

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-4302

FILED
 2016 NOV 23 PM 2:15
 JULIE J. ARMSTRONG
 CLERK OF COURT

R.M. Smith

Fraser, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : ORDER ATTACHED

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)
R. M. Smith	Bonnie Fraser	\$105,720.39
		\$
		\$
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  Judge Code 3002 Date 11/22/16

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:

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

R.M. Smith d/b/a R.M. Smith Construction,)

Plaintiff,)

vs.)

Bonnie Fraser, The Live Oak Custom
Cabinet Company, LLC, Deborah Warren,
and Midsummer Common, LLC,)

Defendants.)

IN THE COURT OF COMMONS PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-4302

ORDER

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2016 NOV 23 PM 2:15

FILED

THIS MATTER CAME BEFORE THE COURT on September 13 and 14, 2016 for the trial of the case. Present were G. Hamlin O’Kelley, III, attorney for Plaintiff R.M. Smith d/b/a R.M. Smith Construction (“Smith” or “Plaintiff”); David B. Marvel, attorney for Defendant Bonnie Fraser (“Fraser” or “Defendant Fraser”); and W. Westbrook Wills, III, attorney for Defendants Deborah Warren (“Warren”) and Midsummer Common, LLC (“Midsummer”). For the reasons stated, the court grants a judgment in favor of Plaintiff against Defendant Fraser in the sum of One Hundred Five Thousand Seven Hundred Twenty and 39/100 (**\$105,720.39**) Dollars.

After taking testimony and reviewing the Exhibits, the court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pleadings and Jurisdiction

1. This litigation involves a breach of contract and the enforcement of a statutory lien. Both are actions at law. *Moore v. Crowley & Associates, Inc.*, 254 S.C. 170, 174 S.E. (2d) 340



(1970) (breach of contract); *Raines v. Sanders*, 134 S.C. 284, 132 S.E. (2d) 581 (1926) (mechanic's lien).

2. Plaintiff executed a Notice of Mechanic's Lien on February 15, 2012, pursuant to S.C. Code Ann. §29-5-10, in the amount of Fifty Six Thousand Two Hundred Fifty Seven and 9/100 (\$56,257.39) Dollars. The Notice of Mechanic's Lien was filed on February 16, 2012 in the Office of the RMC for Charleston County in Book 0234 at Page 146 within ninety (90) days of Plaintiff's last day of providing goods, labor, materials, or services at 0 Zig Zag Alley which was January 17, 2012.
3. On March 5, 2012, a copy of the Notice of Mechanic's Lien was served upon Defendant Fraser at 0 Zig Zag Alley by substituted service and signed for by Adam Fraser. (Plaintiff's Ex. 7).
4. In his Complaint, Plaintiff brought causes of action against Defendant Fraser for breach of contract, foreclosure of the Mechanic's Lien, and quantum meruit seeking damages in the minimum amount of Fifty Six Thousand Two Hundred Fifty Seven and 39/100 (\$56,257.39) Dollars, attorneys' fees as allowed by the Mechanic's Lien statute, and a sale of the property described herein.
5. On August 8, 2012, Defendant Fraser filed her Answer and Counterclaim answering Plaintiff's Complaint and Counterclaiming against Plaintiff for breach of contract seeking damages in an amount exceeding Sixty Five Thousand and No/100 (\$65,000.00) Dollars.
6. Jurisdiction and venue are proper, as this matter was referred by Order of the Honorable Julie J. Armstrong, Charleston County Clerk of Court, on August 20, 2016.

Background and Relationship of the Parties

7. Plaintiff did business as R.M Smith Construction, a company he formerly operated in Charleston. Smith and Defendant Fraser entered into a Contract entitled "Cost Plus Agreement between Owner and Contractor" (hereinafter "Contract") (Plaintiff's Ex. 1) for contractor services at her home located at 0 Zig Zag Alley in Charleston, South Carolina described more fully as:

ALL that lot, piece, parcel or tract of land, situate, lying and being on the South side of Water Street, in the City of Charleston, County of Charleston, State aforesaid, known and designated as No. 9 Water Street, a/k/a 0 Zig Zag Alley.

BEGINNING at a point on the South side of Water Street in common with the lands of Coleman and running thence in a generally Southerly Direction a distance of 94.56 feet to a point; thence generally in a Westerly direction a distance of 3.20 feet to a point; thence in generally a Southerly direction 65.16 feet to a point; thence generally in a Westerly direction a distance of 26.0 feet to a point; thence generally in a Northerly direction 64.10 feet to a point; thence generally in a Westerly direction a distance of 26.95 feet to a point; thence generally in a Northerly direction 62.35 feet to a point; thence generally in an Easterly direction 52.74 feet to a point; thence generally in a Northerly direction 58.3 feet to a point; thence generally in an Easterly direction 5.00 feet to a point of beginning.

