.**

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The Spriggs Group, P.C., Respondent,

v.

Gene R. Slivka, Appellant.

Appellate Case No. 2011-204366

Appeal From Colleton County
William H. Seals, Jr., Circuit Court Judge

Published Opinion No. 5081
Heard January 10, 2013 – Filed February 6, 2013

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Robert T. Lyles, Jr., of Lyles & Lyles, LLC, of
Charleston, for Appellant.

A. Bright Ariail and James Atkinson Bruorton, IV, both
of Rosen Rosen & Hagood, LLC, of Charleston, for
Respondent.

LOCKEMY, J.: In this action for foreclosure of a mechanic's lien and breach of contract, Gene Slivka argues the circuit court erred in (1) submitting a question involving the interpretation of section 29-5-10(a) of the South Carolina Code (2007) to the jury; (2) failing to direct a verdict; and (3) awarding The Spriggs Group, P.C. (Spriggs) attorney's fees, costs, and interest. We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL BACKGROUND

This case arises from a dispute between Slivka and Spriggs regarding Spriggs' provision of architectural services for Slivka's home. Spriggs designed all of the buildings on Slivka's Colleton County plantation (the property), including the main house, two detached garages with apartments, potting shed, conservatory, stable, and grotto. Pursuant to a November 17, 2006 written proposal (the Agreement), Spriggs was to receive a fixed fee of \$161,500 for its architectural and engineering design services, and hourly fees for any additional services. The fixed fee was subsequently reduced to \$152,402. Slivka paid half of the fee at the start of the design process and agreed to pay the remainder upon completion of the project.

According to Slivka, he terminated Spriggs on December 12, 2008. Slivka contends he picked up the remaining drawings from Spriggs' office and told Spriggs he did not want any more drawings. Spriggs, however, continued to perform its services under the Agreement. According to Ken Spriggs, principal of Spriggs, he was unaware Slivka had allegedly terminated Spriggs. In February 2009, Spriggs submitted four invoices totaling \$198,834.53 to Slivka for payment in accordance with the terms of the Agreement. Slivka admitted he owed Spriggs \$76,201, the balance of the Agreement price, but disputed the additional charges and refused to pay Spriggs. Spriggs provided services to Slivka pursuant to the Agreement through May 2009.

As a result of Slivka's failure to pay Spriggs in accordance with the terms of the Agreement, Spriggs filed a mechanic's lien against the property on April 13, 2009. Slivka continued to refuse to pay Spriggs and posted a \$265,112.71 cash bond to remove the lien from the property. Thereafter, on July 8, 2009, Spriggs commenced a foreclosure action on the lien. In an amended complaint filed in May 2010, Spriggs asserted claims for foreclosure of mechanic's lien, breach of contract, breach of contract accompanied by a fraudulent act, quantum meruit, and failure to comply with section 27-1-15 of the South Carolina Code (2007). Slivka counterclaimed for slander of title, violation of the Frivolous Claims Sanctions Act, tortious interference with contractual relationships with third parties dependent upon performance by Spriggs, and tortious interference with contractual relationships with third parties resulting from defective notice of mechanic's lien.

On June 30, 2011, Slivka offered to settle the case for \$100,000, but Spriggs did not accept the offer. Prior to trial, Spriggs filed a motion to strike Slivka's affirmative defenses and counterclaims. Thereafter, Slivka filed a motion for summary judgment as to all of Spriggs' causes of action. Spriggs countered with

its own motion for summary judgment. At the motions hearing, Slivka agreed to withdraw certain counterclaims, and the circuit court denied both motions for summary judgment.

The parties proceeded to trial on all of Spriggs' causes of action and on Slivka's counterclaims for slander of title, tortious interference with contractual relationships with third parties dependent upon performance by Spriggs, and tortious interference with contractual relationships with third parties resulting from defective notice of mechanic's lien. At trial, Spriggs asserted the additional charges in its invoices were a result of Slivka's demands and changes, and they were billed pursuant to the Agreement. Slivka maintained the additional charges were not contemplated when the Agreement was made and Spriggs had a duty to advise him before performing and charging for additional work.

At the conclusion of Spriggs' case, the circuit court denied Slivka's directed verdict motions as to Spriggs' causes of action for foreclosure of mechanic's lien, breach of contract, and failure to comply with section 27-1-15. The circuit court also denied Spriggs' motion for a directed verdict as to the section 27-1-15 claim. Spriggs withdrew its claims for breach of contract accompanied by a fraudulent act and quantum meruit. Following Slivka's case, the circuit court denied Spriggs' motion for a directed verdict as to Slivka's slander of title claim. Slivka also renewed his directed verdict motions as to Spriggs' causes of action for foreclosure of mechanic's lien and failure to comply with section 27-1-15. The circuit court ruled both causes of action would be submitted to the jury.

Spriggs' foreclosure of mechanic's lien, breach of contract, and failure to comply with section 27-1-15 claims were submitted to the jury, along with Slivka's slander of title claim.¹ Following deliberations, the jury returned a verdict in favor of Spriggs on all three of its causes of action and on Slivka's slander of title cause of action. The jury awarded Spriggs \$173,990.53 in actual damages. Slivka made a post-trial motion seeking a judgment notwithstanding the verdict (JNOV) and/or a new trial on Spriggs' foreclosure of mechanic's lien and failure to comply with section 27-1-15 claims.² The circuit court denied Slivka's JNOV motion and his subsequent Rule 59(e), SCRCP, motion to alter or amend. Spriggs made a post-trial motion seeking attorney's fees, costs, and interest. The circuit court granted the motion and awarded Spriggs \$235,030.31 in attorney's fees and costs and

¹ Slivka withdrew both of his tortious interference with contractual relationships claims.

² Slivka did not appeal the jury's verdict on Spriggs' breach of contract claim.

\$37,413.92 in prejudgment interest. Thereafter, the circuit court denied Slivka's Rule 59(e) motion to alter or amend. This appeal followed.

LAW/ANALYSIS

I. Statutory Interpretation

Slivka argues the circuit court erred in submitting the question of whether the services provided by Spriggs in January 2009 fell within the definition of "labor" contained in section 29-5-10(a) of the South Carolina Code (2007) to the jury. We agree but find no reversible error.

Pursuant to section 29-5-90 of the South Carolina Code (2007), a mechanic's lien

shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner . . . a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien. . . .

Section 29-5-10(a) states:

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

or structure during its erection, alteration, or repair is considered to be labor performed or furnished within the meaning of this section. . . .

For its lien to be timely, Spriggs must have performed labor, within the definition contained in section 29-5-10(a), on or after January 13, 2009. According to Andy Bozeman, a Spriggs employee, Spriggs addressed a plumbing subcontractor's request to substitute the size of plumbing lines used on the project on January 13, 2009. Bozeman also communicated with a mechanical engineer and answered questions regarding the plumbing line substitution.

At trial, Slivka argued that while the timeliness of the lien was a question of fact for the jury to decide, whether the construction administration services performed by Spriggs on January 13, 2009, fell within the statutory definition of labor was a question of statutory interpretation for the court. In response, Spriggs argued the question before the jury was one of timeliness, and the services it provided on January 13, 2009, were clearly within the definition of labor. The circuit court decided,

as to the mechanic's lien itself, I'm just going to submit it to the jury. I'm going to read them the statute. I'm going to give them the charge It's kind of long and redundant but y'all can argue whether that is service that falls within the mechanic's lien statute. And of course you can argue the timeliness and all of that kind of stuff.

Slivka contends the question of whether Spriggs' work fell within the purview of the mechanic's lien statute was erroneously submitted to the jury. Spriggs maintains the jury was properly instructed to determine whether its lien was valid and timely. Spriggs also notes the circuit court ruled post-trial it was "implausible that construction administration services would be excluded from the description of labor performed or furnished in the erection, alteration, or repair of any building."

We find the circuit court erred in submitting the question of whether Spriggs' work fell within the purview of the mechanic's lien statute to the jury. *See Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) (holding the issue of interpretation of a statute is a question of law for the court). However, this error was harmless because, as discussed below, we find the

construction administration services proved by Spriggs fell within the definition of labor contained in 29-5-10(a).

II. Timeliness of the Lien

Slivka argues the circuit court erred in denying his motion for directed verdict because Spriggs' lien was not timely. We disagree.

"When reviewing the denial of a motion for directed verdict or JNOV, this Court must employ the same standard as the [circuit] court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Welch v. Epstein*, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000). "The [circuit] court must deny the motions when the evidence yields more than one inference or its inference is in doubt." *Id.* at 300, 536 S.E.2d at 418. "This Court will reverse the [circuit] court only when there is no evidence to support the ruling below." *Id.* "When considering directed verdict and JNOV motions, neither the [circuit] court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Id.* at 300, 536 S.E.2d at 419.

First, Slivka contends the work performed by Spriggs on January 13, 2009, does not fall within the definition of labor contained in section 29-5-10(a) because none of Spriggs' work involved "the preparation of plans, specifications, and design drawings." Slivka maintains none of the work performed by Bozeman occurred on site, and the work only amounted to construction administration services. Slivka argues the circuit court erred in relying on *Williamson v. Hotel Melrose*, 110 S.C. 1, 96 S.E. 407 (1918), in finding construction administration services are a type of labor for which a mechanic's lien may be filed under the mechanic's lien statute. In *Williamson*, our supreme court determined an architect who furnished plans and specifications and "superintended" the construction of a project had performed labor within the meaning of the mechanic's lien statute. 110 S.C. at 1, 96 S.E. at 411. At the time, the mechanic's lien statute did not include the definition of labor contained in the current statute. The statute at the time afforded a lien to "any person to whom a debt is due for labor performed or furnished." *Id.*

Slivka maintains *Williamson* is not applicable because the current version of the mechanic's lien statute, section 29-5-10(a), contains specific activities determined by the legislature to be "labor" and does not include construction administration services. Slivka argues the legislature could have included off-site construction administration services of a design professional in its definition of labor but it chose not to. Furthermore, Slivka maintains Spriggs was not on-site directing the

work on the property like the architect in *Williamson*. Ken Spriggs testified he was not directing any work or supervising the construction.

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

Slivka also contends the circuit court erred in finding work performed by Spriggs in May 2009 supported the timeliness of the lien filed on April 13, 2009. At trial, Bozeman testified he provided design sketches for an appraisal of the property in May 2009. Slivka argues this work could not support the timeliness of Spriggs' lien because it was allegedly performed after the lien was filed. We find the circuit court did not err because the court's order does not explicitly say, as alleged by Slivka, that the May 2009 services were performed within ninety days of April 13, 2009. While the circuit court order mentions the May 2009 services, it notes these services were performed after the lien was filed. The court also specifically notes the lien was filed within ninety days of January 13, 2009. Accordingly, we affirm the circuit court's denial of Slivka's motion for a directed verdict on Spriggs' mechanic's lien claim.

