THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-CP-36-00090
Appellate Case No. 2014-002540

Terlizzi Home Improvement, LLC, ... Appellant,

v.

Michael L. Boheler, Jeannette A. Boheler,
and the Palmetto Bank as Assignee of Midlands
Mortgage Corp. ..... Defendants,

Of Whom
Michael L. Boheler and Jeannette A. Boheler are the..... Respondents,

v.

William Terlizzi..... Third-Party Defendant and Appellant.

FINAL BRIEF OF THE APPELLANTS

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II. DID THE JUDGE BELOW ERR IN AWARDING ATTORNEY'S FEES AGAINST WILLIAM TERLIZZI PERSONALLY WHEN HE WAS NOT A PARTY TO THE MECHANIC'S LIEN ACTION AND WHEN THE DEFENDANTS DID NOT REQUEST SUCH RELIEF IN THEIR PLEADINGS?

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STATEMENT OF THE CASE

This appeal arises from the Plaintiff's mechanic's lien filed in Newberry County and subsequent complaint to foreclose the same. That lien arose from a disputed new home construction project. Prior to the filing of the lien foreclosure complaint the Plaintiff successfully defeated the Defendants' first motion to dismiss the lien per South Carolina Code Section 29-5-100. About two years after the lien foreclosure action was filed the Defendants moved again for dismissal of the lien per Section 29-5-100 by way of a motion for partial summary judgment, which was granted by order dated July 1, 2014. That order also awarded the Defendants attorney's fees of $31,611.75 and held the owner of the Plaintiff, William Terlizzi, who was not a party to the mechanic's lien action, personally liable for those fees. The Plaintiff's motion for reconsideration was denied by a Form 4 order filed on October 20, 2014. The Plaintiff and Third-Party Defendant have appealed both the order of July 1, 2014 granting

partial summary judgment and awarding fees, and also the Form 4 order denying reconsideration.

FACTS

The Defendants wanted the Plaintiff (Terlizzi Home Improvement, LLC) to build them a new home. The owner of the Plaintiff LLC is William Terlizzi, who was made a Third-Party Defendant to certain non-mechanic's lien causes of action by the Defendants. As an accommodation to the Defendants, the Plaintiff originally prepared a fixed price contract for $225,000, which the Defendants needed to have in hand by April 30, 2010, in order to qualify for a then-available tax credit. (Boheler Deposition at pages 40-41) (R.pp. 409-410). That $225,000 fixed price construction contract was never intended to be binding because the final house plans had not yet been prepared when the contract was signed and the Defendants knew they would need certain changes and extras during construction to accommodate the restricted mobility of Jeannette Boheler. (Id. at pages 17-18 and 40-49) (R.pp. 400-401 and 409-417). The parties never reduced their actual construction agreement to writing. During the beginning phases of construction the Defendants allege they made certain payments totaling around $30,000.00 which were never received by the Plaintiff. (Id. at pages 62-65 (R.pp. 420-423); Terlizzi deposition at page 76 (R.p. 257)). As often happens in these circumstances, the Defendants' desires and wishes for their new house outpaced their budget for the same and disputes began to arise between the parties about the construction. Initially, this was resolved by the Defendants' express written agreement to pay for the costly changes and extras they wanted. (July 22, 2011, payment agreement by Michael Boheler) (R.p. 442). This reasonable resolution of the matter did not last for long, and the Defendants (now being advised by an alleged construction "consultant" named Keith Meyers) subsequently attempted to force the Plaintiff to accept a meager "short"

