

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Henry W. Brown
Special Referee

Appellate Case Number 2019-000513

RECEIVED
SEP 25 2019
SC Court of Appeals

Brown Contractors, LLC, under S.C. Residential Builders License No. 20378,
..... Appellant/Respondent,

v.

Andrew Joseph McMarlin a/k/a Andrew Joseph McMarlin and Amy Salzhauer,
..... Respondents/Appellants.

And

Andrew McMarlin and Amy Salzhauer, Respondents/Appellants,

v.

James Brown, IV and Brown-Meihaus Construction Co., LLC, Third-Party Defendants.

**AMENDED DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondents/Appellants propose that the following be included in the Record on Appeal:

1. Trial Transcript (November 7, 2017 – November 10, 2017 and December 13, 2017) pages 26-168, 177-179, 181-187, 194, 230, 248, 249, 272, 273, 498-506, 509-512, 517, 543, 544, 560-566, 611-665, 778 and trial exhibits listed below;
2. Plaintiff's No. 1 LLR Certificate of Authorization Paperwork;
3. Plaintiff's No. 2 LLR Certificate of Authorization;
4. Plaintiff's No. 3 Town of Sullivan's Island Residential Permits – Brown Contractors;

5. Plaintiff's No. 4 Certificate of Occupancy – 1850 Flag Street
6. Plaintiff's No. 5 3.19.14 Mechanics Lien;
7. Plaintiff's No. 6 6.18.14 Lis Pendens, Summons & Complaint;
8. Plaintiff's No. 7 Brown Contractors Inc. – Quick Books (including Unpaid Bills by Job);
9. Plaintiff's No. 8 Brown Contractors Inc. – Unpaid Bills Detail;
10. Plaintiff's No. 9 Brown Contractors Inc. – Customer Balance Detail and Invoices;
11. Plaintiff's No. 10 Volkmar Consulting Services, LLC – 8/16/13 Report;
12. Plaintiff's No. 12 Plaintiffs Exhibit Index;
13. Plaintiff's No. 13 Email from Jeff Neidlinger to Jay Brown on 3/26/2014;
14. Plaintiff's No. 14 Live Oak Home Inspections Report and Invoice;
15. Plaintiff's No. 15 Email Punch List from Cameron Glaws to Jay Brown with handwritten notes;
16. Plaintiff's No. 16 Seven Photographs of House;
17. Plaintiff's No. 18 Original drawings of McMarlin Residence;
18. Plaintiff's No. 19 Construction Plans;
19. Plaintiff's No. 20 Invoice and Backup;
20. Plaintiff's No. 21 Invoice and Backup;
21. Plaintiff's No. 22 Photographs of House During Construction;
22. Defendants' No. 1 Town of Sullivan's Island residential permit issued 7/25/2012;
23. Defendants' No. 2 Town of Sullivan's Island residential permit issued 8/28/2012;
24. Defendants' No. 3 Certificate of Authorization issued 4/16/2014;
25. Defendants' No. 4 LLR Certificate of Authorization to Brown Contractors 4/14/2009;
26. Defendants' No. 5 VLN LLC letter to LLR 8/10/2012;
27. Defendants' No. 6 Email from Vuong regarding contract information;
28. Defendants' No. 7 LLR letter to Brown Contractors 5/27/2015;
29. Defendants' No. 8 Jay Brown Letter to Amy and Andy regarding construction process;
30. Defendants' No. 9 Summary of Payments;
31. Defendants' No. 10 Invoice detail;
32. Defendants' No. 12 Email from Jay to Amy regarding updated cost control estimate 6/15/2012;
33. Defendants' No. 13 Email from Jay to Amy regarding Contract 7/20/2012;
34. Defendants' No. 14 Email from Jay to Amy Henry regarding AIA Cost Plus Contract 7/24/2012;
35. Defendants' No. 15 Email from Jay to Amy regarding Cost Estimate 8/8/2012;
36. Defendants' No. 16 Email from Henry to Amy with forward message from Jay regarding value engineering 8/9/2012;
37. Defendants' No. 17 Email from Jay to Henry regarding a revised phase 1 pricing 8/15/2012;
38. Defendants' No. 18 Email from Jay to Henry and Amy regarding updated bid per Beau Clowney meeting 8/22/2012;

