

THE STATE OF SOUTH CAROLINA
In The SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

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William P. Keesley, Circuit Court Judge

S.C. SUPREME COURT

Opinion No. 5444 (S.C.Ct.App. filed Sept. 28, 2016)

Rose Electric, Inc., ... Petitioner,

v.

Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC, Certified
Development Corporation of South Carolina, Senn Bros., Inc.,
Custom Concrete of Lexington, Inc., and
James Dunlap d/b/a Dunlap Services, ... Defendants,

Of whom

Southern Produce, Inc., and S2P, LLC are Respondents.

APPENDIX – Volume 1

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2011-CP-32-1929

Rose Electric, Inc., ... Appellant

v.

Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC, Certified
Development Corporation of South Carolina, Senn Bros., Inc.,
Custom Concrete of Lexington, Inc., and
James Dunlap d/b/a Dunlap Services, ... Defendants

Of whom

Southern Produce, Inc., and S2P, LLC are Respondents

RECORD ON APPEAL

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COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

CIVIL ACTION NO.: 2011-CP-32-1929

Rose Electric, Inc.,

Plaintiff

vs.

Cooler Erectors of Atlanta, Inc., Southern
Produce, Inc., S2P, LLC, Certified
Development Corporation of South Carolina,
Senn Bros., Inc., Custom Concrete of
Lexington, Inc., and James Dunlap d/b/a
Dunlap Services,

Defendants.

WPK
#4
ORDER

This case arises out of the failure to pay for work provided by an electrical subcontractor on construction of a refrigerated produce processing building (the project) at the new South Carolina State Farmers Market (Farmers Market). The court finds for the Defendants Southern Produce and S2P as is set out below.

Background

Southern Produce, Inc. (Southern Produce) leased a parcel of land from the landowner, S2P, LLC (S2P), and hired Cooler Erectors of Atlanta, Inc. (Cooler) as general contractor for the project. Cooler hired Rose Electric, Inc. (Rose) as a subcontractor to perform the electrical work on the project. Rose completed its work, but Cooler failed to pay. Southern had paid the general

contractor, Cooler, for all but the retainage due under the agreement between Southern and Cooler.

WPK
#2

Rose filed a mechanic's lien on the property to secure payment of the debt. Rose then filed this case seeking payment from Cooler, Southern Produce and S2P in the amount of \$65,094.52, plus prejudgment interest, costs, and attorney fees. The mechanic's lien was filed on March 4, 2011, encumbering 4 acres of land owned by S2P at the Farmers Market,¹ in the amount of \$65,094.52. It includes land leased by Southern Produce on which the project was constructed, plus additional land. The lien named Cooler as the general contractor, and Southern Produce and S2P are named as the owners of the property. After the lien did not result in payment, Rose filed this action on May 20, 2011, in an attempt to perfect the lien and seek recovery. Rose alleges four causes of action: a breach of contract claim against Cooler, and claims for foreclosure of mechanics lien, unjust enrichment, and quantum meruit against Southern Produce, S2P and Senn Bros., Inc. Other defendants were named, as they had prior liens on the property.

Cooler did not answer the complaint and is in default. Defendant Southern Produce filed a general denial. Defendants S2P and Senn filed denials, asserted various defenses, and filed cross-claims against Southern Produce. S2P seeks damages, including costs and attorney fees from Southern Produce based on breach of lease or, alternatively, equitable indemnity. Southern Produce and S2P seek costs and attorney fees from Plaintiff Rose pursuant to the mechanic's lien statutes and other statutory and rule provisions, as prevailing parties.

¹ The lien is recorded in Mechanic Lien Book 14754 at Page 57, Lexington County.

Prior to trial, Southern Produce filed and served on Rose three separate Offers of Judgment or Settlement pursuant to Rule 68(a), SCRCF, S.C. Code Ann. § 15-35-400, and S.C. Code Ann. § 29-5-10 and § 29-5-20. Rose did not respond to any of these offers or make a counter proposal.

On the morning of trial, Plaintiff's counsel informed the Court and Defendants that it was dismissing Defendant Senn Bros., Inc. from the case and that Defendants Certified Development Corporation of South Carolina, Custom Concrete of Lexington, Inc., and James Dunlap were no longer involved in the case. Importantly, Plaintiff Rose also advised it was proceeding only on its quantum meruit claim and was abandoning its claims based on contract, including the foreclosure of the mechanic's lien against Southern and S2P, and the breach of contract action against Cooler.

WHL
#3

Rose called three witnesses and introduced a number of exhibits. Southern Produce and S2P called two witnesses and introduced exhibits. At the conclusion of the day-long trial, the Court invited the parties to submit post-trial briefs. Rose, Southern, and S2P each submitted briefs. Due to the unusual posture of the case and after reviewing the matter, the Court held a post-trial hearing on October 23, 2013, to hear arguments of counsel on various issues, including the effect of Plaintiff's abandonment of all claims except quantum meruit at trial.

Findings of Fact

The Farmers Market was moving from Richland County to its new location in Lexington County in 2010. Southern Produce operated a produce processing business at the old market. In the fall of 2010, Southern Produce began the process of moving its business to the new Farmers Market. It leased undeveloped land and hired a contractor to construct a new building on a

portion of a 4-acre tract owned by S2P, which S2P leased to Southern Produce for an initial term of 10 years. There are other tenants on other portions of the tract, including Senn Bros., Inc. The construction of the building was to be expedited because of the relocation to Lexington County.

Cooler was a general contractor already performing work at the new Farmers Market for various entities when it was hired by Southern Produce. There was a written contract between Southern Produce and Cooler whereby Cooler agreed to construct the project for Southern Produce according to plans that were part of the contract. The cost of the project as stated in the contract was \$213,385.00. The plans were included in the contract price and were dated October 5, 2010. A building permit was issued by Lexington County on November 2, 2010, and a Certificate of Occupancy was issued on November 30, 2010.

WR
#4
Rose is an electrical contractor that was working at the new Farmers Market. It had performed various jobs for Cooler and was paid for those jobs. Cooler contracted with Rose to perform the electrical work on the Southern Produce project pursuant to electrical plans prepared by an electrical engineer and provided to Rose by Cooler's representative.

There was no written contract between Rose and Cooler, nor was there a written contract between Rose and Southern Produce. Rose had performed as electrical subcontractor for Cooler on previous jobs at the Market with no written contract and without any issues from Cooler related to payment.

Homer S. Rose is the sole owner of Rose Electric, Inc. Russell D. Frazee is an electrician who worked for Rose and served as foreman on site for this project. Nate Crocker is the owner of Southern Produce, Inc. Dan Stocker is the general manager of Southern Produce and was on

site almost daily during construction of the project. Morris C. Teasley was the representative of Cooler for the project, and his son, Ben, served as site superintendent on the project.

During the course of construction, there were modifications made to the plans for the electrical installation. Some changes were made by Rose of its own volition and some were made at the direction of Southern Produce. The changes relate to the following:

- a. adding disconnects and plugs to allow for proper cleaning;
- b. modifying the material of disconnects to stainless steel to avoid corrosion;
- c. adding a hand-washer heater system;
- d. relocating an onion peeler from inside to outside the building, rewiring, and placing a disconnect for that device;
- e. adding receptacles and the circuits needed to accomplish that addition;
- f. adding dedicated circuits, a time clock, and breakers;
- g. wiring the evaporator coils; and,
- h. adding lights in the office.

WPK
#5
Rose properly performed the electrical work for this project. Southern Produce admits that it owes Rose separately for changes and additions it requested during the course of construction, and has offered to pay \$10,755.39 for them. Nate Crocker orally contracted with Rose to install an additional electrical line at the project. On January 6, 2011, Rose invoiced Southern Produce directly for that work in the amount of \$1,844.00, which Southern Produce paid by check on February 4, 2011.

Southern Produce paid the general contractor, Cooler, \$203,277 of the \$213,385 contact price. Cooler did not complete the project. Because the project was not finished, Southern Produce withheld \$10,108 as retainage. Cooler did not pay Rose or several other subcontractors on the project, including the concrete and plumbing subcontractors.

Rose began sending invoices and seeking payment from Cooler in November and December, 2010. When Cooler did not pay, Rose changed its position about the responsible party, adding Southern Produce. Invoices were sent by Rose to Cooler and Southern Produce in January and February, 2011. The gist of the situation is that Rose first invoiced Cooler, and, when payment was not forthcoming, began seeking payment from Southern Produce as well.

Custom Concrete of Lexington, Inc., James Dunlap d/b/a Dunlap Services, and Rose Electric each filed mechanic's liens on February 8, 2011, February 18, 2011, and March 4, 2011 respectively, seeking to encumber the entire 4-acre tract owned by S2P. The ownership interest of Southern Produce is a leasehold estate on only a portion of that tract where the produce processing building was constructed. Southern Produce has an obligation under the lease with S2P to remove any mechanic's lien placed on the property and to indemnify the landlord for damages incurred as a result of having to defend such claims.

WPK
#6

When Southern Produce was notified by Custom Concrete, Dunlap, and Rose that they had not been paid by the general contractor, Cooler had already been paid the entire contract price, except the \$10,108 retainage held by Southern Produce. Pursuant to S.C. Code Ann. § 29-5-60, Rose is entitled to a prorated share of the \$10,108 retainage held by Southern Produce, as between it and the other two subcontractors. After Rose filed this action on May 20, 2011, Southern Produce filed and served three Offers of Judgment, pursuant to Rule 68(a), SCRC, S.C. Code Ann. §15-35-400, S.C. Code Ann. §29-5-10 and S.C. Code Ann. § 29-5-20, in the amounts of \$7,549.22 on July 26, 2011, \$15,532.52 on January 23, 2012, and \$18,000.00 on July 13, 2012. Rose did not respond to any of the offers.

ANALYSIS & CONCLUSIONS OF LAW

1. Contract & Mechanic's Lien Claims

When Rose filed this action, it sought to foreclose on its mechanic's lien, which is an action based on contract. On the day of trial, Rose chose to abandon its breach of contract claim against Cooler and its mechanic's lien foreclosure claims against Southern Produce and S2P. Rose takes the position it did not have a contract with Cooler or Southern Produce, and thus seeks to recover \$65,094.54 based on the equitable remedy of quantum meruit. Rose argues that because it did not have a written contract with a set price for its work, there were no agreements and thus only equitable relief is available.

WP #7
Southern Produce and S2P take the position that there is an express contract. It is asserted to be based on the oral agreement between Rose and Cooler, coupled with their course of conduct on other jobs at the Farmers Market, their conduct on this project, and the October plans, November proposal, and invoices. Southern Produce maintains that a set price is not a requirement for establishment of a contract. Southern Produce points out that the November Rose proposal for its scope of work for Cooler was \$56,488.07 and the amount sought by Rose in its lien and complaint is \$54,399.13, \$2,148.94 less than the proposal. The November proposal was signed by Rose, but not by Cooler. Southern Produce admits it had an agreement to pay Rose directly for the changes it requested on the project. Rose provided the cost for that work in a letter dated February 16, 2011, and February 10, 2011 Change Orders 2-12, which amount to \$ 10,755.39. This is the same amount sought in the lien and pleaded by Rose in the Complaint as constituting its contract with Southern Produce.

Defendants also point out that the mechanic's lien filed by Rose is still on record in the Lexington County Office of Register of Deeds at Mechanic Lien Book 1474 at Page 57. It encumbers not only the leased property where the Southern Produce building is located, but also

the remaining portion of the 4-acre tract. Defendants Southern Produce and S2P have had to defend against the lien since March 4, 2011.

Defendants maintain that because there are contracts between Rose and Cooler, and Rose and Southern Produce, Rose is precluded from recovering under the equitable theory of quantum meruit. The Court agrees in this instance.

Actions in quantum meruit are generally based on the absence of a contract. Quantum meruit and contract claims are typically mutually exclusive, so that one cannot recover under this equitable theory when there is a contract. Swanson v Stratos, 350 S.C. 116, 564 S.E.2d 117 (Ct. App. 2002). In this case, Rose alleges in the lien, which is still on record, and the Complaint, that it had contracts with Cooler and Southern Produce. Southern Produce admits these allegations.²

WPR
#8

The Court has reviewed case law and utilized other sources. It found that Hornbook law discusses the distinction between contracts that are "express" and those "implied in fact." If the agreement or intent of the parties is manifested in spoken or written words, the contract is said to be "express." If the mutual undertaking of the parties is inferred from their conduct alone, without oral or written words, then the contract is said to be "implied in fact." It does not matter whether the mutual promises of the parties are expressed in word, written or oral, or implied from the conduct of the parties. Both are contracts entitling the parties to contractual remedies, not equitable remedies. Key Corporation Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675(2007). To have a contract for materials, labor or services does not require a

² Rose's Complaint avers in paragraphs 3, 10,11,12,19, and 20 that it had contracts with Cooler and Southern Produce. In the Notice of Mechanic's Lien and Statement of Account sworn to by Homer Rose, as president of Rose Electric, Inc., he affirmed that Rose had agreements with the Defendants and sought the "contract price" of \$65,094.52.

predetermined set price. The price is typically implied to be the fair and reasonable price in any number of contractual arrangements. For example, consulting a doctor without a predetermined charge implies a promise to pay the reasonable cost of the doctor's services and constitutes a contract between the parties. Likewise, the hiring of a contractor to provide materials and labor, even in the absence of a predetermined charge, implies a contract to pay for those materials and services. The parties may have a dispute as to the value or charge under the contract, but that does not obviate the obligations under the contract.

The court finds, in this case, that the evidence establishes the existence of expressed contracts between Rose and Cooler for the scope of work under the plans, and between Rose and Southern Produce for the requested changes and additions to the project. Moreover, the evidence establishes that contracts are implied in fact by the conduct of Rose, Cooler, and Southern Produce.

WPC
#9

The court finds that the greater weight of the evidence establishes that Rose has a contract with Cooler to pay for the electrical work included in the plans and has a contract with Southern Produce to pay for the requested changes and additions to the project. Rose's abandonment of the contract claims at trial does not change the facts and resulting conclusions of law. The Court finds for the Defendants as to the contract claims.

2. Quantum Meruit Claim

Plaintiff is not entitled to relief on its claims of quantum meruit. Quantum meruit, unjust enrichment and restitution are equivalent terms for equitable remedies for a contract implied by law or quasi-contract. Recognizing that these principles are difficult and confusion easily results, the court has made an extensive evaluation into how quantum meruit is different from an expressed contract or contract implied in fact. Myrtle Beach Hospital, Inc. v. City of Myrtle

Beach, 341 S.C. 1, at 8, 532 S.B.2d 868, at 872 (2000); Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259,261,440 S.E.2d 129,130 (1994). Conceding that the court may be in error in its evaluation, its best effort to assess this situation is that the remedy of quantum meruit is not available here. Quantum meruit is not available if the services and materials for which the Plaintiff is seeking to recover are encompassed in an express contract or one implied in fact. Swanson v. Stratos, 350 S.C. 116,122,564 S.E.2d 117,120 (S.C. App. 2002); Columbia Wholesale Co., 440 S.E.2d at 130-131 (1994).

WPR
#10

As discussed previously, Rose had an expressed contract with the general contractor for the scope of work it performed. That contract covered the \$54,399.13 Rose seeks in this action. Rose also had an expressed contract with Southern Produce for the changes and extras it requested, for which Rose seeks \$10,755.39. These amounts make up the total mechanic's lien of \$65,094.52. The Plaintiff pleaded in Paragraphs 3, 10, 11, and 12 of the Complaint that it entered into a contract with the general contractor, with the knowledge of Southern Produce, to perform work for payment. Defendants admitted the contract of Rose with Cooler in their Answers. Further, Mr. Homer Rose testified that he had done two previous jobs as electrical subcontractor for Cooler at the new Farmers Market prior to the Southern Produce job based on a handshake. He testified that he expected to be paid by Cooler, just as Rose had been in the other two jobs. It is unfortunate that Cooler effectively is insolvent, according to the evidence, and that the loss must fall on anyone else. Cooler does not deserve to escape responsibility, but that does not mean that the obligation to pay falls on any of these other parties.

The oral agreement was further evidenced by a written proposal and a series of written invoices to Cooler and Southern Produce. Mr. Rose testified, and Dan Stocker of Southern

Produce confirmed, that Southern Produce requested the extras from Rose and agreed to pay for the same. Because there are contracts under which recovery is available, quantum meruit is not proper.

Even if there were no contracts encompassing Plaintiff's claims for recovery, the court finds that Rose, under the facts of this case, would still not be entitled to an award under quantum meruit. The elements of quantum meruit are: 1) a benefit conferred on the defendant by the plaintiff; 2) realization of that benefit by the defendant; and, 3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. (Emphasis added). Earthscapes Unlimited, Inc. v Ulbrich, 390 S.C. 609, 703 S.E.2d 221 (2010); Columbia Wholesale, 312 S.C. 259, 440 S.E.2d 129 (1994); Shirley's Iron Works, Inc. v City of Union, 387 S.C. 389, 693 S.E.2d 1 (S.C. App. 2009). The main focus of this inquiry is whether the enrichment to the owner is unjust. In claims of unjust enrichment by subcontractors, the Courts typically deny recovery where the owner has paid on its contract with the general contractor. Columbia Wholesale, supra.; Shirley's Iron Works, Inc., supra; Myrtle Beach Hospital, Inc., supra. Southern Produce has paid all but \$10,108.00 of the contract price for the services and materials provided, and Southern Produces has consistently stood ready to pay the prorated shares of the retainage.

So, Southern Produce has offered to pay \$6,953.29 to Rose per S.C. Code Ann. §29-5-60 (Rose's prorated share of the retainage), but Plaintiff refused the same. Southern Produce has offered to pay Rose \$10,755.39 for the change orders per its verbal contract and pursuant to S.C. Code Ann. §29-5-10. Again, Rose refused. The determination of the Court is that it is not unjust, under the facts of this case, for Southern Produce to retain the benefits because it has paid

for the benefits and tendered all the funds that the law requires. The Court finds for the Defendants on Plaintiff's quantum meruit claim.

3. Prevailing Parties & Attorney Fees/Costs

Even though Plaintiff abandoned its claims for recovery based on foreclosure of the mechanic's lien, the Court must still determine Defendants Southern Produce's and S2P's rights to recover attorney fees and costs in this case. Trico Surveying, Inc. v Godley Auction Co., Inc., 314 S.C. 542, 431 S.E.2d 565 (1993)(owner entitled to award of attorney fees and cost in defending mechanic's lien action where surveyor had no evidence of an expressed or implied in fact contract with owner). Southern Produce and S2P each seek recovery of attorney fees and costs from Rose pursuant to the mechanic's lien statutes, S.C. Code Ann. § 29-5-10 and § 29-5-20. Southern Produce also seeks recovery of costs and interest pursuant to Rule 68, SCRCP and S.C. Code Ann. § 15-35-400.

WPA
#12

S.C. Code Ann. § 29-5-10(a) provides that a contractor shall have a lien on an owner's property to secure payment for a debt due for improvements to the property. The statute also states, "[t]he cost which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party." (Emphasis added). S.C. Code Ann. § 29-5-20(A) provides that a subcontractor has a lien against the owner to secure payment, and provides that the Court must award costs and attorney fees if the party defending against the lien prevails. Both statutes provide the procedure for making offers of settlement, responses, and how to accept an offer. If a plaintiff fails to respond to an offer, the amount prayed for in the Complaint is considered its final offer of settlement for purposes of determining the "prevailing party." The party whose offer is closest to the verdict is the prevailing party for purposes of the award of costs and attorney fees. S.C. Code Ann. §§ 29-5-

10(b) and 29-5-20(C). Both S.C. Ann. § 29-5-10 and §29-5-20 require the mandatory award of attorney fees and costs to the prevailing party, here Southern Produce and S2P. T.W. Morton Builders, Inc. v von Buedingen, 316 S.C. 388, 450 S.E.2d 87, 94-95 (Ct. App. 1994).

The lien was filed on March 3, 2011. It was still of record in the Lexington County Register of Deeds public records at the last hearing. The mechanic's lien encumbers not only the property leased to Southern Produce, but also additional property included in the 4-acre tract described in the lien that is not subject to the lease. Rose provided no improvements on the other sections of the tract. Other entities have rights related to the property, and the Defendants have been forced to defend against the lien foreclosure since March, 2011.

WPC #13

Southern Produce Attorney Fees and Costs

The Court must consider the offers of settlement made by Defendant Southern Produce to Rose during the case. Southern Produce on three occasions (July 26, 2011, January 23, 2012, and July 13, 2012) filed Offers of Settlement pursuant to Rule 68, SCRPC and S.C. Code Ann. §15-35-400, §29-5-10 and §29-5-20. Rose did not accept or respond to any of the offers. The last offer filed by Southern Produce was for \$18,000. Rose did not respond, so plaintiff's offer for purposes of an award of attorney fees and costs under S.C. Code Ann. §29-5-10 and §29-5-20 is considered to be its prayer in the Complaint of \$65,094.52. Defendant Southern Produce is the prevailing party under S.C. Code Ann. §29-5-10 and §29-5-20, as Southern Produce's offer of \$18,000.00 is closer to the Court's award of \$0 than is Rose's offer of \$65,094.52.

Similarly, S.C. Code §15-35-400(A) provides that in any contract action or action seeking the recovery of money damages, a party may file and serve a written offer of judgment on the opposing party. An offer is not accepted within a certain time is deemed rejected. If the

offering party receives a determination at least as favorable as the offer, that party is the prevailing one and is entitled to recover costs and interest at 8%. S.C. Code Ann. §15-35-400(B). Rule 68, SCRCF provides for the same recovery as §15-35-400, but applies to all civil actions.

The Court finds that Southern Produce is entitled to an award of attorney fees, costs, and interest pursuant to the mechanic's lien statutes cited above. Southern Produce is the prevailing party under S.C. Code Ann. §§29-5-10 and 29-5-20 as its \$18,000 offer of settlement was closer to Rose's verdict of \$0 than was Rose's offer of \$65,094.52 contained in the Complaint. Likewise, Southern Produce is the prevailing party entitled to costs and interest at 8% as requested in the Offers of Judgment per Rule 68, SCRCF and S.C. Code § 15-35-400.

WPC
#14 The Affidavit of Kathryn M. Cook, counsel for Southern Produce, summarizing the attorney fees incurred for her services and costs in defending this action, shows that Southern Produce incurred attorney fees of \$18,714.00 through February 28, 2013, and costs of \$156.10, totaling \$18,870.10. Southern Produce's counsel's Supplemental Affidavit shows that additional attorney fees of \$5,542.50 have been incurred from March 1, 2013 through January 17, 2014. Southern Produce's attorney fees for defending this claim are \$24,256.50, plus costs of \$156.10, for a total of \$24,412.60. Interest at 8% from the date of Southern Produce's last offer of judgment on July 13, 2012 through January 24, 2014 totals \$2,983.00 and continues at a rate of \$5.35 per day until judgment is entered. The Court finds Southern Produce is entitled to judgment against Rose in the amount of \$27,396.60.

S2P Attorney Fees and Costs

Defendant S2P is also entitled to an award of the attorney fees and costs incurred for the

services of J. Robin Turner in the defense of the mechanic's lien filed against its property. S2P and Rose did not file settlement offers prior to trial. The claim for attorney fees and costs falls under S.C. Code Ann. §29-5-10 and §29-5-20. It is imputed that Plaintiff's offer is its prayer for \$65,094.52 and Defendant S2P's offer is \$0. Thus, S2P is the prevailing party based on Rose's entitlement to \$0 on its lien claim. S2P incurred costs and attorney fees of \$9,667.56 from November 9, 2011 to February 26, 2013, and \$1,435.54 from March 3, 2013 to November 12, 2013, for a total of \$11,103.10. S2P is entitled to judgment against Rose in the amount of \$11,103.10.

WP
#15

Reasonableness of Attorney Fees

Based on the affidavits and supporting exhibits of counsel for Southern Produce and S2P, the amounts sought for attorney fees and costs by each are reasonable. The Defendants have submitted detailed affidavits itemizing counsels' time and expenses defending the lien claim and the qualifications of counsel. The Court has considered the factors as set forth in Strickland v. Strickland, 376 S.C. 2d 268 (1989) and finds the fees and costs to be reasonable. Trico Surveying, 431 S.E.2d 565,566-567 (1993).

4. S2P Cross-Claims

Lastly, S2P brought cross-claims against Southern Produce for recovery of damages incurred in the amount of fees and costs incurred in defending liens placed on the leased property. S2P bases its damage claims on breach of lease or, alternatively, equitable indemnity. Pursuant to its lease with Defendant S2P, Southern Produce is required to remove any mechanic's lien placed on the leased property and/or to pay for any damages incurred by S2P as a result of any lien. Southern Produce admits it has breached this provision of the lease and

admits that it must pay the damages to S2P.

The damages sustained by S2P are the attorney fees and costs of J. Robin Turner totaling \$11,103.10 in the Rose case and \$1,142.95 dealing with the Custom Concrete and Dunlap Plumbing mechanic's liens. Thus, total damages of \$12,246.05 have been sustained by S2P as a result of Southern Produce's breach of lease. However, Southern Produce, in acknowledging its lease obligations to S2P, has already paid S2P or Robin Turner, on behalf of S2P, a total of \$10,916.35. Of the total paid by Southern Produce, \$1,142.95 was to pay the damages related to Custom Concrete and Dunlap and \$9,773.40 was towards the damages related to Rose. Southern Produce admits it still owes S2P \$1,329.70 in damages based on S2P's total damages relating to the Rose matter. S2P is entitled to judgment against Southern Produce in the amount of \$1,329.70 based on the admitted breach of contract.

WPA
\$116

To the extent S2P recovers any or all of the \$1,329.70 from Rose as a result of its judgment of \$11,103.10, Southern Produce is entitled to a reduction or offset from what it owes under the judgment in favor of S2P. Likewise, to the extent S2P recovers from Rose any amount in excess of \$1,329.70, Southern Produce is entitled to reimbursement from S2P up to the \$9,773.40 already paid for the Rose damages.

Conclusion

THEREFORE, IT IS ORDERED that the Lexington County Register of Deeds is to discharge and release the mechanic's lien filed at Lien Book 14754 at Page 57 immediately. Rose Electric, Inc. is not entitled to judgment on the lien foreclosure against Southern Produce and S2P, or the breach of contract claim against Cooler Erectors of Atlanta, Inc.

IT IS FURTHER ORDERED that Rose Electric, Inc. is not entitled to recovery under the

theory of quantum meruit as there is a contact between Rose and Cooler encompassing \$54,399.13 of Rose's claim, and a contract exists between Rose and Southern Produce encompassing the \$10,755.39 remainder of the claim. Rose cannot recover under an equitable claim of quantum meruit because there are contracts covering the debt. Even if this Court found there were no contracts, the third element of quantum meruit is missing in this matter precluding recovery by Rose (unjust retention of benefit without payment).

IT IS FURTHER ORDERED that the Defendants Southern Produce and S2P are the prevailing parties under S.C. Code Ann. §29-5-10 and §29-5-20.

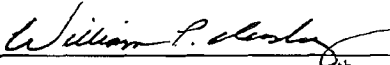
#17 (A) Southern Produce, Inc. is entitled to a judgment against Rose Electric, Inc. of \$24,412.60 for costs and attorney fees, plus interest in the amount of \$2,983.00 through January 24, 2014 pursuant to Rule 68, SCRCF and S.C. Code Ann. §15-35-400. The total judgment for Southern Produce, Inc. against Rose is \$27,395.60. Interest will continue to accrue from January 25, 2014, at the rate of \$5.35, until entry of judgment.

(B) Defendant S2P, LLC is entitled to judgment against Rose Electric, Inc. in the amount of \$11,103.10 covering the costs and attorney fees incurred in the defense of this lien claim.

IT IS FURTHER ORDERED that the Defendant S2P, LLC is entitled to a judgment against Southern Produce, Inc. based on breach of lease in the amount of \$1,329.70. Southern Produce, Inc. is entitled to offset, credit, or reimbursement from S2P of all amounts S2P collects from Rose Electric, Inc., up to \$11,103.10, such that S2P does not recover its damages twice.

AND IT IS SO ORDERED.

January 30, 2014


William P. Keesley, Judge, 11th Judicial Circuit

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3201929

Rose Electric Inc	Cooler Erectors of Atlanta Inc S2P LLC	Southern Produce Inc
	Senn Bros Inc	Certified Development Corporation of South Carolina
	James Dunlap	Custom Concrete of Lexington Inc Dunlap Services

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:

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.**

1/31/2014

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **3rd of February 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **3rd of February 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

William E. Booth III

3231 Sunset Blvd., Ste. A West Columbia, SC 29169

Michelle P Dunlap Turner Padgett Graham & Laney Pa ☒
Post Office Box 1473 Columbia, SC 29202

Jon Robin Turner PO Box 11646 Columbia, SC 29211

Kathryn M. Cook

3655 S. Hwy. 17 Business Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - 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.

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

CIVIL ACTION NO.: 2011-CP-32-1929

Rose Electric, Inc.,)

Plaintiff)

vs.)

Cooler Erectors of Atlanta, Inc., Southern
Produce, Inc., S2P, LLC, Certified
Development Corporation of South Carolina,
Senn Bros., Inc., Custom Concrete of
Lexington, Inc., and James Dunlap d/b/a
Dunlap Services,)

Defendants.)

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2014 JUN 16 PM 12:47

FILED

JUN 17

ORDER ON RECONSIDERATION

In response to an order issued on January 30, 2014, the plaintiff, Rose Electric, Inc., filed a motion for reconsideration and to alter or amend the judgment. Southern Produce, Inc. objected to the court's consideration of the motion, asserting it was not timely. In the alternative, Southern Produce argues that the court should deny the motion. The court rules that the motion is timely, but declines to alter or amend, with two exceptions: 1) the court agrees that the award of interest on the attorney's fees and costs under Rule 68, SCRCP, and §15-35-400 was not appropriate; and, 2) the court will correct some typographical errors on its own motion.

On the issue of timeliness, the court agrees with Rose Electric that the time for filing the Rule 59 motion did not begin to run until counsel received the clocked-in copy from the Clerk of Court's office. This motion is timely and will be considered.

In its motion, Rose Electric stated eight grounds for altering or amending the judgment. However, when the memorandum in support of the motion was submitted, it contained an additional ground and changed the numbering. The court has considered all the grounds raised.

The primary difficulty that the court has with many of the plaintiff's arguments is not with the logic of them, but the procedural posture that the case evolved into once the plaintiff abandoned its claims that were based on contract and elected to proceed only on quantum meruit. The position that the court understood at trial was that the primary contractor, Cooler, was insolvent, and that the plaintiff made certain realistic assessments based on that fact. In response, the defendants who were present did not abandon their claims, and the election of remedies here creates a very difficult procedural framework that was not of the court's making.

WPK
#2 With regard to the initial assertions in the plaintiff's argument that the court somehow misled the plaintiff into thinking that certain rulings were going to be incorporated into the final order, the case was very unusual in that it called for multiple assessments. The court went back to the attorneys seeking their input on several occasions. The order of January 30 was what the court ultimately decided was required in this case. However, the plaintiff, on its own, decided to abandon the contract claims at the beginning of the trial. The distribution of preliminary findings was to focus the argument and to try to be of assistance, and the court is unaware of anything that was done that may have caused detrimental reliance by the plaintiff. Plaintiff's counsel has been diligent and vigorous in representing his client.

1) With Respect to the Finding that Rose Electric Is Not Able to Obtain a Judgment That Southern Produce Pay Rose Electric \$10,755.39 for the Change Orders.

This argument asks the court to find that Southern Produce contracted for and owed Rose Electric the sum of \$10,755.39 for extra

work. The court does not agree with the position that the order prohibited Rose Electric from obtaining payment for extra work. It is just problematic to enter the requested judgment in this action when the plaintiff indicated that its claims based on contract were not being pursued.

In the January 30, 2014 order, the court stated: "Rose also had an expressed contract with Southern Produce for the changes and extras it requested, for which Rose seeks \$10,755.39." Later, it recited: " Mr. Rose testified, and Dan Stocker of Southern Produce confirmed, that Southern Produce requested the extras from Rose and agreed to pay for the same. Because there are contracts under which recovery is available, quantum meruit is not proper."

WPA
#3

At the outset of the bench trial, the plaintiff stated that it only wanted the court to consider the quantum meruit cause of action and was abandoning its claims for breach of contract. The court took the extraordinary step of reconvening the parties for a hearing, after the matter was taken under advisement, to discuss the impact of limiting the case to quantum meruit.

In its memorandum, the plaintiff recites portions of the post-trial memorandum of Southern Produce and a communication regarding a proposed order that deals with findings to be reflected in the final order. Then, the plaintiff notes that the court stated in the January 30 order:

"Southern Produce has offered to pay Rose \$10,755.39 for the change orders per its verbal contract and pursuant to S.C. Code Ann. §29-5-10. Again, Rose refused."

This language that the plaintiff is quoting from the January 30 order comes from the section where the court is analyzing whether one of the elements of quantum meruit exists – specifically, whether it is unjust under the circumstances for Southern Produce to retain the benefits of Rose Electric's work. The court determined that it is not unjust because Southern Produce "paid for the benefits and tendered all the funds that the law requires." In other words, Southern Produce offered to pay Rose Electric pursuant to contract. Had the matter been pursued, the court could have entered a judgment or made an offset.

WPA
#4

If the court understands this argument correctly, the plaintiff is now asking the court to issue a judgment on a breach of contract claim. The court feels that it recited that the extra work was the subject of a contract and that it was undisputed that the amount was owed. The court discussed all of these issues in its evaluation of the evidence, but it does not feel that it can alter or amend the judgment at this stage based on this ground. It is the court's interpretation that it was not asked to enter a judgment against Southern Produce for the contract claim. The court ruled that where a contract exists, quantum meruit does not apply. There has been no assertion that some form of modified quantum meruit should

be imposed.

It does not seem consistent to enter a judgment on a contract claim when the court was told at the beginning of the trial to consider only quantum meruit. The memorandum in support of the Rule 59 motion argues that Rose Electric had a right not to settle its claims and that the offer to pay could only be construed as settlement negotiations. The court does not view the evidence in that way.

The court has no dispute with the position that Southern Produce was obligated to pay for the extra work done, as was discussed in the January 30 order. The problem is in entering a judgment in the present procedural posture of the case.

*WPK
#5*

2) **With Respect to the Finding that There Were Any Other Lienors for Purposes of Proration of the Retainage Amount.**

The plaintiff asserts that no evidence was presented about the existence of any lienholders, other than Rose Electric. The plaintiff wants the court to amend its order to reflect that Rose Electric is entitled to the entire amount of the retainage. If the court does not agree, the plaintiff challenges the fact that a hearing should have been held under §29-5-220 to determine the proper allocation due.

In the January 30 order, the court found that "Custom Concrete of Lexington, Inc., James Dunlap d/b/a Dunlap services, and Rose Electric each filed mechanic's liens on February 8, 2011, February 18, 2011, and March 4, 2011 respectively, seeking to encumber the entire 4-acre tract owned by S2P." It noted that Southern Produce had

an obligation under its lease with S2P to remove these mechanic's liens. It then stated that the entire contract price, except for \$10,108 in retainage, had already been paid by Southern Produce to Cooler before Southern Produce learned that these subcontractors had not been paid. Southern Produce offered to pay Rose Electric \$6,953.29, which Southern Produce determined to be the prorated share of the retainage due to Rose Electric under §29-5-60.

At the trial, evidence was presented about the three liens that were filed. The plaintiff now maintains that the other two liens were not "just" liens under the statute because they did not actually exist at the time of the trial. The memorandum in support of the Rule 59 motion recites that Dunlap's lien expired when its action was dismissed on December 7, 2011. It states that Custom Concrete's lien (filed on February 8, 2011) was not perfected because an action to enforce it was not filed.

Section 29-5-60 reads:

Proration of payments among lienors.

(A) In the event the amount due the contractor by the owner is insufficient to pay all the lienors acquiring liens as herein provided it is the duty of the owner to prorate among all just claims the amount due the contractor.

(B) In the event the amount due a subcontractor by the contractor is insufficient to pay all the lienors acquiring liens under Section 29-5-20 as a result of supplying labor, materials, or services to that subcontractor, all just liens must be prorated by the contractor among sub-subcontractors and suppliers to that subcontractor.

SECTION 29-5-220 reads:

Hearing on claims of lienors.

At the time assigned for the hearing, or within such further time as the court allows for that purpose, every creditor having a lien of the kind before mentioned upon the same property may appear and prove his claim and the owner and each of the creditors may contest

the several claims of every other creditor and the court shall hear and determine them in a summary manner, either with or without a jury, as the case may require.

Having reconsidered the matter, the court finds that the January 30 order accurately reflects the situation that was presented to the court for determination. Southern Produce was faced with three mechanic's liens that had been filed. Settlements were reached with two of the lienholders. Southern Produce had an obligation to prorate the retainage. The court used the information supplied to it in making its ruling.

To the best of the court's recollection, there was never a specific request for a separate hearing under §29-5-220. The parties were given an opportunity to appear and to contest any claims.

WPA
#7

Again, the plaintiff's cause of action presented for determination was under quantum meruit. The court had to evaluate the mechanic's lien issues in assessing that claim, as well as the remaining defendant's claims for attorney's fees and costs. The motion to alter or amend on this ground is denied.

3) With Respect to the Finding that Rose Electric is Not Entitled to Any Payment From the Retainage and That the Correct Retainage was \$10,108.

The plaintiff argues, as it did prior to the January 30 order, that the total cost of the project should have been determined to be \$224,385. Though not discussed at length in the order, the court had previously notified the attorneys about how the cost of the project was calculated. The plaintiff again challenges the calculations made to determine the total project cost and the amount of retainage. The court has reconsidered

these issues and feels that they were already addressed. To the extent that there is an assertion here that the court prohibited Rose Electric from obtaining any portion of the retainage, the court does not agree that the court made such a ruling. Once again, it is the procedural posture of this case that is the problem, in the court's view. The ruling was made based on the issues presented to the court.

The court has reconsidered these issues and determines that the factual basis for the determinations of the amounts and the reasoning for allocating among different lienholders were explained in the order.

WKK
#8

**ITEMS 4 AND 5 ARE COMBINED BECAUSE THEY ARE STATED
DIFFERENTLY IN THE MOTION AND IN THE MEMORANDUM**

- 4) With Respect to the Finding that S2P, LLC [and Southern Produce] Is Entitled to Attorney's Fees and Costs From Rose Electric.**
- 5) With Respect to the Finding that Southern Produce and S2P, LLC are Entitled to Interest.**

This is a challenge based on a contest about the interpretation of §29-5-10 and §29-5-20 (the mechanic's lien provisions), as well as Rule 68, SCRCP and §15-35-400, which deal with not accepting an offer of judgment. The court ruled that Southern Produce and S2P are entitled to attorneys' fees and costs under the mechanic's lien statutes. The court reaffirms that ruling. However, the court went on to discuss the consequences of Rose Electric's failure to accept offers of judgment under Rule 68 and §15-35-400. Having reconsidered the matter, the court agrees with the plaintiff that

the award of interest to Southern Produce was not proper.

After discussing the provisions of the mechanic's lien law and Rule 68 related to attorney's fees and costs, the court stated:

Similarly, S.C. Code §15-35-400(A) provides that in any contract action or action seeking the recovery of money damages, a party may file and serve a written offer of judgment on the opposing party. If the offering party receives a determination at least as favorable as the offer, that party is the prevailing one and is entitled to recover costs and interest at 8%. S.C. Code Ann. §15-35-400(B). Rule 68, SCRPC provides for the same recovery as §15-35-400, but applies to all civil actions.

The court should not have made the determination that interest applies against Rose Electric in this case. Subsection (A) mentions interest, but subsection (B) contains the provisions for awarding it. It states:

WPK
H9
(B) Consequences of NonAcceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer; or (3) if the offeror is a defendant, a reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer.

Rule 68, as its notes reflect, incorporates the language of §15-35-400 in large measure and reconciles the situation for all civil actions. Here, the defendants did not file a counterclaim against Rose Electric. The "offerors" under Rule 68 and §15-35-400 would be Southern Produce and S2P, who were defendants. There were cross-claims, but the situation seems to be one where these two defendants would be subject to subsection (B)(3) as it relates to their

relationship with Rose Electric. There was no judgment rendered against Rose Electric in this case, except for the award of attorney's fees and costs. The rule and the statute do not seem to authorize allocation of 8% interest in this situation to attorney's fees or costs assessed against Rose Electric.

Further, to the extent that the court's ruling seems to base the award of attorney's fees and costs against Rose Electric on anything other than the mechanic's lien statute, the court reconsiders and bases the award on the provisions of the mechanic's lien statutes.

6) A Contract With an Unlicensed General Contractor is Void as Against Public Policy.

WK
#10

The court believes that any arguments in this vein were raised and ruled upon. However, the plaintiff abandoned its contract claims at the beginning of the trial. If the argument is considered, it is the position of the court that the public policy exception would not allow a subcontractor, Rose Electric, to assert the prohibition against unlicensed contractors to bar a landowner or leaseholder from the protections afforded in the mechanic's lien statutes. As for the quantum meruit analysis discussed in the January 30 order, the leaseholder paid an unlicensed general contractor in full, except for the retainage. Absent some evidence of collusion or other dirty hands (none of which was presented here), the court does not believe that the prohibitions related to licensing could be used by a subcontractor of the unlicensed contractor to discount the money the leaseholder paid to the general contractor. Having reconsidered these arguments, the motion to alter or amend is denied as to this ground.

7) Southern Produce Did Not Pay the General Contractor Named on the Building

Permit and the Certificate of Occupancy.

The memorandum in support of the motion notes that the building permit and certificate of occupancy were issued to a licensed contractor, Mike Hutchins. It is argued that there is no evidence that Hutchins performed any work on the project or received any payments. It is argued that the Contractor Agreement did not provide that Cooler was licensed, nor was there a requirement that the contractor's license number be furnished to Southern Produce. For those reasons, it is asserted that no payments were made to the general contractor. For the reasons previously stated in this order and the order of January 20, this argument is rejected, and the motion to alter or amend on this ground is denied.

8) Rose is Entitled to a Judgment Against Cooler Erectors of Atlanta, Inc.

WPA
#11

The court does not believe that it was requested to enter judgment against Cooler in favor of Rose Electric. If it is undisputed that it was properly before the court and was not abandoned, then an order may be submitted to enter judgment by default or any other appropriate manner. However, the court's interpretation is that it ruled on what was presented, and the motion to alter or amend the order of January 30 on this ground is denied.

**AS AMENDED, THE ORDER OF JANUARY 30, 2014 SHOULD READ AS
FOLLOWS:
(changes are denoted with strike-throughs and underlining)**

ORDER

This case arises out of the failure to pay for work provided by an electrical subcontractor on construction of a refrigerated produce processing building (the project) at the new South

Carolina State Farmers Market (Farmers Market). The court finds for the Defendants Southern Produce and S2P as is set out below.

Background

Southern Produce, Inc. (Southern Produce) leased a parcel of land from the landowner, S2P, LLC (S2P), and hired Cooler Erectors of Atlanta, Inc. (Cooler) as general contractor for the project. Cooler hired Rose Electric, Inc. (Rose) as a subcontractor to perform the electrical work on the project. Rose completed its work, but Cooler failed to pay. Southern had paid the general contractor, Cooler, for all but the retainage due under the agreement between Southern and Cooler.

WAC
#12
Rose filed a mechanic's lien on the property to secure payment of the debt. Rose then filed this case seeking payment from Cooler, Southern Produce and S2P in the amount of \$65,094.52, plus prejudgment interest, costs, and attorney fees. The mechanic's lien was filed on March 4, 2011, encumbering 4 acres of land owned by S2P at the Farmers Market,¹ in the amount of \$65,094.52. It includes land leased by Southern Produce on which the project was constructed, plus additional land. The lien named Cooler as the general contractor, and Southern Produce and S2P are named as the owners of the property. After the lien did not result in payment, Rose filed this action on May 20, 2011, in an attempt to perfect the lien and seek recovery. Rose alleges four causes of action: a breach of ~~contact~~contract claim against Cooler, and claims for foreclosure of mechanics lien, unjust enrichment, and quantum meruit against Southern Produce, S2P and Senn Bros., Inc. Other defendants were named, as they had prior liens on the property.

¹ The lien is recorded in Mechanic Lien Book 14754 at Page 57, Lexington County.

Cooler did not answer the complaint and is in default. Defendant Southern Produce filed a general denial. Defendants S2P and Senn filed denials, asserted various defenses, and filed cross-claims against Southern Produce. S2P seeks damages, including costs and attorney fees from Southern Produce based on breach of lease or, alternatively, equitable indemnity. Southern Produce and S2P seek costs and attorney fees from Plaintiff Rose pursuant to the mechanic's lien statutes and other statutory and rule provisions, as prevailing parties.

Prior to trial, Southern Produce filed and served on Rose three separate Offers of Judgment or Settlement pursuant to Rule 68(a), SCRCP, S.C. Code Ann. § 15-35-400, and S.C. Code Ann. § 29-5-10 and § 29-5-20. Rose did not respond to any of these offers or make a counter proposal.

WR
#13 On the morning of trial, Plaintiff's counsel informed the Court and Defendants that it was dismissing Defendant Senn Bros., Inc. from the case and that Defendants Certified Development Corporation of South Carolina, Custom Concrete of Lexington, Inc., and James Dunlap were no longer involved in the case. Importantly, Plaintiff Rose also advised it was proceeding only on its quantum meruit claim and was abandoning its claims based on ~~contract~~contract, including the foreclosure of the mechanic's lien against Southern and S2P, and the breach of contract action against Cooler.

Rose called three witnesses and introduced a number of exhibits. Southern Produce and S2P called two witnesses and introduced exhibits. At the conclusion of the day-long trial, the Court invited the parties to submit post-trial briefs. Rose, Southern, and S2P each submitted briefs. Due to the unusual posture of the case and after reviewing the matter, the Court held a

post-trial hearing on October 23, 2013, to hear arguments of counsel on various issues, including the effect of Plaintiff's abandonment of all claims except quantum meruit at trial.

Findings of Fact

The Farmers Market was moving from Richland County to its new location in Lexington County in 2010. Southern Produce operated a produce processing business at the old market. In the fall of 2010, Southern Produce began the process of moving its business to the new Farmers Market. It leased undeveloped land and hired a contractor to construct a new building on a portion of a 4-acre tract owned by S2P, which S2P leased to Southern Produce for an initial term of 10 years. There are other tenants on other portions of the tract, including Senn Bros., Inc. The construction of the building was to be expedited because of the relocation to Lexington County.

WPK
#14
Cooler was a general contractor already performing work at the new Farmers Market for various entities when it was hired by Southern Produce. There was a written ~~contract~~contract between Southern Produce and Cooler whereby Cooler agreed to construct the project for Southern Produce according to plans that were part of the contract. The cost of the project as stated in the contract was \$213,385.00. The plans were included in the contract price and were dated October 5, 2010. A building permit was issued by Lexington County on November 2, 2010, and a Certificate of Occupancy was issued on November 30, 2010.

Rose is an electrical contractor that was working at the new Farmers Market. It had performed various jobs for Cooler and was paid for those jobs. Cooler contracted with Rose to perform the electrical work on the Southern Produce project pursuant to electrical plans prepared by an electrical engineer and provided to Rose by Cooler's representative.

There was no written contract between Rose and Cooler, nor was there a written contract between Rose and Southern Produce. Rose had performed as electrical subcontractor for Cooler on previous jobs at the Market with no written contract and without any issues from Cooler related to payment.

Homer S. Rose is the sole owner of Rose Electric, Inc. Russell D. Frazee is an electrician who worked for Rose and served as foreman on site for this project. Nate Crocker is the owner of Southern Produce, Inc. Dan Stocker is the general manager of Southern Produce and was on site almost daily during construction of the project. Morris C. Teasley was the representative of Cooler for the project, and his son, Ben, served as site superintendent on the project.

During the course of construction, there were modifications made to the plans for the electrical installation. Some changes were made by Rose of its own volition and some were made at the direction of Southern Produce. The changes relate to the following:

WPC
#15

- a. adding disconnects and plugs to allow for proper cleaning;
- b. modifying the material of disconnects to stainless steel to avoid corrosion;
- c. adding a hand-washer heater system;
- d. relocating an onion peeler from inside to outside the building, rewiring, and placing a disconnect for that device;
- e. adding receptacles and the circuits needed to accomplish that addition;
- f. adding dedicated circuits, a time clock, and breakers;
- g. wiring the evaporator coils; and,
- h. adding lights in the office.

Rose properly performed the electrical work for this project. Southern Produce admits that it owes Rose separately for changes and additions it requested during the course of construction, and has offered to pay \$10,755.39 for them. Nate Crocker orally contracted with Rose to install an additional electrical line at the project. On January 6, 2011, Rose invoiced

Southern Produce directly for that work in the amount of \$1,844.00, which Southern Produce paid by check on February 4, 2011.

Southern Produce paid the general contractor, Cooler, \$203,277 of the \$213,385 ~~contact~~contract price. Cooler did not complete the project. Because the project was not finished, Southern Produce withheld \$10,108 as retainage. Cooler did not pay Rose or several other subcontractors on the project, including the concrete and plumbing subcontractors.

Rose began sending invoices and seeking payment from Cooler in November and December, 2010. When Cooler did not pay, Rose changed its position about the responsible party, adding Southern Produce. Invoices were sent by Rose to Cooler and Southern Produce in January and February, 2011. The gist of the situation is that Rose first invoiced Cooler, and, when payment was not forthcoming, began seeking payment from Southern Produce as well.

WPA
#16 Custom Concrete of Lexington, Inc., James Dunlap d/b/a Dunlap Services, and Rose Electric each filed mechanic's liens on February 8, 2011, February 18, 2011, and March 4, 2011 respectively, seeking to encumber the entire 4-acre tract owned by S2P. The ownership interest of Southern Produce is a leasehold estate on only a portion of that tract where the produce processing building was constructed. Southern Produce has an obligation under the lease with S2P to remove any mechanic's lien placed on the property and to indemnify the landlord for damages incurred as a result of having to defend such claims.

When Southern Produce was notified by Custom Concrete, Dunlap, and Rose that they had not been paid by the general contractor, Cooler had already been paid the entire contract price, except the \$10,108 retainage held by Southern Produce. Pursuant to S.C. Code Ann. § 29-5-60, Rose is entitled to a prorated share of the \$10,108 retainage held by Southern Produce, as

between it and the other two subcontractors. After Rose filed this action on May 20, 2011, Southern Produce filed and served three Offers of Judgment, pursuant to Rule 68(a), SCRCP., S.C. Code Ann. §15-35-400, S.C. Code Ann. §29-5-10 and S.C. Code Ann. § 29-5-20, in the amounts of \$7,549.22 on July 26, 2011, \$15,532.52 on January 23, 2012, and \$18,000.00 on July 13, 2012. Rose did not respond to any of the offers.

ANALYSIS & CONCLUSIONS OF LAW

1. Contract & Mechanic's Lien Claims

WAL #17
When Rose filed this action, it sought to foreclose on its mechanic's lien, which is an action based on contract. On the day of trial, Rose chose to abandon its breach of contract claim against Cooler and its mechanic's lien foreclosure claims against Southern Produce and S2P. Rose takes the position it did not have a contract with Cooler or Southern Produce, and thus seeks to recover \$65,094.54 based on the equitable remedy of quantum meruit. Rose argues that because it did not have a written contract with a set price for its work, there were no agreements and thus only equitable relief is available.

Southern Produce and S2P take the position that there is an express contract. It is asserted to be based on the oral agreement between Rose and Cooler, coupled with their course of conduct on other jobs at the Farmers Market, their conduct on this project, and the October plans, November proposal, and invoices. Southern Produce maintains that a set price is not a requirement for establishment of a contract. Southern Produce points out that the November Rose proposal for its scope of work for Cooler was \$56,488.07 and the amount sought by Rose in its lien and complaint is \$54,399.13, \$2,148.94 less than the proposal. The November proposal was signed by Rose, but not by Cooler. Southern Produce admits it had an agreement

to pay Rose directly for the changes it requested on the project. Rose provided the cost for that work in a letter dated February 16, 2011, and February 10, 2011 Change Orders 2-12, which amount to \$ 10,755.39. This is the same amount sought in the lien and pleaded by Rose in the Complaint as constituting its contract with Southern Produce.

Defendants also point out that the mechanic's lien filed by Rose is still on record in the Lexington County Office of Register of Deeds at Mechanic Lien Book 1474 at Page 57. It encumbers not only the leased property where the Southern Produce building is located, but also the remaining portion of the 4-acre tract. Defendants Southern Produce and S2P have had to defend against the lien since March 4, 2011.

Defendants maintain that because there are contracts between Rose and Cooler, and Rose and Southern Produce, Rose is precluded from recovering under the equitable theory of quantum meruit. The Court agrees in this instance.

WAL #18
Actions in quantum meruit are generally based on the absence of a contract. Quantum meruit and contract claims are typically mutually exclusive, so that one cannot recover under this equitable theory when there is a contract. Swanson v Stratos, 350 S.C. 116, 564 S.E.2d 117 (Ct. App. 2002). In this case, Rose alleges in the lien, which is still on record, and the Complaint, that it had contracts with Cooler and Southern Produce. Southern Produce admits these allegations.²

The Court has reviewed case law and utilized other sources. It found that Hornbook law discusses the distinction between contracts that are "express" and those "implied in fact." If the

² Rose's Complaint avers in paragraphs 3, 10, 11, 12, 19, and 20 that it had contracts with Cooler and Southern Produce. In the Notice of Mechanic's Lien and Statement of Account sworn to by Homer Rose, as president of Rose Electric, Inc., he affirmed that Rose had agreements with the Defendants and sought the "contract price" of \$65,094.52.

agreement or intent of the parties is manifested in spoken or written words, the contract is said to be "express." If the mutual undertaking of the parties is inferred from their conduct alone, without oral or written words, then the contract is said to be "implied in fact." It does not matter whether the mutual promises of the parties are expressed in word, written or oral, or implied from the conduct of the parties. Both are ~~contacts~~contracts entitling the parties to contractual remedies, not equitable remedies. Key Corporation Capital, Inc. v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675(2007). To have a contract for materials, labor or services does not require a predetermined set price. The price is typically implied to be the fair and reasonable price in any number of contractual arrangements. For example, consulting a doctor without a predetermined charge implies a promise to pay the reasonable cost of the doctor's services and constitutes a ~~contact~~contract between the parties. Likewise, the hiring of a contractor to provide materials and labor, even in the absence of a predetermined charge, implies a contract to pay for those materials and services. The parties may have a dispute as to the value or charge under the contract, but that does not obviate the obligations under the contract.

WAL
#19

The court finds, in this case, that the evidence establishes the existence of expressed contracts between Rose and Cooler for the scope of work under the plans, and between Rose and Southern Produce for the requested changes and additions to the project. Moreover, the evidence establishes that contracts are implied in fact by the conduct of Rose, Cooler, and Southern Produce.

The court finds that the greater weight of the evidence establishes that Rose has a ~~contact~~contract with Cooler to pay for the electrical work included in the plans and has a contract with Southern Produce to pay for the requested changes and additions to the project. Rose's abandonment of the contract claims at trial does not change the facts and resulting

conclusions of law. The Court finds for the Defendants as to the contract claims.

2. Quantum Meruit Claim

Plaintiff is not entitled to relief on its claims of quantum meruit. Quantum meruit, unjust enrichment and restitution are equivalent terms for equitable remedies for a contract implied by law or quasi-contract. Recognizing that these principles are difficult and confusion easily results, the court has made an extensive evaluation into how quantum meruit is different from an expressed contract or contract implied in fact. Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, at 8, 532 S.B.2d 868, at 872 (2000); Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259,261,440 S.E.2d 129,130 (1994). Conceding that the court may be in error in its evaluation, its best effort to assess this situation is that the remedy of quantum meruit is not available here. Quantum meruit is not available if the services and materials for which the Plaintiff is seeking to recover are encompassed in an express contract or one implied in fact. Swanson v. Stratos, 350 S.C. 116,122,564 S.E.2d 117,120 (S.C. App. 2002); Columbia Wholesale Co., 440 S.E.2d at 130-131 (1994).

WHL #20

As discussed previously, Rose had an expressed contract with the general contractor for the scope of work it performed. That contract covered the \$54,399.13 Rose seeks in this action. Rose also had an expressed contract with Southern Produce for the changes and extras it requested, for which Rose seeks \$10,755.39. These amounts make up the total mechanic's lien of \$65,094.52. The Plaintiff pleaded in Paragraphs 3, 10, 11, and 12 of the Complaint that it entered into a contract with the general contractor, with the knowledge of Southern Produce, to perform work for payment. Defendants admitted the contract of Rose with Cooler in their Answers. Further, Mr. Homer Rose testified that he had done two previous jobs as electrical

subcontractor for Cooler at the new Farmers Market prior to the Southern Produce job based on a handshake. He testified that he expected to be paid by Cooler, just as Rose had been in the other two jobs. It is unfortunate that Cooler effectively is insolvent, according to the evidence, and that the loss must fall on anyone else. Cooler does not deserve to escape responsibility, but that does not mean that the obligation to pay falls on any of these other parties.

The oral agreement was further evidenced by a written proposal and a series of written invoices to Cooler and Southern Produce. Mr. Rose testified, and Dan Stocker of Southern Produce confirmed, that Southern Produce requested the extras from Rose and agreed to pay for the same. Because there are contracts under which recovery is available, quantum meruit is not proper.

WM
#21

Even if there were no contracts encompassing Plaintiff's claims for recovery, the court finds that Rose, under the facts of this case, would still not be entitled to an award under quantum meruit. The elements of quantum meruit are: 1) a benefit conferred on the defendant by the plaintiff; 2) realization of that benefit by the defendant; and, 3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. (Emphasis added). Earthscapes Unlimited, Inc. v Ulbrich, 390 S.C. 609, 703 S.E.2d 221 (2010); Columbia Wholesale, 312 S.C. 259, 440 S.E.2d 129 (1994); Shirley's Iron Works, Inc. v City of Union, 387 S.C. 389, 693 S.E.2d 1 (S.C. App. 2009). The main focus of this inquiry is whether the enrichment to the owner is unjust. In claims of unjust enrichment by subcontractors, the Courts typically deny recovery where the owner has paid on its ~~contract~~ contract with the general contractor. Columbia Wholesale, supra.; Shirley's Iron Works, Inc., supra; Myrtle Beach Hospital, Inc., supra. Southern Produce has paid all but \$10,108.00 of the contract price for the

services and materials provided, and Southern Produce has consistently stood ready to pay the prorated shares of the retainage.

So, Southern Produce has offered to pay \$6,953.29 to Rose per S.C. Code Ann. §29-5-60 (Rose's prorated share of the retainage), but Plaintiff refused the same. Southern Produce has offered to pay Rose \$10,755.39 for the change orders per its verbal contract and pursuant to S.C. Code Ann. §29-5-10. Again, Rose refused. The determination of the Court is that it is not unjust, under the facts of this case, for Southern Produce to retain the benefits because it has paid for the benefits and tendered all the funds that the law requires. The Court finds for the Defendants on Plaintiff's quantum meruit claim.

3. Prevailing Parties & Attorney Fees/Costs

WHL
#22
Even though Plaintiff abandoned its claims for recovery based on foreclosure of the mechanic's lien, the Court must still determine Defendants Southern Produce's and S2P's rights to recover attorney fees and costs in this case. Trico Surveying, Inc. v Godley Auction Co., Inc., 314 S.C. 542, 431 S.E.2d 565 (1993)(owner entitled to award of attorney fees and cost in defending mechanic's lien action where surveyor had no evidence of an expressed or implied in fact contract with owner). Southern Produce and S2P each seek recovery of attorney fees and costs from Rose pursuant to the mechanic's lien statutes, S.C. Code Ann. § 29-5-10 and § 29-5-20. Southern Produce also seeks recovery of costs and interest pursuant to Rule 68, SCRCP and S.C. Code Ann. § 15-35-400.

S.C. Code Ann. § 29-5-10(a) provides that a contractor shall have a lien on an owner's property to secure payment for a debt due for improvements to the property. The statute also states, "[t]he cost which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party." (Emphasis

added). S.C. Code Ann. § 29-5-20(A) provides that a subcontractor has a lien against the owner to secure payment, and provides that the Court must award costs and attorney fees if the party defending against the lien prevails. Both statutes provide the procedure for making offers of settlement, responses, and how to accept an offer. If a plaintiff fails to respond to an offer, the amount prayed for in the Complaint is considered its final offer of settlement for purposes of determining the “prevailing party.” The party whose offer is closest to the verdict is the prevailing party for purposes of the award of costs and attorney fees. S.C. Code Ann. §§ 29-5-10(b) and 29-5-20(C). Both S.C. Ann. § 29-5-10 and §29-5-20 require the mandatory award of attorney fees and costs to the prevailing party, here Southern Produce and S2P. T.W. Morton Builders, Inc. v von Buedingen, 316 S.C. 388, 450 S.E.2d 87, 94-95 (Ct. App. 1994).

WAL #23
The lien was filed on March 3, 2011. It was still of record in the Lexington County Register of Deeds public records at the last hearing. The mechanic’s lien encumbers not only the property leased to Southern Produce, but also additional property included in the 4-acre tract described in the lien that is not subject to the lease. Rose provided no improvements on the other sections of the tract. Other entities have rights related to the property, and the Defendants have been forced to defend against the lien foreclosure since March, 2011.

Southern Produce Attorney Fees and Costs

The Court must consider the offers of settlement made by Defendant Southern Produce to Rose during the case. Southern Produce on three occasions (July 26, 2011, January 23, 2012, and July 13, 2012) filed Offers of Settlement pursuant to Rule 68, SCRCF and S.C. Code Ann. §15-35-400, §29-5-10 and §29-5-20. Rose did not accept or respond to any of the offers. The last offer filed by Southern Produce was for \$18,000. Rose did not respond, so plaintiff's offer for

purposes of an award of attorney fees and costs under S.C. Code Ann. §29-5-10 and §29-5-20 is considered to be its prayer in the Complaint of \$65,094.52. Defendant Southern Produce is the prevailing party under S.C. Code Ann. §29-5-10 and §29-5-20, as Southern Produce's offer of \$18,000.00 is closer to the Court's award of \$0 than is Rose's offer of \$65,094.52.

Similarly, S.C. Code §15-35-400(A) provides that in any contract action or action seeking the recovery of money damages, a party may file and serve a written offer of judgment on the opposing party. An offer is not accepted within a certain time is deemed rejected. If the offering party receives a determination at least as favorable as the offer, that party is the prevailing one and is entitled to recover costs and interest at 8%. S.C. Code Ann. §15-35-400(B). Rule 68, SCRCP provides for the same recovery as §15-35-400, but applies to all civil actions.

WAL
#24
The Court finds that Southern Produce is entitled to an award of attorney fees, costs, and interest pursuant to the mechanic's lien statutes cited above. Southern Produce is the prevailing party under S.C. Code Ann. §§29-5-10 and 29-5-20 as it's \$18,000 offer of settlement was closer to Rose's verdict of \$0 than was Rose's offer of \$65,094.52 contained in the Complaint. ~~Likewise, Southern Produce is the prevailing party entitled to costs and interest at 8% as requested in the Offers of Judgment per Rule 68, SCRCP and S.C. Code §15-35-400.~~

The Affidavit of Kathryn M. Cook, counsel for Southern Produce, summarizing the attorney fees incurred for her services and costs in defending this action, shows that Southern Produce incurred attorney fees of \$18,714.00 through February 28, 2013, and costs of \$156.10, totaling \$18,870.10. Southern Produce's counsel's Supplemental Affidavit shows that additional attorney fees of \$5,542.50 have been incurred from March 1, 2013 through January 17, 2014. Southern Produce's

attorney fees for defending this claim are \$24,256.50, plus costs of \$156.10, for a total of \$24,412.60. Interest at 8% from the date of Southern Produce's last offer of judgment on July 13, 2012 through January 24, 2014 totals \$2,983.00 and continues at a rate of \$5.35 per day until judgment is entered. The Court finds Southern Produce is entitled to judgment against Rose in the amount of \$27,396.60.

S2P Attorney Fees and Costs

Defendant S2P is also entitled to an award of the attorney fees and costs incurred for the services of J. Robin Turner in the defense of the mechanic's lien filed against its property. S2P and Rose did not file settlement offers prior to trial. The claim for attorney fees and costs falls under S.C. Code Ann. §29-5-10 and §29-5-20. It is imputed that Plaintiff's offer is its prayer for \$65,094.52 and Defendant S2P's offer is \$0. Thus, S2P is the prevailing party based on Rose's entitlement to \$0 on its lien claim. S2P incurred costs and attorney fees of \$9,667.56 from November 9, 2011 to February 26, 2013, and \$1,435.54 from March 3, 2013 to November 12, 2013, for a total of \$11,103.10. S2P is entitled to judgment against Rose in the amount of \$11,103.10.

WAA
#25

Reasonableness of Attorney Fees

Based on the affidavits and supporting exhibits of counsel for Southern Produce and S2P, the amounts sought for attorney fees and costs by each are reasonable. The Defendants have submitted detailed affidavits itemizing counsels' time and expenses defending the lien claim and the qualifications of counsel. The Court has considered the factors as set forth in Strickland v. Strickland, 376 S.C. 2d 268 (1989) and finds the fees and costs to be reasonable. Trico Surveying, 431 S.E.2d 565,566-567 (1993).

4. S2P Cross-Claims

Lastly, S2P brought cross-claims against Southern Produce for recovery of damages incurred in the amount of fees and costs incurred in defending liens placed on the leased property. S2P bases its damage claims on breach of lease or, alternatively, equitable indemnity. Pursuant to its lease with Defendant S2P, Southern Produce is required to remove any mechanic's lien placed on the leased property and/or to pay for any damages incurred by S2P as a result of any lien. Southern Produce admits it has breached this provision of the lease and admits that it must pay the damages to S2P.

WAK
#26

The damages sustained by S2P are the attorney fees and costs of J. Robin Turner totaling \$11,103.10 in the Rose case and \$1,142.95 dealing with the Custom Concrete and Dunlap Plumbing mechanic's liens. Thus, total damages of \$12,246.05 have been sustained by S2P as a result of Southern Produce's breach of lease. However, Southern Produce, in acknowledging its lease obligations to S2P, has already paid S2P or Robin Turner, on behalf of S2P, a total of \$10,916.35. Of the total paid by Southern Produce, \$1,142.95 was to pay the damages related to Custom Concrete and Dunlap and \$9,773.40 was towards the damages related to Rose. Southern Produce admits it still owes S2P \$1,329.70 in damages based on S2P's total damages relating to the Rose matter. S2P is entitled to judgment against Southern Produce in the amount of \$1,329.70 based on the admitted breach of contract.

To the extent S2P recovers any or all of the \$1,329.70 from Rose as a result of its judgment of \$11,103.10, Southern Produce is entitled to a reduction or offset from what it owes under the judgment in favor of S2P. Likewise, to the extent S2P recovers from Rose any amount in excess of \$1,329.70, Southern Produce is entitled to reimbursement from S2P up to the

\$9,773.40 already paid for the Rose damages.

Conclusion

THEREFORE, IT IS ORDERED that the Lexington County Register of Deeds is to discharge and release the mechanic's lien filed at Lien Book 14754 at Page 57 immediately. Rose Electric, Inc. is not entitled to judgment on the lien foreclosure against Southern Produce and S2P, or the breach of contract claim against Cooler Erectors of Atlanta, Inc.

IT IS FURTHER ORDERED that Rose Electric, Inc. is not entitled to recovery under the theory of quantum meruit as there is a ~~contact~~contract between Rose and Cooler encompassing \$54,399.13 of Rose's claim, and a contract exists between Rose and Southern Produce encompassing the \$10,755.39 remainder of the claim. Rose cannot recover under an equitable claim of quantum meruit because there are contracts covering the debt. Even if this Court found there were no contracts, the third element of quantum meruit is missing in this matter precluding recovery by Rose (unjust retention of benefit without payment).

IT IS FURTHER ORDERED that the Defendants Southern Produce and S2P are the prevailing parties under S.C. Code Ann. §29-5-10 and §29-5-20.

(A) Southern Produce, Inc. is entitled to a judgment against Rose Electric, Inc. of \$24,412.60 for costs and attorney fees, ~~plus interest in the amount of \$2,983.00 through January 24, 2014 pursuant to Rule 68, SCRCP and S.C. Code Ann. §15-35-400. The total judgment for Southern Produce, Inc. against Rose is \$27,395.60. Interest will continue to accrue from January 25, 2014, at the rate of \$5.35 per day, until entry of judgment.~~

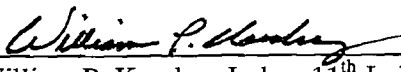
(B) Defendant S2P, LLC is entitled to judgment against Rose Electric, Inc. in the amount

of \$11,103.10 covering the costs and attorney fees incurred in the defense of this lien claim.

IT IS FURTHER ORDERED that the Defendant S2P, LLC is entitled to a judgment against Southern Produce, Inc. based on breach of lease in the amount of \$1,329.70. Southern Produce, Inc. is entitled to offset, credit, or reimbursement from S2P of all amounts S2P collects from Rose Electric, Inc., up to \$11,103.10, such that S2P does not recover its damages twice.

AND IT IS SO ORDERED.

~~January 30~~ June 11, 2014


William P. Keesley, Judge, 11th Judicial Circuit

#28

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3201929**

Rose Electric Inc	Cooler Erectors of Atlanta Inc S2P LLC Senn Bros Inc James Dunlap	Southern Produce Inc Certified Development Corporation of South Carolina Custom Concrete of Lexington Inc Dunlap Services

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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)

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.