draw as the completion of construction neared its end. (Terlizzi deposition at pages 100-104) (R.pp. 259-263). The Plaintiff refused this effort at blackmail and, after the Plaintiff refused to accept the "short" draw, the Defendants then wrongfully terminated the Plaintiff. (Id.). The Defendants' refusal to allow the Plaintiff to complete construction led to the filing of the mechanic's lien in September of 2011. (Amended affidavit in support of mechanic's lien) (R.pp. 443-444). In the absence of any binding written agreement the lien amount of $106,001.13 was calculated by taking the initial $225,000 figure to which was added the costs for the numerous changes and extras done at the request of the Bohelers, and giving the Defendants a credit for the $190,875.00 in payments actually received by the Plaintiff. (Id., which shows in table form how the line was calculated). After almost two years of litigation the Plaintiff reduced the amount of the lien to $48,864.23. (Stipulation filed September 23, 2013) (R.p. 86). The lien amount was reduced in hopes that the lower amount would foster settlement discussions prior to trial and also in light of certain anticipated proof issues arising from the expected untruthful testimony of John Harding, who had been hired by the Defendants to complete the house after the Plaintiff was wrongfully terminated.

ARGUMENT

I. THE TRIAL JUDGE ERRED IN DISMISSING PLAINTIFF'S MECHANIC'S LIEN.

The trial judge, on a motion for partial summary judgment, dismissed the Plaintiff's mechanic's lien, finding that the Plaintiff willfully and knowingly claimed more than was due and that the lien should be dismissed pursuant to South Carolina Code Section 29-5-100. (Order dated July 1, 2014) (R.pp. 17-24). The order of the trial judge should be reversed both because it was based on legal error regarding the amount of the lien, and also because there was a genuine

dispute of material fact concerning the original amount of the lien that otherwise precluded granting summary judgment per Rule 56, SCRCP.

A. The lien was reduced before the motion was filed.

The Plaintiff reduced the lien from $106,001.63 to $48,864.23. (Stipulation filed on 9/24/13) (R.p. 86). Over three months after that lien reduction was filed, the Defendants moved to have the lien dismissed per Section 29-5-100 based solely upon the original lien amount. (Defendant's motion for partial summary judgment dated 1/9/14) (R.pp. 87-88). Section 29-5-180 provides for the amendment of mechanic's lien pleadings and Rule 15(c), SCRCP, provides that amendments relate back to the original date of filing. The Defendants did not object to the lien reduction and, in fact, accepted and endorsed the reduced lien by requesting and receiving back from the clerk of court the excess portion of their previously posted cash bond after the lien was reduced. (3/12/14 hearing transcript at page 28, lines 8-11) (R.p. 120). The trial judge himself noted that the reduced lien amount was not objectionable under Section 29-5-100. (Order at page 3) (R.p. 19). Accordingly, three months before the Defendant's motion was filed the Plaintiff had already reduced the lien as requested by the Defendants. Simply put, the trial judge made a manifest and reversible legal error in dismissing the lien based upon the original lien amount because the original lien amount no longer existed and was a nullity at the point in time the Defendants' motion was filed.

Compounding this error, the trial judge refused to directly address and specifically rule on the legal effect of the lien reduction. After the initial hearing the Plaintiff provided additional argument on this point in a letter sent to the trial judge and counsel, to which the trial judge baldly replied that "the court finds Plaintiff's Supplement Argument, received via e-mail March 13, 2014, unpersuasive," without addressing the arguments made or even attempting to actually

refute any of the points raised by the Plaintiff. (3/13/14 letter to court (R.pp. 501-502); Order at page 4 (R.p. 20)). The Plaintiff's reconsideration motion requested a direct ruling on this issue, in response to which the trial judge merely issued a Form 4 order denying reconsideration by stating only, "After reviewing all relevant materials on file and considering testimony of the parties at the above referenced hearing, Plaintiff's motion to reconsider is denied." (Motion to reconsider at No. 3 (R.p. 90); Form 4 order filed 10/20/14 (R.p. 25)).

