

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2007-CP-46-0119

J. W. Neal Construction, LLC..... Respondent,

v.

Cornelia Thomas..... Appellant.

RECORD ON APPEAL

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HAMILTON MARTENS BALLOU
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ATTORNEYS FOR RESPONDENT

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

J.W. NEAL CONSTRUCTION, LLC,
a South Carolina limited liability company,

Plaintiff,

v.

CORNELIA THOMAS,

Defendant.

ORDER

Case No. 2007-CP-46-0119

DAVID HAMILTON
C.C.P. & S.
YORK COUNTY, SC

2010 JUN 23 AM 11:31

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This matter came before me for a hearing on May 19th, 2010, upon motions of the parties pertaining to an arbitration award in this case. John Martin Foster appeared for the Plaintiff; Herbert W. Hamilton of Hamilton appeared for the Defendant. Based on the record and evidence presented, and arguments of counsel, I make the following findings and conclusions.

By Agreement of the parties, this Mechanics Lien case was dismissed without prejudice and submitted to binding arbitration. With the agreement of counsel for the parties, I interpret the dismissal order as recognizing the continuing jurisdiction of this court pursuant to S.C. Code Ann. §§ 15-48-10 *et seq.* (1976, as amended).

After a full hearing of the matter, the Arbitrator issued his decision, awarding the Plaintiff \$41,182.00 on his claim, and the Defendant \$43,442.00 on her counterclaim. In accordance with applicable statute and precedent, the Arbitrator also ruled that Defendant was the prevailing party, entitled to an award of attorneys fees and costs.

The decision of the Arbitrator is dated on its face February 25, 2010. A cover letter of that date transmitting the same to both counsel was introduced. Neither a certificate of service or a proof of mailing was submitted by either counsel.

By e-mail dated and sent March 22, 2010, Plaintiff requested a revision of the Award due to a mathematical error. By his e-mail of March 23, 2010, the Arbitrator acknowledged that there was a mathematical error, and offered to correct the same. Defendant objected to the correction. All e-mails referenced herein were either attached to the Motion pleadings, or presented to the Court.

Defendant moves pursuant to S.C. Code Ann. § 15-48-120 to re-open the case and confirm the original reward. Pursuant to S.C. Code § 15-48-140, and Rule 60(a), S.C.R.C.P.,

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Plaintiff moves the Court to Modify or Correct the Arbitration Award to be entered.

§ 15-48-140 provides, in relevant part, as follows:

(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; . . .

(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

In this case, I find and conclude that there is ". . . an evident miscalculation of figures [and] an evident mistake in the description of [a] thing . . . referred to in the award." The Arbitrator states in the first, partial paragraph of page 2 of his Award:

"Prior to that time the defendant had paid the Plaintiff 2 draws totaling \$143,600.00, making a total payment to Plaintiff of \$161,550.00."

He states, however, in the second, full paragraph on Page 3 of the award:

"The Defendant has paid a total of \$197,450.00, leaving a balance due to Plaintiff of \$42,182.00."

The two cited statements are obviously inconsistent and contradict each other. This is "evident" on the face of the Award, and I construe the plain language of the statute to apply and to require a correction. Given this fact, Plaintiff is entitled to a modification of the Award to correct this mistake. The other provisions of the Award as to damages will not be affected.

Defendant asserts that a stricter standard should be applied, and that such standard dictates that this award may not be corrected. In *Apex Plumbing Supply v. U.S. Supply Co.*, 142 F.3d 188 (4th Cir. 1998), the Court construed the Federal Arbitration Act to limit the remedy of modification to apply only to "mathematical errors appearing on the face of the award." *Id.*, 142 F.3d at 194. In *United States Postal Service v. Natl. Postal Professional Nurses*, 232 F.3d 892 (4th Cir. 2000), the Court applied that reasoning to the Maryland Uniform Arbitration Act. No South Carolina case controls this particular question of interpretation of our state statute.

I find and conclude that even if the cited standard is applied in this case, there are "mathematical errors appearing on the face of the award." *Apex, supra*, 142 F.3d at 194. It is clear that the Arbitrator found as a fact that a certain amount was paid by Defendant to Plaintiff, and then through error used another amount to calculate the Plaintiff's award. The correct amount is easily calculable from the face of the award. Thus, I find and conclude that this

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satisfies the *Apex* standard, and entitles Plaintiff to relief under § 15-48-140.

The result of this correction is to change the prevailing party from Defendant to Plaintiff. Thus, counsel for Plaintiff shall submit his Affidavit for Attorneys Fees for a determination of reasonable attorney's fees and costs.

Therefore, based on the discussion herein, it is ordered as follows:

1. The Arbitration Award shall be corrected to show an award to Plaintiff of \$78,082.50, and an award to Defendant on her counterclaim of \$43,442.00.

2. As the prevailing party, Plaintiff is granted an award of reasonable attorney's fees and costs. Plaintiff shall submit his motion and affidavit in support of reasonable attorneys fees and costs within ten days from the date of this order. Defendant shall have ten days from the date of service of the motion and affidavit in which to respond to the same. If requested by either party, a hearing will be held to determine the amount of any award.

AND IT IS SO ORDERED.

June 1, 2010


S. Jackson Kimball
Special Circuit Court Judge
York County

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2007CP4600119

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2010 JUN 11 AM 8:45

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JW Neal Construction LLC vs. Cornelia Thomas

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other:

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☒ Statement of Judgment by the Court:

This matter came before me for consideration of an award of attorneys' fees and costs to Plaintiff as the prevailing party in its mechanic's lien claim. Plaintiff was represented by J. Martin Foster, and Defendant was represented by Herbert W. Hamilton.

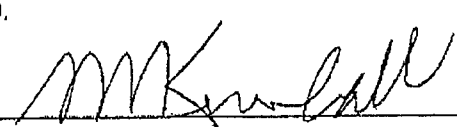
By previous order and pursuant to S.C. Code Ann. Section 15-48-140, I corrected a miscalculation of the arbitration award in this action. The correction altered the Arbitrator's determination of the prevailing party. Thus, it is now appropriate to remand the case to the Arbitrator for a determination of an award of reasonable attorney fees to the Plaintiff as the prevailing party in accordance with the Arbitrator's consideration of the factors set forth in *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997), and *Barron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989), et al.

Therefore, it is ordered that this case be remanded to the Arbitrator for a determination of an award of attorney fees and costs in this action.

AND IT IS SO ORDERED.

Dated at York, South Carolina, this June 9, 2010.

Court Reporter: N/A


S. JACKSON KIMBALL, SPECIAL CIRCUIT JUDGE -

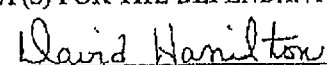
This judgment was entered on the 11th of June, 2010, and a copy mailed first class this 11th of June, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

John Martin Foster Attorney at Law P.O. Box 106 Rock Hill, SC 29731

ATTORNEY(S) FOR THE PLAINTIFF(S)

Herbert W. Hamilton Hamilton Martens Ballou & Sipe, LLC P.O. Box 10940 Rock Hill, SC 29731

ATTORNEY(S) FOR THE DEFENDANT(S)



David Hamilton - Clerk of Court

SCRCP APP-24/FORM 4

ROA000006

STATE OF SOUTH CAROLINA

COUNTY OF YORK

J.W. NEAL CONSTRUCTION, LLC,
a South Carolina limited liability company,

Plaintiff,

v.

CORNELIA THOMAS,

Defendant.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

ORDER

Case No. 2007-CP-46

DAVID HAMILTON
S.C. C.P. & G.S.
YORK COUNTY, S.C.

2012 JUN 20 AM 9:48

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This matter came before me on April 19, 2012, on Defendant's motion to dismiss Plaintiff's mechanic's lien, and Plaintiff's motion to confirm the amended awards made by the Arbitrator as to the case in chief and as to attorney's fees, and directing that judgment to be entered on the award, pursuant to S.C. Code Ann. § 15-48-140(b) (1976, as amended). Based on the record presented and the arguments of counsel, I make the following findings and conclusions.

Defendant's Motion is based, first, on a claim of the Plaintiff's lack of proper licensure under South Carolina law. This argument, to the extent it is cognizable other than by the Arbitrator, is untimely.

Defendant's other argument for dismissal is, in effect, based on a claim of laches in registering the judgment.

The equitable doctrine of laches is defined as 'neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.' (Citation omitted.) 'Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights.' (Citation omitted.) *Robinson v. Estate of Harris*, 388 S.C. 616, 627, 698 S.E.2d 214, 220 (2010).

I find and conclude that Defendant has not made the requisite showing of prejudice necessary to invoke the doctrine of laches. Thus, Defendant's Motion must be denied.

Based on the applicable statute, I find and conclude that Plaintiff is entitled to confirmation of the arbitration award and entry of the same as a judgment. Accordingly, Plaintiff is entitled to foreclosure of its mechanic's lien, and to that end, I make the following

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findings of fact and conclusions of law:

1. The Defendant is the owner of record of the following subject real property:

All that certain piece, parcel, or lot of land, lying, being and situate in Ebenezer Township, County of York, State of South Carolina and being shown and designated as Lot 25 on plat of Wellington Heights Phase IV, containing 1.236 acres upon lat entitled "Property Surveyed for Cornelia Thomas prepared by William Thomas Stafford Jr. dated February 21, 2002 and recorded in the office of the Clerk of Court for York County, SC in Plat Book C-117 at Page 9, which plat is incorporated herein by reference, and having such metes, bounds, courses and distances as by reference to said plat will more fully appear.

Derivation: This being the identical property:

a) conveyed to DJBSMA Development Company LLC by deed of Paul D. Poston and John H. Poston dated November 2, 2002 and recorded November 8, 2002 in Record Book 4772 at Page 9;

b) conveyed to Cornelia Thomas by deed of DJBSMA Development Company LLC dated March 1, 2002 and recorded March 14, 2002 in Record Book 4245 at Page 3; and

c) conveyed by a corrective deed of DJBSMA Development Company LLC to Cornelia Thomas dated November 4, 2002 and recorded November 8, 2002 in Record Book 4772 at Page 13;

all recording references being to the Office of the Clerk of Court for York County, South Carolina.

2. There is has an existing first mortgage on the subject real property with Carolina First, now known as TD Bank, as the mortgagee. The mortgage is a purchase money mortgage, as the funds received by Defendant were used to finance the building of her residence. This litigation arose out of a mechanic's lien filed by Plaintiff as a result of that construction.

3. By Agreement of the parties, this Mechanics Lien case was submitted to binding arbitration. As amended by the Arbitrator and approved by this Court, there is a net award to the Plaintiff of \$34,540.50, and an award to Plaintiff of attorney fees in the amount of \$5,546.00.

4. Plaintiff's mechanic's lien is a valid and subsisting second lien on the subject real property, after that of TD Bank, on the interest of the Defendant in the subject real property for the sum of \$40,186.50, with interest from the date of this judgment at the legal rate.

5. No proof was presented by any party that the debt which is the subject of this action may be satisfied by selling the subject real property in parcels or lots, rather than selling the whole to satisfy the said claim.

6. Based on the record and the findings herein, I make the following conclusions:

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A) That Defendant, being liable for the Mechanic's Lien shall, shall on or before the date set for sale of the subject real property, pay to the Plaintiff or its counsel the amount of the judgment set out herein, together with the costs and disbursements of this civil action;

B) That in default of payment of such said payment to Plaintiff on or before the time herein indicated, the real property described herein be sold by or under the direction of the Master in Equity at public auction, at the Office of the Master in Equity, 1 North Congress Street, York, South Carolina, on such date as is indicated in the Notice of Sale and on the following terms:

- A. **FOR CASH:** The bidding shall not be closed upon the day of sale and shall remain open until the thirtieth (30th) day after such sale, exclusive of the day of sale, pursuant to S.C. Code §§ 15-39-750 and 29-5-280 (West);
- B. The sale shall be subject to pro-rated taxes and assessments, and existing easements, restrictions and other matters of record;
- C. TD Bank's mortgage constitutes a first lien on the real property which is the subject thereof;
- D. J.W. NEAL CONSTRUCTION, LLC's Mechanic's lien constitutes a second lien on the real property which is the subject thereof; and
- E. The successful purchaser shall pay and be responsible for Deed Stamps and the costs of recording the Deed and other proof of title.

C) That Plaintiff is entitled to a pro-ration of all taxes and assessments due on the subject real property;

D) That because a personal or deficiency judgment is not waived by the Plaintiff, the bidding shall not be closed upon the day of sale and shall remain open until the thirtieth (30th) day after such sale, exclusive of the day of sale, pursuant to S.C. Code Ann. §§ 15-39-750 and 29-5-280 (1976);

E) That the Master in Equity shall, by advertisement according to law; that is, by public advertisement of the subject real property setting out the time and place of sale (providing that if such sale be set on a judicial sales day and if the regular day of judicial sales fall on a legal holiday, then and in such event the sale shall be on the Tuesday next succeeding such holiday) and the terms thereof, such advertisement to appear for twenty-one (21) days, that is to say once a week for three (3) weeks, prior or immediately previous to the sale day or days on which the Master in Equity means to expose them to sale, and the Master in Equity shall cause the said notice to be published at three (3) public places in the county, and such publication shall be made in some gazette or newspaper published or printed in the county;

F) That the successful bidder be required at the conclusion of the bidding to comply immediately with the bid, pursuant to S.C. Code Ann. § 15-39-750 and 29-5-260 (1976);

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G) That upon conclusion of the sales process, the Defendant owner, and all persons claiming under defendant owner subsequent to the filing of the notice of *Lis Pendens* of this action in the office of the Clerk of Court for York County, South Carolina, in which county the real property in question is situated, and every person whose conveyance or encumbrance is subsequent, or subsequently recorded, filed, or docketed, is forever barred and foreclosed of all right, claim, lien, or equity of redemption in any part of the real property;

H) That the Plaintiff is entitled to an order that the Master in Equity will execute to the Purchaser a deed and other proof of title to the real and personal property sold; that the Plaintiff, or any other party to this action may become a purchaser at such sale; and that if, upon closing of the bidding, a (prospective) purchaser shall fail to comply with the terms thereof at the time and place set for such sale, then the Master in Equity may, in his discretion, either:

- i. re-advertise the for sale on such convenient sales day or other day thereafter as that Court may set in another Notice of Sale, or
- ii. announce the time and date of such sale at the close of the original bidding, and so from time to time until a successful bid and full compliance therewith shall be secured.

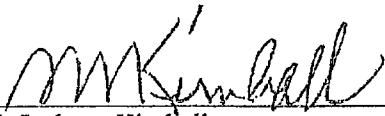
I) That the proceeds of the said sale brought into this Court and applied in payment of the amount due to the Plaintiff, and any residue shall be applied in the same manner as if there had been no such attachment, pursuant to S.C. Code Ann. § 29-5-330 (1976);

J) That upon the sale, the Defendant CORNELIA THOMAS, and all persons claiming under her, be forever barred and foreclosed from any right, title, interest, claim, lien, or equity of redemption in the said real property vested in the said Defendant CORNELIA THOMAS by virtue of the said Mechanic's lien; and

K) That the purchaser of the subject real property at such sale be let into possession of the same on production of the deed and other proof of title thereto;

AND IT IS SO ORDERED.

June 18, 2012


S. Jackson Kimball
Special Circuit Court Judge
York County

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ROA000010

The South Carolina Court of Appeals

J.W. Neal Construction, LLC, a South
Carolina limited liability company, Respondent,

v.

Cornelia Thomas, Appellant.

The Honorable S. Jackson Kimball, III
York County
Trial Court Case No. 2007-CP-46-00119

ORDER of DISMISSAL AND REMITTITUR

The above entitled case is pending on appeal in this Court. It now appears that the Appellant wishes to withdraw the appeal and moves the Court for an Order dismissing the appeal.

IT IS ORDERED that the above captioned appeal be and hereby is dismissed. This case is REMITTED to the Clerk of Court for York County.

V. Claire Allen, Deputy Clerk
For the Court

Columbia, South Carolina
Original to: The Honorable David Hamilton
cc: Herbert W. Hamilton, Esquire
John Martin Foster, Esquire

FILED

9/29/10

ROA000011

SCANNED in 3/2

STATE OF SOUTH CAROLINA)

)

IN ARBITRATION

COUNTY OF YORK)

)

J. W. NEAL CONSTRUCTION,)

LLC)

)

Plaintiff)

)

Vs.)

ARBITRATION AWARD

)

CASE NUMBER 2007-CP-46-119

CORNELIA THOMAS,)

Defendant.)

This matter comes for arbitration hearing on January 28 and 29, 2010 in Rock Hill, SC.
The undersigned was appointed as Arbitrator by stipulation of the parties.

The Plaintiff is represented by John Martin Foster of the York County Bar and the Defendant is represented by Herbert W. Hamilton, also of the York County Bar. The Plaintiff testified along with Robert L. Belk, James Slusarski and Gregory B. Miller. There were 4 Court's exhibits, without objection and 17 Plaintiff's exhibits without objection. The Defendant testified along with Buddy Brault. Part of Defendant's case was the report of Brian Connolly, Plaintiff's exhibit 17 and photographs taken by the Defendant. Defendant also introduced 3 other exhibits without objection. All parties and witnesses testified under oath.

In essence the Plaintiff's complaint was to foreclose a mechanics lien in the amount of \$112,790.00. He also had causes of actions for breach of contract and Quantum Meruit. About November 22, 2005 the parties entered into a fixed price contract for the construction of a house for the amount of \$359,000.00. The Defendant paid 5% down -

\$17,950.00. Plaintiff began work and worked until either middle of December 2006 or January Of 2007 at which time he was ordered off the job by the Defendant. Prior to that time the defendant had paid the Plaintiff 2 draws totaling \$143,600.00, making a total payment to Plaintiff of \$161,550.00.

The Defendant responded with an Answer and Counterclaim, alleging, in addition to a general denial, equitable estoppel and counterclaims, which consisted of allegations of breach of contract, negligent and/or defective work and breach of express and implied warranties.

The Parties stipulated that the Arbitrator's fee will be equally divided between them.

The issues are:

1. Is Plaintiff entitled to additional payment from Defendant for the work he did until the time of his termination from the job by the Defendant, and if so, in what amount?
2. Is the Defendant entitled to an award of money from the Plaintiff pursuant to any of her counterclaims, and if so, in what amount?
3. Whether either party is entitled to attorney fees?

The contract between the parties had an attachment that set out specifications of the job and included references to the specifications set out in the constructions plans. The contract also stated that any change orders were to be signed by both parties. This was a "fixed price" contract. The Plaintiff has charged Defendant with 5 change orders, which were not signed. Both parties testified at length regarding these change orders and the work was done. However, the contract is clear and the Plaintiff can not recover these amounts.

The Plaintiff is seeking to foreclose his mechanics lien, which by stipulation was timely and properly filed, in the amount of \$112,790.00, plus pre-judgment and post judgment interest and attorney fees. In order to determine what amount, if any, the Plaintiff is due, a point in time must be set to examine what percentage of the contract the Plaintiff had

finished. There was conflicting testimony from the parties as to the last date worked by the Plaintiff, but the middle of January, 2007 seems to be the date to be used for this purpose. (The middle of December was also considered, but there is no relevant difference between the two.) It is determined that the Plaintiff's percentage of completion of the job was 66.75%, using a combination of the Defendant's bank's figures- Plaintiff's no. 11- and Plaintiff's estimate- Plaintiff's no. 12. (The Defendant's concern about defective work, repairs necessary, completion of the job and diminution of value to the home will be addressed in the Defendant's counterclaim.) The Plaintiff is entitled to be paid for the amount of completed work. The Plaintiff carried his burden of proof to show the actual work he did and the amount of money he spent thereon. Since this is a fixed price contract, this method of determining any amount, i.e. the percentage of completion, due him is appropriate.

The contract price was \$359,000.00 and the amount of completion was 66.75 percent, which would be \$239,632.00. The Defendant has paid a total of \$197,450.00, leaving a balance due to Plaintiff of \$42,182.00. The Plaintiff is not entitled to the charges for the change orders.

The Plaintiff is not entitled to prejudgment interest. The amount in the Complaint was not liquidated and the amount finally awarded was able to be computed only after obtaining testimony and evidence regarding percentage of completion. This is not a situation where the amount due can be readily ascertained by mere computation or by a legal or recognized standard. The contract between the parties makes no mention of any interest, pre-judgment or otherwise.

As to the Defendant's counterclaims, substantial testimony and evidence was taken from both parties and their witnesses. The primary thrust of the Defendant's case was an attempt to present the defects of Plaintiff's work, the amount the Defendant spent to complete the contract and any diminution in value of the home. In order to determine her entitlements, if any, a determination must be made as to whether she repaired any defective work of Plaintiff, completed remaining work left on the contract when Plaintiff left the job, or had any diminution in value (DIV) of the residence resulting from any of Plaintiff's work that was defective and could not be reasonably repaired. A determination

must be made as to what, if any of the work by Plaintiff was defective, did Defendant expend a "cost to cure" such defect or, if the work could not be reasonably repaired, then an amount of DIV of the whole due to such defect. The Defendant has the burden of proving these matters by a preponderance of the evidence and such must be beyond mere speculation. The Defendant attached a list to her counterclaim and an exhibit that itemizes the claimed defects and each item must be addressed. Defendant's no. 9. It is important to note that the Defendant is not entitled to a "perfect house" nor, in this case, that the work done by the Plaintiff is perfect. She is however entitled to expect that the quality of construction be of reasonable quality.

1. Black felt—Defendant had photographs taken April of 2006 and the inspection report of Mr. Brault, her expert, showing several areas of no or improperly installed felt. Mr. Brault testified he could not state that there were any International Residential Code violations, did not know whether the items he mentioned were addressed by Plaintiff before he left job and could not give any "cost of cure" for any of the defects he mentioned. However, there was no evidence that these areas were not repaired and/or completed by the Plaintiff, nor was there evidence of the extent of such defects, if they existed, and there was no evidence of "cost to cure" or diminution in value (DIV).
2. Foundation—these are also addressed by Mr. Brault on behalf of the Plaintiff and covered by his report. (Court's no. 4.) Defendant gives no evidence of a defect that required repair, cost of same or DIV. Mr. Brault again states that he just pointed out items that concerned him, could not say they were code violations, could not state the method or cost of repair. He specifically stated that he was not aware of any money damage due to these alleged defects. The only evidence of any suggested, but not necessary, repair came from Mr. Belk, the Plaintiff's expert, who stated that \$100.00 could be spent to realign a floor joist. **Mr. Brault testified that if a contractor did not follow the recommendations in his report such would not mean that the contractor "guilty of poor or unworkmanlike conduct."**
3. Master bath windows— The plans called for glass block and the Plaintiff installed acrylic block. He admitted he would have changed them with no cost to the

Defendant, but was not allowed on the job long enough to do so. There is no evidence the Defendant had any cost to remove and replace them, no apparent cost on the exhibit 6 for glass blocks and no testimony regarding DIV resulting from having acrylic versus glass blocks.

4. Window transoms— The plans call for some windows to have transoms and some do not. But there is no testimony about cost to repair this item or DIV.
5. Small windows—No evidence of repair costs or DIV.
6. Front door—The Defendant, on her exhibit no. 6, shows she spent \$5909.00 for a replacement door, but the testimony was that the original door needed to be repaired and that Mr. Belk also saw it. However, there was no evidence that the entire door needed to be replaced and no evidence for Defendant about the cost of repair or DIV. Mr. Belk gave the only repair cost of 200.00
7. Pocket doors—The Plaintiff was ordered off the job before these could be installed, but there was no testimony they were not done or any DIV.
8. Back terrace—This was done differently than the plans, but the only reliable testimony was that it was well built. The fact that it was not in accordance with the plans does not per se mean there was any DIV and there was no testimony to that effect.
9. Grading lot—This is not to be done till the end of the job. Plaintiff had not gotten to that point.
10. Color of bricks—Her expert, Mr. Brault, did not mention this as a defect. Mr. Belk noticed it after it was pointed out to him by the Defendant and his opinion was that it was not objectionable. Even if it was a defect that required correction, there was no evidence of the extent of repair, nature of repair, cost of repair or, if not repaired, any DIV.
11. Stucco window—There was no indication of values except for Mr. Belk who suggested repair cost to be 50.00.
12. Kitchen plumbing—The alleged defects regarding this issue by the Defendant is not chargeable to him since he had not gotten to that stage in his work. No evidence of defect in what he had done, no values of cost to repair any alleged defects nor DIV.

13. Chimney—This was called for in the plans and should be part of the finished house. However, there was no evidence of any cost to add the chimney and if it was not added, whether there was any DIV.
14. Foyer window—There was a finishing defect and the only testimony regarding the repair cost was from Mr. Belk for 100.00.
15. Living room window sills—This complaint does is not a deviation from the plans and is not a defect.
16. & 17. Walls and floors. There is no evidence of a defect that rose to the level of requiring repair, and if repair was needed, no cost of repair nor DIV.
18. Foundation—This has been addressed in number 2 above.
19. Insulation—There is no code violation to have mixed methods of insulation. The areas Defendant complains of having no or improper insulation-see Mr. Brault's report- have been covered so that no one can now testify that these areas have been properly done either by Plaintiff before he left the job or by The Defendant's sub contractor who finished insulation. There are no repair costs or DIV associated with this item.
20. Front stucco windows—This item needed correction and the only repair cost from all the testimony came from Mr. Belk in the amount of \$100.00.
21. Crawl space—This has been addressed earlier as to the change order. The Defendant did not produce any cost to have this changed to comply with the plans, which would not have been practical to do anyway. However, she did not produce any evidence that the house as completed suffered any DIV.
22. Tempered window—There was no evidence of any cost of repair or DIV.
23. Moisture barrier—The testimony clearly showed there was a moisture barrier laid down-although done after the Plaintiff left the job- and there was no moisture problem in the crawl space. Also, the Connolly report, Plaintiff no. 17, clearly indicated that although there was no moisture problem noted as of the date of his inspection, that there could be such in the future, but that the cause was improper placement and grading for the sidewalks and final landscaping, which were not the responsibility of the Plaintiff. Mr. Slusarski also testified confirming the Connolly findings and that the landscaping and drains had apparently been installed similar to

the plans he had done for the Plaintiff- Plaintiff exhibit no. 10. The Defendant testified that she spent an additional \$1890.00 for the final landscaping but this is not chargeable to the Plaintiff.

24. Weep holes—This is addressed in number 1 above.

25. Garage concrete—There is insufficient evidence of cracking that would be deemed a defect and no evidence of repair cost or DIV.

26. Floor insulation—This was not required in the plans.

The Defendant testified and presented evidence that she spent \$229,700.00 in total to complete and repair the job. She stated that there should be credits for allowances in the contract and some overages that she did in the total amount of \$29,262.00. In reviewing Defendants exhibits numbers 6, 7 & 8 and comparing all the entries thereon, the credits to be given should be as follows:

1. Main entrance-- \$9318.00—This is assuming the replacement of the front door-\$5909.00- is included therein.
2. Plumbing—The after allowance value is \$28,401.00.
3. Light fixtures—There were some ambiguities that were resolved in favor of the Defendant, and the after allowance value is \$17,471.00.
4. Kitchen appliances—The after allowance value is \$11,907.

The Defendant can not charge to the Plaintiff the mold remediation expense- \$1,344.00- since there is no evidence of any act or omission by the Plaintiff proximately caused the mold she noticed over a year after the Plaintiff left the job. The Defendant shall be able to include in her counterclaim the \$1,000.00 charged by Mr. Brault as an incidental and consequential damage. She is not entitled to recover any of the other charges on her exhibit number 8. She shall also include the proven costs of repair as indicated in the above list of 1 through 26 in the total amount of \$550.00.

The Defendant undertook to be her own general contractor to complete the job after she ordered the Plaintiff to cease work. At the time she undertook to complete the job 33.25% of the contract remained incomplete. This percentage of the contract is \$119,367.00.

Reducing her expenses by the total of the 1 through 4 above and the mold remediation

amount- a total of \$68,441.00, she has spent \$161,259.00 to complete the contract. She spent \$161,259.00 to complete the contract which should have cost \$119,367.00, the difference being \$41,892.00, the amount she is entitled from the Plaintiff. She is entitled to add \$550.00 repair cost and \$1,000.00 as incidental and consequential damage, as above set out, for a total amount of \$43,442.00.

