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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Petitioner
~~Appellant.~~

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Appellant.

RECORD ON APPEAL

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MAR 13 2014

SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS
MEVERS KITCHENS AND BATHS LLC

JUDGMENT IN A CIVIL CASE
CASE NO. 2007-CP-10-750
v MARY ANN WAGNER etc.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

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

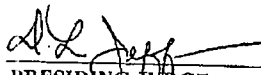
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

This case is stayed pending bankruptcy per Attorney McKnight.

Dated at Charleston, South Carolina, this 21st day of Aug., 2007.


PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20, and a copy mailed first class this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

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

FORM 4

JUDGMENT IN A CIVIL CASE

Case No.: 2007-CP-10-750

Mevers Kitchens and Baths

versus

Mary Ann Wagner, etc et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

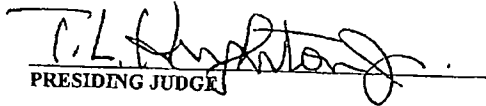
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☐ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED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

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING THE 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:

Pursuant to the attached regarding Stipp Contracting LLC, the Bankruptcy Stay is lifted and this case is Ordered restored back to the non-jury docket.

Dated at Charleston, South Carolina, this 24th day of March 2011.


PRESIDING JUDGE

This judgment was entered on the _____ Day of _____, 20____, and a copy mailed first class this _____ Day of _____, 20____, to attorneys of record or to parties (when appearing pro-se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCCA SCRP Form 4 Revised 6/2008

Clerk of Court

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

FORM 4

JUDGMENT IN A CIVIL CASE

Case No.: 2007-CP-10-00750

Mevers Kitchens and Baths, LLC, versus Mary Ann Wagner, et al

PLAINTIFF

DEFENDANT(S)

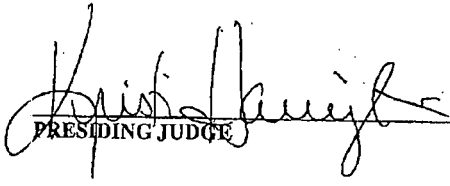
CHECK ONE:

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

By consent of the parties, case is hereby referred to the Master.

Dated at Charleston, South Carolina, this 22 day of June, 2011.


PRESIDING JUDGE

SCCA SCRP Form 4 Revised 6/2008

Clerk of Court
Julie J. Armstrong

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-10-0750

Mevers Kitchens and Baths, LLC

Maryann Wagner and Stipp Contracting, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Master in Equity

Attorney for: ☐ Plaintiff ☐ Defendant

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), 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:

Order Granting Defendant Wagner's Motion to Dismiss for Lack of Prosecution and Ruling Defendant Wagner has prevailed on the merits.

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Maryann Wagner	Mevers Kitchens and Baths, LLC	\$12,030.89
		\$
		\$

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.

Circuit Court Judge

3062
Judge Code

4/10/2012
Date

SCRCP Form 4C (10/2011)

Page 1 of 2

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

Findings of Fact

1. This is a mechanics lien case which was filed February 21, 2007.
2. The Plaintiff was a subcontractor hired by Defendant Stipp Contracting, Inc. to provide kitchen cabinets to the homeowner, Defendant Maryann Wagner.
3. As agreed, the general contractor Stipp Contracting, Inc., invoiced Defendant Maryann Wagner for the cost of the kitchen cabinets and he was paid by Defendant Wagner the sum of \$18,760 for the kitchen cabinets, which amount represented the full invoiced amount.
4. Stipp Contracting Inc. thereafter signed two waivers of lien for Defendant Wagner representing to Defendant Wagner that he had paid Plaintiff for the kitchen cabinets.
5. Mr. Mever, the owner of Plaintiff Kitchen Cabinet company, was personally present when the kitchen cabinets were installed in Defendant Wagner's home on August 21, 2006 yet he never mentioned to Defendant Wagner while he and she were discussing the work being performed that he had not yet been paid by the general contractor for the kitchen cabinets, or that any money was owed to him.
6. At the time, Defendant Wagner had already paid the general contractor \$10,000, which was more than half of the invoiced amount for the kitchen cabinets.
7. On November 20, 2006, ninety one (91) days after the kitchen cabinets were installed, Plaintiff notified Defendant Wagner through a filed statement for the first time that he had not been paid for the kitchen cabinets.
8. Defendant Wagner contacted Plaintiff to tell him she had paid the general contractor in full for the cabinets and Plaintiff responded that he knew she had paid the general

contractor but he believed he would never get his money from the general contractor so he was going after Defendant Wagner for the money.

9. Defendant Wagner refused to pay Plaintiff as she had already fully paid the cost of the cabinets to her general contractor.

10. Thereafter, this suit was filed by Plaintiff against Defendant Wagner and Stipp Contracting Inc. on February 21, 2007.

11. Stipp Contracting Inc. declared bankruptcy while the suit was pending.

12. Plaintiff alleges in the Complaint that when Defendant Wagner acknowledged the quote for cabinetry work, she entered into a separate contract to pay Plaintiff for the kitchen cabinets, whether Stipp paid for the cabinets or not.

13. Plaintiff testified an employee of the general contractor's named Travis Arnett signed the cabinet contract and she merely signed below his signature to acknowledge the specifications in the quote were correct.

14. Defendant Wagner's Requests to Admit and Affidavits from the State establish Plaintiff was not a licensed S.C. Contractor during 2006 so he could not have entered into a contract capable of being enforced through a mechanics lien with Defendant Wagner in 2006.

15. Defendant Wagner's Requests to Admit as well as Affidavits prepared by State employees indicate Plaintiff was also not licensed by the S.C. Residential Builders Commission in accordance with S.C. Code § 40-59-20 during 2006.

16. Even if Plaintiff were to allege he had a separate contract for services with Defendant Wagner, such allegation would fail as a matter of law.

17. Plaintiff has been unable to refinance her home due to this pending litigation for the last five (5) years while the interest rates have fallen dramatically.

18. Plaintiff has paid the amount of \$7,030.89 for attorney fees to Mark McKnight, Esquire and has had to pay an additional \$5,000 to retain her current counsel, Nancy Bloodgood.

19. Plaintiff failed to answer discovery in this case despite a Motion to Compel being filed in April of 2010.

20. Plaintiff also failed to respond to Defendant Wagner's Motion to Amend her Answer filed in July of 2011 and this Court recently issued an Order granting Defendant Wagner's Motion to Amend her Answer after Plaintiff's counsel failed to attend a status conference in this Court on January 30, 2012.

21. Plaintiff's counsel has also failed to attend roster meetings.

22. Plaintiff's counsel has failed to return phone calls and mail sent to his business address has been repeatedly returned as undeliverable.

23. Plaintiff has not provided the Supreme Court with a forwarding address.

Conclusions of Law

1. Pursuant to SCRPC Rule 41 (b), Plaintiff has failed to prosecute this claim.

2. Defendant Wagner fully paid her general contractor for the kitchen cabinets.

3. Plaintiff did not notify Defendant Wagner that he had never been paid by the general contractor until ninety one (91) days after he completed the installation of Defendant Wagner's cabinets. S.C. Code § 29-5-40 requires notice to a homeowner by a subcontractor within ninety days of the work being done in order to perfect a mechanics lien. In this case, the lien was not perfected so no subsequent suit was valid. Failure to perfect the lien means the lien was dissolved pursuant to S.C. Code §29-5-90 and 29-9-120 at the time this suit was filed.

4. Further, even if Plaintiff had timely perfected his mechanics lien, Plaintiff was not licensed as a contractor per S.C. Code § 40-11-5 *et seq.* in 2006. As Plaintiff alleges work was

performed worth more than \$5,000, per S.C. Code § 40-11-30 and §40-59-30, Plaintiff is not entitled to file a mechanics lien.

5. Per S.C. Code § 40-11-370, an entity that does not have a valid S.C. license may not bring an action in law or equity to enforce any contract.

6. As Plaintiff failed to perfect the mechanics lien and because it has no standing to enforce contracts allegedly made in 2006 as it was not a licensed contractor at the time, the Complaint fails.

7. Pursuant to S.C. Code §29-5-20(e), Defendant Wagner is the prevailing party and is entitled to attorney fees from Plaintiff in the amount of \$12,030.89.

Based on the foregoing Findings of Fact and Conclusions of Law,
IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. Plaintiff's Complaint is dismissed for lack of prosecution.

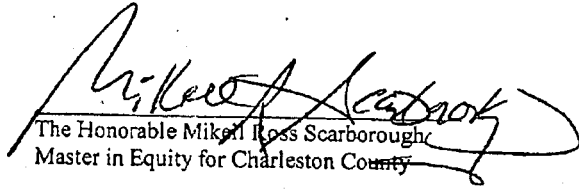
2. Further, even had the Complaint been prosecuted diligently, it would have failed as Plaintiff's Mechanics Lien was not timely perfected.

3. Finally, as Plaintiff was not licensed as a contractor in South Carolina in 2006, it cannot bring a breach of contract action against Defendant Wagner and that claim is without merit.

4. This Court holds Defendant Wagner is the prevailing party in this matter and entitled to attorney fees per S.C. Code §29-5-20(e). This Court orders Plaintiff to pay Defendant Wagner \$12,030.89 as attorney fees.

5. Lien is hereby dismissed and null and void.

AND IT IS SO ORDERED!


The Honorable Mikel Ross Scarborough
Master in Equity for Charleston County

Charleston, South Carolina

Date: 4/10/12

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
Mevers Kitchens and Baths, LLC,

Plaintiff,

Vs.

Maryann Wagner and Stipp Contracting,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2007-CP-10-0750

ORDER PARTIALLY GRANTING
DEFENDANT WAGNER'S MOTION FOR
SUMMARY JUDGMENT AND
DISMISSING PLAINTIFF'S QUANTUM
MERUIT CLAIM

FILED
2013 MAR 14 AM 7:36
CLERK OF COURT

Defendant Maryann Wagner, by and through her counsel Nancy Bloodgood, filed a Motion for Summary Judgment and a hearing was held on February 28, 2013. Present at the hearing were Plaintiff, Plaintiff's counsel W. Tracy Brown and Defendant Wagner's counsel Nancy Bloodgood.

Based on briefs filed by the parties before the hearing and a review of the pleadings and exhibits, I make the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. This is a mechanics lien case which was filed February 21, 2007.
2. The general contractor Stipp Contracting, Inc., invoiced Defendant Maryann Wagner for the cost of the kitchen cabinets and he was paid by Defendant Wagner the sum of \$18,760 for the kitchen cabinets, which amount represented the full invoiced amount.
3. Defendant Stipp Contracting Inc. signed two waivers of lien for Defendant Wagner representing to Defendant Wagner that she had paid him in full for the kitchen cabinets.



4. When Plaintiff, the subcontractor, demanded additional payment for the cabinets, Defendant Wagner contacted Plaintiff to tell him she had paid the general contractor in full for the cabinets.

5. Thereafter, this suit was filed by Plaintiff against Defendant Wagner and Stipp Contracting Inc. on February 21, 2007.

6. Stipp Contracting Inc. declared bankruptcy while the suit was pending.

7. Plaintiff alleges three (3) causes of action in the Complaint, breach of contract, mechanics lien and quantum meruit.

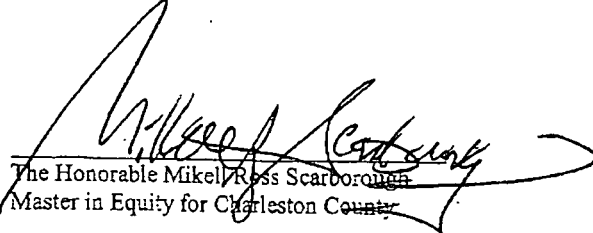
Conclusions of Law

To prevail on a *quantum meruit* claim, a plaintiff must establish (1) he conferred a benefit upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value. Swanson v. Stratos, 350 S.C. 116, 121, 564 S.E.2d 117, 119 (Ct. App. 2002); see also Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010) (providing the same requirements). Here, the lien waivers signed by the general contractor unequivocally acknowledge the general contractor was paid in full for the cabinets by Ms. Wagner. As Defendant Wagner paid the value of the cabinets, which Plaintiff acknowledged in his deposition, it cannot be inequitable for Defendant Wagner to retain the cabinets as a matter of law and Plaintiff's *quantum meruit* claim fails. See, e.g., Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 734 S.E.2d 177 (Ct. App. 2012) (recovery by subcontractor denied when owner paid on her contract with the general contractor); Columbia Wholesale Company, Inc. v. Scudder May N.V., 312 S.C. 259, 440 S.E. 2d 129 (1994) citing Cohen v. Delmar Drive-In Theatre, Inc., 45 Del. 427, 84 A.2d 597 (1951).

Based on the foregoing Findings of Fact and Conclusions of Law,

IT IS ORDERED that Plaintiff's third cause of action in his complaint for Quantum Meruit is dismissed. *The remaining causes of action survive the motion*

AND IT IS SO ORDERED!


The Honorable Mikell Ross Scarborough
Master in Equity for Charleston County

Charleston, South Carolina

Date: 3/8/13

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Mevers Kitchens and Baths, LLC,
Plaintiff,

vs.

Maryann Wagner and Stipp Contracting,
LLC,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2007-CP-10-0750

ORDER

2013 OCT -3 PM 12:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

FILED

This matter came before this Court for a trial on May 15, 2013. Plaintiff seeks to recover upon a breach of contract claim and a mechanic's lien foreclosure action. Present at the hearing were the Plaintiff Mevers Kitchens and Baths, L.L.C., (Mevers), its counsel, W. Tracy Brown Esq., Defendant Maryann Wagner (Wagner) and her counsel, Nancy Bloodgood, Esq. Defendant Stipp Contracting, L.L.C., (Stipp) the general contractor, previously filed bankruptcy and did not appear or otherwise participate.

FINDINGS OF FACT

1. This case concerns a dispute arising in Charleston County. This Court has both subject matter jurisdiction and venue is proper.
2. This matter was referred to this Court by Order dated June 22, 2011.
3. Wagner contracted with general contractor, Stipp, to build her home. (Def. Ex. 5)
4. Wagner was given two choices of retail kitchen cabinet stores by the general contractor from which she could select her cabinetry.
5. Wagner chose Mevers.
6. Mevers is a business that sells and installs kitchen and bath cabinetry.



7. The two officers of Mevers are William E. Mevers and his brother, Roy E. Mevers, who are equal members of the L.L.C. Mevers Dep. 5:17-6:15, Nov. 28, 2012.
8. Mevers is licensed through its member, Roy E. Mevers.
9. On or about March 7, 2006, Mevers provided Wagner with a quote for the provision and installation of cabinetry.
10. On March 9, 2006, said cabinetry quote was accepted and signed for by Wagner.
11. The cabinetry quote described the type, quantity, and price of the selected cabinetry.
12. The cabinetry quote detailed the tax, delivery, and installation specifications.
13. On or around the end of August 2006, the cabinetry was delivered and installed by William E. Mevers.
14. Stipp, the general contractor, billed and received payment from Wagner for the cabinetry in the amount of \$18,760.00; however, Stipp never paid Mevers for the cabinetry work.
15. It is undisputed that Stipp never paid Mevers for the cabinetry work.
16. On November 20, 2006, Mevers filed its mechanic's lien in the amount of \$21,414.43.

CONCLUSIONS OF LAW

I. THE CABINETRY QUOTE IS A CONTRACT BETWEEN PLAINTIFF AND DEFENDANT.

A. Defendants accepted Plaintiff's offer.

The formation of a contract requires a bargain in which there is manifestation of mutual assent to the exchange and a consideration. RESTATEMENT (SECOND) OF CONTRACTS §17(1)

(1981). The manifestation of mutual assent ordinarily takes the form of an offer by one party followed by an acceptance by the other party. See Maryland Supreme Corp. v. Blake Co., 279 Md. 531, 369 A.2d 1025, 1023 (Md. 1977). In determining whether a proposal amounts to an offer, the court must ask whether the proposal can be accepted to create an enforceable agreement. See RESTATEMENT (SECOND) OF CONTRACTS §24 (1981) ("An offer is the manifestation of willingness to enter into a bargain, so made as to justify the offeree in understanding that her assent to that bargain is invited and will conclude it").

In this case, Mevers quoted a price of \$20,760.00, a quotation that Wagner accepted to form a binding contract as referenced in Defendant's Exhibit 4. The quote was signed by Wagner on March 9, 2006 and an employee of Stipp on March 14, 2006. The quote included delivery, installation, and deposit specifications for the cabinetry. As to consideration, Mevers performed its bargain by delivery and installation of the cabinetry in exchange for Defendants' promise to pay. No testimony was presented that the cabinets were defective or improperly installed. It is undisputed that Mevers has never been paid. Based on the foregoing, the Court concludes, Wagner contracted with Mevers and Wagner has failed to perform.

B. The written cabinetry quote satisfies the Statute of Frauds requirements.

For a writing to satisfy the Statute of Frauds it must "reasonably identify the subject matter of the contract, sufficiently indicate that a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement." Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (S.C. 1989). A contract that is signed by the "party to be charged" is valid and enforceable. S.C. Code Ann. §32-3-10.

In this case, the written cabinetry quote satisfies the Statute of Frauds. The quote not only reasonably identifies the cabinets as the subject matter of the contract, but also provides detailed specifications as to the cabinetry's delivery, installation, and costs. Further, Wagner who is the

party to be charged acknowledged the document with her signature. Accordingly, the elements are satisfied.

**II. PLAINTIFF, AS LICENSED CONTRACTOR, CAN ENFORCE THE
CABINETRY QUOTE.**

South Carolina Code Section 40-59-410 provides in part that:

"[t]he practice or offer to practice residential home building, residential specialty contracting, or home inspecting as defined in this chapter by an individual residential builder, residential specialty contractor, or home inspector licensed or registered under this chapter through a firm offering residential building, residential specialty contracting, or home inspecting services to the public is authorized if: (1) *one or more of the corporate officers in the case of a corporation*, or one or more of the principal owners in the case of a firm . . . are licensed under the provisions of this chapter." (emphasis added).

Per Plaintiff's Exhibit 1, Roy Mevers is a licensed homebuilder. It is undisputed that Roy and William Mevers are both members and equal owners of Mevers. As such, Plaintiff was licensed to perform the work that is the subject of the contract and can assert its claims for breach of contract and mechanic's lien.

**III. PURSUANT TO SECTION 29-5-10 OF THE SOUTH CAROLINA CODE,
PLAINTIFF CAN ENFORCE ITS MECHANIC'S LIEN.**

Mechanic's liens in South Carolina are governed by two main statutes; §§ 29-5-10 and 29-5-20 of the South Carolina Code. § 25-5-10 controls liens established by contractors or subcontractors who contract directly with or provide material and/or labor approved by the homeowner. Additionally, § 29-5-10 gives a mechanic's lien to persons who by agreement, or with the consent of the owner, perform labor on or furnish materials in the erection of a structure. Such a lien is unaffected by the amount of the contract between the homeowner and the contractor. Ringer v. Graham, 286 S.C. 14, 331 S.E.2d 373 (S.C. App. 1985).

§ 29-5-20 controls liens established by subcontractors who are seeking payment for services provided to a homeowner pursuant to a contract between the homeowner and a general

contractor. Unlike § 29-5-10, §29-5-20 contains limitation language which provides in relevant part that:

"[i]n no event shall the aggregate amount of the lien filed by a subcontractor or supplier exceed the amount due by the contractor to the subcontractor . . . in no event shall the aggregate amount of liens on the improvement exceed the amount due the owner."

As previously determined, the cabinetry quote is a contract. The quote is a "separate contract" between Wagner and Mevers. Thus, § 29-5-10 is the applicable provision because Mevers contracted directly with Wagner to provide material and labor for the delivery and installation of the cabinetry. Further, the work was accepted and approved by Wagner.

Therefore, Mevers has a right to pursue this mechanic's lien foreclosure action pursuant to § 29-5-10.

IV. PURSUANT TO SECTION 29-5-10 PLAINTIFF IS ENTITLED TO REASONABLE ATTORNEY'S FEES.

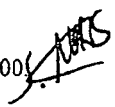
In an action on a mechanics lien arising from § 29-5-10, the right to attorney's fees is governed by § 29-5-10 as opposed to § 29-5-20. T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 450 S.E.2d 87 (S.C.App. 1994). In pertinent part, § 29-5-10 (a) provides:

"[t]he cost which may arise in enforcing or defending against the lien under this chapter, including 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."

In order to protect private subcontractors who contract directly with a homeowner, § 29-5-10 allows costs and reasonable attorney's fees to be secured by a mechanic's lien. The amount of the award is left to the sound discretion of the court, subject to the guidelines in § 29-5-10. T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 450 S.E.2d 87 (S.C.App. 1994).

Meyer's attorney has submitted his affidavit of fees and costs incurred. These fees include \$9,750.00 paid to Meyer's counsel Tracy Brown, Esq., \$500.00 paid to Mike Mitchum, Esq., and



\$5,000.00 paid to Mever's initial counsel Kenneth Krawcheck, Esq. (reduced from \$7,775.00) 

Mr. Krawcheck was suspended from the practice of law during the pendency of this action and Mr. Mitchum died during the pendency of this action, each of which resulted in the representation of Mevers by Mr. Brown at trial.

I find that applying the six factors for the reasonableness of attorney's fees and costs under Baron Data Systems, Inc. v. Loter, 297 S.C. 382 (1989) that these fees and costs are reasonable based upon the efforts of counsel, the length of time that this matter has taken to get to trial and the successful resolution of this matter on Mever's behalf. The Court further notes that the award of fees is less than the amount of the mechanic's lien.

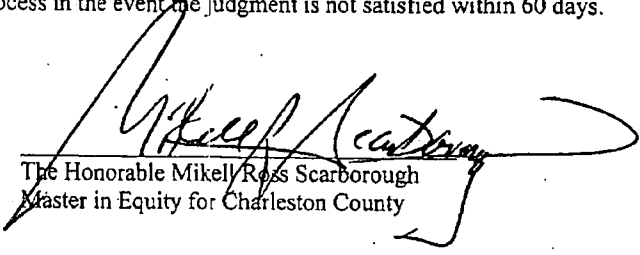
The Court therefore finds that Mevers should be granted mechanic's lien in the amount of \$20,760.00 plus an award of costs and attorney's fees in the amount of \$15,250.00 for a total award of \$36,010.00.

CONCLUSION

Mevers, a duly licensed homebuilder, contracted with Wagner for the delivery and installation of cabinetry to be utilized in the construction of her home being built by Stipp. Mevers provided Wagner with a quote setting forth the specific cabinetry to be provided, installed, and the price related thereto. Wagner accepted the offer as evidenced by her signature on the contract document. Mevers at all times performed in accord with the contract, but Mevers was never paid for the material and labor that was provided. Per § 29-5-10, Mevers filed and perfected its mechanic's lien. Mevers is entitled to recover in the amount of \$20,760.00 plus an amount of costs and reasonable attorney's fees to be determined by the court, not to exceed the statutory limits of the mechanic's lien.

Accordingly, judgment is entered for Mevers in the amount of \$36,010.00.

Mevers is entitled to seek foreclosure of its mechanic's lien pursuant to this Court's usual and customary foreclosure sales process in the event the judgment is not satisfied within 60 days.


The Honorable Mikell Ross Scarborough
Master in Equity for Charleston County

Charleston, South Carolina

Date: 12/3/13

4

STATE OF SOUTH CAROLINA	)	
	)	IN THE CHARLESTON COUNTY RMC OFFICE
COUNTY OF CHARLESTON	)	
	)	SKG 606PG794
MEVERS, KITCHENS AND	)	
BATHS, LLC,	)	
	)	
Plaintiff,	)	MECHANIC'S LIEN
	)	
vs	)	
	)	
MARYANN WAGNER and	)	
STIPP CONTRACTING, LLC,	)	
	)	
Defendants.	)	

Notice is hereby given that Mevers Kitchens and Baths, LLC is due the sum of Twenty-one Thousand, Four Hundred Fourteen and 43/100 (\$21,414.43) from the Defendants, Affidavit of Account being attached hereto and made a part hereof.

The said debt is due to the Plaintiff for materials and labor furnished and actually used in the improvements of the real estate herein described and owned by the Defendants by virtue of an Agreement of or by consent of such owners or by a person or persons authorized by such owners.

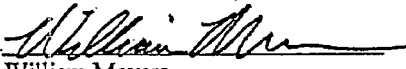
That, as shown by the attached Statement and Affidavit, the Plaintiff furnished materials and labor for such buildings, structures, or improvements within ninety (90) days, the date hereof, on or after the 31st day of August, 2006.

That by virtue thereof, by the service and filing of this Notice and Statement, pursuant to the provisions of the statutes in such cases made and provided, the undersigned has and claims a lien to secure payment of the debt so due and the cost of enforcing said lien including reasonable attorney's fees, all as provided by law upon the buildings and structures hereinafter mentioned and upon the following described real estate:

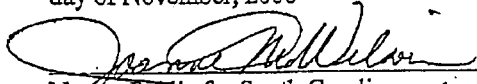
All that certain lot, piece or parcel of land, together with any improvements located thereon, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, known and designated as Lot "5, 7308 SF, No.11 Lowndes Point" on a plat entitled "FINAL PLAT OF A BOUNDARY SURVEY SHOWING THE COMBINATION OF TRACTS "A" & "2", TMS 463-07-00-004 & 464-13-00-054 AND THE SUBSEQUENT SUBDIVISION TO FORM LOTS 1 THROUGH 31 LOWNDES POINTE PROPERTY OF LOWNDES POINT PARTNERS, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SC" dated January 20, 2002, last revised April 14, 2003, and recorded April 24, 2003 in Plat Book EG, Page 325 in the Charleston County RMC Office.

TMS No: 464-13-00-153

Mevers Kitchens and Baths, LLC

By: 
William Mevers
Its: Managing Member

SWORN to before me this 20
day of November, 2006


Notary Public for South Carolina
My commission expires: 5/16/2013

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO: 07-CP-10-750

MEVERS KITCHENS AND
BATHS, LLC,

Plaintiff,

vs.

MARY ANN WAGNER and STIPP
CONTRACTING, LLC,

Defendants.

SUMMONS

2007 FEB 21 PM 4:00
JULIE J ARMSTRONG
CLERK OF COURT

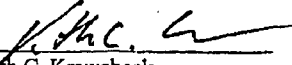
FILED

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Complaint of the Plaintiff in this action, a copy of which is herewith served upon you, and you to serve a copy of your Answer to the Complaint upon the undersigned at his office at Nine State Street, Post Office Box 1018, Charleston, South Carolina, 29402, within thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to Answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and a Judgment by default shall be rendered against you.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons and Complaint, the Plaintiff will move for a general Order of Reference in this case to the Master-in-Equity or Special Referee for this County, which Order shall, pursuant to Rule 53(e) of the South Carolina Rules of Civil Procedure, specifically provide that the said Master-in-Equity or Special Referee is authorized and empowered to enter a Final Judgment in this case.

PLEASE TAKE NOTICE that the Summons and Complaint in this action were filed on _____, 2007, at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina 29401.

KRAWCHECK & DAVIDSON

BY: 

Kenneth C. Krawcheck
9 State Street
Charleston, South Carolina 29401
(843) 577-2577
(843) 723-9951 (fax)
Attorneys for The Plaintiff

Charleston, South Carolina
2/16, 2007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	CASE NO: 07-CP-10-750
MEYERS KITCHENS AND BATHS, LLC,	)	
Plaintiff,	)	COMPLAINT
vs.	)	(Non-jury)
MARY ANN WAGNER and STIPP CONTRACTING, LLC,	)	
Defendants.	)	

FILED
 2007 FEB 21 PM 4:00
 JULIE J. ARMSTRONG
 CLERK OF COURT

The Plaintiff, complaining of the Defendants above named, alleges and states as follows:

1. The Plaintiff is corporation organized and existing under the laws of the State of South Carolina, and doing business in the County of Charleston, State of South Carolina.

2. Upon information and belief, the Defendant, Mary Ann Wagner ("Wagner") is the owner of real property located in the County of Charleston, State of South Carolina, which is the subject matter of this action, and is further described as follows:

All that certain lot, piece or parcel of land, together with any improvements located thereon, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, known and designated as Lot "5, 7308 SF, No.11 Lowndes Point" on a plat entitled "FINAL PLAT OF A BOUNDARY SURVEY SHOWING THE COMBINATION OF TRACTS "A" & "2", TMS 463-07-00-004 & 464-13-00-054 AND THE SUBSEQUENT SUBDIVISION TO FORM LOTS 1 THROUGH 31 LOWNDES POINTE PROPERTY OF LOWNDES POINT PARTNERS, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SC" dated January 20, 2002, last revised April 14, 2003, and recorded April 24, 2003 in Plat Book EG, Page 325 in the Charleston County

RMC Office.

TMS No: 464-13-00-153

3. Upon information and belief, Defendant Wagner is a citizen and resident of the County of Charleston, State of South Carolina.

4. Upon information and belief, Defendant Stipp Contracting, LLC ("Stipp") is a corporation organized and existing under the Laws of the State of South Carolina, and doing business in the County of Charleston, State of South Carolina.

5. The parties and the subject matter of this action are within the jurisdiction of this Honorable Court.

FOR A FIRST CAUSE OF ACTION

6. On or before March 14, 2006, the Plaintiff and the Defendants entered into an Agreement, whereby the Plaintiff would provide labor and materials for improvements which include, but are not limited to, the construction and renovation work on the property located as described in this complaint. The parties' Agreement is attached as Exhibit "A" hereto.

7. The Plaintiff furnished such work, labor, and materials, under this Agreement with the Defendants on the authority of the Defendants.

8. Upon information and belief the Defendants knew and were aware of the work being performed by the Plaintiff.

9. Under the above described Agreement, the Plaintiff was to be paid for the above described work. The amount remaining to be paid under the Agreement is \$21,414.43.

10. Despite due demand for payment the Defendants have failed and refused to pay the Plaintiff pursuant to the Agreement and such failure to pay constitutes a

material breach of the terms of the Agreement and has caused damage to the Plaintiff in the sum of \$21,414.43, along with pre-judgment interest and the costs and disbursements of this action.

FOR A SECOND CAUSE OF ACTION

11. The Plaintiff reiterates and realleges the allegations contained in Paragraphs 1 through 10 above as if set forth fully herein.

12. The Plaintiff has performed all the work required and furnished all the materials required by the Defendants in a workmanlike manner and no complaints have been made to the Plaintiff regarding the work performed or the quality or quantity or materials furnished.

13. The Plaintiff has timely recorded a statement for Mechanic's Lien in the office of the Register of Mesne Conveyances for Charleston County and served a copy of the same upon the Defendants, and a copy of the statement is attached hereto as Exhibit "B" and made a part hereof by reference.