This is an important point for at least two reasons. First, and most obvious, the reduced lien was not objectionable under Section 29-5-100 and does not support a dismissal per that statute since the lien was reduced well before the Defendants requested the court to dismiss the lien. A direct ruling on the amount of the lien in existence at the time the motion was filed is therefore necessary. (Motion to reconsider at No. 3 and 6) (R.pp. 90-91). Secondly, the trial judge conflated the Plaintiff's voluntary lien reduction with an admission that the original lien amount was arrived at in bad faith and violated Section 29-5-100. See order at page 4 (R.p. 20), "This reduced amount is a drastic deviation from the original lien amount and evidences a wilful (sic) disregard for *any* care in calculating the initial lien amount." (emphasis in the original). In other words, the trial judge found the lien reduction itself, without any regard for the circumstances necessitating the reduction, as conclusive proof of bad faith. As discussed above, the lien reduction was done to both foster resolution of this matter after two years of litigation and also in light of concerns about successfully proving the higher figure at trial in light of John Harding's expected testimony.

It is also significant that the original lien amount of $106,001.63 was previously held to be prima facie valid by the court in connection with the Defendant's first motion to dismiss under Section 29-5-100 prior to the Plaintiff's filing the lien foreclosure action. (Form 4 order

filed 11/22/11 denying Defendant's first motion to dismiss per Section 29-5-100) (R.p. 1). Because of that earlier favorable ruling on the higher lien amount there was little reason for the Plaintiff to reduce its lien any earlier than when the Plaintiff might consider necessary for reasons of settlement or evidence presentation as the potential trial date approached. In any event, the liberal amendment of pleadings and claims is encouraged under our court rules. The analysis of the trial judge treats amendment as a trap to ensnare a litigant, rather than (as it should be) a useful tool to lend precision to the issues to be decided during the course of the litigation. The order of the trial judge dismissing the lien should be reversed because the lien was reduced prior to the filing of the Defendant's motion for partial summary judgment.

B. The trial judge did not use the proper evidentiary standard for this summary judgment motion.

Similarly, the trial judge found that the lien should be dismissed because there was allegedly direct evidence of what he considered bad faith concerning the original lien. For example, the trial judge noted "... or had direct evidence of an effort to put the Bohelers 'over a barrel' not existed, this Court's order might be different." (Order at page 4) (R.p. 20). And also, "The Court finds direct evidence, through Mr. Terlizzi's partner, John Harding, that Mr. Terlizzi intended to make the lien large enough to 'put the Boheler's over a barrel." (Order at page 5) (R.p. 21). Leaving aside the issue of the validity of the trial judge's statements that there actually was meaningful direct evidence of bad faith, which the Plaintiff does not concede, in the context of a summary judgment motion it is patent error to find that the existence of some evidence satisfies the requirements of Rule 56, SCRCP, that there is no dispute in the evidence.

The summary judgment standard clearly applies both as to the nature of the motion itself and the case law regarding dismissal claims under Section 29-5-100. Cobb v. Maccaro, 310 S.C. 303, 423 S.E.2d 156 (Ct. App. 1992) ("In sum, statutory authority to dissolve a lien is in the

nature of a summary judgment because it is only available when there is no genuine issue of material fact."); see also Sea Pines Company v. Kiawah Island Company, Inc., 268 S.C. 153, 232 S.E.2d 501 (1977) (reversing trial court's decision to vacate lien and noting, "The facts are disputed and reasonable men may disagree as to whether Sea Pines has been paid for all of the labor and material furnished and used as contemplated by the mechanic's lien statute. A prima facie case for the filing of the mechanic's lien was made to the court and we think the court erred in vacating and discharging the lien."). The trial judge acknowledged that this alleged evidence was contested by the Plaintiff (Order at page 3, fn. 1) (R.p. 19), but goes on to hold that even if there was no direct proof of bad faith that the Plaintiff was otherwise clearly grossly negligent. This begs the question as to whether gross negligence, assuming there was undisputed evidence that there was gross negligence, satisfies Section 29-5-100 which explicitly uses a standard of willful, intentional conduct. The Plaintiff contends that a Section 29-5-100 dismissal is not proper upon a finding of gross negligence, as well as contending that a finding of some direct evidence does not support a decision to grant summary judgment. Rule 56 requires that there not just be some evidence, but that there be no genuine dispute at all. Further, and discussed directly below, there was evidence in the record that the original lien amount was proper, all of which precludes the granting of summary judgment.