III. Attorney's Fees, Costs, and Interest

"A party cannot recover attorney's fees unless authorized by contract or statute." *Cullen v. McNeal*, 390 S.C. 470, 491, 702 S.E.2d 378, 389 (Ct. App. 2010). Here, sections 27-1-5 and 29-5-10 of the South Carolina Code (2007) both authorize an award of attorney's fees to Spriggs. Pursuant to section 27-1-15,

[w]henEVER a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made, by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or

whatever portion of it is determined as valid, within forty-five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand.

Additionally, pursuant to section 29-5-10(a), "[t]he costs which may arise in enforcing or defending against the lien. . . , including a reasonable attorney's fee, may be recovered by the prevailing party." "The fee must be determined by the court in which the action is brought but the fee and court costs may not exceed the amount of the lien." *Id.*

The following six factors should be considered when determining reasonable attorney's fees: "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). "The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009). "An abuse of discretion occurs when the conclusions of the [circuit] court are either controlled by an error of law or are based on unsupported factual conclusions." *Id.* "Similarly, the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.*

A. Section 27-1-15

Slivka argues the circuit court erred in denying his motion for a directed verdict on Spriggs' failure to comply with the section 27-1-15 claim. We disagree.

Slivka contends Spriggs failed to present any evidence Slivka did not perform a fair and reasonable investigation because at the time Spriggs made its demand under the statute the parties were involved in litigation initiated by Spriggs. We find whether a fair and reasonable investigation of Spriggs' claim has been made and whether a valid portion of the claim was paid in a timely manner are questions of fact for the jury. See *Hardaway Concrete Co., Inc. v. Hall Contracting Corp.*, 374 S.C. 216, 229, 647 S.E.2d 488, 495 (Ct. App. 2007) (holding whether a party

made a fair and reasonable investigation of the merits of a claim is a question of fact).

Additionally, Slivka argues at the time the demand was made it was impossible to determine the "valid" amount due because of the parties' pending claims against each other for damages. Finally, Slivka maintains his failure to make a payment at the time of the demand was not unreasonable because he had already paid the court a cash bond exceeding the amount of Spriggs' claim. Slivka fails to cite any legal precedent to support these arguments. Accordingly, we find these arguments are abandoned on appeal. See *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006) (noting when an appellant fails to cite any supporting authority for his position and makes conclusory arguments, the appellant abandons the issue on appeal).

B. Amount of Attorney's Fees and Costs

Slivka argues the circuit court erred in awarding Spriggs \$235,030.31 in attorney's fees and costs. We agree.

The circuit court determined Spriggs was entitled to \$235,030.31 in attorney's fees and costs pursuant to sections 29-5-10 and 27-1-15. The court further found the fees and costs awarded were reasonable based upon the six criteria established by the supreme court. The circuit court noted, "[Spriggs] was required to expend considerably more time and effort on this case due to specific actions of [Slivka] who created unnecessary delays, filed meritless motions, and forced [Spriggs] to incur additional attorney's fees and costs above and beyond what would otherwise have been incurred."

First, Slivka argues Spriggs was not entitled to recover \$28,619.25 in staff member fees as part of its attorney's fees award. We find the circuit court did not abuse its discretion in including staff member fees in its award of attorney's fees. We note Slivka fails to cite any legal precedent to support this argument. Additionally, this court has upheld attorney's fees awards which included paralegal fees. See *McElveen v. McElveen*, 332 S.C. 583, 602, 506 S.E.2d 1, 11 (Ct. App. 1998); *Charleston Lumber Co. v. Miller Housing Corp.*, 318 S.C. 471, 484, 458 S.E.2d 431, 439 (Ct. App. 1995).

Next, Slivka contends Spriggs' total recovery is limited to the amount of the cash bond he posted with the clerk of court. Slivka argues that pursuant to section 29-5-110 of the South Carolina Code (2007), the total payment to Spriggs is limited to

\$266,012.71, the amount of the cash bond he paid to the clerk of court. Therefore, Slivka maintains because Spriggs' verdict was \$173,990.53, any award of attorney's fees under the mechanic's lien statute is limited to a maximum of \$92,022.18. We disagree. Section 29-5-110 relates to the amount of the judgment and makes no mention of attorney's fees. Attorney's fees are specifically addressed in section 29-5-10, which provides that the costs and fees incurred in enforcing or defending against the lien may be recoverable by the prevailing party up to the amount of the lien. *See* § 29-5-10(a).

Finally, Slivka argues 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. Although the amount of attorney's fees awarded in this case, compared to the jury award, may not shock the conscience of this court, the needle is definitely moving on the seismograph. The circuit court order is unclear as to which fees were awarded under which statutory authority. We note the court's award exceeds the amount permitted under the mechanic's lien statute. Further, although theoretically possible, it is improbable an attorney's fee of almost \$250,000 would be awarded for a net recovery of approximately \$75,000 above the \$100,000 settlement offered by Slivka under section 27-1-15. The circuit court may have combined the two statutes to reach the figure, although the legality of that procedure is not addressed in this decision. Moreover, the trial court surely did not award fees for the two causes of action it dismissed or for the breach of contract claim. Thus, because we find the circuit court's order is unclear, we reverse the court's award of \$235,030.31 in attorney's fees to Spriggs and remand the issue of attorney's fees to the circuit court for reconsideration. We order the circuit court to clearly identify the statutory authority for its award and the fees incurred under each statute.

C. Prejudgment Interest

Slivka argues the circuit court's award of \$37,413.92 in prejudgment interest to Spriggs was not supported by statute. We disagree.

The law permits the award of prejudgment interest when a monetary obligation is a sum certain, or is capable of being reduced to certainty, accruing from the time payment may be demanded either by the agreement of the parties or the operation of law. *Butler Contr., Inc. v. Court St., LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258 (2006). Generally, prejudgment interest may not be recovered on an unliquidated claim in the absence of agreement or statute. *Id.* The fact that the amount due is disputed does not render the claim unliquidated for purposes of

awarding prejudgment interest. *Id.* Rather, the proper test is "whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose." *Id.* "The award of prejudgment interest will not be disturbed on appeal unless the [circuit] court committed an abuse of discretion." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 435, 673 S.E.2d 448, 457-58 (2009).

We find the circuit court did not err in awarding Spriggs prejudgment interest. We note the court's award of prejudgment interest was not limited to Spriggs' cause of action for failure to comply with section 27-1-15. The court also awarded interest on Spriggs' breach of contract claim, which was not appealed and is the law of the case. Accordingly, we affirm the circuit court's award of prejudgment interest.

CONCLUSION

We find the construction administration services provided by Spriggs fell within the definition of labor contained in section 29-5-10(a). Additionally, we affirm the circuit court's award of prejudgment interest and denial of Slivka's directed verdict motions as to Spriggs' section 27-1-15 and mechanic's lien claims. We reverse the circuit court's award of attorney's fees and remand for reconsideration.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

SHORT and KONDUROS, JJ., concur.

ROSEN | HAGOOD

James A. Bruorton, IV
cbruorton@rrhlawfirm.com

March 25, 2015

The Honorable William H. Seals, Jr.
Circuit Judge At-Large Seat 6
208 West Dozier Street
Marion, SC 29571

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

Dear Judge Seals:

You may recall that in July 2011, you presided over the above referenced matter. I am sure given the age of the case it may be a distant memory at this point. My client, The Spriggs Group, PC ("Spriggs") served as the architect in the design and construction administration of Mr. Slovak's plantation located in Colleton County. Spriggs designed all buildings on Mr. Slovak's property including a 24,000 sq. ft. main house, two 1,500 sq. ft. detached garages with fully finished 700 sq. ft. apartments above them, a 280 sq. ft. potting shed, a 1,000 sq. ft. conservatory, a 4,000 sq. ft. stable with four horse stalls, and a 500 sq. ft. grotto. Per the contract agreement between Spriggs and Mr. Slivka, Spriggs was paid one half of the Agreement amount at the start of the design process. Spriggs invoiced Mr. Slivka for the remaining contract balance, as well as additional agreed upon services pursuant to the Agreement and Mr. Slivka refused to pay Spriggs any additional monies under the Agreement. Spriggs filed a mechanic's lien against Mr. Slivka's property and a foreclosure action on the lien along with claims for breach of contract and failure to comply with S.C. Code Ann. §27-1-15. Mr. Slivka admitted he owed Spriggs the second half of the Agreement amount, but refused to pay him because Spriggs had invoiced for additional services Mr. Slivka claims Spriggs was not entitled to. After 3 full days of testimony from witnesses for both parties, the jury returned a unanimous verdict in favor of Spriggs on the three causes of action of breach of contract, foreclosure of mechanic's lien and failure to comply with S.C. Code Ann. § 27-1-15. Mr. Slivka chose not to return to the courtroom and be present for the verdict reading.

At the conclusion of trial, both parties requested 10 days to submit post-trial motions. You denied Mr. Slivka's motions for JNOV and for new trial. Mr. Slivka then filed a motion to alter or amend your ruling denying the motions for JNOV and for new trial, which you denied as well. Spriggs made post-trial motions seeking attorneys' fees and costs based on S.C. Code Ann. § 27-1-15 and the South Carolina Mechanic's Lien Statute. You awarded attorneys' fees and

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P.O. Box 893, Charleston, SC 29402
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March 25, 2015

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costs in the amount of \$235,030.31 pursuant to the two statutes. A copy of your Order for Award of Interest, Fees and Costs to Plaintiff is attached for your reference. As you noted in your Order, Spriggs was required to expend considerably more time and effort on this case due to specific actions of Mr. Slivka in who created unnecessary delays, filed meritless motions and forced Spriggs to incur additional attorney's fees and costs above and beyond what would otherwise have been incurred. Mr. Slivka filed a motion to alter or amend that Order as well, which you denied.

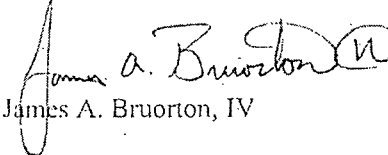
Mr. Slivka filed an appeal challenging every ruling you made with regards to the finding that construction of administrative services is labor under the mechanic's lien statute, the finding that whether a reasonable and fair investigation was made under S.C. Code Ann. §27-1-15 was a question for the jury, and that the attorneys' fees awarded to Spriggs were improper. Mr. Slivka has now lost his appeal at the Court of Appeals level (opinion attached for your reference) and at the Supreme Court level where the court ruled the granting of petition for a writ of certiorari was improvidently granted. The case has been on appeal for nearly four years and Spriggs has continued to incur unnecessary legal fees and costs as a result of Slivka actions. During the oral argument held before the Supreme Court on February 3, 2015, which can be viewed at <http://www.judicial.state.sc.us/scvideo/>, Justice Hearn in particular viewed your Trial Court Order as providing sufficient detail regarding the fees that had been awarded and didn't believe it was necessary for the attorneys' fee award to be revisited. Nevertheless, the dismissal of the writ as improvidently granted leaves the Court of Appeals Opinion (now depublished) as the final Opinion in this matter. According to that Opinion, the attorneys' fees issues was remanded in Order for you to clearly identify the statutory authority for the award of attorneys' fees and the fees incurred under each statute, noting that the attorneys' fees award exceeds the amount permitted under the mechanic's lien statute.