14. This suit has been filed less than six months since the last day that work was performed or labor and materials furnished by the Plaintiff to the real property that is the subject matter of this action.

15. There is a balance due and owing to the Plaintiff under the laws of this state and upon the Agreement in the amount of \$21,414.43, together with reasonable attorney's fees, and the other costs and disbursements of this action, together with the lost overhead and profit and interest, and despite due demand the Defendants have failed to pay the same to the Plaintiff.

FOR A THIRD CAUSE OF ACTION

16. The Plaintiff reiterates and realleges the allegations contained in Paragraph 1 through 15 above as if set forth fully herein.

17. The Plaintiff furnished construction, renovation, and other work to the property, which materials and labors were incorporated into the construction and renovation of the premises on the real property that is the subject matter of this action, and the Plaintiff thereby conferred a benefit upon the Defendants.

18. The materials and labor so furnished by the Plaintiff unpaid for by Defendants have a reasonable value of \$21,414.43 and such materials were appropriated by the Defendants and utilized in the construction and renovation of the premises on the real property that is the subject matter of this action, and the Defendants thereby realized the value of such materials and labor.

19. Upon information and belief the Defendants have accepted the materials so furnished and retain those materials and improvements and under the circumstances of this case it would be inequitable for them to retain such benefit without paying the reasonable value thereof.

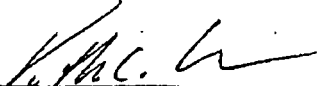
WHEREFORE, the Plaintiff prays for a Judgement as follows:

(a) Against the Defendants for breach of contract in the amount of \$21,414.43, together with prejudgment interest and the costs and disbursements of this action;

(b) Against the Defendants for foreclosure of the above mechanic's lien in the amount of \$21,414.43, together with reasonable attorney's fee and other costs of disbursements of this action and together with lost overhead and profits and interest, including pre-judgment interest, on the amount so due, and further directing the property in satisfaction of the debt; and

(c) Against the Defendants for quantum meruit in the amount of \$21,414.43, together with pre-judgment interest and the costs and disbursements of this action.

KRAWCHECK & DAVIDSON

By: 

Kenneth C. Krawcheck
Nine State Street
Charleston, South Carolina 29401
(843) 577-2577
ATTORNEY FOR THE PLAINTIFF

Charleston, South Carolina

2/16, 2007



MEVERS

Kitchens and Baths, LLC

March 7, 2006

MaryAnne Wagner
214 Calhoun St, Apt 6
Charleston, SC 29401

Cabinetry Quote

Kitchen Specifications:

Executive Cabinetry: Bel Air door w/ Matching drawers in Maple w/ Natural Stained Finish.

Molding: 2" Square Molding in Natural Maple ✓ *Natural Maple*
3/4" Square Molding in ~~Black Painted~~ Finish

Toe Kick: Maple w/ ~~Black Painted~~ Finish ← *Natural Maple*

Features Include:

- Stacked Cabinetry to Ceiling
- Plywood Box Construction
- Blumotion Full Extension Guides on Drawers
- 12" Base w/ Finished Left Side
- 36" 3 Drawer Pots & Pans Base
- 36" Base w/ 2 Roll-out Trays
- Base Lazy Susan
- 36" Sink Base w/ Tilt-out Drawer
- Refrigerator Surround w/ Finished Left Side
- 33" Double oven Stack w/ Finished Left Side
- 27" Base w/ Finished Left Side
- 27" Microwave Wall Cabinet w/ Finished Left Side
- 12" Wall Cabinet w/ Finished Left Side
- 18" Wall Cabinet w/ Finished Right Side
- 24" Angle Wall Cabinet w/ Finished interior & Door Prepared for Glass
- 36" Wall Cabinet w/ Finished Left Side
- 15" Base w/ Finished Right Side
- 15" Base w/ Finished Left Side
- 36" Sink Base for Cooktop
- Wainscott Panel attached to back of Island
- Refrigerator Panel
- Two Dishwasher Panels

\$18,035.00

Master Bath Specifications:

Executive Cabinetry: Contemporary Slab door w/ Matching drawers in Maple w/ Natural Stain Finish

Full Height Vanity Suspended w/ no legs

\$1,175.00

630-B Johnnie Dodds Blvd, Mt. Pleasant, SC 29464
Ph. 843-388-9633 Fax. 843-388-9644 www.meverskitchens.com

Exhibit "A"

Bath 2 Specifications:

Executive Cabinetry: Contemporary Slab door w/
Matching drawers in Maple w/ Natural Stain Finish
Full Height Vanity Suspended w/ no legs
\$495.00

Bath 3 Specifications:

Executive Cabinetry: Contemporary Slab door w/
Matching drawers in Maple w/ Natural Stain Finish
Full Height Vanity Suspended w/ no legs
\$625.00

Powder Room Specifications:

Executive Cabinetry: Contemporary Slab door w/
Matching drawers in Maple w/ Natural Stain Finish
Full Height Vanity Suspended w/ no legs
\$430.00

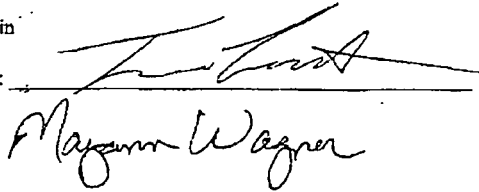
Total: \$20,760.00

This Quote includes tax, delivery and installation .
Please allow 4 weeks for delivery of cabinetry.
50% deposit is due at time of order and balance is due upon installation.
Thank you for the opportunity to assist you.

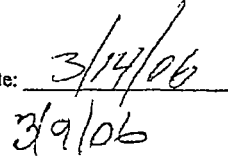
Sincerely,

Jennifer Martin

Approved By: _____


Margaret Wagner

Date: _____


3/14/06
3/9/06

STATE OF SOUTH CAROLINA	)	
	)	IN THE CHARLESTON COUNTY RMC OFFICE
COUNTY OF CHARLESTON	)	
	)	BKG 606PG794
MEYERS, KITCHENS AND	)	
BATHS, LLC,	)	
	)	
Plaintiff,	)	MECHANIC'S LIEN
	)	
vs	)	
	)	
MARYANN WAGNER and	)	
STIPP CONTRACTING, LLC,	)	
	)	
Defendants.	)	

Notice is hereby given that Meyers Kitchens and Baths, LLC is due the sum of Twenty-one Thousand, Four Hundred Fourteen and 43/100 (\$21,414.43) from the Defendants, Affidavit of Account being attached hereto and made a part hereof.

The said debt is due to the Plaintiff for materials and labor furnished and actually used in the improvements of the real estate herein described and owned by the Defendants by virtue of an Agreement of or by consent of such owners or by a person or persons authorized by such owners.

That, as shown by the attached Statement and Affidavit, the Plaintiff furnished materials and labor for such buildings, structures, or improvements within ninety (90) days, the date hereof, on or after the 31st day of August, 2006.

That by virtue thereof, by the service and filing of this Notice and Statement, pursuant to the provisions of the statutes in such cases made and provided, the undersigned has and claims a lien to secure payment of the debt so due and the cost of enforcing said lien including reasonable attorney's fees, all as provided by law upon the buildings and structures hereinafter mentioned and upon the following described real estate:

Exhibit B

All that certain lot, piece or parcel of land, together with any improvements located thereon, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, known and designated as Lot "5, 7308 SF, No.11 Lowndes Point" on a plat entitled "FINAL PLAT OF A BOUNDARY SURVEY SHOWING THE COMBINATION OF TRACTS "A" & "2", TMS 463-07-00-004 & 464-13-00-054 AND THE SUBSEQUENT SUBDIVISION TO FORM LOTS 1 THROUGH 31 LOWNDES POINTE PROPERTY OF LOWNDES POINT PARTNERS, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SC" dated January 20, 2002, last revised April 14, 2003, and recorded April 24, 2003 in Plat Book EG, Page 325 in the Charleston County RMC Office.

TMS No: 464-13-00-153

Mevers Kitchens and Baths, LLC

By: William Mevers
William Mevers
Its: Managing Member

SWORN to before me this 20
day of November, 2006

[Signature]
Notary Public for South Carolina
My commission expires: 5/6/2013

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) STATEMENT AND
AFFIDAVIT OF ACCOUNT

I hereby certify that on this 20th day of November, 2006, personally appeared before me WILLIAM MEVERS, who being duly sworn, deposes and states:

1. That he is the Managing Member of Mevers Kitchens and Baths, LLC, a South Carolina limited liability company organized and doing business under the laws of the State of South Carolina and has been duly authorized by said corporation to make this Affidavit.
2. That there is justly due and owing by Maryann Wagner and Stipp Contracting, LLC to Mevers Kitchens and Baths, LLC over and above any discount and without-deduction or set-off. The sum of money set out in the foregoing declaration and/or in the documents/written obligation/itemized statement of account attached hereto amounting to \$21,414.43, with interest from August 21, 2006.
3. That the said indebtedness represents merchandise sold/monies advanced/services performed by the Plaintiff to or for the Defendant.
4. That the Plaintiff has not, directly or indirectly, received any part of the money or goods charged herein as due or received any security or satisfaction for which credit has not already been given.
5. That the Plaintiff keeps regular books of account and that the keeping of said books of account is in the charge of or under the supervision of the affiant. The entries in said books of account are made in the ordinary course of business. Said entries show that the Defendant is indebted to the Plaintiff in the manner and amount herein set forth.

MEVERS KITCHENS AND BATHS, LLC

By: William E. Mevers
William E. Mevers
Its: Managing Member

SWORN to before me this 20 day of
November, 2006

Wanda All Wilson
Notary Public for South Carolina
My Commission Expires: 5/6/2013

BKG 606PG797

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

Krawcheck & Davidson
Attorneys at Law
9 State Street
Charleston SC 29401

Handwritten signature/initials

FILED

November 20, 2006

12:02:49 PM

BKG 606PG794

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION	AMOUNT
MECH/LIEN	\$ 10.00
Postage	

TOTAL	\$ 10.00
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DRAWER:

	C - slw
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DO NOT STAMP BELOW THIS LINE

STATE OF SOUTH CAROLINA.

COUNTY OF CHARLESTON

MEVERS KITCHENS AND
BATHS, LLC,

Plaintiff,

vs.

MARY ANN WAGNER and STIPP
CONTRACTING, LLC,

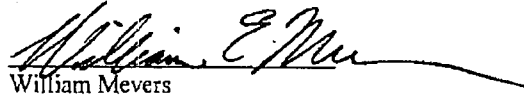
Defendants.

IN THE COURT OF COMMON PLEAS

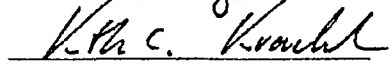
CASE NO:

VERIFICATION

PERSONALLY appeared before me, William Mevers, the Managing Member of the Plaintiff, who being duly sworn, deposes and states that he is the Plaintiff herein, and has read the foregoing Summons and Complaint, and that all of the allegations contained in the Summons and Complaint are true of his own knowledge, except those so stated upon information and belief, and as to those, that he believes the same to be true.


William Mevers

SWORN to before me this
16th day of February, 2007


Notary Public for South Carolina
My Commission Expires: 7/27/10

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CEARLESTON) CASE NO.: 07-CP-10-0750
MEVERS KITCHENS AND BATHS, LLC,)
Plaintiff,)
vs.)
MARYANN WAGNER AND)
STIPP CONTRACTING, LLC,)
Defendant.)

ANSWER,
REPLY TO CROSSCLAIMS
AND CROSSCLAIMS
BY DEFENDANT MARYANN WAGNER
AGAINST DEFEDNANT
STIPP CONTRACTING, LLC

FILED

2007 MAY 29 PM 1:33
JULIE J. ARMSTRONG
CLERK OF COURT

The Defendant, Maryann Wagner ("Wagner"), answers the Complaint of the Plaintiff, Mevers Kitchens and Baths, LLC ("Mevers"), replies to the crosscliams of Defendant, Stipp Contracting, LLC ("Stipp"), and crossclaims against Stipp as follows:

FOR A FIRST DEFENSE
(General Denial - Mevers)

FIRST: She admits Paragraphs 1, 2, 3, 4 and 5 of the Complaint upon either personal knowledge or information and belief.

SECOND: Responding to Paragraph 6, she admits that, on or about the date alleged, she and Stipp entered into an agreement with Mevers for certain labor and materials for the improvement of her home, but denies a copy of such agreement was attached to the Complaint.

THIRD: Responding to Paragraph 7 and 8, she admits that the Plaintiff provided labor and materials pursuant to the agreement with her knowledge and consent.

FOURTH: Responding to Paragraphs 9 and 10, she denies ever having refused to make payment and would allege and show that she paid Stipp \$18,760.00 toward the amount(s) due under the agreement with Mevers as shown in the Exhibits attached hereto and made parts hereof by reference.

FIFTH: She repeats the foregoing in response to Paragraph 11.

SIXTH: She demands strict proof of Paragraphs 12, 13, 14 and 15.

SEVENTH: She repeats the foregoing in response to Paragraph 16.

EIGHTH: She admits Paragraph 17.

NINTH: She demands strict proof of Paragraphs 18 and 19, being the remaining allegations of the Complaint.

FOR A SECOND DEFENSE
(Payment - Mevers)

TENTH: She reasserts the foregoing as if set forth fully herein.

ELEVENTH: She alleges and shows that she has paid \$18,760.00 toward the agreement with Mevers as shown in the Exhibits attached hereto and made parts hereof by reference.

FOR A THIRD DEFENSE
(General Denial - Stipp)

TWELFTH: She reasserts the foregoing as if set forth fully herein and denies any and all allegations of the Complaint and Answer and Crossclaim inconsistent therewith.

THIRTEENTH: She admits Paragraphs 24, 25 and 26 of the Answer and Crossclaim.

FOURTEENTH: She demands strict proof of Paragraphs 27, 28, 29 and 30.

FIFTEENTH: She reasserts the foregoing in response to Paragraph 31.

SIXTEENTH: She denies and demands strict proof of Paragraph 32.

SEVENTEENTH: She reasserts the foregoing in response to Paragraph 33.

EIGHTEENTH: She demands strict proof of Paragraph 34.

NINETEENTH: She denies and demands strict proof of Paragraph 35, being the final allegation of the Answer and Crossclaim.

TWENTIETH: She denies each and every allegation of the Answer and Crossclaim not hereinabove specifically and expressly admitted.

FOR A FOURTH DEFENSE AND CROSSCLAIM
(Payment - Stipp)

TWENTY-FIRST: She reasserts the foregoing as if set forth fully herein.

TWENTY-SECOND: She alleges and shows that she has paid Stipp more than both the contract price and the cost and true value of the materials and labor supplied by it.

FOR A FIFTH DEFENSE AND CROSSCLAIM
(Breach of Contract - Stipp)

TWENTY-THIRD: She reasserts the foregoing as if set forth fully herein.

TWENTY-FOURTH: She alleges and shows that Stipp substantially breached the Contract in that, among other things, it:

(a) failed to provide labor and materials as required under the Contract;

(b) failed to properly supervise the work under the Contract;

(c) failed to properly inspect the work under the Contract;

(d) failed to correct work which it knew or should have known was defective or deficient;

(e) failed to ensure that all work under the Contract was performed in a good and workmanlike manner;

(f) charged for work it either had not performed or performed without Wagner's knowledge or consent and without a signed change order.

TWENTY-FIFTH: As a result of its breaches of the Contract, Stipp is entitled to recover nothing from her and she is entitled to recover actual damages from Stipp in an amount to be determined by the Court.

FOR A SIXTH DEFENSE AND CROSSCLAIM
(Breach of Express Warranties - Stipp)

TWENTY-SIXTH: She reasserts the foregoing as if set forth fully herein.

TWENTY-SEVENTH: Stipp warranted to Wagner it would "furnish and provide all necessary supervision, labor, materials, tools, and equipment," and that it would "perform all things necessary for the proper construction and completion per the South Carolina building code," in its execution of the Contract.

TWENTY-EIGHTH: Stipp breached these warranties in that, among other things, it:

- (a) failed to provide labor and materials as required under the Contract;
- (b) failed to properly supervise the work under the Contract;
- (c) failed to properly inspect work under the Contract;
- (d) failed to correct work which it knew or should have known was defective or deficient;
- (e) failed to ensure that all work under the Contract was performed in a good and workmanlike manner;
- (f) performed work in violation of applicable building codes and standards and practices within the home construction industry.

TWENTY-NINTH: As a result of its breaches of its express warranties to Wagner, she is entitled to recover actual damages from Stipp in an amount to be determined by the Court.

FOR A SIXTH DEFENSE AND CROSSCLAIM
(Breach of Implied Warranty - Stipp)

THIRTIETH: She reasserts the foregoing as if set forth fully herein.

THIRTY-FIRST: In undertaking the work pursuant to the Contract, Stipp warranted that it was specially trained and qualified to perform the work and that it would do so in a good and workmanlike manner.

THIRTY-SECOND: Stipp breached these warranties in that, among other things,

(a) failed to provide labor and materials as required under the Contract;

(b) failed to properly supervise the work under the Contract;

(c) failed to properly inspect work under the Contract;

(d) failed to correct work which it knew or should have known was defective or deficient;

(e) failed to ensure that all work under the Contract was performed in a good and workmanlike manner;

(f) performed work in violation of applicable building codes and standards and practices within the home construction industry.

FOR A SEVENTH DEFENSE AND COUNTERCLAIM
(Conversion - Stipp)

THIRTY-THIRD: She reasserts the foregoing as if set forth fully herein.

THIRTY-FOURTH: She alleges and shows that she paid Stipp for work performed under the Contract, but Stipp diverted much of these funds to other projects, and otherwise converted the same to its own use.

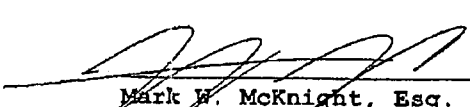
THIRTY-FIFTH: Wagner has been specially damaged as a direct and proximate result of this conversion of her funds in that she has been sued or threatened with suit by suppliers and subcontractors for whose work she had already paid Stipp and was and will be required to correct, complete and pay for work for which Stipp has been paid.

THIRTY-SIXTH: As a result of this conversion, she is entitled to recover actual and punitive damages of and from Stipp in an amount or amounts to be decided by the Court.

WHEREFORE, having fully answered the Complaint, responded to the Crossclaims of and crossclaimed against Defendant Stipp Contracting, LLC, this Defendant prays that the same be dismissed as to her, that judgment be entered for her thereon, for an award for actual and punitive damages against Stipp in amounts to be determined by the Court, for her costs and attorney's fees in defending this action, and for such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES
THAT (S)HE SERVED A COPY OF THE
PLEADINGS OR FOREGOING PAPERS ON
ALL COUNCIL OF RECORD THIS 23rd
DAY OF MAY, 2007

MAJ


Mark W. McKnight, Esq.
154 King Street, Second Floor
P.O. Box 1255
Charleston, SC 29402
(843) 577-2837
(843) 722-4094/Fax
ATTORNEY FOR DEFENDANT
MARYANN WAGNER

Charleston, South Carolina
May 23, 2007

(1)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

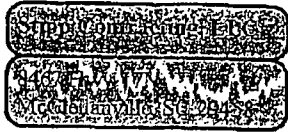
LIEN WAIVER

In exchange for payment of \$ 62,000.00, receipt of which is hereby acknowledged, STIPP CONTRACTING, ("Contractor") as general contractor does hereby confirm that it has been paid for all work performed, material, fixtures, apparatus, or machinery furnished to the project on the property at Lot 5, 11 Lowndes Point Drive, Charleston, SC 29403, TMS #464-13-00-153, through the date of Invoice # 150 and dated 5/11/06. Contractor hereby waives and releases any and all liens it may have, or be entitled to have, with regard to the above referenced work and any work which preceded it and further agrees it is responsible for paying any of its subcontractors involved to such work.

Dated: 5-26-06

STIPP CONTRACTING, LLC

By: [Signature]
Derrick Stipp, Authorized MemberWitness:



②

Invoice

Date	Invoice #
5/11/2006	150

Bill To
Mary Ann Wagner 11 Lowndes Point Lane Charleston, SC

Project	Terms
11 Lowndes Point	Due on receipt

Description	Amount
Materials	14,294.76
Insulation	2,119.15
Electrical	210.00
Plumbing-sewer fee	1,280.00
Plumbing-sewer and water connection	3,117.25
Plumbing-water connection fee	525.00
Sheetrock	15,631.26
Customer Deposit on Job- Cabinets	10,000.00
Dumpster	986.93
Port O Jon	106.50
SCE&G	24.14
Carpentry- Decks	4,851.00
Misc Cleanup	550.00
Subtotal	53,695.99
Fee	8,054.40
Supervision	5,212.50
Thank you for choosing Stipp Contracting	
Total	\$66,962.89

(3)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

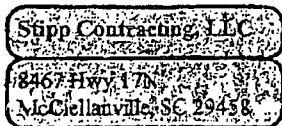
LIEN WAIVER

In exchange for payment of \$ 46,236.79, receipt of which is hereby acknowledged, STIPP CONTRACTING, ("Contractor") as general contractor does hereby confirm that it has been paid for all work performed, material, fixtures, apparatus, or machinery furnished to the project on the property at Lot 5, 11 Lowndes Point Drive, Charleston, SC 29403, TMS #464-13-00-153, through the date of Invoice # 159 and dated 8/4/06. Contractor hereby waives and releases any and all liens it may have, or be entitled to have, with regard to the above referenced work and any work which preceded it and further agrees it is responsible for paying any of its subcontractors involved to such work.

Dated: 8-79-06

STIPP CONTRACTING, LLC

By: [Signature]
Derrick Stipp, Authorized MemberWitness:



④

Invoice

Date	Invoice #
8/4/2006	159

Bill To
Mary Ann Wagner 11 Lowndes Point Lane Charleston, SC

Project	Terms
11 Lowndes Point	Due on receipt

Description	Amount
Mill work & Trim- Labor	4,460.00
Painting	9,100.00
Specialties- Glass	2,345.71
Cabinets - Kitchen	8,760.00
Dumpster	634.50
Port O Jon	53.25
Exterior Trim	2,050.00
Electrical	100.00
Water Bill	9.14
Labor- Clean up	340.58
SCE&G	10.23
Materials	9,412.74
Subtotal	37,276.15
Fee	6,709.71
Supervision	1,417.50
Thank you for choosing Stipp Contracting	
Total	\$45,403.36

~(32) 8/4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2007-CP-10-750

Mevers Kitchens and Baths , L.L.C.,
Plaintiff,

MOTION TO RECONSIDER

vs.

Maryann Wagner and Stipp Contracting, L.L.C.,
Defendant.

2012 APR 26 PM 3:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

FILED

TO: NANCY BLOODGOOD, ESQ., ATTORNEY FOR THE DEFENDANT::

YOU WILL PLEASE TAKE NOTICE that the Plaintiff will move before the
Honorable Mikell R. Scarborough, Judge of the Ninth Judicial Circuit, in the Charleston County
Courthouse, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be
heard, for the purpose of requesting that Judge Scarborough reconsider his earlier executed Order
Granting Defendant Wagner's Motion to Dismiss for Lack of Prosecution and Ruling Defendant
Wagner has Prevailed on the Merits.

This Motion is based upon the fact that the Plaintiff was never notified of the hearing and
equity dictates that Plaintiff is entitled to a new trial in which it has the opportunity to be present and
prosecute its. This Motion will also be supported by the evidence and testimony to presented at
trial.

Respectfully submitted,



William Mevers
Managing Member
Mevers Kitchens and Baths , L.L.C.

This 26 day of April, 2012.
Charleston, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FOR THE NINTH JUDICIAL CIRCUIT

MEVERS KITCHENS AND BATHS, LLC,)

Plaintiff,

VS.

MARYANN WAGNER,

Defendant.)

CASE NO.:2007-CP-10-750



COPY

Hearing before the

Honorable Mikell R. Scarborough, reported by Bernadette A.

Cali, CSR and Notary Public, at 10:00 a.m. on May 15,

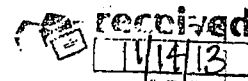
2013 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff: Tracy W. Brown, Esq.
The Brown Law Firm
1524 Ashley River Road
Charleston, S.C. 29407

For the Defendant: Nancy Bloodgood, Esq.
Foster Law Firm
895 Island Park Drive, Ste. 202
Charleston, S.C. 29492

Bernadette A. Cali, CSR
Notary Public



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(Defendant's Exhibits 1-20 marked previous to hearing.)

1 Mr. Brown, if you would like the move forward you
2 may, sir.

3 MR. BROWN: Your Honor, I call Roy Mevers.
4 (Roy E. Mevers, III, 284 Hobcaw Drive, Mt. Pleasant, S.C.
5 29464, duly sworn, testifies as follows:)

6 (DIRECT EXAMINATION BY MR. BROWN:)

7 Q Roy, would you tell the Court how it is you're
8 affiliated with Mevers Kitchens and Baths?

9 A I own 50% of the company.

10 Q You're a partial owner?

11 A Correct.

12 Q You're a member of the LLC?

13 A Yes.

14 Q Are you a licensed builder?

15 A Correct; yes, sir.

16 Q Tell us about your license. What does that
17 license you to do?

18 A Residential construction; unlimited -- a limited
19 amount of commercial.

20 Q So you are a licensed residential builder?

21 A Yes, sir.

22 Q How long have you been so licensed?

23 A Twenty-three years.

24 Q Were you licensed in March of 2006 at the time the
25 contract at issue here was entered into?

1 A Yes, sir.

2 Q Were you licensed in November of 2006?

3 A Yes.

4 Q When the mechanic's lien was filed?

5 A Was filed.

6 Q So you've been licensed continuously for I think

7 you said 26 years?

8 A Correct; 23.

9 Q Twenty-three years?

10 A Yes.

11 Q Okay. And does Mevers Kitchens and Baths, LLC do

12 work under your license?

13 A Yes.

14 Q When that company is doing work under your license

15 it's your license on the line?

16 A Correct.

17 Q And you have issues of liability with regard to

18 that license?

19 A Yes, I do.

20 Q Thank you.

21 MR. BROWN: I don't have anything further, Your

22 Honor.

23 Q Actually, do you have your license with you?

24 A I do.

25 Q Would you mind if we put a sticker on the back of

1 it?

2 A Sure.

3 THE COURT: You want to show that to

4 Ms. Bloodgood?

5 (Discussion off the record.)

6 (Whereupon Plaintiff's Exhibit 1 is marked.)

7 THE COURT: Any other questions for Mr. Mevers?

8 MR. BROWN: No other questions.

9 THE COURT: All right.

10 CROSS EXAMINATION BY MS. BLOODGOOD:

11 Q Mr. Mevers, the license that I just saw for
12 residential builder is in your name personally, Roy Mevers,
13 III; correct?

14 A Correct.

15 Q And you do not have a residential builder's
16 license for Mevers Kitchens and Baths, LLC; correct?

17 A Don't have to.

18 Q You've never been paid a salary by Mevers Kitchens
19 and Baths; have you?

20 A I get paid at the end of the year, profits. Also
21 Billy does new construction. I do the remodeling part.

22 Q You didn't personally install the kitchen cabinets
23 in Ms. Wagner's house; did you?

24 A No.

25 Q So you did not do any construction, you didn't use

1 your personal license real estate builders -- your real
2 estate builders -- residential builders license in any
3 capacity regarding Ms. Wagner's property; correct?

4 A My employees did. The law states that the company
5 has to have a license holder and I am the license holder.

6 Q Are you aware, as a license holder, of a statute
7 40-11-370 that says an entity which does not have a valid
8 license as required may not bring an action either at law or
9 equity to enforce the provisions of a contract?

10 A Never heard that.

11 Q Are you aware that it also says an entity that
12 enters into a contract to engage in construction in a name
13 other than the name that appears on the license may not
14 bring an action either at law or equity to enforce the
15 provisions of a contract?

16 A I have another company called Mevers Construction
17 and my name -- Mevers Construction does not have to be on my
18 license, just the license holder. The owner of the company
19 does not have to be a license holder.

20 Q But Mevers Construction Company did no work on
21 Ms. Wagner's kitchen cabinets?

22 A Mevers Kitchen and Baths did.

23 Q My question is Mevers Construction, which you own,
24 did no work; correct?

25 A No.

1 Q Your brother's not a member of Mevers Construction
2 Company; correct?

3 A No.

4 MS. BLOODGOOD: I don't have any other questions,
5 Your Honor.

6 MR. BROWN: No questions, Your Honor.

7 THE COURT: All right. Very good. I don't have
8 any questions.

9 Mr. Mevers I'll give this back. I have three
10 copies of this.

11 (William E. Mevers, 142 Beresford Creek St., Daniel Island,
12 S.C. 29492, duly sworn testifies as follows:)

13 DIRECT EXAMINATION BY MR. BROWN:

14 Q Billy, tell us what you do for a living.

15 A I run Mevers Kitchens and Baths. I'm managing
16 member of.

17 Q You're the managing member of Mevers Kitchens and
18 Baths?

19 A Yes.

20 Q Tell us a little bit about Mevers Kitchens and
21 Baths. What is it the company does?

22 A We design and sell cabinetry for both remodeling
23 and new construction projects.

24 Q And at some time did you enter into a contract
25 with the Defendant, Ms. Wagner, here?

1 A Yes.

2 Q To do that kind of work on her house?

3 A Yes.

4 Q Let me show you what's been marked as Defendant's

5 Exhibit Number 1. Do you recognize that?

6 A Yes.

7 Q What is that?

8 A This is the contract that we had with Ms. Wagner.

9 Q Let me direct your attention to the upper left of

10 the contract. What's the date of that?

11 A March 7, 2006.

12 Q To whom is it addressed?

13 A Maryann Wagner.

14 Q Where?

15 A Where? Meaning?

16 Q What's the address?

17 A Oh. The address is, looks like 214 Calhoun

18 Street, Apartment 6.

19 Q And this was created prior to her house being

20 constructed; is that correct?

21 A Right.

22 Q Tell us about the contract. Tell us what it is

23 you agreed to do.

24 A Supply cabinetry.

25 Q In particular did you agree to supply the

1 cabinetry listed on the right side of that document?

2 A Correct.

3 Q And were these cabinets and the work to be
4 performed, was it approved by Ms. Wagner?

5 A Yes..

6 Q How do you know that?

7 A Has her signature right here on the document.

8 Q Maryann Wagner's signature?

9 A Yes, right here on the contract.

10 Q There is a signature of someone above that. Who
11 is that?

12 A That was Travis Arnet(phonetic).

13 Q Who was Mr. Arnet?

14 A He was an employee of Stipp Contracting and we had
15 him sign that because the billing, they wanted the billing
16 to go through Stipp -- only reason why we would have
17 somebody from the firm, from the construction firm rather
18 sign the thing.