6/20/2014

Circuit Court Judge

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 **20th of June 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

William E. Booth III
3231 Sunset Blvd., Ste. A
West Columbia, SC 29169

Michelle P Dunlap
Turner Padgett Graham & Laney Pa
Post Office Box 1473 Columbia, SC 29202
Jon Robin Turner PO
Box 11646 Columbia, SC 29211
Kathryn M. Cook
PO Box 4086 North Myrtle Beach, SC 29597

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - 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 LEXINGTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-32-01929

ORIGINAL

ROSE ELECTRIC, INC.

COOLER ERECTORS OF ATLANTA, INC., ET AL.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Judge

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ 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:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: Ms. Cook and Mr. Turner are to submit a proposed order based on instructions given in court.

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.

William P. Hendley
Circuit Court Judge

2050
Judge Code

Oct. 24, 2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the 28 day of Oct, 20 13 and a copy mailed first class or placed in the appropriate attorney's box on this 28 day of Oct, 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

William Booth
3231 Sunset Blvd Suite A
W. Co. La 29169
ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathryn Cook 36555 High 17 B Murrells Inlet
29576
Jon Turner PO 11646 29211
ATTORNEY(S) FOR THE DEFENDANT(S)
Beth Cammell/mh
CLERK OF COURT

Court Reporter: S. Sheppard

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.

Issues that were undisputed should be incorporated into a proposed order to be

submitted by Ms. Cook and Mr. Turner.

As for disputed issues, a proposed order is to be submitted based on directions given in court.

The court finds that the plaintiff has failed to prove entitlement to recovery against

Southern Produce, Inc. The plaintiff elected to proceed in quantum meruit and not contract

against Southern Produce. The court finds that these parties were in a combination of an

express and implied-in-fact contract so that quantum meruit is not appropriate. Even if it

were, the plaintiff has failed to prove that Southern Produce has retained any benefit

unjustly. This is primarily because Southern Produce paid the general contractor for all

of the electrical work done by the plaintiff, with the exception of the additions and prorata

retainage. In the claims against Southern Produce and S2P, LLC, the plaintiff cannot benefit

from the fact that the general contractor was unlicensed.

The plaintiff filed a mechanic's lien. It concedes now that the lien would not be applicable

to a quantum meruit claim. The lien is dissolved. However, Southern Produce and S2P had to

defend against the lien. They are prevailing parties, and they are entitled to recover

attorneys' fees and costs.

Southern Produce and S2P would also be entitled to attorneys' fees and costs based on the

offers of judgment and the South Carolina Rules of Civil Procedure.

The court finds that the plaintiff has failed to prove any liability of S2P to the plaintiff.

COPY

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2011 MAY 20 3:56

CIVIL ACTION NO. 11-CP-32-

Rose Electric, Inc.,

BETH A. CARRIGG
CLERK OF COURT
Plaintiff

vs.

Cooler Erectors of Atlanta, Inc., Southern
Produce, Inc., S2P, LLC, Certified
Development Corporation of South
Carolina, Senn Bros., Inc., Custom
Concrete of Lexington, Inc., and James
Dunlap d/b/a Dunlap Services,

Defendants.

COMPLAINT
(Foreclosure of Mechanic's Lien;
Breach of Contract; Quantum Meruit;
Unjust Enrichment)

(Non-Jury)

2011CP3201929

The Plaintiff, complaining of the Defendants above-named, alleges and requests the following:

1. Plaintiff is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina; and that the property described herein, which is the subject of this action, is situate and lying in the County of Lexington, State of South Carolina, and is owned by Defendant, S2P, LLC ("Owner"). Plaintiff provided labor and materials as a subcontractor for the improvement of Owner's real property

2. Defendant, S2P, LLC, is a corporation organized and existing under the laws of the State of South Carolina and is made a party hereto by virtue of its ownership of the real property that is the subject of this action.

3. Upon information and belief, Defendant, Cooler Erectors of Atlanta, Inc. ("Cooler"), is a corporation organized and existing under the laws of a foreign state, and was the general contractor for improvement work on Owner's real property.

WCB
5/20/11

4. Upon information and belief, Defendant, Southern Produce, Incorporated, ("Southern Produce") is a corporation organized and existing under the laws of the State of South Carolina and is made a party hereto by virtue of its lease of Owner's property.

5. Upon information and belief, Certified Development Corporation of South Carolina is a corporation organized and existing under the laws of the State of South Carolina and is made a party hereto by virtue of a mortgage it holds on the real property that is the subject of this action.

6. Upon information and belief, Senn Bros., Inc. is a corporation organized and existing under the laws of the State of South Carolina ("Senn") and is made a party hereto by virtue of a certain lease it may hold on the real property that is the subject of this action.

7. Upon information and belief, Custom Concrete of Lexington, Inc. is a corporation organized and existing under the laws of the State of South Carolina and is made a party hereto by virtue of a Mechanic's Lien it has filed against the real property that is the subject of this action.

8. Upon information and belief, James Dunlap d/b/a Dunlap Services, is a citizen and resident of Lexington County, South Carolina, and is made a party hereto by virtue of a Mechanic's Lien he has filed against the real property that is the subject of this action.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

9. The allegations of Paragraphs 1 through 8 are hereby incorporated herein and re-alleged as set forth herein.

WLB
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10. That on or about November 24, 2010, the Plaintiff did subcontract, with the authorization and agreement of Owner, with Defendant Cooler to furnish all labor, materials, equipment, subcontract work, and services required to provide electrical service for the construction of a Refrigeration Building within the portion of the Subject Property leased by Defendant Southern Produce and/or Defendant Senn and to improve the property of Owner.

11. Pursuant to the authorization of Owner and the subcontract with Defendant Cooler, the Plaintiff did such work, at a total cost of \$65,094.52.

12. That the total unpaid balance due under the said contract is \$65,094.52, as shown on the Statement of Account, the original of which was attached and incorporated in the Notice of Mechanic's Lien which was timely and duly filed by the Plaintiff herein on March 4, 2011, and is part of the public records for Lexington County as a result of the above-described indebtedness (Record Book 14754, page 57); said Mechanic's Lien served on the Defendants Cooler Erectors of Atlanta, Inc. (via its Registered Agent, T. Stanley Sunderland), Southern Produce, Incorporation (via its Registered Agent, Nathan B. Crocker), and on S2P, LLC (via its Registered Agent, Gregory A. Senn).

13. That the real property which is the subject of the within Complaint is described fully as follows (the "Subject Property"):

That portion of 322 Little Chris Lane as described below:

All that certain unimproved piece, parcel or lot of land, comprising 4.08 acres, more or less, situate, lying and being in the County of Lexington, State of South Carolina, and situated at the Southeast corner of the intersection of Little Chris Lane and Produce Lane within the State Farmers Market, said property being shown and designated as "LOT 12 4.08 ACRES 321 LEXINGTON ASSOCIATES WHOLESALE VENDOR

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(1)" upon that Bonded Plat of the State Farmers Market prepared for 321 Lexington Associates, LLC and the State of South Carolina by Associated E & S, Inc., dated June 15, 2009, revised August 6, 2009, and recorded in the Office of the Register of Deeds for Lexington County as an oversized plat in Record Book 13796 at page 21, to which reference is here craved for specific metes and bounds; be all measurements a little more or less.

14. Less than six months have elapsed since Plaintiff last performed or furnished said labor or materials.

15. Plaintiff is informed and believes that it is entitled to judgment and foreclosure of its Mechanic's Lien together with prejudgment interest and a reasonable sum to be determined by this Court for attorney's fees and costs of this action.

16. Upon foreclosure and sale of the property herein described, in order that the purchaser at said sale may duly acquire peaceful possession of the property, the Court is respectfully requested to include in its Decree of Foreclosure and Sale the following proviso:

After the sale of the premises, and as soon as a sale by the Master-in-Equity, owner(s), or person(s) in possession, shall within twenty (20) days of the date of sale, move from the premises, and give up the premises, without damage or vandalism. Upon failure of owner(s), or person(s) in possession, to vacate premises within twenty (20) days of the date of sale by the court, the Sheriff is authorized, empowered and directed to enter upon the premises, and forcibly eject the parties therefrom, unless prior to such date, owner(s), or person(s) in possession have obtained from the court an order extending the time in which owner(s), or person(s) shall have to vacate such premises. The Sheriff (or his deputies) is also authorized to remove from the premises any furniture or other

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possessions of owner(s), or person(s) in possession, and any interference with the activities of the Sheriff will be upon penalty of contempt of court.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

17. The allegations of paragraphs 1 through 16 are hereby incorporated herein and re-alleged as set forth herein.

18. Plaintiff has made demand upon Defendant Cooler for payment of said sum and said Defendant has failed to pay the same.

19. Defendant Cooler breached its contract with Plaintiff by failing to pay Plaintiff for the materials and labor supplied by Plaintiff.

20. As a direct and proximate result of Defendant Cooler's breach of contract, Plaintiff is entitled to actual and consequential damages, plus interest, costs, and attorney's fees.

FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment)

21. The allegations of paragraphs 1 through 16 are hereby incorporated herein and re-alleged as set forth herein.

22. At the specific instance and request of Defendant Southern Produce and with the authorization and consent of Owner, Plaintiff performed construction and provided labor, materials and equipment for the erection of a Refrigerator Building on Owner's real property.

23. Plaintiff requested payment for the work performed, but Defendant Southern Produce and Owner have failed and refuse to pay Plaintiff the reasonable value of the work performed.

WFS
5/20/11

24. Plaintiff has furnished valuable labor, materials and equipment to Defendant Southern Produce and Owner which were accepted by them. Under such circumstances, Plaintiff is informed and believes that to allow Defendant Southern Produce and Owner to reap the benefit of Plaintiff's labor and materials and the supplies without paying for the same would allow them to be unjustly enriched to the detriment of Plaintiff.

25. Plaintiff is entitled to judgment against Defendant Southern Produce and Owner under the doctrine of unjust enrichment in the amount of \$65,094.52 plus statutory interest and attorney's fees.

FOR A FOURTH CAUSE OF ACTION
(Quantum Meruit)

26. The allegations of paragraphs 1 through 16 are hereby incorporated herein and re-alleged as set forth herein.

27. At the specific instance and request of Defendant Southern Produce and with the authorization and consent of Owner, Plaintiff performed construction and provided labor, materials and equipment for the erection of a Refrigerator Building on the Subject Property.

28. Plaintiff requested payment for the work performed, but Defendant Southern Produce and Owner have failed and refuse to pay Plaintiff the reasonable value of the work performed.

29. Plaintiff has furnished valuable labor, materials and equipment to Defendant Southern Produce and Owner which were accepted by them. Under such circumstances, Plaintiff is informed and believes that it would be inequitable for Defendant Southern Produce and Owner to demand, accept, use, and enjoy the

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5/20/11

benefits of Plaintiff's labor and materials without paying a reasonable value, which Plaintiff believes to be \$65,094.52.

30. Plaintiff is entitled to judgment against Defendant Southern Produce and Owner under the equitable doctrine of quantum meruit in the amount of \$65,094.52 plus statutory interest and attorney's fees.

WHEREFORE, the Plaintiff prays judgment:

(1) That the amount due the Plaintiff upon its lien be ascertained and determined under the direction of this Court, together with prejudgment interest, attorney's fees, and costs of this action.

(2) That the Plaintiff recover judgment against Defendant, S2P, LLC, in the amount found to be due, together with prejudgment interest, attorney's fees and the costs of this suit.

(3) That the said Plaintiff's lien be declared a valid lien on the subject property, and that the said Plaintiff be allowed to have judgment of foreclosure for the amount so found to be due and owing to Plaintiff, with a reasonable sum as attorney's fees and costs of this action.

(4) That the premises, under lien, be sold under the direction of this Court, the equity of redemption be barred, and the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale including attorney's fees;

Second, to the amount due upon the judgment granted to the Plaintiff, together with prejudgment interest, attorney's fees, and costs of this action;

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Third, the surplus, if any, to be distributed according to law in such manner as may be determined by this honorable Court.

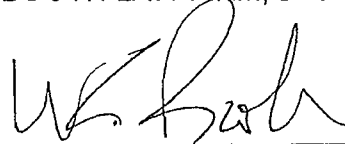
(5) For judgment against Defendant Southern Produce and Defendant S2P, LLC for unjust enrichment in the amount of \$65,094.52, or the reasonable value of the materials furnished, together with interest thereon, and attorney's fees and costs.

(6) For judgment against Defendant Cooler for actual and consequential damages due to the breach of contract.

(7) For judgment against the property Defendant Southern Produce and Defendant S2P, LLC for the value of the materials furnished and labor performed on the property.

(8) For such other and further relief as the Court may deem just and proper.

BOOTH LAW FIRM, LLC



William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(T) (803) 791-9211
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BoothLaw@bellsouth.net

West Columbia, South Carolina
May 20, 2011

FILED
2011 MAY 20 3:56
JETH A. CARRIGG
CLERK OF COURT
JUNIOR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	CIVIL ACTION NO.: 2011-CP-32-01929
Rose Electric, Inc.,	)	
	)	
Plaintiff	)	
	)	
v.	)	Defendant Southern Produce, Inc.'s Answer
	)	to Plaintiff's Complaint
Cooler Erectors of Atlanta, Inc., Southern	)	
Produce, Inc., S2P, LLC, Certified	)	
Development Corporation of South Carolina,	)	
Senn Bros., Inc., Custom Concrete of	)	
Lexington, Inc., and James Dunlap d/b/a	)	
Dunlap Services,	)	
	)	
Defendants	)	
_____	)	

Defendant Southern Produce, Inc., answering the Complaint of Plaintiff, would respectfully show and allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That each and every allegation not hereinafter admitted, modified or qualified is denied and strict proof demanded thereof.
2. That Paragraph 1 is denied.
3. That as to Paragraphs 2, 5, 6, 7, 8 and 13, Defendant Southern Produce, Inc. does not have sufficient information to form a belief as to those allegations and therefore denies the same and demands strict proof thereof.
4. That Paragraphs 3 and 4 are admitted.
5. That Paragraphs 9-12, 14-16, 21-22, 24-27, 29 and 30 are denied and strict proof demanded thereof.

6. That Paragraphs 17-20 does not allege a cause of action against Defendant Southern Produce, Inc., but inasmuch as the allegations of Paragraphs 17-20 can be construed to assert claims against Defendant Southern Produce, the same are denied and strict proof demanded thereof.

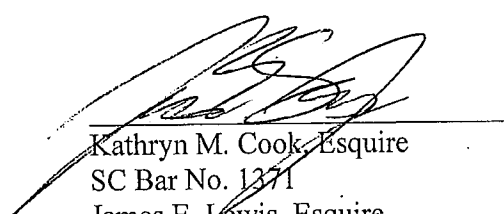
7. That Paragraphs 23 and 28 are admitted.

WHEREFORE, having fully answered the Complaint of Plaintiff, Defendant Southern Produce, Inc. requests:

- a) that the Court dismiss Plaintiff's Complaint with prejudice;
- b) that Defendant be awarded costs and attorney fees; and
- c) that this Court award such other and further relief as this Court may deem just and proper.

Respectfully submitted,

COOK & ROY, LLC



Kathryn M. Cook, Esquire
SC Bar No. 13711

James E. Lewis, Esquire
SC Bar No. 77698

Cook & Roy, LLC

Post Office Box 4086

North Myrtle Beach, SC 29597

Phone: 843-663-1200

Fax: 843-663-0364

Email: kcook@cookandroy.com

Attorney for Defendant Southern Produce,
Inc.

North Myrtle Beach, South Carolina

Dated: July 25, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) CIVIL ACTION NUMBER 11-CP-32-01929

Rose Electric, Inc.,
Plaintiff,
vs.

Cooler Erectors of Atlanta, Inc.; Southern
Produce, Inc.; S2P, LLC; Certified Develop-
ment of South Carolina, Senn Bros, Inc.;
Custom Concrete of Lexington, Inc.; and
James Dunlap D/B/A Dunlap Services,
Defendants.

ANSWER OF DEFENDANT SENN BROS., INC.

Defendant Senn Bros., Inc., by and through its undersigned attorney, would respectfully answer the allegations of the Plaintiff's Complaint as follows, any matter not herein specifically admitted, denied or qualifiedly admitted to be deemed denied, and strict proof demanded thereof.

FOR A FIRST DEFENSE

1. The Defendant admits the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9, except insofar as those allegations may state or imply that S2P, LLC is a principal owner of the improvements whose construction was allegedly contributed to by the Plaintiff (which ownership is denied), and except in so far as they state or imply that Custom Concrete of Lexington, Inc. or James Dunlap, d/b/a Dunlap Services each currently hold(s) a valid mechanic's lien upon the real property described in the Complaint, which allegation is denied, since those Mechanic's Liens have been withdrawn or otherwise terminated, upon information and belief.

2. This Defendant is without sufficient knowledge at this time of the facts supporting or constituting the allegations of paragraphs 10 and 11 to make a good faith admission or denial of these allegations, and therefore must deny same, and demand strict proof thereof.

3. With the exception of the allegations concerning the facts surrounding the filing and service of the Mechanics Lien and attachments, which is admitted, upon information and belief, this Defendant is without sufficient knowledge at this time of the facts supporting or constituting the remaining, monetary allegations of paragraph 12 to make a good faith admission or denial of these allegations, and therefore must deny same, and demand strict proof thereof.

4. The allegations of paragraph 13 are admitted, except in so far as the admission may imply that the

entire property described therein, including property leased by this Defendant, is rightly the subject of the action, which is denied, as the real estate described in the Lien and Complaint is unnecessarily and unreasonably large in size, and should be limited to the real estate and improvements currently occupied by Defendant Southern Produce, Inc. (upon which the improvements have been allegedly constructed with the labor and materials of the Plaintiff).

5. This Defendant is without sufficient knowledge at this time of the facts supporting or constituting the timing allegations of paragraph 14, and therefore must respectfully deny same.

6. The matters included in paragraphs 15 and 16 are not capable of admission or denial, as to Plaintiff's beliefs, but they are denied insofar as they may be construed to allege a legal or equitable entitlement to the relief Plaintiff seeks.

7. With respect to the (incorporated) matter in paragraph 17, 21 and 26, reference is here craved to the admissions and denials made (to each of the incorporated matters) in this document.

8. The allegations of paragraphs 18, 19 and 20 are admitted, upon information and belief, to the extent that they allege a breach of contract between the Plaintiff and its immediate contractor, only. Any inferences or implications that this Defendant is responsible or liable for said the breach is denied.

9. With regard to the allegations of paragraph 22, it is denied upon information and belief, that the owner of this property, S2P, LLC, consented or authorized the Plaintiff to perform any construction on the subject property. The remainder of the allegations of the paragraph are admitted, upon information and belief.

10. In the exercise of reasonable diligence, this Defendant is still without sufficient specific knowledge at this time of the matters described in the allegations of paragraph 23, 24 and 25, with respect to Plaintiff's relationship with Defendant Southern Produce, Inc. and therefore must respectfully deny such allegations at this time. With respect to the allegations concerning the owner of the property, to the extent "Owner" refers to this Defendant's sister company, S2P, LLC, this Defendant is informed and believes that S2P, LLC has not been unjustly enriched, which allegation must therefore be denied.

11. With regard to the allegations of paragraph 27, upon information and belief, it is denied that the owner of this property, S2P, LLC, consented or authorized the Plaintiff to assist in the erection of a refrigerator building on the subject property. The remainder of the allegations of the paragraph are admitted, upon information and belief.

12. The allegations of paragraph 28, with respect to "Owner," are denied, upon information and belief, but, with respect to Defendant Southern Produce, Inc., as the owner of the improvement, the allegations are admitted, upon information and belief.

13. With respect to the allegations of paragraph 29, and 30, in the exercise of reasonable diligence, this Defendant is without sufficient knowledge of the matters described in the allegations concerning Plaintiff's relationship with Defendant Southern Produce, Inc. or of the benefits allegedly conferred to Southern Produce Inc. by Plaintiff, and therefore must respectfully deny such allegations at this time. With respect to the allegations concerning the owner of the property, this Defendant is informed and believes that S2P, LLC has not received any benefits from such labors for which it should be required to pay Plaintiff, nor would any order requiring such be equitable, and such allegation must therefore be denied.

FOR A SECOND DEFENSE

(§20-5-270, Regarding the Manner of Foreclosure of Mechanics Lien)

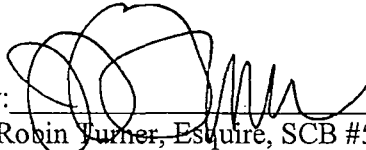
14. The Defendant would reallege all of the preceding matter as if fully repeated here verbatim.

15. The Defendant is informed and believes that foreclosure and sale of the subject property, most of which is directly and primarily encumbered by this Defendant's leasehold right, as well as by the rights of Certified Development as a first mortgagee, is too broad a remedy, in that only the property involved in the Plaintiff's work would need to be sold in order to give the Plaintiff the relief it seeks.

16. The Defendant is informed and believes that the Court should, if it believes foreclosure of a mechanics lien to be warranted under the facts of the case (which is not here admitted), include in any appropriate Order that only a small portion of the property described in the lien and in the Complaint actually be foreclosed upon, being the portion containing the improvements of Southern Produce, Inc., and excluding any of the property leased and utilized by this Defendant, or, in the alternative, that this Defendant's pre-existing commercial lease be granted priority over the rights of any purchaser at public sale.

Wherefore, having fully answered the Complaint in this matter, Defendant Senn Bros, Inc. prays that the Court dismiss the Complaint as against this Defendant, with prejudice.

Respectfully submitted.


By: _____
J. Robin Turner, Esquire, SCB #5657
Attorney for the Defendant
1722 Marion Street
P.O. Box 11646
Columbia, South Carolina 29211
(803) 799-7894

Columbia, South Carolina
October 6, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	CIVIL ACTION NUMBER 11-CP-32-01929
	)	
Rose Electric, Inc.,	)	
Plaintiff,	)	
vs.	)	
	)	
Cooler Erectors of Atlanta, Inc.; Southern	)	ANSWER of Defendant S2P, LLC
Produce, Inc.; S2P, LLC; Certified Develop-	)	and CROSSCLAIMS
ment of South Carolina, Senn Bros, Inc.;	)	
Custom Concrete of Lexington, Inc.; and	)	
James Dunlap D/B/A Dunlap Services,	)	
	)	
Defendants.	)	

Defendant S2P, LLC, by and through its undersigned attorney, would respectfully answer the allegations of the Plaintiff's Complaint as follows, any matter not herein specifically admitted, denied or qualifiedly admitted to be deemed denied, and strict proof demanded thereof.

FOR A FIRST DEFENSE

1. The Defendant admits the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9, except insofar as those allegations may state or imply that S2P, LLC is the principal owner of the improvements whose construction was allegedly contributed to by the Plaintiff (which ownership is denied), and except in so far as they state or imply that Custom Concrete of Lexington, Inc. or James Dunlap, d/b/a Dunlap Services each currently hold(s) a valid mechanic's lien upon the real property described in the Complaint, which allegation is denied, since those Mechanic's Liens have been withdrawn or otherwise terminated, upon information and belief.

2. This Defendant is without sufficient knowledge at this time of the facts supporting or constituting the allegations of paragraphs 10 and 11 to make a good faith admission or denial of these allegations, and therefore must deny same, and demand strict proof thereof.

3. With the exception of the allegations concerning the facts surrounding the filing and service of the Mechanics Lien and attachments, which is admitted, upon information and belief, this Defendant is without sufficient knowledge at this time of the facts supporting or constituting the remaining, monetary allegations of paragraph 12 to make a good faith admission or denial of these allegations, and therefore must deny same, and demand strict proof thereof.

4. The allegations of paragraph 13 are admitted, except in so far as the admission may imply that the entire property described therein, including property leased by this Defendant, is rightly the subject of the

action, which is denied, as the real estate described in the Lien and Complaint is unnecessarily and unreasonably large in size, and should be limited to the real estate and improvements currently occupied by Defendant Southern Produce, Inc. (upon which the improvements have been allegedly constructed with the labor and materials of the Plaintiff).

5. This Defendant is without sufficient knowledge at this time of the facts supporting or constituting the timing allegations of paragraph 14, and therefore must respectfully deny same.

6. The matters included in paragraphs 15 and 16 are not capable of admission or denial, as to Plaintiff's beliefs, but they are denied insofar as they may be construed to allege a legal or equitable entitlement to the relief which Plaintiff seeks.

7. With respect to the (incorporated) matter in paragraph 17, 21 and 26, reference is here craved to the admissions and denials made (to each of the incorporated matters) in this document.

8. The allegations of paragraphs 18, 19 and 20 are admitted, upon information and belief, to the extent that they allege a breach of contract between the Plaintiff and its immediate contractor, only. Any inferences or implications that this Defendant is responsible or liable for said the breach is denied.

9. With regard to the allegations of paragraph 22, it is denied that S2P, LLC, selected, consented or authorized the Plaintiff or any contractor or subcontractor to perform any construction on the subject property, and had no control over the contractor on the construction project, and is not and was never by any other person considered financially responsible for the funding or control of the project or for the payment of any contractor or subcontractor. The Defendant leased the property unimproved to Southern Produce, Inc., which, at its own instance, decided to lease the property and build the improvements. The remainder of the allegations of the paragraph are admitted, upon information and belief.

10. In the exercise of reasonable diligence, this Defendant is still without sufficient specific knowledge at this time of the matters described in the allegations of paragraph 23, 24 and 25, with respect to Plaintiff's relationship with Defendant Southern Produce, and therefore must respectfully deny such allegations at this time. With respect to the allegations concerning the owner of the property, to the extent "Owner" refers to this Defendant, S2P, LLC, this Defendant asserts that it has not been unjustly enriched, which allegation must therefore be denied.

11. With regard to the allegations of paragraph 27, it is denied that S2P, LLC, directly or through a contractor consented or authorized the Plaintiff to assist in the erection of a refrigerator building on the subject property. The remainder of the allegations of the paragraph are admitted, upon information and belief.

12. The allegations of paragraph 28, with respect to "Owner," are denied, except as to this party not



paying money to Plaintiff, which is admitted, though S2P's liability for payment is denied. With respect to Defendant Southern Produce, the allegations are admitted, but only upon information and belief.

13. With respect to the allegations of paragraph 29, and 30, in the exercise of reasonable diligence, this Defendant is without sufficient knowledge of the matters described in the allegations concerning Plaintiff's relationship with Defendant Southern Produce, Inc., or of the benefits allegedly conferred to Southern Produce, Inc. by Plaintiff, and therefore must respectfully deny such allegations at this time. With respect to the allegations concerning S2P, LLC, this Defendant has not received and will not receive any benefits from such labors for which it should be required to pay Plaintiff, nor would any order requiring such be equitable, and such allegation of entitlement or claim must therefore be denied.

FOR A SECOND DEFENSE
(§20-5-270, Regarding the Manner of Foreclosure of Mechanics Lien)

14. The Defendant would reallege all of the preceding matter as if fully repeated here, verbatim.

15. The Defendant is informed and believes that foreclosure and sale of the described real estate, most of which is directly and primarily encumbered by a third party's leasehold right and essential to the third party's business interests, as well as by the rights of Certified Development as a first mortgagee, is too broad a remedy, in that only the real property interest, if any, involved in the Plaintiff's work which would conceivably need to be sold to give the Plaintiff the relief it seeks, is limited to Southern Produce's improved leasehold interest.

16. The Defendant is informed and believes that the Court should, if it believes foreclosure of a mechanics lien to be warranted under the facts of the case (which is not here admitted), include in any appropriate Order that only those interests belonging to Southern Produce, Inc., be sold, and that this Defendant's fee interest be preserved.

FOR A THIRD DEFENSE
(As to Applicability of Mechanics Lien to S2p, LLC's Lands)

17. The Defendant would reallege all of the preceding matter as if fully repeated here, verbatim.

18. The Plaintiff did not do its work by virtue of an agreement with, or by consent of, this defendant, as required for the imposition of a mechanics lien upon this defendant's land, but rather with the consent of Atlanta Cooler Erectors, Inc. acting for Southern Produce, Inc., to construct a building for Southern produce, Inc., so that S2P is not "...the owner of the building or structure...", against whom a mechanics lien will obtain, pursuant §29-5-10[a], and §29-5-30., S.C. Code Ann., et Seq..

19. That a mechanics lien, if any exists, pertains only to the leasehold and to the owner of the leasehold, Sothern Produce, Inc., and not to surrounding real estate owned by S2P, LLC.

FOR A FOURTH DEFENSE
(§29-5-40, S.C. Code Ann.)

20. The Defendant would reallege all of the preceding matter as if fully repeated here, verbatim.

21. The defendant is informed and believes that the entire contract price for the improvements upon the leasehold was paid in full by defendant Southern Produce, Inc. to the contractor, Cooler Erectors of Atlanta, Inc., and that, pursuant to law, plaintiff is therefore not entitled to assert a lien at all, or, in the alternative, that Plaintiff is only entitled to a lien for so much of its unpaid, rightful charges as do not exceed the portion of the account which may remain unpaid between Southern Produce, Inc. and Cooler Erectors of Atlanta, Inc.

FOR A FIFTH DEFENSE
(Mechanics Lien amount limitation as against Owner)

22. The Defendant would reallege all of the preceding matter as if fully repeated here, verbatim.

23. Pursuant to §29-5-40, S.C. Code Ann., The total value of any mechanics lien which could be claimed by the plaintiff on the property of an owner shall not exceed the amount of money due from the owner to the contractor, and the amount due from this defendant to the contractor is and has always been, zero dollars, so that if this Defendant is considered the Owner, then the lien must be limited as against S2P, LLC to the amount of zero dollars (\$0.00).

24. That a mechanics lien, if any exists, pertains only to the property owned by the *owner of the leasehold*, and not to the fee simple estate owned by a third party, in this case, by S2P, LLC.

25. This defendant is informed and believes that the lien as against its property should be dissolved by the court.

FOR A SIXTH DEFENSE AND BY WAY OF CROSS-CLAIM AGAINST SOUTHERN PRODUCE, INC.
((Damages for Breach of Lease))

26. The Defendant would reallege all of the preceding matter as if fully repeated here, verbatim, including, as affirmative allegations, any matter contained in the complaint and admitted hereinabove.

27. Defendant Southern Produce, Inc. and Defendant S2P, LLC entered a land-lease agreement for a term of years upon a small portion of the property described in the complaint, upon which leasehold

Southern Produce, Inc. erected an improvement, such construction giving rise indirectly to the within civil action;

28. Defendant Southern Produce, Inc., by virtue of a lease agreement with S2P, LLC, expressly agreed to promptly resolve any mechanics lien problem upon its leasehold or upon the properties of S2P, LLC, in connection with any construction, by payment or by bond, yet has failed to do so, despite reasonable demand therefor.

29. The failure of Southern Produce Inc. to remove the lien constitutes a violation of a material term and a breach of contract, necessitating attorneys fees in its defense, and further costs and expenses for the defense of the interests in the real property of its other lessor, Senn Bros., Inc., and Southern Produce Inc.'s breach therefore has, and continues to, proximately damage this Defendant, in the nature of its legal defense costs and expenses and potential liabilities or losses under this lawsuit, all of which are foreseeable consequential damages of the breach complained of.

30. S2P, LLC is informed and believes that it is entitled to an order of judgment against its co-defendant, Southern Produce, Inc. for actual damages in an amount to be determined by the artifact which would compensate it for its losses and/or expenses in defending itself against this lawsuit on its own behalf and on behalf of its other tenant on the real property liened by and sued by plaintiff, Senn Brothers, Inc.

SEVENTH DEFENSE AND BY WAY OF CROSS-CLAIM AGAINST SOUTHERN PRODUCE, INC.
(Equitable indemnification, pled in the alternative)

31. The Defendant would reallege all of the preceding matter as if fully repeated here, verbatim, including, as affirmative allegations, any matter contained in the complaint and admitted hereinabove.

32. In the event that the court denies that a breach of Lease has occurred as was pled in the Sixth Defense and Cross-claim, then, and in that event, this defendant would allege that it is equitably entitled to an order indemnifying it from its losses and defense costs as against its co-defendant, Southern Produce, Inc., as S2P, LLC has been forced to defend itself and its lessor in this action as a result of a transaction in which it had no part or culpability, and because this action against S2P, LLC and its Tenant, Senn Bros., Inc. could and should have been avoided by the said codefendant, by taking reasonable measures to avoid the mechanics lien and foreclosure action, including but not limited to proper supervision of its contractor, obtaining appropriate lien waivers, and/or posting the statutory bond to remove the mechanics lien from S2P, LLC's real property.

EIGHTH DEFENSE AND BY WAY OF CROSS-CLAIM AGAINST SOUTHERN PRODUCE, INC.
(Attorneys Fees under Lease)

33. The Defendant would reallege all of the preceding matter as if fully repeated here, verbatim, including, as affirmative allegations, any matter contained in the complaint and admitted hereinabove.

34. The aforementioned Lease provides, inter alia, that, *"Should the Tenant or Landlord be found by a court of competent jurisdiction to be in breach or default of this Lease, the non-prevailing party agrees to pay to the prevailing party reasonable attorney's fees and costs of any such successful action, or of such successful appeal or defense."*

35. This party is informed and believes that it is entitled to an order as against Southern produce, Inc. In the amount of its attorneys fees and costs incurred in this action, none of which would have been incurred, but for the breach of the lease aforementioned.

WHEREFORE, having fully answered the Complaint in this matter, and having Cross-Claimed against Southern Produce, Inc., Defendant Senn Bros, LLC prays that the Court dismiss the Complaint as against this Defendant, with prejudice, or at least to fashion its Order in such a way as to minimize the effect of any judicial sale upon it and upon the businesses of its lessors, and to award it actual damages or indemnification as against Southern Produce, Inc. upon its Cross-Claim, in an amount to be determined by the trier of fact, and to award to it such other and further relief to which this party may be entitled, including attorneys fees as a prevailing party against the mechanic's lien litigation brought by the plaintiff, under section 29-5-10, et Seq., South Carolina Code Ann.

Respectfully submitted.



By: J. Robin Turner, Esquire, SCB #5657
Attorney for the Defendant S2P, LLC
1722 Marion Street
P.O. Box 11646
Columbia, South Carolina 29211
(803) 799-7894

Columbia, South Carolina
October 7, 2011

Kathryn M. Cook
Roger P. Roy, Jr.
James E. Lewis, Jr.

COOK & ROY, LLC
P.O. Box 4086
North Myrtle Beach, South Carolina 29597

Phone: (843) 663-1200
Fax: (843) 663-0364

June 30, 2011

Via Email and U.S. Mail

William E. Booth, III, Esq.
Booth Law Firm
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169

Re: Rose Electric, Inc. v. Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC,
Certified Development Corporation of South Carolina, Senn Bros., Inc., Custom
Concrete of Lexington, Inc. and James Dunlap d/b/a Dunlap Services,
Civil Action No.: 2011-CP-32-01929
C&R File No.: 7495.11.0403

Dear Mr. Booth:

Please be advised that I represent Southern Produce, Inc. with regard to the above-captioned matter. First, I thank you for giving me an extension of time to answer in this matter which I will certainly do in the event we cannot reach an amicable resolution of this matter prior to my answering being due on July 25, 2011. However, I wanted to write you with some pertinent facts which I feel you may find interesting before you and Rose Electric spend further time and effort in this matter.

Southern Produce, Inc., under its contract with Cooler Erectors of Atlanta, Inc., has made full payment to Cooler Erectors except for \$10,210.93 which represents retainage due on this job and under its contract. I am enclosing copies of those checks for your reference. Additionally, two other mechanic's lien have been filed, one by Custom Concrete of Lexington, Inc. in the amount of \$14,529.20 and one by Dunlap Services for \$10,210.93. While Southern Produce does not agree that these amounts are due to the subcontractors including your client, I thought it important to make you aware of the other amounts which are claimed to be due from Cooler Erectors of Atlanta, Inc. Southern Produce has paid out all due under its contract except for \$10,210.93 and there are liens filed in the total amount of \$89,834.65.

Second, please be advised that the general contractor with whom Rose contracted, Cooler Erectors of Atlanta, Inc., is neither authorized to do business in South Carolina per the Secretary of State's Office nor does it have a general contractor's or specialty contractor license to perform work in this state.

Southern Produce agrees with the following change orders and charges:

Change Order #2	\$ 436.20
Change Order #3	\$ 987.61
Change Order #4	\$ 356.80
Change Order #7	\$ 834.95
Change Order #8	\$ 337.63
Change Orders #9-11	\$3,054.97
Change Order #12	\$ 141.06
Total	\$6,149.22

Southern Produce does not agree with Change Order #5 in the amount of \$3,091.89 and Change Order #6 in the amount of \$1,514.00. These change orders were to change the disconnects to stainless steel which should amount to approximately one half of what was charged or \$1,600.00 for Change Order #5 and \$800.00 for Change Order #6. This would bring the total change order amount to \$8,549.22, of which \$6,149.22 is for Change Orders 2, 3, 4, 7, 8, 9, 10, 11, and 12, and the \$2,400.00 for Change Orders #5 and #6. However, Southern Produce will need to replace two emergency lights and two exit lights costing \$1,000.00. The emergency and exit lights installed were not vapor tight as stated in the specifications. In that light, Southern Produce is willing to pay \$7,549.22 to Rose Electric for the change orders. Also, this information is all exclusive of the damages that have been suffered by Southern Produce due to defective installation of the electrical work.

Last, I have been advised by Southern Produce that the mechanic's lien filed by Rose Electric on March 4, 2011 was filed more than 90 days after materials and labor were provided to the job by Rose Electric. It is my information that your client's work, services, and materials were all provided well in advance of the end November, 2010, making the mechanic's lien on March 4, 2011 not timely.

Given the fact that the general contractor with whom Rose contracted is not licensed or authorized to perform labor or services in South Carolina, and due to the defective construction performed by Cooler Erectors and subcontractors, Southern Produce would offer to pay \$7,549.22 in complete settlement and release of any and all claims Rose Electric, Inc. has against Southern Produce, S2P, LLC, Senn Bros., Inc., and/or Certified Development Corporation of South Carolina under its claims for foreclosure of mechanic's lien, *quantum meruit*, and unjust enrichment. Of course, this would still leave Rose Electric's claims to pursue action against Cooler Erectors of Atlanta, Inc. Please let this letter stand as a Rule 68 offer of judgment made on behalf of Defendant Southern Produce, Incorporated, in the amount of \$7,549.22.

I look forward to hearing from you.

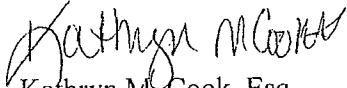
William E. Booth, III, Esq.

Page 3

June 30, 2011

Sincerely,

COOK & ROY, LLC


Kathryn M. Cook, Esq.

KMC:tl

Enclosure

CC: Southern Produce, Inc.
Jake Moore, Jr.
J. Robin Turner, Esq.

NATE CROCKER LINDA CROCKER REDACTED		2981 67-210/539 BRANCH 1237
<i>10-8-10</i> DATE		
PAY TO THE ORDER OF <i>COUGER ELECTORS</i>		<i>\$11,000.00</i>
<i>ELEVEN THOUSAND DOLLARS & 00/100</i>		DOLLARS
CAROLINA FIRST		CAROLINA PRIME
FOR: <i>[Signature]</i>		
REDACTED		2981

REDACTED	

Date:10-15-2010 Account:**REDACTED**Serial:2981 Amount:\$11,000.00 TR:5390219 Sequence:127702892
 BankNum:1 TranCode:0 DbCr:D

SOUTHERN PRODUCE, INC. STATE FARMERS MARKET, U-42 1001 BLUFF ROAD POST OFFICE BOX 13445 COLUMBIA, SC 29201 (803) 771-7635		CAROLINA FIRST BANK COLUMBIA, SC 29201 67-219/539	015946
		10/27/2010	
PAY TO THE ORDER OF COOLER ERECTORS OF ATLANTA		\$ **49,600.00	
Forty-Nine Thousand Six Hundred and 00/100		DOLLARS	
COOLER ERECTORS OF ATLANTA 3167 HERITAGE WAY BUFORD, GA 30519		<i>Note Cook</i> AUTHORIZED SIGNATURE	
MEMO			
REDACTED			

ENDORSE HERE PAY TO THE ORDER OF SPECIAL PAYEE RECORD NUMBER FOR DEPOSIT ONLY DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE (RESERVED FOR FINANCIAL INSTITUTION USE)	REDACTED
	10/26/2010 15:4

Date: 10-29-2010 Account: REDACTED Serial: 15946 Amount: \$49,600.00 TR: 5390219 Sequence: 120023234
 BankNum: 1 TranCode: 0 DBCr: D

SOUTHERN PRODUCE, INC. STATE FARMERS MARKET, U-42 1001 BLUFF ROAD POST OFFICE BOX 13445 COLUMBIA, SC 29201 (803) 771-7825		CAROLINA FIRST BANK COLUMBIA, SC 29201 67-218/538	015947 10/27/2010
PAY TO THE ORDER OF COOLER ERECTORS OF ATLANTA		\$ 42,677.00	
Forty-Two Thousand Six Hundred Seventy-Seven and 00/100 *****			
COOLER ERECTORS OF ATLANTA 3187 HERITAGE WAY BUFORD, GA 30519		<i>Mate Crook</i> AUTHORIZED SIGNATURE	
MEMO 20% DOWN FOR CONSTRUCTION COST REDACTED			

ENDORSE HERE PAY TO THE ORDER OF PROCEED WITH DEPOSIT DO NOT WRITE BELOW THIS LINE RESERVED FOR FINANCIAL INSTITUTION USE	FOR DEPOSIT ONLY DO NOT WRITE BELOW THIS LINE RESERVED FOR FINANCIAL INSTITUTION USE	REDACTED 10/28/2010 15:40

Date: 10-29-2010 Account: **REDACTED** Serial: 15947 Amount: \$42,677.00 TR: 5390219 Sequence: 120023236
 BankNum: 1 TranCode: 0 DdCr: D

ENCLOSE HERE 1. <u>SALE AND THE OFFICE</u> 2. <u>ENCLOSURE</u> 3. <u>ENCLOSURE</u> 4. <u>ENCLOSURE</u> 5. <u>ENCLOSURE</u> 6. <u>ENCLOSURE</u> 7. <u>ENCLOSURE</u> 8. <u>ENCLOSURE</u> 9. <u>ENCLOSURE</u> 10. <u>ENCLOSURE</u> 11. <u>ENCLOSURE</u> 12. <u>ENCLOSURE</u> 13. <u>ENCLOSURE</u> 14. <u>ENCLOSURE</u> 15. <u>ENCLOSURE</u> 16. <u>ENCLOSURE</u> 17. <u>ENCLOSURE</u> 18. <u>ENCLOSURE</u> 19. <u>ENCLOSURE</u> 20. <u>ENCLOSURE</u> 21. <u>ENCLOSURE</u> 22. <u>ENCLOSURE</u> 23. <u>ENCLOSURE</u> 24. <u>ENCLOSURE</u> 25. <u>ENCLOSURE</u> 26. <u>ENCLOSURE</u> 27. <u>ENCLOSURE</u> 28. <u>ENCLOSURE</u> 29. <u>ENCLOSURE</u> 30. <u>ENCLOSURE</u> 31. <u>ENCLOSURE</u> 32. <u>ENCLOSURE</u> 33. <u>ENCLOSURE</u> 34. <u>ENCLOSURE</u> 35. <u>ENCLOSURE</u> 36. <u>ENCLOSURE</u> 37. <u>ENCLOSURE</u> 38. <u>ENCLOSURE</u> 39. <u>ENCLOSURE</u> 40. <u>ENCLOSURE</u> 41. <u>ENCLOSURE</u> 42. <u>ENCLOSURE</u> 43. <u>ENCLOSURE</u> 44. <u>ENCLOSURE</u> 45. <u>ENCLOSURE</u> 46. <u>ENCLOSURE</u> 47. <u>ENCLOSURE</u> 48. <u>ENCLOSURE</u> 49. <u>ENCLOSURE</u> 50. <u>ENCLOSURE</u> 51. <u>ENCLOSURE</u> 52. <u>ENCLOSURE</u> 53. <u>ENCLOSURE</u> 54. <u>ENCLOSURE</u> 55. <u>ENCLOSURE</u> 56. <u>ENCLOSURE</u> 57. <u>ENCLOSURE</u> 58. <u>ENCLOSURE</u> 59. <u>ENCLOSURE</u> 60. <u>ENCLOSURE</u> 61. <u>ENCLOSURE</u> 62. <u>ENCLOSURE</u> 63. <u>ENCLOSURE</u> 64. <u>ENCLOSURE</u> 65. <u>ENCLOSURE</u> 66. <u>ENCLOSURE</u> 67. <u>ENCLOSURE</u> 68. <u>ENCLOSURE</u> 69. <u>ENCLOSURE</u> 70. <u>ENCLOSURE</u> 71. <u>ENCLOSURE</u> 72. <u>ENCLOSURE</u> 73. <u>ENCLOSURE</u> 74. <u>ENCLOSURE</u> 75. <u>ENCLOSURE</u> 76. <u>ENCLOSURE</u> 77. <u>ENCLOSURE</u> 78. <u>ENCLOSURE</u> 79. <u>ENCLOSURE</u> 80. <u>ENCLOSURE</u> 81. <u>ENCLOSURE</u> 82. <u>ENCLOSURE</u> 83. <u>ENCLOSURE</u> 84. <u>ENCLOSURE</u> 85. <u>ENCLOSURE</u> 86. <u>ENCLOSURE</u> 87. <u>ENCLOSURE</u> 88. <u>ENCLOSURE</u> 89. <u>ENCLOSURE</u> 90. <u>ENCLOSURE</u> 91. <u>ENCLOSURE</u> 92. <u>ENCLOSURE</u> 93. <u>ENCLOSURE</u> 94. <u>ENCLOSURE</u> 95. <u>ENCLOSURE</u> 96. <u>ENCLOSURE</u> 97. <u>ENCLOSURE</u> 98. <u>ENCLOSURE</u> 99. <u>ENCLOSURE</u> 100. <u>ENCLOSURE</u> 101. <u>ENCLOSURE</u> 102. <u>ENCLOSURE</u> 103. <u>ENCLOSURE</u> 104. <u>ENCLOSURE</u> 105. <u>ENCLOSURE</u> 106. <u>ENCLOSURE</u> 107. <u>ENCLOSURE</u> 108. <u>ENCLOSURE</u> 109. <u>ENCLOSURE</u> 110. <u>ENCLOSURE</u> 111. <u>ENCLOSURE</u> 112. <u>ENCLOSURE</u> 113. <u>ENCLOSURE</u> 114. <u>ENCLOSURE</u> 115. <u>ENCLOSURE</u> 116. <u>ENCLOSURE</u> 117. <u>ENCLOSURE</u> 118. <u>ENCLOSURE</u> 119. <u>ENCLOSURE</u> 120. <u>ENCLOSURE</u> 121. <u>ENCLOSURE</u> 122. <u>ENCLOSURE</u> 123. <u>ENCLOSURE</u> 124. <u>ENCLOSURE</u> 125. <u>ENCLOSURE</u> 126. <u>ENCLOSURE</u> 127. <u>ENCLOSURE</u> 128. <u>ENCLOSURE</u> 129. <u>ENCLOSURE</u> 130. <u>ENCLOSURE</u> 131. <u>ENCLOSURE</u> 132. <u>ENCLOSURE</u> 133. <u>ENCLOSURE</u> 134. <u>ENCLOSURE</u> 135. <u>ENCLOSURE</u> 136. <u>ENCLOSURE</u> 137. <u>ENCLOSURE</u> 138. <u>ENCLOSURE</u> 139. <u>ENCLOSURE</u> 140. <u>ENCLOSURE</u> 141. <u>ENCLOSURE</u> 142. <u>ENCLOSURE</u> 143. <u>ENCLOSURE</u> 144. <u>ENCLOSURE</u> 145. <u>ENCLOSURE</u> 146. <u>ENCLOSURE</u> 147. <u>ENCLOSURE</u> 148. <u>ENCLOSURE</u> 149. <u>ENCLOSURE</u> 150. <u>ENCLOSURE</u> 151. <u>ENCLOSURE</u> 152. <u>ENCLOSURE</u> 153. <u>ENCLOSURE</u> 154. <u>ENCLOSURE</u> 155. <u>ENCLOSURE</u> 156. <u>ENCLOSURE</u> 157. <u>ENCLOSURE</u> 158. <u>ENCLOSURE</u> 159. <u>ENCLOSURE</u> 160. <u>ENCLOSURE</u> 161. <u>ENCLOSURE</u> 162. <u>ENCLOSURE</u> 163. <u>ENCLOSURE</u> 164. <u>ENCLOSURE</u> 165. <u>ENCLOSURE</u> 166. <u>ENCLOSURE</u> 167. <u>ENCLOSURE</u> 168. <u>ENCLOSURE</u> 169. <u>ENCLOSURE</u> 170. <u>ENCLOSURE</u> 171. <u>ENCLOSURE</u> 172. <u>ENCLOSURE</u> 173. <u>ENCLOSURE</u> 174. <u>ENCLOSURE</u> 175. <u>ENCLOSURE</u> 176. <u>ENCLOSURE</u> 177. <u>ENCLOSURE</u> 178. <u>ENCLOSURE</u> 179. <u>ENCLOSURE</u> 180. <u>ENCLOSURE</u> 181. <u>ENCLOSURE</u> 182. <u>ENCLOSURE</u> 183. <u>ENCLOSURE</u> 184. <u>ENCLOSURE</u> 185. <u>ENCLOSURE</u> 186. <u>ENCLOSURE</u> 187. <u>ENCLOSURE</u> 188. <u>ENCLOSURE</u> 189. <u>ENCLOSURE</u> 190. <u>ENCLOSURE</u> 191. <u>ENCLOSURE</u> 192. <u>ENCLOSURE</u> 193. <u>ENCLOSURE</u> 194. <u>ENCLOSURE</u> 195. <u>ENCLOSURE</u> 196. <u>ENCLOSURE</u> 197. <u>ENCLOSURE</u> 198. <u>ENCLOSURE</u> 199. <u>ENCLOSURE</u> 200. <u>ENCLOSURE</u> 201. <u>ENCLOSURE</u> 202. <u>ENCLOSURE</u> 203. <u>ENCLOSURE</u> 204. <u>ENCLOSURE</u> 205. <u>ENCLOSURE</u> 206. <u>ENCLOSURE</u> 207. <u>ENCLOSURE</u> 208. <u>ENCLOSURE</u> 209. <u>ENCLOSURE</u> 210. <u>ENCLOSURE</u> 211. <u>ENCLOSURE</u> 212. <u>ENCLOSURE</u> 213. <u>ENCLOSURE</u> 214. <u>ENCLOSURE</u> 215. <u>ENCLOSURE</u> 216. <u>ENCLOSURE</u> 217. <u>ENCLOSURE</u> 218. <u>ENCLOSURE</u> 219. <u>ENCLOSURE</u> 220. <u>ENCLOSURE</u> 221. <u>ENCLOSURE</u> 222. <u>ENCLOSURE</u> 223. <u>ENCLOSURE</u> 224. <u>ENCLOSURE</u> 225. <u>ENCLOSURE</u> 226. <u>ENCLOSURE</u> 227. <u>ENCLOSURE</u> 228. <u>ENCLOSURE</u> 229. <u>ENCLOSURE</u> 230. <u>ENCLOSURE</u> 231. <u>ENCLOSURE</u>	

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Date:12-06-2010 Account:REDACTED Serial:16053 Amount:\$30,000.00 TR:5390219 Sequence:1238555~4
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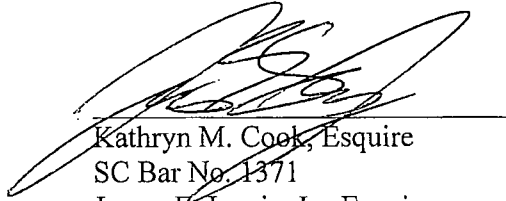
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	CIVIL ACTION NO.: 2011-CP-32-01929
Rose Electric, Inc.,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	OFFER OF JUDGMENT ON BEHALF OF
Cooler Erectors of Atlanta, Inc., Southern	)	DEFENDANT SOUTHERN PRODUCE,
Produce, Inc., S2P, LLC, Certified	)	INC.
Development Corporation of South Carolina,	)	
Senn Bros., Inc., Custom Concrete of	)	
Lexington, Inc., and James Dunlap d/b/a	)	
Dunlap Services,	)	
	)	
Defendants	)	
	)	

Pursuant to S.C. Code Ann. §15-35-400 (1976) and Rule 68(a) of the South Carolina Rules of Civil Procedure, Defendant Southern Produce, Inc. does hereby offer the Plaintiff to take a judgment against Defendant in the amount of Seven Thousand Five Hundred Forty Nine and 22/100 Dollars (\$7,549.22) inclusive of interest, attorney's fees, and costs. This Offer of Judgment must be accepted within twenty (20) days of service hereof. If the Plaintiff fails to accept this Offer of Judgment within the aforesaid time period, this offer shall be deemed rejected. Should the Defendant receive a verdict at least as favorable as the rejected offer, Defendant shall be entitled to all fees and costs from the date of rejection, as permitted by S.C. Code Ann. §15-35-400 (1976) and Rule 68 S.C.R.C.P.

This Offer of Judgment is made for the purposes specified in S.C. Code Ann. §15-35-400 (1976) and Rule 68(a) of the South Carolina Rules of Civil Procedure, and is not to be construed either as an admission that the Defendant is liable to Plaintiff in this action, or that Plaintiff has suffered any damages.

Respectfully submitted,

COOK & ROY, LLC

A handwritten signature in black ink, appearing to read 'K. Cook', is written over a horizontal line.

Kathryn M. Cook, Esquire
SC Bar No. 1371

James E. Lewis, Jr., Esquire
SC Bar No. 77698

Cook & Roy, LLC

Post Office Box 4086

North Myrtle Beach, SC 29597

Phone: 843-663-1200

Fax: 843-663-0364

Email: kcook@cookandroy.com

Attorney for Defendant Southern Produce,
Inc.

North Myrtle Beach, South Carolina

Dated: July 25, 2011

Kathryn M. Cook
Roger P. Roy, Jr.
James E. Lewis, Jr.

COOK & ROY, LLC
P.O. Box 4086
North Myrtle Beach, South Carolina 29597

Phone: (843) 663-1200
Fax: (843) 663-0364

January 23, 2012

Via Email and U.S. Mail

William E. Booth, III, Esq.
Booth Law Firm
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169

Re: Rose Electric, Inc. v. Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC,
Certified Development Corporation of South Carolina, Senn Bros., Inc., Custom
Concrete of Lexington, Inc. and James Dunlap d/b/a Dunlap Services,
Civil Action No.: 2011-CP-32-01929
C&R File No.: 7495.11.0403

Dear Mr. Booth:

I am hereby serving a Second Offer of Judgment that has been filed by Defendant Southern Produce, Inc. with the Lexington County Clerk of Court in the amount of \$15,532.52. You will recall the previous Offer of Judgment was in the amount of \$7,549.22 reflecting the amount Southern Produce believes is due to Rose Electric, Inc. for the change orders performed by Rose Electric. We have now increased that offer by an additional \$7,983.30, making the total offer of judgment \$15,532.52.

This additional \$7,983.30 represents 78.98% of the \$10,108.00 Southern is still holding of the contract price it had with Cooler Erectors of Atlanta, Inc. As I advised in my letter of June 30, 2011, Southern Produce, under its contract with Cooler Erectors of Atlanta, Inc., has made full payment under that contract except for \$10,108.00. There are mechanic lien claims by subcontractors on this project which total \$68,868.33, including Rose's claim. Based on the total amounts claimed by subcontractors under the original scope of work with Cooler Erectors, Rose's claim of \$54,339.13 amounts to 78.98% of the total claims. Thus, in pro-rating the applicable share Southern is still holding, Rose Electric would be entitled to 78.98% of \$10,108.00 or \$7,983.30 if it is successful in its lien foreclosure. Thus, we have filed the Second Offer of Judgment for the total of \$15,532.52.

Clearly, the subcontractors are not the only parties to have been hurt in this situation. Southern Produce, Inc. did not receive what it contracted for with Cooler Erectors of Atlanta, Inc. It appears that my client as well as the subcontractors have suffered at the hands of Cooler Erectors who came into South Carolina without a license and without proper authorization to do business. The harm has to be spread among all remaining standing parties. In that vein, Southern has authorized me to offer payment of \$15,532.52 as a full settlement of any claims Rose Electric, Inc. may have against Southern Produce, Inc., S2P, LLC, Certified Development Corporation of South Carolina, and/or Senn Bros., Inc. If Rose should choose to settle this matter with the

William E. Booth, III, Esq.

Page 2

January 23, 2012

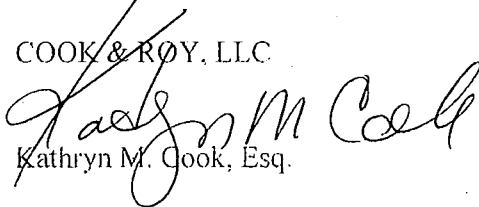
payment of money now, Southern can forward a check and the applicable settlement documents within 20 days of the acceptance of this offer. This would still allow Rose Electric to pursue its remedies against Cooler Erectors of Atlanta, Inc. and, of course, Southern would stand ready to assist by giving testimony, documentation, photographs, etc. that might be needed as evidence in any action.

Please let me hear from you within the next 20 days as the offer of judgment statute requires as to whether Rose will accept \$15,532.52 and/or whether we can settle this matter at least as far as Southern Produce, S2P, LLC, Certified Development Corporation of South Carolina, and Senn Bros., Inc. are concerned.

I look forward to hearing from you.

Sincerely,

COOK & ROY, LLC



Kathryn M. Cook, Esq.

KMC:tlr

Enclosure

CC: Southern Produce, Inc.
J. Robin Turner, Esq.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

Rose Electric, Inc.,)
Plaintiff)

v.)

Cooler Erectors of Atlanta, Inc., Southern)
Produce, Inc., S2P, LLC, Certified)
Development Corporation of South Carolina,)
Senn Bros., Inc., Custom Concrete of)
Lexington, Inc., and James Dunlap d/b/a)
Dunlap Services,)
Defendants)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-32-01929

COPY

SECOND OFFER OF JUDGMENT ON
BEHALF OF DEFENDANT SOUTHERN
PRODUCE, INC.

FILED
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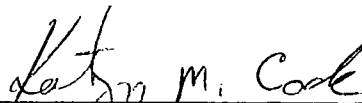
Pursuant to S.C. Code Ann. §15-35-400 (1976) and Rule 68(a) of the South Carolina Rules of Civil Procedure, Defendant Southern Produce, Inc. does hereby offer Plaintiff to take judgment against Defendant Southern Produce, Inc. in the amount of Fifteen Thousand Five Hundred Thirty Two and 52/100 Dollars (\$15,532.52) inclusive of interest, attorney's fees, and costs. This Second Offer of Judgment must be accepted within twenty (20) days of service hereof. If the Plaintiff fails to accept this Second Offer of Judgment within the aforesaid time period, this offer shall be deemed rejected. Should Defendant receive a verdict at least as favorable as the rejected offer, Defendant Southern Produce, Inc. shall be entitled to all fees and costs from the date of rejection, as permitted by S.C. Code Ann. §15-35-400 (1976) and Rule 68 S.C.R.C.P.

This Second Offer of Judgment is made for the purposes specified in S.C. Code Ann. §15-35-400 (1976) and Rule 68(a) of the South Carolina Rules of Civil Procedure, and is not to

be construed either as an admission that Defendant is liable to Plaintiff in this action, or that Plaintiff has suffered any damages.

Respectfully submitted,

COOK & ROY, LLC



Kathryn M. Cook, Esquire

SC Bar No. 1371

James E. Lewis, Jr., Esquire

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Attorney for Defendant Southern Produce,
Inc.

North Myrtle Beach, South Carolina

Dated: January 19, 2012

FILED

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CLERK OF COURT
JUDICIAL DISTRICT
OF THE 1ST JUDICIAL DISTRICT
OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	CIVIL ACTION NO.: 2011-CP-32-01929
Rose Electric, Inc.,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	
Cooler Erectors of Atlanta, Inc., Southern	)	Defendant Southern Produce's
Produce, Inc., S2P, LLC, Certified	)	Post-Trial Memorandum
Development Corporation of South Carolina,	)	
Senn Bros., Inc., Custom Concrete of	)	
Lexington, Inc., and James Dunlap d/b/a	)	
Dunlap Services,	)	
	)	
Defendants	)	

This matter arises out of construction of a produce processing facility at the new SC State Farmers Market on unimproved land owned by Defendant S2P, LLC who lease the land to Defendant Southern Produce. Southern Produce hired Cooler Erectors of Atlanta, Inc. to build the facility on the leased land. Cooler Erectors hired Plaintiff Rose Electric, Inc. to perform the electrical work on the project. Cooler Erectors (hereafter "Contractor") failed to pay Rose Electric (hereafter "Subcontractor") for the work performed and Subcontractor then demanded payment from Southern Produce (hereafter "Owner") and S2P (hereafter "Landlord"). Plaintiff Subcontractor filed a mechanics lien on the property on March 3, 2011 and brought this action to foreclose on the lien on May 20, 2011. Plaintiff's complaint also seeks recovery for breach of contract from Contractor and claims for quantum meruit and unjust enrichment from Landlord and Owner. The amount sought in damages by Plaintiff Subcontractor is \$65,094.52 plus prejudgment interest, attorney fees, and cost.

Mechanic's Lien Claim

Defendant Southern Produce had a written contract with Contractor for \$213,385.00 for turn key construction of the facility which included the electrical subcontractor's scope of work. Owner paid the Contractor \$203,277.00 in construction draws leaving only \$10,108.00 due Cooler Erectors under the contract. Two mechanic's liens were filed against the project by the concrete subcontractor on February 8, 2011 in the amount of \$14,529.20 and the plumbing subcontractor on February 18, 2011 in the amount of \$10,210.93 due to Cooler Erector's failure to pay each. Rose Electric then filed its mechanic's lien on March 3, 2011 in the amount of \$65,094.52, of which \$54,339.13 was due under Rose's contract with Cooler Erectors and \$ 10,755.39 was for

upgrades or extras requested by Southern Produce. Southern Produce offered to pay Rose Electric for the extras in the amount requested of \$10,755.39. But pursuant to S.C. Code § 29-5-20, § 29-5-40, and § 29-5-60, Southern Produce is only liable for the prorate share (68.74%) of the balance due Cooler Erectors (\$10,108.00) on Rose's claim for \$54,339.13 due under the subcontract or \$6,948.24. ($\$10,108.00 \times .6874 = \$6,948.24$)

The mechanic's liens filed by subcontractors total \$79,139.26 as follows:

Custom Concrete	\$14,529.20	18.36%
Dunlap Services	\$10,210.93	12.90%
Rose Electric	<u>\$54,339.13</u>	68.74%
Total	\$79,139.26	100%

Thus the amount owed by Southern Produce is \$10,755.39 for the extras requested by it plus \$6,948.24 as the prorate share of the contract balance owed to Cooler Erectors as it relates to the three liens filed by subcontractors. This totals \$17,703.63 due by Owner to Subcontractor.

Plaintiff is entitled to payment from Southern Produce of \$17,703.63 under its mechanics lien claim. However, the Court must consider the offers of judgment made by Defendant Southern Produce to Rose Electric during the case, as the award of attorney fees and cost will offset the amount owed to Subcontractor. Southern Produce, on three occasions during this litigation (7/26/11, 1/23/12, and 7/13/12), filed Offers of Settlement pursuant to Rule 68, SCRPC and S.C. Code Ann. §15-35-400, §29-5-10, and §29-5-20. Rose Electric did not accept or respond to any of these offers. The last offer filed by Southern Produce was for \$18,000.00 and Rose Electric did not respond or accept, so Plaintiff's offer for purposes of an award of attorney fees and litigation expenses under S.C. Code Ann. §29-5-10 and §29-5-20 is considered to be the prayer in complaint of \$65,094.52. Defendant Southern Produce is the prevailing party in this matter under Rule 68, SCRPC and S.C. Code Ann. §29-5-10, §29-5-20, and §15-35-400 as Defendant's offer of \$18,000.00 is closer to the Court's award of \$17,703.63 than is Rose Electric's offer of \$65,094.52.

Southern Produce is entitled to an award of attorney fees and litigation costs it has incurred. Attached as Exhibit A is the Affidavit of Kathryn M. Cook, counsel for Southern Produce, summarizing the attorney fees incurred for her services and the litigation cost in defending this action with the applicable exhibits. Southern Produce has incurred attorney fees of \$18,714.00 through February 28, 2013 and litigation costs of \$156.10 totaling \$18,870.10. Defendant anticipates it may incur further fees if counsel is requested to draft an order in this matter of

approximately \$1,425.00. Also, per its lease with Defendant S2P, Defendant Southern Produce has paid attorney fees and cost of J. Robin Turner in the amount of \$4,158.97 and anticipates it will be required to pay the remaining cost and fees of Mr. Turner as reflected in the Affidavit filed by S2P.

The evidence shows that Southern Produce is entitled to an award of attorney fees and cost of \$18,870.10. Defendant Southern Produce is also entitled to an award of the attorney fees and costs paid to counsel for Defendant S2P in S2P's defense of the mechanic's lien. While S2P and Rose Electric did not file settlement offers prior to trial, S.C. Code Ann. §29-5-10 and §29-5-20 impute Plaintiff's offer as its prayer for \$65,094.52 and Defendant S2P's offer as \$0. Thus, S2P is the prevailing party based on the entitlement of \$17,703.63 to Rose Electric's on its lien claim, which is closer to \$0 than to \$65,094.52 claimed by Subcontractor. Per §29-5-10 and §29-5-20, Southern Produce and S2P are the prevailing parties, but the total cost and attorney fee award is limited to the amount stated in Rose Electric's notice and certificate of mechanic's lien of \$65,094.52. See, Mozingo & Wallace Architects, LLP v. Patricia Grand, 379 S.C. 478, 666 S.E.2d 267 (S.C. App. 2008); T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 450 S.E.2d 87 (S.C. App. 1994); Trico Surveying, Inc. v. Godley Auction Co., Inc. 314 S.C. 542, 431 S.E.2d 565 (1993).

Based on the Affidavits of counsel and the supporting exhibits, the amounts sought for attorney fees and litigation costs by Defendants Southern Produce and S2P are reasonable. The Defendants have submitted detailed Affidavits itemizing counsels' time and expenses defending the lien claims and the qualifications of counsel. The Court must consider the factors as set forth in Strickland v. Strickland, 376 S.E. 2d 268 (1989). Given the setoff from Plaintiffs award of \$17,703.63 of the Defendants fees and cost, Defendants are entitled to an award from Plaintiff Rose Electric. Plaintiff owes Defendant Southern Produce \$5,320.39¹ plus any further amount the Court finds Southern Produce owes S2P for attorney fees and costs.

Quantum Meruit & Unjust Enrichment

Plaintiff is not entitled to judgment on its alternative claims of quantum meruit or unjust enrichment. Quantum meruit, unjust enrichment and restitution are equivalent terms for equitable remedies for a contract implied by law or quasi-contract, as opposed to an expressed contract or contract implied in fact. Myrtle beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, at 8, 532 S.E.2d 868, at 872 (2000); Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). It is well settled that the equitable remedy of quantum meruit is not available if the services and materials for which the Plaintiff is seeking to recover are encompassed in an express contract or one implied in fact. Swanson v. Stratos, 350 S.C. 116, 122, 564 S.E.2d 117, 120 (S.C. App, 2002); Columbia Wholesale Co., 440 S.E.2d at 130-131 (1994). In this case the evidence clearly shows that Rose had an expressed contract with the general contractor for the scope of work it performed for which it seeks recovery of \$54,399.13 and had an expressed contract with Southern Produce for the upgrades/extras it requested for which Rose seeks \$10,755.39 making up the total mechanic's lien of \$65,094.52. This evidence of contract includes the fact that Plaintiff in Paragraphs 3, 10, 11, and 12 of the Complaint plead that it entered into a contract with the general contractor with the knowledge of Southern

Produce to perform work at the price sought in the lien. Defendants admitted the contract of Rose with Cooler Erectors and Plaintiff is bound by its pleadings. Further, Homer Rose testified that he had done two previous jobs as the electrical subcontractor for Cooler Erectors at the State Farmers Market prior to the Southern Produce job based on a handshake and he expected to be paid by Cooler Erectors, just as he had been in the other two jobs. This oral agreement was further evidenced by a written proposal (Plaintiff's Exhibit 14) and a series of written invoices to Cooler Erectors (Defendant's Exhibits 3, 4) and invoices to Cooler Erectors and Southern Produce (Defendant's Exhibits 5, 6, 7, 18 and Plaintiff's Exhibits 1 – 11). Rose testified and Dan Stocker of Southern Produce confirmed that Southern Produce requested the extras from Rose and agreed to pay for the same. Therefore, recovery under the theory of quantum meruit /unjust enrichment is not proper as the same are due under contracts.