On February 13, 2013, you provided an email to the parties after the Court of Appeals issued their Opinion, requesting certain documentation for your consideration on the attorneys' fees issue. That request was delayed as a result of Mr. Slivka's further appeal of the matter. I have attached that email for your reference, and I assume you will need the same information in order to review this case and issue and Supplemental Order on the attorneys' fees award. Accordingly, I plan to submit the requested documentation within fifteen days along with documentation of the fees and costs incurred during the course of the appeal which Spriggs is now entitled to recover and the case law in support. Should you require a hearing on this matter, please let me know, and I will be happy to appear before the Court on this issue. If you would simply like me to prepare a Proposed Order clarifying the attorney fee award, I am happy to do that as well.

March 25, 2015
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With kindest regards, I am

Sincerely yours,


James A. Bruorton, IV

CAB/cab
cc: Robert T. Lyles, Jr. (via email)

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2009-CP-15-595

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ORDER FOR AWARD OF INTEREST FEES AND COSTS TO PLAINTIFF

PATRIOTIC SOCIETY
COLLECTOR COUNTY
COMMON PLEAS
2011 OCT -3 PM 1:47

This matter came before the Court for a trial on the merits on July 18, 2011 and concluded with a jury verdict being rendered in favor of the Plaintiff in the amount of \$173,990.53 on July 22, 2011. The jury found in favor of Plaintiff on Plaintiff's claims for foreclosure of mechanic's lien, breach of contract, and failure to comply with South Carolina Statute § 27-1-15. Plaintiff has moved this Court, pursuant to Rule 54 of the South Carolina Rules of Civil Procedure, for an award of attorney's fees and costs to be added to the verdict rendered as the prevailing party under the South Carolina Mechanic's Lien Statute and pursuant to S.C. Code Ann. § 27-1-15. Further, Plaintiff has moved for an award of interest to be added to the verdict rendered as prayed for in Plaintiff's Complaint and provided for by S.C. Code Ann. § 27-1-15. Plaintiff timely submitted this motion within ten (10) days from the conclusion of trial per instructions from the bench.

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

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

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

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

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

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

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

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

This Court finds that Plaintiff is entitled to the recovery of attorney's fees and costs in this matter pursuant to S.C. Code Ann. § 29-5-10 and S.C. Code Ann. § 27-1-15 in the amount of \$235,030.31. Further, this Court finds that the attorney's fees and costs awarded are reasonable based upon the six criteria established by the Supreme Court of South Carolina for determining attorney's fees. There is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment. See Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998). South Carolina courts have approved awards of attorney's fees where the fee substantially exceeded the actual 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).

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

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

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

IT IS SO ORDERED this 12th day of ~~August~~September, 2011.


The Honorable William H. Seals, Jr.
Presiding Judge

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The Spriggs Group, P.C., Respondent,

v.

Gene R. Slivka, Appellant.

Appellate Case No. 2011-204366

Appeal From Colleton County
William H. Seals, Jr., Circuit Court Judge

Published Opinion No. 5081
Heard January 10, 2013 – Filed February 6, 2013

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Robert T. Lyles, Jr., of Lyles & Lyles, LLC, of
Charleston, for Appellant.

A. Bright Ariail and James Atkinson Bruorton, IV, both
of Rosen Rosen & Hagood, LLC, of Charleston, for
Respondent.

LOCKEMY, J.: In this action for foreclosure of a mechanic's lien and breach of contract, Gene Slivka argues the circuit court erred in (1) submitting a question involving the interpretation of section 29-5-10(a) of the South Carolina Code (2007) to the jury; (2) failing to direct a verdict; and (3) awarding The Spriggs Group, P.C. (Spriggs) attorney's fees, costs, and interest. We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL BACKGROUND

This case arises from a dispute between Slivka and Spriggs regarding Spriggs' provision of architectural services for Slivka's home. Spriggs designed all of the buildings on Slivka's Colleton County plantation (the property), including the main house, two detached garages with apartments, potting shed, conservatory, stable, and grotto. Pursuant to a November 17, 2006 written proposal (the Agreement), Spriggs was to receive a fixed fee of \$161,500 for its architectural and engineering design services, and hourly fees for any additional services. The fixed fee was subsequently reduced to \$152,402. Slivka paid half of the fee at the start of the design process and agreed to pay the remainder upon completion of the project.

According to Slivka, he terminated Spriggs on December 12, 2008. Slivka contends he picked up the remaining drawings from Spriggs' office and told Spriggs he did not want any more drawings. Spriggs, however, continued to perform its services under the Agreement. According to Ken Spriggs, principal of Spriggs, he was unaware Slivka had allegedly terminated Spriggs. In February 2009, Spriggs submitted four invoices totaling \$198,834.53 to Slivka for payment in accordance with the terms of the Agreement. Slivka admitted he owed Spriggs \$76,201, the balance of the Agreement price, but disputed the additional charges and refused to pay Spriggs. Spriggs provided services to Slivka pursuant to the Agreement through May 2009.

As a result of Slivka's failure to pay Spriggs in accordance with the terms of the Agreement, Spriggs filed a mechanic's lien against the property on April 13, 2009. Slivka continued to refuse to pay Spriggs and posted a \$265,112.71 cash bond to remove the lien from the property. Thereafter, on July 8, 2009, Spriggs commenced a foreclosure action on the lien. In an amended complaint filed in May 2010, Spriggs asserted claims for foreclosure of mechanic's lien, breach of contract, breach of contract accompanied by a fraudulent act, quantum meruit, and failure to comply with section 27-1-15 of the South Carolina Code (2007). Slivka counterclaimed for slander of title, violation of the Frivolous Claims Sanctions Act, tortious interference with contractual relationships with third parties dependent upon performance by Spriggs, and tortious interference with contractual relationships with third parties resulting from defective notice of mechanic's lien.

On June 30, 2011, Slivka offered to settle the case for \$100,000, but Spriggs did not accept the offer. Prior to trial, Spriggs filed a motion to strike Slivka's affirmative defenses and counterclaims. Thereafter, Slivka filed a motion for summary judgment as to all of Spriggs' causes of action. Spriggs countered with

its own motion for summary judgment. At the motions hearing, Slivka agreed to withdraw certain counterclaims, and the circuit court denied both motions for summary judgment.

The parties proceeded to trial on all of Spriggs' causes of action and on Slivka's counterclaims for slander of title, tortious interference with contractual relationships with third parties dependent upon performance by Spriggs, and tortious interference with contractual relationships with third parties resulting from defective notice of mechanic's lien. At trial, Spriggs asserted the additional charges in its invoices were a result of Slivka's demands and changes, and they were billed pursuant to the Agreement. Slivka maintained the additional charges were not contemplated when the Agreement was made and Spriggs had a duty to advise him before performing and charging for additional work.

At the conclusion of Spriggs' case, the circuit court denied Slivka's directed verdict motions as to Spriggs' causes of action for foreclosure of mechanic's lien, breach of contract, and failure to comply with section 27-1-15. The circuit court also denied Spriggs' motion for a directed verdict as to the section 27-1-15 claim. Spriggs withdrew its claims for breach of contract accompanied by a fraudulent act and quantum meruit. Following Slivka's case, the circuit court denied Spriggs' motion for a directed verdict as to Slivka's slander of title claim. Slivka also renewed his directed verdict motions as to Spriggs' causes of action for foreclosure of mechanic's lien and failure to comply with section 27-1-15. The circuit court ruled both causes of action would be submitted to the jury.

Spriggs' foreclosure of mechanic's lien, breach of contract, and failure to comply with section 27-1-15 claims were submitted to the jury, along with Slivka's slander of title claim.¹ Following deliberations, the jury returned a verdict in favor of Spriggs on all three of its causes of action and on Slivka's slander of title cause of action. The jury awarded Spriggs \$173,990.53 in actual damages. Slivka made a post-trial motion seeking a judgment notwithstanding the verdict (JNOV) and/or a new trial on Spriggs' foreclosure of mechanic's lien and failure to comply with section 27-1-15 claims.² The circuit court denied Slivka's JNOV motion and his subsequent Rule 59(e), SCRCP, motion to alter or amend. Spriggs made a post-trial motion seeking attorney's fees, costs, and interest. The circuit court granted the motion and awarded Spriggs \$235,030.31 in attorney's fees and costs and

¹ Slivka withdrew both of his tortious interference with contractual relationships claims.

² Slivka did not appeal the jury's verdict on Spriggs' breach of contract claim.

\$37,413.92 in prejudgment interest. Thereafter, the circuit court denied Slivka's Rule 59(e) motion to alter or amend. This appeal followed.

LAW/ANALYSIS

I. Statutory Interpretation

Slivka argues the circuit court erred in submitting the question of whether the services provided by Spriggs in January 2009 fell within the definition of "labor" contained in section 29-5-10(a) of the South Carolina Code (2007) to the jury. We agree but find no reversible error.

Pursuant to section 29-5-90 of the South Carolina Code (2007), a mechanic's lien

shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner . . . a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien. . . .

Section 29-5-10(a) states:

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

or structure during its erection, alteration, or repair is considered to be labor performed or furnished within the meaning of this section. . . .

For its lien to be timely, Spriggs must have performed labor, within the definition contained in section 29-5-10(a), on or after January 13, 2009. According to Andy Bozeman, a Spriggs employee, Spriggs addressed a plumbing subcontractor's request to substitute the size of plumbing lines used on the project on January 13, 2009. Bozeman also communicated with a mechanical engineer and answered questions regarding the plumbing line substitution.

At trial, Slivka argued that while the timeliness of the lien was a question of fact for the jury to decide, whether the construction administration services performed by Spriggs on January 13, 2009, fell within the statutory definition of labor was a question of statutory interpretation for the court. In response, Spriggs argued the question before the jury was one of timeliness, and the services it provided on January 13, 2009, were clearly within the definition of labor. The circuit court decided,

as to the mechanic's lien itself, I'm just going to submit it to the jury. I'm going to read them the statute. I'm going to give them the charge It's kind of long and redundant but y'all can argue whether that is service that falls within the mechanic's lien statute. And of course you can argue the timeliness and all of that kind of stuff.

Slivka contends the question of whether Spriggs' work fell within the purview of the mechanic's lien statute was erroneously submitted to the jury. Spriggs maintains the jury was properly instructed to determine whether its lien was valid and timely. Spriggs also notes the circuit court ruled post-trial it was "implausible that construction administration services would be excluded from the description of labor performed or furnished in the erection, alteration, or repair of any building."