THE plat of the above property is recorded in the RMC Office for Charleston County in Plat Book N, Page 100, drawn by E.M. Seabrook, Jr., Inc., Civil Engineer and Land Surveyor, No. 1375.

BUTTING AND BOUNDING on the North partially on Lot A of said plat and Water Street; to the East partially on lands of Coleman, Barrell and Lightwood Alley; to the South partially on lands of Porcher, and on the West partially on lands of Pringle, Jenkins and Kinloch.

SUBJECT to a Deed of Conservation Easement dated December 28, 1999, between Angeline D. Zervos and Historic Charleston Foundation, and recorded December 29, 1999, in Book B-340, page 595, RMC Office for Charleston County.

BEING the same property conveyed to Bonnie Fraser by Deed of Angeline D. Zervos, dated August 11, 2008, and recorded August 14, 2008, in the RMC Office for Charleston County in Book 0003, at page 896.

Property Address: 0 Zig Zag Alley, Charleston, SC 29401

TMS No.: 457-16-04-060

8. The Contract contained the following Scope of Work in Paragraph 6:

Renovate Kitchen, New cabinets and counters with new layout as per drawing.

Renovate powder room, add shower and relocate as per plans Den, new ceiling and sheetrock walls.

Smith and Fraser signed the Contract. Fraser added the following handwritten language under Paragraph 17 "Maximum Cost":

This is a cost plus job which is not to exceed \$200,000.00 without written authorization and another contract BF

9. The work was to commence on August 1, 2011 and be completed by November 15, 2011.

Defendants Warren and Midsummer are listed in the Contract as the Architect or Owner's Agent but did not sign the Contract as a party.

10. The General Conditions set forth the obligations of the parties and state in relevant part as follows:

*Owner's
Rights and Obligations*

The Owner shall designate in writing, himself and or his Agent the expressed authority to bind the Owner to the Contract and matters requiring the Owner's approval and authorization.

The Owner shall provide information and services needed for the execution of the Project, as required by the Contract Documents.



The Owner has the right to stop Work if the Contractor fails to meet the requirement of the Contract within the guidelines set forth by the Contract. In writing, the owner shall tell the Contractor to Stop Work until such time as the cause for the Stop Work is eliminated.

The Owner will have the right to correct and complete the Work defaulted by the Contractor. In such case a Change Order will be prepared by the Owner deducting from Payment the costs to remedy. After Completion of the Work by the Owner, the Contractor shall pay the difference, if any, to the Owner to repay the excess Payment received by the Contractor.

...
*Contractor's
Rights and Obligations*

The Contractor will perform and be responsible for the Work as stated in the Contract Documents including that Work to be performed by his Subcontractors, if any.

...
The Contractor is not responsible for the design criteria and or performance of such as stated and presented in the specification prepared by others in the Contract Documents.

...
Payment

Owner to Contractor

The Owner will pay the Contractor as detailed in the Agreement between the Owner and Contractor.

...
At least 10 (ten) days prior to the scheduled date for each Progress Payment, the Contractor shall submit to the Owner an itemization of Work completed for the Owner's approval. The Owner may request documentation from the Contractor to verify such portions of the payout to be made relevant to material suppliers and Subcontractor for payouts. Retainage shall be reflected on each payout if part of the Contract Documents.

...
Within 7 (seven) days of receipt of the Application for Payment, the Owner will issue a Certificate of Payment for the Work completed in the Application for Payment and verify and Certify the quality of and progress of the details of the Application for Payment in compliance with the Contract Documents. The Certificate of Payment will represent the amount of Payment due.

Progress Payments

...
Failure of the Owner to issue a Certificate for Payment or to make Payment to the Contractor through no fault of the Contractor, within 7 (seven) days after receipt of the Application for Payment, the Contractor is to give a Written Notice to the Owner of the intent to stop Work within 7 (seven) days if Payment is not received. The Contract Time will be increased and added Contractor expenses resulting from the Work stoppage will be added to the Contract Amount by way of a written and signed Change Order.