39. Defendants' No. 19 Email from Jay to Henry regarding bid 8/23/2012;
40. Defendants' No. 20 Email from Jay to Henry regarding Updated Bid per Beau Clowney meeting 8/23/2012;
41. Defendants' No. 21 Email from Henry to Vuong regarding bills 6/13/2013;
42. Defendants' No. 22 Notice and Certification of Mechanic's Lien;
43. Defendants' No. 23 Volkmar Consulting Services, LLC Report of Observation;
44. Defendants' No. 26 Invoices;
45. Defendants' No. 27 Invoice 23, 9/12/2012;
46. Defendants' No. 28 Invoice 31, 9/21/2012;
47. Defendants' No. 29 Invoice 6 AIA Document;
48. Defendants' No. 30 AIA Document;
49. Defendants' No. 31 Benchmark 2014 Report;
50. Defendants' No. 32 Benchmark 2013 Report;
51. Defendants' No. 33 Schweers report 10/16/2014;
52. Defendants' No. 34 GLS Invoice;
53. Defendants' No. 35 GLS field notes;
54. Defendants' No. 38 Civil Action 2016-CP-10-435;
55. Defendants' No. 40 Amy Salzhauer Payments to Brown Contractors;
56. Defendants' No. 43 Beau Clowney Plans showing work in phases;
57. Defendants' No. 47 Jeremy Powell Empire Engineering Scope;
58. Defendants' No. 48 Email from Henry Salzhauer to Jay Brown regarding a fix on construction costs on 2/11/2013;
59. Defendants' No. 49 Email from Vuong Nguyen to Courtney Bishop regarding progress on 2/13/2013 (Salzhauer 2612);
60. Defendants' No. 50 Email from Henry Salzhauer to Deborah Kahn regarding incorporating the cost to complete on 2/15/2013 (Salzhauer 2670-2672);
61. Defendants' No. 51 Email from Debroah Kahn to Henry Salzhauer regarding cost to complete information on 2/19/2013 (Salzhauer 2680-2685);
62. Defendants' No. 52 Email from Henry Salzhauer to Deborah Khan regarding entire job expected cost on 2/19/2013 (Salzhauer 2707-2710);
63. Defendants' No. 53 Email from Henry Salzhauer to Jay Brown regarding one number for what the entire job will cost on 2/19/2013 (Salzhauer 2711);
64. Defendants' No. 54 Email from Henry Salzhauer to Jay Brown regarding finish date for house and total cost for house on 2/22/2013 (Salzhauer 2716-2717);
65. Defendants' No. 55 Email from Henry Salzhauer to Jay Brown regarding finish date previously was March and now it is May on 2/25/2013 (Salzhauer 2722-2723);
66. Defendants' No. 56 Email form Henry Salzhauer to Jay Brown regarding firm schedule on 2/27/2013 (Salzhauer 2736-2738);
67. Defendants' No. 57 Email from Amy Salzhauer to Jay Brown regarding quality of work concerns on 3/2/2013 (Salzhauer 2740);

68. Defendants' No. 58 Email from Henry Salzhauer to Jay Brown regarding billing looking like a Time and Material Basis and schedule of completion by end of the week on 3/12/2013 (Salzhauer 2779-2780);
69. Defendants' No. 59 Email from Henry Salzhauer to Jay Brown regarding requisition relevant to cost of the job on 3/22/2013 (Salzhauer 2809);
70. Defendants' No. 60 Email from Henry Salzhauer to Amy Salzhauer regarding detail requests to Jay Brown on 5/13/2013 (Salzhauer 2941);
71. Defendants' No. 61 Email from Henry Salzhauer to Jay Brown regarding his actions show he has abandoned the job 10/2/2013 (Salzhauer 4239);
72. Defendants' No. 62 Email from Jay to Henry Salzhauer providing an update, expressing no legal issues from other clients, and claiming he has a license as well as Brown Contractors and will provide copies. 10/25/2013 (Salzhauer 4441);
73. Defendants' No. 63 Email from Jay Brown to Henry Salzhauer regarding final balance and house being completely done 1/9/2014 (Salzhauer 4690-4691);
74. Defendants' No. 64 Email from Cameron Glaws to Henry Salzhauer expressing interest in finishing work separately from Brown Contractors 1/28/2014 (Salzhauer 4720-4722);
75. Defendants' No. 65 Email from Cameron Glaws to Henry Salzhauer saying where to send payment for work 2/3/2014 (Salzhauer 4755-4761);
76. Defendants' No. 66 Email from Henry Salzhauer to Jay Brown regarding paint contract including money for a different contractor on 8/7/2013 (Salzhauer 3315-3320);
77. Defendants' No. 67 Email from Henry Salzhauer to Vuong Nguyen regarding request for bills that the subcontractors submitted to VLN on 6/13/2013 (Salzhauer 3011-3012);
78. Defendants' No. 68 Email from Henry Salzhauer to Jay Brown regarding a list of concerns ranging from vendors getting paid, work by line item, waiver of liens, painting on 9/13/2013 (Salzhauer 3995-4001);
79. Defendants' No. 69 Email from Jay Brown to Henry Salzhauer regarding his responses to previous email of concerns from Henry on 9/13/2013 (Salzhauer 4002);
80. Defendants' No. 70 Email from Henry Salzhauer to Jay Brown regarding requisition by line item on 9/16/2013 (Salzhauer 4018);
81. Defendants' No. 78 Application and Certification for Payment #3 totalling \$21,825.79 (Bates Label Brown 33-34);
82. Defendants' No. 79 Brown Contractors, LLC Invoice #43 totalling \$21,825.79 (Brown 0035);

