

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP4601155

Preferred Restoration & Construction Inc	Lori Bechtler
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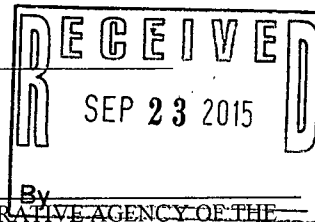
PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____



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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Lori Bechtler	Perferred Restoration & Construction Inc.	\$3359.50 (Attorney Fees)

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.**

s/S. Jackson Kimball

Circuit Court Judge

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

3063

Judge Code

9/21/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on **September 21, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **September 21, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

John Martin Foster PO Box 106 Rock Hill, SC 29731-6106

Walter Keith Martens 130 E. Main Street Rock Hill, SC
29731

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - 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.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-RECEIVED
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IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Preferred Restoration & Construction, Inc.
a North Carolina corporation,

Case No. 2015-CP-46-1155

Plaintiff,

v.

Lori Bechtler,

Defendant.

ORDER DISSOLVING LIEN AND
GRANTING PARTIAL SUMMARY
JUDGMENT AS TO PLAINTIFF'S
FIRST CAUSE OF ACTION

This matter came before me on August 31, 2015, upon Plaintiff's Motion to Reconsider and Defendant's Motion for Attorneys' Fees. Representing Plaintiff was J. Martin Foster, and representing Defendant was W. Keith Martens.

BACKGROUND

Plaintiff commenced this action on April 15, 2015, to foreclose a mechanic's lien. Plaintiff also asserted causes of action for breach of contract and *quantum meruit*. Defendant timely answered and counterclaimed. Defendant also filed a motion to dissolve Plaintiff's lien, and for summary judgment as to Plaintiff's mechanic's lien foreclosure cause of action.

The matter initially came before me on Defendant's motion on July 23, 2015. At that hearing, I found and concluded that Defendant was entitled to dissolution of Plaintiff's mechanic's lien as a matter of law, as well as summary judgment as to Plaintiff's cause of action to foreclose its lien. I also found and concluded that Defendant was the prevailing party in Plaintiff's mechanic's lien foreclosure action, and was entitled to recover her fees and costs. I instructed Defendant's counsel to submit a statement of fees and costs for my consideration, and retained jurisdiction to conduct an additional hearing, if necessary, to determine an appropriate award of fees and costs.

On August 7, 2015, Plaintiff moved for reconsideration of my initial ruling¹ pursuant to Rule 59(e) SCRPC., and also raised objections to Defense Counsel's statement of attorney's fees

¹ I did not issue a written order following the hearing on Defendant's motion, but held the matter open until the issue of Defendant's fees and costs was finally resolved.

and costs. The present hearing was held on Plaintiff's motion for reconsideration, and also to determine an appropriate award of fees and costs.

DISCUSSION

After considering the arguments of the parties on all issues presented at both hearings, I find and conclude that Defendant is entitled to dissolution of Plaintiff's mechanic's lien as a matter of law, and for summary judgment as to Plaintiff's cause of action to foreclose its lien. I also find and conclude that Defendant is entitled to recover her reasonable attorney's fees and costs, limited to those which were incurred in pursuing dissolution of Plaintiff's mechanic's lien. The operative facts are as follows.

Defendant is the owner of a parcel of real property located at 1045 Osteen Road in York County, South Carolina ("Real Property"). Defendant is also the owner of a mobile home ("Mobile Home") located upon the Real Property.² In July, 2014, Defendant hired Plaintiff to perform mold remediation and other repair work in the Mobile Home. It is undisputed that the work Plaintiff was hired to perform is the type of work which requires a valid South Carolina Contractor's license or a Residential Homebuilder's license. It is also undisputed that Plaintiff was licensed at the time it entered into a contract with Defendant, and at the time it performed work in Defendant's Mobile Home.

In October, 2014, Defendant became dissatisfied with Plaintiff's work and terminated Plaintiff. Plaintiff's last date of work on Defendant's Real Property was in October or November, 2014.

