

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	
Indcon, Inc.,)	C.A. NO. 2014-CP-23-04458
)	
Plaintiff,)	
)	
vs.)	
S2W Contracting, LLC,)	ORDER GRANTING PLAINTIFF'S
)	MOTIONS FOR SUMMARY
Defendant.)	JUDGMENT AND FOR DAMAGES,
)	ATTORNEYS' FEES, AND COSTS
)	
)	

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 SC Court of Appeals

This matter comes before the Court on Plaintiff Indcon, Inc.'s ("Indcon") motion for summary judgment filed on March 30, 2016 and Indcon's motion for damages, attorneys' fees, and costs filed on May 11, 2016. For the reasons set forth herein, the Court hereby GRANTS Plaintiff's motion for summary judgment and grants in part and denies in part Plaintiff's motion for damages, attorneys' fees, and costs.

FACTUAL AND PROCEDURAL BACKGROUND

This case stems from an agreement between Indcon and Defendant S2W Contracting, LLC ("S2W") for the sale of industrial grout. In the Fall of 2012, S2W agreed to begin purchasing industrial grout from Indcon, a distributor of Five Star Grout. Plaintiff's Motion for Summary Judgment, Ex. A, p. 68:2-24. According to the testimony of Charles Emmerly Withee, the principal owner and president of S2W, S2W began purchasing grout from Indcon following a cold call by Tony Atkins, the owner of Indcon, in which Withee claims Atkins told him Indcon would sell Five Star Grout to S2W for \$230 per unit. *Id.* at 67-68.

The parties' dispute centers around the price difference between two types of Five Star Grout sold to S2W, "Five Star Epoxy Grout, Pump Grade Unit" ("Pump Grade Grout") and

regular Five Star DP Epoxy Grout (“DP Epoxy Grout”). From December 2012 until June 2013, Indcon sold S2W Pump Grade Grout at the price of \$230 per unit. *See id.*, Ex. B. In June 2013, Atkins spoke with James Morden, an employee of S2W, regarding S2W’s unhappiness with the Pump Grade Grout. *See id.*, Ex. C, pp. 30-31. Morden stated that he needed a different product than the Pump Grade Grout, and Atkins offered to sell DP Epoxy Grout at a higher unit price. *Id.* They agreed that Indcon would begin shipping DP Epoxy Grout to S2W rather than the Pump Grade Grout. *Id.*

Beginning June 11, 2013, Indcon began shipping DP Epoxy Grout to S2W. *See id.*, Ex. D. Between June 11, 2013 and July 21, 2013, Indcon sent seven invoices to S2W showing a price of \$259 per unit for DP Epoxy Grout. *Id.* On July 22, 2013, Indcon sent an invoice to S2W for DP Epoxy Grout with a typed note stating, “Price is more due to being ‘regular’ DP Epoxy NOT Pump Grade-higher yield per unit.” *Id.* at S2W 000034. Holly Stratton-Withee, the wife of Charles Emmerly Withee and co-owner of S2W, testified that she was responsible for the company’s finances, including management of the books and payment of vendor invoices. *See id.*, Ex. E, pp. 16:16-25, 35:3-37:12. Stratton-Withee testified that she received the July 22, 2013 invoice and saw the note about the price change. *Id.* at 77:22-78:9. Stratton-Withee testified that the invoice was paid as demonstrated by her handwritten note on the invoice stating, “bill entered 7-26-13.” *Id.* at 83:17-24, 84:5-7. Following the July 22, 2013 invoice and until June 2014, Indcon sent nine additional invoices reflecting the \$259 per unit price for DP Epoxy Grout, and a total of seventeen invoices over a thirteen-month period, which were all paid by S2W. *See id.*, Ex. D.

Indcon also sent a number of “Statements” to S2W. *See id.*, Ex. G. As Stratton-Withee testified, Indcon sent statements to S2W showing outstanding amounts when it was “a little bit

late” in making payments. *Id.* at Ex. E, p. 89:22-90:1. Each statement contained the following language:

A FINANCE CHARGE OF 1 1/2% PER MONTH (18% PER YEAR) WILL BE IMPOSED ON BALANCES OUTSTANDING MORE THAN 30 DAYS. PURCHASER AGREES TO PAY ALL COLLECTION COSTS AND ATTORNEY'S FEES NECESSARY TO COLLECT ANY PAST DUE AMOUNTS, AS PERMITTED BY LAW.