19 Q So you have Ms. Wagner and someone from Stipp
20 Contracting?

21 A Yes.

22 Q Who is Stipp?

23 A He was the contractor, builder of Ms. Wagner's
24 house.

25 Q General contractor?

1 A General contractor.

2 Q Ms. Wagner signed the document and what's the date

3 that she signed it?

4 A It's 3/9/'06; March 9 of 2006.

5 Q And the signature above, Travis signed when?

6 A March 14.

7 Q So he signed five days after she did?

8 A Yes.

9 Q So is it true that this contract was provided to

10 Ms. Wagner before it was provided to Stipp?

11 A Yes.

12 Q Now, again, you agreed to put the listed materials

13 in?

14 A Correct.

15 Q You agreed to install those?

16 A Correct.

17 Q What did Ms. Wagner agree to do?

18 A Agreed to the specifications of the cabinetry and

19 the price.

20 Q What was the price?

21 A 20,760.

22 Q And did you do the work?

23 A Yes.

24 Q Did you provide the cabinets?

25 A Yes.

1 Q Have you ever heard anybody complain about the
2 work done?

3 A No.

4 Q Anybody ever make any complaints about any
5 defective workmanship?

6 A No.

7 Q Anybody make any complaints about the cabinetry
8 itself?

9 A No.

10 Q And were you ever paid?

11 A No.

12 Q And so what are you asking for today?

13 A The 20,760.

14 Q And after you were not paid you filed a mechanic's
15 lien that's part of the this lawsuit here today?

16 A Correct.

17 Q In that you are requesting the \$20,760?

18 A Correct.

19 Q Okay. Thank you.

20 Now, just to clear something up. You are
21 partners with your brother?

22 A Correct.

23 Q And Mevers Kitchens and Baths, again, operates on
24 your brother's license; is that correct?

25 A Correct.

1 Q Does your company provide cabinetry quotes?

2 A Yes.

3 Q If you'll look on Exhibit 1 at the top left-hand
4 corner does this Mevers Kitchens and Baths, LLC document,
5 which you contend is a contract, state on its face it's a
6 cabinetry quote?

7 A Yes.

8 Q And if you look on the second page of this alleged
9 contract, does it state that this quote includes tax
10 delivery and installation?

11 A Yes.

12 Q And is this Exhibit 1 the only document that you
13 contend is a contract between Ms. Wagner and Mevers
14 Construction?

15 A Yes.

16 Q Or Mevers Kitchens and Baths?

17 A Yes.

18 Q Now, you referred to this document as a quote in
19 your deposition; didn't you?

20 A I suppose.

21 Q And the word contract doesn't appear anywhere on
22 Exhibit 1; does it?

23 A No.

24 Q Now, also on the face -- on the first page of
25 Exhibit 1 it appears there has been some language written

1 through it, crossed off where the molding -- there has been
2 some writing in there that says natural maple finish?

3 A Yes.

4 Q Was that ever initialed as approved? Do you see
5 any initials or any indication that that change to this
6 quote was ever approved?

7 A There are no initials by it.

8 Q And you testified earlier this document is not
9 signed by anyone from Mevers Kitchens and Baths; correct?

10 A That's correct.

11 Q And, in fact, on the approved by-line it's signed
12 by a representative of Stipp construction; correct?

13 A It is.

14 Q And Maryann Wagner who signed the alleged
15 contract, which is entitled a cabinetry quote, signed below
16 the line prior to the time the general contractor signed
17 approved line; correct?

18 A Correct.

19 Q Now, this price quote does not indicate who is
20 purchasing the product; does it?

21 A Has Ms. Wagner's name on it.

22 Q It's signed by the general contractor also; isn't
23 it?

24 A Correct.

25 Q Where does it state on this purchase -- on this

1 quote that it is Ms. Wagner rather than Stipp Contracting
2 who is purchasing the cabinets?

3 A It has her signature on it.

4 Q It has a general contractor's signature on it,
5 too; doesn't it?

6 A Yes, it does.

7 Q So how do you know who is purchasing the cabinets?

8 A Ms. Wagner made the selection of the cabinetry,
9 the selection of the finish, she requested the change of the
10 finish, she signed the document.

11 Q Where does it say on the document who is going to
12 pay for the cabinets? You want me to rephrase that?

13 A Doesn't specifically state who it is but it's
14 implied, understood that Ms. Wagner is going to pay.

15 Q Why isn't it implied and understood that the
16 general contractor's going to pay? He signed it also;
17 didn't he?

18 A Yes, that's just so that he -- the reason we do
19 that is so that the contractor agrees to the price as well.
20 There is -- that way there is no questions at the end of the
21 job from the builder. Contractor can't say, well, I didn't
22 agree to that.

23 Q But nowhere on the face of that alleged contract,
24 that quote, does it say who is responsible for paying for
25 those cabinets; correct?

1 A Correct.

2 Q And nowhere on that price quote does it state when
3 the cabinets will be ordered; does it?

4 A No. Doesn't say anything about when they would be
5 ordered.

6 Q So it's unclear as to when the 50% deposit would
7 be due; correct?

8 A That's correct.

9 Q So you can't tell from the face of this quote when
10 the 50% deposit is due, because it doesn't say when the
11 cabinets are going to be ordered or who is going to pay for
12 them; right?

13 A Yes, you could imply that; yes.

14 Q Does the price quote state when the product will
15 be delivered?

16 A Yes, it says allow four weeks for delivery of
17 cabinetry.

18 Q From what date?

19 A I guess from the date signed.

20 Q Does it say that on the price quote?

21 A No.

22 Q Does the price quote state who is going to pay the
23 50% deposit on the cabinets?

24 A No, not specifically.

25 Q Doesn't say it at all; does it?

1 A (Nods negatively.)

2 Q In fact, you testified in your deposition that
3 Stipp was supposed to pay the deposit on the cabinets;
4 didn't you?

5 A Yes. He was going to handle the payments;
6 correct.

7 Q He was supposed to pay the 50% deposit; correct?

8 A Correct.

9 Q Does this price quote state to whom the product
10 will be delivered?

11 A No.

12 Q Does the price quote state when the product will
13 be delivered?

14 A No.

15 Q Does the price quote state who will pay the
16 balance of the price after the deposit's been paid?

17 A No.

18 Q You sent Stipp a final bill. You invoiced Stipp
19 under this alleged contract; didn't you?

20 A Yes.

21 Q You never sent an invoice to Ms. Wagner; did you?

22 A No.

23 Q In fact, Stipp told you that when he got paid by
24 Ms. Wagner he was going to pay you for the cabinets; didn't
25 he?

1 A Right.

2 Q And you expected Stipp to pay the deposit and to
3 pay the bill; correct?

4 A Correct.

5 Q This alleged contract was really an agreement
6 between you and Stipp; wasn't it?

7 A No.

8 Q Now, does the price quote state the amount of
9 sales tax?

10 A No.

11 Q You never followed up to find out if you had been
12 paid the 50% deposit that's mentioned in that quote; did
13 you?

14 A What happened was, we were real busy at the time.
15 That was sort of the end of the housing boom and, you know,
16 just slipped my mind that they had never paid the deposit.

17 Q Stipp never paid you?

18 A That Stipp never paid the deposit until we got to
19 the end of the job. I realized it and, you know, at the
20 time I wasn't really that concerned about it. I sent them a
21 bill for the total amount. He never paid it.

22 Q And you are personally the person who installed
23 the cabinets in Ms. Wagner's kitchen; correct?

24 A No, not me personally.

25 Q Your employees of --

1 A Yes.

2 Q -- Mevers Kitchens and Baths?

3 A Correct.

4 Q But you were in Ms. Wagner's kitchen while those
5 cabinets were being installed; correct?

6 A Yes.

7 Q And you never mentioned to Ms. Wagner, while the
8 cabinets were being installed, that you had not received the
9 50% deposit for the cabinets; correct?

10 A No. I just didn't even -- I thought we had gotten
11 it and I didn't. Just slipped my mind that we had not
12 gotten it. Wasn't until we got to the end of the job.

13 Q You never asked Ms. Wagner for the remainder
14 amount of those cabinets until you filed a mechanic's lien;
15 correct?

16 A I don't know. I mean, all -- my recollection is I
17 sent Stipp the bill. He kept putting me off. At some point
18 I called Ms. Wagner and told her that he had not paid. He
19 had not paid me and was not paying me; that he kept telling
20 me that he was waiting to get money from her. And that's
21 about the best of my recollection.

22 Q This was the second job you had done with Stipp;
23 correct?

24 A Correct.

25 Q Now, you've seen the lien waivers that Ms. Wagner

1 had Stipp sign proving that he had been paid in full for
2 your cabinets; correct?

3 A Yes.

4 Q Do you have any reason to believe that the general
5 contractor, Stipp, was lying when he signed those lien
6 waivers and that he did not receive payment in full for the
7 cabinets?

8 A I have no way of knowing that.

9 Q You have nothing, no evidence, no witnesses that
10 you're going to produce today that are going to say that
11 Ms. Wagner did not pay Mr. Stipp in full for the cabinets;
12 correct?

13 A No.

14 Q Now, you're not a residential builder; right?

15 A Correct.

16 Q You're also not a general contractor; correct?

17 A Correct.

18 Q And on the exhibit that's been marked as
19 Defendants 4, which is a mechanic's lien that you filed
20 against Ms. Wagner, it's notarized November 20, 2006, the
21 year 2006, you don't put a residential builder license or a
22 contractor license number on there; do you?

23 A No.

24 Q You don't -- your brother, who works for a
25 different company, who has a personal residential builder's

1 license doesn't have his license on this mechanic's lien
2 document either; does he?

3 A No.

4 Q Before you filed a mechanic's lien do you recall
5 having a conversation with Ms. Wagner where you told her you
6 understood that she had, in fact, paid Stipp?

7 A I don't recall that.

8 Q Is it possible that you had a conversation with
9 her and you told her you knew she had paid Stipp?

10 A It's possible that when she told me she paid Stipp
11 I may have said, well, that may be the case. I mean, I
12 didn't know whether she had been paid -- whether she had
13 paid Stipp or not at that point in time, because that was
14 prior to us filing any kind of a lien or a suit.

15 Q You now have reviewed all the documents in
16 discovery. You know that she paid Stipp, but you proceeded
17 with this mechanic's lien for the last three years anyway?

18 A Correct.

19 Q You have no personal knowledge as to whether
20 Ms. Wagner's house was built to code; do you?

21 A No.

22 Q You have no personal knowledge as to whether
23 Ms. Wagner needed to hire contractors after Stipp to bring
24 her house to code and finish the work; do you?

25 A No.

1 Q You have no personal knowledge as to the amount of
2 money that Ms. Wagner contends Stipp owes her; do you?

3 A Other than what has been provided by -- but no
4 personal knowledge.

5 Q During discovery?

6 A Right.

7 Q And even though Stipp filed a mechanic's lien,
8 which was never -- he never followed through with because he
9 went bankrupt, you have no personal knowledge as to whether
10 or not there is any validity to his mechanic's lien?

11 A No.

12 Q One second.

13 MS. BLOODGOOD: Thank you, Your Honor. I don't
14 have any other questions. Could we hand the two
15 exhibits that you have up to --

16 (Discussion off the record.)

17 REDIRECT EXAMINATION BY MR. BROWN:

18 THE COURT: All right.

19 Q Billy, just want to go over a few things again
20 that you were just cross examined about.

21 Number one, the contract. Your contract.

22 A Yes.

23 Q Was that your offer to provide these kitchen
24 cabinets and install them for Ms. Wagner?

25 A Yes.

1 that came about as a result of Hurricane Hugo and
2 legislation was passed to make sure people were
3 properly licensed to bring actions. I know it was done
4 prior to 1998. We were litigating that issue in the
5 '90's, early '90's.

6 I want to take a look at Title 40 as well before I
7 finally issue my ruling, but in order to move forward I
8 would like to do that. I'll take it under advisement
9 on that issue.

10 MS. BLOODGOOD: All right. So I would like to
11 call Ms. Wagner as a witness.

12 THE COURT: Certainly. Ms. Wagner, if you would
13 come on up.

14 (Maryann Wagner, 11 Lowndes Pointe Drive, Charleston, S.C.
15 29403, duly sworn, testifies as follows:)

16 DIRECT EXAMINATION BY MS. BLOODGOOD:

17 Q Ms. Wagner, who was your general contractor who
18 built your house on Lowndes Pointe Drive?

19 A Stipp Contracting.

20 Q I'm going to hand you a document which we've
21 marked as Defendant's Exhibit 5 and ask you if you can
22 identify that document.

23 A Yes, this was the contract between Stipp and
24 myself to build the house for a certain amount of money,
25 dated December 8, '05.

1 construction contract; correct?

2 A Yes, absolutely.

3 Q Now, what did Mr. Stipp tell you was the contract
4 price for the kitchen cabinets? Do you recall?

5 A It was whatever he invoiced me on part of his
6 normal invoicing.

7 Q Okay. And I'm going to show you something to help
8 you with that number, but before I do --

9 A 18,000, I believe. I don't know exactly.

10 Q Since you were paying Mr. Stipp 10% in addition to
11 the subcontractor's prices did you have any conversation
12 with Mr. Stipp about what your interaction was supposed to
13 be with the subcontractors?

14 A I was to have no interaction with the
15 subcontractors. He was handling that. In the case of
16 Mevers I was told to go -- I had no choice. I was told to
17 go to Mevers.

18 Q You didn't get to pick out the kitchen cabinet
19 person?

20 A No.

21 Q Let me show you a letter that we've marked as
22 Defendant's 6 and ask you if you can identify this letter.

23 A Yes, this was upon completion.

24 Q This is a letter from Mr. Stipp to you dated
25 September 12, 2006?

1 A Yes.

2 Q And your house, he said, was completed at that
3 time?

4 A Correct.

5 Q And did he list the subcontractors who provided
6 labor for each trade?

7 A Yes.

8 Q In this letter?

9 A Yes.

10 Q Does he list Mevers Kitchens and Baths as a
11 subcontractor who provided the trade for the cabinets?

12 A Yes, it does.

13 Q Does the letter also state who you should contact
14 if you had a problem with one of subcontractors?

15 A Yes, it's to contact Stipp Contracting instead of
16 any of the subcontractors.

17 Q Okay. Was that your understanding throughout the
18 project that you should contact Stipp if you had a problem
19 with one of the subcontractors?

20 A Yes, I was told who to go to and to go through
21 Stipp for any issues.

22 Q Let me show you an email that we've marked as
23 Defendant's Exhibit 7 and ask you if you can identify that
24 document.

25 A Yes, it's an email from Stipp to me dated May 16,

1 2006.

2 Q Was this prior to the time that your house was
3 completed?

4 A Yes.

5 Q He mentions kitchen cabinets and the required
6 deposit and the quote. Would you read what Stipp says to
7 you about the kitchen cabinets in this email?

8 A As far as the kitchen price goes that is just the
9 required deposit. Mevers also quoted you my price on the
10 cabinets. I will continue to work with them to get the
11 price down more.

12 Q And so was it your understanding in May that Stipp
13 was working with -- negotiating with Mevers to get the price
14 of the cabinets down?

15 A It was my understanding, and also confirmed in
16 this email.

17 Q And the \$20,760 was the price to Stipp, not to
18 you; correct?

19 A Correct.

20 Q Now, 10% of that is approximately \$2000; correct?

21 A Yes.

22 Q And you only got billed by Stipp \$18,760; correct?

23 A Yes.

24 Q So this 20,760 includes Stipp's 10% mark up;
25 right?

1 A Yes, it does.

2 Q Did Stipp eventually bill you for the deposit for
3 the kitchen --

4 A Yes, in May, I believe.

5 Q I'll show you a document we've marked as
6 Defendant's Exhibit 8 and ask you if you can identify that
7 document.

8 A Yes, it's a Stipp -- part of normal billing dated
9 May 11, 2006 invoice number 150.

10 Q And does it indicate that part of this invoice is
11 for the customer deposit on job cabinets?

12 A Yes, I have it underlined customer deposit on job
13 cabinets \$10,000.

14 Q Did you pay Stipp \$10,000 for the deposit on the
15 cabinets?

16 A Yes.

17 Q Let me show you a document that we've marked as
18 Defendant's Exhibit 9 and ask if you can identify that
19 document.

20 A Yes, it's the lien waivers. Any time I would
21 release money to the contractor I made him sign a lien
22 waiver release.

23 Q Were you present when Derrick Stipp signed this
24 lien waiver?

25 A Yes, absolutely.

1 A Yes.

2 Q To work?

3 And would you identify a document that I'm
4 handing you that's been marked as Defendant's Exhibit 13?

5 A Yes. Once again it's a copy of the certified
6 check to support, along with this lien waiver and, again, I
7 would ask Bank of America for the back copy proof that Stipp
8 cashed the check and, hence, paid the subcontractors.

9 Q Now, you never received any invoices from Mevers
10 Kitchens and Baths for the kitchen cabinets; correct?

11 A None, zero.

12 Q And why did you sign what's been marked as
13 Defendant's Exhibit 1, which is the cabinetry quote, below
14 the line instead of on the line that says approved by?

15 A That was actually quite a fight that day because,
16 again, I was told by Stipp to go to Mevers. He was
17 contracting with him. He would work out the pricing as the
18 previous email. I was to go only to approve the design.
19 Mevers was adamant that someone had to at least sign the
20 designs since I was the owner. And that's what I did.
21 Which is why I signed it below the line. I was only signing
22 that I had been there, and I agreed with the type of
23 cabinets, the design, and was in no way signing approval,
24 which I left that line blank.

25 Q Because you had already contracted with Stipp?

- 1 A Absolutely.
- 2 Q As part of his contract with you he was going to
3 get kitchen cabinets?
- 4 A Yes. They were going to sign this after I did.
- 5 Q Were you present when the cabinets were installed?
- 6 A Not the entire time but a portion of the time,
7 yes..
- 8 Q Did you see Mr. Mevers, Billy Mevers in your
9 kitchen while the cabinets were installed?
- 10 A Yes, in August sometime.
- 11 Q By August you had already paid in full for the
12 cabinets?
- 13 A Yes.
- 14 Q And during that time in August when the cabinets
15 were installed no one mentioned to you that there was a
16 problem with payment for the cabinets; correct?
- 17 A Correct, yes.
- 18 Q Mr. Mevers never asked you to pay for the cabinets
19 while he was at your house?
- 20 A No.
- 21 Q Did he ever ask you if you had paid Stipp in full
22 for the cabinets?
- 23 A No.
- 24 Q While he was installing them?
- 25 A No, not while he was there, no.

1 Q So by the time the cabinets were installed in
2 August you had not only paid Stipp, you had signed lien
3 releases from him; correct?

4 A And proof that he cashed those certified checks.

5 Q When did you become aware that Mr. Mevers was
6 taking the position that you were supposed to pay for the
7 kitchen cabinets and not Stipp?

8 A Only when I received notice of a lien.

9 Q And when was that, approximately?

10 A November.

11 Q Okay.

12 A 2006.

13 Q In September of 2006 did you -- did Stipp obtain a
14 CO for your home?

15 A Yes.

16 Q Certificate of Occupancy?

17 A Yes.

18 Q And were there still problems with your home after
19 he obtained that Certificate of Occupancy?

20 A He obtained that falsely. There were numerous
21 problems with my house not to code.

22 Q What were some of the problems?

23 A The stairs are not to code. There were electrical
24 violations not to code. There was a railing outside that he
25 had falsely also retrofitted it to pass the CO. The house

1 was not to code.

2 Q How did he retrofit a railing?

3 A It's a steel cable system which is not -- I guess
4 which he put plexiglass over to get around some of the
5 particular code issues on railing systems and then tore them
6 off. Same thing with the stairs. The stair treads weren't
7 long enough. He had glued boards to extend the tread of the
8 stair so that he could pass, and then he ripped them off.

9 Q After it was inspected?

10 A After it was inspected.

11 Q So was your home ever built to code per the
12 contract you had with Stipp?

13 A No.

14 Q And did you hire someone to come do an estimate on
15 your home and how much it would cost to bring it to code
16 after Stipp stopped work on your house?

17 A Yes.

18 Q I'm going to hand you an exhibit marked as
19 Defendant's 14 and ask you if you can identify that.

20 A Yes, it was a licensed residential inspection
21 service here in Charleston.

22 Q Were you present? Who was the licensed --

23 A Seven Gables Inspection Service, Mr. Jim Lundy,
24 Jr.

25 Q Were you present when Mr. Lundy walked around your

1 house to determine if it was to code?

2 A Yes, it says present at all or part of the
3 inspection, Maryann Wagner.

4 Q And what action did you take when you found out
5 your house was not to code?

6 A A couple of things. I contacted the city. I
7 contacted the state, LLR. I also spoke with various
8 subcontractors to get an estimate of how much it was going
9 to cost me to get my house up to code.

10 Q I'm going to hand you four exhibits; 15, 16, 17
11 and 18. If you would just go through those and describe
12 generally what actions you took in order to try to get your
13 house to code after Mr. Stipp stopped working on it.

14 A You can see this was July of 2008 when I
15 approached the city. The City of Charleston, Department of
16 Public Service came out and did an inspection of the home
17 and confirmed, first, it was an electrical code inspection
18 and they confirmed a code violation with regard to
19 electrical.

20 The second page, deficiencies of code
21 compliance. They cite, second paragraph, the code
22 violations of the interior staircase. They also discuss the
23 handrail height and they confirm about the plexiglass being
24 removed falsely to put the railing to code.

25 Q What else did you do? Which exhibit are you

1 looking at?

2 A This is number 15. That's what the city -- in
3 addition, Exhibit 16 dated September 2nd, was a letter to
4 Mr. Stipp where the city investigated the complaint and
5 found some of the issues were code-compliance issues and
6 they've notified Stipp that the house was not to code and
7 they defined those; stair case, electrical, handrail.

8 Q You're copied on that letter?

9 A I am.

10 Q What is Defendant's 17?

11 A Seventeen is when I tried to pursue it as well
12 with the state, LLR. This is my letter to the state
13 documenting the code issues and their follow up with the
14 city to perform the investigation.

15 Q Defendants 18?

16 A Eighteen? Again, South Carolina Department of
17 Labor Licensing and Regulation, letter dated October 29 of
18 '08, to me, opening this complaint against Stipp Contracting
19 of the house not being to code.

20 Q Did Stipp ever come back and do work to bring your
21 house to code?

22 A No, never saw Stipp again.

23 Q Did you have to pay other contractors to do the
24 work in order to bring your house to code?

25 A Yes.

1 Q I'm going to hand you what we've marked as
2 Defendant's Exhibit 19 and, actually, it's four pages but
3 it's easier if you put them together and glue them, so I'll
4 attach both, Your Honor. It will be -- it's a big page but
5 for the record it might be easier to put the four individual
6 pages.

7 So if you would look at Defendant's 19, is
8 this a document that you created, Ms. Wagner?

9 A Yes.

10 Q Why did you create it?

11 A It's just what I do being an engineer. I
12 documented everything that was done with the house, every
13 payment, every check number, every date of anyone that had
14 been paid and --

15 Q Is this a list of money you had to spend after
16 Stipp stopped working on your house?

17 A Yes, because that's my title; the spread sheet;
18 money spent since the move-in to correct, finish all code
19 violations and improper work.

20 Q What was the total amount that you paid to correct
21 the issues related to Stipp's failure to bring your house to
22 code?

23 A Only partial was 14,322.

24 Q Have you fixed the stairs yet?

25 A I have not.

1 Q Do you have an estimate on the stairs?

2 A Well, a few years ago it was \$12,000. It's
3 probably higher now.

4 Q Can you sell the house before you bring the stairs
5 to code?

6 A No, I'll have to correct it. When everyone does a
7 house inspection, the house isn't to code.

8 Q So besides the 14,000 that you spent
9 out-of-pocket, outside the contract to bring your house to
10 code, you still have 12,000, approximately, to spend?

11 A Approximately.

12 Q Are there other issues that you have to address
13 besides the stairs?

14 A Well, since the stairs are tile that was very
15 unique. I'm not even certain I can replace that, and it
16 goes all through the house. I may have to replace more tile
17 than just the stairs, but you can see there is a list of
18 things attached that will have to be corrected.

19 Q What's your total estimate of how much you've
20 spent and how much you still need to spend in order to get
21 your house to code?

22 A Approximately \$34,700, at that time.

23 Q I'll hand you another document that we've marked
24 as Defendant's Exhibit 20 and ask you if you can identify
25 that document.

1 A Yes. Again, it's my accounting of the project.

2 Q And did you calculate how much money Stipp owes
3 you under the contract?

4 A I did.

5 Q And does Defendant's Exhibit 20 indicate the
6 original cost of the house, the original contract amount?

7 A Yes, original contract 460,566.

8 Q How much money do you believe Stipp owes you as a
9 result of him not bringing your house to code?

10 A 64,908.

11 Q So at the time the mechanic's lien was filed by
12 Mevers Kitchens and Baths did you owe Stipp any money?

13 A No. The cabinets were paid in full. All the
14 invoices were paid in full until that point.

15 Q For the house, you didn't owe him any money for
16 the entire house?

17 A No, it wasn't to code.

18 Q In fact, he owed you money?

19 A Yes.

20 Q All right.

21 MS. BLOODGOOD: I don't have any other questions.

22 If you answer the questions that Mr. Brown has. Okay?

23 CROSS EXAMINATION BY MR. BROWN:

24 Q Good morning, Ms. Wagner.

25 A Good morning.

1 Q And it says how much the price is; is that
2 correct?

3 A Yes.

4 Q Did you understand that you were supposed to pay
5 that price?

6 A Yes.

7 Q Okay. Because it's a contract between you and
8 Stipp; correct?

9 A Yes.

10 Q Now, it was -- and we know that you have a
11 contract because we've got your signature on the last page?

12 A More than that. It says it's a contract.

13 Q Well, it's your signature where it says you accept
14 the proposal; is that right?

15 A I'm signing a contract agreement with Stipp.

16 Q Can I see the document for a second? Thank you.
17 Is this your signature at the bottom right
18 there?

19 A Yes, it is.

20 Q And right over your signature what does it say?

21 A Acceptance of proposal.

22 Q So you accepted the proposal.

23 Now, three months later, in March of 2006,
24 you met with the people over at Mevers; is that correct?

25 A Yes.

1 Q And you had talked about kitchen cabinets;
2 correct?

3 A Yes.

4 Q And you were provided with a document that was
5 called a quote; correct?

6 A Yes.

7 Q Let's see if I can find that.

8 A It's to your left.

9 Q This is my copy. Just a second.

10 And you talked with employees of Mevers about
11 the various types of cabinetry available; is that correct?

12 A Yes.

13 Q And much as in the Stipp document, it says on the
14 right side of this document it says what it is that Mevers
15 is going to provide to you; correct?

16 A Yes.

17 Q And on page two it says he's going to install it;
18 correct?

19 A Yes.

20 Q This is addressed to you, Maryann Wagner; right?

21 A Yes.

22 Q Now, on page one of that we see some handwriting
23 up there. There appears to have been a change in the finish
24 or what-have-you of the cabinets; is that correct?

25 A Yes.

1 Q Was this a change that you desired and you had
2 them make?

3 A I don't recall how it came about.

4 Q But the materials listed on this document are
5 materials you received?

6 A Yes.

7 Q And on page two of that you signed that document?

8 A Below the approved line, yes.

9 Q You're an engineer. Correct?

10 A Yes.

11 Q And you were dealing with Stipp pretty much
12 between you and the contractor; correct?

13 A Yes.

14 Q Is there anywhere on there where you wrote, hey,
15 I'm not entering into a contract here, I'm just telling you
16 that the cabinets are okay. Is there anywhere where you
17 wrote that?

18 A I implied that by signing below the approval line.
19 I didn't sign on the approval line..

20 Q So two signatures on there; correct?

21 A Yes.

22 Q Right at or below where it says approved by. I
23 believe you testified under direct examination that you were
24 there primarily to approve the cabinetry; is that correct?

25 A I was there to select the design and the type of

1 cabinetry and hardware.

2 Q Did you do that?

3 A Yes.

4 Q So when you were done with that did you approve
5 that cabinetry and those designs?

6 A Yes.

7 Q You knew they were going to come and put them in
8 your new house?

9 A I didn't know that, actually.

10 Q You didn't know these cabinets you were buying
11 were going to be put in your house?

12 A All those negotiations were between Stipp and
13 Mevers. I didn't know who would actually install them. I
14 didn't know anything. My job was to pick the cabinets out
15 and the hardware.

16 Q Again, you did that?

17 A Yes.

18 Q Did you at any time understand that the cabinets
19 that you picked out would somehow be placed in your new
20 house?

21 A Yes.

22 Q Was that the idea?

23 A Yes.

24 Q That was my question.

25 And you got the cabinets?

1 not dealing with the subcontractor. My contract is with
2 Stipp Contracting. He invoices me. He's assuring me via
3 the contract he pays all the subcontractors.

4 Q So the answer is no?

5 A Would you repeat the question again?

6 Q Did you at any time ask Mevers to sign a lien
7 waiver?

8 A No.

9 Q And Mevers -- you don't have any knowledge that
10 Mevers was involved in the lien waivers that you got from
11 Stipp; is that correct? His signature or name appears
12 nowhere on there?

13 A Correct. None of the subs do.

14 Q No two ways about it, you got the cabinets you
15 selected; correct?

16 A Yes.

17 Q And there's no problem with the cabinets?

18 A No.

19 Q Thank you.

20 Now, the Certificate of Occupancy. Want to
21 make sure I understand that. At some point you and Stipp
22 kind of begin to have disagreements about the construction;
23 is that correct?

