

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Opinion No. 0000 (S.C. Ct. App. Filed Dec. 18, 2012)

Crenshaw's TV and Radio Service, Inc., d/b/a
Crenshaw's TV & Appliance, ... Petitioner,

v.

Jocassee Partners Holdings, LLC, Individually and d/b/a
The Jocassee Club and Bank of Travelers Rest, ... Defendants,

Of Whom Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club is Respondents

APPENDIX

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S.C. Supreme Court

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2009-CP-37-01522

Crenshaw's TV and Radio Service, Inc.,
d/b/a Crenshaw's TV & Appliance,

Respondent,

v.

Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club
and Bank of Travelers Rest,

Defendants,

Of whom Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club is

Appellant.

RECORD ON APPEAL

T. S. Stern, Jr. (SC Bar ID 5337)
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

CASE NO. 2009-CP-37-1522

Crenshaw's TV and Radio Service, Inc.,
d/b/a Crenshaws TV & Appliance,

Plaintiff,

v.

Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club
and Bank of Travelers Rest,

Defendant.

ORDER

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2010 OCT -4 P 3:26

COPY

This matter is before me pursuant to Motion of the Defendant, Jocassee Partners Holdings, LLC Individually and d/b/a The Jocassee Club's ("Defendant"), to Alter or Amend Judgment pursuant to SCRCP 59. Additionally, Plaintiff, Crenshaw's TV and Radio Service, Inc., d/b/a Crenshaws TV & Appliance ("Plaintiff"), has moved, pursuant to SCRCP 56, for an Order granting Summary Judgment in its favor, and for interest, attorney's fees and costs. For the reasons hereinbelow set forth, the Plaintiff's Motion is granted and the Defendant's Motion is denied.

This is a Mechanic's Lien foreclosure action by a lower tier supplier (Plaintiff) to a general contractor which failed to pay the Plaintiff. Plaintiff's entitlement to the claimed principal balance is not in dispute. After the Plaintiff filed its Mechanic's Lien ("Lien") but before suit to enforce the Lien was filed, the Defendant paid the sum of \$8,494.03 representing one-half of the principal sum owed. Also, prior to filing suit to enforce the Lien, the Defendant tendered, on October 14, 2009, the balance of principal due with the stipulation that the check represented "final payment" and that "Acceptance of this check is your company's confirmation of payment in full". The tender was

along with its Answer and Counterclaims. The offer contained in the Defendant's letter did not include a dismissal of the Counterclaims, with prejudice, it had asserted against the Plaintiff in its Answer and Counterclaims.

8. On January 7, 2010, Plaintiff filed its Offer of Settlement pursuant to S. C. Code §29-5-10 and/or §29-5-20 for the remaining balance of the Mechanic's Lien, in which the Plaintiff agreed to accept in settlement of the Lien the remaining principal balance owed, i.e., \$8,494.03, exclusive of interest, costs and reasonable attorney's fees for the Plaintiff to be determined by the Court, along with the dismissal, with prejudice, of all counterclaims filed by the Defendant.

10. As a follow up to that letter, Plaintiff advised the Defendant, by letter dated January 11, 2010, that the total amount due at that time was \$13,512.35 which was composed of the admitted balance of \$8,494.00 plus the sum of \$5,122.32, representing the interest, costs and attorney's fees incurred as of that date.

11. By letter dated January 20, 2010 Defendant, among other things, again tendered to Plaintiff a check for the remaining principal balance of the Mechanic's Lien. This tender was again rejected by Plaintiff.

12. On January 22, 2010 Plaintiff mailed a letter to Defendant asserting, among other things, that it was the Plaintiff's position that its Offer of Settlement would be closer to the ultimate verdict in this matter since that verdict would include a dismissal of the Defendant's Counterclaims, with prejudice, and, therefore, Plaintiff would be the prevailing party and thus entitled to attorney's fees, interest and costs under the applicable Code Sections of the S. C. Mechanics Lien Statutes.

13. On January 25, 2010 Plaintiff filed its Reply to the Defendant's Counterclaims.

asserted by the Defendant are a part of this action, are capable of being maintained by the Defendant as separate and independent claims which must be resolved as part of this action, and, therefore, any Offer of Settlement had to deal with and include a proposed resolution of those counterclaims with the ultimate resolution of same determining who would be the prevailing party.

After hearing the arguments of counsel and reviewing the record in this case, the Court determined that the Defendant was not entitled to prevail on its Motion for Summary Judgment and by Order dated April 16, 2010, said Motion was denied.

Thereafter, on April 21, 2010 Defendant filed its Motion to Alter or Amend the Judgment. Additionally, Plaintiff then filed its Motion for Summary Judgment on June 15, 2010 seeking an Order granting the Plaintiff the relief it sought in this action, including a dismissal, with prejudice of the Counterclaims asserted by the Defendant. The Plaintiff's attorney also filed his Fee Affidavit regarding attorney's fees. A hearing was held on these Motions on August 2, 2010.

Based upon further arguments of counsel, further review of the record, including the affidavit of Plaintiff's attorney, it is the decision of this Court that the Defendant's Motion be, and the same is hereby, denied; that the Plaintiff's Motion for Summary Judgment should be, and the same is, hereby granted; that the Defendant's Counterclaims be, and they are hereby dismissed, with prejudice; and, that the Plaintiff, as the prevailing party under §29-5-20 of the S. C. Code of Laws, 1976, as amended, is entitled to an award of reasonable attorney's fees, which this Court finds to be \$9,393.00 plus costs in the amount of \$782.99 and interest at the legal rate.

IT IS SO ORDERED this 27 day of Sept, 2010.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT
 COUNTY OF OCONEE)

Crenshaw's TV and Radio Service,
 Inc., d/b/a Crenshaws TV & /
 Appliance,

Plaintiff,

-vs-

Jocassee Partners Holdings, LLC
 Individually and d/b/a The
 Jocassee Club and Bank of /
 Travelers Rest,

Defendants.

Recorded this 10 day of
Sept 2009
 Vol. 7 Pg. 11 and Certified
 Register of Deeds, Oconee County

Notice and Certificate of
 Mechanic's Lien

FILED FOR RECORD
 OCONEE COUNTY, S.C.
 REGISTER OF DEEDS
 1009 SEP 10 P 4 18

TO: Jocassee Partners Holdings, LLC, individually
 Jocassee Partners Holdings, LLC d/b/a The Jocassee Club
 c/o William E. Masters, Registered Agent
 150 Foothills Road
 Greenville, SC 29617
 Bank of Travelers Rest
 c/o R. Bruce White
 42 Plaza Drive
 Travelers Rest, SC 29690

19⁰² 003291
 Ret: Logan, Kelly - Smith
 (and) PO Box 254
 Anderson, SC 29622

NOTICE IS HEREBY GIVEN, that Crenshaw's TV and Radio Service, Inc.,
 d/b/a Crenshaws TV & Appliance hereinafter "Crenshaws TV & Appliance" is due the
 sum of Sixteen Thousand Nine Hundred Eighty Eight and 07/100 (\$16,988.07) Dollars
 from defendant for labor and/or materials furnished to and used in the improvement of
 real estate hereinafter described as 169 Fisher Knob Road, Salcm, SC. A statement of a
 just and true account of said indebtedness with all just credits given is attached hereto
 and made a part hereof as "Exhibit A", together with interest, attorney's fees and costs.

That said debt is due the said Crenshaws TV & Appliance for labor performed and
 materials supplied and actually used in the erection, alteration or repair of buildings or

Exhibit ASTATEMENT OF ACCOUNT

TO: *Jocassee Partners Holdings, LLC, individually*
Jocassee Partners Holdings, LLC d/b/a The Jocassee Club
Bank of Travelers Rest

<u>Invoice Number</u>	<u>Date</u>	<u>Amount</u>
4011814	5-28-09	30,346.94
4011912	6-12-09	1,598.78
4011044	6-19-09	42.35

Paid Date
7-01-09

Paid Reference
check #7208

Paid Amount
15,000.00

Balance Due
16,988.07

Page 2 of 3 Invoice # 4011814 Customer # 102916 Salesman Dave Willford Sale Date 05/28/09

Item	Ordered	Shipped	Description	Price	Ext Total	Tax
ZLH150VSS	1.0	1.0 EACH	MONOGRAM Ice Machine Monogram 15" Ice Machine, Reversible Door, 50 lb Production Capacity, Stores 25lbs, Stainless Steel Door and Handle. REQUIRES GRAVITY FEED DRAIN DRAIN UNIT. HS125083/	1,389.00	1,389.00	Y
G1H18ISXS	1.0	1.0 EACH	GE Refrigerator GE 18.0 cu ft Top Freezer Refrigerator, Iceemaker Ready, Energy Star Rated, New Stainless Handles, Glass Shelves, Gallon Door Storage, Stainless Steel Finish. GS533927/	886.00	886.00	Y
IM4A	1.0	1.0 EACH	GE Ice Maker Ice Maker Kit, Top & Bottom Freezer Models GS472039A/	55.00	55.00	Y
GLD8760NSS	1.0	1.0 EACH	GE Dishwasher GE Dishwasher, Stainless Tall Tub Design, Nylon Racking, 6 Level Wash, CleanSensor, Auto Refresh Cycle, Stainless Steel Finish. HS7110983/	732.00	732.00	Y
JSP42SNS	1.0	1.0 EACH	GE Range GE 30" Slide-In Electric Range, Ceramic Glass Smooth Top, Radiant Elements, Self Clean Oven, Stainless Steel Finish. AS221959Q/	1,236.00	1,236.00	Y
JVM1740SM3G	1.0	1.0 EACH	GE Microwave Oven GE 1.7 cu ft Over The Range Microwave Oven/Vent, 1000 Watts, Rack, Turntable On & Off, Stainless & Black GS9025938/	225.00	225.00	Y
WFMC2201UC	1.0	1.0 EACH	BSCH Washer Nexxt™ 300 Series 3.81 CuFt High Capacity, Spin Speed Up To 1000, 1000W Internal Heater, 15 Individually Tailored Washing Programs, KIDSCARE™ Stain Removal Program, 56 dB Quiet Operation, 19-Hour Time Delay - 1 Hr. Increments, Options: Bleach, Rinse plus, Heavy duty, ENERGY STAR, White 070084484030216/	799.00	799.00	Y
WTMC1321US	1.0	1.0 EACH	BSCH Electric Dryer Nexxt™ 300 Series Laundry 27", 6.7 Cu. Ft. Drum Capacity (IEC), See-Through Door, 3-Digit LED Display, Snag-free Stainless Steel Drum, 11 Drying Programs, 1-Hour WRINKLELOCK™, Delicates/Low Temperature Options, Timed Dry Up To 1 Hr. - 20 Min. Increments, White 070094976025412/	759.00	759.00	Y
WSM2700RWV	1.0	1.0 EACH	GE Laundry Center GE 27" Laundry Center, Electric Dryer, White SADR604193W/	998.00	998.00	Y
SWF	16.0	16.0 EACH	Solid Waste Fee	2.00	32.00	N
DELAPP	1.0	1.0 EACH	Delivery - Appliances	95.00	95.00	Y
INSTALLATION	1.0	1.0 EACH	Installation Installations Are Billed At \$65 Per Hour Plus Any Materials	0.00	0.00	N

Payment Details:		
Type	Amount	Trans #
CHANGE	30346.94	charged to Account #10161E
Signature:		
Date:		
	SubTotal	29,631.00
	6.00% Sales Tax	1,715.94
	Freight	0.00
	Total \$	30,346.94
Printed: 08/27/09 10:08:45 AM FRANKSDESK 4 Frank		Page 2 of 3



SALES INVOICE

Crenshaws TV & Appliance
221 East Main Street
Pendleton, SC 29670
Voice: 864-648-3406
Fax: 864-646-6295

Invoice # 4011912
Customer # 102618
Sale Date 06/12/09
Salesman Kevin Kay

Bill To:
THE JOCASSEE CLUB
NATHAN MASTERS
150 FOOTHILLS ROAD
GREENVILLE SC 29617

Ship To:
CENTRAL CONTRACTING
DAVID GULLEY
SITE: 169 FISHER KNOB ROAD
SALEM SC 29676

864-255-3004
nathan@thecocaseeclub.com

Terms	Due Date	Cust PO #	Ship Via			
Net 10 Days	06/22/09		DELIVERY			
Item	Ordered	Shipped	Description	Price	Ext Total	Tax
MISC	3.0	3.0 EACH	Dish Washer Installation Kit	19.95	59.85	Y
MISC	3.0	3.0 EACH	1/4" S.S. Sock/Motor Line	10.95	59.85	Y
MISC	1.0	1.0 EACH	3/8" S.S. Gas Line	19.95	19.95	Y
MISC	2.0	2.0 EACH	1/2" IHP x 3/8" Flanged Gas Nipple	1.75	3.50	Y
MISC	1.0	1.0 EACH	Junction Box w/ Connectors	4.25	4.25	Y
MISC	1.0	1.0 EACH	1/4" x 1/4" Compression Union	1.85	1.85	Y
MISC	1.0	1.0 EACH	1/4" x 3/8" Compression Union	2.35	2.35	Y
MISC	1.0	1.0 EACH	Black Iron 1/2" Tee	2.25	2.25	Y
MISC	1.0	1.0 EACH	Black Iron 1/2" Plug	0.05	0.05	Y
MISC	2.0	2.0 EACH	Dryer Cord 4 Wire 30 Amp	12.95	25.90	Y
MISC	2.0	2.0 EACH	Range Cord 4 Wire 50 Amp	12.95	25.90	Y
MSLKK	1.0	1.0 HOUR	Installation of 42 Cu. Ft. Pro Style Fridge "Requires Additional Manpower and Time"	125.00	125.00	N
MSLKK	19.5	19.5 HOUR	Labor - Kevin Kay (Installation of Appliances) Delivery Labor Charges with Installation and Set Up	65.00	1,257.50	N

Payment Details:		SubTotal	1,587.10
Type	Amount: Frank #	SCTAX	6.00% Sales Tax 11.88
CHARGE	1598.78 charged to Account #102618	Freight	0.00
Signature: _____		Total \$	1,598.78
Date: _____			Page 1 of 1
Printed: 06/22/09 10:07:50 AM FRANKSDCSK # Frank			

(Page 3 of 4)

Tract 1:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as Tract 4, containing 0.95 acres, more or less, as shown on plat prepared by C. E. Sichen Surveying, dated 04-19-1983 and recorded in Plat Book P-43, at Page 149, in the Register of Deeds Office for Oconee County, South Carolina, reference being made to said plat for a more complete metes and bounds description thereof.

Tract 2:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as Tract 5, containing 11.96 acres, more or less, as shown on plat prepared by C. E. Sichen Surveying, dated 04-19-1983 and recorded in Plat Book P-43, at Page 149, in the Register of Deeds Office for Oconee County, South Carolina, reference being made to said plat for a more complete metes and bounds description thereof.

Tract 3:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as Tract 6A, containing 1.012 acres, more or less, as shown on plat prepared by Wayne R. Garland, RLS # 5298, Surveyor, dated 12-0-83 and recorded in Plat Book P-48, at Page 308, in the Register of Deeds Office for Oconee County, South Carolina, reference being made to said plat for a more complete metes and bounds description thereof.

Tract 4:

All that certain piece, parcel or lot of land situate, lying and being in the Whitewater Township, County of Oconee, South Carolina being shown and designated as Lot No. 6-D on a plat entitled "Matthew T. Lindner and Leslie M. Lindner", prepared by Cornerstone of Sunch, inc., dated February 8, 2001 and recorded in Plat Book 1147 at Page 32 in the R/O Office for Oconee County, South Carolina, and being further shown on a "Survey for William E. Masters", prepared by Ray Dunn and Surveyor, dated June 30, 2003 and recorded in Plat Book 1310, at Page 7 in the R/O Office for Oconee County, South Carolina. Reference to more recent plat of record is hereby created for a more complete metes and bounds description thereof.

This being the same property conveyed unto Jocassee Partners Holdings, LLC by deed dated January 11, 2007 and recorded August 8, 2007 in Deed Book 1604 at page 119, Oconee County records.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2009 SEP 10 P 4 18



James W. Logan, Jr., Esquire
e-mail: logan@loganjollysmith.com

December 18, 2009

**Certified Mail – Return Receipt
Restricted Delivery**

1805 North Boulevard
Anderson, SC 29621
Telephone: 864-226-1910
Facsimile: 864-226-1931

Mailing Address
Post Office Box 259
Anderson, SC 29622

www.loganjollysmith.com

Jocassee Partners Holdings, LLC, Individually
Jocassee Partners Holdings, LLC
d/b/a The Jocassee Club
c/o William E. Masters, Registered Agent
150 Foothills Road
Greenville, SC 29617

RE: Crenshaws TV & Appliance v. Jocassee Partners Holdings, LLC,
individually and d/b/a The Jocassee Club and Bank of Travelers
Rest
C. A. No.: 2009-CP-37-1522

Dear Mr. Masters:

I enclose herewith and serve upon you the Summons, Notice, Lis
Pendens and Complaint in reference to the above captioned matter.

Yours very truly,

LOGAN, JOLLY & SMITH, LLP

James W. Logan, Jr.

James W. Logan, Jr.

JWL,jr/bk
Enclosures

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

***FOR MANDATED ADR COUNTIES ONLY**

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) C. A. No.: 2009-CP-37- 1522

Crenshaw's TV and Radio Service,)
Inc., d/b/a Crenshaws TV &)
Appliance,)

Plaintiff,)

-vs-)

Jocassee Partners Holdings, LLC)
Individually and d/b/a The)
Jocassee Club and Bank of)
Travelers Rest,)

Defendants.)

SUMMONS

2009 DEC 17 P 3:47

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT

TO THE DEFENDANT(S) ABOVE NAMED: Jocassee Partners Holdings, LLC,
Individually and d/b/a The Jocassee Club and Bank of Travelers Rest

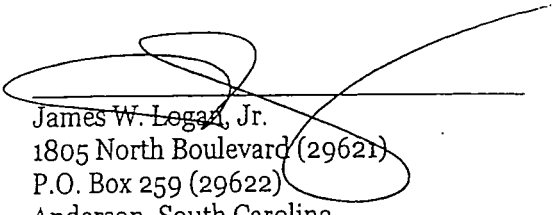
YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices at 1805 North Boulevard, Post Office Box 259, Anderson, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated at Anderson, South Carolina, on the 16 day of December, 2009.

LOGAN, JOLLY & SMITH, LLP

James W. Logan, Jr.
1805 North Boulevard (29621)
P.O. Box 259 (29622)
Anderson, South Carolina

LOGAN, JOLLY & SMITH, LLP



James W. Logan, Jr.
1805 North Boulevard (29621)
P.O. Box 259 (29622)
Anderson, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS
C. A. No.: 2009-CP-37- 1522

Crenshaw's TV and Radio Service,)
Inc., d/b/a Crenshaws TV &)
Appliance,)

Plaintiff,)

-VS-)

Jocassee Partners Holdings, LLC)
Individually and d/b/a The)
Jocassee Club and Bank of)
Travelers Rest,)

Defendants.)

LIS PENDENS # 2009-LP-37-504

Lis Pendens

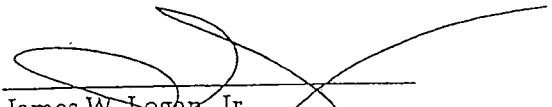
FILED-OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2009 DEC 17 P 3:47

TO THE DEFENDANT (S) ABOVE NAMED: Jocassee Partners Holdings,
LLC, Individually and d/b/a The Jocassee Club and Bank of Travelers Rest:

NOTICE IS HEREBY GIVEN that an action has been commenced and is now
pending in this Court upon Complaint of the above named Plaintiff against the above
named Defendant(s) for the foreclosure of a Mechanic's Lien dated September 9, 2009
and recorded in the office of the Register of Deeds for Oconee County, South Carolina,
on September 10, 2009, in Book 7 at page 11 and said premises are situate in Oconee
County, South Carolina and described in said mortgage as follows:

See Attached Exhibit B.

Dated: December 16, 2009


James W. Logan, Jr.
Logan, Jolly & Smith, LLP
1805 North Boulevard (29621)
P.O. Box 259 (29622)
Anderson, South Carolina
Attorney for Plaintiff

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) C. A. No.: 2009-CP-37- 1522

Crenshaw's TV and Radio Service,))
Inc., d/b/a Crenshaws TV &))
Appliance,))
Plaintiff,))

-vs-))

Jocassee Partners Holdings, LLC))
Individually and d/b/a The))
Jocassee Club and Bank of))
Travelers Rest,))
Defendants.))

