

EXHIBIT "A"

ORDER OF JUDGMENT

CDS RESTORATION LLC

MARK AVANT A/K/A MARK D AVANT ETC.

PLAINTIFF(S)

DEFENDANT(S)

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

**DISPOSITION TYPE (CHECK ONE)**

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

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, 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 :

FILED  
 2017 NOV -3 AM 10:55  
 JULIE M. COLEMAN  
 CLERK  
 COURT  
 RECEIVED

DEC 08 2017

SC Court of Appeals

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)
CDS RESTORATION LLC	MARK AVANT A/K/A MARK D. AVANT	\$ 181,134.88
		\$
		\$
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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

T.L. Hyatt  
 Circuit Court Judge

2008  
 Judge Code

Nov 8 2017  
 Date



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-10-3130

CDS RESTORATION, LLC,

PLAINTIFF,

**ORDER AND JUDGMENT**

V.

MARK AVANT (A/K/A MARK D. AVANT),  
NATIONAL BANK OF SOUTH CAROLINA  
(A/K/A NBSC, A DIVISION OF SYNOVUS  
BANK), AND MILLENNIUM BANK, N.A.,

**RECEIVED**  
DEC 08 2017  
SC Court of Appeals

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2017 NOV -3 AM 10:56

FILED

DEFENDANTS.

**I. INTRODUCTION AND PROCEDURAL POSTURE**

This case came up for trial before the Court and a jury September 5, 2017 to September 7, 2017. Plaintiff filed motions for attorneys' fees, interest, costs and an order of foreclosure. Defendant Mark Avant filed motions for judgment notwithstanding the verdict and a new trial.

For the reasons set forth below, the PLAINTIFF'S motions are GRANTED and the DEFENDANT'S motions are denied. Judgment is entered for the Plaintiff in the amount of \$181,134.88.

In a separate order executed this same day, the Court is ordering that the Plaintiff's mechanics' lien is foreclosed, and that the real property, 612 Adluh Street, Mt. Pleasant, Charleston County, South Carolina 29464 (TMS No. 532-06-00-068), shall be sold by the Master-in-Equity for Charleston County, the Honorable Mikell R. Scarborough.

**II. FINDINGS OF FACT**

**A. Liability and Damages**

#1  
T.L. 1/8/17

The jury found that Defendant Avant had breached the contract, and was unjustly enriched, awarding damages in the amount of \$66,587.82. The Court agrees with the jury and finds there was overwhelming evidence as to both liability and damages. There are no facts whatsoever to support a judgment notwithstanding the verdict or a new trial. The evidence yielded only one inference and the jury's verdict was reasonable.

The Plaintiff agrees that it is entitled to only one recovery, in the amount of \$66,587.82. This recovery is supported by the jury's findings on both breach of contract and unjust enrichment.

### **B. Attorneys' Fees and Costs**

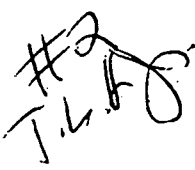
The contract that Defendant Avant breached provides for attorneys' fees.

The mechanic's lien statute provides for attorneys' fees: "The costs 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. The fee must be determined by the court in which the action is brought but the fee and the court costs may not exceed the amount of the lien." S.C. Code Section 29-5-10.

The jury concluded that the Defendant violated S.C. Code Section 27-1-15 by failing to properly investigate the Plaintiff's claim and failing to pay all or a proper portion of the claim. Thus, the Defendant "is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand." *Id.*

Finally, the Plaintiff has moved for fees pursuant to Rule 37(c), SCRPC, for having to prove matters which could have, and should have, been admitted.

Therefore, there are four grounds supporting the award of attorneys' fees:

- 
- (1) the Contract dated October 15, 2015;
  - (2) S.C. Code § 29-5-10 Lien of person furnishing labor and materials for buildings or structures; offers of settlement;

(3) S.C. Code § 27-1-15 Recovery of attorney fees and interest on claims for improvements of real estate; and

(4) Rule 37(c), SCRPC Expenses on Failure to Admit.

S.C. Code § 29-5-10 caps the amount of the fees at no more than \$66,587.82. S.C. Code § 27-1-15 limits the fees to those from the date of the demand (May 10, 2016). Rule 37(c), SCRPC allows reasonable expenses, including reasonable attorney fees incurred with proving the matters in the Requests for Admissions. However, the Contract's attorneys' fees provision limits the recovery to only what is "reasonable."