We find the circuit court erred in submitting the question of whether Spriggs' work fell within the purview of the mechanic's lien statute to the jury. See *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) (holding the issue of interpretation of a statute is a question of law for the court). However, this error was harmless because, as discussed below, we find the

construction administration services proved by Spriggs fell within the definition of labor contained in 29-5-10(a).

II. Timeliness of the Lien

Slivka argues the circuit court erred in denying his motion for directed verdict because Spriggs' lien was not timely. We disagree.

"When reviewing the denial of a motion for directed verdict or JNOV, this Court must employ the same standard as the [circuit] court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party." *Welch v. Epstein*, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000). "The [circuit] court must deny the motions when the evidence yields more than one inference or its inference is in doubt." *Id.* at 300, 536 S.E.2d at 418. "This Court will reverse the [circuit] court only when there is no evidence to support the ruling below." *Id.* "When considering directed verdict and JNOV motions, neither the [circuit] court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Id.* at 300, 536 S.E.2d at 419.

First, Slivka contends the work performed by Spriggs on January 13, 2009, does not fall within the definition of labor contained in section 29-5-10(a) because none of Spriggs' work involved "the preparation of plans, specifications, and design drawings." Slivka maintains none of the work performed by Bozeman occurred on site, and the work only amounted to construction administration services. Slivka argues the circuit court erred in relying on *Williamson v. Hotel Melrose*, 110 S.C. 1, 96 S.E. 407 (1918), in finding construction administration services are a type of labor for which a mechanic's lien may be filed under the mechanic's lien statute. In *Williamson*, our supreme court determined an architect who furnished plans and specifications and "superintended" the construction of a project had performed labor within the meaning of the mechanic's lien statute. 110 S.C. at 1, 96 S.E. at 411. At the time, the mechanic's lien statute did not include the definition of labor contained in the current statute. The statute at the time afforded a lien to "any person to whom a debt is due for labor performed or furnished." *Id.*

Slivka maintains *Williamson* is not applicable because the current version of the mechanic's lien statute, section 29-5-10(a), contains specific activities determined by the legislature to be "labor" and does not include construction administration services. Slivka argues the legislature could have included off-site construction administration services of a design professional in its definition of labor but it chose not to. Furthermore, Slivka maintains Spriggs was not on-site directing the

work on the property like the architect in *Williamson*. Ken Spriggs testified he was not directing any work or supervising the construction.

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

Slivka also contends the circuit court erred in finding work performed by Spriggs in May 2009 supported the timeliness of the lien filed on April 13, 2009. At trial, Bozeman testified he provided design sketches for an appraisal of the property in May 2009. Slivka argues this work could not support the timeliness of Spriggs' lien because it was allegedly performed after the lien was filed. We find the circuit court did not err because the court's order does not explicitly say, as alleged by Slivka, that the May 2009 services were performed within ninety days of April 13, 2009. While the circuit court order mentions the May 2009 services, it notes these services were performed after the lien was filed. The court also specifically notes the lien was filed within ninety days of January 13, 2009. Accordingly, we affirm the circuit court's denial of Slivka's motion for a directed verdict on Spriggs' mechanic's lien claim.

III. Attorney's Fees, Costs, and Interest

"A party cannot recover attorney's fees unless authorized by contract or statute." *Cullen v. McNeal*, 390 S.C. 470, 491, 702 S.E.2d 378, 389 (Ct. App. 2010). Here, sections 27-1-5 and 29-5-10 of the South Carolina Code (2007) both authorize an award of attorney's fees to Spriggs. Pursuant to section 27-1-15,

[w]henEVER a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or

whatever portion of it is determined as valid, within forty-five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand.

Additionally, pursuant to section 29-5-10(a), "[t]he costs which may arise in enforcing or defending against the lien. . . , including a reasonable attorney's fee, may be recovered by the prevailing party." "The fee must be determined by the court in which the action is brought but the fee and court costs may not exceed the amount of the lien." *Id.*

The following six factors should be considered when determining reasonable attorney's fees: "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). "The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009). "An abuse of discretion occurs when the conclusions of the [circuit] court are either controlled by an error of law or are based on unsupported factual conclusions." *Id.* "Similarly, the specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.*

A. Section 27-1-15

Slivka argues the circuit court erred in denying his motion for a directed verdict on Spriggs' failure to comply with the section 27-1-15 claim. We disagree.

Slivka contends Spriggs failed to present any evidence Slivka did not perform a fair and reasonable investigation because at the time Spriggs made its demand under the statute the parties were involved in litigation initiated by Spriggs. We find whether a fair and reasonable investigation of Spriggs' claim has been made and whether a valid portion of the claim was paid in a timely manner are questions of fact for the jury. *See Hardaway Concrete Co., Inc. v. Hall Contracting Corp.*, 374 S.C. 216, 229, 647 S.E.2d 488, 495 (Ct. App. 2007) (holding whether a party

made a fair and reasonable investigation of the merits of a claim is a question of fact).

Additionally, Slivka argues at the time the demand was made it was impossible to determine the "valid" amount due because of the parties' pending claims against each other for damages. Finally, Slivka maintains his failure to make a payment at the time of the demand was not unreasonable because he had already paid the court a cash bond exceeding the amount of Spriggs' claim. Slivka fails to cite any legal precedent to support these arguments. Accordingly, we find these arguments are abandoned on appeal. See *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006) (noting when an appellant fails to cite any supporting authority for his position and makes conclusory arguments, the appellant abandons the issue on appeal).

B. Amount of Attorney's Fees and Costs

Slivka argues the circuit court erred in awarding Spriggs \$235,030.31 in attorney's fees and costs. We agree.

The circuit court determined Spriggs was entitled to \$235,030.31 in attorney's fees and costs pursuant to sections 29-5-10 and 27-1-15. The court further found the fees and costs awarded were reasonable based upon the six criteria established by the supreme court. The circuit court noted, "[Spriggs] was required to expend considerably more time and effort on this case due to specific actions of [Slivka] who created unnecessary delays, filed meritless motions, and forced [Spriggs] to incur additional attorney's fees and costs above and beyond what would otherwise have been incurred."

First, Slivka argues Spriggs was not entitled to recover \$28,619.25 in staff member fees as part of its attorney's fees award. We find the circuit court did not abuse its discretion in including staff member fees in its award of attorney's fees. We note Slivka fails to cite any legal precedent to support this argument. Additionally, this court has upheld attorney's fees awards which included paralegal fees. See *McElveen v. McElveen*, 332 S.C. 583, 602, 506 S.E.2d 1, 11 (Ct. App. 1998); *Charleston Lumber Co. v. Miller Housing Corp.*, 318 S.C. 471, 484, 458 S.E.2d 431, 439 (Ct. App. 1995).

Next, Slivka contends Spriggs' total recovery is limited to the amount of the cash bond he posted with the clerk of court. Slivka argues that pursuant to section 29-5-110 of the South Carolina Code (2007), the total payment to Spriggs is limited to

\$266,012.71, the amount of the cash bond he paid to the clerk of court. Therefore, Slivka maintains because Spriggs' verdict was \$173,990.53, any award of attorney's fees under the mechanic's lien statute is limited to a maximum of \$92,022.18. We disagree. Section 29-5-110 relates to the amount of the judgment and makes no mention of attorney's fees. Attorney's fees are specifically addressed in section 29-5-10, which provides that the costs and fees incurred in enforcing or defending against the lien may be recoverable by the prevailing party up to the amount of the lien. *See* § 29-5-10(a).

Finally, Slivka argues 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. Although the amount of attorney's fees awarded in this case, compared to the jury award, may not shock the conscience of this court, the needle is definitely moving on the seismograph. The circuit court order is unclear as to which fees were awarded under which statutory authority. We note the court's award exceeds the amount permitted under the mechanic's lien statute. Further, although theoretically possible, it is improbable an attorney's fee of almost \$250,000 would be awarded for a net recovery of approximately \$75,000 above the \$100,000 settlement offered by Slivka under section 27-1-15. The circuit court may have combined the two statutes to reach the figure, although the legality of that procedure is not addressed in this decision. Moreover, the trial court surely did not award fees for the two causes of action it dismissed or for the breach of contract claim. Thus, because we find the circuit court's order is unclear, we reverse the court's award of \$235,030.31 in attorney's fees to Spriggs and remand the issue of attorney's fees to the circuit court for reconsideration. We order the circuit court to clearly identify the statutory authority for its award and the fees incurred under each statute.

C. Prejudgment Interest

Slivka argues the circuit court's award of \$37,413.92 in prejudgment interest to Spriggs was not supported by statute. We disagree.

The law permits the award of prejudgment interest when a monetary obligation is a sum certain, or is capable of being reduced to certainty, accruing from the time payment may be demanded either by the agreement of the parties or the operation of law. *Butler Contr., Inc. v. Court St., LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258 (2006). Generally, prejudgment interest may not be recovered on an unliquidated claim in the absence of agreement or statute. *Id.* The fact that the amount due is disputed does not render the claim unliquidated for purposes of

awarding prejudgment interest. *Id.* Rather, the proper test is "whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose." *Id.* "The award of prejudgment interest will not be disturbed on appeal unless the [circuit] court committed an abuse of discretion." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 435, 673 S.E.2d 448, 457-58 (2009).

We find the circuit court did not err in awarding Spriggs prejudgment interest. We note the court's award of prejudgment interest was not limited to Spriggs' cause of action for failure to comply with section 27-1-15. The court also awarded interest on Spriggs' breach of contract claim, which was not appealed and is the law of the case. Accordingly, we affirm the circuit court's award of prejudgment interest.

CONCLUSION

We find the construction administration services provided by Spriggs fell within the definition of labor contained in section 29-5-10(a). Additionally, we affirm the circuit court's award of prejudgment interest and denial of Slivka's directed verdict motions as to Spriggs' section 27-1-15 and mechanic's lien claims. We reverse the circuit court's award of attorney's fees and remand for reconsideration.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

SHORT and KONDUROS, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The Spriggs Group, P.C., Respondent,

v.

Gene R. Slivka, Petitioner.

Appellate Case No. 2013-000800

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Colleton County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 27508
Heard February 3, 2015 – Filed March 18, 2015

**DEPUBLISH THE OPINION OF THE COURT OF
APPEALS AND DISMISS CERTIORARI AS
IMPROVIDENTLY GRANTED**

Robert T. Lyles, Jr., of Lyles & Lyles, L.L.C., of
Charleston, for Petitioner.

James Atkinson Bruorton, IV and Timothy James Wood
Muller, of Rosen Rosen & Hagood, L.L.C., of
Charleston, for Respondent.