COMPLAINT

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2009 DEC 17 P 3:47

The Plaintiff complaining of the Defendant, allege:

1. The Plaintiff is a corporation organized under the laws of the State of South Carolina, with its office and principal place of business in Anderson County, South Carolina; the Defendant, Jocassee Partners Holdings, LLC and The Jocassee Club is a corporation organized under the laws of the State of South Carolina with its office and principal place of business in Greenville, South Carolina and doing business in Oconee County, South Carolina, and the subject matter of this action is within the jurisdiction of this Court.

2. The Plaintiff at the instance and request of the Defendant, sold and delivered goods to the Defendant on account which goods are described and itemized on the attached verified Statement of Account for an agreed price and costs of Sixteen Thousand Nine Hundred Eighty Eight and 07/100 (\$16,988.07) Dollars after all credits for payment received.

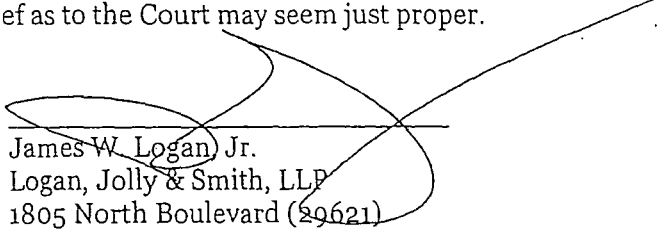
principal amount of Four Million Two Hundred Sixty Three Thousand and no/100 (\$4,256,000.00) Dollars dated February 1, 2008 and recorded February 1, 2008 in the office of the Register of Deeds for Oconee County, South Carolina in Book 2565 at page 162 and Assignment of Rents/Leases dated February 1, 2008 and recorded February 1, 2008 in Book 2565 at page 171, Oconee County records.

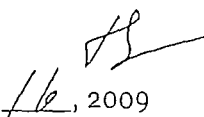
8. That less than six months have elapsed since the said materials were last furnished to the Defendant, Jocassee Partners Holdings, LLC and The Jocassee Club, by the Plaintiff.

9. That the Plaintiff is further entitled to recover as part of this Mechanic's Lien foreclosure action its reasonable attorney's fees as provided by Section 29-5-10 et. Seq., of the Code of Laws for South Carolina, 1976, as amended.

WHEREFORE, Plaintiff prays as follows:

1. That its Mechanic's Lien be enforced;
2. That this Court determine the priority and amount of the Plaintiff's Lien including interest, reasonable attorney's fees and costs;
3. That the Plaintiff be paid the sum of Eight Thousand Four Hundred Ninety Four and 03/100 (\$8,494.03) Dollars plus interest, reasonable attorney's fees and costs;
4. For such other and further relief as to the Court may seem just proper.


James W. Logan Jr.
Logan, Jolly & Smith, LLP
1805 North Boulevard (29621)
P.O. Box 259 (29622)
Anderson, South Carolina
Attorney for Plaintiff

Dated: December , 2009

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE) C.A. No. 2007-CP-37-1522

Crenshaw's TV and Radio Service, Inc.,)
dba Crenshaws TV&Appliance)

Plaintiffs,)

v.)

Jocassee Partners Holdings, LLC,)
Individually and d/b/a The Jocassee Club)
and Bank of Traveler's Rest.)

Defendants.)

**ANSWER AND COUNTERCLAIM
(JURY TRIAL DEMANDED)**

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2009 DEC 30 A 8:32

Defendants, Jocassee Partners Holdings, LLC, Individually and d/b/a The Jocassee Club ("JPH" or "Defendant") by way of Answer and Counterclaim would respectfully allege and show as follows.

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinbelow specifically admitted, modified, or explained, is denied and strict proof demanded thereof.

2. Answering Paragraph 1, this Defendant admits that JPH is a Limited Liability Company, organized under the laws of the state of South Carolina, and doing business in Oconee County, South Carolina, and that the subject matter of the action is within the jurisdiction of the Court.

3. Answering Paragraph 2, this Defendant admits that Plaintiff supplied the goods and materials described in the statement of account to the Defendant, but this Defendant denies that it, in any respect, had any contract with Plaintiff.

4. Answering Paragraph 3, this Defendant would allege and show that the full amount on the statement of account has been tendered to Plaintiff by letter dated October 14,

15. By reason of Plaintiff's rejection of that offer, Defendant is entitled to recover all costs and Attorney's Fees.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Abuse of Process)

16. Defendant herein incorporates by reference all prior allegations consistent herewith.

17. Defendant would respectfully allege and show that Plaintiff filed the Complaint with an ulterior purpose or bad intent of causing injury and financial injury to the Defendant, solely for the purpose of furthering its own agenda.

18. The filing of the Complaint by the Plaintiff was a willful act in the use of process that is not proper in the regular conduct of the proceeding (malicious perversion of the process for a result that is not legitimate.)

19. Defendant would respectfully allege and show that as a direct and proximate result of Plaintiff's abuse of process, Defendant has experienced significant loss and injury.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Slander of Title)

20. Defendant herein incorporates by reference all prior allegations consistent herewith.

21. Defendant would respectfully allege and show that Plaintiff's recording of a Lis Pendens, Mechanic's Lien, and this action against property not subject to any alleged improvement by Plaintiff constitutes publication of a false statement derogatory to Plaintiff's title.

22. Plaintiff's action was malicious inasmuch as Plaintiff rejected in full payment from Defendant before instituting this action, and has caused special damage to Defendant, and Plaintiff has diminished the value of Defendant's property in the eyes of Third Parties.

23. As a result, Defendant is entitled to recover actual and punitive damages against Plaintiff.

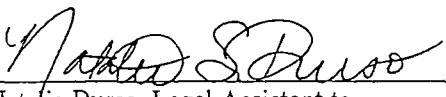
EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	C.A. No. 2007-CP-37-1522
	)	
Crenshaw's TV and Radio Service, Inc., dba	)	
Crenshaws TV&Appliance	)	
	)	
	)	CERTIFICATE OF SERVICE
Plaintiffs,	)	
	)	
v.	)	
Jocassee Partners Holdings, LLC,	)	
Individually and d/b/a The Jocassee Club	)	
and Bank of Traveler's Rest.	)	
	)	
Defendants.	)	

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2009 DEC 30 A 8:32

I did this date serve a copy of Defendant's Answer and Counterclaim upon counsel for Plaintiff, via U.S. Mail and addressed as follows:

James W. Logan, Jr., Esq.
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622

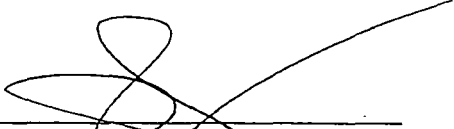

Natalie Durso, Legal Assistant to
T.S. Stern, Jr. (S.C. Bar #5337)
Covington, Patrick, Hagins, Stern & Lewis, P.A.
P.O. Box 2343
Greenville, SC 29602

December 30, 2009
Greenville, South Carolina

4. The Plaintiff denies all allegations contained in the Defendant's

Counterclaims and demands strict proof thereof.

Wherefore having fully replied to the Defendant's Counterclaims, the Plaintiff prays that the same be dismissed and for such other and further relief as this Court deems just and proper.



James W. Logan, Jr.
Logan, Jolly & Smith, LLP
1805 North Boulevard (29621)
P.O. Box 259 (29622)
Anderson, South Carolina
Attorney for Plaintiff

Dated: January 22, 2010

LOGAN, JOLLY & SMITH, L.L.P.

James W. Logan, Jr. (BK)

James W. Logan, Jr.
1805 North Boulevard (29621)
P.O. Box 259 (29622)
Anderson, South Carolina
(864) 226-1910
(864) 226-1931 (Fax)
Attorneys for Plaintiff

Dated: January 22, 2010

☒ MOTION FEE COLLECTED: 25.00
☐ CONTESTED - AMOUNT DUE: _____

FILED O'CONNOR, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2019 FEB 25 P 3:42

\$8,494.03, the remaining balance of the Mechanic's Lien. Plaintiff refused to accept this check as admitted in Paragraph 3 of Plaintiff's Complaint which is attached hereto as Exhibit A.

On December 17, 2009, nearly two months after Defendant had tendered payment of the Mechanic's Lien in full, Plaintiff filed suit in the Office of the Clerk of Court for Oconee County in order to foreclose on the Mechanic's Lien. By letter dated December 29, 2009, Defendant again tried to settle this matter by offering to settle this matter by paying the remaining balance of the Mechanic's Lien. This Offer of Settlement was filed with the Court and is attached hereto as Exhibit B and incorporated herein. Approximately one week later, Plaintiff filed its own Offer of Settlement in the same amount as Defendant's Offer of Settlement. Plaintiff's Offer of Settlement is attached hereto as Exhibit C and incorporated herein by reference. However, when Defendant tendered this amount to Plaintiff, Plaintiff again refused to accept Defendant's tender as evidenced by the letters attached hereto as Exhibit D and Exhibit E, respectively. The basis for Plaintiff's refusal was that it was entitled to attorney's fees and costs in addition to the lien amount. Defendant still agrees to pay unto Plaintiff the remaining balance of Plaintiff's Mechanic's Lien, and the Offers of Settlement filed by Plaintiff and Defendant in identical amounts should have operated as a settlement of this claim.

Defendant therefore would show unto the Court that summary judgment is appropriate in this matter on the following grounds:

- (1) Defendant has tendered to Plaintiff the full value of Plaintiff's mechanic's lien;
 - (2) Defendant has offered to settle Plaintiff's mechanic's lien claim under S.C. Code Ann. § 29-5-20 (2009) for the remaining balance of Plaintiff's mechanic's lien;
- and

T.S. Stern, Jr., S.C. Bar No. 5337
Covington, Patrick, Hagins, Stern & Lewis, P.A.
P.O. Box 2343
Greenville, SC 29602
(864) 242-9000

*Attorneys for Defendant, Jocassee Partners
Holdings, LLC Individually and d/b/a The Jocassee
Club*

February 24, 2010
Greenville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) C. A. No.: 2009-CP-37- 1522
COUNTY OF OCONEE)

Crenshaw's TV and Radio Service,))
Inc., d/b/a Crenshaws TV &)
Appliance,)

Plaintiff,)

-vs-)

Jocassee Partners Holdings, LLC)
Individually and d/b/a The)
Jocassee Club and Bank of)
Travelers Rest,)

Defendants.)

COMPLAINT

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2009 DEC 17 P 3:47

The Plaintiff complaining of the Defendant, allege:

1. The Plaintiff is a corporation organized under the laws of the State of South Carolina, with its office and principal place of business in Anderson County, South Carolina; the Defendant, Jocassee Partners Holdings, LLC and The Jocassee Club is a corporation organized under the laws of the State of South Carolina with its office and principal place of business in Greenville, South Carolina and doing business in Oconee County, South Carolina, and the subject matter of this action is within the jurisdiction of this Court.

2. The Plaintiff at the instance and request of the Defendant, sold and delivered goods to the Defendant on account which goods are described and itemized on the attached verified Statement of Account for an agreed price and costs of Sixteen Thousand Nine Hundred Eighty Eight and 07/100 (\$16,988.07) Dollars after all credits for payment received.

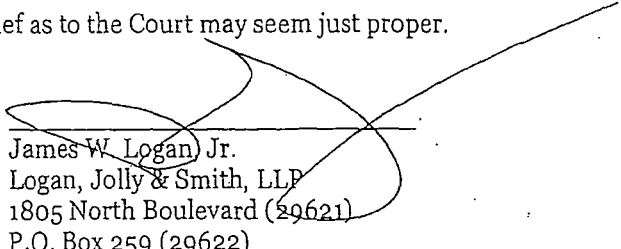
principal amount of Four Million Two Hundred Sixty Three Thousand and no/100 (\$4,256,000.00) Dollars dated February 1, 2008 and recorded February 1, 2008 in the office of the Register of Deeds for Oconee County, South Carolina in Book 2565 at page 162 and Assignment of Rents/Leases dated February 1, 2008 and recorded February 1, 2008 in Book 2565 at page 171, Oconee County records.

8. That less than six months have elapsed since the said materials were last furnished to the Defendant, Jocassee Partners Holdings, LLC and The Jocassee Club, by the Plaintiff.

9. That the Plaintiff is further entitled to recover as part of this Mechanic's Lien foreclosure action its reasonable attorney's fees as provided by Section 29-5-10 et. Seq., of the Code of Laws for South Carolina, 1976, as amended.

WHEREFORE, Plaintiff prays as follows:

1. That its Mechanic's Lien be enforced;
2. That this Court determine the priority and amount of the Plaintiff's Lien including interest, reasonable attorney's fees and costs;
3. That the Plaintiff be paid the sum of Eight Thousand Four Hundred Ninety Four and 03/100 (\$8,494.03) Dollars plus interest, reasonable attorney's fees and costs;
4. For such other and further relief as to the Court may seem just proper.


James W. Logan, Jr.
Logan, Jolly & Smith, LLP
1805 North Boulevard (29621)
P.O. Box 259 (29622)
Anderson, South Carolina
Attorney for Plaintiff

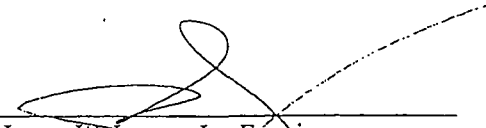

Dated: December 16, 2009

Exhibit B

Defendant's Motion for Summary Judgment

Exhibit C

Defendant's Motion for Summary Judgment



James W. Logan, Jr., Esquire
Logan, Jolly & Smith, LLP
1805 North Boulevard (29621)
P.O. Box 259
Anderson, SC 29622
(864) 226-1910
(864) 226-1931 Fax
logan@loganjollysmith.com
Attorney for Plaintiff

Dated: January 6th, 2010

COVINGTON PATRICK HAGINS STERN  LEWIS, PA

Writer's Direct E-Mail: sstern@covpatlaw.com
Direct Dial: (864) 240-5516

January 20, 2010

James W. Logan, Jr., Esq.
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622

RE: Crenshaw's TV and Radio Service, Inc v. Jocassee Partners Holdings,
LLC
C.A. No. 2007-CP-37-1522

Eugene C. Covington, Jr. Dear Jim:

Douglas F. Patrick

John A. Hagins, Jr.

T. S. Stern, Jr.

Stephen R. H. Lewis

Pursuant to S.C. Code Ann. § 29-5-20 and our offer dated December 29, 2009 and filed December 30, 2009, enclosed herewith please find Jocassee Partner's Holdings' check in the amount of \$8,494.03, which represents the total balance of the Mechanic's Lien claim.

I am in receipt of your letter of January 11, 2010, in which you claim, in addition to that amount, some \$5,122.32 in Attorney's Fees. I believe that you are mistaken in your claim to the entitlement to Attorney's Fees. As you know, in October, my client tendered a check in this same amount which was rejected. Although the mechanic's lien was placed upon the property at this time, the statute makes clear that, not only this offer, but also the formal offer of settlement I previously provided to you, operates as a settlement of all matters pertaining to the Lien, including any claim to costs and Attorney's Fees.

S.C. Code Ann. § 29-5-20 states that the prevailing party is entitled to costs and attorneys' fees. This statute further states that the "party whose offer is closer to the verdict reached is considered the prevailing party in the action." Offers under this statute are to be made "exclusive of interest and costs". A clear reading of this statute shows that attorney's fees are treated like costs and thus should be excluded from any offers of settlement. Furthermore, any entitlement to attorney's fees arises only after the Court has rendered its verdict as to the underlying claim. Therefore, the amount of attorney's fees would be excluded from the verdict.

I have also confirmed that our construction of the offer provisions of §29-5-20 is correct with three respected construction attorneys.

Should you continue to refuse to accept our offer in full satisfaction of the Lien amount, we will formally move to for summary judgment dismiss the lien based

211 Pettigru Street
Greenville, SC 29601
1.800.849.2988
864.242.9000
FAX 864.233.9777
Mailing Address:
Post Office Box 2343
Greenville, SC 29602
www.covpatlaw.com

Jocasse Partners Holdings, LLC
150 Foot Hills Road
Greenville, SC 29617

BANK OF TRAVELERS REST
67-737/532

3880

1/12/2010

Pay to the
Order of

Crenshaws TV & Appliance

\$ **8,494.03

Eight Thousand Four Hundred Ninety-Four and 03/100*****

Dollars

Crenshaws TV & Appliance
221 East Main Street
Pendleton, SC 29670

memo

Balance Due/Customer # 102616

[Signature]

⑈003880⑈ ⑆05320737⑆ 50 79 328⑈

Crenshaws TV & Appliance

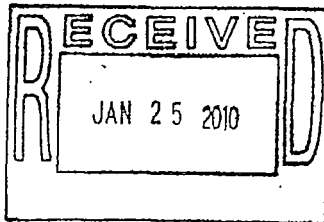
Balance Due/Customer # 102616

1/12/2010

3880
8,494.03

Bank of Travelers R Balance Due/Customer # 102616

8,494.03



James W. Logan, Jr., Esquire
Email: logan@loganjollysmith.com

January 22, 2010

1805 North Boulevard
Anderson, SC 29621
Telephone: 864-226-1910
Facsimile: 864-226-1931

Mailing Address
Post Office Box 259
Anderson, SC 29622

www.loganjollysmith.com

T. S. Stern, Jr.
Covington, Patrick, Hagins, Stern & Lewis
P.O. Box 2343
Greenville, SC 29602

Re: Crenshaws TV & Appliance v. Jocassee Partners Holdings, LLC,
individually and d/b/a The Jocassee Club

Dear Sandy:

This will acknowledge receipt of your letter dated January 20, 2010 with the enclosure referenced therein.

I am not surprised by the position you are taking in this matter and fully anticipated that that would be your position. However, your Answer included counterclaims that your client is now attempting to assert against my client. Your Offer of Judgment, while tendering the principal balance due, did not include a dismissal, with prejudice, of the counterclaims that you had filed on behalf of your client. It is my belief that any verdict rendered by the Court in this matter will not only include a verdict for the Plaintiff in the full amount due as to the underlying claim but also a verdict for the Plaintiff dismissing the Defendant's counterclaims, with prejudice. Accordingly, it is my opinion that such a verdict would be closer to the Offer of Judgment made on behalf of Crenshaw since it would include a dismissal of those counterclaims and would thus entitle the Plaintiff to attorney's fees, interest and costs.

COPY

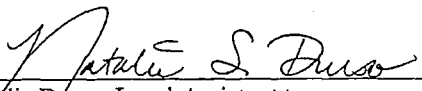
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) C.A. No. 2007-CP-37-1522
Crenshaw's TV and Radio Service, Inc., dba)
Crenshaws TV&Appliance)
Plaintiffs,)
v.)
Jocassee Partners Holdings, LLC,)
Individually and d/b/a The Jocassee Club)
and Bank of Traveler's Rest.)
Defendants.)

CERTIFICATE OF SERVICE

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2010 FEB 25 P 3:42

This is to certify that I did this date serve a true copy of Defendant's Motion for Summary Judgment upon counsel for Plaintiff, via U.S. Mail, proper postage affixed thereto, and addressed as follows:

James W. Logan, Jr., Esq.
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622


Natalie Durso, Legal Assistant to
T.S. Stern, Jr. (S.C. Bar #5337)
Covington, Patrick, Hagins, Stern & Lewis, P.A.
P.O. Box 2343
Greenville, SC 29602

February 24, 2010
Greenville, South Carolina

II. RELEVANT FACTS PERTINENT TO MOTION

The following facts are undisputed.

