Appellants' Notice of Appeal Ex. No. 1

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-10- 00262

Marsh Waterproofing, Inc.,

PLAINTIFF(S)

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

DEFENDANT(S)

Submitted by: COURT

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other **Global settlement**

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before the Court on February 5, 2020 for a bench trial. Having reviewed applicable law, pre and post-trial memorandums submitted to the Court, and considered the arguments of counsel, the Court finds the mechanics lien dated November 16, 2018 in the amount of $36,800.00 is valid and duly enforceable. Counsel shall confer on the issue of attorney's fees, and if the parties cannot agree, the matter can be submitted to the court via brief.

Counsel for Plaintiff is requested to submit a more formal order within thirty (30) days.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**

Marsh Waterproofing	Steeple Dorchester Ltd.; Hamilton Management Services Co., Inc.	$36,800.00 plus applicable interest and attorney's fees
		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2159 **Judge Code**	02/11/2020 **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Albert A. Lacour, III
ATTORNEY(S) FOR THE PLAINTIFF(S)

Christopher Clay Olson
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: K. Nicole Carney

Appellants' Notice of Appeal Ex. No. 2

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT
MARSH WATERPROOFING, INC., Plaintiff, vs. STEEPLE DORCHESTER, LTD. AND HAMILTON MANAGEMENT SERVICES COMPANY, INC. Defendants.	CIVIL ACTION NO. 2018-CP-10-00262 DEFENDANTS' NOTICE OF MOTION AND MOTION TO AMEND JUDGMENT OR FOR A NEW TRIAL IN THE ALTERNATIVE (RULE 59)

PLEASE TAKE NOTICE that Defendants STEEPLE DORCHESTER LTD. AND HAMILTON MANAGEMENT SERVICES COMPANY, INC. ("Defendants"), by and through the undersigned counsel, and pursuant to Rules 59(a) and (e), SCRCP, move this court for an order to alter or amend its judgment of February 12th, 2020 to find for the Defendants. Specifically, the Defendants ask that the Court direct the entry of a new judgment pursuant to SCRCP 59(a)(2). In the alternative, the Defendants would move for a new trial based on the grounds and arguments below.

In addition to requesting that the Court's judgment be amended in favor of the Defendants, the moving Defendants also seek for Steeple Dorchester, Ltd. be deemed the "prevailing party" and awarded reasonable attorney's fees and costs pursuant to the South Carolina mechanic's lien statutes as it is rightly the "prevailing party" pursuant to S.C. Code Ann. § 29-5-20(A).

As a third alternative and pursuant to Rule 52, the Defendants seek further clarification as to the Court's ruling dated February 12th, 2020. This motion is timely, pursuant to Rule 6, SCRCP as the tenth day falls on a Saturday and, therefore, runs until Monday, February 24th, 2020.

PROCEDURAL HISTORY

This lawsuit stems from work performed by the Plaintiff at the Church's Chicken located on Dorchester Road in Charleston County, South Carolina. ("The Project") Plaintiff Marsh Waterproofing, Inc. is a Texas contractor who performed work in South Carolina at several Church's Chicken locations during August 2017.

On January 22nd, 2018, the Plaintiffs initiated this action against ARCAFEUSA, the title owner of the property where Steeple Dorchester operated a Church's Chicken franchise.[1] On March 12th, 2018, the Plaintiff amended its Complaint. In its amended complaint, the Plaintiff removed the record property owner and added Defendant Steeple Dorchester, Ltd. as a Defendant more than six months after the Plaintiff's work was performed. *See Amended Summons and Complaint*

On February 5th, 2020, a bench trial was conducted by the Honorable Frank Addy in Charleston, South Carolina. After the Plaintiff called two witnesses, the Defendants moved for a directed verdict which was denied. At the close of arguments, Judge Addy indicated that he would provide a ruling in a few days. On February 12th, 2020, the Court ruled in favor of the Plaintiff in the amount of $36,800.00 holding specifically, as follows:

> **"The Court finds the mechanics lien dated November 16, 2018 in the amount of $36,800.00 is valid and duly enforceable."**

There was no ruling as to the Plaintiff's causes of action for breach of contract or quantum meruit. Furthermore, the Order does not set forth any findings of fact and instructs the Plaintiffs to submit a more formal Order within 30 days of receipt. The Defendants are not able to determine whether or not a more formal order will be submitted. Nevertheless, the Defendants hereby seek a new trial or, in the alternative, an amendment of the Court's February 12th Order. In addition, the Defendants seek clarification pursuant to Rule 52(a), which provides "on the n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon." *See Rule 52(a) SCRCP.*

South Carolina Case Law and Statutory Scheme on Unlicensed Contractors

The Defendants respectfully request that this Court alter and amend its judgment pursuant to SCRCP 59(a) as the trial court failed to consider S.C. Code Ann. 40-11- 370, which acts as a door closing statute for unlicensed contractors seeking to enforce contractual obligations in South Carolina courts. The Defendants will focus the majority of their efforts on the controlling statute and case law following the statute. According to S.C. Code Ann. 40-11- 370, "an entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract." *S.C. Code 40-11-370(c)* This statute should have barred not only the mechanic's lien claim, but all claims due to its plain meaning.

Pursuant to South Carolina law, contractors must be properly licensed to perform construction work. Specifically, S.C. Code §40-11-30 states:

---

[1] ARCAFE was inexplicably dismissed as a party before appearing, despite the fact was, at all times relevant, the record title holder to the property.

> *No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total costs of construction is greater than $5,000 for general contracting or greater than $5,000 for mechanical contracting without a license issued in accordance with this chapter.*

S.C. Code Ann. §40-11-370(c) and S.C. Code Ann. §40-11-30 operate in tandem to bar lawsuits by unlicensed contractors in South Carolina. The statutes are all well-settled and, when raised as an affirmative defense, our courts have consistently barred unlicensed contractors from prevailing in lawsuits.