C. Evidentiary disputes precluded granting summary judgment.

The dismissal of the lien was explicitly based upon the trial court's determination that the higher original lien amount was still somehow in force at the time the Defendants' motion was filed. As discussed above, the operative lien amount at the time of the motion's filing was much lower, which should have precluded dismissal. That being said, the underlying factual scenario involving this new home construction was so uncertain and muddy that there is evidence, when

construed in the Plaintiff's favor, that higher lien amount was proper and this should have been enough to successfully withstand a summary judgment challenge under Section 29-5-100.

There was an earlier summary judgment motion brought by the Plaintiff and Third-party Defendant to dismiss the Defendants' counterclaims and third-party claims, which was denied by the court because of the factual disputes that existed. (Order filed 7/2/13) (R.pp. 3-13). Of course, that motion dealt with other causes of action, but it bears consideration in the context of this appeal that all the causes of action in issue in the earlier motion arise out of the same set of factual circumstances surrounding the home construction and that another court found those circumstances to be so disputed and uncertain as to preclude summary judgment.

The main disputed issues relevant to the case at bar concern the terms of the agreement between the parties and the role and authority of John Harding as concerns certain payments alleged made by the Defendants but never received by the Plaintiff. The terms of the agreement (or lack of agreement about the terms) is relevant because it goes directly to the whether and how much the Defendants owed the Plaintiff for the overall home construction project, including the changes/extras during the home construction. The Defendants conceded that the $225,000 written contract between the parties was not binding because the final house plans had not yet been drawn at the time the contract was signed and the house they wanted built was different from that described in the contract. (Boheler deposition at pages 40-49) (R.pp. 409-417). Further, it is undisputed that the contract was drafted solely as an accommodation to the Defendants so that they could claim a tax credit which required them to have a contract in hand prior to April 30th. (Boheler deposition at pages 40-41 (R.pp. 409-410), and 43-48 (R.pp. 411-416)). Additionally, there were numerous extra/changes during the course of construction for

which the Defendants agreed to pay. (Terlizzi deposition at pages 111-131 (R.pp. 264-284) and 159 (R.p. 309)).

Unfortunately, but perhaps by design, the Plaintiff was fired from the project by the Defendants prior to completion when he refused an unwarranted "short" draw from the Defendants and the parties' agreement was never memorialized into written form. (Terlizzi deposition at pages 100-104) (R.pp. 259-263). The Defendants did, however, agree to pay the amounts requested by the Plaintiff prior to wrongfully firing him. (7/22/11 agreement signed by Michael Boheler) (R.p. 442).

The original lien amount used by the Plaintiff (Amended affidavit in support of mechanic's lien filed 9/16/11) (R.pp. 443-444) calculated the amount owed using figures that included profit and overhead on the changes/extras and gave credit to the Defendants for payments actually received by the Plaintiff from the Defendants. Profit and overhead are permissible items to include in a mechanic's lien if they are part of the agreement between the parties. Zepa Construction, Inc., v. Radazzo, 356 S.C. 39, 586 S.E.2d 599, 604 (Ct. App. 2003) ("... where overhead costs and profits are provided for in the contract, they become subject to collection on a mechanic's lien.") and Sentry Engineering and Construction, Inc. v. Mariner's Cay Development Corp., 287 S.C. 346, 338 S.E.2d 631, 635 (1985) ("We hold that overhead and profit, when stated as part of the contract price, are proper components of a mechanic's lien."). The Bohelers never objected to the inclusion of profit and overhead in connection with the extra/changes and agreed to pay for the same when presented with the additional amounts claimed by the Plaintiff. (7/22/11 agreement signed by Michael Boheler) (R.p. 442).

Further complicating the amount of the claimed lien was the assertion by the Bohelers that they had paid around $30,000 to John Harding for work done on the house. Even assuming

such payments were actually made by the Defendants, they were never received by the Plaintiff and John Harding had no authority to receive those payments on the Plaintiff's behalf. (Supplemental Affidavit of William Terlizzi) (R.pp. 457-459). All of these factors provide a "rational basis" for the calculation of the lien amount claimed by the Plaintiff, despite the trial court's holding that it did not, particularly in light of Mr. Terlizzi's detailed description of how the lien amount was calculated in light of the changes/extras. (Terlizzi deposition at pages 111-131 (R.pp. 264-284); attachments to the Terlizzi affidavit in support of filing of mechanic's lien (R.pp. 449-453)).