1. Plaintiff filed a mechanic's lien on September 10, 2009, in the amount of \$16,988.07 on property owned by Defendant. (Exhibit 1)
2. Defendant paid the sum of Eight Thousand Four Hundred Nine Four and 03/100 (\$8,494.03) Dollars to Plaintiff prior to Plaintiff's instituting this foreclosure action.
3. Defendant tendered to Plaintiff the remaining balance of Plaintiff's mechanic's lien prior to Plaintiff's instituting this foreclosure action as evidenced by its letter to Plaintiff dated October 14, 2009. (Exhibit 2)
4. Plaintiff refused to accept Defendant's tender of the remaining balance of the mechanic's lien on the basis that it claimed it was due additional sums for attorney's fees.
5. Two months later, despite being offered payment in full, on December 17, 2009, Plaintiff filed its Complaint to foreclose on its mechanic's lien alleging that it was entitled to recover the remaining balance of the mechanic's lien, plus interest, costs and attorney's fees. (Exhibit 3)
6. By letter dated December 29, 2009, Defendant offered to pay to Plaintiff the remaining balance of Plaintiff's mechanic's lien. This tender was again rejected by Plaintiff. (Exhibit 4)
7. On December 30, 2009, Defendant filed its letter to opposing counsel dated December 29, 2009. Pursuant to the terms of the letter, the same constituted an Offer of Settlement in accordance with S.C. Code Ann. § 29-5-20. (Exhibit 4)
8. On December 30, 2009, Plaintiff's Answer and Counterclaim was filed with the Oconee County Clerk of Court. (Exhibit 5)

Dairies, Inc. v. J.C. Pelfrey, 234 S.E.2d 490 (S.C. 1977). Summary judgment is appropriate where “plain, palpable and undisputed facts exist on which reasonable minds cannot differ.” *Main v. Corley*, 316 S.E.2d 406, 407 (S.C. 1984) (citing *Williams v. Chesterfield Lumber Co.*, 230 S.E.2d 447 (S.C. 1976)). The Rule mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case and on which that party will bear the burden of proof at trial. See, e.g. *Cray Communications, Inc. v. Novatel Computer Sys., Inc.*, 33 F.3d 390, 393 (4th Cir. 1994) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

IV. DISCUSSION IN SUPPORT OF SUMMARY JUDGMENT

As evidenced by Plaintiff’s Complaint, Plaintiff has sued Defendant for the purpose of foreclosing on its mechanic’s lien filed September 10, 2009. Because Defendant tendered to Plaintiff payment in full satisfaction of the mechanic’s lien, Defendant denied Plaintiff’s entitlement to foreclose on the lien and brought counterclaims against Plaintiff for Abuse of Process, Slander of Title and Recovery of Attorney’s Fees pursuant to S.C. Code Ann. § 29-5-20 (2009). In its Reply, Plaintiff denied the allegations of Defendant set forth in the Answer and Counterclaim.

As shown by Plaintiff’s Complaint and the undisputed facts and evidence, this is a purely legal matter involving the entitlement to attorney’s fees under the mechanic’s lien statute. For the reasons set forth below, Defendant would show that Plaintiff is not entitled to recover attorney’s fees in this matter. To the contrary, this Court should award attorney’s fees to Defendant for its efforts to remove the lien.

A. As to Plaintiff’s Mechanic’s Lien and Defendant’s Counterclaim:

On September 10, 2009, Plaintiff filed a Mechanic’s Lien against property owned by Defendant, Jocassee Partners Holdings, LLC in the amount of \$16,988.07(Exhibit 1). Plaintiff’s

Defendant still agrees to pay unto Plaintiff the remaining balance of Plaintiff's mechanic's lien, as evidenced by its Offer of Settlement filed with the Court. This payment would constitute a settlement of all claims and counterclaims filed in this matter.

B. As to Attorney's Fees and Costs

As noted above, Plaintiff refused payment of Defendant's tender because it believes that it is entitled to attorney's fees and costs in this matter. This is incorrect because Plaintiff is not, nor could not be the "prevailing party" since it has been offered every penny it would be entitled to recover. To the contrary, Defendant would show unto the Court that it is entitled to attorney's fees in having to defend against the lien, because Plaintiff has refused to accept payment in full. The applicable statute is S.C. Code Ann. § 29-5-20 (2009). This statute states in pertinent part the following:

- (a) Every laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon, subject to existing liens of which he has actual or constructive notice, to the value of the labor or material so furnished, including the costs of the action and a reasonable attorney's fee which must be determined by the court in which the action is brought but only if the party seeking to enforce the lien prevails. If the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court. The fee and the court costs may not exceed the amount of the lien. The lien may be enforced as herein provided.
- (c) Not less than fifteen days before the first term of court at which the trial is set, either party may file and serve on the other party an offer of settlement, and within ten days thereafter the party served may respond by filing and serving his offer of settlement. The offer shall state that it is made under this section and specify the amount, exclusive of interest and costs, which the party serving the offer is willing to agree constitutes a settlement of the lien. If the action is not reached for trial, then not less than fifteen days before the next term of court and subsequent terms of court at which the trial is set, either party may file and serve on the other party an offer of settlement or an amendment of a prior offer of settlement and, within ten days after that, the party served may respond by filing and serving his offer or amended offer of settlement. The offer supersedes any offer previously made under this section by the same party.

further stated that “the intent of the legislature in allowing the prevailing party in an action brought under the mechanic’s lien statute to recover attorney fees and costs stems from a desire to deter both wrongful filing of liens and unjustified refusal to pay debts subject to mechanic’s liens.” *Id.* at 486. See also, *Keeney’s Metal Roofing, inc. v. Brian A. Palmieri*, 345 S.C. 550, 548 S.E.2d 900 (2001).

Here, the actions of Plaintiff are in complete opposition to the intent of the legislature. Defendant was trying to settle disputes with its general contractor when Plaintiff filed its lien. As a show of good faith, Defendant promptly paid one-half of the Plaintiff’s lien. Approximately one month after the filing of Plaintiff’s lien, Defendant tendered the balance in full.² As a result of not accepting Defendant’s payment, Plaintiff has caused the costs and attorney’s fees for both Plaintiff and Defendant to be incurred.

2. Interpretation as to Offers of Settlement under Subparagraph (c).

Also important to the nature of Plaintiff’s claim is the interpretation of the “Offer of Settlement” language found in S.C. Code Ann. § 29-5-20. Defendant has found no case law referencing the Legislature’s intent as to the provisions found in subparagraph (c) of the statute. However, Defendant would show that the statute provides that the offer is “exclusive of interest and costs, which the party serving the offer is willing to agree constitutes a settlement of the lien” (emphasis added).

Here, Plaintiff appears to say that two offers are necessary in order to settle the lien – the first as to the settlement of the amount of the lien and the second as to the amount of attorney’s fees and costs. This fact is evidenced by the Offer of Settlement filed by Plaintiff (Exhibit 6) and the cover letter it sent to Defendant (Exhibit 7). In its Offer of Settlement filed with the Court

² It is important to note that due to the filing of other liens against the subject property, payment to Plaintiff of the full value of its lien without the determination of priority amongst lien claimants left Defendant with a substantial risk of liability.

Based on the law, the right to attorney's fees and costs does not arise until there is a determination by the Court. Because there has been no such determination, Plaintiff had no right to attorney's fees prior to instituting an action to enforce the lien (and a subsequent decision by the court was rendered). Since Defendant tendered payment in full prior to institution of this foreclosure action, Plaintiff would have no right to recover attorney's fees and costs.

Additionally, it is important to note that because the right to attorney's fees and costs only arise upon a rendering by the Court, it is appropriate for such costs to be excluded from any offers of settlement.

4. Costs only accrue when an action is filed.

Even assuming *arguendo* that Defendant would be liable on the underlying lien claim, the attorney's fees and costs would only accrue upon the institution of an action. The statute states that the prevailing party is entitled to "costs of the action". Black's defines "action" as a criminal or civil proceeding. The filing of a lien does not begin a legal action and thus Plaintiff was not entitled to any costs when Defendant tendered payment of the remaining balance of the lien to Plaintiff.

By analogy, Defendant would also argue that Plaintiff was also not entitled to recovery of any attorney's fees at the time Defendant tendered payment of the remaining balance of the lien to Plaintiff. Although ruling on a separate issue, the Court in *Utilities Construction Co., Inc. v. Wilson*, 321 S.C. 244, 468 S.E.2d 1 (1996) stated that "it is the enforcement of the lien which confers the right to attorney fees." (emphasis added) It is not the filing of the lien which confers such right.

Similarly, the statute provided for attorney's fees to either the "party enforce[ing] the lien" or the party "defending against the lien". These actions only occur when an action has been

liable for such costs, when the result showed, that the subsequent proceedings on the part of the plaintiffs, were unnecessary.

The defendant is entitled to the Supreme Court costs, and it is so adjudged.

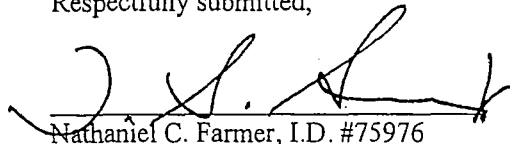
Thus, even though Plaintiff may succeed in recovering the value of its mechanic's lien, it should not be deemed the prevailing party because it refused payment of the full lien amount. Defendant should therefore be allowed to recover its costs and attorney's fees in this matter.

Additionally, Defendant offered to settle this matter for the full value of the lien on December 29, 2009. Since the offer is exclusive of attorney's fees and costs, only the Defendant can be the prevailing party under S.C. Code Ann. § 29-5-20 (2009). As such, Defendant should be entitled to attorney's fees and costs.

CONCLUSION

For the reasons stated above, there exists no genuinely disputed issues of material fact and Defendant is entitled to judgment as a matter of law.

Respectfully submitted,



Nathaniel C. Farmer, I.D. #75976
Patterson & Associates, P.A.
1088 North Church Street
Greenville, SC 29601
(864) 329-0548

T.S. Stern, Jr., I.D. #5337
Covington, Patrick, Hagins, Stern & Lewis, PA
P.O. Box 2343
Greenville, SC 29602
(864) 242-9000

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS
C. A. No.: 2009-CP-37-1522

Crenshaw's TV and Radio Service,)
Inc., d/b/a Crenshaws TV &)
Appliance,)

Plaintiff,)

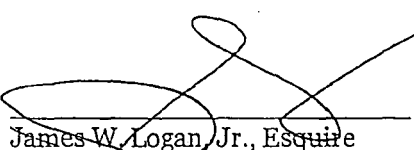
-vs-)

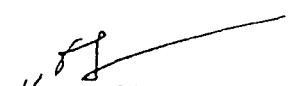
Jocassee Partners Holdings, LLC)
Individually and d/b/a The)
Jocassee Club and Bank of)
Travelers Rest,)

Defendants.)

***Motion for Summary
Judgment***

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through its undersigned counsel, hereby moves the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an order granting Summary Judgment in favor of the Plaintiff. This motion is based upon the grounds that the pleadings, depositions, Answers to Interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact as to the Defendant's claims, and that, therefore, the Plaintiff is entitled to judgment as a matter of law. This Motion is further based upon such authority as will be set forth in the Memorandum that will be filed in support of the Motion.


James W. Logan, Jr., Esquire
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622
864-226-1910
864-226-1931 (fax)
Attorney for Plaintiff


Dated: June 11, 2010

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) C. A. No.: 2009-CP-37-1522
COUNTY OF OCONEE)

Crenshaw's TV and Radio Service,)
Inc., d/b/a Crenshaws TV &)
Appliance,)

Plaintiff,)

-vs-)

Jocassee Partners Holdings, LLC)
Individually and d/b/a The)
Jocassee Club and Bank of)
Travelers Rest,)

Defendants.)

Certificate of Service by Mail

The undersigned does hereby certify that he is one of the attorneys for the Plaintiff in the above entitled action; that he has this date served a copy of the Plaintiff's **Motion for Summary Judgment** upon the defendant Jocassee Partners Holdings, LLC d/b/a The Jocassee Club by depositing the said copy in the United States Mail at Anderson, South Carolina, with prepaid, certified mail and first class postage affixed, addressed as follows:

T. S. Stern, Jr.
Covington, Patrick, Hagins, Stern & Lewis
P.O. Box 2343
Greenville, SC 29602

Bank of Travelers Rest
c/o R. Bruce White
42 Plaza Drive
Travelers Rest, SC 29690

County of Oconee

In the Court of Common Pleas

Crenshaw's TV & Radio Service,
Inc.,

Plaintiff,

-VS-

Jocassee Partners Holdings,

Defendant.

2009-CP-37-01522

April 12, 2010

Transcript of Record

BEFORE:

The Honorable R. Lawton McIntosh, Judge

APPEARANCES:

James W. Logan, Jr., Esquire
Attorney for the Plaintiff

T.S. Stern, Jr., Esquire
Nathaniel C. Farmer, Esquire
Attorney for Defendant

Renee Tollison
Circuit Court Reporter

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 10:14 a.m.)

4 THE COURT: Mr. Logan, is this your motion?

5 MR. LOGAN: No, sir. It's Mr. Stern's motion
6 for summary judgment, Your Honor.

7 THE COURT: This is your motion?

8 MR. STERN: Yes, sir.

9 THE COURT: Okay. I've got a brief. And I
10 have not read it yet, so I will. Go ahead.

11 MR. STERN: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. STERN: Sandy Stern and Nathan Farmer here
14 for the Defendant Jocassee Partners Holdings, L.L.C.
15 This is a motion for summary judgment that really turns
16 on what is, I think, a purely legal matter. Really, we
17 don't have any facts in dispute, but I'll just review
18 them briefly.

19 This case is about a project up on Lake Jocassee,
20 sort of a interval ownership project done by Jocassee
21 Partners Holding. The general contractor for the project
22 was a company called Central Contracting Corporation.
23 And the Plaintiff in the case, Crenshaw's TV and Radio
24 Service, was a subcontractor supplier to Central
25 Contracting on that project.

1 I exchanged correspondence. We made another offer of
2 settlement which enclosed a check for the same amount
3 that had previously been offered way back in October of
4 2009.

5 So this is an action by a lower-tier subcontractor
6 on a project. There's no privity between Crenshaw and
7 Jocassee Partners. The issue is whether a party is
8 entitled to attorney's fees just for the filing of the
9 lien. The law is crystal clear, we believe, that to
10 recover attorney's fees the claimant must be considered a
11 prevailing party. And the fees, by the terms of the
12 statute, are to be determined by the Court. And under
13 the statute you can be a party, a prevailing party, only
14 in one of two ways. First, by receiving a verdict that
15 is closer to the amount that you claim -- in this case,
16 sixteen thousand nine hundred and change -- or by --
17 through the offer of settlement process which is what we
18 went through in this case. And the only way you can get
19 an offer of settlement is if the ultimate award in the
20 case -- it's who the result is closest to ---

21 THE COURT: Right.

22 MR. STERN: --- exclusive of attorney's fees
23 and costs. Because we've tendered the full amount of any
24 verdict that Crenshaw would be entitled to, going way
25 back to October of 2009, Crenshaw cannot be the

1 entitlement to attorney's fees. And that's not what the
2 statute says. And if you think about it, one of the
3 logical consequences of what Crenshaw is saying in this
4 case is -- let's say they file a mechanic's lien and
5 never perfect it. If you accept what Crenshaw's saying
6 is true, the Defendant would be entitled to its
7 attorney's fees because the lien would go. And that's
8 clearly not the law either. There are a number of
9 consequences from that, but it's pretty clear to me and
10 pretty clear by the terms of the statute that you're only
11 entitled to attorney's fees if you prevail in the
12 foreclosure action. And that's the basis. It would mean
13 that, you know, that in the instance I said, that a
14 perfectly innocent owner tenders the full amount and he
15 does what the statute would require him to do, pay that
16 lien off. But he still -- he doesn't even know how much
17 to pay off because he's still liable for attorney's fees
18 if you accept what Crenshaw is saying. So we think for
19 that reason that we're clearly entitled.

20 The interpretation that Crenshaw gives would really
21 discourage settlements because a lien goes on by a lower-
22 tier subcontractor. He doesn't know how much attorney's
23 fees are paid. It just means that he can't pay it off at
24 that time as we attempted to do in this case.

25 So Your Honor, we think that for that reason and

1 should have accepted the initial tender. It should have
2 accepted the offer of settlement. And for that reason,
3 because of the offer of settlement, the only thing that
4 they would ever be entitled to is the amount we've
5 already offered. And for that reason we think that we're
6 entitled to summary judgment as to that claim conditioned
7 upon our tendering the amount we've been trying to tender
8 back in October as well as our attorney's fees for having
9 to defend an action that was unnecessary.

10 Thank you.

11 THE COURT: Thank you, Mr. Stern.

12 Mr. Logan?

13 MR. LOGAN: Good morning, Your Honor.

14 Mr. Stern has left out a few things that I would
15 like to bring to the Court's attention. First of all,
16 I'd like to pass up a copy of what I believe to be the
17 applicable statute which is § 29-5-20. I've highlighted
18 a few provisions that I would like to specifically point
19 the Court to. If you'll see -- and whether it's § 29-5-
20 10 or § 29-5-20, the language is basically the same. So
21 that's a difference without any significance. I think §
22 20 is the applicable one. Every laborer, mechanic,
23 subcontractor, et cetera, when the improvement has been
24 authorized by the owner -- and there's no question that
25 is the case here -- has a lien thereon subject to

1 check, please be advised that it is accepting that check
2 with the understanding that not only is there a remaining
3 balance due on the invoice as indicated in your letter,
4 but there is also now due and owing as part of the
5 claimant's claim or lien all other damages that are
6 recoverable by my client since it was necessary for my
7 client to file the lien. By accepting the check, we do
8 not waive that and are including -- and are due the
9 balance of the invoice and also other damages.

10 The next I heard from Mr. Masters was in October.
11 So basically I put them on notice that the balance was
12 still due as well as attorney's fees. So we're not
13 talking about an innocent owner who doesn't know what's
14 going on or doesn't know the involvement of my client.

15 October 14 of 2009, I get a letter from Mr. Masters.
16 Well, actually my client, Crenshaw, gets the letter which
17 Mr. Crenshaw sends to me. And he says -- and this is
18 despite my letter of September the 23rd -- enclosed you
19 will find final payment. And that was for just the
20 balance. And then the second paragraph says, acceptance
21 of this check is your company's confirmation of payment
22 in full. Well, that's not payment in full of the lien as
23 described under the particular code section involved.

24 So at the authorization of my client, we filed suit
25 to enforce the lien. So we not only have a lien that was

1 Now, keep in mind that at the time this letter is
2 sent, he has also filed not only an answer but
3 counterclaims. This letter, this offer of judgment, says
4 nothing about dismissing the counterclaims. And as you
5 know, counterclaims exist independently of the main
6 action. And whether you settle the main action or
7 conclude the main action, the counterclaims can proceed
8 if they are not resolved as part of that. And there's
9 nothing in this offer of judgment that includes a
10 counterclaim.

11 I respond to that with the Plaintiff's offer of
12 judgment, which I'm permitted to do under the statute
13 that says, pursuant to these two sections, the plaintiff
14 hereby makes the offer of settlement to accept in
15 settlement of the lien the sum of eight thousand four
16 ninety-four and the dismissal with prejudice of all
17 counterclaims filed by the Defendant. And subsequent to
18 that, I get from Mr. Stern not only a letter in which he
19 seeks to clarify his offer, but now another offer of
20 judgment that includes not only payment of the balance in
21 full or what he characterizes as an offer of judgment,
22 but also agreeing to dismiss the counterclaims which, as
23 I understand it and would view it, is an acceptance of my
24 offer of judgment.

25 Now, my offer of judgment that I made ---

1 My offer of judgment, which included dismissal with
2 prejudice of the counterclaims, would be the one that
3 would ultimately prevail in my judgment. Or at the
4 least, I'm entitled to go forward and seek that result
5 from the court. And if I get that result from the court,
6 since my offer came first and was not an acceptance of
7 his offer, my client would deem to be the prevailing
8 party under the statute.

9 I think it would be fundamentally unfair under the
10 statute where a defendant forces a party to file a lien,
11 doesn't offer to pay everything that's owed under that
12 lien, forces a lawsuit to collect that amount and then
13 tries to come in and say, well, you're not entitled to
14 what the statute says you're entitled to. That's not
15 fair in my judgment, and nor is it consistent with what
16 the statute says encompasses the lien, nor the status of
17 the offer of judgment in this case if I prevail in the
18 action on the merits, which I believe I'm entitled to do
19 and which I believe I will do. So that's my argument.