24 A At the very end, yes.

25 Q At the very end. Isn't it true that at the very

BPC1002087

LLR South Carolina
Residential Builders Commission

Home Builder

ROY MEYERS III

THE MEYERS CO. INC.
THE MEYERS CO. INC.
P. O. BOX 21323
CHARLESTON SC 29413

Lic #: RBB. 10650
Effective Date: 07/17/2012
Expires: 06/30/2014

Paul Dwyer
Paul Dwyer, Administrator



MEVERS

Kitchens and Baths, LLC

March 7, 2006

MaryAnne Wagner
214 Calhoun St, Apt 6
Charleston, SC 29401

Cabinetry Quote

Kitchen Specifications:

Executive Cabinetry; Bal Air door w/ Matching drawers in Maple w/ Natural Stained Finish

Molding: 2" Square Molding in Natural Maple *Natural Maple*

3/4" Square Molding in ~~Maple~~ *Natural Maple* Finish

Toe Kick: Maple w/ ~~Maple~~ *Natural Maple* Finish

Features Include:

- Stacked Cabinetry to Ceiling
- Plywood Box Construction
- Blumotion Full Extension Guides on Drawers
- 12" Base w/ Finished Left Side
- 36" 3 Drawer Pots & Pans Base
- 36" Base w/ 2 Roll-out Trays
- Base Lazy Susan
- 36" Sink Base w/ Tilt-out Drawer
- Refrigerator Surround w/ Finished Left Side
- 33" Double oven Stack w/ Finished Left Side
- 27" Base w/ Finished Left Side
- 27" Microwave Wall Cabinet w/ Finished Left Side
- 12" Wall Cabinet w/ Finished Left Side
- 18" Wall Cabinet w/ Finished Right Side
- 24" Angle Wall Cabinet w/ Finished Interior & Door Prepared for Glass
- 36" Wall Cabinet w/ Finished Left Side
- 15" Base w/ Finished Right Side
- 15" Base w/ Finished Left Side
- 36" Sink Base for Cooktop
- Wainscott Panel attached to back of Island
- Refrigerator Panel
- Two Dishwasher Panels

\$13,035.00

Master Bath Specifications:

Executive Cabinetry; Contemporary Slab door w/ Matching drawers in Maple w/ Natural Stain Finish

Full Height Vanity Suspended w/ no legs

\$1,175.00

630-B Jobnis Dodds Blvd, Mt. Pleasant, SC 29464
Ph. 843-388-9633 Fax. 843-388-9644 www.meverskitchens.com

Bath 2 Specifications:

Executive Cabinetry: Contemporary Slab door w/
Matching drawers in Maple w/ Natural Stain Finish
Full Height Vanity Suspended w/ no legs
\$495.00

Bath 3 Specifications:

Executive Cabinetry: Contemporary Slab door w/
Matching drawers in Maple w/ Natural Stain Finish
Full Height Vanity Suspended w/ no legs
\$625.00

Powder Room Specifications:

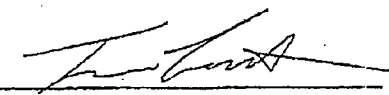
Executive Cabinetry: Contemporary Slab door w/
Matching drawers in Maple w/ Natural Stain Finish
Full Height Vanity Suspended w/ no legs
\$430.00

Total: \$20,760.00

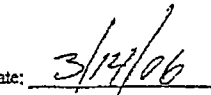
This Quote includes tax, delivery and installation.
Please allow 4 weeks for delivery of cabinetry.
50% deposit is due at time of order and balance is due upon installation.
Thank you for the opportunity to assist you.

Sincerely,

Jennifer Martin

Approved By: 



Date: 

3/14/06
3/9/06



Nicki Haley
Governor

Catherine B. Templeton
Director

South Carolina
Department of Labor, Licensing and Regulation

Residential Builders Commission



110 Centerville Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 264-6996
FAX: (803) 264-4814
www.llr.state.sc.us

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

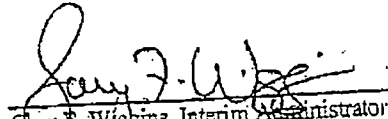
IN RE:)

William E. Mevers or
Mevers Kitchens and Baths, LLC)

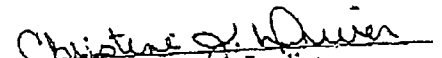
SOUTH CAROLINA RESIDENTIAL
BUILDERS COMMISSION

LICENSE VERIFICATION

This is to verify that William E. Mevers or Mevers Kitchens and Baths, LLC is not, nor has ever been licensed or registered with the Residential Builders Commission, in accordance with Section 40-59-20.


Gary F. Wiggins, Interim Administrator
Residential Builders Commission

Dated and Signed, April 13, 2011


Christine G. Wiggins
Notary Public for South Carolina
My Commission Expires: 11-8-2017



Nikki Haley
Governor

South Carolina
Department of Labor, Licensing and Regulation



Contractors' Licensing Board

110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4686
Licensing Section Fax: (803) 896-4701

STATE OF SOUTH CAROLINA

In the Matter of:
Mevers Kitchens & Baths, LLC and
William E. Mevers

License No: NONE

LICENSE VERIFICATION

AFFIDAVIT

Requested information: Do the above individual or entity have or have ever had a license in S.C. with the Contractors' Licensing Board.

The Board records have been diligently searched and no requested data or documentation has been found, which is kept as official records in the normal course of business, for the above individual or entity as a General or Mechanical Contractor, Burglar/Fire or Fire Sprinkler Contractor in the State of South Carolina as licensed by the Department of Labor, Licensing and Regulation, Contractors' Licensing Board.

L. Joyce Thurber
Certified by:
L. Joyce Thurber
SC LLR, Contractors' Licensing Board
FOIA Coordinator

NOTARY

SUBSCRIBED & SWORN TO BEFORE ME

THIS 10th DAY OF April 2010

Angela D. Scott

S.C. Notary Public

My Commission Expires: August 24, 2012

BOARD SEAL

CERTIFIED TRUE COPY

BY: [Signature]

TITLE: AA

4

STATE OF SOUTH CAROLINA	)	
	)	IN THE CHARLESTON COUNTY RMC OFFICE
COUNTY OF CHARLESTON	)	
	)	EXG 606PG794
MEYERS, KITCHENS AND	)	
BATHS, LLC,	)	
	)	
Plaintiff,	)	MECHANIC'S LIEN
	)	
vs	)	
	)	
MARYANN WAGNER and	)	
STIPP CONTRACTING, LLC,	)	
	)	
Defendants.	)	

Notice is hereby given that Meyers Kitchens and Baths, LLC is due the sum of Twenty-one Thousand, Four Hundred Fourteen and 43/100 (\$21,414.43) from the Defendants, Affidavit of Account being attached hereto and made a part hereof.

The said debt is due to the Plaintiff for materials and labor furnished and actually used in the improvements of the real estate herein described and owned by the Defendants by virtue of an Agreement of or by consent of such owners or by a person or persons authorized by such owners.

That, as shown by the attached Statement and Affidavit, the Plaintiff furnished materials and labor for such buildings, structures, or improvements within ninety (90) days, the date hereof, on or after the 31st day of August, 2006.

That by virtue thereof, by the service and filing of this Notice and Statement, pursuant to the provisions of the statutes in such cases made and provided, the undersigned has and claims a lien to secure payment of the debt so due and the cost of enforcing said lien including reasonable attorney's fees, all as provided by law upon the buildings and structures hereinafter mentioned and upon the following described real estate:

All that certain lot, piece or parcel of land, together with any improvements located thereon, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, known and designated as Lot "5, 7308 SF, No.11 Lowndes Point" on a plat entitled "FINAL PLAT OF A BOUNDARY SURVEY SHOWING THE COMBINATION OF TRACTS "A" & "2", TMS 463-07-00-004 & 464-13-00-054 AND THE SUBSEQUENT SUBDIVISION TO FORM LOTS 1 THROUGH 31 LOWNDES POINTE PROPERTY OF LOWNDES POINT PARTNERS, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SC" dated January 20, 2002, last revised April 14, 2003, and recorded April 24, 2003 in Plat Book EG, Page 325 in the Charleston County RMC Office.

TMS No: 464-13-00-153

Mevers Kitchens and Baths, LLC

By: William Mevers
William Mevers
Its: Managing Member

SWORN to before me this 20
day of November, 2006

[Signature]
Notary Public for South Carolina
My commission expires: 5/6/2013

Stipp Contracting

8467 Hwy 17N
McClellanville, SC 29458
Office 843-887-3739 Fax 843-887-3749

December 8, 2005

Ms. Mary Ann Wagner
11 Lowndes Pointe Dr.
Charleston, SC

RE: New Construction

Dear Ms. Wagner,

Thank you for offering Stipp Contracting an opportunity to bid on your upcoming project. We are pleased to offer for your consideration a firm bid price of ~~\$480,566.68~~ 466,274.68 for the work listed on the scope of work page. We are available at your convenience to help you in any possible way that we can. Our goal is to make your project a fun and memorable experience for you at a very affordable price.

We are a licensed and insured locally owned construction company capable of all projects whether large or small.

Thank you for this opportunity to serve you from all of us at Stipp Contracting. If we can be of further help, please feel free to call us at anytime.

Sincerely,
Stipp Contracting



Derrick Stipp
President

Scope of Work

11 Lowndes Pointe Dr.

- Foundation: Complete all concrete block work per plans. All walls to be 8" block and piers 8 x 8 with #5 rebar and straps tied into foundation.
- Exterior walls: to be completed and framed with 2 x 4 studs 16" oc tied together with Simpson straps and hurricane clips per code requirements.
- Sheathing: 1/2" CDX plywood with 30lb. felt paper for moisture barrier.
- Stucco Foundation: Elastomeric Stucco (color pending)
- Siding: Hardi Plank siding with Hardi Plank trim.
- Porch Ceilings: 1 x 4 T & G bead board
- Soffit: Hardi Panel
- Floor Framing: All joists to be TJI engineered joists
- Concrete Slabs: Garage, family room, and patio. Concrete will be a 4" slab with fiber added to concrete.
- Sub floor: 3/4" T & G Plywood sub floor, glued and nailed.
- Hardwood Floors: 2 1/4" Red oak flooring. Installed, sanded and finished with 3 coats in hall, powder room, kitchen, and living room.
- Carpet: Carpet and pad installed @ \$2.70/sqft. Berber or cut pile. (allowance). Carpet to be installed in dining room, 2nd floor hall, bedrooms, closets, master bath, and family room.
- Ceramic tile: \$3/sq ft for material. (allowance)
- Ceramic tile labor to install \$9/sqft (allowance) Tile to be installed in laundry and bathrooms #2 and #3.
- Roof Framing: Rafters to be 2 x 8 and 2 x 10 per plans
- Roof Sheathing: 1/2" CDX plywood with 30lb felt paper.
- Shingles: 30yr architectural (owner to pick color)
- Flashing: Aluminum coil stock
- Gutters: 5K aluminum to be installed over screen porch and master bedroom deck
- Drywall: 1/2" gypsum board installed and finished
- Painting: Interior and exterior. 1 primer coat and 2 coats finish with flat latex on interior.
- Ceilings: 1 primer coat and 1 coat flat latex
- Interior doors: Solid flat panel paint grade doors per plans
- Exterior doors: Anderson sliders, French doors, and steel
- Front door: Custom (allowance \$2000)
- Windows: Anderson Awning and casement vinyl clad with Low E and DP rating per building code.
- Window and Door trim: 1 x 4 and 1 x 6 AC with screens.

- Closet Shelves: 1 x 12 paint grade with wood rods.
- Kitchen Cabinets: Semi-custom flat panel cabinets. (allowance \$15,000)
- Kitchen Counters: Granite 3cm with backsplash (allowance \$2200)
- Vanity Tops: All tops cultured marble with backsplash
- Stairs: Garage to 1st floor to be #1 KDAT treated pine
1st to 2nd floor to be red oak including rails and balusters.
- Plumbing: Supply and install all plumbing per plans
- Plumbing fixtures: All fixtures and toilets to be elongated (allowance \$6500)
- Electrical: Supply and install all electrical per plans
- Electrical Fixtures: All fans, can lights, and sconces (allowance \$5500)
- Powder room: Pedestal sink
- Kitchen: SS under mount sink, faucet with spray, garbage disposal, icemaker connection, dishwasher connection, and gas to stove
- Bath 2: Cast iron tub, shower valve, and faucet
- Bath 3: Neo-angled cultured marble walls with glass semi-frameless walls/doors, shower valve and faucet.
- Master Bath: Cultured Marble walls with glass semi-frameless walls/doors, Whirlpool tub deck and splash. Shower and tub valves and faucets.
- Laundry room: Washer and dryer connections (washer and dryer are not included in allowance)
- Install Gas lines: Porch grill, stove and water heater
- Heating: Lennox 13 Seer with rigid and flex ducts
- Insulation: Fiberglass all exterior wall, garage ceiling and attic space
- Appliances (allowance \$8000)
- Door hardware (allowance \$1500)
- Mirrors (allowance \$725)
- ~~Cabinets (allowance \$500)~~
- Vanity Cabinet (allowance \$3600)
- Bath Accessories (allowance \$750)
- Shower Glass (allowance \$1800)
- Supply and install all door and window trim
- Supply and install Clopay garage doors
- Supply and install Bathroom accessories
- Supply and install door and window hardware
- Supply and install cabinet hardware
- Supply and install fiberglass screen on back porch
- Supply and install porch rails
- Supply and install stair treads and hand rails
- Supply and install floors
- Supply and install closet shelves
- Supply and install shoe molding
- Supply and install concrete driveway
- Supply and install mailbox
- Permit

- Port-o-Jon
- Trash removal
- Final clean up
- Final rough grading (landscaping not included)
- Supervision

NOTE: To stucco complete outside of house please add \$23,533.00 to total cost
 To treat lumber package with mold and termite barrier (blue lumber) please add \$7475.000 to the total cost

*\$3,500 included for smart wiring

Conditions

1. All work exceeding 8 hours per day and weekend meetings shall bear the overtime rate of 1 ½ times the hourly rate.
 2. Commencement of work to begin upon mutual agreement and signed contract returned to Stipp Contracting.
 3. All work, per owner furnished plans and specifications or as directed, shall be subject to the owner's final inspection and approval.
 4. Invoices will be submitted at the end of each workweek for work in place for that week only. Payment is due by the customer upon receipt of the invoice.
 5. All change orders will be completed on a cost plus basis.
 - Superintendent: \$45/hr
 - Carpenter: \$35/hr
 - Labor: \$25/hr
- * → A 10% profit and 10% overhead will be added to all materials and subcontractors

Contract Agreement

As contractor, I agree to furnish and provide all necessary supervision, labor, materials, tools, and equipment. I further agree to perform all things necessary for the proper construction and completion, per the South Carolina building code, of the project referenced by these rates and conditions.

Stipp Contracting

Date: 12-8-05

By: [Signature]

As owner, the above prices, specifications, and conditions are to my satisfaction and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined herewith.

Acceptance of Proposal:

Date: 12/14/05

By: Margaret Wagner
Owner

Please sign and return this agreement to Stipp Contracting. Work will begin as soon as this agreement is signed and returned.

Stipp Contracting

8467 Hwy 17N
McClellanville, SC 29458
Office 843-887-3739 Fax 843-887-3749

September 12, 2006

Ms. Mary Ann Wagner
11 Lowndes Point Dr.
Charleston, SC 29413

RE: New Construction

Dear Ms. Wagner

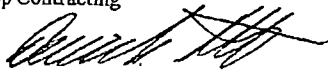
Thank you for choosing Stipp Contracting for your project at 11 Lowndes Point Drive. It has been an honor and a pleasure working with you on your project. As of September 12, 2006 all inspections have been ordered and approved. The final certificate of occupancy was issued from the City of Charleston and supplied to you on September 12, 2006. Stipp Contracting is supplying you with a one year warranty on materials and workmanship from September 12, 2006. All manufacture warranties are applied as specified from the manufacturer. Listed below are the subcontractors who provided labor for each trade.

Electrical - EXP and King Elect.
Plumbing - Charles Brunson Plumbing —
HVAC - German Heating and Air
Footing and Foundation - Warren Concrete
Roofing - Cahill Contracting
Cabinets - Meavers Kitchen and Bath
Glass - A Morgan Glass
Windows - Buck Lumber
Painting - MP Coatings
Termite - Terminex
Tile - Tile by Fire

If any problems occur with any of the specified trades above please give Stipp Contracting a call instead of the individual subcontractors.

Thank you for this opportunity to serve you from all of us at Stipp Contracting. If we can be of further help, please feel free to call us at anytime.

Sincerely,
Stipp Contracting



Derrick Stipp
President

7

INBOX: maryam_wagner

GET EMAIL
 COMPOSE EMAIL
 VIDEO MAIL
 REPLY
 REPLY ALL
 FORWARD
 PRINT
 REPORT AS SPAM

MESSAGE CENTER

INBOX (1)

Draft

Screened Mail [EMPTY]

Sent Mail

Trash [EMPTY]

My Folders[EDIT]

- 11 Lowndes Point
- Bob
- Eric
- Financials
- Job Search
- Travel

Address Book

Mailbox Manager

Preferences

Help

Sign Out

Start faxing via email now. Try eFax. 30-DAY FREE TRIAL

Get the Comcast Toolbar FREE DOWNLOAD

INBOX: Email 2 of 39 Move to Folder

« Previous

From: <slippcontracting@tds.net>
 [ADD TO ADDRESS BOOK]
 To: <Maryam_wagner@comcast.net>
 Cc: <travisa@mindspring.com>
 Subject: requested info
 Date: Tuesday, May 16, 2006 12:00:06 PM

Sorry about the mix up on the numbers I sent earlier. I have attached the correct numbers.

As far as the kitchen price goes that is just the required deposit. Meavers also quoted you my price on the cabinets. I will continue to work on them to get the price down more.

The following are the Invoice numbers, dates, and amounts:

#150	5-11-06	\$66,962.89
#147	3-31-06	\$43,194.85
#146	3-20-06	\$95,000.00
#140	2-25-06	\$79,953.33
#137	1-17-06	\$33,947.98

When you paid me for the change orders you overpaid me by 240.65. That your total amount due of \$66,722.24 and not \$66,962.89.

Travis has answered your other questions in the attached documents. If you any more questions please give me a call.

(Attachments successfully scanned for viruses.)

Attachment 1: Allen Thornton wagner #'s.doc (application/msword)

Attachment 2: change order may 15 2006.doc (application/msword)

Attachment 3: Wagner_Floor_Rails revised.doc (application/msword)

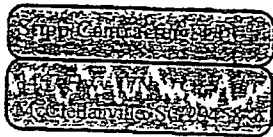
INBOX: Email 2 of 39 Move to Folder

« Previous

Comcast

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http://mailcenter.comcast.net/wmc/v/wm/4471DA890005DCA80000415822135753339D0... 5/22/2006



②
Invoice

Date	Invoice #
5/11/2006	150

Bill To
Mary Ann Wagner 11 Lowndes Point Lane Charleston, SC

Project	Terms
11 Lowndes Point	Due on receipt

Description	Amount
Materials	14,294.76
Insulation	2,119.15
Electrical	210.50
Plumbing-sewer fee	1,280.00
Plumbing-sewer and water connection	3,117.25
Plumbing-water connection fee	525.00
Stegerock	15,631.26
Customer Deposit on Job- Cabinets	10,000.00
Dumpster	956.93
Port O Jon	106.50
SCE&G	24.14
Carpentry- Decks	4,851.00
Misc Cleanup	350.00
Subtotal	\$3,695.99
Fee	8,054.40
Supervision	5,212.50
Thank you for choosing Stipp Contracting	
Total	\$66,952.89

9 (1)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

LIEN WAIVER

In exchange for payment of \$ 62,000.00, receipt of which is hereby acknowledged, STIPP CONTRACTING, ("Contractor") as general contractor does hereby confirm that it has been paid for all work performed, material, fixtures, apparatus, or machinery furnished to the project on the property at Lot 5, 11 Lowndes Point Drive, Charleston, SC 29403, TMS #464-13-00-153, through the date of Invoice # 150 and dated 5/11/06. Contractor hereby waives and releases any and all liens it may have, or be entitled to have, with regard to the above referenced work and any work which preceded it and further agrees it is responsible for paying any of its subcontractors involved to such work.

Dated: 5-26-06

STIPP CONTRACTING, LLC

By: [Signature]
Derrick Stipp, Authorized MemberWitness:

10.

Sequence Number: 9030253519
Capture Date: 05/19/2006
Check Number: 289147

No. 0289147

307/240 870

Remitter (Purchased By)

\$ **62000.00**

Author's Signature

#0289147# 121140000191: 001641000272# #0006200000#

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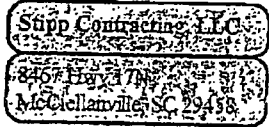
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INDEX

PAY TO THE ORDER OF
NBSC
FOR DEPOSIT ONLY
STPP CONTRACTING, LLC
23076570661

no cash back from this line
Depository bank required

//



Invoice

Date	Invoice #
3/4/2006	159

Bill To
Mary Ann Wagner 11 Lowndes Point Lane Charleston, SC

Project	Terms
11 Lowndes Point	Due on receipt

Description	Amount
Mill work & Trim- Labor	4,460.00
Painting	9,100.00
Specialties- Glass	2,345.71
Cabinets - Kitchen	8,760.00
Dumpster	634.50
Port O Jon	53.25
Exterior Trim	2,050.00
Electrical	100.00
Water Bill	9.14
Labor- Clean up	340.58
SCE&G	10.23
Materials	9,412.74
Subtotal	37,276.15
Fee	6,709.71
Supervision	1,417.50
Thank you for choosing Supp Contracting	
Total	\$45,403.36

~(32) 8/4

12

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

LIEN WAIVER

In exchange for payment of \$ 46,236.79, receipt of which is hereby acknowledged, STIPP CONTRACTING, ("Contractor") as general contractor does hereby confirm that it has been paid for all work performed, material, fixtures, apparatus, or machinery furnished to the project on the property at Lot 5, 11 Lowades Point Drive, Charleston, SC 29403, TMS #464-13-00-153, through the date of Invoice # 159 and dated 8/4/06. Contractor hereby waives and releases any and all liens it may have, or be entitled to have, with regard to the above referenced work and any work which preceded it and further agrees it is responsible for paying any of its subcontractors involved to such work.

Dated: 8-79-06

STIPP CONTRACTING, LLC

By: [Signature]
Derrick Stipp, Authorized Member

Witness:

Amount: \$31,236.79
Account: 1641000272
Bank Number: 11400001

Sequence Number: 9030421027
Capture Date: 08/09/2006
Check Number: 289894

13

Bank of America

Cashier's Check

No. 0289894

Pay to the order of **WILLIAMS**
Date **08/09/2006**
Remitter (Purchased By) **WILLIAMS**
Pay ****THIRTY ONE THOUSAND TWO HUNDRED THIRTY SIX DOLLARS AND 79 CENTS****
To ****STIPP CONTRACTORS****
Order **1234**
Of
Bank of America, N.A.
San Antonio, Texas
Authorized Signature *[Signature]*
31236.79

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EXT=0367 TRC=0367 PK=06
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DO NOT WRITE/STAMP BELOW THIS LINE
EXPOSURE BANK EXPOSURE DATE

EXPOSURE CHECKER
Dunst daly

Amount: \$15,000.00
Account: 1641000272
Bank Number: 11400001

Sequence Number: 9430888387
Capture Date: 08/31/2006
Check Number: 391279

Bank of America

Cashier's Check

No. 0391279

DATE: APRIL 28, 2006

PAY TO THE ORDER OF: MARIA KRAFF

AMOUNT: \$15,000.00

SIGNATURE: Erika Meyer

VOID AFTER 90 DAYS

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0530-0020-6
ENT-4245 TRC-3504 PK-06 922 6830190440 061100606

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9831296 111000038 E165 12 002
ENT-425 TEC-925 PK-97 88/31/86
0011423209430000007

X-DR Depository

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DEPOSIT HERE ONLY

14

RESIDENTIAL INSPECTION SERVICE SPECIALIZING IN OLDER AND HISTORIC HOMES	-SEVEN GABLES- INSPECTION SERVICE WWW.SEVENGABLESINSPECTIONS.COM 	39 SMITH ST. CHARLESTON, SC 29401 PH: (843) 723-0060 E-MAIL: FLATBLUESKY @HOTMAIL.COM CHAS. BUS. LIC.: #28943
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SUMMARY

This is the report of a visual inspection of the readily accessible areas of this building, in accordance with the terms and conditions contained in the PRE-INSPECTION AGREEMENT, which is a part of this report and incorporated herein. This report reflects conditions visible and apparent at the time of inspection. Please read the REMARKS printed on each page and call us for an explanation of any aspect of the Report that you do not fully understand.

Date of Inspection: September 23, 2006

Time: 8:30 - 12:30

Address: 11 Lowndes Pointe Dr., Charleston, SC 29403

Outside temperature: 81°

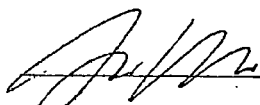
Weather: Sunny, no recent rain

Present at all or part of inspection: Maryann Wagner

Name of inspector: James J. Lundy, Jr.

Category	Defects (refer to full details in report)
1. Structure	No problems found.
2. Heating / Cooling	Compressor access cover too heavy, missing air grille below island cabinet, insulation filling attic overflow pan.
3. Plumbing	Water service pipe above minimum depth, water heater pilot goes out, wrong drain pop-up assemblies in two sinks, handheld shower leaks, front toilet stopped up.
4. Electrical / Kitchen	Left main shutoff box not bonded, service wire damaged by cover screw, missing junction box cover under range, cable not secured in outlet box in island cabinet, closet lights not working, downdraft vent not working, no water to refrigerator, problem with dryer vent, left dishwasher does not dry dishes, missing washer connection box face cover.
5. Interior / attic	Missing covers on speaker/cable outlets, numerous problems with windows, three stair code violations, missing door trim on pocket door, wallboard defects, window paint defects, no door stops for laundry doors, master closet door does not latch, front door weather stripping missing, inadequate insulation in attic two places.
6. Exterior / roof	Stucco defects around door and vent, unfinished base of column, broken vent louver, ripped roof shingle, garage door sensitivity needs adjustment.
7. Grounds	Unfinished landscaping at time of inspection.

Report prepared by:

 9/24/06

James J. Lundy, Jr.

Date

SC License # RBL1511

Page 1 of 27 This confidential report was prepared exclusively for use by Maryann Wagner.

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THE INSPECTION

This home inspection is being conducted in accordance with the nationally recognized Standards of Practice of the American Society of Home Inspectors (ASHI). ASHI Standards exceed the inspection requirements published by the state of South Carolina. The purpose of the inspection is to identify major functional and structural deficiencies that may affect the decision to purchase. Although some minor problems may be mentioned, this report does not attempt to list them all.

An Inspector's job is to thoroughly examine the home and educate you with regard to its condition. You are strongly encouraged to attend the inspection and accompany the inspector during his examination of the building. The inspector's findings are best communicated in a face-to-face manner, and the information you will receive will be of great value to you. The written report is a summary of that information.

It is very important for you to understand what your inspector is doing for you, and what the limitations are in the inspection and analysis. The inspection is of readily accessible areas of the building and is limited to visual observations only. The inspector may not move furniture, lift carpeting, or dismantle any items or equipment.

An inspection is intended to assist in evaluation of the overall condition of the building. The inspection is based on the observation of the visible and apparent condition of the building and its components at the time of inspection.

The results of the inspection are not intended to make any representation regarding latent or concealed defect that may exist, and no warranty or guarantee of any kind is expressed or implied.

Your home inspector is a generalist who is knowledgeable with regard to proper residential construction and maintenance practices. He is not an expert on every aspect of or component in a home. In the report, you may be advised to seek further evaluation by specialist to fully ascertain defects or concerns identified in this report.

This report is no guarantee or warranty; an inspector cannot eliminate all your risk in purchasing a home. There are warranty programs available to insure you against failure of some of the major systems of the house. Consult with a real estate agent for additional information.

Homebuyers, after settling and occupying the building, sometimes overlook important information, recommendations and warning contained in their report. This can cause failure or other damage that could have been prevented if the inspector's advice and recommendations had been followed. Please READ YOUR ENTIRE REPORT!

After occupancy, the building may have some defects that are not identified in the inspection report. If a problem arises that you feel the inspector's report did not give you sufficient warning of, call the inspector. A phone consultation may be helpful to you in deciding what corrective measures to take, and the inspector may be able to advise you in assessing proposals offered by contractors for remedying the problem.

Please consult your inspector before you engage a contractor to examine or correct a possible defect. Unless prior consultation occurs, the company cannot assist you further.

Throughout this report where the age of components is stated, the age shown is approximate. It is not possible to be exact, but an effort is made to be as accurate as possible based on the visible condition of the item or nameplate data. In most cases, age is expressed relative to the service life of the component.

When any item in the report is reported to be "Satisfactory," the meaning is that it appears to be performing its major function at the time of inspection. An item listed as "Satisfactory" will require periodic repair and maintenance actions to achieve its full useful service life.

PART 1: STRUCTURE

Structural Defects

Cracks, buckling, bowing, sagging and other forms of displacement may indicate a major structural defect. Some cracks are indicative of minor shrinkage or settlement; others indicate structural defects. Often, observations over a period of time are required to determine if movement is still occurring, or if it has stopped. In other cases, soil borings, excavation along foundation walls, and other invasive techniques may be required to evaluate a structural concern. A structural engineer or contractor usually performs these actions; they are not typically completed during a one-time evaluation by a home inspector. It is not unusual for an engineer or contractor to be recommended to be brought in for further evaluation in cases where visible evidence suggests the presence of a structural defect.

Crawl Space Moisture

Crawl space moisture concerns are frequently noted in houses and the conditions that cause it are usually capable of determination by an experienced building analyst. Moisture concerns should be taken seriously; significant damage to the structure can occur due to rot and insects attracted to damp wood. See P. 13 for additional remarks concerning mold and fungi growth.

Reducing dampness, whether slight or extensive, can usually be accomplished by one or more of the following actions: installing gutters, realigning gutters and extending downspouts to discharge some distance from the house, adding a sump pump, adding a vapor barrier, relocating air conditioning ductwork, upgrading air conditioning ductwork insulation, improving crawl space ventilation, adding fill inside low areas of the crawl space to displace water.

In most soils, the recommended slope away from the house is a 5-inch drop over a 5-foot distance (one inch per foot). Expensive solutions to dampness problems are frequently offered, and it is possible to spend many thousands of dollars for such unsatisfactory solutions and elaborate drain systems.

Independent experts try to recommend solutions that prevent water from entering the area around or under the building, and their solutions can be as simple as purchasing a splash block for \$14 and placing it under a downspout outlet, or the purchasing of a load of fill dirt for building up the grade around the house.

Cross ventilation of the crawl space is necessary and installation of a plastic vapor barrier over a dirt floor is strongly recommended precaution, even if visual signs of a moisture problem do not exist.

Insect Boring Activity and Rot

If there is an inaccessible basement or crawl space, there is a possibility that past or present termite activity and/or rot exists in this area. Since no visual inspection can be made, it is not possible to make a determination of this damage if it exists.

Insect Boring Inspection

No inspection is made by this company to detect past or present insect boring activity or rot. We recommend you contact a qualified exterminator should you desire more information or a possible examination of the building and/or a warranty.