In a 2013 decision by the South Carolina Supreme Court, S.C. Code Ann. §40-11-370(c) was found to be "clear, defined, explicit, and unquestionably applicable" to bar the claims of an improperly licensed contractor who prevailed in an arbitration proceeding prior to having that decision overturned. *C-Sculptures, LLC v. Brown, 403 S.C. 53, 56-57, 742 S.E.2d 359, 361 (2013)*

The court in *C-Sculptures* provides a thorough analysis of S.C. Code Ann. §40-11-30 and S.C. Code Ann. §40-11-370(c) and, in doing so, deemed the latter to be subject to strict construction and outside the discretion of an arbitrator. The court held, "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning." *C-Sculptures, LLC v. Brown, 403 S.C. 53, 56-57, 742 S.E.2d 359, 361 (2013)* The C-Sculptures opinion is the key to Defendants' Rule 59 arguments because there is no way it can be reconciled with the Court's findings in this case.

C-Sculptures was cited on directed verdict. If anything, the facts in the case at bar are even less hazy than the issues presented by C-Sculptures, which held that an arbitrator's decision to deny a property owner's motion to dismiss claims brought by an *improperly* licensed contractor, pursuant to 40-11-370, constituted "manifest disregard" of a "well-defined, explicit, and clearly applicable" legal maxim. The Defendants would respectfully ask that the Court reconsider and amend its previous Order in favor of the Plaintiff and find for the Defendants based on the record and arguments.

The Defendants are of the opinion that the Court placed far too much weight on statements and arguments made in the record by counsel for the Plaintiff regarding the nature and scope of work performed by the Plaintiff. In closing arguments, Defendants sought to confuse the Court with an alternate interpretation of the phrase "general contracting" as it is used in S.C. Code Ann. §40-11-30. The statute holds as follows:

> "No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five thousand dollars for ***general contracting*** or greater than five thousand dollars for mechanical contracting without a license issued in accordance with this chapter." S.C. Code Ann. § 40-11-30 (Emphasis Added)

The Plaintiff's argument(s) were well articulated, albeit wrong. The Defendants are of the belief that Plaintiff's improper and unfounded arguments only served to confuse the Court and "muddy the waters." Specifically, the Plaintiff argued that it was not subject to the door closing effect of S.C. Code Ann. § 40-11-370(c) because it was not the *general contractor* on the job. As Defendants argued in rebuttal, the phrase *"general contracting"* must be read in context of the Chapter regulating contractors in the South Carolina Code. Specifically, the Code defines "General contractor" as "an entity which performs or supervises or offers to perform or supervise general construction." *S.C. Code Ann. § 40-11-20(8)* The key language in the provision is "performs or supervises" which clearly and unequivocally provides that a contractor need not be a supervising prime, or general contractor to be included in the definition of "general contractor" pursuant to the prevailing Code provisions. In addition, "General construction" means the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property. *S.C. Code Ann. § 40-11-20(9)* Therefore, an entity is required to be licensed so long as it is performing general construction at a cost of more than $5,000.00 to be subject to the licensing requirement.

The Defendants understand that is quite easy to get lost in the minutia of S.C. 40-11-10 et seq. The Contractors Licensing Board clearly understood the requirements of its own commission, however, when it found that Marsh was in violation:

> **As such, the hearing officer determined that the scope of work for the use of this foam underneath the crawlspace of the project(s) was structural in nature and required a general contractor's license pursuant to S.C. Code Ann §§ 40-11-20(8) and 40-11-410(1) (1976, as amended) See the third conclusion of law in the Order issued by the Contractor's Licensing Board.**

Finally, the Contractors Licensing Board could not have concluded its opinion any clearer than in its final paragraph where its ruling should be all that is required to bar Marsh's claims in this matter:

> **"The Respondent is cautioned that the scope of the work on the project(s) does require a general contracting license in South Carolina if the Respondent is not supervised by a licensee in the required license group and classification."**

The Order has served to clarify and contradict every one of the Plaintiff's arguments and, despite the muddy water, this Court should have applied the law as it is written, not as interpreted by the Plaintiff. For these reasons, the Defendants would respectfully request that judgment be amended in its favor. Alternatively, the Defendants would ask for a new trial.

Should the court fail to find that the Defendants are entitled to an amendment of its original judgment and, further, hold that the Defendants are not entitled to a new trial, the Defendants seek clarification as to the Court's holding that the mechanics lien was "valid and enforceable." The Defendants note that Rule 52(a) is applicable to non-jury matters and instructs the trial court to find the

facts specially and state separately its conclusions of law thereon in support of a judgment. Rule 52(b) allows a court to also amend its findings or make additional findings and may amend the judgment accordingly.

The Judgment's Validation of the Mechanic's Lien was Improper

The Court's judgment in this case declares that the Plaintiff's mechanics lien was "valid and enforceable." *See Order.* This holding goes against the weight of established and well-developed South Carolina statutory and case law as has been discussed throughout this memorandum.

In order for the Court to find that the mechanics lien was valid and enforceable, the Court would have to find that either: (a) Marsh Waterproofing possessed a valid general contractor's license in the State of South Carolina; (b) a license was not required; or (c) that Marsh Waterproofing was working under the supervision of a licensed contractor. Both (a) and (c) are immediately ruled out via Tim Marsh's trial testimony. Thus, the holding can only be based on the Court's implied holding that a license was not required.

The Court Failed to Consider Evidence in the Contractor's Licensing Board Order

It is clear that the Court did not place any weight on the South Carolina LLR Contractor's Licensing Board Opinion[2] which held, in pertinent part, as follows:

> a. "The hearing officer determined that the scope of work for the use of this foam underneath the crawlspace of the project(s) was structural in nature and required a general contractor's license pursuant to S.C. Code Ann §§ 40-11-20(8) and 40-11-410(1) (1976, as amended)." See LLR Order, Page 5.
> b. "The hearing officer finds that Respondent violated S.C. Code Ann.§ 40-11-110(A)(5) in that Respondent engaged in contracting work in South Carolina when not properly licensed or supervised by a licensee licensed in the required license group and classification." See LLR Order, Page 5.

The LLR's Contractor's Licensing Board is the established agency charged with the regulation of licensing within the industry. As the Order found that the scope of work fell within that which a license was required and further found that the Plaintiff violated South Carolina law by engaging in contracting work in South Carolina while not being properly licensed, a new trial or amendment of the Order is paramount to the furtherance of justice.