PER CURIAM: We granted the petition for a writ of certiorari to review the Court of Appeals' decision in *The Spriggs Group, P.C. v. Slivka*, 402 S.C. 42, 738 S.E.2d 495 (Cl. App. 2013). We first direct the Court of Appeals to depublish its opinion and assign the matter an unpublished opinion number. The above opinion shall no longer have any precedential effect. Next, we dismiss as improvidently granted the writ of certiorari.

Accordingly, we

**DEPUBLISH THE OPINION OF THE COURT OF APPEALS AND
DISMISS CERTIORARI AS IMPROVIDENTLY GRANTED.**

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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March 19, 2015

The Honorable Patricia C. Grant
PO Box 620
Walterboro SC 29488-0028

REMITTITUR

Re: The Spriggs Group v. Gene Slivka
Lower Court Case No. 2009CP1500595
Appellate Case No. 2013-000800

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CLERK

cc: Robert T. Lyles, Jr., Esquire
James Atkinson Bruorton, IV, Esquire
Lawrence Caldwell Melton, Esquire
Brian A. Autry, Esquire
Timothy James Wood Muller, Esquire

Chip Bruorton

From: Seals, William Law Clerk (Bradley Pogue) <wsealslc@sccourts.org>
Sent: Wednesday, February 13, 2013 3:56 PM
To: Chip Bruorton; Bright Atrial; 'rtl@lylesfirm.com' (rtl@lylesfirm.com)
Cc: Seals, William
Subject: The Spriggs Group v. Slivka Appellate Case No. 2011-204366

Dear Counsel:

Judge Seals is in receipt of the Court of Appeals opinion and order reversing and remanding for reconsideration the Circuit Court's award of plaintiff's attorney fees in the above captioned matter. In this regard, the Court is requesting that both parties submit, in duplicate, within **fifteen (15) days** of today's date, the following items for consideration:

1. Plaintiff's Attorney Fee Affidavit;
2. Copy of the Verdict Form returned by the jury;
3. Copy of the original Circuit Court order awarding Plaintiff's attorney fees;
4. Copy of the contract between the two parties, if it was admitted into evidence at trial, and if it includes a section addressing costs and attorney fees in the event of a dispute arising out of the contract;
5. Copy of the original Mechanic's Lien filed by Spriggs;
6. Detailed timeline of all procedural history and court filings in order to help establish the reasonableness of costs and attorney fees;
7. Five (5) page brief addressing: (A) Under which statute(s) or contract term(s) is the recovery of Plaintiff's costs and attorney fees appropriate, (B) the amount of costs and attorney fees which are reasonable and should be awarded in this case. Relevant case law and authority should be cited in support of all arguments and positions taken. (**Any brief exceeding 5 pages will not be considered.)

All items are to be submitted both by email to wsealslc@sccourts.org, AND via mail to:

The Honorable William H. Seals, Jr.
Circuit Judge At-Large Seat 6
208 West Dozier Street
Marion, South Carolina 29571.

Should you have any questions or concerns regarding the Court's request, please do not hesitate to contact me.

With kind regards,

Bradley Pogue

Law Clerk to the Honorable William H. Seals, Jr.

Circuit Court Judge At-Large Seat 6

208 West Dozier Street

Marion, South Carolina 29571

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Member

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April 8, 2015

The Honorable William H. Seals, Jr.
Circuit Judge At-Large Seat 6
208 West Dozier Street
Marion, SC 29571
wsealsj@sccourts.org

Re: *The Spriggs Group, P.C. vs. Slivka*,
CA No. 2009-CP-15-0595

Dear Judge Seals:

First, thank you for allowing me time to respond to Chip Bruorton's letter of March 25, 2015. Before doing so, I wanted to have an opportunity to speak with Mr. Slivka and explain the current posture of the case.

I agree with Mr. Bruorton's proposal for him to provide you with materials that you requested on February 13, 2013. Clearly, the Court of Appeal's Order remanding this case to you is now in full force and effect, and we will need to address the attorneys' fee issue with you as directed by the Court of Appeals.

I want to take this opportunity, however, to clarify the proceedings from the appeal in light of some of Mr. Bruorton's remarks. Mr. Slivka filed an appeal seeking reversal of your submission of the mechanic's lien and the demand for payment claim to the jury. He also appealed your award of attorneys' fees and costs. Filing that appeal was within his rights as a litigant and was based on his firm belief, and mine, that the lien claim was untimely and that the demand for payment statute was inapplicable. We also firmly believed that the award of attorneys' fees was excessive and not in conformance with the law. (I say that with all due respect.)

After reading the briefs and listening to the arguments, the Court of Appeals found that submission of the mechanic's lien claim to the jury was in error, as Mr. Slivka contended, though they deemed that error to be harmless because they found that Mr. Spriggs had prevailed in his mechanic's lien claim. Curiously, the Court of Appeals felt that Mr. Slivka had abandoned his appeal relative to the demand for payment statute though he and I strenuously objected to that conclusion. Third, and finally, as Slivka requested, the Court of Appeals reversed the award of attorneys' fees and remanded that matter back to you. Spriggs took no exception to that ruling.

Because of our continued belief in Mr. Slivka's position with regard to the mechanic's lien and the demand for payment statutes, we filed a Petition for Writ of Certiorari. The Supreme Court accepted our Petition and agreed to hear the case. The issue was again fully briefed. An Amicus Brief was also submitted by the American Institute of Architects because of the significance of the issues before the Supreme Court. After our argument, the Supreme Court decided not to consider the appeal, concluding that Certiorari had been "improvidently granted".

The Order dismissing the Certiorari was accompanied by the Supreme Court's very unusual Order to the Court of Appeals directing it to cease publication of its opinion in this case. The Supreme Court has thus instructed the Court of Appeals that its opinion, ruling in favor of Mr. Spriggs on the mechanic's lien aspect of the case, is no longer of any precedential effect. I will leave it up to you to interpret the significance of that relative to the correctness of the Court of Appeals' opinion, but from my perspective, the acceptance of certiorari in the first instance, and the instruction to cease publication of the Court of Appeals' opinion, suggests that the Supreme Court takes a dim view of the Court of Appeals' opinion relative to the mechanic's lien statute and its application in this case. (Otherwise, the Supreme Court could simply have denied cert. and let the Court of Appeals opinion remain untouched.)

I offer this not to re-litigate the issues but to say that Mr. Slivka's appeal had considerable merit and not only resulted in a reversal of the attorneys' fee award but also raised legitimate questions concerning the application of the mechanic's lien statute in this case.

I also want to note that shortly after the trial, Mr. Spriggs executed on the cash bond posted by Mr. Slivka and has had the benefit of that \$265,112.71 for years. Spriggs therefore long ago received the full amount of the jury verdict of \$173,990.53, *plus* an additional \$91,122.18, which represents a 53% attorneys' fee award on top of that.

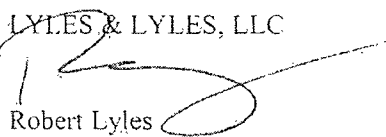
We welcome the opportunity to revisit the attorneys' fees issue with you. In doing so, since Mr. Bruorton referred you to Justice Hearn's remarks, I ask you to note the remarks of Justice Kittredge during the argument in which he discussed the Court of Appeals' order with respect to the attorneys' fee award.

After you receive the materials from Mr. Bruorton that you have requested, please let us know what else you need from us. I would like the opportunity to have a hearing on this matter when it suits you.

Thank you in advance for your attention and consideration.

Sincerely,

LYLES & LYLES, LLC


Robert Lyles

Chip Bruorton

From: Chip Bruorton
sent: Thursday, April 9, 2015 9:15 AM
To: 'Seals, William'; Seals, William, Law Clerk (Kathleen W. Hearn)
Cc: 'rtl@lylesfirm.com'; Laura Croft; 'Allen DuPre'; 'eb@lylesfirm.com'; Brew Hagood
Subject: RE: The Spriggs Group, P.C. v. Gene Slivka (Case No.: 2009-CP-15-595)

Your Honor,

I am in receipt of Mr. Lyles letter to you from yesterday. I will provide the Court with the requested information by the close of business tomorrow. One point that I would like to address in Mr. Lyles letter is the assertion that Mr. Spriggs has somehow already had the benefit of an attorney's fee award of 53% of the verdict amount. I will address the Court's award of attorneys' fees and its ability to award additional attorneys' fees for the appeal process in my memorandum in detail, but just so the Court is aware of where things currently stand on the disbursed money, I am providing a breakdown below.

Bond Amount Released to RRH after entry of Judgment	=	\$265,112.71
Verdict Amount	=	\$173,990.53
Pre-Judgment Interest Awarded	=	\$37,413.92
Cost Awarded by the Court	=	<u>\$25,920.71</u>
Balance	=	\$27,787.55

The total amount of the attorneys fee out of the released bond is \$27,787.55 in a case that has been ongoing since the fall of 2009. That amount is slightly less than 16% of the verdict amount. With all due respect to Mr. Lyles, his representation of Mr. Spriggs having had the benefit of a 53% fee is not accurate. Further, the only amount that has been disbursed is the Verdict Amount plus pre-judgment interest of \$211,404.45. The remaining \$53,708.26 still sits in my firm's trust account while the Court clarifies its prior award of \$235,030.31 in fees and costs to The Spriggs Group as the prevailing party in this action.

I look forward to finally resolving this matter before you.

Sincerely,
Chip Bruorton

Chip Bruorton
| Attorney at Law |

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From: Seals, William [mailto:wsealsj@sccourts.org]
Sent: Thursday, March 26, 2015 9:32 AM
To: Laura Croft; Seals, William Law Clerk (Kathleen W. Hearn)
Cc: 'rtl@lylesfirm.com'; Chip Bruorton
Subject: RE: The Spriggs Group, P.C. v. Gene Slivka (Case No.: 2009-CP-15-595)

Mr. Bruorton and Mr. Lyles:

I am in receipt of your emailed letter. I am in court in general sessions Florence this week and have not had time to review same. However I will get to it very soon. In the meantime, if Mr. Lyles would like to respond it would be appreciated as I decide how best to move forward from this point in time. WHS

From: Laura Croft [mailto:lcroft@rrhlawfirm.com]
Sent: Wednesday, March 25, 2015 11:05 AM
To: Seals, William; Seals, William Law Clerk (Kathleen W. Hearn)
Cc: 'rtl@lylesfirm.com'; Chip Bruorton
Subject: The Spriggs Group, P.C. v. Gene Slivka (Case No.: 2009-CP-15-595)

Dear Judge Seals:

Attached, please find a letter from Chip Bruorton regarding the above referenced matter. You will receive the original via U.S. Mail.

If you have any questions, please let us know. Thank you for your time.