SEVEN GABLES INSPECTION SERVICE

Structural Inspection Findings

Photos p. 21

Category	Description	Defect found
Building type	Single family house, new construction	
Construction	Wood frame house 2 story house on raised cinderblock foundation	
Roof type	Asphalt composite fiberglass shingles, architectural grade	
Style	Modern	
Foundation	Raised cinderblock foundation	
Floor structure	Unknown	
Floor sheathing	Unknown	
Insulation	Fiberglass batt	
Roof structure	2x8 rafters at 16" on center with 2x8 ceiling joists	
Roof sheathing	Particle board	
Basement	None	
Crawlspace	N/A	
Remarks:		
Portions of structure members not inspected due to insulation, and wall / ceiling finishes.		
For purposes of the report, Lowndes Point runs east-west, the property is on the south side of the street and the front door faces north.		
The house is a newly built single-family house in the very last stages of being finished. All indications are that the house has been well built with materials known for longevity and low maintenance. The house has 4 bedrooms, 3½ bathrooms, a living room, kitchen, great room, and a recreation room on the ground floor.		
There are no indications of structural defects in the materials or structure of the building. Pertaining to the observable structural elements, no problems or code violations were discovered.		

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SEVEN GABLES INSPECTION SERVICE

PART 2: HEATING AND COOLING

Heat Pumps

Heat pumps operate at maximum efficiency when serviced at least once a year. Adequate air flow is more critical than with other forced air systems; it is important that the filter be kept clean. It is not advisable to shut off supply grilles to rooms except as required to balance heat and cooling. Heat pumps cannot be checked on the heat cycle if the outside temperature is over 65° F. The total heating or cooling capacity of a heat pump system varies with outside temperature conditions.

Gas Furnaces

The heat exchanger in a gas or oil furnace is partially hidden from view; it cannot be fully examined and its condition determined without being disassembled. Since this is not possible during a visual inspection it is recommended that a service contract be placed on the unit and a service call be made prior to settlement to check the condition of a heat exchanger.

Air Conditioning Compressor / Condensing Unit

The major components of an air conditioning condensing unit are the compressor and condensing coil. Condensing coils, located in the air stream, generally last longer. The estimated age of a condensing unit is taken from the equipment nameplate. Sometimes the compressor which is not visible may have to be replaced since the original installation. Air conditioners cannot be checked if the outside temperature is below 65° F.

Air Filter

Air filters should be changed or cleaned every 30 days to provide proper air circulation throughout the house and help protect the heating and cooling system. Buildup of lint, dirt and animal hair (if pets are present) can occur on the AC evaporator coil if air filters are improperly maintained.

Humidifier

Since it is not possible during a visual inspection to determine whether the humidifier is operating properly, it is recommended that it be serviced at the same time as the furnace, and cleaned regularly.

Fireplaces

It is important that a fireplace be cleaned on a routine basis to prevent the buildup of creosote in the flue, which can cause a chimney fire. Chimneys used only for gas logs do not require frequent cleaning. Masonry fireplace chimneys are normally required to have a terra cotta flue liner or 8 inches of masonry surrounding each flue in order to be considered safe and to conform with most building codes. During a visual inspection it is common to be unable to detect the absence of a flue liner either because of stoppage at the firebox, a defective damper, or lack of access from the roof.

SEVEN GABLES INSPECTION SERVICE

Heating and Cooling Inspection Findings

Photos p. 22

Category	Description	Defect found
Heating System	Heat pump	
Fuel	Electric	
Brand	Armstrong Air	
Unit 1	36,000 BTU, 13 SEER age: new	
Unit 2	42,000 BTU, 13 SEER age: new	
Distribution	Ductwork	See Below
Filter	Disposable fiberglass filters 20x30"	
Supplementary heat	Electric resistance emergency heater	
Remarks:		
Units not tested in heat mode due to high outdoor temperature at time of inspection.		
An air grille is missing on the kickboard of the kitchen island where a hole was cut for the HVAC supply. No other defects with ductwork or air grilles were noted.		

Category	Description	Defect found
Cooling System	Heat pump	
Brand	Armstrong Air	
Unit 1	3 ton supply temp: 65° return temp: 75°	See Below
Unit 2	3.5 ton supply temp: 58° return temp: 73°	See Below
Remarks:		
Units turned on when operated by the thermostat. Observed differential temperature indicates satisfactory cooling performance.		
Both compressors are located under the front stairs. Access is provided through a large louvered panel on the east side that is extremely heavy and unwieldy and held in place with a single nail. No specific building code details how much this should weigh or how easily removable it should be. This will primarily be a nuisance to service personnel as the homeowner will seldom have need to access the area.		
Homeowner related a recent problem with downstairs unit's condensate pump having failed, causing damage to wallboard framed under the unit (unit is in garage). Since the unit is fitted with a pan and a float switch, failure of the condensate pump should not have led to water escaping the pan. The pump was operating at time of inspection but it is suspected that there could still be a problem with the condensate pan or the float switch unless they were also fixed at the time of the condensate pump repair. Recommend getting full explanation from the HVAC technician who serviced unit.		
In the attic unit, the condensate pan is filled with loose insulation. This should be cleaned from the pan to prevent problems with condensate overflow or failure of the float switch in the event that the condensate line becomes plugged.		

PART 3: PLUMBING

Wells

Examination of wells is not included in this visual inspection. It is recommended that you have a well water checked for purity by the local health authorities and if possible a check on the flow of the well in periods of drought.

Private Septic Systems

The check of septic systems is not included in our visual inspection. You should have the local health authorities or other qualified experts check the condition of a septic system. In order for the septic system to be checked, the house must have been occupied within the last 30 days. A proper on-site sewage disposal system check should consist of removing the tank cover, pumping out its contents, and visually examining the tank interior.

Water Pipes

Galvanized water pipes tend to rust from the inside out, significantly reducing house water pressure without leaking. Copper pipes are very durable but are sometimes susceptible to corrosion causing pinhole leaks. Plastic piping systems generally have an indefinite life expectancy but exposed portions of the system can be easily damaged. The use of polybutyl plastic piping, however, has been problematic. The system, widely known by the trade name "Quest," is generally ok if copper fittings were used. When plastic fittings are present, the system must be replumbed. The successor to polybutyl, known as PEX, has excellent performance.

Backflow Preventers and Expansion Tanks

Most modern homes have a backflow preventer installed at or near the meter. Many municipalities require them to be added on older homes when work on the plumbing system is performed, or if an irrigation system is present. Backflow preventers should be tested annually. In systems with a backflow preventer, an expansion tank must be present to avoid overpressure conditions created by water expansion in a closed system. Expansion tanks are typically located at the cold water supply to the water heater.

Cross Connections

Connections between on site water supplies and public water supplies are not permitted because of the potential to contaminate the public water supply. If found, they should be removed by a competent plumber.

Domestic Water Heater

The life expectancy of a domestic water heater is 8 to 12 years. Water heaters generally are not replaced unless they leak. The heating element on an electric water heater may require replacing prior to the end of life expectancy of the heater itself. It is very important that water heaters have a properly installed relief valve and discharge piping. The valve discharge should point downward, and the line should slope downward to its discharge at the building exterior.

Ceramic Tile

Bathroom tile installed in a mortar bed is an excellent material. Grout joints, however, are porous and should be sealed every 2 to 3 years with a grout sealer (follow manufacturers directions). Where there is a joint between the tile and other surface such as tub or sink, it is necessary to keep the joint caulked to prevent water from leaking through. Ceramic tile applied with mastic to wallboard is acceptable in places where the surface is not continually wetted, such as a bathroom wall. It is extremely problematic when used in shower stalls, or tub surrounds.

Stall Shower

Until recent years, built-in showers were built over a lead pan. The probable life of this type of installation is as little as 8 to 10 years depending on usage and grout sealing. The standard material used today is a thick polymeric material with indefinite life. It can be installed inexpertly, however, and cause just as much trouble as its lead counterpart. Although a visual inspection is made to determine whether a shower pan is currently leaking, it cannot be stated with certainty that no defect is present or that one may not soon develop. Shower pan leaks often do not show except when the shower is actually in use.

SEVEN GABLES INSPECTION SERVICE

Plumbing Inspection Findings

Photos p. 23

Category	Description	Defect found
Water service entrance	1" PEX	See Below
Water pipes	PEX	
Drain, waste, and vent	PVC	
Wasted disposal	Public sewer	
Water heater	Gas, in room off garage Pressure relief valve present, with expansion tank. Pan and pressure relief valve properly drained to side of house. Unit is properly installed on 18" stand for gas water heaters. Size: 75 gallons Brand: A.O. Smith Age: new	See Below
Water pressure	Average at sinks and showers (40 PSI measured at spigots)	
Bathroom #1	Location: downstairs sink, and toilet Floor covering: ceramic tile	See Below
Bathroom #2	Location: middle bathroom Tub, sink, and toilet Shower wall covering: ceramic tile Floor covering: ceramic tile	See Below
Bathroom #3	Location: front bathroom shower, sink, and toilet Shower wall covering: ceramic tile Floor covering: ceramic tile	See Below
Bathroom #4	Location: master bedroom Tub, shower, double sink, and toilet Shower wall covering: ceramic tile Floor covering: ceramic tile	
Additional sinks	None	
Remarks:		
Bathrooms are numbered in the order in which they were inspected.		
The International Building Code Section P2603.6 specifies that water service piping must be 12" or more below the ground. The service for this house is more or less on top of the ground on the east side of the house (approximately where the water heater is). Recommend all codes be followed.		
The water heater's pilot light has gone off on several occasions, as reported by the homeowner. At the time of inspection, the pilot was off. It was relit and remained on for the duration of the inspection. If the pilot continues to go off, have a qualified plumber inspect the unit for a faulty thermocouple or control valve.		
The sinks in bathroom #1 and bathroom #2 have the incorrect type of pop-up stopper installed. These sinks have no accommodations for pop-up levers but the drains are the type that only work with pop-up levers. Recommend replacement with the correct type of stopper.		
The front bathroom's toilet is stopped up. The handheld shower in that bathroom leaks where there is a loose connection to the supply hose.		
Recommend having all problems repaired by a qualified plumber.		

PART 4: ELECTRICAL

Aluminum wiring

Houses built after, or extensively remodeled after 1960 may have aluminum lower branch wiring. Initially, this wiring was pure aluminum that proved unstable and subject to surface corrosion when placed in direct contact with dissimilar metals at fixture and outlet connections. Later, aluminum alloy was used and although its performance was much better, special care and special connections must be used to prevent corrosion, overheating, arcing, and fire. The practice of using aluminum alloy wiring was generally stopped around 1973.

Knob and Tube wiring

In the first third of the 20th century, houses were wired with "knob and tube" wiring. With this system of wiring, separate hot and neutral wires are suspended by ceramic insulators (called knobs) and protected by ceramic tubes when passing through wood studs and joists. When undamaged, this type of wiring is safe and reliable. One of its chief features is that the hot and neutral wires are not in close proximity and therefore unlikely to cause fires by arcing. The system is however prone to damage where exposed in attics and crawlspaces, the wire's insulation is usually brittle with age, and there is no ground wire with this type of wiring (unless retrofitted later). In old houses it is normal to see knob and tube wiring still in use for lighting and outlet circuits that would require dismantling floors or plaster to replace. Many insurance companies are opposed to this type of wiring being in use in the houses they insure.

Ground Fault Circuit Interrupters

Ground fault circuit interrupters (GFCIs) are special protective devices that prevent electrocution when electrical devices are wetted or submerged in water. They are recommended on all outdoor outlets and on interior outlets in wet areas such as bathrooms and kitchen counter areas. GFCIs should be tested monthly to ensure they are functioning.

Smoke Detectors

If no smoke detectors are presently installed in the building, it is recommended that smoke detectors be installed near mechanical equipment, in the hallway outside sleeping areas, in every bedroom, and in other areas where a fire may originate. Smoke detectors installed in the house should be checked every month to insure that they are functioning properly.

Carbon Monoxide Detectors

Carbon monoxide detectors are strongly recommended when the house contains any gas-burning appliances or has an attached garage. These devices should be placed and maintained in accordance with the manufacturer's directions.

Clothes washer and dryers

Clothes washers and dryers cannot be inspected properly without a load of laundry, so these appliances are not tested other than to determine whether they are operating. Overflow pans under the washer, with a drain line routed to the exterior are always recommended, especially when the laundry area is on the second level or above. When hooking up a dryer, it must be kept vented to the exterior to prevent excessive moisture from building up in the house or crawlspace. Dryer vent lines require periodic inspection and cleaning to avoid a lint buildup that may cause a fire. Washer and dryers often are not included in the sales contract, or are included in "as-is condition."

SEVEN GABLES INSPECTION SERVICE

Electrical Inspection Findings

Photos p. 24

Category	Description	Defect found
Service entrance cable	Copper underground 240 V	
Panel box	Location: double panel boxes in garage. Main shutoff panels located outside next to meter Main panel rating: 200 amps each box grounded and bonded, except box on left which is not bonded Circuit breakers	See Below
Auxiliary panel box	Panel boxes located at hot tub and potential hot tub locations	
Circuits and Conductors	Quality: defects found Wiring method: Romex GFCI's: Exterior, kitchen, garage and bathrooms	See Below
Outlets, Fixtures, and Switches	Testing of all outlets and switches was conducted	See below
Smoke Detectors	Tested ok	
Other wired features	Cable, telephone, information, and alarm system	
Remarks:		
The house has two 200 amp services. The main shutoff boxes are located on either side of the meter. The box on the left (north) is not bonded but the right box is not. Only auxiliary boxes should not be bonded; main panel boxes should be. The garage outlets could not be made to work. It is suspected that they are either on a GFCI breaker that was in the tripped position, or they are wired to a GFCI outlet that was tripped. No way to reset this circuit was discovered during the inspection so it is unknown whether the outlets are not working or simply tripped. One of the power lines supplying the north breaker box passes directly behind the front cover screw on the left. The screw has penetrated the wire's insulation and shorted to the box. The insulation should be wrapped with electrical tape and the wire should be put in a position that will not contact any cover screws. There is an electrical junction box in the range cabinet (middle of island) that does not have a cover. All junction boxes must have a cover. There is another outlet box in the end cabinet of the island where the cable insulation does not penetrate the required amount into the box and is not secured there. This is required by section E3805.3.1 of the Residential Building Code. The closet light in the middle bedroom closest to the front of the house does not work. The light in the laundry room does not work. The light in the middle bedroom closest to the rear of the house came on very slowly after about 30 seconds after the switch was turned on. For all items, have repairs made by a qualified electrician.		

SEVEN GABLES INSPECTION SERVICE

Kitchen and Appliances Inspection Findings

Photos p. 24

Category	Description	Defect found
Cabinets	Upper and lower maple cabinets present in new condition	
Countertops	Granite	
Sink	With garbage disposal No leaks, garbage disposal works	
Dishwasher	Two Jenn-Aire dishwashers on either side of sink Age: new Drying problem reported on dishwasher on left	See Below
Range	Jenn-Aire Electric radiant burner Age: new	
Oven	Double Jenn-Aire wall ovens with single controller	
Refrigerator	Maytag 36" double door, freezer on bottom, with ice maker	See Below
Other appliances	GE microwave Age: new Hot water dispenser	
Floor	Ceramic tile	
Ventilation	Downdraft exhaust fan integral to range	See Below
Lighting	High intensity overhead	
Clothes Washer	GE washer Age: new	See Below
Clothes Dryer	GE dryer Age: new	See Below
Remarks:		
Some problems are noted with the kitchen appliances: As reported by the homeowner, the dishwasher on the left does not dry the dishes. The dishwasher on the right (which is the identical brand and make) dries the dishes properly. The downdraft ventilator on the back of the glass-top range did not operate or even raise and lower at the time of inspection. There is no water supplied to the refrigerator icemaker or chilled water dispenser. The reason for this is unknown. The washer connection box front frame is missing. This cover provides a finished appearance to the installation. The dryer hose is connected to the wall vent tube, however the tube has come loose from the wall vent. This should be fixed because hot, humid air will get into the wall and into the laundry room. At the time of inspection, the kitchen lighting was not completely installed, waiting for one light over the island and a light over the sink.		

PART 5: INTERIOR

Nail Pops

Drywall nail pops are due in part to normal expansion and contraction of the wood members to which the drywall is nailed, and are usually only of cosmetic significance.

Fireplace

It is important that a fireplace be cleaned on a routine basis to prevent the buildup of creosote in the flue, which can cause a chimney fire. Masonry fireplace chimneys are normally required to have a terra cotta flue liner or 8 inches of masonry surrounding each flue in order to be considered safe and to conform with most building codes. During a visual inspection it is common to be unable to detect the absence of a flue liner either because of stoppage at the firebox, a defective damper, or lack of access from the roof.

Asbestos and Other Environmental Hazards

Asbestos fiber in some form is present in many homes, but it is often not visible or cannot be identified without testing. If there is any reason to suspect that asbestos fiber may be present and it is of particular concern, a sample of the material in question may be removed and examined in a testing laboratory. However, detecting or inspecting for the presence or absence of asbestos is not a part of our inspection. Also excluded from this inspection and report are the possible presence of or danger from lead in water, radon gas, lead paint, urea formaldehyde, EMF (electromagnetic fields), toxic or flammable chemicals and all other similar or potentially harmful substances and environmental hazards.

Mold and Fungi Growth

The presence of wood destroying fungi can cause significant structural damage to a house. Mold and fungi growth are present to some degree in almost all homes in the area. Some varieties of mold are considered toxic; the effect of mold on occupants varies. When the presence of mold is noted, you should consider retaining the services of an industrial hygienist to determine what further testing and remediation actions may be in order. Seven Gables will note the presence of mold and fungi if it is in visible areas, but detecting or inspecting for the presence or absence of mold is not a part of our inspection.

Wood Flooring

Always attempt to clean wood floors first before making the decision to refinish the floor. Wax removers and other mild stripping agents plus a good waxing and buffing will usually produce satisfactory results. Mild bleaching agents help remove deep stains. Sanding removes some of the wood in the floor and can usually be done safely only once or twice in the life of the floor. Animal odors and stains are common in older homes. These problems cannot be positively identified in a general or visual inspection. Wood flooring also expands and contracts as humidity levels vary; you can expect to see some dimensional variations dependent on the time of year.

Carpeting

Where carpeting has been installed, the materials and condition of the floor underneath cannot be determined.

SEVEN GABLES INSPECTION SERVICE

Interior Inspection Findings

Photos p. 25

Category	Description	Defect found
Floors	Ceramic tile, carpet	
Walls	Drywall	See Below
Ceilings	Drywall, smooth 10' to 12'	
Stairs / Railings	Single flight between floors, code violations	See Below
Woodwork	Full window and door casings, baseboards	
Ceiling fans	On porch	
Fireplace	None	
Doors	Wood	See Below
Windows	Casement windows swinging out	See Below

Remarks:

There are paint and wallboard defects scattered throughout the house. In the entry hall, there is a large hole next to the alarm motion sensor. In the middle bedroom closest to the front there is a missing wall plate next to the outlet behind the bed. There are missing wall covers on miscellaneous outlets for computer or speaker wires.

There are three code violations concerning the stairway. First, the stairs do not have a nosing due to the style of tile used to cover the stairs. A stair nosing is required if the stair treads are less than 11". The stair treads are 10" which would require a minimum 3/4" nosing. Resolving this violation would require adding a nosing or increasing the tread depth to 11". The riser height is uniform at 7 1/4" except for the first step. The riser height on that step is 8 1/4", violating the maximum code height and the maximum variation requirement of less than 3/8". The third violation is that the handrail height is 2" below the minimum height of 34". Have all code violations resolved by a contractor familiar with building code requirements.

The pocket door between the kitchen and living room is missing a stop molding. When the door is closed there are significant gaps between the jamb and the edge of the door.

The master closet door adjacent to the bedroom door to the hallway does not latch. It can be pushed open without turning the handle. It also appears that the handle was installed up side down.

There are no door stops for the laundry room doors. The left door opens into the front bedroom door and the right door opens into the railing.

The front door lacks weather stripping on the bottom of the door. There is a large gap between the floor and door.

There are numerous problems with the windows of the house. Many windows do not open fully. Although the windows appear to have been made by the same manufacturer, the opening hardware varies. Some of the windows have detents that can be set to keep the windows from fully opening while others do not. The building code requires that at least one window must fully open in each bedroom for emergency egress. The lock positions vary too. Some window locks seem to stop half way down while others lock in the full down position. The lock lever in the middle bathroom is missing altogether. This does not give confidence that each window is truly locked. Lastly, while opening several of the windows the arm that opens the window comes out of its track. The ones that came out of the track show damaged nylon bearings. Since the windows are new, it would not be expected that the mechanism components should not be so heavily damaged. Recommend builder evaluates each window for necessary repairs.

There is paint damage that looks like abrasion in the window frames of windows in the master bedroom and the rear middle room.

SEVEN GABLES INSPECTION SERVICE

Attic Inspection Findings

Photos p. 25

Category	Description	Defect found
Access	Pull-down stairs in the upstairs hallway	
Observation method	Crawled and probed	
Moisture stains	None observed	
Framing	2x8 rafters at 16" on center with 2x8 ceiling joists at 16" on center	
Roof sheathing	Particle board	
Storage	Some storage available	
Insulation	7 to 12" loose fiber blown-in insulation	See below
Ventilation	Continuous perforated soffit vent and ridge vent	
Remarks:		
The attic should have 12 or more inches of insulation. There are two areas – one over the master bedroom and one over the middle bedrooms – where the insulation has been moved around and the thickness is less than required. Recommend covering the areas with the required amount of insulation.		

PART 6: EXTERIOR

Inspection of Roof

Many roofs are hazardous to walk on and in most cases can be satisfactorily inspected from the ground with binoculars or from a window with a good view of the roof. Some roofs, such as asbestos cement, slate, clay or concrete tiles, shingles, or shakes may be seriously damaged by persons walking on them. Accordingly, the building analyst will base the inspection report on visible evidence that can be seen without walking on the roof.

"Satisfactory" Roof Covering

When the inspection report indicates that a roof is "satisfactory" it means the roof is functional and in serviceable condition with respect to its relative age. A roof that is stated to be satisfactory may show evidence of past or present leaks or may soon develop leaks. However, such a roof can be repaired and give generally satisfactory service for the balance of its service life.

Roof Coverings

Asphalt and fiberglass single roofs are very common. If a new roof is required, it may be installed over the original roof unless prohibited by local building codes. If two layers of roofing have already been installed, both old layers need to be removed before a new roof covering.

Roll roofing, selvage, or asphalt roll roofing is an inexpensive type of roofing material typically used on low grade roofs.

Wood shingles and shakes have more insulating value than other roofs. They are relatively rare in this area due to the high humidity and its effect on encouraging moss and mildew growth on the shingles.

Built-up roofs consisting of multiple tar / ply layers, or single flexible membrane roofs, need proper drainage. If there is standing water on the roof, the rate of deterioration is doubled.

Metal roofs have a very long life if the exposed metal is kept coated with paint. When a metal roof has been tarred (including aluminized tar, i.e. silver coating), it is impossible to determine the condition of the metal under the tar. While there may be no visible evidence of ongoing leaks, it is possible that the roof has rusted through and will need replacement in the near future.

Stucco

It is important to prevent cracks from forming in exterior stucco since water can seep into cracks, freeze, expand, and cause deterioration of the framing as well as further cracking of the stucco.

SEVEN GABLES INSPECTION SERVICE

Roof Inspection Findings

Photos p. 26

Category	Description	Defect found
Roof Covering	Asphalt composite fiberglass shingles, architectural grade	See Below
Flashing	N/A	
Roof Penetrations	One plumbing vent penetrates roof	
Drip edge	Aluminum drip edge along complete periphery	
Gutters and Downspouts	None	
Chimney flashing	N/A	
Remarks:		
The roof is new, properly installed and in good condition. One exception is a torn shingle on the east side of the house approximately at the middle of the house. There are several small abrasions on that side along the edge but they are not significant. The rip, however, goes through the tarpaper and up to the start of the drip edge flashing. This could cause some damage to the underlying particle board and soffit. Recommend patching or replacing this shingle.		

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SEVEN GABLES INSPECTION SERVICE

Exterior Inspection Findings

Photos p. 26

Category	Description	Defect found
Exterior Wall Covering	Hardi-plank	
Secondary wall covering	Stucco	See Below
Windows	Outward-opening single casement, double paned and some fixed double paned windows	
Skylights	None	
Chimney	None	
Front Porch and Stairs	Tropical hardwood and pressure treated wood	
Back Porch and Stairs	Tropical hardwood and pressure treated wood	
Exterior Doors	Material: wood	
Shutters	None	
Garage / Carport	2 car garage under house	
Garage door openers	Each door has an opener	See Below
Remarks:		
There are two stucco defects on the exterior. The first is on the right side of one of the foundation vents on the east side of the house. The other is at the base of the door to the garage next to the meter box. Both locations will likely be covered with landscaping but are visible at this time. The southeast column of the back porch has a large amount of concrete or stucco mix at its base. It was not clear how the landscaping will cover this. Consult with the landscape architect whether it needs to be removed. The vent on the front of the house has a board that is displaced, making the vent look crooked and damaged. Again, this might be covered by landscaping plants but it is noticeable now. The garage door openers were shown to function properly and shown to return when the light sensors were crossed. The sensitivity is set incorrectly when encountering resistance while closing, however. The doors should reverse when encountering a light resistance. Recommend adjustment.		

PART 7: GROUNDS

Roof and Surface Water Control

Roof and surface water must be controlled to maintain a dry crawl space. This means keeping gutters cleaned out and aligned, extending downspouts, installing splash blocks, and building up the grade so that roof and surface water are diverted away from the building.

A positive grade of approximately 1 inch per foot slope for at least 5 feet from the foundation walls is recommended. Where trees, air conditioning units and other obstructions do not permit the recommended slope, surface drains can be used instead. Failure to properly control water can yield a wet crawl space, erosion, and foundation settlement.

Sidewalks and Driveway

Spalling concrete cannot be patched with concrete because the new will not bond with the old. Water will freeze between the two layers or the concrete will break up from movement or wear. Replacement of the damaged section is recommended. Concrete normally cracks due to shrinkage during the curing process and thermal effects. Cracks up to 1/4" wide are generally considered normal and do not affect the serviceability of the surface as long as there is no vertical separation across the crack.

Retaining Walls

Retaining walls deteriorate because of excessive pressure build-up behind them, generally due to water accumulation. Often conditions can be improved by excavation of a trench behind the retaining wall and filling it with coarse gravel. Drain holes through the wall will then be able to relieve the water pressure. Retaining walls sometimes suffer from tree root pressure or from general movement of topsoil down the slope. Normally these conditions require rebuilding of the retaining wall.

Trees and Shrubbery

Shrubbery should be planted and trimmed so it is at least 12 inches away from the structures. Tree limbs should be cut back at least 5 feet from the structure. Limbs cause physical damage to siding, trim, and roofing by rubbing against them when the wind blows. Growth also holds moisture against the house, encouraging rot.

Exterior wood surfaces

All untreated wood surfaces need regular applications of paint or special chemicals to resist rot. Porch or deck columns and fence posts that are buried in the ground and made of untreated wood will rot within a year or two. All post and wood members with ground contact should be of treated wood or constructed of wood that has natural resistance to rot, such as redwood.

Decking should always be attached with corrosion resistant fasteners. Structural components should be supported by posts or piers, or attached to the main structure using lag bolts. Brick veneer should never be used to support deck components.

SEVEN GABLES INSPECTION SERVICE

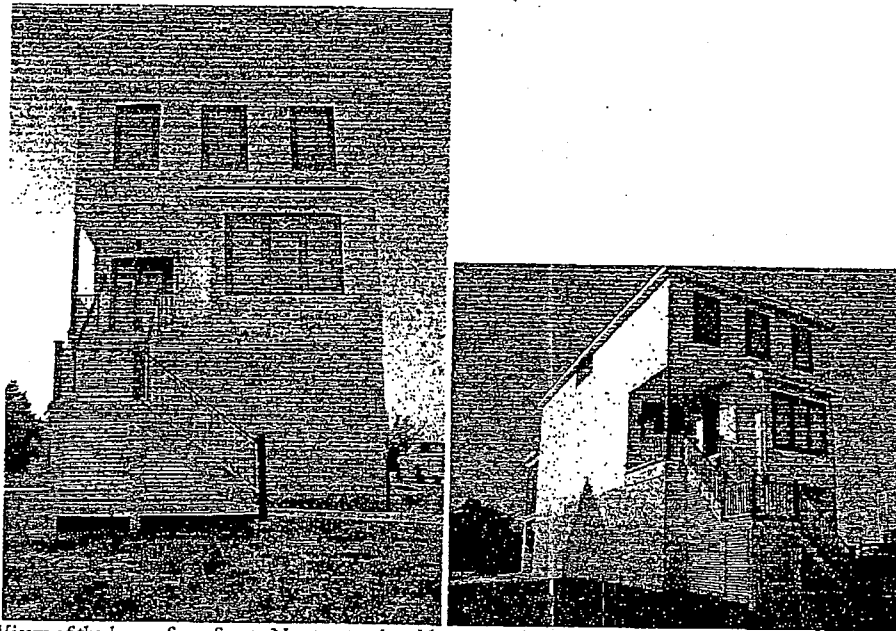
Grounds Inspection Findings

Photos p. 27

Category	Description	Defect found
Grading	General grading, slope and drainage: Cannot be determined at this point Grading and slope at house wall (within 5 feet from building): Good slope away on east side, not finished on west	
Sidewalks / Walkways	Oyster shell cement	
Driveway / parking	Oyster shell cement	
Retaining wall	N/A	
Trees and Shrubbery	None	
Fencing	None	
Deck	None	
Patio / Terrace	Tropical hardwood and pressure treated wood	
Rear / Side stairs	Tropical hardwood and pressure treated wood	
Outbuildings	None	
Remarks:		
The grounds were unlandscaped at the time of inspection. Additional dirt and sod will have to be added. Until that is completed, it is not possible to determine if slope and drainage are correct.		

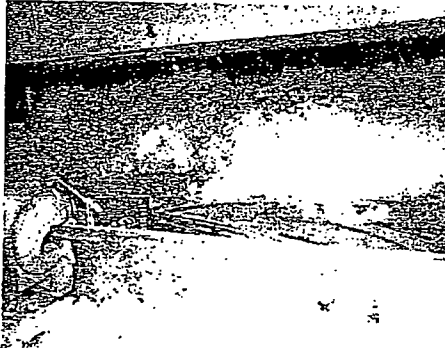
PHOTOS

PART 1: STRUCTURE

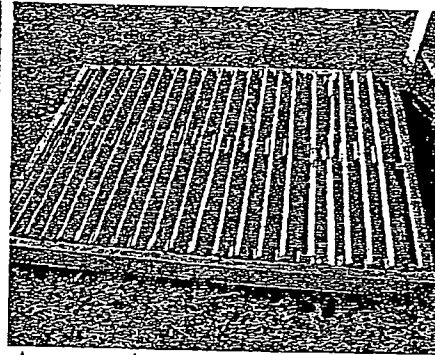


Views of the house from front. No structural problems were found during inspection.