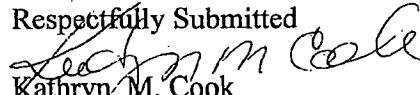
Assuming for the sake of argument that there was no contract encompassing the Plaintiff's claim for recovery, Rose, under the undisputed facts of this case, would still not be entitled to an award under quantum meruit. The elements of quantum meruit are: 1) a benefit conferred on the defendant by the plaintiff; 2) realization of that benefit by the defendant; and 3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. (Emphasis added) Earthscapes Unlimited, Inc. v. Ulbrigh, 390 S.C. 609, 703 S.E.2d 221 (2010); Columbia Wholesale, 440 S.E.2d 129 (1994); Shirley's Iron Works, Inc. v. City of Union, 387 S.C. 389, 693 S.E.2d 1 (S.C. App. 2009). The main focus of this inquiry is whether the enrichment to the owner is unjust. In claims of unjust enrichment by subcontractors, the Courts have typically denied recovery where the owner has paid on its contract with the general contractor. Columbia Wholesale, supra.; Shirley's Iron Works, Inc., supra; Myrtle Beach Hospital, Inc., supra. As in this case where Southern Produce has paid all but \$10,108.00 of the contract price for the services and materials provided, it is not unjust for it to retain the benefits as it has paid for them. To require Defendant Southern Produce to pay twice would be unjust. Southern Produce has offered to pay Rose for the extra of \$10,755.39 per its verbal contract and pursuant to S.C. Code Ann. §29-5-10 and Rose's prorate share of the remaining balance due Cooler Erectors per §29-5-20 of \$6,953.29, but Plaintiff has refused the same. Plaintiff has sought and is entitled to recover from Cooler Erectors for the full amount it claims under a theory of breach of contract of \$65,094.52 but not from Southern Produce

Conclusion

Plaintiff Rose Electric, Inc. is entitled to payment in the amount of \$65,094.52 and prejudgment interest from Defendant Cooler Erectors of Atlanta, Inc.. Rose is not entitled to recovery under its theories of quantum meruit or unjust enrichment as there is an expressed contract between Rose and Cooler that encompasses \$54,399.13 of Rose's lien claim and an expressed contract between Rose and Southern Produce encompassing the \$10,755.39 remainder of the lien. Plaintiff is entitled to recovery of \$17,708.68 from Defendant Southern Produce made up of \$10,755.39 for the extras requested by Southern Produce and \$6,953.29 representing 68.74% of the unpaid contract price owed under the Cooler Erector's contract with Southern Produce per S.C. Code Ann. §29-5-60. However, Defendants Southern Produce and S2P the prevailing parties under S.C. Code Ann., §29-5-10 and §29-5-20. Southern Produce is due an award of cost and

attorney fees for the defense of the lien claim of \$18,870.10 plus \$4,158.97 it has paid S2P's attorney and Defendant S2P is entitled to an award from Rose Electric of cost and fees it has not yet been paid. As a result of the set off of Defendants awards from the amount Southern Produce owes Rose Electric, the net result is Rose Electric owes Southern Produce \$5,320.39¹ and S2P is entitled to an award from Rose Electric for the balance of fees due its attorney.

Respectfully Submitted


Kathryn M. Cook
Cook & Roy, LLC

Attorney for Defendant Southern Produce, Inc.

Kcook@cookandroy.com

2/28/13

¹	\$18,870.10	Southern Produce Attorney Fees & Cost
	+ 4,158.97	S2P Fees paid by Southern Produce
	= \$23,029.07	
	- \$17,703.68	Amount owed Rose Electric by Southern Produce
	\$5,325.39	Net Judgment owed to Southern Produce by Rose Electric

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Rose Electric, Inc.,

Plaintiff,

vs.

Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC, Certified Development Corporation of South Carolina, Senn Bros., Inc., Custom Concrete of Lexington, Inc., and James Dunlap d/b/a Dunlap Services,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 11-CP-32-1929

**PLAINTIFF'S MOTION TO
ALTER OR AMEND ORDER
GRANTING JUDGMENTS TO S2P, LLC
AND SOUTHERN PRODUCE, INC.
AGAINST PLAINTIFF DATED
JANUARY 30, 2014, FILED
FEBRUARY 3, 2014**

The Plaintiff, Rose Electric, Inc., respectfully moves the Court under Rule 59(e), SCRCP, to alter or amend the Order dated January 30, 2014, granting judgments in favor of Southern Produce, Inc. and S2P, LLC.

I. WITH RESPECT TO THE FINDING THAT ROSE ELECTRIC IS NOT ABLE TO OBTAIN A JUDGMENT THAT SOUTHERN PRODUCE PAY ROSE ELECTRIC \$10,755.39 FOR THE CHANGE ORDERS.

The Plaintiff respectfully moves that this Court find that Southern Produce contracted for and owed Rose Electric the sum of \$10,755.39 for extra work authorized directly by Daniel Stocker who was an employee and the general manager of Southern Produce.

II. WITH RESPECT TO THE FINDING THAT THERE WERE ANY OTHER LIENORS FOR PURPOSES OF PRORATION OF THE RETAINAGE AMOUNT.

The Plaintiff respectfully moves that this Court find that at the time of trial there were no other lienors acquiring liens other than Rose Electric. There was no evidence

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presented by Southern Produce that there were any existing liens from which payment would be required for the cancellation of the liens.

III. WITH RESPECT TO THE FINDING THAT ROSE ELECTRIC IS NOT ENTITLED TO ANY PAYMENT FROM THE RETAINAGE AND THAT THE CORRECT RETAINAGE AMOUNT WAS \$10,108.

The Plaintiff respectfully moves that this Court find Rose Electric is entitled to the payment of the full amount of the retainage and that the retainage amount was \$21,108.

IV. WITH RESPECT TO THE FINDING THAT S2P, LLC IS ENTITLED TO ATTORNEY'S FEES AND COSTS FROM ROSE ELECTRIC.

The Plaintiff respectfully moves that this Court make a finding that S2P, LLC is not entitled to an award of attorney's fees and costs against Rose Electric.

V. WITH RESPECT TO THE FINDING THAT SOUTHERN PRODUCE AND S2P, LLC ARE ENTITLED TO INTEREST.

The Plaintiff respectfully moves that this Court make a finding that neither Southern Produce nor S2P, LLC are entitled to interest on the award of attorney's fees and costs. Rule 68, SCRCP, is not applicable. Also, S.C. Code §15-35-400 is not applicable.

VI. A CONTRACT WITH AN UNLICENSED GENERAL CONTRACTOR IS VOID AS AGAINST PUBLIC POLICY.

The Plaintiff respectfully moves that this Court make a finding that the fact that Cooler Erectors was unlicensed prevents Southern Produce from maintaining that it paid Cooler Erectors for the work.

VII. SOUTHERN PRODUCE DID NOT PAY THE GENERAL CONTRACTOR NAMED ON THE BUILDING PERMIT AND ON THE CERTIFICATE OF OCCUPANCY.

The Plaintiff respectfully moves that this Court make a finding that the fact that Cooler Erectors was unlicensed and that a different licensed company was named in

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the building permit and the certificate of occupancy means that it did not pay the general contractor.

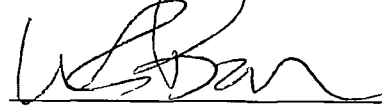
VIII. ROSE IS ENTITLED TO A JUDGMENT AGAINST COOLER ERECTORS OF ATLANTA, INC.

The Plaintiff respectfully moves that this Court enter a judgment against Cooler Erectors of Atlanta, Inc. in favor of Rose Electric, Inc. in the full amount due Rose Electric, Inc.

IX. CONCLUSION

For the foregoing reasons, the Court should alter or amend its Order.

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West Columbia, South Carolina
February 21, 2014

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State of South Carolina
County of Lexington

Court of Common Pleas

Rose Electric, Incorporated)
Plaintiff,)
v.) Transcript of Record
Southern Produce,) 11-CP-32-1929
Incorporated, et al.)
Defendants.)

February 13, 2013
Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

A P P E A R A N C E S:

William E. Booth, III, Esquire
Attorney for the Plaintiff

Kathryn M. Cook, Esquire
Attorney for Defendant Southern Produce

J. Robin Turner, Esquire
Attorney for Defendants Senn Brothers and S2P

Stacy L. Sheppard, RPR
Circuit Court Reporter

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1	E X H I B I T S			
2	NO.	DESCRIPTION	ID.	EVD.
3	P-1	Plans	37	39
4	P-2	Invoice	46	47
5	P-3	Invoice	48	48
6	P-4	Invoice	51	51
7	P-5	Invoice	51	51
8	P-6	Invoice	51	51
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E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
D-6	1/13/11 Invoice	92	92
D-7	Letter	98	98
D-8	1/6/11 Invoice	99	99
D-9	Contract Agreement	130	130
D-10	Plans	133	133
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1 (The following proceedings were held on
2 February 13, 2013.)

3 THE COURT: Are y'all ready?

4 MR. BOOTH: The plaintiff's ready, Your Honor.

5 MS. COOK: The defense, Southern Produce, is,
6 Your Honor.

7 MR. TURNER: And the defendant, Senn Brothers,
8 Incorporated and S2P, LLC, are likewise represented
9 and ready.

10 THE COURT: Do you need to make opening
11 statements or do you just want to get started with
12 the evidence?

13 MR. BOOTH: Your Honor, the plaintiff would
14 like an opening statement opportunity.

15 THE COURT: All right, sir.

16 MR. BOOTH: Thank you, Your Honor. Again, my
17 name is William Booth. I represent Rose Electric,
18 Inc., which is the plaintiff in this case.

19 May it please the Court. This action arises
20 from the construction of the new refrigerated
21 building used by Defendant Southern Produce for its
22 business operations and located within the new South
23 Carolina Farmers Market. The construction project
24 was a rush job because of the notice to vacate that
25 had been issued by the University with the deadline

1 of December 1, 2010, for the land on which
2 Southern's business was located at the time at the
3 old Farmers Market. Southern, my understanding,
4 processes fresh vegetables and fruit for sale to
5 wholesale produce distribution companies.

6 My client, an electrical contractor, has not
7 been paid anything for the work done by it at the
8 new building. The construction portion of the
9 project was completed in less than 30 days during
10 November of 2010, with the building permit being
11 issued on November 2 and the certificate of
12 occupancy being issued on November 30. The value of
13 the work done by Rose Electric is \$65,000 and that
14 is the amount we will ask the Court to award my
15 client, Rose Electric.

16 Now, the building in question is located on
17 land owned by another defendant in this case, S2P,
18 LLC, and is next door to another business known as
19 Senn Brothers Produce, again, at the new Farmers
20 Market. My understanding, that Southern sells its
21 processed produce to Senn Brothers. Now, again,
22 it's my understanding that the owners of Senn
23 Brothers, the company, the business, and the owners
24 of S2P, LLC, the titleholder, are the same.

25 We expect the evidence will show that Southern

1 did enter into a written contract with a company
2 called Cooler Erectors of Atlanta for acting as a
3 general contractor for this project. And we believe
4 the evidence will show that payments were made to
5 Cooler.

6 I believe the evidence will also show that
7 Cooler Electric Erectors -- excuse me -- Cooler
8 Erectors was not licensed at the time to act as a
9 general contractor in this state, and, in fact,
10 Cooler used a licensed contractor to pull or get the
11 building permit.

12 I expect Southern will present evidence that it
13 was not aware that it was hiring an unlicensed
14 contractor, but we believe the evidence will also
15 show that Southern did not exercise good judgment of
16 not checking to see if Cooler was licensed, did not
17 look at the building permit that had a different
18 name on it and did not notice a different
19 contractor's name on the placard that's placed at a
20 construction site where you do see who the general
21 contractor is.

22 Now, at the beginning of the project, Rose
23 Electric was asked by Cooler and the person at
24 Cooler, you'll hear his name, Morris Teasley, to do
25 all the electrical work for this project, but no

1 written contract was ever entered into with Cooler
2 for this work. In fact, Rose Electric was never
3 asked to submit a proposal with pricing before the
4 work began, I assume because it was a rushed job,
5 but was only told that the entire job had to be
6 finished by the end of November.

7 Initially, Rose Electric was given a set of
8 detailed electrical drawings done by an electrical
9 engineer, and based on those drawings, Rose Electric
10 did a takeoff so the materials could be purchased.
11 The materials in this case total almost \$40,000.

12 Within a few days, Rose Electric had mobilized
13 its workers and began work, again, to meet this very
14 -- beat this deadline because of the quick nature of
15 the project. Even during this time period, again,
16 mainly November of 2010, Rose Electric hired
17 additional workers through a staffing service. And,
18 also, I believe -- I was told that the workers even
19 worked on the day after Thanksgiving again to meet
20 that deadline.

21 Now, on many occasions, Judge, Southern dealt
22 directly with Rose Electric for making critical
23 changes to the specifications done by the electrical
24 engineer and for adding new features. We expect
25 that the evidence will show that Southern does not

1 dispute the need for such changes nor the
2 authorization for the general manager to direct Rose
3 Electric to directly -- direct Rose Electric to make
4 these changes, nor do we think the evidence will
5 show that they dispute the amount that Rose Electric
6 says is associated with that type of work or that
7 area of work.

8 But Southern has not paid or tendered payment
9 to Rose Electric for even this work that it admits
10 was ordered directly by its general manager and
11 apparently has refused payment for this many years
12 unless Rose Electric, at the same time it got its
13 payment, released or releases Southern for any other
14 remaining amount due, which we think was a mistake
15 as far as paying my client at least that much money.

16 Now, during the trial, we expect Southern
17 Produce to argue and present evidence that the
18 contract with his unlicensed contractor was paid in
19 full except for the amount held from the final
20 progress payment relying on SC Code Section 29-5-40.
21 We believe the amount withheld was \$10,200. We also
22 understand that Rose Electric is the only party or
23 only other contractor seeking payment for the work
24 at the building.

25 To counter, Your Honor, we will argue that the

1 statute that they're relying upon only applies if
2 the owner pays a licensed general contractor, a
3 licensed one for the State of South Carolina, or
4 pays the contractor named on the building permit.
5 This argument is supported by the many changes made
6 to South Carolina law during the last several years
7 for the purpose of making sure that only licensed
8 contractors do general contracting work in South
9 Carolina.

10 For example, these statutory changes, one of
11 which requires, in the filing of a mechanic's lien
12 notice, that the actual license number of the
13 contractor be placed on the document or it can't be
14 filed. Secondly, there was another statutory change
15 that really codified a previous case or previous
16 case law which prevents an unlicensed contractor
17 from going into court to seek either enforcement of
18 his contract or even the payments due the
19 contractor. So we have those new statutory changes
20 which show a policy of not allowing general
21 contractors to be -- work here without licenses.

22 Now, to recover for the work done, Rose
23 Electric has filed and seeks payments under causes
24 of action against Southern Produce as a tenant and
25 SP2 {sic}, LLC, as a landlord and owner of the real

1 property. These causes ask this Court for an
2 equitable remedy. The lack of a written contract in
3 many instances of authorization and consent given
4 directly from the owner are relevant to support
5 these causes of action.

6 Another fact in this case supporting these
7 causes of action of the equitable relief we're
8 requesting includes Southern not immediately paying
9 for the work it requested directly from Rose
10 Electric for the changes made from the original
11 specifications.

12 And, Your Honor, without going into too much
13 detail about case law right now, there is a couple
14 of cases fairly recent that deal with quantum meruit
15 and deal with the issues that we've got here. I
16 think the case that sort of is very relevant is a
17 case called Earthscapes Unlimited, Inc. versus
18 Ulbrich. That's spelled U-l-b-r-i-c-h.

19 Now, that dealt with a claim by a landscaper to
20 be paid, and his suit ended up being directly
21 against the homeowner. The subcontractor, the
22 landscape subcontractor, was awarded the full amount
23 that he sought. In that case, like this one, the
24 homeowner had paid the general, as he argued, for
25 the landscaping work, as well as the other money

1 owed the contractor for the building of his new
2 home.

3 But here's what's significant about that case:
4 The homeowner dealt directly with the landscaper on
5 many occasions for making changes. Just looking at
6 the case, it was extra work. The homeowner wanted
7 installation of drainage for water runoff, including
8 additional plant materials, the installation of a
9 well for yard irrigation.

10 Other cases that I'll, again, argue later
11 include Williams Carpet Contractors versus Skelly,
12 S-k-e-l-l-y, and there's another case, Stevens &
13 Wilkinson of South Carolina, Inc. versus City of
14 Columbia, both of those cases dealt with quantum
15 meruit.

16 So, Your Honor, we think the evidence will show
17 that my client should be awarded the amount or the
18 value of his improvement to this person -- these
19 defendants' real property and be able to recover the
20 money.

21 Now, just to clean up a couple of things: We
22 have a defendant, Senn Brothers, I think it's Inc.,
23 we will agree to have them or the pleadings amended
24 to delete them as a party, because, again, S2P, LLC
25 is the owner or the landlord and Senn Brothers,

1 Inc., it's my understanding, has no involvement in
2 the lease that exists between these two. And so we
3 will stipulate or agree that Senn Brothers, Inc. is
4 no longer a party in this case.

5 Now, the other party, Cooler Erectors, was
6 sued, but they have not appeared or participated and
7 I've not heard anything from them since we filed the
8 lawsuit a few years ago, so -- I've not put them in
9 default. I'm still expecting to do a regular
10 evidentiary trial to prove what we're owed, but, as
11 I said, our request would be based on equitable
12 remedies, which are against the, in this case, the
13 tenant and the owner of the real estate. So that'll
14 be our principal argument, Judge.

15 Any questions before I sit back down?

16 THE COURT: Was Cooler Erectors given notice of
17 this hearing?

18 MR. BOOTH: Yes, sir. I did send it to the
19 registered agent, yes, sir, I did.

20 THE COURT: Okay. Thank you.

21 MR. BOOTH: But that's the only person I know
22 that I -- is connected with it.

23 THE COURT: Does the defense wish to make any
24 opening statement?

25 MS. COOK: Yes, ma'am -- I mean, yes, sir.

1 I'll be brief. My name is Kathryn Cook. I'm from
2 Horry County. I go by the nickname Kif. So if you
3 hear somebody say Kif, that is me. I'm here with
4 Dan Stocker, who is the general manager of Southern
5 Produce.

6 There is much that Mr. Booth has said that we
7 don't disagree with, but there are a few important
8 factors that we do disagree with. First of all,
9 Your Honor, my client, Southern Produce, does lease
10 this space. And when it leased the space that is
11 the subject of this action, it was an unimproved
12 piece of property. They then entered into a flat
13 fee, turnkey contract with Cooler Erectors to do the
14 complete construction of the building.

15 Now, this is a processing center, which is, in
16 a sense, really just two giant coolers. It is not a
17 particularly complex construction project like I'm
18 used to down at the beach where we're dealing with
19 condominiums, but what is important is at the time
20 of the contract that my client entered into with
21 Cooler Erectors, the reason my client knew about
22 Cooler Erectors was because that contractor was on
23 site at the South Carolina State Farmers Market
24 doing work for Senn Brothers and other leaseholders
25 and building owners on the Farmers Market that were

1 building similar type operations.

2 In fact, the way, it is our understanding and
3 from the testimony of the plaintiff in this case,
4 that my client even knew who was doing the
5 electrical work after the fact was that Rose
6 Electric, prior to taking this job with Cooler
7 Erectors to be the electrical sub on this job, Rose
8 Electric had acted as the subcontractor for Cooler
9 Erectors on at least three jobs prior to this job at
10 the Farmers Market and was doing and undertaking
11 another job fairly simultaneously, and that went on
12 after the Southern Produce job out at the Farmers
13 Market.

14 We would -- and we'll put into evidence the
15 plans for the building. And this -- when I say it
16 was a turnkey job, it was for a contract price of
17 113,000 -- excuse me -- \$213,385. I don't think
18 anybody is going to dispute that my client, Southern
19 Produce, the tenant, has paid \$203,277 of that total
20 contract price to Cooler Erectors. That leaves a
21 balance due under the contract to Cooler Erectors of
22 \$10,103.

23 The turnkey project was for Cooler Erectors to
24 obtain all permits, conduct with and in conjunction
25 with the Lexington County Building Department, all

1 inspections to final CO and punch list. It included
2 having the plans drafted, which included the
3 structural, electrical, HVAC and plumbing plans,
4 which were included in the contract price.

5 The date of the plans issued were October 9th,
6 2010. It will be shown in evidence that these plans
7 were in the possession of Rose Electric before they
8 took on the role as subcontractor to do the work
9 outlined in those plans and that Southern -- and
10 that Rose Electric then produced a proposal to
11 Southern Produce -- excuse me -- to Cooler Erectors
12 to do the total job as outlined in the plans as a
13 subcontractor in the figure of approximately
14 \$55,000.

15 They then began work or, simultaneously, they
16 began work on the job. We don't dispute that the
17 majority of the job was from the concrete being laid
18 to the CO being issued, taken care of, in about 30
19 days, but, as I said, it's two big coolers.

20 The evidence will show that all of the invoices
21 of Rose Electric during construction and shortly
22 thereafter when their scope of work had finished,
23 were from Rose Electric to Cooler Erectors, that it
24 was not until February, Your Honor, of 2011, this
25 job having been completed at the end of November of

1 2010, that Rose Electric began to look to my client,
2 Southern Produce, for payment. We don't dispute
3 that, as far as we know, Rose Electric has not been
4 paid for the work that it did on this job. However,
5 I think it is also undisputed that my client has
6 paid for all the work done on this job other than
7 \$10,000.

8 Your Honor, after Rose Electric's scope of work
9 was completed in November, late November, early
10 December of 2010, my client did directly hire Rose
11 Electric to perform some work for it at the same
12 site to the tune of 1,800 and some odd dollars. We
13 directly hired them to do that work. We -- they
14 performed that work. They invoiced us for that work
15 because we are the ones who contracted for that work
16 and we paid for that work.

17 Your Honor, I think the evidence will show you
18 that this contact during construction that my client
19 had with Rose Electric had to do with some very
20 minimal changes to their contract scope of work with
21 Cooler Erectors as the electrical contractor, such
22 things as changing some fittings from regular metal
23 to stainless steel. Of the \$65,000, Your Honor,
24 that Rose Electric claims in this action it is due,
25 \$10,755.39 allegedly, according to Rose Electric,

1 are for these extra change orders that they say my
2 client hired them to do. The balance -- so about
3 \$55,000 of the amount of the 65 that they seek.

4 And to be exact, Your Honor, pursuant to a
5 letter from Rose Electric to Cooler Erectors on
6 February 16th, 2011, Cooler Erectors itself says,
7 \$54,339.13 is the amount of our cost for contract
8 work. States in that letter that the change order
9 work is \$10,755.39.

10 So of the \$65,000, Your Honor, the evidence
11 will show Rose Electric claims about \$10,000 of it
12 being as change order work that they say my client
13 requested and \$55,000 of it has to do with its
14 subcontract with Cooler Erectors.

15 Your Honor, I take issue with a second thing
16 that Mr. Booth said. The evidence will show that
17 there are and have been more than one claim by one
18 subcontractor in this matter. It's undisputed that
19 \$10,108 was withheld from the total \$213,385 due
20 under the turnkey contract with Cooler Erectors.
21 But of that amount, there was a lien claim by Custom
22 Concrete for \$14,529.20. There was a claim and a
23 mechanic's lien by Dunlap Services, which was the
24 plumbing subcontractor, Your Honor, for \$10,210.93.
25 And then there was this claim by Rose Electric for

1 \$65,094.52.

2 Your Honor, what that boils down to is there
3 was approximately \$90,000 in unpaid claims by
4 subcontractors against Cooler Erectors and my client
5 on this job. The exact number, Your Honor, is
6 \$89,834.65.

7 Your Honor, according to the lien statute --
8 and this case genesis is by way of a mechanic's lien
9 filed by Rose Electric in March of 2011, for the
10 \$65,000. At that time, it was the last of the subs
11 to file the claim; Custom Concrete and Dunlap
12 already having filed. At that time, Your Honor,
13 this \$90,000 was owed.

14 According to case law and to our statutes,
15 specifically 29-5-40 which deals -- is the
16 mechanic's lien statute dealing with subcontractors,
17 the prorated share of Rose Electric's amount that
18 had left to be paid under this turnkey contract was
19 72.46 percent. Now, that is if you use the total
20 amount of the \$65,000, Your Honor, 55 of which is
21 under its subcontract and 10 of which is under these
22 change orders. I believe, to be fair, that you've
23 got to take that \$10,000 out.

24 And my client, the evidence will show, doesn't
25 disagree and has never disagreed with paying Rose

1 Electric for part of those \$10,000 in change orders.
2 We just have a difference of opinion on two items as
3 how much they should cost. So we have, at all
4 times, been ready, willing, able and have done
5 offers of judgment that are filed with the court to
6 pay \$7,500 of that amount.

7 And so, really, under the contract and the case
8 law and the statutes, the percentage of the amount
9 of the contract prices, the 55,000 that Rose
10 Electric is due under its contract with Cooler
11 Erectors, it's prorated percentage of that amount is
12 68.71 percent. Custom Concrete's would be 18.37
13 percent and Dunlap 12.92 percent.

14 Your Honor, under the statute and even before
15 the foreclosure action was filed under the
16 mechanic's lien, after the mechanic's lien was filed
17 but before the foreclosure action, we did an offer
18 of judgment and a Rule 68 offer offering the 68.71
19 percent plus 7500 of the 10,000 in change orders.

20 But Your Honor will see that we've done two
21 other supplemental subsequent offers of judgment
22 under the statute and under Rule 68 where we upped
23 that amount to \$18,000. And, Your Honor, what that
24 would cover would be the percentage owed under the
25 contract plus the full amount of the change orders

1 as valued by plaintiff all to no avail.

2 Your Honor, case law is clear that in order to
3 recover under theories of quantum meruit and/or
4 unrich enjustment -- unrich -- unjust enrichment --
5 excuse me, I just flew in from Miami yesterday, Your
6 Honor, I'm sorry -- that those remedies are only
7 available, Your Honor, if there is no contract. In
8 this case, there is a contract.

9 But if Your Honor wants to consider the relief
10 sought under the equitable theories of unjust
11 enrichment and quantum meruit, the factors and
12 elements of quantum meruit and unjust enrichment are
13 benefit conferred to the defendant by the plaintiff,
14 don't dispute it, Your Honor, a realization of that
15 by the defendant, don't dispute it, Your Honor. The
16 key to the equitable relief sought here is retention
17 by the defendant of a benefit under conditions that
18 make it unjust to retain that benefit without paying
19 its value.

20 Your Honor, my client has paid its value. My
21 client has paid all of the contract price to the
22 contractor other than \$10,000 and offered to pay and
23 is still willing, as we stand here today, to pay all
24 of the extras claimed by the defendant. We have
25 paid the benefit.

1 Now, it has come to light after the fact that
2 Cooler Erectors wasn't a licensed contractor. My
3 client did not know that. My client only knew that
4 Cooler Erectors was out on the Farmers Market
5 building all these buildings for Senn Brothers and
6 S2P -- or whatever that -- S2P, for Senn Brothers
7 and its lessees and that those lessees and Senn
8 Brothers also did not know that Cooler Erectors was
9 unlicensed.

10 But just like the landowner and my client
11 didn't know that they were unlicensed, Rose
12 Electric, whether it knew or it didn't know, had
13 been in the contracting business, the electrical
14 contracting business, as a sole proprietor,
15 Mr. Rose, for more than 30 years. And if my client
16 had a duty, which there's nowhere in the statutory
17 scheme or in case law that I can locate that places
18 any kind of duty on my client to only deal in a
19 mechanic's lien situation with a licensed
20 contractor, likewise Mr. Rose, who's in the
21 business, had the same opportunity and the same duty
22 to determine if the person or the entity it was
23 contracting with was licensed. And if he did or he
24 did not do that, he took the risk.

25 And, in fact, the evidence will show from

1 Mr. Rose that the last job Mr. Rose was working on
2 after the Southern Produce job and during the time
3 that he figured out he wasn't getting paid by Cooler
4 Erectors, he didn't finish that job out at the
5 Farmers Market.

6 And nobody disputes, my client doesn't dispute,
7 that Mr. Rose was not paid, but my client did pay
8 the contractor.

9 Mr. Rose still has an avenue to collect. He
10 has brought a breach of contract action in this case
11 against Cooler Erectors for the money that he is
12 owed. Cooler Erectors is a Georgia corporation.
13 They can't come into this court and defend because
14 they're not licensed, but Mr. Rose can get his
15 judgment and go to Georgia and execute on it.

16 Your Honor, it would be unjust if my client
17 were forced to pay twice for the work that it has
18 already paid for, which is all but \$10,000 of the
19 contract price. Your Honor, of that \$10,000,
20 however, my client has paid portions of that money
21 to the other claimants in this case and that amount
22 reduces the \$10,108 that has been paid -- that has
23 been reserved from what's owed the general
24 contractor to \$9,000 and some change.

25 Your Honor, we are sorry for Mr. Rose, but

1 Mr. Rose took a risk in dealing with Cooler Erectors
2 just like we did. We paid our money and we're very
3 sorry Cooler Erectors didn't pay Mr. Rose. And we
4 are ready, willing and able and have at all times
5 offered to pay the statutory percentage that is due
6 and the amount, the fair amount, of the extras that
7 Mr. Rose claims were done at the insistence of my
8 client.

9 THE COURT: Mr. Turner, do you want to say
10 anything?

11 MR. TURNER: Very briefly, Your Honor. Thank
12 you.

13 Throughout this case, I've represented Senn
14 Brothers, Incorporated, which is actually a produce
15 warehouse and distribution business, been in this
16 county and in Richland County, throughout this state
17 and the southeast for 60 some years, and also S2P,
18 LLC, which was an LLC that was set up just to
19 acquire the land at the new Farmers Market and it
20 did acquire the land in the new Farmers Market. And
21 Senn Brothers built a really nice facility on a
22 portion of that land.

23 Both of those companies that I represent were
24 named defendants in this lawsuit, but Mr. Booth has
25 this morning followed up on a statement he made to

1 me the other day that he would now dismiss this
2 proceeding as against Senn Brothers, Inc. And we
3 have no objection to being dismissed in that. And
4 from this point forward, I would only try to protect
5 the interest of S2P, LLC in this proceeding if it
6 please the Court and if it's not objected to by
7 counsel for Southern Produce.

8 MS. COOK: No objection from Southern Produce,
9 Your Honor.

10 THE COURT: All right. Go ahead.

11 MR. TURNER: We raised several defenses on
12 behalf of the landowner, one of which points out
13 that this large piece of land owned by the landowner
14 has a very large operation going with Senn Brothers,
15 and they've also got this little corner of the
16 property that they've leased to the defendant,
17 Southern Produce.

18 And Southern Produce has a different kind of
19 operation. It processes vegetables. Sometimes it
20 does that under a contract -- under a job invoice
21 and contract with my client, Senn Brothers, who's no
22 longer involved, and sometimes for other companies.
23 And sometimes it does things of its own instigation
24 and sells those -- sells those finished produce
25 products to other distributors or other buyers.

1 There is an arms length relationship between Senn
2 Brothers and Southern Produce.

3 Southern Produce has a ten-year leasehold to
4 that corner of the property. Southern Produce owns
5 the building that got built through the efforts of
6 Mr. Rose and others under this contractor, Cooler
7 Erectors, in Atlanta. And I can confirm that I was
8 involved with many of the construction jobs and many
9 of the land acquisitions at the Farmers Market for
10 the wholesalers. And Cooler Erectors of Atlanta did
11 a lot of those buildings. He came in, very
12 gregarious fellow, shook hands, undercut all the
13 bids, built the buildings and the last one to be
14 built had the big mechanic's lien problem as Your
15 Honor's probably seen in many developments and
16 unfortunately Southern Produce and Rose Electric in
17 this case.

18 One of the things that we've pointed out in our
19 answer is that the mechanic's lien statute, if we
20 get to the point where there's going to be a
21 foreclosure and sell of real estate, the statute
22 provides that the Court should actually partition or
23 sever so much of the real estate as is required to
24 satisfy the lien and not sell the entire, in this
25 case, four acres and several million dollars worth

1 of construction belonging to a company that's not
2 involved in this case now.

3 In the event that Your Honor gets to that
4 decision in this case, we would ask that you
5 consider partitioning a reasonable amount of this
6 land off containing the Southern Produce project and
7 allow it to be sold. And there will be testimony
8 that will show that it's worth plenty enough to pay
9 for any conceivable judgment it might have rendered
10 against it.

11 Also, my client having entered a lease with
12 Southern Produce, a long-term lease for this
13 particular piece of dirt, had a clause in that lease
14 preventing or forbidding Southern Produce from
15 allowing a mechanic's lien to be placed on that
16 property or if a mechanic's lien is placed on that
17 property, requiring that it be negotiated off or
18 bonded off immediately. That was not done in this
19 case and we pled that as an event of default under
20 the lease.

21 And as a result of that default, we believe
22 we're entitled to a reasonable indemnification of
23 defense costs and attorney's fees and any other
24 negative verdict that might come down to S2P in this
25 matter simply by the language of the lease, which

1 Your Honor will get later.

2 In addition, there is a clear provision in
3 there which provides that Southern Produce
4 will reimburse any of these defense costs, a whole
5 separate provision. And to its credit, to this
6 date, Southern Produce has been doing that. So we
7 would ask Your Honor, at the appropriate time, to
8 hear testimony as to what my client's losses are in
9 the matter and to award a judgment on the
10 cross-claim that's against Southern Produce.

11 Overall I think the statements of counsel are
12 very relevant, especially those of Ms. Cook. I
13 would point out to the Court that my own
14 distillation of what's going on here is that we've
15 got two separate cases, one's a mechanic's lien case
16 and the other is a quantum meruit case on these
17 changes. And the plaintiff would have the Court
18 blend those two so it becomes overall a quantum
19 meruit case when, in fact, it's not.

20 The case for the larger amount of money is
21 brought as a mechanic's lien case. The owners of
22 the enterprise and of the dirt are entitled to the
23 preventions and the protections of the mechanic's
24 lien act for having paid the contractor in full.
25 And the excess, the change orders, the things that

1 were not in the original contract, they can be
2 outside a mechanic's lien contract in my -- in my
3 naive analysis. Those things might be subject to a
4 strict enforcement for a quantum meruit, but not the
5 mechanic's lien contract damages. Those need to
6 stay where they are, inside the statutory scheme. I
7 appreciate it, Your Honor. Thank you.

8 THE COURT: All right. How many witnesses do
9 you plan to call?

10 MR. BOOTH: Three, Your Honor.

11 THE COURT: How long will the first one be?

12 MR. BOOTH: It will take at least an hour on
13 direct I'm sure.

14 THE COURT: Court's in recess for ten minutes.

15 (Brief Recess.)

16 THE COURT: Call your first witness.

17 MR. BOOTH: Thank you, Your Honor. We call,
18 first witness, Mr. Homer Rose. Mr. Rose, if you'll
19 come forward and bring whatever you need to and take
20 the position to be sworn in.

21 HOMER S. ROSE,

22 having been duly sworn, testified as follows:

23 THE CLERK: Have a seat, please, sir. When
24 you're comfortably seated, state your full name.

25 THE WITNESS: Homer S. Rose.

1 DIRECT EXAMINATION

2 BY MR. BOOTH:

3 Q Good morning, Mr. Rose. I want to first ask
4 you a few questions about your personal background
5 and your business before we get into the specifics
6 of this case. So make sure you're close to the mic,
7 make sure -- that was a test. You've got to say yes
8 or no to every question. Shaking of the head
9 doesn't work because the court reporter has to take
10 down testimony. So are you ready to begin?

11 A Yes, sir, I am.

12 Q That sounds good. All right, Mr. Rose, where
13 do you live currently?

14 A I live at [REDACTED] in Eastover,
15 South Carolina.

16 Q And what business are you in?

17 A Electrical contracting.

18 Q And what is the name of the company?

19 A Rose Electric, Incorporated.

20 Q And you remember -- are you the sole owner and
21 officer of that company?

22 A Yes, sir, I am.

23 Q Do you recall the date, the approximate date,
24 that Rose Electric came into existence?

25 A Approximately March of 1985, Rose electric was

1 incorporated as a business.

2 Q Let me ask you about your background. What
3 education do you have starting with high school?

4 A I graduated from Lower Richland High School as
5 a senior with a diploma. I left there, went into
6 the South Carolina Air National Guard. And at the
7 time, I had some night schooling with -- through
8 Midlands Technical College for electrical code and
9 electrical construction type work.

10 Q And anything else as far as formal education
11 beyond that?

12 A No, sir.

13 Q Mr. Rose, are you currently licensed to be an
14 electrical contractor in this state?

15 A Yes, sir. I'm licensed with the South Carolina
16 Licensing Board.

17 Q And what type of license do you have?

18 A We have a mechanical contractors license, which
19 is rated at EL-5, which is an unlimited rating.

20 Q Any other licenses or certifications?

21 A I hold a state masters electrical license. I
22 hold a city masters electrical card. I hold a
23 masters license for several other cities in the
24 state, which reciprocates from my state masters
25 license.

1 Q And about how long have you held that state
2 masters license for electrical contracting work?

3 A Twenty years.

4 Q Now, Mr. Rose, again, let me go back to your
5 business experience. What did you do, if anything,
6 before you founded Rose Electric?

7 A I worked for South Carolina Electric and Gas
8 for 21 years. I went to work for them in 1977. I
9 worked with them until 1998, at which time, Rose
10 Electric became a full-time business, which I worked
11 in and hired employees to work for me.

12 Q So that, again, is your full-time occupation
13 right now?

14 A Yes, sir.

15 Q Tell me again a little bit more about Rose
16 Electric. What type of business have they done over
17 the last ten years, for example?

18 A We primarily sought to do industrial work. We
19 worked for South Carolina Electric and Gas and
20 Fossil Hydro Plants. We worked for CMC Steel, an
21 industrial steel business. We worked for
22 International Paper Company doing industrial type
23 work in those plants. We also sought to do
24 primarily commercial work on military installations,
25 such as Shaw Air Force Base where we just completed

1 a renovation job there. We're presently working at
2 McEntire Air National Guard Base and McCrady
3 Training Center and Carps Hill Reservoir Base there.

4 Q All right. Now, without giving me too much
5 detail, what does an electrical contractor do on a
6 new building or a new construction job?

7 A We take plans and specs and install the
8 electrical, power, lighting, communications
9 according to what we see on the drawings.

10 Q Now, currently, how many employees, besides
11 yourself, does Rose Electric have?

12 A Seven.

13 Q All right. Let's go back ten years. What's
14 the highest number that you've had employed?

15 A We've had as many as 20.

16 Q And where is the main office or the
17 headquarters for Rose Electric?

18 A At 1421 VanBoklen Road, Eastover.

19 Q Now, I'm going to switch your attention to the
20 specifics of this case. I'll call it the Southern
21 Produce project or Southern Produce building as I go
22 through your questions. So are you ready to focus
23 on that?

24 A Yes, sir.

25 Q Now, let me just start at the beginning. When

1 were you first contacted about doing electrical work
2 for this new building?

3 A It was approximately the last week or the -- in
4 October of 2010 or the first week in November of
5 2010, somewhere in that range.

6 Q All right. And how were you contacted or who
7 contacted you?

8 A Mr. Morris Teasley with Cooler Erectors of
9 Atlanta.

10 Q And did you already know him at the time or his
11 company?

12 A Yes, sir, I did.

13 Q And how do you know him at the time?

14 A We had been hired by Mr. Teasley to do some T
15 and M work, make some improvements on the Hook
16 building and the Senn building where the previous
17 contractor had not completed the job. We were
18 introduced to him by Mr. Mike Hutchins. And we went
19 through that building and had a punch list of
20 completions that needed to happen to get his
21 contract with Hook and Senn completed.

22 Q All right. Let me slow you down a minute. You
23 used the term and phrase T and M. Tell me what that
24 means.

25 A On a time and material basis. When we have

1 jobs that we don't know necessarily what the scope
2 of work may be, we go in on an agreement to work
3 based on the amount of time that the electricians
4 put in it along with the cost of the material.

5 Q Okay. Give me a breakdown for those two cases
6 you mentioned about what your cost or charges were
7 and about how long were you working?

8 A I don't recall exactly how long we were there
9 and exactly what the charges were. I know we were
10 probably there at least three or four weeks making
11 improvements and finishing the work that had been
12 incompleted and correcting some incorrect work.

13 Q Again, prior to the Southern Produce job, prior
14 to when you were contacted for that job, had you
15 done any other work for Mr. Teasley or for his
16 company, Cooler Erectors?

17 A Following the Hook building and the Senn
18 buildings, we moved over to a building that was
19 called Rabon Tomatoes and I gave Mr. Teasley a
20 proposal to do that work. He agreed upon it and we
21 completed that building 100 percent before we went
22 to the Southern Produce building.

23 Q All right. Now, we've heard mention made of
24 Cooler Erectors or Mr. Teasley not being licensed
25 as, I guess, a general contractor in this state. Do

1 you recall that comment?

2 A I recall the comment.

3 Q Okay. So from your viewpoint when you were
4 doing business with him or his company, did you know
5 at that time whether or not he was licensed as, I
6 guess, a general contractor in this state?

7 A I did not know that.

8 Q All right. And -- but Mr. Teasley or his
9 company he's working for, somebody else, the owner,
10 for example; correct?

11 A Yes, sir.

12 Q Now, you are licensed, as the licenses that you
13 mentioned, what are the annual requirements that you
14 have to satisfy to maintain your license for your
15 particular area?

16 A Every two years we have to furnish the South
17 Carolina Licensing Board with an audited -- I lost
18 my words.

19 Q Financial statement?

20 A An audited financial statement to prove our
21 credibility to them that we deserve to have the
22 license status that we carry.

23 Q All right. Knowing what you know now about
24 Cooler and Mr. Teasley, would you have done any work
25 for him at that time about him not being licensed?

1 A I don't think that I would have.

2 Q And why would you probably not have done the
3 work if you would have known that at the time?

4 A I'm not accustomed to working for contractors
5 not licensed in the State of South Carolina.

6 Q Okay. Now, moving back to the Southern Produce
7 building, what information were you given at the
8 beginning in order for you to determine what work
9 needed to be done?

10 A I was given a set of drawings.

11 Q Deal with it more specific. What type of
12 drawings?

13 A They were architectural drawings showing the
14 electrical work to be put into the building.

15 Q Do you have a full sized copy of those plans
16 with you?

17 A Yes, sir, I do.

18 Q All right. Show them to me again, just open
19 them up.

20 A (Witness complies.)

21 Q And then I'd like you to look at this document,
22 which I'll identify in just a minute with an exhibit
23 number.

24 (Plaintiff's Exhibit Number 1, plans, marked
25 for identification.)

1 Q Now, I want you to help me look at this smaller
2 size version, which I'll ask you, is this smaller
3 size version the same as the full version you have
4 in front of you?

5 A (Witness reviewing document.)

6 MS. COOK: Your Honor, do you mind if I step up
7 just a minute.

8 BY MR. BOOTH:

9 Q Can you answer the question?

10 A Yes, sir, that appears to be the same drawing.

11 MR. BOOTH: Go ahead, Ms. Cook. You want to
12 look at these?

13 MS. COOK: I just wanted to know if they had
14 any writing on them or if they're -- Your Honor, I
15 don't know if I have any objection, but I would like
16 noted for the record that the three pages that Mr.
17 Rose is looking at -- it's always good to see a
18 fellow Diamond Hornet since I graduated from there
19 too -- do have some writing on them, Your Honor,
20 that are not in the condensed size or on the Exhibit
21 1 that has been marked by Mr. Booth.

22 THE COURT: Is there an issue I need to rule
23 on?

24 MS. COOK: No, sir. There's no objection, but
25 just for the record so that the record will be

1 clear, that the set that Mr. Rose is looking on have
2 some handwritten adaptations that the actual exhibit
3 marked to be introduced do not have on them.

4 THE COURT: All right.

5 MR. BOOTH: Your Honor, I'll place in front of
6 you the reduced company.

7 THE COURT: Mr. Turner, do you have an
8 objection to entering this in the record?

9 MR. TURNER: I do not, Your Honor.

10 THE COURT: Madame Court Reporter, mark Exhibit
11 1 in the record, please.

12 (Plaintiff's Exhibit Number 1, plans,
13 admitted into evidence.)

14 BY MR. BOOTH:

15 Q Mr. Rose, I know we have the reduced version,
16 but I ask you to refer to your regular size version
17 as I ask you a few questions. Now, there was a
18 comment made about some sort of writing on the set
19 you got. Can you explain what that writing is?

20 A Yes, sir. What I see is some personal notes
21 that I made when I was doing the takeoff, and we had
22 some notes that were made for changes that developed
23 during the actual construction and probably some
24 addition -- I see some additions as well.

25 Q In view of that, I don't mind you working with

1 the reduced size, I just thought it would be easier.
2 You did look through the reduced size, that contains
3 no extra notes or annotations; correct?

4 A No, sir, no extra notes.

5 Q So anything written on there would be something
6 you could look at to refresh your recollection?

7 A Yes, sir, that's correct.

8 Q So keep them open because I want to ask you a
9 few questions. I just thought it would be easier
10 with the full size. Looking at Plaintiff's Exhibit
11 1, even though your full size is not the exhibit,
12 but it's basically the same thing, first of all,
13 tell me about these plans. What have they -- it's
14 been introduced into evidence so you can talk about
15 them. Who did these plans for the electrical work?

16 A Electrical engineer, Mr. L. Gene Clark, which
17 is a professional engineer.

18 Q So you had nothing to do with the original
19 design; correct?

20 A No, sir.

21 Q And, again, these plans were given to you by
22 Mr. Teasley?

23 A Yes, sir.

24 Q All right. During the course of construction,
25 did you have to install or make any modifications

1 that are not shown on these plans?

2 A Yes, sir, we did.

3 Q All right. And who instructed you to make
4 those changes?

5 A Sir?

6 Q Who instructed you to make those changes?

7 A Some of the changes we made on our own because
8 of the situation in the building. Some of the
9 changes were instructed for us to make by Mr. Dan
10 Stocker, who was acting as the Southern Produce
11 representative at the time.

12 Q All right. Let's get back to Mr. Stocker. I
13 believe his name is spelled S-t-o-c-k-e-r. How was
14 Mr. Stocker involved in this project from your
15 recollection?

16 A He was on the site on a regular basis as the
17 building went up and assisting the superintendent
18 for the general contractor to ensure that they
19 received what they needed in their buildings, the
20 way I see it.

21 Q Okay. Now, during the course of construction,
22 did you have a full-time engineer on site working?

23 A I did not have an engineer. I had a working
24 foreman.

25 Q I'm sorry. Working foreman. And who was that?

1 A That was Mr. Russell Frazee.

2 Q The last name is spelled F-r-a-z-e-e. Is that
3 the correct spelling?

4 A I think it's F-r-a-z-i-e-r.

5 Q Okay. We'll let him spell it when he gets up.
6 Now, did Mr. Frazee report to you during the course
7 of construction that changes had been requested?

8 A Yes, sir.

9 Q All right. Did you, yourself, deal with
10 Mr. Stocker directly with making some of these
11 changes?

12 A Yes, sir, he did.

13 Q Let's talk about the category of changes called
14 disconnects for just a minute, all right. Was that
15 an area that was changed from these original plans?

16 A Yes, sir, it was.

17 Q And what was done differently as far as
18 disconnects are concerned from the plans that you
19 have here?

20 A On the original drawing, it stated that the
21 terminations for the equipment would be hard wired.
22 Mr. Stocker made the request that some of the
23 equipment not be hard wired, that there be stainless
24 steel disconnects installed ahead of the primary
25 line or head of the machine. And there was some

1 request that some, what we call, Cannon plugs be
2 installed so that the equipment could be easily
3 disconnected and moved.

4 Q All right. And from his point of view or from
5 what you know about their business and their
6 equipment, why would that be necessary, those
7 changes you just mentioned?

8 A Most of which I think for cleaning purposes
9 and, as far as the stainless steel disconnects,
10 because of the corrosive atmosphere.

11 Q All right. So there are two different types of
12 disconnects that you can put in?

13 A Yes, sir, there are.

14 Q Explain those two differences.

15 A Well, there's actually three. One would be a
16 NEMA 1 which qualifies for indoor and non-wet
17 locations. NEMA 3R is actually a standard metal
18 disconnect, which is rated for outdoor use and wet
19 locations. And a stainless steel disconnect is
20 rated for corrosive environments.

21 Q And why would the stainless steel be better to
22 use in this case?

23 A I think probably because of the cleaning
24 solutions they had to use to wash down equipment.
25 I'm not totally familiar with what their procedures

1 are.

2 Q So you're just saying that it would last longer
3 I guess?

4 A Yes, sir.

5 Q Now, just quickly looking at the plans, where
6 on the plans, what page and what part of the plans
7 say how the equipment is to be wired that you were
8 just talking about?

9 A That's on plan number E2 in the fixture
10 schedule.

11 Q All right. E2, of course, in this case is page
12 two because there are three pages. And fixture
13 schedule is set forth on that page; correct?

14 A Yes, sir, that's correct.

15 Q Just find one place on there where it does
16 specify the type of wiring. Just read it for me off
17 the plan, just read it.

18 A On equipment number 28, for instance, it says,
19 Connection. In that column, it says, Hard wire
20 junction.

21 Q All right. Now, going from hard wire
22 connection to stainless steel disconnects, is that
23 an upgrade of what is specified here?

24 A Yes, sir, that's an upgrade.

25 Q And I assume by upgrade, you mean it costs more

1 than doing a hard wire?

2 A Yes, sir.

3 Q Is there any equipment, extra equipment, you
4 have to buy?

5 A A stainless steel disconnect.

6 Q That's a piece of equipment or some electrical
7 equipment; right?

8 A Yes, sir.

9 Q So about how many did you have to buy to
10 replace what is specified as hard wire?

11 A I would have to look back at my change order to
12 see how many they requested. I can't recall the
13 exact number.

14 Q All right. Let me -- now, you mentioned change
15 orders. What is that exactly?

16 A That's a request of the general contractor or
17 the owner of the building to do something outside of
18 what has been specified on the original drawings.

19 Q All right. Now, at the time of the request for
20 the change, did you put anything in writing at that
21 time?

22 A No, sir.

23 Q Did you give Mr. Stocker a price for the
24 upgrade?

25 A No, sir.

1 Q Did he ask for a price?

2 A Not that I recall.

3 Q All right. Did the company called Cooler
4 Erectors, Mr. Teasley, say anything about doing this
5 upgrade directly to you?

6 A No, sir.

7 Q So the only communication you had was between
8 Mr. Stocker and yourself or Mr. Freeze {sic}; right?

9 A Yes, sir.

10 Q Now, I show you a couple of documents. Let me
11 start with this one first.

12 MR. BOOTH: I would like this marked for
13 identification as Plaintiff's Exhibit 2.

14 (Plaintiff's Exhibit Number 2, invoice,
15 marked for identification.)

16 Q All right. I now show you what's been marked
17 for identification as Exhibit 2 and ask if you can
18 identify it?

19 A Yes, sir. That is a change order for
20 installing stainless steel disconnects.

21 Q And does this have a price on it?

22 A Yes, sir, it does.

23 Q And what is that price?

24 A \$3,091.89.

25 Q And what is this particular invoice dated?

1 A February 10th, 2011.

2 Q Has this been paid?

3 A No, sir.

4 Q In looking at the bottom left-hand corner, does
5 it identify who ordered the work?

6 A Yes, sir.

7 MR. BOOTH: That's all right now. I'd like to
8 offer this into evidence as Exhibit 2.

9 THE COURT: Any objection?

10 MS. COOK: No objection, Your Honor.

11 MR. TURNER: No, sir.

12 THE COURT: Mark that in evidence, please,
13 ma'am.

14 (Plaintiff's Exhibit Number 2, invoice
15 admitted into evidence.)

16 BY MR. BOOTH:

17 Q Is this the same disconnect work that you were
18 talking about a few minutes ago?

19 A Yes, sir, it is.

20 Q So, again, going back to your electrical plans,
21 that change order or that work that you did changed
22 these specifications?

23 A Yes, sir.

24 MR. BOOTH: Now, we'll mark the next exhibit as
25 Plaintiff's 3.

1 (Plaintiff's Exhibit Number 3, invoice,
2 marked for identification.)

3 Q And, again, just identify it first. Just
4 identify that particular document, Exhibit 3.

5 A That's a change order for installing more
6 stainless steel disconnects.

7 Q And what price is on that?

8 A \$1,514.28.

9 Q And has Rose Electric been paid for that?

10 A No, sir.

11 MR. BOOTH: We offer this into evidence as
12 Plaintiff's Exhibit 3.

13 THE COURT: Any objection?

14 MS. COOK: No objection, Your Honor. And, I
15 mean, Mr. Booth can try his case how he wants to,
16 but, I mean, we have offered to pay these change
17 orders.

18 MR. TURNER: No objection, Judge.

19 (Plaintiff's Exhibit Number 3, invoice,
20 admitted into evidence.)

21 MR. BOOTH: I didn't know that.

22 THE COURT: She said it in opening statement,
23 but I don't know the case, you all know the case.
24 I'm sitting here trying to figure out why I need to
25 know all this stuff, but I'm listening.

1 MR. BOOTH: The only thing, again, of course
2 we're on the record and I just want to talk a
3 minute, these change orders add up to the \$10,000
4 that are different from the retainage amount or the
5 amount that wasn't paid to the general. And I
6 recall her saying that they didn't -- they said that
7 was not something that they had authorized for my
8 client to do directly and that's what I remember
9 from the opening and that's the way the case has
10 been given to me or at least shown to me by opposing
11 counsel, so that's why I'm going through this.

12 THE COURT: Again, I don't know the case. I
13 would not -- even if I did, I would not pretend to
14 tell you how to try your case. You put up the case
15 as you want.

16 The reason I said what I said was what I heard
17 in opening statements, there's no question that the
18 work was done, there's no question that the work was
19 done properly, there's no question that it was
20 excessive. Y'all have a legal issue that I think
21 I'm going to have to address or legal issues I'm
22 going to have to address.

23 But if I need -- if there are equitable things
24 that I need to have factual information about or
25 there are other matters that are in dispute, again I

1 don't pretend to know the case. If they quit giving
2 us 5500 cases a year to decide, maybe I would be
3 able to get more prepared before a case, but my
4 experience has been that's usually a waste of time
5 because so many of them settle or get continued. So
6 I show up. I depend on the attorneys, and I have
7 fine attorneys here, and I'm going to listen. So go
8 ahead. You prepare your case. You do it any way
9 you want to.

10 MR. BOOTH: Yes, sir. I'll be glad to take a
11 few minutes break and just see if she will admit or
12 say that these are change --

13 THE COURT: I'll be happy to let y'all do
14 anything -- if you think it'll help you. I don't
15 want to do anything to hinder you. We're in recess
16 for about five -- you just let me know when you're
17 ready.

18 MR. BOOTH: Yes, sir.

19 THE COURT: Sir, during this break, you're
20 permitted to step down if you like, you can stay
21 there if you like, but you cannot discuss your
22 testimony with anybody, all right. Thank you, Mr.
23 Rose.

24 We're at ease.

25 (Brief Recess.)

1 (Plaintiff's Exhibit Numbers 4 through 10,
2 invoices, marked for identification.)

3 MR. BOOTH: During that break, counsel and I
4 went over these next several exhibits, we marked
5 them, and admission is agreed to. So I'll just
6 quickly go through the numbers. Exhibit 4 has got
7 the number on it 11020. Number 5 has the number on
8 it 11021. Number 6 has the number 11022 on it. And
9 Number 7 has the number 11025. Number 8 has the
10 number 11026. Number 9 has the number 11027.
11 Number 10 has the number 11028. Those have all been
12 agreed to, so we offer them into evidence.

13 MS. COOK: No objection.

14 MR. TURNER: No objection.

15 THE COURT: Do you have those in evidence,
16 Stacy?

17 COURT REPORTER: Yes, sir. Is Number 3 in?

18 THE COURT: Do you agree to 3?

19 MS. COOK: Yes, sir.

20 MR. TURNER: Yes, Your Honor.

21 THE COURT: 3's in evidence.

22 (Plaintiff's Exhibit Numbers 4 through 10,
23 invoices, admitted into evidence.)

24 BY MR. BOOTH:

25 Q Mr. Rose, I show you what we've put into

1 evidence. I'm just going to ask you a couple of
2 questions. These exhibit numbers that we just
3 introduced into evidence, do they contain more work
4 that was done by Rose Electric on this job?

5 A Yes, sir. This is change order work that was
6 done by Rose Electric.

7 Q And, again, just for clarification, that's work
8 that's different from or in addition to the work
9 that's shown on these plans?

10 A Yes, sir, that's right.

11 Q You can fold up the plans now.

12 A (Witness complies.)

13 Q Now, for those particular change orders that
14 have been put into evidence, has Rose Electric been
15 paid for those?

16 A No, sir.

17 Q And who or what company should be responsible
18 for payment?

19 A Southern Produce.

20 Q All right. Did you make a demand on Southern
21 Produce to pay those invoices?

22 A We sent them invoices by way of certified mail.

23 Q All right. And after you sent the certified
24 mail that you mentioned, you did not get payment?

25 A No, sir.

1 Q Do you recall what Southern Produce said about
2 not paying?

3 A At that particular time, I think they were
4 still in negotiations with Morris Teasley or with
5 Cooler Erectors over who was going to pay what.

6 MR. BOOTH: Now, let me mark this as next
7 exhibit for the plaintiff.

8 (Plaintiff's Exhibit Number 11, letter,
9 marked for identification.)

10 Q Again, I'll ask you to identify it first. Now,
11 looking at Plaintiff's Exhibit 11, just identify it,
12 don't read anything off of it yet, identify it by
13 what it is.

14 A This is a letter from the office of Rose
15 Electric, Incorporated with a list of change orders
16 that were performed at the Southern Produce
17 building. It says, Unpaid Invoices. And copies
18 were sent to Cooler Erectors of Atlanta, attention
19 Morris Teasley, and Southern Produce, attention Nate
20 Crocker.

21 Q All right. Now, attached to it is what?

22 A Attached to it is a copy of the certified mail
23 receipt that's been signed.

24 MR. BOOTH: We offer that into evidence.

25 THE COURT: Any objection to this?

1 MS. COOK: No objection, Your Honor.

2 MR. TURNER: No objection.

3 THE COURT: Mark that in evidence, please,
4 ma'am.

5 (Plaintiff's Exhibit Number 11, letter,
6 admitted into evidence.)

7 BY MR. BOOTH:

8 Q Looking at 11, the letter you described, does
9 it contain the detail of the particular change
10 orders that have already been put into evidence?

11 A Yes, sir. It has the complete detail of the
12 change orders that are put into evidence.

13 Q What is that total?

14 A Sir?

15 Q What is the total of the change order?

16 A \$10,755.39.

17 Q Okay. And, again, I'll ask you was that paid
18 by Southern Produce?

19 A No, sir.

20 Q But, again, just to make sure I understand,
21 back to the letter that you've got, who was
22 obligated to make that payment, in your opinion, of
23 the change orders?

24 A The change orders, Southern Produce would be
25 obligated to make that payment.

1 Q So you didn't expect to have Cooler Erectors
2 pay that?

3 A No, sir.

4 Q Now, this is a good time to ask you a couple
5 questions about how you worked on this job. First
6 question is, did you, your company, have a written
7 contract signed by the parties about you doing this
8 work and how much you agreed to charge and how much
9 you agreed to get paid?

10 A No, sir, we did not.

11 Q And I believe these service orders or invoices
12 that you have here don't have anybody's signature on
13 it; is that correct?

14 A No, sir, they do not.

15 Q So why did you begin this job without having a
16 written contract and the price agreed upon?

17 A We had previously done work for Cooler Erectors
18 of Atlanta. We had completed three jobs, all of
19 which we had been paid well. We had been paid on
20 demand. Within a day's notice, we had money that
21 was owed to us. This Southern Produce job was a
22 very fast track job and Morris Teasley came to me
23 and asked if we could perform the work in three
24 weeks and if we would do the job, and I agreed that
25 we would. No price was discussed.

1 Q All right. So the charges on these change
2 orders are charges that you came up with; is that
3 correct?

4 A They are charges based on time and material
5 that was put into them.

6 Q And, again, at the time Mr. Stocker told you to
7 do this work, he did not ask for a price for any of
8 these change orders?

9 A No, sir, not that I recall.

10 Q And do you think the price, the value, that you
11 associated with these change orders is customary and
12 reasonable for the work that you did?

13 A Yes, sir, they are.

14 MR. BOOTH: I have two photographs that I'd
15 like to have marked. The first one will be marked
16 as Exhibit 12. Then I'll have another photograph
17 marked.

18 (Plaintiff's Exhibit Numbers 12 and 13,
19 photographs, marked for identification.)

20 Q Mr. Rose, are you looking at the two
21 photographs?

22 A Yes, sir, I am.

23 Q And, again, identify what these photographs
24 show. Just identify what it is on the photograph.

25 A On one of the drawings, I see a 600 amp service

1 mass and meter that was designated on the drawings
2 to be installed on this building. On Exhibit 13, I
3 see disconnect switches, conduit and wire that was
4 designated to be installed per plans on this
5 building.

6 Q Is the picture a fair and accurate picture of
7 the particular places that you just mentioned?

8 A Yes, sir, it is.

9 Q You know that of your own personal knowledge?

10 A Yes, sir, I do.

11 MR. BOOTH: We offer these in, 12 and 13, in
12 evidence.

13 MS. COOK: Your Honor, I think a little more
14 background needs to be laid as to -- I object to the
15 authenticity at this time as to when these were
16 taken and who took them.

17 THE COURT: Do you have anything, Mr. Turner?

18 MR. TURNER: I have no objection to these
19 photographs being entered, Your Honor.

20 MS. COOK: And I may not have any if it can be
21 just a little further authenticated.

22 MR. BOOTH: Well, I asked him, I said, Is this
23 a fair and accurate representation of what the
24 pictures show or at least the pictures? And he
25 said, yes, he can say that of his own personal

1 knowledge. I don't think it's relevant or necessary
2 that I say, did he take the picture, as long as he
3 can testify that they're accurate.

4 THE COURT: You don't have to have him testify
5 who took the pictures, I agree with that. If
6 there's a dispute as to anything about the --

7 MS. COOK: I'll withdraw, Your Honor. That's
8 fine. No objection.

9 THE COURT: 12 and 13 are in evidence, Madame
10 Court Reporter.

11 (Plaintiff's Exhibit Numbers 12 and 13,
12 photographs, admitted into evidence.)

13 BY MR. BOOTH:

14 Q Now, let me just ask you one question about 13.
15 Is this part of the Southern Produce building that
16 was constructed?

17 A Yes, sir, it is.

18 Q And the other one, again, even though you
19 identified the electrical equipment, is that part of
20 the building?

21 A Yes, sir, it is.

22 Q Oh, let me ask you one more question: Going to
23 Number 12, looking at Exhibit 12, does it show a
24 disconnect to the disconnect type things you were
25 talking about before that are inside? Does that

1 show a disconnect?

2 A Yes, sir. There's a 30 amp disconnect switch
3 on the outside of the building serving the
4 condensing unit for the office air conditioning.

5 Q Okay. And I believe that's on the far
6 right-hand side of the picture?

7 A Yes, sir, that's correct.

8 Q But that was not stainless steel, is it?

9 A No, sir, that is not.

10 Q Now, at some point during the construction
11 work, did you put together some sort of proposal or
12 some sort of price for the work that you were doing
13 with respect to the original specifications?

14 A I'm sorry. I didn't hear all of what you said.

15 Q Some time during the construction time, did you
16 prepare a proposal that sets forth the cost for the
17 work that's related to the original?

18 A I did.

19 Q And was that proposal ever signed?

20 A No, sir, it was not.

21 Q Do you know why it wasn't signed?

22 A No, sir, I do not.

23 MR. BOOTH: I'll have this marked as the next
24 Plaintiff's Exhibit.

25 (Plaintiff's Exhibit Number 14, proposal,

1 marked for identification.)

2 Q Is that exhibit the proposal that I asked you
3 about?

4 A Yes, sir, it is.

5 Q And you prepared this?

6 A Yes, sir. It was prepared in my office by the
7 office manager.

8 Q And who did you give it to?

9 A Sir?

10 Q Who did you give this proposal to?

11 A This proposal was sent to Morris Teasley of
12 Cooler Erectors of Atlanta.

13 Q And, again, your testimony is that you never
14 got this back signed; is that correct?

15 A That's correct.

16 Q Now, look at the --

17 MR. BOOTH: So we offer this into evidence.

18 THE COURT: Any objection to this?

19 MS. COOK: No objection, Your Honor.

20 MR. TURNER: I don't think so, Your Honor.

21 Thank you.

22 THE COURT: Mark Number 14 into evidence.

23 Thank you.

24 (Plaintiff's Exhibit Number 14, proposal,
25 admitted into evidence.)

1 BY MR. BOOTH:

2 Q Looking at this Exhibit 14 now, the proposal,
3 how much is the amount there?

4 A \$56,488.07.

5 Q All right. And has any of that been paid?

6 A No, sir.

7 Q All right. And what's the date of this
8 proposal?

9 A November 24th, 2010.

10 Q All right. Before that date, had you given a
11 price to either Southern or to Cooler Erectors?

12 A No, sir, I have not.

13 Q On that date, November 24, what progress had
14 you made in doing the electrical work installation?

15 A We were probably 90 percent complete.

16 Q So up till that time, nobody had asked you to
17 present a price?

18 A No, sir.

19 Q So did you do this job without a written
20 contract?

21 A Yes, sir, I did.

22 Q Now, I next show you -- have you prepared a
23 summary or evaluation of all the work that you did
24 on this project? Have you prepared a evaluation of
25 all the work that you did?

1 A Yes, sir, I have.

2 MR. BOOTH: We'd like this marked as one
3 exhibit. It's all put together.

4 (Plaintiff's Exhibit Number 15, calculation
5 packet, marked for identification.)

6 Q Mr. Rose, is this the evaluation that you did,
7 the document you're looking at now?

8 A Yes, sir, it is.

9 Q Again, without going into too many details, did
10 you prepare this?

11 A Between myself and the office manager, it was
12 prepared.

13 Q All right. And without, again, going into
14 details, does the first page present a summary?

15 A Yes, sir, it does.

16 Q And every page after that, what is that
17 information?

18 A That's reinforcing documents for what you see
19 on the first page.

20 Q All right. And does this represent, in your
21 opinion, the fair value of the work that you did on
22 this project?

23 A Yes, sir. That's a very fair value of what we
24 did on the project.

25 MR. BOOTH: We offer this in evidence.

1 THE COURT: Any objection to this?

2 MR. TURNER: No objection.

3 MS. COOK: No objection.

4 THE COURT: Mark 15 in evidence.

5 (Plaintiff's Exhibit Number 15, calculation
6 packet, admitted into evidence.)

7 BY MR. BOOTH:

8 Q Now, looking at the first page of this exhibit,
9 tell me what you got at the top part.

10 A The top part is the time record for the
11 electricians that worked on the job, gives the week
12 in which the work -- the pay period in which they
13 were -- the hours were worked and work was
14 performed. It shows their rate of pay that was
15 charged, including the burden on each man's pay. It
16 gives a total of the amount that was paid out in
17 labor. It also has a statement for the temporary
18 employees that we had to use on the job due to the
19 fast track schedule of the job, shows there how much
20 we paid them.

21 And next is a reflection of all of the material
22 invoices that came from Shealy Electrical
23 Wholesalers, an itemized list of those, and has a
24 total amount with our markup for the total cost of
25 the material. And at the bottom, it has a total for

1 the job, including labor and material.

2 Q And that total is what according to this?

3 A \$65,094.52.

4 Q All right. Just referring to the other numbers
5 we put in, does this represent the total of all work
6 done?

7 A Yes, sir, it does.

8 Q So it's not broken down between what Southern
9 ordered versus what Cooler ordered?

10 A No, sir, it does not.

11 Q And I believe that number's also what you're
12 asking the Court to give you?

13 A Yes, sir, that's correct.

14 Q Now, have you had any communication from Cooler
15 Erectors or from Mr. Morris Teasley about paying any
16 portion of your charges?

17 A On January the 27th -- excuse me -- December
18 the 27th, 2010, I met with Mr. Morris Teasley at the
19 Southern Produce site and presented him with all of
20 the charges for work that we had done and questioned
21 him about our payment for what had been completed.

22 Q All right. And did he then meet with Southern
23 Produce people?

24 A I had met with them on the same day prior to
25 that.

1 Q All right. So what was -- was there any
2 dispute between Southern and Cooler about money?

3 MS. COOK: Your Honor, I'm going to object to
4 anything that he doesn't know of his own personal
5 knowledge that he was not involved in personally.

6 MR. BOOTH: I can ask him if he had any
7 discussions.

8 THE COURT: Rephrase your question.

9 BY MR. BOOTH:

10 Q Do you recall any discussion about Cooler and
11 Southern making the payment to your company?

12 MS. COOK: Your Honor, I think we would have to
13 have -- I'm going to object unless it's discussion
14 he would have had with someone with Southern who is
15 here, then -- because my objection would be hearsay
16 if it's other than a party that is here.

17 MR. BOOTH: I can rephrase it, Your Honor.
18 That's no problem.

19 THE COURT: Okay.

20 BY MR. BOOTH:

21 Q Let me rephrase it. Did you have any
22 discussion or did you talk with anybody from
23 Southern Produce, you see the two gentlemen, about
24 getting paid?

25 A I did. I sat with Nate Crocker and Dan Stocker

1 and made them aware that we had not been paid
2 anything for any of the work that had been
3 completed. And, at that time, they advised me that
4 they had paid out all of the money that they had
5 owed to Erectors of Atlanta.