Termination of Contract

Contractor

The Contractor may terminate the Contract if the Work is stopped for a period of time at no fault or act of the Contractor, non Payment of Work performed and billed and substantial breach of the Agreement. The Contractor is to submit in writing to the Owner, within 7 (seven) days of the concurrence or within state governing regulations, the reason(s) for stoppage and the intent to collect unpaid Progress Payments and the costs for stored materials, equipment, overhead & profit and damages related to the stoppage.

Owner

...
The Owner upon Written Notice to the Contractor, within 7 (seven) days or the limits of the law may terminate the Contract, stop Payment and proceed to Contract with another Contractor and or complete the unfinished portions of the Contract himself.

(Plaintiff's Ex. 1)

Work at 0 Zig Zag Alley

11. The court took testimony from Plaintiff Smith whom the court finds very credible. The court also finds Defendant Warren credible but that Defendant Fraser is not a credible witness.



12. Plaintiff commenced work in August of 2011 per the terms of the Contract, having been placed in contact with Defendant Fraser via Warren. Smith routinely looked to Warren, as Owner's agent, for answers when decisions needed to be made at 0 Zig Zag Alley.
13. Smith was paid for his work until his December 5, 2011 invoice was submitted for payment. (Plaintiff's Ex. 3).
14. The December 5, 2011 invoice was for \$42,142.18 and reflected the work performed at 0 Zig Zag Alley by Smith in November 2011. On December 26, 2011, Smith submitted another invoice, Invoice Number 462, for \$12,478.76 for work performed in December 2011. On February 1, 2012, Smith submitted his last invoice, Invoice Number 469, for \$1,636.45 for work performed in January, 2012. (Plaintiff's Ex. 4 and 5, admitted without objection). The total of all three unpaid invoices amounts to Fifty Six Thousand Two Hundred Fifty Seven and No/100 (\$56,257.39) Dollars.
15. Smith testified that The Live Oak Custom Cabinet Company, LLC, ("Live Oak") was to build, construct, and install the cabinets in the kitchen. Smith dealt with Mike West of Live Oak and Warren in communications regarding the cabinets. Per the Contract, Smith was not responsible for design criteria and performance in specifications prepared by others at 0 Zig Zag Alley. (Plaintiff's Ex. 1 and 14, admitted without objection).
16. Smith received estimates from West and Live Oak regarding the kitchen cabinets from August 24, 2011 through November 11, 2011. (Plaintiff's Exs. 8, 9, 10, 11, 12, and 13).

The Estimates were for the following scope of work:

*Custom Kitchen Cabinets as per drawings provided; cabinets are paint grade w/ 3/4" faces & fronts. 1/2 round corner vanity included. * Metal frame glass doors will be an upcharge T.B.D.
Custom Wine/Storage Cabinets.
Total: \$22,592.62*



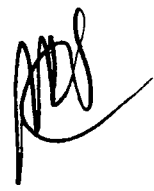
(Plaintiff's Ex. 8.)

17. Smith testified he made all payments to Live Oak for the cabinet work through November 7, 2011, although the final retainage payment of ten (10%) percent was never paid. Smith also testified that Warren directed all payments to Live Oak be made through him.
18. By late December 2011 and early January 2012, Fraser began expressing displeasure with the cabinets and other aspects of the work at 0 Zig Zag Alley.
19. Smith provided thirty (30) pictures to the court showing the state of the work at 0 Zig Zag Alley in early January 2012. Numerous pieces of blue tape were placed on the walls, cabinets, shower, tiles, grout, light switches, electrical panels, wiring, and the wine cooler by Fraser to indicate her displeasure with the work performed at her house. (Plaintiff's Ex. 15). Both Smith and Warren testified they were communicating with Fraser regarding performance of the work so that it could be completed to her satisfaction in late December 2011 and early January 2012.
20. Both Smith and Warren recalled receiving a Punch List (Plaintiff's Ex. 16) of items to be corrected on or about January 2, 2012. Smith testified he met with Warren to discuss the Punch List items and the deficiencies in the work. Smith also testified he either remedied, or was in the process of remedying, the items on the Punch List (except for the items involving the cabinets, which Live Oak was in the process of remedying) in early January 2012.
21. Smith submitted sixteen (16) email strings to the court which began in September 2011 and ended on January 16, 2012 setting forth the history of work, complaints, difficulties in having Fraser make decisions, and the condition of the work performed. (Plaintiff's Exs. 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, and 32).