Sincerely,
Laura

Laura Croft

| Paralegal |

151 Meeting Street
Suite 400, Charleston SC 29401
| office | 843-577-6726
| fax | 843-724-8036
| direct phone | (843) 266-8113
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Robert T. Lyles, Jr.  
Member

Direct: (843) 735-5560  
E-mail: rtl@lylesfirm.com

May 14, 2015

The Honorable William H. Seals, Jr.  
Circuit Judge At-Large Seat 6  
208 West Dozier Street  
Marion, SC 29571  
wsealsj@sccourts.org

Re: The Spriggs Group, P.C. v. Slivka  
C/A No: 2009-CP-15-0595

Dear Judge Seals,

I am in receipt of Chip Bruorton's Proposed Order for Award of Attorney's Fees to Plaintiff which he circulated on Monday afternoon in response to your e-mail over the weekend. The purpose of this letter is to advise of a number of objections, both factual and legal, that I have to the Proposed Order. I appreciate your consideration of these objections and appropriate modifications of Mr. Bruorton's Proposed Order.

**Incorrect Factual Assertions**

In the Proposed Order, I disagree with a number of the factual findings Mr. Bruorton has in his Proposed Order.

First, Mr. Bruorton asserts that "Spriggs Group invoiced defendant Slivka for the remaining contract balance, as well as additional agreed upon services pursuant to the contract agreement." This is contrary to the only testimony in the case, being that Mr. Spriggs believed that he had performed services that exceeded the scope of the fee agreement. Both he and his employee, Mr. Bozeman, admitted that neither of them disclosed that fact to Mr. Slivka. Mr. Slivka never agreed to pay for the additional services because he was never told, until February of 2009, that additional services had been performed.

Next, in the recitation of the facts, I think it is critical to include the fact that on February 9, 2012, a Partial Satisfaction of Judgment was entered into when Spriggs received full satisfaction for the award of the jury and obtained the sum of \$265,112.71. At that time, the matter was still pending before the Court of Appeals which had yet to hear arguments or render any opinion.

## Legal Objections

### **1. Slivka was the prevailing party on appeal.**

In the proposed Order, Mr. Bruorton has you finding that "In the eyes of this court, those two issues were the substantive legal arguments presented on appeal." In the appellate courts, we have opposed Spriggs' request for fees and cost on the basis that Spriggs was not the prevailing party. No decision has been made on Spriggs request. It seems prudent to wait until the appellate court decides whether or not Spriggs is entitled to attorney's fees and cost on appeal before you make that decision. Otherwise, your decision may be in conflict with the decision of the appellate courts on this issue.

Further, while it is true that Slivka challenged the legality of the statutory claims, it is also true that the jury's award of \$173,990.53 for each of those claims was not challenged on appeal by Slivka. Slivka's arguments were that Spriggs was not entitled to attorneys fees because the statutory claims were invalid *and* that the attorney's fees as awarded by you were improper. As you know, your attorney's fee award was remanded back to you for reasons we cited in our appellate briefs. Thus, Slivka prevailed on appeal.

As mentioned in oral argument, had Slivka sought to vacate the jury's award, the situation might be considerably different. He did not. While the case was on appeal, Spriggs had already obtained full satisfaction of the jury's verdict, \$173,990.53, (plus \$92,112.71 in pre-judgment interest and attorney's fees) so the effect of the appellate court ruling affirming the verdict was inconsequential since Spriggs had long since received his money.

Since Slivka was the prevailing party on appeal, the Court should not award attorney's fees and costs incurred during the appeal process.

### **2. Attorney's fee award considers erroneous factors.**

In reviewing your e-mail and Mr. Bruorton's Proposed Order, it is clear that three material bases for your award of fees against Mr. Slivka are not among the six factors you are to consider when awarding attorney's fees.

First, in your e-mail and in the Proposed Order, it is clear that you use as a basis for the fee the manner in which Mr. Slivka and his prior counsel chose to exercise his rights as a litigant in this case. Had Mr. Slivka been unreasonable in the conduct of litigation, or acted in bad faith, the appropriate place to have addressed that issue would have been for a request for sanctions or attorney's fees during discovery when the allegedly bad conduct had taken place.

Second, your email and the Proposed Order also indicate that the award of fees is based upon your desire that Mr. Slivka recognize his exposure to more fees if he chooses to exercise his rights as a litigant and file further appeals. This appears to be an effort to deter another lawful appeal.

Finally, in your email and the Proposed Order, you base the attorney's fee award on the financial hardships Mr. Spriggs has ostensibly suffered during the pendency of this litigation. This is tantamount to awarding Spriggs additional actual damages.

None of these findings or bases of the award of fees is a factor to be considered when awarding attorney's fees. Basing an award of fees on these factors is an abuse of discretion and I request that you reduce the attorney's fee award to eliminate any fees awarded as a punitive tax on Mr. Slivka, as a deterrent to hinder the right of Mr. Slivka to file a lawful appeal, or to award Mr. Spriggs additional damages based on financial hardships he has suffered as a result of this litigation.

**3. The calculation of interest is inaccurate.**

In the Proposed Order, Mr. Bruorton has you awarding attorney's fees for the appeal in the amount exceeding \$61,000.00. He also asks you to apply interest on those fees as of the date of the jury verdict for the purpose of calculating prejudgment interest. It is inconceivable that attorney's fees that are awarded for the first time in May of 2015, could accrue interest from 2011. While I object for the foregoing reasons to the award of these fees way, I request that if you do award them, the judgment rate should not apply to those fees until the date of your Order containing them.

**4. Award under § 27-1-15 is excessive.**

The effect of your Order is to award the entire amount of the attorney's fees, totaling \$213,715.25, under the Demand for Payment statute. As indicated at oral argument, the theory of Mr. Spriggs with regard to the Demand for Payment statute has been that on the date the demand was received, in March of 2010, Mr. Slivka admitted that he owed Mr. Spriggs approximately \$76,000 but did not pay it (since he had been wrongfully liened and had already deposited \$265,112.71). You have awarded total fees of approximately 300% to recover the unreasonably withheld \$76,000.00. This is grossly excessive and I believe is an abuse of discretion.

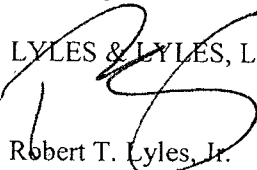
**5. Fees not recoverable § 27-1-15.**

You have awarded all of these fees under the Demand for Payment statute. That statute, unlike the Mechanic Lien statute, does not recognize the right to recover fees incurred defending counterclaims. In the Proposed Order, Mr. Bruorton proposes that you find that the legal fees incurred resulted in an award "in close proximity" to the total damages claimed (in fact, the jury apparently believed that Mr. Spriggs overbilled Mr. Slivka by \$25,000.00) and "avoiding thousands of dollars in liability on defendant's counterclaims." The counterclaim filed on Mr. Slivka was for slander of title based upon what he still believes was an untimely and defective mechanics lien. There was no counterclaim related to the § 27-1-15 claim nor could there have been. An award of fees under that statute for defending an unrelated counterclaim is, in my opinion, not warranted by the statute and is also an abuse of discretion.

The above represents my objections to the Proposed Order and I appreciate, in advance, your consideration of them. It is not exhaustive and I have not completed my review of all of the supporting authority provided by Mr. Bruorton.

If you have any questions for me, or need further information, please call or email me.

Sincerely,

  
LYLES & LYLES, LLC

Robert T. Lyles, Jr.

RTL/eb

Cc: Chip Bruorton  
Gene Slivka

From: Laura Croft  
To: jls@hrlawfirm.com  
Subject: FW: The Spriggs Group, P.C. v. Sivka  
Date: Wednesday, December 09, 2015 10:29:42 AM  
Attachments: lra0001.png  
lra0001.pdf

Brooke,

Please see the email below.

Laura

Laura Croft  
[Paralegal]

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Suite 400, Charleston SC 29401  
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From: Seals, William [mailto:wseals@sccourts.org]

Sent: Thursday, May 14, 2015 5:03 PM

To: Chip Bruorton <chbruorton@hrlawfirm.com>

Cc: Robert Lyles <rl@hrlawfirm.com>; Allen DuPre <ald@hrlawfirm.com>

Subject: Re: The Spriggs Group, P.C. v. Sivka

I will handle it. Just wanted to have input from all. I will have an Order out first of next week if not before.

The Honorable William H. Seals, Jr.  
Circuit Court Judge At-Large, Seat 6  
103 N. Main St.  
Marion, South Carolina

On 14 May 2015, at 5:01 pm, Chip Bruorton <chbruorton@hrlawfirm.com> wrote:

Your Honor,

I have read Mr. Lyles' letter and objections to the Court. I do not want to get into a back and forth, as I believe your honor has taken careful consideration to make the rulings made in this matter. I would like to address a couple things in Mr. Lyles' letter.

1) Mr. Lyles continues to argue that Sivka is the prevailing party on appeal. This is simply not the case. He claims that because the attorneys' fees award was reversed he is the prevailing party on appeal. Of the 5-6 issues on appeal at the Appellate Court level, Mr. Spriggs prevailed on all, except the attorneys' fees award. Which as indicated by the Court of Appeals was reversed and remanded for clarification. Mr. Sivka's further appeal of to the South Carolina Supreme Court was solely on the issues of whether contract administrative services are considered labor under the mechanic's lien statute and whether the determination of whether a reasonable and fair investigation was performed under S.C. Code Ann. 27-1-15 was a question for the jury. The attorneys' fees issue was not even appealed to the Supreme Court. The Supreme Court ruled the Writ of Certiorari was improvidently granted and did not reverse any of the rulings of the Court of Appeals. How Mr. Sivka paints himself as the prevailing party under those circumstances is disingenuous.

2) As for interest on the Appellate Fees, I have provided case law to the court that supports interest on the same. The law sets forth that the Appellate Fees are added to the original judgment at the original judgment date. Mr. Lyles has provided no authority for his position.

Thank you for your attention to this matter.

Sincerely,  
Chip

Chip Bruorton

[Attorney at Law]

151 Meeting Street  
Suite 400, Charleston SC 29401  
[office] 843-577-6726  
[fax] 843-724-8036  
[direct phone] (843) 266-8119  
[direct fax] (843) 266-2261

chbruorton@hrlawfirm.com <mailto:chbruorton@hrlawfirm.com>

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From: Enca Boyd [mailto:enca@hrlawfirm.com]

Sent: Thursday, May 14, 2015 4:39 PM

To: wseals@sccourts.org <mailto:wseals@sccourts.org>

Cc: Chip Bruorton, Robert Lyles, Allen DuPre

Subject: The Spriggs Group, P.C. v. Sivka

Attached please find correspondence from Mr. Lyles regarding the above-referenced matter.

Should you have any difficulty opening the attachment, please do not hesitate to contact me.

Thank you.