In considering the LLR Order, the court should have considered the great weight previous courts have afforded agency administrative orders. "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Dunton v. S.C. Bd. of Exam'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987); see also Nucor Steel v. Pub. Serv. Comm'n of S.C., 310 S.C. 539, 543, 426 S.E.2d 319, 321

[2] The Order is attached as Exhibit B.

(1992) ("Where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason."). There is no cogent reason to ignore or overrule a decision made by the Contractors Licensing Board in this case. The Board Order represents legal and factual findings in an ex parte regulatory proceeding in which the Defendants were not able to testify or present evidence.

The Court was Prejudiced by Plaintiff's Presentation of SEC Materials

The Defendants have included a final exhibit, which is an affidavit prepared by Alexander C. Burns, principal of Hamilton Management. The full weight of Burns' testimony should be considered in light of the court's consideration of irrelevant, yet untrue assertions made by the Plaintiff. Specifically, the Plaintiff repeatedly contended that Burns and the Defendants were aware of Marsh's status as an unlicensed contractor. S.C. Code Ann. 40-11-370 does not allow for exceptions, whether they be invented or actual, and the presentation of Burns testimony should not be necessary in light of the Plaintiff's status as an unlicensed contractor. Regardless, Burns' testimony should be considered by the Court to the extent the Court's judgment of the Defendants was hampered by Plaintiff's shameless presentation of the inflammatory materials.

WHEREFORE, the Defendants seek consideration of this memorandum and exhibits and amend its judgment accordingly to find in favor of the Defendants. Alternatively, this Court should grant a new trial absolute to the Plaintiffs.

HARPER LITTLE PLLC

S/ C. Clay Olson

C. Clay Olson, Esquire
SC Bar 17007
164 Market Street Ste 139
Charleston, SC 29464
clay@harperlittlelaw.com

February 24, 2020

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE TENTH JUDICIAL CIRCUIT
MARSH WATERPROOFING INC., Plaintiff, vs. STEEPLE DORCHESTER, LTD. AND HAMILTON MANAGEMENT SERVICES COMPANY, INC. Defendants.	)	CIVIL ACTION NO. 2018-CP-10-00262 DEFENDANTS NOTICE OF MOTION TO TO AMEND JUDGMENT OR IN THE ALTERNATIVE FOR A NEW TRIAL AND CLARIFICATION UNDER 59(A)(2)

PLEASE TAKE NOTICE that Defendants STEEPLE DORCHESTER LTD. AND HAMILTON MANAGEMENT SERVICES COMPANY, INC. ("Defendants"), by and through the undersigned counsel, and pursuant to Rules 59(a) and (e), SCRCP, move this court for an order to alter or amend its judgment of March 11, 2020 to find for the Defendants. Specifically, the Defendants ask that the Court direct the entry of a new judgment pursuant to SCRCP 59(a)(2). In the alternative, the Defendants would move for a new trial based on the grounds and arguments below.

In addition to requesting that the Court's judgment be amended in favor of the Defendants, the moving Defendants also seek for Steeple Dorchester, Ltd. be deemed the "prevailing party" and awarded reasonable attorneys' fees and costs pursuant to the South Carolina mechanic's lien statutes as it is rightly the "prevailing party" pursuant to S.C. Code Ann. § 29-5-20(A). As a third alternative and pursuant to Rule 52, the Defendants seek further clarification as to the Court's ruling dated March 11, 2020.

PROCEDURAL HISTORY

This lawsuit stems from work performed by the Plaintiff at the Church's Chicken located on Dorchester Road in Charleston County, South Carolina. Plaintiff Marsh Waterproofing, Inc. is a Texas contractor who performed work in South Carolina at several Church's Chicken locations during the month of August, 2017 and Defendant Steeple Dorchester Ltd was a franchisee operating d/b/a Church's Chicken. Defendant Hamilton Management Services Company was a management company providing third-party management to Defendant Steeple Dorchester Ltd. and its parent, State Acquisitions, LLC.

On January 22nd, 2018, the Plaintiffs initiated this action against ARCAFEUSA, the title

owner of the property where Steeple Dorchester operated a Church's Chicken franchise.[1] On March 12th, 2018, the Plaintiff amended its Complaint. In its amended complaint, the Plaintiff removed the record property owner and added Defendant Steeple Dorchester, Ltd. as a Defendant more than six months after the Plaintiff's work was performed. *See Amended Summons and Complaint.*

On February 5th, 2020, a bench trial was conducted by the Honorable Frank Addy in Charleston, South Carolina. The Defendants raised a motion *in limine* regarding the improper inclusion of certain testimony by the Plaintiffs concerning extrinsic evidence of prior acts of one of the anticipated witnesses for the Defendants, which was never ruled upon by the Court. After the Plaintiff called two witnesses, the Defendants moved for a directed verdict which was denied. At the close of arguments, Judge Addy indicated that he would provide a ruling in a few days.

On February 12th, 2020, the Court ruled in favor of the Plaintiff in the amount of $36,800.00 holding specifically, as follows: "The Court finds the Mechanic's Lien dated November 16, 2018 in the amount of $36,800.00 is valid and duly enforceable."

On February 24, 2020, the Defendants filed a Motion to Amend Judgment or in the Alternative For A New Trial, which was not considered by the Court.

On March 9, 2020, the Court issued a Final Order For Foreclosure of Mechanic's Lien which was amended on March 11, 2020, at the request of the Plaintiff by its Motion to Alter or Amend the Judgment, which listed the amount of the debt as well as included a sum of the attorneys' fees and costs sought by the Plaintiff.

There was no ruling in the Order as to the Plaintiff's causes of action for breach of contract against Steeple Dorchester Ltd. or a ruling regarding *quantum meruit* against any of the parties.

For the reasons which will be detailed within this memorandum, the Defendants hereby seek a new trial or, in the alternative, an amendment of the Court's Order. In addition, the Defendants seek clarification pursuant to Rule 52(a), which provides "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon." *See Rule 52(a) SCRCP.*

[1] ARCCAFE001,LLC was inexplicably dismissed as a party before appearing, despite the fact was, at all times relevant, the record title holder to the property.

