

**RECEIVED**  
AUG 14 2017  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

Appellate Case No. 2014-002540

Terlizzi Home Improvement, LLC,.....Appellant,

v.

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

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

v.

William Terlizzi,.....Third-Party Defendant and Appellant.

RESPONDENT'S PETITION FOR  
REHEARING

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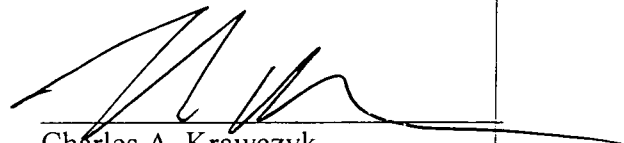
Pursuant to Rules 221(a) and 240, SCACR, the Petitioners/Respondents ask this Court to rehear and reconsider certain matters pertaining to its opinion in this matter filed July 5, 2017, and bearing Unpublished Opinion No. 2017-UP-280 based upon the following grounds:

1. This Court should address the lower court's finding that the actions of Mr. Terlizzi in filing the inflated lien was willful, wonton, intentional and with a conscience disregard for the truth. That this Court should confirm the lower Court findings that Mr. Terlizzi's actions were ultra vires in nature for which there can be no protection behind the corporate shield.

2. This Court should reexamine the lower Court's finding as to the reasonableness of the attorney's fee award and find that there existed sufficient evidence and findings of fact to support the fees awarded.

WHEREFORE, having raised the above issue by way of a Petition for Rehearing, the Petitioners/Respondents 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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PROOF OF SERVICE

I certify that I have served the Respondent's Petition for Rehearing on the attorneys for Terlizzi Home Improvement, LLC and William Terlizzi by depositing a copy of each in the United States Mail, postage prepaid, on August 14, 2017, addressed to Robert M. Cook II, The Robert Cook Law Firm LLC, P.O. Box 3575, Batesburg-Leesville, SC 29070.

August 14, 2017



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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-CP-36-00090  
Appellate Case No. 2014-002540

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**RESPONDENTS' MEOMRANDUM IN SUPPORT FOR REHEARING**

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Pursuant to Rule 240(c)(2), SCACR the Petitioners/Respondents provide the following in support of their Petition for Rehearing of the Courts Order filed July 5, 2017

1. This Court should address the lower court's finding that the actions of Mr. Terlizzi in filing the inflated lien was willful, wonton, intentional and with a conscience disregard for the truth. That this Court should confirm the lower Court findings that Mr. Terlizzi's actions were ultra vires in nature for which there can be no protection behind the corporate shield.

It is important to bring to the forefront of this matter the nature and intent of Mr. Terlizzi in filing the mechanic's lien on the Boheler home. As is seen through the affidavit of Mr. Terlizzi's partner John Harding and in the findings of the lower court, Mr Terlizzi never intended the mechanic's lien to be an accurate accounting and statement of the amount owed to THI. Instead it was intended as a method to gain a collateral advantage over the Bohelers by "holding them over a barrel". The record is far from unclear in this matter. In fact Petitioners/Respondents would state that there could not exist a more documented example of the abuse of a mechanics' lien without an admission of the builder himself. That proof exists as follows:

1. The sworn affidavit of John Harding, Mr. Terlizzi's partner indicating
  - (a) that the lien amount was incorrect, (R. p 530)
  - (b) That Mr. Harding told Mr. Terlizzi that it was incorrect before it was filed (R. p 531)
  - (c) That Mr. Terlizzi approached Mr. Harding and asked him to be complicit in an intentionally overstated and fraudulent lien.(R. p. 531)
  - (d) That Mr. Terlizzi wanted to file the lien because it would effectively

put the Bohelers “over a barrel”, and they would be forced to negotiate with him because they could not afford to bond off the Lien or hire an attorney (R. p 531)

- (2) The complete lack of any proof or backup to justify the Lien (what the lower court called “lacking in accuracy and of specious validity” R. p 20). just further strengthens the testimony of John Harding
- (3) The finding by the Lower Court that:
  - (a) The actions taken by Mr. Terlizzi were intentional, wanton and with conscience disregard for the truth (R. p 22).
  - (b) That Mr. Terlizzi; “intentionally inflated them (the numbers) to create and insurmountable financial burden for the Bohelers (R. p 22)”
  - (c) The actions are ultra vires for which Mr. Terlizzi may be held personally liable (R. p 22).

The lower court found that Mr. Terlizzi and Mr. Harding were partners under the laws of South Carolina (R. p 3). That portion of the Order was not appealed and sits as the law of the case. As a partner, Mr. Harding has the ability to bind the partnership. In this instance Mr. Harding has indicated on behalf of the partnership that Mr. Terlizzi filed an intentionally overstated and inflated lien with the intent to gain a collateral advantage over the Bohelers; a lien that Mr. Harding wanted no part of (R. p. 531). In a word the lower court determined that Mr. Terlizzi, rather than the partnership engaged in this act. The lower Court determined that this act was an ultra vires act. That filing a fraudulent lien and foreclosure action in the name of an LLC does not shield an individual from his intentional acts or the consequences that flow from those acts. In this instance Mr.