See id., Ex. G. Stratton-Withee testified that she generally paid the statements within 30 days.

See id., Ex. E, p. 90:10-15. She also testified that she personally saw the provision on the statements but never contacted Indcon to dispute the language. *Id.* at p. 91:8-22.

On June 12, 2014, Indcon shipped 500 units of DP Epoxy Grout at \$259 per unit to S2W and sent an invoice that day. *See* Plaintiff's Motion for Damages, Attorneys' Fees, and Costs, Ex. A. On June 26, 2014, S2W rented a grout pump from Indcon, and Indcon sent an invoice for the group pump that day to S2W. *Id.*, Ex. C. In July 2014, Charles Emmery Withee testified that he discovered the \$259 per unit price when he saw the two invoices dated June 12, 2014 and June 26, 2014 and informed Indcon that he would no longer do business with them. *See* Plaintiff's Motion for Summary Judgment, Ex. A, pp. 94:24-95:7, 104:1-14. Subsequently, S2W failed to pay for or return 338 units of DP Epoxy Grout that was shipped and invoiced by Indcon. *Id.* at 174:9-176:12; *See also* Plaintiff's Motion for Damages, Attorneys' Fees, and Costs, Ex. B, pp. 111:7-112:6.

On July 25, 2014, Indcon assessed a late charge of \$5,373.77 to S2W for its failure to pay for the deliveries of grout described by Invoices 12180, 12189, 12190, and 12245 (the “Invoices”). *Id.*, Ex. F, G. The Invoices reflected a total amount of \$149,782.61 outstanding before credits and partial payments. On August 11, 2014, Indcon issued its final statement to S2W, reflecting credits to and payments made by S2W. *Id.*, Ex. G. Similar to the statements

sent to S2W between June 2013 and October 2013, this statement contained the same language regarding finance charges of 18% per year and attorney's fees. *Id.* Indcon issued a credit to S2W for 162 units of DP Epoxy Grout that were returned in the amount of \$41,958 and applied that credit to Invoice 12189. *Id.*, Ex. E. Indcon also applied a payment of \$11,188.25 to Invoice 12189. *Id.*, Ex. G. Additionally, S2W paid a portion of Invoice 12245 for the grout pump rental but failed to pay the shipping charge. *Id.* Below is a summary of the amounts of unpaid invoices including credits and payments:

a. Invoice 12180		
112 Units of Aggregate		\$2,688.00
b. Invoice 12189		
250 Units DP Epoxy (\$259/unit)		\$64,750.00
Shipping & Handling		\$712.50
Credit		(\$41,958.00)
Payment		(\$11,188.25)
c. Invoice 12190		
250 Units DP Epoxy (\$259/unit)		\$64,750.00
280 Units of Aggregate (\$24/unit)		\$6,720.00
Shipping & Handling		\$1,529.75
d. Invoice 12245		
Rental of Grout Pump		\$2,400.00
Shipping & Handling		\$858.59
Payment		(\$2,400.00)
e. Late Charge		<u>\$ 2,214.66</u>
		\$91,077.25

See id., Ex. E, G. After applying credits and payments to the Invoices, the total in principal and late fees owed by S2W as of August 11, 2014 was \$91,077.25.

Following S2W's refusal to pay its outstanding balance, Indcon filed the instant lawsuit, alleging causes of action for breach of contract, quantum meruit, and defamation against S2W. On April 22, 2016, Indcon filed a memorandum in support of its motion for summary judgment

as to its breach of contract claim, seeking the outstanding balance plus 18% interest and attorney's fees. The Court heard oral argument on April 27, 2016 regarding Indcon's motion for summary judgment. On May 4, 2016, the Court issued a Form 4 order granting the motion for summary judgment and instructed Indcon to file a submission on its damages. On May 11, 2016, Indcon filed its motion and memorandum in support of motion for damages, attorneys' fees, and costs.

STANDARD OF REVIEW

Where "plain, palpable, and indisputable facts exist on which reasonable minds cannot differ," summary judgment is proper. *Rothrock v. Copeland*, 305 S.C. 402, 405 (1991). Summary judgment should therefore be granted the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits" show that there is "no genuine issue" as to any material fact and that the moving party is "entitled to judgment as a matter of law." Rule 56(c), SCRPCP; *Connor Holdings, LLC v. Cousins*, 373 S.C. 81 (2007).