Regarding attorney fees, the Defendant is the "prevailing" party. Neither Party made a demand or offer as required by the statute and therefore the Plaintiff's demand is the amount claimed in his complaint, \$112,790.00 and the Defendant's offer is "zero." Therefore, based on the above Award, the Defendant is the "prevailing" party and is entitled to attorney fees that are solely for the defense of the foreclosure of the mechanics lien. The award to the Plaintiff is closer to the offer of the Defendant than to the Plaintiff's demand. The award to Defendant on her Counterclaim is not used to determine who is the "prevailing" party.

When there is a determination of the "prevailing" party, therefore attorney fees must be awarded to that party, and the determination of the amount of attorney fees to be awarded to the Defendant is totally within the discretion of the Arbitrator, *Keeney's Metal Roofing, Inc.*, 345 S.C. at 553, 548 S.E.2d at 901. Not only must the fees be regarding the defense of the mechanics lien, they must be related to our case law criteria: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services, *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) (citing *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993).

The parties both presented to the Arbitrator their respective itemized fees. After careful review and considering the above six criteria applied to Defendant's counsel and his statement of fees, the amount Defendant incurred solely the defense of the mechanics lien is \$6,2500.00, which amount she shall be entitled to be recovered by the Defendant from the Plaintiff. The total amount of the Defendant's attorney fees were substantially in excess of the amount awarded and were considered to be for the presentation of her

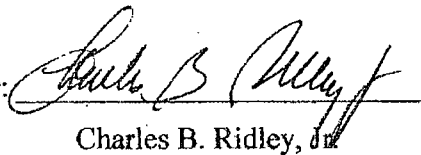
counterclaim or other matters not associated with strictly the defense of the mechanics lien.

THEREFORE, the ARBITRATION AWARD is as follows:

1. Plaintiff, on its Complaint, shall receive the amount of \$42,182.00, Forty Two Thousand One Hundred Eighty Two and no/100 Dollars from the Defendant.
2. The Defendant, on her Counterclaim, shall receive the amount of \$43,442.00, Forty Three Thousand Four Hundred Forty Two and no/100 Dollars from the Plaintiff.
3. The Parties will equally divide the fees of the Arbitrator, which shall be submitted to counsel for the parties within 14 days for the date hereon.
4. The Defendant shall be awarded the amount of \$6,250.00 (Six Thousand Two Hundred Fifty and no/100 Dollars) from the Plaintiff as attorney fees for the defense of the mechanics lien as the prevailing party.

Date: February 25, 2010

Arbitrator:


Charles B. Ridley, Jr.

STATE OF SOUTH CAROLINA)

IN ARBITRATION

COUNTY OF YORK)

J. W. NEAL CONSTRUCTION, LLC)

Plaintiff(s))

Vs.)

CORNELIA THOMAS,)

Defendant(s).)

_____)

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C.C.P. & ES
YORK COUNTY, SC

AMENDMENT TO

ARBITRATION AWARD

CASE NUMBER 2007-CP-46-119

Pursuant to two Orders in the above matter from the Honorable S. Jackson Kimball,
Special Circuit Judge, the original Award in the above matter is hereby amended to
consider the award of attorney fees.

CHS

The Arbitrator used the incorrect amount of \$197,550.00 as the total amount paid by the Defendant to Plaintiff on the contract. The correct amount should be a total of \$161,550.00 paid by the Defendant to the Plaintiff on the contract and is so stated in other portions of the Award. Since the Plaintiff completed 66.75% of the contract, he would be entitled to \$239,632 less the amount paid by the Defendant (\$161,550) for a total due him of \$78,082.50. The Defendant on her Counterclaim is awarded the amount of \$43,442.00. These amounts are set forth in the above Orders of Judge Kimball.

Because the amount awarded to the Plaintiff has substantially increased, he is entitled to an award of attorney fees as being the "prevailing party." Reference is made to the attorney fee portion of the original Award for analysis as to which party is "prevailing." The Plaintiff is recovering an amount closer to his amount claimed in his complaint to foreclose the mechanics lien.

Applying the same criteria for determining attorney fees as in the original Award, the crucial element is what amount appears reasonably applicable to the pursuit of the foreclosure of the mechanics lien as opposed to the amount dedicated to the defense of the Defendant's counterclaim. After careful review of the Plaintiff's counsel's attorney fee statement, the amount of \$5,649.00 is a proper amount to award the Plaintiff as regarding his pursuit of foreclosure of the mechanics lien.

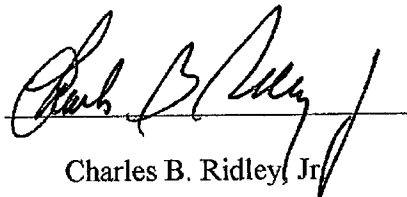
CBK

THEREFORE, the initial Arbitration Award is hereby amended as follows:

1. The Plaintiff is awarded the amount of \$5,649.00, Five thousand six hundred forty nine and no/100 dollars, for attorney fees.
2. The Defendant is not entitled to any attorney fees.

Date: June 17, 2010

Arbitrator:


Charles B. Ridley, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

J. W. NEAL CONSTRUCTION, LLC,
a South Carolina limited liability company,

Plaintiff,

v.

CORNELIA THOMAS,

Defendant.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

SUMMONS

C.A. No. 07-CP-46-119

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CLERK OF COURT
YORK COUNTY, SC

TO THE DEFENDANT:

IF UPON AN INDIVIDUAL, OTHER THAN A MINOR, OR AN INCOMPETENT PERSON, CORPORATION, PARTNERSHIP, OR OTHER UNINCORPORATED ASSOCIATION WHICH IS SUBJECT TO SUIT UNDER A COMMON NAME:

YOU ARE REQUIRED to answer the Complaint in this action and to serve a copy of your Answer on the subscriber of this Summons at 223 East Main Street, Suite 520, Post Office Box 106, Rock Hill, South Carolina 29731, within thirty (30) days after service of this Summons, exclusive of the day of service.

YOU ARE NOTIFIED that in case of your failure to appear and defend within thirty (30) days after service of this Summons, judgment by default will be rendered against you for the relief demanded in the Complaint.

IF UPON A MINOR, A PERSON JUDICIALLY DECLARED INCAPABLE OF CONDUCTING HIS OWN AFFAIRS, OR AN INCOMPETENT PERSON:

YOU ARE NOTIFIED if you have a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may defend on your behalf.

If you are not otherwise represented in this civil action or the Court shall deem it proper, the Court shall appoint a Guardian *ad litem* for you.

If you are a minor party of the age of 14 years or over, you may apply for the appointment of a Guardian *ad Litem* to represent your interests in the above-entitled matter.

If you are a minor party under the age of 14 years, your parent, general or testamentary guardian, relative or friend may apply for the appointment of a Guardian *ad Litem* to represent your interests in the above-entitled matter.

If you are an imprisoned person, you, your relative or friend may apply for the appointment of a Guardian *ad Litem* to represent your interests in the above-entitled matter.

If no application for the appointment of a Guardian *ad litem* is made by or in your behalf within Thirty (30) days after service of this Summons upon you, then the undersigned as attorney for the Plaintiff will make application for the appointment of such Guardian *ad Litem*, after first

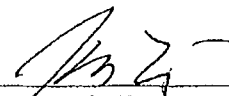
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giving notice of such application to the person or persons to whom such notice must be given under Rule 17(d)(3), (4), or (5), S.C.R.C.P.

IF UPON THE UNITED STATES OF AMERICA:

YOU ARE REQUIRED to answer the Complaint in this action and to serve a copy of your Answer on the subscriber of this Summons at 223 East Main Street, Suite 520, Post Office Box 106, Rock Hill, South Carolina 29731, within Sixty (60) days after service of this Summons, exclusive of the day of service.

YOU ARE NOTIFIED that in case of your failure to appear and defend within Sixty (60) days after service of this Summons, judgment by default will be rendered against you for the relief demanded in the Complaint.



John Martin Foster
Attorney for Plaintiffs

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, SC 29730

Post Office Box 106
Rock Hill, SC 29731-6106

803 324-8100
803 324-8109: Fax
jmfooster@infoave.net

January 5, 2007

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

J. W. NEAL CONSTRUCTION, LLC,
a South Carolina limited liability company,

Plaintiff,

v.

CORNELIA THOMAS,

Defendant.

COMPLAINT TO FORECLOSE

MECHANICS' LIEN

C.A. No. 07-CP-46- 119

Plaintiff alleges:

PARTIES

1. Plaintiff J. W. NEAL CONSTRUCTION, LLC is, and at all times mentioned hereinafter was, a limited liability company organized under the laws of the State of South Carolina, with its principal place of business located at 1361 Pocalla Road, Sumter, South Carolina 29150.
2. Plaintiff is duly registered to do business in the State of South Carolina and, by its general qualifying party Joshua W. Neal, is duly licensed as a Building Contractor.
3. On knowledge and information, Defendant CORNELIA THOMAS is a resident of the State of New York.

JURISDICTION AND VENUE

4. Defendant CORNELIA THOMAS has, by reason of its contract with Plaintiff for the purchase of supplies and materials, and by its agreement with Plaintiff for the construction of a residence in this county:
 - i. transacted business in the State of South Carolina, and in the County of York;
 - ii. entered into a contract to be performed in whole or in part in this State, and in this county;

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C.C. CP. & GS
YORK COUNTY, SC

all within the meaning of those terms as set out in S.C. Code Ann. § 36-2-803 (1976).

5. On knowledge and information, under the terms of S.C. Code Ann. § 36-2-803, this Court may exercise personal jurisdiction over Defendant.

6. On knowledge and information, this action arose, and venue lies, in the county named above.

FIRST CAUSE OF ACTION:

FORECLOSURE OF MECHANICS LIEN

11. On or about November 22, 2005, the parties hereto entered into a contract under which the Plaintiff promised to perform or furnish labor, and/or furnish materials to be used in the said erection, alteration, or repair of a building or structure on real estate located in the said county and state and owned by the Defendant. The said contract was set out in a written document, a copy of which is attached hereto and incorporated herein as Exhibit "C".

12. The said contract was agreed to by, or with the consent of, or by some person having authority from, or rightfully acting for, the Defendant.

13. Subsequent changes were made to the said contract and, on one occasion, memorialized by a "Change Order". A copy of the "Change Order" is attached hereto and incorporated in as Exhibit "CO".

14. The said "Change Orders" was agreed to by, or with the consent of, or by some person having authority from, or rightfully acting for, the Defendant.

15. Pursuant to the agreement of the parties, the Plaintiff placed the charges for its labor and/or materials on its standard statement, copies of which were served upon the Defendant or her agent. A copies of the most recent statement is attached hereto and incorporated herein as Exhibit "S".

16. A description of the real estate owned by the Defendant is attached hereto and incorporated herein as Exhibit "RP".

17. After the date stated above, pursuant to the said contract and in reliance upon it, the Plaintiff performed or furnished labor, and/or furnished materials actually used in the said erection, alteration, or repair of the said building or structure located on the said real estate.

18. The Plaintiff duly performed all of the conditions of the said contract on its part to be performed within the time thereby required, and to the extent permitted by the Defendant.

19. Having completed such labor and/or furnished such materials as were provided by the contract and/or permitted by the Defendant, the Plaintiff duly demanded payment thereof, but Defendant has refused and neglected to make such payment.
20. The Plaintiff has caused a notice in writing of such labor and material and the amount of value thereof to be delivered to the Defendant, pursuant to the requirements of S.C. Code Ann. § 29-5-40 (Law Co-op.)
21. A copy of such notice, and of the accompanying Statement, with all just credits given, are attached hereto and incorporated herein as Exhibit "N" and "S", respectively.
22. No notice in writing has been furnished to the Plaintiffs or their counsel prior to the notice referenced above stating that the Defendant CORNELIA THOMAS as owner would not be responsible for the items set out on the said Statement, as allowed by S.C. Code Ann. §§ 29-5-80 (Law Co-op.)
23. A Certificate of Mechanics' Lien was filed in the Office of the Register of Mesne Conveyances in the county and state aforesaid on January 4, 2007 and recorded in the Mechanics' Lien Book in the Office of the Clerk of Court for York County, South Carolina.
24. A copy of the said Certificate is attached hereto and incorporated herein as Exhibit "CR", the original of this document also had, as attachments, copies of the items referenced both therein and/or in this Complaint as Exhibits "RP", "N", and "S".
25. The said Certificate was presented to the said Defendant within ninety (90) days after the Plaintiff ceased to labor or to furnish labor or materials.
26. Within the same ninety (90) day period, the Plaintiff caused a copy of the said Certificate, with its attachments, on the Defendant. Plaintiff has filed a certification of the same with the Clerk of Court for the county and state aforesaid, pursuant to S.C. Code Ann. § 29-5-90 (Law Co-op.).
27. The Mechanics' Lien evidenced by the documents referenced above has not been canceled or otherwise discharged, nor has the Defendant (as of the date of this Complaint) filed his written undertaking with the said Clerk of Court in order to release the said lien, pursuant to S.C. Code Ann. § 29-5-110 (Law Co-op.)
28. On knowledge and information, the Plaintiff is entitled to prejudgment interest on the amount stated on its Invoices and Statement referenced above from the date thereof until the entry of judgment at the rate of 18 %, and for judgment on the sum total of principal and accrued prejudgment interest from the date of judgment at the rate of 18 %, pursuant to the provisions of S.C. Code Ann. § 34-31-20 (Law Co-op.)

SECOND, ALTERNATIVE CAUSE OF ACTION:

CONTRACT

29. All matters, set out elsewhere in this Complaint and consistent herewith, are realleged hereby as fully as if set out herein.
30. On or about November 22, 2005, the parties hereto entered into a contract under which the Plaintiff promised to perform or furnish labor, and/or furnish materials to be used in the said erection, alteration, or repair of a building or structure on real estate located in the said county and state and owned by the Defendant. The said contract was set out in a written document, a copy of which is attached hereto and incorporated herein as Exhibit "C".
31. The said contract was agreed to by, or with the consent of, or by some person having authority from, or rightfully acting for, the Defendant.
32. Subsequent changes were made to the said contract and memorialized by "Change Orders". Copies of the "Change Orders" are attached hereto and incorporated in as Exhibit "CO".
33. The said "Change Orders" was agreed to by, or with the consent of, or by some person having authority from, or rightfully acting for, the Defendant.
34. Pursuant to the agreement of the parties, the Plaintiff placed the charges for its labor and/or materials on its standard Statement, copies of which were served upon the Defendant or her agent. A copies of the most recent statement is attached hereto and incorporated herein as Exhibit "S".
35. The Plaintiff duly performed all of the conditions of the said contract on its part to be performed within the time thereby required, and to the extent permitted by the Defendant.
36. In December, 2007, Defendant without cause discharged Plaintiff and ordered it to refrain from the performance of any further service under the contract. By doing so, Defendant rendered it impossible for Plaintiff to complete performance.
37. Having completed such labor and/or furnished such materials as were provided by the contract and/or permitted by the Defendant, the Plaintiff duly demanded payment thereof, but Defendant has refused and neglected to make such payment.
38. As a proximate result of Defendant's refusal and breach of the contract, Plaintiff sustained damages in the amount of One Hundred Twelve Thousand Seven Hundred Ninety and no/100 (\$112,790.00) Dollars, plus interest on the same at the legal rate of 8.75 % on the unpaid balance from ten (10) days after the date of the respective statements making up a portion thereof

until the entry of judgment, and interest at the legal rate of 12 % on the sum stated plus the accrued prejudgment interest as of the date of judgment, until paid. In addition, the Plaintiff the loss of its anticipated profits as to the remaining, unperformed portion of the contract.

THIRD, ALTERNATIVE CAUSE OF ACTION:

QUANTUM MERUIT

39. All matters, set out elsewhere in this Complaint and consistent herewith, are realleged hereby as fully as if set out herein.

40. In and after December, 2003, by oral statements made in person and over the telephone, Defendant promised to pay to Plaintiff, for the provision of labor and/or materials furnished or supplied after that date by Plaintiff on behalf of Defendant, and at Defendant's request. A true summary of such supplies and services, with the price thereof charged to the Plaintiff for purchase thereof, is attached hereto and incorporated herein as Exhibit "S".

41. The reasonable value of the above-mentioned labor and/or materials is One-Hundred Twelve Thousand Seven Hundred Ninety and no/100 (\$112,790.00) Dollars, plus interest on the same at the legal rate of 8.75 % on the unpaid balance from ten (10) days after the date of the respective statements making up a portion thereof until the entry of judgment, and interest at the legal rate of 12 % on the sum stated plus the accrued prejudgment interest as of the date of judgment, until paid.

42. Plaintiff has demanded that Defendant pay the sum mentioned above, but Defendant refused, and continues to refuse, to pay Plaintiff the same.

WHEREFORE, Plaintiff prays:

AS TO THE FIRST CAUSE OF ACTION:

1. That this Court attest the copies of this Complaint to be served upon the Defendant, and issue its order:

a) That notice that the Defendant may appear and answer thereto at a certain day in the same term or at the next term be given, and

b) That notice of the filing of the Complaint be given to all other creditors who have a lien of the same kind upon the same estate by service of a copy of the said Order, and

c) That the Order and attested copy of the Complaint be served on the Defendant and all other such creditors,

all as required by S.C. Code Ann. § 29-5-190 (Law Co-op.);

2. That the Plaintiff be determined and adjudged to have a valid and subsisting lien on the interest of the Defendant in the real estate described above, for the amount of the Plaintiff's claim, with interest;
3. That the amount due on the Plaintiff's Lien, with interest, be ascertained and adjudged;
4. That all persons claiming under the Defendant subsequent to the filing of the Certificate of Mechanics' Lien in the Office of the Clerk of Court for the county and state aforesaid,
all persons whose conveyance or encumbrance is subsequent, or subsequently recorded, filed, or docketed, and
all persons whose mortgage was actually existing and duly recorded subsequent to the date of the said contract herein (pursuant to S.C. Code Ann. § 29-5-70 (Law Co-op.)),
be forever barred and foreclosed of all right, claim, lien, and equity of redemption in the said real estate or any part thereof;
5. That the interest of the Defendant in the real estate described above, as of the date of the filing of the said Certificate, be decreed to be sold by such officer as may be authorized by law and the proceeds of the sale distributed according to the provisions of Title 29, Chapter 5 of the South Carolina Code of Laws;
6. That the Plaintiff be awarded its reasonable attorney's fees as prevailing party, pursuant to S.C. Code Ann. §§ 29-5-10 and 29-5-20 (Law Co-op.);

AS TO THE SECOND CAUSE OF ACTION:

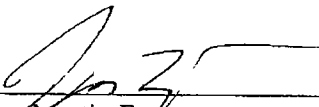
7. That judgment issue for Plaintiff J. W. NEAL CONSTRUCTION, LLC against Defendant CORNELIA THOMAS in the amount of \$112,790.00, plus interest on the same at the legal rate of 8.75 % on the unpaid balance from ten (10) days after the date of the respective statements making up a portion thereof until the entry of judgment, and interest at the legal rate of 12 % on the sum stated plus the accrued prejudgment interest as of the date of judgment, until paid;

AS TO THE THIRD CAUSE OF ACTION:

8. That judgment issue for Plaintiff J. W. NEAL CONSTRUCTION, LLC against Defendant CORNELIA THOMAS in the amount of \$112,790.00, being the reasonable value of the labor was performed and/or materials supplied, plus interest on the same at the legal rate of 8.75 % on the unpaid balance from ten (10) days after the date of the respective statements making up a portion thereof until the entry of judgment, and interest at the legal rate of 12 % on the sum stated plus the accrued prejudgment interest as of the date of judgment, until paid;

AS TO ALL CAUSES OF ACTION:

9. That a prayer for any other relief which may be authorized under other causes of action be included; and
10. That Plaintiff be granted such other and further relief as this Court may deem just and proper.



John Martin Foster
Attorney for Plaintiff

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, S. C. 29730

Post Office Box 106
Rock Hill, S. C. 29731-6106

803 324-8100
803 324-8109
jmfoster@infoave.net

January 5, 2007

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

CONTRACT

THIS AGREEMENT is made this 22 day of November, 2005 by and between Ms. Cornelia Thomas, hereinafter known as the "Owner", and J. W. Neal Construction, LLC, hereinafter known as the "Contractor."

WITNESSETH:

1. That the Contractor shall furnish all labor and materials needed for the construction of a house in York County, South Carolina on the land of the owner; according to the plans and specifications attached hereto and made a part of this contract, and which have been signed and approved by the Owner and the Contractor.
2. That there shall be no changes from the original plans and specifications as approved and attached unless both parties agree thereto in writing as to the extent of such changes and the amounts to be paid or deducted therefor, before work thereon shall have begun.
3. That the Owner shall furnish an adequate survey and description of the Property as well as a loan commitment letter from a credible lending institution or proof of available funds prior to construction beginning. The Contractor shall obtain and pay for all permits necessary to complete the work. Contractor shall also comply with all laws or regulations bearing on the conduct of the work, and shall notify owner if the drawings and specifications are at variance therewith, or if unforeseen conditions arise. In all instances the Contractor shall bring all building up to any local, state or mortgage lending standards.
4. That all materials shall be new and of good quality, and the Contractor shall employ persons who are sufficiently skilled in the work assigned to them so that all workmanship on the building shall likewise be of good quality.
5. That the Contractor shall allow the Owner or other legally interested parties to inspect all work and materials at all times and shall, after receiving notice in writing, remove all defective materials, whether completed or not. Materials rendered unfit for reworking are to be replaced at the Contractor's own expense.
6. Contractor agrees to carry such insurance as required by State and Federal Laws relating to compensation for personal injury to workmen. The Owner may carry additional insurance for protection from contingent liability and may object to and cause to be removed any condition dangerous to workmen or the public. The owner shall carry fire insurance on the building and materials as work progresses, either in binder form or in the usual manner so long as owner and Contractor are protected.
7. Contractor shall complete all work included in this contract within 9 months.

from the date that construction begins, unless delayed by conditions beyond his control, in which case time shall be extended the actual number of days so delayed.

8. It is mutually agreed between the parties hereto that the sum to be paid by Owner to Contractor for the erection and construction of the building according to the attached and approved plans and specifications shall be Three Hundred Seventy Nine Five Hundred Fifty Dollars and no cents (\$359,000.00), less any earnest money paid this date, which shall be held in an account of J.W. Neal Construction. The proposed construction includes the following square footage and cost breakdown:

Total Heated Area	3397 sq. ft.
Unheated Area (Garage, Porches, Patio)	<u>1137 sq. ft.</u>
Total	4534 sq. ft.

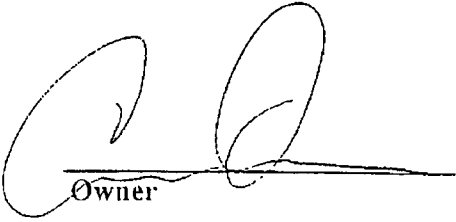
9. Funds will be disbursed according to the schedule as herein defined or that of the lending institution advancing funds for said construction. The first payment, due when the house is framed and the roof complete shall be 25% (per cent) of the contract price. The second payment, due when the plumbing, wiring and inside work is roughed in shall be 25% (per cent) of the contract price. The third payment, due when all outside work is complete, trimming out inside commenced shall be 25% (per cent) of the contract price. The fourth and final payment, due when all specifications are complied with and a certificate of occupancy has been obtained, shall be 25% (per cent) of the contract price or the remaining unpaid amount of the contract price plus overages and change orders. It is expressly understood and agreed that should the Owner obtain a construction loan that all disbursements shall be in accord with the terms, conditions and requirements of Owner's Lender, provided the Contractor is advised of such terms and conditions, prior to the execution of this Contract. It is also understood that if the contractor obtains the construction loan that the owner will subordinate the lot or property to a construction loan and be responsible for monthly interest payments to the lending institution.

10. Final payment shall be due and payable in full when the construction hereinabove referred has been completed and said premises are ready for occupancy. Failure to pay the balance of the contract price within ten (10) days after completion of said dwelling shall result in a penalty charge of Twenty-five (\$25.00) per day until said payment in full is made.

11. Any disagreement arising out of this contract or the application of any provisions thereof shall be submitted to an Arbitrator or Arbitrators not interested in the finances of the contract. The parties hereto may agree on one arbitrator, or may each select one and these two shall select a third. It is mutually agreed that the decision of the mutually agreed arbitrator or any two of the three selected, if each selects one, shall be binding and have the same weight, as a legal decision on any difference herein arising.

This agreement shall be binding upon the parties hereto, their heirs, administrators, executors, successors and assigns.

Witness

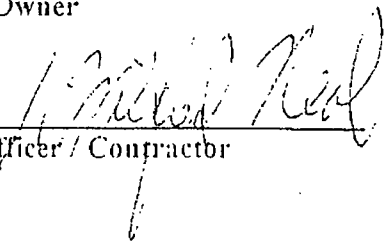


Owner

Witness

Owner

Witness

By: 

Officer / Contractor

11/15/2005

CONTRACT CHANGE ORDER

FROM: J. W. Neal Construction

1361 Pocalla Road
Sumter, South Carolina 29150

No. 00001-Thomas-1

TO: Ms. Cornelia Thomas

New York, New York

DATE

4-Oct-05

JOB NAME

Thomas Residence in York County

CONTRACT JOB N 0001-Thomas

PREPARED BY

J. Wilfred Neal

WORK TO BEGIN BY

TBD

WORK TO BE COMPLETED BY

TBD

The work covered by this order shall be performed under the same terms and conditions as that included in the Original

Home is to be built on a Crawl Space foundation instead of a Concrete Slab Foundation. This change will include additional materials and labor (i.e. lumber, insulation, foundation vents, framing labor).

Changes Approved

BY:

PREVIOUS CONTRACT AMOUNT

\$379,550.00

AMOUNT OF THIS ORDER

\$3,000.00

BY:

TOTAL CONTRACT AND EXTRAS

\$382,550.00

By: _____

EXHIBIT "RP"

All that certain piece, parcel, or lot of land, lying, being and situate in Ebenezer Township, County of York, State of South Carolina and being shown and designated as Lot 25 on plat of Wellington Heights Phase IV, containing 1.236 acres upon plat entitled "Property Surveyed for Cornelia Thomas prepared by William Thomas Stafford Jr. dated February 21, 2002 and recorded in the office of the Clerk of Court for York County, SC in Plat Book C-117 at Page 9, which plat is incorporated herein by reference, and having such metes, bounds, courses and distances as by reference to said plat will more fully appear.

Derivation: This being the identical property:

- a) conveyed to DJBSMA Development Company LLC by deed of Paul D. Poston and John H. Poston dated November 2, 2002 and recorded November 8, 2002 in Record Book 4772 at Page 9;
- b) conveyed to Cornelia Thomas by deed of DJBSMA Development Company LLC dated March 1, 2002 and recorded March 14, 2002 in Record Book 4245 at Page 3; and
- c) conveyed by a corrective deed of DJBSMA Development Company LLC to Cornelia Thomas dated November 4, 2002 and recorded November 8, 2002 in Record Book 4772 at Page 13;

all recording references being to the Office of the Clerk of Court for York County, South Carolina.

JOHN MARTIN FOSTER

Attorney at law

The Professional Center	PO Box 106	803 324 8100
157 East Main Street	Rock Hill SC	803 324 8109 Fax
Rock Hill SC 29730	29731-6106	jmfoster@infoave.net

January 5, 2007

Ms. Cornelia Thomas
161 South Elliott Place
Apartment 6E
Brooklyn, New York 11217-1550
To Be Hand-Delivered:

Re: Labor and/or Materials supplied to 975 Oxford Drive, Rock Hill, SC 29732
By: J.W. Neal Construction, LLC

Madam:

I represent the general contractor on your property referenced above. According to the records of the Clerk of Court of your county, you are the owner of record of the said property.

Enclosed with this letter please find our Statement of Account for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure on the said property, as defined by S.C. Code Ann. § 29-5-10 (Law Co-op.) This labor and/or material was performed, furnished and/or actually used by virtue of an agreement with, or the consent of, yourself, or some person having authority from, or rightfully acting for, you, as defined in the same statute.

This letter and Statement shall constitute your notice in writing of such labor and material and the amount or value thereof under the requirements of S.C. Code Ann. § 29-5-40 (Law Co-op.)

No notice in writing has been furnished to my clients or myself prior to this letter stating that you as the owner will not be responsible for the items set out on the said Statement, as allowed by S.C. Code Ann. § 29-5-80 (Law Co-op.)