ARGUMENT

I. There is No Contract Between Plaintiff and Defendants Hamilton Management Services Company or Defendant Steeple Dorchester, Ltd. and, therefore, any Judgment against Hamilton Management Services Company or Steeple Dorchester, Ltd. Should be Vacated, Amended, or Otherwise Withdrawn

The Defendants respectfully request that this Court alter and amend its judgment pursuant to SCRCP 59(a) as the Court failed to consider that there is no evidence supporting a valid contract between the Plaintiff and either Defendant. While the Defendants focused the thrust of their argument in this action on the lack of licensure on the part of the Plaintiff, this does not alleviate the Plaintiff's burden to establish the existence of a valid contract between the parties in the action in order to prevail upon its claim.

The Order states as a finding of fact, "I find that Hamilton Management Services Company authorized improvements to the property to be made by Marsh Waterproofing, Inc. and signed the acceptance of the Plaintiff's proposal (exhibit 6), thereby forming a valid and binding agreement supported by valid consideration". *Order, Paragraph 7.*

Accepting the scope of work as a contract which was entered into evidence by the Plaintiff, as Exhibit 4 to their *Return to Motion For Summary Judgment*, the document is clearly addressed to (emphasis added) **State Acquisitions, LLC** and addresses multiple crawlspaces across numerous properties operated by subsidiaries of State Acquisitions, LLC across South Carolina. *Exhibit A.*

The document is signed by Alexander Burns, in his capacity as a representative of State Acquisitions, LLC. There is no reference in the proposal to Hamilton Management Services Company authorizing the work, as is stated in the Order, or agreeing to act as guarantor or surety in any capacity. Moreover, there is no reference to Steeple Dorchester Ltd. in the scope of work as a party to the contract, or as guarantor or surety. The agreement for the crawlspace work was entered into between the Plaintiff and State Acquisitions, LLC, which is the parent company of Steeple Dorchester Ltd.

Hamilton testified as a 30(b)(6) witness that the services it provided were, as follows:

Hamilton Management Services Company was contracted by State Acquisitions, on behalf of the Steeple subsidiaries, to provide certain services related to the administrative function of the entities. For example, Hamilton Management Services Company provided all of the accounting services to State Acquisitions and

15 all of the Steeple subsidiaries. (SEE Deposition of Hamilton Management Services Company Page 27)

and

17 Hamilton Management Services Company contracted
18 all of the third-party vendors on behalf of the
19 various Steeple entities. It procured bids, it
20 arranged contracts, it provided all the payment
21 and billing services on behalf of the entity,
22 for fees.

(SEE Deposition of Hamilton Management Services Company Page 28)

There should have never been any confusion with regard to the role, or lack thereof, of Hamilton Management Services in the project. The same should be said about State Acquisitions. The Plaintiff understood that their client for contracting purposes to be State Acquisitions, LLC insofar as their invoices, which again were provided to the Court as evidence by the Plaintiff as Exhibit 8 to their *Return to Motion For Summary Judgment*, is addressed "Bill To" (emphasis added) **State Acquisitions, LLC**. The invoice lists work that was performed at a Steeple subsidiary by name and even lists the subsidiary's name and address as where the work is performed. *Exhibit B.*

Perplexingly, despite the existence of the other contract in evidence and absolutely no evidence of any other written contracts between any of the parties, the Court found as a conclusion of law, "Hamilton Management Services Company, Inc. entered into an agreement for the work, and Plaintiff should have judgment against it on the contract claim." *See Order, Paragraph 23.*

The Court cannot find as a conclusion of fact or law that a valid contract exists between either Steeple Dorchester Ltd. or Hamilton Management Services Company and the Plaintiff, when the Plaintiff itself tendered into evidence a contract covering the subject matter of this action with another party.[2] Notwithstanding that the party may be an affiliate of Steeple Dorchester Ltd., the basic elements of contract law require that an action for breach of contract be tendered against the party to the contract. The Defendants properly raised in their answer an affirmative defense of the Statute of Frauds. *See Answer, Paragraph 19.*

The South Carolina Statute of Frauds, as codified under SC Code Ann 32-3-10 states that, "No action shall be brought whereby: (2) To charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person;". Moreover, Section 32-3-20 states that "No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or

[2] The proposal was directed to State Acquisitions.

given concerning or relating to the character, conduct, credit, ability, trade or dealings of any person to the intent or purpose that such other person may obtain credit, money or goods thereon unless such representation or assurance be made in writing, signed by the party to be charged therewith or by some person thereunto by him legally authorized."

The Defendants have failed to name State Acquisitions, LLC as a party to this action and have provided absolutely no claims or evidence to suggest why or how Steeple Dorchester Ltd. or Hamilton Management Services Company should be liable for a contract explicitly entered into between the Plaintiff and State Acquisitions, LLC. This basic defect ought to be enough for the Court to amend its judgment regarding the breach of contract claim against both Steeple Dorchester Ltd. and Hamilton Management Services Company.

This fatal flaw renders it impossible for the Court to find for the Plaintiff under any theory save quantum meruit. However, the findings of fact and law do not otherwise support that Hamilton Management Services Company was unjustly enriched at the expense of the Plaintiff as it did not receive any benefits conferred by the Plaintiff as a result of the work performed. *See Affidavit of Alexander Burns* The same holds true for all defendants.

Given that there can be no surviving claims against Defendant Hamilton Management Services Company, Defendant Hamilton Management Services Company respectfully requests that the court find for Hamilton Management Services Company on the Plaintiffs actions for breach of contract, foreclosure of a mechanics lien, and quantum meruit.

Additionally, Defendants respectfully request pursuant to SCRCP Rule 52(a) a determination by the Court as to whether it considered the existence of a contract covering the scope of work between the Plaintiff and State Acquisitions, LLC, at the peril of Hamilton Management Services, Inc. and if not, the grounds by which it disregarded this evidence by substituting the contracting party for Hamilton Management Services.