DISCUSSION

Plaintiff is entitled to summary judgment because the pleadings, depositions, and record before the Court show that there is no dispute of material fact and that Plaintiff is entitled to relief as a matter of law. An as initial matter, the contract at issue is controlled by the South Carolina Commercial Code, S.C. Code § 36-2-101, *et seq.* (the "Commercial Code") because the grout at issue is a "good" within the meaning of the Commercial Code. *See* S.C. Code Ann. § 36-2-105. Both Indcon and S2W are "merchants" under the Commercial Code. S.C. Code Ann. § 36-2-104 ("Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction..."). Indcon is a distributor of industrial grout, and S2W is a

commercial contractor who resells industrial grout purchased from distributors like Indcon to its customers and installs the grout. *See* Plaintiff's Motion for Summary Judgment, Ex. A, pp. 27:5-28:12, 92:13-94:23, 157-21-23; 172:12-15; 180:25-182:23.

I. The Price Term of DP Epoxy Grout

In interpreting an agreement subject to the Commercial Code, the Court must first look to the writings exchanged by the parties. *See* S.C. Code Ann. § 36-2-202. Turning first to writings exchanged between the parties, the writings exchanged between the parties consist of seventeen invoices and a number statements indicating amounts outstanding. Though an invoice may constitute a confirming writing under § 36-2-201 sufficient to satisfy the Statute of Frauds, such a writing “does not prove the terms of the contract,” and the party seeking to enforce the contract “still has the burden of proving the contract terms.” *Hinson-Barr, Inc. v. Pinckard*, 292 S.C. 267, 356 S.E.2d 115 (1987).

If the writings exchanged between the parties are not conclusive, the Court may also look to the parties' course of performance and course of dealing to determine the meaning of the agreement. *See* S.C. Code Ann. § 36-2-202. (“Terms...may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented: (a) by course of performance, course of dealing, or usage of trade.”). A “course of performance” is a sequence of conduct between the parties to a particular transaction where the agreement “involved repeated occasions for performance by a party” and “the other party...accepts the performance or acquiesces in it without objection.” S.C. Code Ann. § 36-1-303(a). “Course of dealing” is defined as “the sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other

conduct.” S.C. Code Ann. § 36-1-303(b). Under the Commercial Code, a course of performance or a course of dealing between the parties is relevant in “ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement.” S.C. Code Ann. § 36-1-303(d).

In the instant case, the writings exchanged between the parties and their course of performance demonstrates that the parties agreed to a \$259 per unit price for DP Epoxy Grout. For more than one year, Indcon sold and delivered DP Epoxy Grout to S2W, invoiced S2W at the \$259 per unit price, and S2W accepted the grout and paid the invoices without complaint or rejection. Prior to July 22, 2013, Indcon sent seven invoices, specifically denoting the per unit price as \$259 for DP Epoxy Grout. Notably, the July 22, 2013 contained a note explaining the price difference. Following the July 22, 2013 invoice, Indcon sent nine more invoices, all clearly denoting the same price for DP Epoxy Grout. Each invoice was received and paid by S2W as evidenced by the testimony and handwritten notes from Stratton-Withee, an owner and the chief financial officer of S2W. The delivery, acceptance, and payment of these multiple invoices are sufficient confirmatory memoranda to show the price agreed-upon by the parties. S.C. Code § 36-2-204; S.C. Code Ann. § 36-2-201. Additionally, S2W’s continued orders of the grout at the \$259 per unit price and its acceptance without complaint for more than a year of both the price and the grout shows through the parties’ course of performance and course of dealing and evidence the price term of the agreement. S.C. Code Ann. § 36-1-303(d).

Viewing the evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact that needs to be decided by the trier of fact. S2W cannot point to any writing exchanged by the parties showing any price other than \$259 per unit for DP Epoxy Grout, such as any letter, email, or other correspondence discussing the matter with Indcon.