20 THE COURT: Thank you, sir.

21 Mr. Stern?

22 MR. STERN: May it please the Court. Your
23 Honor, the bottom line is this. If you look at the
24 language of the statute, the fundamental flaw in that
25 entire argument is that it presumes payment of --

1 fallacy of the -- one of the fallacies of the argument,

2 Your Honor.

3 And I anticipated some of these and would show the
4 Court just some of the consequences that have just sort
5 of -- of getting at the interpretation that Mr. Logan
6 says. But the bottom line on all of it is you don't get
7 your fees and costs for having to file the lien. Because
8 again -- the other problem, too, Your Honor -- think
9 about it. In some of these projects the aggregate
10 liability of the owners, as the Court's aware, is the
11 amount that the owner owes to the general contractor.
12 What happens when you have multiple lien claims? If you
13 pay a lien and a fee -- say you have five lien claims.
14 Who gets fees and who doesn't? Because that pool is
15 limited. If you accept that argument, then one lower-
16 tier subcontractor would be preferred to another because
17 he may get his fees as opposed to the principal sums
18 because the maximum liability can only exceed the total
19 amount that the general contractor is owed from the
20 owner. So that creates yet another problem with that
21 interpretation in that if you owe fees from the mere
22 filing of it, you're reducing one other subcontractor
23 equally entitled to the amount he may be due on the
24 principal sum.

25 So those are the practical problems. We think we've

1 prejudice.

2 So for all of those reasons, I believe I'm entitled
3 to go forward. I ask that their motion for summary
4 judgment be dismissed and that I be allowed to proceed in
5 court, seek a ruling from the Court, and if successful,
6 have the Court determine that my client is the prevailing
7 party and be entitled to attorney's fees and costs.

8 Thank you.

9 THE COURT: Anything further?

10 MR. STERN: Just the only thing I would -- one
11 of the -- and I don't think this would be a matter of
12 dispute. But Mr. Logan also wrote a letter January 11th
13 that is part of the brief in this case too that we filed.
14 And I may be wrong. But this is where he says that
15 they'll accept the sum of thirteen thousand six hundred
16 sixteen, which is the eight thousand four ninety-four oh
17 three, the amount previously tendered after the filing of
18 the lien and before the foreclosure, plus five thousand
19 in attorney's fees. So that the Court has a full
20 understanding of all of the exchange of correspondence on
21 it, that's part of it, too. That's the first time an
22 amount, I believe, was offered or told to pay. You know,
23 for that reason we think we're correct on this legal
24 matter. Thank you.

25 THE COURT: Okay.

1 Certificate of Reporter

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Oconee County, South Carolina,
9 on the 12th day of April 2010.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 February 7, 2011

15 
16 _____
17 Circuit Court Reporter

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EXHIBITS

No	DESCRIPTION	ID	EV
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No Exhibits Were Presented During the Hearing

1 an order. And I will fill in the fees that I have so far
2 to date, plus -- charged at two hundred and fifty dollars
3 an hour for attorneys and eighty-five dollars an hour for
4 a paralegal, plus costs, a total of about eighty-two
5 hundred dollars.

6 MR. STERN: Which Your Honor is free to cut it
7 if you'd ...

8 THE COURT: Yeah, I'd love to cut some of his
9 fees every so often.

10 MR. LOGAN: Judge?

11 MR. STERN: Feel free.

12 THE COURT: I'm kidding.

13 MR. LOGAN: Oh, okay.

14 MR. STERN: I'll let you.

15 THE COURT: Well, that's good. So you're just
16 going to ---

17 MR. STERN: Yes, sir.

18 THE COURT: You can just email that to Aren.

19 MR. STERN: Okay.

20 THE COURT: And do you know how to do that?

21 MR. STERN: If I could just get the email
22 address.

23 THE COURT: Okay. It's 'L' McIntosh, M-C-I-N-
24 T-O-S-H, lc at sccourts.org.

25 MR. STERN: Yes, sir.

Crenshaw's TV & Radio Service Inc v. Jocassee Partners Holdings, LLC
August 2, 2010

6

1 a.m.)

2 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

*JOCASSEE PARTNERS HOLDINGS, LLC
150 Foot Hills Road
Greenville, SC 29617*

September 17th, 2009

Crenshaws TV & Appliance
221 East Main Street
Pendleton, SC 29670

Dear Sirs;

Enclosed you will find payment for 50% of the final invoice submitted by your company to Jocassee Partners Holdings, LLC (JPH) for services rendered per your contract with Central Contracting Company (CCC) at 177 Fisher Knob Road, Salem, SC 29676.

JPH apologizes for any economic burdens placed upon your company due to CCC's inability to provide JPH with timely and accurate financial records. We are paying 50% of the final invoice your company submitted to JPH as a gesture of good will and to provide some relief to your business while CCC and JPH continue to resolve this dispute. JPH has invited CCC to offer the same good will to your company so that you are paid in full. However, if this invitation is not accepted by CCC, upon resolution of this dispute, JPH will immediately pay any remaining monies owed per the final invoice attached. In order to limit any hardship, JPH also agrees to extend the time subcontractors have to file mechanics liens on the above property due to this dispute.

<i>VENDOR</i>	<i>TOTAL</i>	<i>50%</i>	<i>BALANCE</i>
<i>Crenshaws TV & App.</i>	<i>16988.07</i>	<i>8494.03</i>	<i>8494.03</i>

Thank you for your patience and understanding in this matter.



Nathan Masters
Jocassee Partners Holdings, LLC

JOCASSEE PARTNERS HOLDINGS, LLC
150 Foot Hills Road
Greenville, SC 29617

October 14, 2009

Crenshaw's TV & Appliance
221 East Main Street
Pendleton, SC 29670

Dear Sirs;

Enclosed you will find final payment for the invoice submitted by your company to Jocassee Partners Holdings, LLC (JPH) for services rendered per your contract with Central Contracting Company (CCC) at 177 Fisher Knob Road, Salem, SC 29676.

Acceptance of this check is your company's confirmation of payment in full.

Thank you for your patience and understanding in this matter.

Nathan Masters
Jocassee Partners Holdings, LLC

Copy

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) C. A. No.: 2009-CP-37-1522

Crenshaw's TV and Radio Service,)
Inc., d/b/a Crenshaws TV &)
Appliance,)
Plaintiff,)

-vs-

Jocassee Partners Holdings, LLC)
Individually and d/b/a The)
Jocassee Club and Bank of)
Travelers Rest,)
Defendants.)

Plaintiff's Offer of Settlement

TO: Defendant, Jocassee Partners Holdings, LLC and d/b/a The Jocassee Club, and T. S. Stern, Jr. as attorney for said Defendant

Plaintiff, Crenshaw's TV and Radio Service, Inc., d/b/a Crenshaws TV & Appliance (hereinafter "Plaintiff"), pursuant to S. C. Code Section 29-5-10 and/or 29-5-20, hereby makes an Offer of Settlement to accept in settlement of the lien in this case the sum of Eight Thousand Four Hundred Ninety Four and 03/100 (\$8,494.03) Dollars, exclusive of interest, costs and a reasonable attorney's fee for the Plaintiff to be determined by the Court, and the dismissal, with prejudice, of all counterclaims filed by the Defendant, Jocassee Partners Holdings, LLC, individually and d/b/a The Jocassee Club, in this action.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) C. A. No.: 2009-CP-37-1522

Crenshaw's TV and Radio Service,)
Inc., d/b/a Crenshaws TV &)
Appliance,)

Plaintiff,)

-vs-)

Jocassee Partners Holdings, LLC)
Individually and d/b/a The)
Jocassee Club and Bank of)
Travelers Rest,)

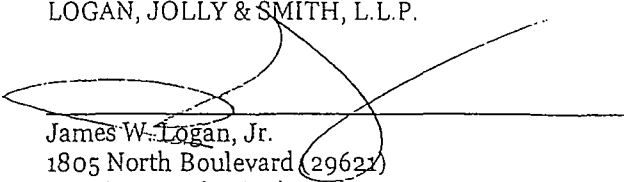
Defendants.)

Certificate of Service by Mail

The undersigned does hereby certify that he is one of the attorneys for the plaintiff in the above entitled action; that he has this date served a copy of the plaintiff's Offer of Settlement upon the defendant Jocassee Partners Holdings, LLC d/b/a The Jocassee Club by depositing the said copy in the United States Mail at Anderson, South Carolina, with prepaid, certified mail and first class postage affixed, addressed as follows:

T. S. Stern, Jr.
Covington, Patrick, Hagins, Stern & Lewis
P.O. Box 2343
Greenville, SC 29602

LOGAN, JOLLY & SMITH, L.L.P.


James W. Logan, Jr.
1805 North Boulevard (29622)
P.O. Box 259 (29622)
Anderson, South Carolina
(864) 226-1910
(864) 226-1931 (Fax)
Attorneys for Plaintiff

Dated: January 6, 2010

COVINGTON PATRICK HAGINS STERN  LEWIS, PA

Writer's Direct E-Mail: sstern@covpatlaw.com
Direct Dial: (864) 240-5516

January 20, 2010

James W. Logan, Jr., Esq.
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622

RE: Crenshaw's TV and Radio Service, Inc v. Jocassee Partners Holdings,
LLC
C.A. No. 2007-CP-37-1522

Eugene C. Covington, Jr. Dear Jim:

Douglas F. Patrick

John A. Hagins, Jr.

T. S. Stern, Jr.

Stephen R. H. Lewis

Pursuant to S.C. Code Ann. § 29-5-20 and our offer dated December 29, 2009 and filed December 30, 2009, enclosed herewith please find Jocassee Partner's Holdings' check in the amount of \$8,494.03, which represents the total balance of the Mechanic's Lien claim.

I am in receipt of your letter of January 11, 2010, in which you claim, in addition to that amount, some \$5,122.32 in Attorney's Fees. I believe that you are mistaken in your claim to the entitlement to Attorney's Fees. As you know, in October, my client tendered a check in this same amount which was rejected. Although the mechanic's lien was placed upon the property at this time, the statute makes clear that, not only this offer, but also the formal offer of settlement I previously provided to you, operates as a settlement of all matters pertaining to the Lien, including any claim to costs and Attorney's Fees.

S.C. Code Ann. § 29-5-20 states that the prevailing party is entitled to costs and attorneys' fees. This statute further states that the "party whose offer is closer to the verdict reached is considered the prevailing party in the action." Offers under this statute are to be made "exclusive of interest and costs". A clear reading of this statute shows that attorney's fees are treated like costs and thus should be excluded from any offers of settlement. Furthermore, any entitlement to attorney's fees arises only after the Court has rendered its verdict as to the underlying claim. Therefore, the amount of attorney's fees would be excluded from the verdict.

I have also confirmed that our construction of the offer provisions of §29-5-20 is correct with three respected construction attorneys.

Should you continue to refuse to accept our offer in full satisfaction of the Lien amount, we will formally move to for summary judgment dismiss the lien based

211 Pettigru Street
Greenville, SC 29601
1.800.849.2988
864.242.9000
X 864.233.9777

Mailing Address:
Post Office Box 2343
Greenville, SC 29602
www.covpatlaw.com

Jocasse Partners Holdings, LLC
150 Foot Hills Road
Greenville, SC 29617

BANK OF TRAVELERS REST
87-737/532

3880

1/12/2010

Pay to the
Order of

Crenshaws TV & Appliance

\$ **8,494.03

Eight Thousand Four Hundred Ninety-Four and 03/100 *****

Dollars

Crenshaws TV & Appliance
221 East Main Street
Pendleton, SC 29670

memo

Balance Due/Customer # 102616

⑈003880⑈ ⑈05320737⑈ 50 79 328⑈

Crenshaws TV & Appliance

Balance Due/Customer # 102616

1/12/2010

3880
8,494.03

Bank of Travelers R Balance Due/Customer # 102616

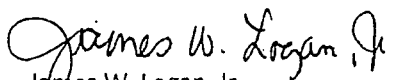
8,494.03

T. S. Stern, Jr.
Page 2
January 22, 2010

If you wish to discuss this matter in more detail, I will be happy to do so.

Yours very truly,

Logan, Jolly & Smith, L.L.P.


James W. Logan, Jr.

JWL,jr/bk

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Crenshaw's TV and Radio Service, Inc.,
d/b/a Crenshaws TV & Appliance,

Plaintiff,

v.

Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club
and Bank of Travelers Rest,

Defendants.

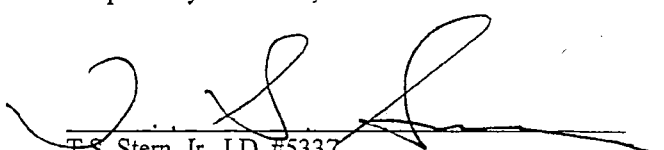
IN THE COURT OF COMMON PLEAS

Case No.: 2009-CP-37-1522

**DEFENDANT'S OFFER OF
SETTLEMENT TO PLAINTIFF**

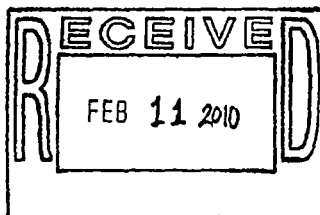
Pursuant to S.C. Code Ann. § 29-5-20, this Defendant, Jocassee Partners Holdings, LLC, hereby offers to pay to Plaintiff the sum of Eight Thousand Four Hundred Ninety-four and 03/100 (\$8,494.03) Dollars as a net settlement of the claims and counterclaims between Crenshaw's TV and Radio Service, Inc., d/b/a Crenshaws TV & Appliance, Plaintiff, and Jocassee Partners Holdings, LLC Individually and d/b/a The Jocassee Club and Bank of Travelers Rest, Defendants. This offer, if accepted, would settle all claims and counterclaims between Plaintiff and Defendants, which arise out of, or relate to the project which is the subject of this action, and such claims and counterclaims shall be dismissed with prejudice.

Respectfully submitted,


T.S. Stern, Jr., I.D. #5337

Covington, Patrick, Hagins, Stern & Lewis, P.A.
P.O. Box 2343
Greenville, SC 29602
(864) 242-9000 ext. 516

Greenville, South Carolina
February 4, 2010



James W. Logan, Jr., Esquire
Email: logan@loganjollysmith.com

February 10, 2010

1805 North Boulevard
Anderson, SC 29621
Telephone: 864-226-1910
Facsimile: 864-226-1931

Mailing Address
Post Office Box 259
Anderson, SC 29622

www.loganjollysmith.com

T. S. Stern, Jr.
Covington, Patrick, Hagins, Stern & Lewis
P.O. Box 2343
Greenville, SC 29602

Re: Crenshaws TV & Appliance v. Jocassee Partners Holdings, LLC,
individually and d/b/a The Jocassee Club

Dear Sandy:

This will acknowledge receipt of and thank you for your letter dated February 5, 2010 with enclosure referenced therein. It appears to me that your "clarification" to your Offer of Settlement dated December 29, 2009 is really an acceptance of my client's Offer of Settlement dated January 6, 2010 previously forwarded to you which included, as part of said Offer of Settlement, a dismissal, with prejudice, of your client's counterclaims. Accordingly, it is my position that by your client's acceptance, my client is deemed to be the "prevailing party" entitling it to costs, expenses and attorney's fees.

Therefore, please forward to me by return mail your client's check in the amount of \$8,494.03, plus the amount of costs and attorney's fees stated in my letter of January 11, 2010. Please also enclose appropriate documentation to satisfy the Mechanic's Lien for my signature.

Yours very truly,

Logan, Jolly & Smith, L.L.P.

JWLjr/bk

James W. Logan, Jr.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2009-CP-37-01522

Crenshaw's TV and Radio Service, Inc., d/b/a Crenshaw's
TV & Appliance,.....Respondent,

v.

Jocassee Partners Holdings, LLC individually and d/b/a
The Jocassee Club and Bank of Travelers Rest,
Of whom Jocassee Partners Holdings, LLC individually and
d/b/a The Jocassee Club is the Appellant.

APPELLANT'S INITIAL BRIEF

T. S. Stern, Jr. (SC Bar ID 5337)
V. Elizabeth Wright (SC Bar ID 76029)
Covington, Patrick, Hagins, Stern
& Lewis, P.A.
211 Pettigru Street
Greenville, SC 29601
(864) 242-9000
Attorneys for the Appellant

Other counsel of record:

James W. Logan, Jr.
Logan, Jolly & Smith, LLP
P.O. Box 259
Anderson, SC 29622
(864) 226-1910

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Statement of Issues on Appeal

- I. DID THE TRIAL COURT ERR IN AWARDING RESPONDENT ATTORNEY'S FEES UNDER S.C. CODE ANN. § 29-5-20 WHEN RESPONDENT HAD FILED, BUT NOT FORECLOSED, ITS MECHANIC'S LIEN AND HAD REFUSED TENDER OF THE FULL AMOUNT OF ITS MECHANIC'S LIEN BEFORE IT COMMENCED FORECLOSURE PROCEEDINGS?
- II. DID TRIAL COURT ERR IN FINDING RESPONDENT WAS PREVAILING PARTY UNDER S.C. CODE ANN. § 29-5-20 WHEN APPELLANT HAD PREVIOUSLY TENDERED THE FULL AMOUNT OF THE MECHANIC'S LIEN?

Statement of the Case

This action commenced on December 17, 2009 when Respondent Crenshaw's TV and Radio Service, Inc. ("Crenshaw") filed its Petition to Foreclose a Mechanic's Lien in the amount of \$16,988.07 against the property owner Appellant Jocassee Partners Holdings, LLC ("Jocassee"). Crenshaw, a supplier to the general contractor, Central Contracting, had not been paid by Central Contracting and filed its mechanic's lien on September 10, 2009 in the amount of \$16,988.07. The sole issue in this appeal is whether Jocassee owes Crenshaw attorney's fees for the filing of the mechanic's lien when S.C. Code Ann § 29-5-20 by its terms provides only for an award of attorney's fees to a prevailing party in litigation. Jocassee does not owe attorney's fees under this statute

because it tendered the full amount of the lien before the action was commenced and Crenshaw rejected such tender. The material facts in this case are not in dispute.

On April 12, 2010, the Honorable R. Lawton McIntosh heard Jocassee's argument for summary judgment, which was denied. On August 2, 2010, Judge McIntosh heard Jocassee's Motion to Reconsider and again denied Jocassee's Motion for Summary Judgment, but granted summary judgment to Crenshaw. Judge McIntosh's Order concerning Jocassee's Motion to Reconsider was filed on October 4, 2010. Jocassee filed its Notice of Appeal on October 12, 2010 and notified counsel for Crenshaw of the appeal on the same date.

Statement of Facts

This is an appeal from the circuit court's Order denying Jocassee's Motion to Reconsider and granting Crenshaw's Motion for Summary Judgment awarding attorney's fees in the amount of \$9,393.00. On September 10, 2009, Crenshaw filed a mechanic's lien in the amount of \$16,988.07 on property owned by Jocassee. (Mechanic's Lien, Crenshaw's TV and Radio Service, R. ____) Jocassee paid the sum of \$8,494.03 to Crenshaw prior to Crenshaw bringing a foreclosure action against Jocassee and later tendered to Crenshaw the remaining balance of the mechanic's lien, but Crenshaw refused to accept tender, claiming it was due additional sums for attorney's fees. (October 14, 2009 letter from Jocassee to Crenshaw, R. ____) Despite being offered payment in full for the mechanic's lien pursuant to the offer of settlement as set out in S.C. Code Ann. § 29-5-20, on December 17, 2009, Crenshaw filed its Complaint to foreclose on the mechanic's lien, alleging it was entitled to recover the remaining balance of the mechanic's lien, plus interest, costs and attorney's fees. (Complaint, R. ____). Jocassee again tendered the remaining balance of the mechanic's lien and again Crenshaw refused

tender. (Defendant's December 29, 2009 letter to Plaintiff, R. ____.) Jocassee filed this letter of tender with the Oconee Clerk of Court on December 30, 2009 as an Offer of Settlement as set out in S.C. Code § 29-5-20. (December 30, 2009 letter of Jocassee filing Offer of Settlement, R. __) and also filed its Answer and Counterclaims on the same day. (Answer and Counterclaims, R. ____).