Erica M. Boyd  
Paralegal  
LYLES & LYLES, LLC  
342 East Bay Street  
Charleston, SC 29401  
(843) 577-7730

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Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

June 5, 2015

James Bruorton, IV
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401

Re: *The Spriggs Group, P.C. vs. Slivka*,
CA No. 2009-CP-15-0595

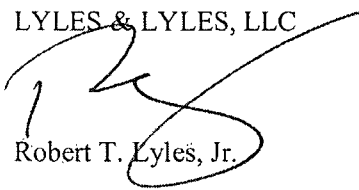
Dear Chip:

Thank you for your letter dated June 3rd. We received Judge Seals' Order last week and are filing a Rule 59 motion today. If that is denied, Mr. Slivka will determine how he wishes to proceed.

For the second time I have heard your firm state that Spriggs' intent is to pursue further collection of a judgment from property Mr. Slivka previously sold. By what authority will you do that? The judgment is against Mr. Slivka and the posting of the bond, those many years ago, released the property from the effect of the mechanic's lien, which has already been satisfied in full.

Sincerely,

LYLES & LYLES, LLC



Robert T. Lyles, Jr.

RTL/eb

Cc: Gene Slivka

ROSEN | HAGOOD

Laura S. Croft
lcroft@rrhlawfirm.com

June 10, 2015

VIA EMAIL & US MAIL

The Honorable William H. Seals, Jr.
Circuit Judge At-Large Seat 6
208 West Dozier Street
Marion, SC 29571

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

Your Honor:

I am in receipt of Defendant Gene Slivka's Motion to Alter or Amend your May 11, 2015 Order awarding attorneys' fees to The Spriggs Group. The legal basis for that award is justified and has been briefed on several occasions. I do not intend to file a formal brief in response to Mr. Slivka's motion.

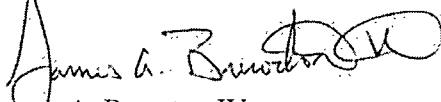
In making its award, the Court used its discretion in considering the legal authority for which Plaintiff was entitled to the fees awarded. The fees awarded are reasonable and justified. Mr. Slivka provides no legal basis for the allegations set forth in his motion seeking reconsideration. Mr. Slivka's assertion that the sums awarded by the jury under the demand for payment statute had been paid in full as of January 11, 2012 is inaccurate. The money collected by Mr. Spriggs was only a partial satisfaction of the judgment entered. Fortunately for Mr. Spriggs, a bond had been posted with the court that Mr. Spriggs was able to take advantage of in reducing the amount of the judgment owed. Had that bond not been posted with the Court, Mr. Spriggs would still to this day have not received a dime towards the verdict, or interest and fees awarded against Mr. Slivka. Mr. Slivka has **never** voluntarily paid any additional money to The Spriggs Group since the initial deposit on the contract was paid some 8 years ago.

The Supreme Court's denial of The Spriggs Group petition for taxation of cost against Defendant Slivka has no effect on the issues before this court. The characterization of The Spriggs Group not being the prevailing party is also inaccurate as no such determination was made by the Court. The Appellate Court rules do not address how a motion for taxation of costs is affected when a Petition for Writ of Certiorari is granted and then dismissed as improvidently granted. Because certiorari was dismissed, SCACR 242(j) was found not to apply. It is for that reason alone, that The Spriggs Group petition was denied.

June 10, 2015
Page 2

I appreciate your continued attention to this matter.

Sincerely yours,



James A. Bruorton IV

CAB/cab

cc: Robert Lyles, Esq. (via email only)

LYLES & LYLES, LLC

ATTORNEYS AT LAW

342 East Bay Street

P.O. Box 773 (29402)

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Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

June 15, 2015

Via Electronic Mail/US Mail

The Honorable William H. Seals, Jr.
C/O Colleton County Clerk of Court
101 Hampton Street
Walterboro, S.C. 29488

Re: *The Spriggs Group, P.C. vs. Slivka,*
CA No. 2009-CP-15-0595

Dear Judge Seals,

I am writing to briefly respond to Chip Bruorton's letter dated June 10, 2015 and to supplement our motion with some authority in the event you decide not to hold a hearing. (This is written prior to our email exchange this morning.)

First, with regard to Mr. Bruorton's letter, it is irrefutable that the jury's verdict of \$173,990.53, together with all pre-judgment interest that you awarded, was paid to Mr. Spriggs in January of 2012. At that time, an additional \$57,666.38 was also paid which constituted a portion of your award of attorney's fees. The fact that the funds (actual money) had been deposited into the court by Mr. Slivka pursuant to the Mechanics Lien statute does not somehow taint the money or erase the fact that Spriggs was paid in full, for the jury's entire verdict of \$173,990.53 for all claims. (The award for breach of contract in that amount was not appealed.)

While your Order is based on your finding that Mr. Slivka at some point created difficulties in the underlying litigation, I also want to note that in advance of trial, Mr. Slivka submitted an offer of settlement, pursuant to the Mechanic's Lien statute, of \$100,000.00, in an effort to settle this case without the need for a trial (or any appeals). That sum was 30% more than the amount that Mr. Spriggs contended was undisputedly owed by Mr. Slivka. Mr. Spriggs did not reply or make a counter-offer. Mr. Spriggs refused to negotiate or compromise. As you know, the jury award was significantly less than the total claim. To the extent you have attributed all of Mr. Spriggs' fees to the conduct of Mr. Slivka, I want you to be aware that Mr. Slivka at least tried to resolve this case in advance of trial, but to no avail.

One of the grounds I have asserted in our Rule 59(e) motion is that the amount you have awarded in attorney's fees, totaling \$213,715.25, is exponentially greater than the amount that was undisputedly owed under §27-1-15. It is also approximately 150% of the amount Mr. Spriggs was actually awarded by the jury. While I am aware of *Taylor vs. Medenica* and *Baron Data Systems, Inc. vs. Phillip H. Loter*, and I recognize that in some cases the Supreme Court has recognized fees may exceed the amount of the recovery, there is precedent for awards of attorney's fees being reduced as being excessive in light of the actual recovery. See, *Carter-Moit Engineering, Co. v. McDaniels*, 253 S.E.2d 515, 273 S.C. 34 (1979).

As noted previously, I believe that you have abused your discretion in awarding fees based, at least in part, on a desire to punish Mr. Slivka for his conduct in the litigation, to deter Mr. Slivka from any future appeals, and to award Mr. Spriggs additional damages that were unasserted and unrecoverable in the underlying suit for consequences of the suit (that he filed and refused to negotiate in advance of trial). None of those considerations are listed among the six factors you might consider in awarding attorney's fees. While admittedly, I have not been able to find any South Carolina authority on point, I have found authority in another jurisdiction which addresses this issue and refer your attention to *DeWils Interiors, Inc. v. Dines*, 106 Idaho 288, 678 P.2d 80 (Ct. App. 1984)(Statute providing for award of attorney fees to prevailing parties in actions involving disputes in specified types of commercial transactions is facially neutral and exhibits no punitive purpose, and determination of reasonable fee under the statute should not be colored by characterizing the award as a penalty.)

Finally, with regard to the attorney's fees awarded for the appeal, the award seems unreasonable and grossly unfair under the circumstances. Mr. Slivka appealed the award of attorney's fees in part on the basis that, despite his request, you had not specified which fees were awarded under which applicable statute so that Slivka did not have an opportunity to argue, in post-trial motions, the appropriateness of the fees in light of the relevant statutory framework. He also contended that the fees were excessive. The Court of Appeals remanded the matter back to you with reference to both of those issues and instructions for you to clarify the attorney's fee award and at least suggested that the award was surprising in light of the results Mr. Spriggs actually obtained.

In issuing your most recent Order, you have reduced the costs and fees awarded to Mr. Spriggs at the trial court level by the sum of \$82,650.00 and allotted it all to the §27-1-15 claim in conformance with the Court of Appeals Order. It is unreasonable to award Mr. Spriggs fees he incurred with respect to Mr. Slivka's undeniably successful appeal. It certainly chills the right of a litigant to file a meritorious appeal. (As a side note, Mr. Spriggs vigorously opposed our post-trial motions (incurring fees all the while) which forced Slivka to go to the Court of Appeals, which, at least in part, granted the relief he requested.)

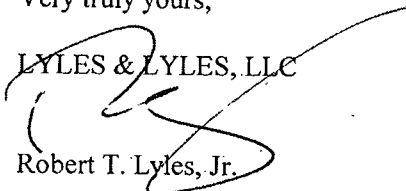
In addition, Mr. Spriggs incurred substantial fees and costs associated with the Supreme Court's acceptance of *certiorari*. The Supreme Court then simply changed its mind about *certiorari* and remanded the case back to the Court of Appeals with no disposition at all. Again,

it seems grossly unfair to penalize Mr. Slivka in the form of an award of attorney's fees because the Supreme Court changed its mind about *certiorari*.

One final point on this is that while I am aware that the law in South Carolina is that an award of costs on appeal is not binding on a trial court in deciding whether to award attorney's fees, it is significant in this case that Mr. Spriggs' request for attorney's fees and costs in the appellate courts was denied. However, I have enclosed both Mr. Spriggs' request for costs and fees, and Mr. Slivka's response. As you can see, one of the grounds for opposing Spriggs' request for costs and fees in the appellate courts was that he was not the prevailing party. The Order issued denying these costs, which I previously sent to you, does not state the basis upon which it was made but clearly it can be inferred that the Appellate Courts agreed with me, as discussed above, that Mr. Spriggs was not the prevailing party on appeal and, therefore, was not entitled to his fees.

As always, thank you for your careful consideration of these matters. In conformance with our email exchange of this morning, this will be the last you hear from me absent a request for more information.

Very truly yours,


LYLES & LYLES, LLC

Robert T. Lyles, Jr.

RTL/bt

Enclosures

cc: Gene R. Slivka

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

APR 3 2015

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

S.C. Supreme Court

Appellate Case No. 2013-000800

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

v.

GENE R. SLIVKA, ... Petitioner.

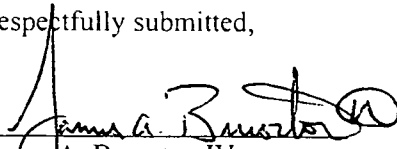
REVISED MOTION FOR TAXATION OF COSTS AND EXPENSES

James A. Bruorton IV
Timothy J.W. Muller
Rosen | Hagood
P.O. Box 893
Charleston, SC 29402
(843) 577-6726

Attorneys for Respondent

Pursuant to SCACR 242(j), the Respondent, The Spriggs Group, P.C., hereby moves this Court to tax or assess costs against Petitioner, Gene R. Slivka, in the total amount of \$3,034.42 as more particularly set forth on the Revised Itemized Statement of Costs filed along with this motion. This motion is based on the grounds that the Respondent is the prevailing party by virtue of this Court's opinion filed on March 18, 2015 dismissing the Petitioner's Certiorari as improvidently granted.