Yours,

John Martin Foster

cc: Client

EXHIBIT "S"

STATEMENT

CORNELIA THOMAS
161 South Elliott Place
Brooklyn, New York 11217-1550

By: J. W. NEAL CONSTRUCTION, LLC.
1361 Pocalla Road
Sumter, South Carolina 29150

Labor Performed or furnished or materials furnished and used for a building or structure upon real property:

Thomas Job: as of 12/28/2006

Contract Price		\$ 359,000.00
Earnest Money Contract Execution (5%)	17,950.00	
Draw #1 - at 27% Complete	78,980.00	
Draw #2 - at 45% Complete	<u>64,620.00</u>	
	161,500.00	<u>- 161,550.00</u>
Remaining Contract Balance		\$ 197,450.00
Completed to date (75%)	269,250.00	
Draws To date	<u>-161,550.00</u>	
Amount Currently Due (See attached Schedule)	107,700.00	<u>\$107,700.00</u>
Portion of Contract Unearned:	\$ 89,750.00	

Changes Approved by Ms. Thomas

Build House on Crawl Space	3,000.00	
Reverse Garage	990.00	
Change MB Walls after Framing	350.00	
Add Windows to Garage Total	<u>750.00</u>	<u>\$ 5,090.00</u>

SUB-TOTAL DUE, WITH CHANGES: **\$ 112,790.00**

INTEREST at the legal rate shall be added to the above from ten (10) days after the date of said Statement(s),
which interest shall be added to the SUB TOTAL stated above.

This account has been placed in the hands of an attorney for collection or suit instituted to collect same or a
portion thereof, and an attorney's fee is now due and owing in an accruing amount.

TOTAL DUE **\$ 112,790.00 (plus accruing interest and attorney's fees)**

Total Due on Submission of Account: Please Remit Immediately

SCHEDULE TO EXHIBIT "S"

J W Neal Construction
Schedule of Values and Completion -- Thomas Job
975 Oxford Drive
Rock Hill, South Carolina

Total Construction Estimate

\$359,000.00

Item	Item Description	% of Total	% Complete	Amount
1	Permits/Soft Costs/General Conditions	4%	4%	\$14,360.00
2	Cleaning/Grading/Fill	2%	2%	\$7,180.00
3	Footings/Underground Plumbing/Soil Treatment	5%	5%	\$17,950.00
4	Foundation/Slab Poured	6%	6%	\$21,540.00
5	Exterior Walls/ Tie Beam	6%	6%	\$21,540.00
6	Roof Framing	6%	6%	\$21,540.00
7	Roof Sheathing/Felt	4%	4%	\$14,360.00
8	Interior Framing	5%	5%	\$17,950.00
9	Windows/Exterior Door Frames	4%	4%	\$14,360.00
10	2nd Plumbing/ Tubs & Showers Set	2%	2%	\$7,180.00
11	Wiring Rough-in	4%	4%	\$14,360.00
12	HVAC-Ducts Installed	2%	2%	\$7,180.00
13	Roof Shingles installed	4%	4%	\$14,360.00
14	Insulation (Walls & Ceiling)	2%	2%	\$7,180.00
15	Exterior Trim & Soffits	3%	3%	\$10,770.00
16	Drywall Hanging	4%	4%	\$14,360.00
17	Drywall Finishing	3%	3%	\$10,770.00
18	Interior Trim/Interior Doors installed	4%	2%	\$14,360.00
19	Interior Paint	2%		\$7,180.00
20	Siding/Stucco/Brickwork	5%	5%	\$16,155.00
21	Exterior Painting Complete	2%		\$7,180.00
22	Exterior Doors & Garage Doors Installed	2%	1%	\$7,180.00
23	Cabinets Installed	4%		\$14,360.00
24	Countertops Installed	1%		\$5,385.00
25	Plumbing Finishing	1%		\$5,385.00
26	Electrical Finishing	1%		\$5,385.00
27	Flooring Finished--Carpet/Tile/HW	3%		\$10,770.00
28	Appliances Installed	2%		\$7,180.00
29	HVAC-Compressor/Air Handler	3%		\$10,770.00
30	Driveway/Walkways installed	2%	1%	\$7,180.00
31	Final Grading	1%		\$3,590.00
	Total	100%	75%	\$359,000.00
Amount Earned to date				\$269,250.00

STATE OF SOUTH CAROLINA

] IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

] SIXTEENTH JUDICIAL CIRCUIT

J. W. NEAL CONSTRUCTION, LLC,
a South Carolina limited liability company,

Plaintiff,

v.

CORNELIA THOMAS.

Defendant.

CERTIFICATE OF MECHANICS' LIEN

FILED FOR RECORD 01/11/2007
C.A. No. 07-CP-468 00026 PAGE 00142
David Hamilton - Clerk of Court
York County Courthouse
Instrument Number: 000007974

Pursuant to S. C. Code Ann. § 29-5-90 (1976), the Plaintiff(s) above-named hereby present(s) this Certificate of Mechanics' Lien for filing to the office of the register of deeds or clerk of court in the above-referenced county, including therewith:

1. A Statement of a just and true account of the amount due the said Plaintiff(s), with all just credits given, as the attached Exhibit "S", which is attached hereto and incorporated herein;

2. Together with a description of the property (located in the above-referenced county) intended to be covered by the Mechanics' Lien sufficiently accurate for identification, with the name of the Defendant(s) as owner(s) of the property, if known, as the attached Exhibit "RP", which is attached hereto and incorporated herein;

PERSONALLY appeared before me, the undersigned authority, the Plaintiff(s), who, being duly sworn, depose(s), certify(ies) and say(s) as follows:

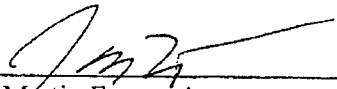
A. That this Certificate is presented within ninety days after the Plaintiff(s) ceased to labor or to furnish labor and materials for a building or structure upon the property referenced in 2. above;

B. That the Plaintiff(s) shall, within the same ninety day period serve a copy of this Certificate, with its attachments, on the Defendant(s) or, in the event the Defendant(s) cannot be found, upon the person in possession, and file a certification of the same with this Court; or, in the event neither the Defendant(s) nor the person in possession can be located after diligent search, this fact shall be verified by Affidavit of the Sheriff or his deputy and the same filed with this Office; and

C. That (s)he/they is/are the Plaintiff(s) in the foregoing action; that (s)he/they has/have read the within Certificate of Mechanic's Lien; and that the facts stated therein are true

of his/her/their own knowledge, except for those matters alleged therein on information and belief, and as to those, (s)he/they believe(s) them to be true.

J. W. NEAL CONSTRUCTION, LLC

By: 
John Martin Foster, Attorney

SWORN TO and subscribed before me
this 5th day of January, 2007

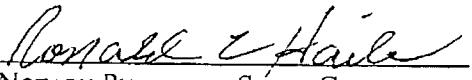

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 6/5/2016

EXHIBIT "S"

STATEMENT

CORNELIA THOMAS
161 South Elliott Place
Brooklyn, New York 11217-1550

By: J. W. NEAL CONSTRUCTION, LLC.
1361 Pocalla Road
Sumter, South Carolina 29150

Labor Performed or furnished or materials furnished and used for a building or structure upon real property:

Thomas Job: as of 12/28/2006

Contract Price		\$ 359,000.00
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SUB-TOTAL DUE, WITH CHANGES:		\$ 112,790.00

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which interest shall be added to the SUB TOTAL stated above.

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TOTAL DUE **\$ 112,790.00 (plus accruing interest and attorney's fees)**

Total Due on Submission of Account: Please Remit Immediately

Page 3 of EXHIBIT "CR"

ROA000043

SCHEDULE TO EXHIBIT "S"

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Rock Hill, South Carolina

Total Construction Estimate

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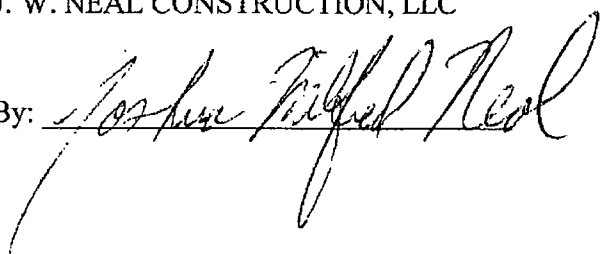
all recording references being to the Office of the Clerk of Court for York County, South Carolina.

STATE OF SOUTH CAROLINA]
COUNTY OF YORK]

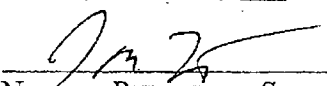
VERIFICATION

Personally appeared before me the undersigned, who, being duly sworn, deposes and says that the Plaintiff is a corporation; that he or she is an Officer or Agent of the Plaintiff authorized to make this verification; that he or she has read the allegations of the preceding Complaint; and that the allegations of the Complaint are true of his or her own knowledge based upon the business records of the Plaintiff except those allegations made upon knowledge and information, and, as to them, he or she verily believes them to be true.

J. W. NEAL CONSTRUCTION, LLC

By: 

SWORN TO and subscribed before me
this day of January 5, 2007.


NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 02/13/05

FILED-RECEIVED
2007 JAN 12 PM 2:44
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

J.W. Neal Construction, LLC,)
Plaintiff,)

C/A No. 2007-CP-46-0119

v.)

Cornelia Thomas,)
Defendant.)

**ANSWER and
COUNTERCLAIM
(Jury Trial Demanded)**

FILED
2017 FEB 22 AM 8:50
CLERK OF COURT
YORK COUNTY, SC

The Defendant, Cornelia Thomas ("Thomas"), answering the Plaintiff J.W. Neal Construction, LLC's ("J.W. Neal") Complaint would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. Thomas denies each and every allegation of the Complaint which is not hereinafter admitted, modified or otherwise explained, and demands strict proof thereof.
2. Responding to the allegations of Paragraphs 1-2, Thomas is without sufficient information or belief to form an opinion to as to the allegations set forth therein and therefore denies the same.
3. The allegations contained in paragraph 3 of the Complaint are admitted.
4. Responding to paragraphs 4-6, the allegations contained therein call for legal conclusions to which no response is required. To the extent a response is required, Thomas admits that she contracted with the Plaintiff for improvements upon real property located in York County, South Carolina and that therefore this court has personal jurisdiction, and venue is proper in York County. All remaining allegations are denied.

ROA000047

5. Responding to Paragraph 11¹ of the Complaint, Thomas admits that she contracted with the Plaintiff on or about November 22, 2005, craves reference to the written contract as the best evidence of the contents thereof, and denies anything inconsistent therewith. Further responding, Thomas asserts that the contract attached by Plaintiff in it's Complaint is incomplete and fails to include, among other things, attachments and exhibits to the contract, specifically the project plans and specifications.

6. As to the allegations contained in Paragraph 12, Thomas admits that the November 22, 2005 contract was agreed to by, or with the consent of, or by some person having authority from, or rightfully acting for, her. Any remaining allegations are denied.

7. Responding to Paragraph 13 of the Complaint, Thomas is without sufficient information or belief to admit or deny the allegations contained therein and therefore denies the same.

8. Responding to Paragraph 14 of the Complaint, Thomas is without sufficient information or belief to admit or deny the allegations contained therein and therefore denies the same.

9. Upon information and belief, Paragraph 15 is denied.

10. Paragraph 16 is a legal statement which, upon information and belief, does not require a response of Thomas. To the extent a response is required, Paragraph 16 is denied.

11. Responding to Paragraphs 17-19, the allegations set forth therein call for legal conclusions to which no response is required. To the extent a response is required, Paragraphs 17-19 are denied.

¹ Defendant notes that Plaintiff's Complaint is not numbered consecutively and skips Paragraphs 7-10.

12. The allegations contained in Paragraph 20 call for a legal conclusion to which no response is required. To the extent a response is required, the allegations contained therein are denied. Further responding, Thomas admits that she was delivered written notice that the Plaintiff demanded payment for labor and/or materials allegedly pursuant to the contract. Any remaining allegations are denied.

13. Upon information and belief, Paragraph 21 does not require a response of Thomas. To the extent a response is required, Paragraph 21 is denied.

14. Responding to Paragraph 22, the allegations contained therein call for a legal conclusion to which no response is required. To the extent a response is required, the allegations contained therein are denied.

15. As to the allegations contained in Paragraph 23, Thomas is without sufficient information or belief to form an opinion as to the allegations contained therein and therefore denies the same.

16. Upon information and belief, Paragraph 24 is a legal statement which does not require a response of Thomas. To the extent a response is required, Paragraph 24 is denied.

17. Responding to the allegations contained in Paragraphs 25-27, Thomas is without sufficient information or belief to form an opinion as to the allegations contained therein and therefore denies the same and demands strict proof thereof. Further responding, Plaintiff admits only that she was served with a copy of Plaintiff's Notice of Mechanics Lien. Any remaining allegations are denied.

18. Paragraph 28 is denied.

19. Responding to Paragraph 29, Paragraph 29 is a legal statement to which no response is required. To the extent a response is required, it is denied.

20. Responding to Paragraph 30 of the Complaint, Thomas admits that she contracted with the Plaintiff on or about November 22, 2005, craves reference to the written contract as the best evidence of the contents thereof, and denies anything inconsistent therewith.

21. As to the allegations contained in Paragraph 31, Thomas admits that the November 22, 2005 contract was agreed to by, or with the consent of, or by some person having authority from, or rightfully acting for, her. Any remaining allegations are denied.

22. Responding to Paragraph 32 of the Complaint, Thomas is without sufficient information or belief to admit or deny the allegations contained therein and therefore denies the same.

23. Responding to Paragraph 33 of the Complaint, Thomas is without sufficient information or belief to admit or deny the allegations contained therein and therefore denies the same.

24. Upon information and belief, Paragraph 34 is denied.

25. Responding to Paragraphs 35-41, the allegations contained therein call for legal conclusions to which no response is required. To the extent a response is required, Paragraphs 35-41 are denied.

26. Responding to Paragraph 42, Thomas admits that Plaintiff has alleged that it is owed \$112,790.00, and that she disputes this amount is due and owing pursuant to the contract and thereby refuses to pay the same.

FOR A SECOND DEFENSE

27. Thomas reiterates the Paragraphs set forth above and incorporates them by reference to the extent not inconsistent herewith.

28. Plaintiff's claims are barred by the doctrine of payment.

FOR A THIRD DEFENSE

29. Thomas reiterates the allegations set forth above and incorporates them by reference to the extent not inconsistent herewith.

30. Plaintiff's claim are barred by one or more of the doctrines of waiver, unclean hands, or equitable estoppel.

**FOR A FOURTH DEFENSE
AND BY WAY OF COUNTERCLAIM**

31. Thomas reiterates the allegations set forth above and incorporates them by reference to the extent not inconsistent herewith.

32. Thomas purchased real property located in the Wellington Heights Subdivision, Lot 25, York County, South Carolina ("Property").

33. Subsequent to Thomas's purchase of the Property, Thomas entered into a general construction contract with Plaintiff J.W. Neal Construction under which J.W. Neal was to furnish all labor and materials needed for the construction of a house upon the Property pursuant to the specific terms of the contract and in accordance with the project plans and specifications.

34. Plaintiff J.W. Neal failed to perform its work on the project according to the specific terms of the contract.

35. Plaintiff J.W. Neal failed to perform its work on the project in accordance with the Project plans and specifications.

36. Plaintiff J.W. Neal's work on the project was negligent, defective and not in keeping with industry standards.

37. Plaintiff J.W. Neal was advised on numerous occasions that its work was defective and not in compliance with the contract terms or the project plans and specifications

and that J.W. Neal was required to perform additional work to correct these deficiencies and ensure that the final work was in compliance with the project plans and specifications.

38. Specifically, Plaintiff was advised, by letter dated August 29, 2006 that certain portions of the work were defective, and not consistent with the building code requirements and accepted industry practice.

39. Pursuant to Section 40-59-810 of the South Carolina Code known as the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, Thomas informed Plaintiff in her August 29, 2006 letter of Plaintiff's right to cure such defects.

40. On information and belief, Plaintiff did not respond, in writing, to Thomas's August 29, 2006 letter.

41. Plaintiff J.W. Neal failed to correct its defective, deficient and non-compliant work which constitutes a breach of the contract.

42. As a proximate result of J.W. Neal's breach of contract, Thomas was required to hire another contractor to correct and complete J.W. Neal's defective, deficient and non-compliant work, causing Thomas actual, incidental, and consequential damages in such sums as shall be proven at trial.

FOR A FIFTH DEFENSE
AND BY WAY OF COUNTERCLAIM

43. Thomas reiterates the allegations set forth above and incorporates them by reference to the extent not inconsistent herewith.

44. J.W. Neal owed a duty to Thomas to construct her house in a professional, workmanlike, and skillful manner, and in accordance with the contract plans and specifications, applicable building codes, and industry standards.

45. J.W. Neal was negligent, grossly negligent, wilfull and wanton in constructing the Plaintiff's house in numerous particulars including but not limited to:

- (a) failing to properly seal and/or insulate the house as required by the contract, project plans and specifications, and express and implied warranties;
- (b) failing to properly install exhausts, ventilation, and/or vapor barriers, as required by the contract, project plans and specifications, and express and implied warranties;
- (c) failing to firestop the fireplace chase as required by the contract, project plans and specifications, and express and implied warranties;
- (d) failing to construct a brick chimney as required by the contract, and project plans and specifications, and express and implied warranties;
- (e) failing to install a wrought iron railing around the sundeck as required by the contract, project plans and specifications, and express and implied warranties;
- (f) failing to install glass block windows in the master bath as required by the contract, project plans and specifications, and express and implied warranties;
- (g) defectively installing the brick veneer to the house;
- (h) defectively installing the roof to the house;
- (i) defectively installing flash weep holds;
- (j) installing the wrong color shingles;
- (k) installing windows at a size smaller than required by the project plans and specifications;
- (l) installing doors to the garage and house that were not contained in the project plans and specifications;
- (m) failing to reinforce over-drilled joists to prevent splitting;

- (n) failing to properly set the foundation;
- (o) failing to install the balcony in accordance with the project plans and specifications.

46. As a direct and proximate result of the negligence of J.W. Neal, Thomas has suffered damages in such sums as shall be proven at trial.

FOR A SIXTH DEFENSE
AND BY WAY OF COUNTERCLAIM

47. Thomas reiterates the allegations set forth above and incorporates them by reference to the extent not inconsistent herewith.

48. The allegations contained herein constitute a breach of J.W. Neal's express warranties, as provided under the contract.

49. As a direct and proximate result of J.W. Neal's breach of its express warranties, Thomas has suffered damages in such sums as shall be proven at trial.

FOR A SEVENTH DEFENSE
AND BY WAY OF COUNTERCLAIM

50. Thomas reiterates the allegations set forth above and incorporates them by reference to the extent not inconsistent herewith.

51. In contracting with the Plaintiff to construct her house, J.W. Neal held itself out as being specially qualified to construct residential houses.

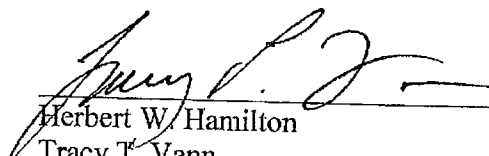
52. In holding itself out as a specialist, J.W. Neal impliedly warranted that the work which it undertook would be of proper workmanship and reasonable fitness for its intended use.

53. For the reasons set forth herein above, J.W. Neal breached its implied warranty to Thomas.

54. As a direct and proximate result of J.W. Neal's breach of implied warranty, Thomas has been damaged in such sums as shall be proven at trial.

WHEREFORE, having fully answered Plaintiff J.W. Neal's Complaint, Thomas prays for dismissal of the Complaint; for judgment on her Counterclaims in the following particulars: Judgment against J.W. Neal as to her Fourth, Sixth and Seventh Defenses and Counterclaims for all actual, incidental, and consequential damages as a result of Plaintiff's wrongful conduct, in such sums as shall be proven at trial; and judgment against J.W. Neal as to her Fifth Defense and Counterclaim for all actual and punitive damages as a result of the Plaintiff's negligence and gross negligence, in such sums as shall be proven at trial; for the costs of this action and attorney's fees', and for such other and further relief as the Court deems just and proper.

February 21st, 2007.


Herbert W. Hamilton
Tracy T. Vann
HAMILTON MARTENS BALLOU & SIPE, LLC
P.O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672

ATTORNEYS FOR DEFENDANT
CORNELIA THOMAS

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

J. W. NEAL CONSTRUCTION, LLC,
a South Carolina limited liability company,

Plaintiff,

v.

CORNELIA THOMAS,

Defendant.

REPLY AND

ANSWER TO COUNTERCLAIMS

C.A. No. 07-CP-46-0119

The Plaintiff, in response to the Answer and Counterclaim of the Defendant, alleges as follows (all references to paragraphs, unless otherwise identified, are to the Paragraphs of the said Answer and Counterclaim):

FOR A REPLY AND

AS A FIRST DEFENSE AS TO ALL COUNTERCLAIMS:

1. Each allegation of the Complaint which is not admitted, denied or qualified in this Answer is hereby denied.
2. Plaintiff reaffirms and reiterates all of the allegations contained in its Complaint and denies those allegations inconsistent therewith.

FOR A SECOND DEFENSE AND

AS TO FOURTH DEFENSE AND COUNTERCLAIM:

3. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
4. On knowledge and information, the allegations of Paragraph 31. are directional only and require no response by Plaintiff.
5. The allegations of Paragraph 32. as to the Plaintiff's purchase of real property are admitted, as correctly set out in Exhibit "RP" of the Complaint and in the records of the Clerk of Court for York County.

6. The allegations of Paragraph 33. as to the existence of a contract between the parties is admitted. As to the alleged terms thereof, reference to the written contract, a copy of which is set out in Exhibit "C" of the Complaint, is craved.
7. On knowledge and information, the allegations of Paragraph 34. as to the Plaintiff's failure to perform according to the "specific terms" of the Contract are too general to admit of response. The Plaintiff affirmatively alleges that he has performed the parties' contract according to its terms and to the extent he was not prevented therefrom by the Defendant.
8. On knowledge and information, the allegations of Paragraph 35. as to the Plaintiff's failure to perform its work on the project in accordance with the Project plans and specifications, the Plaintiff denies the same and affirmatively alleges that he has performed the parties' contract according to its terms and to the extent he was not prevented therefrom by the Defendant.
9. The allegations of Paragraph 36. alleging that the Plaintiff's work was negligent, defective and not in keeping with industry standards are denied.
10. The allegations of Paragraph 37. alleging that the Plaintiff was advised that its work was defective, not in compliance with the contract terms, or with the project plans and specifications are admitted insofar as the Defendant made various complaints to the Plaintiff's agent, alleging her dissatisfaction with its work. The Plaintiff specifically denies that its work was defective; it denies that its work was not in compliance with the contract terms; and it denies that its work was not in compliance with project plans and specifications.
11. In further response to Paragraph 37. alleging that the Plaintiff was required to correct the alleged deficiencies and ensure that the work was in compliance with project plans and specifications, the Plaintiff affirmatively alleges its knowledge of its requirement to perform under the parties' contract and to execute its work in a good and workmanlike manner, affirmatively alleges that it had done so when prevented from further work by the Defendant, and affirmatively alleges that any items brought to its attention requiring extra work to meet this standard would have been performed had it not been prevented by the Defendant.
12. In response to Paragraph 38. alleging that Plaintiff was advised by letter of August 29, 2006 which alleged that portions of its work were defective, and were not consistent with building code requirements and accepted industry practice, the same is admitted.
13. In response to Paragraph 39. alleging that the said letter of August 29th notified the Plaintiff of his right to cure the alleged defects, the same is admitted.
14. In response to Paragraphs 40. and 41., alleging that Plaintiff did not respond, in writing, to the Letter of Defendant's counsel dated August 29, 2006, nor corrected the work which the

ROA000057

Defendant complained of, the Plaintiff would affirmatively allege that after the said letter, he met, and made numerous attempts to meet, with the Defendant and her chosen unlicensed inspector, and with the Investigator of the South Carolina Department of Labor, Licensing and Regulation on this matter; that on knowledge and information, his counsel made numerous attempts to contact Herbert Hamilton, Defendant's counsel, to resolve this matter; that the Defendant neither pursued her complaint with the SC LLR nor dealt with him in good faith to resolve her alleged complaints; and that Defendant announced clearly and from the beginning of this process her intent to have Plaintiff removed from this project.

15. In response to the allegations of Paragraph 42., the Plaintiff would affirmatively allege that any substitute or successor contractor hired by the Defendant was procured as a proximate result of her failure to deal with the Plaintiff in good faith and her desire to remove him from this project.

FOR A THIRD DEFENSE AND
AS TO FIFTH DEFENSE AND COUNTERCLAIM:

16. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.

17. On knowledge and information, the allegations of Paragraph 43. are directional only and require no response by Plaintiff.

18. In response to the allegations of Paragraph 44. alleging the requirements of workmanship, the same are admitted.

19. In response to the allegations of Paragraph 45. setting out specific allegations of failure in workmanship by Plaintiff, the Plaintiff's responses are set out after the relevant allegations:

- a. failing to properly seal and/or insulate the house;

The same is denied and it is affirmatively alleged that no valid basis for such allegation has been presented to Plaintiff, and that the same was done according to the plans and to the applicable building codes;

- b. failing to properly install exhausts, ventilation, and/or vapor barriers;

The same is denied and it is affirmatively alleged that no valid basis for such allegation has been presented to Plaintiff, and that the same was done according to the plans and to the applicable building codes;

ROA000058

- c. failure to firestop the fireplace chase;

The meaning of this allegation is unknown to Plaintiff; it affirmatively alleges that all work on the fireplace was done according to the parties' contract and agreement;

- d. failing to construct a brick chimney;

The same is denied, and it affirmatively alleges that all work on the fireplace was done according to the parties' contract and agreement;

- e. failing to install a wrought iron railing around the sundeck;

The same is denied, and it is affirmatively alleged that such work could only have been performed at a stage of construction never reached because Plaintiff was barred from the construction site;

- f. failing to install glass block windows in the master bath;

The same is denied, and it affirmatively alleges that all work on the fireplace was done according to the parties' contract and agreement;

- g. defectively installing the brick veneer;

The same is denied, and it is affirmatively alleged that no valid basis for such allegation has been presented to Plaintiff, and that the same was done according to the plans and to the applicable building codes;

- h. defectively installing the roof;

The same is denied, and it is affirmatively alleged that no valid basis for such allegation has been presented to Plaintiff, and that the same was done according to the plans and to the applicable building codes;

- i. defectively installing flash weep holes;

The same is denied and it is affirmatively alleged that no valid basis for such allegation has been presented to Plaintiff, and that the same was done according to the plans and to the applicable building codes;

- j. installing the wrong color shingles;

The same is denied, and it affirmatively alleged that the Defendant selected the shingles installed by Plaintiff;

- k. installing windows at a size smaller than required by plans and specifications;

The same is denied, and it is affirmatively alleged that the only change in windows was caused by a requirement of the Code Enforcement Official and approved by the Defendant;

- l. installing doors to the garage and house that were not contained in the project plan and specifications;

The same is denied, and it affirmatively alleged that the Defendant specifically requested the work apparently referenced by this allegation;

- m. failing to reinforce over-drilled joints to prevent splitting;

The same is denied and it is affirmatively alleged that no valid basis for such allegation has been presented to Plaintiff, and that the same was done according to the plans and to the applicable building codes;

- n. failing to properly set the foundation; and

The same is denied and it is affirmatively alleged that no valid basis for such allegation has been presented to Plaintiff, and that the same was done according to the plans and to the applicable building codes;

- o. failing to install the balcony in accordance with the project plans and specifications.

The same is denied and it is affirmatively alleged that no valid basis for such allegation has been presented to Plaintiff, and that the same was done according to the plans and to the applicable building codes;

20. In response to the allegations of Paragraph 46. alleging proximate damage as a result of the Plaintiff's alleged failures of workmanship, such failures are denied, on the grounds and for those reasons set out above. Such damage is also denied, on the same grounds.