The lien waivers executed in connection with this construction were mentioned by the trial judge in his order, but frankly do not seem to form the actual basis of his decision to dismiss the lien. The enforceability of lien waivers depends upon the factual circumstances and the intention of the parties, none of which was even discussed or analyzed by the trial judge. The evidence is that the many of the waivers were not executed at the time of payment, but were signed at one time en masse. (Terlizzi deposition at pages 134-135, 142 and 150) (R.pp. 287-288, 295, and 303). Also, those waivers were signed under duress because the Plaintiff would not otherwise receive payment for work already done. (Id.). See Willms Trucking Company v. JW Construction Co., Inc., 314 S.C. 171, 442 S.E.2d 197 (Ct. App. 1994) (affirming decision that lien waiver signed under duress because of need for payment). Thus, there is at least an evidentiary dispute as to the enforceability of the lien waivers insofar as they impacted the Plaintiff's right to the amount of the claimed lien. In sum, there were facts to support the amount of the original lien claimed by the Plaintiff and the trial judge erred in holding otherwise, especially in the context of a motion for summary judgment. His order should be reversed.

II. THE TRIAL JUDGE ERRED IN AWARDING ATTORNEY'S FEES AGAINST WILLIAM TERLIZZI PERSONALLY.

The Plaintiff Terlizzi Home Improvement, LLC, is a limited liability company organized under South Carolina law. The order of the trial judge found the sole member and owner of the Plaintiff, William Terlizzi, to be personally liable for statutory attorney's fees in the amount of $31,611.75 awarded to the Defendants upon the dismissal of the lien. (Order at pages 5-8) (R.pp. 21-24). Mr. Terlizzi was not a party to the mechanic's lien action. The Defendants did not seek his personal liability for attorney's fees in the mechanic's lien action in their Answer/Counterclaim, nor did they seek it in their summary judgment motion. The personal liability of Mr. Terlizzi first came up in the proposed order sent to the trial judge after the summary judgment hearing. There is no legal basis for an award of statutory attorney's fees against Mr. Terlizzi personally and that portion of the order should be reversed in the event the dismissal of the lien is not reversed.

The mechanic's lien law is a creature of statute and it must be strictly construed. Ferguson Fire and Fabrications, Inc. v. Preferred Fire Protection, L.L.C., (Opinion No. 27410, South Carolina Supreme Court, filed 7/9/14). There is no provision in the mechanic's lien law that allows for finding a non-party liable for attorney's fees, nor does Section 29-5-100 contain any provision for that even when there is a finding of a knowing and intentional misstatement of the lien amount. The order of the trial judge does not cite any statute or case law that permits the owner of a limited liability company to be held personally responsible for an award of attorney's fees under the mechanic's lien statute. There simply is no legal basis at all for that part of the order.

Additionally, the Defendants had no right to recover relief that was not requested in pleadings. Dixie Bell, Inc. v. Redd, 376 S.C. 361, 656 S.E.2d 765 (Ct. App. 2007). As noted

above, a finding of personal liability was not even requested in the motion for summary judgment seeking dismissal of the lien. The issue of personal liability could only plausibly come up, if at all, in the context of it first being shown that the LLC itself could not pay the award, and based upon some clear post-judgment entitlement of the Defendants to pierce the liability shield of the Plaintiff limited liability company. Clearly, this matter is not at that point yet and the court trial judge's order in that regard is, at best, premature.