Crenshaw filed its Offer of Settlement on January 7, 2010 for the same amount as listed on Jocassee's Offer of Settlement, exclusive of interest, costs and attorney's fees. (January 7, 2010 Offer of Settlement, R. ____). By letter of January 11, 2010, Crenshaw offered to settle the matter for \$13,616.35, which included the remaining amount of the mechanic's lien and attorney's fees in the amount of \$5,122.32. (January 7, 2010 letter of Plaintiff, R. ____). In its letter of January 20, 2010, Jocassee again tendered a check for the remaining balance of the mechanic's lien.¹ This was once again rejected. (January 20, 2010 letter of Defendant, R. ____). Crenshaw filed its Reply on January 25, 2010. (Reply, R. ____). On February 5, 2010, Jocassee clarified to Crenshaw that its December 29, 2009 offer of settlement included the dismissal of all asserted counterclaims. (February 5, 2010 letter, R. ____). Jocassee filed an Offer of Settlement on February 5, 2010 for the remainder of the mechanic's lien. (February 5, 2010 Offer of Settlement, R. ____). In response, on February 10, 2010, Crenshaw informed Jocassee that the Offer of Settlement was actually an acceptance of its offer and thus Crenshaw was the prevailing party. (February 10, 2010 letter of Plaintiff, R. ____). Jocassee filed its Motion for Summary Judgment on February 24, 2010 and the motion was heard on April 12, 2010. Summary judgment was denied. On August 2, 2010, Jocassee's Motion for Reconsideration was heard and its motion for summary judgment was denied while

¹ With this check the full amount of the lien has been paid without prejudice to either party.

Crenshaw's motion for summary judgment was granted. Jocassee timely filed its Notice of Appeal upon receipt of the court's order and this appeal follows.

Standard of Review

This is an appeal of an order granting summary judgment to Respondent Crenshaw and denying summary judgment to Appellant Jocassee. When reviewing an order granting summary judgment, the appellate court applies the same standards as the trial court. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Where there are no disputed issues of facts, the appellate court is free to decide a question of law with no particular deference to the circuit court. *Catawba Indian Tribe of S. Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007)(citing *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000)). Because the trial court erred as to a matter of law, Jocassee is entitled to a reversal of the trial court's order and a remand to the trial court for an award of reasonable attorney's fees as the prevailing party.

Argument

- I. THE TRIAL COURT ERRED IN AWARDING RESPONDENT ATTORNEY'S FEES UNDER S.C. CODE ANN. § 29-5-20 WHEN RESPONDENT HAD FILED, BUT NOT FORECLOSED, ITS MECHANIC'S LIEN AND HAD REFUSED TENDER OF THE FULL AMOUNT OF ITS MECHANIC'S LIEN BEFORE IT COMMENCED FORECLOSURE PROCEEDINGS.

Crenshaw contends that it is entitled to recover attorney's fees because it filed a mechanic's lien. (T. TR. April 12, 2010, R. ____). The trial court agreed despite the clear, contrary language of S.C. Code Ann. § 29-5-20 which states:

Every laborer, mechanic, subcontractor or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon, subject to existing liens of which he had actual or constructive notice...including the costs of the action and reasonable attorney's fees which must be determined by the court in which the action is brought but only if the party seeking to enforce the lien prevails. *Emphasis added.*

Having tendered the full amount of the mechanic's lien on October 14, 2009, the foreclosure action was unnecessary and Crenshaw should have accepted Jocassee's tender in full. The foreclosure action was commenced not because of a legitimate dispute as to Crenshaw's entitlement to the lien or the amount thereof, but rather solely to recover attorney's fees incurred in the filing of the lien. Jocassee paid of half of the amount owed on the mechanic's lien and tendered payment of the remaining half on October 14, 2010, two months prior to Crenshaw filing its foreclosure action. On that date no action had been filed, therefore Crenshaw was not entitled to attorney's fees. Had Crenshaw accepted the tender on October 14, 2010, the mechanic's lien would have been paid in full, rendering this protracted litigation moot.

For attorney's fees to be recovered the mechanic's lien claimant must bring a foreclosure action as expressly provided in the statute and it must prevail in the foreclosure action. Simply stated, if the General Assembly intended to award attorney's fees for filing a mechanic's lien, it would have used language which said that. Moreover, this interpretation makes sense because to rule otherwise would penalize the owner by requiring him to pay attorney's fees when his first notice of a supplier's claim was the service of the lien itself.

Case law under Section 29-5-20 is consistent with the plain meaning of the statute. In *Utilities Const. Co., Inc. v. Wilson*, 321 S.C. 244, 250, 468 S.E.2d 1, 5 (Ct. App. 1996)

this Court stated, “Clearly, under the statute a party is entitled to recover attorney’s fees if she prevails in defending against the lien.” In this opinion this Court also cited *Cedar Creek Properties v. Cantelou Assoc.*, 320 S.C. 483, 465 S.E.2d 774 (Ct. App. 1995) to show that the Legislature intended to afford a property owner a remedy where a mechanic attempts to enforce a defective or wrongful mechanic’s lien. *Utilities*, p. 3. Both the statute and the case law state unequivocally that the party bringing a mechanic’s lien must prevail in the lawsuit before it can collect attorney’s fees.

Crenshaw’s position, which is completely unsupported by the case law, would only encourage avarice and the “mining” for attorney’s fees by bringing unnecessary litigation rather than the amicable pre-suit resolution envisioned by the statute. Crenshaw rejected the tender two months prior to its filing the foreclosure action when Jocassee tendered the full amount of the lien. Further, in its Offer of Settlement on December 29, 2009, Jocassee again offered to settle for the full amount of the lien.

It is well-settled law in South Carolina that mechanic’s liens are purely statutory and can only be acquired and enforced in accordance with the conditions of the statute. *Multiplex Bldg. Corp. Inc. v. Lyles*, 268 S.C. 577, 579, 235 S.E.2d 133, 134 (1977) citing 53 Am.Jur.2d Mechanics’ Liens, § 2. It is also well-settled law in South Carolina that attorney’s fees are not recoverable unless based upon a contract or statute. In this case S.C. Code Ann. § 29-5-20 provides for the recovery of attorney’s fees. In *Cedar Creek Properties v. Cantelou Associates, Inc.*, 320 S.C. 483, 465 S.E.2d 774 (1995), the Court stated that the “primary rule of construction is to ascertain the intention of the legislature.” In *Cedar Creek Prop. id.*, the Court further stated that “the intent of the legislature in allowing the prevailing party in an action brought under the mechanic’s lien

statute to recover attorney fees and costs stems from a desire to deter both wrongful filing of liens and unjustified refusal to pay debts subject to mechanic's liens." *Id.* at 486.

Emphasis added.

Jocassee did precisely what the General Assembly envisioned when, in a show of good faith, it promptly paid one-half of Crenshaw's lien. Jocassee tendered the remainder of Crenshaw's lien, *which Crenshaw rejected* because it wanted attorney's fees to which it was not entitled. By improperly rejecting this tender Crenshaw manufactured its own justification for recovering attorney's fees and disregarded the rule of law that mechanic's liens can only be enforced in accordance with the conditions of the statute.

Multiplex, p. 579, 134. Clearly, Section 29-5-20 does not contemplate awarding attorney's fees for the mere filing of a mechanic's lien and just as clearly, the legislature did not contemplate attorney's fees as an incentive for parties to file foreclosure actions when the amount of the mechanic's lien has been tendered. Crenshaw is not entitled to attorney's fees and should not be rewarded with attorney's fees for bringing an action which should never have been brought.

II. THE TRIAL COURT ERRED IN FINDING RESPONDENT WAS
PREVAILING PARTY UNDER S.C. CODE ANN. § 29-5-20 WHEN
APPELLANT HAD PREVIOUSLY TENDERED THE FULL AMOUNT OF
THE LIEN.

In its Order the trial court found Crenshaw was the prevailing party under S.C. Code Ann. § 29-5-20 and was entitled to attorney's fees in the amount of \$9,393.00 plus costs of \$782.99. (Order, p. 3, R. ____). Subparagraph (a) of the statute clearly states that the "prevailing party" is entitled to attorney's fees and costs of the action. The statute further

states that the determination of the prevailing party would be based upon a verdict by the court. In *Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC*, 372 S.C. 89, 641 S.E.2d 459 (Ct. App. 2007) the court noted that “Section 29-5-20(A) of the South Carolina Code (Supp. 2005) provides attorney’s fees for the prevailing party in an action to enforce a lien. In an action to enforce a mechanic’s lien, the prevailing party receives a favorable decision or verdict on liability. (emphasis added.) Based on the law, the right to attorney’s fees and costs does not arise until there is a determination on liability by the court. Because there has been no such determination, Crenshaw is not the prevailing party and therefore is not entitled to attorney’s fees.

Jocassee is the prevailing party, not Crenshaw. Jocassee is defending against the lien filed by Crenshaw. Jocassee can also show it is the prevailing party for the following reasons:

- (1) Jocassee tendered payment in full of the mechanic’s lien prior to Crenshaw filing the foreclosure action; and
- (2) Jocassee is the prevailing party under S.C. Code Ann. § 29-5-20 because offers of settlement are exclusive of interest, costs, and attorney’s fees and Jocassee offered to settle this matter for the full value of Crenshaw’s mechanic’s lien.

The Court in *Burnett & Johnson v. Senn*, 93 S.C. 316 (1912) encountered similar facts as in this case when the plaintiffs refused to accept a tender made by the defendant concerning a mechanic’s lien. In rendering its decision, the Court state the following:

It was the wrongful act of the plaintiffs, in refusing the tender made by the defendant that rendered necessary the rendition of the judgment from which they appealed. The judgment of the Supreme Court was not more favorable to them, than the offer made by the defendant. Therefore, they accomplished nothing by the proceedings subsequent to the time of the tender, and cannot be said to have been the prevailing

party. It would be an injustice to the defendant, to make him liable for such costs, when the result showed, that the subsequent proceedings on the part of the plaintiffs, were unnecessary.

Id. at 317-318.

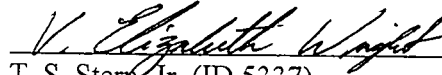
The facts in this case are similar to those in *Burnett*. As in *Burnett*, Jocassee tendered full value of the mechanic's lien to Crenshaw in an effort to avoid litigation. The most Crenshaw would receive if it were found to be the prevailing party would be the amount of the mechanic's lien, which Jocassee had already tendered. Despite Jocassee's tender of the full amount of the mechanic's lien, Crenshaw decided to take the matter to court in a foreclosure action. In so doing, Crenshaw added to the court costs and attorney's fees in an effort to get more money from Jocassee than to which it was entitled. The Supreme Court in *Burnett* found this sort of conduct to be an injustice to that defendant as it would be to Jocassee here. Crenshaw should not be declared the prevailing party and rewarded for bringing an unnecessary action in order to get more money from Jocassee.

Conclusion

Crenshaw is not entitled to attorney's fees and costs because Jocassee tendered full value prior to Crenshaw's filing an action for foreclosure of the lien. Further, under the Court's holding in *Burnett*, Crenshaw cannot be found to be the prevailing party. The trial court's order should be reversed and remanded for an award of reasonable attorney's fees to Jocassee as the prevailing party.

Respectfully submitted.

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March 11, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2009-CP-37-01522

Crenshaw's TV and Radio Service, Inc., d/b/a Crenshaw's
TV & Appliance,.....Respondent,

v.

Jocassee Partners Holdings, LLC individually and d/b/a
The Jocassee Club and Bank of Travelers Rest,
Of whom Jocassee Partners Holdings, LLC individually and
d/b/a The Jocassee Club is the Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

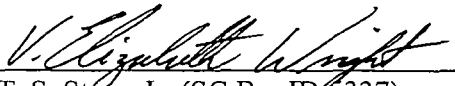
Appellant proposes that the following be included in the Record on Appeal:

1. April 12, 2010 Transcript of Hearing before the Honorable R. Lawton McIntosh
2. August 2, 2010 Transcript of Hearing before the Honorable R. Lawton McIntosh
3. Order of the Honorable R. Lawton McIntosh filed October 4, 2010
4. Motion and Memorandum in Support of Defendant's Motion for Summary Judgment
5. September 10, 2009 Mechanic's Lien to Jocassee Partners Holdings, LLC with exhibits
6. October 14, 2009 letter from Jocassee Partners Holdings, LLC to Crenshaw's TV and Appliance
7. Summons, Lis Pendens and Complaint, Crenshaw's TV and Radio Service, Inc., Civil Action Number 2009-CP-37-1522
8. December 29, 2009 letter from T. S. Stern, Jr., Esq. to James W. Logan, Jr., Esq.
9. Answer and Counterclaim of Jocassee Partners Holdings, Civil Action Number 2009-CP-37-1522

10. Plaintiff's Offer of Settlement dated January 7, 2010
11. January 11, 2010 letter from James W. Logan, Jr., Esq. to T. S. Stern, Jr., Esq.
12. January 20, 2010 letter from T. S. Stern, Jr., Esq. to James W. Logan, Jr., Esq.
13. February 5, 2010 Offer of Settlement from Defendant
14. February 10, 2010 letter from Plaintiff to Defendant
15. Reply of Plaintiff, Civil Action Number 2009-CP-37-1522

We certify that this designation contains no matter which is irrelevant to this appeal.

March , 2011


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2009-CP-37-01522

Crenshaw's TV and Radio Service, Inc., d/b/a Crenshaw's
TV & Appliance,.....Respondent,

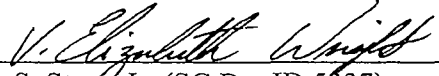
v.

Jocassee Partners Holdings, LLC individually and d/b/a
The Jocassee Club and Bank of Travelers Rest,
Of whom Jocassee Partners Holdings, LLC individually and
d/b/a The Jocassee Club is the Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Initial Brief and Designation of Matter
to be Included in the Record on Appeal on Respondent Crenshaw's TV and Radio
Service by depositing a copy of it in the United States Mail, postage prepaid, on March
11, 2011, addressed to its attorney of record, James W. Logan, Jr., P.O. Box 259,
Anderson, SC 29622.

March 11, 2011



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No.: 2009-CP-37-01522

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SC Court of Appeals

Crenshaw's TV and Radio Service, Inc.,
d/b/a Crenshaw's TV & Appliance,

Respondent,

v.

Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club
And Bank of Travelers Rest,

Appellants

Of Whom Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club is

Appellant.

RESPONDENT'S INITIAL BRIEF

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372 S.C. 89, 641 S.E.2d 459 7

Statutes

S. C. Code Ann. §29-5-20(1976) 1, 3, 5, 7, 8

Statement of Issues on Appeal

- I. DID THE TRIAL ERR IN FINDING RESPONDENT WAS THE PREVAILING PARTY UNDER S. C. CODE ANN. §29-5-20 (1976)?
- II. DID THE TRIAL COURT ERR IN AWARDING RESPONDENT ATTORNEYS FEES, INTEREST AND COSTS UNDER S. C. CODE ANN. §29-5-20 (1976)?

Statement of the Case

This action commenced on December 17, 2009 when Respondent Crenshaw's TV and Radio Service, Inc. ("Crenshaw") filed its Petition to Foreclose a Mechanic's Lien in the amount of \$16,988.07 plus interest, attorney's fees and costs against the property owner Appellant Jocassee Partners Holdings, LLC ("Jocassee"). Crenshaw, a supplier to the general contractor, Central Contracting, had not been paid by Central Contracting and filed its mechanic's lien on September 10, 2009 in the amount of \$16,988.07 plus interest, attorney's fees and costs. The sole issue in this appeal is whether Jocassee owes Crenshaw attorney's fees interest, attorney's fees and costs. The material facts in this case are not in dispute.

On April 12, 2010, the Honorable R. Lawton McIntosh heard Jocassee's argument for summary judgment, which was denied. On August 2, 2010, Judge McIntosh heard Jocassee's Motion to Reconsider and again denied Jocassee's Motion for Summary Judgment, but granted summary judgment to Crenshaw. Judge McIntosh's Order was filed on October 4, 2010. Jocassee filed its Notice of Appeal on October 12, 2010 and notified counsel for Crenshaw of the appeal on the same date.

Statement of Facts

This is a Mechanic's Lien foreclosure action by a lower tier supplier (Respondent) to a general contractor which failed to pay the Respondent. Respondent's entitlement to the claimed principal balance is not in dispute. After the Respondent filed its Mechanic's Lien ("Lien") but before suit to enforce the Lien was filed, the Appellant paid the sum of \$8,494.03 representing one-half of the principal sum owed. Also, prior to filing suit to enforce the Lien, the Appellant tendered, on October 14, 2009, the balance of principal due with the stipulation that the check represented "final payment" and that "Acceptance of this check is your company's confirmation of payment in full". The tender was rejected by the Respondent since it did not include payment of interest, attorney's fees and costs. Therefore, what is in dispute is whether the Respondent is entitled to interest, attorney's fees and costs from Appellant.

The following facts are undisputed:

1. Respondent filed its Mechanic's Lien on September 10, 2009 in the amount of \$16,988.07 on property owned by Appellant. (R. ____)
2. Appellant paid the sum of \$8,494.03 to Respondent on September 17, 2009, prior to Respondent's instituting this suit to enforce the lien.
3. Respondent replied to Appellant's payment by its letter of September 23, 2009 advising the Appellant that not only was the remaining principal balance owed but that there was also due and owing as a part of the claim all other damages that are recoverable by Respondent since it was necessary to file a Mechanic's Lien. (R. ____)
4. Prior to the institution of suit to enforce the Lien, Appellant tendered to Respondent the remaining balance of Respondent's Lien, as evidenced by letter to Respondent dated October 14, 2009, in which it is stated that the enclosed payment was a "final payment"

and that "Acceptance of this check is your company's confirmation of payment in full". (R. ____)

5. Respondent refused to accept Appellant's tender of the remaining principal balance of the Lien on those terms because Respondent claimed it was due additional sums for interest, attorney's fees and costs under S. C. Code Ann. §29-5-20 (1976).

6. On December 17, 2009, Respondent filed its Summons and Complaint to enforce its Lien, alleging it was entitled to recover the principal balance owed which had been previously tendered, plus interest, cost, and attorney's fees. (R. ____)

7. On December 30, 2009, Appellant filed its letter to Respondent's counsel wherein it offered to pay the Respondent the remaining balance of the Lien in accordance with the offer of settlement procedure set forth in S.C. Code Ann. §29-5-20 (1976) along with its Answer and Counterclaim. The offer contained in the Appellant's letter did not include a dismissal of the Counterclaims, with prejudice, it had asserted against the Respondent in its Answer and Counterclaims. (R. ____)

8. On January 7, 2010, Respondent filed its Offer of Settlement pursuant to S. C. Code §21-5-10 (1976) and/or §29-5-20 (1976) for the remaining balance of the Mechanic's Lien, in which the Respondent agreed to accept in settlement of the Lien the remaining principal balance owed, i.e., \$8,494.03, exclusive of interest, costs and reasonable attorney's fees for the Respondent to be determined by the Court, along with the dismissal, with prejudice, of all counterclaims filed by Appellant. (R. ____)

9. As a follow up to that letter, Respondent advised the Appellant, by letter dated January 11, 2010, that the total amount due at this time was \$13,512.35 which was composed of

the admitted balance of \$8,494.00 plus attorney's fees of \$5,122.32, representing interest, costs and attorney's fees incurred as of that date. (R. ____)

10. By letter dated January 20, 2010 Appellant, among other things, again tendered to Respondent a check for the remaining balance of the Mechanic's Lien. This tender was again rejected by Respondent. (R. ____)

11. On January 22, 2010 Respondent mailed a letter to Appellant asserting, among other things, that it was the Respondent's position that its Offer of Settlement would be closer to the ultimate verdict in this matter and since that verdict would include a dismissal of the Appellant's Counterclaims, with prejudice, and, therefore Respondent would be the prevailing party and thus entitled to attorney's fees, interest and costs under the applicable Code Sections of the S. C. Mechanic's Lien Statutes. (R. ____)

12. On January 25, 2010 Respondent filed its Reply to the Appellant's Counterclaims. (R. ____)

13. The Appellant's attorneys then forwarded to Respondent's attorney a letter dated February 5, 2010 . . . to clarify my Offer of Settlement dated December 29, 2009" . . . and further stated that . . . "this Offer of Settlement was intended to dismiss all claims and counterclaims raised in the above referenced action . . .". The letter also included "Appellant's Offer of Settlement to the Respondent" which it was filing "to further clarify this matter . . .". (R. ____)

14. By letter dated February 10, 2010, Respondent's counsel advised that Appellant's Offer of Settlement was actually an acceptance of Respondent's previous offer filed January 7, 2010 and, thus, Respondent was now the prevailing party and, accordingly, entitled to interest, attorney's fees and costs in this matter. (R. ____)

15. The Appellant filed its Motion for Summary Judgment on February 24, 2010. (R. ____)

16. Respondent filed its Motion for Summary Judgment on June 15, 2010 seeking an Order granting the relief it sought, including a dismissal, with prejudice, of the counterclaims asserted by the Appellant. The Respondent's attorney also filed his Fee Affidavit regarding attorney's fees. (R. ____)

Standard of Review

This is an appeal of an Order granting summary judgment to Respondent, Crenshaw and denying summary judgment to Appellant, Jocassee. When reviewing an Order granting summary judgment, the appellate court applies the same standards as the trial court. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Where there are no disputed issues of acts, the appellate court is free to decide a question of law with no particular deference to the circuit court. *Catawba Indian Tribe of S. Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) (citing *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000))

Argument

I. DID THE TRIAL ERR IN FINDING RESPONDENT WAS THE PREVAILING PARTY UNDER S. C. CODE ANN. §29-5-20 (1976)?

The Mechanic's Lien Statute in question, i.e., S. C. Code Ann. §29-5-20 (1976), provides as follows:

(A) Every laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon, subject to existing liens of which he has actual or constructive

notice, to the value of the labor or material so furnished, including the costs of the action and a reasonable attorney's fee which must be determined by the court in which the action is brought but only if the party seeking to enforce the lien prevails. If the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court. The fee and the court costs may not exceed the amount of the lien. The lien may be enforced as herein provided. (Emphasis added).