II. The Court Cannot Award Attorneys' Fees or Costs in Any Claim Against Hamilton Management Services Company

Defendant Hamilton Management Services Company respectfully request that this Court alter and amend its judgment pursuant to SCRCP 59(a) as the Court failed to consider whether there was any statutory or contractual authority by which it could award the attorneys' fees and costs against Hamilton Management Services Company. Notwithstanding the other impediments to the Plaintiff prevailing on any cause of action as raised herein, even if the Plaintiff were to prevail on a claim against Defendant Hamilton Management Services Company for either breach of contract or *quantum meruit*, there is no applicable statute or provision of contract by which Defendant Hamilton Management Services Company

could be subject to an award of attorneys' fees and costs insofar as it has at no time held any interest in the subject property, whether as an owner or tenant. As such, Defendant Hamilton Management Services Company respectfully requests the Court alter the judgment to relieve Defendant Hamilton Management Services Company from the Plaintiff's attorneys' fees and costs.

Additionally, Defendant Hamilton Management Services Company respectfully requests pursuant to SCRCP Rule 52(a) a determination by the Court as to the contractual or statutory grounds under which it awarded the Plaintiff's attorneys' fees and costs as judgment against Defendant Hamilton Management Services Company.

III. The Order Explicitly Contradicts the Testimony of the Defendants' Witness

Defendants respectfully request that this Court alter and amend its judgment pursuant to SCRCP 59(a) as the trial court failed to consider the written or deposition testimony of Alexander Burns, a director of Defendant Hamilton Management Services Company and its Rule 30(b)(6) designee, which directly contradicts the Court's findings of fact in the Order as they relate to Mr. Burns' own reliance.

The Court found that, "Additionally, I find that Defendants did not rely on the existence or non-existence of a license." *See Order, Paragraph 16.* This is in stark contrast to Mr. Burns' affidavit which states, "...it was my belief that Marsh Waterproofing, Inc was adequately licensed, bonded and insured for the work being performed." *Exhibit C, Page 2.* See also the following deposition testimony from Mr. Burns which asserts reliance:

Q. Well, at what point did you decide you didn't
19 intend to pay because you didn't think he could
20 file a lien?
21 MR. OLSON: Objection.
22 A. No. At the point at which we became aware that
23 a contractor ***that had previously sent us***
24 documents in which they stated they were
25 licensed, bonded, and insured, we found out was
1 not licensed in South Carolina, and we were
2 unclear as to whether we were going to have to
3 have the work removed and redone by a licensed
4 contractor. *(Emphasis Added) (See Deposition of Alexander Burns Page 98-99)*[3]

Mr. Burns further testified that, "It would have been antithetical to the interests of Hamilton Management Services Company or the Steeple entities for me to engage the services of an unlicensed contractor and a potentially negligent act to knowingly do so. Moreover, I am unaware of any benefit that

[3] Mr. Burns deposition testimony was given as a 30(b)(6) designee for Hamilton Management Services.

any of the entities would have received by doing so…as of the authorization of this payment, I still did not know that Marsh Waterproofing was unlicensed in South Carolina. Had I have known that Marsh Waterproofing was unlicensed in late September of 2017, I would not have authorized the Forty Thousand Dollar Payment." *Exhibit C, Page 3.*

The Court's Order attempts to substantiate its decision by further finding fact which is contradicted by the Plaintiff. "Marsh made no representation to Defendants that it was licensed in the correspondence, the proposal or the discussions of the parties." *See Order, Paragraph 16.* While it would likely bear no significance as to what representations were made by Marsh due to the strict nature of the statute barring unlicensed contractors, the Defendants would urge the Court to consider the evidence should it be persuasive.

The Plaintiff's "reliance" argument has no precedent. Plaintiff attempts to graft the holding from Teseniar v. Prof'l Plastering & Stucco, Inc. to somehow create a "lack of reliance" exception to S.C. 40-11-370(c). This exception does not exist at common law. Furthermore, the exception certainly is not supported by Teseniar. In that case, the court found that a prime contractor was able to retain the services of an unlicensed subcontractor so long as it supervised the subcontractor and was licensed in the trades being performed by the subcontractor. The Court in *Teseniar* stated, verbatim, as follows:

> *"Moreover, we note the pertinent licensing statutes are intended to protect the public interest. S.C. Code Ann. § 40-1-10(A)-(B) (2011). The purpose of protecting the public interest by denying enforceability does not exist when dealing with claims between contractors. See Kennoy v. Graves, 300 S.W.2d 568 (Ky. App. 1957) ("The statute involved, and similar ones, are designed to protect the public from being imposed upon by persons not qualified to render a professional service. The reason for the rule denying enforceability does not exist when persons engaged in the same business or profession are dealing at arm['s] length with each other. In the case before us, appellant was in a position to know, and did know, the qualifications of appellee. No reliance was placed upon the existence of a license, as presumptively would be the case if appellee was dealing with the general public.").* Teseniar v. Prof'l Plastering & Stucco, Inc., 407 S.C. 83, 97, 754 S.E.2d 267, 274 (Ct. App. 2014)

It would be in error for this Court to adopt the Teseniar holdings as a justification for Marsh's lack of licensure. Teseniar holds that the requirement that a contractor be licensed is excused in situations where one contractor sues another contractor. The distinction drawn by that Court is sensibly reasoned upon the fact that the parties in Tseniar were both contractors and members of the contracting industry do not need the protections afforded to the non-contractor public as the situation before this court which is the identical situation envisioned by SC 40-11-370.

To find for the Plaintiff in the face of an explicit statute requiring licensure, the Court must have found as an evidentiary matter that the Defendants truly *were* "in a position to know, and did know, the qualifications of [Marsh]. No reliance was placed upon the existence of a license, as presumptively there would be in the case if [Marsh] was dealing with the general public." *Order, Paragraph 17.* If the only person in a position to know the Defendants' knowledge of Marsh's qualifications explicitly testified in writing that he was not aware that Marsh was unlicensed until long after the work was completed, the Court must either find this to be a defect to the Plaintiff's reliance upon Tesceniar or state why the Court chose to wholly disregard the written testimony of Mr. Burns, as appeared in the record.

And while an evidentiary finding would be without merit, as there is no testimony to indicate that the Defendants were aware of the Plaintiff's unlicensed status, to hold that a non-contracting entity like any of the Defendants is not owed the protection of 40-11-370 would be akin to drafting new legislation entirely.