Terlizzi's actions subjected him to the mandatory fee shifting provision under S.C. Code §29-5-20.

This Court remanded the question of Mr. Terlizzi's personal liability for further proceedings in part because Mr. Terlizzi individually was not a party to his own complaint, and was named as a third party defendant only to the tort and contract counterclaims. That Mr. Terlizzi did not name himself to his own complaint should be of no consequence. The action of filing the lien and a sworn affidavit of account occurred well before any litigation occurred. The sworn affidavit was found by this Court and the lower court to be inflated and without rational basis. This same action was found by the lower court to be intentional, wanton and with conscience disregard for the truth. The lower court found that this action was an ultra vires act and as such Mr. Terlizzi could be held accountable for the resulting damage of that act. One of those results is the fee shifting provisions under the statute.

This Court has looked to the causes of action within the third party complaint as a basis for Mr. Terlizzi's liability, but the lower Court's findings could have been made without any counterclaims or third party claims. The statute itself sets forth the remedy against the person who files a fraudulent lien. There is no requirement that there even be a pleading of any kind, just a finding that the violation took place and that the lien is dismissed. Upon that finding of an intentionally inflated lien the automatic fee shifting provision kicks in. In this case the lower Court found that Mr. Terlizzi in his individual capacity, filed the lien and that he could not hide behind his corporate structure for his intentional wrongful actions. Because of his intent to use it as a collateral advantage to financially cripple the Bohelers it was an intentional violation of the statute. Mr. Terlizzi

should not be able to hide behind the corporate shield for his intentional actions in filing a lien in violation of §29-5-100.

That Mr. Terlizzi was not named as a party in all of the third party causes of action is a ministerial issue. Mr. Terlizzi individually was a party to the action, represented in all proceedings by counsel and was made aware of the potential consequences early on in the proceeding. When remanded to the lower Court and upon motion to leave to amend, (such leave being freely and liberally granted) Mr. Terlizzi will become a party to the mechanic's lien by placing his name on one line in a third party complaint to which he has already been made a party. There being no change in this Court's and the lower Court's findings of his willful, wanton and intentional actions, he will once again be found personally liable and we will be before this Court on the same issue once again based upon a purely ministerial action. The Boheler's respectfully request this Court alter its decision and find that Mr. Terlizzi's actions were ultra vires and as such subjected him to the penalties of the fee shifting provisions of the mechanic's lien statute.

2. The Court should reexamine the lower Court's finding as to the reasonableness of the attorney's fee award and find that there existed sufficient evidence and findings of fact to support the fees awarded.

The amount, reasonableness and necessity of attorney's fees in this action was subject to two hearings. Counsel for the Bohelers was cross examined by counsel for THI and Mr. Terlizzi as well as the honorable Judge Addy. A full explanation of the fees and how they were arrived was described and the court based its findings upon this full examination. Based upon the initial hearing the Court ordered that an amended fee

affidavit be issued to address those problems that the Court identified in the original affidavit.

While the Court did not specifically spell out the six factors that this Court requires it did specifically state that the affidavit “meets the factors necessary to determine reasonable attorney’s fees as set out in Rule 407 and *Spriggs Group, P.C. V. Slivka* 402 S.C. 42, 738 S.E.2d 295 (Ct. App. 2013), (which specifically cites the case of *Jackson v Speed* 326 S.C. 289, 308, 486 S.E.2d 750,759 (1997)). Thus the Respondents respectfully request that this Court reexamine the record and finding on the amount of attorney’s fees and affirm the lower court’s decision.

WHEREFORE having raised the above issues by way of their petition and the Memorandum in Support the Petitioners/Respondents respectfully request that the court reconsider and reverse those parts of it order as noted above and hold: That Mr. Terlizzi’s actions in filing the mechanic’s lien was an ultra vires act and as such subjected him to the statutory penalties for filing a lien in violation of §29-5-100 and 2) That the attorney’s fees granted by the circuit court we reasonable and affirm the amount of that award against Mr. Terlizzi personally.

Respectfully submitted,



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**PROOF OF SERVICE**

The undersigned hereby certifies that on the date indicated below, he served  
counsel for the Appellants with a copy of the Memorandum in support of Petition for  
Rehearing by mailing a copy of the same by United States Mail with first class postage  
prepaid to the following address:

Robert M. Cook II, Esquire  
P.O. Box 2559  
Batesburg-Leesville, South Carolina 29070

August 14, 2017  
Columbia, South Carolina

  
Charles Krawczyk