On December 30, 2014, Plaintiff filed the mechanic's lien that it now seeks to foreclose. Plaintiff did not record its contractor license number on the face of its lien document. Nor did Plaintiff provide other proof of its licensure to the York County Clerk of Court at the time the lien was filed.

CONCLUSIONS OF LAW

Because Plaintiff did not provide proof of its licensure at the time it filed its lien, the lien is invalid. Under South Carolina law, "a mechanic's lien arises, inchoate, when labor is performed or material furnished." *Preferred Sav. & Loan Ass'n, Inc. v. Royal Garden Resort, Inc.*, 301 S.C. 1, 3, 389 S.E.2d 853, 854 (1990). However, "for an inchoate lien to become valid,

² In support of her motion to dissolve Plaintiff's mechanic's lien, Defendant submitted an affidavit establishing that the Mobile Home is titled as personal property. On or about July 21, 2015, Plaintiff filed and served an affidavit in opposition to Defendant's motion. Plaintiff's affidavit created an issue of fact as to whether the Mobile Home is personal property or a part of the Real Property.

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the lien must be perfected and enforced in compliance with South Carolina's mechanic's lien statutes.” *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C.*, 409 S.C. 331, 342, 762 S.E.2d 561, 566 (2014)(citing *Preferred Sav. & Loan Ass'n*, 301 S.C. at 1, 389 S.E.2d at 853 (1990))(emphasis added). Among other requirements:

To file a mechanics’ 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. S.C. Code Ann. § 29-5-15(A)(1976, as amended)(Emphasis added.).

“Under the rules of statutory interpretation, use of words such as ‘shall’ or ‘must’ indicates the legislature's intent to enact a mandatory requirement.” *Bradley v. Doe*, 374 S.C. 622, 634, 649 S.E.2d 153, 160 (Ct. App. 2007). Because Plaintiff failed to comply with the mandatory requirement of § 29-5-15(A), the lien was not perfected in accordance with South Carolina’s mechanics’ lien statutes, and it is invalid. *Ferguson Fire & Fabrication*, 409 S.C. at 342, 762 S.E.2d at 566.

Plaintiff correctly points out that the mechanics’ lien statutes do not specify a “penalty” to be imposed where a lien claimant fails to comply with the provisions of S.C. Code Ann. § 29-5-15(A). However, neither does § 29-5-10, which establishes the lien, or § 29-5-90, which specifies the time period within which the lien must be filed and the contents of the lien, specifies a penalty or legal consequence for noncompliance with the applicable statutes for claiming and filing the lien. While § 29-5-120 does provide that if suit is not brought on the lien within six months of its filing, the lien will be dissolved, no statutory language dictates the consequence of either an untimely filed, or noncompliant, statement of the lien. The remedy of dismissal of the lien is judicially created as the natural consequence of noncompliance with the applicable statute.

In this case, there is no genuine issue of material fact to be determined. Plaintiff filed a facially incomplete statement of its lien in accordance with § 29-5-15. Therefore, the lien is invalid, and Defendant is entitled to have the lien dissolved. For the same reason, Defendant is entitled to summary judgment as to Plaintiff’s first cause of action.

As to Plaintiff’s motion pursuant to Rule 59(e), SCRPC, to alter or amend the original ruling, I find no matter presented that was not addressed expressly or by clear implication in the ruling from the bench. I further find no basis for reconsideration or amendment of the ruling.

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AWARD OF FEES AND COSTS

Defendant is also entitled to an award of fees and costs, as the prevailing party in regard to Plaintiff's mechanics' lien. Under the mechanic's lien statutes, "[t]he costs which may arise in enforcing or defending against [a] lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party." S.C. Code Ann. § 29-5-10 (1976, as amended). This provision is mandatory, meaning a party who successfully defends a lien claim is entitled to an award of costs and reasonable attorney's fees. *T.W. Morton Builders, Inc. v. von Buedingen*, 316 S.C. 388, 450 S.E.2d 87 (Ct. App. 1994).