Therefore, the Defendants respectfully request pursuant to SCRCP Rule 52(a) a determination by the Court as to whether it considered the deposition testimony or the affidavit of Alexander Burns of November 8, 2019, and if not, the grounds by which it disregarded this evidence which appeared in the record as well as the basis by which the Court determined that the Defendants are not afforded the status of the general public insofar as there is no evidence in the record to suggest that either entity has any construction industry experience, licensure, or familiarity and should be afforded a special status beyond that of the general public.

III. The LLR Found The Work Performed Required A General Contractor's License

In order for the Court to find that the Mechanic's Lien was valid and enforceable, the Court would have to find that either: (a) Marsh Waterproofing possessed a valid general contractor's license in the State of South Carolina; (b) a license was not required; or (c) that Marsh Waterproofing was working under the supervision of a licensed contractor. Both (a) and (c) are immediately ruled out via Tim Marsh's trial testimony, and as set forth below. Thus, the holding can only be based on the Court's implied holding that a license was not required.

It is clear that the Court did not place any weight on the South Carolina LLR Contractor's Licensing Board Opinion ("LLR Final Order") which found that the Plaintiff violated South Carolina law while acting as an unlicensed general contractor and performing work that serves as the basis for this action, which required a general contractor's license in South Carolina.

The Court found in its order (emphasis added) "General Construction is installation, replacement or repair of a building or structure. **S.C. Code §40-11-20(8)**. I find that the facts in

the record establish that Marsh Waterproofing, Inc. and the work it performed do not fall within these definitions". *See Order, Paragraph 11.*

This ruling was based upon the Court "analyzing this case by the nature of the work" and "analyzing this case by the scope of work" as opposed to deferring to conclusions of fact and law of the Contractor's Licensing Board, which provided a written final ruling relative to the Plaintiff's specific conduct in this matter. The LLR Final Order reached the exact opposite conclusion having considered the technical specs for the structural foam and the recommendations of the engineering report.

The LLR's Contractor's Licensing Board is the established agency charged with the regulation of licensing within the industry. As the LLR Final Order found that the scope of work fell within that which a license was required and further found that the Plaintiff violated South Carolina law by engaging in contracting work in South Carolina while not being properly licensed, a new trial or amendment of the Court's Order is paramount to the furtherance of justice.

The LLR Final Order held, in pertinent part, as follows (emphasis added): "The hearing officer determined that the scope of work for the use of this foam underneath the crawlspace of the project(s) was structural in nature and **required a general contractor's license** pursuant to **S.C. Code Ann §§ 40-11-20(8)** and 40-11-410(1) (1976, as amended)." *See Exhibit D, Page 5.*

It should not escape the Court's notice that LLR cited the exact same statute as violated by the Plaintiff that the Order states the Plaintiff did not violate. The Court need not extrapolate the LLR Final Order as it directly calls out the statute contemplated by the Court.

With regard to whether the Plaintiff violated South Carolina law, in in the eyes of the statutory board established to regulate such violations of law, (emphasis added) "The hearing officer finds that **[Marsh Waterproofing] violated S.C. Code Ann.§ 40-l l-110(A)(5)** in that [Marsh Waterproofing] engaged in contracting work in South Carolina **when not properly licensed or supervised by a licensee** licensed in the required license group and classification." *See Exhibit D, Page 5.*

In considering the LLR Final Order, the Court ought to have considered the great weight previous courts have afforded similar agency administrative orders. "The construction of a

statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Dunton v. S.C. Bd. of Exam'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987); see also Nucor Steel v. Pub. Serv. Comm'n of S.C., 310 S.C. 539, 543, 426 S.E.2d 319, 321(1992) ("Where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason.").

There is no cogent reason to ignore or overrule a decision made by the Contractors Licensing Board in this case. The Board Order represents legal and factual findings in an *ex parte* regulatory proceeding in which the Defendants were not able to testify or present evidence and the Plaintiff was afforded great latitude by which to stipulate to facts that were otherwise contradicted in the record in this case.

The determination of LLR that the Plaintiff was acting as a general contractor should also be considered in light of the Court's holding which distinguishes of the facts in the C-Sculptures case from the action at bar. The Order states, "I conclude that the decided cates cited by Defendants uniformly involve contractors who were either admittedly general contractors, or were adjudged to be general contractors based upon either the nature of the work or the scope of the work; therefore, the cases are inapplicable to these facts." *See Order, Paragraph 27.*

If the LLR concluded as a matter of law that the Plaintiff was acting as an unlicensed general contractor based upon their review of the scope of work performed by the Plaintiff, it would stand to reason that the Court would find that the Plaintiff was adjudged to be a general contractor based upon the scope of work by the government agency with the singular authority to make such determinations on behalf of the State of South Carolina; which is exactly analogous to the fact pattern of C-Sculptures.

The Defendants respectfully request that the Court adopt the findings of the LLR and find that the work performed by the Plaintiff required a general contracting license and find that this serves as a complete bar to the Plaintiff's recover and render judgment in favor of the Defendants on all causes of action, and thus declare the Defendants the prevailing party.

In the alternative, the Defendants request a new trial in order to seek further testimony before the Court from the LLR regarding the requirement for licensure to the extent the Court is unresolved regarding the sufficiency of their written order.

Additionally, Defendants respectfully request pursuant to SCRCP Rule 52(a) a determination by the Court as to whether it considered the LLR's conclusion of law as dispositive of whether the work performed by the Plaintiff requires a general contracting license in South Carolina, and if not, the grounds by which it disregarded this evidence, which appeared in the record.

IV. The Plaintiff Was Not Working Beneath or Supervised by a South Carolina Licensed Contractor

While the Order does state that the Court finds that Marsh "reasonably believed that a general contractor was working ahead of Marsh on the project" there is no evidence in the record to suggest that the Plaintiff even believed that it was **supervised by** a licensed South Carolina general contractor. As set forth above, the LLR hearing officer found that (emphasis added), "[Marsh Waterproofing was] **not properly licensed or supervised by a licensee licensed in the required license group and classification.**" *See Exhibit D, Page 6.*

Given that Plaintiff could not identify any general contractors involved in the project that it had agreed to work under, conceded in the deposition of Tim Marsh that it was not: (i) supervised by a general contractor; (ii) scheduled by a general contractor; (iii) contracted with a general contractor; (iv) and did seeking payment from a general contractor, the Court cannot have found that it was working under a licensed South Carolina general contractor that it did not know or see.