ROA000060

FOR A FOURTH DEFENSE AND
AS TO SIXTH DEFENSE AND COUNTERCLAIM:

21. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
22. On knowledge and information, the allegations of Paragraph 47. are directional only and require no response by Plaintiff.
23. In response to the allegations of Paragraph 48. alleging breach of express warranties, such breach is denied, on the grounds and for those reasons set out above.
24. In further response to the allegations of Paragraph 48. alleging breach of express warranties, the same are denied on knowledge and information, insofar as express warranties relate to the sale of goods, and no such sale, or its breach by Plaintiff, is alleged or referenced in the Answer and Counterclaim of Defendant.
25. In response to the allegations of Paragraph 49. alleging proximate damage as a result of a breach of express warranties, such breach is denied, on the grounds and for those reasons set out above. Such damage is also denied, on the same grounds.

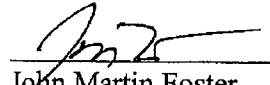
FOR A FIFTH DEFENSE AND
AS TO SEVENTH DEFENSE AND COUNTERCLAIM:

26. All allegations stated or referenced elsewhere in this pleading and relevant to this defense are hereby realleged by this reference to them.
27. On knowledge and information, the allegations of Paragraph 50. are directional only and require no response by Plaintiff.
28. In response to the allegations of Paragraph 51. alleging the Plaintiff's presentation of its qualification to construct residential houses, the same is admitted.
29. In response to the allegations of Paragraph 52. alleging implied warranties, the same are denied on knowledge and information, insofar as implied warranties relate to the sale of goods, and no such sale, or its breach by Plaintiff, is alleged or referenced in the Answer and Counterclaim of Defendant.
30. In response to the allegations of Paragraph 53. alleging proximate damage as a result of a breach of implied warranties, such breach is denied, on the grounds and for those reasons set out above. Such damage is also denied, on the same grounds.

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WHEREFORE, having fully replied and answered the Answer and Counterclaim herein,
the Plaintiff prays that this Court:

- A. Dismiss the Counterclaims of the Defendant;
- B. Include a prayer for any other relief which may be authorized under other causes of action; and
- C. Award or allow the Plaintiff such other and further relief as this Court may deem just and proper.


John Martin Foster
Attorney for Plaintiff

The Guardian Building
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Rock Hill, S. C. 29730

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803 324-8100
803 324-8109
jmfoster@comporium.net

July 31, 2007

Rock Hill, South Carolina

ROA000062

STATE OF SOUTH CAROLINA

COUNTY OF YORK

J. W. Neal Construction, LLC

Plaintiff

vs.

Cornelia Thomas,

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2007-CP-46-0119

MOTION TO RE-OPEN CASE AND
CONFIRM ARBITRATION AWARD

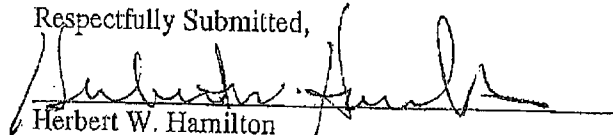
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2010 APR -1 PM 4:50
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

The Defendant hereby moves to re-open this case and confirm the arbitration award filed by the Arbitrator on February 25, 2010 (a copy of which is attached hereto) and enter judgment thereon. The Motion is made on the following grounds:

1. A consent order was issued submitting this case to binding arbitration and dismissing the case without prejudice.
2. On February 25, 2010 the Arbitrator filed his arbitration award.
3. This Court has authority to confirm the award and enter judgment thereon pursuant to S. C. Code §15-48-120 (Rev. 2005).

The Motion will be based on the award attached hereto and statutory and common law authority.

Respectfully Submitted,



Herbert W. Hamilton
Hamilton Martens & Ballou, LLC
130 East Main Street
P. O. Box 10940
Rock Hill, South Carolina 29731
Phone: (803) 329-7672
Fax: (803) 329-7678

March 31, 2010

ATTORNEY FOR THE DEFENDANT

STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
	]	
COUNTY OF YORK	]	SIXTEENTH JUDICIAL CIRCUIT
	]	
J.W. NEAL CONSTRUCTION, LLC,	]	
a South Carolina limited liability company,	]	NOTICE AND MOTION
	]	
Plaintiff,	]	TO CONFIRM ARBITRATION AWARD
v.	]	
	]	
CORNELIA THOMAS,	]	C.A. No. 2007-CP-46-0119
	]	
Defendant.	]	

To: The Defendant and
Herbert W. Hamilton
Hamilton, Martens & Ballou, LLC
Attorneys for Defendant
130 East Main Street
Post Office Box 10940
Rock Hill, South Carolina 29731

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Motion herein, as follows:

DATE AND TIME: To be set by the Clerk of Court, or as soon thereafter as counsel may be heard.

PLACE: Office of the Master in Equity
1 North Congress Street
York, South Carolina 29745, or such other place as may be designated by the Judge or the Clerk of Court.

Pursuant to S.C. Code § 15-48-140(b) (West), the Plaintiff, by his counsel undersigned, moves this Court (as necessary) for an order:

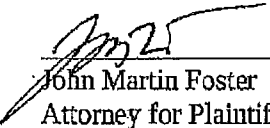
1. Confirming the amended awards made by the Arbitrator in the above-entitled matter, both as to the case in chief and as to attorney's fees;
2. Directing that judgment to be entered on the award pursuant to the statute cited above; and
3. Enforcing the judgment entered on the arbitration award.

This Motion is made on the grounds that:

- A. The motion will be made on the ground that the arbitrators have made a written award determining the dispute between the parties following hearings held by the arbitrators in accordance with the arbitration agreement executed by the parties.
- B. All awards of the arbitrator d herein have already been filed with the Clerk of Court for York County, and are attached hereto and incorporated herein.

Pursuant to Rule 11(a), S.C.R.C.P., counsel for the Movants hereby affirms that prior to filing this Motion, he has communicated, orally or in writing, with opposing Counsel and has attempted in good faith to resolve the matter contained in this Motion, or certifies that such consultation is unnecessary due to the dispositive nature thereof, would serve no useful purpose or could not be timely held.

This Motion is based on the records, pleadings, and files of this civil action, on the attachments hereto, and upon such Brief or Memorandum of Law as the Movants may submit, all of which are hereby incorporated herein.


John Martin Foster
Attorney for Plaintiff

The Guardian Building
223 East Main Street, Suite 320
Rock Hill, SC 29730

Post Office Box 106
Rock Hill, SC 29731-6106

803 324 8100
803 324 8109 fax
jmfoster@comporium.net

April 3, 2012

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

J.W. NEAL CONSTRUCTION, LLC,
a South Carolina limited liability company,

Plaintiff,

v.

CORNELIA THOMAS,

Defendant.

RETURN TO MOTION

OF DEFENDANT

and NOTICE AND MOTION

TO MODIFY OR CORRECT AWARD

C.A. No. 2007-CP-46-0119

To: Herbert W. Hamilton
Hamilton, Martens & Ballou, LLC
Attorneys for Defendant
130 East Main Street
Post Office Box 10940
Rock Hill, South Carolina 29731

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Motion herein, as follows:

DATE AND TIME: To be set by the Clerk of Court,
or as soon thereafter as counsel may be heard.

PLACE: Office of the Master in Equity
1 North Congress Street
York, South Carolina 29745,
or such other place as may be designated by the Judge or
the Clerk of Court.

Pursuant to S.C. Code § 15-48-140 (Law.Co-op.) and Rule 60(a), S.C.R.C.P., the Plaintiff makes his Return to the Motion of the Defendant and moves this Court to Modify or Correct the Arbitration Award entered as to the within civil action.

Pursuant to Rule 6(d), S.C.R.C.P., the Plaintiff as Movant prays that this Court fix a period for service prior to hearing, and for hearing, different than that of the ten (10) days provided for by the Civil Rules, and, in fact, set the hearing at the time, date and place set at the earliest convenience for the Court and both counsel.

If you fail to appear, the Plaintiff will request the relief prayed for in said Return and Motion.

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Return and Motion herein, as follows:

FACTUAL BACKGROUND

By Agreement of the parties (an incomplete copy of which is attached), this Mechanics Lien case was dismissed without prejudice and submitted to binding arbitration, with the Honorable Charles B. Ridley, Jr. acting as arbitrator.

After a full hearing, the Arbitrator issued his decision, awarding the Plaintiff \$41,182.00 on his claim, and the Defendant \$43,442.00 on her counterclaim. A copy of the Arbitration Award received by counsel for Plaintiff is attached and incorporated. In accordance with the statutes and precedent governing Mechanics Lien case, the Award also ruled that Plaintiff was responsible for the Defendant's attorneys fees and costs, while receiving none expended by him.

By e-mail dated and sent March 22, 2010, the Plaintiff requested a revision of the Award due to a mathematical error. (All e-mails relating to the history thereafter are attached hereto and incorporated herein.)

The Arbitrator acknowledges in his e-mail of March 23, 2010 that there was a mathematical error and offers to correct the same; correction of that error increased the Plaintiff's recovery to \$78,082.00 and, as the prevailing party, entitled him to attorney's fees. A summary of the Plaintiff's Attorney's fees and costs are attached hereto and incorporated herein.

The Defendant, by her counsel, objects to the correction on notice grounds, as stated in his e-mails. Pursuant to S.C. Code Ann. § 15-48-120 (Law.Co-op.), the Defendant moves to re-open the case and confirm the original reward.

ARGUMENT

S.C. Code Ann. § 15-48-140 (Law.Co-op.) provides, in relevant part, as follows:

(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; . . . or

...
(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

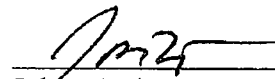
(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

While the Plaintiff maintains that its procedure and timeliness in requesting a modification from the Arbitrator was correct, it is its position that the clear language of S.C. Code § 15-48-140 renders that dispute moot.

There is a mathematical mistake in the original calculation of the Arbitrator. That mistake is acknowledged by the Arbitrator. There is, to Plaintiff's knowledge, no dispute over the fact or effect of that mistake other than the procedural matters raised by Defendant under the adopted Arbitration rules. Those rules do not affect the power of this Court to make a correction under § 15-48-140 nor under Rule 60(a), S.C.R.C.P. The Plaintiff is entitled to a modification and correction of the original Order.

Pursuant to Rule 11(a), S.C.R.C.P., counsel for the Plaintiff hereby affirms that prior to filing this Return and Motion, he has communicated, orally or in writing, with opposing Counsel and has attempted in good faith to resolve the matter contained in this Return and Motion, or that he is not so required, owing to the dispositive nature thereof.

The basis for this Motion is the above-cited Statutes and Rules, the records of this Case, and the attached affidavit of the undersigned, all of which are incorporated by this reference.



John Martin Foster
Attorney for Plaintiff

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, S.C. 29730

Post Office Box 106
Rock Hill, S.C. 29731-6106

Rock Hill, South Carolina

March 21, 2010

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803 324-8109: Fax
jmfoster@comporium.net

STATE OF SOUTH CAROLINA]
COUNTY OF YORK]

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

J.W. NEAL CONSTRUCTION, LLC,]
Plaintiff,]

C/A No. 2007-CP-46-0119

vs.]

ARBITRATION AGREEMENT

CORNELIA THOMAS,]
Defendant.]

This Agreement is executed this _____ day of October, 2008 by the Plaintiff, J.W. Neal Construction, LLC ("J.W. Neal Construction") and the Defendant, Cornelia Thomas ("Thomas"), both in person and by their respective counsel.

RECITAL

WHEREAS, an action is pending in the Circuit Court for the 16th Judicial Circuit between the parties hereto; and

WHEREAS, the dispute arises from the construction by J.W. Neal Construction of a house for Thomas, and

WHEREAS, the Parties have agreed to submit the case to binding arbitration, and

WHEREAS, the Parties wish to establish the terms and conditions of the arbitration.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1. The terms of this Agreement will control the arbitration. The arbitration will not be administered by the American Arbitration Association (hereafter also "AAA") or another similar organization.

2. The foregoing notwithstanding, the Parties agree that the *Construction Arbitration Rules* of the American Arbitration Association, as amended September 1, 2007, will control the

ROA000069

arbitration process. Insofar as those Rules assign administrative duties to the AAA, the same will be performed, as needed, by the Arbitrator selected by the Parties.

3. The arbitration will be conducted by one Arbitrator, selected by agreement of the Parties. In the event the Parties are unable to agree on the selection of the Arbitrator, either Party may apply to the Circuit Court for the appointment of the Arbitrator.

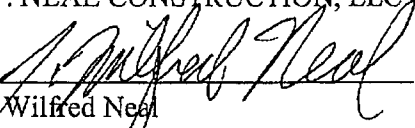
4. The Arbitrator's compensation will be borne equally by the Parties; *provided however*, that the Arbitrator shall have authority to require payment of costs, including the Arbitrator's compensation, in such other manner and such other division as the Arbitrator deems appropriate.

5. Upon appointment of the Arbitrator, the Parties will meet with the Arbitrator to establish a schedule for discovery and trial.

6. This agreement will be governed by and interpreted in accordance with the laws of the State of South Carolina.

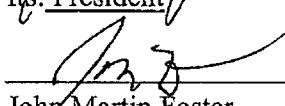
IN WITNESS WHEREOF the Parties hereto intending to be bound have executed this Agreement.

J.W. NEAL CONSTRUCTION, LLC

By: 

Wilfred Neal

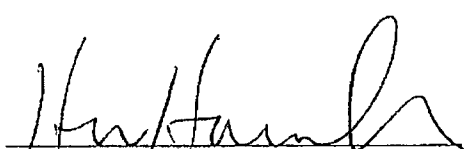
Its: President


John Martin Foster

Attorney for Plaintiff

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803 324-8109: Fax
jmfooster@comporium.net

CORNELIA THOMAS



Herbert W. Hamilton

Hamilton Martens Ballou & Sipe, LLC
Attorneys for Defendant

130 East Main Street, Suite 201
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803 329-7607
803 329-7678: Fax
hhamilton@hmbslaw.com

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Certified Mediator Listing

The following is a list of mediators available for the United States District Court for the District Court of South Carolina. Click on a name to learn more about the mediator's background and areas of expertise.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z |

~ OR ~

search on name:

and/or All Regions ☐ location

Mediator	Region
Allen, T. Eugene III	Midlands
Aydlette, Derwood (Dirk) III	Midlands
Bolt, J. Dennis	Midlands
Boyle, F. Ladson	Midlands
Brailsford, Daniel T.	Midlands
Brailsford, James M.	Midlands
Brown, Henry	Midlands
Bruner, James L.	Midlands
Bryan, Mary Lowndes	Midlands
Burke, W. Lewis	Midlands
Cauthen, George B.	Midlands
Clarkson, A. Crawford Jr.	Midlands
Clingman, Sarah L.	Midlands
Cotter, Leslie A. Jr.	Midlands
Crowe, Danny Calvert	Midlands
Culbreath, Gray T.	Midlands
Cushman, Charles V.B. III	Midlands
Downey, Jane Harris	Midlands
Duff, David T.	Midlands
Ellis, F. Earl Jr.	Midlands
Fantry, John Joseph Jr.	Midlands
Farnsworth, Jullanne	Midlands
Floyd, William H. III	Midlands
Goldberg, Harry L.	Midlands
Grice, Linda Annette	Midlands
Grier, F. Barron III	Midlands
Hall, Jeanne Plowden	Midlands
Hamilton, Herbert W.	Midlands
Henry, Joseph	Midlands
Jacobs, Harold W.	Midlands
Jeter, Edwin Russell	Midlands
Johnson, Weldon R.	Midlands
Justice, Scott T	Midlands
McKellar, L. Henry	Midlands
McMaster, Henry D.	Midlands
Melton, Lawrence C.	Midlands
Miley, Richard E.	Midlands
Mills, J. Christopher	Midlands
Moylan, John C. III	Midlands

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ROA000071

<u>Nauful, Ernest J. Jr.</u>	Midlands
<u>Ormond, J. Charles Jr.</u>	Midlands
<u>Orr, James W.</u>	Midlands
<u>Osborne, Hamilton Jr.</u>	Midlands
<u>Ridley, Charles B. Jr.</u>	Midlands
<u>Ries, Richard D. Don</u>	Midlands
<u>Robinson, D. Clay</u>	Midlands
<u>Rushing, Don S.</u>	Midlands
<u>Sheheen, Vincent A.</u>	Midlands
<u>Shuler, Franklin G. Jr.</u>	Midlands
<u>Smith, Franklin J. Jr.</u>	Midlands
<u>Smith, Gerald F.</u>	Midlands
<u>Sowell, Thornwell F.</u>	Midlands
<u>Thompson, Charles F.</u>	Midlands
<u>Tighe, J. Hagood</u>	Midlands
<u>Todd, Walter B. Jr.</u>	Midlands
<u>Valtorta, Laura P.</u>	Midlands
<u>Wallace, Richard H. Jr.</u>	Midlands
<u>Walters, Fred A.</u>	Midlands
<u>Warren, Charles Otis, Jr.</u>	Midlands
<u>Wilkins, Robert P.</u>	Midlands
<u>Williams, Daryl L.</u>	Midlands
<u>Winters, Joan Elizabeth</u>	Midlands
<u>Wolfe, Eldon Edwin Jr.</u>	Midlands

STATE OF SOUTH CAROLINA)

)

IN ARBITRATION

COUNTY OF YORK)

)

J. W. NEAL CONSTRUCTION,)

LLC)

)

Plaintiff)

)

Vs.)

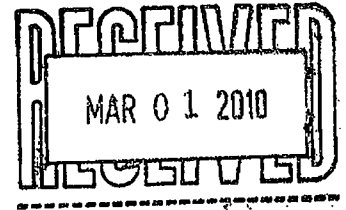
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ARBITRATION AWARD

CASE NUMBER 2007-CP-46-119

CORNELIA THOMAS,)

Defendant.)



This matter comes for arbitration hearing on January 28 and 29, 2010 in Rock Hill, SC.

The undersigned was appointed as Arbitrator by stipulation of the parties.

The Plaintiff is represented by John Martin Foster of the York County Bar and the Defendant is represented by Herbert W. Hamilton, also of the York County Bar. The Plaintiff testified along with Robert L. Belk, James Slusarski and Gregory B. Miller. There were 4 Court's exhibits, without objection and 17 Plaintiff's exhibits without objection. The Defendant testified along with Buddy Brault. Part of Defendant's case was the report of Brian Connolly, Plaintiff's exhibit 17 and photographs taken by the Defendant. Defendant also introduced 3 other exhibits without objection. All parties and witnesses testified under oath.

In essence the Plaintiff's complaint was to foreclose a mechanics lien in the amount of \$112,790.00. He also had causes of actions for breach of contract and Quantum Meruit. About November 22, 2005 the parties entered into a fixed price contract for the construction of a house for the amount of \$359,000.00. The Defendant paid 5% down -

\$17,950.00. Plaintiff began work and worked until either middle of December 2006 or January Of 2007 at which time he was ordered off the job by the Defendant. Prior to that time the defendant had paid the Plaintiff 2 draws totaling \$143,600.00, making a total payment to Plaintiff of \$161,550.00.

The Defendant responded with an Answer and Counterclaim, alleging, in addition to a general denial, equitable estoppel and counterclaims, which consisted of allegations of breach of contract, negligent and/or defective work and breach of express and implied warranties.

The Parties stipulated that the Arbitrator's fee will be equally divided between them.

The issues are:

1. Is Plaintiff entitled to additional payment from Defendant for the work he did until the time of his termination from the job by the Defendant, and if so, in what amount?
2. Is the Defendant entitled to an award of money from the Plaintiff pursuant to any of her counterclaims, and if so, in what amount?
3. Whether either party is entitled to attorney fees?

The contract between the parties had an attachment that set out specifications of the job and included references to the specifications set out in the constructions plans. The contract also stated that any change orders were to be signed by both parties. This was a "fixed price" contract. The Plaintiff has charged Defendant with 5 change orders, which were not signed. Both parties testified at length regarding these change orders and the work was done. However, the contract is clear and the Plaintiff can not recover these amounts.

The Plaintiff is seeking to foreclose his mechanics lien, which by stipulation was timely and properly filed, in the amount of \$112,790.00, plus pre-judgment and post judgment interest and attorney fees. In order to determine what amount, if any, the Plaintiff is due, a point in time must be set to examine what percentage of the contract the Plaintiff had

finished. There was conflicting testimony from the parties as to the last date worked by the Plaintiff, but the middle of January, 2007 seems to be the date to be used for this purpose. (The middle of December was also considered, but there is no relevant difference between the two.) It is determined that the Plaintiff's percentage of completion of the job was 66.75%, using a combination of the Defendant's bank's figures- Plaintiff's no. 11- and Plaintiff's estimate- Plaintiff's no. 12. (The Defendant's concern about defective work, repairs necessary, completion of the job and diminution of value to the home will be addressed in the Defendant's counterclaim.) The Plaintiff is entitled to be paid for the amount of completed work. The Plaintiff carried his burden of proof to show the actual work he did and the amount of money he spent thereon. Since this is a fixed price contract, this method of determining any amount, i.e. the percentage of completion, due him is appropriate.

The contract price was \$359,000.00 and the amount of completion was 66.75 percent, which would be \$239,632.00. The Defendant has paid a total of \$197,450.00, leaving a balance due to Plaintiff of \$42,182.00. The Plaintiff is not entitled to the charges for the change orders.

The Plaintiff is not entitled to prejudgment interest. The amount in the Complaint was not liquidated and the amount finally awarded was able to be computed only after obtaining testimony and evidence regarding percentage of completion. This is not a situation where the amount due can be readily ascertained by mere computation or by a legal or recognized standard. The contract between the parties makes no mention of any interest, pre-judgment or otherwise.

As to the Defendant's counterclaims, substantial testimony and evidence was taken from both parties and their witnesses. The primary thrust of the Defendant's case was an attempt to present the defects of Plaintiff's work, the amount the Defendant spent to complete the contract and any diminution in value of the home. In order to determine her entitlements, if any, a determination must be made as to whether she repaired any defective work of Plaintiff, completed remaining work left on the contract when Plaintiff left the job, or had any diminution in value (DIV) of the residence resulting from any of Plaintiff's work that was defective and could not be reasonably repaired. A determination

must be made as to what, if any of the work by Plaintiff was defective, did Defendant expend a "cost to cure" such defect or, if the work could not be reasonably repaired, then an amount of DIV of the whole due to such defect. The Defendant has the burden of proving these matters by a preponderance of the evidence and such must be beyond mere speculation. The Defendant attached a list to her counterclaim and an exhibit that itemizes the claimed defects and each item must be addressed. Defendant's no. 9. It is important to note that the Defendant is not entitled to a "perfect house" nor, in this case, that the work done by the Plaintiff is perfect. She is however entitled to expect that the quality of construction be of reasonable quality.

1. Black felt—Defendant had photographs taken April of 2006 and the inspection report of Mr. Brault, her expert, showing several areas of no or improperly installed felt. Mr. Brault testified he could not state that there were any International Residential Code violations, did not know whether the items he mentioned were addressed by Plaintiff before he left job and could not give any "cost of cure" for any of the defects he mentioned. However, there was no evidence that these areas were not repaired and/or completed by the Plaintiff, nor was there evidence of the extent of such defects, if they existed, and there was no evidence of "cost to cure" or diminution in value (DIV).
2. Foundation—these are also addressed by Mr. Brault on behalf of the Plaintiff and covered by his report. (Court's no. 4.) Defendant gives no evidence of a defect that required repair, cost of same or DIV. Mr. Brault again states that he just pointed out items that concerned him; could not say they were code violations, could not state the method or cost of repair. He specifically stated that he was not aware of any money damage due to these alleged defects. The only evidence of any suggested, but not necessary, repair came from Mr. Belk, the Plaintiff's expert, who stated that \$100.00 could be spent to realign a floor joist. **Mr. Brault testified that if a contractor did not follow the recommendations in his report such would not mean that the contractor "guilty of poor or unworkmanlike conduct."**
3. Master bath windows— The plans called for glass block and the Plaintiff installed acrylic block. He admitted he would have changed them with no cost to the

Defendant, but was not allowed on the job long enough to do so. There is no evidence the Defendant had any cost to remove and replace them, no apparent cost on the exhibit 6 for glass blocks and no testimony regarding DIV resulting from having acrylic versus glass blocks.

4. Window transoms— The plans call for some windows to have transoms and some do not. But there is no testimony about cost to repair this item or DIV.
5. Small windows—No evidence of repair costs or DIV.
6. Front door—The Defendant, on her exhibit no. 6, shows she spent \$5909.00 for a replacement door, but the testimony was that the original door needed to be repaired and that Mr. Belk also saw it. However, there was no evidence that the entire door needed to be replaced and no evidence for Defendant about the cost of repair or DIV. Mr. Belk gave the only repair cost of 200.00
7. Pocket doors—The Plaintiff was ordered off the job before these could be installed, but there was no testimony they were not done or any DIV.
8. Back terrace—This was done differently than the plans, but the only reliable testimony was that it was well built. The fact that it was not in accordance with the plans does not per se mean there was any DIV and there was no testimony to that effect.
9. Grading lot—This is not to be done till the end of the job. Plaintiff had not gotten to that point.
10. Color of bricks—Her expert, Mr. Brault, did not mention this as a defect. Mr. Belk noticed it after it was pointed out to him by the Defendant and his opinion was that it was not objectionable. Even if it was a defect that required correction, there was no evidence of the extent of repair, nature of repair, cost of repair or, if not repaired, any DIV.
11. Stucco window—There was no indication of values except for Mr. Belk who suggested repair cost to be 50.00.
12. Kitchen plumbing—The alleged defects regarding this issue by the Defendant is not chargeable to him since he had not gotten to that stage in his work. No evidence of defect in what he had done, no values of cost to repair any alleged defects nor DIV.

13. Chimney—This was called for in the plans and should be part of the finished house. However, there was no evidence of any cost to add the chimney and if it was not added, whether there was any DIV.
14. Foyer window—There was a finishing defect and the only testimony regarding the repair cost was from Mr. Belk for 100.00.
15. Living room window sills—This complaint does is not a deviation from the plans and is not a defect.
16. & 17. Walls and floors. There is no evidence of a defect that rose to the level of requiring repair, and if repair was needed, no cost of repair nor DIV.
18. Foundation—This has been addressed in number 2 above.
19. Insulation—There is no code violation to have mixed methods of insulation. The areas Defendant complains of having no or improper insulation-see Mr. Brault's report- have been covered so that no one can now testify that these areas have been properly done either by Plaintiff before he left the job or by The Defendant's sub contractor who finished insulation. There are no repair costs or DIV associated with this item.
20. Front stucco windows—This item needed correction and the only repair cost from all the testimony came from Mr. Belk in the amount of \$100.00.
21. Crawl space—This has been addressed earlier as to the change order. The Defendant did not produce any cost to have this changed to comply with the plans, which would not have been practical to do anyway. However, she did not produce any evidence that the house as completed suffered any DIV.
22. Tempered window—There was no evidence of any cost of repair or DIV.
23. Moisture barrier—The testimony clearly showed there was a moisture barrier laid down-although done after the Plaintiff left the job- and there was no moisture problem in the crawl space. Also, the Connolly report, Plaintiff no. 17, clearly indicated that although there was no moisture problem noted as of the date of his inspection, that there could be such in the future, but that the cause was improper placement and grading for the sidewalks and final landscaping, which were not the responsibility of the Plaintiff. Mr. Slusarski also testified confirming the Connolly findings and that the landscaping and drains had apparently been installed similar to

the plans he had done for the Plaintiff- Plaintiff exhibit no. 10. The Defendant testified that she spent an additional \$1890.00 for the final landscaping but this is not chargeable to the Plaintiff.

24. Weep holes—This is addressed in number 1 above.

25. Garage concrete—There is insufficient evidence of cracking that would be deemed a defect and no evidence of repair cost or DIV.

26. Floor insulation—This was not required in the plans.

The Defendant testified and presented evidence that she spent \$229,700.00 in total to complete and repair the job. She stated that there should be credits for allowances in the contract and some overages that she did in the total amount of \$29,262.00. In reviewing Defendants exhibits numbers 6, 7 & 8 and comparing all the entries thereon, the credits to be given should be as follows:

1. Main entrance-- \$9318.00—This is assuming the replacement of the front door-\$5909.00- is included therein.
2. Plumbing—The after allowance value is \$28,401.00.
3. Light fixtures—There were some ambiguities that were resolved in favor of the Defendant, and the after allowance value is \$17,471.00.
4. Kitchen appliances—The after allowance value is \$11,907.