Accordingly, under §29-5-20 (1976), the Lien created by this statute includes both the value of the labor and materials furnished and the costs of the action and a reasonable attorney's fee to be determined by the Court. Further, under this statute, even though the Lien encompasses the costs and attorney's fees, whether a party is entitled to collect the costs and attorney's fees included in the lien is based upon a determination that the party is the prevailing party in the suit to enforce the lien.

In this case, the Respondent was forced to file a Lien because the Appellant refused to pay the Respondent. After the lien was filed, the Appellant tendered partial payment of the principal amount due. The Appellant later tendered the balance of the principal due but on the condition that it was a "final payment" and that acceptance of the check constituted payment in full. Since the amount tendered did not include interest, attorney's fees and costs included in the Lien under §29-5-20 it was rejected by the Respondent. The Appellant was notified of this rejection and the reasons therefor. Respondent received no further communication from the Appellant and was thus compelled to file suit to enforce its Lien to comply with the time constraints imposed by this Mechanic's Lien Statute.

In response to the suit filed by the Respondent to enforce the Lien, the Appellant served and filed its Answer and Counterclaims accompanied by a letter to the Respondent offering to pay the remaining principal balance as an Offer of Settlement pursuant to S. C. Code Ann. §29-5-20 (1976). However, the Offer of Settlement did not include an offer to dismiss the counterclaims, with prejudice, that were asserted against the Respondent in the Appellant's Answer. While the principal amount due is not in dispute, the counterclaims asserted by the Appellant were now a part of this action and were capable of being maintained by the Appellant as separate and independent claims which had to be resolved as part of this action. Accordingly, any Offer of Settlement had to deal with and include a proposed resolution of those counterclaims with the ultimate resolution of that issue determining who would be the prevailing party.

The Respondent subsequently filed (January 7, 2010) an Offer of Settlement that included a dismissal, with prejudice, of those counterclaims. While it is true that the Appellant thereafter sought "to further clarify" its offer to include a dismissal of the counterclaims, with prejudice, the "clarification" constituted nothing more than an acceptance of the Respondent's Offer of Settlement dated January 7, 2010. (R. ____). Accordingly, since the Order of the Lower Court granting the Respondent's Motion for Summary Judgment included a dismissal, with prejudice, of the Appellant's counterclaims, the Respondent's Offer of Settlement dated January 7, 2010, was closer (in fact, identical) to the ultimate verdict in this matter. Therefore, the Respondent must be deemed to be the prevailing party under §29-5-20(c) and entitled to attorney's fees, interest and costs. (See, *Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC, et al.*, 372 S.C. 89, 641 S.E.2d 459).

II. DID THE TRIAL COURT ERR IN AWARDING RESPONDENT ATTORNEYS FEES UNDER S. C. CODE ANN. §29-5-20 (1976)?

As stated above, the lien created by §29-5-70 (1976) includes both the value of the labor and materials furnished and the costs of the action and a reasonable attorney's fee to be determined by the Court. However, to collect the costs and attorney's fee included in the lien, the party seeking them must be determined by the Court to be the prevailing party in the suit to enforce the lien.

In the present case, the Lower Court properly granted the Respondent's Motion for Summary Judgment and dismissed, with prejudice, the counterclaims filed by the Appellant. Accordingly, the Respondent prevailed in the suit to enforce the lien, and, as the party whose Offer of Settlement was closer to the verdict reached (indeed, identical to the verdict reached) the Respondent is "... considered the prevailing party in the action" under §29-5-20(c) (1976). As such, the Court's award of attorney's fees, interest and costs in this case was proper and must be affirmed. (See, *T. W. Morton Builders, Inc. v. Richard P. von Buedingen, et al* 372 S. C. 89, 641 S.E.2d 459).

Conclusion

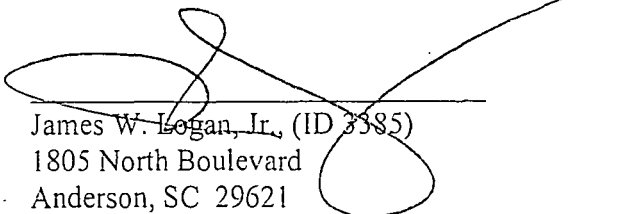
It would be fundamentally unfair and in contravention of §29-5-20 (1976) to allow the Appellant to escape payment of attorney's fees, interest and costs in this case. The Appellant refused to pay its debt to the Respondent that it now acknowledges it owed until after the Respondent was forced to file a mechanic's lien to comply with the time constraints contained §29-5-20. The Appellant then tendered only a partial payment. Later, Appellant tendered the balance owed but without any acknowledgment of its obligation to pay attorney's fees, interest and costs. Thus, the Respondent was forced, by the conduct of the Appellant, to incur not only

the expense of filing a mechanic's lien but the added expense of filing suit to preserve its lien and to collect these attorney's fees, interest and costs that are included in the Lien. The Appellant should not be allowed to avoid payment of these expenses and thus profit by its conduct.

Accordingly, the Respondent respectfully requests that the Order of the Lower Court be affirmed in all respects.

Respectfully submitted,

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Dated: April 6th, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No.: 2009-CP-37-01522

RECEIVED
APR 07 2011
SC Court of Appeals

Crenshaw's TV and Radio Service, Inc.,
d/b/a Crenshaw's TV & Appliance,

Respondent,

v.

Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club
And Bank of Travelers Rest,

Appellants

Of Whom Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club is

Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent proposes that the following be included in the Record on Appeal:

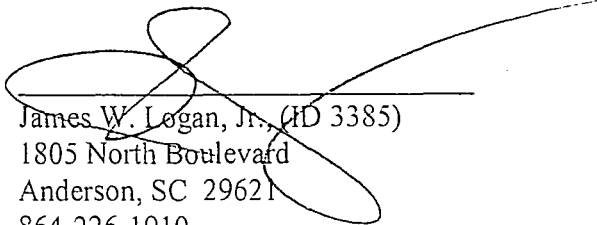
1. Notice and Certificate of Mechanic's Lien filed September 10, 2009
2. Letter dated September 17, 2009 from Jocassee Partners Holdings, LLC to Crenshaws TV & Appliance
3. Letter dated September 23, 2009 from James W. Logan, Jr., Esquire to Jocassee Partners Holdings, LLC
4. Letter dated October 14, 2009 from Jocassee Partners Holdings, LLC to Crenshaw's TV & Appliance with enclosed check
5. Summons and Complaint filed December 17, 2009

6. Letter dated December 29, 2009 from James W. Logan, Jr. Esquire to T. S. Stern, Jr., Esquire
7. Answer and Counterclaim filed December 30, 2009
8. Plaintiff's Offer of Settlement dated January 7, 2010
9. Letter dated January 11, 2010 from T. S. Stern, Jr., Esquire to James W. Logan, Jr., Esquire
10. Letter dated January 20, 2010 from T. S. Stern, Jr., Esquire to James W. Logan, Jr., Esquire
11. Letter dated January 22, 2010 from James W. Logan, Jr., Esquire to T. S. Stern, Jr., Esquire
12. Reply filed January 25, 2010
13. Letter dated February 5, 2010 from T. S. Stern, Jr., Esquire to James W. Logan, Jr., Esquire
14. Letter dated February 10, 2010 from James W. Logan, Jr., Esquire to T. S. Stern, Jr., Esquire
15. Jocassee Partners Holdings, LLC's Motion for Summary Judgment filed February 24, 2010
16. Crenshaws TV & Radio Service, Inc.'s Motion for Summary Judgment filed June 15, 2010

We certify that this designation contains no matter which is irrelevant to this appeal.

April 6, 2011

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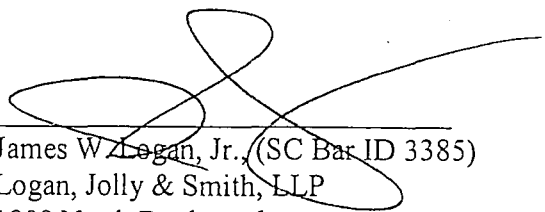
Appellants

Of Whom Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club is

Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal on Appellant Jocassee Partners Holdings, LLC individually and d/b/a The Jocassee Club by depositing a copy in the United States Mail, postage prepaid, on April 6, 2011, addressed to its attorneys of record, T. S. Stern, Jr. and V. Elizabeth Wright, 211 Pettigru Street, Greenville, SC 29201.



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Dated April 6, 2011 

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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R. Lawton McIntosh, Circuit Court Judge

Case No. 2009-CP-37-01522

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Jocassee Partners Holdings, LLC
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and Bank of Travelers Rest,

Defendants,

Of whom Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club is

Appellant.

REPLY BRIEF OF APPELLANT

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REPLY BRIEF

I. Respondent Crenshaw Is Not the Prevailing Party In This Action.

In its Respondent's Brief, Crenshaw states that it is the prevailing party in the underlying action. Crenshaw overlooks two important facts in its analysis. One, Jocassee tendered the full amount of the mechanic's lien two months prior to Crenshaw's filing the foreclosure action. Two, Crenshaw failed to bring the foreclosure action as expressly provided in the statute.

The foreclosure action brought by Crenshaw was unnecessary and in contradiction to the mechanic's lien statute. On page 6 of its Initial Respondent's Brief, Crenshaw claims it was "forced" to file a mechanic's lien because Jocassee failed to pay Crenshaw. Crenshaw's statement in its brief is simply not supported by the facts of the case. Jocassee, the owner, stepped up to the plate when the general contractor did not pay Crenshaw and Jocassee paid ½ of the amount due on or about September 10, 2009. On October 14, 2009, Jocassee tendered the remainder owed on the mechanic's lien to Crenshaw, which Crenshaw rejected. (October 14, 2009 letter to Respondent, R. __) Crenshaw waited until December 2009 to file a foreclosure action. (Complaint, R. __) What Crenshaw is saying is that it is entitled to attorney's fees for merely filing a mechanic's lien when the statute expressly states that entitlement is triggered by the filing of an "action". See S.C. Code Ann. § 29-5-20. The correct interpretation, based on the plain language of the statute, is that attorney's fees are awarded if the mechanic's lien is litigated to a judgment or verdict or by settlement as provided in S.C. Code Ann. § 29-5-10, but not for the mere filing of a mechanic's lien.

It is well-settled law in South Carolina that mechanic's liens are purely statutory and can only be acquired and enforced in accordance with the conditions of the statute.

Multiplex Bldg. Corp. Inc. v. Lyles, 268 S.C. 577, 579, 235 S.E.2d 133, 134 (1977) citing 53 Am.Jur.2d Mechanics' Liens, § 2. It is also well-settled law in South Carolina that attorney's fees are not recoverable unless based upon a contract or statute. In this case S.C. Code Ann. § 29-5-20 provides for the recovery of attorney's fees. In *Cedar Creek Properties v. Cantelou Associates, Inc.*, 320 S.C. 483, 465 S.E.2d 774 (1995), the Court stated that the "primary rule of construction is to ascertain the intention of the legislature." In *Cedar Creek Prop. id.*, the Court further stated that "the intent of the legislature in allowing the prevailing party in an action brought under the mechanic's lien statute to recover attorney fees and costs stems from a desire to deter both wrongful filing of liens and unjustified refusal to pay debts subject to mechanic's liens." *Id.* at 486. *Emphasis added.*

Jocassee did precisely what the General Assembly envisioned when, in a show of good faith, it promptly paid one-half of Crenshaw's lien. Jocassee tendered the remainder of Crenshaw's lien, *which Crenshaw rejected* because it wanted attorney's fees to which it was not entitled. By improperly rejecting this tender Crenshaw manufactured its own justification for recovering attorney's fees and disregarded the rule of law that mechanic's liens can only be enforced in accordance with the conditions of the statute. *Multiplex*, p. 579, 134. Section 29-5-20 does not contemplate awarding attorney's fees for the mere filing of a mechanic's lien and just as clearly, the legislature did not contemplate awarding attorney's fees as an incentive for parties to file foreclosure actions when the amount of the mechanic's lien has been previously tendered. Crenshaw is not entitled to attorney's fees and should not be rewarded with attorney's fees for bringing an action which should never have been brought.

Further, there is case law precedent in which attorney's fees were denied to a party who refused tender in order to collect attorney's fees on a mechanic's lien. The Court in *Burnett & Johnson v. Senn*, 93 S.C. 316 (1912) encountered similar facts as in this case when the plaintiffs refused to accept a tender made by the defendant concerning a mechanic's lien. In rendering its decision, the Court stated the following:

It was the wrongful act of the plaintiffs, in refusing the tender made by the defendant that rendered necessary the rendition of the judgment from which they appealed. The judgment of the Supreme Court was not more favorable to them, than the offer made by the defendant. Therefore, they accomplished nothing by the proceedings subsequent to the time of the tender, and cannot be said to have been the prevailing party. It would be an injustice to the defendant, to make him liable for such costs, when the result showed, that the subsequent proceedings on the part of the plaintiffs, were unnecessary.

Id. at 317-318.

The facts in this case are similar to those in *Burnett*. As in *Burnett*, Jocassee tendered full value of the mechanic's lien to Crenshaw in an effort to avoid litigation. The most Crenshaw would receive if it were found to be the prevailing party would be the amount of the mechanic's lien, which Jocassee had already tendered. Despite Jocassee's tender of the full amount of the mechanic's lien, Crenshaw decided to take the matter to court to mine for attorney's fees in a foreclosure action. In so doing, Crenshaw added to the court costs and attorney's fees in an effort to get more money from Jocassee than to which it was entitled to receive. The Supreme Court in *Burnett* found this sort of conduct to be an injustice to that defendant as it would be to Jocassee in this case. Crenshaw cannot be declared the prevailing party, because to do so would reward it for bringing an unnecessary action in order to get more money from Jocassee.

II. Crenshaw Is Not Entitled to Attorney's Fees Because It Is Not the Prevailing Party.

Crenshaw did not follow the intent of the mechanic's lien statute in two ways. First, it rejected tender offered by Jocassee on October 14, 2009, two months prior to its filing the foreclosure action. In *Seckinger v. The Vessel Excalibur*, 326 S.C. 382, 390, 483 S.E.2d 775, 779 (Ct. App. 1997) the Court noted that, "The intention of the legislature to foster settlements is evident in § 29-5-10(b)." The Court also noted that, "A party decreases the chance of paying the opponent's costs and attorney fees by increasing the willingness to compromise." *Id.* Thus, the mechanic's lien statute is not intended as an opportunity to "mine" for attorney's fees, but rather as a vehicle of settlement between parties. Jocassee anticipated the intent of the mechanic's lien statute well before Crenshaw filed its foreclosure action as evidenced by its payment of the first half of the amount owed on the lien in September of 2009 and later by its tender of the remaining half of the mechanic's lien in October of 2009, tender which Crenshaw rejected. Jocassee demonstrated the willingness to compromise well in advance of Crenshaw's foreclosure action and therefore followed the intent of the statute.

Crenshaw further failed to follow the intent of the mechanic's lien statute when it showed no willingness to compromise. First, as narrated earlier, Crenshaw rejected tender of the remaining half of the amount owed on the mechanic's lien. Next, in its eagerness to seize attorney's fees to which it is not entitled, Crenshaw claims in its Respondent's Initial Brief that Jocassee accepted its offer of settlement made on January 7, 2010, which also is not supported by the facts of the case. It is clear in its letter of January 20, 2010 (R. ____) that Jocassee did not accept Crenshaw's offer of settlement,

but instead reiterated its offer of tender previously made in October and December of 2009. Crenshaw's claim that it is entitled to attorney's fees because Jocassee accepted its offer of settlement is not supported by the facts of the case, therefore Crenshaw cannot claim that this offer of settlement entitles it to attorney's fees.

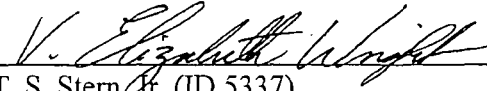
Conclusion

Crenshaw is not the prevailing party and therefore is not entitled to attorney's fees. Further, Crenshaw's refusal of tender from Jocassee, tender that made the foreclosure action unnecessary, is an attempt to "mine" attorney's fees and is the sort of action which the Court in *Burnett & Johnson v. Senn* condemned. Jocassee is the prevailing party and as such, is entitled to attorney's fees.

Respectfully submitted.

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& LEWIS, P.A.


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April 13, 2011

THE STATE OF SOUTH CAROLINA
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Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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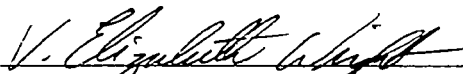
Of whom Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club is

Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Initial Reply Brief on Respondent Crenshaw's TV and Radio Service by depositing a copy of it in the United States Mail, postage prepaid, on April 13, 2011, addressed to its attorney of record, James W. Logan, Jr., P.O. Box 259, Anderson, SC 29622.

April 13, 2011



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and Bank of Travelers Rest,

Defendants,

Of whom Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club is

Appellant.

BRIEF OF APPELLANT

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STATUTORY AUTHORITY

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SECONDARY AUTHORITY

53 Am.Jur.2d Mechanics' Liens, § 2	6
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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN AWARDING RESPONDENT ATTORNEY'S FEES UNDER S.C. CODE ANN. § 29-5-20 WHEN RESPONDENT HAD FILED, BUT NOT FORECLOSED, ITS MECHANIC'S LIEN AND HAD REFUSED TENDER OF THE FULL AMOUNT OF ITS MECHANIC'S LIEN BEFORE IT COMMENCED FORECLOSURE PROCEEDINGS?
- II. DID TRIAL COURT ERR IN FINDING RESPONDENT WAS PREVAILING PARTY UNDER S.C. CODE ANN. § 29-5-20 WHEN APPELLANT HAD PREVIOUSLY TENDERED THE FULL AMOUNT OF THE MECHANIC'S LIEN?

STATEMENT OF THE CASE

This action commenced on December 17, 2009 when Respondent Crenshaw's TV and Radio Service, Inc. ("Crenshaw") filed its Petition to Foreclose a Mechanic's Lien in the amount of \$16,988.07 against the property owner Appellant Jocassee Partners Holdings, LLC ("Jocassee"). Crenshaw, a supplier to the general contractor, Central Contracting, had not been paid by Central Contracting and filed its mechanic's lien on September 10, 2009 in the amount of \$16,988.07. The sole issue in this appeal is whether Jocassee owes Crenshaw attorney's fees for the filing of the mechanic's lien when S.C. Code Ann § 29-5-20 by its terms provides only for an award of attorney's fees to a prevailing party in litigation. Jocassee does not owe attorney's fees under this statute because it tendered the full amount of the lien before the action was commenced and Crenshaw rejected such tender. The material facts in this case are not in dispute.

On April 12, 2010, the Honorable R. Lawton McIntosh heard Jocassee's argument for summary judgment, which was denied. On August 2, 2010, Judge McIntosh heard Jocassee's Motion to Reconsider and again denied Jocassee's Motion for Summary Judgment, but granted summary judgment to Crenshaw. Judge McIntosh's Order concerning Jocassee's Motion to Reconsider was filed on October 4, 2010. Jocassee filed its Notice of Appeal on October 12, 2010 and notified counsel for Crenshaw of the appeal on the same date.