22. On December 18, 2011, Fraser sent an email to Warren expressing displeasure with the height of the drawers in a cabinet in the kitchen. (Plaintiff's Ex. 23). Warren contacted both West and Smith about the issues. Warren also stated that Fraser's then boyfriend, a contractor, was criticizing the work of Smith and West and injecting himself into the project. (Id.)
23. On January 1, 2012, Warren contacted West to advise that Fraser was not satisfied with the cabinets. That same email message was also forwarded to Smith. (Plaintiff's Ex. 24). Warren set forth in detail the problems that Fraser had with the cabinets. Warren asked for a list of problems as soon as possible in order to move forward with correcting the issues.

Plaintiff's Notice of Delinquent Payments

24. On January 3, 2012, Smith emailed Fraser a copy of the December 2011 Invoice advising it was due within seven days. Smith then advised that the November 2011 Invoice, in the amount of \$42,142.18, had yet to be paid within the seven (7) days of receipt. All payments were to have been made within seven (7) days of application for payment. (Plaintiff's Ex. 1). Smith advised Fraser that he had the right to stop work. (Id). Smith also stated that he wanted to know "what the problem is so that we can work this out, I have always tried to do everything you wanted and still are ready to [sic] whatever is necessary to complete this project." (Plaintiff's Ex. 25). Smith testified he also taped a copy of this email with the Invoice on Fraser's door at 0 Zig Zag Alley.
25. The contract required Smith to provide seven (7) days written notice before stopping work. (Plaintiff's Ex. 1; Plaintiff's Ex. 25).



26. On January 9, 2012, Smith conveyed to Fraser he would continue resolving the punch list items for work already completed, but that he would not perform any new or additional work until such time as she paid him on his outstanding invoices due from November and December.
27. As of January 11, 2012, Warren was in contact with Fraser and Smith about resolving the complaints as to the veneer on the cabinets and other Punch List items. (Plaintiff's Ex. 27). These communications continued the next day regarding Fraser's complaints about re-grouting the shower, replacing tile, cleaning the bathroom counter, and the quality of the work. (Plaintiff's Ex. 28). Warren also forwarded further communication with West on that same date. (Plaintiff's Ex. 29). Warren did not communicate that Smith would be stopping work if his invoices remained unpaid. (Id.) Warren devised a plan to correct the maple veneer issues with the cabinets (per Fraser's complaint) and a copy of that plan was attached to that correspondence. (Id.) On January 15, 2012, Warren emailed Smith about finishing the cabinets and about the lack of payment by Fraser to Smith. (Plaintiff's Ex. 31). Warren also advised that Fraser had not approved the plan to correct the cabinets in the kitchen (Id.)
28. When Smith arrived at 0 Zig Zag Alley on January 17, 2012 he discovered Fraser had changed the locks on the doors preventing Smith and other contractors from entering or performing further work to complete or resolve the punch list items. Smith was never allowed back onto the property to finish any work. He was never paid for the work completed in November, December, and early January, despite giving Fraser notice in writing of her failure to pay.

29. The testimony and evidence before the court demonstrate that, as of mid-November, 2011, Plaintiff had completed the majority of work under his Contract with Fraser, although certain items, including the kitchen cabinets, remained to be completed or corrected. Nevertheless, the record demonstrates that completion of the renovation project by the date specified in the contract was frustrated by delays due, in large part, to Fraser's own difficulties in deciding on materials and finishes. Additionally, the evidence and testimony demonstrate that over the course of the renovation project, Fraser made multiple changes and additions to Plaintiff's scope of work, resulting in further delay and enlarging the project as a whole.

Defendant Fraser's Case in Chief

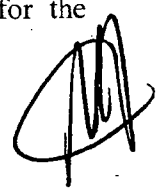
30. The court heard from Defendant Fraser's witnesses to determine if she was entitled to any set off due to her counterclaims for breach of contract.
31. Defendant Fraser provided an Exhibit containing numerous pictures of what she contended was shoddy workmanship. (Defendant's Ex. 5).
32. Defendant Fraser provided an estimate from Jim Lovejoy of Massachusetts for new cabinets, but she did not provide an estimate for the completion cost of the cabinets from Mike West and Live Oak. (Defendant's Ex. 2).
33. No evidence was presented that Fraser allowed Smith to cure the alleged defective work. Instead, the evidence shows that Fraser changed the locks and refused to allow any further work at 0 Zig Zag Alley as of January 17, 2012 and refused to pay Smith's invoices for work he had performed. Accordingly, the court finds for Plaintiff Smith as to Defendant Fraser's counterclaims, as Defendant Fraser did not meet her burden of proof in establishing Plaintiff breached the contract.