The Defendant can not charge to the Plaintiff the mold remediation expense- \$1,344.00- since there is no evidence of any act or omission by the Plaintiff proximately caused the mold she noticed over a year after the Plaintiff left the job. The Defendant shall be able to include in her counterclaim the \$1,000.00 charged by Mr. Brault as an incidental and consequential damage. She is not entitled to recover any of the other charges on her exhibit number 8. She shall also include the proven costs of repair as indicated in the above list of 1 through 26 in the total amount of \$550.00.

The Defendant undertook to be her own general contractor to complete the job after she ordered the Plaintiff to cease work. At the time she undertook to complete the job 33.25% of the contract remained incomplete. This percentage of the contract is \$119,367.00.

Reducing her expenses by the total of the 1 through 4 above and the mold remediation

amount- a total of \$68,441.00, she has spent \$161,259.00 to complete the contract. She spent \$161,259.00 to complete the contract which should have cost \$119,367.00, the difference being \$41,892.00, the amount she is entitled from the Plaintiff. She is entitled to add \$550.00 repair cost and \$1,000.00 as incidental and consequential damage, as above set out, for a total amount of \$43,442.00.

Regarding attorney fees, the Defendant is the "prevailing" party. Neither Party made a demand or offer as required by the statute and therefore the Plaintiff's demand is the amount claimed in his complaint, \$112,790.00 and the Defendant's offer is "zero." Therefore, based on the above Award, the Defendant is the "prevailing" party and is entitled to attorney fees that are solely for the defense of the foreclosure of the mechanics lien. The award to the Plaintiff is closer to the offer of the Defendant than to the Plaintiff's demand. The award to Defendant on her Counterclaim is not used to determine who is the "prevailing" party.

When there is a determination of the "prevailing" party, therefore attorney fees must be awarded to that party, and the determination of the amount of attorney fees to be awarded to the Defendant is totally within the discretion of the Arbitrator, *Keeney's Metal Roofing, Inc.*, 345 S.C. at 553, 548 S.E.2d at 901. Not only must the fees be regarding the defense of the mechanics lien, they must be related to our case law criteria: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services, *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) (citing *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993)).

The parties both presented to the Arbitrator their respective itemized fees. After careful review and considering the above six criteria applied to Defendant's counsel and his statement of fees, the amount Defendant incurred solely the defense of the mechanics lien is \$6,2500.00, which amount she shall be entitled to be recovered by the Defendant from the Plaintiff. The total amount of the Defendant's attorney fees were substantially in excess of the amount awarded and were considered to be for the presentation of her

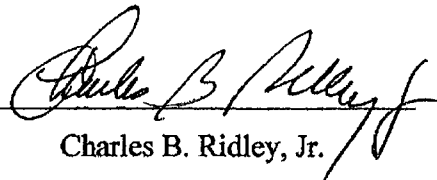
counterclaim or other matters not associated with strictly the defense of the mechanics lien.

THEREFORE, the ARBITRATION AWARD is as follows:

1. Plaintiff, on its Complaint, shall receive the amount of \$42,182.00, Forty Two Thousand One Hundred Eighty Two and no/100 Dollars from the Defendant.
2. The Defendant, on her Counterclaim, shall receive the amount of \$43,442.00, Forty Three Thousand Four Hundred Forty Two and no/100 Dollars from the Plaintiff.
3. The Parties will equally divide the fees of the Arbitrator, which shall be submitted to counsel for the parties within 14 days for the date hereon.
4. The Defendant shall be awarded the amount of \$6,250.00 (Six Thousand Two Hundred Fifty and no/100 Dollars) from the Plaintiff as attorney fees for the defense of the mechanics lien as the prevailing party.

Date: February 25, 2010

Arbitrator:


Charles B. Ridley, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

J.W. NEAL CONSTRUCTION, LLC,
a South Carolina limited liability company,

Plaintiff,

v.

CORNELIA THOMAS,

Defendant.

AFFIDAVIT AS TO MOTION

OF DEFENDANT

and NOTICE AND MOTION

TO MODIFY OR CORRECT AWARD

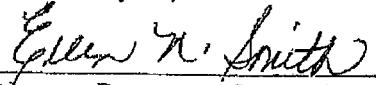
C.A. No. 2007-CP-46-0119

PERSONALLY appeared before me, a notary public, the undersigned affiant, who being duly sworn, deposes and says:

1. I am counsel for the named Plaintiff. I have personal knowledge of all dealings between the parties referenced in the accompanying Return and Motion. I am familiar with regularly kept records of my office, including e-mails sent and received and financial billings; those matters herein not based on my recollection are based on such records.
2. To the best of my information, knowledge and belief, the facts stated in the attached Return and Motion and its accompanying documents, are true. As to those matters stated on knowledge and information, I am informed and believe the same to be true.


John Martin Foster

SWORN TO and subscribed before
me on May 10, 2010.


NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 03/31/14

ROA000082

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

J.W. NEAL CONSTRUCTION, LLC,
a South Carolina limited liability company,

Plaintiff,

v.

CORNELIA THOMAS,

Defendant.

NOTICE AND MOTION

FOR ATTORNEYS FEES AND COSTS

C.A. No. 2007-CP-46-0119

To: The Defendant and
Herbert W. Hamilton
Hamilton, Martens & Ballou, LLC
Attorneys for Defendant
130 East Main Street
Post Office Box 10940
Rock Hill, South Carolina 29731

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Motion herein, as follows:

DATE AND TIME: To be set by the Clerk of Court,
or as soon thereafter as counsel may be heard.

PLACE: Office of the Master in Equity
1 North Congress Street
York, South Carolina 29745,
or such other place as may be designated by the Judge or
the Clerk of Court.

Pursuant to the last Order of this Court and to S.C. Code § 29-5-20 (West), the Plaintiff moves this Court for the allowance of his reasonable costs and attorneys fees as to the within civil action.

Counsel for Plaintiff, pursuant to the previous Order of his Court and within ten (10) days from the date of the last hearing, submitted his Affidavit as to Attorney's Fee and Costs. A filed copy thereof is attached hereto and incorporated herein. The substance of counsel's Affidavit is here restated and reaffirmed.

By e-mail and mailing of Friday, June 4, 2010, the Defendant has already filed a return to this Motion or to the Affidavit of Plaintiff's Counsel referenced above. That Return seeks to recite various factual allegations as to the Plaintiff's alleged "failure" to respond to the Defendant's written demands. Those allegations are not recited in the Arbitration Award and are not before this Court. They are, in any event, denied.

The other argument made in the said Return is based on the language of the unamended Arbitration Award to Defendant of less than her total attorney's fees. The relevant language of the Arbitration Award is as follows:

After careful review and considering the above six criteria applied to Defendant's counsel¹ and his statement of fees, the amount Defendant incurred solely the defense [sic] of the mechanics lien is \$6,250.00, which amount she shall be entitled to be recovered [sic] by the Defendant from the Plaintiff. The total amount of the Defendant's attorney fees were substantially in excess of the amount awarded² and were considered to be for the presentation of the counterclaim or other matters not associated with strictly [sic] the defense of the mechanics lien.

[ARBITRATION AWARD, February 25, 2010, pages 8-9.]

In response to the language above, counsel for Movant would argue as follows:

First, to counsel's knowledge, he has never been furnished with a copy of the attorney's fees that were claimed by Defendant's counsel. He is thus unable to respond factually to the statement that that amount was "substantially in excess" of the amount awarded.

Second, the clear intent of the Arbitrator was to base his decision as to Attorneys Fees upon the small amount of the net award to the Defendant in the original Award. Here, after issuance of the Order of this Court amending the same, the Plaintiff has a net award against the

¹ That is: to Defendant as the prevailing party under the original unamended Award. The criteria in question are those normally applied in our State to the award of attorney's fees. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997), *CITING Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993).

² In the original Arbitration Award, the Defendant's award exceeded that of the Plaintiff by \$1,260.00.

Defendant in the amount of \$34,640.50. That factor or rationale of the Arbitrator has no application here.

Third, Movant argues that the relevant precedent dealing with the award of attorney's fees in a mechanic's lien action is *Utilities Construction Co., Inc. v. Wilson*, 321 S.C. 244, 468 S.E.2d 1 (Ct.App. 1996) and its successors. In that case, the Trial Court directed a verdict for Wilson against the mechanic's lien cause of action. The jury, however, returned a verdict against Wilson for the amount of Utilities' unpaid invoices under the theories of contract and unjust enrichment. The Trial Court awarded Wilson's entire request for attorney's fees. The Court of Appeals remanded for revision, limiting the fees to those attributable to defense against the mechanic's lien. *Id.*, 321 S.C. at 250.

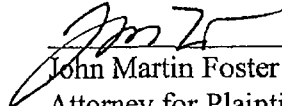
The *Utilities* case dealt with a situation where there was a clear division between the mechanic's lien defense (there, on technical grounds) and that of the contract and enrichment causes. The Court of Appeals was certainly correct to limit attorneys fees accordingly. In this case, no such distinction arises. As to the Counterclaim, the Plaintiff was required to defend the same in order to assert his claim for payment on the lien proper; there was no distinction in the type of proof sought or offered. As to the claims of contract and *quantum meruit* asserted by the Plaintiff, the proof thereof was, in all essentials, identical to that of the mechanic's lien. The Arbitrator made no distinction between the Plaintiff's causes of action in stating its decision. In short, there is no basis under the *Utilities* case to limit the requested attorney's fees sought by the Plaintiff.

If you fail to appear, the Plaintiff will request the relief prayed for in said Return and Motion.

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Return and Motion herein, as follows:

Pursuant to Rule 11(a), S.C.R.C.P., counsel for the Plaintiff hereby affirms that prior to filing this Return and Motion, he has communicated, orally or in writing, with opposing Counsel and has attempted in good faith to resolve the matter contained in this Return and Motion, or that he is not so required, owing to the dispositive nature thereof.

The basis for this Motion is the above-cited Statutes, Rules, Arbitration Award and Order, the records of this Case, all of which are incorporated by this reference.


John Martin Foster
Attorney for Plaintiff

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, S.C. 29730

Post Office Box 106
Rock Hill, S.C. 29731-6106

803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

Rock Hill, South Carolina

June 7, 2010

STATE OF SOUTH CAROLINA]
COUNTY OF YORK]
J.W. NEAL CONSTRUCTION, LLC,]
a South Carolina limited liability company,]
Plaintiff,]
v.]
CORNELIA THOMAS,]
Defendant.]

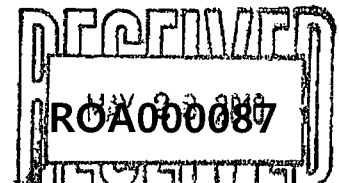
IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

AFFIDAVIT AS TO
ATTORNEY'S FEES AND COSTS
C.A. No. 2007-CP-46-0119

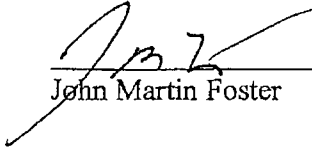
FILED-RECEIVED
2010 MAY 28 AM 9:47
DAVID HAMILTON
C.C.D. & GS
YORK COUNTY, SC

PERSONALLY appeared before me the undersigned Affiant, who, being duly sworn, deposes and says:

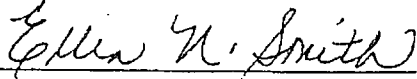
1. The Plaintiff J.W. NEAL CONSTRUCTION, LLC has engaged the services of the counsel undersigned for the purpose of prosecuting this claim for foreclosure of mechanics lien, breach of contract, and *quantum meruit* before the Circuit Court and before the Arbitrator.
2. Counsel is a duly licensed and practicing attorney engaged in the regular practice of commercial law in the State of South Carolina. He has been actively engaged in the practice of law for thirty years.
3. In accordance with his standard practice for the prosecution of such actions, he was engaged by Movant at his (former) litigation rate of One-Hundred Fifty (\$150.00) Dollars per hour. Secretarial time is charged at a rate of Thirty-Five (\$35.00) Dollars per hour. Costs and expenses are passed on to the client.
4. By its verified Complaint herein, premised upon the contract and other causes of action herein, the Plaintiff seeks to recover reasonable attorneys fees, costs and expenses incurred pursuant to its civil action.
5. The attached and incorporated statements, here verified by counsel for Plaintiff, are intended and submitted as a part of this affidavit of attorneys fees and costs. In the course of this representation, he has expended in behalf of the clients the time, and incurred the expense shown, on the statements attached hereto and incorporated herein.
6. The main grouping of statements (Invoices *no.s* 2016 through 2020) represent the case through the Final Hearing and submission of the case to the Arbitrator for decision. The final Invoice *no.* 2030 represents attorneys fees and costs since that time.



7. The attached and incorporated summary, headed "Invoices by Client", here verified by counsel for Plaintiff, is also intended and submitted as a part of this affidavit of attorney fees and costs.
8. On knowledge and information, the amount of attorneys fees, costs and expenses plead for is reasonable and standard in commercial practice.


John Martin Foster

SWORN TO and subscribed before me
this day of May 24, 2010


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 03/31/14

ROA000088

Invoices by Client

Page 1 05/24/10

Date Range: 01/01/06 thru 05/24/10

Sorted by: Date & Invoice #

Customer: J. W. NEAL CONSTRUCTION, LLC - C/O MR. J. WILFRED NEAL

<u>Invoice #</u>	<u>Customer</u>	<u>Sales</u>	<u>Invoice Total</u>
2016	J. W. Neal Construction, LLC - c/o	2,001.81	2,001.81
2017	J. W. Neal Construction, LLC - c/o	1,169.30	1,169.30
2018	J. W. Neal Construction, LLC - c/o	1,016.00	1,016.00
2019	J. W. Neal Construction, LLC - c/o	3,324.50	3,324.50
2020	J. W. Neal Construction, LLC - c/o	3,433.98	3,433.98
Total for 02/18/10		<u>10,945.59</u>	<u>10,945.59</u>
2030	J. W. Neal Construction, LLC - c/o	731.12	731.12
Total for 05/24/10		<u>731.12</u>	<u>731.12</u>
Totals		<u>\$11,676.71</u>	<u>\$11,676.71</u>

ROA000089

John Martin Foster Attorney
 223 East Main Street Suite 520
 Post Office Box 106
 Rock Hill SC 29731-6106

Invoice	2016	Page 1 of 3
Date	02/18/10	

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 Post Office Box 35142
 Charlotte NC 28235

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 4815 Prestwick Lane
 Charlotte NC 28212

Terms: Hourly, costs	File: 07-002	Opposing Party: Thomas, Cornelia	Case Type:
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Time/No.	Services / Cost	Unit Price	Amount
75	12/28/06 Initial Consult with Client: TC with Tommy Player, Esq.: standard fee	1.00	75.00
0.3	Prep. and review of e-mailed Contract and response 01/07	150.00	45.00
1.5	Draft Complaint, Summons, Lis Pendens	150.00	225.00
0.5	TCs, contact with process servers, instructions to same 01/11/07	150.00	75.00
20	Xerographic Copies	0.10	2.00
10	Costs Advanced: Filing Fee: Lis Pendens	1.00	10.00
150	Costs Advanced: Summons, Complaint	1.00	150.00
30	Costs Advanced: Process Server: Notice of Mechanics Lien, etc. 01/12/07	1.00	30.00
125	Xerographic Copies	0.10	12.50
30	Costs Advanced: Process Server: as above 03/07	1.00	30.00
0.75	Research; prep. of Motion to Compel Arbitration	150.00	112.50
25	Costs Advanced: Filing Fee: Motion 03/22/07	1.00	25.00

ROA000090

John Martin Foster Attorney
 223 East Main Street Suite 520
 Post Office Box 106
 Rock Hill SC 29731-6106

Invoice	2016	Page 2 of 3
Date	02/18/10	

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 Post Office Box 35142
 Charlotte NC 28235

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 4815 Prestwick Lane
 Charlotte NC 28212

Terms: Hourly, costs	File: 07-002	Opposing Party: Thomas, Cornelia	Case Type:
-------------------------	-----------------	-------------------------------------	------------

Time/No.	Services / Cost	Unit Price	Amount
120	Costs Advanced: AI: Process Servers 03/28/07	1.00	120.00
30	Costs Advance: Process Server: Carolina First Bank 04/05/07	1.00	30.00
10	Costs Advanced: Filing Fee: Lis Pendens 04/09/07	1.00	10.00
60	Costs Advanced: Parker's" Process Servers 05/08/07	1.00	60.00
31.81	Costs Advanced: FedEx charges 06/12/07	1.00	31.81
0.9	Prep. of Additional Affidavit on Motion to Arbitrate, fax	150.00	135.00
0.8	Secretarial: work on above 06/13/07	35.00	28.00
1.2	Review files, research, TC from Hamilton	150.00	180.00
30	Costs Advanced: Courier to file Amended Affidavit 06/14/07	1.00	30.00
1	Trip to Court on Motion (1/2 of whole); Hearing on same	150.00	150.00
1.2	Research, draft Answer, TCs, e-mails 07/31/07	150.00	45.00
2	Prep. Discovery Requests	150.00	45.00

ROA000091

John Martin Foster Attorney
223 East Main Street Suite 520
Post Office Box 106
Rock Hill SC 29731-6106

Invoice	2016	Page 3 of 3
Date	02/18/10	

J. W. Neal Construction, LLC
c/o Mr. J. Wilfred Neal
Post Office Box 35142
Charlotte NC 28235

J. W. Neal Construction, LLC
c/o Mr. J. Wilfred Neal
4815 Prestwick Lane
Charlotte NC 28212

Terms:
Hourly costs

File:
07-002

Opposing Party:
Thomas, Cornelia

Case Type:

Time/No.	Services / Cost	Unit Price	Amount
0.25	10/15/07 Research on Motion to allow redone Mortgage by Thomas	150.00	45.00
1.7	10/16/07 Trip, Hearing on Motion to allow Mortgage	150.00	255.00
0.3	11/30/07 Receipt, review of responses to Discovery	150.00	45.00
Amount Paid 1,448.28		Amount Due 553.53	
TOTAL			\$2,001.81

ROA000092

John Martin Foster Attorney
 223 East Main Street Suite 520
 Post Office Box 106
 Rock Hill SC 29731-6106

Invoice	2017	Page 1 of 3
Date	02/18/10	

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 Post Office Box 35142
 Charlotte NC 28235

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 4815 Prestwick Lane
 Charlotte NC 28212

Terms: Hourly, costs	File: 07-002	Opposing Party: Thomas, Cornelia	Case Type: Litigation
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Time/No.	Services / Cost	Unit Price	Amount
	01/29/07		
0.3	Complimentary Copy to Hamilton: letter: secretarial	35.00	10.50
0.75	Postage	1.00	0.75
	03/22/07		
0.41	Postage on Motion to Compel Arbitration	1.00	0.41
0.1	E-mail to Process Servers for bill	1.00	0.10
	03/28/07		
0.15	Prep. of Cover Letter to Carolina First: Secretarial	35.00	5.25
	04/26/07		
0.2	Request, receipt, review of Neal insurance binder	150.00	30.00
	05/21/07		
0.5	Mtg. with Client	150.00	75.00
	06/12/07		
0.25	Fax to Neal on Amended Affidavit: prep.	150.00	37.50
0.15	2d fax on instructions for signing	150.00	22.50
0.3	Letter to Hamilton with Amd. Affidavit: Secretarial	35.00	10.50
	07/07		
2	Research, prep. of Answers to Counterclaim, Discovery	150.00	300.00
	07/12/07		
0.3	Receipt, review of request by Thomas for Arbitration: discussion with Client	150.00	45.00

ROA000093

John Martin Foster Attorney
 223 East Main Street Suite 520
 Post Office Box 106
 Rock Hill SC 29731-6106

Invoice	2017	Page 2 of 3
Date	02/18/10	

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 Post Office Box 35142
 Charlotte NC 28235

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 4815 Prestwick Lane
 Charlotte NC 28212

Terms: Hourly, costs	File: 07-002	Opposing Party: Thomas, Cornelia	Case Type: Litigation
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Time/No.	Services / Cost	Unit Price	Amount
	07/19/07		
1.2	Research, draft Answer, TCS, e-mails	150.00	180.00
0.1	E-mail to Hamilton on status of Discovery	150.00	15.00
	07/26/07		
0.25	Receipt, review of AAA rules on Arbitration from Hamilton	150.00	37.50
	07/31/07		
0.25	Prep. of Cover Letter for Answer to Counterclaim nad Discovery	150.00	37.50
	08/13/07		
	Receipt, review of Motion to allow re-done Mortgage (with subordination of Mechanics' Lien)	150.00	150.00
0.15	Letter to Neal with Motion: Secretarial	35.00	5.25
0.41	Postage	1.00	0.41
	09/26/07		
0.1	Receipt, scheduling of Hamilton Motion on Mortgage: Secretarial	35.00	3.50
	10/25/07		
0.25	Receipt, review of Hamilton Affidavits on Mortgage subordination	150.00	37.50
	10/31/07		

ROA000094

John Martin Foster Attorney
223 East Main Street Suite 520
Post Office Box 106
Rock Hill SC 29731-6106

Invoice	2017	Page 3 of 3
Date	02/18/10	

J. W. Neal Construction, LLC
c/o Mr. J. Wilfred Neal
Post Office Box 35142
Charlotte NC 28235

J. W. Neal Construction, LLC
c/o Mr. J. Wilfred Neal
4815 Prestwick Lane
Charlotte NC 28212

Terms: Hourly, costs	File: 07-002	Opposing Party: Thomas, Cornelia	Case Type: Litigation
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Time/No.	Services / Cost	Unit Price	Amount
0.2	E-mail agreeing to Arbitration	150.00	30.00
0.6	E-mail to Judge Kimball on Affidavits, agreeing to Motion	150.00	90.00
0.1	Agreement to extend Discovery deadline of Thomas 11/16/07	150.00	15.00
0.15	Receipt, review of Thomas Subpoena to Carolina First 12/03/07	150.00	22.50
0.2	Letter to Client on received Discovery responses: Secretarial	35.00	7.00
0.63	Postage	1.00	0.63
Amount Paid 0.00		Amount Due 1,169.30	
TOTAL			\$1,169.30

ROA000095

John Martin Foster Attorney
 223 East Main Street Suite 520
 Post Office Box 106
 Rock Hill SC 29731-6106

Invoice	2018	Page 1 of 3
Date	02/18/10	

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 Post Office Box 35142
 Charlotte NC 28235

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 4815 Prestwick Lane
 Charlotte NC 28212

Terms: Hourly, costs	File: 07-002	Opposing Party: Thomas, Cornelia	Case Type: Litigation
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Time/No.	Services / Cost	Unit Price	Amount
0.5	07/24/07 Telephone Conference with Client	150.00	75.00
0.5	12/04/07 Telephone Conference with Client	150.00	75.00
1.9	12/28/07 Review Discovery, Discovery responses with Client	150.00	285.00
0.15	03/39/08 Receipt, Review of Hamilton Letter on suggested Arbitrators	150.00	22.50
0.8	04/24/08 Mtg. with Client: discussion on experts	150.00	120.00
0.1	07/08/08 E-mail confirming Belk's inspection	35.00	3.50
0.25	07/25/08 Discussion on Hamilton's request for continuance, review of proposed Order	150.00	37.50
0.1	08/12 - 13/08 Review of formal Motion, Order on continuance	150.00	15.00
0.2	E-mails to, from Hamilton on photos in Discovery	150.00	30.00

ROA000096

John Martin Foster Attorney
 223 East Main Street Suite 520
 Post Office Box 106
 Rock Hill SC 29731-6106

Invoice	2018	Page 2 of 3
Date	02/18/10	

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 Post Office Box 35142
 Charlotte NC 28235

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 4815 Prestwick Lane
 Charlotte NC 28212

Terms: Hourly, costs	File: 07-002	Opposing Party: Thomas, Cornelia	Case Type: Litigation
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Time/No.	Services / Cost	Unit Price	Amount
0.1	08/19/08 E-mail from Hamilton's office in further response	150.00	15.00
0.2	08/21/08 E-mail to Judge Alford requesting continuance due to state of discovery, Hamilton medical status	150.00	30.00
0.1	E-mail response from Hamilton's office on request for Plan copies 08/28/08	150.00	15.00
0.1	E-mail to Lynn Strait, Hamilton confirming continuance 08/26/08	150.00	15.00
0.75	Mtg. with Client, Bob Belk 08/28/08	150.00	112.50
0.1	E-mail to Lynn Strait on continuance confirmation 09/11/08	150.00	15.00
0.15	E-mail to Hamilton agreeing to Arbitration, discussing AAA rules 09/12/08	150.00	22.50
0.1	Review Hamilton's e-mail to Strait confirming Arbitration, confirmation of same 09/15/08	150.00	15.00

ROA000097

John Martin Foster Attorney
223 East Main Street Suite 520
Post Office Box 106
Rock Hill SC 29731-6106

Invoice	2018	Page 3 of 3
Date	02/18/10	

J. W. Neal Construction, LLC
c/o Mr. J. Wilfred Neal
Post Office Box 35142
Charlotte NC 28235

J. W. Neal Construction, LLC
c/o Mr. J. Wilfred Neal
4815 Prestwick Lane
Charlotte NC 28212

Terms: Hourly, costs	File: 07-002	Opposing Party: Thomas, Cornelia	Case Type: Litigation
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Time/No.	Services / Cost	Unit Price	Amount
0.2	Receipt, review of proposed Order of Dismissal without Prejudice	150.00	30.00
0.1	E-mail to Hamilton approving Order, discussing terms of Arbitration 09/16/08	150.00	15.00
0.1	Further e-mail on signature to Order, possible Arbitors 09/17/08	150.00	15.00
0.15	E-mai to Hamilton in response to above 09/25/08	150.00	22.50
0.15	E-mail to Hamilton on status of Arbitraton agreement, review of reply	150.00	22.50
0.05	Review of reply e-mail	150.00	7.50
Amount Paid 0.00		Amount Due 1,016.00	
TOTAL			\$1,016.00

ROA000098

John Martin Foster Attorney
 223 East Main Street Suite 520
 Post Office Box 106
 Rock Hill SC 29731-6106

Invoice	2019	Page 1 of 3
Date	02/18/10	

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 Post Office Box 35142
 Charlotte NC 28235

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 4815 Prestwick Lane
 Charlotte NC 28212

Terms: Hourly, costs	File: 07-002	Opposing Party: Thomas, Cornelia	Case Type: Litigation
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Time/No.	Services / Cost	Unit Price	Amount
0.2	10/31/08 Receipt, review of Order, discussion of Arbitrator	150.00	30.00
0.15	11/06/08 Fax letter to Hamilton with signature page on proposed Order, discuss Arbitrator	150.00	22.50
0.65	01/26/09 Mtg. with Hamilton on status of discovery, setting date for Arbitration	150.00	97.50
0.2	02/09/09 Receipt, review of Ridley Arbitration Agreement, discuss dates	150.00	30.00
0.15	04/23/09 Reschedule arbitration	150.00	22.50
0.15	04/30/09 Receipt, review of Ridley e-mail on dates	150.00	22.50
0.6	Conferece with Client by Telephone	150.00	90.00
0.2	05/11/09 Reschedule Arbitration: Secretarial	35.00	7.00
0.25	05/12/09 E-mail to Bob-Belk on date of Arbitration and meeting:Secretarial	35.00	8.75

ROA000099

John Martin Foster Attorney
 223 East Main Street Suite 520
 Post Office Box 106
 Rock Hill SC 29731-6106

Invoice	2019	Page 2 of 3
Date	02/18/10	

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 Post Office Box 35142
 Charlotte NC 28235

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 4815 Prestwick Lane
 Charlotte NC 28212

Terms: Hourly, costs	File: 07-002	Opposing Party: Thomas, Cornelia	Case Type: Litigation
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Time/No.	Services / Cost	Unit Price	Amount
0.1	Attorney on above 05/13/09	150.00	15.00
0.5	Mtg. with Client: review docs for trial	150.00	75.00
0.25	E-mail of Witness list to Hamilton, questions on procedure 06/02/09	150.00	37.50
2.5	Research trial issues 06/03/09	150.00	375.00
0.3	TCs on rescheduling hearing 06/12/09	150.00	45.00
0.4	Conference call with Client 07/01/09	150.00	60.00
0.1	E-mail to Belk reminding of hearing date: Secretarial 07/23/09	35.00	3.50
2	Mtg. with Client, TCs, research 07/24/09	150.00	300.00
1.5	TCs, trial preparation 07/25/09	150.00	225.00
2	Trial preparation 07/26/09	150.00	300.00

