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Terlizzi Home Improvement, LLC, Appellant,

v.

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

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

v.

William Terlizzi, Third-Party Defendant and an
Appellant.

Appellate Case No. 2014-002540

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JUL 18 2017
SC Court of Appeals

PETITION FOR REHEARING

ROBERT M. COOK II
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BATESBURG-LEESVILLE, SC 29070
803/317-2171

ATTORNEY FOR THE APPELLANTS/PETITIONERS

RMCIP

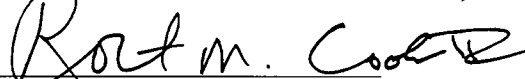
Pursuant to Rules 221(a) and 240, SCACR, the Petitioners (the Appellants) ask this court to rehear and reconsider certain matters pertaining to its opinion in this matter filed July 5, 2017, and bearing Unpublished Opinion No. 2017-UP-280, based upon the following grounds:

1. This court should definitively rule on the legal issue of whether the Appellant Terlizzi is personally liable for the attorney's fees/costs sought by the Respondents in connection with the mechanic's lien action, and hold that he is not so liable.
2. This court should specifically rule on the amount of the mechanic's lien in existence at the time the motion to dismiss the lien was filed and reverse the trial court's dismissal of the lien based upon the amount of the lien in existence at that time.

WHEREFORE, having raised the above issues by way of their petition for rehearing, the Petitioners/Appellants respectfully request that the court reconsider those parts of its order as noted above by way of reversing and filing of a substituted opinion.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

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ATTORNEY FOR THE APPELLANTS/PETITIONERS

RMCII

Pursuant to Rule 240(c)(2), SCACR, the Petitioners/Appellants provide the following in support of their motion for rehearing of the court's order filed July 5, 2017:

1. This court should directly and clearly hold that Terlizzi is not liable for attorney's fees/costs in connection with the mechanic's lien action.

In its order of July 5th this court vacated the trial court's award of attorney's fees/costs against Terlizzi personally and held: 1) "the record is unclear as to whether Terlizzi is personally liable for the fees as the circuit held"; and 2) "we find an award of attorney's fees against Terlizzi is premature at this time." This court then directed a remand of this case back to the trial court for further proceedings. There simply is no statutory basis or case law precedent for holding that Mr. Terlizzi, as a non-party to the mechanic's lien action, could possibly be directly and personally liable for statutory attorney's fees per the attorney's fee mechanism found in Title 29. This issue was fully addressed in the Appellant's Final Brief at pages 11-13, Final Reply Brief at pages 2-3, and at oral argument. The Petitioners have requested, and are entitled, to a direct and clear response to their request that the court specifically rule that there is no statutory or other precedential basis for holding Terlizzi as a non-party personally liable for attorney's fees/costs on the mechanic's lien cause of action. There simply is no legal basis for holding otherwise, nor is there any real reason not to state so clearly in the court's opinion. In the absence of a clear ruling from this court, this issue will remain unresolved and be the subject of further litigation despite the current (and much appreciated) respite provided by the court's vacation of that part of the trial court's order. The Petitioner remains in jeopardy on this issue unless and until this issue is definitively resolved. It is strictly a matter of law and additional factual development upon remand will not assist the court at all.

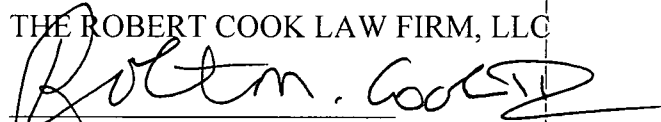
2. This Court should specifically rule on the amount of the mechanic's lien in existence at the time the motion to dismiss was filed.

This court noted in its decision that the Petitioner/Appellant Terlizzi Home Improvement, LLC, stipulated to a reduced amount of its mechanic's lien three months prior to the Respondent's filing of a motion to dismiss that lien per Section 29-5-100. This court was specifically requested to rule upon the issue of the amount of the mechanic's lien in force when that motion to dismiss was filed. (See Appellant's Final Brief at pages 4-6, including on page 5: "A direct ruling on the amount of the lien in existence at the time the motion was filed is therefore necessary."). This is the vital and paramount issue directly related to the error resulting from the dismissal of the mechanic's lien in the first place. This court ruled against the Petitioner on this issue without ever directly addressing this issue. If the lien was reduced prior to the motion, and it was, then the motion to dismiss should have been denied for that reason alone as the lien in existence at the time the motion was filed was not objectionable per Section 29-5-100. This issue must be addressed and ruled upon by this court, otherwise the legal error made by the trial court will continue to unfairly harm the Petitioner.

WHEREFORE, having raised the above issues by way of their petition for rehearing and the within Memorandum in Support, the Petitioners/Appellants respectfully request that the court reconsider and reverse those parts of its order as noted above and hold: 1) that the mechanic's lien should not have been dismissed because it was reduced prior to the filing of the motion to dismiss, and 2) that the Petitioner Terlizzi is clearly not personally liable for attorney's fees/costs on the mechanic's lien cause of action as a matter of law.

Respectfully submitted,

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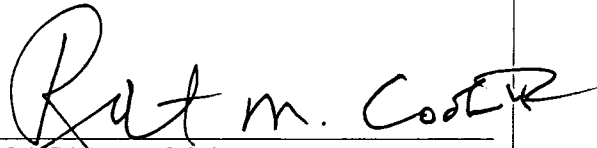
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PROOF OF SERVICE

I certify that I have served the Appellant's Petition for Rehearing and Memorandum in Support of Petition for Rehearing on the attorneys for Michael L. Boheler and Jeannette A. Boheler by depositing a copy of each in the United States Mail, postage prepaid, on July 18, 2017, addressed to Charles A. Krawczyk, Esquire, Finkel Law Firm, LLC, P.O. Box 1799, Columbia, SC 29202 and Kathleen McDavid Muthig, Esquire, Finkel Law Firm, LLC, P.O. Box 1799, Columbia, SC 29202.

July 18, 2017



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July 18, 2017

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
P. O. Box 11629
Columbia, SC 29211

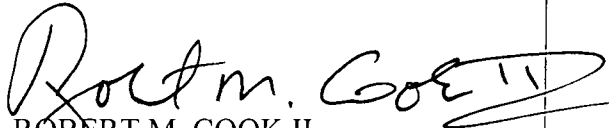
Re: **Terlizzi Home Improvement, LLC v. Michael L. Boheler, et al.**
C.A. No: 2012-CP-36-00090
Appellate Case No. 2014-002540

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Dear Ms. Abbott:

Enclosed please find the original and seven copies of the Appellant's Petition for Rehearing and Memorandum in Support of Petition for Rehearing, with proof of service attached. Please file the original of this document and return the file-stamped extra copy to me. By means of a copy of this letter I am serving opposing counsel with this document. A check in the amount of \$25 for the filing fee is enclosed. Please let me know if there are any questions.

Yours Very Truly,



ROBERT M. COOK II
The Robert Cook Law Firm, LLC

RMC/ppd

Enclosure: Original and (7) copies of the Petition for Rehearing and Memorandum in Support of Petition for Rehearing
\$25 check

cc: Charles A. Krawczyk, Esquire
Kathleen McDavid Muthig, Esquire