

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FOR THE NINTH JUDICIAL CIRCUIT

RECEIVED

Marsh Waterproofing, Inc.,

Jun 19 2020

CASE NO.: 2018-CP-10-00262

Plaintiff,

SC Court of Appeals

vs.

**SUPPLEMENTAL ORDER TO AMEND
FINAL ORDER OF FORECLOSURE OF
MECHANICS LIEN, NON-JURY
DECISION FILED MARCH 11, 2020**

Steeple Dorchester Ltd. and Hamilton
Management Services Company, Inc.,

Defendant(s).

This matter came before me again for the hearing of post-trial motions via video conference at 10 AM on Tuesday, April 28, 2020. Participating were Albert A. Lacour, III, attorney for the Plaintiff and C. Clay Olson, attorney for the Defendants. The court reporter was Stacy Johnson and the video conference was also recorded. Before the Court were: (1) the Plaintiff's Motion to Modify Judgment to Add Award of Attorney's Fees and Costs Pursuant To The Mechanic's Lien Statute filed February 21, 2020; (2) Defendant's Notice of Motion and Motion to Amend Judgment or For a New Trial in the Alternative (Rule 59) filed February 24, 2020; and (3) Defendants Notice of Motion to Amend Judgment or in the Alternative for New Trial and Clarification (Rule 59 (A) (2)) filed March 23, 2020.

Upon consideration of the Motions of Defendants and the Exhibits filed along with those motions and also the arguments of counsel, I find and conclude that my rulings at the time of the trial of the case and those necessarily contained in the entry of Judgment were sound and are hereby reaffirmed. Defendant's Motions are therefore **DENIED**.

Upon consideration of the Motion of Plaintiff and the Exhibits filed along with that motion and also the arguments of counsel, I find and conclude that an award of attorney's fees and costs under the statute is appropriate. Plaintiff's Motion is therefore **GRANTED**. The six factors to be considered in determining an award of attorney's fees are 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. Blumberg v. Nealco, Inc. 310 S.C. 492, 427 S.E.2d 659 (1993).

Plaintiffs Motion is supported by 30 pages of time entries providing detailed descriptions of the nature of the services being provided in Exhibit A to the Motion. The entries reflect that this particular case is one of six identical mechanics liens filed in five different counties across the state and that numerous activities were consolidated by counsel as the work proceeded. As a result there are some entries dedicated solely to this action in this county and there are other activities that must be aggregated and then divided by the six separate actions to allocate them equally between all six cases.

The nature and extent of the legal services rendered is contained in the descriptions. I find the difficulty of representation and the level of skill required was elevated by the time limitations in the statute which required the six cases to proceed simultaneously. I find Defendants have vigorously defended the case and the issues raised by defendants have also increased the difficulty of representation beyond that normally encountered in a mechanics lien foreclosure. The time entries document \$15,961 in attorney's time devoted to this case solely. The time entries further document a total of \$77,347 of attorney's time devoted to the six cases jointly, and therefore the

allocated portion of this case would be \$12,701. The entries further document \$1140 of paralegal time to be allocated across the six cases resulting in \$190 to be allocated for this case. The charges by paralegal staff are allowable in South Carolina. Spriggs Group PC v. Slivka 402 S.C. 42, 738 S.E.2d 495 (Ct. App. 2013). I find therefore the total fees incurred as to this case are \$28,852.

The Affidavit in support of the Motion, attached as Exhibit C thereto, indicates that the fee agreement with the client is in writing and contains an hourly rate of \$225 for attorney's time, \$150 for associate time and \$95 for paralegal or clerical time. Additionally the plaintiff is required to reimburse counsel for all out-of-pocket costs incurred. I find that the affidavit reflects counsel has been in practice for 38 years and holds a rating from Martindale Hubble as "AV Preeminent" in his chosen field. I find that the rates charged for the services rendered are within the range of rates typically and customarily charged for such services within South Carolina. I find the efforts of counsel have bestowed a beneficial result upon the Plaintiff and resulted in a full recovery of the claim despite the vigorous efforts of Defendants to prevent such result.

I find the Affidavit of counsel and Exhibit B to the Motion reflect that the costs incurred directly in association with this case total \$1042.

I therefore conclude that an award of attorney's fees and paralegal fees in the amount of \$28,852 and costs of \$1,042 for a total of \$29,894 is appropriate and reasonable under the circumstances of this case. The total amount of the fees and costs should be added to the judgment previously entered. It is therefore,

ORDERED, that Plaintiff's Motion to Modify Judgment to Add Award of Attorney's Fees and Costs Pursuant To The Mechanic's Lien Statute is **GRANTED** and the Final Order For Foreclosure Of Mechanic's Lien Non-Jury Decision filed March 11, 2020 is amended and supplemented as follows:

- Paragraph 20 of the Final Order is amended to read "I find that the amount due and owing to the Plaintiff upon its mechanic's lien is \$36,800, together with attorneys's fees in the amount of \$28,852, together with costs in the amount of \$1042 for a total debt of \$66,694."
- Paragraph 23 of the Final Order is amended to read "I conclude Plaintiff should have judgment for foreclosure of Plaintiffs mechanics lien for the Total Amount Due of \$66,694 together with interest from the date of entry of this order at 8.75%, as set forth above, and that the leasehold interest of Steeple Dorchester Ltd. In the subject property shall be sold at public auction after due advertisement."
- The second paragraph at the top of page 10 is amended to read "**ORDERED**, that there is due to the Plaintiff upon the mechanics lien set forth in the Complaint the Total Amount Due of \$66,694 as of the date hereof, together with interest of 8.75% per annum accruing from and after the entry of this Order, and that the leasehold interest of Defendant Steeple Dorchester Ltd. in the property should be sold and the proceeds thereof applied to payment and satisfaction of the debt; and it is further,"

AND IT IS FURTHER ORDERED that all terms and conditions of the Final Order For Foreclosure Of Mechanic's Lien Non-Jury Decision filed March 11, 2020 are reaffirmed and remain in full force and effect, except to the extent modified herein.

AND IT IS FURTHER ORDERED Defendant's Notice of Motion and Motion to Amend Judgment or For a New Trial in the Alternative (Rule 59) and Defendant's Notice of Motion to Amend Judgment or in the Alternative for New Trial and Clarification (Rule 59 (A) (2)) are **DENIED**.

AND IT IS SO ORDERED.

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Charleston Common Pleas

Case Caption: Marsh Waterproofing Inc VS ARC CAFEUSA001 LLC , defendant,
ct al
Case Number: 2018CP1000262
Type: Order/Other

So Ordered

s/Frank R. Addy, Jr., 2159

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