The Plaintiff cannot prevail on the reliance upon the conceptual existence and licensure of another contractor when the Plaintiff was not directly supervised by the licensed contractor. Given no justifiable reliance and the lack of direct licensure by the Plaintiff, the Defendants respectfully request the Court render judgment in favor of the Defendants on all causes of action and declare the Defendants to be the prevailing party.

Additionally, Defendants respectfully request pursuant to SCRCP Rule 52(a) a determination by the Court as to whether it found that the Plaintiff was working under a licensed South Carolina general contractor, and if so, which licensed South Carolina general contractor in particular and the facts the Court considered to establish their privity.

V. The Offer To Perform Contracting Work By The Plaintiff Was Illegal At Time of Formation

The Defendants respectfully request that this Court alter and amend its judgment pursuant to SCRCP 59(a) as the trial court failed to consider whether the Plaintiff could have even made the offer to perform the services under South Carolina law.

SC Code Ann 40-11-30 states (emphasis added) "No entity or individual may…or **offering** to perform contracting work for which the total cost of construction is greater than five thousand dollars for general contracting…"

For a claim of breach of contract or *quantum meruit* the Court would have to find that the offer to perform services could have been lawfully entered into by the Plaintiff **at the time of formation**. Similarly, for the Court to determine that a Mechanic's Lien was valid at the time of filing would require that the Court determine that the Plaintiff could have initially offered to perform the work.

The LLR makes clear in its final order that (emphasis added), "[Marsh Waterproofing] is cautioned that the scope of work on the project(s) **does require a general contracting license in South Carolina** if [Marsh Waterproofing] **is not supervised by** a licensee in the required license group or classification". *See Exhibit D, Page 6.*

Per LLR, given the exact same facts and circumstances, if the Plaintiff were to seek to do the exact same thing today, it could not even make the offer to do so without either obtaining a license or be **supervised by** a licensed South Carolina general contractor, or it would be violating Section 40-11-30.

As set forth above, there is absolutely no evidence in the record to suggest that the Plaintiff was **supervised by** a licensed South Carolina general contractor for purposes of availing itself of that contractors' license at the time of offer and thus could not have lawfully made an offer to perform the work.

"If the offer of a contract itself violates statutory law, then the contract cannot be seen as having been ratified as an enforceable contract." *See* Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 555, 606 S.E.2d 752, 758 (2004) (holding the general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution).

The Plaintiff was obviously not **supervised by** a licensed South Carolina general contractor at any time and the LLR Final Order establishes that the work does require either a valid general construction license or to be **supervised by** one; therefore insofar as no party has ever attempted to argue that the Plaintiff was a South Carolina licensed general contractor, the Court cannot have found that it was already supervised by a licensed South Carolina general contractor at the time at which it offered to perform $36,800 in contracting work on July 10, 2017.

To the extent that the Plaintiff's solicitation was illegal at the time of offer, by statute, it cannot maintain any of its causes of action and therefore the Defendants respectfully request judgment in favor of the Defendants on all causes of action and that they be deemed the prevailing party.

VI. The Testimony of Tim Marsh is Inconsistent

The Defendants respectfully request that this Court alter and amend its judgment pursuant to SCRCP 59(a) as the trial court failed to consider the inconsistencies in the statements made by Tim Marsh in his affidavit of April 30, 2018 versus his testimony at trial, as it appears in the Order. Paragraph 2 of the affidavit states "I asked him [Burns] whether I needed to be licensed in South Carolina and he told me he would check with someone and get back to me. He subsequently did respond to me and tell me there did not seem to be a need to be licensed to do our work in South Carolina." *See Exhibit E.*

As a Finding of Fact, the Order states in paragraph 16, "On the facts in the record I find the parties discussed licensing before the work started and Tim Marsh told Mr. Burns that he was not licensed in South Carolina and asked if Mr. Burns thought he needed to be. Mr. Burns promised to check on it. Thereafter the parties proceeded with the work. Mr. Burns could not rely upon the existence of a license for the qualifications of the contractor if he knew none existed." This is in concert with Mr. Marsh's trial testimony in which he alleged that no follow up conversation took place regarding the need for licensure.

Despite the inconsistencies in Mr. Marsh's statements regarding the alleged conversations regarding licensure, the Order makes no reference to the testimony of Mr. Burns, which was entered into the record in the form of an affidavit stating in relevant part "At no time did Mr. Marsh, or any other party from Marsh Waterproofing, discuss the issue of contractor licensing with me or anyone else at Hamilton or the Steeple entities." *See Exhibit C, Page 2.*

To the extent that the testimony of Tim Marsh is inconsistent and cannot be relied upon as definitively refuting the testimony of Mr. Burns, the Defendants respectfully request judgment in favor of the Defendants on all causes of action and that they be deemed the prevailing party or in the alternative a new trial which permits Mr. Burns to testify about his conversations with Mr. Marsh to the extent the Court requires further clarity on his testimony, Mr. Burns' testimony was effectively precluded by the improper acts of the Plaintiff, for reasons set forth below.

Additionally, Defendants respectfully request pursuant to SCRCP Rule 52(a) a determination by the Court as to whether it found the testimony of Mr. Marsh was sufficiently consistent to definitively establish the substance of the conversation between Mr. Marsh and Mr. Burns relative to licensure and whether the Court considered the written testimony of Mr. Burns regarding his recollection of the conversation, and if not, the grounds by which it disregarded this evidence which appeared in the record.

VII. The Order Materially Misstates Mr. Burns' Testimony

Insofar as the Order sets forth Mr. Burns' testimony relative to the Defendants in a way that is not supported by the *actual* testimony of Mr. Burns, as it appears in the record, the Defendants respectfully request that the Order be amended to reflect Mr. Burns' actual record testimony, as set forth in his

affidavit of November 8, 2019 regarding his discussions with Mr. Marsh, his belief as to the Plaintiff's status as a licensed contractor, his reliance upon their licensure as a condition for State Acquisitions, LLC to contract services, and by extension respectfully request judgment in favor of the Defendants on all causes of action and that they be deemed the prevailing party or in the alternative a new trial which permits Mr. Burns to testify about his conversations with Mr. Marsh to the extent the Court requires further clarity on his testimony, Mr. Burns' testimony was effectively precluded by the improper acts of the Plaintiff, for reasons set forth below.