- 83. Defendants' No. 80 Application and Certification for Payment #4 totaling \$31,032.58 (Brown 0001-0002);
- 84. Defendants' No. 81 Brown Contractors, LLC Invoice #54 totaling \$31,032.58 (Brown 0003);
- 85. Defendants' No. 82 Application and Certification for Payment #5 totaling \$35,750.73 (Brown 0054-0055);
- 86. Defendants' No. 83 Brown Contractors, LLC Invoice #63 totaling \$35,750.73 (Brown 0056);
- 87. Defendants' No. 84 Application and Certification for Payment #6 totaling \$171,449.20 (Brown 0082-0083);
- 88. Defendants' No. 85 Brown Contractors, LLC Invoice #65 totaling \$171,449.20 (Brown 0084);
- 89. Defendants' No. 86 Application and Certification for Payment #7 totaling \$80,783.16 (Brown 0102-0103);
- 90. Defendants' No. 87 Brown Contractors, LLC Invoice #69 totaling \$80,783.16 (Brown 0104);
- 91. Defendants' No. 88 Application and Certification for Payment #8 totaling \$33,366.87 (Brown 0142-143);
- 92. Defendants' No. 89 Brown Contractors, LLC Invoice #73 totaling \$33,366.87 (Brown 0144);
- 93. Defendants' No. 90 Application and Certification for Payment #9 totaling \$59,951.58 (Brown 0172-0173);
- 94. Defendants' No. 91 Brown Contractors, LLC Invoice #74 totaling \$59,951.58 (Brown 0174);
- 95. Defendants' No. 92 Application and Certification for Payment #10 totaling \$45,996.55 (Brown 0190-0191);
- 96. Defendants' No. 93 Brown Contractors, LLC Invoice #80 totaling \$45,996.55 (Brown 0192-0193);
- 97. Defendants' No. 94 Application and Certification for Payment #11 totaling \$75,965.54 (Brown 0231-0232);
- 98. Defendants' No. 95 Brown Contractors, LLC Invoice #83 totaling \$75,965.54 (Brown 0233-0234);
- 99. Defendants' No. 96 Application and Certification for Payment #12 totaling \$50,472.72 (Brown Contractors 000155-156);
- 100. Defendants' No. 97 Brown Contractors, LLC Invoice #99 totaling \$50,472.72 (Brown Contractors 000157);
- 101. Defendants' No. 98 Application and Certification for Payment #2.2 totaling \$88,036.99 (Brown Contractors 000187-188);
- 102. Defendants' No. 99 Brown Contractors, LLC Invoice #109 totaling \$88,036.99 (Brown Contractors 000189-190);
- 103. Defendants' No. 100 Application and Certification for Payment #2.3 totaling \$114,373.86 (Brown 0333-334);
- 104. Defendants' No. 101 Brown Contractors, LLC Invoice #119 totaling \$114,373.86 (Brown 0335-336);
- 105. Defendants' No. 102 Application and Certification for Payment #2.4 totaling \$78,874.67 (Brown 0393-394);