Respectfully submitted,



James A. Bruorton IV
Timothy J.W. Muller
Rosen | Hagood
151 Meeting St., Suite 400
Charleston, SC 29401
(843) 577-6726
(843) 724-8036 (f)
Attorneys for Respondents

March 31, 2015
Charleston, SC

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Appellate Case 2013-000800

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

v.

GENE R. SLIVKA, ... Petitioner.

REVISED ITEMIZED STATEMENT OF COSTS AND EXPENSES

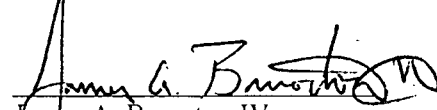
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P.O. Box 893
Charleston, SC 29402
(843) 577-6726

Attorneys for Respondent

| COSTS TAXABLE UNDER
RULE 222, SCACR | NO. OF
PAGES | RATE | REQUESTED | ALLOWED
(For Court
Use Only) |
|---|-----------------------------|------|------------|------------------------------------|
| Costs of Printing or Copying
Final Brief filed in S.C. Court
of Appeals | 54 +
covers &
binding | | \$175.71 | |
| Costs of Trial Transcript to
first court reporter | 847 | | \$670.25 | |
| Costs of Trial Transcript to
second court reporter | 7 | | \$11.15 | |
| Attorney's Fee Provided by
Rule 222(b), SCACR, for
proceedings in S.C. Court of
Appeals | | | \$1,000.00 | |
| Other – Motion filing fee
pursuant to SCACR 240(d) for
motion to tax costs filed in S.C.
Court of Appeals | | | \$25.00 | |
| Costs of Printing or Copying
Final Brief filed in S.C. Court
of Appeals | 594 +
Covers
& Bind | | \$127.31 | |
| Attorney's Fee Provided by
Rule 242(j), SCACR, for
proceedings in S.C. Supreme
Ct. | | | \$1,000.00 | |
| Other – Motion filing fee
pursuant to SCACR 242(j)(4)
for motion to tax costs filed in
S.C. Supreme Court. | | | \$25.00 | |
| Total | | | \$3,034.42 | |

I, James A. Bruorton, IV, do swear or affirm that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was (mailed to/served upon) opposing counsel.

Respectfully submitted,



James A. Bruorton IV

Timothy J.W. Muller

Rosen Hagood

151 Meeting St., Suite 400

Charleston, SC 29401

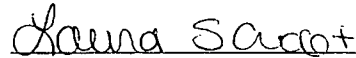
(843) 577-6726

(843) 724-8036 (f)

Attorneys for Respondents

SWORN to before me this

31st day of March, 2015.



Notary Public for South Carolina

My commission expires: 5/28/18

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Appellate Case No. 2013-000800

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

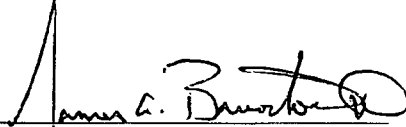
v.

GENE R. SLIVKA, ... Petitioner.

PROOF OF SERVICE

I certify that I have served the Revised Motion for Taxation of Costs and Expenses along with the Revised Itemized Statement of Costs and Expenses by depositing a copy of it in the United States Mail, postage prepaid, on March 31, 2015, to Petitioner's attorney of record, Robert T. Lyles, Jr., Esquire, Lyles & Lyles, LLC, 342 East Bay Street, Post Office Box 773, Charleston, South Carolina, 29402.

March 31, 2015


James A. Bruorton, IV
Timothy J.W. Muller
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PO Box 893
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cbruorton@rrhlawfirm.com
tmuller@rrhlawfirm.com
Attorneys for Respondent

ROSEN | HAGOOD

James A. Bruorton, IV
cbruorton@rrhlawfirm.com

RECEIVED

APR 3 2015

S.C. Supreme Court

March 31, 2015

The Supreme Court of South Carolina
Administrative Assistant
P.O. Box 11330
Columbia, SC 29211

Re: The Spriggs Group, P.C. v. Gene Slivka
Appellate Case 2013-000800

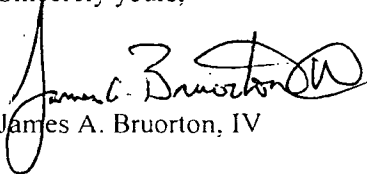
Dear Sir or Madam:

Enclosed, please find the original and six (6) copies of Respondent's Revised Motion for Taxation of Costs and Expenses, Revised Itemized Statement of Costs and Expenses and Proof of Service in the above referenced matter. By copy of this letter, I am serving the same upon counsel of record.

Also enclosed, please find our firm's check in the amount of \$25.00 and a pre-paid envelope. Please return one file stamped copy to me at your convenience.

If you have any questions, please feel free to give me a call.

Sincerely yours,



James A. Bruorton, IV

CAB/lsc
Enclosures

cc: Mr. Robert T. Lyles, Jr. (via U.S. Mail)

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

Appellate Case No. 2013-000800

RECEIVED

APR 14 2015

S.C. Supreme Court

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

v.

GENE R. SLIVKA, ...Petitioner.

RESPONSE TO REVISED MOTION FOR TAXATION OF COSTS AND EXPENSES

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

The Respondent, The Spriggs Group, P.C., is not entitled to costs under South Carolina Rule of Appellate Procedure 242(j). SCACR 242(j) **Costs When a Writ of Certiorari Has Been Granted** (emphasis in original), provides as follows:

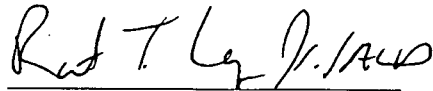
- (1) *To Whom Awarded.* Unless otherwise ordered by the Supreme Court or agreed to by the parties, costs shall be assessed against the appellant if the decision of the Supreme Court has the effect of affirming the judgment of the lower court or tribunal which was reviewed by the Court of Appeals. When the decision of the Supreme Court has the effect of reversing the judgment of the lower court or tribunal which was on appeal, costs shall be assessed against the respondent before the Court of Appeals. When the decision of the Supreme Court has the effect of affirming or reversing in part or vacating the judgment of the lower court or tribunal which was on appeal, costs shall be allowed only as ordered by the Supreme Court.

First, SCACR 242(j) does not apply in this instance, as certiorari was dismissed. The Supreme Court granted certiorari on July 14, 2014. Briefs were submitted and oral arguments made. Following said arguments, the Supreme Court issued Opinion 27508, filed on March 18, 2025. In said opinion the Supreme Court directed the Court of Appeals to depublish its opinion. Next, it dismissed as “improvidently granted” the writ of certiorari. SCACR makes no provision for awarding costs when certiorari is dismissed. The order did not award costs to either party. As certiorari was dismissed, SCACR 242(j) does not apply.

Second, Order 27508 had a negative impact on Respondent Spriggs, while having no impact on Petitioner Slivka. The Supreme Court had the option of affirming the Court of Appeals decision but expressly refused to do so. Instead, the Court ordered that the Court of Appeals depublish the opinion and ordered that said the opinion would no longer have any precedential effect. The ruling of the Supreme Court therefore had a negative impact on Spriggs, while Slivka gained the benefit of having the ruling against him unpublished. This ruling therefore had more of an effect of affirming in part and reversing in part the ruling of the lower court, in which case no party is allowed costs under SCACR 242(j)(1). Therefore, Spriggs is not entitled to costs.

Additionally, the costs expended in the Court of Appeals requested in Respondent's Revised Itemized Statement of Costs and Expenses are clearly not recoverable. Under SCACR 222, unless otherwise ordered by the appellate court or agreed by the parties when an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court. In this matter, the Court of Appeals affirmed in part and reversed and remanded the lower court's award of attorney's fees in its Opinion filed February 26, 2013. No costs were allowed by the Court of Appeals to any party. Therefore neither party is entitled to costs.

Respectfully submitted,

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

Robert T. Lyles, Jr.
Lyles & Lyles, LLC
342 East Bay Street (29401)
Post Office Box 773
Charleston, South Carolina 29402
(843) 577-7730
(843) 577-7172 (fax)
rtl@lylesfirm.com
Attorney for Petitioner

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

Appellate Case No. 2013-000800

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

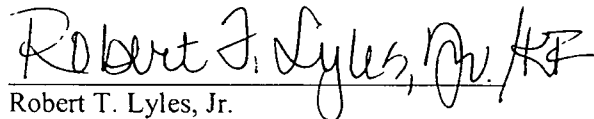
v.

GENE R. SLIVKA, ...Petitioner.

PROOF OF SERVICE

I certify that I have served Petitioner's Response to Revised Motion fir Taxation of Costs and Expenses on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on April 10, 2015, addressed to their attorneys of record, James A. Bruorton, IV, and Timothy J.W. Muller, Esquire, Rosen, Rosen & Hagood, LLC, 151 Meeting Street, Suite 400, Post Office Box 893, Charleston, S.C. 29402.

April 10, 2015



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

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P.O. Box 773 (29402)
Charleston, South Carolina 29401
Telephone: (843) 577-7730
Facsimile: (843) 577-7172

Robert T. Lyles, Jr.
Member

Direct: (843) 735-5560
E-mail: rtl@lylesfirm.com

April 10, 2015

Daniel E. Shearouse, Clerk of Court
The Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

Re: *The Spriggs Group, P.C. vs. Slivka*
Appellate Case Number: 2013-000800

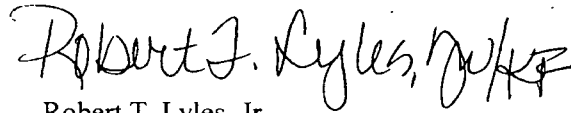
Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of Petitioner's Response to Revised Motion for Taxation of Costs and Expenses in the above referenced matter. By copy of this letter, I am serving the same upon counsel of record.

Please do not hesitate to contact us should you have any questions.

Very truly yours,

LYLES & LYLES, LLC



Robert T. Lyles, Jr.

RTL/kf
Enclosure

RECEIVED

APR 14 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

APPELLATE CASE NO: 2015-001457

RECEIVED
DEC 10 2015
SC Court of Appeals

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

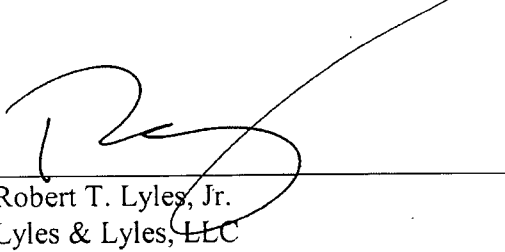
v.

GENE R. SLIVKA, ... Appellant.

CERTIFICATE OF COUNSEL

I certify that I have served the Record on Appeal on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on December 9, 2015, addressed to their attorneys of record, James Atkinson Bruorton, IV, Esquire, Rose, Rosen & Hagood, LLC, 151 Meeting Street, Suite 400, Charleston, SC 29402.

December 9, 2015


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