Additionally, Defendants respectfully request pursuant to SCRCP Rule 52(a) a determination by the Court as to whether it whether the Court considered the written testimony of Mr. Burns as contained in his affidavit, and if not, the grounds by which it disregarded this evidence which appeared in the record.

IIX. Judgment on the Mechanic's Lien Is Not A Judiciable Matter

As testified by Mr. Burns, "Following Marsh's filing of the mechanic's liens, on or about December 18, 2017, the landlord terminated all of the leases to the Steeple entities pursuant to a breach of the forbearance agreement, which specifically prohibited the filing of any Mechanic's Liens on the properties." *See Exhibit C, Page 5.*

As noted above, Plaintiff dismissed the landlord from the action in 2017 with no indication of any consideration received, which would serve to otherwise off-set the Plaintiff's claim. As such, the Plaintiff cannot foreclose on the real estate itself but only on Defendant Steeple Dorchester Ltd. leasehold interest, which has not existed since 2017.

The Court instructs the "case be referred to the Master in Equity so that he may conduct the sale" despite the fact that there is nothing to be sold. *See Order, Paragraph 30.*

If there is no leasehold interest, by virtue of the termination of the lease, then there is nothing upon which the Plaintiff may foreclose the Mechanic's Lien upon. If there is no possibility of recovery under the foreclosure, then it cannot serve justice for the Court to have consider the merits of the Mechanic's Lien as a distinct cause of action from the breach of contract and the *quantum meruit* claims.

The Plaintiff was made aware of the termination of the leases since the inception of this lawsuit. The counterclaim was raised specifically upon the grounds that the harm caused by the Plaintiff was as a result of the termination of the leases.

The Plaintiff has effectively wasted the Defendants' and the Court's time and resources maintaining a cause of action that the Defendants have attempted to dispose of through a motion to dismiss and a motion for summary judgment as well as directed verdict. While the Defendants concede they have been focused upon the determination that the Plaintiff was acting as an unlicensed contractor,

which would resolve all of the causes of action together, it remains the burden of the Plaintiff to ensure that the causes of action they seek to maintain represent a judiciable controversy for which relief can be granted by the courts and are not brought for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation, as required by SCRCP Rule 11(b)(1).

The termination of the leases has appeared in the record and been well known to the Plaintiff for over two years and yet they have maintained this cause of action, which cannot advance their interest financially or otherwise, to the detriment of the Defendants.

The clear motivation for the Plaintiff to maintain the illusory cause of action related to the foreclosure of the Mechanic's Lien is the imposition of their attorneys' fees & costs, which would not otherwise be available to them. It cannot be an appropriate remedy to foreclose a lien which does not secure anything solely to recover expenses that cannot otherwise be recovered.

The Defendants respectfully request that the Court render judgment in favor of the Defendants on the foreclosure mechanic's lien, and to be deemed the prevailing party, or in the alternative impose a sanction in favor of the Defendants in the amount of their attorneys' fees and costs associated with defending the action for foreclosure of the Mechanic's Lien, pursuant to the Court's inherent authority under Rule 11(b)(3).

Additionally, Defendants respectfully request pursuant to SCRCP Rule 52(a) a determination by the Court as to whether there is even currently a lien on the property, its leasehold interest, and clarification as to what exactly is to be sold by the Master in Equity.

IX. The Court Was Prejudiced By Plaintiff's Improper Presentation of Extrinsic Information Regarding a Critical Witness For Defendants.

The Defendants have included a final exhibit, which is an affidavit dated February 24, 2020 prepared by Alexander Burns, Director of Hamilton Management Services Company. The full weight of Mr. Burns' testimony should be considered in light of improper inclusion of extrinsic information to attack the credibility of a witness without seeking the Court's permission as is required by Rule 608(b) of the South Carolina Rules of Evidence, and only then introducing it upon cross examination of a witness at trial.

Mr. Burns provides a detailed statement regarding the chilling effect the Plaintiff's procedural misconduct had regarding his willingness to testify and the Defendants were clearly prejudiced by his lack of live testimony at trial. *See Exhibit F.*

The complete lack of reference to Mr. Burns' prior written testimony in the Order makes clear that the Court either did not consider Mr. Burns' testimony or found it to be entirely discredited. Given that Mr. Burns was in a position to have direct knowledge of the facts and

circumstances regarding the Defendants' knowledge and justification, as well as the evidentiary support for their counterclaim, his testimony's exclusion cannot go unconsidered by the Court.

WHEREFORE, the Defendants seek consideration of this motion and exhibits and respectfully request the Court amend its judgment accordingly to find in favor of the Defendants, and deem them the prevailing party. Alternatively, this Court should grant a new trial absolute to the Defendants providing the Court with the opportunity to consider additional testimony, including that of Mr. Burns and LLR.

HARPER LITTLE PLLC

/s/ C. Clay Olson
C. Clay Olson, Esquire
SC Bar 17007
164 Market Street, Ste 139
Charleston, SC 29403
clay@harperlittlelaw.com

March 22, 2020

Appellants' Notice of Appeal Ex. No. 4

Certificate of Electronic Notification

Recipients

Albert Lacour - Notification transmitted on 05-11-2020 08:48:44 AM.

Christopher Olson - Notification transmitted on 05-11-2020 08:48:44 AM.

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2018CP1000262

Official File Stamp:	05-11-2020 08:48:35 AM
Court:	CIRCUIT COURT
	Common Pleas
	Charleston
Case Caption:	Marsh Waterproofing Inc VS ARC CAFEUSA001 LLC , defendant, et al
Document(s) Submitted:	Supplemental Order to Amend Final Order Order/Other
Filed by or on behalf of:	Frank R. Addy

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

Albert A. Lacour, III for Marsh Waterproofing Inc

Christopher Clay Olson for Hamilton Management Services Company Inc, Steeple Dorchester Ltd

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Hamilton Management Services Co Inc

Marsh Waterproofing