STATEMENT OF FACTS

This is an appeal from the circuit court's Order denying Jocassee's Motion to Reconsider and granting Crenshaw's Motion for Summary Judgment awarding attorney's fees in the amount of \$9,393.00. On September 10, 2009, Crenshaw filed a mechanic's lien in the amount of \$16,988.07 on property owned by Jocassee. (Mechanic's Lien, Crenshaw's TV and Radio Service, R. p. 7) Jocassee paid the sum of \$8,494.03 to Crenshaw prior to Crenshaw bringing a foreclosure action against Jocassee and later tendered to Crenshaw the remaining balance of the mechanic's lien, but Crenshaw refused to accept tender, claiming it was due additional sums for attorney's fees. (October 14, 2009 letter from Jocassee to Crenshaw, R. p. 115) Despite being offered payment in full for the mechanic's lien pursuant to the offer of settlement as set out in S.C. Code Ann. § 29-5-20, on December 17, 2009, Crenshaw filed its Complaint to foreclose on the mechanic's lien, alleging it was entitled to recover the remaining balance of the mechanic's lien, plus interest, costs and attorney's fees. (Complaint, R. p. 29). Jocassee again tendered the remaining balance of the mechanic's lien and again Crenshaw refused tender. (Defendant's December 29, 2009 letter to Plaintiff, R. p. 116.) Jocassee filed this letter of tender with the Oconee Clerk of Court on December 30, 2009

as an Offer of Settlement as set out in S.C. Code § 29-5-20 and also filed its Answer and Counterclaims on the same day. (Answer and Counterclaims, R. p. 33).

Crenshaw filed its Offer of Settlement on January 7, 2010 for the same amount as listed on Jocassee's Offer of Settlement, exclusive of interest, costs and attorney's fees. (January 7, 2010 Offer of Settlement, R. p. 117). By letter of January 11, 2010, Crenshaw offered to settle the matter for \$13,616.35, which included the remaining amount of the mechanic's lien and attorney's fees in the amount of \$5,122.32. (January 7, 2010 letter of Plaintiff, R. p. 120). In its letter of January 20, 2010, Jocassee again tendered a check for the remaining balance of the mechanic's lien.¹ This was once again rejected. (January 20, 2010 letter of Defendant, R. p. 121). Crenshaw filed its Reply on January 25, 2010. (Reply, R. p. 40). On February 5, 2010, Jocassee clarified to Crenshaw that its December 29, 2009 offer of settlement included the dismissal of all asserted counterclaims. (February 5, 2010 letter, R. p. 126). Jocassee filed an Offer of Settlement on February 5, 2010 for the remainder of the mechanic's lien. (February 5, 2010 Offer of Settlement, R. p. 126). In response, on February 10, 2010, Crenshaw informed Jocassee that the Offer of Settlement was actually an acceptance of its offer and thus Crenshaw was the prevailing party. (February 10, 2010 letter of Plaintiff, R. p. 129). Jocassee filed its Motion for Summary Judgment on February 24, 2010 and the motion was heard on April 12, 2010. Summary judgment was denied. On August 2, 2010, Jocassee's Motion for Reconsideration was heard and its motion for summary judgment was denied while Crenshaw's motion for summary judgment was granted. Jocassee timely filed its Notice of Appeal upon receipt of the court's order and this appeal follows.

¹ With this check the full amount of the lien has been paid without prejudice to either party.

STANDARD OF REVIEW

This is an appeal of an order granting summary judgment to Respondent Crenshaw and denying summary judgment to Appellant Jocassee. When reviewing an order granting summary judgment, the appellate court applies the same standards as the trial court. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Where there are no disputed issues of facts, the appellate court is free to decide a question of law with no particular deference to the circuit court. *Catawba Indian Tribe of S. Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) (citing *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000)). Because the trial court erred as to a matter of law, Jocassee is entitled to a reversal of the trial court's order and a remand to the trial court for an award of reasonable attorney's fees as the prevailing party.

ARGUMENT

- I. THE TRIAL COURT ERRED IN AWARDING RESPONDENT ATTORNEY'S FEES UNDER S.C. CODE ANN. § 29-5-20 WHEN RESPONDENT HAD FILED, BUT NOT FORECLOSED, ITS MECHANIC'S LIEN AND HAD REFUSED TENDER OF THE FULL AMOUNT OF ITS MECHANIC'S LIEN BEFORE IT COMMENCED FORECLOSURE PROCEEDINGS.

Crenshaw contends that it is entitled to recover attorney's fees because it filed a mechanic's lien. (T. TR. April 12, 2010, R.pp. 85-105). The trial court agreed despite the clear, contrary language of S.C. Code Ann. § 29-5-20 which states:

Every laborer, mechanic, subcontractor or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon, subject to existing liens of which he had actual or constructive notice...including the costs of the action and reasonable attorney's fees which must be determined by the court in which the action is brought but only if the party seeking to enforce the lien prevails. *Emphasis added.*

Having tendered the full amount of the mechanic's lien on October 14, 2009, the foreclosure action was unnecessary and Crenshaw should have accepted Jocassee's tender in full. The foreclosure action was commenced not because of a legitimate dispute as to Crenshaw's entitlement to the lien or the amount thereof, but rather solely to recover attorney's fees incurred in the filing of the lien. Jocassee paid of half of the amount owed on the mechanic's lien and tendered payment of the remaining half on October 14, 2010, two months prior to Crenshaw filing its foreclosure action. On that date no action had been filed, therefore Crenshaw was not entitled to attorney's fees. Had Crenshaw accepted the tender on October 14, 2010, the mechanic's lien would have been paid in full, rendering this protracted litigation moot.

For attorney's fees to be recovered the mechanic's lien claimant must bring a foreclosure action as expressly provided in the statute and it must prevail in the foreclosure action. Simply stated, if the General Assembly intended to award attorney's fees for filing a mechanic's lien, it would have used language which said that. Moreover, this interpretation makes sense because to rule otherwise would penalize the owner by requiring him to pay attorney's fees when his first notice of a supplier's claim was the service of the lien itself.

Case law under Section 29-5-20 is consistent with the plain meaning of the statute. In *Utilities Const. Co., Inc. v. Wilson*, 321 S.C. 244, 250, 468 S.E.2d 1, 5 (Ct. App. 1996), this Court stated, "Clearly, under the statute a party is entitled to recover attorney's fees if she prevails in defending against the lien." In this opinion this Court also cited *Cedar Creek Properties v. Cantelou Assoc.*, 320 S.C. 483, 465 S.E.2d 774 (Ct. App. 1995) to show that the Legislature intended to afford a property owner a remedy

where a mechanic attempts to enforce a defective or wrongful mechanic's lien. *Utilities*, p. 3. Both the statute and the case law state unequivocally that the party bringing a mechanic's lien must prevail in the lawsuit before it can collect attorney's fees.

Crenshaw's position, which is completely unsupported by the case law, would only encourage avarice and the "mining" for attorney's fees by bringing unnecessary litigation rather than the amicable pre-suit resolution envisioned by the statute. Crenshaw rejected the tender two months prior to its filing the foreclosure action when Jocassee tendered the full amount of the lien. Further, in its Offer of Settlement on December 29, 2009, Jocassee again offered to settle for the full amount of the lien.

It is well-settled law in South Carolina that mechanic's liens are purely statutory and can only be acquired and enforced in accordance with the conditions of the statute. *Multiplex Bldg. Corp. Inc. v. Lyles*, 268 S.C. 577, 579, 235 S.E.2d 133, 134 (1977) citing 53 Am.Jur.2d Mechanics' Liens, § 2. It is also well-settled law in South Carolina that attorney's fees are not recoverable unless based upon a contract or statute. In this case S.C. Code Ann. § 29-5-20 provides for the recovery of attorney's fees. In *Cedar Creek Properties v. Cantelou Associates, Inc.*, 320 S.C. 483, 465 S.E.2d 774 (1995), the Court stated that the "primary rule of construction is to ascertain the intention of the legislature." In *Cedar Creek Prop. id.*, the Court further stated that "the intent of the legislature in allowing the prevailing party in an action brought under the mechanic's lien statute to recover attorney fees and costs stems from a desire to deter both wrongful filing of liens and unjustified refusal to pay debts subject to mechanic's liens." *Id.* at 486. *Emphasis added.*

Jocassee did precisely what the General Assembly envisioned when, in a show of good faith, it promptly paid one-half of Crenshaw's lien. Jocassee tendered the remainder of Crenshaw's lien, *which Crenshaw rejected* because it wanted attorney's fees to which it was not entitled. By improperly rejecting this tender Crenshaw manufactured its own justification for recovering attorney's fees and disregarded the rule of law that mechanic's liens can only be enforced in accordance with the conditions of the statute. *Multiplex*, p. 579, 134. Clearly, Section 29-5-20 does not contemplate awarding attorney's fees for the mere filing of a mechanic's lien and just as clearly, the legislature did not contemplate attorney's fees as an incentive for parties to file foreclosure actions when the amount of the mechanic's lien has been tendered. Crenshaw is not entitled to attorney's fees and should not be rewarded with attorney's fees for bringing an action which should never have been brought.

II. THE TRIAL COURT ERRED IN FINDING RESPONDENT WAS PREVAILING PARTY UNDER S.C. CODE ANN. § 29-5-20 When Appellant Had Previously Tendered The Full Amount Of The Lien.

In its Order the trial court found Crenshaw was the prevailing party under S.C. Code Ann. § 29-5-20 and was entitled to attorney's fees in the amount of \$9,393.00 plus costs of \$782.99. (Order, p. 3, R. p. 3). Subparagraph (a) of the statute clearly states that the "prevailing party" is entitled to attorney's fees and costs of the action. The statute further states that the determination of the prevailing party would be based upon a verdict by the court. In *Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC*, 372 S.C. 89, 641 S.E.2d 459 (Ct. App. 2007), the court noted that "Section 29-5-20(A) of the South Carolina Code (Supp. 2005) provides attorney's fees for the prevailing party in an action to enforce a lien. In an action to enforce a mechanic's lien, the prevailing party receives a favorable decision or verdict on liability. (emphasis added.) Based on the law, the

right to attorney's fees and costs does not arise until there is a determination on liability by the court. Because there has been no such determination, Crenshaw is not the prevailing party and therefore is not entitled to attorney's fees.

Jocassee is the prevailing party, not Crenshaw. Jocassee is defending against the lien filed by Crenshaw. Jocassee can also show it is the prevailing party for the following reasons:

- (1) Jocassee tendered payment in full of the mechanic's lien prior to Crenshaw filing the foreclosure action; and
- (2) Jocassee is the prevailing party under S.C. Code Ann. § 29-5-20 because offers of settlement are exclusive of interest, costs, and attorney's fees and Jocassee offered to settle this matter for the full value of Crenshaw's mechanic's lien.

The Court in *Burnett & Johnson v. Senn*, 93 S.C. 316 (1912) encountered similar facts as in this case when the plaintiffs refused to accept a tender made by the defendant concerning a mechanic's lien. In rendering its decision, the Court state the following:

It was the wrongful act of the plaintiffs, in refusing the tender made by the defendant that rendered necessary the rendition of the judgment from which they appealed. The judgment of the Supreme Court was not more favorable to them, than the offer made by the defendant. Therefore, they accomplished nothing by the proceedings subsequent to the time of the tender, and cannot be said to have been the prevailing party. It would be an injustice to the defendant, to make him liable for such costs, when the result showed, that the subsequent proceedings on the part of the plaintiffs, were unnecessary.

Id. at 317-318.

The facts in this case are similar to those in *Burnett*. As in *Burnett*, Jocassee tendered full value of the mechanic's lien to Crenshaw in an effort to avoid litigation.

The most Crenshaw would receive if it were found to be the prevailing party would be the amount of the mechanic's lien, which Jocassee had already tendered. Despite Jocassee's tender of the full amount of the mechanic's lien, Crenshaw decided to take the matter to court in a foreclosure action. In so doing, Crenshaw added to the court costs and attorney's fees in an effort to get more money from Jocassee than to which it was entitled. The Supreme Court in *Burnett* found this sort of conduct to be an injustice to that defendant as it would be to Jocassee here. Crenshaw should not be declared the prevailing party and rewarded for bringing an unnecessary action in order to get more money from Jocassee.

CONCLUSION

Crenshaw is not entitled to attorney's fees and costs because Jocassee tendered full value prior to Crenshaw's filing an action for foreclosure of the lien. Further, under the Court's holding in *Burnett*, Crenshaw cannot be found to be the prevailing party. The trial court's order should be reversed and remanded for an award of reasonable attorney's fees to Jocassee as the prevailing party.

Respectfully submitted.

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May 9, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2009-CP-37-01522

Crenshaw's TV and Radio Service, Inc.,
d/b/a Crenshaw's TV & Appliance,

Respondent,

v.

Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club
and Bank of Travelers Rest,

Defendants,

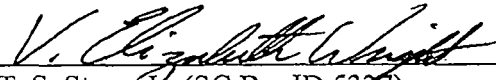
Of whom Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club is

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b),
SCACR.

May 9, 2011



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Individually and d/b/a The Jocassee Club
and Bank of Travelers Rest,

Defendants,

Of whom Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club is

Appellant.

REPLY BRIEF OF APPELLANT

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REPLY ARGUMENT

I. Respondent Crenshaw Is Not the Prevailing Party In This Action.

In its Respondent's Brief, Crenshaw states that it is the prevailing party in the underlying action. Crenshaw overlooks two important facts in its analysis. One, Jocassee tendered the full amount of the mechanic's lien two months prior to Crenshaw's filing the foreclosure action. Two, Crenshaw failed to bring the foreclosure action as expressly provided in the statute.

The foreclosure action brought by Crenshaw was unnecessary and in contradiction to the mechanic's lien statute. On page 6 of its Initial Respondent's Brief, Crenshaw claims it was "forced" to file a mechanic's lien because Jocassee failed to pay Crenshaw. Crenshaw's statement in its brief is simply not supported by the facts of the case. Jocassee, the owner, stepped up to the plate when the general contractor did not pay Crenshaw and Jocassee paid ½ of the amount due on or about September 10, 2009. On October 14, 2009, Jocassee tendered the remainder owed on the mechanic's lien to Crenshaw, which Crenshaw rejected. (October 14, 2009 letter to Respondent, R. p. 115) Crenshaw waited until December 2009 to file a foreclosure action. (Complaint, R. p. 29) What Crenshaw is saying is that it is entitled to attorney's fees for merely filing a mechanic's lien when the statute expressly states that entitlement is triggered by the filing of an "action". See S.C. Code Ann. § 29-5-20. The correct interpretation, based on the plain language of the statute, is that attorney's fees are awarded if the mechanic's lien is litigated to a judgment or verdict or by settlement as provided in S.C. Code Ann. § 29-5-10, but not for the mere filing of a mechanic's lien.

It is well-settled law in South Carolina that mechanic's liens are purely statutory and can only be acquired and enforced in accordance with the conditions of the statute.

Multiplex Bldg. Corp. Inc. v. Lyles, 268 S.C. 577, 579, 235 S.E.2d 133, 134 (1977) citing 53 Am.Jur.2d Mechanics' Liens, § 2. It is also well-settled law in South Carolina that attorney's fees are not recoverable unless based upon a contract or statute. In this case S.C. Code Ann. § 29-5-20 provides for the recovery of attorney's fees. In *Cedar Creek Properties v. Cantelou Associates, Inc.*, 320 S.C. 483, 465 S.E.2d 774 (1995), the Court stated that the "primary rule of construction is to ascertain the intention of the legislature." In *Cedar Creek Prop. id.*, the Court further stated that "the intent of the legislature in allowing the prevailing party in an action brought under the mechanic's lien statute to recover attorney fees and costs stems from a desire to deter both wrongful filing of liens and unjustified refusal to pay debts subject to mechanic's liens." *Id.* at 486. *Emphasis added.*

Jocassee did precisely what the General Assembly envisioned when, in a show of good faith, it promptly paid one-half of Crenshaw's lien. Jocassee tendered the remainder of Crenshaw's lien, *which Crenshaw rejected* because it wanted attorney's fees to which it was not entitled. By improperly rejecting this tender Crenshaw manufactured its own justification for recovering attorney's fees and disregarded the rule of law that mechanic's liens can only be enforced in accordance with the conditions of the statute. *Multiplex*, p. 579, 134. Section 29-5-20 does not contemplate awarding attorney's fees for the mere filing of a mechanic's lien and just as clearly, the legislature did not contemplate awarding attorney's fees as an incentive for parties to file foreclosure actions when the amount of the mechanic's lien has been previously tendered. Crenshaw is not entitled to attorney's fees and should not be rewarded with attorney's fees for bringing an action which should never have been brought.

Further, there is case law precedent in which attorney's fees were denied to a party who refused tender in order to collect attorney's fees on a mechanic's lien. The Court in *Burnett & Johnson v. Senn*, 93 S.C. 316 (1912) encountered similar facts as in this case when the plaintiffs refused to accept a tender made by the defendant concerning a mechanic's lien. In rendering its decision, the Court stated the following:

It was the wrongful act of the plaintiffs, in refusing the tender made by the defendant that rendered necessary the rendition of the judgment from which they appealed. The judgment of the Supreme Court was not more favorable to them, than the offer made by the defendant. Therefore, they accomplished nothing by the proceedings subsequent to the time of the tender, and cannot be said to have been the prevailing party. It would be an injustice to the defendant, to make him liable for such costs, when the result showed, that the subsequent proceedings on the part of the plaintiffs, were unnecessary.

Id. at 317-318.

The facts in this case are similar to those in *Burnett*. As in *Burnett*, Jocassee tendered full value of the mechanic's lien to Crenshaw in an effort to avoid litigation. The most Crenshaw would receive if it were found to be the prevailing party would be the amount of the mechanic's lien, which Jocassee had already tendered. Despite Jocassee's tender of the full amount of the mechanic's lien, Crenshaw decided to take the matter to court to mine for attorney's fees in a foreclosure action. In so doing, Crenshaw added to the court costs and attorney's fees in an effort to get more money from Jocassee than to which it was entitled to receive. The Supreme Court in *Burnett* found this sort of conduct to be an injustice to that defendant as it would be to Jocassee in this case. Crenshaw cannot be declared the prevailing party, because to do so would reward it for bringing an unnecessary action in order to get more money from Jocassee.

II. Crenshaw Is Not Entitled to Attorney's Fees Because It Is Not the Prevailing Party.

Crenshaw did not follow the intent of the mechanic's lien statute in two ways. First, it rejected tender offered by Jocassee on October 14, 2009, two months prior to its filing the foreclosure action. In *Seckinger v. The Vessel Excalibur*, 326 S.C. 382, 390, 483 S.E.2d 775, 779 (Ct. App. 1997) the Court noted that, "The intention of the legislature to foster settlements is evident in § 29-5-10(b)." The Court also noted that, "A party decreases the chance of paying the opponent's costs and attorney fees by increasing the willingness to compromise." *Id.* Thus, the mechanic's lien statute is not intended as an opportunity to "mine" for attorney's fees, but rather as a vehicle of settlement between parties. Jocassee anticipated the intent of the mechanic's lien statute well before Crenshaw filed its foreclosure action as evidenced by its payment of the first half of the amount owed on the lien in September of 2009 and later by its tender of the remaining half of the mechanic's lien in October of 2009, tender which Crenshaw rejected. Jocassee demonstrated the willingness to compromise well in advance of Crenshaw's foreclosure action and therefore followed the intent of the statute.

Crenshaw further failed to follow the intent of the mechanic's lien statute when it showed no willingness to compromise. First, as narrated earlier, Crenshaw rejected tender of the remaining half of the amount owed on the mechanic's lien. Next, in its eagerness to seize attorney's fees to which it is not entitled, Crenshaw claims in its Respondent's Initial Brief that Jocassee accepted its offer of settlement made on January 7, 2010, which also is not supported by the facts of the case. It is clear in its letter of January 20, 2010 (R. p. 121) that Jocassee did not accept Crenshaw's offer of settlement, but instead reiterated its offer of tender previously made in October and December of

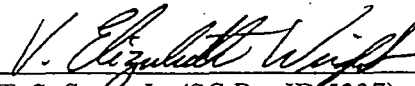
2009. Crenshaw's claim that it is entitled to attorney's fees because Jocassee accepted its offer of settlement is not supported by the facts of the case, therefore Crenshaw cannot claim that this offer of settlement entitles it to attorney's fees.