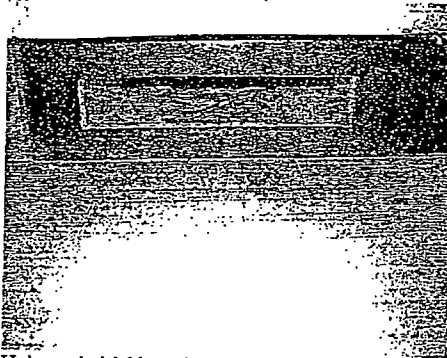
PART 2: HEATING and COOLING



Insulation in condensate pan in attic.

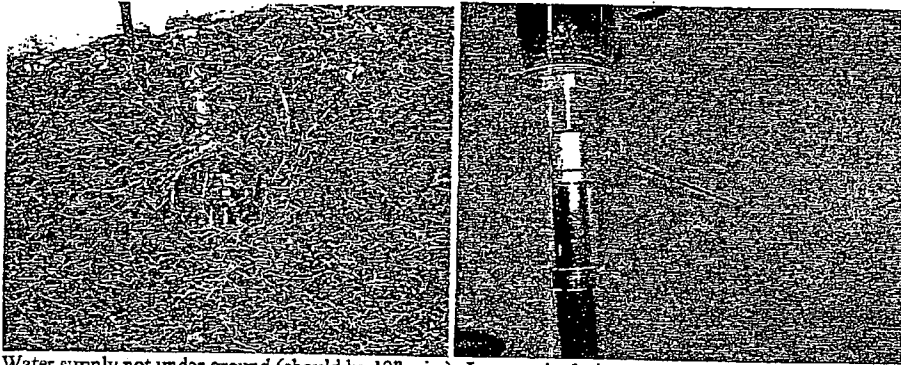


Access cover is extremely heavy and hard to position.

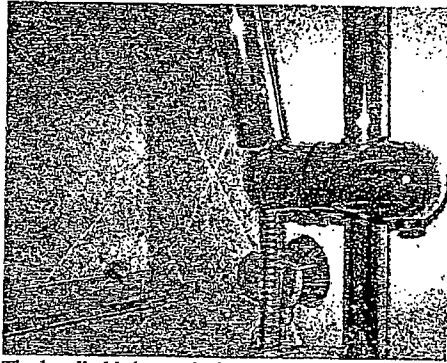


Hole cut in kickboard lacks grille.

PART 3: PLUMBING

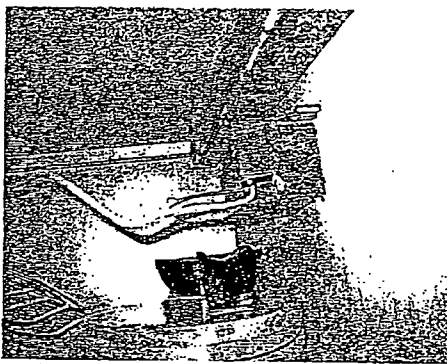


Water supply not under ground (should be 12" min.). Improperly drain type under two sinks.

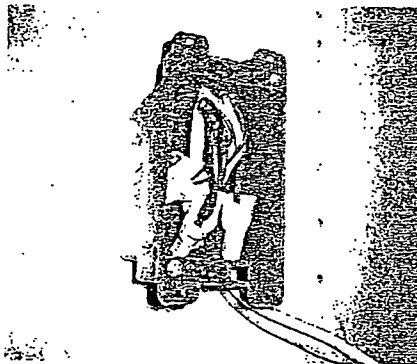


The handheld shower leaks where the hose attaches.

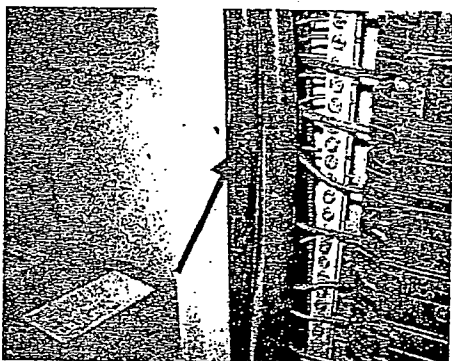
PART 4: ELECTRICAL / KITCHEN



Cable jacket does not penetrate outlet box.



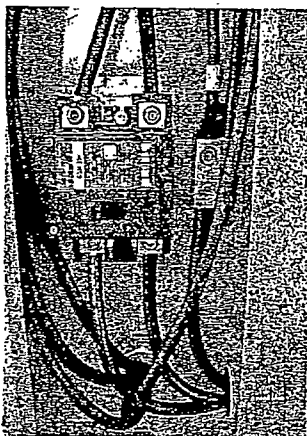
Junction box without cover



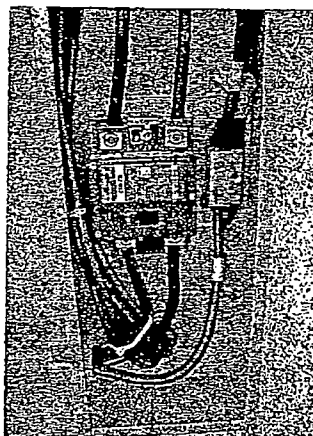
Damage to service cable from cover screw.



Washer connection box missing face cover. Dryer hose is not properly connected

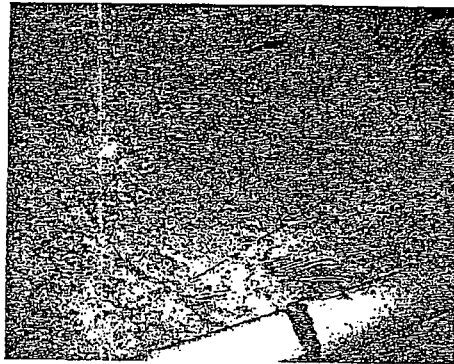
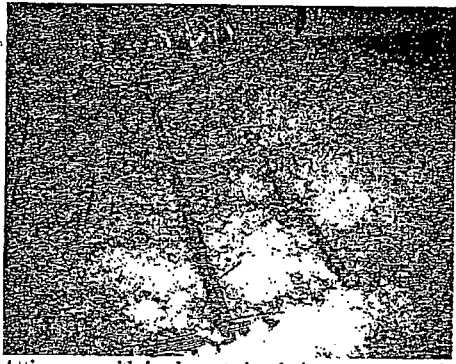


Box on left is not grounded.

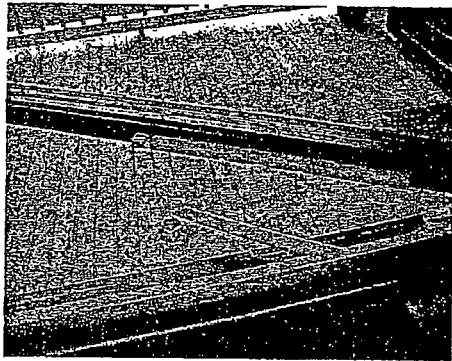


Box on right has proper bonding wire.

PART 5: INTERIOR / ATTIC



Attic areas with inadequate insulation over master bedroom (left) and middle bedroom (right).



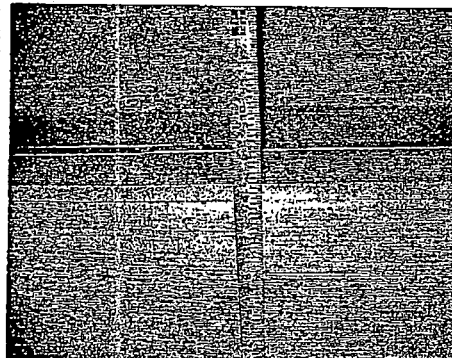
Window arm comes out of track and is damaged.



Missing, abraded paint on bedroom window sill.

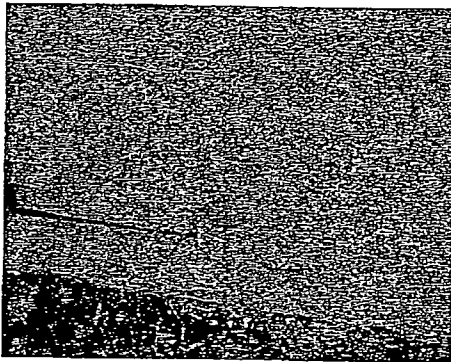


Damaged paint in master bedroom window.

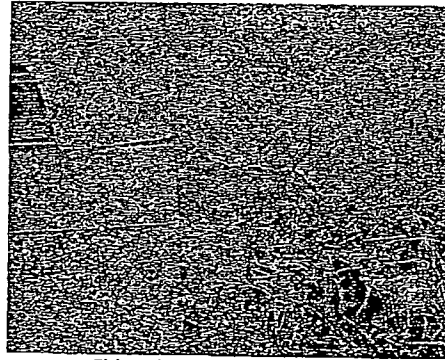


Stairs have no nosing, incorrect tread depth, and inconsistent riser height (first step height shown).

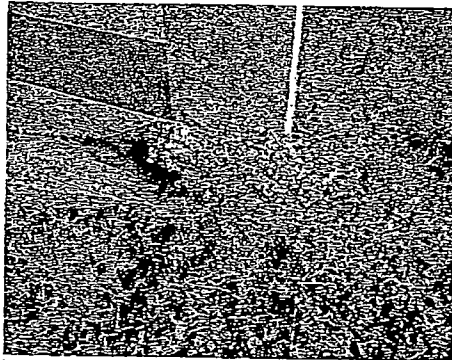
PART 6: EXTERIOR/ROOF



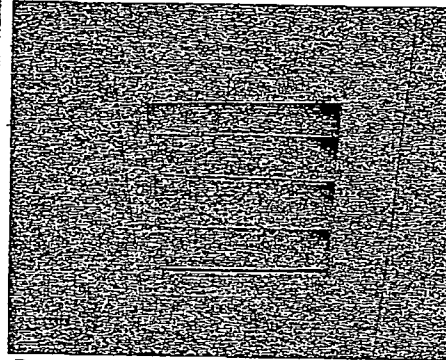
Stucco damage around vent on east side of foundation.



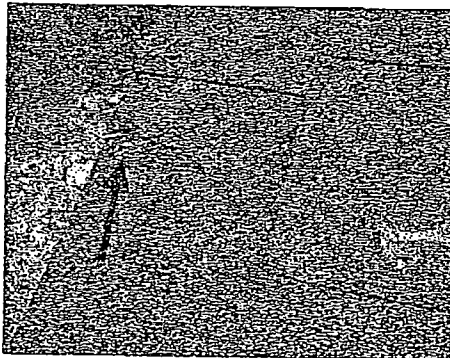
Chipped stucco at base of door to garage.



Excess cement at base of column.

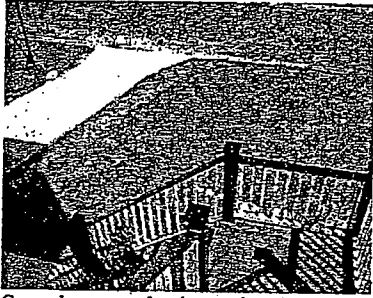


Damaged louvered vent on front of house.



Ripped shingle on east edge of house.

PART 7: GROUND



Grounds were unlandscaped at time of inspection.



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City of Charleston

JOSEPH P. RILEY, JR.
Mayor

July 23rd, 2008

South Carolina
Department of Public Service

LAURA S. CABNESS, P.E.
Director

11 Lowndes Pointe Drive
3 pm

Electrical Code Inspection follow-up

From Complaint:

- 1.) The two 200 Amp main panels located at meter location are bonded per IRC E3509.
- 2.) SPA Auxiliary panel per IRC E4103.3
 - a.) not anchored per code IRC E3804.3
 - b.) no cable connector at rear of disconnect per IRC 38051.2
 - c.) Romex used outdoor must comply with IRC 3702.3.2
- 3.) Garage outlets
 - a.) Five receptacles located in the garage are not GPCI protected per IRC E-3802.2
- 4.) The feeder cable insulation(in the north panel) damage by a screw, was already wrap with electrical tape.
- 5.) Island
 - a.) Outlet box in cabinet without a cover per IRC 3806.4
 - b.) Island GFCI cable where strip protrude outside of outlet box per IRC E.3306.10.3
- 6.) Laundry Room light does not work .
- 7.) All deficiencies will be corrected by a Licensed electrician.

July 24, 2008

11 Lowndes Point
Charleston, South Carolina

Deficiencies of Code Compliance

In response to a complaint filed by the home owner of 11 Lowndes Point, reinspection of specific areas was carried out by Electrical Inspector Marion Hayward, Building inspector Ted Rucker and Chief Building Official Tom Scholtens.

The inspection of the interior staircase found the first riser to be greater than the allowable 3/8 inch difference. Possible solution; remove tile tread to allow correction at substrate level. The tread depth was found to be within the allowable tolerance ref: section R311.5.3.1 state modification to allow 9 inch minimum tread depth and maximum 8 1/4 inch riser. However the style of material used did not allow for the required nosing at each tread Ref sec R 311.5.3.3. Possible solution; attach 3/4-1 inch brushed aluminum tubing to front of tread

The hand rail height was found to be at 33 to 33 3/4 inch, measured at the nose and perpendicular to the tread. Ref: section R 311.5.6.1 state modification to allow handrail heights' minimum to be lowered from 34 to 30 inches. No corrections needed.

During the inspection it was noted that the protective covers of Plexiglas necessary to make the exterior guard rail compliant had been removed by the contractor. Possible solution; contractor returns and reinstalls required guard panels.

Respectfully;
Ted Rucker
Building Code Enforcement Officer



City of Charleston

South Carolina

Department of Public Service

JOSEPH P. RILEY, JR.
Mayor

LAURA S. CABINNESS, P.E.
Director

2 September 2008

Derrick Stipp
Stipp Contracting
8467 Highway 17 North
McClellanville, SC 29458

Dear Mr. Stipp;

I have received a complaint forwarded from the South Carolina Residential Builders Commission concerning some of your work at 11 Lowndes Pointe Drive, Charleston, South Carolina.

Along with other staff members, I investigated the complaint and found that some of the issues were code compliance issues.

Following is a summary of these issues of non compliance:

1. The Interior staircase is not within code specifications.
 - a. There is a difference in riser height in the stairway greater than the allowed 3/8" variation. IRC R 311.5.3.1
 - b. The treads do not have a nosing on the step. They terminate square with the riser. A nosing is required to be added. IRC R311.5.3.3.
2. The exterior patio guardrail had been illegally modified. Prior to the Certificate of Occupancy, Plexiglas panels were added to gain compliance with the code. These panels have been removed and are no longer on site.
3. Electrical code violations are noted:
 - a. Spa Auxiliary Panel is not compliant with IRC E4103
 - i. Not anchored properly. IRC E3804.3
 - ii. No cable connector at the rear of the disconnect IRC E3805.1.2
 - iii. NMC used outdoors shall comply with IRC E3702.3.2
 - b. Garage Outlets are not GFCI protected IRC E3802.2
4. Island
 - a. Outlet Box cover is missing in the cabinet. IRC E3806.4
 - b. Island GFCI cable strip extends outside of outlet box IRC E3306.10.3
 - c. Laundry room light does not work.
5. Electrical deficiencies are required to be addressed by a licensed electrician.

I have tired unsuccessfully to contact you by phone. The number you have given, 843-887-3739 has been disconnected, and I have left messages on 843-887-3883 but have as yet not spoken with you.

75 Calhoun Street, 3rd Floor, Charleston, SC 29401-3506 ~ Phone (843) 724-3754 ~ Fax (843) 973-7261

As you know, compliance with the 2003 IRC is not optional in South Carolina. These are corrections that are required to be made by you and your electrician. Please contact us as soon as the corrections have been made so we may inspect the work and verify completion, and notify the Residential Builders Commission of compliance.

Please contact me at scholtens@ci.charleston.sc.us or at 843 937-8670 at your earliest convenience. I will be forwarding a copy of this letter to Investigator Lowe from the SC Department of Labor Licensing and Regulation as well as to Ms. Wagner the complainant.

Sincerely,

Tom Scholtens, CBO/CFM
Chief Building and Fire Official
City of Charleston
843.937.8670

75 Calhoun Street, 3rd Floor, Charleston, SC 29401-3506 ~ Phone: (843) 724-3754 ~ Fax: (843) 973-7261



South Carolina Department of Labor, Licensing and Regulation

Mark Sanford
Governor

Adrienne Riggins Youmans
Director



South Carolina Building Codes Council

110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4688
FAX: (803) 896-4814
www.llr.state.sc.us

October 28, 2008

Ms. Maryann Wagner
Welded Tube - Berkeley
1100 North Street Circle
Huger, SC 29450

Dear Ms. Wagner:

This is in response to your letter dated October 20, 2008, in which you stated your concerns about LLR case number 2008-385.

I spoke with Mr. Charlie Ido, Supervisor over residential builders' complaints, concerning the issues addressed in your letter. Mr. Ido provided me with the following summary of events.

Your complaint was received by the Office of Investigation and Enforcement (OIE) on June 5, 2008. It was routinely referred to the City of Charleston inasmuch as the complaint was within 24 months since issuance of the Certificate of Occupancy on September 24, 2006. The case was also assigned to LLR Investigator Roger Lowe to monitor.

On July 17, 2008, Investigator Lowe contacted Mr. Tom Scholtens, Building Official for the City of Charleston, to update the status. Mr. Scholtens advised that he had not received the original correspondence. A copy of the complaint was resent.

On September 16, 2008, Investigator Lowe received a report from Mr. Scholtens stating that an inspection was conducted, which verified that code violations existed. Mr. Scholtens reported that Mr. Derrick Stipp (respondent) had been notified of the violations and given a time frame to make repairs. On the same date, you tried to contact Investigator Lowe via telephone. Investigator Lowe returned the call and left a voice mail.

On September 22, 2008, you spoke with Investigator Lowe. During that conversation you stated that you were concerned about the time frame given to Mr. Stipp by the city, and asked specific questions about Mr. Stipp's bond.

On October 21, 2008, Investigator Lowe received correspondence from Mr. Scholtens reporting that attempts to get Mr. Stipp to make repairs had been unsuccessful. He reported that he was returning the file to OIE.

Upon receipt of the documentation from Mr. Scholtens, Investigator Lowe determined that the building permit had been pulled not with respondent's residential builders license but rather with respondents general contractors license (GC# 109922).

On October 24, 2008, Mr. Ido closed the case against Mr. Stipp's residential license administratively and referred the case file to Mr. Steve Freshley, Supervisor over general contractors' complaints.

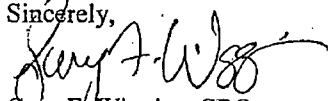
On October 27, 2008, Investigator Lowe received a copy of your letter to me.

Investigator Lowe will complete his inquiry and prepare a report for new case file.

Ms. Wagner, I understand your frustration with the progress made to date, but the OIE is obligated to follow a specific process in the investigation of complaints. If a case goes to an administrative hearing, failure to follow the process will, at best, delay the case from being prosecuted and, at worse, have it dismissed on procedural issues.

Thank you for taking the time to contact me.

Sincerely,



Gary F. Wiggins, CBO
Administrator,
SC Building Codes Council

Cc: Mr. Charles Ido
Mr. Steve Freshley
Mr. Roger Lowe
Mr. Thomas Scholtens
Ms. Laura S. Cabiness
Mayor Joseph P. Riley



Mark Sanford
Governor

Adrienne Riggins Youmans
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Legal Services
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX Information
Office of Investigations (803) 896-4656
Wages and Child Labor (803) 896-7680
www.llr.state.sc.us

896-4526

October 29, 2008

Ms. Maryann Wagner
11 Lowndes Pointe Drive
Charleston, SC 29403

Re: Contractors' Licensing Board
File #: 2008-256

Dear Ms. Wagner:

Your complaint referenced above has been received and a case file has been opened. Investigator Roger Lowe has been assigned the case and may be contacting you for further information. We request that you do not contact the investigator requesting an update of your case. Open investigations are fluid and, therefore, cannot be discussed. Normally our investigators work their cases in the order they are received. Please be assured that your complaint will be worked as quickly as our caseload permits.

Please understand that the function of this agency is to administer and enforce the applicable license laws and regulations and we have no authority beyond the statutes that apply to a particular license area. With respect to your complaint, the agency has the authority to investigate to determine if a licensee has violated the license law and, if so, refer it to the Board or Commission having jurisdiction so that they may take appropriate disciplinary action. Discipline may range from a public reprimand to revocation of a license or registration. This agency does not have the authority to intercede in contractual issues, arbitrate disputes or require a licensee to refund money or perform any particular act regarding the matters alleged in your complaint.

The investigator assigned to this case will collect evidence to determine if there are facts to support a charge against the licensee for violations of the license law. The investigator's findings will be reviewed by a committee composed of legal and subject matter experts with recommendations to follow. If violations are noted, the Board may negotiate a settlement with the licensee or proceed to a hearing at which time you may be called as a witness. If no violations are noted or cannot be proven, the case will be closed and you will be notified, in writing, of our decision.

Please be assured that your complaint will receive a thorough investigation and you will be contacted as necessary. Thank you for your patience while we conduct our investigation.

Respectfully,

J. S. Freshley
Chief of Investigations

JSF

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Money Spent since Move-In to correct/finish Code Violations and Improper Work

Company/Supplier

M&G Locks
M&G Locks
Chem Dry
Joe Newman

Inspection
Bird Hardware
Overhead Doors
Blitch Plumbing
Blitch Plumbing
Blitch Plumbing
A Morgan Glass
Mitch Newall
Mister Sparky
Buck Lumber
Sweetgrass Hardware
S&W Painter
Lowes
Joe Newman
M. Sparkey
Joe Newman
Joe Newman
Joe Newman
Jenkins Electric
Jenkins Electric
Charles Henderson
Charles Henderson
Charles Henderson

Money Paid by MW BofA MW Personal Account
Check Numbers and Dates

\$132.00 873 9/11/06
\$85.00 876, 9/15/06
\$281.00 882, 10/1/06
\$280.00 906, 10/6/06
\$670.00 908, 10/7/06
\$1,225.00 916, 10/13/06
\$140.00 1311, 4/11/07
\$250.00 1322, 4/11/07
\$175.00 1349, 5/20/07
\$125.00 1378, 6/28/07
\$125.00 1404, 8/8/07
\$150.00 1474, 11/8/07
\$410.00 1483, 11/28/07
\$550.00
\$45.00 1302, 3/19/07
\$78.00 880, 10/14/06
\$58.00 924, 11/2/06
\$265.00 1396, 7/24/07
\$168.00 1377, 6/28/07
\$165.00 951, 12/4/06
\$125.00 955, 12/3/06
\$248.00 1465, 12/8/08
\$280.00 paid cash, have receipt
\$209.00 paid cash, have receipt
\$290.00 paid cash, have receipt
\$715.00 misc.
\$100.00 1503, 12/16/09
\$100 1512, 1/13/09
\$1,700 1556, 1557, 3/8/09
\$520.00 1592, 4/18/09
\$150.00 1603, 5/6/09
\$162.50 1660, 7/27/09
\$65 1666, 8/1/09
\$555 1810, 1829, 4/23/10, 6/26/10
\$220 1836, 7/10/10,
\$270 1864, 1870, 12/12/10, 1/8/11

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Charles Henderson	\$500	1879, 1892, 2/1/11, 3/4/11
Charles Henderson	\$470	1914, 5/15/11
Charles Henderson	\$450	1995, 12/30/11
Melcer Tile	\$550	AmEx
Bass	\$350	electronic, 9/21, 10/17
Charles Henderson	\$465	2035, 2048, 4/2/12, 5/1
Charles Henderson	\$450	2087, 2088, 2089, 8/4, 8/7
<u>TOTAL PAID TO DATE TO CORRECT STIPP ISSUES</u>	<u>\$14,322</u>	

Note: Due to surgeries, little work done in 2009, 2010

Remaining Items to Correct per Code Violations

Stairs	\$12,465.82	
Tile	\$4,717	1503, 12/26/08
Buck Lumber	\$1,062.67	1592, 4/18/09; 1603, 5/2/09
Ed Xaccarius	\$1,260	1542, 2/12/09
N. Lakes Electrical	\$448	1573, 3/18/09
Stucco Co.	\$1,700	1556, 3/8/09
<u>Minimum to Correct</u>	<u>\$21,653</u>	
Total spent and still needed to correct Builder non-performance	<u>\$34,710</u>	

Work done

repair broken locks and keys
provide keys
clean carpet. Spilled paint, mildew since plastic left on
various. Repaired incomplete and broken items
Repaired incomplete and broken items left by Stipp. Pocket door
not working and stuck, windows won't open, wires not in conduit,
water heater not functioning, misc.
All items in inspection report done 9/06.

GreenGables

front door/fix key mechanism
no garage openers
bath fixtures don't work
repair leak of master bath tub never fixed initially
repair leak never fixed initially
shower glass never correctly installed
repair electrical code violations
repair electrical code violations
screen door replaced
screen door hardware
paint after leak repair of bath never fixed by Stipp
various repair items -remove glue on stairs, deck finish,
various repair items
electrical code repair
wood repairs
wood repairs
wood repairs
electrical code repair
electrical code repair
plumbing, electrical repairs
code repairs
Incorrect work redo

incorrect work redo
incorrect work redo
bathroom leak, improper install (no wax ring, leaking since built)
same as above...
rerun irrigation lines on neighbor's property
rerun main water line on neighbor's property from house to main meter
rerun main water line from main meter (after City moved) to house

estimate provided

tile repairs if tile still available in small lots.
repair all windows; windows painted shut, don't crank fully
repair deck & seal; never done. Beautiful Brazilian hardwood gone.
hot tub wiring not to code
repair foundation stucco; all broken. See pictures

Original Contract Amount	\$460,566.68
Plus Approved Change Orders	\$15,570.00
Revised Contract Amount	\$476,136.68
Minus Credits and Allowances to Homeowner	\$38,327.00
Revised Contract Amount	\$413,592.00
Amount Paid Stipp	\$437,809.68
Difference	-\$30,198.00
Money spent by MW to correct code violations and punchlist items	\$13,057.00
Money still needed to correct violations	\$21,653.00
Total amount needed to correct code violations and improper work	\$34,710.00
Stipp Owes MW	\$64,908.00
Even if give Stipp benefit of the doubt of change over \$15,570	-\$14,628.00 MW

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Appellant.

**CERTIFICATION OF COUNSEL AND CERTIFICATION OF
COMPLIANCE WITH ORDER ON REDACTION OF PERSONAL DATA
IDENTIFIERS**

I, Nancy Bloodgood, Esquire, hereby certify, pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, that this Record on Appeal contains all of the material and documentation proposed to be included by any of the parties and does not contain any other material. In addition, I further certify that this Record on Appeal complies with the South Carolina Supreme Court's Order dated August 13, 2007, addressing the redaction of personal data identifiers and other sensitive information.

Nancy Bloodgood

Nancy Bloodgood, Esq., SC Bar No. 6459

Lucy C. Sanders, Esq., SC Bar No. 78169

FOSTER LAW FIRM, L.L.C.

895 Island Park Drive, Suite 202

Charleston, SC 29492

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lsanders@fosterfoster.com

Attorneys for the Appellant

Charleston, South Carolina

Date: February 20, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

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Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC;
Defendants,

of whom,

Maryann Wagner is

Appellant.

PROOF OF SERVICE OF RECORD ON APPEAL

Nancy Bloodgood, Esq., SC Bar No. 6459
Lucy C. Sanders, Esq., SC Bar No. 78169
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Email: nbloodgood@fosterfoster.com
lsanders@fosterfoster.com
Attorneys for the Appellant

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RECEIVED
MAR 13 2014
SC Court of Appeals

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I, Nancy Bloodgood, Esquire, certify that on February 20, 2014, I served a copy of the Record on Appeal via First Class Mail by placing a copy of the said documents in the United States mail with sufficient postage thereon on the following:

T. Tracy Brown, Esquire
The Brown Law Firm
1524 Ashley River Road
Charleston, SC 29407
Attorneys for Respondent

Nancy Bloodgood
Nancy Bloodgood, Esquire

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Appellant.

FINAL BRIEF OF APPELLANT

Nancy Bloodgood, Esq., SC Bar No. 6459

Lucy C. Sanders, Esq., SC Bar No. 78169

FOSTER LAW FIRM, L.L.C.

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Charleston, SC 29492

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Attorneys for the Appellant

RECEIVED

MAR 13 2014

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Lower Court err in making conclusions of law based on facts that were not in evidence?
- II. Did the Lower Court err in holding a Cabinetry Quote was a contract between Appellant and Respondent?
- III. Did the Lower Court err in construing the ambiguities of the Cabinetry Quote in favor of the drafter?
- IV. Did the Lower Court err in holding that the Cabinetry Quote met the requirements of the Statute of Frauds?
- V. Did the Lower Court err in holding that Respondent was entitled to rely on his brother's contracting license to file a mechanic's lien?
- VI. Did the Lower Court err in finding that S.C. Code 29-5-10 applied to the facts in this case and permitted Respondent to recover damages in excess of what is owed to the general contractor?
- VII. Did the Lower Court err in finding Respondent was entitled to reasonable attorney fees?

STATEMENT OF THE CASE

This is a mechanic's lien case that was filed by Respondent Mevers Kitchen and Baths, LLC on February 21, 2007 against a general contractor, Stipp Contracting, LLC and Appellant homeowner. (R. pp. 24-37.) Stipp Contracting, LLC (hereinafter "Stipp") declared bankruptcy while the case was pending so the case was stayed on August 24, 2009. (R. p. 1.) On March 24, 2011, the bankruptcy stay was lifted. (R. p. 2.) On June 22, 2011, the case was referred to the Master with the consent of the parties. (R. p. 3.) Appellant thereafter filed a Motion to Dismiss for Lack of Prosecution, and an Order was issued by the Master on April 10, 2012 granting Appellant's Motion and awarding Appellant attorney fees. (R. pp. 4-11.)

Respondent obtained new counsel and filed a Motion to Reconsider which was

subsequently granted. (R. p. 50.) On March 8, 2013, the Master summarily dismissed Respondent's cause of action for quantum meruit against Appellant. (R. pp. 12-14.) Respondent did not appeal the dismissal of that cause of action.

On May 15, 2013, a bench trial was held before the Master regarding Respondent's two remaining causes of action against Appellant; a breach of contract claim and an action to foreclose on a mechanic's lien. The Master issued an Order dated October 3, 2013 finding in favor of Respondent on both causes of action, and this appeal ensues. (R. pp. 15-21.)