ROA000100

John Martin Foster Attorney
223 East Main Street Suite 520
Post Office Box 106
Rock Hill SC 29731-6106

Invoice	2019	Page 3 of 3
Date	02/18/10	

J. W. Neal Construction, LLC
c/o Mr. J. Wilfred Neal
Post Office Box 35142
Charlotte NC 28235

J. W. Neal Construction, LLC
c/o Mr. J. Wilfred Neal
4815 Prestwick Lane
Charlotte NC 28212

Terms:
Hourly, costs

File:
07-002

Opposing Party:
Thomas, Cornelia

Case Type:
Litigation

Time/No.	Services / Cost	Unit Price	Amount
5	Trial preparaton 07/27/09	150.00	750.00
3.2	Hearing: objection and delay due to nature of disclosed list of complaints (above including mtg. with Client, Belk) 07/28/09	150.00	480.00
2	Trip, inspection of house with Belk, Hamilton	150.00	300.00
0.15	E-mail to Hamilton on availability of Plans	150.00	22.50
0.15	Letter resetting Trial: Secretarial	35.00	5.25
Amount Paid 0.00		Amount Due 3,324.50	
TOTAL			\$3,324.50

ROA000101

John Martin Foster Attorney
 223 East Main Street Suite 520
 Post Office Box 106
 Rock Hill SC 29731-6106

Invoice	2020	Page 1 of 2
Date	02/18/10	

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 Post Office Box 35142
 Charlotte NC 28235

J. W. Neal Construction, LLC
 c/o Mr. J. Wilfred Neal
 4815 Prestwick Lane
 Charlotte NC 28212

Terms: Hourly, costs	File: 07-002	Opposing Party: Thomas, Cornelia	Case Type: Litigation
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Time/No.	Services / Cost	Unit Price	Amount
1.23	07/28/09 Postage for above letter	1.00	1.23
0.5	09/09 Faxes, TCs on need to reschedule: discovered water problems	150.00	75.00
0.2	10/12/09 Receipt, review of Water Report from Thomas	150.00	30.00
1.9	12/28/09 Mtg. with Client, review status, docs for trial	150.00	285.00
0.2	12/29 - 12/30/09 Receipt, review of list of complaints by Thomas	150.00	30.00
0.15	01/05/10 Fax of above to Client	35.00	5.25
0.15	01/07/10 E-mails on scheduling hearing	150.00	22.50
0.6	01/22/10 E-mail, TCs on scheduling inspection by Aquatech: TC to, from Slusarski	150.00	90.00
0.9	01/23 - 01/27/10 Trip to house, inspection by Slusarski	150.00	135.00

ROA000102

John Martin Foster Attorney
223 East Main Street Suite 520
Post Office Box 106
Rock Hill SC 29731-6106

Invoice	2020	Page 2 of 2
Date	02/18/10	

J. W. Neal Construction, LLC
c/o Mr. J. Wilfred Neal
Post Office Box 35142
Charlotte NC 28235

J. W. Neal Construction, LLC
c/o Mr. J. Wilfred Neal
4815 Prestwick Lane
Charlotte NC 28212

Terms: Hourly, costs	File: 07-002	Opposing Party: Thomas, Cornelia	Case Type: Litigation
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Time/No.	Services / Cost	Unit Price	Amount
4	Review file, docs, trial prep.	150.00	600.00
600	Xerographic Copies 01/26/10	0.10	60.00
0.4	Mtg. with Hamilton	150.00	60.00
0.6	Mtg. with Client 01/28/09	150.00	90.00
5.1	Hearing: 1st day (excl. lunch) 01/29/10	150.00	765.00
5.6	Hearing: 2nd day (excl. lunch) 02/12/10	150.00	840.00
2.3	Memorandum to Arbitrator	150.00	345.00
Amount Paid 0.00		Amount Due 3,433.98	
TOTAL			\$3,433.98

ROA000103

John Martin Foster Attorney
223 East Main Street Suite 520
Post Office Box 106
Rock Hill SC 29731-6106

Invoice	2030
Date	05/24/10

J. W. Neal Construction, LLC
c/o Mr. J. Wilfred Neal
Post Office Box 35142
Charlotte NC 28235

J. W. Neal Construction, LLC
c/o Mr. J. Wilfred Neal
4815 Prestwick Lane
Charlotte NC 28212

Terms:
Hourly, costs

File:
07-002

Opposing Party:
Thomas, Cornelia

Case Type:
Litigation

Time/No.	Services / Cost	Unit Price	Amount
0.4	03/22/10 Prep. of e-mail to Charles Ridley on modification of award	150.00	60.00
	03 - 04/10 E-mails between Ridley, Hamilton and Foster on procedure: not charged		
2	05/10/10 Research, prep. of Return to Motion and Motion to Modify	150.00	300.00
148	Xerographic Copies	0.10	14.80
25	Filing Fee: Return and Motion	1.00	25.00
	05/13/10		
0.9	Hearing on Motions	150.00	135.00
	05/24/10		
1.3	Prep. of Proposed Order, e-mail in transmission	150.00	195.00
1.32	Postage	1.00	1.32
Amount Paid 0.00		Amount Due 731.12	
TOTAL			\$731.12

ROA000104

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Equity Court

The Honorable S. Jackson Kimball, Master-in-Equity

Case No.: 2007-CP-46-00119

JW Neal Construction,

.....Respondent,

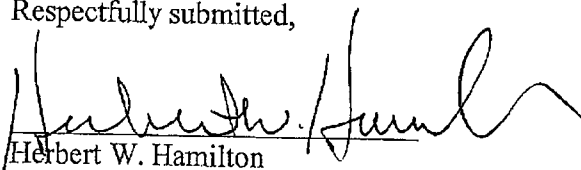
v.

Cornelia Thomas.....Appellant.

MOTION TO DISMISS APPEAL

Appellant hereby moves to dismiss this Appeal without prejudice. The Motion is made on the grounds that the Order of June 1, 2010, from which this Appeal is taken, is not the final order and the Appeal is premature.

Respectfully submitted,



Herbert W. Hamilton
HAMILTON MARTENS & BALLOU, LLC
P.O. Box 10940
Rock Hill, SC 29730
(803) 329-7672

ATTORNEYS FOR APPELLANT

August 26, 2010
Rock Hill, South Carolina

ROA000105

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Equity Court

The Honorable S. Jackson Kimball, Master-in-Equity

Case No.: 2007-CP-46-00119

JW Neal Construction, ...Respondent,

v.

Cornelia Thomas.....Appellant.

MEMORANDUM

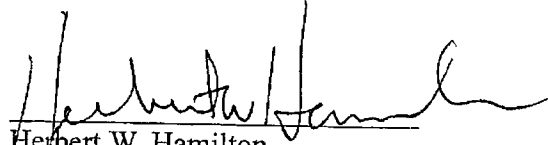
On June 1, 2010, the Honorable S. Jackson Kimball issued an Order captioned "Judgment in a Civil Case". The Order purports to rule on all substantive issues before the Court. Thereafter, the Court remanded the case to the Arbitrator for the purpose of determining attorneys' fees under the Mechanic's Lien Statute. (See Exhibits A & B)

Out of an abundance of caution, the Appellant filed a Notice of Appeal from Judge Kimball's Order of June 1, 2010. It now appears that a supplemental order regarding attorney's fees will be necessary. Consequently, Judge Kimball's Order of June 1, 2010 is not a final order as required by Rule 201(a) of the Appellate Court Rules, and this Appeal is premature.

The Appellant respectfully requests that this Appeal be dismissed without prejudice.

ROA000106

Counsel for the Appellant has been unable to obtain the consent of Respondent's
Counsel to this Motion.



Herbert W. Hamilton
HAMILTON MARTENS & BALLOU, LLC
P.O. Box 10940
Rock Hill, SC 29730
(803) 329-7672

ATTORNEYS FOR APPELLANT

August 27, 2010
Rock Hill, South Carolina

4820-6738-0999, v. 1

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
J.W. Neal Construction, LLC,)
Plaintiff,)
v.)
Cornelia Thomas,)
Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C/A No.: 2007-CP-46-0119

NOTICE OF MOTION AND MOTION

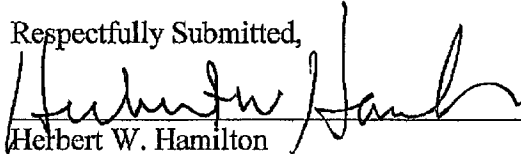
FILED - RECEIVED
FEB -6 PM 2:59
JAY HAMILTON
C.C. CP & GS
YORK COUNTY, SC

TO: J. Martin Foster, Esq., Attorney for the Plaintiff.

You will please take notice that the undersigned as counsel for the Defendant will move on the 10th day after service hereof or at such other time and place as the Court may direct, for an order dismissing the Mechanic's Lien filed by the Plaintiff against property owned by the Defendant and removing the same from public record. The Motion is made on the grounds that the Plaintiff was not licensed to perform the work for which the Mechanics Lien was filed, and the Plaintiff has failed and is unable to prosecute the claim to judgment.

The Motion will be based on the Pleadings, the Court Orders and applicable statutory and common law.

Respectfully Submitted,


Herbert W. Hamilton
Hamilton Martens & Ballou, LLC
130 East Main Street
P. O. Box 10940
Rock Hill, South Carolina 29731
Phone: (803) 329-7672
Fax: (803) 329-7678
ATTORNEY FOR THE DEFENDANT

February 3, 2012

ROA000108

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM YORK COUNTY
Equity Court

The Honorable S. Jackson Kimball, Master-in-Equity

Case No.: 2007-CP-46-00119

JW Neal Construction, LLC, ... Respondent,

v.

Cornelia Thomas, ... Appellant.

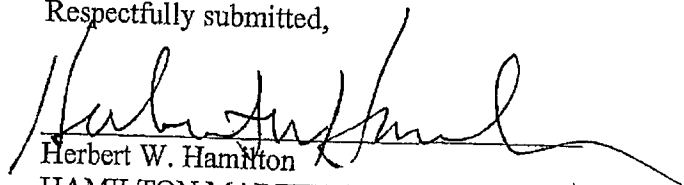
NOTICE OF APPEAL

Notice is hereby given that Cornelia Thomas appeals the final order of the Honorable S. Jackson Kimball dated June 18, 2012 and the judgment entered thereon as well as Interlocutory Order of Judge Kimball dated June 1, 2010, and the Arbitration Award and Amended Arbitration award to which Judge Kimball's Orders refer. Appellant received written notice of entry of the final order and judgment on June 27, 2012. Copies of the orders, from which the Appellant appeals, are attached hereto.

RECEIVED
JUL 16 2012
SC Court of Appeals

ROA000109

Respectfully submitted,



Herbert W. Hamilton

HAMILTON MARTENS & BALLOU, LLC

P.O. Box 10940

Rock Hill, SC 29730

(803) 329-7672

ATTORNEYS FOR APPELLANT

July 13, 2012
Rock Hill, South Carolina

Other Counsel of Record:

John Martin Foster
Attorney at Law
PO Box 106
Rock Hill, SC 29731
(803) 324-8100

ATTORNEY FOR RESPONDENT

-and-

The Honorable David Hamilton
York County Clerk of Court
PO Box 649
York, SC 29745

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM YORK COUNTY
Equity Court

The Honorable S. Jackson Kimball, Master-in-Equity

Case No.: 2007-CP-46-00119

SC Court of Appeals

RECEIVED
JUL 16 2012

JW Neal Construction, LLC, ... Respondent,

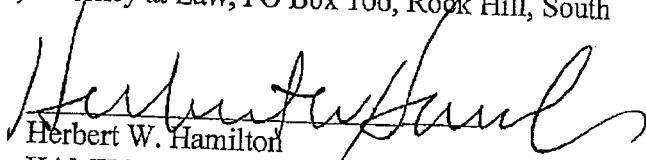
v.

Cornelia Thomas, ... Appellant.

PROOF OF SERVICE

I, Herbert W. Hamilton, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to its attorney of record, John Martin Foster, Attorney at Law, PO Box 106, Rock Hill, South Carolina 29731.

July 13, 2012


Herbert W. Hamilton
HAMILTON MARTENS & BALLOU, LLC
P.O. Box 10940
Rock Hill, SC 29730
(803) 329-7672

ATTORNEYS FOR APPELLANT

ROA000111

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM YORK COUNTY
Equity Court

The Honorable S. Jackson Kimball, Master-in-Equity

Case No.: 2007-CP-46-00119

JW Neal Construction, LLC, ... Respondent,

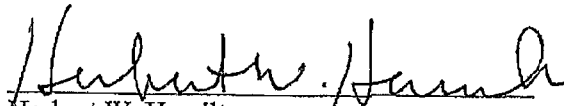
v.

Cornelia Thomas, ... Appellant.

NOTICE OF APPEAL

Notice is hereby given that Cornelia Thomas appeals the Order of the Honorable S. Jackson Kimball dated June 1, 2010 and filed of record with the York County Clerk of Courts offices on June 23, 2010. The Appellant received written notice of the entry of this order on June 27, 2010. A copy of the order is attached.

Respectfully submitted,



Herbert W. Hamilton
HAMILTON MARTENS & BALLOU, LLC
P.O. Box 10940
Rock Hill, SC 29730
(803) 329-7672

July 24, 2010
Rock Hill, South Carolina

ATTORNEYS FOR APPELLANT

ROA000112

Other Counsel of Record:

John Martin Foster
Attorney at Law
PO Box 106
Rock Hill, SC 29731
(803) 324-8100

ATTORNEY FOR RESPONDENT

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM YORK COUNTY
Equity Court

The Honorable S. Jackson Kimball, Master-in-Equity

Case No.: 2007-CP-46-00119

JW Neal Construction, LLC, ... Respondent,

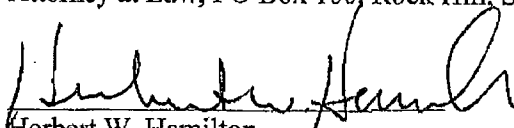
v.

Cornelia Thomas, ... Appellant.

PROOF OF SERVICE

I, Herbert W. Hamilton, certify that I have today served the within notice of appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to its attorney of record, John Martin Foster, Attorney at Law, PO Box 106/Rock Hill, South Carolina 29731.

July 26, 2010


Herbert W. Hamilton
HAMILTON MARTENS & BALLOU, LLC
P.O. Box 10940
Rock Hill, SC 29730
(803) 329-7672

ATTORNEYS FOR APPELLANT

ROA000114

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

CONTRACT

THIS AGREEMENT is made this 22 day of November, 2005 by and between Ms. Cornelia Thomas, hereinafter known as the "Owner", and J. W. Neal Construction, LLC, hereinafter known as the "Contractor."

WITNESSETH:

1. That the Contractor shall furnish all labor and materials needed for the construction of a house in York County, South Carolina on the land of the owner; according to the plans and specifications attached hereto and made a part of this contract, and which have been signed and approved by the Owner and the Contractor.
2. That there shall be no changes from the original plans and specifications as approved and attached unless both parties agree thereto in writing as to the extent of such changes and the amounts to be paid or deducted therefor, before work thereon shall have begun.
3. That the Owner shall furnish an adequate survey and description of the Property as well as a loan commitment letter from a credible lending institution or proof of available funds prior to construction beginning. The Contractor shall obtain and pay for all permits necessary to complete the work. Contractor shall also comply with all laws or regulations bearing on the conduct of the work, and shall notify owner if the drawings and specifications are at variance therewith, or if unforeseen conditions arise. In all instances the Contractor shall bring all building up to any local, state or mortgage lending standards.
4. That all materials shall be new and of good quality, and the Contractor shall employ persons who are sufficiently skilled in the work assigned to them so that all workmanship on the building shall likewise be of good quality.
5. That the Contractor shall allow the Owner or other legally interested parties to inspect all work and materials at all times and shall, after receiving notice in writing, remove all defective materials, whether completed or not. Materials rendered unfit for reworking are to be replaced at the Contractor's own expense.
6. Contractor agrees to carry such insurance as required by State and Federal Laws relating to compensation for personal injury to workmen. The Owner may carry additional insurance for protection from contingent liability and may object to and cause to be removed any condition dangerous to workmen or the public. The owner shall carry fire insurance on the building and materials as work progresses, either in binder form or in the usual manner so long as owner and Contractor are protected.
7. Contractor shall complete all work included in this contract within 9 months

ROA000115

from the date that construction begins, unless delayed by conditions beyond his control, in which case time shall be extended the actual number of days so delayed.

8. It is mutually agreed between the parties hereto that the sum to be paid by Owner to Contractor for the erection and construction of the building according to the attached and approved plans and specifications shall be Three Hundred Seventy Nine Five Hundred Fifty Dollars and no cents (\$359,000.00), less any earnest money paid this date, which shall be held in an account of J.W. Neal Construction. The proposed construction includes the following square footage and cost breakdown:

Total Heated Area	3397 sq. ft.
Unheated Area (Garage, Porches, Patio)	<u>1137 sq. ft.</u>
Total	4534 sq. ft.

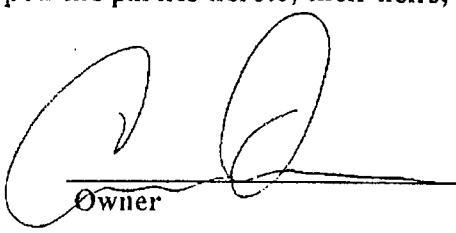
9. Funds will be disbursed according to the schedule as herein defined or that of the lending institution advancing funds for said construction. The first payment, due when the house is framed and the roof complete shall be 25% (per cent) of the contract price. The second payment, due when the plumbing, wiring and inside work is roughed in shall be 25% (per cent) of the contract price. The third payment, due when all outside work is complete, trimming out inside commenced shall be 25% (per cent) of the contract price. The fourth and final payment, due when all specifications are complied with and a certificate of occupancy has been obtained, shall be 25% (per cent) of the contract price or the remaining unpaid amount of the contract price plus overages and change orders. It is expressly understood and agreed that should the Owner obtain a construction loan that all disbursements shall be in accord with the terms, conditions and requirements of Owner's Lender, provided the Contractor is advised of such terms and conditions, prior to the execution of this Contract. It is also understood that if the contractor obtains the construction loan that the owner will subordinate the lot or property to a construction loan and be responsible for monthly interest payments to the lending institution.

10. Final payment shall be due and payable in full when the construction hereinabove referred has been completed and said premises are ready for occupancy. Failure to pay the balance of the contract price within ten (10) days after completion of said dwelling shall result in a penalty charge of Twenty-five (\$25.00) per day until said payment in full is made.

11. Any disagreement arising out of this contract or the application of any provisions thereof shall be submitted to an Arbitrator or Arbitrators not interested in the finances of the contract. The parties hereto may agree on one arbitrator, or may each select one and these two shall select a third. It is mutually agreed that the decision of the mutually agreed arbitrator or any two of the three selected, if each selects one, shall be binding and have the same weight, as a legal decision on any difference herein arising.

This agreement shall be binding upon the parties hereto, their heirs, administrators, executors, successors and assigns.

Witness

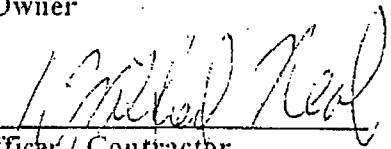


Owner

Witness

Owner

Witness

By: 

Officer / Contractor

11/15/2005

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J. W. NEAL CONSTRUCTION, LLC

Description of Materials

☒ Proposed

☐ Under Construction

Property Address: York County, South Carolina

Name: Ms. Cornelia Thomas

Mortgagor of Sponsor: First Citizens Bank of S. C.

Contractor or Builder: J. W. Neal Construction Address: 1361 Pocalla Rd., Sumter, S.C.

-
1. EXCAVATION:
Bearing soil, type: Sand Clay
 2. FOUNDATIONS: Type: Slab
Footings: Concrete mix 1: 3: 5 3000 PSI Reinforcing: as required per code
Foundation wall: material Brick Reinforcing: as required per code
Interior foundation wall: material Brick or Block
Piers: material and reinforcing: Brick or Block
Waterproofing: As required Termite protection: Poison Soil
 3. CHIMNEYS:
Material: Brick
Flue lining: material: Fire Clay Fireplace flue size: TBD
 4. FIREPLACES:
Type: One Two-wav Gas Ash dumps and clean out: no Opening according to plans
Fireplace: Facing Marble or CT; lining NA; hearth Marble or CT; Mantel: Wood (Mantel must be chosen from builder's selections) - \$600
 5. EXTERIOR WALLS:
Wood Frame: wood grade and species #2 SPF, 2x4 Spruce, 16 OC
☒ Corner Bracing Building paper or felt: Polv. Flashing
Sheathing: Styrofoam or Plywood; Thickness 3/4"; Width: 4'
Siding: N/A Shingles: N/A Stucco: Per plans
Masonry veneer: \$290/Thousand Sills Brick Lintels Steel angles Base flashing Polv.
Gable wall construction: Brick where possible, vinyl siding or stucco otherwise.
Brick type: Richtex Queen or Modular
 6. FLOOR FRAMING:
Joists: wood, grade, and species; #2KD SYP 2" x 10" Bridging: As required by Code
 7. SUBFLOORING: (Describe under flooring for special floors under item 20.)
Material: grade and species OSB size 3/4"x4'x8' type T&G
Laid: ☒ First Floor, ☒ Second Floor, ☒ Attic

ROA000118

8. **FINISH FLOORING:** (Wood only. Describe other finish flooring under item 21.)

Location	Rooms	Grade	Species	Thickness	Width	Bldg. Paper	Finish
First Floor	DR, LR, Entry, Hall, Butler's	Select	oak	3/4"	TBD		Stained
Attic Floor			Plywood				

Additional information:

9. **PARTITION FRAMING:**

Studs: wood, grade, and species # 2 SPF

Size and spacing 2" X 4", 16" OC

10. **CEILING FRAMING:**

Joists: wood, grade, and species # 2 SPF 16" O.C. Ceiling Heights to be 10ft. on 1st floor and 2nd floor according to plans.

11. **ROOF FRAMING**

Rafters: wood, grade, and species # 2 SPF, K.D. Pine

Additional information: 16" OC

12. **ROOFING:**

Sheathing: wood, grade, and species 1/2" OSB

Roofing: Black Fiberglass, Architectural Shingles Grade: 25 yr.; size: 12" X 36"; type: wind seal

Underlay Felt # 15 Fastening: Galv. Nails

Flashing: material Galv. Aluminum, visible flashing to be copper tone

13. **GUTTERS DOWNSPOUTS:**

Gutters: Material _____; gage or weight _____; size _____; Shape _____

Downspouts: Material _____; gage or weight _____; size _____; Shape _____

Downspouts connected to: ☐ Storm sewer; ☐ Sanitary sewer; ☐ Dry well; ☐ Splash blocks _____

14. **LATH AND PLASTER:**

Dry-wall ☒ walls, ☒ ceilings: material sheet rock; thickness 1/2";

Finish smooth - Except for Garage

15. **DECORATING:** (Paint, wallpaper, etc.)

Rooms	Wall Finish Material and Application	Ceiling Finish Material and Application
Kitchen	Paint or Wallpaper, field tile back splash	Painted, smooth finish
Bath	Paint or Wallpaper	Painted, smooth finish
Other	All other rooms painted	Painted, smooth finish

Additional information: Wallpaper allowance \$1000 Material only. 3 Wall Paint Colors, 1 trim Color, and 1 Ceiling Color.

16. **INTERIOR DOORS AND TRIM:**

Doors: type 6 panel Colonist material h. board thickness 1 3/8"

Door trim: type RB3; material MDF Base: type: 7 1/4" One piece speed base down stairs & 5 1/4" upstairs; material: MDF/FJ Pine

Finish: doors Painted; trim Painted.

Other trim (item, type and location): 5" Crown first floor & 4" second floor, Chair rail in dining room.

17. WINDOWS:

Windows: type Single Hung; make White M&W or Moss Material Vinyl; sash thickness 1 3/8"

Weather-stripping: type manufactured Grade; material vinyl / aluminum

Screens: ☐ Full; ☒ half, type aluminum

Basement windows: type N/A

Special windows According to plans

18. ENTRANCES AND EXTERIOR DETAIL:

Main entrance: material wood or fiberglass; width 36"; thickness 1 3/4" - (\$2500 Allowance for Unit)

Frame: material Wood

Other entrance doors: material metal or fiberglass; width per plans

Head flashing: Poly; Weather-stripping: type Aluminum; saddles Aluminum

19. CABINETS AND INTERIOR DETAIL:

Kitchen cabinets, wall units: material Birch, Oak, or Maple, Raised panel, Concealed Hinges

Lineal feet of shelves: See plans

Base units: material Birch, Oak, or Maple Counter top Granite Surface, builder's selection (or \$4500); Finish of cabinets Painted or stained

Medicine cabinets: make N/A

Other cabinets and built-in furniture per plans, Oak, Birch, or Maple.

20. STAIRS:

Stair	TREADS	RISERS	STRINGER	HANDRAIL	BALUSTERS
	Material / Thickness	Material / Thickness	Material / Thickness		N/A
Main	Oak / 1"	Pine or MDF / 3/4"	Pine or MDF / 3/4"	Oak	N/A
Bonus					N/A
Attic	Disappearing				

Disappearing: make and model number: N/A

21. FLOORS AND WAINSCOT: (Describe Carpet as listed in Certified Products Directory)

Location	Material, Color, Border, Sizes, Gags, ETC.	Threshold Material	Wall Base	Under floor
Floors			Material	Material
Kitchen	Ceramic tile (\$3.50 allowance, material only)	N/A	Wood	Durrock
Bath	Ceramic tile (\$3.50 allowance, material only)	Marble	"	Durrock
Bedrooms	Carpet \$25.00 per sq. yd. Installed		"	

Location	Material, Color, Border, Sizes, Gags, ETC.	Height	Height Over	Height in Showers
Wainscot			Tub	From Floor
Master bath	Cultured Marble or Ceramic tile	N/A	9 in.	7 ft.
Other baths	Cultured Marble or Ceramic tile	N/A	N/A	7 ft.

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22. PLUMBING: All fittings to be based on fixtures selected by customer

FIXTURES	#	LOCATION	MAKE	Mfg's Fixture ID #	SIZE	COLOR
Double Sink	1	Kitchen	TBD	TBD	See Plans	Stainless Steel
Lavatory	4	All Baths	Cultured Marble	Micalline Products	See Plans	TBD
Water closet	4	All Baths	America Std	American Standard	See Plans	White
Bathtub	2	Other Baths	TBD	TBD	See Plans	White
Shower over tub	2	Other Baths			See Plans	TBD
Stall shower	1	MB	Cultured Marble or Ceramic Tile	N/A	See Plans	TBD
Laundry trays	1	Laundry Room	TBD	TBD	See Plans	White
Whirlpool Tub	1	Master Bath			See Plans	TBD
Pedestal Sink	N/A					

Allowance - \$3800 for Trim, Fixtures, Water Closets.

☒ Curtain rod BR#2, 3 ☒ Door MB ☒ Shower pan: material TBD
 Water supply: Well Sewage disposal: Septic System
 House drain (inside): PVC House sewer (outside): PVC
 Water piping: PEX Sill cocks, number 3
 Domestic water heater: type Electric make and model TBD; heating capacity 80 gal.

23. HEATING:

Warm air: Forced Type of system 12 SEER Heat Pump or Gas (if available)
 Furnace: make and model TBD
 Additional information:
 Controls: make and types TBD

24. ELECTRIC WIRING:

Service: Underground Panel: Circuit-breaker AMP'S 200 or Code; No. Circuits 40
 Special outlets: Range, Dishwasher, Microwave, Washer & Dryer
☒ Doorbell ☒ Chimes Push-button locations: Front door and door to Garage.
 Additional information: Doorbells, transformer and chimes from lighting allowance. We will also install telephone and cable connections in all bedrooms, family room, Living Room and kitchen.

25. LIGHTING FIXTURES:

Total number of fixtures See Plans
 Total allowance for fixtures, typical installation: \$4,000.00

26. INSULATION:

Location	Thickness	Material, Type, and Method of Installation	Vapor Barrier
Ceiling	12 "	Blown R-30	
Wall	3 1/2"	Fiberglass R - 13	
Floor	6 "	Fiberglass R - 19	

27. MISCELLANEOUS: (Describe any main dwelling materials, equipment, or construction items not shown elsewhere; or use to provide additional information where the space provided was inadequate. Always reference by item number to correspond to numbering used on this form.)
 Kitchen Appliances: \$4,000.00.