The fee must be determined by the court, and may not exceed the amount of the lien. (S.C. Code Ann. § 29-5-10.) Fees and costs may only be recovered for those actions specifically involving the lien. *Cedar Creek Properties, Inc. v. Cantelou Assoc., Inc.*, 320 S.C. 483, 487, 465 S.E.2d 774, 776 (1995). While an award of fees and costs is mandatory, the amount of fees that should be awarded is left to the sound discretion of the court. *Keeney's Metal Roofing, Inc. v. Palmieri*, 345 S.C. 550, 553, 548 S.E.2d 900, 901 (Ct. App. 2001). "The court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997), citing *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993).

In support of Defendant's motion for fees and costs, Defendant's attorney submitted an affidavit and itemized billing statement, which reflects that the fees and costs incurred by Defendant in defending Plaintiff's mechanic's lien action totaled \$3,359.50, including court costs of \$25.00. Based upon my review of the affidavit and itemized statement, I find and conclude that the fees incurred are reasonable and appropriate under the circumstances.

All fees shown on the filed statement were directly related to Defendant's defense of the mechanic's lien action, not other aspects of counsel's representation. The time that defense counsel devoted toward the preparation of his client's case was not excessive, as the issues involved were fairly complex.³ The result obtained by defense counsel was certainly beneficial to

³ There is apparently no reported case interpreting or applying S.C. Code Ann. § 29-5-15(A). Further, as it relates to this case, the question of whether a mobile home is real property or personal property is a fact-intensive inquiry that has spawned much litigation in this state.

While a portion of defense counsel's fees were devoted toward an argument that Defendant ultimately did not pursue, namely that dissolution of the lien on grounds that Plaintiff's work related to the improvement of a mobile home, and not real property, Defendant only abandoned that argument after Plaintiff served an affidavit two

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his client. Defense Counsel is an experienced and well-respected attorney in the community, and his billing rates are comparable with the rates charged by other attorneys in this community. Lastly, the fees and costs requested do not exceed the amount of Plaintiff's lien.

Under the circumstances of this case, I find and conclude that Defense Counsel's fees and expenses are reasonable and fully recoverable under the mechanic's lien statutes. As the prevailing party in Plaintiff's mechanic's lien claim, Defendant is entitled to an award of fees and costs in the amount of \$3,359.50.

ORDER

Based on the discussion herein, it is ordered as follows:

1. Plaintiff's mechanics' lien filed on December 30, 2014 in DR Vol. 352 at Page 3 (Instrument Number 201490087173) is hereby dissolved, and of no further legal effect. Likewise, Plaintiff's Lis Pendens filed on April 15, 2015 is also dissolved. The Clerk of Court is authorized and directed to mark the same as dissolved and terminated on the public record.

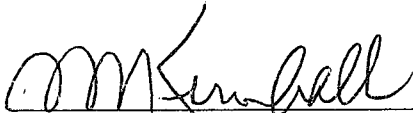
2. Defendant is granted summary judgment as to Plaintiff's cause of action to foreclose its mechanics' lien.

3. Defendant shall have and recover attorney's fees and costs in the total amount of \$3,359.50 for successful defense of the mechanics lien. Nothing in this order affects Plaintiff's claims for breach of contract or *quantum meruit*, or Defendant's counterclaims.

4. Plaintiff's motion pursuant to Rule 59(e), SCRPC, is denied.

AND IT IS SO ORDERED.

September 18, 2015


S. Jackson Kimball
Special Circuit Court Judge
York County

days before the hearing on Defendant's motion. Plaintiff's "eleventh hour" affidavit created an issue of fact which would have precluded the court from considering dissolution of Plaintiff's lien on that basis. *See Sea Pines Co. v. Kiawah Island Co.*, 268 S.C. 153, 157, 232 S.E.2d 501, 502 (1977) ("The judge to whom application for relief is made may not try disputed facts."). Recognizing the limits of this court's authority under *Sea Pines*, defense counsel made a tactical decision to abandon that prong of attack, and to pursue dissolution of Plaintiff's lien on a ground that did not delve into disputed factual issues. Of course, until Plaintiff filed and served its affidavit, it was necessary and appropriate for Defense Counsel to research and fully prepare all arguments in support of dissolution.