6 Q At that time, did they mention they had held
7 back or retained some of the payment?

8 A Yes, sir, they did. They said they held 10,000
9 dollar retainers.

10 Q And did you have any discussions with him, at
11 that time, about getting paid for the separate work
12 that you did?

13 A No, sir, I did not.

14 MR. BOOTH: Your Honor, at this time, we're
15 going to just get some things into the record that
16 I'm not sure if they're going to be disputed. The
17 first thing I have is the actual filing of the
18 notice and the date it was filed. And I can put
19 that in if there's any dispute that we filed it
20 timely. Of course, you have 90 days.

21 MS. COOK: If I can see the notice of the
22 mechanic's lien, and it's a viable one, I'm sure
23 I'll have no objection.

24 (Pause.)

25 MS. COOK: No objection, Your Honor.

1 MR. BOOTH: So we have a stipulation that the
2 notice was filed within the 90 days. Is that okay
3 with you, Mr. Turner?

4 MR. TURNER: That's the one that's appended to
5 your summons and complaint?

6 MR. BOOTH: Right.

7 MR. TURNER: No objection.

8 MS. COOK: And it's -- are you making it an
9 exhibit or --

10 MR. BOOTH: No. If you don't dispute, it's
11 stipulated, I don't think --

12 MS. COOK: Well, I'll put it in, but I have no
13 objection, Your Honor.

14 THE COURT: Thank you. Within 90 days of the
15 last work done on the project?

16 MR. BOOTH: Yes, sir.

17 THE COURT: Go ahead.

18 MR. BOOTH: Of course, the date we filed the
19 complaint --

20 THE COURT: When you turn away from us, we
21 can't hear you.

22 MR. BOOTH: Sorry. My fault.

23 THE COURT: I think that's why he's asked you
24 to repeat questions. When you turn away, this room
25 is so big, it just eats up your voice.

1 MR. BOOTH: All right. Thank you, Your Honor.

2 BY MR. BOOTH:

3 Q Now, Mr. Rose, I'm going to ask some questions
4 about employing me as your attorney. First question
5 is did you hire me to be your attorney for this
6 collection case?

7 A Yes, sir, I did.

8 Q And with my hourly rate specified at 220?

9 A Yes, sir.

10 Q And have I provided to you detailed billing for
11 all of my work?

12 A Yes, sir, you have.

13 Q And you paid, I think, some of it; correct?

14 A Yes, sir, we've paid some of it.

15 Q So you're still obligated to pay me on the
16 hourly rate?

17 A Yes, sir, I am.

18 MR. BOOTH: Your Honor, we just offer my
19 affidavit in support of the request for attorney
20 fees. If we can do that now, I've got it ready to
21 be put in.

22 THE COURT: Any objection to this?

23 MS. COOK: Well, I haven't seen it, Your Honor.
24 Maybe if we could take a break, during the break,
25 and I can take a look at it, I might not have an

1 objection, but I just hadn't seen it.

2 MR. BOOTH: I suggest we just mark it for
3 identification. Then after we come back --

4 THE COURT: Mark it for ID.

5 (Plaintiff's Exhibit Number 16, attorney fee
6 affidavit, marked for identification.)

7 MR. BOOTH: Your Honor, that completes my
8 direct. I know he's still subject to cross, but I
9 subpoenaed the building official, Mr. Moore, who is
10 back there, and I would like to put him up for a
11 short testimony dealing with a couple documents from
12 the county records.

13 THE COURT: Is there any objection to taking
14 the witness out of order?

15 MS. COOK: No, sir, Your Honor.

16 MR. TURNER: None, Your Honor.

17 THE COURT: Mr. Rose, they want you to step
18 down. We'll take a witness out of order. The same
19 rule applies, you cannot discuss your testimony with
20 anybody during the time that you're off the stand
21 because they haven't had a chance to cross-examine
22 you yet. So if you'd step down, please.

23 Call your witness.

24 MR. BOOTH: Mr. Moore, Mike Moore.

25 THE COURT: Would you come up to the clerk,

1 please, sir?

2 MICHAEL MOORE,

3 having been duly sworn, testified as follows:

4 THE CLERK: State your full name for us,
5 please, when you're seated.

6 THE WITNESS: My name is Michael Moore.

7 DIRECT EXAMINATION

8 BY MR. BOOTH:

9 Q I always ask this: Where do you live?

10 A I reside at **REDACTED**, Lexington, South
11 Carolina.

12 Q Are you employed by the County of Lexington?

13 A I am.

14 Q And what is your position or title with the
15 county?

16 A I'm building official for the county.

17 Q How long have you held that position?

18 A Twenty-nine years.

19 Q Mr. Moore, as part of your job as building
20 official, does your department issue building
21 permits and certificate of occupancy permits?

22 A Yes, sir, we do.

23 Q And did you bring with you a building permit
24 for a Southern Produce building?

25 A The copies, yes, sir.

1 Q Let me see that, make sure...

2 A (Witness complies.)

3 MR. BOOTH: What I'm going to do is have this
4 marked as Plaintiff's Exhibit.

5 (Plaintiff's Exhibit Number 17, building
6 permit, marked for identification.)

7 Q Mr. Moore, you're looking at Exhibit 17 right
8 now. What is that? Can you identify it first?

9 A That is a building permit that was issued out
10 of our office.

11 Q And I believe it says, Issued by, at the
12 bottom. Do you see that?

13 A Yes.

14 Q Do you recognize that signature?

15 A Yes, I do.

16 Q Is that somebody in your office?

17 A Yes, that's my staff.

18 Q Okay. And is this for the building at 322
19 Little Chris Lane?

20 A Yes, sir, it is.

21 MR. BOOTH: Your Honor, we offer this into
22 evidence as the building permit issued by the County
23 with respect to the building.

24 THE COURT: Any objection to this?

25 MR. TURNER: I believe I will object, Your

1 Honor, as to relevance. It appears -- I don't
2 understand this totally, but it appears this is a
3 building permit for a structure that's not involved
4 in this litigation. Perhaps I don't understand.

5 THE COURT: Ms. Cook, do you have anything on
6 this?

7 MS. COOK: Your Honor, I'm not sure he's laid a
8 proper -- an in depth enough foundation.

9 MR. TURNER: That might help me too.

10 THE COURT: Do you want to be heard?

11 MR. BOOTH: Your Honor, I asked him if this was
12 the building permit issued by the County for the
13 property at 322 Little Chris Lane. His answer was
14 yes.

15 If this is not the Southern Produce building,
16 then they can certainly dispute that, but this is
17 the same permit number that applies to this
18 certificate of occupancy, which was produced to me
19 by counsel in production. So I have the certificate
20 of occupancy number that matches this number. So I
21 had him pull both. So I can do the certificate of
22 occupancy now for identification just to show the
23 tie in.

24 MR. TURNER: I withdraw my objection. Now that
25 my client's explained what this document is to me, I

1 withdraw my objection to it.

2 MS. COOK: No problem, Your Honor.

3 THE COURT: Both objections are withdrawn.

4 Mark 17 into evidence, please.

5 (Plaintiff's Exhibit Number 17, building
6 permit, admitted into evidence, and Plaintiff's
7 Exhibit Number 18, certificate of occupancy, marked
8 for identification.)

9 BY MR. BOOTH:

10 Q Looking at Exhibit 18, Mr. Moore, can you
11 identify what this document is?

12 A Yes, sir. This is a certificate of occupancy
13 issued out of our office.

14 MR. BOOTH: We offer that into evidence.

15 THE COURT: Any objection to this?

16 MS. COOK: No objection, Your Honor.

17 MR. TURNER: No objection.

18 THE COURT: Mark 18 in evidence, please, ma'am.

19 (Plaintiff's Exhibit Number 18, certificate
20 of occupancy, admitted into evidence.)

21 BY MR. BOOTH:

22 Q Just a couple more questions, Mr. Moore.
23 Looking at the building permit, what name is listed
24 as the contractor?

25 A The contractor of record was Mike Hutchins.

1 Q Do you know Mr. Hutchins?

2 A I'm familiar with him, yes.

3 Q And on the certificate of occupancy, it's got
4 the word applicant. Is that also Mr. Hutchins?

5 A Yes, it would be.

6 Q Now, on the job site itself, what information
7 should be displayed as far as who the contractor is
8 -- let me start over. I apologize. Now, I'm asking
9 you as far as notification or placards on the job
10 site, what information is put on the job site that
11 would identify the contractor?

12 A When the building permit is issued, in
13 conjunction with that, a building permit card is
14 also issued. And by ordinance, that card has to be
15 posted on the construction site somewhere in plain
16 view near the front of the property.

17 Q And I think you answered this, but just to make
18 sure. Would that placard or information say who the
19 general contractor is?

20 A Yes, it does.

21 MR. BOOTH: I think that's all I have of this
22 witness.

23 THE COURT: Cross.

24 *****

25 *****

1 CROSS-EXAMINATION

2 BY MS. COOK:

3 Q Mr. Moore, do you have any personal knowledge
4 about the Southern Produce building that was
5 construction at the Farmers Market from your
6 perspective as a county official?

7 A I'm not sure -- I mean, our office was involved
8 with all of the structures on that property. So, of
9 course, we did scheduling and, you know, permit
10 applications and so, yes.

11 Q Do you personally have any personal knowledge
12 or did you have any personal involvement with the
13 construction going on at the Southern Produce site?

14 A No.

15 Q All right. And in your office, once -- what
16 does your office do to ensure someone pulling a
17 permit is licensed if it is not the owner himself
18 that's pulling the permit?

19 A The contractor must present a license card
20 that's issued by the State of South Carolina at the
21 time the permit is actually physically issued.

22 Q And other than someone presenting that card to
23 show that they are licensed, does Lexington County
24 require anything or any proof that the person
25 pulling the permit, showing you that he's licensed

1 has a contract with or is, in fact, the contractor
2 who is acting as the GC on a commercial site?

3 A No, ma'am.

4 Q Okay. And you wouldn't do any field
5 investigation, going out there on site to see if
6 Mr. Hutchins or his company, who had the license and
7 pulled the permit, was actually the general
8 contractor on site doing the work and being paid by
9 the owner?

10 A No, ma'am, we would not.

11 Q Okay. Now, your department, though, would be
12 responsible for going out and doing whatever
13 inspections of the construction process were
14 necessary to assure that the codes were being met;
15 am I correct?

16 A Yes.

17 Q And your office did that?

18 A Yes.

19 Q Okay. And after doing that, that would have
20 been when your office would have issued the
21 certificate of occupancy; is that correct?

22 A Yes.

23 Q And I note that the building permit was pulled
24 or issued on November 2nd, 2010. And then according
25 to Exhibit 18, the certificate of occupancy was

1 issued on November 30, 2010; correct?

2 A Yes.

3 Q Okay. I'm from Horry County and I will admit
4 we do stuff crazy down there, but does Lexington
5 County require the general contractor pulling the
6 permit to list the major subcontractors he is using
7 on the job?

8 A The -- they're not required to list them. The
9 subcontractors pull separate permits under the
10 general contractor's number.

11 Q Okay. And, in this case, would Mr. Rose and
12 Rose Electric have pulled a permit through Lexington
13 County for this job?

14 A Yes.

15 Q Okay. And have you checked your records to see
16 if, in fact, that was done?

17 A I have not.

18 Q Okay. But he would have pulled that permit
19 under this permit, Exhibit Number 17?

20 A Yes.

21 Q Okay. Would the -- would Lexington County have
22 allowed construction work to -- or some level of
23 construction work or grading to have been done
24 before this permit was issued, Exhibit 17?

25 A Grading, yes.

1 Q Okay. So just because the building permit was
2 pulled on November 2nd, that doesn't mean that
3 that's exactly when work actually started. It could
4 have predated the actual building permit. Do I
5 understand correctly?

6 A That's correct, yes.

7 Q Okay. And when the CO was issued, November
8 30th, does that mean that the job is completely
9 finished or do you issue COs prior to complete
10 finishing of the job in terms of upfitting and
11 things of that nature?

12 A No. This would be for completion of the
13 building permit, the work outlined in that permit.

14 Q Okay. And what work would have been outlined
15 under the permit, Exhibit 17?

16 A It was for the new construction of a processing
17 building.

18 Q Would that have -- would that have meant that
19 the electrical work for that process -- that produce
20 processing structure would have been finished in
21 order for the certificate of occupancy to have been
22 issued?

23 A Yes.

24 MS. COOK: That's all the questions I have,
25 Your Honor.

MICHAEL MOORE - CROSS BY MR. TURNER

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1 THE COURT: Thank you.

2 Mr. Turner.

3 CROSS-EXAMINATION

4 BY MR. TURNER:

5 Q I have just one or two, Mr. Moore. As a
6 Lexington building official, can you tell me what
7 the main purposes are of posting the building permit
8 on site?

9 A Well, it's for identification, number one.
10 Number two, it establishes that the project is a,
11 for lack of a better word, a legally authorized
12 process or project.

13 Q When you say for identification, you mean
14 whoever wants to try to identify what's going on
15 there can do it through the number in contacting
16 your office?

17 A That's correct.

18 Q How does the information get on the building
19 permit pertaining to the TMS number and the owner
20 that's listed on this?

21 A There's an application that's filled out by the
22 applicant and that information is then transposed
23 from the application to the permit itself.

24 Q So, in this case, we would assume that the
25 applicant, being listed as Mr. Mike Hutchins, he

MICHAEL MOORE - REDIRECT BY MR. BOOTH

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1 informed you that S2P, LLC was the owner of the
2 project and gave you the TMS number?

3 A He would have. That's also verified before
4 it's put on the permit.

5 Q Verified that the two match?

6 A Yes.

7 Q Have you had any contact ever with, from your
8 recollection, with a company called Atlanta Cooler
9 Erectors, Incorporated?

10 A Not directly, I have not.

11 Q Or with a Mr. Morris Teasley?

12 A Not to my knowledge.

13 Q You don't know whether or not that person or
14 that company has any relationship, professional or
15 otherwise, with Mr. Mike Hutchins?

16 A I do not.

17 MR. TURNER: Thank you.

18 That's all I have, Your Honor.

19 THE COURT: Redirect.

20 MR. BOOTH: One minute, Your Honor.

21 (Pause.)

22 REDIRECT EXAMINATION

23 BY MR. BOOTH:

24 Q Mr. Moore, is there a sign on display in your
25 office where you get building permits concerning a

MICHAEL MOORE - REDIRECT BY MR. BOOTH

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1 licensed contractor pulling a permit for somebody
2 else?

3 A Yes.

4 Q What does that sign say; do you recall?

5 A It notifies the applicant that that's a illegal
6 practice under the license and laws for the state,
7 that anyone making an application must be properly
8 licensed.

9 MR. BOOTH: That's all we have, Your Honor, on
10 redirect.

11 THE COURT: Any recross?

12 MS. COOK: No, sir.

13 MR. TURNER: Nothing further, Your Honor.

14 THE COURT: Thank you, sir. You may step down.

15 MR. BOOTH: And also be excused?

16 MS. COOK: No problem, Your Honor.

17 MR. TURNER: No objection.

18 THE COURT: You're free to go, sir. Thank you.

19 All right. Mr. Rose, I need you back on the
20 stand, please, sir, and you're still under oath.

21 (Witness resumes the witness stand.)

22 THE COURT: Ms. Cook, do you have any questions
23 of the witness?

24 MS. COOK: Yes, sir. And, Your Honor, do you
25 mind if I stand back here? People usually don't

1 have a problem hearing me.

2 THE COURT: I don't mind at all.

3 CROSS-EXAMINATION

4 BY MS. COOK:

5 Q Good morning, Mr. Rose, or I guess it's
6 afternoon, Mr. Rose.

7 A Good afternoon.

8 Q I've got a few questions for you. Your counsel
9 talked about, but I don't believe he marked, the
10 mechanic's lien, the notice of the mechanic's lien
11 that you filed in this action. Do you recall hiring
12 Mr. Booth in order to assist you with the filing of
13 that mechanic's lien?

14 A Yes, I did.

15 Q Let me hand you what I have as a -- it's
16 entitled Notice of Mechanic's Lien. Take a look at
17 that, all the pages, and tell me if you can identify
18 it.

19 A Yes. It appears to be a mechanic's lien that
20 was filed against the piece of property where the
21 Southern Produce building now lies.

22 MS. COOK: Your Honor, I'd like to actually
23 introduce and mark as Defendant's Exhibit Number 1,
24 the Notice of Mechanic's Lien.

25 THE COURT: Is there any objection?

1 MR. BOOTH: None from the plaintiff.

2 MR. TURNER: No objection, Your Honor.

3 THE COURT: Mark it -- is there any need to
4 separate the defendants with the exhibits and just
5 mark it as Defendant's Exhibit?

6 MR. BOOTH: It will probably be better. I
7 think she's going to put in others.

8 THE COURT: I mean, is there any need to
9 separate the two defendants in the designations?
10 The record will reflect who will introduce it.

11 MS. COOK: It doesn't matter to -- whatever is
12 easiest for Madame Court Reporter. I have no
13 objection to them just being defendant's 1.

14 MR. TURNER: I agree.

15 THE COURT: Defendant's 1.

16 (Defendant's Exhibit Number 1, notice of
17 mechanic's lien, marked and admitted into evidence.)

18 BY MS. COOK:

19 Q Now, Mr. Rose, is that your signature on the
20 second page and the fourth page?

21 A Yes, that is my signature.

22 Q And if you look at the top of that document,
23 does it show that it was filed here in Lexington
24 County on March 4th, 2011? Look there at the very
25 top, I think it's the top -- the top right. Does it

1 show a filed date of March 4, 2011?

2 A That's correct.

3 Q Okay. Now, you testified earlier that you did
4 not have a written contract with Cooler Erectors for
5 performing the work at Southern Produce; correct?

6 A That's correct.

7 Q But you did have an agreement with them that
8 you would perform the work and they would pay you;
9 isn't that correct?

10 A That's correct.

11 Q Okay. And as part of that, you did provide a
12 proposal to Cooler Erectors for the work that you
13 were doing under -- per the plans after looking at
14 the plans, didn't you?

15 A That's correct.

16 Q Let me show you this document. It's entitled
17 Rose Electric Proposal. It has a date of November 8
18 -- excuse me -- November 24, 2010. Take a look at
19 that and tell me if you can identify it.

20 A That's a proposal that was provided to Cooler
21 Erectors of Atlanta, attention Morris Teasley, for
22 contract -- well, contract is not a proper term, but
23 a proposal to do the work at Southern Produce
24 building.

25 MS. COOK: Your Honor, I'd like to mark this as

1 Defendant's Exhibit Number 2.

2 THE COURT: Is there any objection?

3 MR. BOOTH: Your Honor, it doesn't make any
4 difference to me, but that's already in as
5 Plaintiff's 14. It's the same thing as Plaintiff's
6 14. I'll leave it up to Ms. Cook. I don't care
7 whether it has another number. I just point that
8 out.

9 MR. TURNER: Without objection.

10 MS. COOK: I couldn't find it, Your Honor. I'm
11 sorry.

12 THE COURT: Just go ahead and mark it.
13 Defendant's Exhibit 2, mark it as evidence.

14 (Defendant's Exhibit Number 2, proposal,
15 marked and admitted into evidence.)

16 BY MS. COOK:

17 Q And so am I correct that by the time you did
18 this proposal, November 24th, you had already looked
19 at all the plans and done your take off; correct?

20 A Correct.

21 Q And you had, in fact, almost finished the job;
22 isn't that right, Mr. Rose?

23 A That is correct.

24 Q Okay. And so, at that time, you had agreed
25 with Cooler Erectors to do the job. You almost

1 finished the job. And on November 24th, you said
2 you'd do the job for \$56,488.07; is that correct?

3 A That is correct.

4 Q Okay. Now, let me hand you this time a
5 document dated the same day, November 24, 2010.
6 It's entitled Rose Electric Service Invoice for
7 \$22,804. And tell me if you can identify that
8 document.

9 A I can.

10 Q What is that, sir?

11 A That's an invoice to Cooler Erectors of Atlanta
12 for work performed on the Southern Produce building.

13 Q And it's dated the same date as your proposal
14 there that we marked as Defendant's 3 {sic}?

15 A That's right.

16 MS. COOK: Your Honor, I'd like to introduce
17 this as Defendant's Exhibit Number 4.

18 THE COURT: Is there any objection -- is it 4
19 or 3?

20 COURT REPORTER: It will be 3.

21 MS. COOK: I'm sorry, 3.

22 THE COURT: Any objection to this?

23 MR. BOOTH: None, Your Honor, from the
24 plaintiff.

25 MR. TURNER: No objection, Your Honor.

1 THE COURT: Mark that as Exhibit 3, please.

2 (Defendant's Exhibit Number 3, invoice,
3 marked and admitted into evidence.)

4 BY MS. COOK:

5 Q I'm going to hand you back Defendant's 3. And
6 I'm going to hand you another document dated
7 December 9. It's a service invoice from Rose
8 Electric for \$41,226.49 and ask if you can identify
9 that?

10 A That's an invoice to Cooler Erectors of Atlanta
11 from Rose Electric for work performed at the
12 Southern Produce building.

13 MS. COOK: Your Honor, I'd like to introduce
14 that as Defendant's 4.

15 THE COURT: Any objection?

16 MR. BOOTH: None, Your Honor, from the
17 plaintiff.

18 MR. TURNER: No objection.

19 THE COURT: Mark it in evidence, please.

20 (Defendant's Exhibit Number 4, invoice,
21 marked and admitted into evidence.)

22 BY MS. COOK:

23 Q Now, Mr. Teasley -- excuse me -- Mr. Rose, if
24 you look at the invoice dated November 24, 2010, for
25 \$22,804 you gave, that is addressed to Cooler

1 Erectors; correct?

2 A I don't understand your question.

3 Q The invoice, the service invoice, Defendant's
4 Exhibit Number 3, you gave that to Cooler Erectors
5 expecting Cooler Erectors to pay you that \$22,804,
6 didn't you?

7 A That is correct.

8 Q And then Defendant's Exhibit Number 4, dated
9 December 9, 2010, for \$41,226.49, you gave that
10 invoice to Cooler Erectors expecting Cooler Erectors
11 to pay you that amount, didn't you?

12 A That is correct.

13 Q At that time, November 24 and December 9, did
14 you have any agreement with Southern Produce that
15 Southern Produce would pay you either of those
16 invoices?

17 A I did not.

18 Q And Cooler Erectors did not pay you either of
19 those invoices, did they?

20 A They did not.

21 Q And both of these invoices, Defendant's 3 and
22 Defendant's 4, they cover work, do they not, that
23 was within your agreement with Cooler Erectors, not
24 the extras that you testified, the 10,000 and some
25 odd change orders; is that correct?

1 MR. BOOTH: Your Honor, I would object. She's
2 stating in her question a fact that hasn't been
3 admitted by him, that is, they had an agreement with
4 Cooler Erectors for them to pay these invoices.
5 That was not his testimony earlier. So I would
6 object to the question because it states a fact that
7 hadn't been put in evidence by him.

8 THE COURT: Well, she asked him if it's correct
9 or not. He can say whether it's correct or not.
10 The objection is overruled. Go ahead, pose your
11 question again.

12 BY MS. COOK:

13 Q You did not have an agreement as of November
14 24th or December 9th, that Southern Produce would
15 pay you these amounts, did you?

16 A No.

17 Q And both of the -- the amounts set forth in
18 these invoices cover the work that you had agreed
19 with Cooler Erectors that you would perform; is that
20 correct?

21 A That is not correct.

22 Q Okay. What scope of work do these two invoices
23 cover, Mr. Rose?

24 A These two invoices exceed my proposal for the
25 original scope of work that was on the drawings for

1 \$56,488.07. These two invoices reflect an amount
2 somewhere in the neighborhood of \$64,000, which
3 would also include the change order work that was
4 requested by Southern Produce.

5 Q Okay. So you were looking to Cooler Erectors
6 to pay that?

7 A Yes.

8 Q And you were on site monitoring this job, this
9 Southern Produce job, the whole time; correct?

10 A I was not.

11 Q You had your foreman or superintendent there on
12 the job and that's the gentleman seated back here;
13 is that correct?

14 A That's correct.

15 Q Okay. And so any changes that are reflected in
16 the change orders we went through, that would have
17 come from my client, Southern Produce, through your
18 superintendent to you as to what they wanted to
19 upgrade; is that a fair statement?

20 A That is a fair statement.

21 Q Okay. And so you weren't there and you don't
22 know if any of these conversations about the
23 upgrades took place with your superintendent, as
24 well as a representative of Cooler Erectors, do you?

25 A The conversations were always communicated to

1 me by phone through Russell whenever they took place
2 and he asked me for permission to proceed.

3 Q Okay. Now, I noticed that on those two
4 invoices, Defendant's 3 and Defendant's 4, the
5 December 9th and the November 24th invoices, you've
6 got written on the top of them, Voided, or there is
7 written on the top of them, Voided; correct?

8 A That's correct.

9 Q Is that your handwriting?

10 A No. That's the handwriting of Kathy Simmons,
11 the office manager.

12 Q Why were these two invoices voided, if you
13 know?

14 A The invoices were generated on the request of
15 Morris Teasley for a division of work between the
16 office -- the work performed in the office area,
17 which would be your Exhibit Number 3, and the
18 difference of the work that was performed for
19 putting in the 600 amp service and the additional
20 work, which is on your Exhibit 4. I do not know why
21 he asked me to separate that work.

22 Q Out like that?

23 A Ma'am?

24 Q Okay. You don't know why it was asked that you
25 separate it out like that?

1 A No, ma'am, I do not.

2 Q Okay. Now, after you submitted those two
3 invoices, did you subsequently submit two more
4 invoices on January 13, 2011? And I'm going to show
5 you a Rose Electric invoice dated January 13, 2011,
6 for \$28,152.43 and another one dated the same date
7 from Rose Electric, but this one in an amount of
8 \$36,250.29.

9 A (Witness reviewing documents.)

10 Q Do you recognize those invoices?

11 A I do.

12 MS. COOK: Your Honor, I'd like to introduce
13 those as Exhibits 5 and 6.

14 THE COURT: Any objection to these?

15 MR. BOOTH: None, Your Honor.

16 MR. TURNER: No objection to that.

17 THE COURT: Mark those in evidence, please.

18 (Defendant's Exhibit Numbers 5 and 6,
19 invoices, marked and admitted into evidence.)

20 MS. COOK: So, Your Honor, for the record, we
21 have introduced into evidence as Defendant's Exhibit
22 Number 5, the invoice number 11007 in the amount of
23 28,152.43, that's 5. And 6 is invoice 11008 in the
24 amount of \$36,250.29, and that's 6, Your Honor.

25 BY MS. COOK:

1 Q Now, when you didn't get paid in November and
2 December from the two previous invoices, why did you
3 do two new invoices January 13th?

4 A As I read the description on Exhibits 5 and 6
5 that you just handed to me, I realize that the
6 statement that I made earlier about separating out
7 the power and lighting at the request of
8 Mr. Teasley, was not actually these invoices, but
9 these two invoices, which are Exhibit 5 and 6, and
10 these were -- again, I do not know why he made a
11 request for us to separate work out into different
12 portions. I understood it to be something to do
13 with the negotiations with the owner of Southern
14 Produce.

15 Q Okay. So let me see if I understand what
16 you're telling me. Exhibits 3 and 4 that we just
17 marked, the November 24 invoice and the January --
18 and the December invoice, those were not done to
19 break out the work as to the different locations.
20 They were done for what reason?

21 A I don't recall exactly and that's probably why
22 you see voided on them. They were voided.

23 Q Were they done as a result of a request from
24 Cooler Erectors?

25 A They were.

1 Q Okay. And then Defendants 5 and 6, when you
2 did these next set of invoices on January 13th, were
3 they done at the request of Cooler Erectors?

4 A That is correct.

5 Q Okay. And this time it's these two that were
6 done to break out the location of the work, the
7 warehouse space from the office space. Is that your
8 understanding?

9 A That's what it says on the invoice.

10 Q And if you add up the amounts on these two
11 invoices and the amounts on the previous two
12 invoices, they don't equal the same thing, do they?

13 A I don't have a calculator with me.

14 Q I've got one. In fact, they're different
15 amounts because Mr. Teasley asked you to do that;
16 isn't that right?

17 MR. BOOTH: Your Honor, the witness asked to be
18 able to run the calculator on those numbers, and I
19 think that's what he wants to do before she asks the
20 next question.

21 THE COURT: All right.

22 (Pause.)

23 BY MS. COOK:

24 Q They're not the same amount, are they,
25 Mr. Rose?

1 A I'm not finished.

2 Q Oh, I'm sorry.

3 A No, they are not the same amount.

4 Q Okay. And neither one of those amounts are the
5 same amount as you asked for in your mechanic's
6 lien, are they? You asked for \$64,091 and -- you
7 asked for 65,094 -- \$65,094.52. So none of those
8 amounts are the same, are they, sir?

9 A That is correct.

10 Q And by the time of January 13th, you'd finished
11 all the work, hadn't you?

12 A We had finished the work, but we were probably
13 still receiving material invoices.

14 Q And those amounts are also different from what
15 was marked in Plaintiff's Exhibit Number 2 -- excuse
16 me -- Defendant's Exhibit Number 2, which is the
17 proposal amount, the 56,488.07?

18 A The proposal amount does not reflect the cost
19 of the change orders.

20 Q Okay. By January 13th, when you submitted
21 these next two sets of invoices, you knew you were
22 one of the last subs that had not been paid by
23 Cooler Erectors; didn't you?

24 A I did know that.

25 Q And you were getting worried about being paid,

1 weren't you?

2 A Who would not?

3 Q And I don't blame you, but you were worried
4 about getting paid, weren't you?

5 A That is correct.

6 Q Okay. But as of January 13th, when you did
7 that next set of invoices, you didn't give those
8 invoices to Southern Produce, you gave them to
9 Cooler Erectors, didn't you?

10 A What was the date you gave me with that?

11 Q January 13th, those last two invoices, Exhibits
12 5 and 6.

13 A That's right.

14 Q Okay. You then did more invoices, didn't you?
15 You did more invoices in February, didn't you?

16 A I think you're referring to the invoices we
17 provided with the letters that we sent.

18 Q Yes, sir. I think we marked them, your counsel
19 did, as Plaintiff's 2 through 10. You did those
20 February invoices, February 10th, didn't you?

21 A That is correct.

22 Q And, again, those went to Cooler Erectors?

23 A These invoices went both to Cooler Erectors and
24 to Southern Produce.

25 Q They went to Southern Produce with a letter

1 dated February 16th that your counsel marked, didn't
2 they?

3 A Certified mail was signed by Southern Produce
4 on February the 17th.

5 Q And the letter's dated February 16th, isn't it?

6 A I don't know that.

7 Q Let me hand you, I think it's already been
8 marked into evidence, but let me show you, it's a
9 letter dated February 16, 2011, on Rose Electric
10 letterhead, and attached to that are a series of
11 invoices, and it's addressed to Cooler Erectors and
12 Southern Produce. Take a look at that and tell me
13 if you can identify it.

14 A That's correct. That is a letter with invoice
15 numbers, change order numbers and amounts owed to
16 Rose Electric addressed to Cooler Erectors of
17 Atlanta, attention Morris Teasley, and Southern
18 Produce, attention Nate Crocker.

19 MS. COOK: Your Honor, I'd like to introduce
20 that as Defendant's Exhibit Number 7.

21 THE COURT: Any objection?

22 MR. BOOTH: No objection. They're in evidence
23 under our exhibits, but that's fine.

24 MR. TURNER: No objection.

25 THE COURT: Mark it as Defendant's 7.

1 (Defendant's Exhibit Number 7, letter,
2 marked and admitted into evidence.)

3 BY MS. COOK:

4 Q Is that letter dated February 16th?

5 A That is correct.

6 Q Now, that letter that you sent, those
7 enclosures were with it, the February 10th invoices
8 that reflect all the change orders; isn't that
9 right, Mr. Rose?

10 A That's correct.

11 Q And isn't it correct that that's the first time
12 you wrote or submitted any invoices to my client to
13 pay dealing with the Cooler Erectors' scope of work?

14 A I can't say for sure that that's the first time
15 they saw invoices from Rose Electric.

16 Q But my question to you, sir, was that's the
17 first time Rose Electric sent invoices to Southern
18 Produce for the scope of work at Southern Produce;
19 isn't that correct?

20 A I do not recall that that is the first time.

21 Q Well, do you have any other documents, and let
22 me -- let me show you one thing. There was a
23 situation when Mr. Crocker of Southern Produce did
24 ask you directly to do some work for him, didn't he?

25 A That is correct.

1 Q Okay. Let me show you an invoice dated January
2 6, 2011, from Rose Electric to Southern Produce for
3 \$1,844.02. Do you recognize that, sir?

4 A I do.

5 Q And does that invoice reflect the scope of work
6 that Mr. Crocker asked you to do and that Rose
7 Electric did do?

8 A I don't know that Mr. Crocker requested it. I
9 think Dan Stocker requested work.

10 Q Dan Stocker, okay. And did you perform that
11 work?

12 A We did.

13 Q And did you get paid for that work?

14 A We got paid for that work.

15 MS. COOK: Your Honor, I'd like to introduce
16 this as Exhibit Number 8.

17 MR. BOOTH: No objection, Your Honor, from the
18 plaintiff.

19 MR. TURNER: Is that two pages?

20 MS. COOK: No, it is not.

21 MR. TURNER: No objection.

22 THE COURT: Exhibit 8 is in evidence.

23 (Defendant's Exhibit Number 8, invoice,
24 marked and admitted into evidence.)

25 BY MS. COOK:

1 Q And let me show you the bottom half of a check
2 and it's dated, the stub, 2/4/2011 for \$1,844.02.
3 You may or may not be able to identify the bottom of
4 that check.

5 A I don't recall seeing it.

6 Q Okay. Do you recall receiving a check from
7 Southern Produce for \$1,844 to pay that invoice?

8 A I know that we got paid for that invoice.

9 Q Okay. Other than the invoice, which is
10 Defendant's Exhibit Number 8, do you recall ever
11 sending any other invoices to my client before or
12 after that February 16th letter?

13 A Without reviewing my records, I cannot recall
14 what else may have transpired before or after this
15 letter.

16 Q Okay. After you sent out the February 16th
17 letter -- and let's take a minute and look at that.
18 The February 16th letter, you're outlining exactly
19 how much is owed for -- under the agreement with
20 Cooler Erectors for their portion of the job and
21 exactly how much is owed with regard to the change
22 orders. Is that a fair statement of what that's
23 saying in that letter?

24 A That's correct.

25 Q Okay. And after you sent that letter out, did

1 you have any discussions with Mr. Stocker of
2 Southern Produce about his questions or issues with
3 the amounts you were charging for the change orders?

4 A I do not recall that.

5 Q Well now, does that mean you didn't or you just
6 don't remember if you did or you didn't?

7 A I don't remember.

8 Q Okay. All right. That's fair. And do you
9 remember, after filing the mechanic's lien on March
10 4th, 2011, do you remember receiving a letter from
11 me that went to your attorney offering to pay
12 \$7,544.03?

13 A I do recall that.

14 Q And do you recall that letter basically being
15 that there was a disagreement with regard to my
16 client's willingness to pay the amounts you had for
17 the change orders?

18 A I don't remember the disagreement on the
19 amounts.

20 Q Okay. But after the lawyers got involved, is
21 it fair to say that, other than through documents
22 between the lawyers that we may have given to each
23 of you, there was no more communication between
24 yourself and Southern Produce, Rose Electric and
25 Southern Produce; is that fair?

1 A That's fair.

2 Q Okay. But you do know that prior to us coming
3 to court today, Southern Produce had offered you to
4 pay the full 10,000 -- the full \$10,755.39 for the
5 change orders. You're aware of that, aren't you?

6 A I understood that to be a settlement for the
7 full amount.

8 Q Well, in addition to that, you do know that my
9 client offered to pay a percentage of what you were
10 owed under your contract; is that correct?

11 A That is correct.

12 Q Now, you also were aware, even before you filed
13 the mechanic's lien, weren't you, that there were
14 other subcontractors on that Southern Produce job
15 that had not been paid by Cooler Erectors?

16 A That's correct.

17 Q And you don't dispute that Dunlap had been paid
18 in full, do you?

19 A I don't know anything about it.

20 Q Okay. There was talk around the Farmers Market
21 that Cooler Erectors wasn't paying its bills.

22 MR. BOOTH: Your Honor, objection.

23 THE COURT: What's your objection?

24 MR. BOOTH: Well, she just said there was talk
25 around the Farmers Market, that whatever, and I

1 don't think that's a question that he can answer
2 about what was going on as far as around the Farmers
3 Market. If he heard anything, that's fine, but that
4 question or, you know, what's the guy, you know,
5 what was being talked about within the market.

6 THE COURT: It's not a question. It's a
7 statement.

8 MS. COOK: I'll rephrase.

9 BY MS. COOK:

10 Q Did you talk with any other subcontractors and
11 learn that they weren't being paid on a Southern
12 Produce job?

13 A I did learn that some other subcontractors on
14 the Southern Produce job were not getting paid.

15 Q All right. And, in fact, had you agreed to do
16 another job in conjunction with Cooler Erectors?

17 A That is totally incorrect.

18 Q Oh, you had not agreed to do any work on the
19 Clayton Rawls' job?

20 A Not at all. I'm totally unfamiliar with that.

21 Q Okay. I'm sorry. Was the Rabon Tomato job --
22 you did the Rabon Tomato job for Cooler Erectors;
23 correct?

24 A We completed that job previous to going on the
25 Southern Produce job.

1 Q And then you worked for Cooler Erectors in
2 doing the Senn job that you testified about earlier;
3 is that right?

4 A That's correct.

5 Q And you worked for Cooler Erectors in doing the
6 Hook job?

7 A That is correct.

8 Q Okay. Had you talked with Cooler Erectors
9 about doing any other jobs for them after Southern
10 Produce?

11 A I did not.

12 Q Okay. Now, Mr. Rose, Plaintiff's Exhibit 15,
13 which is this -- I'm going to call it this
14 spreadsheet and then the backup documentation, when
15 did you prepare this? Was this prepared after you
16 filed the foreclosure action?

17 A I don't know the exact date it was prepared.

18 Q Well, you never provided this to -- Exhibit 15,
19 all this backup and this spreadsheet, you never
20 provided this before your deposition to Southern
21 Produce, did you? When I say this, Exhibit 15.

22 A No. Why did I have a need to?

23 Q Because you weren't doing the Southern Produce
24 job on a time and materials basis, were you?

25 A I don't understand your question.

1 Q Well, this wasn't a cost plus job for you, was
2 it?

3 A I'd offered a proposal for what was on the
4 drawings.

5 Q And you'd offered that proposal to Cooler
6 Erectors?

7 A That's correct.

8 MS. COOK: Your Honor, if you'd bear with me
9 just a minute.

10 THE COURT: Yes, ma'am.

11 (Pause.)

12 BY MS. COOK:

13 Q Mr. Rose, when did you first learn Cooler
14 Erectors wasn't a licensed general contractor?

15 A I think it was after we had filed the
16 mechanic's lien and I had conversations with Mike
17 Hutchins.

18 Q Okay. So it would have been some time after
19 March 4th, which is when the mechanic's lien was
20 filed?

21 A I think that would be correct.

22 Q Okay.

23 MS. COOK: Your Honor, that's all I have.

24 THE COURT: Mr. Turner.

25 MR. TURNER: Thank you, Your Honor.

HOMER S. ROSE - CROSS BY MR. TURNER

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1 CROSS-EXAMINATION

2 BY MR. TURNER:

3 Q Mr. Rose, I asked you some questions a while
4 back in a deposition we had. And without putting
5 those questions and everything into evidence, I'm
6 going to ask you basically the same questions right
7 now very quickly. You never had any conversations
8 with S2P or any of the S2P people about the Southern
9 Produce job, did you?

10 A I did at one point. When the job was complete,
11 I went to their office and explained to them that I
12 had not been paid for any of the work there and
13 asked if they could offer me any help.

14 Q And that was the first time you had talked to
15 anybody at S2P about the Southern Produce job?

16 A That's correct.

17 Q After it was over?

18 A That's correct.

19 Q Nobody at S2P ever promised to pay or get you
20 paid, did they?

21 A No, sir, they did not.

22 Q They never had any input in any of the change
23 orders that you picked up on that project, did they?

24 A No, sir, they did not.

25 Q Did they ever pay you anything by the way?

1 A Did --

2 Q S2P ever pay you anything or Senn Brothers pay
3 you anything in connection with this project?

4 A Towards this project?

5 Q Yes.

6 A No, they did not.

7 Q You never looked into -- what was written on
8 the posting with the building permit, you never
9 looked into those facts, did you?

10 A No, sir, I did not.

11 Q As far as you were concerned, when you did the
12 Southern Produce job, Southern Produce was the owner
13 of the job?

14 A Yes, sir.

15 MR. TURNER: That's all I've got for you. I
16 appreciate it.

17 Thank you, Your Honor.

18 THE COURT: Redirect.

19 MR. BOOTH: Thank you, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. BOOTH:

22 Q Mr. Rose, I've got just two or three areas I
23 want to get back to and the first one has to do with
24 adding up the numbers on these two sets of invoices.
25 My addition comes out the same, so if you'll look at

1 3 and 4.

2 A (Witness complies.)

3 Q If you'll find Exhibits 3 and 4. With that
4 calculator, if you'll run that total for me.

5 A 3 and 4 is \$64,402.72.

6 Q Now, look at Exhibits 5 and 6, and what's that
7 total?

8 A \$64,030.49.

9 Q So the difference is about how much?

10 A \$372.23.

11 Q But looking at these invoices, the set right
12 here and all the other sets, how did you determine
13 what the amount due was? Was it based on time and
14 materials on these invoices, all these invoices?

15 A That's correct. We can't call it time and
16 materials. We call it -- we run a cost analysis on
17 our job so that we can keep up with where we are,
18 that's the way we keep up with the material that's
19 been used on the job. It's similar to time and
20 material. But after we did the cost analysis,
21 that's where we ended up.

22 Q All right. Now, looking back at Exhibits 5 and
23 6, would you pull those back in front of you,
24 please?

25 A (Witness complies.)

1 Q All right. At the very top underneath the
2 address for Cooler Erectors, what words do you see
3 after that address?

4 A Copy to Southern Produce.

5 Q Is that on both Exhibits 5 and 6?

6 A It is.

7 Q All right. And what's the date of the invoice,
8 two invoices?

9 A January 13th, 2011.

10 Q All right. Were these two invoices copied to
11 Southern Produce at that time?

12 A That's what it says.

13 Q Okay. And this was about a month before the
14 letter was written; correct?

15 A Yes, sir.

16 Q Now, one last question about the invoices.
17 They're invoices that you generated, correct?

18 A My office manager generated the invoices.

19 Q Okay. The time you generated these invoices,
20 did you have any agreement with either Southern or
21 Cooler that this amount would be paid and agreed
22 upon by them?

23 A No, sir.

24 Q So you expected to be paid that amount?

25 A Yes, sir.

HOMER S. ROSE - RECROSS BY MS. COOK

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1 Q All right. And, of course, you've already
2 testified you weren't paid that?

3 A That's correct.

4 Q But there was no negotiations on any of these
5 invoices as far as you can recall?

6 A No, sir.

7 MR. BOOTH: Your Honor, that completes my
8 redirect.

9 THE COURT: Thank you.

10 Recross.

11 MS. COOK: Just one thing.

12 RECROSS-EXAMINATION

13 BY MS. COOK:

14 Q Those two January invoices that you reflected
15 showed that Southern Produce was copied in on that.
16 You don't know, do you, of your own knowledge
17 whether or not they were really sent to Southern
18 Produce, do you?

19 A If my office manager typed in, Copy to Southern
20 Produce, she sent it to them.

21 MS. COOK: Okay. Thank you, sir.

22 THE COURT: Recross.

23 MR. TURNER: I have to ask one more question.

24 *****

25 *****

HOMER S. ROSE - RECROSS BY MR. TURNER

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1 RECROSS-EXAMINATION

2 BY MR. TURNER:

3 Q You just testified that you expected to be paid
4 by Cooler Erectors and you had been paid by them on
5 other jobs. You testified to that also, didn't you?

6 A That's correct.

7 Q Was there any -- ever any friction between you
8 and Cooler Erectors on getting paid?

9 A No, sir, never.

10 MR. TURNER: Thank you.

11 THE COURT: Thank you, sir. You may step down.

12 All right. Ladies and gentlemen, I've got an
13 interview with a potential law clerk this afternoon
14 at 2:00, so I need to ask y'all to come back at
15 2:45, give me some time to talk to him.

16 All right. Court's in recess until 2:45.

17 MS. COOK: Your Honor, do you have any problem
18 with us being in here to organize?

19 THE COURT: No, I don't have any problem.

20 MS. COOK: Thank you, sir.

21 THE COURT: Whatever suits security, suits me.

22 (Whereupon, there was a luncheon recess.)

23 THE COURT: Call your next witness.

24 MR. BOOTH: Thank you, Your Honor. Russell
25 Frazee.

1 RUSSELL D. FRAZEE,

2 having been duly sworn, testified as follows:

3 THE CLERK: When you're comfortably seated,
4 state your full name for us.

5 THE WITNESS: My name is Russell D. Frazee,
6 F-r-a-z-e-e.

7 DIRECT EXAMINATION

8 BY MR. BOOTH:

9 Q Mr. Frazee, give us where you live.

10 A At **REDACTED** in Lexington, South Carolina.

11 Q And what do you currently do for a living?

12 A I'm an electrician.

13 Q And where do you work right now?

14 A Construct South.

15 Q You work where?

16 A At Construct South, Construction.

17 Q So the name of the company is Construct South
18 Company?

19 A Yes, sir.

20 Q Speak up, speak into the mic. Now, Mr. Frazee,
21 did you ever work for a company by the name of Rose
22 Electric?

23 A Yes, sir, I did.

24 Q And what years did you work there?

25 A I think in '09 and '010.

1 Q Say that one more time.

2 A In '09 to '010.

3 Q Now, you've been here today. You've heard this
4 case is about a building that was built for Southern
5 Produce. Do you understand that okay?

6 A Yes, sir.

7 Q And did you have any work responsibilities on
8 behalf of Rose Electric during the time that
9 building was being built?

10 A Yes, sir, I did.

11 Q And, again, what job responsibilities did you
12 have for that job?

13 A I was the foreman, electrical foreman on the
14 job.

15 Q And were you there most every day that work was
16 being done?

17 A Yes, sir, I was.

18 Q And do you recall those dates were pretty much
19 every day in November of 2010?

20 A Just about. We had, like, 30 days or so to
21 complete the job.

22 Q All right. And I'm not asking you the numbers,
23 but during that time, were there other employees of
24 Rose Electric there?

25 A Yes, there was.

1 Q But as far as your job there, you were the
2 contact for Rose Electrical?

3 A Yes, sir.

4 Q Now, during that time, did you meet a gentleman
5 named Dan Stocker?

6 A Yes, sir. He was the owner.

7 Q Say that again.

8 A He was the owner, I assume.

9 Q The owner, okay. And you recognize him here
10 today, right?

11 A Yes, sir.

12 Q Now, Mr. Stocker, how often did you see him on
13 the site during those days?

14 A Just about every day.

15 Q Now, during those days, did you and Mr. Stocker
16 ever talk about work on this job?

17 A Yes, sir, we did.

18 Q All right. Now, did those conversations
19 include any changes that needed to be made to the
20 project?

21 A Just about all of them were.

22 Q Okay. And did you -- do you have a good
23 recollection of what those changes were as we sit
24 here today?

25 A Yes, sir, I do.

1 Q Let me just go through a few of them. Let's
2 talk about the stainless steel disconnects. Do you
3 recall that change being requested?

4 A Yes, sir, I do.

5 Q And do you recall the change being requested
6 for Cannon style plugs?

7 A Yes, sir.

8 Q All right. So looking at Exhibits 2, 3 and 4,
9 does the work description there match what you
10 recall as part of what Mr. Stocker asked you to do?

11 A Yes, sir.

12 Q All right. Let's pull the first invoice. And
13 how is that referenced on that document you got?
14 You got a change order number?

15 A Change order number two?

16 Q Yes.

17 A Is install Cannon style plugs.

18 Q All right. And do you recall how many plugs
19 were changed?

20 A I think there was, like, seven or eight pieces
21 of equipment that was in there that we had to change
22 out.

23 Q Now, did Mr. Stocker specifically ask you to
24 change to the type plug called...

25 A Cannon style? Yes.

1 Q He did?

2 A Yes, sir.

3 Q And you remember that discussion?

4 A Yes, sir, because everything is hard wired and
5 all the equipment has plugs on it and it has to have
6 a plug where they can unplug it and take it out and
7 clean it.

8 Q Is that what Mr. Stocker told you as far as the
9 reason?

10 A Yes, sir.

11 Q And did you tell him that would be additional
12 work?

13 A Yes, sir.

14 Q All right. What was his response, if any?

15 A He said that's fine with him.

16 Q All right. And based on that conversation, who
17 did you believe would pay for that work eventually?

18 A I assumed the owner, him.

19 Q The owner, again, I know -- but that's Southern
20 Produce.

21 A Yes, Southern Produce.

22 Q No question in your mind?

23 A Not in my mind.

24 Q Now, let's quickly go to the next number, you
25 mentioned number 2. What's the next change order

1 number?

2 A Number five.

3 Q Number five. What do you recall about that
4 work?

5 A Change from hard wire to stainless steel
6 disconnects. The reason that was changed, again,
7 the machines had plugs on them and if you hard wire
8 them, you have to take the plugs off and you can't
9 move the machine if it's hard wired into the
10 induction box.

11 Q And who requested that you do that work?

12 A The owner, Southern Produce.

13 Q Mr. Dan Stocker again?

14 A Yes, sir.

15 Q All right. And did you understand that his
16 company, Southern Produce, would pay for that work?

17 A Yes, sir.

18 Q Now, let's move to the next one very quickly.
19 I don't want to take too much more time. What's the
20 next one there?

21 A Change order number six says, Install stainless
22 steel disconnects for equipment two and three. And
23 if I seen the blueprints and I've got my notes,
24 equipment two and three, change two stainless steel
25 disconnects on those two pieces of equipment for

1 him.

2 Q All right. And do you have anymore up there?

3 I think that's all of them.

4 A That's it.

5 Q Okay. I'm going to give you a couple more.

6 Now, I'm handing you Plaintiff's Exhibits 5 and 6.

7 Look at 5 first. Look at Exhibit 5, and what change
8 order number is that?

9 A Number three.

10 Q And what was that work?

11 A They added a hand wash heater circuit to a
12 station sink where the employees can wash their
13 hands and stuff.

14 THE COURT: Mr. Frazee, I have a real hard time
15 hearing you. Speak up for me, please.

16 THE WITNESS: I'm sorry, Your Honor. They
17 added hand washing heater stations for the employees
18 to wash their hands when they're handling this, you
19 know, all your produce and everything.

20 BY MR. BOOTH:

21 Q Okay. And was that hand washer inside the
22 cooler area?

23 A I believe it is.

24 Q All right. Now, again, did Mr. Dan Stocker ask
25 you to put in that new hand washer heater system?

1 A Yes, sir.

2 Q Now, the next exhibit is what or the next
3 change order number?

4 A Change order number four, relocate equipment
5 number 13 from inside the building to outside and
6 provide disconnect.

7 Q So what was going on there?

8 A We had to relocate -- it was an onion peeler is
9 basically what it is. And it was inside the coolers
10 and they put it outside. And we had to rewire the
11 whole thing for the weather proof disconnect
12 outside, change all the stuff from inside the cooler
13 to outside the building.

14 Q Okay. And, again, was that requested or
15 directed to do that by Mr. Dan Stocker?

16 A Yes, sir.

17 Q Now, I'm going to give you Exhibit 7, 8, 9 and
18 10. Start with Number 7. What change order number
19 is referenced there?

20 A Install five additional receptacles to inside
21 of cooler walls.

22 Q So what work was that?

23 A I think they had little small equipment that
24 they could plug in, you know, like shop vacs and
25 stuff to clean up inside the cooler and different

1 machines that they could plug up on, you know, 110
2 volts instead of having other equipment to run off
3 of 220.

4 Q Again, was that requested of Mr. Dan Stocker?

5 A Yes, sir.

6 Q What's the next change order?

7 A Install six additional receptacles in the
8 office area to include an additional circuit. We
9 had to add more receptacles inside each, each
10 offices, and I had to pull another circuit to
11 accommodate the load on the receptacles.

12 Q And, again, Mr. Stocker told you to do that?

13 A Yes, sir.

14 Q What's the next one?

15 A Install dedicated circuits to evaporators,
16 including the time clock and 12 volt contactor and
17 we had to add additional breakers in the rework.

18 Q All right. Any other explanation? Does that
19 say it pretty well or do you recall anything else?

20 A That's pretty much it. They put evaporator
21 coils inside the cooler and they weren't wired up so
22 we had to -- he wanted us to go ahead and wire them
23 up, hook them up to everything and put them on a
24 time clock and stuff and then they have to go
25 through a controller.

1 Q All right. Again, he being Mr. Dan Stocker?

2 A Yes, sir.

3 Q All right. What's the next one?

4 A Install one additional two-by-four length
5 fixture in the office area. They didn't have enough
6 light in one of the offices and we added another
7 light fixture in there.

8 Q The next one?

9 A I think we're back to square one.

10 Q Okay. All right. Again, just to wrap up, as
11 far as the ones you discussed and the information
12 you've given us, that was all requested by Mr. Dan
13 Stocker?

14 A Yes, sir.

15 Q And you understood that Mr. Dan Stocker's
16 company, Southern Produce, would pay for those
17 particular jobs?

18 A Yes, sir.

19 Q All right. Now, was there anybody else on the
20 site that you remember that was connected with this
21 company called Cooler Erectors?

22 A I think it was his son, Ben.

23 Q Do you remember his last name?

24 A I assume it was the same as his father's. I
25 always called him Ben.

1 Q All right. Well, just call him Ben then. Did
2 Ben, at any time, for any other work that you
3 described, come to you to have the work done?

4 A No, sir.

5 Q And was Ben aware that the work was being done?

6 A Yes, sir, he was aware.

7 Q All right. And each time you had a request
8 from Mr. Stocker, did you communicate that to
9 Mr. Rose?

10 A Yes, sir. I wouldn't do no work without his
11 approval.

12 MR. BOOTH: All right. Your Honor, that's all
13 the questions I have of Mr. Frazee.

14 THE COURT: Thank you.

15 All right. Cross-examination.

16 CROSS-EXAMINATION

17 BY MS. COOK:

18 Q Mr. Frazee?

19 A Yes, ma'am.

20 Q These invoices that Mr. Booth has just been
21 over with you, the change orders, did you have
22 anything with drafting them up?

23 A All I've got is what I wrote down.

24 Q But you didn't have anything to do with these
25 exhibits that you just went over?

1 A No, ma'am.

2 Q Did you have anything to do with the pricing or
3 the calculation of the amounts that are on these
4 invoices?

5 A No, ma'am.

6 Q And when Dan would talk with you about things
7 he wanted changed or added, did you tell him at that
8 time what the price was going to be?

9 A No, ma'am.

10 Q Did you know what the price was going to be?

11 A No, ma'am.

12 Q Okay. That wasn't within your scope of
13 responsibility?

14 A No, ma'am.

15 Q Okay. Now, when Mr. Stocker would talk to you
16 about changes or additions or things he wanted to
17 change, were there occasions when the three of you,
18 Ben, Mr. Stocker and yourself, were having
19 conversations about these changes?

20 A I can recall maybe once or twice Ben would be
21 there, but --

22 Q Okay. And were there occasions when
23 Mr. Stocker had talked with you about a change that
24 you then talked to Ben about it? Ben being with
25 Cooler Erectors.

1 A No, ma'am. Normally, if he'd come to me, I'd
2 go to my boss.

3 Q You'd go to Mr. Rose?

4 A Yes, ma'am.

5 Q And do you know what conversations Mr. Rose was
6 having with Ben or with Ben's daddy?

7 A No, ma'am.

8 Q Okay. And you said it was your understanding
9 or you assumed that Southern Produce would pay for
10 these changes. What's the basis of that
11 understanding?

12 A I'm not sure I understand what you --

13 Q Why did you think that? Did Dan ever tell you
14 he would pay Rose Electric for those changes?

15 A I assumed he would because he said it would be
16 on him. All the changes was coming back through
17 Southern.

18 Q Did you do anything to submit change orders or
19 to tell Mr. Rose about change orders to submit to
20 Cooler Erectors?

21 A The only changes I give was directly to
22 Mr. Homer.

23 Q Okay. And those are these changes that we just
24 went over, those exhibits you just talked about?

25 A Yes, ma'am.

1 Q Okay. And you were the -- I'm sorry. Did you
2 say you were the superintendent or you were the
3 foreman for Rose Electric on the site?

4 A Foreman.

5 Q And who did you -- who did you report to for
6 the general contractor?

7 A Ben.

8 Q And Ben, as you understood it, was the son of
9 Mr. Teasley that was the owner of Cooler Erectors?

10 A Yes, ma'am.

11 Q Were you the foreman or did you do any of the
12 work for Rose Electric on any of the other buildings
13 out at the Farmers Market before y'all got to
14 Southern Produce?

15 A Yes, ma'am.

16 Q And who did you report to -- who was the person
17 you reported to on those other jobs on behalf of
18 Cooler Erectors?

19 A I worked at Senn Brothers. And I think that
20 gentleman right over here (indicating), I reported
21 to him. And one other job, I think, Ben was over
22 there, Mr. Teasley.

23 Q Was that the tomato processing plant?

24 A Yes, ma'am.

25 Q And Ben was the superintendent over there for

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1 Cooler Erectors?

2 A Yes, ma'am.

3 Q And that's who you reported to?

4 A If I needed something.

5 Q Okay. And do you have any knowledge about how
6 any of these prices were calculated?

7 A No, ma'am.

8 MS. COOK: That's all I've got. Thank you very
9 much.

10 THE COURT: Mr. Turner.

11 MR. TURNER: Just one thing.

12 CROSS-EXAMINATION

13 BY MR. TURNER:

14 Q Mr. Frazee, what was Luke -- what did Luke do?

15 I mean, I see that he was there all the time you
16 were there and he got the same pay rate and the same
17 amount of OT. Did y'all ride together to the job,
18 you and Luke?

19 A Yes, sir, we worked together.

20 Q What was his job?

21 A He was an electrician.

22 Q So he was technically under you, even with you
23 or over you?

24 A Under me.

25 MR. TURNER: Okay. Thank you. That's all I've

1 got.

2 THE COURT: Redirect.

3 MR. BOOTH: Nothing, Your Honor.

4 THE COURT: Thank you, sir. You may step down.

5 MR. BOOTH: Is it all right if Mr. Frazee is
6 excused for the rest of the day?

7 THE COURT: Is there any objection to him being
8 released?

9 MS. COOK: None, Your Honor.

10 MR. TURNER: No objection.

11 THE COURT: You're free to go. Thank you, sir.
12 Call your next witness.

13 MR. BOOTH: That's all the witnesses for the
14 plaintiff.

15 THE COURT: All right. As I understand it, in
16 nonjury cases, we just move on. I don't need to
17 hear motions.

18 MS. COOK: Yes, sir, that's fine.

19 MR. TURNER: Thank you.

20 THE COURT: Are y'all ready or do you want a
21 few minutes?

22 MS. COOK: I'm ready unless Your Honor
23 wishes --

24 THE COURT: No. I kept y'all waiting. I was
25 back there working, but y'all couldn't see it. All

1 right, call your first witness.

2 MS. COOK: I clerked for a judge, Your Honor, I
3 know. I'd call Dan Stocker to the stand, Your
4 Honor.

5 THE COURT: Come around, please.

6 DANIEL CARL STOCKER, JR.,
7 having been duly sworn, testified as follows:

8 THE CLERK: State your full name when you're
9 comfortably seated.

10 THE WITNESS: Daniel Carl Stocker, Jr.,
11 S-t-o-c-k-e-r.

12 DIRECT EXAMINATION

13 BY MS. COOK:

14 Q Dan, is it okay if I refer to you as Dan?

15 A Yes, ma'am.

16 Q And is it -- it's Stocker not --

17 A Yes, ma'am. It's the peculiarity of the
18 family.

19 Q Okay. And, Dan, what do you do for a living
20 right now?

21 A I'm the general manager of Southern Produce.

22 Q And how long have you had that position?

23 A Since August of 2010.

24 Q Now, very briefly, if you would, tell the Court
25 about your educational and work background, just

1 very briefly, from high school forward.

2 A Yes, ma'am. I attended Irmo High School, did
3 not graduate, joined the Navy after completion of
4 the 10th grade, served 21 years in the Navy, retired
5 as an E8 in 2007, worked in the fire safety industry
6 for roughly two and a half years until offered the
7 opportunity to come on at Southern Produce.

8 Q And you've been there as general manager ever
9 since?

10 A Yes, ma'am.

11 Q What responsibility, if any, did you have with
12 regard to the new facility that was constructed at
13 the new Farmers Market in 2010?

14 A I was responsible for the project moving along
15 and it meeting the requirements of Southern Produce
16 for us to be able to move in a timely manner to the
17 new market.

18 Q Were you the guy on the job for Southern
19 Produce?

20 A Yes, ma'am.

21 Q Okay. And did Southern Produce have a contract
22 with anyone to build that facility?

23 A Yes, ma'am, we did. We had a contract, I
24 believe, it's signed by Cooler Erectors of Atlanta.
25 Their representative was Morris Teasley.

1 Q And I'm going to hand you a document, ask if
2 you can identify it.

3 A This is the contract between Southern Produce
4 and Cooler Erectors of Atlanta to build a turnkey
5 building.

6 MS. COOK: Your Honor, at this time, I'd like
7 to introduce this document as Defendant's Exhibit
8 Number 9.

9 THE COURT: Is there any objection?

10 MR. BOOTH: No objection, Your Honor, for the
11 plaintiff.

12 MR. TURNER: No objection, Your Honor.

13 (Defendant's Exhibit Number 9, contract
14 agreement, marked and admitted into evidence.)

15 BY MS. COOK:

16 Q And, Dan, if you will, did you review this
17 contract before it was signed by Southern Produce?

18 A Yes, ma'am.

19 Q Okay. Now, I see that it is executed on the
20 third page by a Nate Crocker for Southern Produce.
21 Who is Nate?

22 A He's the sole owner of Southern Produce.

23 Q Okay. And are you related to him in any way --
24 or were you related to him in any way?

25 A In a roundabout way, yes, ma'am. He is married

1 to an ex-nonblood aunt of mine.

2 Q All right. And when was this contract signed?

3 A I believe it was October 27th of 2010.

4 Q And are you familiar with the terms and the
5 requirements on both the contractor and Southern
6 Produce?

7 A Yes, ma'am.

8 Q Okay. How much did Southern Produce agree to
9 pay the general contractor, Cooler Erectors, for the
10 turnkey job?

11 A \$213,000 and change.

12 Q And how much did you pay Cooler Erectors for
13 the work that they did do?

14 A \$203,000 and some change.

15 Q Okay. Now, when you say turnkey, can you
16 describe to the Court what you mean by that briefly?

17 MR. BOOTH: Your Honor, I object to the
18 contract. It's here. It speaks for itself. I
19 think she's asking him to interpret some part of the
20 contract and I think the contract's fine.

21 THE COURT: Do you wish to be heard?

22 MS. COOK: Yes, sir. The contract doesn't use
23 the term turnkey. I am merely asking the witness to
24 expound upon what he understood the term turnkey,
25 dealing with this general contractor, to be.

1 THE COURT: Mr. Turner, do you wish to be
2 heard?

3 MR. TURNER: No thank you, Your Honor.

4 THE COURT: Do you have anything else,
5 Mr. Booth?

6 MR. BOOTH: No.

7 THE COURT: The objection is overruled. You
8 may continue.

9 You can answer the question.

10 THE WITNESS: As I understand the question to
11 be, the term turnkey means within the contract, that
12 the walls, windows, doors, the building would be
13 complete. I would receive a certificate of
14 occupancy and it would be done to the plans that
15 were drawn up and provided to the subcontractor.

16 BY MS. COOK:

17 Q And were the costs for the plans included
18 within this contract price?

19 A Yes, ma'am.

20 Q Let me hand you --

21 MS. COOK: And, Your Honor, I only have one
22 condensed set.

23 MR. BOOTH: Judge, if I can just have a minute.

24 THE COURT: Sure.

25 (Pause.)

1 MR. BOOTH: Your Honor, thank you for the
2 opportunity. I've looked through every page. We
3 have no objection.

4 MR. TURNER: Nor do I, Your Honor.

5 THE COURT: All right. Hand it to the court
6 reporter.

7 (Defendant's Exhibit Number 10, plans,
8 marked and admitted into evidence.)

9 BY MS. COOK:

10 Q Dan, I'm going to hand you what has been marked
11 for identification as Exhibit 10. Would you look
12 and tell the Court what that is, if you can identify
13 it, and the date of that document?

14 A The date of the document's 10/9 of 2010. And
15 it is the building plans for Southern Produce's
16 processing facility.

17 MS. COOK: Your Honor, we'd like to introduce
18 that as Defendant's Exhibit Number 10.

19 THE COURT: It's already in.

20 MS. COOK: Thank you, Your Honor.

21 BY MS. COOK:

22 Q Now, do those plans include the structural,
23 mechanical, HVAC and electrical plans?

24 A Yes, ma'am.

25 Q And the last three pages of those plans, are

1 they the same electrical plans that have been
2 introduced into evidence and testified to by
3 Mr. Rose earlier today?

4 A Yes, ma'am.

5 Q In terms of the permitting for this job, who
6 was in charge of getting the permit for being able
7 to construct the project?

8 A Cooler Erectors of Atlanta as the general
9 contractor.

10 Q And who was responsible for getting the
11 certificate of occupancy?

12 A Cooler Erectors of Atlanta.

13 Q Now, in terms of payment, let me hand you a
14 document and ask if you can identify it. It's got
15 Cooler Erectors of Atlanta on the top and it's an
16 invoice.

17 A Yes, ma'am. This was a invoice that Morris
18 Teasley of Cooler Erectors of Atlanta presented to
19 us due immediately for the payment of the metal
20 building itself.

21 Q Was this typical of the process that was used
22 by Cooler Erectors in order to get payment under the
23 contract with Southern Produce?

24 A Yes, ma'am.

25 MS. COOK: Your Honor, we'd like to introduce

1 this invoice as Defendant's Exhibit Number 11..

2 THE COURT: Any objection to this?

3 MR. BOOTH: No objection from the plaintiff.

4 MR. TURNER: No objection, Your Honor.

5 THE COURT: Mark it in evidence, please, ma'am.

6 (Defendant's Exhibit Number 11, invoice,
7 marked and admitted into evidence.)

8 BY MS. COOK:

9 Q Now, Dan, have you had an opportunity to pull
10 and compile a copy of all of the checks that were
11 used to pay for the work of Cooler Erectors?

12 A Yes, ma'am.

13 Q Let me hand you a multipage document. And if
14 you would, take a look at that and see if you can
15 identify it.

16 A Yes, ma'am. It's a list of all payments and
17 photocopies of all checks made to Cooler Erectors of
18 Atlanta in order to complete our portion of the
19 contract.

20 MS. COOK: Your Honor, we would like to
21 introduce this, the copies of the checks and the
22 compilation on top, as Defendant's Exhibit Number
23 12.

24 THE COURT: Any objection to this?

25 MR. BOOTH: I object to one of the checks, Your

1 Honor, check number 2981, dated October the 8th,
2 2010, for \$11,000. That check's not from Southern
3 Produce, so we would object to it not being relevant
4 or authenticated as going towards this project. It
5 could have gone for a different project.

6 The other checks we have no objection. It's
7 just that first check. And the date on it is
8 several weeks before the contract was signed, so we
9 don't know if this was -- so it's got the date that
10 doesn't seem to be consistent, but it's still not
11 written on Southern Produce like the others are.

12 MS. COOK: I'll be glad to lay some further --

13 THE COURT: All right.

14 MS. COOK: -- foundation.

15 MR. BOOTH: But he's not Mr. Crocker, right?

16 Mr. Crocker signed this check. So, again, my
17 objection still goes on, but I'll listen to some
18 more questions.

19 THE COURT: I haven't admitted it, ruled it to
20 be admitted yet, if she wants to attempt to lay a
21 foundation. Go ahead.

22 BY MS. COOK:

23 Q Dan, if you would, look to the first check
24 behind the compilation.

25 A Yes, ma'am.

1 Q Who, again, is Nate Crocker?

2 A The sole owner of Southern Produce,
3 Incorporated.

4 Q And how do you know him?

5 A Through an extended relationship going over 20
6 years.

7 Q Okay. He was married to?

8 A To an ex-aunt.

9 Q And what has been familiarly, if that's a word,
10 how long have you known him?

11 A Right at 20 years.

12 Q And how long have you worked for him?

13 A Since August of 2010.

14 Q Okay. And as part of your task with regard to
15 coming on as general manager of Southern Produce in
16 August of 2010, were you responsible for any part of
17 the negotiation and/or preparation for entering into
18 a contract to have a new facility built?

19 A Yes, ma'am.

20 Q Okay. And as part of that, were you -- I think
21 we look at -- can you tell me who the check is made
22 payable to?

23 A Cooler Erectors.

24 Q And I believe you stated that the date of the
25 plans for the facility that we've been talking about

1 are dated what day?

2 A 10/9.

3 Q Okay. And do you have any personal knowledge
4 of why Mr. Crocker would have written a check to
5 Cooler Erectors on 10/8 of 2010, personal knowledge?