Further, a novel issue of law should not be decided by way of summary judgment. Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003). The issue of personal liability for acts done in connection with a limited liability company has been intentionally left unanswered by our Supreme Court. 16 Jade Street, LLC, v. R. Design Construction Co., LLC, ___ S.C. ___, 747 S.E.2d 770 (2013) (vacating prior decision and noting, "Although this case poses the novel question of whether the Uniform Limited Liability Company Act (LLC Act) shields an LLC member from personal liability from this own torts, we save that discussion for another day ..."). It was manifest reversible error for the trial judge to hold Mr. Terlizzzi personally liable for the statutory attorney's fees when there was no statutory or case law support for doing the same in the context of a mechanic's lien action, when the Defendants never requested that the Plaintiff's owner be found personally liable, and when it involved a novel question of law at the summary judgment stage.

This ruling by Court, when viewed in light of the statements made by the trial judge in the order itself, reflects a desire to punish the Plaintiff's owner for what the trial judge saw as his egregious conduct. Presumably, the trial court was concerned that the Plaintiff's owner would somehow "get away" with this wrongdoing if he was not held personal liable for the statutory attorney's fees. The Plaintiff and its owner strongly reject the notion that there was any

wrongdoing, intentional or otherwise, but if the trial court's concern certainly seems misplaced in light of the numerous tort causes of action brought against Mr. Terlizzi individually the Counterclaim/Third-Party Complaint, most of which seeks not just actual damages but punitive damages against him and which have yet to be tried. If the Plaintiff's owner is to be punished, as apparently desired by the trial court, then it would be most fair that it be done by way of a full trial on the merits on the causes of action that specifically name him as a party.

III. THE CIRCUIT COURT ERRED IN THE AMOUNT OF ATTORNEY'S FEES AWARDED.

The attorney's fees awarded in connection with the mechanic's lien portion of this matter of $31,611.75 are, in a word, excessive. This is true as a general proposition when one considers that the mechanic's lien action involved only two depositions and was resolved at the summary judgment motion stage. This is also true as a specific proposition as to many of the individual items included in the amended attorney's fees affidavit dated 5/15/14 (R.pp. 460-472). The Plaintiff (and Mr. Terlizzi) objects to the following:

1. The Defendants were awarded fees of $2,855 for work performed from 9/26/11 to 11/10/11 in connection with the original Section 29-5-100 motion to dismiss the mechanic's prior to suit being filed. The Plaintiff won that motion and the lien was not dismissed. (Form 4 denying motion to dismiss filed 11/22/11) (R.p. 1). The Plaintiff and Third-Party Defendant should not have to pay the Defendants' attorney's fees/costs **for a motion that the Plaintiff won.** (emphasis added).
2. The Defendants' Answer/Counterclaim/Third-Party Complaint asserts numerous non-mechanic's lien causes of action against the Plaintiff, and Mr. Terlizzi as a third-party Defendant. The Plaintiff and Mr. Terlizzi as a Third party Defendant filed a summary judgment/dismissal motion as to those non-mechanic's lien causes of action on 1/29/13 and, after a hearing in Newberry before the Honorable Knox McMahon, that motion was denied by order filed 7/2/13. The Defendants sought $4,287.50 in fees related to the Plaintiff's and Third-Party Defendant's motion for summary judgment for work done

between 3/27/13 and 5/31/13. Only fees related to work done directly on the mechanic's lien issue can properly be awarded. EFCO Corporation v. Renaissance On Charleston Harbor, LLC, 370 S.C. 612, 635 S.E.2d 922 (Ct. App. 2006). No portion of the fees included for the above work should have been allowed by the trial court, but the way the order is drafted it's impossible to tell how much, if any, of the above mentioned time entries were deducted or discounted in light of the fact that the work done was not related to the defense of the mechanic's lien. The Plaintiff and Mr. Terlizzi assert that none of the $4,287.50 in fees for this time period is properly allowable.