CONCLUSION

Crenshaw is not the prevailing party and therefore is not entitled to attorney's fees. Further, Crenshaw's refusal of tender from Jocassee, tender that made the foreclosure action unnecessary, is an attempt to "mine" attorney's fees and is the sort of action which the Court in *Burnett & Johnson v. Senn* condemned. Jocassee is the prevailing party and as such, is entitled to attorney's fees.

Respectfully submitted.

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May 11, 2011

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and Bank of Travelers Rest,

Defendants,

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Individually and d/b/a The Jocassee Club is

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Reply Brief complies with Rule 211(b),
SCACR.

May 11, 2011


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MAY 31 2011

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Individually and d/b/a The Jocassee Club
And Bank of Travelers Rest,

Defendants,

Of Whom Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club is

Appellant.

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Statement of Issues on Appeal

- I. DID THE TRIAL ERR IN FINDING RESPONDENT WAS THE PREVAILING PARTY UNDER S. C. CODE ANN. §29-5-20 (1976)?
- II. DID THE TRIAL COURT ERR IN AWARDING RESPONDENT ATTORNEYS FEES, INTEREST AND COSTS UNDER S. C. CODE ANN. §29-5-20 (1976)?

Statement of the Case

This action commenced on December 17, 2009 when Respondent Crenshaw's TV and Radio Service, Inc. ("Crenshaw") filed its Petition to Foreclose a Mechanic's Lien in the amount of \$16,988.07 plus interest, attorney's fees and costs against the property owner Appellant Jocassee Partners Holdings, LLC ("Jocassee"). Crenshaw, a supplier to the general contractor, Central Contracting, had not been paid by Central Contracting and filed its mechanic's lien on September 10, 2009 in the amount of \$16,988.07 plus interest, attorney's fees and costs. The sole issue in this appeal is whether Jocassee owes Crenshaw attorney's fees interest, attorney's fees and costs. The material facts in this case are not in dispute.

On April 12, 2010, the Honorable R. Lawton McIntosh heard Jocassee's argument for summary judgment, which was denied. On August 2, 2010, Judge McIntosh heard Jocassee's Motion to Reconsider and again denied Jocassee's Motion for Summary Judgment, but granted summary judgment to Crenshaw. Judge McIntosh's Order was filed on October 4, 2010. Jocassee filed its Notice of Appeal on October 12, 2010 and notified counsel for Crenshaw of the appeal on the same date.

Statement of Facts

This is a Mechanic's Lien foreclosure action by a lower tier supplier (Respondent) to a general contractor which failed to pay the Respondent. Respondent's entitlement to the claimed principal balance is not in dispute. After the Respondent filed its Mechanic's Lien ("Lien") but before suit to enforce the Lien was filed, the Appellant paid the sum of \$8,494.03 representing one-half of the principal sum owed. Also, prior to filing suit to enforce the Lien, the Appellant tendered, on October 14, 2009, the balance of principal due with the stipulation that the check represented "final payment" and that "Acceptance of this check is your company's confirmation of payment in full". The tender was rejected by the Respondent since it did not include payment of interest, attorney's fees and costs. Therefore, what is in dispute is whether the Respondent is entitled to interest, attorney's fees and costs from Appellant.

The following facts are undisputed:

1. Respondent filed its Mechanic's Lien on September 10, 2009 in the amount of \$16,988.07 on property owned by Appellant. (R. p. 7)
2. Appellant paid the sum of \$8,494.03 to Respondent on September 17, 2009, prior to Respondent's instituting this suit to enforce the lien.
3. Respondent replied to Appellant's payment by its letter of September 23, 2009 advising the Appellant that not only was the remaining principal balance owed but that there was also due and owing as a part of the claim all other damages that are recoverable by Respondent since it was necessary to file a Mechanic's Lien. (R. p. 114)
4. Prior to the institution of suit to enforce the Lien, Appellant tendered to Respondent the remaining balance of Respondent's Lien, as evidenced by letter to

Respondent dated October 14, 2009, in which it is stated that the enclosed payment was a “final payment” and that “Acceptance of this check is your company’s confirmation of payment in full”. (R. p. 115)

5. Respondent refused to accept Appellant’s tender of the remaining principal balance of the Lien on those terms because Respondent claimed it was due additional sums for interest, attorney’s fees and costs under S. C. Code Ann. §29-5-20 (1976).

6. On December 17, 2009, Respondent filed its Summons and Complaint to enforce its Lien, alleging it was entitled to recover the principal balance owed which had been previously tendered, plus interest, cost, and attorney’s fees. (R. p. 19)

7. On December 30, 2009, Appellant filed its letter to Respondent’s counsel wherein it offered to pay the Respondent the remaining balance of the Lien in accordance with the offer of settlement procedure set forth in S.C. Code Ann. §29-5-20 (1976) along with its Answer and Counterclaim. The offer contained in the Appellant’s letter did not include a dismissal of the Counterclaims, with prejudice, it had asserted against the Respondent in its Answer and Counterclaims. (R. p. 116)

8. On January 7, 2010, Respondent filed its Offer of Settlement pursuant to S. C. Code §21-5-10 (1976) and/or §29-5-20 (1976) for the remaining balance of the Mechanic’s Lien, in which the Respondent agreed to accept in settlement of the Lien the remaining principal balance owed, i.e., \$8,494.03, exclusive of interest, costs and reasonable attorney’s fees for the Respondent to be determined by the Court, along with the dismissal, with prejudice, of all counterclaims filed by Appellant. (R. p. 117)

9. As a follow up to that letter, Respondent advised the Appellant, by letter dated January 11, 2010, that the total amount due at this time was \$13,512.35 which was composed of the admitted balance of \$8,494.00 plus attorney's fees of \$5,122.32, representing interest, costs and attorney's fees incurred as of that date. (R. p. 120)

10. By letter dated January 20, 2010 Appellant, among other things, again tendered to Respondent a check for the remaining balance of the Mechanic's Lien. This tender was again rejected by Respondent. (R. p. 121)

11. On January 22, 2010 Respondent mailed a letter to Appellant asserting, among other things, that it was the Respondent's position that its Offer of Settlement would be closer to the ultimate verdict in this matter and since that verdict would include a dismissal of the Appellant's Counterclaims, with prejudice, and, therefore Respondent would be the prevailing party and thus entitled to attorney's fees, interest and costs under the applicable Code Sections of the S. C. Mechanic's Lien Statutes. (R. p. 124)

12. On January 25, 2010 Respondent filed its Reply to the Appellant's Counterclaims. (R. p. 40)

13. The Appellant's attorneys then forwarded to Respondent's attorney a letter dated February 5, 2010 . . . to clarify my Offer of Settlement dated December 29, 2009" . . . and further stated that . . . "this Offer of Settlement was intended to dismiss all claims and counterclaims raised in the above referenced action . . .". The letter also included "Appellant's Offer of Settlement to the Respondent" which it was filing "to further clarify this matter . . .". (R. p. 126)

14. By letter dated February 10, 2010, Respondent's counsel advised that Appellant's Offer of Settlement was actually an acceptance of Respondent's previous

offer filed January 7, 2010 and, thus, Respondent was now the prevailing party and, accordingly, entitled to interest, attorney's fees and costs in this matter. (R. p. 129)

15. The Appellant filed its Motion for Summary Judgment on February 24, 2010. (R. p. 44)

16. Respondent filed its Motion for Summary Judgment on June 15, 2010 seeking an Order granting the relief it sought, including a dismissal, with prejudice, of the counterclaims asserted by the Appellant. The Respondent's attorney also filed his Fee Affidavit regarding attorney's fees. (R. p. 80)

Standard of Review

This is an appeal of an Order granting summary judgment to Respondent, Crenshaw and denying summary judgment to Appellant, Jocassee. When reviewing an Order granting summary judgment, the appellate court applies the same standards as the trial court. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Where there are no disputed issues of facts, the appellate court is free to decide a question of law with no particular deference to the circuit court. *Catawba Indian Tribe of S. Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) (citing *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000))

Argument

I. DID THE TRIAL ERR IN FINDING RESPONDENT WAS THE PREVAILING PARTY UNDER S. C. CODE ANN. §29-5-20 (1976)?

The Mechanic's Lien Statute in question, i.e., S. C. Code Ann. §29-5-20 (1976), provides as follows:

(A) Every laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon, subject to existing liens of which he has actual or constructive notice, to the value of the labor or material so furnished, including the costs of the action and a reasonable attorney's fee which must be determined by the court in which the action is brought but only if the party seeking to enforce the lien prevails. If the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court. The fee and the court costs may not exceed the amount of the lien. The lien may be enforced as herein provided. (Emphasis added).

Accordingly, under §29-5-20 (1976), the Lien created by this statute includes both the value of the labor and materials furnished and the costs of the action and a reasonable attorney's fee to be determined by the Court. Further, under this statute, even though the Lien encompasses the costs and attorney's fees, whether a party is entitled to collect the costs and attorney's fees included in the lien is based upon a determination that the party is the prevailing party in the suit to enforce the lien.

In this case, the Respondent was forced to file a Lien because the Appellant refused to pay the Respondent. After the lien was filed, the Appellant tendered partial payment of the principal amount due. The Appellant later tendered the balance of the principal due but on the condition that it was a "final payment" and that acceptance of the check constituted payment in full. Since the amount tendered did not include interest, attorney's fees and costs included in the Lien under §29-5-20 it was rejected by the

Respondent. The Appellant was notified of this rejection and the reasons therefor.

Respondent received no further communication from the Appellant and was thus compelled to file suit to enforce its Lien to comply with the time constraints imposed by this Mechanic's Lien Statute.

In response to the suit filed by the Respondent to enforce the Lien, the Appellant served and filed its Answer and Counterclaims accompanied by a letter to the Respondent offering to pay the remaining principal balance as an Offer of Settlement pursuant to S. C. Code Ann. §29-5-20 (1976). However the Offer of Settlement did not include an offer to dismiss the counterclaims, with prejudice, that were asserted against the Respondent in the Appellant's Answer. While the principal amount due is not in dispute, the counterclaims asserted by the Appellant were now a part of this action and were capable of being maintained by the Appellant as separate and independent claims which had to be resolved as part of this action. Accordingly, any Offer of Settlement had to deal with and include a proposed resolution of those counterclaims with the ultimate resolution of that issue determining who would be the prevailing party.

The Respondent subsequently filed (January 7, 2010) an Offer of Settlement that included a dismissal, with prejudice, of those counterclaims. While it is true that the Appellant thereafter sought "to further clarify" its offer to include a dismissal of the counterclaims, with prejudice, the "clarification" constituted nothing more than an acceptance of the Respondent's Offer of Settlement dated January 7, 2010. (R. p. 117) Accordingly, since the Order of the Lower Court granting the Respondent's Motion for Summary Judgment included a dismissal, with prejudice, of the Appellant's counterclaims, the Respondent's Offer of Settlement dated January 7, 2010, was closer

(in fact, identical) to the ultimate verdict in this matter. Therefore, the Respondent must be deemed to be the prevailing party under §29-5-20(c) and entitled to attorney's fees, interest and costs. (See, *Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC, et al.*, 372 S.C. 89, 641 S.E.2d 459).

II. DID THE TRIAL COURT ERR IN AWARDING RESPONDENT
ATTORNEYS FEES UNDER S. C. CODE ANN. §29-5-20 (1976)?

As stated above, the lien created by §29-5-70 (1976) includes both the value of the labor and materials furnished and the costs of the action and a reasonable attorney's fee to be determined by the Court. However, to collect the costs and attorney's fee included in the lien, the party seeking them must be determined by the Court to be the prevailing party in the suit to enforce the lien.

In the present case, the Lower Court property granted the Respondent's Motion for Summary Judgment and dismissed, with prejudice, the counterclaims filed by the Appellant. Accordingly, the Respondent prevailed in the suit to enforce the lien, and, as the party whose Offer of Settlement was closer to the verdict reached (indeed, identical to the verdict reached) the Respondent is "... considered the prevailing party in the action" under §29-5-20(c) (1976). As such, the Court's award of attorney's fees, interest and costs in this case was proper and must be affirmed. (See, *T. W. Morton Builders, Inc. v. Richard P. von Buedingen, et al* 372 S. C. 89, 641 S.E.2d 459).

Conclusion

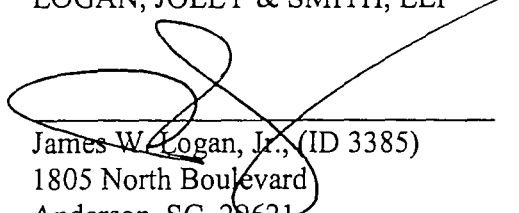
It would be fundamentally unfair and in contravention of §29-5-20 (1976) to allow the Appellant to escape payment of attorney's fees, interest and costs in this case. The Appellant refused to pay its debt to the Respondent that it now acknowledges it owed

until after the Respondent was forced to file a mechanic's lien to comply with the time constraints contained §29-5-20. The Appellant then tendered only a partial payment. Later, Appellant tendered the balance owed but without any acknowledgment of its obligation to pay attorney's fees, interest and costs. Thus, the Respondent was forced, by the conduct of the Appellant, to incur not only the expense of filing a mechanic's lien but the added expense of filing suit to preserve its lien and to collect these attorney's fees, interest and costs that are included in the Lien. The Appellant should not be allowed to avoid payment of these expenses and thus profit by its conduct.

Accordingly, the Respondent respectfully requests that the Order of the Lower Court be affirmed in all respects.

Respectfully submitted,

LOGAN, JOLLY & SMITH, LLP



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Anderson, South Carolina

Dated: May 24, 2011



The South Carolina Court of Appeals

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CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 14, 2012

Ms. Violet Elizabeth Wright
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Mr. James W. Logan
PO Box 259
Anderson SC 29622

Mr. T. S. Stern, Jr.
PO Box 2343
Greenville SC 29602

Re: Crenshaw's TV v. Jocassee Partners
Appellate Case No. 2010-175307

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Jenny A. Kitchings /B
CLERK

cc: R. Lawton McIntosh

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

Crenshaw's TV and Radio Service, Inc., d/b/a Crenshaw's
TV & Appliance, Respondent,

v.

Jocassee Partners Holdings, LLC Individually and d/b/a
The Jocassee Club and Bank of Travelers Rest,
Defendants,

Of whom Jocassee Partners Holdings, LLC Individually
and d/b/a The Jocassee Club is Appellant.

Appellate Case No. 2010-175307

Appeal From Oconee County
R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2012-UP-610
Heard October 3, 2012 – Filed November 14, 2012

REVERSED AND REMANDED

Violet Elizabeth Wright and T.S. Stern, Jr. of Covington
Patrick Hagins Stern & Lewis, P.A. of Greenville, for
Appellant.

James W. Logan of Logan Jolly & Smith, LLP of
Anderson, for Respondent.

PER CURIAM: Jocassee Partners Holdings, LLC (Jocassee) appeals the trial court's grant of summary judgment to Crenshaw's TV and Radio (Crenshaw) on its mechanic's lien foreclosure action and the award of costs and attorney's fees to Crenshaw. We reverse and remand to the trial court for an award of reasonable attorney's fees to Jocassee as the prevailing party.

Jocassee argued that the trial court erred in finding Crenshaw was the prevailing party and in awarding Crenshaw attorney's fees under section 29-5-20 of the South Carolina Code (2007) when Jocassee had previously tendered the full amount of the mechanic's lien, the final half of which Crenshaw had refused before it commenced foreclosure proceedings.

As a general rule, attorney's fees are not recoverable unless authorized by contract or statute. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). Under the mechanic's lien statute, attorney's fees are awarded by the court only if there is an action filed with the court. S.C. Code Ann. § 29-5-20 (A) (2007). The court may award to the prevailing party

the costs of the action and a reasonable attorney's fee which must be *determined by the court in which the action is brought* but only if the party seeking to enforce the lien prevails. If the *party defending against the lien prevails, the defending party must be awarded* costs of the action and a reasonable attorney's fee as determined by the court.

Id. (emphasis added).

Our supreme court has defined a "prevailing party" as "one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered."

EFCO Corp. v. Renaissance on Charleston Harbor, LLC, 370 S.C. 612, 618, 635 S.E.2d 922, 925 (Ct. App. 2006) (quoting *Heath v. County of Aiken*, 302 S.C. 178, 182-83, 394 S.E.2d 709, 711 (1990)).

"Clearly, the intent of the legislature in allowing the prevailing party in an action brought under the mechanic's lien statute to recover attorney fees and costs stems from a desire to deter both wrongful filing of liens and unjustified refusal to pay debts subject to mechanic's liens." *Cedar Creek Properties v. Cantelou Associates, Inc.*, 320 S.C. 483, 486, 465 S.E.2d 774, 775 (Ct. App. 1995).

In this case the lien was properly filed, but Crenshaw did not accept payment of the debt and refused to accept the second half of the payment for the mechanic's lien after previously accepting the first half. At that point in time, Crenshaw was not entitled to costs and fees. In defending the foreclosure action against the improper addition of costs and fees, Jocassee should have been the prevailing party and awarded attorney's fees. See § 29-5-20 (A) (stating the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court).

REVERSED AND REMANDED.

HUFF, THOMAS, and GEATHERS, JJ., concur.

The South Carolina Court of Appeals

Crenshaw's TV and Radio Service, Inc., d/b/a Crenshaw's
TV & Appliance, Respondent,

v.

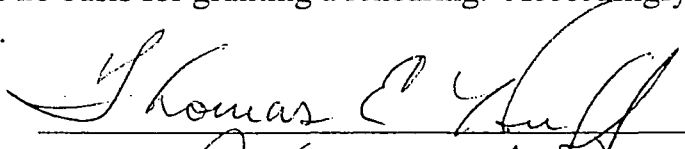
Jocassee Partners Holdings, LLC Individually and d/b/a
The Jocassee Club and Bank of Travelers Rest,
Defendants,

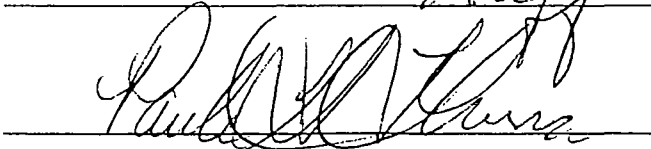
Of whom Jocassee Partners Holdings, LLC Individually
and d/b/a The Jocassee Club is Appellant.

Appellate Case No. 2010-175307

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.


J.


J.

Columbia, South Carolina

cc:
Violet Elizabeth Wright
James W. Logan, Jr.
T. S. Stern, Jr.

FILED
18 Dec 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Opinion No. 0000 (S.C. Ct. App. Filed Dec. 18, 2012)

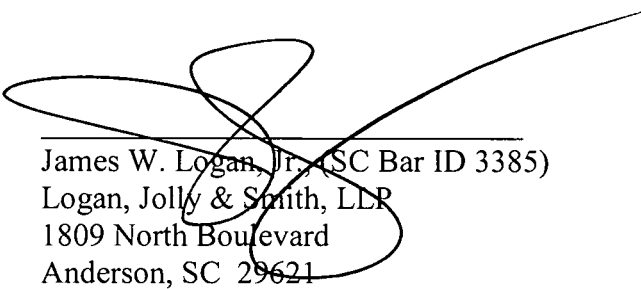
Crenshaw's TV and Radio Service, Inc.,
d/b/a Crenshaw's TV & Appliance, ... Petitioner,

Jocassee Partners Holdings, LLC, Individually and d/b/a
The Jocassee Club And Bank of Travelers Rest, ...Defendants,

Of Whom Jocassee Partners Holdings, LLC
Individually and d/b/a The Jocassee Club is Respondents.

PROOF OF SERVICE

I certify that I have served a corrected title page of the Petition for a Writ of Certiorari and a corrected Appendix on Respondent Jocassee Partners Holdings, LLC individually and d/b/a The Jocassee Club by depositing a copy in the United States Mail, postage prepaid, on January 11, 2013, addressed to its attorneys of record, T. S. Stern, Jr. and V. Elizabeth Wright, 211 Pettigru Street, Greenville, SC 29201.



James W. Logan, Jr. (SC Bar ID 3385)
Logan, Jolly & Smith, LLP
1809 North Boulevard
Anderson, SC 29621
(864)226-1910
Attorneys for Petitioner

Dated: January 22, 2013