STATEMENT OF FACTS

Respondent Mevers Kitchens and Baths, LLC is a business that sells and installs kitchen cabinets. (R. p. 57, lines 20-23; p. 55, lines 7-22.) Billy Mevers is the managing member of Respondent. (R. p. 57, lines 14-19.) Neither Respondent Billy Mevers nor his kitchen cabinet business, Mevers Kitchens and Baths, LLC, are licensed as residential builders or contractors by the State of South Carolina. (R. pp. 94-95; p. 69, lines 14-17.) Respondent's brother, Roy Mevers, is a licensed home builder and his business is called Mevers Construction Company. (R. p. 91.) However, Roy Mevers did not personally do any construction at Appellant's home and his business, Mevers Construction Company, did not perform any construction at Appellant's home. (R. p. 55, lines 22-24; p. 56, lines 20-25.) Respondent and its managing partner Billy Mevers are not members of Roy Mevers's Construction Company. (R. p. 57, lines 1-3.) Respondent's managing partner Billy Mevers testified that he operates his kitchen business under his brother's contractor's license and that his brother is a partner in his kitchen cabinet company. (R. p. 61, lines 21-25; p. 52.)

Stipp Contracting LLC (Stipp), a general contractor, entered into a contract to build Appellant's house on or about December 5, 2005. (R. pp. 98-103; p. 72, lines 17-19.) The contract between Appellant and Stipp states that Appellant agreed to a 10% surcharge being added by Stipp to all materials and subcontractors. (*Id.*) Stipp agreed to furnish all labor, materials and equipment necessary for the proper construction and completion of the home. (*Id.*) Respondent acknowledges that Stipp was the general contractor of Appellant's home. (R. p. 59, line 22 – p. 60, line 1.)

While the house was being built, Appellant was told by Stipp to go to Respondent's store to pick out her kitchen cabinets. (R. p. 73, lines 14-20.) After Appellant chose her cabinets, she was provided a document labeled "Cabinetry Quote" which was approved by an employee of the general contractor. Appellant signed below the approval line on the quote. (R. p. 88, line 7 – p. 89, line 6.) Appellant testified she signed below the line to indicate she was merely approving the cabinets. (R. p. 77, line 12 – p. 78, line 4; p. 88, line 4 – p. 89, line 17.) The term "contract" does not appear anywhere on the Cabinetry Quote, which document Respondent contends is a contract. (R. p. 62, lines 3-23; pp. 92-93.) The Cabinetry Quote is not signed by anyone representing Respondent Mevers Kitchens and Baths, LLC. (R. pp. 92-93.) The Cabinetry Quote does not indicate who is responsible for paying for the kitchen cabinets. (R. p. 93, lines 8-10; p. 64, line 23 – p. 65, line 1; pp. 92-93.) The Cabinetry Quote does not state when the cabinets will be ordered or when the 50% deposit is due. (R. p. 65, lines 2-8; pp. 92-93.) The Cabinetry Quote also does not state who is going to pay the 50% deposit or when the cabinets will be delivered. (R. p. 65, line 9 – p. 66, line 1; pp. 92-93.) Appellant testified she knew she was choosing cabinets but she did not know who

would install them. (R. p. 89, lines 7-17.)

Respondent's managing partner Mevers testified that he understood Stipp was supposed to pay the 50% deposit on the cabinets so Respondent never billed Appellant for the cabinets. (R. p. 66, line 2 – p. 67, line 4.) In fact, when Respondent did not receive the 50% deposit, Mevers billed Stipp, not Appellant. (R. p. 67, lines 11-21.) When Mevers was in Appellant's kitchen during the cabinet installation, he never asked Appellant to pay for the cabinets. (R. p. 68, lines 4-21.)

Appellant was concerned that the quoted price of \$20,760 for the cabinets exceeded the \$15,000 allowance for kitchen cabinets Stipp had included in her contract, but Stipp told Appellant in an email that Respondent had quoted her the general contractor's price and that Stipp would continue to work with Respondent to get the price down. (R. p. 74, line 22 – p. 76, line 1; p. 105.)

Before the kitchen cabinets were installed, Stipp invoiced Appellant the cost of the kitchen cabinets minus his 10% commission, which Appellant paid in full to Stipp. (Id.; R. pp. 106-112.) Stipp thereafter signed two (2) waivers of lien regarding the cabinets on May 26, 2006 and August 29, 2006 when he received payment in full for the invoiced cabinets from Appellant. (R. pp. 106-112.) The Lien Waivers both stated that ~~the general contractor~~ "agrees it is responsible for paying any of its subcontractors involved in such work." (Id.) Stipp later provided Appellant a list of all of the subcontractors he had used to build her home, including Respondent, and Stipp requested in writing Appellant not contact any subcontractors directly if she had problems. (R. p. 104.)

On November 20, 2006, Respondent first notified Appellant through a filed

statement that he had not been paid for the kitchen cabinets. (R. p. 79, lines 5-12.) Appellant Wagner contacted Respondent and told him she had already paid Stipp in full for the cabinets several months earlier. (R. p. 70, lines 4-18.) Appellant Wagner refused to pay Respondent as she had already fully paid the invoiced cost of the cabinets to Stipp. Respondent filed a mechanic's lien against Stipp and Appellant. (R. pp. 22-23.) There is no contractor license number listed on the face of the mechanic's lien. (Id.)

Appellant's contract with Stipp required Appellant's home to be built to code. (R. pp. 98-103.) Appellant's home was not built to code. (R. pp. 113-146.) After Stipp stopped working on Appellant's home and declared bankruptcy, Appellant spent \$14,322 to repair work Stipp performed and Appellant's interior stair case is still not to code; it will cost Appellant an additional \$21,653 to fix the stairs. (R. p. 79, line 18 – p. 84, line 7; pp. 147-151.) Respondent admitted he did not know if any money is owed by Appellant to Stipp for the cabinets. (R. p. 71, lines 1-11.)

ARGUMENTS

Applicable Standard of Review

"In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. The rule is the same whether the judge's findings are made with or without a reference. The judge's findings are equivalent to a jury's findings in a law action." Townes Associates, Ltd. v. Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976) (citing Chapman v. Allstate Ins. Co., 263 S.C. 565, 211 S.E. 2d 876 (1974)). A breach of contract action is an action at law and, in an action at law, the appellate court can correct errors of law but will not disturb factual findings of the

jury "unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings." Townes Associates, Ltd. v. Greenville, supra; Sterling Development Co. v. Collins, 309 S.C. 237, 421 S.E.2d 402 (1992).

I. There is no evidence in the record to support many of the Lower Court's conclusions of law.

a. Lack of facts regarding whether a contract existed.

The Lower Court held that the "Cabinetry Quote" at issue (R. pp. 92-93) was a contract on the basis that Appellant accepted and signed a quote. (R. p. 16). However, Appellant testified at the trial of this case that she signed the quote below the approved line to indicate she was not signing a contract; she was just agreeing to the cabinets. (R. p. 77, line 12 – p. 78, line 4; p. 88, line 4 – p. 89, line 17.) Further, the Lower Court made no finding of fact regarding the significance of Respondent failing to sign the Cabinetry Quote or of the fact that an employee of Stipp's signed the quote. The Lower Court erred in holding that Appellant was responsible for paying Respondent for the cabinets when there is no such language in the contract. (R. pp. 92-93.) The only testimony at trial was Appellant's testimony that she signed under the line to show she was not responsible for payment. The Lower Court also failed to find as fact that Appellant prepared and had Stipp sign two (2) lien waivers confirming he had been paid and had paid Respondent for the cabinets. (R. pp. 15-16.)

b. Lack of facts regarding Respondent's brother's relationship with Respondent.

The Lower Court erred in finding it was "undisputed that Roy and William Mevers are both members and equal owners" of Respondent company. (R. p. 18.) In fact, there are no facts in evidence to support this fact as the Lower Court's conclusion is

based on statements made in a deposition that was never entered in as evidence at the trial. Finding of Fact No. 7 in the Trial Order states it is based on deposition testimony; and no depositions were made part of the record.¹ (R. p. 16; p. 52.)

c. Lack of facts regarding the mechanic's lien issues.

The Lower Court erred in finding that Respondent "contracted directly with [Appellant] to provide material and labor for the delivery and installation of the cabinetry." (R. p. 19.) Respondent never signed the Cabinetry Quote so he could not have contracted directly with Appellant. Further, the contract between Appellant and the general contractor Stipp was entered into evidence which indicated that S.C. Code §29-5-20 applies, not S.C. Code 29-5-10, which limits the amount a subcontractor can recover to the amount owed by the homeowner to the general contractor, in this case zero. As the Order does not find sufficient facts to support several key holdings and as other holdings are based on evidence not in the record, the Lower Court's Order should be overturned.

II. The Cabinetry Quote at issue is not a contract between Respondent and Appellant; it is merely a price quote.

The Lower Court held that the document entitled "Cabinetry Quote" which both Stipp and Appellant signed, but which Respondent did not sign, was a binding contract between Respondent and Appellant, and that Appellant breached the contract by failing to pay Respondent for the cabinets it installed in her home. (R. pp. 15-21.) It is undisputed that there is no indication on the face of the Cabinetry Quote as to whether Stipp or Appellant was responsible for paying the required 50% deposit or the remaining 50% cost of the cabinets.

¹ This finding of fact is only in the Order because Respondent drafted the Order for the Lower Court.

Further, the Cabinetry Quote does not state on its face who is the purchaser of the cabinets, Stipp or Appellant. The Cabinetry Quote also fails to state the total price of the cabinets including the sales tax and contains no order or delivery dates. Therefore, because the Cabinetry Quote is not signed by a necessary party (Respondent), is ambiguous as to the terms of payment (the total cost and who is responsible for making payment), and is silent as to when the cabinets will be ordered or delivered, there are too many essential terms missing from this document for it to be considered a contract and there can be no meeting of the minds as to its terms. See, e.g., Walker v. Preacher, 188 S.C. 431, 435, 199 S.E.2d 675, 677 (1938) (A contract must contain all the essential elements and the terms and conditions stated with reasonable certainty with no essential term omitted, and it must be obvious that the terms are agreed upon). The document at issue is more along the lines of a seller's price quotation, which is an invitation for an offer with the offer usually taking the form of a purchase order providing pricing and terms of delivery. See, e.g., Audio Visual Assoc. v. Sharp Electronics, 210 F.3d 254 (4th Cir. 2000).

The Cabinetry Quote at issue is only an invitation for an offer. See, id. at 259 (“Typically, a seller’s price quotation is an invitation for an offer, and the offer usually takes the form of a purchase order, providing product choice, quantity, price and terms of delivery”). Not only does the Cabinetry Quote lack many of the essential elements of a contract, on its face it indicates there was clearly no meeting of the minds as to who is responsible for payment. Both the general contractor’s agent and the homeowner signed it and the Lower Court could only guess as to who should pay. A Court should not construe a contract to give one party an advantage over the other when there is no

meeting of the minds. Mishoe v. General Motors, 234 S.C. 182, 107 S.E.2d 43 (1958). Respondent admitted he did not request payment from Appellant because he was waiting for Stipp to pay him. In short, there is no evidence that Appellant was the party responsible for paying for the cabinets. There is no written requirement in the Cabinetry quote that Appellant pay for the cost of the cabinets and Respondent never asked Appellant to pay until after he knew Stipp would not to pay him.

III. Even if this purchase quote was considered a contract, ambiguities must be construed against the drafter of any contract.

Further, as there are questions on the face of the Cabinetry Quote as to who is responsible for payment; the payment amount; and the terms of delivery, the document is ambiguous. If terms are susceptible of more than one meaning, ambiguities are construed against the drafter of the contract, here the Respondent. See, e.g., Wallace v. Day, 390 S.C. 69, 700 S.E.2d 446 (Ct. App. 2010); Myrtle Beach Lumber Co. v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (1981); Hann v. Carolina Casualty Ins. Co., 252 S.C. 518, 167 S.E.2d 420 (1969); Ringer v. Graham 293, S.C. 238, 359 S.E.2d 523 (Ct. App. 1987); Silver v. Aabstract Pools & Spas, Inc., 376 S.C. 585, 658 S.E.2d 539 (Ct. App. 2008). Construing this contract against Respondent, Appellant is not responsible for paying for the cabinets, Stipp is:

- a. **When a contract is ambiguous, the parties' conduct is relevant to determine their intent.**

If the Cabinetry Quote is a contract, as its terms are ambiguous, parole evidence is necessary to determine the intent of the parties and the Lower Court failed to consider parole evidence. As stated in Speed v. Speed, 213 S.C. 401, 49 S.E.2d 588 (1948), a contract can be comprised of several documents. One relevant document in evidence

which was completely ignored by the Lower Court is the construction contract between Stipp and Appellant (R. pp. 98-103.) That contract provided an allowance to Appellant for the cabinets in the total price paid to Stipp. (Id.) The contract between Appellant and Stipp also provided that Stipp would be paid 10% over the cost of the subcontractors and materials. (Id.) Both of these facts and Appellant's testimony indicate that the general contractor, not Appellant, was supposed to pay Respondent for the cabinets.

Further, Stipp instructed Appellant in his contract with her and in a letter addressed to her after the home was completed, not to contact the subcontractors if she had any concerns, thereby confirming that he was dealing with the subcontractors, not Appellant. (R. p. 104.) Stipp also indicated in an email to Appellant that he was still negotiating the cabinet price with Respondent after the quote was signed. (R. p. 105.) Finally, Respondent invoiced Stipp, not Appellant, and Respondent testified he was waiting for Stipp to pay him. (R. p. 66, line 18 – p. 67, line 4.) It was only after Stipp failed to pay, that Respondent contacted Appellant. (R. p. 67, line 11 – p. 68, line 21.)

The cardinal rule in the interpretation of a contract, if one exists here, is to ascertain the intention of the parties and give effect to that intention. Bolt v. Ligon 144, S.C. 218, 142 S.E.2d 504 (1928). In this case, based on the conduct of the parties, it is clear the intent was for Stipp, not Appellant, to pay Respondent for the cabinets.

b. Respondent could have obtained payment for the cabinets if he had requested it in a timely manner.

Respondent had the opportunity to ask Appellant to pay for the cabinets, but never did so, even when he was in her kitchen installing the cabinets and had at that time not yet even been paid the 50% deposit. The one whose negligence makes a fraud possible must bear the loss. Clanton's Auto Auction Sales Inc. v. Young, 239 S.C. 250, 122 S.E.2d

640 (1961) (court refused to protect seller of car when his conduct permitted and enabled another to commit a fraud); Willis v. Page, 213 S.C. 156, 48 S.E.2d 627 (1948) (negligence or fault on the part of the seller that is reasonable likely to mislead or deceive an innocent purchaser will support a plea of estoppel). In this case, Respondent's inaction contributed to him not being paid as he should have followed through with the collection of the deposit and/or asked for full payment before the cabinets were installed. Had he done so, he and Appellant would have learned that Stipp pocketed the money he should have paid Respondent.

c. Respondent is not a Licensed Contractor so he cannot enforce a contract.

Plaintiff has admitted he is not a licensed contractor or registered builder but contends that because his brother has a general contracting license for a different business, has Respondent satisfied the statutory requirements for filing a lien. Respondent's manager Billy Mevers, not his brother Roy Mevers, sold and installed Appellant's kitchen cabinets. Per S.C. Code §40-11-370(A), "It is unlawful to use the term "licensed contractor" or to perform or offer to perform general or mechanical construction without first obtaining a license as required by this chapter." Further, pursuant to subsection (B) of this statute, it is "unlawful to engage in construction under a name other than the exact name which appears on the license issued pursuant to this chapter. "Engaging in construction" includes marketing, advertising, using site signs, and submitting contracts." (Id.) Respondent engaged in construction, not his brother. As Respondent's brother did not engage in any construction at Appellant's home, his contractor's license under a different company is irrelevant to this case.

As Respondent is not a licensed contractor, he cannot enforce the document he

alleges is a contract. Per S.C. Code §40-11-370(C), an entity which does not have a valid license cannot bring an action in law or equity to enforce a contract. ("An entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract. An entity that enters into a contract to engage in construction in a name other than the name that appears on its license may not bring an action either at law or in equity to enforce the provisions of the contract.") (Id.)

IV. Even if the Cabinetry Quote could be considered a contract, it is an unenforceable contract under the Statute of Frauds.

The Lower Court held that the essential terms of a contract were present in the Cabinetry Quote and that it was signed by the party to be charged so it met the requirements of the Statute of Frauds. (R. pp. 17-18.) This holding is in error as many terms of the alleged contract are missing or ambiguous and Stipp's representative also signed the price quote, so it is unclear on the face of the document which party was to be charged.

A contract for the sale of goods (kitchen cabinets) of \$500 or more is not enforceable unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent. S.C. Code §36-2-201. Here, two different parties (Stipp and Appellant) signed the alleged contract so the party responsible is not determinable and the contract violates the statute of frauds. See, e.g., Walker v. Preacher, supra. (If the provisions of a contract differ and cannot be reconciled or oral testimony is needed to supply the necessary terms and conditions, the statute of frauds provides no protection.) (Id. at 435-436, 677).

V. Respondent cannot file or enforce a mechanic's lien as he is not a licensed contractor.

"No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five thousand dollars for general contracting or greater than five thousand dollars for mechanical contracting without a license issued in accordance with this chapter." S.C. Code §40-11-30.

S.C. Code §29-5-15(A) states:

To file a mechanic's lien, a contractor must provide the clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed. (emphasis added)

Per S.C. Code §29-5-15(A), Respondent's mechanic's lien is invalid on its face as there is no contractor's license listed on it. ("To file a mechanic's lien, a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed.") Respondent's contractor's license number is not recorded on the lien. As no contractor's license is listed on the lien at issue, the lien is invalid.

VI. Respondent's Mechanic Lien claim fails because Appellant owes the general contractor no money and a subcontractor can only recover funds owed to the general contractor.

The Lower Court erred in applying S.C. Code §29-5-10, as that statute applies to a supplier who deals with an owner. Here, there was ample evidence that Respondent

dealt with the general contractor, not Appellant. Respondent billed the general contractor and expected him to pay for the cabinets. When Respondent was installing the cabinets even though he had not been paid, Mevers said nothing to Appellant about paying for the cabinets. The general contractor directed Appellant not to deal with the subcontractors and Appellant was sent to Respondent's business to choose cabinets by the general contractor. The statute that the Lower Court should have applied is S.C. Code §29-5-20 which protects suppliers who deal with general contractors.

Respondent admitted he has no evidence that any money is owed to Stipp for the cabinets. (R. p. 71, lines 1-11.) If there is no money owed by Appellant to Stipp, there is no money owed to the subcontractor even if there is a valid lien. S.C. Code §29-5-20(B) states:

In no event shall the aggregate amount of the lien filed by a subcontractor or supplier exceed the amount due by the contractor to the subcontractor... in no event shall the aggregate amount of liens on the improvement exceed the amount due to the owner.

Therefore, assuming *arguendo* Respondent is entitled to file a lien, the value of the lien is zero dollars as Stipp is owed nothing by Appellant. In fact, Stipp owes Appellant money because her home was not up to code as he agreed to do by contract (R. pp. 140-151; p. 79, line 13 – p. 85, line 19) and Appellant had to finish the construction work Stipp failed to finish. (R. pp. 147-151).

Even if Respondent was a licensed contractor capable of filing a lien, S.C. Code §29-5-20(B) states, "In no event shall the aggregate amount of any liens filed by a sub-subcontractor or supplier exceed the amount due by the contractor to the subcontractor to whom the sub-subcontractor or supplier has supplied labor, material, or services..." Here, there was ample evidence to establish that at the time Respondent filed his mechanic's

lien, Appellant homeowner had already paid Stipp in full the amount he invoiced her for the cabinets and Stipp had signed lien waivers. (R. p. 107; R. p. 110.) As no money was owed to Stipp by the Appellant, no money is owed to Respondent subcontractor by the Appellant. See, e.g., Stoudenmire Heating & Air Conditioning Co. v. Craig Bldg. Ptnrshp., 308 S.C. 298, 417 S.E.2d 634 (Ct. App. 1992) (liability limited to the balance due to the contractor when notice received from the subcontractor); Stovall Bldg. Supplies v. Mottet, 305 S.C. 28, 406 S.E.2d 176 (Ct. App. 1990).

VII. Appellant is entitled to attorney fees as the prevailing party.

For purposes of the award of attorney's fees, the determination of the prevailing party is based on the verdict. S.C. Code §29-5-20(C). In the event this Court reverses the Lower Court's decision, Appellant respectfully requests this matter be remanded for a determination of attorney fees owed Appellant.

CONCLUSION

Appellant respectfully requests this Court reverse the Lower Court's Order and remand for an assessment of attorney fees against Respondent per S.C. Code §29-5-20(C) as she is the prevailing party in this case and she is entitled to attorney fees from Respondent in an amount to be determined after Appellant submits a petition for attorney fees.

SIGNATURE BLOCK ON NEXT PAGE

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MAR 13 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Appellant.

CERTIFICATE OF COUNSEL

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

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MAR 13 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

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v.

Maryann Wagner and Stipp Contracting, LLC,
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of whom,

Maryann Wagner is

Appellant.

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Nancy Bloodgood, Esquire

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

ORIGINAL

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, L.L.C.....Respondent

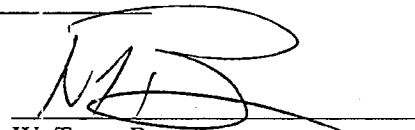
V.

Maryann Wagner and Stipp Contractin, L.L.C.
Defendants,

Of whom,

Maryann Wagner is Appellant

FINAL BRIEF OF RESPONDENT


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MAR 21 2014

SC Court of Appeals

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STATEMENT OF THE CASE

This is a mechanic's lien case that was filed by Respondent Mevers Kitchens and Baths, L.L.C. on February 21, 2007 against a general contractor, Stipp Contracting, L.L.C. and Appellant homeowner. (R. p. 24-37) Stipp Contracting, L.L.C. declared bankruptcy while the case was pending so the case was stayed on August 24, 2009. (R. p. 1) On March 24, 2011, the bankruptcy stay was lifted. (R. p. 2) On June 22, 2011, the case was referred to the Master with the consent of the parties. (R. p. 3) Appellant thereafter filed a Motion to Dismiss for Lack of Prosecution and an Order was issued by the Master on April 10, 2012 granting Appellant's motion and awarding Appellant attorney fees. (R. p. 4-11)

Respondent obtained new counsel and filed a Motion to Reconsider which was subsequently granted. (R. p. 50) On March 8, 2013, the Master summarily dismissed Respondent's claim for quantum meruit against Appellant. (R. pp. 12-14) Respondent did not appeal the dismissal of that cause of action.

On May 15, 2013, a bench trial was held before the Master regarding Respondent's two remaining causes of action against Appellant; a breach of contract claim and a action to foreclose on a mechanic's lien. The Master issued his Order dated October 3, 2013 finding in favor of Respondent on both causes of action, and this appeal ensues. (R. pp. 15-21)

STATEMENT OF THE FACTS

Respondent Mevers Kitchens and Baths, L.L.C. is a business that sells and installs kitchen and bath cabinetry. The two officers of Mevers Kitchens and Baths, L.L.C. (hereinafter "Mevers") are William E. Mevers and his brother, Roy E. Mevers. The Respondent company is licensed through its member, Roy E. Mevers. (R. p. 53, line 7 - p. 54, line 19)

On or about March 7, 2006, Respondent provided Appellant Wagner with a quote for the provision and installation of cabinetry. (R. p. 57, line 22 - p. 58, line 3) Said quote was accepted by Appellant Wagner on March 9, 2006 as evidenced by her signature on the bottom of said quote at the place designated by "Approved By:" (R. p. 59, lines 3-9) Said contract specifically sets forth the cabinets to be installed and the costs therefor. (R. p. 58, line 4 - p. 59, line 5) It also list MaryAnn Wagner as the party for whom the quote was prepared and offered. *Id.* Five days after said contract was executed by Appellant Wagner, (R. p. 87, line 13 - p. 88, line 8) it was also signed by an employee for the Stipp Contracting, L.L.C. evidencing its approval as well.

Mevers provided and installed the cabinets in Appellant Wagner's home as required under the terms of the parties' agreement. (R. p. 90, lines 14-18) Mevers has never been paid. (R. p. 60, line 22 - p. 61, line 11)

Respondent brought its action against Maryann Wagner and Stipp Contracting seeking relief under cause of action for Breach of Contract, Foreclosure and Quantum Meruit. Defendant Stipp previously filed for Bankruptcy under Chapter 7 and is out of the case. Respondent's Quantum Meruit claim was previously disposed of via Motion for Summary Judgement.

ARGUMENT

I. THERE IS AMPLE EVIDENCE IN THE RECORD TO SUPPORT THE LOWER COURT'S CONCLUSIONS OF LAW

a. There were facts presented sufficient to show that a contract existed.

Appellant Wagner opines that there is no evidence on the record supporting the existence of a contract between her and the Respondent. She is in error as there is ample evidence supporting the existence of such a contract.

Respondent's managing member, Billy Mevers, testified that Mevers Kitchens and Baths entered into a contract with the Appellant. (R. p. 57, line 22 - p. 58, line 3).He further testified that the written contract between he and Appellant was addressed to Appellant, at her address, provided the cabinetry to be provided and the costs thereof and the installation cost. (R. p. 58, line 4 - p. 59, line 5) That contract was admitted into evidence. (R. pp. 92-93) He also testified that Appellant approved the contract as evidenced by her signature on the contract.(R. p. 59, lines 3-9). Moreover, Appellant admitted during her testimony to signing the contract and to its contents. (R. p. 87, line 13 - p. 88, line 8) Clearly, Respondent made an offer and Appellant Wagner accepted the offer as shown by her signature thereon.

The fact that there is no signature by Respondent Mevers is of no moment. The Statute of Frauds (SC Code Ann. § 32-3-10) provides that a contract in writing and signed by the "party to be charged." is valid and enforceable. Blacks' Law Dictionary defines "party to be charged" as "the party against whom the contract is sought to be enforced. The party to be charged in the action - that is, the Appellant." Even in the case in which an alleged contract must be in writing, it is sufficient if signed only by the party to be charged. Again, there was sufficient evidence provided to the trial court showing the existence of a contract between Appellant and Respondent.

- b. The uncontroverted evidence presented shows that Respondent was licensed to provide the goods and services contracted for.

Appellant Wagner next takes the position that there was no evidence provided that supports the fact that Roy Mevers are equal owners of Respondent Mevers Kitchens and Baths, L.L.C. Again, the records shows otherwise. In particular, Roy Mevers, who holds a residential builder's license, testified that he is a member of the LLC and owns 50% of the company. (R. p. 53, lines 7-21) That testimony was uncontroverted.

South Carolina Code § 40-59-410 provides in part that:

[t]he practice or offer to practice residential home building, residential specialty contracting, or home inspecting as defined in this chapter by an individual residential builder, residential specialty contractor, or home inspector licensed or registered under this chapter through a firm offering residential building, residential specialty contracting, or home inspecting services to the public is authorized if: (1) one or more of the corporate officers in the case of a corporation, or one or more of the principal owners in the case of a firm . . . are licensed under the provisions of this chapter.”

It is not disputed that Roy Mevers is a member and 50% owner of Mevers Kitchens and Baths, L.L.C. and he is a licensed residential builder. He further testified that he was so licensed at the times the contract was entered into and the mechanic’s lien was filed and that Mevers Kitchens and Baths, L.L.C. operates under his license. (R. p. 53, line 20 - p. 54, line 19) Therefore, Mevers Kitchens and Baths, L.L.C. is licensed properly and it can assert its claims for breach of contract and mechanic’s lien

- c. There were sufficient facts regarding mechanic’s lien issues upon which the trial court could have based its decision.

Appellant next takes the position that there was an insufficient showing that Appellant and Respondent contracted with each other. The existence of the contract is addressed hereinabove. It is not disputed that Mevers Kitchens and Baths, L.L.C. provided the goods and services contracted for. Billy Mevers testified that the company provided the goods and services contracted for but was never paid for those goods and services. (R. p. 60, line 22 - p. 61, line 11) Mevers Kitchens and Baths was and is licensed to provide those goods and services, did provide those goods and services and may assert a mechanic’s lien to secure payment therefor.

Appellant next opines that the controlling mechanic's lien statute is S.C. Code §29-5-20 applies and not is S.C. Code §29-5-10. That assertion is again grounded upon the fact that Appellant claims there was no contract between she and Respondent. Clearly there was.

Mechanic's liens in South Carolina are governed by two main statutes. South Carolina Code Ann. § 29-5-20 controls liens established by subcontractors who are seeking payment for services provided to home owners pursuant to a contract between the home owner and a general contractor.

That statute provides that:

In no event shall the aggregate amount of the lien filed by a subcontractor or supplier exceed the amount due by the contractor to the subcontractor . . . in no event shall the aggregate amount of liens on the improvement exceed the amount due the owner.

S.C. Code Ann. § 29-5-20(B).

South Carolina Code Ann. § 29-5-10 controls liens established by subcontractors or contractors who contract directly with or provide material or labor approved by the home owner to that home owner. That Section contains no language such as that contained within Section 29-5-20(B) and the limitation contained therein does not apply. "If the contract is with or approved by the owner, the property is subject to the lien for the materials or labor without regard to payments made under the building contract." (J. Kershaw Spong, Mechanic's Lien Laws in South Carolina, South Carolina Lawyer, Vol. 6, Pg. 32)

This matter was discussed by the South Carolina Court of Appeals in Ringer v. Graham, 286 S.C. 14, 331 S.E.2d 373 (S.C.App. 1985) within which it stated that "Code Section 29-5-10 gives a mechanic's lien to persons who by agreement or with the consent of the owner perform labor upon

or furnish materials in the erection of aa structure. *Such a lien is unaffected by the amount of the contract between the owner and the contractor.*" Id. (Emphasis added).

Here, the testimony of both the Appellant and Respondent was that Appellant approved of the contract as evidenced by her signature thereon. In fact Appellant testified in no uncertain terms that she did approve the cabinetry contracted for (R . p. 89, lines 4-6) Similarly, Respondent testified that Appellant approved of the cabinetry as evidenced by her signature on the contract. (R. p.59, lines 3-9)

Again, it is abundantly clear that Appellant contracted with Respondent and approved of the goods and service provided. Therefore, S.C. Code §29-5-10 controls. Consequently, Respondent's lien is unaffected by the amount of the contract between Appellant and Stipp. In any event, there was sufficient evidence submitted upon which the trial court could base its decision.