6 MR. BOOTH: Your Honor, I mean, she's asking
7 him to relate something that Mr. Crocker did or
8 said. And, again, Mr. Crocker is not here. And I
9 would object again. I know she's laying a
10 foundation, but I'll just add that to my objection.
11 I do think it's not admissible because it has
12 nothing -- it doesn't say what it's for. Again,
13 it's -- the date on it.

14 MS. COOK: Your Honor, I would say that that --
15 he can cross-examine about it. It goes to the
16 weight not the admissibility. And I've asked
17 Mr. Stocker about any personal knowledge he has of
18 why an 11,000 dollar check was written by
19 Mr. Crocker payable to Cooler Erectors, personal
20 knowledge that he has.

21 THE COURT: There's nothing wrong with the
22 question, but, you know, I don't know what the
23 answer will be.

24 MR. TURNER: I think the question is totally
25 proper, Your Honor.

1 THE COURT: What's wrong with the question?

2 MR. TURNER: Nothing. I said totally proper.

3 THE COURT: Oh, I'm sorry.

4 The answer may be problematic, I don't know,
5 depending on what he says, but the question is all
6 right. Go ahead.

7 THE WITNESS: Answer --

8 THE COURT: Do you have personal knowledge
9 about --

10 THE WITNESS: Yes, I do.

11 BY MS. COOK:

12 Q And what is your -- what's the source of your
13 personal knowledge of this 11,000 dollar check?

14 A At the time that this payment had to be made on
15 10/8, in order to get the building plans, which are
16 dated 10/9, the funds were not in the business
17 account, and Mr. Crocker had to go into his personal
18 account to write a check to give it to Morris
19 Teasley so that the plans could be released and then
20 the contract could be finalized as to the amounts
21 and all that it was going to take.

22 MS. COOK: Your Honor, we'd offer all checks
23 and the summary that's on top as Defendant's Exhibit
24 12.

25 THE COURT: There's an objection?

1 MR. BOOTH: Yes, sir, objection, yes, sir.

2 THE COURT: Do you wish to put anything else on
3 the record?

4 MR. BOOTH: Your Honor, like I said, this is
5 not admissible because the person that wrote the
6 check, signed the check, is not here. Mr. Stocker's
7 knowledge, whatever reason it is, is strictly based
8 on really hearsay or at least not personal knowledge
9 since he doesn't -- didn't testify to anything to do
10 with, he didn't tell us he got an invoice, he didn't
11 tell me where the 11,000 came from, so I think his
12 foundation doesn't support. I think you'd have to
13 have one of the Crockers here to authenticate this
14 check. So I still think it's inadmissible.

15 THE COURT: Do you have anything else?

16 MR. TURNER: The admissibility in this
17 particular exhibit is in Your Honor's discretion
18 based on the circumstances and based on the direct
19 testimony elicited. I think it's been properly
20 legitimated and a foundation has been set for it. I
21 would agree that it ought to be admitted.

22 THE COURT: Anything else?

23 MS. COOK: No, sir.

24 THE COURT: The objection is overruled. Mark
25 it in evidence.

1 (Defendant's Exhibit Number 12, copies of
2 checks, marked and admitted into evidence.)

3 BY MS. COOK:

4 Q Other than this venture with regard to the new
5 facility, has Southern Produce or, to your
6 knowledge, has Mr. Crocker had any further dealings
7 with Cooler Erectors other than the Southern Produce
8 building?

9 A No, ma'am.

10 Q Did Southern Produce have anything to do with
11 the hiring of the subs that worked on this job?

12 A No, ma'am.

13 Q How did it come to be that Southern Produce
14 executed a contract and hired Cooler Erectors as the
15 general contractor for this project?

16 A Because of the familiarity with the work that
17 was being done and the success that had been
18 exhibited in its previous work performed out on the
19 market, we chose to use the same contractor.

20 Q All right. And Southern Produce, do you own
21 the land where the -- does Southern Produce own the
22 land where the building was built?

23 A No, ma'am.

24 Q What right do you -- does Southern Produce have
25 to utilize that land?

1 A We can only use it in accordance with the
2 lease.

3 Q And who is the lease with?

4 A S2P.

5 Q I'm going to hand you a document that's
6 entitled Lease Agreement. Would you take a look at
7 that and tell me if you can identify it?

8 A It's the current lease agreement between S2P,
9 LLC and Southern Produce, Incorporated.

10 Q As general manager for Southern Produce, do you
11 have any responsibility with regard to the lease?

12 A Yes, ma'am.

13 Q What's your responsibility with regard to the
14 lease?

15 A To ensure that we stay within the confines of
16 it.

17 Q And did you participate in any way with regard
18 to the review and/or negotiation of the lease with
19 S2P, LLC?

20 A Review, yes, ma'am.

21 MS. COOK: Your Honor, we'd like to introduce
22 this as Defendant's Exhibit Number 13.

23 THE COURT: Any objection to this?

24 MR. BOOTH: None, Your Honor, for the
25 plaintiff.

1 MR. TURNER: No objection, Your Honor.

2 THE COURT: 13's in evidence.

3 (Defendant's Exhibit Number 13, lease
4 agreement, marked and admitted into evidence.)

5 BY MS. COOK:

6 Q Now, Dan, when the problems arose with Cooler
7 Erectors in the construction of the facility, did
8 there come a point in time when some liens were
9 filed on the property?

10 A Yes, ma'am.

11 Q And were there liens filed other than the one
12 we've been here about today, Rose Electric?

13 A Yes, ma'am.

14 Q And as part of the lease agreement with S2P,
15 did and does Southern Produce have any obligation
16 with regard to payment of attorney's fees of S2P
17 because of the liens being filed?

18 A It's my understanding we're responsible for all
19 of it.

20 Q And what, if anything, has Southern Produce
21 done to perform its obligation to S2P?

22 A We have paid in excess of \$5300 of the attorney
23 bills that have been received so far.

24 Q Okay.

25 A For S2P.

1 Q All right. Now, you've heard, as you've been
2 sitting here today, a lot about these -- well, let
3 me finish that line of thought then. Do you recall
4 offhand what other mechanic's liens were filed with
5 regard to this property?

6 A I believe there was one filed by Dunlap
7 Services and then there was also one filed by Custom
8 Concrete.

9 Q All right. Let me hand you a document entitled
10 Notice of Mechanics's Lien Custom Concrete and ask
11 if you can identify that?

12 A I recognize this as the notice of mechanic's
13 lien that we received in early 2011 from Custom
14 Concrete.

15 Q And how much was that lien filed for? What was
16 the amount of the lien?

17 A I believe it was 14,000 and change -- I'm
18 sorry, here it is -- \$14,529.20.

19 MS. COOK: Your Honor, we'd ask that this
20 document be introduced into evidence as Defendant's
21 Exhibit Number 14.

22 THE COURT: Any objection to this?

23 MR. BOOTH: No objection, Your Honor.

24 MR. TURNER: No objection.

25 THE COURT: Mark it in evidence, please.

1 (Defendant's Exhibit Number 14, notice of
2 mechanic's lien, marked and admitted into evidence.)

3 BY MS. COOK:

4 Q Next let me show you what's entitled Notice of
5 Mechanic's Lien Dunlop Services or Dunlap Services
6 and ask if you can identify that?

7 A This is a Notice of Mechanic's Lien by Dunlap
8 Services for the amount of \$10,210.93.

9 MS. COOK: Your Honor, I'd like to introduce
10 this as Defendant's Exhibit 15.

11 THE COURT: Any objection to this?

12 MR. BOOTH: No objection for the plaintiff.

13 MR. TURNER: No objection, Your Honor.

14 THE COURT: Mark it in evidence, please.

15 (Defendant's Exhibit Number 15, notice of
16 mechanic's lien, marked and admitted into evidence.)

17 BY MS. COOK:

18 Q Then last I'm going to show you what's
19 previously been marked as Defendant's Exhibit Number
20 1. It's a notice of mechanic's lien by Rose
21 Electric. Let me hand you that and ask if you can
22 identify that document?

23 A Yes, ma'am. This is a notice of mechanic's
24 lien that we received in March by Rose Electric for
25 the amount of \$65,094.52.

1 Q All right. And are those all of the mechanic's
2 liens that were filed or have been filed with regard
3 to this Southern Produce project?

4 A To the best of my knowledge, yes, ma'am.

5 Q All right. Now, can you just tell the Court
6 again, of the contract price with Cooler Erectors,
7 how much Southern Produce has paid?

8 A The exact amount is 203,000 -- \$203,277.

9 Q And you have all of the checks that back that
10 up that have been introduced as part of Defendant's
11 Exhibit Number 12?

12 A Yes, ma'am.

13 Q And under the contract, what balance is left
14 due to Cooler Erectors under the contract if the
15 contract had been performed in full?

16 A I believe it's \$10,103.

17 Q All right. And has some portion of that 10,000
18 and change been paid in order to resolve the Dunlap
19 Services and the Concrete mechanic's liens?

20 A Yes, ma'am.

21 Q All right. Now, you have heard today some
22 discussions about the change orders that amount to
23 around \$10,000 and change that took place and were
24 installed at Southern Produce; correct?

25 A Yes, ma'am.

1 Q And do you dispute that those items and that
2 work was actually done by Rose Electric?

3 A I do not dispute that it was done.

4 Q Okay. And with regard to how it came to be
5 that changes, upgrades or whatever were done to the
6 tune of around \$10,000, would you just tell the
7 Court how that came to occur?

8 A Each one occurred somewhat differently, but the
9 general scheme -- it was a very fluid time because
10 of the pace of the job. I know specifically on the
11 stainless steel disconnects and Cannon plugs, that
12 Mr. Rose and I discussed them on the back of his
13 tailgate looking at the plans. At other times, I
14 would identify or question what was being done and
15 would address Ben, the site superintendent. And I
16 dealt with Mr. Russell Frazee of Rose Electric on
17 most of the other change orders.

18 Q All right. Now, when you were dealing with the
19 change orders, who again is Ben?

20 A It was my understanding that Ben was Morris
21 Teasley's son, and he was always known to me as the
22 site superintendent.

23 Q All right. And were there occasions when these
24 changes were being -- you mentioned two specific
25 times you remember -- or on two specific issues,

1 having conversations with Mr. Rose on his tailgate,
2 but in the other instances, did you have
3 conversations either separately or together with
4 Russell and Ben?

5 A It was both. Some issues were discussed as a
6 group and then sometimes I would deal directly with
7 Russell and then would have to backfill Ben or
8 Morris on what was going on.

9 Q And was it ever your intention not to pay for
10 these upgrades or change orders?

11 A Never.

12 Q And at the time you were requesting and
13 discussing with Russell, Mr. Rose and Ben the change
14 orders, were you given prices as to how much each of
15 those items or those changes was going to cost?

16 A No, ma'am.

17 Q Okay. And can you recall approximately when
18 you or Southern Produce first learned as to what the
19 total price was that Rose Electric was asking for
20 those change orders? And I'm just talking about the
21 change orders.

22 A Just the change orders?

23 Q Yes.

24 A The first time I was made aware of that was
25 when we received the letter dated February 16th, I

1 think is when it was dated, for the change order
2 amounts.

3 Q And I'm going to show you what was marked --
4 the letter's been marked twice. The February 16th
5 letter from Rose Electric was marked as Plaintiff's
6 Exhibit Number 11, and then that letter plus the
7 service invoices were marked as Defendant's Exhibit
8 Number 7. Would you take a look at that and is that
9 the document you're talking about?

10 A Yes, ma'am.

11 Q Okay. Now, when you -- prior to getting this
12 letter in February from Rose Electric, had Southern
13 Produce received any other direct invoices or
14 contact about payment needing to be made by Southern
15 Produce directly to Rose Electric?

16 A No, ma'am. There was no invoices or anything
17 submitted, but I did have a conversation -- Mr. Rose
18 did come by our office and we had a generalized
19 conversation as to the situation, but it never
20 delved into specifics.

21 Q Was there an occasion where Southern Produce
22 did directly contract with Rose Electric to have
23 some work performed at Southern Produce?

24 A Yes, ma'am. In my absence, I was out of town,
25 Nate Crocker contacted Rose Electric and I believe

1 dealt directly with Mr. Rose and contracted to have
2 a additional service line installed.

3 Q Let me show you what was marked earlier as
4 Defendant's Exhibit Number 8. It's an invoice from
5 Rose Electric dated January 6, 2011, in the amount
6 of \$1,844. Can you identify that invoice?

7 A Yes, ma'am. This is the work that was
8 requested by Mr. Crocker directly to Rose Electric
9 to be performed.

10 Q Do you have any knowledge, any firsthand
11 knowledge, about whether or not that was paid?

12 A Yes, ma'am, the check has cleared.

13 Q Okay. And in terms of making payments during
14 this project, who was in charge of reviewing
15 invoices on behalf of Southern Produce and having
16 checks written?

17 A That would be me.

18 Q All right. Let me show you a document and ask
19 if you can identify what that is?

20 A This is a Southern Produce check, number 16215,
21 made out to Rose Electric for the amount of
22 \$1844.02.

23 Q Is it a check?

24 A This particular is a check payment stub.

25 Q All right. And would you have been the one

1 that would have requested and gone about seeing that
2 a check was written for the invoice?

3 A Yes, ma'am.

4 Q Okay. And is the stub that is shown here in
5 the exact amount as what is requested in the service
6 invoice, Defendant's Number 8?

7 A Exactly.

8 MS. COOK: Your Honor, we'd seek to introduce
9 the check stub as Defendant's Exhibit Number 16.

10 MR. BOOTH: Your Honor, that's fine. No
11 objection. We consent that he got paid, but that's
12 all right. No objection.

13 THE COURT: Without objection, mark it in
14 evidence.

15 (Defendant's Exhibit Number 16, copy of
16 check stub, marked and admitted into evidence.)

17 BY MS. COOK:

18 Q Now, the invoice submitted by Rose for the
19 work, the \$1844 worth of work, you paid?

20 A Yes, ma'am.

21 Q When you got the February 16th letter, and that
22 letter's made -- addressed to who?

23 A It's addressed both to Cooler Erectors of
24 Atlanta first and then there's a subsequent two
25 block that has Southern Produce listed.

1 Q And you got that letter, didn't you?

2 A Yes, ma'am.

3 Q And did you review the letter and the change
4 orders that were attached?

5 A Yes, ma'am.

6 Q Was that the first time you had seen any
7 reference to how much those changes you had
8 requested were going to cost?

9 A Yes, ma'am.

10 Q Did you initially have any issue with some of
11 the pricing on those invoices?

12 A Yes, ma'am. On a couple of the items, we
13 thought that the price of the product was a little
14 inflated.

15 Q And did you have discussions about that with
16 Rose Electric?

17 A I cannot honestly say if that was ever
18 discussed with Rose.

19 Q Do you know if, on your behalf, your attorney,
20 after the mechanic's lien was filed, made the
21 attorney for Rose Electric aware of the issues on
22 the pricing?

23 A Yes, ma'am, I do know that that was discussed.

24 Q And was there a letter written to evidence
25 those issues?

1 A Yes, ma'am.

2 Q And after that letter, did and do you now, on
3 behalf of Southern Produce, even though you had some
4 issues, do you dispute and are you willing to pay
5 the 10,000 and -- hold on, I'm going to get the
6 exact amount.

7 A \$755?

8 Q Yes, sir.

9 A I believe the answer to your question is, no,
10 ma'am, we have no dispute of that amount and have
11 offered to pay it in full.

12 Q Okay. And did you request that your attorney
13 make and file offers of judgment and offers with
14 regard to not only making that payment, but other
15 payments towards the amount sought in this case?

16 A Yes, ma'am.

17 Q Now, was the work outlined in the contract with
18 Cooler Erectors ever completed?

19 A No, ma'am.

20 Q All right. And why did you not pay -- you paid
21 203,000 some odd dollars, but you held back 10,000
22 and change, \$10,108. Why did you hold back and not
23 pay that \$10,108 to Cooler Erectors?

24 A Because the work contained within the scope of
25 the contract had not been completed yet.

1 Q Did they ever complete the job?

2 A No, ma'am.

3 Q Okay. And when did you -- when did Southern
4 Produce first learn that Cooler Erectors was not
5 licensed?

6 A After retaining your counsel.

7 Q Okay. And did you retain my counsel before or
8 after the mechanic's liens were filed?

9 A After.

10 Q I'm going to show you one last invoice from
11 Rose Electric dated February 10, 2011. It's the
12 same date as all the other change order invoices.
13 Do you recognize that document?

14 A I recognize the document, but I'm not exactly
15 sure the order in which I received it.

16 Q Okay. And how much is that invoice for?

17 A \$54,339.13.

18 Q And was that part of the package that you
19 received along with Exhibit Number 7, the February
20 16th letter and the rest of the change order
21 invoices?

22 A Yes, ma'am, I do believe so.

23 Q And the amount that's reflected on this invoice
24 for \$54,339.13, does Rose Electric mention that
25 exact amount as being owed under the contract in his

1 letter of February 16th?

2 A Yes, ma'am. It's referenced as the cost for
3 contract work.

4 MS. COOK: Your Honor, we'd seek to introduce
5 this as Defendant's Exhibit Number 17.

6 THE COURT: Any objection to this?

7 MR. BOOTH: No objection for the plaintiff.

8 MR. TURNER: No objection.

9 THE COURT: Mark it in evidence, please.

10 (Defendant's Exhibit Number 17, invoice,
11 marked and admitted into evidence.)

12 BY MS. COOK:

13 Q I want to show you what we marked earlier, and
14 there's some earlier invoices dated January 13 of
15 2011. They're Defendant's Exhibits 5 and 6 from
16 Rose Electric to Cooler Erectors. And it was
17 referenced -- first of all, do you recognize that
18 invoice, exhibit number -- Defendant's Exhibit
19 Number 5?

20 A Yes.

21 Q Okay. And do you recall when you received that
22 invoice or if you received that invoice?

23 A The invoices that were split up into two, I do
24 not know which two I got, but when Morris Teasley
25 came at the end of January the last time that we

1 spoke with him, he'd presented us with two of these
2 invoices.

3 Q All right. And we had marked some earlier that
4 were like November 24th and December 9th. And then
5 we have these two, Defendant's 5 and 6, that are
6 dated January 13th. And you don't know which of
7 those two sets, is that right, that you got?

8 A Yes, ma'am. I apologize.

9 Q But do you recall it being in January when you
10 got the invoices?

11 A Yes, ma'am.

12 Q Okay. Now, Defendant's Exhibit Number 5 is in
13 what amount?

14 A \$28,152.43.

15 Q And what has Rose Electric put as the
16 description of the work that that \$28,000 is for?

17 A It is described as a 600 amp service and office
18 lighting and power.

19 Q Okay. And the reference that Rose Electric has
20 put on this invoice says what?

21 A It says, Southern Produce original contract.

22 Q Okay. Now, let me show you Defendant's Exhibit
23 Number 6, which is dated the same day, their service
24 invoice number 1108, and how much is it for?

25 A \$36,250.29.

1 Q And what's the description that they put in
2 this invoice for what it covers?

3 A It just says, Southern Produce change order.

4 Q Okay. And that invoice in January says the
5 change orders are in what amount?

6 A \$36,250.29.

7 Q And then the February 16th invoices and backup
8 show that the change orders were in what amount?

9 A \$10,755.39.

10 MS. COOK: Your Honor, could you bear with me
11 just a minute?

12 THE COURT: Certainly.

13 (Pause.)

14 BY MS. COOK:

15 Q In order to represent Southern Produce in this
16 matter dealing with Rose Electric, did Southern
17 Produce hire an attorney?

18 A Yes, ma'am.

19 Q Who did they hire?

20 A Kathryn M. Cook.

21 Q All right. And have you been paying me for my
22 services in this matter?

23 A Yes, ma'am.

24 Q And am I charging you at an hourly billable
25 rate?

1 A Yes, ma'am.

2 Q And do you receive invoices from me?

3 A Yes, ma'am.

4 Q And have you paid me all of those invoices?

5 A All that have been received.

6 Q All right.

7 MS. COOK: Your Honor, bear with me one more
8 minute.

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 MS. COOK: Dan, that's all the questions I
12 have. Thank you very much. I'm sure these
13 gentlemen will have some for you too.

14 Thank you, Your Honor.

15 THE COURT: Do you want to ask any questions?

16 MR. TURNER: I would, Your Honor. Thank you.

17 CROSS-EXAMINATION

18 BY MR. TURNER:

19 Q Very briefly, Mr. Stocker. You acknowledge
20 that Southern Produce has a duty to S2P to reimburse
21 it to indemnify the defendant as to its financial
22 burden suffered as a result of the problems with the
23 building -- of your building, whether those are
24 mechanic's lien problems or any other liabilities
25 associated with that, don't you?

1 A Yes, sir, we have that responsibility.

2 Q And that's not really a matter of question
3 before the Court?

4 A Not to my knowledge, no, sir.

5 Q In fact, you've already paid some \$5,300 and
6 some odd change, you testified to earlier, in
7 partial performance of that duty; is that correct?

8 A Yes, sir.

9 Q Would it surprise you to know that there's
10 still an outstanding attorney's fee and cost bill
11 between my law firm and the defendant, S2P, in the
12 amount of some \$1700 before we even got to today?

13 A No, sir, that does not surprise me.

14 Q Can you anticipate that you would have any
15 objection to also paying that as you have paid the
16 other invoices?

17 A No, sir, no objection.

18 Q Would you have any objection if His Honor would
19 so rule to keep this matter open for the submission
20 of an attorney's fee affidavit listing the time
21 we've spent here today along with all the other time
22 that you're already aware of and asking the Court to
23 order that reimbursement by Southern Produce in
24 favor of S2P, LLC?

25 A That would only affect S2P, am I understanding

1 that correctly, that affidavit? I'm probably -- I
2 don't understand the question, I don't think, quite.

3 Q I think the question is, would you have any
4 objection if His Honor -- if we subjected -- if we
5 suggested to His Honor that the exact amount of
6 attorney's fees to be reimbursed to S2P were
7 established by affidavit after the close of today's
8 hearing?

9 A No, sir, no objection.

10 Q You testified on, I think it was July 25, 2012,
11 that you thought the Southern Produce building was
12 about, I think you said, 75 percent complete. Does
13 that strike a familiar cord?

14 A Yes, sir.

15 Q Have you gotten any closer to final completion
16 since then?

17 A No, sir.

18 Q At that time, you also estimated that you
19 had -- that is you, your company, had invested some
20 \$360,000 in the improvements in that building that
21 would not be easily removable or actually part of
22 that building now. Is that still your testimony?

23 A Correct.

24 Q Do you know of any reason why, if His Honor
25 would order that some real estate be sold to satisfy

1 any judgment in this case, do you know of any reason
2 why His Honor would have to sell the entire four
3 acres with the Senn Brothers Warehouse and Produce
4 Distribution operation, as well as the Southern
5 Produce building?

6 A No, sir.

7 Q Do you think it would be possible to sell the
8 Southern Produce building and a sufficient curtilage
9 so as to satisfy any verdict that might arise in
10 this case?

11 A Yes, sir.

12 Q Would you have any objection to such a remedy
13 if it came down to that point?

14 A No, sir.

15 MR. TURNER: That's all I have, Your Honor.

16 Thank you, Mr. Stocker.

17 THE COURT: Okay. Mr. Booth.

18 MR. BOOTH: Yes, sir.

19 MS. COOK: Could I indulge Your Honor for a
20 short bathroom break?

21 THE COURT: Court's in recess for five minutes.

22 You can step down if you like, but you can't
23 discuss your testimony with anyone.

24 THE WITNESS: Yes, sir.

25 THE COURT: We're at ease.

1 (Brief recess.)

2 THE COURT: Cross.

3 MR. BOOTH: Yes, the plaintiff is ready to
4 cross.

5 CROSS-EXAMINATION

6 BY MR. BOOTH:

7 Q Mr. Stocker, I refer you back to one of the
8 checks that you put into evidence. I don't know if
9 you have that particular check or that particular
10 exhibit nearby. Do you have it nearby?

11 A (Witness nodded head.)

12 Q And I'd like to refer you to the check that we
13 talked about earlier, the one dated October 8, 2010.

14 A Yes, sir.

15 Q Okay. Good. For \$11,000. And you said you
16 had personal knowledge that went for the payment of
17 the plans that you put into evidence, correct?

18 A Yes, sir.

19 Q So I'm assuming that was paid for the, I
20 assume, there's an architect and maybe an engineer
21 or two that did the plans and then this money went
22 to pay those?

23 A It went to Morris Teasley to pay for the plans.
24 I do not know how it was dispersed after that.

25 Q Then about three days later Mr. Teasley

1 presented you with a contract that had a price in it
2 of 213,000; correct?

3 A Yes, sir.

4 Q So, in other words, Cooler Erectors used the
5 plans to come up with their pricing?

6 A I have no idea, sir.

7 Q Well, I mean, it refers to the plans that he
8 used to come up with the pricing in here, but you
9 don't know that for yourself?

10 A I do not know that he used the plans to
11 generate the price, no, sir. I don't know what
12 Mr. Teasley did. I assume that.

13 Q Okay. Now, do you have the contract agreement
14 nearby, the one that you put into evidence as the
15 contract agreement?

16 MS. COOK: Defendant's Exhibit Number 9.

17 BY MR. BOOTH:

18 Q Looking at Defendant's Exhibit Number 9, which
19 is the contract agreement, read the part of that
20 contract that is labeled as number one on the first
21 page, read that out loud for me.

22 A The contractor agrees to furnish all labor and
23 materials to do the following work for the owners
24 and independent contractor.

25 Q All right. And underneath that you have an A,

1 B, C, D, E, F, G. Do you agree with that?

2 A Yes, sir.

3 Q All right. So none of those categories and
4 none of that language you read talks about paying
5 for plans; correct?

6 A No, sir. Paragraph three just states that
7 architectural plans will be attached to and are part
8 of this agreement.

9 Q I understand that, but as far as the scope of
10 work, which is in paragraph one, A, B, C, D, E, F,
11 G, there's no mention of plans being part of the
12 scope of work. Do you agree with that?

13 A I mean, the drawings are referenced in A, B and
14 C, D, and F. I mean, I kind of disagree with that.
15 I don't know if that's proper.

16 Q But why would the price of 213 already -- why
17 would that price of 213 include the 11,000 that had
18 already been paid?

19 A Because that's what Morris Teasley wrote -- I
20 mean, agreed to.

21 Q Well, if the plans were included, it should
22 have been 213,385 less the \$11,000 if that was part
23 of the original scope; correct?

24 A I can only say that I assume that the plans
25 were part of the -- as it referenced in here, that

1 per drawings, that the plans were part of this
2 contract.

3 Q Right. I realize the contract says there are
4 plans and drawings that were used or referred to,
5 but talking about paying for the plans and drawings.
6 It's not mentioned the word -- in the scope -- in
7 the scope that we just looked at, there's nothing in
8 there that says plans and specifications from an
9 architect or an engineer?

10 A Correct, it does not state that.

11 Q You're just making the assumption that this
12 11,000 dollar check written three weeks before the
13 contract was included in the total of 213; correct?

14 A No, sir, I'm not assuming that.

15 Q Well, you did with your schedule. You put it
16 right here on your schedule. You have the 11,000
17 going against the 213?

18 A Correct.

19 Q All right. So if you don't include the 11,000,
20 then the amount you retained was 20 some thousand
21 dollars?

22 A Is there a question?

23 Q Is that true?

24 A I don't believe it's true, no, sir.

25 Q All right. Now, you furnished and put into

1 evidence as Defendant's Exhibit 11, one invoice from
2 Cooler Erectors; correct?

3 A Correct.

4 Q Do you have that Number 11 nearby?

5 A Yes, sir.

6 Q All right.

7 A Yes, sir.

8 Q This is the only one you provided to us today;
9 correct?

10 A Yes, sir.

11 Q All right. What about the very last, I assume,
12 invoice that would have been generated for the
13 balance owed at the time the check was written on
14 December 2, do you have that invoice from Cooler
15 Erectors?

16 A No, I do not have that invoice with me.

17 Q Okay. But in your calculations, you added the
18 11 in with the 213?

19 A According to these calculations, yes, sir, the
20 11,000 I added in.

21 Q Now, where in the contract does your company,
22 Southern Produce, have the right to withhold any
23 money based on progress payments?

24 A I would say it would have to fall under
25 paragraph four.

1 Q All right. Paragraph four, if you don't mind
2 reading from paragraph four starting with, The
3 following payments, out loud.

4 A The following payments -- and I was trying to
5 find it, sir, excuse me -- The following payments
6 will be paid to the contractor on satisfactory
7 completion of the work in the following manner: 20
8 percent upon acceptance of this contract, upon
9 delivery of special ordered material and monthly
10 progress draws.

11 Q And, again, that first invoice was the --

12 A Special ordered material.

13 Q Right. Now, it mentions monthly progress
14 draws. At the time the 30,000 dollar check was
15 written on December 2, what progress did he report
16 to you that justified paying him the 30 plus the ten
17 you withheld?

18 A I'm sorry. I didn't catch that last, 30
19 plus --

20 Q Well, you withheld ten?

21 A Right.

22 Q Okay. So I'm assuming his progress draw was
23 40?

24 A No, sir. He would -- it was not. We still --
25 that was a progress draw not a final payment.

1 Q Okay. I misunderstood. Why did you withhold
2 something -- so that was --

3 A The building was not complete on December 2nd.

4 Q It was not complete in what way?

5 A There was no -- there was only primer on the
6 walls, the painting had not been finished, doors
7 were not painted, automatic door closers were not
8 installed, bollards to protect the corners of the
9 walkways had not been installed. There's -- I'm
10 sorry -- there was some drainage issues. There was
11 -- the overhang on the rear of the building was not
12 built according to the plans. There were quite a
13 few issues remaining with the building and that's
14 why when he came on December 12th to receive a
15 progress draw, we gave him 20 -- I'm sorry --
16 30,000.

17 Q Okay. I'm just referring to your check date.
18 If it's -- the check date's 12/2, you mentioned he
19 came to you on 12 -- you mentioned a different
20 date --

21 A If I did, that was a mistake on my part. I'm
22 sorry.

23 Q No big deal, just trying to get that clarified.
24 So assuming that the progress draw -- do you
25 remember what -- the amount that he sought to be

1 paid and what percentage he told you he had
2 completed on December 2?

3 A No, sir, I do not know. If I remember
4 correctly, as no invoice was presented, he stated
5 that he needed a progress draw. And after
6 discussion, Nate Crocker and I decided that we would
7 pay him the \$30,000 and keep ten remaining because
8 of the work that still remained to be completed.

9 Q All right. Now, let me ask you to look at
10 another part of the contract for a minute. Look at
11 paragraph five on page two. And I'll read that out
12 loud for you. If you'll find it so you can follow
13 along. Are you there now?

14 A Yes, sir.

15 Q All right. Paragraph five, The contractor and
16 owner may agree to extra services and work, that any
17 such extras must be set out and agreed to in writing
18 by both the contractor and the owner.

19 Were there any extra services and work that
20 were agreed upon besides what's specified here?

21 A That were in writing? Is that the question?

22 Q Well, I was going to get to that. I was just
23 asking were there any at all and then I was going to
24 ask was there a writing done to --

25 A There were several instances of extra work

1 performed.

2 Q I mean, again, I guess I go to the question,
3 did the owner pay any additional amount above what's
4 in this contract based on paragraph five?

5 A No.

6 Q No. But there was additional work and services
7 done; is that correct?

8 A Yes.

9 Q Okay. Would the extra work that Rose Electric
10 did, would that fall into that category in paragraph
11 five?

12 A The change orders you're referencing?

13 Q The change orders, that would be fine.

14 A Yes, sir.

15 Q All right. So those were not put in writing to
16 be added to this contract; correct? The change
17 order from Rose --

18 A The change orders, no, sir, they were not put
19 in writing for the contract.

20 Q Okay. And that's because those change orders
21 weren't part of this contract, so you didn't need to
22 do a written change order according to paragraph
23 five; correct?

24 A No -- well, my understanding, sir, it says, By
25 any such extras -- But any such extras must be set

1 out and agreed in writing by both the contractor and
2 the owner.

3 Q Well, I don't know if you answered my question.
4 Let me ask it again. But with respect to the change
5 orders, extra work, that was done by Rose Electric,
6 which we talked about --

7 A Yes, sir.

8 Q -- there was no written modification done
9 between the owner and the contractor for that work;
10 correct?

11 A No, sir.

12 Q All right. So that means that work was done
13 not under this contract with Cooler Erectors as
14 extra services; correct?

15 A No, sir. I -- we -- Cooler Erectors was the
16 general contractor on the job, that's who I talked
17 to about everything.

18 Q Well, you just testified that you had
19 discussion directly with Mr. Frazee and also with
20 Mr. Rose about doing extra work, so why doesn't that
21 count?

22 A Also, on every one of those discussions, there
23 was also a discussion with Ben, the superintendent,
24 or Morris Teasley, the general contractor, about
25 those same changes.

1 Q I guess I'm just asking should those changes
2 have been put in writing and signed as required by
3 paragraph five?

4 A Yes, sir, I guess they should have.

5 Q Should have, but they weren't, okay. I think
6 that's probably a better question. I apologize for
7 going around the bend.

8 Now, with the work that had not been completed,
9 when you gave me this 30,000, has any of that work
10 now been completed? What are we, December 2010,
11 here we are February 2013. Has any of that work
12 been completed?

13 A Some has been patched, but as far as actually
14 completed, no, sir.

15 Q So how much did you spend for patchwork?

16 A I don't have that in front of me right now, but
17 it's in the thousands of dollars.

18 Q Okay. Now, let me go back to the discussion
19 about a couple mechanic liens.

20 A Yes, sir.

21 Q You'll find those two exhibits your lawyer put
22 into evidence, the one for Dunlap services, the
23 other for Custom Concrete.

24 A Yes, sir.

25 Q Let's look at -- do you have those?

1 A Yes, sir.

2 Q Look at Custom Concrete first. That should be
3 Exhibit 14.

4 A Yes, sir.

5 Q All right. Now, is your company, Southern
6 Produce, named as a defendant in this lawsuit? I'm
7 just asking you to look at it.

8 A I'm sorry, sir. I had the Dunlap not the
9 Custom Concrete one in front of me, so give me just
10 one second.

11 Okay. I'm sorry, sir.

12 Q Now, back to the notice that was submitted for
13 Custom Concrete, do you have that?

14 A Yes, sir.

15 Q Is the name Southern Produce listed as a
16 defendant?

17 A No, sir, not in the upper left-hand block.

18 Q Right. So do you know whether or not your
19 company was involved in this lawsuit or this
20 mechanic's lien filing, Southern Produce?

21 A If we were involved in it?

22 Q Yes.

23 A Yes, sir, we were involved in it.

24 Q How were you involved in it?

25 A By the fact of our lease and the fact that we

1 were leasing the property, having this mechanic's
2 lien placed on it made us in default and we had
3 to -- I mean, we had to rectify the situation.

4 Q Okay. But this case doesn't exist anymore,
5 right?

6 A I'm not a lawyer, sir. I don't know if -- I
7 take it that it doesn't.

8 Q Well, I'm just asking you. Do you know what
9 {sic} was the last time that you had to deal with
10 this case as far as maybe paying money to S2P?

11 A I would say that this is probably around the
12 July or August timeframe of 2011, but I'm only
13 guesstimating.

14 Q I guess, I'm asking do you know whether or not
15 this case is active anymore?

16 A To my understanding, no, sir, it's not active.

17 Q And even though they claim they're owed about
18 14,529, has Southern Produce paid anything to Custom
19 Concrete?

20 A Other than legal fees, no, sir.

21 Q Okay. But nothing to Custom Concrete?

22 A Correct.

23 Q Okay. Now, let's go to Dunlap services, the
24 second one.

25 A Yes, sir.

1 Q That's where Southern Produce is named as a
2 defendant. Do you see that?

3 A Yes, sir.

4 Q And the amount there again is \$10,210; correct?

5 A Yes, sir.

6 Q And you said you paid something on that and the
7 amount you paid, I believe, was \$465 back on August
8 19th, 2011; correct?

9 A That was a settlement, yes, sir.

10 Q But, again, do you remember the date of the
11 settlement?

12 A No, sir. I believe you just said August.

13 Q Right. I've got the check. I'm not really
14 interested in putting this into evidence, but I just
15 want you to verify, that case got settled on that
16 date; correct?

17 A I do believe it was a little while afterwards
18 before everything got filed, but, yes, sir, that was
19 the check for that purpose.

20 Q Okay. So, currently, are there any subs or any
21 other contractors making any claim besides Rose
22 Electric to any of the funds that you've held back?

23 A No, sir, not at this time.

24 Q Do you anticipate anybody else involved in the
25 construction to file any kind of claim for unpaid

1 amounts?

2 A I don't really know. It seems to me this whole
3 thing is kind of up in the air with Cooler Erectors
4 being in Georgia.

5 Q All right. Now, has Southern Produce filed any
6 kind of legal action against Cooler Erectors for any
7 of the issues that we've talked about today?

8 A No, sir.

9 Q Does Southern Produce plan to file any kind of
10 lawsuit against Southern -- excuse me -- Cooler
11 Erectors?

12 A I believe we've reserved our right to address
13 that after the completion of this.

14 Q Now, you mentioned that the project in your
15 terms was very fluid. Do you remember saying that?

16 A Yes, sir.

17 Q And I believe you also characterized it as
18 being -- as a lot of changes on the fly. Do you
19 remember those words?

20 A Yes, sir.

21 Q Is that your --

22 A I remember the fluid from today. I believe the
23 changes on the fly is from my deposition.

24 Q Okay. Do you still have that opinion of how
25 the project worked, a lot of changes on the fly?

1 A Yes, sir. It seems common in construction.

2 Q And as far as I know, the word very fluid and
3 changes on the fly may mean the same thing. I just
4 wanted you to clarify.

5 A Yes, sir.

6 Q Okay. Now, you personally, had you ever had
7 anything to do with a construction project at the,
8 maybe, comparable size to the one for Southern
9 Produce?

10 A No, sir.

11 Q No prior experience?

12 A No, sir.

13 Q All right. And as far as the contract with
14 Cooler, you said you worked on that contract;
15 correct?

16 A I stated I was involved in the reviewing of it.

17 Q Okay. The reviewing of it. Now, at the time
18 this contract was given to you, did you make any
19 changes or request any changes, I should say, from
20 the original version that was given to you by
21 Cooler?

22 MS. COOK: Objection. I'm not sure there's
23 been any testimony that there was an original
24 version.

25 MR. BOOTH: I was just asking were there any

1 changes.

2 THE COURT: Overruled. Go ahead.

3 Do you understand his question?

4 THE WITNESS: Were there any changes to this
5 contract?

6 BY MR. BOOTH:

7 Q Right. After you got it, did you request, I
8 use the word, did you request any changes to the
9 contract that was given to you by Cooler before this
10 one was finalized, I guess is a better way to put
11 it?

12 A No, sir.

13 Q So this one is exactly the way it was written
14 by Cooler Erectors when it was given to you?

15 A Yes, sir.

16 Q To review? I just want to make sure --

17 A Maybe I used the term review in the improper
18 tense or purpose. The contract was presented, was
19 reviewed at that particular moment in time and
20 signed.

21 Q Now, did either you or Mr. Crocker seek any
22 legal advice or legal assistance in reviewing this
23 contract?

24 A No, sir.

25 Q Now, you were put in charge of watching over

1 this project by Mr. Crocker; correct?

2 A Yes, sir.

3 Q So he gave you authority to make changes or to
4 check on --

5 A Yes.

6 Q And to check on the progress, correct?

7 A Yes, sir.

8 Q And you said he was the sole owner of Southern?

9 A Correct, yes, sir.

10 Q Now, one thing about the contract, I did not
11 see that there was any specification as far as a
12 deadline to complete the work. Is that the way you
13 look at it too?

14 A If you're asking me if there's a deadline in
15 the contract, no, sir, there's not a deadline in the
16 contract.

17 Q But even though it's been discussed, there was
18 a, somewhat of a deadline as far as Southern Produce
19 was concerned about getting into the building;
20 correct?

21 A It's kind of like that 11,000 dollar check, we
22 knew what it was for, but it wasn't specified.

23 Q Let me just back up. This will be real quick.
24 Southern Produce at the time this contract was
25 signed, that the drawings were done, was located in

1 a different location; right?

2 A That's correct.

3 Q Which we called the old Farmers Market;
4 correct?

5 A That's correct.

6 Q So did Southern Produce get some sort of notice
7 that they had to vacate by a certain date?

8 A Yes, sir.

9 Q Okay. And what was that date they had to
10 vacate based on that notice?

11 A December 2nd, I believe, is the actual date.

12 Q All right. And that was accomplished; correct?

13 A Yes, sir.

14 Q So Southern Produce was able to get into the
15 new building, out of the old building and started
16 operating by December 2?

17 A Yes, sir.

18 Q Due to the hard work of employees of Rose
19 Electric and other people working on the project;
20 correct?

21 A A lot of hard work and a lot of good people
22 that got messed over by Morris Teasley.

23 Q Okay. Now, you indicated that you did not know
24 that his company was not licensed until some time
25 later when your attorney told you; correct?

1 A Yes, sir.

2 Q But isn't it true the certificate of occupancy,
3 which you got from the county right around the time
4 you moved in, it had Mr. Hutchins, Mike Hutchins, as
5 the general contractor? Did you see that?

6 A At that particular time, I did not pay
7 attention to it.

8 Q But you've looked at it since then?

9 A Yes, sir.

10 Q And the certificate of occupancy does have that
11 name on it; correct?

12 A Yes, sir.

13 Q All right. What about Mike Hutchins? Did he
14 have anything to do with this project as far as you
15 know?

16 A As far as -- from day one, my understanding was
17 Mike Hutchins was the grader, drainage guy. He
18 graded and leveled the property and he did some, you
19 know, outdoor, like, drainage work, and that was the
20 extent of his position as far as I know.

21 Q So did you, Southern Produce, make any payments
22 to Mr. Hutchins directly?

23 A No.

24 Q And how long was he around that you recall?

25 A Who's that?

1 Q Mr. Hutchins?

2 A I never dealt with Mr. Hutchins, sir. I asked
3 who the guy on the tractor was one day and that's
4 when they told me who he was.

5 Q Okay.

6 A I can tell you that I was out there far more
7 than he was.

8 Q Yes. Now, one last thing, and this is, again,
9 just for my benefit because I want to make sure I
10 understand your position, your company's position.
11 You testified that it was never the intention of
12 Southern Produce not to pay for the change order
13 work?

14 A Correct.

15 Q And -- but isn't it true that for Rose Electric
16 to get paid for the change order work, you also
17 wanted them or it not to seek anymore money beyond
18 that payment; correct?

19 A To release the lien? Yes, sir.

20 Q All right. So there was sort of a condition on
21 getting paid for the change orders. The condition
22 was they'd have to release the lien?

23 A I'm --

24 Q You answered the question fine. Just don't
25 worry about it.

1 MR. BOOTH: I withdraw the question, Your
2 Honor.

3 Q Now, I know you said -- last series of
4 questions. I know you said you weren't around when
5 the work was done in late December. You put that
6 into evidence, the invoice and the check stub or
7 whatever for the work.

8 A Yes, sir.

9 Q So you weren't involved, but you know the work
10 got done by Rose Electric?

11 A Yes, sir.

12 Q At that time when they did the work in
13 December, they had not been paid anything for the
14 other work; correct?

15 A I was not aware of that at that time, but I
16 understand that to be the case now.

17 Q So you're saying that when -- so Mr. Homer Rose
18 did not mention that when he came out and did that
19 work?

20 A Once again, sir, I was not present at that
21 particular time. I was away on travel.

22 Q Okay.

23 MR. BOOTH: Your Honor, that completes my
24 cross.

25 THE COURT: Thank you.

DANIEL CARL STOCKER, JR. - REDIRECT BY MS. COOK

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1 Redirect.

2 MS. COOK: Just two very short matters.

3 REDIRECT EXAMINATION

4 BY MS. COOK:

5 Q Mr. Stocker, would you look at the mechanic's
6 lien filed by Rose Electric in this action? I think
7 it's Defendant's Exhibit Number 1.

8 A Yes, ma'am.

9 Q Who were the defend -- well, let me just ask,
10 this is Dunlap Services and Custom Concrete named as
11 defendants in this suit by Rose Electric?

12 A No, ma'am.

13 Q I'm sorry. What I didn't do -- I'm going to
14 hand you the complaint.

15 MS. COOK: Do you have any problem with me
16 handing --

17 MR. BOOTH: No. Go right ahead.

18 BY MS. COOK:

19 Q Let me hand you the complaint in this action
20 because I don't believe the mechanic's lien does
21 list them, but let me have you look at the complaint
22 in this action. Are Custom Concrete and Dunlap
23 Services named defendants in this lawsuit?

24 A Yes, ma'am.

25 Q And Mr. Booth asked you about a deadline for

DANIEL CARL STOCKER, JR. - REDIRECT BY MS. COOK

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1 moving from the old Farmers Market to the new
2 Farmers Market where this building was built and you
3 said December 2nd. Was that the third deadline
4 y'all had been given?

5 A Yes, ma'am.

6 Q And when you moved on or about -- and December
7 2nd is the -- when you moved on or about December
8 2nd, I mean, were you able to immediately start
9 working?

10 A No, ma'am. We weren't immediately able to
11 start working. There was still preparation that we
12 had to do.

13 Q And, in fact, the additional work that Southern
14 Produce requested of Rose Electric for the \$1,844,
15 that was done in January, wasn't it?

16 A Yes, ma'am.

17 MS. COOK: Your Honor, that's all I've got from
18 this witness.

19 THE COURT: Anything else?

20 MR. TURNER: Not from me, Your Honor. Thank
21 you.

22 THE COURT: Anything else?

23 MR. BOOTH: Nothing further, Your Honor.

24 THE COURT: Thank you, sir. You can step down.

25 Call your next witness.

1 MS. COOK: Your Honor, at this time, we would
2 ask -- we have no further witnesses, but we would
3 ask for the Court to take as part of the case and
4 note as part of the case, that there are -- there is
5 -- excuse me, Your Honor -- an offer of judgment
6 made on behalf of Southern Produce filed with this
7 court on July 26, 2011, in the amount of \$7,549.22.
8 And that will be in the court's file, Your Honor,
9 and part of the evidence in this case.

10 We would also ask the Court to take note of the
11 second offer of judgment filed on behalf of the
12 defendant, Southern Produce, on January 23rd, 2012,
13 in the amount of \$15,532.52.

14 Last, Your Honor, we would ask that Your Honor
15 take notice of the offer of judgment and settlement
16 filed on July 13th, 2002 -- I'm sorry, I said 2002,
17 I meant 2012 -- in the amount of \$18,000. That is
18 the last offer of judgment and settlement that has
19 been filed. There was no response to that offer of
20 settlement and judgment.

21 That offer of settlement and judgment was made
22 pursuant to Rule 68(a) of the South Carolina Rules
23 of Civil Procedure, pursuant to code section
24 15-35-400 of the South Carolina Code, and
25 specifically with regard to South Carolina Code

1 annotated, which is the mechanic's lien law, 29-5-10
2 paren, small B, end paren, and 29-5-20(C).

3 So we would like the Court to take those offers
4 and, in particular, the offer of settlement and
5 judgment filed in July for \$18,000 into account in
6 this case.

7 Additionally, Your Honor, as part of this case,
8 I would like to point out to the Court that the
9 filed complaint by the -- by Rose Electric in this
10 matter, which was filed on May 20, 2011, in
11 paragraph three of the complaint states that Cooler
12 Electric -- excuse me -- Cooler Erectors of Atlanta
13 is a corporation organized and existing under the
14 laws of a foreign state and was the general
15 contractor for improvement work to the owner's real
16 property.

17 The complaint, paragraph three, I would like to
18 also emphasize to Your Honor in the answers of my
19 client, Southern Produce, in the answer of S2P and
20 in the answer of the now dismissed defendant Senn
21 Brothers, Inc., we all admitted that allegation.
22 And I would like to -- for the Court to also note
23 that, in the file, that Cooler Erectors was properly
24 served by the plaintiff in this action and did not
25 interpose any answer, pleading or appearance in this

1 matter.

2 Your Honor, that would conclude Southern
3 Produce's case other than to ask Your Honor if Your
4 Honor would be receptive to, in terms of deciding
5 this case, allowing an affidavit of attorney's fees
6 incurred by my client to be produced to Your Honor.
7 I would -- I have not -- to date, my client, before
8 yesterday and today, had incurred attorney's fees in
9 excess of \$10,000 and I would like to update an
10 affidavit.

11 Clearly, if Mr. Booth would like to have a
12 small evidentiary hearing on that, I don't have a
13 problem with that, but just as Mr. Turner has
14 questioned my client about not having any opposition
15 to him putting in, which I know Your Honor has not
16 ruled on, but I'd like the opportunity, because I
17 believe attorney's fees would be a matter for the
18 Court in any event depending on your ruling, Your
19 Honor, I would like to be able to supplement the
20 record with an affidavit of attorney's fees.

21 THE COURT: Do y'all have a position on the
22 issue of attorney's fees being submitted by
23 affidavits?

24 MR. BOOTH: Your Honor, I, of course, put mine
25 into evidence and Ms. Cook said she would review it

1 and let you know if there's any objections to it. I
2 realize we still have the issue of whether it's an
3 award of it, but as far as the amount and the time
4 information I have in there, I have the details, I
5 just need to hear, is there any objection?

6 MS. COOK: I have not, Your Honor. I was just
7 -- handed it to me when he presented it, so I
8 haven't had an opportunity to review that, Your
9 Honor.

10 THE COURT: Do you want to be heard,
11 Mr. Turner?

12 MR. TURNER: To the extent that that's a
13 motion, Your Honor, I would consent to it. I think
14 Your Honor is experienced enough and knows enough
15 about the case at this point as to consider whether
16 or not the attorney's fees and expenses charged by
17 any of the counsel in the matter are reasonable and
18 to make any finding he wants based on that.
19 Otherwise, I can put up my client and we can elicit
20 testimony about it, whatever is your pleasure.

21 MR. BOOTH: May I be heard a little bit more?

22 THE COURT: Yes, sir.

23 MR. BOOTH: Judge, I don't know how you handle
24 attorney fee cases as far as, assuming you're going
25 to make an award, whether you do it as a second type

1 hearing or a bifurcated hearing where -- I've seen
2 it where the parties sort of exchange their
3 affidavits, and if there's an objection, then we
4 would come back here. If there's no objection --

5 THE COURT: That's fine with me. I've done it
6 that way. I've done it purely on affidavits and
7 I've done in it in full blown hearings. It's fine
8 with me to just reserve the issue about attorney's
9 fees on behalf of all the parties and if there's a
10 dispute, we'll reconvene the hearing and we'll
11 litigate the issue I suppose -- I mean, litigate the
12 amount.

13 MR. BOOTH: Correct, the reasonable amount.

14 THE COURT: Do you have any evidence to present
15 aside from that, Mr. Turner, on any issue? I mean
16 it's five after 5:00. I'm perfectly willing to
17 adjourn for today and start back tomorrow.

18 MR. TURNER: That's what I'm trying to avoid,
19 Your Honor.

20 THE COURT: Well, I would think that y'all
21 might be, but I just don't know how much longer the
22 testimony is going to take.

23 MR. TURNER: I've got about three questions for
24 one witness and we can conclude, I think, all the
25 testimony in the case.

1 THE COURT: Do you anticipate reply?

2 MR. BOOTH: No, I don't anticipate any reply on
3 his part. I don't anticipate, just based on what I
4 know.

5 MR. TURNER: How about if I call him and we try
6 to get it done real quick?

7 THE COURT: It's not a problem for me. You had
8 indicated that you had a commitment tonight and I
9 understand that you live on the coast. I live an
10 hour away from here, but when I leave here, I'm
11 going to another office, so what difference does it
12 make to me? I'd like to go ahead and get it wrapped
13 up too. Call your witness.

14 MR. TURNER: May I call a witness?

15 THE COURT: Certainly.

16 MR. TURNER: I'd like to call Mr. James Senn to
17 give testimony.

18 JAMES D. SENN,
19 having been duly sworn, testified as follows:

20 THE CLERK: Have a seat please and state your
21 full name for us.

22 THE WITNESS: James D. Senn.

23 DIRECT EXAMINATION

24 BY MR. TURNER:

25 Q Mr. Senn, you are a member of S2P, LLC; is that

1 correct?

2 A Yes, sir.

3 Q And a part owner of that?

4 A Yes, sir.

5 Q And you're also an officer and stockholder in
6 Senn Brothers, Inc.; is that correct?

7 A Yes, sir.

8 Q And you also, in your connection with Senn
9 Brothers, Inc., you do business on that same piece
10 of land as Southern Produce does; is that correct?

11 A Yes, sir.

12 Q All right. Do you have any affiliation,
13 ownership or ongoing contractual relationship or
14 obligation to Southern Produce?

15 A No, we do not.

16 Q Do they own any interest in any of your
17 companies?

18 A No, they do not.

19 Q Do you own any interest in any -- in their
20 company?

21 A No, I do not.

22 Q Do any of your stockholders or members of your
23 two companies own any interest in Southern Produce?

24 A No, we do not.

25 Q Are you under any obligation that when you need

1 the kind of services that they do, are you under any
2 obligation to use them for those services?

3 A No, we are not.

4 Q Are they under any obligation to use you to
5 obtain, for instance, wholesale vegetables or any of
6 the things that you do?

7 A No, they are not.

8 Q To the best of your knowledge, S2P has entered
9 a lease with Southern Produce?

10 A Yes, we are.

11 Q And that's the lease that was entered into
12 evidence here today?

13 A Yes.

14 Q And under that lease, Southern Produce has
15 agreed to reimburse you for your attorney's fees and
16 costs incurred in defense of any action, for
17 instance, like this action, where there's a
18 mechanic's lien filed by a creditor of Southern
19 Produce?

20 A Yes, they have.

21 Q And, in fact, Southern Produce has been
22 reimbursing you for those expenses; is that correct?

23 A Yes.

24 Q You've retained me, your company's both
25 retained me to do a defense in this case; is that

1 correct?

2 A Yes.

3 Q And I charge you by the hour; is that correct?

4 A Yes, it is.

5 Q And I pass on any of my expenses to you as
6 well, don't I?

7 A Yes, you do.

8 Q Is it your understanding that currently there
9 is an attorney's fee bill and costs that's been run
10 up in this case up to \$7,000 or so; is that correct?

11 A It is.

12 Q And I haven't even billed you for today's time,
13 have I?

14 A No, you haven't.

15 Q And you're pretty sure I'm going to, aren't
16 you?

17 A I think so, yes. I know so.

18 Q All right, sir. Is it your prayer to the Court
19 that the Court orders Southern Produce to reimburse
20 you in that amount when the Court feels its
21 appropriate?

22 A Yes.

23 Q Did you have any role whatsoever in choosing
24 the contractor on building the building for Southern
25 Produce?

JAMES D. SENN - CROSS BY MR. BOOTH

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1 A Did I do what now?

2 Q Did you have any role at all in choosing the
3 contractor?

4 A No, sir, I did not.

5 Q Did you approve the contractor?

6 A No, I did not.

7 Q Did you disapprove any other contractors?

8 A No, I did not.

9 Q Did you choose any subcontractors?

10 A No, I did not.

11 MR. TURNER: That's all I have for him, Your
12 Honor.

13 Answer any questions they might have for you.

14 THE COURT: Mr. Booth.

15 CROSS-EXAMINATION

16 BY MR. BOOTH:

17 Q Very quickly. The lease agreement that was
18 given to us a few minutes ago, Mr. Senn, has a
19 commitment date of January 1, 2011.

20 A Uh-huh.

21 Q That's after this building was finished. You
22 understand that, don't you?

23 A Yes.

24 Q Because, I mean, when I say finished, at least
25 the CO was obtained in November of 2010; correct?

JAMES D. SENN - CROSS BY MR. BOOTH

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1 A Yes.

2 Q So was there a lease in effect back at that
3 time with Southern Produce?

4 A We were in the process of doing a lease.

5 Q Okay. So you did get permission for Southern
6 Produce to begin construction prior to the lease
7 being signed?

8 A Yes.

9 Q Mr. Senn, just one other question. Your lease
10 does say that you, your company, is supposed to
11 approve all plans and the developer that would be
12 used for any construction on this property. Do you
13 know that that's in your lease?

14 A Yes, I do know that's in our lease, but I
15 understood that to mean that, you know, that he was
16 building a building to process produce and that he
17 didn't go back there and build a flea market or a
18 bar or lounge or whatever. That's -- I mean, that's
19 how I took that -- what I took that to mean.

20 Q I got you.

21 MR. BOOTH: That's all I have. Thank you,
22 Mr. Senn.

23 THE COURT: All right. Any other questions?

24 *****

25 *****

JAMES D. SENN - CROSS BY MS. COOK

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1 CROSS-EXAMINATION

2 BY MS. COOK:

3 Q Mr. Senn, did you use Cooler Erectors to do
4 work on your buildings?

5 A Yes, we did.

6 Q Did you use Rose Electric to do work in your
7 building?

8 A Yes, we did.

9 Q Did Rose Electric do its work in your building
10 under the direction and under the general contract
11 of Cooler Erectors?

12 A Yes, he did.

13 MS. COOK: That's all the questions I have,
14 Your Honor.

15 MR. TURNER: Nothing further, and nothing
16 further from this party, Your Honor.

17 THE COURT: Thank you, sir. You can step down.

18 All right. Any reply testimony?

19 MR. BOOTH: No, Your Honor. I don't need to do
20 any reply. Thank you for the opportunity.

21 THE COURT: All right. I don't see memoranda
22 in the file. If you want to do -- I'll give you the
23 option: You can do me a proposed order that
24 basically would be in the form of a memorandum or
25 you can do a memorandum and abbreviate from that,

1 cut and paste and do a short order or you can just
2 send me a memorandum and I'll tell you how I'm going
3 to rule and then direct that the attorneys draw the
4 order or I'll do the order myself. Do y'all want to
5 be -- you want to tell me your preference?

6 MR. BOOTH: The plaintiff's preference would be
7 a memo sent to you, I assume, by e-mail in whatever
8 timeline. Maybe two weeks will be all right?

9 THE COURT: That's fine. Two weeks is fine.

10 Is that all right with everybody?

11 MR. TURNER: And then Your Honor would instruct
12 whoever should draw the order, that'll be fine.

13 THE COURT: That'll give me time to read
14 through everything and then read your memos. And I
15 don't know when my next chambers week is, but
16 assuming I have some time, I can look at it off the
17 bench. I'll try to do it sooner. But is two weeks
18 enough time?

19 MS. COOK: Yes, sir, Your Honor, for the memo.
20 And can we submit to Your Honor and to co-counsel
21 and opposing counsel the affidavits of attorney's
22 fees at that time as well?

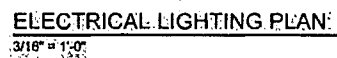
23 THE COURT: I was assuming that y'all would do
24 that.

25 MS. COOK: Yes, sir.

1 THE COURT: All right. Well, thank you very
2 much, folks. I'm very sad and sorry that y'all are
3 in this situation. Courts resolve disputes. We
4 don't always resolve them where anybody's happy,
5 much less everybody's happy. So if you all have
6 been talking, I would encourage you to continue to
7 talk if you can do so. If you cannot, I'll make a
8 decision and I'll do the best I can in making a
9 decision. I hope I'm right and I hope it's helpful.
10 If I'm wrong and it's not helpful, I hope you don't
11 have to go through the step of appealing it, but if
12 you do and I'm wrong, I apologize to you in advance.

13 Y'all all have impressed me as being very fine
14 people and I really am sorry you find yourself in
15 this kind of situation.

16
17 END OF PROCEEDINGS
18
19
20
21
22
23
24
25



FAULTURE SCHEDULE		
TYPE	DESCRIPTION	DATE
A	CONCRETE LUMBER - 220 PLY 12 NO.	4-20-78 10
B	COOPER - 200-200-200-200-200	4-20-78 10
C	COOPER - 100-200-200-200-200	4-20-78 10
D	COOPER - 200-200-200-200-200	4-20-78 10
E	COOPER - 200-200-200-200-200	4-20-78 10
F	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
G	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
H	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
I	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
J	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
K	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
L	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
M	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
N	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
O	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
P	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
Q	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
R	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
S	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
T	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
U	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
V	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
W	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
X	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
Y	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10
Z	CONCRETE LUMBER - 200 PLY 12 NO.	4-20-78 10

SOUTHERN PRODUCE PROCESSING FACILITY SOUTH CAROLINA		APPROVALS		REVISIONS	
 GENE CLARK PE INC. 225 PARKWAY SOUTH, SUITE 200 COLUMBIA, SC 29204 TEL: 803-733-1111 FAX: 803-733-1112		DESIGNED BY	DATE	REVISION	DATE
		DESIGNED BY	DATE	REVISION	DATE
		DESIGNED BY	DATE	REVISION	DATE
		DESIGNED BY	DATE	REVISION	DATE

$$3/16" = 1'-0"$$

FUTURE SCHEDULE						
NO.	EQUIPMENT NAME	VOLUME	PHASE	INSTALL/TEAR-DOWN	CONNECTION	DELETED
1	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
2	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
3	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
4	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
5	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
6	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
7	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
8	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
9	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
10	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
11	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
12	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
13	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
14	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
15	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
16	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
17	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
18	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
19	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
20	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
21	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
22	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
23	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
24	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
25	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
26	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
27	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
28	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
29	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
30	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
31	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
32	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
33	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
34	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
35	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
36	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
37	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
38	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
39	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
40	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
41	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
42	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
43	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
44	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
45	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
46	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
47	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
48	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
49	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
50	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
51	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
52	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
53	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
54	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
55	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
56	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
57	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
58	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
59	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
60	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
61	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
62	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
63	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
64	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
65	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
66	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
67	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
68	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
69	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
70	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
71	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
72	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
73	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
74	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
75	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
76	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
77	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
78	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
79	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
80	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
81	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
82	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
83	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
84	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
85	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
86	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
87	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
88	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
89	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
90	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
91	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
92	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
93	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
94	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
95	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
96	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
97	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
98	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
99	HUMIDIFIER	1.0	1	30 W	11W OUTLET	001
100	WATERHEATER	2.0	1	0.5 W	WATERLINE JUNCTION	002
BUTTERFLY VALVE & LOCKDOWN ON SMALL PIPES MUST BE INDICATED ON FUTURE SCHEDULE						
FILL & BLEND TANK BE LOCATED NEXT TO SECTION 1						

SOUTHERN PRODUCE PROCESSING FACILITY SOUTH CAROLINA		 L. Gens Clark PE Inc. 1000 WEST STREET COLUMBIA, SC 29201 (803) 733-4444		ARCHITECTURAL COMPANY AC 222 Elmwood Drive, Suite 202A Columbia, SC 29201 (803) 733-4444		REVISIONS: 1. See drawing for 2. See drawing for 3. See drawing for 4. See drawing for 5. See drawing for 6. See drawing for 7. See drawing for 8. See drawing for 9. See drawing for 10. See drawing for	
SHEET NO. E2		APPROVALS: ARCHITECT ENGINEER PLUMBER MECHANICAL ELECTRICAL SANITARY SPECIALTY INSULATION ROOFING FLOORING PAINTING OTHER		APPROVALS: ARCHITECT ENGINEER PLUMBER MECHANICAL ELECTRICAL SANITARY SPECIALTY INSULATION ROOFING FLOORING PAINTING OTHER		APPROVALS: ARCHITECT ENGINEER PLUMBER MECHANICAL ELECTRICAL SANITARY SPECIALTY INSULATION ROOFING FLOORING PAINTING OTHER	
DATE: 10-03-2010							

294

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11023
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #5

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Equipment #28 – Change from hard wire to			
				Stainless steel disconnects.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$3,091.89	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11023
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

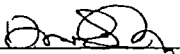
Phone: 770-932-9012

Fax #: 770-932-5527

Terms: **Upon receipt of invoice**

Job Name/Number: Farmers Mkt., Southern Produce
Change Order #5

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Equipment #28 - Change from hard wire to			
				Stainless steel disconnects.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$3,091.89	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11020
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #2

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Install Cannon Style Plugs.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$436.20	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

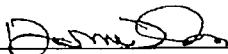
**SERVICE
INVOICE**

INVOICE NO: 11021
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #3

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Add Hand Wash Water Heater Circuit to			
				Station Sink.			
				OTHER CHARGES			AMT
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$987.61	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11022
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #4

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Relocate equipment #13 from inside the			
				Building to outside and provide disconnect			
				With fuses.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE: \$356.80			

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

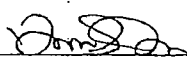
**SERVICE
INVOICE**

INVOICE NO: 11025
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #7

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Instal 5 additional recepticles to the inside			
				Of cooler walls.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$834.95	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11026
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #8

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Install 6 additional recepticles in office area			
				To include additional circuit.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$337.63	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO.: 11027
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #9, 10 and 11

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Install dedicated circuits for the Evaporators			
				Including time clock, and 12 pole control			
				Contactor and additional breaker and			
				Rework.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$3,054.97	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11028
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #12

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Install 1 additional 2x4 Lay-In Fixture in			
				Office Area.			
				OTHER CHARGES			AMT
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE: \$141.06			

Rose Electric Inc.

1421 VanBoklen Rd.
Eastover, SC 29044

Bus.: (803) 353-8949
Fax: (803) 353-2668
Email: roseelectric@aol.com

February 16, 2011

To: Cooler Erectors of Atlanta, Inc.
Attention: Morris Teasley
3167 Heritage Way
Buford, GA 30519

To: Southern Produce, Inc.
Attention: Nate Crocker
PO Box 7783
Columbia, SC 29202

From: Rose Electric, Inc.

Re: Unpaid Invoices

Gentlemen:

At present we have incurred unpaid expenses on the Southern Produce job in the amount of \$65,094.52. I have gone back through the files and pulled out the change orders that Mr. Dan Stocker, with Southern Produce, requested us to do while we were working on the contract portion of this job. I have listed the Change Orders below and I am enclosing copies of each for each of you.

Change Order #2 - \$ 436.20
Change Order #3 - \$ 987.61
Change Order #4 - \$ 356.80
Change Order #5 - \$3,091.89
Change Order #6 - \$1,514.28

Change Order #7 - \$ 834.95
Change Order #8 - \$ 337.63
Change Order #9, 10 & 11 - \$3,054.97
Change Order #12 - \$ 141.06

Change Order #1 was for "Cooler Power" and has already been paid by Southern Produce.

The total amount of Change Orders #2 - 12 is \$10,755.39. Subtracting this \$10,755.39 from our Total unpaid cost of \$65,094.52, will leave \$54,339.13. This is our cost for the contract work. I am Not sure how you want to handle paying us but would appreciate your immediate attention in getting this paid. The original invoices for this job were submitted in November of 2010.

You have given me no alternative but to start the process of obtaining counsel to help me collect our money. However, I would prefer that you just send us our money. Please respond.

Sincerely,



Homer S. Rose
Rose Electric, Inc.

SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Southern Produce Inc
Attn: Nate Crocker
322 Little Chris Lane
West Columbia, SC
29172

2. Article Number

(Transfer from service label)

7009 2250 0002 8108 7926

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

2-17-11

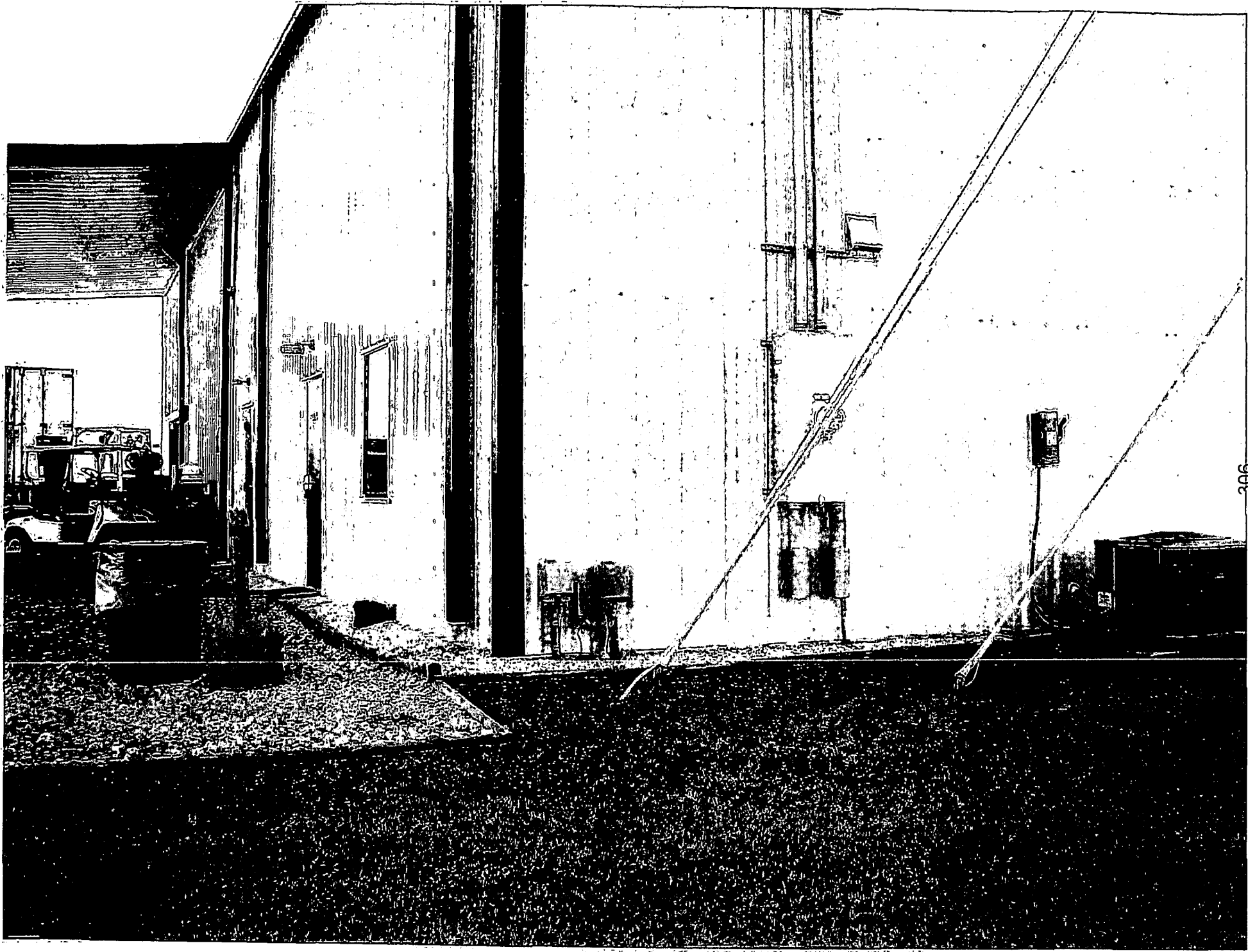
D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

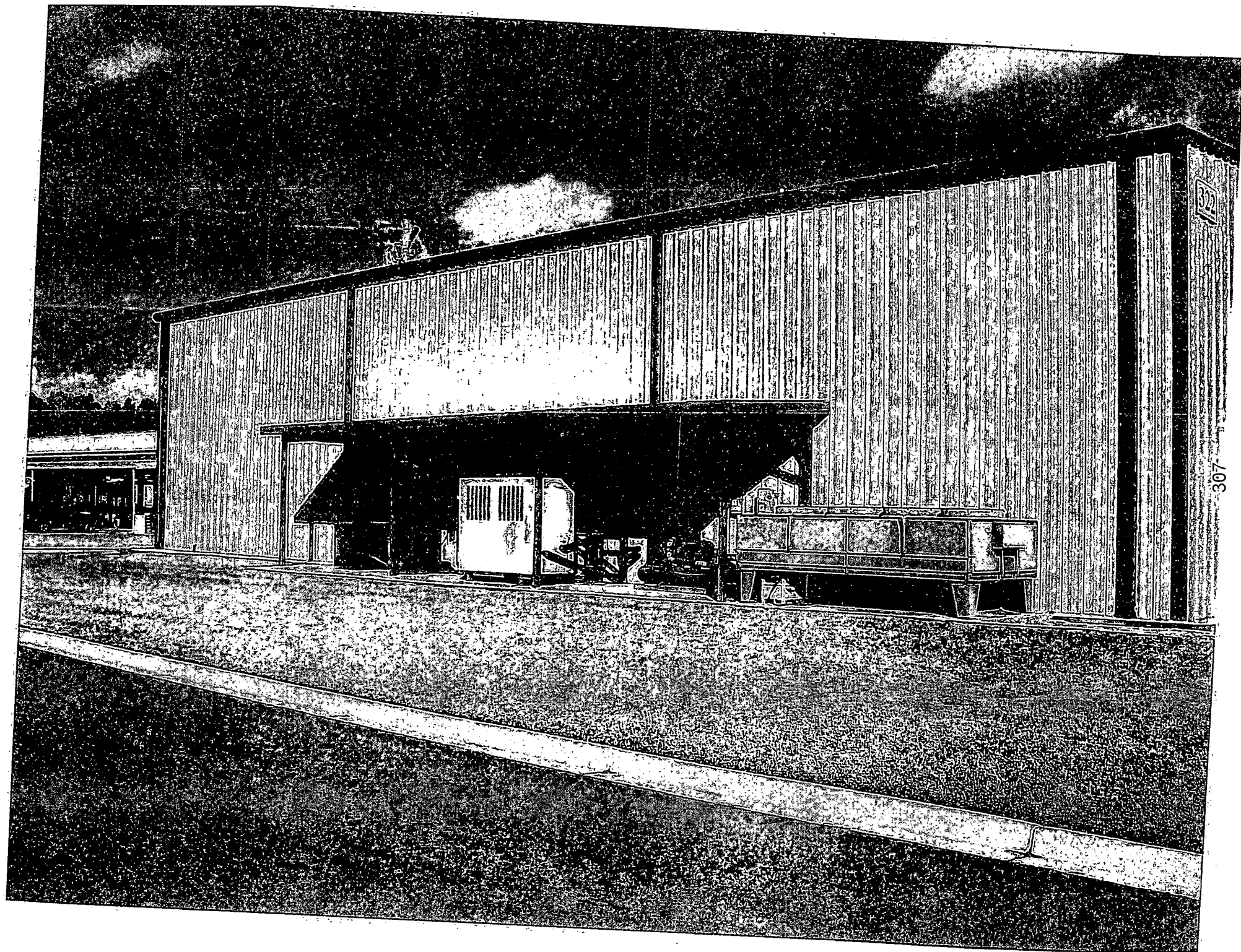
3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes





32

307

Rose Electric, Inc.

1421 VanBoklen Road
Eastover, SC 29044
Bus.: 803.353.8949
Fax: 803.353.2668
roseelectric@aol.com

PROPOSAL

DATE: November 24, 2010

REI Contractors License #M99797

Cooler Erectors of Atlanta
Attn: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 404-246-0969
Fax: 770-932-5527 ✓
Email:
Location: SC Farmers Market
Southern Produce

JOB DESCRIPTION

Electrical, including: Power, Lighting, and Refrigeration Power.

ITEMIZED PROPOSAL

\$56,488.07

TOTAL PROPOSED JOB COST \$56,488.07

This is a proposal only, not a contract for services. This proposal is for completing the job as described above. It is based on our evaluation and does not include material price increases or additional labor and materials which may be required should unforeseen problems arise after the work has started. Note: This proposal may be withdrawn by us if not accepted in 10 days. Material prices good for 30 days.



Authorized Signature

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance: _____

Signature _____

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
1	Southern Produce, Farmers Market																
2	EMPLOYEE	11/6	11/13	11/20	11/27	12/4	1/29				HOURS	Rate	Total				TOTAL COSTS
3	Homer	4	12	13	27		6				62	\$46.50	\$2,883.00				
4	Homer (O.T.)										0	\$69.75	\$0.00				
5	Clint Rose										0	\$35.00	\$0.00				
6	Clint (O.T.)										0	\$52.50	\$0.00				
7	Bobby Stachura										0	\$35.00	\$0.00				
8	Bobby (O.T.)										0	\$52.50	\$0.00				
9	Joe Moore										0	\$33.00	\$0.00				
10	Joe (O.T.)										0	\$49.50	\$0.00				
11	Luke Lanham	5	37	40	30	30					142	\$33.00	\$4,686.00				
12	Luke L. (O.T.)			18	18						36	\$49.50	\$1,782.00				
13	Rhonda Parker			40	10						50	\$33.00	\$1,650.00				
14	Rhonda (O.T.)			15							15	\$49.50	\$742.50				
15	Robert Shapley			10	7.5						17.5	\$30.00	\$525.00				
16	Robert (O.T.)			8	18						26	\$49.50	\$1,287.00				
17	Rocky Melton				7.5						7.5	\$35.00	\$262.50				
18	Rocky (O.T.)			8	18						26	\$52.50	\$1,365.00				
19	Russell Frazee	5	38	40	30	30					143	\$33.00	\$4,719.00				
20	Russell (O.T.)			18	18						36	\$49.50	\$1,782.00				
21																	
22		9	49	152	136	30	6	0			561		\$21,684.00				21,684.00
23																	
24	Belcher Staffing	W/E 11-20-10															793.80
25	Belcher Staffing	W/E 11-27-10															1,728.72
26	Belcher Staffing	W/E 12-4-10															617.40
27																	
28	Trencher Rental																
29	Trucks & Tools										\$80/day; \$300/week						1,180.00
30	MATERIAL										AMOUNT	MATERIAL	AMOUNT	Material	Amount		
31	Shealy										\$35.73	Shealy	\$372.63	Shealy	139.89		
32	Lowes										\$62.54	Shealy	\$316.89	Shealy	100.12		
33	Shealy										\$195.28	Shealy	\$438.33	Shealy	46.83		
34	Shealy										\$438.33	Shealy	\$2,130.00	Shealy	196.26		
35	Shealy										\$531.07	Shealy	\$102.80	Shealy	2567.91		
36	Shealy										\$3.21	Shealy	\$104.25	Shealy	663.4		
37	Shealy										\$1,208.42	Shealy	\$54.01	Shealy	21.22		
38	Shealy										\$2,004.58	Shealy	\$229.13	Shealy	217.02		
39	Shealy										\$180.30	Shealy	\$51.96	Shealy	77.04		
40	Shealy										\$57.55	Shealy	\$45.32	Shealy	262.13		
41	Shealy										\$7,062.00	Shealy	\$642.49	Shealy	7.78		
42	Shealy										\$534.14	Shealy	\$3,180.23	Shealy	102.01		
43	Ahern										\$377.18	Shealy	\$6,848.37	Shealy	26.08		
44	Shealy										\$1,007.68	Ahern	\$323.68	Shealy	0.25		
45											Ahern	\$216.68	Shealy	\$8.50			
46													Shealy	\$48.54			
47													Shealy	\$42.48			
48													Shealy	\$309.73			
49													Shealy	\$81.66			
50													Shealy	\$52.80			
51													Shealy	\$23.12			
52													Shealy	\$142.28			
53																	
54											\$13,698.01		\$15,056.77		\$5,237.05		39,090.60
55	15% HANDLING											\$5,098.77					
56																	
57	TOTAL JOB COST																65,094.52
58																	

B ELCHER
Staffing Services, Inc.

(803) 926-3514

INVOICE

PAGE: 1

TERMS: NET DUE UPON RECEIPT

ATTN: HOMER ROSE
ROSE ELECTRIC, INC.
1421 VONBOKLEN RD
EASTOVER SC 29044

Date Client Number Invoice Number
12/02/10 083924-000 48333-00

BELCHER STAFFING SERVICES INC
P.O. BOX 2392
NEW YORK NY 10116-2392

Employee Name	Classification	Description	Period	Units	Rate	Extension	Total
HOWELL, WILLIAM	TOP HELPER	S.T. HOURS	1128	28.00	23.52		658.56

PO NUMBER

Farmers Mkt/

WE ENCOURAGE YOU TO SEND PAYMENTS ELECTRONICALLY VIA ACH CREDIT TO:

ABA # 021052053 UPIC/ACCT # 91218798

PLEASE INCLUDE CUSTOMER # AND INVOICE # IN THE PAYMENT.

TOTAL AMOUNT

658.56

B ELCHER
Staffing Services, Inc.

Remittance Stub

Date	Client Number	Invoice Number	Total Due
12/02/10	083924-000	48333-00	658.56

To ensure proper credit to your account, return this stub with payment.

1804112 000005 03

Proper credit cannot be assured unless all remittances are made to:

ATTN: HOMER ROSE
ROSE ELECTRIC, INC.
1421 VONBOKLEN RD
EASTOVER SC 29044

BELCHER STAFFING SERVICES INC
P.O. BOX 2392
NEW YORK NY 10116-2392



TERMS: NET DUE UPON RECEIPT

NOV 28 2010

Week Ending: 11-27-10

Job Name/Id: Farmers Mkt., Southern Produce

Dec 01 2010 3:38PM HP LASERJET FAX

B ELCHER
Staffing Services, Inc.

(803) 926-3514

INVOICE

PAGE: 1
TERMS: NET DUE UPON RECEIPT

ATTN: HOMER ROSE
ROSE ELECTRIC, INC.
1421 VONBOKLEN RD
EASTOVER SC 29044

Date Client Number Invoice Number
11/25/10 083924-000 48300-00

BELCHER STAFFING SERVICES INC
P.O. BOX 2392
NEW YORK NY 10116-2392

Employee Name	Classification	Description	Period	Units	Rate	Extension	Total
HOWELL, WILLIAM	TOP HELPER	S.T. HOURS	1121	18.00	23.52		423.36
WILLIAMS, SEAN E	TOP HELPER	S.T. HOURS	1121	18.00	20.58		370.44

W/E 11-20-10

PO NUMBER
Southern Produce

WE ENCOURAGE YOU TO SEND PAYMENTS ELECTRONICALLY VIA ACH CREDIT TO:
ABA # 021052053 UPIC/ACCT # 91218798
PLEASE INCLUDE CUSTOMER # AND INVOICE # IN THE PAYMENT.

TOTAL AMOUNT 793.80

B ELCHER
Staffing Services, Inc.

Remittance Stub

Date Client Number Invoice Number Total Due
11/25/10 083924-000 48300-00 793.80

1804112 000004 03

To ensure proper credit to your account, return this stub with payment.

Proper credit cannot be assured unless all remittances are made to:

ATTN: HOMER ROSE
ROSE ELECTRIC, INC.
1421 VONBOKLEN RD
EASTOVER SC 29044

BELCHER STAFFING SERVICES INC
P.O. BOX 2392
NEW YORK NY 10116-2392

INVOICE

PAGE: 1

TERMS: NET DUE UPON RECEIPT

(803) 926-3514

ATTN: HOMER ROSE
ROSE ELECTRIC, INC.
1421 VONBOKLEN RD
EASTOVER SC 29044

Date	Client Number	Invoice Number

12/09/10 083924-000 48364-00

BELCHER STAFFING SERVICES INC
P.O. BOX 2392
NEW YORK NY 10116-2392

Employee Name	Classification	Description	Period	Units	Rate	Extension	Total
WILLIAMS, SEAN E	TOP HELPER	S.T. HOURS	1205	30.00	20.58		617.40

PO NUMBER

Farmers Mkt/Southern

WE ENCOURAGE YOU TO SEND PAYMENTS ELECTRONICALLY VIA ACH CREDIT TO:

AEA # 021052053 UPIC/ACCT # 91218798

PLEASE INCLUDE CUSTOMER # AND INVOICE # IN THE PAYMENT.

TOTAL AMOUNT

617.40

[illegible]

TIME SHEET

TO: BELCHER STAFFING SERVICES, INC. - Phone 926-3514; Fax 796-8414

Week Ending: 12-4-10

FROM: ROSE ELECTRIC, INC. - Phone 353-8949; Fax 353-2668

Job Name/ #: Farmers Mkt., Southern Produce

Name	M	T	W	TH	F	S	S	Reg OT	Total	Employee Signature
1. Sean Williams	10	10	10						30	\$617 ⁴⁰
2	Sean is working Thursday for another area at the Farmers Market								0	
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										

SEND PAYMENTS TO:

ACCOUNTS RECEIVABLES
4241 ARVILLE ST
LAS VEGAS, NV 89103-3713
TEL: 702-362-0623
FAX: 702-966-4864



CUSTOMER ASSISTANCE:

COLUMBIA
6320 FAIRFIELD RD
COLUMBIA, SC 29203-2621

TEL: 803-783-0170
FAX: 803-783-0190
MON - FRI 6:00-5:00
SATURDAY CLOSED
SUNDAY CLOSED

RENTAL INVOICE

Customer: 248370

ROSE ELECTRIC INC
1421 VANBOKLEN RD
EASTOVER, SC 29044-9580

Job Site:

FARMERS MARKET
406 WHOLESALE LN
CAYCE, SC 29033

C#: 803-353-8949 J#: 803-353-8949

Map page/grid: 8143/D4

Invoice #... 8917449-003 ✓
Invoice date 1/14/11
Date out... 11/11/10 2:00 PM
Date in... 1/13/11 10:00 AM
Job Loc... FARMERS MARKET; 406 WHOLESALE
Job No... FARMERS MARKET
P.O. #... HOMER
Ordered By... HOMER/KW
Written by... CHRISFD
Sales rep... 8783 - RANDY LOPER
Terms... Net 10 Days

Qty	Equipment	Min	Day	Week	4 Week	Amount

1	SCISSORLIFT, 19-20', 32", ELECT	72.00	72.00	145.00	295.00	145.00
EQP#: 17248 Make: SKYJACK Model: SJIII3219 Ser #: 231637						
HR OUT: 419.90 HR IN: 423.00 TOTAL: 3.10						

SALES ITEMS:

Qty	Item number	Unit	Price	
1	160642	EA	7.500	7.50
ENVIRONMENTAL CHARGE				
PICKUP CHARGE - CUSTOMER CALL WHEN DONE				50.00

ROSE ELECT: HOMER 803-353-8949

CALL CUSTOMER ON ARRIVAL TO RECEIVE

SPECIAL RATE / CUSTOMER CALL OFF

Rental-total: 202.50

(7%) Tax: 14.18

Total: 216.68

FINAL BILL: 1/06/11 02:00 PM THRU 1/13/11 10:00 AM.

IF THE EQUIPMENT DOES NOT WORK PROPERLY
NOTIFY CUSTOMER ASSISTANCE AT ONCE

MULTIPLE SHIFTS OR
OVERTIME RATES MAY APPLY

CUSTOMER IS RESPONSIBLE FOR
REFUELING, DAMAGES OR REPAIRS

1. Damage Waiver (12% of gross rental charges) will be charged absent of proof of insurance (see reverse side of this rental contract).

2. Customer must call branch location to obtain call off rental number and is responsible for Equipment until it is picked up.

3. If Customer fails to return equipment within the time specified above, Customer is deemed to have renewed the rental contract on the same terms and conditions.

4. By initialing this section you the renter/lessee have affirmed that you are aware of and will abide by the "State of California's Air Resources Board" Idling Policy which states that no vehicle or engine subject to the in-use off-road diesel regulation may idle for more than 5 consecutive minutes. See California Code of Regulation, Section 2449 (d) (3). Initial here.

This Rental Contract consists of both sides of this document. I have had the opportunity to read the terms and conditions on both sides of this Rental Contract and have been instructed in the proper use and operation of the Equipment delivered and will ensure that all operator(s) receive this training and the instructions contained in the manufacturer's operation manual, a copy of which has been provided with the Equipment, which will be read by each operator. I have understood the instructions provided, and all questions have been answered to my satisfaction.

X

CUSTOMER SIGNATURE

DATE

NAME PRINTED

DELIVERED BY

DATE

Terms: Payment Due within 10 days of invoice. A finance charge of 2% per month will be added to past due accounts.



Shealy Electrical Wholesalers
PROFESSIONAL DISTRIBUTION FOR THE ELECTRICAL INDUSTRY

Phone: (803) 227-0599
www.shealyelectrical.com

INVOICE

Order #	2292461-00
Inv Date	01/12/11
PO #	southern produce
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	01/12/11
Terms	Net 30 Days
Instructions	

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	12/2mc 99170 WIRE 12/2MC CABLE WITH G ROUND	250	0	250	EA	0.52	EA	130.00
2	40ast 00041 ARL 40AST SNAP-IN CABLE CONN	1	0	1	EA	69.01	HU	0.69
3	52151-1/2&3/4 16430 SC 4SQ1-1/2D BOX	4	0	4	EA	0.57	EA	2.28
3	Lines Total	Qty Shipped Total		255			Total	132.97
							Taxes	9.31
							Invoice Total	142.28



Phone: (803) 227-0599
www.shealyelectrical.com

INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2289638-00
Inv Date	12/03/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	12/03/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS.(ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	12/4SOR 99230 CAROL 12/4 SO CORD-500FT REEL Lot #: 2-LOT4 Qty: 20.00	20	0	20	EA	1.08	EA		21.60
1	Lines Total	Qty Shipped Total		20				Total	21.60
								Taxes	1.52
								Invoice Total	23.12

SEND PAYMENTS TO:
ACCOUNTS RECEIVABLES
 4241 ARVILLE ST
 LAS VEGAS, NV 89103-3713
 TEL: 702-362-0623
 FAX: 702-966-4864



CUSTOMER ASSISTANCE:
COLUMBIA
 6320 FAIRFIELD RD
 COLUMBIA, SC 29203-2621

TEL: 803-783-0170
 FAX: 803-783-0190
 MON - FRI 6:00-5:00
 SATURDAY CLOSED
 SUNDAY CLOSED

CYCLE INVOICE

Customer: 248370

ROSE ELECTRIC INC
 1421 VANBOKLEN RD
 EASTOVER, SC 29044-9580

Job Site:

FARMERS MARKET
 406 WHOLESALE LN
 CAYCE, SC 29033

C#: 803-353-8949 J#: 803-353-8949
 Map page/grid: 8143/D4

Invoice #... 8917449-002
 Invoice date 12/24/10
 Date out... 11/11/10 2:00 PM
 Billed thru. 1/06/11
 Job Loc..... FARMERS MARKET; 406 WHOLESALE
 Job No..... FARMERS MARKET
 P.O. #..... HOMER
 Ordered By... HOMER/KW
 Written by... CYCLE BILL
 Sales rep... 8783 - RANDY LOPER
 Terms..... Net 10 Days

Southern Produce
204 ch
10/24

Qty	Equipment	Min	Day	Week	4 Week	Amount

1	SCISSORLIFT, 19-20', 32", ELECT	72.00	72.00	145.00	295.00	295.00
EQP#: 17248 Make: SKYJACK Model: SJIII3219 Ser #: 231637						
HR OUT: 419.90 HR IN: TOTAL: 419.90						
CUSTOMER CALL WHEN DONE						

SALES ITEMS:

Qty	Item number	Unit	Price	
1	160642	EA	7.500	7.50
ENVIRONMENTAL CHARGE				

ROSE ELECT: HOMER 803-353-8949

CALL CUSTOMER ON ARRIVAL TO RECEIVE

SPECIAL RATE / CUSTOMER CALL OFF

Rental-total: 302.50

(7%) Tax: 21.18

Total: 323.68

BILLED FOR FOUR WEEKS 12/09/10 THRU 1/06/11

IF THE EQUIPMENT DOES NOT WORK PROPERLY
 NOTIFY CUSTOMER ASSISTANCE AT ONCE

MULTIPLE SHIFTS OR
 OVERTIME RATES MAY APPLY

CUSTOMER IS RESPONSIBLE FOR
 REFUELING, DAMAGES OR REPAIRS

1. Damage Waiver (12% of gross rental charges) will be charged absent of proof of insurance (see reverse side of this rental contract).
 2. Customer must call branch location to obtain call off rental number and is responsible for Equipment until it is picked up.
 3. If Customer fails to return equipment within the time specified above, Customer is deemed to have renewed the rental contract on the same terms and conditions.
 4. By initialing this section you the renter/lessee have affirmed that you are aware of and will abide by the "State of California's Air Resources Board" Idling Policy which states that no vehicle or engine subject to the in-use off-road diesel regulation may idle for more than 5 consecutive minutes. See California Code of Regulation, Section 2449 (d) (3). _____ initial here.
- This Rental Contract consists of both sides of this document. I have had the opportunity to read the terms and conditions on both sides of this Rental Contract and have been instructed in the proper use and operation of the Equipment delivered and will ensure that all operators receive this training and the instructions contained in the manufacturer's operation manual, a copy of which has been provided with the Equipment, which will be read by each operator. I have understood the instructions provided, and all questions have been answered to my satisfaction.

X

CUSTOMER SIGNATURE	DATE	NAME PRINTED	DELIVERED BY	DATE

Terms: Payment Due within 10 days of invoice. A finance charge of 2% per month will be added to past due accounts.



Shealy Electrical Wholesalers
PROFESSIONAL DISTRIBUTOR FOR THE ELECTRICAL INDUSTRY

Phone: (803) 227-0599
www.shealyelectrical.com

INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288950-00
Inv Date	11/29/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/29/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	DIH3-1-LM 81020 R-DOT 3H 1/2" KO IG BOX	10	0	10	EA	360.24	HU	36.02
2	F88T124GV 00000 HOFF WW TYPE 1 STRAIGHT SECTION	2	0	2	EA	36.20	EA	72.40
3	F88GCPNKGV 00000 HOFF WW TYPE 1 CLOSURE PLATE	4	0	4	EA	5.58	EA	22.32
3	Lines Total	Qty Shipped Total		16			Total	130.74
							Taxes	9.15
							Invoice Total	139.89



Shealy Electrical Wholesalers
PROFESSIONAL DISTRIBUTION FOR THE ELECTRICAL INDUSTRY

Phone: (803) 227-0599
www.shealyelectrical.com

INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Order #	2288996-00
Inv Date	11/23/10
PO #	SOUTHERN PRODUCE C/O
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/23/10
Terms	Net 30 Days
Instructions	

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	1222-SW 24100 LEV 2P 20A WHT TGL SW	5	0	5	EA	971.26	HU		48.56
Lines Total		Qty Shipped Total			5	Total			48.56
						Taxes			3.40
						Invoice Total			51.96



Shealy Electrical Wholesalers
PROFESSIONAL DISTRIBUTORS FOR THE ELECTRICAL INDUSTRY

Phone: (803) 227-0599
www.shealyelectrical.com

INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
SOUTHERN PRODUCE
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2289312-00
Inv. Date	
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	12/02/10
Terms	Net 30 Days

Instructions
HOMER 353-8949

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	8903LG1200V02 85161 30A 12P LTG CNCTR	1	0	1	each	620.00	each	620.00
2	SPICA 00000 SQUARE D SMALL PROJECT Dept Code: 29355971	1	1	0	each	0.00001	each	0.00
2	Lines Total	Qty Shipped Total			1		Total	620.00
							Taxes	43.40
							Invoice Total	663.40



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1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2289469-00
Inv Date	12/02/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	12/02/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	3GCB 12955 SC FLT3G GANG BOX BLANK COVER	1	0	1	each	7.94	each	7.94
1	Lines Total	Qty Shipped Total		1			Total	7.94
							Taxes	0.56
							Invoice Total	8.50



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ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2289495-00
Inv Date	12/02/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	12/02/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	TR30R 74786 FRZ 30A 250V RK5 TD FUSE	13	0	13	EA	3.49	EA	45.37
1	Lines Total	Qty Shipped Total		13			Total	45.37
							Taxes	3.17
							Invoice Total	48.54



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Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Order #	2289533-00
Inv Date	12/02/10
PO #	southern produce
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	12/02/10
Terms	Net 30 Days
Instructions	

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	35RED3/4X66 10810 3M CODING TAPE	1	0	1	EA	3.80	EA		3.80
2	35BLU3/4X66 10836 3M CODING TAPE	1	0	1	EA	3.80	EA		3.80
3	35WHT3/4X66 10828 3M CODING TAPE	1	0	1	EA	3.80	EA		3.80
4	61052 SL 61052 S-L SEPTOR LED HEADLAMP	1	0	1	EA	28.30	EA		28.30
4	Lines Total	Qty Shipped Total		4				Total	39.70
								Taxes	2.78
								Invoice Total	42.48



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Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
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Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2289547-00
Inv Date	12/02/10
PO #	Southern Produce
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	12/02/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	WP3100C 10609 INT 2-3/4 IG WTRPRF CVR	1	0	1	EA	5.01	EA		5.01
2	100A-130V 11375 SYL 100A 130V IF A19 MED LAMP	4	0	4	EA	0.50	EA		2.00
3	6THHNBK500 23400 WIRE 6 STR THHN BLACK 50 0' RL	500	0	500	EA	0.53	EA		265.00
4	2535 TB 02535 T&B 3/4 .625-.750 CORD CONN	3	0	3	EA	5.73	EA		17.19
5	LN102 42454 SC 3/4 STEEL LOCKNUT	3	0	3	EA	0.09	EA		0.27
5 Lines Total		Qty Shipped Total		511				Total	289.47
								Taxes	20.26
								Invoice Total	309.73



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Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Order #	2289593-00
Inv Date	12/02/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	12/02/10
Terms	Net 30 Days

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	6THHNBLK-C 23401 WIRE 6 STR THHN BLACK CU T PCS Lot #: 6THHNBLK-C2-LOTS Qty: 144.00	144	0	144	EA	0.53	EA	76.32
1	Lines Total	Qty Shipped Total			144		Total	76.32
							Taxes	5.34
							Invoice Total	81.66



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ATTN: Accounts Receivable
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Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2289611-00
Inv Date	12/02/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	12/02/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	10/4SOR 99225 CAROL 10/4 SO CORD-500FT REEL Lot #: 2-LOT4 Qty: 15.00	15	0	15	EA	1.49	EA		22.35
2	12/4SOR 99230 CAROL 12/4 SO CORD-500FT REEL Lot #: 2-LOT2 Qty: 25.00	25	0	25	EA	1.08	EA		27.00
2	Lines Total	Qty Shipped Total		40				Total	49.35
								Taxes	3.45
								Invoice Total	52.80



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Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
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Order #	2289340-00
Inv Date	12/02/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	12/02/10
Terms	Net 30 Days

Bill To: ROSE ELECTRIC
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Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
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RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	WA131 44554 SC 1X1/2 RED WASH	2	0	2	EA	0.12	EA	0.24
2	S-3-RD 71803 R-DOT 3H 1/2"KO RND LAMP HLDR	1	0	1	EA	0.00001	HU	0.00
2	Lines Total	Qty Shipped Total		3			Total	0.24
							Taxes	0.01
							Invoice Total	0.25



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Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2289315-01
Inv Date	12/02/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	12/02/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Product #	Quantity	Quantity	Quantity	Qty	Unit	Price	Price	Net Amount
Ln# Description	Ordered	Backordered	Shipped	UM		Price	UM	
2 DS-47 81050 R-DOT 3H 1/2"KO ROUND BX	3	0	3	EA		812.50	HU	24.38
1 Lines Total	Qty Shipped Total		3				Total	24.38
							Taxes	1.70
							Invoice Total	26.08



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ATTN: Accounts Receivable
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Bill To: ROSE ELECTRIC
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EASTOVER, SC 29044-9580

Order #	2289315-00
Inv Date	12/02/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	12/02/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
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RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	CCRHP 00000 D-B CCRHP FIXTURE PART WET LOCATION	3	0	3	EA	29.81	EA		89.43
2	DS-47 81050 R-DOT 3H 1/2"KO ROUND BX	3	3	0	EA	812.50	HU		0.00
3	35-345 35345 IDEAL 7/8 HSS HOLE SAW QUOTE D14610	1	0	1	EA	5.91	EA		5.91
3	Lines Total			Qty Shipped Total	4			Total	95.34
								Taxes	6.67
								Invoice Total	102.01



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ATTN: Accounts Receivable
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West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288487-01
Inv Date	12/01/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/30/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
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RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
TKT PUT BACK INTO ORDER STAGE. djl								
13	TK124A 02476 SC 1-1/4 S/S EMT CPLG	4	0	4	EA	0.85	EA	3.40
20	TS104 44406 SC 1-1/4 1H STL EMTSTRAP	3	0	3	EA	0.27	EA	0.81
22	TS103 44404 SC 1-IN 1H STL EMT STRAP	17	0	17	EA	0.18	EA	3.06
3	Lines Total	Qty Shipped Total		24			Total	7.27
							Taxes	0.51
							Invoice Total	7.78



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Bill To: ROSE ELECTRIC
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Order #	2289290-00
Inv Date	12/01/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/30/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
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RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product #	Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
3	D321NRB	46106	2	0	2	EA	91.89	EA	183.78
		SQD 30A-240V-4SN RT SW							
5	3/4EMT	02002	100	0	100	EA	0.36	EA	36.00
		3/4-EMT							
6	10/3SOR	99226	20	0	20	EA	1.26	EA	25.20
		CAROL 10/3 SO CORD-500FT REEL							
		Lot #: 2-LOT2 Qty: 20.00							
3	Lines Total		Qty Shipped Total		122			Total	244.98
								Taxes	17.15
								Invoice Total	262.13



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ATTN: Accounts Receivable
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Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2289384-00
Inv Date	12/01/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/30/10
Terms	Net 30 Days
Instructions	

1-1.2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
3	XC270 44704 SC 1/2 D/C SQZ FLEX CONN	2	0	2	EA	0.54	EA		1.08
4	QOB260 41702 SQD 2P-120/240V-60A CB	1	0	1	EA	51.84	EA		51.84
5	TR40R 74791 FRZ 40A 250V RK5 TD FUSE	13	10	3	EA	6.36	EA		19.08
3	Lines Total	Qty Shipped Total		6				Total	72.00
								Taxes	5.04
								Invoice Total	77.04



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Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
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Order #	2289471-00
Inv Date	12/01/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/30/10
Terms	Net 30 Days

Bill To: ROSE ELECTRIC
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EASTOVER, SC 29044-9580

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	TP7600 07600 CRS-H VAP PRF BOX MNT FIXT	2	0	2	EA	44.77	EA	89.54
2	10THHNGRN 23040 THHN-10-GRN-19STR-CU-500 -	500	0	500	EA	0.22656	EA	113.28
2	Lines Total	Qty Shipped Total		502			Total	202.82
							Taxes	14.20
							Invoice Total	217.02



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Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2289277-00
Inv Date	11/30/10
PO #	southern produce
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/29/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS.(ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
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Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	72c1 14475 SC 4-11/16SQ FLT BLNK COVER	3	0	3	EA	0.44	EA	1.32
2	WP3100C 10609 INT 2-3/4 1G WTRPRF CVR	3	0	3	EA	5.01	EA	15.03
4	35-397 35397 IDEAL 4-1/2X1/4 PILOT DRILL QUOTE D14610	1	0	1	EA	3.48	EA	3.48
3	Lines Total	Qty Shipped Total		7			Total	19.83
							Taxes	1.39
							Invoice Total	21.22



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Remit To: Shealy Electrical Wholesalers
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Order #	2288605-00
Inv Date	11/29/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/29/10
Terms	Net 30 Days
Instructions	

Bill To: ROSE ELECTRIC
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Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	350MCMTHHNAL WIRE	400	0	400	each	1.65	each	*NC	660.00
2	CUTTING CHARGE CUTTING CHARGE	1	0	1	each	0.00	each		0.00
3	6/2MC CABLE	355	0	355	each	2.45	each		869.75
3	Lines Total	Qty Shipped Total		756				Total	1529.75
								Freight In	72.00
								Taxes	112.13
								Invoice Total	1713.88
									- 706.20
									1007.68

Wrong wire
4 returned fixtures
660.00
46.20 Tax
706.20



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Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2289228-00
Inv Date	11/29/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/29/10
Terms	Net 30 Days

Instructions

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WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
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Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	350MCMTHHN-C 99497 WIRE 350 MCM STR THHN BL ACK CUT PCS Lot #: 2-LOT29 Qty: 365.00	365	0	365	EA	6.78	EA	2474.70
2	ka26u 37010 BUR 2/0 ALCU 1H TERM LUG	4	0	4	EA	1.67	EA	6.68
2	Lines Total	Qty Shipped Total		369			Total	2481.38
							Freight In	12.00
							Taxes	174.53
							Invoice Total	2667.91



Shealy Electrical Wholesalers
PROFESSIONAL DISTRIBUTION FOR THE ELECTRICAL INDUSTRY

Phone: (803) 227-0599
www.shealyelectrical.com

INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2289191-00
Inv Date	11/29/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/29/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	512 CADDY 67751 ERC T-BAR BOX HANGER	2	0	2	EA	5.29	EA		10.58
2	52151-1/2 16425 SC 4SQ 1-1/2D BOX	2	0	2	EA	0.63	EA		1.26
3	5252 TB 05252 T&B 1/2 90D L/T FLEX CONN	2	0	2	EA	2.88	EA		5.76
4	5332 05332 T&B 1/2 INS L/T FLEX CONN	12	0	12	EA	1.81	EA		21.72
5	WP3100C 10609 INT 2-3/4 1G WTRPRF CVR	12	0	12	EA	5.01	EA		60.12
6	OWN232-UNV-1/2-EB 60828 D-B 4FT FIX UND W/ELEC BALLAST	2	0	2	EA	38.77	EA		77.54
7	FO32/741/ECO 21999 SYL OCTRON STRAIGHT FLUOR LAMP	4	0	4	EA	1.61	EA		6.44
7 Lines Total		Qty Shipped Total		36				Total	183.42
								Taxes	12.84
								Invoice Total	196.26



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INVOICE

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1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2289113-00
Inv Date	11/29/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/29/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	CCU 00427 R-DOT S-G UNIV W P COVER	5	0	5	EA	5.34	EA		26.70
2	CL53-2 99910 5101 GRAY SPOOL INS 3" CL53-2 QUOTE 092828	2	0	2	EA	0.98	EA		1.96
3	J252 82820 JOSLYN J252 PULLEY BRKT WO/INS QUOTE 00115520	2	0	2	EA	5.35	EA		10.70
4	J1076 85090 JOSLYN J1076 3/16X2-1/2 SQ WASHER	4	0	4	EA	0.39	EA		1.56
5	J8812 88560 JOSLYN J8812 5/8X12 MACH INE BOLT QUOTE 00115520	2	0	2	EA	1.42	EA		2.84
5 Lines Total		Qty Shipped Total			15			Total	43.76
								Taxes	3.07
								Invoice Total	46.83



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INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288959-00
Inv Date	11/29/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/29/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	3PVCLB 06549 CAR 3-IN PVC E986L TYPE- LV PVC FTG	2	0	2	EA	2579.58	HU		51.59
2	7510 GI 61340 GI 3/4X10 COPPR GRND ROD	2	0	2	EA	20.99	EA		41.98
2	Lines Total			Qty Shipped Total	4			Total	93.57
								Taxes	6.55
								Invoice Total	100.12



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INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
C/O SOUTHERN PRODUCE
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288187-01
Inv Date	11/29/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Shealy Pick
Ship Date	11/29/10
Terms	Net 30 Days

Instructions
HOMER 353-8949

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	LOT PRICE SQUARE D 00000 Q2C: 29296417 Dept Code: 29296417	1	0	1	each	6219.00	each		6219.00
9	SN0610 75136 100A NEUTRAL ASSY	1	0	1	each	0.00001	each		0.00
10	GTK03 42181 30&60A GROUND LUG	11	0	11	each	0.00001	each		0.00
11	PKOGTA2 43267 200A GRND LUG KIT	1	0	1	each	0.00001	each		0.00
12	GTK0610 75138 100A GRND LUG KIT	2	0	2	each	0.00001	each		0.00
13	PANEL A INT BOX FRONT 00000 NQ 600A MCB 120/208V	1	0	1	each	0.00001	each		0.00
14	PANEL B INTERIOR 00000 NQ 200A MLO 120/208V	1	0	1	each	0.00001	each		0.00
16	PANEL B FRONT 00000 NC38S	1	0	1	each	0.00001	each		0.00
17	PANEL C INTERIOR 00000 NQ 200A MLO 120/208V	1	0	1	each	0.00001	each		0.00
19	PANEL C FRONT 00000 NC38S	1	0	1	each	0.00001	each		0.00
20	TR40R 74791 FRZ 40A 250V RK5 TD FUSE	8	0	8	EA	4.73153	EA		37.85
21	TR30R 74786 FRZ 30A 250V RK5 TD FUSE	16	0	16	EA	2.59	EA		41.44
22	TR100R 74801 FRZ 100A 250V RK5 TD FUSE	3	0	3	EA	10.64	EA		31.92
23	TR125R 74805 FRZ 125A 250V RK5 TD FUSE	3	0	3	EA	23.38	EA		70.14
14	Lines Total			Qty Shipped Total	51			Total	6400.35
								Taxes	448.02
								Invoice Total	6848.37

SEND PAYMENTS TO:**ACCOUNTS RECEIVABLES**

4241 ARVILLE ST
LAS VEGAS, NV 89103-3713
TEL: 702-362-0623
FAX: 702-966-4864

**CUSTOMER ASSISTANCE:**

COLUMBIA
6320 FAIRFIELD RD
COLUMBIA, SC 29203-2621

TEL: 803-783-0170
FAX: 803-783-0190
MON - FRI 6:00-5:00
SATURDAY CLOSED
SUNDAY CLOSED

CYCLE INVOICE

Customer: 248370

ROSE ELECTRIC INC
1421 VANBOKLEN RD
EASTOVER, SC 29044-9580

Job Site:

FARMERS MARKET
406 WHOLESALE LN
CAYCE, SC 29033

C#: 803-353-8949 J#: 803-353-8949
Map page/grid: 8143/D4

Invoice #... 8917449-001
Invoice date 11/26/10
Date out... 11/11/10 2:00 PM
Billed thru. 12/09/10
Job Loc.... FARMERS MARKET; 406 WHOLESALE
Job No..... FARMERS MARKET
P.O. #..... HOMER
Ordered By.. HOMER/KW
Written by.. CYCLE BILL
Sales rep .. 8783 - RANDY LOPER
Terms..... NET 10 DAYS

Smithers Produce

Qty	Equipment	Min	Day	Week	4 Week	Amount

1	SCISSORLIFT, 19-20', 32", ELECT	72.00	72.00	145.00	295.00	295.00
EQP#: 17248 Make: SKYJACK Model: SJIII3219 Ser #: 231637						
HR OUT: 419.90 HR IN:		TOTAL: 419.90				
CUSTOMER CALL WHEN DONE						

SALES ITEMS:

Qty	Item number	Unit	Price	
1	160642	EA	7.500	7.50
ENVIRONMENTAL CHARGE				
DELIVERY CHARGE - ASAP 11/11/10 2:00 PM 50.00				

ROSE ELECT: HOMER 803-353-8949

CALL CUSTOMER ON ARRIVAL TO RECEIVE

SPECIAL RATE / CUSTOMER CALL OFF

Rental-total: 352.50
(7%) Tax: 24.68
Total: 377.18

BILLED FOR FOUR WEEKS 11/11/10 THRU 12/09/10

IF THE EQUIPMENT DOES NOT WORK PROPERLY
NOTIFY CUSTOMER ASSISTANCE AT ONCE

MULTIPLE SHIFTS OR
OVERTIME RATES MAY APPLY

CUSTOMER IS RESPONSIBLE FOR
REFUELING, DAMAGES OR REPAIRS

1. Damage Waiver (12% of gross rental charges) will be charged absent of proof of insurance (see reverse side of this rental contract).

2. Customer must call branch location to obtain call off rental number and is responsible for Equipment until it is picked up.

3. If Customer fails to return equipment within the time specified above, Customer is deemed to have renewed the rental contract on the same terms and conditions.

4. By initialing this section you the renter/lessee have affirmed that you are aware of and will abide by the "State of California's Air Resources Board" Idling Policy which states that no vehicle or engine subject to the in-use off-road diesel regulation may idle for more than 5 consecutive minutes. See California Code of Regulation, Section 2449 (d) (3). Initial here.

This Rental Contract consists of both sides of this document. I have had the opportunity to read the terms and conditions on both sides of this Rental Contract and have been instructed in the proper use and operation of the Equipment delivered and will ensure that all operators receive this training and the instructions contained in the manufacturer's operation manual, a copy of which has been provided with the Equipment, which will be read by each operator. I have understood the instructions provided, and all questions have been answered to my satisfaction.

CUSTOMER SIGNATURE

DATE

NAME PRINTED

DELIVERED BY

DATE

Terms: Payment Due within 10 days of invoice. A finance charge of 2% per month will be added to past due accounts.

Please visit us on the web at www.Ahern.com or you may call our 24 hour service at 800-400-1610



Phone: (803) 227-0599
www.shealyelectrical.com

INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288492-00
Inv Date	11/22/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/19/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	8THHNBLK-C 23099 WIRE 8 STR THHN BLACK CU T PCS Lot #: 8THHNBLK-C2-LOT2 Qty: 536.00	536	0	536	EA	0.33	EA		176.88
2	6THHNBLK-C 23401 WIRE 6 STR THHN BLACK CU T PCS Lot #: 6THHNBLK-C2-LOT5 Qty: 462.00	462	0	462	EA	0.50	EA		231.00
3	4THHNBLK-C 23406 WIRE 4 STR THHN BLACK CU T PCS Lot #: 2-LOT10 Qty: 738.00	738	0	738	EA	0.78	EA		575.64
4	2THHNBLK-C 23418 WIRE 2 STR THHN BLACK CU T PCS Lot #: 2-LOT12 Qty: 492.00	492	0	492	EA	1.21	EA		595.32
5	2/0THHN-C 99506 WIRE 2/0 STR THHN BLACK CUT PCS Lot #: 2/0THHN-C2-LOT10 Qty: 37.00	37	0	37	EA	2.51	EA		92.87
6	12/2MC 99170 WIRE 12/2MC CABLE WITH G ROUND	1000	0	1000	EA	0.43	EA		430.00
7	12/3SOR 99227 CAROL 12/3 SO CORD-500FT REEL Lot #: 12/3SOR-2-LOT2 Qty: 100.00	100	0	100	EA	0.89	EA		89.00
8	2/0STRBARE 99100 WIRE 2/0 SD 7STR BARE CO PPER	40	0	40	EA	2.12	EA		84.80
9	3/0THHN-C 99504 WIRE 3/0 STR THHN BLACK CUT PCS Lot #: 2-LOT13 Qty: 216.00	216	0	216	EA	3.16	EA		682.56
9	Lines Total	Qty Shipped Total		3621				Total	2958.07
								Freight In	14.11
								Taxes	208.05
								Invoice Total	3180.23



Shealy Electrical Wholesalers
PROFESSIONAL DISTRIBUTION FOR THE ELECTRICAL INDUSTRY

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INVOICE

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1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288878-00
Inv Date	11/22/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Shealy Truck
Ship Date	11/19/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	2TG8332-01 UNV1/3EBLPT735 00000 D-B 2X4 3-LAMP 32T8 UNV VOLT	10	0	10	EA	49.92	EA	499.20
1	Lines Total	Qty Shipped Total		10			Total	499.20
							Taxes	34.94
							Invoice Total	534.14



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1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288879-00
Inv Date	11/22/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/19/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
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Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	3PVC 00000 3-IN NM COND 10FT	10	0	10	EA	0.97	EA	9.70
2	3PVCTA 13101 CAR 3-IN PVC E943L TERM ADPT	4	0	4	EA	1.19	EA	4.76
4	12SOLTHHNBLK 22400 THHN-12-BLK-SOL-CU- 500S/R WIRE	500	0	500	EA	0.11972	EA	59.86
5	12SOLTHHNRED 22420 THHN-12-RED-SOL-CU- 500S/R WIRE	500	0	500	EA	0.11972	EA	59.86
6	12SOLTHHNBLU 22430 THHN-12-BLU-SOL-CU- 500S/R WIRE	500	0	500	EA	0.11972	EA	59.86
7	12SOLTHHNWHT 22410 THHN-12-WHT-SOL-CU- 500S/R WIRE	500	0	500	EA	0.11972	EA	59.86
8	12SOLTHHNGRN 22440 THHN-12-GRN-SOL-CU- 500S/R WIRE	500	0	500	EA	0.11972	EA	59.86
10	12/2MC 99170 WIRE 12/2MC CABLE WITH G ROUND	500	0	500	EA	0.43	EA	215.00
12	TK111A 02542 SC 1/2 COMP EMT CPLG	50	0	50	EA	0.32	EA	16.00
13	2PVC 00000 2-IN NM COND 10FT	20	0	20	EA	0.47	EA	9.40
14	2PVCEL 13030 CAR 2-IN 90D PVC UA9AJ ELB	2	0	2	EA	142.76	HU	2.86
15	2PVCLB 06546 CAR 2-IN LB PVC E986I FTG QUOTE 1226335	1	0	1	EA	6.44	EA	6.44
16	HS906 42010 SC 2-IN 2H STL COND STRAP	4	0	4	EA	0.25	EA	1.00
17	3/4EMT 02002 3/4-EMT	100	0	100	EA	0.36	EA	36.00
14	Lines Total	Qty Shipped Total		3191			Total	600.46
							Taxes	42.03
							Invoice Total	642.49



Shealy Electrical Wholesalers
PROFESSIONAL DISTRIBUTION FOR THE ELECTRICAL INDUSTRY

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INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
SOUTHERN PRODUCE
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Order #	2288342-00
Inv Date	11/23/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Express
Ship Date	11/22/10
Terms	Net 30 Days
Instructions	
HOMER 353-8949	

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
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Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty. UM	Unit Price	Price UM	Net Amount
	TKT PUT BACK INTO ORDER STAGE DJL							
1	LOT PRICE LIGHTING 00000 LITESOURCE	1	0	1	each	6600.00	each	6600.00
2	H5L454M23MV/HC101 00000 TYPE "A" Dept Code: A	20	0	20	each	0.00001	each	0.00
3	131A432MVLN741 00000 TYPE "B" Dept Code: B	9	0	9	each	0.00001	each	0.00
4	131A232MVLN741 00000 TYPE "C" Dept Code: C	2	0	2	each	0.00001	each	0.00
5	131A232UMV 00000 TYPE "D" Dept Code: D	1	0	1	each	0.00001	each	0.00
6	R1 00000 TYPE "E" Dept Code: E	4	0	4	each	0.00001	each	0.00
7	CXTEU2RW 00000 TYPE "EX" Dept Code: EX	3	0	3	each	0.00001	each	0.00
8	CXTEU2RW-RC 00000 TYPE "EXR" Dept Code: EXR	3	0	3	each	0.00001	each	0.00
9	RH1 00000 TYPE "EXR"	3	0	3	each	0.00001	each	0.00
10	WPW113GUWSJE120LP 00000 TYPE "F" Dept Code: F	2	0	2	each	0.00001	each	0.00
11	F32T8/741/6 00000 LAMP	20	0	20	each	0.00001	each	0.00
12	F54TSHO/841 00000 LAMP	100	0	100	each	0.00001	each	0.00
12	Lines Total	Qty Shipped Total		168			Total	6600.00
							Taxes	462.00
							Invoice Total	7062.00



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INVOICE

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1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288970-00
Inv Date	11/23/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/23/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS.(ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
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Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	2CCU 00431 R-DOT 2-G UNIV W P COVER	2	0	2	EA	1260.77	HU	25.22
2	2IH4-I 39426 R-DOT 2G RT BOX W/4 1/2 HUBS	2	0	2	EA	857.09	HU	17.14
2	Lines Total	Qty Shipped Total		4			Total	42.36
							Taxes	2.96
							Invoice Total	45.32



Electrical Wholesalers
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1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
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120 Saxe Gotha Road
West Columbia, SC 29172

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EASTOVER, SC 29044-9580

Order #	2288989-00
Inv Date	11/23/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
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Ship Date	11/23/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
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Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	TC114A 02498 SC 1-1/4 COMP EMT CONN	8	0	8	EA	1.08	EA		8.64
3	TC116A 02500 SC 2-IN COMP EMT CONN	4	0	4	EA	2.43	EA		9.72
5	TC113A 02497 SC 1-IN COMP EMT CONN	4	0	4	EA	0.63	EA		2.52
6	PS1000-1-AS-EG 00000 P-STRUT EMT CLAMP	4	0	4	each	63.59	HU		2.54
7	BU206 90741 SC 2-IN COND BUSH	8	0	8	EA	2.95	EA		23.60
8	S232 05232 T&B 1/2 STR L/T FLEX CONN	4	0	4	EA	1.69	EA		6.76
6	Lines Total	Qty Shipped Total			32	Total			53.78
								Taxes	3.77
								Invoice Total	57.55



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INVOICE

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1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288757-00
Inv Date	11/19/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/18/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	4Z34 00000 Non Stock	50	0	50	each	0.44	each	22.00
2	K12 24512 ERC 3/4 CONDUIT CLIP	50	0	50	EA	0.30	EA	15.00
3	3/4 EMT 02002 3/4-EMT	300	0	300	EA	0.36	EA	108.00
4	TK122A 02389 SC 3/4 S/S EMT CPLG	50	0	50	EA	0.24	EA	12.00
5	TC122A 02218 SC 3/4 S/S EMT CONN	50	0	50	EA	0.23	EA	11.50
5	Lines Total	Qty Shipped Total		500			Total	168.50
							Taxes	11.80
							Invoice Total	180.30



Shealy Electrical Wholesalers
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INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Order #	2288661-00
Inv Date	11/19/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/18/10
Terms	Net 30 Days

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	12/3MC 00000 WIRE 12/3MC CABLE WITH G ROUND	250	0	250	each	0.75	each	187.50
2	56856-2 99110 LANDIS 3-IN HUB	2	0	2	EA	13.32	EA	26.64
2	Lines Total	Qty Shipped Total		252			Total	214.14
							Taxes	14.99
							Invoice Total	229.13



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EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Order #	2288487-00
Inv Date	11/16/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Express
Ship Date	11/16/10
Terms	Net 30 Days

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
	TKT PUT BACK INTO ORDER STAGE.							
1	1 EMT 02003 1-IN-EMT	130	0	130	EA	0.65	EA	84.50
2	1-1/4 EMT 02004 1-1/4-EMT	290	0	290	EA	1.03	EA	298.70
3	2 EMT 02006 2-IN-EMT	30	0	30	EA	1.55	EA	46.50
4	3 IMC 00008 3-IN-INTERMEDIATE-METAL E-METAL	40	0	40	EA	6.98	EA	279.20
5	EF12-C 99092 E-FLEX 3/4 EF GRY CUT PCS LIQ TITE Lot #: EF12-C2-LOT2 Qty: 24.00	24	0	24	EA	0.75	EA	18.00
6	EF14 80147 E-FLEX EF14 GRY 1-1/4 250FT L/T	12	0	12	EA	1.42	EA	17.04
7	1-1/4 EMTEL 02024 ELBOW	4	0	4	EA	2.78	EA	11.12
8	2 EMTEL 02026 ELBOW	2	0	2	EA	4.75	EA	9.50
9	TC123A 02464 SC 1-IN S/S EMT CONN	4	0	4	EA	0.50	EA	2.00
10	TC124A 02465 SC 1-1/4 S/S EMT CONN	4	0	4	EA	0.80	EA	3.20
11	TC126A 02466 SC 2-IN S/S EMT CONN	4	0	4	EA	1.65	EA	6.60
12	TK123A 02475 SC 1-IN S/S EMT CPLG	19	0	19	EA	0.38	EA	7.22
13	TK124A 02476 SC 1-1/4 S/S EMT CPLG	33	4	29	EA	0.85	EA	24.65
14	TK126A 02484 SC 2-IN S/S EMT CPLG	5	0	5	EA	1.71	EA	8.55
15	SPLN108 01811 SC 3-IN THIN LOCKNUT	12	0	12	EA	110.05	HU	13.21
16	BU508 40464 SC 3-IN 10SD PLSTC BUSH	4	0	4	EA	1.21	EA	4.84
17	5233 05233 T&B 3/4 STR L/T FLEX CONN	8	0	8	EA	2.50	EA	20.00
18	5235 05235 T&B 1-1/4 STR L/T FLEX CONN	4	0	4	EA	7.05	EA	28.20



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INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Order #	2288487-00
Inv Date	11/16/10
PO #	SOUTHERN PRODUCE
Page #	2
Account #	25054
Ship Via	Express
Ship Date	11/16/10
Terms	Net 30 Days
Instructions	

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty. UM	Unit Price	Price UM	Net Amount
19	TS102 44402 SC 3/4 1H STL EMT STRAP	3	0	3	EA	0.09	EA	0.27
20	TS104 44406 SC 1-1/4 1H STL EMTSTRAP	38	3	35	EA	0.27	EA	9.45
21	TS106 44410 SC 2-IN 1H STL EMT STRAP	3	0	3	EA	0.55	EA	1.65
22	TS103 44404 SC 1-IN 1H STL EMT STRAP	17	17	0	EA	0.18	EA	0.00
23	PS1100-3-AS-EG 00000 P-STRUT GRC CLAMP	6	0	6	each	113.56	HU	6.81
24	52151-1/2&3/4 16430 SC 4SQ1-1/2D BOX	50	0	50	EA	0.56	EA	28.00
25	GW335G 92096 SC 3-1/2D 3G MASON BOX	3	0	3	EA	5.85	EA	17.55
26	52C13 13875 SC 4SQ 1/2D 1G SW RING	5	0	5	EA	0.35	EA	1.75
27	52C14-5/8 13882 SC 4SQ5/8D 1G RING	25	0	25	EA	0.39	EA	9.75
28	52C18-5/8-25 13902 SC 4SQ 5/8D 2G RING	3	0	3	EA	0.57	EA	1.71
29	310 ARL 00310 ARL 3/8 12/2MC CBL STRAP	100	0	100	EA	8.80	HU	8.80
30	XC403 44756 SC 1-IN SQZ FLEX CONN	6	0	6	EA	2.74	EA	16.44
31	2521 02521 T&B 1/2 .250-.375 CORD CONN	10	0	10	EA	5.14	EA	51.40
32	DIH3-2-LM 81023 R-DOT 3H 3/4" KO 1G BOX	24	0	24	EA	359.84	HU	86.36
33	KA26U 37010 BUR 2/0 ALCU 1H TERM LUG QUOTE D323578	2	0	2	EA	1.67	EA	3.34
34	SH108 43364 SC 3-IN CLAMP-ON ENT CAP	2	0	2	EA	60.63	EA	121.26
35	7510 GI 61340 GI 3/4X10 COPPR GRND ROD	2	2	0	EA	20.99	EA	0.00



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INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288487-00
Inv Date	11/16/10
PO #	SOUTHERN PRODUCE
Page #	3
Account #	25054
Ship Via	Express
Ship Date	11/16/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
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Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
36	JAB34H 80074 3/4 GRND ROD CLAMP OD CLAMP GALVAN G6	2	0	2	EA	1.66	EA		3.32
37	30-276 30276 IDEAL RED WIRE CONN	500	0	500	EA	0.12	EA		60.00
38	CS120-2I 81571 LEV SP 20A 277V IV SW	5	0	5	EA	1.95	EA		9.75
39	CS320-2I 81581 LEV 3WAY 20A 277V IV SW	15	0	15	EA	2.74	EA		41.10
40	CR20-I LEV 81543 LEV IV DPLX RCPT NEMA5- 20R	20	0	20	EA	1.34	EA		26.80
41	7899-I 30627 LEV 20A SL PRO GFCI	17	0	17	EA	11.62	EA		197.54
42	2720 LEV 80963 LEV 30A 4W 250V TL RECPT	7	5	2	EA	3042.04	HU		60.84
43	PJ1-I 15357 LEV 1G IV PLAST SW PLATE	5	0	5	EA	39.29	HU		1.96
44	PJ8-I 15359 LEV IV 1G DPLX PLT	20	0	20	EA	0.39	EA		7.80
45	PJ2-I 95577 LEV 2G IV PLAST SW PLATE	3	0	3	EA	78.52	HU		2.36
46	PJ3-I 95583 LEV 3G IV PLAST SW PLATE	3	0	3	EA	117.81	HU		3.53
47	52C1 13790 SC 4SQ FLAT BLANK COVER	43	0	43	EA	0.24	EA		10.32
48	PJ26-I 15360 LEV 1G DECOR PLATE IV	17	0	17	EA	38.89	HU		6.61
49	12/3MC 99171 WIRE 12/3MC CABLE WITH G ROUND	250	0	250	EA	0.73	EA		182.50
50	32500 32500 KLN 11 N 1 SCR-DRVR/NUT DRVR	1	0	1	EA	0.00001	EA		0.00
50	Lines Total	Qty Shipped Total			1805				Total 1862.00
									Freight In 11.44
									Taxes 131.14
									Invoice Total 2004.58

**Shealy****Electrical Wholesalers**
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www.shealyelectrical.com**INVOICE****Ship To:** ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580**Remit To:** Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172**Bill To:** ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288367-00
Inv Date	11/16/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/15/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	33+ 06132 3M 3/4X66 VINYL TAPE	10	0	10	EA	4.10	EA	41.00
2	J1553 10399 MET 1/4X3 MUSH HD TOGGL	50	0	50	EA	18.95	HU	9.48
2	Lines Total	Qty Shipped Total		60			Total	50.48
							Taxes	3.53
							Invoice Total	54.01



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INVOICE

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1421 VAN BOKLEN RD
SOUTHERN PRODUCE
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288089-01
Inv Date	11/16/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/15/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
4	Y10803A 00000 8/3 W/GRD MC CABLE	500	0	500	each	2.22353	each	1111.77
9	310 ARL 00310 ARL 3/8 12/2MC CBL STRAP	200	0	200	EA	8.80	HU	17.60
2	Lines Total	Qty Shipped Total		700			Total	1129.37
							Taxes	79.05
							Invoice Total	1208.42



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Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Order #	2288395-00
Inv Date	11/17/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/16/10
Terms	Net 30 Days

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	9817-9504 99104 LANDIS 400-600A 3PH METER CAN	1	0	1	EA	388.25	EA	388.25
2	56732M 99109 LANDIS K7 T LUG	8	0	8	EA	13.51	EA	108.08
2	Lines Total	Qty Shipped Total		9			Total	496.33
							Taxes	34.74
							Invoice Total	531.07



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ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288548-00
Inv Date	11/17/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/16/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
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Ln#	Product #	Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	916-25RE 86073	KLN 1X25FT STL PWR TAPE W/MAGNET TIP	1	0	1	EA	17.86	EA	17.86
2	CY1/2 10775	SC 3-1/2D SW BOX W/EARS	2	0	2	EA	1.70	EA	3.40
3	820D 15210	SC HOLD-IT BOX SUP-1PR	2	0	2	EA	0.41	EA	0.82
4	PS200EH10'PGAL 00000	P-STRUT 1-5/8 X 1-5/8 CHANNEL	50	0	50	EA	1.36	EA	68.00
5	JWW82 80526	MET 3/8 FLAT WASHER	100	0	100	EA	0.03	EA	3.00
6	JN165 80433	MET 3/8-16 HEX FIN NUTS	100	0	100	EA	0.03	EA	3.00
6	Lines Total		Qty Shipped Total		255			Total	96.08
								Taxes	6.72
								Invoice Total	102.80



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Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Order #	2288596-00
Inv Date	11/18/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/18/10
Terms	Net 30 Days

Bill To: ROSE ELECTRIC
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EASTOVER, SC 29044-9580

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS.(ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
2	jww82 80526 MET 3/8 FLAT WASHER	100	0	100	EA	0.03	EA	3.00
1	Lines Total	Qty Shipped Total		100			Total	3.00
							Taxes	0.21
							Invoice Total	3.21



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INVOICE

Ship To: ROSE ELECTRIC
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EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288694-00
Inv Date	11/18/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/18/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	PS1000-1-1/4-AS-EG 00000 P-STRUT EMT CLAMP	50	0	50	each	72.68	HU	36.34
2	PS1000-3/4-AS-EG 00000 P-STRUT EMT CLAMP	50	0	50	each	59.05	HU	29.53
3	36-073 50842 IDEAL 24TPI SAW BLADE	3	0	3	EA	10.52	EA	31.56
3	Lines Total	Qty Shipped Total		103			Total	97.43
							Taxes	6.82
							Invoice Total	104.25



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INVOICE

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1421 VAN BOKLEN RD
SOUTHERN PRODUCE
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2288089-00
Inv Date	11/12/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/11/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
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RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	12/2MC 99170 WIRE 12/2MC CABLE WITH G ROUND	2000	0	2000	EA	0.43	EA	860.00
2	12/3MC 99171 WIRE 12/3MC CABLE WITH G ROUND	1000	0	1000	EA	0.73	EA	730.00
3	10/3MC 99172 WIRE 10/3MC CABLE	250	0	250	each	1259.39	TH	314.85
4	Y10803A 00000 8/3 W/GRD MC CABLE	500	500	0	each	2.22353	each	0.00
5	XC220 SC 44672 SC 3/8 S/S FLEX CONN	50	0	50	EA	0.34	EA	17.00
6	310 ARL 00310 ARL 3/8 12/2MC CBL STRAP	200	0	200	EA	8.80	HU	17.60
7	JTEKD6 80354 MET 10X3/4 HEX TEK SCRW	500	0	500	EA	3.94	HU	19.70
8	XC402 44754 SC 3/4 MALL SQZ FLEXCONN	25	0	25	EA	1.26	EA	31.50
8	Lines Total	Qty Shipped Total		4025			Total	1990.65
							Taxes	139.35
							Invoice Total	2130.00



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Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN:Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2287701-00
Inv Date	11/11/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/08/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
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Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	52151-1/2&3/4 16430 SC 4SQ1-1/2D BOX	50	0	50	EA	0.56	EA		28.00
2	12/2MC 99170 WIRE 12/2MC CABLE WITH G ROUND	500	0	500	EA	0.48	EA		240.00
3	40AST 00041 ARL 40AST SNAP-IN CABLE CONN	100	0	100	EA	69.01	HU		69.01
4	310 ARL 00310 ARL 3/8 12/2MC CBL STRAP	100	0	100	EA	8.80	HU		8.80
5	4040AST 40351 SNAP-IN CABLE CONNECTOR	25	0	25	EA	161.40	HU		40.35
6	52C14-5/8 13882 SC 4SQ5/8D 1G RING	50	0	50	EA	0.39	EA		19.50
7	JTEKD7 80355 MET 10X1 HEX TEK SCREW	100	0	100	EA	3.99	HU		3.99
7	Lines Total	Qty Shipped Total			925			Total	409.65
								Taxes	28.68
								Invoice Total	438.33



Phone: (803) 227-0599
www.shealyelectrical.com

INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #:	2287845-00
Inv Date	11/11/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/10/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	12/3MC 99171 WIRE 12/3MC CABLE WITH G ROUND	250	0	250	EA	0.73	EA	182.50
1	Lines Total	Qty Shipped Total		250			Total	182.50
							Taxes	12.78
							Invoice Total	195.28



Shealy Electrical Wholesalers
PROFESSIONAL DISTRIBUTOR FOR THE ELECTRICAL INDUSTRY

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INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2287963-00
Inv Date	11/11/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/10/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM		Net Amount
1	12/2MC 99170 WIRE 12/2MC CABLE WITH G ROUND	250	0	250	EA	0.43	EA		107.50
2	12/3MC 99171 WIRE 12/3MC CABLE WITH G ROUND	250	0	250	EA	0.73	EA		182.50
3	CT50175C0 33286 BUR 50LB BLK CBL TIE QUOTE D323578	100	0	100	each	6.16	HU		6.16
3	Lines Total			Qty Shipped Total	600			Total	296.16
								Taxes	20.73
								Invoice Total	316.89

*Southern
Produce*



LOWE'S HOME CENTERS, INC.
2829 AUGUSTA RD
WEST COLUHBIA, SC 29170 (803) 926-8885

SALE

SALES #: 50499MM1 810335 11-10-10

3946 SQ-D 100A 6SP 12CIR 30.74
12811 HOM 1POLE 20AMP CIR BRK 5.04
2 @ 2.87
51438 4X6X12 #2 .40 ACQ TREATED 21.97

SUBTOTAL: 58.45

TAX: 4.09

INVOICE 56381 TOTAL: 62.54

DEBIT: 62.54

DEBIT:XXXXXXXXXX6827 AMOUNT:62.54 AUTHCD:135145

REFID:803999101 11/10/10 14:54:58

PURCHASE CASH BACK TOTAL DEBIT

62.54 62.54

STORE: 0499 TERMINAL: 56 11/10/10 14:54:58

OF ITEMS PURCHASED: 4

EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S.

SEE REVERSE SIDE FOR RETURN POLICY.

STORE MANAGER: CRAIG HASON

HAVE A COMMENT OR FEEDBACK? LET US KNOW AT:

WWW.LOWES.COM/FEEDBACK

STORE CODE: 04991-11010-56381

WE HAVE THE LOWEST PRICES, GUARANTEED!

IF YOU FIND A LOWER PRICE, WE WILL BEAT IT BY 10%.

SEE STORE FOR DETAILS.