Instead, S2W points to an alleged verbal agreement between Indcon and S2W at the beginning of their relationship and a single telephone call that occurred in July 2014 when Withee claims he first discovered the price difference between Pump Grade Grout and DP Epoxy Grout. This is insufficient to create an issue of material fact. Indcon offered testimony from Atkins that he discussed the sale of DP Epoxy Grout at a higher price with James Morden six months after the initial conversation with Withee. Plaintiff's Motion for Summary Judgment, Exhibit C at 31:24 – 32:9. Morden then authorized the purchase of the DP Epoxy Grout at the higher unit price. *Id.* It is well-established in South Carolina that notice to an agent is notice to the principal. *Citizens Bank v. Heyward*, 133 S.C. 190, 133 S.E. 709, 712 (S.C. 1925). S2W offered no testimony or evidence contradicting this conversation or disputing that notice to Morden of the price difference is notice to S2W. In the absence of conflicting evidence, summary judgment is appropriate.

Second, a telephone call objecting to the price difference after seventeen writings confirming the price and more than a year of course of performance and dealing between the parties is insufficient to create an issue of material fact. In the face of writings and more than a year of performance it is unclear why Withee's claimed discovery of the price difference in July 2014 is relevant to any issue in dispute. Instead, it amounts to a summary denial that is not supported by any other evidence or testimony in the record. Therefore, it is insufficient as matter of law to create a genuine issue of material fact regarding the agreed upon price of DP Epoxy Grout. *See Saluda Motor Lines v. Crouch*, 300 S.C. 43 (Ct. App. 1989) ("The question on a motion for summary judgment is whether there is anything of substance to be tried. Therefore, it is incumbent upon the court to search the proof as proffered by affidavits or otherwise, to ascertain whether it discloses a real issue, rather than a formal, perfunctory, or shadowy one.").

II. S2W's Acceptance of the Goods

S2W cannot keep the goods without paying for them. "Acceptance of goods occurs when the buyer: (b) fails to make an effective rejection (subsection (1) of § 36-2-602)...or (c) does any act inconsistent with the seller's ownership." S.C. Code § 36-2-606. "Acceptance of the goods precludes rejection of the goods accepted..." S.C. Code § 36-2-607(2). Once accepted "[t]he buyer must pay at the contract rate for any goods accepted." *Id.* To avoid paying for the goods, the buyer must reject the goods "within a reasonable time after their delivery or tender." S.C. Code § 36-2-602(1). Rejection "is ineffective unless the buyer seasonably notifies the seller." *Id.*

South Carolina law requires a buyer to reject goods in writing. *Plantation Shutter Co. v. Ezell*, 328 S.C. 475, 480, 492 S.E.2d 404, 407 (Ct. App. 1997) ("As we just noted, section 36-2-602 requires the buyer to notify the seller in writing.") (emphasis in original). As explained by the Court in *Plantation Shutter*, "[a]n ineffective rejection by the buyer is an acceptance by the buyer." *Id.* at 481. "In construing section 36-2-602(1), our courts have determined that for a rejection of goods to be effective, a buyer must notify a seller in writing." *Id.* (citing to *Southeastern Steel Co. v. Burton Block & Concrete Co.*, 273 S.C. 634, 258 S.E.2d 888 (1979); *American Fast Print Ltd. v. Design Prints of Hickory*, 288 S.C. 46, 339 S.E.2d 516 (Ct. App. 1986)).

In the instant case, the goods shown on the Invoices were shipped to S2W. S2W received the goods and billed its customer, Targa, for the same DP Epoxy Grout it received from Indcon. See Plaintiff's Motion for Summary Judgment, Ex. H. S2W has produced no evidence to show that it notified Indcon of its rejection of the goods in writing. Viewing the evidence in the light most favorable to the non-moving party, the only possible rejection of the goods may have

occurred during the July 2014 telephone call, which is not a sufficient rejection of goods in writing as required by the Commercial Code. *Plantation Shutter Co.*, supra. Furthermore, S2W used the goods on one of its projects without seeking Indcon's instructions with respect to the goods or offering to return the goods. *Id.*, Ex. E, p. 113:1-22. Under these circumstances, S2W has accepted the goods and therefore must pay the contract price as shown on the Invoices.

II. Interest and Attorneys' Fees

In addition to the outstanding contract price, Indcon argues that it is entitled to 18% interest per annum and attorneys' fees due to a provision found in each of its statements delivered to S2W. The statements all contained identical language stating in all capital letters:

A FINANCE CHARGE OF 1 1/2% PER MONTH (18% PER YEAR) WILL BE IMPOSED ON BALANCES OUTSTANDING MORE THAN 30 DAYS. PURCHASER AGREES TO PAY ALL COLLECTION COSTS AND ATTORNEY'S FEES NECESSARY TO COLLECT ANY PAST DUE AMOUNTS, AS PERMITTED BY LAW.