II. IT IS CLEAR FROM THE RECORD THAT APPELLANT AND RESPONDENT
CONTRACTED FOR THE GOODS AND SERVICES PROVIDED

As stated hereinabove, it is clear that the Appellant and Respondent had a contract for the provision and installation of cabinetry within Appellant's home. Respondent's managing member, Billy Mevers, testified that Mevers Kitchens and Baths entered into a contract with the Appellant. (R. p. 57, line 22 - p. 58, line 3) He further testified that the written contract between he and Appellant was addressed to Appellant, at her address, provided the cabinetry to be provided and the costs thereof and the installation cost. (R. p. 58, line 4 - p. 59, line 5) That contract was admitted into evidence. (R. pp. 92-93) He also testified that Appellant approved the contract as evidenced by her signature on the contract. (R. p. 59, lines 3-9) Moreover, Appellant admitted during her testimony to signing the contract and to its contents. (R. p. 87, line 13 - p. 88, line 8) Clearly,

Respondent made an offer and Appellant Wagner accepted the offer as shown by her signature thereon.

Moreover, there were no ambiguities in the contract. It states with specificity which materials were to be provided. While Appellant states in her brief that the contract failed to state the total price of the cabinets, a review of the contract shows that it specifically states that the total price was \$20,760.00 and that the total price “includes tax, delivery and installation” charges. (R. pp. 92-93) While Appellant states in her brief that the contract failed to state a delivery date, a reading of the contract reveals that it specifically provided “[p]lease allow 4 weeks for delivery of cabinetry.” *Id.* While Appellant states in her brief that the contract fails to state who is the purchaser and who is to pay, the contract is addressed to Appellant at her address *Id.* She discussed with Respondent the materials to be provided and made changes to the cabinets and, when provided with the contract, signed it. (R. p. 86, line 23 - p. 88, line 8) It states with specificity what the purchase and installation price was for those materials. It provides a delivery date. *Id.* In addition, the contract provides that “[t]his quote includes tax, delivery and installation.” Finally, provides for a 50% deposit at the time of order with the balance due upon installation. *Id.* The contract is clear as a bell, valid and enforceable.

It is abundantly clear that the parties had a meeting of the minds with regard to the goods and services to be provided by Mevers. In particular, Appellant testified about the written contract as follows:

Q. . . . it says on the right side of this document it says what it is that Mevers is going to provide to you; correct?

A. Yes.

Q. And on page two it says he's going to install it, correct?

A. Yes.

Q. Now, on page one of that we see some handwriting up there. There appears to have been a change in the finish or what-have-you of the cabinets; is that correct?

A. Yes.

Q. Was this a change that you desired and you had them make?

A. I don't recall how it came about.

Q. But the materials listed on this document are materials you received?

A. Yes.

Q. And on page two of that you signed that document?

A. Below the approved line, yes.

(R. p. 87, line 13 - p. 88, line 8) It is also clear from Appellant's testimony that she approved the goods and services that were provided. She further testified as follows:

Q. I believe you testified under direct examination that you were there primarily to approve the cabinetry; is that correct?

A. I was there to select the design and the type of cabinetry and hardware.

Q. Did you do that?

A. Yes.

Q. So when you were done with that did you approve that cabinetry and those designs?

A. Yes.

(R. p. 88, line 22 - p. 89, line 6) Finally, there is no doubt that those cabinets were installed in Appellant's home. Her testimony was:

Q. No two ways about it, you got the cabinets you selected; correct?

A. Yes.

Q. And there's no problem with the cabinets?

A. No.

(R. p. 90, lines 14-18.). Again, the contract between Appellant and Respondent was clear and unambiguous, in writing, offered by Respondent and accepted and approved by Appellant.

III. LICENSURE

Appellant Wagner next and again takes the position that Respondent is not licensed to perform the work that is the subject of the contract and, as a result, cannot maintain any action related to such.

South Carolina Code § 40-59-410 provides in part that:

[t]he practice or offer to practice residential home building, residential specialty contracting, or home inspecting as defined in this chapter by an individual residential builder, residential specialty contractor, or home inspector licensed or registered under this chapter through a firm offering residential building, residential specialty contracting, or home inspecting services to the public is authorized if: (1) one or more of the corporate officers in the case of a corporation, or one or more of the principal owners in the case of a firm . . . are licensed under the provisions of this chapter."

It is not disputed that Roy Mevers is a member and 50% owner of Mevers Kitchens and Baths,

L.L.C. and he is a licensed residential builder. (R. p. 53, lines 9-21) Mevers Kitchens and Baths.

L.L.C. operates under its owner's and member's license. *Id.* Therefore, Mevers is licensed properly and it can assert its claims for breach of contract and mechanic's lien

IV. MECHANIC'S LIEN:

Appellant Wagner next opines that, if Respondent is entitled to recover under its mechanic's lien, it cannot recover more than she would owe under her contract with Stipp, the general contractor.

Mechanic's liens in South Carolina are governed by two main statutes. South Carolina Code Ann. § 29-5-20 controls liens established by subcontractors who are seeking payment for services provided to home owners pursuant to a contract between the home owner and a general contractor.

That statute provides that:

In no event shall the aggregate amount of the lien filed by a subcontractor or supplier exceed the amount due by the contractor to the subcontractor . . . in no event shall the aggregate amount of liens on the improvement exceed the amount due the owner.

S.C. Code Ann. § 29-5-20(B).

South Carolina Code Ann. § 29-5-10 controls liens established by subcontractors or contractors who contract directly with or provide material or labor approved by the home owner. That Section contains no language such as that contained within Section 29-5-20(B) and the limitation contained therein does not apply. "If the contract is with or approved by the owner, the property is subject to the lien for the materials or labor without regard to payments made under the building contract." (J. Kershaw Spong, Mechanic's Lien Laws in South Carolina, South Carolina Lawyer, Vol. 6, Pg. 32)

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or furnish materials in the erection of aa structure. *Such a lien is unaffected by the amount of the contract between the owner and the contractor.*” Id. (Emphasis added).

Here, Appellant not only approved the goods and services to be provided, she signed a written contract for the provision of those services. As a result, S.C. Code § 29-5-10 controls and the trial court ruled correctly on that issue.

V. APPELLANT’S LACHES CLAIM WAS NOT RAISED BELOW AND IS NOT PRESERVED FOR APPEAL.

Appellant next appears to be raising a claim for relief under the doctrine of laches. That claim was neither raised below nor ruled on by the trial court. Therefore, it is not preserved for appeal.

VI. Respondent was awarded properly attorney’s fees and costs associated with the action below. Respondent is informed and believes that it is entitled to attorney’s fees and costs associated with its defense in this appeal and prays for an decision granting same after Respondent submits a petition for such.

CONCLUSION

It is apparent from Appellant’s submissions that her appellate claims are grounded primarily on two assertions. First, the assertion that the parties did not contract. The testimony and evidence submitted below clearly show that the parties did contract for the goods and services at issue therein and the trial court correctly ruled on that issue. It is also clear that, even if the court was to decide that the parties did not contract, Respondent may still assert its mechanic’s lien under S.C. Code § 29-5-10 because Appellant dealt directly with Respondent and approved of the goods and services

it provided. In addition, it is also clear that Respondent was properly licensed to provide those goods and services so Appellants claims to the contrary must fail.

Respondent respectfully requests this Court affirm the decision of the Master-In-Equity for Charleston County.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'W. Tracy Brown', written over a horizontal line.

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THE STATE OF SOUTH CAROLINA
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Honorable Mikell Ross Scarborough, Master-In-Equity

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, L.L.C.....Respondent

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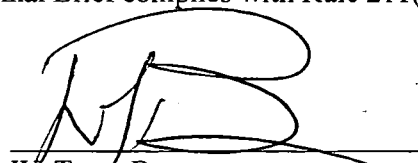
Maryann Wagner and Stipp Contracting, L.L.C.
Defendants,

Of whom,

Maryann Wagner is Appellant

CERTIFICATE OF COUNSEL

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



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SC Court of Appeals

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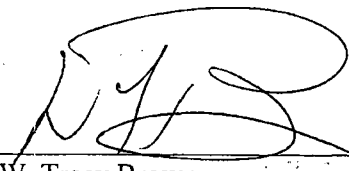
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Defendants,

Of whom,

Maryann Wagner is Appellant

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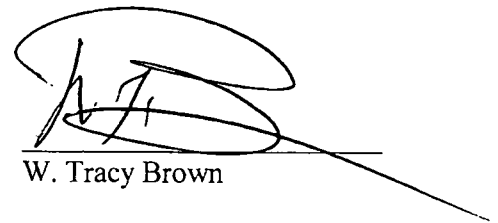
MAR 21 2014

SC Court of Appeals

I, W. Tracy Brown, Esquire, certify that on March ²⁰~~21~~, 2014, I served a copy of the Respondent's Final Brief via First Class Mail by placing a copy of the said documents in the United States mail with sufficient postage thereon on the following:

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The Honorable Jenny Kitchings
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MAR 21 2014

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Appellant.

REPLY BRIEF OF APPELLANT

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SC Court of Appeals

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ARGUMENTS

- I. Respondent makes insufficient reference to the Record to support its Statement of Facts, especially facts regarding the business relationship of Billy Mevers and Roy Mevers and their businesses.

Respondent cites to no facts to support its Statement of Facts as required by Rule 208 (b) (2) and (4). (Resp. Br. p. 1-1 [sic]) Respondent alleges it was licensed to perform contracting work at Appellant's home in August of 2006 through Roy Mevers who is Billy Mevers' brother because Roy Mevers has a 50% ownership interest in Respondent's business. (Resp. Br. p. 3; Tran. p. 4, l. 3-9.) Billy Mevers, not his brother Roy Mevers or Roy Mever's construction company, installed Appellant's kitchen cabinets at her home. (Tr. Tran. p. 6, l.22-24; p. 7, l. 20-25.) Billy Mevers produced at trial, a copy of a Home Builder's license for "Mevers Co, Inc." effective July 2012 through June 2014. (Pl.'s Tran. Ex. 1)

S.C. Code §40-59-410 (A) requires a residential business certificate of authorization to engage in residential home building. "The practice or offer to practice ... residential specialty contracting through a firm is authorized only through entities holding a residential business certificate of authorization issued by the commission." *Id.* Respondent Mevers Kitchens and Baths, LLC is a business that has never been registered with the Residential Builders' Commission as required by S.C. Code §40-59-20 (Def.'s Tran. Ex. 2) Further, Billy Mevers and Respondent Mevers Kitchens and Baths, LLC have never been licensed with the S.C. Contractors' Licensing Board per S.C. Code §40-11-240. (Def.'s Tran. Ex. 3) The Lower Court had no evidence that Respondent had a residential business certificate of authorization.

S.C. Code §40-59-410 (A) requires an individual practicing residential specialty

contracting (such as installing kitchen cabinets) to have a residential business certificate of authorization unless "an individual has at least fifty-one percent of the ownership interest and is the sole resident licensee for the firm..." *Id.* In this case the "firm" is Respondent. Billy Mevers and Respondent are the person or entity that performed the cabinetry work at issue. Respondent would not have needed a residential business certificate of authorization if his brother Roy Mevers owned at least fifty-one percent of the business, but Roy Mevers testified he only owns fifty percent of Respondent business. (Tr. Tran. p. 4, l. 3-9.)

As the only evidence in the record is that that Respondent and Billy Mevers never had a residential home builder's license, and a residential business certificate of authorization was required by State law, the Lower Court erred in finding that Billy Mevers is licensed through his brother Roy Mevers. (Trial Order) The undisputed evidence is that Respondent was not authorized under S.C. Code §40-59-410 (A) to perform the residential specialty contracting work at Appellant's home. Additionally, as Billy Mevers and Respondent and had no license number, no mechanic's lien can be brought pursuant to S.C. Code §29-5-15 (A). Further, Billy Mevers and Respondent cannot bring a breach of contract claim as Billy Mevers engaged in construction under Respondent's name, not under his brother Roy's company. S.C. Code §40-11-370 (A) and (C). In short, the Lower Court erred as a matter of law in finding that Billy Mevers is licensed through his brother Roy Mevers and that Respondent was entitled to enforce a contract or file a mechanics lien. (Trial Order)

II. Even if Respondent could bring a breach of contract claim, the Lower Court made insufficient findings of fact to support the existence of a contract.

The cabinetry "quote" is ambiguous on its face as to who will pay for the kitchen

cabinets because both the general contractor and Appellant signed it. (Def.'s Tr. Ex. 1) Appellant admitted she signed the quote but testified at trial she was just agreeing to the cabinets in the quote; she was not signing a contract and so indicated by signing under the signature line on the quote, not on the line. (Tr. Tran, p. 44, l. 12 – p. 45, l. 20; p. 56, l. 14- p. 57, l. 6.) Respondent admitted that the contract does not state on its face who is responsible for paying for the cabinets. (Tr. Tran. p. 17, l. 11 – p. 18, l. 8.)

III. The Statute of Frauds provides no protection if the terms of an agreement are ambiguous.

Contrary to Respondent's assertion, the Statute of Frauds provides no protection if the terms of an agreement are ambiguous. *Walker v. Preacher*, 188 S.C. 431, 434-435, 199 S.E.2d 675, 676-677 (1938)

Under the statute of frauds, as in force in most of the states, it appears to be well settled that, if sufficiently definite and certain, and signed by the party to be charged, or by his agent or attorney on his behalf, a pleading admitting a parol agreement within the statute may constitute a sufficient writing within the meaning of the statute so as to enable the Court to enforce a contract. In order to constitute a sufficient memorandum, the subject-matter--the contract in this case--must be so certainly described as that no oral testimony is needed to supply any necessary terms or conditions.

Here, the cabinetry quote at issue not only did not state who was responsible for payment contrary to Respondent's argument; it did not state when the cabinets would be delivered. The quote states, "please allow 4 weeks for delivery of cabinetry." It is unclear whether that statement refers to the delivery of cabinets to Respondent or to the general contractor Stipp or to Appellant. In fact, the cabinet quote was signed in early March and the cabinets were not delivered to Appellant until late August, so the meaning of this statement is unclear. (Def.'s Tr. Ex. 1; Tr. Tran. p. 45, l. 8-13.) Respondent

testified he “guessed” that the four week delivery date meant for the date it was signed but the quote did not state that. (Tr. Tran. p. 18, l. 2- p. 19, l. 22.) Also, the price of the cabinets was unclear as the price on the quote is not the same amount Appellant was invoiced or the amount she paid her general contractor. (Tr. Tran. p. 36, l. 17 – p. 38, l. 6; p. 39, l. 22 – p. 44, l. 8; Def.’s Tr. Ex. 7.)

IV. The Lower Court made no findings of fact to support its legal conclusion that S.C. Code §29-5-10 should apply because Respondent dealt directly with Appellant.

Respondent cites *Ringer v. Graham*, 293 S.C. 238, 359 S.E.2d 523 (Ct. App. 1987) for the proposition that Respondent was dealing with Appellant directly and, therefore, S.C. Code §29-5-10 should apply as that statute applies to a supplier who deals directly with an owner. S.C. Code §29-5-20 is intended to protect suppliers who deal with general contractors and limits a supplier’s recovery to the amount due to the contractor. The Lower Court erred in finding that because Appellant accepted and signed a cabinetry quote that Respondent was dealing directly with her. In fact, the evidence at trial was overwhelmingly to the contrary.

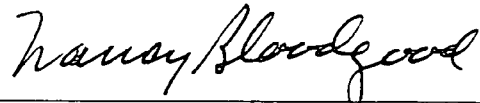
The general contractor also signed to approve the quote; he chose Respondent’s business and directed Appellant to go there to choose cabinets; the general contractor required Appellant not to contact any subcontractors (such as Respondent) if she had problems; he negotiated the price of the cabinets with Respondent; and, most tellingly, Respondent sent the general contractor the bill and expected payment from him, not the Appellant. (Tr. Tran. p. 21, l. 13 – p. 22, l. 13; p. 38, l. 21- p. 40, l. 14; p. 19, l. 2-8; 15- p. 20, l. 4; Def.’s Tr. Ex.1, 6, 7.) Appellant testified she never even met Billy Mevers until he was installing her cabinets in her kitchen which was five (5) months after she

approved the quote. (Tr. Tran. p. 45, l. 5-25.) It was only when the contractor failed to pay for the cabinets that Respondent looked to Appellant for payment.

In *Ringer*, the Court limited the recovery of a subcontractor who had no contact with the landowner. “[T]here is no evidence in the record that the [landowners] agreed to be contractually liable for payments to the [subcontractor].” *Id.* at 245, 359 S.E.2d at 527. Here, S.C. Code §29-5-20 applies as there is no evidence in the record and no findings of fact in the Order that Appellant agreed to be contractually liable for paying Respondent for the cabinets. To the contrary, Appellant contracted to pay her general contractor and did pay her general contractor for the cabinets.

CONCLUSION

Appellant respectfully requests this Court reverse the Lower Court’s Order and remand for an assessment of attorney fees against Respondent per S.C. Code §29-5-20(C) as she is the prevailing party in this case and she is entitled to attorney fees from Respondent in an amount to be determined after Appellant submits a petition for attorney fees.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Appellant.

PROOF OF SERVICE FOR REPLY BRIEF OF APPELLANT

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JAN 27 2014

SC Court of Appeals

I, Nancy Bloodgood, Esquire, certify that on January 21, 2014, I served a copy of the Reply Brief of Appellant via First Class Mail by placing a copy of the said documents in the United States mail with sufficient postage thereon on the following:

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1524 Ashley River Road
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Attorneys for Respondent

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211



Nancy Bloodgood, Esquire

**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**

Mevers Kitchens and Baths, LLC, Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

Of whom Maryann Wagner is the Appellant.

Appellate Case No. 2013-002283

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Unpublished Opinion No. 2015-UP-473
Heard April 14, 2015 – Filed October 7, 2015

AFFIRMED AS MODIFIED

Nancy Bloodgood and Lucy C. Sanders, both of Foster
Law Firm, LLC, of Charleston, for Appellant.

W. Tracy Brown, of The Brown Law Firm, of
Summerville, for Respondent.

PER CURIAM: In this mechanic's lien action, Maryann Wagner (Wagner) argues the master erred in awarding judgment to Mevers Kitchens and Baths, LLC (Mevers Kitchens). Specifically, Wagner contends the master erred in (1) finding the cabinetry quote created a contract between Wagner and Mevers Kitchens; (2) finding Mevers Kitchens is a licensed contractor and thus can enforce its mechanic's lien; and (3) holding Mevers Kitchens is entitled to reasonable attorney's fees. We affirm as modified pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the master erred in finding the cabinetry quote created a contract between the parties, was unambiguous, and satisfied the statute of frauds: S.C. Code Ann. § 32-3-10 (2007) (codifying South Carolina's statute of frauds); *Butler Contracting, Inc. v. Court St., LLC*, 369 S.C. 121, 127, 631 S.E.2d 252, 255–56 (2006) ("A proceeding for the enforcement of a statutory lien, such as a mechanic's lien, is legal in nature. In an action at law, when a case is tried without a jury, the trial court's findings of fact will be upheld on appeal when they are reasonably supported by the evidence. Stated another way, the trial court's findings of fact will not be disturbed on appeal unless wholly unsupported by the evidence or unless it clearly appears the findings were influenced or controlled by an error of law." (citations omitted)); *Player v. Chandler*, 299 S.C. 101, 106, 382 S.E.2d 891, 895 (1989) (explaining that to satisfy the statute of frauds, "[t]he writing must reasonably identify the subject matter of the contract, sufficiently indicate a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement" (citation omitted)).

2. As to whether the master erred in holding Mevers Kitchens is a licensed contractor and thus can enforce its mechanic's lien: S.C. Code Ann. § 40-59-410(B) (2011) ("The practice or offer to practice residential home building, residential specialty contracting, or home inspecting as defined in this chapter by an individual residential home builder, residential specialty contractor, or home inspector licensed or registered under this chapter through a firm offering residential building, residential specialty contracting, or home inspecting services to the public is authorized if: (1) *one or more of the corporate officers in the case of a corporation*, or one or more of the principal owners in the case of a firm, or one or more employees are designated as the resident licensee . . . and are licensed under the provisions of this chapter" (emphasis added)); *Ringer v. Graham*, 286 S.C. 14, 17 n.2, 331 S.E.2d 373, 375 n.2 (Ct. App. 1985) ("[Section 29-5-10 of the South Carolina Code] gives a mechanic's lien to persons who by agreement or with the consent of the owner perform labor upon or furnish materials in the

erection of a structure. Such a lien is unaffected by the amount of the contract between the owner and the contractor.").

3. We find Mevers Kitchens is entitled to \$9,750 in attorney's fees. *See* S.C. Code Ann. § 29-5-10(a) (2007) ("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.").

AFFIRMED AS MODIFIED.

SHORT, LOCKEMY, and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

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OCT 22 2015
SC Court of Appeals

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Appellant.

PETITION FOR REHEARING PURSUANT TO SCACR RULE 221

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Attorneys for the Appellant

I. ARGUMENT

On October 7, 2015, this Court filed a decision affirming (as modified) the Lower Court's judgement in favor of Respondent. See Wagner v. Mevers Kitchens and Baths, LLC, No. 2015-UP-473 (Ct. App. Oct. 7, 2015). The Wagner Opinion 1) failed to address Appellant's arguments regarding Sections 29-5-15 and 29-5-20 of the South Carolina Code; and 2) overlooked Appellant's argument that the Lower Court's holding regarding Section 40-59-410 was unsupported by the facts.

A. The Wagner Panel Erred by Ignoring Appellant's Argument that S.C. Code §§ 29-5-15 and 29-5-20(B) Bar Recovery by Respondent.

Chapter 5 of Title 29 of the South Carolina Code governs mechanics' liens. Pursuant to rules of statutory construction, its Sections must be read together and interpreted as a whole. Section 29-5-10 defines and explains a mechanics' lien action, Section 29-5-15 explains the procedural requirements of filing a mechanics' lien, and Section 29-5-20 *limits* recovery for laborers, mechanics, subcontractor, sub-subcontractors, suppliers, and other persons furnishing materials for the improvement of real estate under certain circumstances. The Wagner Panel erred by ignoring the limitations imposed by Section 29-5-20 and overlooking Appellant's argument that Section 29-5-20 bars Respondent's right to file a mechanic's lien.

Here, the undisputed evidence was that Respondent was a subcontractor for the construction of Appellant's home, not the general contractor. (R. at 59 l. 22--60, l. 1; R. at 72, ll. 17-25; R. at 104.) Respondent, as the subcontractor, dealt with the general contractor, not directly with the owner (Appellant). (R. at 66-67.) Appellant's only interaction with Respondent was that the general contractor sent Appellant was to

Respondent's business to choose her cabinets. (R. at 73.) The general contractor otherwise directed Appellant not to deal with his subcontractors and his employee signed on "approved" line for Respondent's cabinet quote. (R. at 63, ll. 11-13; R. at 73-78.) Respondent installed cabinets at Appellant's home, but said nothing to Appellant about paying for the cabinets. (R. at 66-68.) Respondent billed the general contractor and expected him to pay for the cabinets. (Id.)

As Respondent was clearly a subcontractor and/or supplier, the Lower Court should have applied S.C. Code §29-5-20 in analyzing whether Respondent's mechanic's lien was proper. Stoudenmire Heating & Air Conditioning Co. v. Craig Bldg. Ptnrshp., 308 S.C. 298, 417 S.E.2d 634 (Ct. App. 1992) (Section 29-5-20 applies where a subcontractor is involved). Section 29-5-20 allows suppliers, subcontractors, and sub-subcontractors to file mechanics' liens, but only in certain circumstances and only for a limited amount of money. Specifically, liens filed by sub-subcontractors and suppliers cannot exceed the amount of money due by the contractor to the subcontractor. In other words, if the contractor has paid the subcontractor in full, a sub-subcontractor (e.g., an independent contractor of a subcontractor) cannot file a mechanic's lien against the property at issue. Obviously, the sub-subcontractor could file an action in law or equity against the subcontractor if the subcontractor withheld payment from the sub-subcontractor, but cannot file a lien against the property per Section 29-5-20.

The statute further states "in no event shall the total aggregate amount of liens on the improvement exceed the amount due by the owner." §29-5-20(B). Here, Appellant was the owner of the property and it is undisputed that she had paid the general contractor for the amount he invoiced her for the cabinets and the general contractor had signed two

lien waivers. (R. p. 107; R. p. 110.) Respondent admitted he has no evidence that any money is owed to the general contractor for the cabinets. (R. p. 71, lines 1-11.) Further, there was evidence in the Record that the general contractor actually owes Appellant money because her home was not up to code as he agreed to do by contract (R. pp. 140-151; p. 79, line 13 – p. 85, line 19) and Appellant had to finish the construction work the general contractor failed to finish. (R. pp. 147-151).

As no money was owed to the general contractor by the Appellant, Respondent's subcontractor cannot file a mechanic's lien against Appellant's property. See, e.g., Stoudenmire Heating & Air Conditioning Co. v. Craig Bldg. Ptnrshp., 308 S.C. 298, 417 S.E.2d 634 (Ct. App. 1992) (liability limited to the balance due to the contractor when notice received from the subcontractor); Stovall Bldg. Supplies v. Mottet, 305 S.C. 28, 406 S.E.2d 176 (Ct. App. 1990). Section 29-5-20 bars the use of a mechanic's lien in this fact scenario; Respondent can seek payment from the general contractor, not from Appellant.

The Wagner Panel ignored Appellant's argument and did not address the applicability of Section 29-5-20 to these facts. Further, the Panel also overlooked the applicability of Section 29-5-15(A), which states that:

To file a mechanic's lien, a contractor must provide the clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed. (emphasis added)

Per S.C. Code §29-5-15(A), Respondent's mechanic's lien is invalid on its face as there is no contractor's license listed on it. Respondent's contractor's license number is not recorded on the lien. As no contractor's license is listed on the lien at issue, the lien is invalid. The Wagner Panel failed to rule on the applicability of this Section to the facts

of this appeal and failed to consider Appellant's argument that the Lower Court erred in failing to apply this Section.

B. The Wagner Panel overlooked Appellant's argument that the Lower Court's holding regarding Section 40-59-410 was unsupported by the facts and there was no evidence in the Record that Respondent was licensed properly, which bars Respondent's recovery in law and equity.¹

Per S.C. Code §40-11-370(C), an entity which does not have a valid license cannot bring an action in law or equity to enforce a contract. Respondent does not have a valid license for residential home building or residential specialty contracting. (R. pp. 94-95.) S.C. Code Section 40-59-410 specifies the requirements necessary for firms to engage in residential home building and residential specialty contracting and specifically states that firms cannot hold a license or registration for building or contracting. However, employees of a firm can perform building and contracting services if the firm has a residential business certificate of authorization or if a 51% owner of the firm is the sole resident licensee of the firm. Here, there was no evidence in the Record that Respondent had a certificate of authorization or that its presumed "resident licensee" (Roy Mevers) owned 51% of the firm. Thus, Respondent's employees (including Billy Mevers) were not authorized to perform residential building or residential specialty contracting through Section 41-59-410(A).

Subsection (B) provides an alternate method of authorization for employees by stating that work by individuals can be authorized "through a firm" if one of the firm's owners or officers is individually licensed and designated as the firm's resident licensee and the firm has obtained a \$15,000 surety bond and has been issued a residential

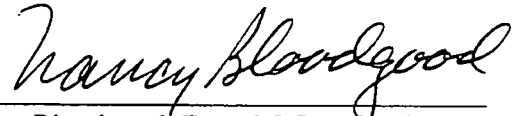
¹ This argument assumes for purposes of this Petition only that the parties entered into an unambiguous contract, but, even so, the contract is unenforceable pursuant to S.C. Code §40-11-370(C).

business certificate of authorization. The Wagner Panel cites to S.C. Code Section 40-59-410(B) in support of its affirmation of the Lower Court's judgment against Appellant. However, the Panel does not cite the entire text of subsection (B) and ignores the part of the statute that requires that the firm obtain a surety bond and a certificate of authorization. Respondent does not meet these requirements and, thus, Roy Mevers and Respondent were not authorized to engage in residential building or specialty contracting. There is no evidence in the Record that Respondent met the requirements of Section 40-59-410(A) or (B).

Per S.C. Code §40-11-370(A), "It is unlawful to use the term "licensed contractor" or to perform or offer to perform general or mechanical construction without first obtaining a license as required by this chapter." Further, pursuant to subsection (B) of this statute, it is "unlawful to engage in construction under a name other than the exact name which appears on the license issued pursuant to this chapter. "Engaging in construction" includes marketing, advertising, using site signs, and submitting contracts." (Id.) Respondent, through Billy Mevers, engaged in construction. Roy Mevers did not engage in any construction at Appellant's home. As Respondent is not a licensed contractor, it cannot enforce the document it alleges is a contract, nor can it enforce a mechanic's lien. S.C. Code §40-11-370(C) bars Respondent's ability to recover under law or equity and the Wagner Panel erred in finding that Respondent could enforce its alleged contract and mechanic's lien pursuant to 40-59-410(B). Subsection (B) includes additional requirements that were overlooked by the Panel.

II. CONCLUSION

For the reasons stated herein, Appellant asks the Court to grant her Petition for a Rehearing.



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Date: 10-21-15

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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OCT 22 2015

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Honorable Mikell Ross Scarborough, Master-In-Equity Judge

Case No. 2007-CP-10-0750

Mevers Kitchens and Baths, LLC,

Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

of whom,

Maryann Wagner is

Appellant.

**PROOF OF SERVICE FOR RESPONDENT'S PETITION FOR REHEARING
PURSUANT TO SCACR RULE 221**

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Attorneys for the Appellant

I, Nancy Bloodgood, Esquire, certify that on October 21, 2015, I served a copy of the **Respondent's Petition for Rehearing** pursuant to SCACR Rule 221 to the following:

W. Tracy Brown, Esquire
The Brown Law Firm
110 N. Main Street
Summerville, SC 29483
Attorneys for Respondent

[X] VIA FIRST CLASS MAIL

by placing a copy of said documents in the United States mail with sufficient postage thereon; and to the following:

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

[X] VIA FEDERAL EXPRESS



Nancy Bloodgood, Esquire

The South Carolina Court of Appeals

Mevers Kitchens and Baths, LLC, Respondent,

v.

Maryann Wagner and Stipp Contracting, LLC,
Defendants,

Of Whom Maryann Wagner is the Appellant.

Appellate Case No. 2013-002283

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

[Signature] J.

Stephane P. McDonalds.

Columbia, South Carolina

cc:
Nancy Bloodgood, Esquire
Lucy Clark Sanders, Esquire

FILED

January 21, 2016

W. Tracy Brown, Esquire
The Honorable Mikell R. Scarborough