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28. **HARDWARE:** *(Make, material, and finish)* Entry Locks Schlage; Make & Finish TBD by customer
Interior Schlage; make & Finish TBD; Allowance: \$1,000.

29. **SPECIAL EQUIPMENT:** *(State material or make, model and quantity. Include only equipment and appliances which are acceptable by local law, custom and applicable FHA standards. Do not include items which, by established custom, are supplied by occupant and removed when he vacates premises or chattels prohibited by law from becoming realty.)*

Pre-wire for Security System and installation all exterior doors, motion detectors, two key pads.
Smoke detectors as required by code

30. **PORCHES:** concrete

31. **TERRACES:** N/A

32. **GARAGES:** Per plans (door - insulated steel, with remote controls); 4" thick concrete slab floor

33. **WALKS AND DRIVEWAYS:**

Driveway: Up to 60' long width 12'; base material 3000 PSI; thickness 4"

Front walk: width 4'; material: concrete thickness 4"

Steps: material Brick treads as required risers as required

34. **OTHER ONSITE IMPROVEMENTS:**

(Specify all exterior onsite improvements and described elsewhere, including items such as unusual grading, drainage structures, retaining walls, fence, railings, and accessory structures.)

35. **LANDSCAPING, PLANTING, AND FINISH GRADING:**

Topsoil Grading - front yard, side yard, rear yard up to 30 feet behind main building.

Lawns: Not Includes; Landscaping and Irrigation system to be determined and priced separately with Home Owner.

Front yard:

Side Yards:

Rear Yard:

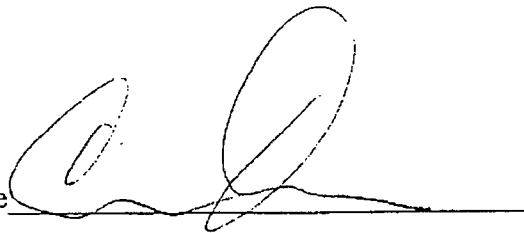
Planting:

Allowance:

Date

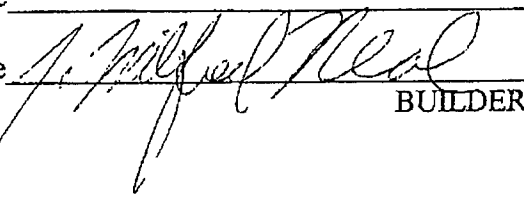
11/22/05

Signature



Signature

Signature



BUILDER

ROA000122 00

Hamilton Martens Ballou & Sipe
ATTORNEYS AT LAW

Herbert W. Hamilton
(803) 329-7607
hhamillou@hmbslaw.com

August 29, 2006

Certified Mail/Return Receipt Requested

Mr. J.W. Neal
J.W. Neal Construction, LLC
1361 Pocalla Road
Sumter, SC 29150-7529

RE: Cornelia Thomas

Dear Mr. Neal:

I am writing on behalf of Ms. Cornelia Thomas regarding the house your company is building for Ms. Thomas in York County. Ms. Thomas is anxious to avoid any controversy but is concerned about statements made recently regarding additional costs for items which should be included in the contract price. Additionally, Ms. Thomas has received a report indicating that certain portions of the work your company has done is defective and is not consistent with the building code requirements and accepted industry practice.

As you are aware, the contract which your company signed with Ms. Thomas is a fixed price contract. By the terms of your contract, you are obligated to build the house according to plans and specifications for a fixed price of \$359,000. Also, by the terms of your contract, no changes which involve an increase or decrease in the contract price are to be made unless agreed to in writing prior to the work being done. Consequently, if items are included on the plans and specifications, they must be constructed with no increase to the contract price. This would include but not be limited to construction of a brick chimney, installation of wrought iron railing around the sundeck, and installation of glass block windows in the master bath. Each of these items are required by the plans and specifications and should be constructed for no increase in the contract price. Installation of acrylic or plastic blocks in the bathroom is contrary to the plans and specifications and should be removed and the correct material installed at no cost.

I am enclosing herewith a copy of the report received by Ms. Thomas from an independent inspector. You will note that several items have been identified as defective construction and contrary to building code requirements. A number of these items create potential for water infiltration. The fact that the building code inspector may have missed these items or the items were covered up when the building inspector came by has no bearing on your obligation to build a house according to building codes. These items must be addressed and corrected.

Hamilton Martens Ballou & Sipe, LLC

Mr. J.W. Neal
August 29, 2006
Page 2

The third area of concern relates to hardware, plumbing fixtures and other similar items for which there is no specification. Ms. Thomas is in the process of preparing a complete list of items that she wishes to have installed in the house. She recognizes that if any items she wishes to include constitute an upgrade from the plans and specifications, she may have to pay more for the items. In the meantime, neither you or anyone on your behalf are authorized to purchase plumbing fixtures, hardware or any other items which have not been approved by Ms. Thomas. If these items are purchased and installed, Ms. Thomas will not be responsible for the cost of removing them if they are not acceptable.

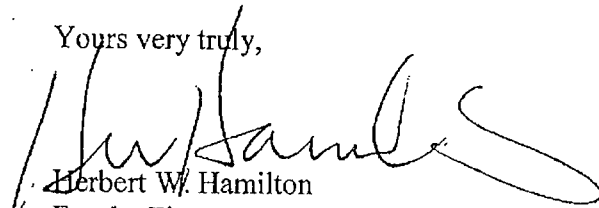
This letter is written to you in an effort to resolve this matter amicably but also in satisfaction of Section 40-59-810 of the South Carolina Code known as the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act. Please be advised that as required by the Act Ms. Thomas asserts that there are several construction defects in the house. The defects are described in the attached reports in sufficient detail to allow you to determine the general nature of the defects. Ms. Thomas is presently unaware of the results of the described defects. Failure to correct the defects may have serious adverse affects on the house including allowing water to enter the structure.

By the terms of the Act, you have thirty (30) days from receipt of the notice to inspect, offer to remedy or offer to settle the matter or deny the claim regarding the defects. In the event no response is received, the claim is denied or a satisfactory proposal to remedy the defects is not made within the 30 day time period, Ms. Thomas will be free to pursue any claims which may be available to her including the filing of a complaint with the South Carolina Residential Home Builder's Licensing Board.

Ms. Thomas would very much like to resolve this matter without any further controversy or dispute. Please let me hear from you as soon as possible but in any event within 30 days from the date of this letter.

Thank you for your attention.

Yours very truly,



Herbert W. Hamilton
For the Firm

HWH/tpm
Enclosure

cc: Wilford Neal
4815 Prestwood Lane
Charlotte, NC 28212-2288

ROA000124

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

J. W. NEAL CONSTRUCTION, LLC,
a South Carolina limited liability company,

Plaintiff,

v.

CORNELIA THOMAS,

Defendant.

CERTIFICATE OF MECHANICS' LIEN

FILED FOR RECORD 01/11/2007
AT 10:57 AM
C.A. No. 07-CP-1460K 00026 PAGE 00142
David Hamilton - Clerk of Court
York County Courthouse
Instrument Number: 000007974

Pursuant to S. C. Code Ann. § 29-5-90 (1976), the Plaintiff(s) above-named hereby present(s) this Certificate of Mechanics' Lien for filing to the office of the register of deeds or clerk of court in the above-referenced county, including therewith:

1. A Statement of a just and true account of the amount due the said Plaintiff(s), with all just credits given, as the attached Exhibit "S", which is attached hereto and incorporated herein;

2. Together with a description of the property (located in the above-referenced county) intended to be covered by the Mechanics' Lien sufficiently accurate for identification, with the name of the Defendant(s) as owner(s) of the property, if known, as the attached Exhibit "RP", which is attached hereto and incorporated herein;

PERSONALLY appeared before me, the undersigned authority, the Plaintiff(s), who, being duly sworn, depose(s), certify(ies) and say(s) as follows:

A. That this Certificate is presented within ninety days after the Plaintiff(s) ceased to labor or to furnish labor and materials for a building or structure upon the property referenced in 2. above;

B. That the Plaintiff(s) shall, within the same ninety day period serve a copy of this Certificate, with its attachments, on the Defendant(s) or, in the event the Defendant(s) cannot be found, upon the person in possession, and file a certification of the same with this Court; or, in the event neither the Defendant(s) nor the person in possession can be located after diligent search, this fact shall be verified by Affidavit of the Sheriff or his deputy and the same filed with this Office; and

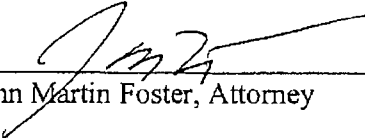
C. That (s)he/they is/are the Plaintiff(s) in the foregoing action; that (s)he/they has/have read the within Certificate of Mechanic's Lien; and that the facts stated therein are true

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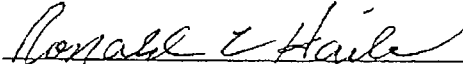
of his/her/their own knowledge, except for those matters alleged therein on information and belief, and as to those, (s)he/they believe(s) them to be true.

J. W. NEAL CONSTRUCTION, LLC

By:


John Martin Foster, Attorney

SWORN TO and subscribed before me
this 5th day of January, 2007



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 6/5/2016

ROA000126

EXHIBIT "S"

STATEMENT

CORNELIA THOMAS
161 South Elliott Place
Brooklyn, New York 11217-1550

By: J. W. NEAL CONSTRUCTION, LLC.
1361 Pocalla Road
Sumter, South Carolina 29150

Labor Performed or furnished or materials furnished and used for a building or structure upon real property:

Thomas Job: as of 12/28/2006

Contract Price		\$ 359,000.00
Earnest Money Contract Execution (5%)	17,950.00	
Draw #1 - at 27% Complete	78,980.00	
Draw #2 - at 45% Complete	<u>64,620.00</u>	
	161,500.00	- 161,550.00
Remaining Contract Balance		\$ 197,450.00
Completed to date (75%)	269,250.00	
Draws To date	<u>-161,550.00</u>	
Amount Currently Due (See attached Schedule)	107,700.00	<u>\$107,700.00</u>
Portion of Contract Unearned:	\$ 89,750.00	

Changes Approved by Ms. Thomas

Build House on Crawl Space	3,000.00	
Reverse Garage	990.00	
Change MB Walls after Framing	350.00	
Add Windows to Garage Total	<u>750.00</u>	<u>\$ 5,090.00</u>

SUB-TOTAL DUE, WITH CHANGES: \$ 112,790.00

INTEREST at the legal rate shall be added to the above from ten (10) days after the date of said Statement(s),
which interest shall be added to the SUB TOTAL stated above.

This account has been placed in the hands of an attorney for collection or suit instituted to collect same or a
portion thereof, and an attorney's fee is now due and owing in an accruing amount.

TOTAL DUE **\$ 112,790.00 (plus accruing interest and attorney's fees)**

Total Due on Submission of Account: Please Remit Immediately

ROA000127

SCHEDULE TO EXHIBIT "S"

J W Neal Construction
Schedule of Values and Completion -- Thomas Job
975 Oxford Drive
Rock Hill, South Carolina

Total Construction Estimate

\$359,000.00

Item	Item Description	% of Total	% Complete	Amount
1	Permits/Soft Costs/General Conditions	4%	4%	\$14,360.00
2	Cleaning/Grading/Fill	2%	2%	\$7,180.00
3	Footings/Underground Plumbing/Soil Treatment	5%	5%	\$17,950.00
4	Foundation/Slab Poured	6%	6%	\$21,540.00
5	Exterior Walls/ Tie Beam	6%	6%	\$21,540.00
6	Roof Framing	6%	6%	\$21,540.00
7	Roof Sheathing/Felt	4%	4%	\$14,360.00
8	Interior Framing	5%	5%	\$17,950.00
9	Windows/Exterior Door Frames	4%	4%	\$14,360.00
10	2nd Plumbing/ Tubs & Showers Set	2%	2%	\$7,180.00
11	Wiring Rough-in	4%	4%	\$14,360.00
12	HVAC-Ducts installed	2%	2%	\$7,180.00
13	Roof Shingles installed	4%	4%	\$14,360.00
14	Insulation (Walls & Ceiling)	2%	2%	\$7,180.00
15	Exterior Trim & Soffits	3%	3%	\$10,770.00
16	Drywall Hanging	4%	4%	\$14,360.00
17	Drywall Finishing	3%	3%	\$10,770.00
18	Interior Trim/Interior Doors installed	4%	2%	\$14,360.00
19	Interior Paint	2%		\$7,180.00
20	Siding/Stucco/Brickwork	5%	5%	\$16,155.00
21	Exterior Painting Complete	2%		\$7,180.00
22	Exterior Doors & Garage Doors Installed	2%	1%	\$7,180.00
23	Cabinets Installed	4%		\$14,360.00
24	Countertops Installed	1%		\$5,385.00
25	Plumbing Finishing	1%		\$5,385.00
26	Electrical Finishing	1%		\$5,385.00
27	Flooring Finished--Carpet/Tile/HW	3%		\$10,770.00
28	Appliances Installed	2%		\$7,180.00
29	HVAC-Compressor/Air Handler	3%		\$10,770.00
30	Driveway/Walkways installed	2%	1%	\$7,180.00
31	Final Grading	1%		\$3,590.00
	Total	100%	75%	\$359,000.00
Amount Earned to date				\$269,250.00

ROA000128

EXHIBIT "RP"

All that certain piece, parcel, or lot of land, lying, being and situate in Ebenezer Township, County of York, State of South Carolina and being shown and designated as Lot 25 on plat of Wellington Heights Phase IV, containing 1.236 acres upon plat entitled "Property Surveyed for Cornelia Thomas prepared by William Thomas Stafford Jr. dated February 21, 2002 and recorded in the office of the Clerk of Court for York County, SC in Plat Book C-117 at Page 9, which plat is incorporated herein by reference, and having such metes, bounds, courses and distances as by reference to said plat will more fully appear.

Derivation: This being the identical property:

- a) conveyed to DJBSMA Development Company LLC by deed of Paul D. Poston and John H. Poston dated November 2, 2002 and recorded November 8, 2002 in Record Book 4772 at Page 9;
- b) conveyed to Cornelia Thomas by deed of DJBSMA Development Company LLC dated March 1, 2002 and recorded March 14, 2002 in Record Book 4245 at Page 3; and
- c) conveyed by a corrective deed of DJBSMA Development Company LLC to Cornelia Thomas dated November 4, 2002 and recorded November 8, 2002 in Record Book 4772 at Page 13;

all recording references being to the Office of the Clerk of Court for York County, South Carolina.

Cornelia Thomas
161 S Elliott Place Apt 6c
Brooklyn, NY 11217

10001
87-219/530
BRANCH 1290

Feb 14, 2006
DATE

PAY TO THE ORDER OF JW Neal Construction \$ 17,950.00
Seventeen Thousand & Nine Hundred Fifty DOLLARS

CAROLINA FIRST
ROCK HILL, SC 29731

FOR 50% Down Payment

⑆053902147⑆ ⑆102030882⑆ 0001 ⑆0001795000⑆

FOR DEPOSIT ONLY
Acct of J.W. Neal Construction
Acct# 000689694934

6078

BANK OF AMERICA, NA CAR
⑆053902147⑆ E3163 901P23
02/27/06
⑆000000000⑆

FEB 27 06

The following security features (and others not listed) exceed industry standards:
• Doesn't vent fingerprints if "fired."
• Absence of production on all "one-off" documents.
• Documented source of all ink.
• Ink produced by a single source.
• Documented source of all ink.
• Documented source of all ink.
• Documented source of all ink.

Date:02-28-2006 Account:8102030882 Serial:1 Amount:\$17,950.00 TR:5390219 Sequence:46305560 BankNum:1
TranCode:0 DbCr:D

Subject: RE: JW Neal Construction v Thomas 07-CP-46-0119

From: Charlie Ridley <cbridley@earthlink.net>

Date: Tue, 20 Apr 2010 15:48:28 -0400 (EDT)

To: Herb Hamilton <HHamilton@hmandb.com>, John Martin Foster <jmfoster@comporium.net>

Martin and Herb-- I have not heard anything since me last email to ya'll. Can someone bring me up to date- especially if someone is expecting me to do something. Thanks.

-----Original Message-----

From: Charlie Ridley

Sent: Mar 31, 2010 9:31 AM

To: Herb Hamilton , John Martin Foster

Subject: RE: JW Neal Construction v Thomas 07-CP-46-0119

I do not know whether the AAA rules apply or the SC UAA applies. My approach as arbitrator was under the SC UAA, but I have now seen that there was some discussion between the 2 of you before the hearings that AAA may have some involvement. Under my approach, Martin would have rights under 15-48-100. To me it is clear that I made an "evident mistake" in the award and that the mistake did not affect the "merits of the controversy." I also firmly believe, if another rule applies, that the mistake clearly was a "...clerical ...or computational" error and needs to be corrected. As to the time periods, 15-48-100 seems clear. "delivery" is the term used. Whether that means upon mailing or receipt seems important since it was mailed on Feb 25th and notice to me and Herb was received on Mar 22nd by email. Do I correctly assume that email is the same as regular mail and there is additional time for service by that method. I do not know. And would there be some time for the weekend to also be considered?

If I have to rule on the matter, I am attaching a much thought out Amendment to the Award for both of you to see. I am also inclined to rule that Martin was timely, especially since the ends of justice and fairness are better served by correcting what to me is a simple math error, but one that had substantial changes to the amount of the awards.

If there is no agreement for me to rule, I must suggest that the then proper method would be for Herb to move to confirm the award, which he would have to do anyway, and for Martin to then make his motion to correct the error -- 15-48-100. The judge would then, as I understand it, would have the option of making the correction himself or sending it back to me. Since attorney fees would have to be amended, he would probably send it back for that reason. (My reason for attaching what I would rule if he would do so.)

I hope I have helped some to resolve the predicament that I have caused.

-----Original Message-----

From: Herb Hamilton

Sent: Mar 30, 2010 6:41 PM

To: John Martin Foster

Cc: Charlie Ridley

Subject: RE: JW Neal Construction v Thomas 07-CP-46-0119

First let me say that I do not like to be hyper- technical about the rules. Under these circumstances I don't think I have any choice.

AAA Rule 45 provides that the parties will accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

Rule 46 provides "Within twenty (20) days after the **transmittal** (emphasis added) of an award, any party, upon notice to the other parties, may request the arbitrator to correct any clerical, typographical, technical or computational errors in the award "

The term transmit is defined "to send or transfer...". Rule 46 requires that the time run from the date the award was sent not the date it was received. This is consistent with Rule 45 which provides that the award is delivered when it is mailed.

ROA000131

e-mail was dated March 22.

Additionally, I submit that the issue here is not the kind of error the abritrator may correct under Rule 46. It is neither clerical, typographical, technical, or computational.

Based on the forgoing I submit that the Arbitrator does not have the authority to address the issue. To the extent that relief is available, which is not admitted, the releif must be granted by the court under 15-48-130 or 15-48-140.

Thank you for your consideration.

From: John Martin Foster [mailto:jmfoster@comporium.net]

Sent: Monday, March 29, 2010 2:02 PM

To: Herb Hamilton

Cc: Charlie Ridley

Subject: Re: JW Neal Construction v Thomas 07-CP-46-0119

Herb:

Let me respond to your points in turn.

First, I received the signed decision on March 1st and made my request for correction within twenty days, allowing for the weekend.

Second, you were copied on my e-mail. I presume Charles can either treat your e-mail as your response, or allow more time. I will note that I understand your points to be purely procedural.

I believe Charles needs to rule on your points in order to clear our way for any further action in Circuit Court. I will await his, and your, response.

On 03/25/10 10:11 am, Herb Hamilton wrote:

Martin: I did not see your e-mail until yesterday. I spent some time last night trying to determine the correct procedure to address your concern.

You reference R-46 as the basis for your request. R-46 requires notice and gives the opposing party 10 days to respond. I would argue that R-46 does not cover the issue you have raised.

More importantly however, R-46 requires that the request be made within 20 days of the transmittal of the award. The award was transmitted on February 25, 2010. Your e-mail request is dated March 22, more than 20 days after the transmittal of the award.

I believe that the proper procedure under these circumstances is to file a motion for correction or modification of the award under section 15-48-140(1). To the extent I have any argument to make I am not waiving it by suggesting this procedure.

Please let me know whether you agree or disagree with this approach. By copy of this e-mail I am advising Charlie of my position. If you disagree with my analysis of the procedure I want to file a more detailed reply within the 10 days provided by R-46.

I plan to file a motion to confirm the original award. My thought would be that you would object to confirmation and move to modify or correct the award under 15-48-140. Please let me know what you think about this procedure.

Herb

ROA000132

From: John Martin Foster [<mailto:jmfoster@comporium.net>]
Sent: Monday, March 22, 2010 3:41 PM
To: Charlie Ridley; Herb Hamilton
Subject: JW Neal Construction v Thomas 07-CP-46-0119

Charles:

I understand that under the rules adopted for our Arbitration, I must request a correction in the event of a mathematical error (R-46).

I read your Award (or the unlocked copy I have received) (page 3, 1st full paragraph) as stating that my client, JW Neal Construction, had received \$197,450.00 from Ms. Thomas. From this you make various computations.

If this reading is correct, the math is incorrect. As shown as part of our evidence (attached), the amount received by my client, as of the end of the contract between the parties totaled \$161,500.00. I attach the page, which is already in your possession. The figure cited in the Award as paid to him is, in fact, the total remaining on the contract.

Pursuant to the rules, I ask an according modification and correction, both as to the basic award and as to attorney's fees.

--

John Martin Foster
Attorney at law

The Guardian Building PO Box 106 803 324
8100
223 East Main Street Suite 520 Rock Hill SC 803 324 8109
Fax
Rock Hill South Carolina 29730 29731-6106
jmfoster@comporium.net

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ROA000133

--
John Martin Foster
Attorney at law

The Guardian Building PO Box 106 803 324
8100
223 East Main Street Suite 520 Rock Hill SC 803 324 8109
Fax
Rock Hill South Carolina 29730 29731-6106
jmfooster@comporium.net

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Charlie Ridley
cbridley@earthlink.net
office 803-324-4292
cell 803-517-2904

Charlie Ridley
cbridley@earthlink.net
office 803-324-4292
cell 803-517-2904

ROA000134

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

J.W. NEAL CONSTRUCTION, LLC,

Plaintiff,

vs.

CORNELIA THOMAS,

Defendant.

C/A No. 2007-CP-46-0119

ARBITRATION AGREEMENT

This Agreement is executed this ____ day of October, 2008 by the Plaintiff, J.W. Neal Construction, LLC ("J.W. Neal Construction") and the Defendant, Cornelia Thomas ("Thomas"), both in person and by their respective counsel.

RECITAL

WHEREAS, an action is pending in the Circuit Court for the 16th Judicial Circuit between the parties hereto; and

WHEREAS, the dispute arises from the construction by J.W. Neal Construction of a house for Thomas, and

WHEREAS, the Parties have agreed to submit the case to binding arbitration, and

WHEREAS, the Parties wish to establish the terms and conditions of the arbitration.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1. The terms of this Agreement will control the arbitration. The arbitration will not be administered by the American Arbitration Association (hereafter also "AAA") or another similar organization.

2. The foregoing notwithstanding, the Parties agree that the *Construction Arbitration Rules* of the American Arbitration Association, as amended September 1, 2007, will control the

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arbitration process. Insofar as those Rules assign administrative duties to the AAA, the same will be performed, as needed, by the Arbitrator selected by the Parties.

3. The arbitration will be conducted by one Arbitrator, selected by agreement of the Parties. In the event the Parties are unable to agree on the selection of the Arbitrator, either Party may apply to the Circuit Court for the appointment of the Arbitrator.

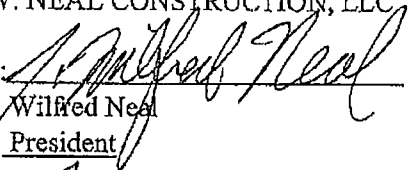
4. The Arbitrator's compensation will be borne equally by the Parties; *provided however*, that the Arbitrator shall have authority to require payment of costs, including the Arbitrator's compensation, in such other manner and such other division as the Arbitrator deems appropriate.

5. Upon appointment of the Arbitrator, the Parties will meet with the Arbitrator to establish a schedule for discovery and trial.

6. This agreement will be governed by and interpreted in accordance with the laws of the State of South Carolina.

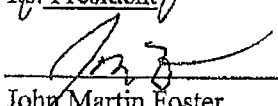
IN WITNESS WHEREOF the Parties hereto intending to be bound have executed this Agreement.

J.W. NEAL CONSTRUCTION, LLC

By: 

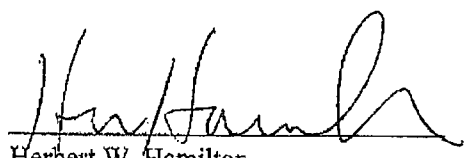
Wilfred Neal

Its: President


John Martin Foster
Attorney for Plaintiff

223 East Main Street, Suite 520
Post Office Box 106
Rock Hill, S. C. 29731-6106
803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

CORNELIA THOMAS


Herbert W. Hamilton
Hamilton Martens Ballou & Sipe, LLC
Attorneys for Defendant
130 East Main Street, Suite 201
Post Office Box 10940
Rock Hill, S. C. 29731
803 329-7607
803 329-7678: Fax
hhamilton@hmbslaw.com

ROA000136

Charles B. Ridley, Jr., P.A.

Attorney at Law
PO Box 11783
Rock Hill, SC 29731

February 25, 2010

The Honorable David Hamilton
York County Clerk of Court
PO Box 649
York, SC 29745

Re: J.W. Neal Construction, LLC vs. Cornelia Thomas
CA no. 2007-CP-46-119
Arbitration Award

Dear Mr. Hamilton:

Enclosed please find for filing the original Arbitration Award in the above matter.
I am sending copies of same by copy of the letter to counsel for the Parties.

Thank you, I am

Sincerely yours,



Charles B. Ridley, Jr.

CBRJr

Enclosures

Cc: Herbert W. Hamilton
John Martin Foster

ROA000137



American Arbitration Association

Dispute Resolution Services Worldwide

Commercial Arbitration Rules and Mediation PROCEDURES
(Including Procedures for Large, Complex Commercial Disputes)
Amended and Effective September 1, 2007

Summary of Changes

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09/10/08 12:25 pm

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These rules and any amendment of them shall apply in the form in effect at the time the administrative filing requirements are met for a demand for arbitration or submission agreement received by the AAA. To ensure that you have the most current information, see our Web Site at www.adr.org.

INTRODUCTION

Each year, many millions of business transactions take place. Occasionally, disagreements develop over these business transactions. Many of these disputes are resolved by arbitration, the voluntary submission of a dispute to an impartial person or persons for final and binding determination. Arbitration has proven to be an effective way to resolve these disputes privately, promptly, and economically.

The American Arbitration Association (AAA), a not-for-profit, public service organization, offers a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA

serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

Standard Arbitration Clause

The parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Arbitration of existing disputes may be accomplished by use of the following:

We, the undersigned parties, hereby agree to submit to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules the following controversy: (describe briefly) We further agree that the above controversy be submitted to (one) (three) arbitrator(s). We further agree that we will faithfully observe this agreement and the rules, that we will abide by and perform any award rendered by the arbitrator(s), and that a judgment of any court having jurisdiction may be entered on the award.

In transactions likely to require emergency interim relief, the parties may wish to add to their clause the following language:

The parties also agree that the AAA Optional Rules for Emergency Measures of Protection shall apply to the proceedings.

These Optional Rules may be found below.

The services of the AAA are generally concluded with the transmittal of the award. Although there is voluntary compliance with the majority of awards, judgment on the award can be entered in a court having appropriate jurisdiction if necessary.

Administrative Fees

The AAA charges a filing fee based on the amount of the claim or counterclaim. This fee information, which is included with these rules, allows the parties to exercise control over their administrative fees.

The fees cover AAA administrative services; they do not cover arbitrator compensation or expenses, if any, reporting services, or any post-award charges incurred by the parties in enforcing the award.