See id., Ex. G. In support of its position, Indcon points to § 207 which provides, "Between merchants such [additional] terms become part of the contract unless: (a) the offer expressly limits acceptance to the terms of the offer; (b) they materially alter it; or (c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received." S.C. Code § 36-2-207.

The appropriateness and amount of attorneys' fees and interest is a function of the trial court and is not a question for the jury. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 385-86, 377 S.E.2d 296, 298 (1989); *Bickerstaff v. Prevost*, 670 S.E.2d 660, 661 (S.C. App. 2009). The central question is whether the language providing for attorney's fees and 18% interest per annum so "materially alter[s]" the agreement that such terms should not be enforced. *See Mace Industries, Inc. v. Paddock Pool Equip. Co., Inc.*, 288 S.C. 65, 339 S.E.2d 527 (S.C. App. 1986)

(affirming award of attorney's fees and interest on unpaid invoices pursuant to S.C. Code § 36-2-207). The test for whether an additional term constitutes a material alteration is whether such term presents (1) an unreasonable surprise and (2) a hardship on the non-assenting party. S.C. Code § 36-2-207, Off. Cmts. 4, 5; *see also Weisz Graphics v. Peck Indus.*, 304 S.C. 101, 108-109, 403 S.E.2d 146 (1991) (holding that a twelve-month release period did not result in unreasonable surprise or hardship because it conformed to existing trade usage and prior course of dealing between the parties). In evaluating what constitutes an "unreasonable surprise," courts outside of South Carolina have considered the parties' prior course of dealing, industry custom, how clearly the terms were marked in the document, and whether such terms appear on the parties' standard forms. *See Rocheux Intern. of N.J., Inc. v. U.S. Merchants Fin. Group, Inc.*, 741 F. Supp. 2d 651, 682 (D.N.J. 2010). In determining whether the additional terms imposed an unreasonable hardship on the non-assenting party, other courts have considered "whether the clause at issue would impose substantial economic hardship." *Bayway Refining Co. v. Oxygenated Mktg. & Trading A.G.*, 215 F.3d 219, 224 (2d Cir.2000) (citation omitted). Ultimately, the majority of courts outside South Carolina reviewing whether an addition to a contract constitutes a material alteration hold that it depends on the unique facts of every case. *Am. Ins. Co. v. El Paso Pipe and Supply Co.*, 978 F.2d 1185, 1190 (10th Cir. 1992).

In the instant matter, an award of attorneys' fees presents neither an unreasonable surprise nor a hardship on S2W. For over one year, Indcon sent numerous statements to S2W explicitly mentioning its right to seek interest and attorney's fees in conjunction with any unpaid invoice. The language was clearly marked at the bottom of each statement in all capital letters. As Stratton-Withee testified, she saw the provision when she paid the amounts within thirty days but never contacted Indcon about the language. Similar to other courts outside this state, this

Court is persuaded that the terms could not have come as a surprise to S2W. *See, e.g., Mid-South Packers, Inc. v. Shoney's, Inc.*, 761 F.2d 1117, 1123 (5th Cir. 1985) (concluding that the interest and attorneys' fees terms could not come as a surprise, because the buyer had received numerous invoices bearing those terms during the parties' course of dealing); *Boyd v. Oscar Fisher Co.*, 210 Cal. App. 3d 368, 258 Cal. Rptr. 473, 479 (1989) (same); *Offen, Inc. v. Rocky Mountain Constructors, Inc.*, 765 P.2d 600, 601 (Colo. Ct. App. 1988) (same). Similarly, there is no evidence that such an award of attorney's fees presents a substantial economic hardship on S2W.

The Court finds that the attorney's fees requested by Plaintiff are reasonable. In determining the amount of attorney's fees to award, the court should consider the: "(1) nature, extent, and difficulty of the case; (2) time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services." *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991). Considering the complex and protracted nature of this litigation, this Court finds the number of hours dedicated to this case appropriate. *See* Motion for Damages, Attorneys' Fees, and Costs, Ex. I. Given that Plaintiff's current and former counsel are well-respected members of the local bar, this Court finds that the fees charges are similarly appropriate. *See id.* Accordingly, Plaintiff is also entitled to an award of \$21,527.93 in reasonable attorney's fees.