62.54

First Citizens

588-40 (1/03)



Phone: (803) 227-0599
www.shealyelectrical.com

INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2287141-00
Inv Date	11/08/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/08/10
Terms	Net 30 Days
Instructions	

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	UAT111-OJCA 99100 LANDIS 100A 1PH METER CAN	1	0	1	EA	26.92	EA	26.92
2	QOI12M100RB 86787 SQD LD-CNTR BOX & INT	1	0	1	EA	203.06	EA	203.06
3	1-1/2PVC 00000 1-1/2 NM COND 10FT	10	0	10	EA	0.37	EA	3.70
4	SH105 43358 SC 1-1/2 CLAMP-ON ENT CAP	1	0	1	EA	7.18	EA	7.18
5	B150 SQD 45945 SQD 1-1/2 BOLT-ON HUB	1	0	1	EA	11.65	EA	11.65
6	38599-2 99107 LANDIS 2-IN HUB	1	0	1	EA	3.53	EA	3.53
7	RB165 43244 SC 2X1-1/2 RED BUSH	1	0	1	EA	5.00	EA	5.00
8	HS905 42008 SC 1-1/2 2H COND STRAP	2	0	2	EA	0.21	EA	0.42
9	6258G13 GI 00000 GI 5/8X8 CU GROUND ROD 13 MILS COPPER ***** SOLD PER EACH PIECE *****	1	0	1	EA	11.46	EA	11.46
10	6THHNBK-C 23401 WIRE 6 STR THHN BLACK CU T PCS Lot #: 2-LOT6 Qty: 6.00	6	0	6	EA	0.50	EA	3.00
11	STEPHENS 00390 WIRE 2 AL URD TRI STEPHE NS Lot #: 2-LOT1 Qty: 12.00	12	0	12	EA	0.64	EA	7.68
12	JAB58H 80073 5/8 GRND ROD CLAMP OD CLAMP GALVAN # G5	1	0	1	EA	1.13	EA	1.13
15	J089Z 79210 JOS J089Z NYLON ALLOY WI REHOLDER	1	0	1	EA	3.23	EA	3.23
17	WP3100C 10609 INT 2-3/4 1G WTRPRF CVR	2	0	2	EA	5.39	EA	10.78
18	30-030 30030 IDEAL 8-OZ ANTI OXIDANT COMP	1	0	1	EA	12.35	EA	12.35
19	1-1/2PVCTA 06205 CAR 1-1/2 PVC TERM ADPT E943H	3	0	3	EA	0.36	EA	1.08



Shealy Electrical Wholesalers
PROFESSIONAL DISTRIBUTION FOR THE ELECTRICAL INDUSTRY

Phone: (803) 227-0599
www.shealyelectrical.com

INVOICE

Ship To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
ATTN: Accounts Receivable
120 Saxe Gotha Road
West Columbia, SC 29172

Bill To: ROSE ELECTRIC
1421 VAN BOKLEN RD
EASTOVER, SC 29044-9580

Order #	2287141-00
Inv Date	11/08/10
PO #	SOUTHERN PRODUCE
Page #	2
Account #	25054
Ship Via	Counter
Ship Date	11/08/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
20	LN105 42460 SC 1-1/2 STEEL LOCKNUT	3	0	3	EA	0.36	EA	1.08
21	30-651 30651 IDEAL YEL WIRE CONN QUOTE D14610	500	0	500	EA	0.07	EA	35.00
18	Lines Total	Qty Shipped Total		548			Total	348.25
							Taxes	24.38
							Invoice Total	372.63



Shealy Electrical Wholesalers
PROVIDING THE BEST SERVICE FOR THE ELECTRICAL INDUSTRY

Phone: (803) 227-0599
 www.shealyelectrical.com

INVOICE

Ship To: ROSE ELECTRIC
 1421 VAN BOKLEN RD
 EASTOVER, SC 29044-9580

Remit To: Shealy Electrical Wholesalers
 ATTN:Accounts Receivable
 120 Saxe Gotha Road
 West Columbia, SC 29172

Bill To: ROSE ELECTRIC
 1421 VAN BOKLEN RD
 EASTOVER, SC 29044-9580

Order #	2287194-00
Inv Date	11/03/10
PO #	SOUTHERN PRODUCE
Page #	1
Account #	25054
Ship Via	Counter
Ship Date	11/02/10
Terms	Net 30 Days

Instructions

1-1/2% SERVICE CHARGE PER MONTH WILL BE ADDED IF INVOICE IS NOT PAID
 WITHIN TERMS. (ANNUAL PERCENTAGE RATE OF 18%) MERCHANDISE NOT TO BE
 RETURNED WITHOUT PERMISSION. RESTOCKING CHARGE MAY APPLY.

Ln#	Product # Description	Quantity Ordered	Quantity Backordered	Quantity Shipped	Qty UM	Unit Price	Price UM	Net Amount
1	QO120 40010 SQD SP-120/240V-20A CB	4	0	4	EA	8.03	EA	32.12
2	STEPHENS 00390 WIRE 2 AL URD TRI STEPHE NS Lot #: 2-LOT1 Qty: 2.00	2	0	2	EA	0.64	EA	1.28
2	Lines Total	Qty Shipped Total		6			Total	33.40
							Taxes	2.33
							Invoice Total	35.73

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Rose Electric, Inc.,

Plaintiff,

vs.

Cooler Erectors of Atlanta, Inc., Southern
Produce, Inc., S2P, LLC, Certified
Development Corporation of South
Carolina, Senn Bros., Inc., Custom
Concrete of Lexington, Inc., and James
Dunlap d/b/a Dunlap Services,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 11-CP-32-1929

AFFIDAVIT OF
WILLIAM E. BOOTH III
AS TO ATTORNEY'S
FEES AND COSTS

Personally appeared before me, **WILLIAM E. BOOTH III**, who being duly sworn,
deposes and states the following:

1. I am an attorney licensed to practice law by the Supreme Court of South Carolina and I have been licensed since November 11, 1975.
2. I am engaged in the private practice of law as a sole practitioner at 3231 Sunset Boulevard, Suite A, West Columbia, SC 29169. From September of 1982 until August of 2000, I was an associate/partner at the law firm of Mays, Foster, Booth and Gunter located at 2512 Devine Street, Columbia, SC 29205. Previously, I worked for one year as a judicial law clerk for the Honorable William Rhodes, two and one-half years as a staff attorney for the Public Service Commission of South Carolina, and one and one-half years as a staff attorney for the South Carolina Department of Insurance.
3. The primary focus of my law practice is business and real estate law and such practice includes civil litigation involving construction contracts.

WED
2/13/11

CONFIDENTIAL

4. I was initially engaged by Homer Rose, the owner of Rose Electric, Inc., in March of 2011 concerning nonpayment of invoices, equipment and services used in the improvement of property located at 322 Little Chris Lane, West Columbia, SC 29169.

5. I track my time very carefully using the computer software program known as TIMESLIPS. I usually time my work as the work is being done or I make sure that my time is inputted at the end of each day. I am very confident that my time records are accurate, both as to the nature of the work and the time spent.

6. I initially had a fixed fee in the amount of \$1,000.00 for the filing of the mechanic's lien. Any work done following the filing of the mechanic's lien was to be done at an hourly rate.

7. For a summary of the hours expended by me and the hours expended by my paralegal, law clerks, assistants in my office since the initial meeting with Mr. Rose, I have prepared the following chart¹:

ATTORNEY	HOURLY RATE	TIME EXPENDED
William E. Booth III	\$220.00	\$15,576.00
PARALEGAL	HOURLY RATE	TIME EXPENDED
Eric J. Enos	\$60.00	\$582.00
LAW CLERK	HOURLY RATE	TIME EXPENDED
Sarah Guthrie	\$25.00	\$25.00
Total Amount of Fees		\$16,183.00

WR
2/13/13

¹ Current as of February 13, 2012 – I have included an estimated 5 hours preparing a proposed order after the conclusion of the trial.

2013
FEB
13

8. The following is a summary chart of the litigation costs incurred in this action²:

Litigation Costs List

Expense	Amount
Filing Fees	\$150.00
Mileage	\$38.80
TOTAL:	\$188.80

9. Next, I am attaching to this Affidavit a print out produced by the TIMESLIPS computer program of the details of the work performed and the time expended by myself, my paralegal, and my law clerk.

10. I feel strongly that this request for attorney's fees and costs is reasonable and in compliance with Rule 1.5 of Rule 407 of the Rules of the Supreme Court dealing with fees charged by lawyers. This Rule lists eight factors to be considered, including the time and labor required and the skill requisite to perform the legal service properly. The exact wording of this Rule is as follows:

RULE 1.5 FEES

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

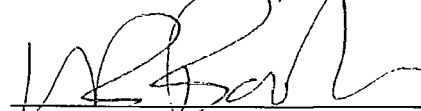
- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;**
- (2) The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;**
- (3) The fee customarily charged in the locality for similar legal services;**

² Current as of February 13, 2013.

W2
2/13/

- (4) The amount involved and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) Whether the fee is fixed or contingent.

BOOTH LAW FIRM, LLC



William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(T) (803) 791-9211
(F) (803) 791-3159
BoothLaw@bellsouth.net

Sworn to before me this
13th day of February, 2012



Notary Public for South Carolina

My commission expires: July 8, 2011

Booth Law Firm, LLC
3231 Sunset Blvd., Ste. A
West Columbia, SC 29169

(803) 343-2895 - voice
(803) 343-2812 - fax
e-mail - BoothLaw@BellSouth.net
website - www.wbooth-law.com
Federal ID# - 56-2213099

File Number
4657.1151

Invoice submitted to:
Rose Electric, Inc.
c/o Homer Rose
1421 VanBoklen Road
Eastover, SC 29044

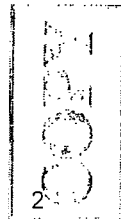
Invoice Date: February 12, 2013

In Reference To: Lawsuit to collect for work done on Southern Produce building.

SERVICES THROUGH:

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
<u>Bill Booth</u>			
3/2/2011 - WEB	No Activity Appointment - Homer Rose - review of lien rights.	1.00 220.00/hr	220.00
3/3/2011 - WEB	No Activity Appointment - Homer Rose - to sign lien.	0.30 220.00/hr	66.00
5/6/2011 - WEB	No Activity Telephone call to Rose, Homer -- spoke.	0.20 220.00/hr	44.00
5/20/2011 - WEB	Prepare pleadings Prepare pleadings -	2.00 220.00/hr	440.00
7/8/2011 - WEB	Correspondence with Correspondence with Cook - counsel for SP.	2.20 220.00/hr	484.00
8/2/2011 - WEB	Telephone conference with Telephone conference with Rob Turner - SP2 and Senn.	0.20 220.00/hr	44.00
9/6/2011 - WEB	Telephone conference with Telephone conference with Clayton as to status of Dunlap case.	0.20 220.00/hr	44.00
3/6/2012 - WEB	File Review File Review - to check on status of trial docket; email sent to client on possible trial dates.	0.40 220.00/hr	88.00
6/7/2012 - WEB	Telephone Call with Telephone Call to Kathryn M. Cook - left message.	0.20 220.00/hr	44.00



		<u>Hrs/Rate</u>	<u>Amount</u>
6/13/2012	- WEB Email message to Email message sent to Cook as to contacting me.	0.30 220.00/hr	66.00
6/14/2012	- WEB Email message from Email message read from Cook; email to Homer.	0.30 220.00/hr	66.00
	- WEB Telephone Call with Telephone Call to Homer Rose - spoke.	0.20 220.00/hr	44.00
6/20/2012	- WEB Telephone Call with Telephone Call to Jon Robin Turner - spoke.	0.30 220.00/hr	66.00
6/22/2012	- WEB Trial preparations with Homer.	1.50 220.00/hr	330.00
6/24/2012	- WEB Review Review of Invoices; research of law as to using legal theory of Quantum Meruit - found cas law.	3.00 220.00/hr	660.00
6/26/2012	- WEB Email message from Read and send emails about trial.	0.70 220.00/hr	154.00
6/27/2012	- WEB Meeting with Homer Rose - Trial Preparation.	2.00 220.00/hr	440.00
	- WEB Research Research of law as to attorneys fees; offset for payments to contractor; reviewing exhibits.	2.00 220.00/hr	440.00
6/28/2012	- WEB Meeting Meeting with Homer and Russell.	0.50 220.00/hr	110.00
	- WEB Email message from Email message from Opposing Counsel; Judge; Turner; email sent.	0.50 220.00/hr	110.00
7/2/2012	- WEB Preparation Preparation of revised notice of deposition; email read from Cook, Turner; email sent.	0.50 220.00/hr	110.00
7/3/2012	- WEB Telephone Call with Telephone Call to Mike Hutchins - spoke.	0.50 220.00/hr	110.00
	- WEB Telephone Call with Telephone Call to Ben Calhoun - spoke.	0.20 220.00/hr	44.00
	- WEB Email message from Email message read from Cook; email sent to Cook as to depositions.	0.30 220.00/hr	66.00
7/6/2012	- WEB Preparation Preparation of revised deposition notice.	0.20 220.00/hr	44.00

		<u>Hrs/Rate</u>	<u>Amount</u>
7/8/2012 - WEB	Preparation Preparation of questions for Southern Produce witness.	0.20 220.00/hr	44.00
7/9/2012 - WEB	Preparation Preparation questions for SP witness.	1.50 220.00/hr	330.00
7/10/2012 - WEB	Email message from Email message read; new offer of settlement.	1.00 220.00/hr	220.00
7/11/2012 - WEB	Email message from Email message read from Cook; review offer of settlement.	0.50 220.00/hr	110.00
7/12/2012 - WEB	Review Review of file for deposition; meeting with Homer.	1.50 220.00/hr	330.00
- WEB	Deposition Taking Deposition of Stocker; Attending Deposition of Rose..	6.00 220.00/hr	1,320.00
10/9/2012 - WEB	Trial preparations Review of depositions; documents.	1.00 220.00/hr	220.00
- WEB	Court Appearance Court Appearance - Roster Meeting; travel time - case continued due to Judge knowing Senn - conflict.	1.00 220.00/hr	220.00
11/4/2012 - WEB	Preparaion for Hearing Preparation for Trial - review of deposition, exhibits. Working on Opening Statement.	3.10 220.00/hr	682.00
11/8/2012 - WEB	Preparaion for Hearing Preparing for Trial.	1.90 220.00/hr	418.00
11/27/2012 - WEB	Telephone Call with Telephone Call with Lisa Comer at Clerk's office; email sent to OAs.	0.50 220.00/hr	110.00
12/18/2012 - WEB	Email message to Email message to OA for discovery.	0.20 220.00/hr	44.00
12/28/2012 - WEB	Research Research at Permit Office for case.	0.50 220.00/hr	110.00
1/7/2013 - WEB	Court Appearance Court Appearance for Roster Meeting - notified about OA father health problem; travel to courthouse for meeting; phone call with Homer.	1.30 220.00/hr	286.00
1/8/2013 - WEB	Review Review.	0.70 220.00/hr	154.00
1/14/2013 - WEB	Email message to Email message to Fechtel.	0.30 220.00/hr	66.00



		<u>Hrs/Rate</u>	<u>Amount</u>
2/11/2013 -	WEB Court Appearance Court Appearance - roster meeting.	0.50 220.00/hr	110.00
-	WEB Preparaion for Hearing Preparation for Trial.	4.40 220.00/hr	968.00
2/12/2013 -	WEB Preparaion for Hearing Trial Prep	10.00 220.00/hr	2,200.00
2/13/2013 -	WEB Court Appearance Court Appearance	10.00 220.00/hr	2,200.00
2/14/2013 -	WEB Draft Draft Proposed Order	5.00 220.00/hr	1,100.00
SUBTOTAL:		[70.80	15,576.00]
<u>Chris Jarvis</u>			
3/4/2011 -	CJ Recording Record Mechanics Lien in Lexington County ROD.	0.80 20.00/hr	16.00
-	CJ Hand Delivery Hand delivery to attorney Jake Moore.	0.40 20.00/hr	8.00
SUBTOTAL:		[1.20	24.00]
<u>Eric Enos</u>			
6/25/2012 -	EE Preparation Preparation for Trial - Exhibits	1.00 60.00/hr	60.00
6/27/2012 -	EE Preparation Preparation of Exhibit Books	0.50 60.00/hr	30.00
7/6/2012 -	EE Draft Draft Amended Notice of Deposition	0.20 60.00/hr	12.00
2/12/2013 -	EE Trial preparations Trial Preparation	2.00 60.00/hr	120.00
2/13/2013 -	EE Court Appearance Court Appearance	6.00 60.00/hr	360.00
SUBTOTAL:		[9.70	582.00]

Rose Electric, Inc.

File No. 4657.1151

Page



		<u>Hrs/Rate</u>	<u>Amount</u>
<u>Sarah Guthrie</u>			
8/26/2011 - SG	Travel to/from Travel to and from Lexington Courthouse to file certificates of service	0.50 25.00/hr	12.50
9/2/2011 - SG	Travel to/from Travel to and from Lexington Clerk of Court to file Acceptances of Service	0.50 25.00/hr	12.50
SUBTOTAL:		[1.00	25.00]
For professional services rendered		82.70	\$16,207.00
Additional Charges :			
		<u>Qty/Price</u>	
<u>Bill Booth</u>			
2/11/2013 - WEB	Mileage Mileage.	10 0.57	5.65
SUBTOTAL:		[5.65]	
<u>Chris Jarvis</u>			
3/4/2011 - CJ	Mileage Mileage to record mechanics lien at Lexington County ROD.	21 0.51	10.71
- CJ	Mileage Mileage for hand delivery to attorney Jake Moore.	6 0.51	3.06
SUBTOTAL:		[13.77]	
<u>Eric Enos</u>			
3/3/2011 - EE	Recording Fee Recording Fee - Mechanic's Lien	1 11.00	11.00
5/20/2011 - EE	Filing Fee Filing Fee - Complaint	1 150.00	150.00
SUBTOTAL:		[161.00]	

Rose Electric, Inc.
File No. 4657.1151

Page

6



	<u>Qty/Price</u>	<u>Amount</u>
<u>Sarah Guthrie</u>		
6/13/2011 - SG Mileage	15	7.65
Mileage from office to Lexington Courthouse to file Answer	0.51	
8/26/2011 - SG Mileage	7	3.57
Mileage to and from Lexington Courthouse to file certificates of service	0.51	
9/2/2011 - SG Mileage	16	8.16
Mileage to and from Lexington Clerk of Court to file Acceptances of Service	0.51	
 SUBTOTAL:		<u>[19.38]</u>
 Total costs		<u>\$199.80</u>
 For professional services rendered	<u>82.70</u>	<u>\$16,406.80</u>



County of Lexington, South Carolina

Department of Community and Economic Development

County Administration Building

212 South Lake Dr.

Lexington, SC 29072

(803) 785-8130

BUILDING PERMIT

11/02/2010

Permit # 1002814

Project Name:

Contractor: Mike Hutchins, 803 955 2381

5504 Beckman Rd
Lexington, SC 29073

Owner: S2P LLC

Columbia, SC 29201

Project Address: 322 Little Chris Ln
West Columbia, SC

Subdivision:

Lot:

TMS # 007997-06-012

Property Notes:

Proposed Use: produce processing

Description of work: Construct processing bldg * hold final for grading & landscaping

Occupancy: Factory Factory & Industrial Low & Moderate

ConstructionType: II-B

Area: 5100

Permit Fee: \$ 1336.00

Permit Type: BM - MASTER BUILDING

Valuation: \$ 411519.00

1. This permit becomes null and void if the construction is not started within six months or if the work is abandoned for any 90 day period or longer after the work has commenced.
2. No work is to begin or to be continued if the permit card is destroyed, lost or stolen.
3. I hereby certify that I have read and examined this document and know the same to be true and correct. Furthermore, I understand that the issuance of this permit does not constitute a privilege to violate or cancel any applicable state or local ordinances, codes or laws.
4. I understand that the omission or misrepresentation of any facts contained herein may be cause for the immediate revocation of this permit.
5. It is the permit holder's responsibility to schedule all inspections at least one business day in advance. To schedule an inspection call (803) 785-8130 between the hours of 8:00 AM and 5:00 PM.

Contractor/Agent:

Date

Issued by:

Date

**County of Lexington, South Carolina**

Department of Community and Economic Development
Department of Building Safety, County Administration Building
212 South Lake Dr., Lexington, SC 29072

CERTIFICATE OF OCCUPANCY

This Certificate is issued pursuant to the requirements of the Lexington County Building Codes Ordinance certifying that at the time of issuance this structure substantially complied with the applicable codes regulating building construction.

Permit # 1002814 Tax Map # 007887-06-012
Location: 322 Little Chris Ln
West Columbia, SC
Applicant: Mike Hutchins, 803 966 2381
Owner: S2P LLC
Columbia, SC 29201
Code Edition: International Building Code
Occupancy: Factory Factory & Proposed Use: produce processing
ConstructionType: Industrial Low & Moderate
Moderate

Comments:


Michael J. Moore, Building Official

NOV 30 2010

Date

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Rose Electric, Inc. (Contractor's License
Number 99797),

Plaintiff,

vs.

Cooler Erectors of Atlanta, Inc., Southern
Produce, Inc., and S2P, LLC,

Defendants.

IN THE OFFICE OF THE REGISTER OF
DEEDS

NOTICE OF MECHANIC'S LIEN

PROPERTY OWNER:

S2P, LLC

TMS No. 007997-06-012

TO THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Rose Electric, Inc. (Contractor's License Number 99797), herein claims a Mechanic's Lien in and to the property described in the Exhibit attached hereto as Exhibit "A", by virtue of monies due and owing in the amount of Sixty-five thousand ninety-four and 52/100 Dollars (\$65,094.52), by reason of certain labor, materials and/or services furnished by Plaintiff within ninety (90) days immediately past, by virtue of an agreement with, or by consent of, the owner of the building or structure, or a person having authority from, or rightfully acting for, the owner in procuring or furnishing the labor or materials, which labor, materials and/or services have been used and incorporated into the improvement of the property. See, S.C. Code Ann. §29-5-20 (1976). Services and materials were furnished by the Plaintiff by virtue of an agreement with the above-named Defendant, Cooler Erectors of Atlanta, Inc., and the property owner at the time the agreement was entered into was S2P, LLC. From the beginning of time that labor, services and materials were furnished by Plaintiff, Defendant, S2P, LLC, was the owner of the

property, taking by deed dated December 16, 2009, and recorded in Record Book 14013 at Page 316 in the Office of the Register of Deeds for Lexington County, South Carolina. The labor, services and materials furnished by the Plaintiff are described in the statement of account attached hereto and incorporated herein by reference. A copy of the verified statement of account is attached as Exhibit "B".

The property which is the subject of this lien is described in the attached Exhibit "A". Plaintiff is also entitled to pre-judgment interest, and Plaintiff is also entitled to attorney's fees and costs incurred, as provided by statute.

Rose Electric, Inc.
(Contractor's License No. 99797)

By: Homer Rose
Homer Rose, its President
1421 VanBoklen Rd.
Eastover, SC 29044
Plaintiff

BOOTH LAW FIRM, LLC

William E. Booth III
William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(T) (803) 791-9211
(F) (803) 791-3159
BoothLaw@bellsouth.net
Attorney for Plaintiff

West Columbia, South Carolina
March 3, 2011

EXHIBIT "A"

That portion of 322 Little Chris Lane as described below:

All that certain unimproved piece, parcel or lot of land, comprising 4.08 acres, more or less, situate, lying and being in the County of Lexington, State of South Carolina, and situated at the Southeast corner of the intersection of Little Chris Lane and Produce Lane within the State Farmers Market, said property being shown and designated as **"LOT 12 4.08 ACRES 321 LEXINGTON ASSOCIATES WHOLESALE VENDOR (1)"** upon that Bonded Plat of the State Farmers Market prepared for 321 Lexington Associates, LLC and the State of South Carolina by Associated E & S, Inc., dated June 15, 2009, revised August 6, 2009, and recorded in the Office of the Register of Deeds for Lexington County as an oversized plat in Record Book 13796 at page 21, to which reference is here craved for specific metes and bounds; be all measurements a little more or less.

COPY

EXHIBIT "B"

STATEMENT OF ACCOUNT

Rose Electric, Inc.
1421 VanBoklen Road
Eastover, SC 29044

Re: All electrical work and materials for a new refrigeration building to be operated by Southern Produce, Inc., including, but not limited to, 600 amp service, office lighting, office power, and refrigeration power.

Location of Work: 322 Little Chris Lane

General Contractor: Cooler Erectors of Atlanta, Inc.

Total Contract Price: \$54,339.13

Change Orders: \$10,755.39

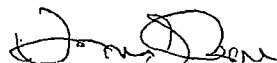
Less Payments: (\$0.00)

BALANCE DUE AND UNPAID: \$65,094.52

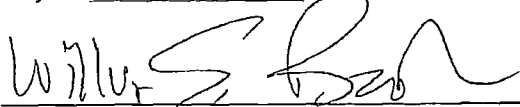
Plus such interest, costs and attorney's fees as may be established by the Court.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) AFFIDAVIT

PERSONALLY appeared before me, Homer Rose, who being duly sworn, deposes and says: he is the President of Rose Electric, Inc., and has personal knowledge of the matters set forth heretofore; that the above is a just and true account of the monies owed to Rose Electric, Inc. for the materials and labor supplied for electrical work and materials at 322 Little Chris Lane, Lexington County, South Carolina.


Homer Rose

Sworn to before me this 3rd
day of March, 2011


Notary Public for South Carolina
My commission expires: My Commission Expires April 7, 2015

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Rose Electric, Inc.,

Plaintiff,

vs.

Cooler Erectors of Atlanta, Inc., Southern
Produce, Inc., and S2P, LLC,

Defendant.

IN THE OFFICE OF THE REGISTER OF
DEEDS

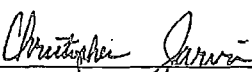
CERTIFICATE OF SERVICE

I, Christopher Jarvis, do hereby certify that I have served the following named individual(s) with a copy of the pleading(s) indicated below by the method and on the date indicated below:

INDIVIDUALS SERVED:

VIA CERTIFIED MAIL WITH RETURN RECEIPT Mr. T. Stanley Sunderland Registered Agent for Cooler Erectors of Atlanta, Inc. P.O. Box 346 Buford, GA 30518	VIA CERTIFIED MAIL WITH RETURN RECEIPT Mr. Nathan B. Crocker Registered Agent for Southern Produce, Inc. 1001 Bluff Road U-42 Columbia, SC 29201
VIA CERTIFIED MAIL WITH RETURN RECEIPT Mr. Gregory A. Senn Registered Agent for S2P, LLC 188 Midway Road Lexington, SC 29072	

Pleading	Date of Service
Notice of Mechanic's Lien	March 4, 2011


Christopher Jarvis

West Columbia, South Carolina
March 4, 2011

Rose Electric, Inc.

1421 VanBoklen Road
Eastover, SC 29044
Bus.: 803.353.8949
Fax: 803.353.2668
roseelectric@aol.com

PROPOSAL

DATE: November 24, 2010

REI Contractors License #M99797

Cooler Erectors of Atlanta
Attn: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 404-246-0969

Fax: 770-932-5527 ✓

Email:

Location: **SC Farmers Market**
Southern Produce

JOB DESCRIPTION

Electrical, including: Power, Lighting, and Refrigeration Power.

ITEMIZED PROPOSAL

	\$56,488.07
TOTAL PROPOSED JOB COST	\$56,488.07

This is a proposal only, not a contract for services. This proposal is for completing the job as described above. It is based on our evaluation and does not include material price increases or additional labor and materials which may be required should unforeseen problems arise after the work has started. Note: This proposal may be withdrawn by us if not accepted in 10 days. Material prices good for 30 days.

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

James J. R.

Authorized Signature

Date of Acceptance: _____

Signature _____

3

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 10095
DATE: November 24, 2010

Cooler Erectors of Atlanta, Inc.
Attn.: Accounts Payable
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012

Fax #: 770-932-5527 - *fax'd. original w/backup to*

Terms: **Upon receipt of invoice**

Job Name/Number: Farmers Mkt., Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
	Back up Invoices furnished			Electrical including Power, Lighting and			
				Refrigeration Power.			
				Invoice #1			
				OTHER CHARGES			AMT
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Morris Teasley, CEOA				Due		\$22,804.00	
SIGNATURE: <i>Morris S. Rose</i>							
				TOTAL DUE:		\$22,804.00	

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Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

voided

INVOICE NO: 10100
DATE: December 9, 2010

Cooler Erectors of Atlanta, Inc.
Attn.: Accounts Payable
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
	Back up Invoices furnished			Electrical including Power, Lighting and			
				Refrigeration Power.			
				Invoice #2			
				OTHER CHARGES			AMT
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			

WORK ORDERED Morris Teasley, CEOA

SIGNATURE: *Thomas S. Rose*

Due	\$41,226.49
TOTAL DUE:	\$41,226.49

altern B/H + 372.23
41,598.72

Rose Electric, Inc.

P. O. Box 189
 1421 VanBoklen Rd.
 Eastover, SC 29044
 Bus.: 803/353-8949
 Fax: 803/353-2888

#13

SERVICE INVOICE

INVOICE NO: 11007
 DATE: January 13, 2011

Cooler Erectors of Atlanta, Inc.
 Attn.: Morris Teasley
 3167 Heritage Way
 Buford, GA 30519

Phone: 770-932-9012
 Fax #: 770-932-5527
 Terms: Upon receipt of Invoice
 Job Name/Number: Farmers Mkt., Southern Produce
 Original Contract

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				800 Amp Service and Office Lighting and			
				Power.			
				OTHER CHARGES			AMT
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Morris Teasley							Other:
SIGNATURE: <i>Harmer S. Rose</i>							
							TOTAL DUE: \$28,152.43

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#14

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2868

**SERVICE
INVOICE**

INVOICE NO: 11008
DATE: January 13, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Tassley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: Upon receipt of invoice
Job Name/Number: Farmers Mkt, Southern Produce
Change Order

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				All equipment and electrical additions outside			
				Original Scope of Work generated by			
				Southern Produce.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Morris Tassley				Other:			
SIGNATURE: <u>Homer S. Rose</u>							
				TOTAL DUE:		\$38,250.28	

Rose Electric Inc.

1421 VanBoklen Rd.
Eastover, SC 29044

Bus.: (803) 353-8949
Fax: (803) 353-2668
Email: roseelectric@aol.com

February 16, 2011

To: Cooler Erectors of Atlanta, Inc.
Attention: Morris Teasley
3167 Heritage Way
Buford, GA 30519

To: Southern Produce, Inc.
Attention: Nate Crocker
PO Box 7783
Columbia, SC 29202

From: Rose Electric, Inc.

Re: Unpaid Invoices

Gentlemen:

At present we have incurred unpaid expenses on the Southern Produce job in the amount of \$65,094.52. I have gone back through the files and pulled out the change orders that Mr. Dan Stocker, with Southern Produce, requested us to do while we were working on the contract portion of this job. I have listed the Change Orders below and I am enclosing copies of each for each of you.

Change Order #2 - \$ 436.20	Change Order #7 - \$ 834.95
Change Order #3 - \$ 987.61	Change Order #8 - \$ 337.63
Change Order #4 - \$ 356.80	Change Order #9, 10 & 11 - \$3,054.97
Change Order #5 - \$3,091.89	Change Order #12 - \$ 141.06
Change Order #6 - \$1,514.28	

Change Order #1 was for "Cooler Power" and has already been paid by Southern Produce.

The total amount of Change Orders #2 - 12 is \$10,755.39. Subtracting this \$10,755.39 from our Total unpaid cost of \$65,094.52, will leave \$54,339.13. This is our cost for the contract work. I am Not sure how you want to handle paying us but would appreciate your immediate attention in getting this paid. The original invoices for this job were submitted in November of 2010.

You have given me no alternative but to start the process of obtaining counsel to help me collect our money. However, I would prefer that you just send us our money. Please respond.

Sincerely,



Homer S. Rose
Rose Electric, Inc.

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

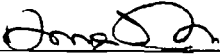
**SERVICE
INVOICE**

INVOICE NO: 11020
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #2

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Install Cannon Style Plugs.			
				OTHER CHARGES			AMT
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker							Other:
SIGNATURE: 							
							TOTAL DUE: \$436.20

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

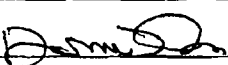
**SERVICE
INVOICE**

INVOICE NO: 11021
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #3

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Add Hand Wash Water Heater Circuit to			
				Station Sink.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$987.61	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11022
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #4

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Relocate equipment #13 from inside the			
				Building to outside and provide disconnect			
				With fuses.			
				OTHER CHARGES			AMT
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$356.80	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11023
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #5

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Equipment #28 – Change from hard wire to			
				Stainless steel disconnects.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$3,091.89	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11024
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #6

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Install stainless steel disconnects for			
				Equipment #2 and 3.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$1,514.28	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

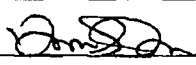
**SERVICE
INVOICE**

INVOICE NO: 11025
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #7

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Instal 5 additional recepticles to the inside			
				Of cooler walls.			
				OTHER CHARGES			AMT
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$834.95	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11026
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #8

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Install 6 additional recepticles in office area			
				To include additional circuit.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$337.63	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11027
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #9, 10 and 11

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Install dedicated circuits for the Evaporators			
				Including time clock, and 12 pole control			
				Contactor and additional breaker and			
				Rework.			
				OTHER CHARGES		AMT	
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED:		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$3,054.97	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11028
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce
Change Order #12

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Install 1 additional 2x4 Lay-In Fixture in			
				Office Area.			
				OTHER CHARGES			AMT
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Dan Stocker				Other:			
SIGNATURE: 							
				TOTAL DUE:		\$141.06	

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11005
DATE: January 6, 2011

Southern Produce
Attn: Nate Crocker
P.O. Box 7783
Columbia, SC 29202

Phone: 803-926-4900
Fax #:
Terms: **Upon Receipt of Invoice**
Job Name/Number: Cooler Power

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				Install cable disconnect and breakers for			
				Appropriate size of new cooler installation.			
				OTHER CHARGES			AMT
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			\$315.00
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			1489.02
WORK ORDERED Nate				Other:			40.00
SIGNATURE: <u>Homer S Rose</u>							
				TOTAL DUE:			\$1844.02

9

COOLER ERECTORS OF ATLANTA, INC.

3167 HERITAGE WAY

BUFORD, GA 30519

(404) 226-2207

FAX (770) 932-5527

CONTRACTOR AGREEMENT

22 OCTOBER, 2010

MR. NATE CROCKER

SOUTHERN PRODUCE
COLUMBIA, S. C.

FOR VALUE CONSIDERATION, THE OWNER AND CONTRACTOR AGREE AS FOLLOWS:

1. THE CONTRACTOR AGREES TO FURNISH ALL LABOR AND MATERIALS TO DO THE FOLLOWING WORK FOR THE OWNER AS AN INDEPENDENT CONTRACTOR:

A. SITE WORK

1. REMOVE EXCESS DIRT AND GRADE TO BUILDING ELEVATION.

B. FOUNDATION

1. SIZE 60' X 85' X 6" THICK CONCRETE TURN DOWN CONCRETE SLAB ON GRADE AND 25' X 45' DOCK SLAB ON GRADE PER ATTACHED DRAWINGS
2. SITE CONDITIONS TO BE SUITABLE PER SOIL TEST
3. FLOOR IN PRODUCTION AREA TO BE SLOPED TO CENTER DRAIN

C. METAL BUILDING

1. SIZE: 60' X 85' X 20' HIGH
2. ROOF: 26 GAUGE UNPAINTED GALVALUME BAX-RIB
3. WALLS: 26GA PAINTED GALVALUME BAX-RIB
4. 25' X 45' LEAN TO ROOF SYSTEM CEILED UNDER PURLINS
5. GUTTERS AND DOWNSPOUTS
6. ONE (1) 8' X 7' FRAMED OPENING
7. THREE (3) 1070 WALK DOORS
8. 3" FIBERGLASS INSULATION WITH VR-R PLUS FACING ON ROOF AND WALLS
9. TWO (2) 3' X 4' INSULATED FIXED GLASS WINDOWS WITH TEMPERED GLASS

D. OFFICE:

1. WALLS: DRYWALL, PAINTED
2. CEILING: 2' X 4' ACOUSTICAL TILE
3. FLOOR: CONCRETE
4. DOORS: METAL
5. LIGHTING: 2' X 4' FLUORESCENT
6. HVAC: HEAT PUMP

E. RESTROOMS

1. WALLS: DRYWALL
2. CEILING: 2' X 4' ACOUSTICAL TILE
3. FLOOR: CONCRETE
4. DOORS: METAL
5. TOILETS, SINKS, HANDICAP ACCESSORIES, PAPER TOWEL DISPENSERS

F. WAREHOUSE PLUMBING

1. (2) 4" FLOOR DRAINS WITH 3" PIPE (PER DRAWINGS)
2. (4) WATER FAUCETS
3. (1) ICE MACHING STUB OUT
4. (1) MOP SINK
5. (7) FLOOR SINKS
6. (1) FLOOR DRAIN W/FUNNEL
7. (1) WATER HEATER

G. ELECTRICAL

1. (1) 600 AMP THREE PHASE 120/208 VOLT SERVICE
2. (2) 200 AMP THREE PHASE 120/208 VOLT PANELS
3. LIGHTING PER DRAWINGS
4. OUTLETS PER DRAWINGS
5. POWER DROPS FOR EQUIPMENT
6. TELE/DATA STUB-UPS

2. EXCLUSIONS:

- (A) EQUIPMENT FINAL CONNECTIONS
- (B) INSULATED PANELS AND INSTALATION
- (C) CONCRETE CURB FOR PANELS
- (D) SINEAGE
- (E) TELEPHONE DATA SYSTEM

3. THE CONTRACTOR AGREES TO PERFORM THIS WORK IN A COMPETENT AND SKILLFUL MANNER ACCORDING TO STANDARD INDUSTRY PRACTICES, AND ALL WORK PERFORMED SHALL BE SUBJECT TO FINAL APPROVAL BY THE OWNER.

ARCHITECTURAL PLANS WILL BE ATTACHED TO AND ARE PART OF THIS AGREEMENT. THE CONTRACT PRICE IS SUBJECT TO CHANGE IF THE LOCAL GOVERNING AUTHORITY REQUIRES UNFORESEEN CHANGES TO THE DESIGN.

4. THE OWNER AGREES TO PAY THE CONTRACTOR AS FULL PAYMENT THE AMOUNT OF \$213,385.00 FOR DOING THE WORK OUTLINED ABOVE. THE FOLLOWING PAYMENTS WILL BE PAID TO THE CONTRACTOR ON SATISFACTORY COMPLETION OF THE WORK IN THE FOLLOWING MANNER: 20% UPON ACCEPTANCE OF THIS CONTRACT, UPON DELIVERY OF SPECIAL ORDERED MATERIAL, AND MONTHLY PROGRESS DRAWS.

5. THE CONTRACTOR AND OWNER MAY AGREE TO EXTRA SERVICES AND WORK, BUT ANY SUCH EXTRAS MUST BE SET OUT AND AGREED TO IN WRITING BY BOTH THE CONTRACTOR AND THE OWNER.

6. THE CONTRACTOR AGREES TO HOLD THE OWNER HARMLESS FROM ANY CLAIMS OF LIABILITIES ARISING FROM THE CONTRACTORS WORK UNDER THIS AGREEMENT. THE CONTRACTOR AGREES TO CARRY GENERAL LIABILITY INSURANCE, AND WORKMAN'S COMPENSATION INSURANCE FOR ALL WORK DONE UNDER THIS AGREEMENT.

7. IN NO EVENT SHALL THE CONTRACTOR BE LIABLE FOR LOSS OF USE, REVENUE OR PROFIT OR FOR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, BUT NOT LIMITED TO, LOSSES INVOLVING FOOD SPOILAGE OR PRODUCT LOSS.

8. NO MODIFICATIONS OF THIS AGREEMENT WILL BE EFFECTIVE UNLESS IT IS SIGNED BY BOTH PARTIES. THIS AGREEMENT BINDS AND BENEFITS BOTH PARTIES AND ANY SUCCESSORS. THIS DOCUMENT, INCLUDING ANY ATTACHMENTS, IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES

PAYMENT TERMS: 20% UPON ACCEPTANCE OF CONTRACT
PROGRESS DRAWS AS NEEDED.

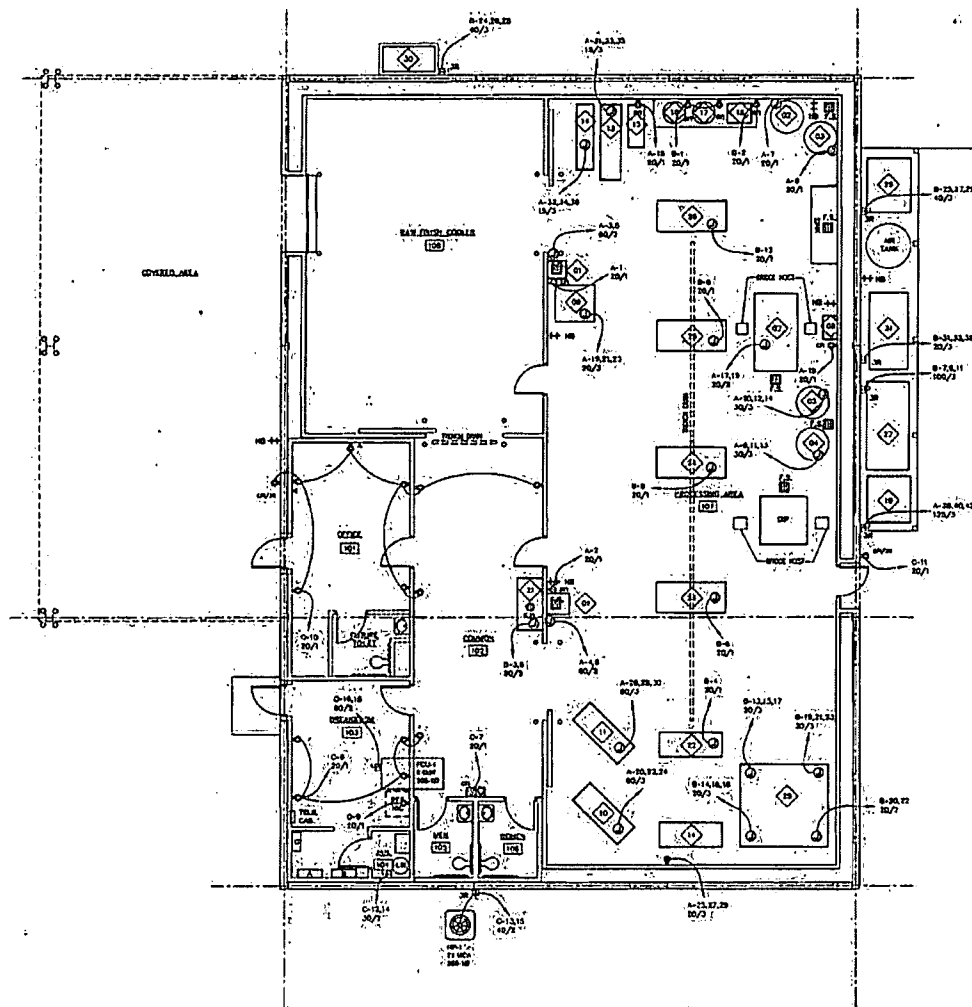
DATED 10/27/10

Nate Crocker
SIGNATURE OF THE OWNER

Marvin P. Beasley
SIGNATURE OF THE CONTRACTOR

Nate Crocker
NAME OF THE OWNER

Cooler Erectors of Atlanta Inc
NAME OF THE CONTRACTOR



COOLER ERECTORS OF ATLANTA, INC.
3167 HERITAGE WAY
BUFORD, GA 30519
(770) 932-9012
FAX (770) 932-9013

INVOICE # 2181026

26 OCTOBER, 2010

SOUTHERN PRODUCE
COLUMBIA, S. C.

ATTN: NATE CROCKER

METAL BUILDING, MATERIAL ONLY

AMOUNT DUE THIS INVOICE \$49,600.00

TERMS: NET DUE UPON RECEIPT

COOLER ERECTORS OF ATLANTA, INC

MORRIS C. TEASLEY

Southern Produce, Incorporated's Payments to Cooler Erectors of Atlanta, Inc.

10/8/10	#2981	\$ 11,000.00
10/27/10	#15946	\$ 49,600.00
10/27/10	#15947	\$ 42,677.00
11/16/10	#16019	\$ 70,000.00
12/2/10	#16053	<u>\$ 30,000.00</u>
Total		\$203,277.00

NATE CROCKER
LINDA CROCKER
REDACTED

OK pay Harold.

10-8-10 DATE

2981
67-218/538
BRANCH 1237

PAY TO THE ORDER OF COULON ELECTORS \$ 11,000.00

ELEVEN THOUSAND DOLLARS & 00 100 DOLLARS

CAROLINA FIRST CAROLINA PRIME

FOR REDACTED 2981

REDACTED

PAY TO THE ORDER OF
CROCKER BANK & TRUST
67-218/538
BRANCH 1237

PER DEPOSIT ONLY
CROCKER BANK & TRUST
67-218/538
BRANCH 1237

Date: 10-15-2010 Account: **REDACTED** Serial: 2981 Amount: \$11,000.00 TR: 5390219 Sequence: 127702892
BankNum: 1 TranCode: 0 DbCr: D

http://srvafswb2/scripts/afs/afswb/AfsWeb.dll?Process?_application=eVision&_method=1... 6/1/2011

015946

SOUTHERN PRODUCE, INC.
 STATE FARMERS MARKET, U-42
 1001 BLUFF ROAD
 POST OFFICE BOX 13445
 COLUMBIA, SC 29201
 (803) 771-7825

CAROLINA FIRST BANK
 COLUMBIA, SC 29201
 67-218/539

10/27/2010

PAY TO THE ORDER OF COOLER ERECTORS OF ATLANTA \$ **49,600.00

Forty-Nine Thousand Six Hundred and 00/100 DOLLARS

COOLER ERECTORS OF ATLANTA
 3187 HERITAGE WAY
 BUFORD, GA 30619

MEMO

Steve Crook
 AUTHORIZED SIGNATURE

REDACTED

REDACTED

10/28/2010 15:40

FOR DEPOSIT ONLY

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
 (RESERVED FOR FINANCIAL INSTITUTION USE)

ENDORSE HERE

TO THE ORDER OF

FOR DEPOSIT ONLY

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
 (RESERVED FOR FINANCIAL INSTITUTION USE)

Date: 10-29-2010 Account: **REDACTED** Serial: 15946 Amount: \$49,600.00 TR: 5390219 Sequence: 120023234
 BankNum: 1 TranCode: 0 DbCr: D

DOCUMENT SUPPLIED BY THE NATIONAL ARCHIVE SYSTEM. THE INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE.

SOUTHERN PRODUCE INC.
P.O. BOX 13448
COLUMBIA, SC 29201

CAROLINA FIRST BANK
COLUMBIA, SC 29201
67-218/539

316019

11/16/2010

PAY TO THE ORDER OF COOLER ERECTORS OF ATLANTA \$ **70,000.00

Seventy Thousand and 00/100 ***** DOLLARS

COOLER ERECTORS OF ATLANTA
3187 HERITAGE WAY
BUFORD, GA 30619

Nate Crocker
AUTHORIZED SIGNATURE

MEMO Construction Draw

REDACTED

REDACTED 11/17/2010 14:2

REDACTED

ENDORSE HERE

DO NOT WRITE IN THIS SECTION BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

Security Features

- The security features of the check are designed to help you verify the authenticity of the check and protect you from fraud.
- **Watermark:** A watermark of the word "ONE" is visible in the background of the check.
- **Color Shifting:** The color of the ink on the check changes when you tilt it.
- **Microprint:** The words "ONE HUNDRED DOLLARS" are printed in tiny letters around the perimeter of the check.
- **Security Thread:** A security thread is embedded in the paper of the check.
- **Optical Variable Ink:** The ink on the check changes color when you tilt it.
- **Security Features:** The security features of the check are designed to help you verify the authenticity of the check and protect you from fraud.

Date: 11-18-2010 Account: **REDACTED** Serial: 16019 Amount: \$70,000.00 TR: 5390219 Sequence: 1221545-2
BankNum: 1 TranCode: 0 D5Cr: D

http://srvafswb2/scripts/afs/afswb/AfsWeb.dll?Process?_application=eVision&_method=I... 6/1/2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

S2P, LLC)
)
) LEASE AGREEMENT
)
 Landlord,)
)
 TO)
)
 Southern Produce Inc.,)
)
 Tenant.)
 _____)

This Lease Agreement is entered into this 1st day of January, 2011, by and between Southern Produce Incorporated ("Lessee" or "Tenant") and S2P, LLC ("Landlord").

Leasehold Premises: In consideration of a monthly rental to be paid as hereinafter specified and on the conditions hereinafter set forth, Landlord hereby lets and leases unto Tenant, who agrees to take and pay the specified rental, for the exclusive use of property located directly under a building to be erected by Tenant upon a portion of the premises of Senn Bros. wholesale produce operation located at the South Carolina Farmers Market, the exact location of the building to be determined by agreement of the parties, all plans and contractor to be approved by the Landlord and by the developer. The rights to the leased premises conveyed shall also include the nonexclusive use of any surrounding parking and tarmac owned by the Landlord, as long as such use does not interfere with use of such areas by Senn Bros, Inc. during its normal business operations.

Term and Rental. Security Deposit: The term of this Lease is for a period of ten (10) years, beginning January 1, 2011, and ending at the close of business on December 31, 2021 (Termination date). This Lease will be automatically renewed for successive terms of five (5) years, unless one party shall communicate, in writing, to the other party to this lease its intention not to renew the lease, no later than ninety (90) days prior to the expiration of any current term.

Base Rent: During the first 10 year term, Tenant agrees to pay unto the Landlord, as rent for each month of the Lease term, the monthly sum of \$250.00, being payable on the 5th day of each month in advance beginning January 5, 2011; Monthly Rent for any renewal term shall be the same as the prior term, or, in the sole and exclusive discretion of the Landlord, conditioned upon notice given to Tenant no later than 120 days prior to the end of the term, the rental amount to

be re-computed, any change in rent affected at the beginning of a renewal term shall be based directly upon the percentage change, if any, in the consumer price index (CPI) which may occur between the published current CPI on the date the term started and the published current CPI upon the date 150 days prior to the end of the then-current term of the lease. Rent shall be due and payable upon the first day of each month. If Tenant takes possession of the property on any other day than the first day of the month, then Tenant shall, prior to taking possession, pay a prorated rent for the remainder of the current month, in addition to the first month's rent, all in advance. Construction activity shall not begin prior to the payment of rent.

Additional Rent: Tenant shall pay promptly upon demand, as additional rent, a pro rata share of the property taxes assessed against the Landlord, based upon the square footage occupied by Tenant's building, and shall further pay all of the tax attributable to the improvements (building) constructed and occupied by the Tenant. Tenant shall also pay promptly on demand a pro rata share of Landlord's liability under any assessments which may be periodically required of the owners and/or operators within the wholesale market, the proration to be based upon square footage of land area, or upon comparative value of the improvements, depending upon how the assessment is calculated by the market authority setting the assessments.

Utilities: any utilities, utility hookups, deposits, extension lines, tap fees, or the like, as well use each costs for any utilities or other services which may be required by the Tenant shall be and shall remain the Tenant's exclusive responsibility. Landlord shall allow the reasonable and necessary work to bring utilities to the leasehold.

Late Fees: If any of the above rents are not paid when due or within ten (10) days thereafter, then a 10% late charge shall be added to the rent and become immediately payable to the Landlord.

Contents, Risk of loss, Security: Tenant occupies space and brings in any personal property upon the leasehold at Tenant's own risk of theft, fire or vandalism. Landlord makes no representation to Tenant regarding any insurance or security, and provides none for the Tenant's benefit, directly or indirectly. Tenant shall maintain its own insurance against loss of its own property located on the leasehold, and Landlord shall have no liability associated with loss of such property, for any reason whatsoever, unless lost or damaged as a result of the Landlord's intentional wrongful act. If a security system is maintained by Tenant, both shall have access and keys or passwords to such system, and Landlord agrees to obey the Tenant's reasonable security procedures at all times, even in the event of fire or other emergency, and to avoid entering the Tenant's premises outside normal business hours in an unscheduled manner, unless in the event of *bona fide* emergency. In addition, each party agrees to

notify the other of all instances of theft or vandalism and to immediately report all suspicious or dangerous activities of any third parties which either may observe during any time Tenant is upon the premises.

Building Hazard Insurance: Tenant shall keep the building upon the premises insured with the company acceptable to the Landlord against all perils in an amount equal at least to the replacement value of the building, and shall name the Landlord as a loss payee of that insurance policy, providing a copy upon request. That policy shall contain a clause requiring that the Landlord will be notified by the insurer in the event of a termination or a lapse in coverage. All such insurance shall be obtained from a company approved by Landlord, and a certificate evidencing the issuance of such policy or policies, including a declarations page for each policy, together with evidence of the payment of premium, shall be delivered to Landlord within ten (10) days of Tenant occupying the premises, which shall not occur until a Certificate of Occupancy is issued by the appropriate governmental office. Landlord shall not unreasonably withhold consent or approval of insurer. Not less than ten (10) days prior to the expiration of any such policy or policies, evidence of the renewal of such policy or policies, or a new certificate, together with evidence of the payment for the renewal period or new policy, as the case may be, shall contain an agreement by the insurance company that the policy or policies will not be cancelled, or the coverage changed, without ten (10) days' prior written notice to Landlord.

Termination for Default: Tenant's continued or persistent violation of any material term of this Lease shall, in the sole and exclusive discretion of the Landlord, constitute a Default of this lease agreement, unless such condition is remedied within 15 days of written notice to tenant. With respect to rent payable, if any of the rent or late charge is in arrears for a period of more than ninety (90) days, then Landlord may declare this Lease in Default and, therefore, null and void. In the event of Default, Landlord may collect for rents already due hereunder and demand and shall be entitled to immediate possession of the premises, or, in the alternative, may sue for specific performance of the lease.

Tenant to Insure and to Indemnify Landlord: The Tenant agrees to indemnify, defend and hold Landlord harmless from all claims for personal injuries, death, and property damage which occur as the result of the operation of Tenant's business on the property, or which result from any work done on the property by Tenant, any activities by persons on the premises relating to Tenant's occupancy or business or persons accompanying Tenant's customers, or any contractor selected by or for Tenant. Tenant shall carry a minimum of \$500,000 per occurrence liability insurance covering Tenant's business operation on the leased property and Landlord shall be named as an additional insured thereunder. Tenant shall also carry insurance for the full insurable value of Tenant's trade fixtures, furnishings, and all other items of personal property of Tenant located on the property.

Mutual Waivers of liability: Tenant and Landlord each hereby waive any and all rights of recovery against the other, or against the officers, agents, employees, and representatives of the other, for loss or of damage to such waiving party or its property or the property of others under its control, to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Tenant and Landlord shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

Changes to Leasehold: The Tenant shall not make any alterations or structural changes in the property, except as may be approved by Landlord, and any such changes or additions shall be the sole and exclusive property of Landlord notwithstanding expiration or termination of this lease.

Contemplated Uses: This Lease shall entitle the Lessee to reasonable use of the premises for the purpose of operating a fresh produce processing business, and related activities, although Tenant shall not engage in any other activity directly competing with the type of business conducted by the Landlord's Tenant, Senn Bros. Produce. All activities will be conducted in accordance with applicable law and regulation of all government agencies, and in accordance with the rules and regulations, covenants and restrictions of the State Farmers Market.

Prohibited Activities: If Tenant uses the premises or conducts upon the premises any activity which is unlawful, or which would reasonably be expected to damage the premises, Landlord may provide ten(10)days written notice given simultaneously with notice of a period of twenty (20) days in which Tenant may abate, to Landlord's reasonable satisfaction, the objectionable activities, as a condition of continued use and occupancy, and Landlord may subsequently terminate the lease, in the event that reasonable and appropriate remedial action has not been taken by Tenant with respect to the activities specified in the notice. Neither this Lease nor any of the activities contemplated within this lease shall create any partnership, joint venture or any other relationship between these parties except lessor/lessee, and both parties are strictly prohibited from representing to any 3rd party that their relationship is anything other than lessor/lessee.

Condition at End of Lease: At the end of the Lease, Tenant agrees to leave all improvements previously made, in good condition, reasonable wear and tear accepted. Landlord shall then have exclusive ownership of all such improvements, as further consideration for the entering and performance of this lease agreement.

Successors Bound. This Lease shall be binding upon the parties hereto and their respective heirs, successors and assigns and shall not be assigned by the Tenant without the prior written approval of the Landlord.

Eminent Domain/Condemnation. The parties further acknowledge that if the leased premises or any part of it shall be taken by eminent domain or pursuant to other governmental authority, this Lease shall continue as if such taking did not occur, unless the taking substantially and materially interferes with the Tenant's business activities. In the event that Tenant's building is taken by eminent domain, Tenant shall be entitled to a pro-rata share of that award, based upon the relationship that the value of its improvements taken bear to the total value of Landlord's property taken, less 20% to compensate the Landlord for loss of its expectation of eventual ownership of the building after the tenancy would have otherwise expired.

SC Laws. This agreement shall be interpreted and enforced under the laws of the state of South Carolina. Should the Tenant or Landlord be found by a court of competent jurisdiction to be in breach or default of this Lease, the non-prevailing party agrees to pay to the prevailing party reasonable attorney's fees and costs of any such successful action, or of such successful appeal or defense. This lease is not intended to be recorded publicly.

Damage to premises by Casualty: If the property is damaged by fire or other causes, rent shall continue to be paid, unabated, and Tenant shall rebuild or repair the building, unless, with the consent of the Landlord, in its sole discretion and under such further conditions as Landlord may impose, the lease is terminated.

Right of Refusal. If, during the period of this lease, Landlord shall intend to accept a third-party offer to purchase the entire premises owned by Landlord, then such offer shall be reduced to writing, and the copy of such written offer of purchase shall be immediately provided to the Tenant; Tenant shall thereafter, for a period of 10 days, have the option to purchase the property under substantially equivalent terms as set forth in the proposed third-party contract, and shall communicate such intention by providing a signed and enforceable, substantially equivalent, written contract offer to the Landlord within such time frame. This clause shall not, and this lease shall not, however, have any priority against the interests of any bona fide mortgagee or bond-investor of Landlord, now or later.

First Access. Tenant shall be allowed immediate access after the payment of the first rent, in order to prepare the premises, but may not begin business activities until the issuance of a Certificate of Occupancy. Tenant and Landlord understand and agree that any new construction is subject to approval or disapproval by 321 Lexington Associates, or its successors or assigns.

Liens. Tenant shall not cause, suffer or allow any lien or encumbrance against the leasehold without first securing the Landlord's written permission. In the event that a mechanics lien or materialman's lien is placed against the property in connection with the construction of improvements by Tenant, then such lien shall be immediately discharged by the placing by the Tenant of a sufficient bond, pursuant to statutory procedures. Tenant's failure to perform this term of the agreement shall constitute a default of this Lease, and Landlord may thereafter terminate the lease in its sole and absolute discretion, and avail itself of any remedy provided herein or by the laws of the state of South Carolina.

Landlord's Access. Landlord shall be allowed reasonable access to the entire premises for purposes of inspection, repair, or verifying compliance with the terms of this lease, upon reasonable advance notice to the Tenant, during normal business hours. Landlord shall nevertheless, at all times in which the businesses open for operation, have the right to perform inspection of areas which are generally open to the public within the premises.

Tenant to Maintain. Tenant agrees to reasonably maintain the premises and keep it in a clean and orderly condition and repair, inside and out, as may be required by rules and regulations of the State Farmers Market and any other applicable governing bodies or agencies within the market. NHL promptly repair or remedy any unsightly condition, shall dispose of this garbage and waste in an efficient manner, shall not permit offensive odors in and around the leasehold, and shall promptly repair any damage to the parking area, entrance ramps, etc., which might be directly or indirectly attributable to Tenant's activities. Landlord shall not be responsible for any maintenance whatsoever, except for the repair of any damage to the premises or parking areas that may be caused by Landlord or by Landlord's other Tenants.

Modification. This lease agreement cannot be modified except by a signed writing between Landlord and Tenant, and it is a complete agreement, which incorporates all of the prior material understandings of the parties, all agreements, understandings and representations prior to this date being merged herein. The conduct of the parties shall not operate as a waiver of their rights to subsequently insist upon strict performance of this agreement in the future.

Lease as violation of law. In the event that it is determined that landlord has violated the terms of its mortgage or bond agreement financing the purchase and/or construction of its facility within the farmers market as a result of entering this lease, and if that violation cannot be otherwise remedied without forfeiting its financing or otherwise suffering a severe financial penalty, then the landlord shall, upon 90 days written notice, have the right to declare

this lease null and void, conditioned upon first reimbursing to Tenant all of tenant's building expenses, costs, insurance, and related sums irretrievably expended by it in reliance upon this lease agreement, plus a reasonable expense for tenant's physical relocation to another location in the greater metropolitan area (moving expense only).

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of this 1st day of January, 2011.

IN THE PRESENCE OF:

Edward B. Burch
DeP

Edward B. Burch
DeP

Tenant
Southern Produce Corporation:

Nate Crocker
By: Nate Crocker, Pres.

Landlord
S2P, LLC

James Senn
By: James Senn, Pres.

F/m/re/fMaD/s2p special lease draft3

2/8/11

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Custom Concrete of Lexington, Inc.,)
S. C. Contractors License #51851)

Plaintiff,)

v.)

Cooler Erectors of Atlanta, Inc. and)
S2P, LLC,)

Defendants.)

OFFICE OF THE REGISTER OF DEEDS

2011005232 FILED, RECORDED, INDEXED
2011-02-08 15:47:27:710
REC FEE: \$11.00 ST FEE: \$0.00
CD FEE: \$0.00 Pages: 5
Lexington County R.O.D. Debra M. Gunter
MECHANICS LIEN Bk:Pg 14717:155

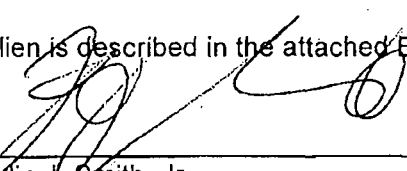
14

NOTICE OF MECHANIC'S LIEN

TO THE DEFENDANTS ABOVE NAMED:

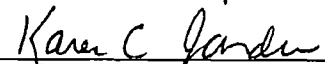
YOU WILL PLEASE TAKE NOTICE that the Plaintiff herein claims a Mechanic's Lien in and to the property described in the Exhibit attached hereto as Exhibit "A" by reason of certain labor, materials and/or services furnished by Plaintiff within less than ninety (90) days immediately past, at the special instance and request and with the knowledge of the Defendants, for the improvement of the described property, which labor, materials and/or services have been used and incorporated into the improvement of the property. A copy of the verified statement of account is attached as Exhibit "B".

The property which is the subject of this lien is described in the attached Exhibit "A".



Franklin J. Smith, Jr.
Richardson Plowden & Robinson, P.A.
1900 Barnwell Street
Post Office Box 7788
Columbia, South Carolina 29202
(803) 771-4400
ATTORNEYS FOR THE PLAINTIFF

Sworn to before me this 4th
day of February, 2011.



(L.S.)
Notary Public for South Carolina
My Commission Expires: 6/18/2017

All that certain unimproved piece, parcel or lot of land, comprising 4.08 acres, more or less, situate, lying and being in the County of Lexington, State of South Carolina, and situated at the Southeast corner of the intersection of Little Chris Lane and Produce Lane within the State Farmers Market, said property being shown and designated as "LOT 12 4.08 ACRES 321 LEXINGTON ASSOCIATES WHOLESale VENDOR (1)" upon that Bonded Plat of the State Farmers Market prepared for 321 Lexington Associates, LLC and the State of South Carolina by Associated # & S, Inc., dated June 15, 2009, last revised August 6, 2009, and recorded in the Office of Register of Deeds for Lexington county as an oversized plat, in Record Book 13796 at page 121, to which reference is here craved for specific metes and bounds; be all measurements being a little more or less.

This being the same property conveyed to S2P, LLC by deed of 321 Lexington Associates, LLC dated December 16, 2009 and recorded on December 17, 2009 in Book 13711 at Page 127.

TMS # 007997-06-012

EXHIBIT A

STATEMENT OF ACCOUNT

Custom Concrete of Lexington
108 Carlin Drive
West Columbia, SC 29169

Re: Senn Brothers Produce
State Farmers Market
3483 Charleston Hwy.
West Columbia, SC 29172

For materials and labor supplied in project located at the SC State
Farmers Market, 3483 Charleston Hwy., West Columbia, South Carolina.

Total Due \$14,529.20

Plus such costs and attorneys' fees as may be established by the Court.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

AFFIDAVIT

PERSONALLY appeared before me, Joseph Mitchell Hook, who being duly sworn, deposes and says: that he is the President of Custom Concrete of Lexington, Inc. and has personal knowledge of the matters set forth heretofore; that the above is a just and true account of the monies owed to Custom Concrete of Lexington, Inc. for the materials and labor supplied in the construction of the project known as Senn Brothers Produce, SC State Farmers Market, 3483 Charleston Hwy., West Columbia, South Carolina.


Joseph Mitchell Hook

I certify that I have a valid South Carolina License.
License No.: 51851

Sworn to before me this 4th
day of February, 2011.

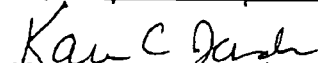
 (L.S.)
Notary Public for South Carolina
My Commission Expires: 6/18/2017

EXHIBIT B

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL



7008 1140 0000 7464 2118
7008 1140 0000 7464 2118

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Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
To:		
Sen	Mr. T. Stanley Sunderland	
Str	Registered Agent for Cooler Erectors	
or F	of Atlanta, Inc.	
City	P. O. Box 346	
	Buford, GA 30518	

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1. Article Addressed to:

Mr. T. Stanley Sunderland
Registered Agent for Cooler Erectors
of Atlanta, Inc.
P. O. Box 346
Buford, GA 30518

COMPLETE THIS SECTION ON DELIVERY

A. Signature		☐ Agent
X		☐ Addressee
B. Received by (Printed Name)	C. Date of Delivery	
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☐ Insured Mail	☐ C.O.D.	
4. Restricted Delivery? (Extra Fee)		☒ Yes

2. Article Number
(Transfer from se)

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PS Form 3811, February 2004

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To
or
City

Mr. Gregory A. Senn
Agent for Service for S2P, LLC
3483 Charleston Highway
West Columbia, SC 29172

Instructions

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Gregory A. Senn
Agent for Service for S2P, LLC
3483 Charleston Highway
West Columbia, SC 29172

2. Article 1
(Transf)

7008 1140 0002 0400 9897

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from Item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

2/18/11 signed

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

) REGISTER OF DEEDS OFFICE

Dunlap Services,)

Plaintiff,)

vs.)

Southern Produce, Inc., Cooler Erectors of)
Atlanta, Inc. and S2P LLC,)

Defendants.)

NOTICE OF MECHANIC'S LIEN

NOTICE IS HEREBY GIVEN that Dunlap Services ("Dunlap") is due the principal sum \$10,210.93 from the Defendants, as is more fully shown on the Verified Statement of Account attached hereto and made a part hereof, together with interest and attorneys' fees as may be awarded by the Court. The above sum includes all just credits.

That said debt is due Dunlap for labor performed and/or materials furnished for improvements to the real estate located at 322 Little Chris Lane at the new Farmers Market ("the Property"), by virtue of an agreement with, or by consent of S2P, LLC, the owner thereof, or any entity or person(s) authorized by, or rightfully acting for, said owner.

Dunlap claims a mechanic's lien and/or materialman's lien on the Property described on Exhibit A.

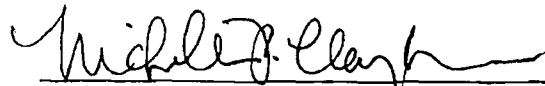
Dunlap would show that less than ninety (90) days have elapsed since the last date that labor was performed and/or materials were furnished for improvements on the

premises, and Dunlap has a lien against the property in the total amount of \$ 10,210.93,
together with attorneys' fees, interest, and costs.

Contractor License Number: M109581

TURNER PADGET GRAHAM & LANEY P.A.

By:



Michelle P. Clayton, Fed. I.D. 9520

MClayton@TurnerPadget.com

P.O. Box 1473

Columbia, South Carolina 29202

Telephone: (803) 254-2200

**ATTORNEYS FOR DUNLAP
SERVICES**

February 18, 2011

Exhibit A

That portion of 322 Little Chris Lane as described below:

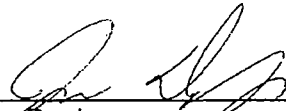
All that certain unimproved piece, parcel or lot of land, comprising 4.08 acres, more or less, situate, lying and being in the County of Lexington, State of South Carolina, and situated at the Southeast corner of the intersection of Little Chris Lane and Produce Lane within the State Farmers Market, said property being shown and designated as "**LOT 12 4.08 ACRES 321 LEXINGTON ASSOCIATES WHOLESALE VENDOR (1)**" upon that Bonded Plat of the State Farmers Market prepared for 321 Lexington Associates, LLC and the State of South Carolina by Associated E & S, Inc., dated June 15, 2009, revised August 6, 2009, and recorded in the Office of Register of Deeds for Lexington County as an oversized plat, in Record Book 13796 at page 21, to which reference is here craved for specific metes and bounds; be all measurements being a little more or less.

STATE OF SOUTH CAROLINA	)	
	)	IN THE REGISTER OF DEEDS OFFICE
COUNTY OF LEXINGTON	)	
Dunlap Services,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT
	)	AND
Southern Produce, Inc., Cooler Erectors	)	VERIFIED STATEMENT OF ACCOUNT
of Atlanta, Inc. and S2P LLC,	)	
	)	
Defendants.	)	
	)	

PERSONALLY APPEARED BEFORE ME, Jim Dunlap, who being duly sworn deposes and says as follows:

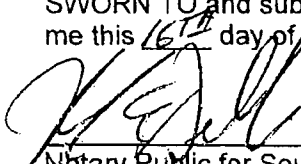
1. He is an authorized representative of the Plaintiff, and is authorized to make this Affidavit on behalf of the Plaintiff.
2. He is familiar with the account forming the basis for the within action, that all the matters alleged therein are true of his own knowledge, except for those allegations upon information and belief, and as to those, he believes them to be true.
3. The Plaintiff contracted with S2P, LLC's agent to perform services and to furnish supplies on S2P, LLC's property, which is located at 322 Little Chris Lane at the new Farmers Market, South Carolina.
4. The Plaintiff last provided supplies to the Property on or about November 24, 2010.
5. The Plaintiff is presently owed the sum of \$10,210.93, plus interest and attorneys' fees.

6. The foregoing is a true and accurate statement of the account of the Plaintiff, and no part of the total due has been paid by discount or otherwise. This amount may be revised in the future at such time as is appropriate.



Jim Dunlap

SWORN TO and subscribed before
me this 16th day of February, 2011.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: 4/27/14

ROSE ELECTRIC

Date	Type	Reference
1/6/2011	Bill	11005

Original Amt.
1,844.02

2/4/2011	
Balance Due	Discount
1,844.02	
Check Amount	

016215

Payment
1,844.02
1,844.02

Carolina First 11005

1,844.02

Rose Electric, Inc.