The Plaintiff seeks attorneys' fees and costs in the amount of \$94,953.40. The Court has reviewed the Plaintiff's attorneys' invoices and affidavits.

**1. The nature, extent and difficulty of the legal services rendered;**

The Court finds that while this case at its core was not exceptionally complex, and did not need to be complex, the conduct of the Defendant made the litigation more extensive and difficult than necessary.

**2. The time and labor necessarily devoted to the case;**

The Court has reviewed the attorneys' invoices and the Plaintiff's memorandum in support of its claim for fees. The Court finds that there is substantial evidence for the matters detailed in the Plaintiff's memorandum, which unnecessarily required extensive time and labor from the Plaintiff's counsel. In presiding over the trial, the Court saw firsthand the Defendant's approach to litigation, which, to put it mildly, was haphazard, unprepared and oftentimes misleading.

**3. The professional standing of counsel;**

The Court finds as a fact, based on its own observance of counsel and supporting affidavits, that Plaintiff's counsel's standing supports the requested hourly rates.

**4. The contingency of compensation;**

#3  
T.L.H.

This was not a factor because the Plaintiff was billed by the hour.

**5. The fee customarily charged in the locality for similar legal services;**

Considering Plaintiff's counsel's hourly rates and the issues they were forced to address by the Defendant, the Court finds the amount requested to be customary in Charleston County, given the circumstances.

**6. The beneficial results obtained.**

The Plaintiff was awarded every single thing it requested from the jury. The results are very beneficial.

The Court finds the Plaintiff's fee petition to be fair and reasonable considering the Defendant's conduct in this case. Applying the attorneys' fees and costs provision from the Contract, the Plaintiff is awarded \$94,953.40 in fees and costs.

**C. Interest**

The Plaintiff prayed for, and was awarded, the sum certain of \$66,587.82. It is entitled to prejudgment interest at a rate of eight and three-fourths percent per annum (8.75%). S.C. Code § 34-31-20. Further, S. C. Code § 27-1-15 provides for "interest at the judgment rate from the date of the demand." At the present time, the prejudgment interest rate is higher than the post-judgment rate. Thus, the Plaintiff elects prejudgment interest.

The Plaintiff is entitled to 8.75% prejudgment interest from January 15, 2016 to September 7, 2017, a period of 601 days.

$$\$66,587.82 \times .0875 \times (601/365) = 9,593.66.$$

$$66,587.82 + 9,593.66 = \mathbf{\$76,175.48}.$$

*#4  
T.L.A.S.* Pursuant to S.C. Supreme Court Order 2017-01-04-01, post-judgment interest from September 8, 2017 to January 14, 2018 accrues at 7.75% per annum. This yields interest at **\$16.17** per diem. A new post-judgment rate will apply on January 15, 2018.

The Court concludes that the Plaintiff is entitled to judgment in the amount of \$181,134.88.

This sum is composed of the following elements:

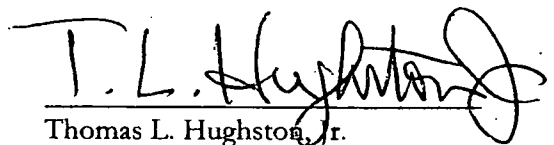
- a) Principal/verdict: \$66,587.82
- b) Prejudgment interest: \$9,593.66.
- c) Costs through trial: \$4,555.90
- d) Attorneys' fees through trial: \$90,397.50
- e) Fees and costs anticipated through the conclusion of the action: \$10,000.00

### III. CONCLUSIONS OF LAW

1. There are no factual, legal or equitable reasons to grant a new trial or judgment notwithstanding the verdict.
2. The Court is satisfied that Plaintiff has complied with the statutes pertaining to the filing of notices of Lis Pendens.
3. The Plaintiff has proven its claims against the Defendant Mark Avant for Breach of Contract and Unjust Enrichment; thus, it has established its Mechanic's Lien against the Defendant's property.
4. The Plaintiff is entitled to judgment in the amount of \$181,134.88. The Judgment shall bear interest hereafter at the South Carolina post-judgment rate.

**IT IS SO ORDERED!**

#5



Thomas L. Hughston, Jr.  
Circuit Court Judge  
Ninth Judicial Circuit

Nov. 2  
~~October~~ \_\_\_\_\_, 2017

Charleston, South Carolina