Turning to the question of interest, this Court holds that an award of eighteen percent interest per annum presents a material alteration of the agreement that should not be enforced. While it is not surprising that a party would seek to recover some amount of interest on unpaid invoices, Plaintiff seeks an interest rate of eighteen percent which would continue to accrue until

after the judgment is rendered and until the total balance is paid in full. The Court finds that such an interest term presents a material alteration to the agreement. In considering whether an additional term providing for eighteen percent interest was a material alteration, one court wrote:

[Idaho Code § 28-2-207 provides] that additional terms (12% or 18% interest rate) become part of the contract unless “they materially alter it.” In this particular case such additional terms materially alter the contract to sell fish at a particular price on open account due and payable the 10th of the month following purchase. Our law allows 8% interest on open accounts beginning three months after the last item. Our law in this regard became part of the parties' contract. To change the interest rate of that contract from 8% to 12% or 18% is a material alteration. In this case it would alter the amount of interest from approximately \$1,400 to approximately \$27,000 — a substantial alteration in anyone's view.

Rangen, Inc. v. Valley Trout Farms, Inc., 658 P.2d 955, 962-63 (Idaho 1983) (opinion concurring in part and dissenting in part). Under South Carolina law, Plaintiff would be entitled to 8.75% prejudgment interest, and parties should expect at least that amount of interest to accumulate on past due invoices. See S.C. Code Ann. § 34-31-20. To hold that Plaintiff is entitled to eighteen percent interest would more than double the amount of accrued interest from \$15,117.08 to \$31,097.99, not including the interest that would continue to accrue until the judgment is paid. The Court finds that this presents a similar material alteration as the one discussed in *Rangen*. Accordingly, the Court finds that Plaintiff is entitled to the legal prejudgment interest rate of 8.75% per annum in the amount of \$15,117.08.

CONCLUSION

For the foregoing reasons, Plaintiff's motion for summary judgment is granted and its motion for interest, attorneys' fees, and costs is granted in part and denied in part.

THEREFORE, IT IS ORDERED that judgment shall be entered against S2W in the principal amount of Ninety-One Thousand Seventy-Seven and 25/100ths (\$91,077.25) Dollars, plus prejudgment interest at the legal rate in the amount of Fifteen Thousand One Hundred

Seventeen and 08/100ths (\$15,117.08) Dollars, plus attorneys' fees and costs in the amount of Twenty-One Thousand Five Hundred Twenty-Seven and 93/100ths (\$21,527.93) Dollars, for a total judgment of One Hundred Thirty Thousand Eight Hundred Eighty-One and 37/100ths (\$127,722.37) Dollars, with interest continuing to accrue on the judgment until paid at the post-judgment interest rate.

AND IT IS SO ORDERED.

Judge, Thirteenth Judicial Circuit

July ____, 2016

Greenville, South Carolina



Greenville Common Pleas

Case Caption: Indcon Inc vs. S2W Contracting LLC

Case Number: 2014CP2304458

Type: Order/Other

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2016-07-28 15:50:35 page 15 of 15

For Clerk of Court Office Use Only

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

Adam Crittenden Bach 2201 Augusta Street, Suite 200
Greenville, SC 29605

John Robert Devlin Jr. PO Box 10387 Greenville, SC
29603-0387

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2016 Aug 09 12:50 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304458



Greenville Common Pleas

Case Caption: Indcon Inc vs. S2W Contracting LLC

Case Number: 2014CP2304458

Type: Order/Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2304458

RECEIVED

SEP 09 2016

SC Court of Appeals

ELECTRONICALLY FILED 2016 May 17 3:33 PM - GREENVILLE - COMMON PLEAS - CASE#2014CP2304458

Indcon Inc

S2W Contracting LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

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

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

Defendant's Motion for reconsideration filed May 13, 2016, is denied at this time.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2162

5/17/2016

CPFORM4Cm
SCCA SCRPC Form 4C (Revised 3/2013)

Judge Code

Date

For Clerk of Court Office Use Only

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

Adam Crittenden Bach 2201 Augusta Street, Suite 200
Greenville, SC 29605

John Robert Devlin Jr. PO Box 10387 Greenville, SC
29603-0387

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

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Greenville Common Pleas

Case Caption: Indcon Inc vs. S2W Contracting LLC

Case Number: 2014CP2304458

Type: Order/Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

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