106. Defendants' No. 103 Brown Contractors, LLC Invoice #130 totaling \$78,874.67 (Brown 0395-396);
107. Defendants' No. 104 Application and Certification for Payment #25 totaling \$78,874.67 (Brown 0419-420);
108. Defendants' No. 105 Brown Contractors, LLC Invoice #137 totaling \$68,351.78 (Brown 0421-422);
109. Defendants' No. 106 Application and Certification for Payment #2.6 \$110,990.31 (Brown 0468-469);
110. Defendants' No. 107 Brown Contractors, LLC Invoice #151 totaling \$110,990.31 (Brown 0470-0472);
111. Defendants' No. 108 Application and Certification for Payment #2.7 totaling \$86,024.98 (Brown 0544-0545);
112. Defendants' No. 109 Brown Contractors, LLC Invoice #155 totaling \$86,024.98 (Brown 0546-0547);
113. Defendants' No. 110 Application and Certification for Payment #2.8 totaling \$96,293.67 (Brown 0577-578);
114. Defendants' No. 111 Brown Contractors, LLC Invoice #161 totaling \$96,293.67 (Brown 579-581);
115. Defendants' No. 112 Application and Certification for Payment #2.9 totaling \$12,962.19 (Brown 0654-655);
116. Defendants' No. 113 Brown Contractors, LLC Invoice #165 totaling \$12,962.19 (Brown 0656);
117. Defendants' No. 114 Application and Certification for Payment #2.10 totaling \$83,317.80 (Brown 0722);
118. Defendants' No. 115 Brown Contractors, LLC Invoice #170 totaling \$83,317.80 (Brown 0720-721);
119. Defendants' No. 116 Application and Certification for Payment #2.11 totaling \$50,674.27 (Brown Contractors 001254-1255);
120. Defendants' No. 117 Brown Contractors, LLC Invoice #181 totaling \$50,674.27 (Brown Contractors 001256-1257);
121. Defendants' No. 118 Email dated 3/12/2013 from Henry Salzhauer to Jay Brown;
122. Defendants' No. 122 Email from Amy to Jay Brown describing concerns;
123. Defendants' No. 123 Email from Jay Brown to Amy Salzhauer dated 10/8/2013 of benchmark inspection;
124. Defendants' No. 124 Email from 6/5/2013;
125. Defendants' No. 125 Email from 6/25/2013 Bates Labeled 3221;
126. Defendants' No. 126 Bates Label Salzhauer 2955;
127. Defendants' No. 127 Bates Label Salzhauer 2956;
128. Defendants' No. 128 Bates Label Salzhauer 2957;
129. Defendants' No. 129 Email;
130. Defendants' No. 130 Email;
131. Defendants' No. 131 Email dated 12/10/2013 regarding April 13th date for cost;
132. Defendants' No. 132 Email from Henry Salzhauer to Jay Brown on 3/17/2014;
133. Defendants' No. 133 Email from Kibbey to Jay Brown on 3/17 of Benchmark Inspection report;

134. Defendants' No. 135 Email dated 6/24/2013 re 'Some good Examples of the Floor';
135. Defendants' No. 136 Email dated 8/30/2013 from Amy to Henry re 'Floors at 1850 Flag Street';
136. Defendants' No. 137 Email dated 8/30/2013 from Henry to Amy re Floors at 1850 Flag Street';
137. Defendants' No. 138 Email from Amy to Jay re 'Second Opinion on Floors';
138. Defendants' No. 139 Email from Amy to Jay dated 9/3/2013 re 'Second Opinion on Floors';
139. Defendants' No. 140 Strickland Report;
140. Defendants' No. 141 VLN Estimate dated 12/7/2012;
141. Defendants' No. 142 VLN Invoice dated 12/17/2012;
142. Defendants' No. 143 VLN Invoice dated 2/8/2013;
143. Defendants' No. 144 VLN Invoice dated 2/18/2013.

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


Robert T. Lyles, Jr. (SC Bar # 10299)

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Attorneys for Respondents/Appellants

September 23, 2019

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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The Honorable Henry W. Brown
Special Referee

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.....Respondents/Appellants.

And

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v.

James Brown, IV and Brown-Meihaus Construction Co., LLC,Third-Party Defendants.

PROOF OF SERVICE

I certify that I have served a copy of the Respondents/Appellants' Amended Designation of Matter to be Included in the Record on Appeal on counsel for the Appellant/Respondent by depositing a copy in the United States Mail, First Class postage prepaid, this 23rd day of September, 2019, addressed to the following:

Robert B. Varnado
Brown & Varnado, LLC
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Mt. Pleasant, SC 29465
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Cindy Worsham

Cindy Worsham, Paralegal for
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September 23, 2019

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September 23, 2019

VIA U.S. MAIL

The Honorable V. Claire Allen
Deputy Clerk, The South Carolina Court of Appeals
Post Office Box 11629
1220 Senate Street (29201)
Columbia, SC 29211

RECEIVED
SEP 25 2019
SC Court of Appeals

Re: *Brown Contractors, LLC, et al. vs. Andrew Joseph McMarlin, et al.*
Appellate Case No.: 2019-000513

Dear Ms. Allen:

Enclosed please find the original and one (1) copy each of the Respondents/Appellants' Initial Reply Brief with Proof of Service and Amended Designation of Matter to be Included in the Record on Appeal with Proof of Service for filing in the above-referenced matter.

By copy of this correspondence and as indicated on each Proof of Service, copies of the enclosed Initial Reply Brief and Amended Designation of Matter have been served on opposing counsel.

Should you have any questions regarding the enclosed, please give me a call.

Thank you for your assistance, and with kindest regards, I am

Very truly yours,

LYLES & ASSOCIATES, LLC

Robert T. Lyles by/ Marcus J. Guilfoyle

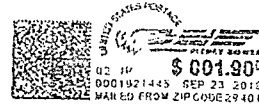
Robert T. Lyles, Jr.

RTL/cw

Enclosures

cc: Robert B. Varnado, Esquire (Via Email & U.S. Mail)

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Charleston, SC 29401



FIRST CLASS MAIL

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