Mediation

The parties might wish to submit their dispute to mediation prior to arbitration. In mediation, the neutral mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. Mediation is administered by the AAA in accordance with its Commercial Mediation Procedures. There is no additional administrative fee where parties to a pending arbitration attempt to mediate their dispute under the AAA's auspices.

If the parties want to adopt mediation as a part of their contractual dispute settlement

procedure, they can insert the following mediation clause into their contract in conjunction with a standard arbitration provision:

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission:

The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. (The clause may also provide for the qualifications of the mediator(s), method of payment, locale of meetings, and any other item of concern to the parties.)

Large, Complex Cases

Unless the parties agree otherwise, the procedures for Large, Complex Commercial Disputes, which appear in this pamphlet, will be applied to all cases administered by the AAA under the Commercial Arbitration Rules in which the disclosed claim or counterclaim of any party is at least \$500,000 exclusive of claimed interest, arbitration fees and costs.

The key features of these procedures include:

§ a highly qualified, trained Roster of Neutrals;

§ a mandatory preliminary hearing with the arbitrators, which may be conducted by teleconference;

§ broad arbitrator authority to order and control discovery, including depositions;

§ presumption that hearings will proceed on a consecutive or block basis.

COMMERCIAL MEDIATION PROCEDURES

M-1. Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for mediation or conciliation of existing or future disputes under the auspices of the American Arbitration Association (AAA) or under these procedures, the parties and their representatives, unless agreed otherwise in writing, shall be deemed to have made these procedural guidelines, as amended and in effect as of the date of filing of a request for mediation, a part of their agreement and designate the AAA as the administrator of their mediation.

The parties by mutual agreement may vary any part of these procedures including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

M-2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation under the AAA's auspices by making a

request for mediation to any of the AAA's regional offices or case management centers via telephone, email, regular mail or fax. Requests for mediation may also be filed online via WebFile at www.adr.org.

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the AAA and the other party or parties as applicable:

- i. A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate.
- ii. The names, regular mail addresses, email addresses, and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.
- iii. A brief statement of the nature of the dispute and the relief requested.
- iv. Any specific qualifications the mediator should possess.

Where there is no preexisting stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of the AAA, a party may request the AAA to invite another party to participate in "mediation by voluntary submission". Upon receipt of such a request, the AAA will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

M-3. Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the AAA.

M-4. Appointment of the Mediator

Parties may search the online profiles of the AAA's Panel of Mediators at www.aaamediation.com in an effort to agree on a mediator. If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

- i. Upon receipt of a request for mediation, the AAA will send to each party a list of mediators from the AAA's Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the AAA of their agreement.
- ii. If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the AAA shall invite a mediator to serve.
- iii. If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

M-5. Mediator's Impartiality and Duty to Disclose

AAA mediators are required to abide by the Model Standards of Conduct for Mediators in effect at the time a mediator is appointed to a case. Where there is a conflict between the Model

Standards and any provision of these Mediation Procedures, these Mediation Procedures shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

Prior to accepting an appointment, AAA mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. AAA mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time-frame desired by the parties. Upon receipt of such disclosures, the AAA shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

M-6. Vacancies

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise, in accordance with section M-4.

M-7. Duties and Responsibilities of the Mediator

- i. The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
- ii. The mediator is authorized to conduct separate or ex parte meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person or otherwise.
- iii. The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
- iv. The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
- v. In the event a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation session(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.
- vi. The mediator is not a legal representative of any party and has no fiduciary duty to any party.

M-8. Responsibilities of the Parties

The parties shall ensure that appropriate representatives of each party, having authority to

consummate a settlement, attend the mediation conference.

Prior to and during the scheduled mediation conference session(s) the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

M-9. Privacy

Mediation sessions and related mediation communications are private proceedings. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

M-10. Confidentiality

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

- i. Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
- ii. Admissions made by a party or other participant in the course of the mediation proceedings;
- iii. Proposals made or views expressed by the mediator; or
- iv. The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

M-11. No Stenographic Record

There shall be no stenographic record of the mediation process.

M-12. Termination of Mediation

The mediation shall be terminated:

- i. By the execution of a settlement agreement by the parties; or
- ii. By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- iii. By a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or
- iv. When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

M-13. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these procedures.

M-14. Interpretation and Application of Procedures

The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and responsibilities. All other procedures shall be interpreted and applied by the AAA.

M-15. Deposits

Unless otherwise directed by the mediator, the AAA will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

M-16. Expenses

All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

M-17. Cost of the Mediation

There is no filing fee to initiate a mediation or a fee to request the AAA to invite parties to mediate.

The cost of mediation is based on the hourly mediation rate published on the mediator's AAA profile. This rate covers both mediator compensation and an allocated portion for the AAA's services. There is a four-hour minimum charge for a mediation conference. Expenses referenced in Section M-16 may also apply.

If a matter submitted for mediation is withdrawn or cancelled or results in a settlement after the agreement to mediate is filed but prior to the mediation conference the cost is \$250 plus any mediator time and charges incurred.

The parties will be billed equally for all costs unless they agree otherwise.

If you have questions about mediation costs or services visit our website at www.adr.org or contact your local AAA office.

Conference Room Rental

The costs described above do not include the use of AAA conference rooms. Conference rooms are available on a rental basis. Please contact your local AAA office for availability and rates.

COMMERCIAL ARBITRATION RULES

R-1. Agreement of Parties*+

(a) The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter AAA) under its Commercial Arbitration Rules or for arbitration by the AAA of a domestic commercial dispute without specifying particular rules. These rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a demand for arbitration or submission agreement received by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.

(b) Unless the parties or the AAA determines otherwise, the Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration fees and costs. Parties may also agree to use these procedures in larger cases. Unless the parties agree otherwise, these procedures will not apply in cases involving more than two parties. The Expedited Procedures shall be applied as described in Sections E-1 through E-10 of these rules, in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(c) Unless the parties agree otherwise, the Procedures for Large, Complex Commercial Disputes shall apply to all cases in which the disclosed claim or counterclaim of any party is at least \$500,000, exclusive of claimed interest, arbitration fees and costs. Parties may also agree to use the Procedures in cases involving claims or counterclaims under \$500,000, or in nonmonetary cases. The Procedures for Large, Complex Commercial Disputes shall be applied as described in Sections L-1 through L-4 of these rules, in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(d) All other cases shall be administered in accordance with Sections R-1 through R-54 of these rules.

* The AAA applies the *Supplementary Procedures for Consumer-Related Disputes* to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are nonnegotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

+ A dispute arising out of an employer promulgated plan will be administered under the AAA's National Rules for the Resolution of Employment Disputes.

R-2. AAA and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its offices.

R-3. National Roster of Arbitrators

The AAA shall establish and maintain a National Roster of Commercial Arbitrators ("National Roster") and shall appoint arbitrators as provided in these rules. The term "arbitrator" in these rules refers to the arbitration panel, constituted for a particular case, whether composed of one or more arbitrators, or to an individual arbitrator, as the context requires.

R-4. Initiation under an Arbitration Provision in a Contract

(a) Arbitration under an arbitration provision in a contract shall be initiated in the following manner:

(i) The initiating party (the "claimant") shall, within the time period, if any, specified in the contract(s), give to the other party (the "respondent") written notice of its intention to arbitrate (the "demand"), which demand shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the amount involved, if any, the remedy sought, and the hearing locale requested.

(ii) The claimant shall file at any office of the AAA two copies of the demand and two copies of the arbitration provisions of the contract, together with the appropriate filing fee as provided in the schedule included with these rules.

(iii) The AAA shall confirm notice of such filing to the parties.

(b) A respondent may file an answering statement in duplicate with the AAA within 15 days after confirmation of notice of filing of the demand is sent by the AAA. The respondent shall, at the time of any such filing, send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a counterclaim is made, the party making the counterclaim shall forward to the AAA with the answering statement the appropriate fee provided in the schedule included with these rules.

(c) If no answering statement is filed within the stated time, respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration.

(d) When filing any statement pursuant to this section, the parties are encouraged to provide descriptions of their claims in sufficient detail to make the circumstances of the dispute clear to the arbitrator.

R-5. Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these rules by filing at any office of the AAA two copies of a written submission to arbitrate under these rules, signed by the parties. It shall contain a statement of the nature of the dispute, the names and addresses of all parties, any claims and counterclaims, the amount involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate filing fee as provided in the schedule included with these rules. Unless the parties state otherwise in the submission, all claims and counterclaims will be deemed to be denied by the other party.

R-6. Changes of Claim

After filing of a claim, if either party desires to make any new or different claim or counterclaim, it shall be made in writing and filed with the AAA. The party asserting such a claim or

counterclaim shall provide a copy to the other party, who shall have 15 days from the date of such transmission within which to file an answering statement with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

R-7. Jurisdiction

(a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

(b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

(c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

R-8. Mediation

At any stage of the proceedings, the parties may agree to conduct a mediation conference under the Commercial Mediation Procedures in order to facilitate settlement. The mediator shall not be an arbitrator appointed to the case. Where the parties to a pending arbitration agree to mediate under the AAA's rules, no additional administrative fee is required to initiate the mediation.

R-9. Administrative Conference

At the request of any party or upon the AAA's own initiative, the AAA may conduct an administrative conference, in person or by telephone, with the parties and/or their representatives. The conference may address such issues as arbitrator selection, potential mediation of the dispute, potential exchange of information, a timetable for hearings and any other administrative matters.

R-10. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within 15 days after notice of the request has been sent to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale, and its decision shall be final and binding.

R-11. Appointment from National Roster

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner:

(a) Immediately after the filing of the submission or the answering statement or the expiration of the time within which the answering statement is to be filed, the AAA shall send simultaneously to each party to the dispute an identical list of 10 (unless the AAA decides that a different number is appropriate) names of persons chosen from the National Roster. The parties are

encouraged to agree to an arbitrator from the submitted list and to advise the AAA of their agreement.

(b) If the parties are unable to agree upon an arbitrator, each party to the dispute shall have 15 days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the National Roster without the submission of additional lists.

(c) Unless the parties agree otherwise when there are two or more claimants or two or more respondents, the AAA may appoint all the arbitrators.

R-12. Direct Appointment by a Party

(a) If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the National Roster from which the party may, if it so desires, make the appointment.

(b) Where the parties have agreed that each party is to name one arbitrator, the arbitrators so named must meet the standards of Section R-17 with respect to impartiality and independence unless the parties have specifically agreed pursuant to Section R-17(a) that the party-appointed arbitrators are to be non-neutral and need not meet those standards.

(c) If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment.

(d) If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within 15 days after such notice has been sent, an arbitrator has not been appointed by a party, the AAA shall make the appointment.

R-13. Appointment of Chairperson by Party-Appointed Arbitrators or Parties

(a) If, pursuant to Section R-12, either the parties have directly appointed arbitrators, or the arbitrators have been appointed by the AAA, and the parties have authorized them to appoint a chairperson within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint the chairperson.

(b) If no period of time is specified for appointment of the chairperson and the party-appointed arbitrators or the parties do not make the appointment within 15 days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the chairperson.

(c) If the parties have agreed that their party-appointed arbitrators shall appoint the chairperson from the National Roster, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section R-11, a list selected from the National Roster, and the appointment of the chairperson shall be made as provided in that Section.

R-14. Nationality of Arbitrator

Where the parties are nationals of different countries, the AAA, at the request of any party or on its own initiative, may appoint as arbitrator a national of a country other than that of any of the parties. The request must be made before the time set for the appointment of the arbitrator as agreed by the parties or set by these rules.

R-15. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that three arbitrators be appointed. A party may request three arbitrators in the demand or answer, which request the AAA will consider in exercising its discretion regarding the number of arbitrators appointed to the dispute.

R-16. Disclosure

(a) Any person appointed or to be appointed as an arbitrator shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration.

(b) Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.

(c) In order to encourage disclosure by arbitrators, disclosure of information pursuant to this Section R-16 is not to be construed as an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

R-17. Disqualification of Arbitrator

(a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for

(i) partiality or lack of independence,

(ii) inability or refusal to perform his or her duties with diligence and in good faith, and

(iii) any grounds for disqualification provided by applicable law. The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section R-12 shall be nonneutral, in which case such arbitrators need not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence.

(b) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

R-18. Communication with Arbitrator

(a) No party and no one acting on behalf of any party shall communicate ex parte with an arbitrator or a candidate for arbitrator concerning the arbitration, except that a party, or

someone acting on behalf of a party, may communicate ex parte with a candidate for direct appointment pursuant to Section R-12 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.

(b) Section R-18(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section R-17(a), the parties have agreed in writing are non-neutral. Where the parties have so agreed under Section R-17(a), the AAA shall as an administrative practice suggest to the parties that they agree further that Section R-18(a) should nonetheless apply prospectively.

R-19. Vacancies

(a) If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

(b) In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

(c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-20. Preliminary Hearing

(a) At the request of any party or at the discretion of the arbitrator or the AAA, the arbitrator may schedule as soon as practicable a preliminary hearing with the parties and/or their representatives. The preliminary hearing may be conducted by telephone at the arbitrator's discretion.

(b) During the preliminary hearing, the parties and the arbitrator should discuss the future conduct of the case, including clarification of the issues and claims, a schedule for the hearings and any other preliminary matters.

R-21. Exchange of Information

(a) At the request of any party or at the discretion of the arbitrator, consistent with the expedited nature of arbitration, the arbitrator may direct

- i) the production of documents and other information, and
- ii) the identification of any witnesses to be called.

(b) At least five business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing.

(c) The arbitrator is authorized to resolve any disputes concerning the exchange of information.

R-22. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The AAA shall send a notice of hearing to the parties at least 10 days in advance of the hearing date, unless otherwise agreed by the parties.

R-23. Attendance at Hearings

The arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person other than a party and its representatives.

R-24. Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

R-25. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

R-26. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three days in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties, or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.

R-27. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-28. Postponements

The arbitrator may postpone any hearing upon agreement of the parties, upon request of a party for good cause shown, or upon the arbitrator's own initiative.

R-29. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a

postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

R-30. Conduct of Proceedings

(a) The claimant shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

(b) The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The parties may agree to waive oral hearings in any case.

R-31. Evidence

(a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.

(b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.

(c) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

R-32. Evidence by Affidavit and Post-hearing Filing of Documents or Other Evidence

(a) The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

(b) If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-33. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection

or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

R-34. Interim Measures**

(a) The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim award, and the arbitrator may require security for the costs of such measures.

(c) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

** The Optional Rules may be found below.

R-35. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided in Section R-32 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing.

R-36. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.

R-37. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

R-38. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

R-39. Serving of Notice

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of

judgment on any award made under these rules may be served on a party by mail addressed to the party, or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.

(b) The AAA, the arbitrator and the parties may also use overnight delivery or electronic facsimile transmission (fax), to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by electronic mail (E-mail), or other methods of communication.

(c) Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

R-40. Majority Decision

When the panel consists of more than one arbitrator, unless required by law or by the arbitration agreement, a majority of the arbitrators must make all decisions.

R-41. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

R-42. Form of Award

(a) Any award shall be in writing and signed by a majority of the arbitrators. It shall be executed in the manner required by law.

(b) The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

R-43. Scope of Award

(a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.

(b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.

(c) In the final award, the arbitrator shall assess the fees, expenses, and compensation provided in Sections R-49, R-50, and R-51. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.

(d) The award of the arbitrator(s) may include:

- (i) interest at such rate and from such date as the arbitrator(s) may deem appropriate; and
- (ii) an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

R-44. Award upon Settlement

If the parties settle their dispute during the course of the arbitration and if the parties so request, the arbitrator may set forth the terms of the settlement in a "consent award." A consent award must include an allocation of arbitration costs, including administrative fees and expenses as well as arbitrator fees and expenses.

R-45. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at the last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

R-46. Modification of Award

Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within 20 days after transmittal by the AAA to the arbitrator of the request and any response thereto.

R-47. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to the party, at the party's expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

R-48. Applications to Court and Exclusion of Liability

- (a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
- (b) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.
- (c) Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.
- (d) Parties to an arbitration under these rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.

R-49. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe an initial filing fee and a case service

fee to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. The filing fee shall be advanced by the party or parties making a claim or counterclaim, subject to final apportionment by the arbitrator in the award. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

R-50. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

R-51. Neutral Arbitrator's Compensation

(a) Arbitrators shall be compensated at a rate consistent with the arbitrator's stated rate of compensation.

(b) If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the AAA and confirmed to the parties.

(c) Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

R-52. Deposits

The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

R-53. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

R-54. Suspension for Nonpayment

If arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.

EXPEDITED PROCEDURES

E-1. Limitation on Extensions

Except in extraordinary circumstances, the AAA or the arbitrator may grant a party no more

than one seven-day extension of time to respond to the demand for arbitration or counterclaim as provided in Section R-4.

E-2. Changes of Claim or Counterclaim

A claim or counterclaim may be increased in amount, or a new or different claim or counterclaim added, upon the agreement of the other party, or the consent of the arbitrator. After the arbitrator is appointed, however, no new or different claim or counterclaim may be submitted except with the arbitrator's consent. If an increased claim or counterclaim exceeds \$75,000, the case will be administered under the regular procedures unless all parties and the arbitrator agree that the case may continue to be processed under the Expedited Procedures.

E-3. Serving of Notices

In addition to notice provided by Section R-39(b), the parties shall also accept notice by telephone. Telephonic notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-4. Appointment and Qualifications of Arbitrator

(a) The AAA shall simultaneously submit to each party an identical list of five proposed arbitrators drawn from its National Roster from which one arbitrator shall be appointed.

(b) The parties are encouraged to agree to an arbitrator from this list and to advise the AAA of their agreement. If the parties are unable to agree upon an arbitrator, each party may strike two names from the list and return it to the AAA within seven days from the date of the AAA's mailing to the parties. If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from other members of the panel without the submission of additional lists.

(c) The parties will be given notice by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Section R-17. The parties shall notify the AAA within seven days of any objection to the arbitrator appointed. Any such objection shall be for cause and shall be confirmed in writing to the AAA with a copy to the other party or parties.

E-5. Exchange of Exhibits

At least two business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator shall resolve disputes concerning the exchange of exhibits.

E-6. Proceedings on Documents

Where no party's claim exceeds \$10,000, exclusive of interest and arbitration costs, and other cases in which the parties agree, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary. The arbitrator shall establish a fair and equitable procedure for the submission of documents.

E-7. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the arbitrator shall set the date, time, and place of the

hearing, to be scheduled to take place within 30 days of confirmation of the arbitrator's appointment. The AAA will notify the parties in advance of the hearing date.

E-8. The Hearing

(a) Generally, the hearing shall not exceed one day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing, and may require further submission of documents within two days after the hearing. For good cause shown, the arbitrator may schedule additional hearings within seven business days after the initial day of hearings.

(b) Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one pursuant to the provisions of Section R-26.

E-9. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

E-10. Arbitrator's Compensation

Arbitrators will receive compensation at a rate to be suggested by the AAA regional office.

PROCEDURES FOR LARGE, COMPLEX COMMERCIAL DISPUTES

L-1. Administrative Conference

Prior to the dissemination of a list of potential arbitrators, the AAA shall, unless the parties agree otherwise, conduct an administrative conference with the parties and/or their attorneys or other representatives by conference call. The conference will take place within 14 days after the commencement of the arbitration. In the event the parties are unable to agree on a mutually acceptable time for the conference, the AAA may contact the parties individually to discuss the issues contemplated herein. Such administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the AAA may deem appropriate:

(a) to obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;

(b) to discuss the views of the parties about the technical and other qualifications of the arbitrators;

(c) to obtain conflicts statements from the parties; and

(d) to consider, with the parties, whether mediation or other non-adjudicative methods of dispute resolution might be appropriate.

L-2. Arbitrators

(a) Large, Complex Commercial Cases shall be heard and determined by either one or three arbitrators, as may be agreed upon by the parties. If the parties are unable to agree upon the number of arbitrators and a claim or counterclaim involves at least \$1,000,000, then three

arbitrator(s) shall hear and determine the case. If the parties are unable to agree on the number of arbitrators and each claim and counterclaim is less than \$1,000,000, then one arbitrator shall hear and determine the case.

(b) The AAA shall appoint arbitrator(s) as agreed by the parties. If they are unable to agree on a method of appointment, the AAA shall appoint arbitrators from the Large, Complex Commercial Case Panel, in the manner provided in the Regular Commercial Arbitration Rules. Absent agreement of the parties, the arbitrator(s) shall not have served as the mediator in the mediation phase of the instant proceeding.

L-3. Preliminary Hearing

As promptly as practicable after the selection of the arbitrator(s), a preliminary hearing shall be held among the parties and/or their attorneys or other representatives and the arbitrator(s). Unless the parties agree otherwise, the preliminary hearing will be conducted by telephone conference call rather than in person. At the preliminary hearing the matters to be considered shall include, without limitation:

(a) service of a detailed statement of claims, damages and defenses, a statement of the issues asserted by each party and positions with respect thereto, and any legal authorities the parties may wish to bring to the attention of the arbitrator(s);

(b) stipulations to uncontested facts;

(c) the extent to which discovery shall be conducted;

(d) exchange and premarking of those documents which each party believes may be offered at the hearing;

(e) the identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;

(f) whether, and the extent to which, any sworn statements and/or depositions may be introduced;

(g) the extent to which hearings will proceed on consecutive days;

(h) whether a stenographic or other official record of the proceedings shall be maintained;

(i) the possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and

(j) the procedure for the issuance of subpoenas.

By agreement of the parties and/or order of the arbitrator(s), the pre-hearing activities and the hearing procedures that will govern the arbitration will be memorialized in a Scheduling and Procedure Order.

L-4. Management of Proceedings

(a) Arbitrator(s) shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Commercial

Cases.

(b) Parties shall cooperate in the exchange of documents, exhibits and information within such party's control if the arbitrator(s) consider such production to be consistent with the goal of achieving a just, speedy and cost-effective resolution of a Large, Complex Commercial Case.

(c) The parties may conduct such discovery as may be agreed to by all the parties provided, however, that the arbitrator(s) may place such limitations on the conduct of such discovery as the arbitrator(s) shall deem appropriate. If the parties cannot agree on production of documents and other information, the arbitrator(s), consistent with the expedited nature of arbitration, may establish the extent of the discovery.

(d) At the discretion of the arbitrator(s), upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator(s) may order depositions of, or the propounding of interrogatories to, such persons who may possess information determined by the arbitrator(s) to be necessary to determination of the matter.

(e) The parties shall exchange copies of all exhibits they intend to submit at the hearing 10 business days prior to the hearing unless the arbitrator(s) determine otherwise.

(f) The exchange of information pursuant to this rule, as agreed by the parties and/or directed by the arbitrator(s), shall be included within the Scheduling and Procedure Order.

(g) The arbitrator is authorized to resolve any disputes concerning the exchange of information.

(h) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

OPTIONAL RULES FOR EMERGENCY MEASURES OF PROTECTION

O-1. Applicability

Where parties by special agreement or in their arbitration clause have adopted these rules for emergency measures of protection, a party in need of emergency relief prior to the constitution of the panel shall notify the AAA and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice may be given by facsimile transmission, or other reliable means, but must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties.

O-2. Appointment of Emergency Arbitrator

Within one business day of receipt of notice as provided in Section O-1, the AAA shall appoint a single emergency arbitrator from a special AAA panel of emergency arbitrators designated to rule on emergency applications. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed in the application, to affect such arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the AAA to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

O-3. Schedule

The emergency arbitrator shall as soon as possible, but in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceeding by telephone conference or on written submissions as alternatives to a formal hearing.

O-4. Interim Award

If after consideration the emergency arbitrator is satisfied that the party seeking the emergency relief has shown that immediate and irreparable loss or damage will result in the absence of emergency relief, and that such party is entitled to such relief, the emergency arbitrator may enter an interim award granting the relief and stating the reasons therefore.

O-5. Constitution of the Panel

Any application to modify an interim award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator until the panel is constituted; thereafter such a request shall be addressed to the panel. The emergency arbitrator shall have no further power to act after the panel is constituted unless the parties agree that the emergency arbitrator is named as a member of the panel.

O-6. Security

Any interim award of emergency relief may be conditioned on provision by the party seeking such relief of appropriate security.

O-7. Special Master

A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate. If the AAA is directed by a judicial authority to nominate a special master to consider and report on an application for emergency relief, the AAA shall proceed as provided in Section O-1 of this article and the references to the emergency arbitrator shall be read to mean the special master, except that the special master shall issue a report rather than an interim award.

O-8. Costs

The costs associated with applications for emergency relief shall initially be apportioned by the emergency arbitrator or special master, subject to the power of the panel to determine finally the apportionment of such costs.

ADMINISTRATIVE FEES

The administrative fees of the AAA are based on the amount of the claim or counterclaim. Arbitrator compensation is not included in this schedule. Unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.

In an effort to make arbitration costs reasonable for consumers, the AAA has a separate fee schedule for consumer-related disputes. Please refer to Section C-8 of the *Supplementary Procedures for Consumer-Related Disputes* when filing a consumer-related claim.

The AAA applies the *Supplementary Procedures for Consumer-Related Disputes* to arbitration

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clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the Supplementary Procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

Fees

An initial filing fee is payable in full by a filing party when a claim, counterclaim or additional claim is filed. A case service fee will be incurred for all cases that proceed to their first hearing. This fee will be payable in advance at the time that the first hearing is scheduled. This fee will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified at least 24 hours before the time of the scheduled hearing, the case service fee will remain due and will not be refunded.

These fees will be billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee	Case Service Fee
Above \$0 to \$10,000	\$750	\$200
Above \$10,000 to \$75,000	\$950	\$300
Above \$75,000 to \$150,000	\$1,800	\$750
Above \$150,000 to \$300,000	\$2,750	\$1,250
Above \$300,000 to \$500,000	\$4,250	\$1,750
Above \$500,000 to \$1,000,000	\$6,000	\$2,500
Above \$1,000,000 to \$5,000,000	\$8,000	\$3,250
Above \$5,000,000 to \$10,000,000	\$10,000	\$4,000

Above \$10,000,000	*	*
Nonmonetary Claims**	\$3,250	\$1,250

Fee Schedule for Claims in Excess of \$10 Million.

The following is the fee schedule for use in disputes involving claims in excess of \$10 million. If you have any questions, please consult your local AAA office or case management center.

Claim Size	Fee	Case Service Fee
\$10 million and above	Base fee of \$ 12,500 plus .01% of the amount of claim above \$ 10 million.	\$6,000
	Filing fees capped at \$65,000	

** This fee is applicable only when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to the highest possible filing fee.

Fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$2,750 for the filing fee, plus a \$1,250 case service fee. Expedited Procedures are applied in any case where no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration costs.

Parties on cases held in abeyance for one year by agreement, will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be closed.

Refund Schedule

The AAA offers a refund schedule on filing fees. For cases with claims up to \$75,000, a minimum filing fee of \$300 will not be refunded. For all other cases, a minimum fee of \$500 will not be refunded. Subject to the minimum fee requirements, refunds will be calculated as follows:

- 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.
- 50% of the filing fee will be refunded if the case is settled or withdrawn between six and

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- 30 calendar days of filing.
- 25% of the filing fee will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing.

No refund will be made once an arbitrator has been appointed (this includes one arbitrator on a three-arbitrator panel). No refunds will be granted on awarded cases.

Note: the date of receipt of the demand for arbitration with the AAA will be used to calculate refunds of filing fees for both claims and counterclaims.

Hearing Room Rental

The fees described above do not cover the rental of hearing rooms, which are available on a rental basis. Check with the AAA for availability and rates.

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2007-CP-46-0119

J. W. Neal Construction, LLC..... Respondent,

v.

Cornelia Thomas..... Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certified that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

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Case No. 2007-CP-46-0119

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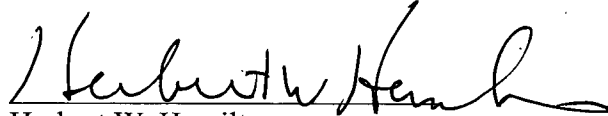
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November 25, 2013

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THE STATE OF SOUTH CAROLINA

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CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens Ballou & Carroll, LLC certifies that the Appellant's RECORD ON APPEAL was served upon other counsel of record by depositing same in the United States Mail, with sufficient postage affixed and addressed as follows:

John Martin Foster
Attorney at Law
PO Box 106
Rock Hill, SC 29731

The is the 27th day of November, 2013


L. Melia Sweatt

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SC Court of Appeals