34. Due to the breach of contract by Fraser, Smith is entitled to damages in the sum of Fifty Six Thousand Two Hundred Fifty Seven and 39/100 (\$56,257.39) Dollars, representing the total sum of the three outstanding Invoices. Smith is also entitled to foreclose on the Mechanic's Lien and is entitled to prejudgment interest in the amount of 8.75% per annum on the principal due from the time of the execution of the Mechanic's Lien, February 15, 2012. See *S.C. Code Ann.* §34-31-20; *Lee v. Thermal Eng'g Corp.*, 352 S.C. 8, 572 S.E.2d 302 (Ct. App. 2002) ("Prejudgment interest is allowed on liabilities to pay money from the time when, either by agreement of the parties or operation of law, the payment was demandable, if the sum is certain or capable of being reduced to a certainty").

Equitable Indemnification

35. At the close of the evidence, Defendant Warren moved for a directed verdict as to Plaintiff's cause of action against her individually for equitable indemnification, on the grounds that Smith had neither pleaded nor offered any evidence to demonstrate that Warren had provided services under contract with Fraser in any capacity other than that of employee of Midsummer Common, nor had he pleaded for or offered evidence to support piercing the corporate veil.

36. Next, Defendant Midsummer Common moved the court for a directed verdict in its favor as to Plaintiff's cause of action for equitable indemnification on the following grounds: 1) that in light of the evidence and testimony of record, Plaintiff could not, and did not, demonstrate that he was without fault for the specific defects in workmanship Fraser alleged in her counterclaim against Smith for breach of contract; 2) that Smith could not, and did not, demonstrate that Midsummer Common was solely responsible for the



specific defects in workmanship Fraser alleged in her counterclaim; and 3) that because Smith prevailed on his causes of action and on Fraser's counterclaim, he could demonstrate no damages to be indemnified.

37. The court granted the motions for directed verdict in favor of both Warren, individually, and Midsummer Common as to Plaintiff's cause of action for equitable indemnity.

Attorney's Fees

38. Plaintiff is the prevailing party as against Defendant Fraser under the Mechanic's Lien statute and is therefore entitled to an award of reasonable attorney's fees. See *S.C. Code Ann.* §29-5-10(b).

39. Counsel for Plaintiff has filed an Affidavit of Attorney's Fees. The court finds as facts herein the amounts due as stated are appropriate as

[t]here are six factors to consider in determining an award of attorney's fees: 1) nature, extent and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained.

Blumberg v. Nealco, 310 S.C. 492, 427 S.E.2d 659 (1993).

40. Counsel's Affidavit provides that he is a licensed attorney in good standing and that he and his firm have successfully prosecuted this matter since February 15, 2012, the date the Notice of Mechanic's Lien was filed. During the time of the prosecution of the case, counsel spent time investigating his client's claims, reviewing the numerous pleadings filed, drafting discovery, drafting motions and orders, attending hearings, prosecuting the case, and attending the trial of the case before this court. Having considered the nature, extent and difficulty of the services rendered, the time involved, the professional standing of counsel, the fee customarily charged for similar cases, including breach of contract and

mechanic's lien foreclosure actions, and the beneficial results obtained, the court finds that the sum of Twenty Eight Thousand Nine Hundred Seven (\$28,907.00) Dollars is a reasonable attorney's fee to allow under the terms of the Mechanic's Lien statute for a matter that has been pending since February 15, 2012. *S.C. Code Ann. §29-4-10(b)*.

41. The court will address Defendant Warren and Midsummer's claim for indemnification as to attorney's fees in a separate Order.

Judgment

42. The total judgment owing Plaintiff, with prejudgment interest since February 15, 2012, at 8.75% per annum, and other costs and expenses of collection, including attorney's fees pursuant to *S.C. Code Ann. §29-4-10(b)*, is as follows:

Damages for Breach of Contract	\$ 56,257.39
Prejudgment Interest through 9/15/2016	\$ 20,555.16
Attorney's fees	\$ 28,907.84
TOTAL DAMAGES	\$105,720.39

43. After the date of Judgment, interest at the legal rate per annum shall be added to such judgment debt to comprise the total debt secured by the lien.

44. Defendant Fraser is liable for the aforesaid judgment debt, and, on or before the date of sale of the Property, shall pay to Plaintiff or Plaintiff's attorney, the amount of Plaintiff's debt, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure of the Mechanic's Lien and sale shall be cancelled.