P. O. Box 189
1421 VanBoklen Rd.
Eastover, SC 29044
Bus.: 803/353-8949
Fax: 803/353-2668

**SERVICE
INVOICE**

INVOICE NO: 11029
DATE: February 10, 2011

Cooler Erectors of Atlanta, Inc.
Attn.: Morris Teasley
3167 Heritage Way
Buford, GA 30519

Phone: 770-932-9012
Fax #: 770-932-5527
Terms: **Upon receipt of invoice**
Job Name/Number: Farmers Mkt., Southern Produce

Copy to: Southern Produce

QTY	MATERIAL & PARTS	\$/PART	AMT	DESCRIPTION OF JOB			
				600 Amp Service and Office Lighting and			
				Power.			
				OTHER CHARGES			AMT
				LABOR	HRS	RATE	AMT
				TOTAL LABOR:			
DATE COMPLETED		TOTAL MATERIALS:		TOTAL MATERIALS:			
WORK ORDERED Morris Teasley				Other:			
SIGNATURE:							
				TOTAL DUE:		\$54,339.13	

PLF. EXHIBIT**3**

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF LEXINGTON) COURT OF COMMON PLEAS NONJURY

3
4 ROSE ELECTRIC,)
5 PLAINTIFF,)
6 VS.)
7 COOLER ERECTORS OF ATLANTA,)
8 INC., ET AL,) 2011-CP-32-1929
9 DEFENDANT.)

10
11 October 23rd, 2013
12 Lexington, South Carolina

13 B E F O R E:

14 THE HONORABLE WILLIAM P. KEESLEY, Judge.

15 A P P E A R A N C E S:

16 BILL BOOTH
17 ESQ.
18 Attorney for the Plaintiff

19 KATHRYN COOK
20 ESQ.
21 Attorney for the Defendant Southern Produce

22 J. ROBIN TURNER
23 ESQ.
24 Attorney for the Defendant S2p LLC

25 STACY SHEPPARD
Circuit Court Reporter

Transcribed by Pamela E. Green, Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Court's Exhibits</u>		
C-1	Contract Information		3

1 PROCEEDINGS

2
3 THE COURT: I appreciate you-all coming back in and I
4 apologize to you for asking. But I've spent an awful lot of
5 time on this case in trying to understand the, the exact
6 context that it's in now because it's gone through different
7 variations. I've, I've tried to look up cases myself and
8 I've got a portion of a Hornbook that I had in Law School
9 that I want to share with you attorneys and help me --
10 hopefully we won't be here very long.

11 I sent to you the rough draft of the tentative findings
12 that I started to make, and I sent to you an email that
13 dealt with my primary concern, which is this issue about
14 quantum meruit, and, I guess, since that's the central issue
15 I wanted to talk to you about, let me just hand to the
16 attorneys this section from, just give one to each one of
17 them, Simpson's Hornbook on Contracts, Page 5, Sections 5.
18 If y'all will read that and then I've got a question or two
19 for you.

20 (Pause.)

21 THE COURT: Stacy, mark that as Court's.

22 (WHEREUPON, the contract information was marked as
23 Court's Exhibit No. 1 and received into evidence at this
24 time.)

25 (Pause.)

1 THE COURT: Y'all ready?

2 I'm struggling to understand how this is not covered by
3 contract, this situation. I have read the cases, not only
4 the one you've cited, but others, that acknowledge that, in
5 South Carolina, you can, you can plead in the alternative.
6 I understand that.

7 In the briefs there's, there's mention of contracts are
8 implied in law, and, in Ms. Cook's brief, there's a
9 reference to implied in fact, which I think may be more
10 precise under her discussion about quantum meruit and unjust
11 enrichment.

12 Does he need to come in?

13 MR. BOOTH: I think that's my---

14 THE COURT: I think they're making him turn his cell
15 phone off.

16 MR. BOOTH: Yeah, that's my client. Thanks, Judge.

17 THE COURT: That's fine.

18 The Hornbook seems to me to be saying that there's
19 confusion in, in the law because of the imprecise use of the
20 language. It doesn't exactly say that, but my understanding
21 of the, of the law is that an express contract is, is one
22 which is basically written, and that, if -- a, a term of a
23 implied contract -- a term of an agreement is not discussed,
24 such as the price of a work, that you imply that it will be
25 a reasonable price for the services that are performed,

1 goods and services provided.

2 I don't think that is quasi contract. That's not
3 unjust enrichment. That's not quantum meruit. That's just
4 you imply a term into the agreement.

5 So I'm struggling to see how this is not covered by an
6 implied contract, which would seemingly take it out of
7 quantum meruit. But if, if the two -- if you-all want to
8 have input about this, I'd be happy to hear from you in
9 addition to what I've read over and over in your briefs.

10 MS. COOK: The Defendant, Defendant, Southern Produce,
11 categorically agrees with your analysis, Your Honor.

12 THE COURT: Okay.

13 MR. BOOTH: Of course, I disagree---

14 THE COURT: Sure.

15 MR. BOOTH: ---and I've cited the Stanley Smith & Sons
16 case. I'm reading the footnote in there where this
17 particular subject that's addressed in the Hornbook and it's
18 discussed there, and the footnote, I'll just read a couple
19 sentences, the unfortunate use of implied contract to
20 keynote those true and finding of fact as quasi implied in
21 all contracts is made with much confusion. This
22 distinction, however, is clear. A contract implied in fact
23 arises when the assent of the parties is manifest by
24 conduct, not worth. A quasi contract or when implied in law
25 is no contract at all, but an obligation created by law in

1 the absence of any agreement between the parties.

2 Now, I get to unjust enrichment just like Judge Cooper
3 did in Boykin Contracting because there was no agreement as
4 to the price. The price -- they're, you know, the -- for
5 either the, the original work under the contract or even the
6 extra work, there was no agreement as to price---

7 THE COURT: I don't disagree.

8 MR. BOOTH: ---and Stanley Smith, it, it dealt with
9 that.

10 THE COURT: I'm sorry.

11 What now?

12 MR. BOOTH: The Stanley Smith case dealt with the
13 absence of a price and so did the Boykin Contracting.
14 Boykin Contracting, there was a---

15 THE COURT: Tell, tell me which case you said before,
16 Boykin?

17 MR. BOOTH: The Stanley Smith case. That's, that's in
18 my, my brief. It's at 283 S.C. 430, 322 S.E.2d 474.
19 That's, that's what I cited in my brief.

20 THE COURT: But I never understood the law to be that.
21 Just because you don't have an agreement, that, that happens
22 all the time. I mean the, the, the parties do some work for
23 me, and we don't agree on a price, we might talk about it in
24 general terms. We might not talk about it at all. But it
25 doesn't take it out of being a contract. You just imply the

1 one term, the price.

2 MR. BOOTH: Okay. Well, the Boykin Contracting case is
3 exactly a case where the parties -- you had an electrical
4 contractor and then you also had the owner. In Boykin
5 Contracting, the testimony was the parties had a
6 face-to-face meeting about doing the work. The contractor
7 said the agreement was that the work would be done based
8 upon time and materials.

9 Contrary to that, the owner, Mr. Kirby in this case,
10 testified that he had agreed to pay Boykin based upon an
11 amount due under another contract that would have been done
12 for some previous work by the general contractor. It
13 amounted to about 5,000. Judge Cooper, after a day long
14 trial, said there was no express contract because of the---

15 THE COURT: There was no express contract?

16 MR. BOOTH: Well, because the parties had disagreed and
17 there was no evidence that they agreed upon a price. No
18 meeting of the minds. I say the price is this. You say the
19 price is that. If our minds don't meet we have no contract.

20 THE COURT: No, an express---

21 MR. BOOTH: No express contract.

22 THE COURT: An expressed contract, I just handed the
23 Horn Law to y'all because of this. If the agreement or
24 mutual assent is manifested in words, oral or written, the
25 contract is said to be expressed.

1 So there, there was no agreement as to the term of the
2 price?

3 MR. BOOTH: In this case, correct.

4 THE COURT: But that doesn't stop the inquiry. The
5 inquiry goes on to say, on the other hand, where the mutual
6 understanding of the parties is inferred if their conduct
7 alone without spoken or written words, the contract is said
8 to be implied in fact.

9 MR. BOOTH: We don't have that. No evidence of that in
10 this case.

11 THE COURT: But everybody who enters into an agreement
12 for, for -- with another person, other than a charity, knows
13 they have to pay the reasonable value for the services that
14 are performed.

15 MR. BOOTH: And that's quantum meruit.

16 THE COURT: When I went to the doctor the other day I
17 didn't ask him how much he was gonna charge me. But when I
18 get the bill, you can darn sure bet that the Courts are
19 gonna uphold his right to charge me. I -- I'm struggling
20 with this concept.

21 MR. BOOTH: Well, Judge, I'll just add what I think
22 I've already said. You have a proposal, Exhibit,
23 Plaintiff's Exhibit 14, dated November 24th, 2010, where a
24 proposal was made, in this case addressed to Cooler
25 Erectors, 56,048. It says on there that this is not a

1 contract for services unless it's signed.

2 So what conduct -- the work had already been done.

3 So what conduct occurred after this or even before this
4 that somehow made that price an agreed upon price?

5 That's the part that I'm saying is missing in this
6 case. There's nothing, there's no evidence that---

7 THE COURT: But the finder of facts sets the reasonable
8 value of the service.

9 MR. BOOTH: Under quantum meruit. That's what quantum
10 meruit---

11 THE COURT: No---

12 MR. BOOTH: ---does.

13 MS. COOK: And---

14 THE COURT: That's not the way I understand the law.
15 That's why, you know, you can wrap your mind into a pretzel
16 dealing with this stuff and I've done that and I apologize
17 to you. But I think quantum meruit is different -- that
18 it's a different legal principle than what you're, you're
19 saying, and, and I'm -- I wanted to make absolutely certain
20 that I'm fair, that I give you an opportunity to explain to
21 me where I'm wrong.

22 MR. BOOTH: Then how do you value the service if you
23 call it a contract?

24 well, what if -- what can be implied by the Court, the
25 fact finder, to determine what the price was for this work?

1 You're saying it's like the doctors. So I just accept
2 whatever price he puts on his bill.

3 THE COURT: No, I'm not saying he can charge me a
4 million dollars for giving me a flu shot.

5 MR. BOOTH: Well, you just said there was no agreement
6 as to price. So, when you pay, you pay based upon what you
7 think is reasonable once you get the bill.

8 Now, if you think the doctor's gouging you and you
9 think the price is way out of line from what you expected
10 for whatever visit treatment you got, then I assume you can
11 object to that.

12 THE COURT: But I didn't hear any testimony objecting
13 to the amount of the, the bill.

14 MR. BOOTH: And I presented it specifically following
15 Williams Carpets, specifically following a couple other
16 cases. I asked -- I put into evidence what was the
17 reasonable value of the services provided. That's what the
18 quantum meruit requires. You have to evaluate by -- and
19 they could of, they could of contested to it. They could of
20 brought in their own experts, so to speak, to say well, I
21 looked over his electrical work. I think it should only of
22 cost this much money.

23 They had that right. That's what quantum meruit is.
24 You don't have an expressed agreement as to price. So
25 quantum meruit is looking for three elements as part of that

1 evaluation. You'll have to determine the benefit that was
2 conferred and determine it was beneficial and then you get
3 into determining how, how it should be paid.

4 So I -- if this is not quantum meruit -- and, again, I
5 looked at the Boykin Contracting cases. It's almost right
6 on point. If this is not quantum meruit, then what you're
7 saying is if a contractor goes in and does any work on a
8 house or a building or whatever, does any work, then, at
9 some point---

10 THE COURT: No, no. He can't come to my house and just
11 start working.

12 MR. BOOTH: But you invite him. You invite him. I'll
13 add that to the facts.

14 THE COURT: I invited him and I give him the general
15 scope of the work. In, in this case you had discussions.
16 You had, you -- I mean you got conflicting situations. You
17 got sometimes where things are done pretty much on Rose
18 Electric's own and I don't mean they did it improperly.
19 I'm---

20 MR. BOOTH: Right.

21 THE COURT: ---just saying they just kind of took the
22 ball and ran with it, and they're other times when they said
23 okay, move that onion peeler outside the building. They
24 being the, the people who had, had control of the building.

25 MR. BOOTH: Right.

1 THE COURT: It, it's -- they -- if the contractor I had
2 to redo my bathroom started doing work on my roof, we don't
3 have this discussion.

4 MR. BOOTH: But we don't---

5 MS. COOK: Your Honor, can I---

6 MR. BOOTH: I'll let her. I'm sorry.

7 THE COURT: Okay.

8 MR. BOOTH: I may have interrupted her.

9 MS. COOK: And I'd like to go back to what Your Honor
10 started with about contract, and I view the evidence a
11 little bit differently, Your Honor, in that I believe that
12 there is evidence in this matter from which the finder of
13 fact, yourself, can find there was an agreed upon price for
14 the contract work that Rose Electric agreed to do under the
15 general contractor's proposal with Cooler Electric.

16 THE COURT: Yeah, I, I, I wasn't, I wasn't clear in
17 what I was trying to say with that, but---

18 MS. COOK: So, so---

19 THE COURT: ---I don't disagree with you.

20 MS. COOK: So with regard to that part of the, the
21 damages aspect or the claim, which is the -- which amounts
22 to the fifty --.

23 THE COURT: Fifty-four.

24 MS. COOK: -- fifty-four and change, my view of the
25 evidence before Your Honor is that there is a contract price

1 under an expressed contract, which is made up of both
2 written documents and the actions of the party, and that is
3 an expressed contract especially with regard to that -- to
4 the 54,339.13 that Rose Electric is pursuing or was pursuing
5 under it's Mechanic's Lien claim and is the same amount that
6 they're claiming, of course, under their quantum meruit
7 argument.

8 With regard to the change order amount, which is the
9 \$10,755.39, that, Your Honor, I believe their evidence is
10 abundantly clear that that is an expressed contract, was an
11 expressed contract between Rose Electric and my client
12 directly not involving Cooler Erectors for the change orders
13 that were done at my client's request and for which my
14 client agreed to pay. I think, factually, you can find
15 there was not a set price for that part of the work, that
16 express contract, but that it is -- the fact finder can
17 imply, in this expressed contract, that term, which came
18 almost simultaneously with the work being completed when the
19 invoice was sent to my client.

20 My client did have an argument, at the outset, with the
21 amount being charged. But once we got to this litigation,
22 Your Honor, and early on in 2011, we said we're not gonna
23 quibble about those pennies. We agree that we -- we agreed
24 with you, in an express contract, to pay you for those
25 change orders and the amount you've claimed is 10,755.39.

1 Maybe we didn't agree upon that at the very beginning of our
2 contractual relationship for the change orders, but, with
3 the finishing, you submitted that price.

4 So from, from the contract prospective, I believe that
5 there's evidence in this case where Your Honor can find we
6 have an expressed contract for the, what I'm gonna call the
7 scope of work Rose was performing under its contract with
8 Cooler Erectors for this 54,339.13.

9 THE COURT: And where is that?

10 where is the, where is the express contract where the
11 words 54,719 are said or---

12 MS. COOK: Your Honor---

13 THE COURT: ---written?

14 MS. COOK: ---there's testimony about that and also, in
15 the evidence that was put before Your Honor, there was the
16 actual initialed -- there was the initial quote that Rose
17 did for Cooler Erectors, and then further, during the course
18 of this, throughout all of this change orders, he says the
19 amount of the contract is 56,000 and change as they're going
20 through the work.

21 So there -- that's my recollection of the evidence that
22 there is documentary evidence as to the contract price for
23 which they were gonna do the scope of work that Cooler hired
24 them to do, and then the second contract, so to speak,
25 express contract, comes with the change orders.

1 THE COURT: All right. So---

2 MS. COOK: The only term I believe you have to imply
3 would be the specific amount for the change order portion---

4 THE COURT: All right.

5 MS. COOK: ---and I think it's important to acknowledge
6 that, in this matter, the Plaintiff pled and for two years
7 maintained that there was a contract between the parties to
8 cover all of this and, and thus---

9 MR. BOOTH: And the Defendant's admitted that.

10 MS. COOK: And we, we admitted it. They're bound by
11 that pleading. The fact that they, once they came to trial
12 wanted to do away with their Mechanic's Lien claim and try
13 to go on quantum meruit, which the case law says if you have
14 a contract you can not have quantum meruit.

15 THE COURT: All right. Well -- it's been since
16 February --

17 MS. COOK: Yes, sir.

18 THE COURT: -- and it's been various times when I've
19 had the opportunity -- you know, they keep, keep us in Court
20 so much we don't have any office weeks as y'all know, and,
21 and this kind of thing is not the kind of thing you can pick
22 up and look at in 15 minutes.

23 MS. COOK: And refresh yourself, yes, sir.

24 THE COURT: It, it takes me about an hour just to get
25 back into it, and that's, that's not y'all's problem. I

1 understand that. I've taken it home at night. I've read
2 through it. I've done the best I can, which might not be
3 what I'd like for it to be.

4 Back to the point. Since it's been through February --
5 since it's been since February since I heard facts, I've got
6 my notes all here, the, the quote you're talking about was
7 given after the, the plans and specs were done by the
8 electrical engineer?

9 MS. COOK: Yes, sir. Yes, sir.

10 THE COURT: It was based on that?

11 MS. COOK: Yes, sir.

12 MR. BOOTH: Talking about -- I think she's talking
13 about Exhibit 14. I can show it to you.

14 THE COURT: See the clerks keeps the exhibits---

15 MR. BOOTH: We're talking about this one.

16 THE COURT: ---and I don't---

17 MR. BOOTH: We're talking about that exhibits.

18 THE COURT: I try not to take things out of the Clerk's
19 office except when I'm in this building.

20 MR. BOOTH: Judge, while she's looking at that and I
21 heard what you said and I would like the opportunity to---

22 THE COURT: Sure.

23 MR. BOOTH: ---to present a few other things beyond --.

24 THE COURT: Well, this really is, is just---

25 MS. COOK: That is---

1 THE COURT: ---kind of the start of---
2 MR. BOOTH: Yeah.
3 THE COURT: She said something about you abandoned your
4 quantum meruit claim and that was---
5 MR. BOOTH: That's one of those---
6 THE COURT: ---the real point of confusion that I had
7 was trying to figure out if -- I'm sorry.
8 MS. COOK: Abandoned the Mechanic's Lien.
9 THE COURT: You abandoned your Mechanic's Lien claim.
10 MR. BOOTH: Well, the contract, the contract claim.
11 THE COURT: Well, that, that, that was part---
12 MR. BOOTH: It goes together.
13 THE COURT: ---of my confusion. I wasn't sure of the
14 relationship between the Mechanic's Lien Statute and, and
15 quantum meruit.
16 MS. COOK: Either or.
17 THE COURT: The case that -- I got so many notes
18 floating around here. Bear with me.
19 (Pause.)
20 THE COURT: The Earthscapes case, they, they really
21 were deciding that case because of the pleadings and what
22 was not pled, and you, you can't really extrapolate that
23 thing out as broadly as, as what I think some snippet from
24 the case law might suggest.
25 But, but, Mr. Booth, go ahead.

1 Anything you want to tell me to help me out?

2 MR. BOOTH: Your Honor, yes. My, my---

3 THE COURT: That's why I asked y'all to come in.

4 I'm trying to, trying to, trying to make the right
5 decision. I realize I'm wrong more than my share of times,
6 but I mean I don't dispute that, if, if I were to rule in
7 favor of them, that your client's getting the shaft. The
8 question is who shafted him and who can he recover from.

9 But go ahead.

10 MR. BOOTH: Well, Your Honor, just to add a little bit
11 more to the question of the contract, but, again, the
12 Stanley Smith case, Stanley Smith was suing I believe a
13 school about doing repairs, some sort of damage, and the
14 Court found there was no express contract as to price. So
15 they -- Stanley Smith had to go back and, I guess, sue under
16 quantum meruit, but I just keep going back to that because I
17 think that's important.

18 But let me just go on beyond that a little bit because
19 I, I know, from just reading what you've got there, you --
20 we talked about what was the total contract price, and
21 that's, that's an issue that you put in your findings of
22 fact and so far you're saying that you think my argument
23 that the contract price should -- there should be an
24 increase in that based upon the fact that it was a check
25 issued a couple weeks before the contract between Southern

1 and Cooler Erectors, and my argument was that that check was
2 paid in addition to the 213,000 under the contract because
3 the way the contract's written and I just simply add to
4 that.

5 THE COURT: Wait a minute. I lost you.

6 I thought, I thought what I said in those tentative
7 findings was that the \$11,000 for the, for the plans and
8 specs was not included in the total price.

9 MR. BOOTH: Maybe I misunderstood you. Thanks for
10 verifying that.

11 THE COURT: Well, I, I may ---

12 MR. TURNER: That's the way I understood it.

13 THE COURT: Like I said, it's easy to wrap your mind
14 into a pretzel dealing with this. But that's what I was
15 thinking. I was rejecting the assertion that the \$11,000
16 was part of the project for the purpose of---

17 MR. BOOTH: Okay.

18 THE COURT: ---evaluating the Mechanic's Lien.

19 MR. BOOTH: I'm glad I brought it up. So you clarified
20 it and I, of course, agree with that.

21 THE COURT: Okay.

22 MR. BOOTH: So I just want to make sure I understood
23 that.

24 THE COURT: All right.

25 MR. BOOTH: Moving onto a couple other things.

1 Yes, it's unfortunate that Southern Produce didn't get
2 paid a penny for any of the work it did and I would just
3 simply point out to the Court that while Southern Produce
4 wants to act like they're acting in good faith, willing to
5 say we concede we, we owe what we called the extra work
6 amount. Judge, I would simply point out, in February of
7 2011, they also should of said yes, we agree that that's the
8 amount we owe. We disagree that we owe you for the other
9 work. But we do agree with that and the, and the payment
10 should of been made.

11 In fact, you got a statute that came along in 1987 that
12 addresses this sort of problem, 27-1-15, and, again, that
13 was done in 1987. The purpose of that statute was to put on
14 the burden of the owner to investigate a claim, decide what
15 the owner will contest and what the owner won't contest, and
16 then whatever the owner doesn't contest, then that payment
17 should be made.

18 So we're, we're over two years away from that and they
19 withheld payment under the argument that we're not gonna pay
20 you anything even though we admit that we owe you about
21 \$11,000. We're not even gonna pay you that because you want
22 more money from us and I just don't believe that's a
23 position they can take at this point. So I think that
24 should be addressed by the Court when we look at, I think,
25 the quantum meruit part of the case.

1 The other thing that we were -- touched on during the
2 trial---

3 THE COURT: You're talking about the unjust part of it?

4 MR. BOOTH: Yes, sir.

5 THE COURT: Okay.

6 MR. BOOTH: I'm arguing that because, again, I know
7 you're not leaning that way. But I feel like I need to
8 argue that a little bit. I won't take too long.

9 THE COURT: That's, that's fine. I haven't made up my
10 mind or I wouldn't have y'all here.

11 MR. BOOTH: I said leaning. So that -- is that not
12 saying you have made up your mind?

13 THE COURT: Okay.

14 MR. BOOTH: Okay.

15 THE COURT: You didn't say I made up my mind.

16 MR. BOOTH: You're---

17 THE COURT: Go ahead.

18 MR. BOOTH: You're right. I may or may not use these
19 findings of fact list, I'll use -- I'll call it that way.

20 But anyway going on to a little bit further, I think
21 the, the question, when you look at quantum meruit, you got
22 the three elements, and the last element, I believe, is the
23 one only that's contested, and that's the retention by the
24 defendant, in this case Southern Produce, of the benefit and
25 under conditions that make it unjust for, again, Southern

1 Produce to retain the, the benefit without paying its value
2 and that's the third element of quantum meruit.

3 As we know, we've had several appellate cases, Boykin
4 Contracting, and the last one where those three elements are
5 repeated over and over again. So---

6 THE COURT: Okay. Can I stop you?

7 I hate to keep interrupting y'all.

8 MR. BOOTH: No. No.

9 THE COURT: Their argument is we paid the contract.

10 MR. BOOTH: And I, I mean---

11 THE COURT: Your guy dealt with the contractor. He
12 made a bad deal. You don't get to come back and get money
13 twice from us because you made a bad deal.

14 MR. BOOTH: And I'm gonna talk about that right now.

15 I know -- and I'll -- I will tell you, even under
16 quantum meruit, I'm not trying to say quantum meruit
17 eliminates that argument or that defense. I'm not arguing
18 that.

19 THE COURT: Sure.

20 MR. BOOTH: The, the couple cases I cited specifically
21 say the Court should consider, in determining whether it's
22 unjust for the owner to retain, if you look at what the
23 owner has paid for the work through another party. In this
24 case the general contractor. I'm not suggesting that that
25 still is your analysis.

1 what I'm saying is, just like in Earthscapes, the
2 surveyor, excuse me, the landscaping case, the owner there
3 had to pay twice. So there are instances where equity comes
4 in and does require the owner to pay twice. So it's just
5 not a mathematical calculation. This is a---

6 THE COURT: But he didn't plead it. I mean that's,
7 that's the whole point. That's why I went to the
8 Earthscapes a while ago. He probably would of prevailed,
9 but he didn't plead it.

10 MR. BOOTH: He didn't.

11 You talking about the owner?

12 THE COURT: The owner did not plead, is that -- if I
13 recall the facts correctly, he did not plead the bar. It
14 was the statute, 20 -- again, I got notes scattered
15 everywhere.

16 But that case came down on -- the Supreme Court set out
17 four issues if I remember right, and they addressed the
18 first two and then they said it's not necessary for us to
19 even look at the other two, and I wish they had looked at
20 the other two cause they were a whole lot more on point with
21 what I'm wrestling with. But they said, since he didn't
22 plead it, then the, the circuit judge had found quantum
23 meruit, let it stand, and didn't even address it---

24 MR. BOOTH: Well---

25 THE COURT: ---that issue I don't believe.

1 MR. BOOTH: Well, the Trial Court found that, under the
2 breach of contract theory---

3 THE COURT: Found both, didn't he?

4 MR. BOOTH: Well then he said if I wasn't gonna find it
5 under breach of contract, I would rule that the quantum
6 meruit applies. So---

7 THE COURT: Right.

8 MR. BOOTH: ---the trial judge made his ruling on the
9 breach of contract part. The, the Supreme Court said we
10 disagree that the breach contract cause of action should of
11 been used by the Trial Court because of the fact there was
12 no express agreement. In that case the landscaper admitted
13 that he did not have an express agreement as far as how much
14 he would charge.

15 Yes, there were discussions, there were meetings, but
16 he admitted that I don't, I don't have an express agreement
17 with either the owner or the contractor for how much I'll be
18 paid for this work. There was no question he was hired to
19 do work on that landscaping job. But then you get down to
20 the, the part of the decision where the Supreme Court says
21 we disagree that there was a breach of contract, and they,
22 again, say because there was no express agreement as to the
23 price of the landscaping work. But then they looked at the
24 fact that the Trial Judge said but I would rule, under
25 quantum meruit, that the landscaper can still recover and

1 the Supreme Court said that is correct, and then went on to
2 say since he ruled that way, we're not, we're not gonna
3 reverse the -- a Trial Court.

4 But it wasn't -- he, he didn't -- he did not make it
5 under quantum meruit to begin with. He did it under breach
6 of contract. So that's how I read Earthscapes, the
7 landscaper case.

8 But getting back to this case for a little bit---

9 THE COURT: Okay.

10 MR. BOOTH: ---the -- now they're a couple other
11 factors and, and I think this is where the timeline becomes
12 important.

13 You have a timeline of -- project starts November 2.
14 Project gets a C.O. on November 30th. And during that
15 approximately 30 days, there's no dispute that the owner's
16 representative, Mr. Stocker, participated, was on the site
17 on a very very frequent basis, and part of his involvement
18 or participation was to order changes to be made to the
19 specs, and you mentioned one of the changes and whether or
20 not he said let's do it this way or whether or not my client
21 said you might want to consider moving this outside, it
22 still was all ultimately ordered and agreed to by the owner.
23 So you had that going on for, for quite a bit of orders,
24 change orders, for the full month of November.

25 Then, on November 30th, the building gets a C.O.,

1 and, therefore, Southern Produce was able to move in and
2 start operating. Two days later they pay Cooler Erectors
3 \$30,000 two days later. And they knew, when they made that
4 payment, they, of course, knew there was a balance due and
5 they explained that they did that retainage, even though
6 it's not in the contract, we did that for one purpose only,
7 to project ourselves, cause we don't think the job finished.
8 So we want to be able to have some money left over in the
9 contract.

10 But the thing they also knew at that time was the fact
11 that Rose Electric was not being paid out of that money for
12 this extra work. So my point is---

13 THE COURT: Say that again.

14 MR. BOOTH: They knew that Rose Electric was not being
15 paid for the extra work out of that payment.

16 THE COURT: Okay.

17 MR. BOOTH: Because it -- the contract, we went over
18 this at trial, the contract says, if you're gonna do
19 changes, you run them through Cooler's contract and there's
20 an amendment and then you add it to his contract. But that
21 wasn't done. Everybody agrees that instead, because of the
22 urgency of completing, because of the just numerous changes,
23 my client, Rose Electric, stayed on this site. Whatever Dan
24 Stocker said do he did it, and he did it well, did it
25 timely. And then, like I said, Dan Stocker never said to

1 Mr. Rose okay, change order whatever it was, how much is
2 that gonna cost, or give me a, a price right now or, or
3 let's wait and get a price before we complete it.

4 Instead, Dan Stocker was, again, wanting everything to
5 move forward quicker. So on November -- so on December the
6 2nd, when they made that \$30,000, they knew that Rose
7 Electric had not been paid for at least the extra work, at
8 least the extra work because they were dealing with a
9 contract that had not been amended. So the total there
10 clearly didn't reflect any of these upgrades or changes. So
11 they were paying -- why two days that quick after the C.O.,
12 they paid quickly, and my client was never asked to furnish
13 an invoice. Of course, I doubt my client even knew that
14 that payment was being made on that date because my client
15 was just finishing up the work. That were just pulling in
16 tarps and loading on the electrical wiring on their truck
17 cause they had completed their work in a timely manner.

18 So, so to have Southern Produce pay that quickly, and
19 also know that my client, Rose Electric, for all the work
20 that was handled directly, hadn't been paid. The reason I'm
21 mentioning that -- I'm almost through with my point.

22 THE COURT: That's all right. Take your time.

23 MR. BOOTH: They had a duty, at that time, to say wait
24 a minute. We're not gonna give you this check for 30,000
25 until you do a couple things, Cooler. You get back to us on

1 what Rose Electric wants to charge, and if they'd of done
2 that, number two, they would of found out that Rose, at that
3 time, hadn't been paid any of the money and would of found
4 out that, in this case, you have three subs that we know
5 about that didn't get paid on this project including Rose
6 Electric.

7 So rather than inquiry, rather than be fair with Rose
8 Electric, for example, this Southern Produce put their hands
9 over their eyes and said we don't want to know about
10 anything else. We want to get that payment to you so we can
11 limit to -- us to possibly having liability for an extra
12 ten. That's what they did. Two days after the C.O. was
13 issued, that 30,000 was paid.

14 So I think they had notice. Well, they knew that Rose
15 hadn't been paid and I believe they had a duty, at that
16 time, before they made that final payment, because they were
17 withholding money to project themselves, but not protecting
18 the company that had, you know, gone the extra mile by
19 coming out there and working hard. They put, you know,
20 extra a -- they put a site person there for the whole time,
21 had extra people come in to try to get that deadline done by
22 November the 30th.

23 So I think that \$30,000 payment, I believe there was
24 sufficient notice or at least some question the judge -- you
25 should consider about whether or not that 30 would be

1 protected under their payment defense cause I don't think it
2 should be based on these circumstances.

3 Now, moving onto the situation where -- a situation
4 involving the fact that Cooler Erectors was not licensed.
5 Just a couple final comments. I believe that was
6 uncontested that Cooler Erectors was not licensed in South
7 Carolina, and, during the trial, I put into evidence or had
8 testimony from Mike Moore, who's over the Inspector's
9 Department, who put in -- we put in the actual building
10 permit and the C.O. into evidence. But then also asking is
11 there a placard, a large -- I'm using my fingers. I'm not
12 trying to imply an exact, but I think it is, it's a, it's a
13 certain size with certain characteristics that are placed on
14 the property that says who the general contractor is.

15 Well, there's no dispute that that placard said the
16 general contractor is Mike Hawkins. That was not in
17 dispute.

18 Now, I'm, I'm looking at the evidence and, and seeing
19 where they don't say, Mr. Stocker doesn't say or anybody
20 else says from Southern side, that they went down and
21 examined that placard and looked at who the general
22 contractor was. But the fact that Cooler was coming, you
23 know, out-of-town, had an out-of-town address, the fact that
24 they were in their doing, doing the work, here you have
25 Southern turning over the whole project to an unlicensed

1 contractor, and, you know, you were asking about other
2 parties. I mean Cooler Erectors, as far as I know, is out
3 of business, insolvent, nothing we can get out of Cooler
4 Erectors as far as I can tell. We did, we did give them
5 notice of the hearing through the certified mail, excuse me,
6 they -- well, certified mail, but also to their registered
7 agent, but we never heard anything back.

8 So here we have my client with the white hat doing the
9 work quickly, not necessarily stopping to get pricing done
10 until the, the project was over, and all of a sudden he
11 finds out that they claim they don't owe him anything other
12 than an amount for his extra work, and, and possibly the
13 retainage, they don't owe him anything above that. So that
14 ends up being about one-third of what everybody agrees is
15 the right amount that, that his work was worth.

16 Now get back to quantum meruit. That's what you look
17 at. If you look at, again, Boykin Contracting, Judge Cooper
18 did not -- when he did the quantum meruit analysis for how
19 much was owed, he did a very detailed analysis and he didn't
20 necessarily go along with the first figure submitted by, in
21 that case, the contractor. He went through an analysis
22 about how you measure that value and that's what I was
23 talking about earlier.

24 The value of the work is what you do to prove your
25 quantum meruit case.

1 What was the value of the work?

2 In this case, we put in the -- a lot of information
3 about it and nobody else contested that that was the value.
4 As I said, the quantum meruit cases I've done in the past,
5 we've had a contest and it was even a contest in Boykin
6 Contracting where you can bring in your own expert if you
7 want to and say, you know, I'm an electrical contractor, I
8 looked at the work, and my value of that work is X dollars,
9 which may be lower, probably lower than what the contractor
10 wants.

11 That's what you do in a quantum meruit. You do, you do
12 a value of the work and that's based upon, I guess, the
13 materials you used, the labor, just different factors. But
14 there's an actual factual issue of what is the value of that
15 work, not what's on some piece of paper that was never
16 signed. You go through the valuation and, again, this -- in
17 this case, you know, we put in, you know, 1,400 feet of
18 wire, X dollars for that, da, da, da.

19 So that's what we did. We put in every single material
20 invoice. We put in labor information. But we submitted it,
21 and I remember saying this, we submit this as a
22 determination of the value of the services, the value of the
23 work I guess is a better word. That's the way I, I, I said
24 that I was putting in this exhibit for that purpose because
25 I was trying to comply with the quantum meruit that I have

1 to give a value to that just like in Boykin Contracting. As
2 I said, it was very much contested in that case.

3 So we think, when you look at the factors that I just
4 mentioned, the fast pace of the job, the fast pace of
5 payments, you look at having an unlicensed contractor there.
6 You look at the fact that my guy did extra work and every,
7 everybody knew it was being done and they didn't stop and
8 say wait a minute, let's see how much Rose Electric is due.

9 So I think, when you add all this up, it's not unjust
10 to make Southern Produce pay the entire amount sought here.
11 Again, about one-third of it is not really contested, but
12 there's two-thirds left, and we think, under the analysis
13 that, that you would make under a quantum meruit case, again
14 that's employing equities.

15 Now, let me finish up by going over a couple of other
16 issues. First of all, we, we -- because we're doing quantum
17 meruit, we can not get attorney fees. If I'd of done a
18 breach of contract without using the Mechanic's Lien
19 Statute, I could not have gotten attorney fees.

20 The, the way it works is the Mechanic's Lien Statute,
21 if you have the right to put a lien on real estate or,
22 again, the real estate's gonna be owned by, in this case,
23 Southern Produce, but, you know, you could be a sub way down
24 the ladder, but you could still put a lien on the real
25 estate. The purpose of that lien, as long as you do it

- 1 within 90 days and, and start your case 180 days, you put a
2 lien on that real estate, which means whatever amount you're
3 owed, any parties in the case, if it's not paid, you have a
4 right to have a judicial sale of that property and hopefully
5 get paid out of that, and that's how the Mechanic's Lien
6 Statute allows you to do that. It allows you to have a
7 means to be able to foreclose on it just like, I guess, a
8 mortgage lien.

9 So, we think, in this case, we're pulling out -- it --
10 you know, we're not asserting breach of contract and I
11 believe you have to have a contract to have a Mechanic's
12 Lien case. I don't believe quantum, quantum meruit gives
13 you the right to lien the property.

14 So we're pulling out of that. We should not get
15 attorney's fees cause it doesn't come under quantum meruit.
16 So we do concede that for our purpose of abandoning all
17 causes of action.

18 Now, the abandonment thing, you look at Williams
19 Carpet. That's exactly what was done by the contractor in
20 that case. They, they abandoned everything but the quantum
21 meruit, and I, I may have the case wrong, but I know they're
22 a couple cases I've cited where that was done. That's what
23 we did. And so far I had no objection to it other than they
24 disagreed that it's a quantum meruit case.

25 So we think we did the proper procedure to use here to

1 be able to have you consider quantum meruit.

2 Thank you, Judge, for letting me go on.

3 Appreciate it.

4 THE COURT: Thank you.

5 MS. COOK: Your Honor, I'm gonna try to be brief and
6 address kind of just what your issue, as I perceived them
7 from your 29 iterations of potential findings and the
8 argument today.

9 First, I want to point out, Your Honor, that Williams
10 Carpet was from Horry County and I'm, I'm intimately
11 familiar with that case.

12 In that case, Williams Carpet, who was the
13 supplier/installer of carpet at a condominium project
14 multi-phased, they didn't file a Mechanic's Lien action in
15 that case.

16 That was a breach of contract action and a quantum
17 meruit cause of action against the principal of the LLC
18 owner, and, in that case, Henrietta Golding, who represented
19 Williams Carpet, tried the case with all causes of action,
20 and before it was decided by the jury, she decided she would
21 abandon her breach of contract claim against the developer
22 entity that, at that point, didn't have any assets, and
23 would go just against Mr. Skelly, who was the principal of
24 the developer entity that had already sold all the condos,
25 based on quantum meruit because there was not a contract and

1 she never pled that there was a contract between Williams
2 Carpet and the principal of the developer and that case did
3 not include a, a Mechanic's Lien cause of action just to
4 off -- address that right there.

5 But what we have here -- and, and we all know somebody
6 in this case is gonna get the shaft. Whether it's Rose
7 Electric, who did the work, don't dispute that, and hadn't
8 been paid, although we have been offering and tried to pay
9 him \$10,755 and change for his change orders since the
10 beginning of time, but they won't take that till they could
11 get us to pay twice what we'd already paid for the
12 electrical work to Cooler Erectors who Rose Electric had its
13 direct contract with. Rose pled it, admitted it, signed a
14 verified Mechanic's Lien claiming it, and we didn't dispute
15 it.

16 Now, Your Honor, it's also not disputed that, of the
17 213,000 contract price we had with Cooler Erectors to do the
18 total scope of work, including Rose Electric's scope other
19 than the 10,000 and change extras, we paid 203,000, and much
20 has been said about the fact that we paid the last 30 that
21 we paid under that contract just two or three days after the
22 C.O. was issued.

23 Well, Mr. Booth may want to try to put some kind of
24 nefarious intent on that. But what we had was a draw
25 contract situation. Cooler Erectors was not finished with

1 the building. We'd obtained a C.O. But we all know getting
2 a C.O. does not mean a project is fished. There was much
3 more work to be completed. We paid the next draw of \$30,000
4 in hopes that we could get Cooler Erectors to finish the
5 project and that's the reason for the timing. Nothing
6 nefarious and we need to also recall that this was not Rose
7 Electric's first go round working for this unlicensed
8 Georgia contractor.

9 The undisputed testimony is that Cooler -- that Rose
10 Electric had done two projects prior to being a sub on our
11 project with Cooler Erectors. Say you want to point fingers
12 there, Rose Electric is as much at fault doing business with
13 an unlicensed general contractor in the State of South
14 Carolina as we are for doing business with them. But that
15 doesn't obviate the fact that we paid 203,000 of a 213,000
16 contract price that included Rose Electric's total scope of
17 work other than our \$10,000 -- \$10,755 in extras, which we
18 do not dispute we owe, which we have been trying to pay,
19 which we made three offers of judgment in settlement prior
20 to this case to try to pay that, and even more than that,
21 Your Honor, our last offer of judgment was \$18,000 and the
22 reason it was that \$18,000 is that's made up of the \$10,755
23 we owe under our expressed contract with Rose Electric for
24 the extras and is the percentage from the retainage we held
25 of the total Mechanic's Lien that had been filed in this

1 project going to the total contract price of Cooler
2 Electric.

3 Of the three Mechanic's Liens that had been filed,
4 Cooler Electric was the last to file the Mechanic's Lien.
5 But the first Mechanic's Lien in February was for 14,529 --
6 \$529.20. The plumber was owed \$10,210.93, and then Rose
7 Electric, in March, filed its lien for a total of
8 \$65,094.52. But they do itemize, and rightly so, they do
9 itemize, in that Mechanic's Lien that they filed in March,
10 that that is made up of two elements. It's made up of the
11 contract price its -- that they are due from Cooler Electric
12 under their subcontract of 54,399.13, and that's in their
13 lien, that is in their pleadings where they plead an
14 expressed contract, and it is made up of the \$10,755.39,
15 which is our extras that we owe.

16 Well, under a Mechanic's -- under the Mechanic's Lien
17 Statute, as I've always understood it, you take the total
18 amount that's owed to some contractors, the material man,
19 and under, under the contract, and when you total all that
20 up, what it came out to was \$79,139.26. That's the hundred
21 percent.

22 Of that total percent that's still due under the
23 contract for which we hold retainage of 10,000 and change,
24 68.74 percent of that would be Rose Electric's. So we took
25 the 10,000 and change that we hold as retainage, multiplied

1 that by the pro rata share that they're entitled to of 68 --
2 68.74 percent, and that gives you 6,000 -- excuse me, Your
3 Honor. That gives you the \$6,948.24.

4 So you add that \$6,924.68 to the \$10,755 and change we
5 agree we owe for the extras, and that comes out to a total
6 of 17,500 and something. So I round it up to 18,000.

7 We admit that, under the Mechanic's Lien Statute,
8 that's what's owed. And whether you -- and the Mechanic's
9 Lien Statute is really nothing more than a statutory scheme
10 for enforcing a construction contract, and you can either go
11 under the Mechanic's Lien Statute or breach of contract or
12 you can go under quantum meruit. You can't do both. If you
13 have a contract, you don't have quantum meruit.

14 Now, Mr. Booth, when they came to trial, made a
15 strategic decision, for whatever reason, to say well, we're
16 gonna, at this point, two and a half years later when we've
17 had a lien filed against the Farmer's Market and Southern
18 Produce's property, which, by the way, is still on file
19 against our property and encumbering our property and making
20 us in bad light with our landlord over here, we come to
21 trial two, two and a half years later, still got a lien on
22 the property, but when he comes to trial he decides I'm
23 gonna abandon my Mechanic's Lien claim against these folks
24 and I'm just gonna go under quantum meruit.

25 well, that's his choice. But, under that choice, the

1 three elements he, he can not prove.

2 First of all, the law is clear that if you have a
3 contract, whether it's a written contract, an oral contract,
4 an implied in fact contract, which is what we have, you
5 can't have quantum meruit because quantum meruit is when you
6 don't have a contract. Be it written, be it implied in
7 fact. You're having to get the judge to apply, in law, a
8 contract for equity's sake.

9 Well, he pled and he's got contracts. He may want to
10 abandon that cause of action when we come to trial. But he
11 can't abandon what he has claimed and is bound by.

12 So that throws quantum meruit -- he's just not entitled
13 to recover under quantum meruit at all because of that.
14 But, but if Your Honor were to say -- and I don't disagree
15 that that makes Mr. Rose have to eat some money. But he's a
16 businessman. He'd done two other jobs with this guy.

17 We're willing to, and I believe under my memorandum,
18 we've said that we should pay him the \$10,755 for the
19 extras.

20 But the third element of quantum meruit, if you could
21 even get there under these facts, Your Honor, is that it's
22 in a situation where it would be unjust, in other words
23 we've kept some benefit for which we have not paid. Well,
24 we have paid. We've paid \$203,000 to Cooler Erectors.

25 Now, I admit Cooler Erectors never paid Rose, but

1 that's between Cooler Erectors and Rose, and Mr. Booth and
2 Mr. Rose have a breach of contract action under Cooler
3 Erector -- against Cooler Erectors. They are in default.
4 They were asked to the hearing, and as far as I know he has
5 not abandoned his claim to get a judgment against Cooler
6 Erectors for what he's owed by Cooler Erectors. Whether he
7 can collect on that or not I don't know. But he has
8 somebody to go after.

9 But we've already paid Cooler Erectors, part of the
10 money that Cooler Erectors should have paid to Mr. Rose, and
11 we are willing or were willing, under the Mechanic's Lien
12 Statute, to pay, additionally, his pro rata share of what
13 everybody didn't get paid, which is 68, 69 percent of the
14 10,000, and we're willing to do that.

15 They made the strategic decision, Your Honor, to
16 abandon the Mechanic's Lien action and pursue only a quantum
17 meruit cause of action. Unfortunately, factually, they have
18 a contract for both, both for the amount they're owed by
19 Cooler Erectors under their subcontract and for the amount
20 they're owed by us under their extras contract I'm gonna
21 call it. But they've decided to abandon that claim for the,
22 for the contract claim, which is statutorily encapsulated in
23 the Mechanic's Lien Statute.

24 If you could have a Mechanic's Lien and a quantum
25 meruit cause of action or just -- unjust enrichment that

1 they are all the same things, it's all one cause of action,
2 it would obviate the Mechanic's Lien scheme. There'd be no
3 reason to have a Mechanic's Lien scheme, and it affords
4 protections to a subcontractor, but it likewise affords
5 protection to a owner or someone for whom the work is being
6 done to say you can only be liable to a subcontractor or a
7 material man to the extent you haven't paid the contractor,
8 the general contractor, in full for the work, and there's
9 been no dispute about how much was not paid.

10 Now, Your Honor, unfortunately, I believe, because of
11 the, of the strategic decision made at the 11th hour in
12 trial to abandon the Mechanic's Lien claim and try to pursue
13 only quantum meruit, I believe the facts in this case are
14 going to lead -- the facts and the law of quantum meruit is
15 not gonna allow a recovery by Rose Electric in this matter.

16 Unfortunately, for Mr. Rose and Rose Electric, that
17 does not obviate the relief we're entitled to under the
18 Mechanic's Lien Statute. The owner of the property, S2P
19 LLC, and my client, the tenant of the property for the last
20 two and a half years even through today's date, have been
21 defending a Mechanic's Lien action where there is a lien
22 encumbering title to the leasehold state and to the effect
23 that encumbers the, the, the fee estate and, and the
24 obligations of the owner of the property the landlord has
25 with their lenders, we continue to have to defend against

1 that, and under the Mechanic's Lien Statute, and
2 additionally, under Rule 68 of the South Carolina Rules of
3 Civil Procedure, we've made three different offers of
4 judgment. The last being to the tune of \$18,000.

5 There was no response back from Rose Electric. That
6 means their offer was zero. Our offer was 18,000. We've
7 become the prevailing party, and, under the Mechanic's Lien
8 Statute, under Rule 68, we're entitled to an award of
9 attorney fees, prejudgment interests, and costs involved in
10 defending that Mechanic's Lien action. The lien sits on
11 property, and, in our memorandum, Your Honor, we itemized
12 what the -- my fees were to date back in February.

13 We also had paid, because, under our lease, we have an
14 obligation under our lease with the owner of the property,
15 to defend them or indemnify them from, from attorney's fees
16 if we can't get that Mechanic's Lien removed, which we
17 couldn't bond it off. We tried. We tried to pay. Couldn't
18 get it off by way of payment. And so we've paid money to
19 Mr. Turner here on behalf of -- for his defense of the
20 landlord, and he hasn't -- we haven't fully compensated for
21 that.

22 So, Your Honor, where I believe, from a strategic
23 standpoint, this leaves Rose Electric is they can't recover
24 under, under quantum meruit. So they get zero from that.
25 We are the prevailing party in defending this Mechanic's

1 Lien action, which we're still having to defend. The lien's
2 still sitting there, and from that prospective, Rose
3 Electric is gonna owe us \$17,703.68 exclusive of -- and, and
4 that's through the cost and attorney fees that have been
5 incurred through February. That doesn't include anything
6 after February.

7 Frankly, I wish that the strategic, for, for Mr. Rose's
8 sake, I wish the strategic decision had not been made to go
9 all in as they say in poker with regard to the quantum
10 meruit, but, but that was their choice, and Mr. Rose and
11 Rose Electric isn't the only entity that's gotten the shaft
12 here. We got bitten by Cooler Erectors as well.

13 Luckily, for Rose Electric, they did perform at least
14 two jobs and I think there was some other work they did out
15 at the Farmer's Market under Cooler Erectors as, as the
16 general contractor for which they did get paid in full. My
17 client paid what -- the 203,000 and Cooler Erectors never
18 finished the job. They've had to pay extra, but that's
19 neither here nor there.

20 But, Your Honor, I, I agree with the thought Your Honor
21 had initially. What we do have here is an expressed
22 contract that cancels out the right to try to recover a
23 quasi contract. I believe---

24 THE COURT: well, you have a combination I think of
25 expressed and implied in fact.

1 MS. COOK: That -- yes, sir, and, and our Courts, and
2 we all use that term kind of interchangeable. I think an
3 expressed contract can be a verbal -- including all terms,
4 and an expressed contract can also be a -- verbal with some
5 implied in fact terms, and I believe that's what you've got
6 a combination of that here.

7 THE COURT: Well, y'all---

8 MS. COOK: The point -- I will point out, because the,
9 the Boykin case, it just so happens that I talked at the CLE
10 for the Master's in Equity two weeks ago and the professor
11 who teaches equity down at Charleston School of Law, right
12 after me, did an analysis of the most important cases in the
13 last year for equity. Boykin was one of the cases that he
14 talked about. Boykin is so distinguishable factually from
15 what we've got here.

16 This case stands for the proposition that there was no
17 payment by Mr. Kirby or Mr. Kirby's company, the bingo
18 parlor operator, to a general contractor. There was no
19 payment at all. We've got payment here.

20 Additionally, it stands for the proposition that the
21 Court is not -- is willing to pierce through -- not even --
22 they say not even -- they didn't even have to pierce through
23 in this case. They found, under equity, that Mr. Kirby,
24 individually and personally, was liable to Boykin
25 Contracting for the work although Mr. Kirby was trying to

1 hide behind a corporate shell, and, in equity, the Court
2 said we're not gonna let you do that. Kirby, you are the
3 one who personally had all the contact in the case, while it
4 involves an owner, and it involves a contractor, and it
5 involves not having all the terms of an express contract in
6 place, such that the Court factually, from the facts of this
7 case, found that there was no contract. So they, they could
8 go to equity and make an award for payment by Boykin to
9 Boykin from Kirby personally.

10 Factually, we have a totally different situation here.
11 We have an expressed contract. My position would be, where
12 we have evidence of the contract price and all terms dealing
13 with the portion of the work done by Rose that was being
14 done under Cooler Erectors, and an expressed contract with
15 the implied in fact term of the, the price for the extras my
16 client directly agreed to pay, that would entitle, under the
17 contract theory or the statutory Mechanic's Lien theory,
18 which is the other theory upon which we were sued before it
19 was abandoned, to a recovery. But also would allow for the
20 offset or the setting off from whatever Rose would recover
21 under the Mechanic's Lien Act because of our offers of
22 judgment not being accepted.

23 Our attorneys fees, which---

24 THE COURT: That, that---

25 MS. COOK: ---exceeded---

1 THE COURT: I really understand all that. If, if you
2 got anything you want to wrap up---

3 MS. COOK: No, sir, that's, that's all, Your Honor.

4 THE COURT: We've been going an hour and 15 minutes
5 almost --

6 MS. COOK: Yes, sir.

7 THE COURT: -- and I got one more question. I had
8 questions I'd written on notes, and y'all have addressed
9 four of them, and satisfied my curiosity. Whether I'm right
10 or wrong is a different issue. But I'm doing, doing the
11 best I can with what I got.

12 I need to talk about this crossclaim.

13 So what -- what's the status of the crossclaim?

14 MR. TURNER: That's the crossclaim between the two
15 defendants, Your Honor?

16 THE COURT: Yes, sir.

17 MR. TURNER: There's basically no disagreement about
18 it. Southern Produce has been paying the defense costs of
19 S2p LLC. The claim is still outstanding because the
20 attorneys fees are still mounting. I think, if Your Honor
21 would allow us to stipulate whatever that amount is after he
22 rules, we're not gonna have any issue with that. That's,
23 that's gonna be something easy to agree to.

24 THE COURT: All right. Well, let me, let me just --
25 and that relates -- y'all are brought in -- y'all were

1 brought in by who?

2 MR. BOOTH: S2p was brought in by the Plaintiff, Your
3 Honor.

4 THE COURT: Okay.

5 MR. TURNER: There was a Mechanic's Lien filed against
6 our real estate.

7 THE COURT: You answered my question.

8 MR. TURNER: Thank you, Your Honor.

9 THE COURT: All right. I'm ready to rule. I may
10 change my mind again, but I'm ready to rule.

11 MR. TURNER: Can I say something before you do, Your
12 Honor?

13 There was---

14 THE COURT: Please do.

15 MR. TURNER: ---all this argument and I, I didn't say a
16 word.

17 THE COURT: Go ahead.

18 MR. TURNER: But I do want to say that since there --
19 Rose Electric does want to abandon its claim under contract,
20 it doesn't have a right to have a lien against our property
21 anymore, and that whatever Your Honor rules, we'd hope he
22 would rule that that be dissolved immediately.

23 Also, if he relies totally upon a quantum meruit, I
24 think we have to look at whether or not he is proved the
25 entitlement to quantum meruit and that can not exist where

1 there is enough evidence of a contract to constitute a
2 contract. So he can't recover there either.

3 Moreover, there was no evidence at trial that my client
4 got any benefit, acquiesced in the, the electrical work,
5 asked for the electrical work, received the electrical work,
6 accepted the electrical work, or any of the things that you
7 usually look to when you're trying to do equity between the
8 parties, and I think, even under equitable causes of action,
9 S2p is -- just needs to be dismissed from this action.

10 Thank you, sir.

11 THE COURT: All right. What I want you to do is to
12 basically track briefs that have been submitted. Look at
13 the findings that -- the tentative findings of fact that I
14 set out that I sent to you and, Ms. Cook, you and Mr. Turner
15 get together and draft me a proposed order. Put it in a
16 format that I can change. Don't send it to me in a PFD file
17 that I can't change cause, cause I often change things
18 around, and I may read something and it may trigger another
19 issue.

20 But, but track your brief, Ms. Cook, and, and,
21 Mr. Turner, and my finding is that, that you got a situation
22 here where you've got a combination of an expressed contract
23 and an implied in fact contract. At a minimum, it's an
24 implied in fact contract.

25 My, my determination is that quantum meruit does not

1 apply to this situation. Even if it did, and I do the
2 quantum meruit analysis, you get to the third element and it
3 requires unjust conditions and, in this case, Southern
4 Produce paid the general contractor and it's not unjust for
5 Southern Produce to retain the benefit. As to S2p, it owned
6 the land. It didn't contract with anybody, and if I were to
7 grant the Mechanic's Lien, I would separate out the, the
8 leasehold from the fee simple title to the real -- to the
9 land. But I'm not gonna do that because I'm gonna find that
10 the Mechanic's Lien is to be dismissed.

11 Now, I find that the Plaintiff has established
12 entitlement to the pro rata share to the retainage and
13 you've gone through and discussed that in great detail and
14 its set forth in the brief in great detail. So Southern --
15 excuse me.

16 Rose Electric is entitled to some money under the
17 retainage and is also entitled to recover for the extras
18 and, again, I'm, I'm not gonna sit here and go through those
19 things penny by penny. Y'all, y'all send me something and
20 I'll, I'll work it out. However, that gets into the part
21 where I don't think anybody takes any great delight in this,
22 somebody's gonna get the shaft has been pointed out, and I
23 hate that. On a personal level, it's, it's something
24 everybody hopes they can avoid.

25 The question is what does the law allow recovery on and

1 where does the damage have to lie, and, in this instance, I
2 just don't see where Rose Electric can shift that over to
3 the Defendants, and Rose Electric filed under the Mechanic's
4 Lien Statute, and even though it is since abandoned it most
5 recently, that was one of the questions I had on my notes up
6 here, I wasn't sure if that had been abandoned or not, the,
7 the Mechanic's Lien was filed, it's been filed, it's still
8 there, and it's encumbered the property, and it's required
9 the Defendants to defend the case, and the Mechanic's Lien
10 Statute provides that the prevailing party gets to return --
11 gets attorney fees and costs.

12 So my finding is that the -- Southern Produce is proven
13 entitlement to attorney's fees and costs. The
14 reasonableness of which I'll evaluate in a proposed order.

15 Also, the, the Rules of Civil Procedure dictate that
16 the prevailing party in a case may recover attorney's fees
17 and costs where there's an offer of judgment and here you
18 had several offers of judgment. So, under both those
19 theories, the Southern Produce is entitled to recover and
20 S2p LLC is entitled to attorney's fees because a lien was
21 filed against its property.

22 That's my ruling. I don't take any delight in it.
23 Y'all sent me a proposed order, and, when you send it to me,
24 send it to opposing counsel in the same format that you send
25 it to me, the same means. Again, I may make some changes.

1 Hopefully I won't have to require you-all to get back
2 together with me again. But -- and you may have a
3 reconsideration motion, and if you have one, I'll, I'll
4 promise you I'll look at it diligently.

5 Thank you very much.

6 Court's adjourned.

7 MS. COOK: Thank you, Your Honor.

8 MR. TURNER: Thank you, judge.

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11 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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Subject	RE: Rose Electric, Inc. vs. Cooler Erectors of Atlanta, Inc., et al. (2011-CP-32-1929)
From	Keesley, William P.
To	Bill Booth; JRobinTurnerPA@sc.rr.com; kcook@cookandroy.com
Cc	Keesley, William P. Law Clerk (Justin Calliham); Huggins, Mona
Sent	Tuesday, August 20, 2013 5:40 PM

As you know, I heard testimony in this case in February and gave time for the attorneys to submit their arguments through briefs. I have obtained from the Clerk of Court's office the post-trial brief of the plaintiff filed on March 11 and the memorandum of S2P, LLC, filed on February 26. I do not have a brief for Southern Produce. I did not have any briefs submitted through emails.

After going through my notes and reviewing the briefs and the evidence, I regret that I feel it necessary to reconvene. In my judgment, **it is best to ask you some questions**, and I think the most expedient way to accomplish this is by scheduling a hearing. What follows does not include all the issues that I need addressed, but may help you prepare.

My primary concern relates to whether I understand the plaintiff's current position correctly about the mechanic's lien and the parties. I have read the cases cited repeatedly. I have reviewed the entire mechanic's lien statute. I need to make sure that I understand how the plaintiff's abandonment of all causes of action except quantum meruit affects the relief being sought. I need to make sure I specifically understand your positions related to attorney's fees and costs.

I also need clarification about claims made by defendants. If I understand correctly, the plaintiff stated that the only remaining party to its claim is Southern Produce, but there are other claims raised in the pleadings.

I have had this case under advisement far longer that I would like. While I have spent a good deal of time putting together a list of factual findings, I do not want to finalize those and reach conclusions of law without meeting with you again, on the record.

If possible, I would like to schedule this for the week of September 9. Please review your schedules and let me know if you are available for about an hour during that week. Obviously, we will have to give notice to all the parties that are entitled to it.

Thank you. [wpk]

Subject	RE: Rose Electric, Inc. vs. Cooler Erectors of Atlanta, Inc., et al. (2011-CP-32-1929)
From	<u>Keesley, William P.</u>
To	Bill Booth; JRobinTurnerPA@sc.rr.com; kcook@cookandroy.com
Cc	Keesley, William P. Law Clerk (Justin Calliham); Huggins, Mona
Sent	Friday, October 18, 2013 4:13 PM
Attachments	<<Rose Electric Findings.doc>>

What follows is preliminary, but I wanted to roll it out to you.

In anticipation of our meeting next week, please see the email below for some of the concerns I expressed earlier. Also, please see the attachment for the tentative findings – I emphasize that I am not ruling, yet. But, you can address the way I seem to be viewing the facts at this point.

I will plan to review this file again on Monday and hope to be able to provide some more guidance as to what I am looking to ask you at the hearing. Thank you. [wpk]

1. There was a written contract between Southern Produce, Inc. (Southern Produce) and Cooler Erectors of Atlanta, Inc. (Cooler) whereby Cooler was to construct a building (the project) for Southern Produce.
2. The cost of the project was stated in the contract to be \$213,385.
3. The building was to be constructed on a 4-acre tract of land located at the South Carolina Farmers Market. The land is owned by S2P, LLC (S2P).
4. Southern Produce holds a 10-year lease on a portion of the 4-acre tract
5. The project was to be completed on the land over which Southern Produce holds a leasehold estate.
6. The work related to the project was to be expedited because Farmers Market was being relocated.
7. There are other tenants on other portions of the land, including Senn Bros., Inc. (Senn Bros.).
8. Rose Electric, Inc. (Rose Electric) was a subcontractor on the project and contracted with Cooler to perform electrical work pursuant to architectural plans. The electrical plans were prepared by an electrical engineer and were given to Rose Electric by a representative of Cooler.
9. There was no written contract between Rose Electric and Cooler, nor was there a written contract between Rose Electric and Southern Produce. Rose Electric had performed other jobs for Cooler without any issues related to payment.
10. Homer S. Rose is the sole owner of Rose Electric.
11. Russell D. Frazee (Frazee) is an electrician who worked at Rose Electric and served as the foreman on site for the project.
12. Nate Crocker (Crocker) is the owner of Southern Produce.
13. Dan Stocker (Stocker) was the general manager of Southern Produce. He was on site at the project on a regular basis, almost daily.
14. Morris Teasley served as a representative of Cooler concerning the project.
15. Ben Teasley, the son of Morris Teasley, served as the site superintendent for Cooler on the project.
16. There were modifications to the plan for electrical installation made during construction. Some changes were made by Rose Electrical of its own volition. Some were made at the direction of Southern Produce. The changes related to the following things:
 - a. Adding disconnects and plugs to allow for proper cleaning;
 - b. Modifying the material of disconnects to stainless steel to avoid corrosion;
 - c. Adding a hand-washer heater system;
 - d. Relocating an onion peeler from inside to outside the building, rewiring, and placing a disconnect for that device;
 - e. Adding receptacles and the circuits needed to accomplish that addition;
 - f. Adding dedicated circuits, a time clock, and breakers;
 - g. Wiring the evaporator coils; and,
 - h. Adding lights in the office.

17. Nate Crocker entered into an arrangement to add a line. The invoice for that work was \$1,844, which was paid, as shown by Defense Exhibit 16.
18. Southern Produce admits that it owes Rose Electric \$10,755.39 for changes and additions to the electrical components of the project. It has offered to pay that amount to Rose Electric.
19. There is no dispute that Rose Electric performed the electrical work properly.
20. Southern Produce has paid \$203,277 to Cooler for the project.
21. The project was not completed by Cooler.
22. Because the project was not been completed, Southern Produce withheld \$10,108 as retainage.
23. Cooler did not pay Rose Electric and apparently did not pay other subcontractors.
24. Rose Electric began sending invoices and seeking payment from Cooler and Southern Produce. The invoices are inconsistent in regard to who is responsible for the indebtedness due. The gist of the situation is that Rose Electric first invoiced Cooler and, when payment was not made, began seeking payment from Southern Produce.
25. Rose Electric filed a mechanic's lien that seeks to encumber the entire 4-acre tract, as did Custom Concrete of Lexington, Inc. and James Dunlap, d/b/a Dunlap Services.
26. Under §29-5-60¹, Rose Electric is entitled to a prorated share of the retainage.

¹ § 29-5-60. Proration of payments among lienors.

(A) In the event the amount due the contractor by the owner is insufficient to pay all the lienors acquiring liens as herein provided it is the duty of the owner to prorate among all just claims the amount due the contractor.

(B) In the event the amount due a subcontractor by the contractor is insufficient to pay all the lienors acquiring liens under Section 29-5-20 as a result of supplying labor, materials, or services to that subcontractor, all just liens must be prorated by the contractor among sub-subcontractors and suppliers to that subcontractor.

§ 29-5-40. Notice to owner before lien attaches when laborer was employed by someone other than owner.

Whenever work is done or material is furnished for the improvement of real estate upon the employment of a contractor or some other person than the owner and such laborer, mechanic, contractor or materialman shall in writing notify the owner of the furnishing of such labor or material and the amount or value thereof, the lien given by § 29-5-20 shall attach upon the real estate improved as against the true owner for the amount of the work done or material furnished. But in no event shall the aggregate amount of liens set up hereby exceed the amount due by the owner on the contract price of the improvement made.

If a person claiming a mechanic's lien was employed by someone other than the owner of the property, he must notify the owner of the furnishing of the labor or material in order for the lien to attach. > Shelley Const. Co., Inc. v. Sea Garden Homes, Inc. (S.C.App. 1985) 287 S.C. 24, 336 S.E.2d 488.

The fact that a project owner paid the total contract price, and paid the supplier the prorated amount that the supplier would have recovered under its mechanics' lien, tended to show that the owner was not unjustly enriched, thus precluding the supplier's quantum meruit recovery against the owner. > Columbia Wholesale Co., Inc. v. Scudder May N.V. (S.C. 1994) 312 S.C. 259, 440 S.E.2d 129, rehearing denied. Implied And Constructive Contracts K 3; Implied And Constructive Contracts K 30

27. The total of the contract between Southern Produce and Cooler is \$213,385. The court is not leaning toward accepting the assertion by Rose Electric that the amount should be \$224,385 due to an addition of \$11,000 for the architectural fees that were paid. The justification would be that the plaintiff has not proven, by the greater weight of the evidence, that the architectural fees should be added to the total for this purpose.
28. The court wants to know the parties positions on the exact manner that the percentage of the retainage due to Rose Electric should be calculated (orders attributable to Southern Produce are included?). Is the amount of \$10,755.39 deducted from total claim made by Rose Electric against the mechanic's lien.
29. Southern Produce has an obligation under its lease with S2P to remove any mechanic's liens and to indemnify S2P. The property which is the subject of any mechanic's lien would be the leasehold estate – the tenancy for years. Under §29-5-30,² the fee simple title of S2P is not subject to the any lien that might be asserted by Southern Produce. [Has Southern Produce abandoned its mechanic's lien?]

Cut and paste of some code sections:

§ 29-5-80 Notice of nonresponsibility by owner of building or structure. The owner of any such building or structure in process of erection or being altered or repaired, other than the person by whom or in whose behalf a contract for labor or materials has been made, may prevent the attaching of any lien for labor thereon not at the time performed or materials not then furnished by giving notice, in writing, to the person performing or furnishing such labor or furnishing such materials that he will not be responsible therefor.

1. **SECTION 29-5-160.** Contents of petition. The petition shall contain a brief statement of the contract [emphasis added] on which it is founded and of the amount due thereon, with a description of the premises subject to the lien and all other material facts and circumstances, and shall pray that the premises may be sold and the proceeds of the sale applied to the discharge of the demand.
2. **SECTION 29-5-260.** Sale of premises if lien established. If the lien is established in favor of any of the creditors whose claims are presented the court shall order a sale of the property to be made by such officer as may be authorized by law to make sales of property.
3. **SECTION 29-5-270.** Sale of part of property. If part of the property can be separated from the residue and sold without damage to the whole and if the value thereof is sufficient to satisfy all debts proved in the case, the court may order a sale of that part, if it appears to be most for the interest of all parties concerned.

² **SECTION 29-5-30.** Lien against debtor with life estate or whose estate is less than fee simple.

If the person for whom the work is done or materials are furnished has an estate for life or any other estate less than a fee simple in the land or if the property, at the time of recording the statement, is mortgaged or under any other encumbrance, the lien before provided for shall bind his whole estate and interest therein in like manner as a mortgage would have done and the creditor may cause the right of redemption or whatever other right or estate the owner had in the property to be sold and applied to the discharge of his debt, according to the provisions of this chapter.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

William P. Keesley, Circuit Court Judge

Case No. 2011-CP-32-1929

Rose Electric, Inc., ... Appellant

v.

Cooler Erectors of Atlanta, Inc., Southern Produce, Inc., S2P, LLC, Certified
Development Corporation of South Carolina, Senn Bros., Inc.,
Custom Concrete of Lexington, Inc., and
James Dunlap d/b/a Dunlap Services, ... Defendants

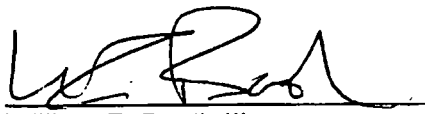
Of whom

Southern Produce, Inc., and S2P, LLC are Respondents

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

November 13, 2015
~~October 26, 2012~~


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