3. On 3/12/14 a person by the initials of "CDH" billed $312.50 for a "conference with attorney Charles A. Krawczyk." There's no reason to include this in the awardable fees both because there is no explanation as what was done and conferences, as a general matter, should not be considered awardable fee activities.
4. Numerous unnecessary items were included in the billing statement including a total of $537.50 from 2/23/12 to 3/5/14 for "updating file" or "updating pleadings," a total of $1,017.50 on 8/9/12 and 8/12/12 for reviewing a spreadsheet, and 8.1 hours ($2,227.50) spent on drafting the Answer/Counterclaim, most of which related to counterclaims and third party claims not related to the mechanic's lien. None of these fees for this time should have been awarded other than perhaps that limited portion of the 8.1 hours involved in the responsive pleading that directly related to the defense of the mechanic's lien.
5. There are also total charges of $1,076.09 for computer research on 1/31/12, 3/30/12, 5/31/13, 9/30/13 and 2/28/14. This was not a complex case and no non-South Carolina research was either needed or presented to the Court. The SC Bar provides a mechanism (Fast Case) for free legal research. These charges should not have been awarded as part of the attorney's fees/costs.
6. The hourly rate of $275.00 for attorney Krawczyk was never established as being the equivalent of the "fee customarily charged in the locality for similar services." Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993). There was no testimony at all on that relevant issue. The Plaintiff and Mr. Terlizzi contend that $150 per hour would be appropriate for Mr. Krawcyzk's time, at least insofar as an award of statutory attorney's fees is concerned.

7. The hourly rate of $125 allowed for time by both law clerks and paralegals was not established as being the prevailing rate in the locality and, standing alone, those hourly rates are excessive and unreasonable for work done by non-lawyers. The mechanic's lien allows for an award of "attorney's fees" for a reason. The term "litigation related costs" was not used. This presupposes that these type non-lawyer time entries are not awardable as attorney fees. The fees assessed for both law clerks and paralegal services should be struck outright, or at a minimum, the hourly rate significantly reduced.

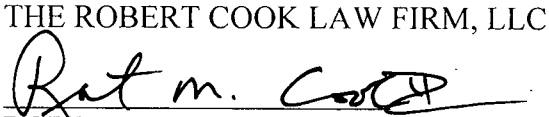
For the above reasons, the Plaintiff and Third-Party Defendant request that this Court substantially reduce the amount of statutory fees awarded and award a lower, more reasonable figure limited to work actually done in connection with the defense of the mechanic's lien action. EFCO Corp. and Blumberg, both supra.

CONCLUSION

For the reason stated above, or as may be made by way of reply brief or during oral argument, the Plaintiff and Third-Party Defendant request that this Court reverse the dismissal of the mechanic's lien. Failing that, these parties ask the Court to reverse that part of the order awarding attorney's fees against Mr. Terlizzi, and also seek amendment of the award of attorney's fees to a more reasonable, lower amount.

Respectfully submitted,

THE ROBERT COOK LAW FIRM, LLC



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October 21, 2015

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellants certifies that this Final Brief of the Appellants complies with Rule 211(b), SCACR.

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October 21, 2015

Terlizzi Home Improvement, LLC, Appellant,

v.

Michael L. Boheler, Jeannette A. Boheler and the Palmetto Bank as Assignee of Midlands Mortgage Corp., Defendants,

Of Whom Michael L. Boheler and Jeannette A. Boheler are the Respondents,

v.

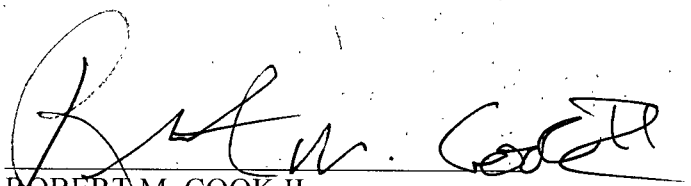
William Terlizzi, Third-Party Defendant and an Appellant.

Appellate Case No. 2014-002540

PROOF OF SERVICE

I certify that I have served the Appellant's Final Brief and Final Reply Brief on the attorney for Michael L. Boheler and Jeannette A. Boheler by depositing a copy of each in the United States Mail, postage prepaid, on October 28, 2015, addressed to Charles A. Krawczyk, Esquire, Finkel Law Firm, LLC, P.O. Box 1799, Columbia, SC 29202.

October 28, 2015



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