Sales Procedure

45. On default of payment at or before the time herein indicated, the Property shall be sold by this court at public auction at the Charleston County Courthouse, Charleston, South Carolina, within sixty (60) days, or some convenient sales date, on the following terms:

- i. **FOR CASH:** The court will require a deposit of 5% on the amount of the bid (in certified funds) to be applied on the purchase price only upon compliance with the bid, but in case of noncompliance within 30 days, the deposit may be forfeited without further hearing and applied to the costs and Plaintiff's debt;
- ii. The sale shall be subject to taxes and assessments, existing easements, and easements and restrictions of record; and
- iii. Purchaser shall be required to pay for deed preparation, costs of recording the Deed, and transfer taxes.

46. If Plaintiff be the successful bidder at the sale, for a sum not exceeding the amount of costs, disbursements and expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the court only the amount of the costs, disbursements and expenses crediting the balance of the bid on Plaintiff's indebtedness up to its judgment amount plus costs.

47. Plaintiff, by advertisement according to law, shall give notice of the time, date, place of sale, and the terms thereof.

48. The court will execute to the Purchaser, or Purchasers, a Master's Deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser or Purchasers, should fail to comply with the terms thereof within 30 days after date of sale, then the court may

advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

49. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the Property shall not be sold, and in that event any such sale shall be null and void and of no force and effect. The Property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

50. That the court will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court.

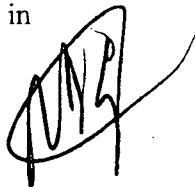
NEXT: To the payment of Plaintiff, or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus funds will be held pending further order of the court.

IT IS THEREFORE ORDERED that Plaintiff shall have judgment against Defendant Fraser on its Mechanic's Lien foreclosure action in the amount of **\$105,720.39**. In the alternative, Plaintiff may have a judgment against Defendant Fraser on its breach of contract action in the amount of **\$56,257.39**.

IT IS FURTHER ORDERED that Plaintiff may foreclose on its lien as set forth below:

- a. In the event the successful bidder is other than Defendant Fraser, upon full compliance with the bid, the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in



full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

- b. In the event the successful bidder is other than the Defendant Bonnie Fraser and the occupant(s) have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to Plaintiff's Mechanic's Lien in said premises, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the Mechanic's Lien of the Plaintiff, which personal property, being deemed abandoned, shall be removed by Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.
- c. In addition to all parties deemed by law to have received constructive notice of the action herein, Defendant Fraser shall be forever barred and foreclosed of all right, title, interest, and equity of redemption in said premises so sold, or any part thereof.

IT IS FURTHER ORDERED that the Master's Deed made pursuant to the sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant(s) who was/were the titleholder(s) of the property at the time of filing of the notice of pendency of the within action, and the name of the grantee, and the RMC for Charleston County is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

IT IS FURTHER ORDERED that the RMC for Charleston County shall release of record the Mechanic's Lien and Amended Mechanic's Lien being foreclosed, and all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Disbursements has been executed and filed. The Plaintiff's Mechanic's Lien and Amended Mechanic's Lien are described as follows:

That certain Mechanic's Lien filed February 16, 2012, in the Office of the RMC for Charleston County in Book 0234 at Page 146 as amended by that Amended Mechanic's Lien filed in Book 0327 at Page 439.

IT IS FINALLY ORDERED that the court retains jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and any other matters required of the court.

IT IS SO ORDERED!



The Honorable Michael R. Scarborough
Master in Equity for Charleston County

Nov. 22, 2016
Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-10-4302

R. M. Smith d/b/a R. M. Smith Construction

Bonnie Fraser

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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

FILED
 2013 AUG -2 AM 9:30
 JUDGE J. ANASTASIOU
 CLERK OF COURT
 BY

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 came before the Court on July 18, 2013, on Defendant's Motion to Dissolve Mechanic's Lien, to Dismiss, and/or for Summary Judgment. This Court hereby DENIES Defendant's Motion.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

[Signature]
 Circuit Court Judge

2151
 Judge Code

7/31/13
 Date

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-4302

R.M. Smith d/b/a R.M. Smith Construction

Bonnie Fraser, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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), 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 matter came before the court for argument on September 13, 2016 and the court finds as follows. Judge Harrington previously heard the identical Motion on July 18, 2013 and denied it. Accordingly, Defendant's Motion for Summary Judgment filed September 9, 2016 is DENIED. Finally, Paul Rahn's Motion to be Relieved as Counsel, which was filed on June 19, 2014, is GRANTED.

FILED
 2016 SEP 15 PM 1:31
 CLERK OF COURT
 J. ARRINGTON

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
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

Date

9/17/16

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: