

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
ARM Quality Builders LLC d/b/a, )  
ARM Quality Builders, )  
 )  
Plaintiff(s), )  
 )  
v. )  
 )  
Joseph A. Golson and Lycia B. Golson )  
and Branch Banking and Trust Company, )  
 )  
Defendants )  
 )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
Case No.: 2017-CP-32-02204

**ORDER**

**RECEIVED**  
OCT 15 2020  
SC Court of Appeals

Joseph A. Golson and Lycia B. Golson, )  
 )  
Third-Party Plaintiffs )  
 )  
v. )  
 )  
Ahmad Mazloom, )  
 )  
Third-Party Defendant )  
 )  
\_\_\_\_\_ )

**BACKGROUND AND PROCDEURAL HISTORY**

This case was tried as a non-jury bench trial before this Court from December 18 - 20, 2019. Caitlin C. Heyward of the Thrasher Firm and E. Wade Mullins III of Bruner Powell Wall & Mullins appeared on behalf of Defendants Joseph A. Golson and Lycia B. Golson (collectively, "the Golsons"). James Randall Davis appeared on behalf of Plaintiff, ARM Quality Builders LLC ("ARM") and Third-Party Defendant, Ahmad Mazloom ("Mazloom").

ARM initiated this litigation by filing suit for breach of contract and for foreclosure of mechanic's lien that it had filed on the subject property as well as asserting claims for quasi-contract, quantum meruit and unjust enrichment. ARM sought \$55,085.82 that it claimed it was due for extra contractual work during the construction of the Golson's home. The Golsons argued

that the parties agreed the home would be built under a cost-plus arrangement with a guaranteed maximum price of \$395,000. In other words, ARM agreed to build the home for its total costs plus a 15% fee for a price to the Golsons not to exceed \$395,000. The Golsons maintained that ARM and Mazloom misrepresented the cost of the home to inflate the price and the Golsons have been damaged in that they had overpaid ARM based on its fraudulent representations. The Golsons also maintained that to the extent the cost of the home exceeded the guaranteed maximum price, they are not required to pay any additional money. The Golsons answered and asserted counterclaims based on these assertions. The Golsons amended their Answer and Counterclaim and asserted a Third-Party Action against Ahmad Mazloom, the principal of ARM Quality Builders, and the individual solely responsible for the fraudulent representations. The Golsons have asserted the following causes of action in its counterclaim and third-party complaint:

1. Breach of Contract (ARM)
2. Breach of Contract Accompanied by a Fraudulent Act (ARM)
3. Slander of Title (ARM)
4. Negligent Misrepresentation (ARM and Mazloom)
5. Constructive Fraud (ARM and Mazloom)
6. Fraud in the Inducement (ARM and Mazloom)
7. Violation of the SC Unfair Trade Practices Act (ARM and Mazloom)
8. Piercing the Corporate Veil/Alter Ego (ARM and Mazloom)

After filing their Amended Answer, Counterclaim and Third-Party Complaint, the Golsons moved to dissolve the mechanic's lien filed by ARM and dismiss the mechanic's lien foreclosure action. On November 27, 2018, Judge Clifton Newman entered an Order granting the motion to dissolve the mechanic's lien and for dismissal of the lien foreclosure action, finding that the time for enforcing the mechanic's lien had expired prior to ARM's filing of the lien and finding that ARM did not serve the mechanic's lien as required by S.C. Code Ann. § 29-5-90. On May 20, 2019, Judge Newman issued an Order denying ARM's Motion to Reconsider his decision on the mechanic's lien and further issuing an Award of Attorney's Fees in the amount of \$25,000. As

such, ARM's claim for foreclosure of its mechanic's lien was dismissed. However, the Golsons' claim for Slander of Title remains before this Court in addition to the remaining counterclaims and Plaintiff's claims for Breach of Contract, Quasi-Contract, Quantum Meruit and Unjust Enrichment.

The Court heard from eight witnesses over the course of a three-day bench trial. Plaintiff presented Ahmad Mazloom as its sole witness. Joseph Golson and Lycia Golson testified on behalf of Defendants along with four subcontractors who were hired by ARM to work on the Golson project. After the conclusion of witness testimony and summation by both counsel, this Court directed each party to submit proposed orders. The proposed orders were completed after the parties obtained the formal transcript of the bench trial and made their respective arguments with citations to the court record. Based on the testimony and voluminous documentary evidence presented at trial as well as arguments presented by counsel, I make the following findings of fact and conclusions of law. To the extent any findings of fact constitute conclusions of law, or vice-versa, they shall be so regarded.

#### **STANDARD OF REVIEW**

In a bench trial, the trial judge acts as the finder of fact. *Lollis v. Dutton*, 421 S.C. 467, 483, 807 S.E.2d 723, 731 (Ct. App. 2017). “[T]he judge, as the finder of fact, may believe all, some, or none of the testimony, even when [the testimony] is not contradicted.” *Id.* (internal citation omitted). A trial judge will be accorded great deference where matters of credibility are involved. *Id.* (internal citations omitted). “Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to [circuit] court findings where matters of credibility are involved.” *Forrester*, 282 S.C. at 516, 320 S.E.2d at 42. *Lollis v. Dutton*, 421 S.C. 467, 483, 807 S.E.2d 723, 731 (Ct. App. 2017). On appeal of an action at law

tried without a jury, we will not disturb the trial court's findings of fact unless no evidence reasonably supports the findings. *Jordan v. Judy*, 413 S.C. 341, 347–48, 776 S.E.2d 96, 100 (Ct. App. 2015).

#### **FINDINGS OF FACT**

1. In late 2015 and early 2016, the Golsons entered into negotiations with Mazloom of ARM Quality Builders, LLC to construct a custom new home (“the Project”). Tr. 431:24 – 432:24.
2. Mr. Golson testified that during those negotiations, the Golsons and Mr. Mazloom met on several occasions to discuss the Golsons’ plans and goals for the Project. He testified one of the concerns emphasized by the Golsons was a clear understanding of the costs associated with the work. Tr. 438:12 – 439:3; 444:19 – 445:7.
3. Mr. Golson testified Mr. Mazloom indicated that the maximum price would not exceed \$395,000.00. Tr. 438:22 – 439:20.
4. In February 2016, the Golsons and ARM entered into a written agreement whereby ARM agreed to construct a home on the Golsons’ property located at 207 Libby Ariail Lane in Lexington, South Carolina (the Project). **Def. Ex. 1.**
5. Mr. Golson testified that during the latter part of 2016, the Golsons became concerned as the costs associated to complete the work appeared to exceed the maximum costs quoted by Mazloom. He testified Mr. Mazloom repeatedly told him they had nothing to worry about when inquiries were made about the cost of the work. Tr. 456:18 – 458:16.
6. On February 11, 2017, Mr. Mazloom presented the Golsons with a final statement of what he determined was owed on the Contract balance. **Pl. Ex 34**; Tr. 156:12-15.

7. Mr. Mazloom represented to the Golsons that he spent \$388,998.66<sup>1</sup> in raw construction costs on the Project and that he was owed an additional \$55,084.53 on the Contract balance (after applying the \$395,000.00 he received in progress payments and crediting \$18,247.05 in material costs purchased by the Golsons out of pocket), which included a 15% fee on Plaintiff's construction cost and an additional 15% fee on the materials purchased by the Golsons. **Pl. Ex. 34**; Tr. 153:13 – 156:15.
8. The Golsons requested Mr. Mazloom provide a full accounting and supporting documentation for the costs incurred, which Mr. Mazloom produced on April 17, 2017. **Def. Ex. 18, 20, 21**.
9. The Golsons disagreed they owed any additional money to Plaintiff. Thereafter, Plaintiff filed a Mechanic's Lien against the Golsons' property on May 5, 2017 and initiated this action for breach of contract and foreclosure of the Mechanic's Lien on June 15, 2017.
10. At trial, the parties disputed how payment was structured pursuant to the terms of the Agreement.
11. The Golsons argued that the contract was structured as a cost plus a fixed fee of 15% with a guaranteed maximum price of \$395,000.00. Tr. 439:6-440:15; 534:24-535:15.
12. On the other hand, ARM adopted alternative positions at trial. At times ARM argued that the Agreement was for a fixed fee of \$395,000.00 based upon previously agreed upon specifications, and that the cost of the Project increased due to changes requested by the homeowners. Tr. 247:17-21.
13. On other occasions ARM claimed the Agreement was structured as a cost plus a fee with no guaranteed maximum price. Tr. 159-160; T4. 416:18-25. Mr. Mazloom opined that any costs

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<sup>1</sup> Mr. Mazloom testified that the total construction costs of \$388,998.66 depicted on **Pl. Ex. 34** represented the total of the itemized construction costs depicted on **Pl. Ex. 44**. However, the total of the itemized construction costs reflected in **Pl. Ex. 44** total \$387,864.64.

incurred over \$395,000 would automatically be interpreted as an “extra” under the terms of the contract, regardless of what the charges were for, and regardless of whether the charges were for items within the scope of the previously agreed upon specifications. Tr. 163:9-14. However, Mr. Mazloom could not explain why it was necessary to keep track of “extras” or reference extra costs in the contract if the parties intended there be no price ceiling. Tr. 159-160.

14. A demand letter from Plaintiff’s attorney characterized the contract as a cost plus with no ceiling. **Def. Ex. 19.**
15. The parties Agreement is comprised of a two-page document executed by the parties entitled Contract to Build and a two-page document entitled Contract for Services executed by the parties, both of which are dated February 29, 2016. **Def. Ex. 1.** The Contract for Services provides that the “Builder will construct said home at cost. Builder’s fee will be 15% of the cost to build said house.” The Contract to Build obligates the Builder to build the home in accordance with the house plans and the specifications attached to and incorporated into the Agreement. The Contract to Build also states that the Golsons would pay \$395,000.00 for the construction of the home. While the Court acknowledges that the specific payment structure of the Contract for Services and the Contract to Build may differ or conflict, or at a minimum be interpreted as ambiguous, the Court finds the only rational and reasonable interpretation of the documents as a whole, along with consideration of the entirety of the testimony, is that the Parties’ Agreement was structured as a cost plus a fee with a guaranteed maximum price of \$395,000.00. As referenced in the specifications attached to the Agreement, if the scope of work of the Project was modified or increased, the guaranteed maximum price could be

- increased by agreement of the parties. Likewise, if the scope of work was decreased the guaranteed maximum price could be decreased by agreement of the parties.<sup>2</sup>
16. The parties stipulated Defendants paid ARM a total of \$395,000.00 for ARM's work on the Project, which does not include or account for the additional \$18,247.05 the Golsons paid out of pocket for materials used and incorporated into the Project.
17. Plaintiff claimed the Golsons owe an additional \$55,085.82 in contract balance for extracontractual work requested by the owners. **Pl. Ex. 34.**
18. The Golsons claimed Plaintiff is not owed any additional money because the parties' Agreement does not entitle ARM to more than \$395,000.00 and because Mr. Mazloom, acting individually and on behalf of ARM, fraudulently over-billed them for ARM's work on the Project by presenting them with inflated or falsified invoices.
19. The Golsons claimed the actual costs incurred on the Project were less than \$395,000.00 and they are entitled to damages for breach of contract, fraud and breach of contract accompanied by a fraudulent act.
20. The parties stipulated that prior to litigation, on April 17, 2017, Plaintiff submitted an accounting and backup documentation to the Golsons evidencing Plaintiff's costs on the Project. A copy of the cost backup documentation was provided to the Court and marked as **Joint Exhibit 1.**<sup>3</sup>

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<sup>2</sup> Although neither party introduced the plans into evidence, the parties agreed that the house was to be built in accordance with a set of plans drafted by an engineer, Lloyd Higbe. Tr. 38: - 39:16; Tr. 431:24 - 432:24.

<sup>3</sup> The parties do not stipulate as to the legitimacy of the documents produced, only that the documents contained in Joint Exhibit 1 were produced by Plaintiff on April 17, 2017. The legitimacy and trustworthiness of those records is a disputed fact before the Court.

21. A full and complete copy of Plaintiff's bank statements checks and deposits for the period January 1, 2016 through November 30, 2017 was provided to the Court and admitted into evidence as **Joint Exhibit. 2.**
22. The parties stipulated Plaintiffs' April 2017 accounting included copies of twelve (12) signed checks to various subcontractors that were never drawn on the ARM company bank account. **Joint Ex. 3.**
23. After litigation commenced and while discovery was ongoing, on March 19, 2018, Plaintiff produced copies of "cash receipts" to Defendants for the first time. The cash receipts were intended to account for the twelve (12) checks from twelve subcontractors that were never drawn on the ARM bank account. A true and correct copy of the additional backup and "cash receipts" produced by ARM Quality Builders, LLC on March 19, 2018 was submitted to the Court as **Joint Exhibit. 4.**<sup>4</sup>
24. The twelve cash payments to subcontractors total \$57,812.58. Mr. Mazloom testified that he used cash from his personal safe, and it was not money that belonged to the company. He testified that ARM pays him back for the money he pays in cash, but only if the homeowner pays ARM. Tr. 239:18-241. There are no loan documents between Mr. Mazloom and ARM formalizing Mr. Mazloom's personal loans to the company in the record.
25. Mr. Mazloom testified he keeps records of cash payments to subcontractors by writing and signing a check for the amount paid in cash and putting it in his file "for the IRS record." Tr. 110:15-111:20.

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<sup>4</sup> The parties do not stipulate as to the legitimacy of the documents produced, only that the documents contained in Joint Exhibit 4 were produced by Plaintiff on March 19, 2018. The legitimacy and trustworthiness of those records is a disputed fact before the Court.

26. There is no notation or reference to the IRS on any of the checks that Mazloom claimed were to prove to the IRS that those contractors were paid in cash. Indeed, there is no way to differentiate the "IRS" "reminder checks" from the legitimate checks drawn on the ARM account without examining all of ARM's bank records to determine what checks were actually paid. **Joint Ex. 3.**

27. Mr. Mazloom provided no credible explanation as to why it was necessary to sign the checks to prove to the IRS that subcontractors were paid in cash. Tr. 189.

**A. Plaintiff's Claim for Extracontractual Work**

28. Plaintiff's Exhibit 33 is a document with handwriting itemizing what Plaintiff claimed was "extra" work. Tr. 45-46; 51-65. The handwriting added by Mr. Mazloom's daughter after Plaintiff initiated this litigation does not evidence any agreement or change order approved by the Golsons. Tr. 174; Pl. Ex. 33.

29. Mr. Mazloom testified there were no written change orders on the Project. Tr. 175:6-17; Tr. 418:5-20.

30. There are no other documents in the record demonstrating the handwritten items identified on Plaintiff's Exhibit 33 were considered "extras" by either party prior to performance of that work, nor is there any evidence demonstrating that Plaintiff incurred additional costs in performing such work or that the Golsons agreed by word or conduct to pay for any "extras."

31. For the items that Plaintiff claimed were upgrades or substitutions, Plaintiff provided no evidence quantifying the cost differential between the specified items and the substituted or upgrade items. Tr. 163:15-167:5.

32. Mr. Mazloom testified he never told the Golsons the dollar amount any of the extras were going to cost. Tr. 168:1-3.

33. Mr. Mazloom testified that at some unspecified point during the project he told Mr. Golson costs were going to exceed \$395,000, but he did not know by how much. Mr. Mazloom testified the Golsons never cared to know how much over budget the project would be. Tr. 170-171.
34. The Court finds Plaintiff failed to meet its burden to present evidence that it incurred costs exceeding \$395,000.00 that related to extra work outside the scope of the parties' Agreement.

**B. Breach of Contract**

35. Whether the Court accepts Plaintiff's argument that its claim for breach of contract damages of \$55,085.82 is one for extracontractual work or not is irrelevant to the Court's conclusion that the Golsons did not breach the parties' Agreement. The Court has analyzed all of the alleged costs submitted by Plaintiff, making no distinction or determination as to whether it is "extra-contractual costs" or not, and determined that Plaintiff has not satisfied its burden of proving the costs it incurred, which were properly allocated to the Project, exceeded the total amount paid by the Golsons to the Plaintiff. Simply put and as set forth in detail below, the Court finds that Plaintiff failed to meet its burden that it incurred any costs on the Project exceeding \$395,000.00.

**Richard Crolley/A&D Fabrication**

36. Plaintiff claimed it incurred \$13,000.00 in costs on the Project for work provided by Rick Crolley and A&D Fabrication ("A&D"). A&D fabricated the handrails for the Project. **Pl. Ex. 44.**
37. Plaintiff claimed the charges incurred for the handrails are reflected on invoice no. 48852. **Def. Ex. 6A.** Plaintiff claimed it made seven payments to Mr. Crolley and A&D Fabrication. **Def. Ex. 6A, ARM 000066, 000067.**

38. Plaintiff claimed the cash payment is evidenced by a “cash receipt” for \$3,600 and a “IRS” reminder check (check no. 850) for the same amount. **Def. Ex. 6D; Def. Ex. 6B; Tr. 226:14-227:25.**<sup>5</sup>
39. Plaintiff included copies of invoice no. 48852 in the accounting produced to Defendants in April 2017, along with copies of check nos. 808, 850, 826, 767, 781, 784, and 793. **Joint Ex. 1; Def. Ex. 6A.** Plaintiff did not produce the “cash receipt” to Plaintiffs until March 2018. **Joint Ex. 3; Def. Ex. 6D.**
40. Mr. Mazloom denied asking Mr. Crolley to alter or create false invoices. Tr. 224-225.
41. Contrary to Mazloom’s testimony, Mr. Crolley testified Mr. Mazloom never paid him in cash. Tr. 266: 1-8. Mr. Crolley testified Mr. Mazloom always paid him with checks on every project. Tr. 267-268.
42. Mr. Crolley testified he did not retain copies of the invoices for the work he did, but he did work on other projects for Plaintiff in 2016. Tr. 269:19 – 270:20.
43. Mr. Crolley testified he sent Mr. Mazloom an invoice as soon as his work was complete. He testified all of his work on the Project was reflected on two invoices, one for the side and back of the house and one for the work on the front of the house. Tr. 269.
44. Mr. Crolley recalled providing a subpoena response in response to discovery with a blank copy of his invoice tickets. He testified that he did not write the \$13,000.00 figure on the copy that Mazloom submitted to the Golsons purporting to be his invoice, and that it did not belong to him because it was written on the wrong kind of invoice paper. Tr. 273-275; **Def. Ex. 6B.**

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<sup>5</sup> Plaintiff stipulated that Check No. 850 for \$3,600.00, which was also included in the April 2017 accounting, was never drawn on the ARM bank account. **Joint Ex. 1, Joint Ex. 3.**

45. Mr. Crolley testified Mr. Mazloom called him several times and showed up at his shop approximately three weeks before Mr. Crolley was expected to be deposed in this matter. Mr. Crolley testified that Mr. Mazloom contacted him on those occasions to demand a “cash receipt” for the Golson Project. Tr. 277:9 – 279:14.
46. Mr. Crolley candidly admitted that he wrote a false “cash receipt” at Mr. Mazloom’s request, but admitted he was never paid the \$3,600 for the work described on that invoice. Mr. Crolley testified the document was a “no good” “dead ticket,” and Mr. Mazloom came up with the \$3,600.00 figure and the date to include on the invoice. Tr. 277-278; 281:19-282:18; **Def. Ex. 6D**. Tr. 288-290.
47. Mr. Crolley testified Mr. Mazloom also contacted him in advance of his testimony at trial. Mr. Crolley testified he had no desire or intent to lie for anyone, indicating he was motivated to testify truthfully to the Court. Tr. 279:20 - 280:12.
48. The Court finds Plaintiff failed to meet its burden establishing it incurred \$13,000.00 in costs for A&D’s work on the Project.
49. The Court observed Mr. Crolley’s demeanor and finds his testimony to be credible.
50. The Court finds Plaintiff and Mr. Mazloom fraudulently overstated its costs by \$3,600.00.
51. The Court finds Plaintiff incurred \$9,400.00 in actual costs attributable to A&D’s work on the Project.

**Bubba Morrell/B&R Electric**

52. Bubba Morrell testified on behalf of B&R Electric (“B&R”), which served as the electrical contractor on the Project.
53. Plaintiff claimed it incurred \$23,098.51 in costs on the Project for work provided by B&R Electric. **Pl. Ex. 44**; Plaintiff claimed that the charges incurred for the electrical work are

- reflected in two invoices received and that he made three payments to Mr. Morrell and B&R – two by check and one payment in cash. **Pl. Ex. 20**; Tr. 125:21 – 126:18.
54. Plaintiff claimed the cash payment is evidenced by a “cash receipt” for \$4,100 and a “TRS” reminder check (check no. 846) for the same amount. **Pl. Ex. 20**; Tr.126:7-18.
55. Mr. Morrell testified he created an invoice at Mr. Mazloom’s request that falsely stated his cost of work on the Golson Project amounted to \$23,098.51. Tr. 269; **Def. Ex. 15A**, ARM 00068. However, Mr. Morrell testified the actual project costs were inflated by approximately \$5,000.00. Mr. Morrell testified B&R charged Plaintiff only \$18,000.00 for the Golson job, which is all B&R was paid. Tr. 296; **Def. Ex. 25**.
56. Mr. Morrell expressed regret for generating the false invoice and conveyed his desire to make it right by testifying truthfully before the Court. Mr. Morrell provided the original carbon copy invoice that reflected his true bill for the Golsons’ Project to the Court, and he explained how he falsely adjusted the square footage price to add \$5,000.00 to the final bill at Mr. Mazloom’s request. Tr. 303:5-305:12; Tr. 332:9-333:19; **Def. Ex. 25**.
57. Plaintiff stipulated it included the inflated \$23,098.51 invoice in the accounting provided to the Golsons on April 17, 2017 along with three checks to Bubba Morrell: check No. 812 for \$18,000.00, check no. 798 for \$900.00 and check no. 846 for \$4,100.00 as alleged support for costs incurred on the Project. **Joint Ex. 1**; **Joint Ex. 3**.
58. Mr. Morrell explained check no. 812 for \$18,000.00 dated December 30, 2016 was the only check he received from Mr. Mazloom and represented payment in full for the Golsons’ Project. **Def. Ex. 15A**, ARM 000069; Tr. 296-297, 301:12-305:12.
59. Mr. Morrell testified that check no. 798 for \$900.00 dated December 5, 2016, which Plaintiff stipulated was included in the accounting it provided to the Golsons in April 2017, relates to a

project he completed for Plaintiff on Old Cherokee Road. Tr. 310:17-312:25. Mr. Morrell presented an invoice for that work to the Court, which was admitted into evidence. **Def. Ex. 26.**

60. Mr. Morrell's testimony directly contradicts Mr. Mazloom's assertion that Plaintiff did not have any other jobs in progress while the Golsons' home was being built, and it suggests Plaintiff falsely charged the Golsons for work relating to another job.
61. Finally, although Plaintiff contends the check No. 846 for \$4,100.00 was written and signed to document a cash payment to Mr. Morrell for tax purposes, Mr. Morrell testified he was never paid in cash by Mr. Mazloom for work performed on the Golsons' Project. Tr. 269; Tr. 315:10-25; Tr. 321:18-25.
62. Mr. Morrell testified Mr. Mazloom approached him on several occasions and asked him to generate a "cash receipt" for \$4,100.00 to coincide with amount stated on check No. 846. Mr. Morrell testified that he ultimately relented but that he did not actually perform any of the work described in that document. Tr. 316-317; **Def. Ex. 15C.**
63. The Court finds Plaintiff failed to meet its burden establishing it incurred \$23,098.51 in costs for B&R Electric's work on the Project.
64. The Court observed Mr. Morrell's demeanor and finds his testimony to be credible.
65. The Court finds Plaintiff and Mr. Mazloom fraudulently overstated its costs by \$5,098.51.
66. The Court finds Plaintiff incurred \$18,000.00 in actual costs attributable to B&R Electric's work on the Project.

**Joshua Hall/ Double R Cabinetry**

67. Joshua Hall testified on behalf of Double R. Cabinetry, which provided the interior finish carpentry and cabinetry on the Golson Project. Tr. 337.

68. Plaintiff claimed the charges incurred for the carpentry and cabinetry totaled \$13,999.00 and are reflected on invoice nos. 1084 and 1080. **Pl. Ex. 44; Def. Ex. 7A.** Plaintiff claimed it made four payments to Mr. Hall, three times by check and once in cash. **Def. Ex. 7A, ARM 000047.**
69. Plaintiff claimed the cash payment is supported by a "cash receipt" for \$4,299.00 (invoice no. 1220) and a "IRS" reminder check (check no. 848) for the same amount. **Def. Ex. 7D; Def. Ex. 7A, ARM 000047.**
70. Plaintiff included copies of invoice nos. 1084 and 1080 in the accounting produced to Defendants in April 2017, along with copies of check nos. 800, 807, 824 and 848. **Joint Ex. 1; Def. Ex. 7A.** Plaintiff did not produce the "cash receipt" to Plaintiffs until March 2018. **Joint Ex. 3; Def. Ex. 7D.**
71. However, Mr. Hall testified invoice nos. 1080 and 1084 are inflated invoices that Mr. Mazloom asked him to create in January 2017. **Tr. 345; Tr. 353:11-354:23.**
72. Mr. Hall testified he previously provided the Golsons copies of the true invoices, invoice nos. 1079 and 1052, which reflect his actual charges on the Project. **Tr. 343:18-344:13; Def. Ex. 7B.**
73. The charges for the work described on invoice nos. 1079 and 1052 total \$5,121 and \$6,629, respectively. The combined total of the invoices that Mr. Hall testified he actually billed Plaintiff is \$11,750.<sup>6</sup> Those invoices refer to two draw payments Mr. Hall received from ARM, one for \$3,500.00 on December 22, 2016 and another for \$2,500.00 on September 30, 2016. **Def. Ex. 7B; Tr. 364:8-16.**
74. Mr. Hall testified he was paid in full for his work. **Tr. 350:25 – 351:2.**

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<sup>6</sup> Mr. Hall attempted to add the invoices amounts together during his testimony on cross examination. However, upon review of the documents it appears Mr. Hall's calculation was in error. **Tr. 365.** The actual combined total is \$11,750.00.

75. Mr. Hall testified check no. 800 for \$4,200.00 was payment for work he performed on Mr. Mazloom's brother's house and not the Golsons' as Mr. Mazloom claimed. Mr. Hall testified check no. 807 for \$3,500.00 and check no. 824 for \$2,000.00 most probably related to the Golson Project. However, given the passage of time since he completed the project, Mr. Hall could not recall with absolute certainty which checks were for the Golsons' work. Tr. 348: 24-351:2.
76. Mr. Hall testified he never received a cash payment for the Golson Project. Tr. 341:25-342:13. Mr. Hall testified Mr. Mazloom contacted him on several occasions shortly before his deposition in this case and requesting he create a "cash receipt" for \$4,299.00. Mr. Hall testified the "cash receipt" (invoice no. 1220) is not a legitimate document and does not reflect any actual charges for work performed on the Project. Mr. Hall appeared to genuinely regret creating the document for Mr. Mazloom. Tr. 342:19-343:17; 355:5-357:11.
77. Mr. Hall testified he worked on other projects for Plaintiff in 2016 and 2017, including one project for Mr. Mazloom's brother and another for Mr. Mazloom's son. Mr. Hall testified Plaintiff paid him with checks on those projects. Tr. 347-348.
78. Mr. Hall's testimony is bolstered by the text messages he received from Mr. Mazloom. **Def. Ex. 7E.** It is clear from those messages that Mr. Mazloom was in possession of a copy of invoice no. 1079, which reflected the legitimate charges for Double R's Cabinetry's work, as early as January of 2017. Nevertheless, Plaintiff failed to produce invoice no. 1079 to the Golsons in the April 2017 accounting and cost backup.
79. The text messages also reveal that Mr. Mazloom communicated with Mr. Hall about work that was ongoing at his brother's house on Pompeii Place in November and December of 2016. **Def. Ex. 7E.**

80. Finally, the text messages include a written request from Mr. Mazloom for a cash receipt for \$4,299.00. **Def. Ex. 7E.**
81. The Court observed Mr. Hall's demeanor and finds his testimony to be credible. While the evidence reflects the backup Plaintiff submitted to demonstrate its costs for Double R. Cabinetry's work was supported by a fraudulent check and a "cash receipt" for \$4,299.00, the Court accepts Mr. Hall's testimony that invoice nos. 1079 and 1052 reflected the actual work performed and ARM paid Mr. Hall \$11,750.00 for that work.
82. The Court finds the cost incurred for Double R. Cabinetry's work was \$11,750.00.
83. The Court finds Plaintiff and Mr. Mazloom submitted a falsely inflated invoice to Defendants and overstated the amount owed for work provided by Double R. Cabinetry by \$2,249.00.

**Josh Joyner/White Knoll Heating and Air**

84. Plaintiff claimed it paid White Knoll Heating and Air ("White Knoll") \$25,000 to install the HVAC system in the Golsons' home. **Pl. Ex. 44; Tr. 124:12 – 125:13.**
85. Plaintiff claimed it paid White Knoll in four installments, which included one \$5,500.00 cash payment. Plaintiff testified the remaining three installments were paid by check. **Def. Ex. 8A, ARM 000021; Tr. 125:2-13.**
86. Plaintiff claimed the cash payment is supported by a "cash receipt" for \$5,500.00 and an "TRS" reminder check (check no. 847) for the same amount. **Def. Ex. 8D; Def. Ex. 8A, ARM 000021.**
87. Plaintiff provided a copy of a \$25,000.00 White Knoll invoice (invoice no. 29460) to Defendants in April 2017, along with copies of check nos. 768, 799, 811, and 847. **Joint Ex. 1; Def. Ex. 8A.** Plaintiff did not produce the "cash receipt" to Defendants until March 2018. **Joint Ex. 3; Def. Ex. 8D.**
88. The \$25,000 invoice Mazloom asserted as backup for the HVAC costs is dated January 24, 2017, with payment due on or before February 23, 2017. **Def. Ex. 8A.** However, Plaintiff

claimed the first payment to White Knoll for the Project was by check in August 2016 for \$10,000, five months before the date of the invoice. **Def. Ex. 8A**, ARM 000021.

89. Mr. Joyner testified on behalf of White Knoll Heating & Air. Mr. Joyner testified he charged Plaintiff \$19,500.00 for the HVAC installed at the Project. Tr. 372: 3-16.
90. Mr. Joyner testified he sent Mr. Mazloom an invoice reflecting the \$19,500.00 charge, but he does not know what Mr. Mazloom did with it. Tr. 382:11-17.
91. Mr. Joyner testified Mr. Mazloom asked him to falsify invoice no. 29460 after the job was completed. Tr. 373:15-374:14. Mr. Joyner testified the \$25,000.00 invoice (invoice no. 29460) is falsely overstated by \$5,500.00. Tr. 376: 14-20.
92. Mr. Joyner testified that he was never paid in cash for the Golson Project. Tr. 375:20-374:17.
93. Mr. Joyner testified he did not create the "cash receipt" Mr. Mazloom claimed he received from White Knoll. Mr. Joyner testified he saw the cash receipt for the first time at the trial in this matter. Tr. 376: 21-377: 9; Tr. 378: 21-379:11; **Def. Ex. 8D**.
94. The Court finds Mr. Joyner's testimony to be credible. The Court finds ARM paid Mr. Joyner \$19,500.00 for his work on the Project.
95. The Court finds Plaintiff submitted a fraudulently inflated invoice to Defendants.
96. The Court finds Plaintiff overstated the amount it was owed for the HVAC system supplied by White Knoll Heating & Air by \$5,500.00.

**Winnsupply**

97. Plaintiff claimed it incurred \$4,329.40 in charges related to materials purchased from Winnsupply for the Golson Project. **Pl. Ex. 44**; Tr. 82:11-25.
98. Plaintiff testified the Winnsupply charges are supported by the invoices contained in Plaintiff's Exhibit 8, which were admitted into evidence. Tr. 82:11-25; **Pl. Ex. 8**.

99. Plaintiff did not call any witnesses from Winnsupply to testify regarding the invoices contained in **Pl. Ex. 8**.
100. Among the Winnsupply backup is an invoice for \$1,069.15 for rough plumbing materials (invoice no. 33701200). The shipment date on the invoice is February 16, 2017. The shipment address identified as "Chapin," and a physical shipment address is not provided. The invoice does not include any reference to the Golson Project. Tr. 391: 22- 395:11; **Pl. Ex. 8**.
101. Mr. Mazloom acknowledged the rough plumbing on the Golson Project was completed before the February 16, 2017 shipment date listed on invoice no. 33701200.<sup>7</sup>
102. Mr. Mazloom attempted to explain how invoice no. 33701200, which is dated five days after Plaintiff submitted its final to the Golsons, could reasonably be included the Project costs. Mr. Mazloom claimed the original invoice had the wrong shipment address and that someone at Winnsupply corrected the address and provided a new invoice to him in February 2017, which altered the shipment date on the document. He testified that the materials were actually shipped earlier than what is indicted on invoice no. 33701200. Tr. 395:22-398:21.
103. The Court finds Mr. Mazloom's testimony is not credible. A copy of the original invoice Plaintiff claimed reflects the actual shipment date is not in the record. Plaintiff did not call any witnesses from Winnsupply to support Mr. Mazloom's testimony.
104. Furthermore, Mr. Mazloom's explanation regarding the need to correct the shipment address on invoice no. 33701200 is untenable. The invoice indicates the items were sold to ARM and identifies Mr. Mazloom's home address as the purchaser's address. The delivery

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<sup>7</sup> In a prior Order dissolving Plaintiff's mechanic's lien dated November 27, 2018, the Court determined that the Project was complete, and no labor or materials were provided or incorporated into the Project after January 2017.

address is referred to as "Chapin job," and no physical address is reflected in the "ship to" column.

105. With the exception of invoice no. 33355900 for \$639.79 and invoice no. 32546500 for \$757.75, there is no shipment address or other identifying information on any of the other Winnsupply invoices included in Plaintiff's claim relating them to the Project. **Pl. Ex. 8.**
106. The Project address is 207 Libby Ariail Lane. "Libby Ariail" is listed as the job name on invoice nos. 33355900 and 32546500. The Court finds Plaintiff presented sufficient evidence that invoice no. 33355900 for \$639.79 and invoice no. 32546500 for \$757.75 reasonably relate to materials purchased for the Project.
107. With the exception of invoice nos. 33355900 and 32546500, the Court finds the Winnsupply invoices provided by Plaintiff afford no reliable or articulable basis to support a finding that those materials relate to the Project.
108. The Court finds Plaintiff established it incurred a maximum of \$1,397.54 in actual project costs with respect to materials purchased from Winnsupply.
109. The Court finds Plaintiff failed to meet its burden establishing the materials reflected on the remaining invoices provided in Plaintiff's Exhibit 8 are attributable to the Project.
110. Specifically, the Court finds invoice no. 33701200 for \$1,069.15 is not attributable Project. The Court further finds invoice nos. 33441400, 33460500, 33373800, 33363000, 33324800, and 33272700 are not attributable the Project.

**Vacuum Center/Tony Bearden**

111. Plaintiff claimed it incurred \$2,800.00 in costs for work provided by Vacuum Center, Inc. ("Vacuum Center") on the Project, which is reflected on invoice no. 92192. **Pl. Ex. 21, Pl. Ex. 44; Def. Ex. 14A.**

112. Plaintiff claimed it made three payments to Vacuum Center: two checks, each for \$1200, and one \$400 cash payment. **Def. Ex. 14A**, ARM 000058.
113. Plaintiff claimed the cash payment is supported by a “cash receipt” for \$400.00 (invoice no. 93244) and an “IRS” reminder check (check no. 845) for the same amount. **Def. Ex. 14D; Def. Ex. 14A**, ARM 000058.<sup>8</sup>
114. Plaintiff included copies of invoice no. 92192 in the accounting produced to Defendants in April 2017, along with copies of check nos. 764, 803 and 845. **Joint Ex. 1; Def. Ex. 14A**. Plaintiff did not produce the “cash receipt” to Plaintiffs until March 2018. **Joint Ex. 3; Def. Ex. 14D**.
115. Mr. Mazloom was questioned about a subpoena response provided by Vacuum Center reflecting a total charge of \$2,400.00. The description of the work is identical to the \$2,800 invoice submitted by Mr. Mazloom, but the total job cost is \$400.00 less than what is claimed on Plaintiff’s invoice. Mr. Mazloom attempted to explain the discrepancy by claiming that he purchased a nail gun for Mr. Bearden to use on the Project. However, he could not credibly explain how a nail gun would make the price of the invoice increase \$400.00. Tr. 403:9-406:1.
116. The description of the work on the \$400 “cash receipt” produced by Plaintiff in 2018 is for additional wiring and pipe, which are charges in addition to those provided on the original invoice. The receipt also indicates payment in cash. There is no reference to a \$400 credit for a nail gun purchase on the document itself. **Def. Ex. 14D**.
117. The Court finds Mr. Mazloom’s testimony is not credible. Plaintiff did not call Mr. Bearden or any other witness to testify on behalf of Vacuum Center to support his testimony.

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<sup>8</sup> Plaintiff stipulated that Check No. 845 for \$400.00 was never drawn on the ARM bank account. **Joint Ex. 1, Joint Ex. 3**.

118. The Court finds Plaintiff failed to meet its burden establishing it incurred \$2,800 in costs for Vacuum Center's work on the Project.

119. The Court finds Plaintiff and Mr. Mazloom submitted a falsely inflated invoice to Defendants, on which Plaintiff overstated the amount it was owed for work provided by Vacuum Center by \$400.00.

120. The Court finds Plaintiff paid Vacuum Center \$2,400.00 for its work on the Project.

Harvey Wise

121. Plaintiff claimed the tile subcontractor, Harvey Wise, submitted two invoices totaling \$12,586.50 for his work on the Project. **Pl. Ex. 44; PL. Ex. 9.**

122. Plaintiff claimed it paid Mr. Wise \$12,586.50 in three separate payments, all of which were delivered to Mr. Wise at the same time on March 20, 2017. Mr. Mazloom testified he wrote two \$6,000.00 checks to Mr. Wise and paid the remaining \$586.50 balance in cash. Tr. 104:14-105:23.

123. The Court admitted Plaintiff's Exhibit 9 into evidence at Plaintiff's request. The first page of Plaintiff's Exhibit 9 is ARM check no. 853 for \$12,586.50. Notably, Plaintiff stipulated check no. 853 was never drawn on the ARM account but was included accounting ARM provided the Golsons in April 2017. **Pl. Ex. 9, Joint Ex. 3, 1.000142-143.**

124. Plaintiff did not explain what the \$12,586.50 check that was not drawn on the ARM account represented with respect to the Project or why it was included in its April 2017 Project accounting.

125. The second page of Plaintiff's Exhibit 9 is an invoice for \$586.50 (invoice no. 3202017) for "kitchen backsplash," which Plaintiff stipulated was not produced until March 2018. **Joint Ex. 4.**

126. The third page of Plaintiff's Exhibit 9 is an invoice for \$12,106.50 (invoice no. 1222017) that Plaintiff originally provided to the Golsons as its cost backup. **Joint Ex. 3, 1.000142-143.** There is unidentified handwriting on that document adding another \$480.00 underneath the typed balance on the invoice, increasing the final balance to \$12,586.50.
127. Plaintiff did not explain what the additional \$480.00 charge represented on invoice no. 320217 or why ARM claimed it is owed only \$12,586.50 for Mr. Wise's work when the combined total of invoice nos. 320217 and 1222017 is \$13,171.00.
128. The last page of Plaintiff's Exhibit 9 includes copies of two \$6,000.00 checks that were written to Mr. Wise. Plaintiff did not explain why it did not include copies of the two \$6,000 checks in the accounting backup submitted to the Golsons in April 2017, nor did Plaintiff explain why it was necessary to pay Mr. Wise with two identical checks and with cash on the same day.
129. Plaintiff did not offer Mr. Wise or any other witnesses to testify regarding the tile work performed on the Project or payments Mr. Wise received from ARM.
130. The Court finds Plaintiff failed to meet its burden establishing it incurred \$12,585.50 in costs for Mr. Wise's work on the Project.
131. Given the unexplained discrepancies in Plaintiff's own documents, Mr. Mazloom's testimony and the documents admitted did not appear credible. The trustworthiness of the documents and the credibility of Mr. Mazloom's testimony was further undermined by four of Plaintiff's own subcontractors, who testified that Mr. Mazloom directed them to falsify invoices and denied receiving any payments in cash. The subcontractors' testimony in this case establishes Plaintiff and Mr. Mazloom engaged in a pattern of dishonesty and deception by seeking payment for false or inflated invoices from Defendants. Therefore, the Court finds Mr.

Mazloom's testimony alone is untrustworthy and insufficient to establish the costs related to Mr. Wise's work on the Project.

132. While it is likely Plaintiff did incur some costs for work provided by Mr. Wise on the Project, Plaintiff failed to meet its burden establishing what those costs were. Without testimony from Mr. Wise or any other witnesses, there is no reliable evidence to determine the specific amount costs attributable to the Project for Mr. Wise's work. The Court will not conjecture in favor of Plaintiff where Plaintiff failed to meet its burden of proof.

**Eagle Excavating/Jim Pasko**

133. Plaintiff claimed it incurred \$5,150.00 in costs for grading work provided by Eagle Excavating and Jim Pasko on the Project. **Pl. Ex. 44; Pl. Ex. 10.**

134. Plaintiff claimed the Eagle Excavating charges are supported by the following invoices: (1) invoice no. 402394 dated January 19, 2017 for \$600.00, (2) invoice no. 402377 dated January 10, 2017 for \$1,500.00, (3) unnumbered invoice dated October 6, 2016 for \$1,650.00, and (4) unnumbered invoice dated July 19, 2016 for \$400.00. **Tr. 107:15-109:8; Pl. Ex. 10.**

135. Mr. Mazloom testified he paid Mr. Pasko \$600 in cash for invoice no. 402394. **Tr. 109:9-25.**

136. Mr. Mazloom did not offer any testimony regarding the two checks payable to Mr. Pasko that are included on the last page of Plaintiff's Exhibit 10. Mr. Mazloom did not testify that the checks represent payment for the invoices Plaintiff claimed are related to the Golson Project.

137. The first check included Plaintiff's Exhibit 10 is for \$3,000.00 and is dated November 16, 2016 (check no.788). There is nothing in the memo line or on the face of the check itself that relates that payment to the Golsos Project. According to the invoices provided Plaintiff, the October 2016 invoice for \$1,650 and the July 2016 invoice for \$600.00 were the only two bills

- outstanding at the time Plaintiff issued the \$3,000.00 check to Mr. Pasko. Plaintiff did not offer any explanation as to why he paid \$750.00 more than Mr. Pasko had billed him at that time.
138. The second and final check included in Plaintiff's Exhibit 10 is for \$1,500.00 and is dated January 12, 2017 (check no. 815). Likewise, there is nothing in the memo line or on the face of the check itself that relates that payment to the Golsons Project.
139. The sum total of the four invoices provided in Plaintiff's Exhibit 10 is \$4,150.00, which does not match the \$5,150.00 figure on Plaintiff's claim summary provided in Plaintiff's Ex. 44. There is no testimony in the record explaining this discrepancy.
140. The Court finds Plaintiff's claim for work attributable to Eagle Excavating cannot reasonably exceed the \$4,150.00 sum total of the invoices contained in Plaintiff's Exhibit 10.
141. The Court finds the records provided in Plaintiff's Exhibit 10 are contradictory and untrustworthy. The combined total of check nos. 788 and 815 is \$4,500.00, which exceeds the combined total of the invoices produced by Plaintiff by \$350.00. Accounting for the \$600.00 cash payment Plaintiff claimed it paid in February 2017, Plaintiff's own records suggest Plaintiff overpaid Eagle Excavating \$950.00. Pl. Ex. 10.
142. The Court finds Mr. Mazloom's testimony is not credible. Plaintiff did not offer Mr. Pasko or any other witnesses to testify on behalf of Eagle Excavating regarding the grading work performed on the Project, the invoices submitted for the job, or the payments Mr. Pasko received from ARM.
143. The Court finds Plaintiff failed to meet its burden establishing the costs it incurred with respect to work provided by Mr. Pasko and Eagle Excavating. Without testimony from Mr. Pasko or any other witnesses, there is no reliable evidence from which the Court may

reasonably the costs attributable to the Project for Mr. Pasko's work. The Court will not conjecture in favor of Plaintiff where Plaintiff failed to meet its burden of proof.

**Jamie Huerta**

144. Plaintiff claimed it incurred \$22,483.56 in costs for concrete work provided by Jamie Huerta on the Project. **Pl. Ex. 44; Def. Ex. 10A.** Plaintiff included two email "invoices" from Mr. Huerta to Mr. Mazloom and copies of three checks in the accounting provided to the Golsons in April 2017 as support for those costs. **Def. Ex. 10A.**
145. Mr. Mazloom testified Plaintiff paid Mr. Huerta \$22,483.56 in total. Mr. Mazloom testified he paid Mr. Huerta \$3,683.56 in cash and the remaining payments were made by check. **Tr. 113:25-114:20.**
146. Plaintiff claimed the \$3,683.56 cash payment is supported by an "IRS" reminder check (check no. 841) for the same amount.<sup>9</sup> **Tr. 115-117; Def. Ex. 10A.**
147. Plaintiff did not offer Mr. Huerta or any other witness to testify regarding the charges incurred for the concrete work. However, the record includes a copy of the email "invoices" for the Project produced by Mr. Huerta in response to a subpoena, which indicates his actual cost on the job was \$15,215.00. **Def. Ex. 10B.**
148. The labor and materials itemized on Mr. Mazloom's email "invoice" dated October 14, 2016 total \$4,283.56, and the labor and materials for the Golson Project itemized on the same email produced by Mr. Huerta total \$3,015.00. Compare **Def. Ex. 10A, ARM 000016-17 and Def. Ex. 10B.** In other words, it appears the October 2016 email that was produced to the Golsons was altered to reflect an additional \$1,268.56 in costs above what Mr. Huerta provided as documentation for that work.

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<sup>9</sup> Plaintiff stipulated that Check No. 841 for \$3,683.56, which was also included in the April 2017 accounting, was never drawn on the ARM bank account. **Joint Ex. 1, Joint Ex. 3.**

149. Moreover, the October 2016 email includes an \$850.00 charge for labor performed at 125 Sweet Melody Lane, which is Mr. Mazloom's personal residence. This suggests Mr. Mazloom was working on a project for himself at the same time as the Golsons' project and was falsely submitting charges for that work to the Golsons for payment. **Def. Ex. B.**
150. The labor and materials itemized on Mr. Mazloom's email "invoice" dated January 20, 2017 total \$18,200.00, but itemized charges on the same email produced by Mr. Huerta total only \$12,200.00. Compare **Def. Ex. 10A**, ARM 000015 and **Def. Ex. 10B**. Likewise, it appears the January 2017 email that was produced to the Golsons was altered to reflect an additional \$6,000.00 in costs above what Mr. Huerta provided as documentation for that work.
151. Given the unexplained discrepancies between the email invoices Plaintiff submitted to the Golsons for payment and the emails produced by Mr. Huerta, the Court finds Mr. Mazloom's testimony is not credible.
152. The Court finds Plaintiff failed to meet its burden establishing it incurred \$22,483.56 in costs for Mr. Huerta's work on the Project.
153. While it is likely Plaintiff did incur some costs for work provided by Mr. Huerta on the Project, Plaintiff failed to meet its burden establishing what those costs were.
154. Given Mr. Mazloom's pattern of seeking payment for falsely inflated invoices through the manipulation of subcontractor cost records, it is reasonable to conclude Mr. Mazloom engaged in a similar scheme with respect to Mr. Huerta's project costs.
155. While the evidence reflects the backup submitted by Plaintiff was supported by a fraudulent "IRS" check for \$3,683.56, the Court finds the emails produced by Mr. Huerta reasonably establish the costs for Mr. Huerta's work on the Project.
156. The Court finds the cost incurred for Mr. Huerta's work is \$15,215.00.

157. The Court finds Plaintiff and Mr. Mazloom fraudulently submitted an altered and inflated email "invoice" to Defendants, overstating the amount owed for work provided by Mr. Huerta by \$7,268.56.

**RNG Contracting/Nery Rodas**

158. Plaintiff claimed it incurred \$148,000.00 in costs for work provided by Nery Rodas with RNG Contracting on the Project. Mr. Mazloom testified that Mr. Rodas provided the foundation, floors, framing, roofing, sheetrock and painting and various other work. **Pl. Ex. 44; Tr. 132.**

159. Plaintiff claimed the charges incurred for RNG's work are reflected on ten separate invoices: invoice dated July 20, 2016 for \$16,000, invoice dated August 20, 2016 for \$24,200, invoice dated August 25, 2016 for \$16,100, invoice dated October 5, 2016 for \$16,780, invoice dated November 10, 2016 for \$19,400, invoice dated November 15, 2016 for \$14,600, invoice dated January 10, 2017 for \$10,700, invoice dated January 12, 2017 for \$5,402.52, invoice dated January 25, 2017 for \$23,271, and invoice dated January 26, 2017 for \$2,500. **Tr. 132: 23-133:13; Pl. Ex. 27.**

160. Mr. Mazloom claimed he paid Mr. Roads by check on eight (8) occasions and \$32,753.52 in cash. **Pl. Ex. 27; Def. Ex. 9A.**

161. Plaintiff claimed the cash payment is evidenced by a "cash receipt" for \$32,753.52 and a "IRS" reminder check (check no. 852) that was never drawn on the ARM account for the same amount. **Tr. 192:4 – 194:13; Def. Ex. 9A.**

162. Plaintiff included copies of each of the above referenced invoices in the accounting produced to Defendants in April 2017, along with copies of check nos. 757 (\$6,000), 760 (\$30,000), 769 (\$10,000), 774 (\$19,200), 778 (\$10,000), 780 (\$12,000), 852 (\$32,753.52), 821

(\$9,000), 791 (\$20,000).<sup>10</sup> **Joint Ex. 1, 1.00086-88; Def. Ex. 9A.** Plaintiff did not produce the “cash receipt” to Plaintiffs until March 2018. **Joint Ex. 3; Def. Ex. 9D.**

163. Notably, the dates and amounts of the checks do not match up to any particular invoice. For example, a handwritten note on the \$16,000 invoice dated July 20, 2016 indicates it was paid the same day. However, only one check was written to Mr. Rodas in July 2016 (check no. 757) and that check is for only \$6,000. When questioned about this, Mr. Mazloom denied altering the invoice by adding a “1” before the “6” and inflating the invoice by \$10,000. Instead he claimed he paid Mr. Rodas the \$6,000 “because he asked me.” **Tr. 195-196; Def. Ex. 9A.**

164. Next, Mr. Mazloom denied he that he received any money from Mr. Rodas. Mr. Mazloom was then questioned about a \$20,000 check payable to “cash” that Mr. Mazloom received from Mr. Rodas on November 23, 2016 (check no. 1502). **Def. Ex. 9E.** When asked to explain why he wrote check no. 791 for \$20,000 to Mr. Rodas on November 16, 2016 and why Mr. Rodas then paid him back \$20,000 just seven days later, he claimed the money was a loan and denied it had anything to do with the Project. Mr. Mazloom testified he loaned Mr. Rodas \$20,000 about two weeks before Mr. Rodas paid him back, but he was unable to recall any specific information about the loan or what it was for. **Tr. 206-212.** There are no documents in the record evidencing a loan agreement between Mr. Rodas, Plaintiff or Mazloom.

165. The RNG invoice dated January 26, 2017 for \$2,500 reflects alleged charges for cleaning and power-washing all of the outside brick and the driveway. However, Mr. Golson testified that work was never performed. **Def. Ex. 9A, ARM00085; Tr. 473:4 – 474:3.**

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<sup>10</sup> Although Plaintiff testified his total claim with respect to Mr. Rodas is \$148,000, the sum total of the checks produced in the backup to the Golsons, including the \$32,753.52 “IRS” reminder check for the cash payment, is \$148,953.52.

166. The Court observed Mr. Mazloom's demeanor and finds his testimony lacks credibility, and the records Mr. Mazloom claimed supported his testimony are untrustworthy.
167. Plaintiff did not offer Mr. Rodas or any other witnesses to testify on behalf of RNG Contracting regarding the work Mr. Rodas and RNG performed on the Project, the invoices submitted for the job, or the payments Mr. Rodas received from ARM.
168. The Court finds Plaintiff failed to meet its burden establishing it incurred \$148,000.00 in costs for Mr. Rodas' work on the Project.
169. The Court finds Plaintiff and Mr. Mazloom fraudulently overstated its costs by \$55,253.52 which includes the alleged \$32,753.52 cash payment, the \$20,000 "kickback" payment that was paid back to Mazloom seven days later, and the \$2,500 alleged costs for the power-washing that was not performed.
170. The Court finds Plaintiff incurred \$92,746.48 in actual costs attributable to Mr. Rodas' work on the Project.

**Proctor Foundation and Concrete**

171. Plaintiff claimed it incurred \$10,000.00 in costs on the Project for work provided by Marc Proctor and Proctor Foundation and Concrete ("Proctor"). Proctor was the concrete and foundation subcontractor for the Project. Tr. 128:20-131:3; Pl. Ex. 44; Def. Ex. 12A.
172. Plaintiff claimed the charges incurred for the foundation and concrete are reflected on invoice no. 1452 dated July 12, 2016. Def. Ex. 12A, ARM 000011.
173. Mr. Mazloom testified he paid Proctor twice by check (check no. 753 for \$3,500.00 check no. 754 for \$5,500.00) and once in cash. Tr. 128:20-131:3; Def. Ex. 12A.
174. Plaintiff claimed the \$1,000 cash payment is evidenced by an "IRS" reminder check dated July 25, 2016 (check no. 842) for the same amount. Def. Ex. 12A. Plaintiff stipulated check

no. 842 was never drawn on the ARM bank account but was produced in the April 2017 accounting Plaintiff submitted to the Golsons.

175. Plaintiff did not produce a "cash receipt" from Proctor for the \$1,000 payment. Tr. 230:3-235:2.
176. Plaintiff did not offer Mr. Proctor or any other witnesses to testify on behalf of Proctor Foundation and Concrete regarding the concrete and foundation work performed on the Project, the invoices submitted for the job, or the payments Proctor received from ARM.
177. The Court finds Plaintiff failed to meet its burden establishing it incurred \$10,000.00 in costs for Proctor's work on the Project.
178. The Court observed Mr. Mazloom's demeanor and finds his testimony regarding the cash payment and the IRS "reminder" check lacks credibility.
179. The Court finds Plaintiff and Mr. Mazloom fraudulently overstated Proctor's costs by \$1,000.00.
180. The Court finds Plaintiff incurred \$9,000.00 in actual costs attributable to Proctor's work on the Project.

**Billy Kelly**

181. Plaintiff claimed it paid the plumbing subcontractor, Billy Kelly, \$2,400.00 for his work on the Project. **Pl. Ex. 44; PL. Ex. 16.**
182. Plaintiff claimed the charges incurred for the plumbing are reflected on invoice no. 787113, which totals \$2,400. The description of the work on that invoice reads "Rough in of trim. Builder provide material." **Pl. Ex. 16.**
183. Mr. Mazloom claimed Mr. Kelly was paid on two occasions, once by check for \$1,600 in January 2017 and the remainder in cash. Tr. 121-123.

184. Mr. Mazloom claimed the cash payment was for “extra work” performed by Mr. Kelly with respect to the faucet for the hand bidet. Tr. 123:2-25.
185. Mr. Mazloom did not explain when the extra work was performed, if those charges were in addition to the charges on invoice no. 787113, or why the extra work was not included in the description of work on that invoice. Even assuming the alleged “extra work” charges were in addition to the charges included on invoice 787113, Mr. Mazloom did not explain why Plaintiff’s total claim for Mr. Kelly’s work is only \$2,400 and not \$3,200.
186. Nevertheless, Plaintiff claimed the cash payment is supported by an “IRS” reminder check dated October 29, 2016 (check no. 843) for \$800.00. Def. Ex. 16. Notably, Plaintiff stipulated check no. 843 was never drawn on the ARM account but was included accounting ARM provided the Golsons in April 2017. Pl. Ex. 16; Joint Ex. 3.
187. Plaintiff attempted to introduce a “cash receipt” for the \$800 cash payment, but the Court declined to consider the contents of that document for the truth of the matter asserted without testimony from Mr. Kelly regarding the money he received from Plaintiff on this Project. Tr. 147:10-150:15 (excluding Pl. Ex. 35).
188. Plaintiff did not offer Mr. Kelly or any other witnesses to testify regarding the plumbing work performed on the Project or payments Mr. Wise received from ARM.
189. Given the unexplained discrepancies in Plaintiff’s own documents, Mr. Mazloom’s testimony and the documents admitted did not appear credible. The trustworthiness of the documents and the credibility Mr. Mazloom’s testimony was further undermined by four of Plaintiff’s own subcontractors, who testified that Mr. Mazloom directed them to falsify invoices and denied receiving any payments in cash. The subcontractors’ testimony in this case establishes Plaintiff engaged in a pattern of dishonesty and deception by seeking payment for

false or inflated invoices from Defendants. Therefore, the Court finds Mr. Mazloom's testimony alone is untrustworthy and insufficient to establish the costs related to Mr. Kelly's work on the Project.

190. While it is likely Plaintiff did incur some costs for work provided by Mr. Kelly on the Project, Plaintiff failed to meet its burden establishing what those costs were. Without testimony from Mr. Kelly or any other witnesses, there is no reliable evidence to determine the specific amount costs attributable to the Project for Mr. Kelly's work. The Court will not conjecture in favor of Plaintiff where Plaintiff failed to meet its burden of proof.

191. The Court finds Plaintiff and Mr. Mazloom fraudulently overstated the amount it was owed for Mr. Kelly's work on the Project by a minimum of \$800, the amount of the "TRS" reminder check that was never drawn on the ARM account.

192. However, in light of the lack of testimony from Mr. Kelly and the lack of credibility and trustworthiness of the evidence submitted by Plaintiff, the Court further finds Plaintiff failed to meet its burden establishing it incurred the entirety of the \$2,400.00 in costs Plaintiff claimed for Mr. Kelly's work on the Project.

193. Having fully considered all of the evidence presented in support of the project costs presented by ARM and the challenges and disputes thereto by the Golsons, the Court has made specific findings for the reasons set forth above and summarizes those findings as follows:

**Total Project Costs- Damages for Breach of Contract and Fraud**

<b>Sub/Supplier</b>	<b>Amount Claimed by Plaintiff</b>	<b>Amount Proven By Plaintiff</b>	<b>Unproven amount of Plaintiff's claim</b>
Undisputed Subcontractor Costs <sup>11</sup>	\$ 105,116.68	\$ 105,116.68	
Winnsupply	\$ 4,329.40	\$ 1,397.54	\$ 2,931.86
A&D Fabrication (Rick Crolley)	\$ 13,000.00	\$ 9,400.00	\$ 3,600.00
White Knoll Heating and Air (Josh Joyner)	\$ 25,000.00	\$ 19,500.00	\$ 5,500.00
B&R Electric (Bubba Morrell)	\$ 23,000.00	\$ 18,000.00	\$ 5,000.00
Double R. Cabinetry (Josh Hall)	\$ 13,999.00	\$ 11,750.00	\$ 2,249.00
RNG Contracting (Nerry Rodas)	\$ 148,000.00	\$ 92,746.48	\$ 55,253.52
J&M Huerta (Jamie Huerta)	\$ 22,483.56	\$ 15,215.00	\$ 7,268.56
Eagle Excavating (Jim Pasko)	\$ 5,150.00	\$ -	\$ 5,150.00
Harvey Wise	\$ 12,586.50	\$ -	\$ 12,586.50
Proctor Foundation and Concrete (Marc Proctor)	\$ 10,000.00	\$ 9,000.00	\$ 1,000.00
Vacuum Center (Tony Bearden)	\$ 2,800.00	\$ 2,400.00	\$ 400.00
Billy Kelly	\$ 2,400.00	\$ -	\$ 2,400.00
<b>TOTAL</b>	<b>\$ 387,865.14</b>	<b>\$ 284,525.70</b>	<b>\$ 103,339.44</b>

<sup>11</sup> Plaintiff and Defendants do not dispute that Plaintiff met its burden establishing the project costs it incurred with respect to the following subcontractors and suppliers: Adam Goings, BMC East, Bilt Rite, Barnhill Services, GTG, Lowes, Stier, Allwaste, SCE&G, Crystalline, Donald Daniels, Complete Septic Tank, Jason Kyzer, Lexington County Lucius Cobb, Cayce Exterminating, and Columbia Shelving and Mirror (collectively, the "Undisputed Project Costs"). Pl. Ex. 44. Therefore, the Court finds the Undisputed Project Costs total \$105,116.68 and are properly accounted for in Plaintiff's claim.

194. Plaintiff has proved \$284,525.70 in actual project costs as referenced above.
195. The Court finds the maximum amount Defendants were required to pay Plaintiff for the Project is \$327,204.56, which is the total proven costs of \$284,525.70 plus \$42,678.86 (15% of the proven project costs).<sup>12</sup>
196. The Court finds Defendants paid Plaintiff \$395,000.00 plus \$18,247.05 in out of pocket material costs, for a total of \$413,247.05. Having found Plaintiff established it earned \$327,204.56 for its project costs and fee, Plaintiff is not entitled to any additional costs with respect to its claim for breach of contract.
197. The Court finds Defendants paid Plaintiff \$86,042.50 in excess of what the parties' Agreement required. The Court further finds that Plaintiff's requests for payment for which it was not entitled and the Defendants' payments to Plaintiff in reliance on the false representations was a breach of the parties' Agreement that resulted in damages of \$86,042.50.

### C. Fraud

198. As referenced above, Defendants asserted, and this Court so found that certain alleged costs were fraudulently presented by Plaintiff and Mr. Mazloom to Defendants for payment; that Defendants reasonably relied on the requests for payment and Plaintiff and Mazloom were paid monies for which there was no entitlement. More specifically, requests for payment were submitted by ARM and Mazloom representing actual costs incurred when, in fact, those costs had not been incurred and were not properly allocated to the Project. Furthermore, ARM's

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<sup>12</sup> The Court finds the parties' Agreement does not expressly provide for ARM to earn a fee for costs that the Golsons incurred for materials contemplated to be purchased by ARM. As such, Plaintiff is not contractually entitled to recover a 15% fee on the \$18,247.05 in materials purchased by the Golsons out of pocket.

and Mazloom's scheme of fraudulent activity included fabricated checks that were not drawn in Plaintiff's account.

199. ARM and Mazloom's fraudulent scheme was employed by a variety of methods intended to convolute the Project accounting records. In addition to submitting checks to the Golsons that were never drawn on the ARM back account, Mazloom submitted invoices to the Golsons for work not performed and/or for work relating to other projects he was working on at the time, including renovations at his personal residence and his brother's house. Mr. Mazloom used many of the same contractors on the Golson's project, so he was able to manipulate those invoices to make the work appear as if it related to the Golsons' Project.
200. There is ample testimony from multiple third-party witnesses that Mazloom made concerted efforts to conspire or otherwise coordinate the production of false invoices reflecting payment had been received by subcontractors in cash when such payments had not been paid. Testimony also reflects invoices being presented as costs incurred by ARM that were either inflated or for work not performed on the Golsons' residence.
201. In light of the evidence presented at trial, Mr. Mazloom's testimony regarding the work performed on the other projects was not credible. Initially, Mr. Mazloom testified that he only worked on two projects in 2016—he testified that he built his son's house in early 2016 and once that project was completed, he began work on the Golson's project in July 2016. Mr. Mazloom testified that ARM did not perform work on any other projects while the Golsons' home was under construction. Tr. 175:21-176.
202. When confronted with evidence that he performed work on his brother's house at the same time as he worked on the Project, Mr. Mazloom attempted to explain that while he did send contractors, including B&R electric, Josh Hall, and Nery Rodas, over to his brother and sister

in law's house to do some work in 2016 while the Golson project was ongoing, his brother did not pay him for any of that work. He claimed his relatives paid the contractors directly. Tr. 1761; Tr. 177-178. However, that testimony was contradicted by Mr. Mazloom's own subcontractors. For example, Mr. Hall testified Mr. Mazloom paid him for the work he did at Mazloom's brother's house. Tr. 347-348.

203. Furthermore, the emails subpoenaed from Mr. Huerta included charges for labor Mr. Huerta performed at Mr. Mazloom's residence, and Mr. Crolley recalled doing work at Mr. Mazloom's house as well. Def. Ex. 10B.
204. Not only did ARM and Mr. Mazloom inflate invoices and charge the Golsons' for work not performed on the Project or performed on other projects, ARM and Mazloom charged the Golsons an additional 15% fee on the fraudulent charges and filed a Mechanic's Lien against the Property when the Golsons questioned the invoices and refused to pay the full amount.
205. The Court finds that there is clear and convincing evidence that these actions were taken by ARM and Mazloom with knowledge of the false representations and intended and calculated to deceive the Golsons. Furthermore, having no knowledge of the falsity of the represented costs, the Golsons relied on these representations and said representations were material to the process and resulted in ARM and Mazloom receiving payment for which they were not entitled.
206. Having made findings that Mr. Mazloom and Plaintiff engaged in fraudulent acts with regard to his attempt to induce the Golsons to pay, the Court finds the total amount of fraudulent activity is \$81,160.59 and is summarized as follows:

Subcontractor	Proven Fraud	Type of Fraudulent Scheme
A&D Fabrication/Rick Crolley	\$ 3,600.00	fake check, inflated invoice
White Knoll Heating & Air/Josh Joyner	\$ 5,500.00	fake check, inflated invoice
B&R Electric/Bubba Morrell	\$ 5,089.51	fake check, inflated invoice, work on other projects
Double R. Cabinetry/Josh Hall	\$ 2,249.00	work on other projects, inflated invoice, fake check
RNG Contracting/Nery Rodas	\$ 55,253.52	Invoice for work not performed; \$20,000 kickback check; fake check
Jamie Huerta	\$ 7,268.56	fake check, inflated invoice
Proctor Foundation & Concrete/Marc Proctor	\$ 1,000.00	fake check, inflated invoice
Vacuum Center/Tony Bearden	\$ 400.00	fake check, inflated invoice
Billy Kelly	\$ 800.00	fake check, inflated invoice

207. Having found the total amount of fraudulent activity is \$81,160.59 of overstated costs, the Court finds that the Golsons were damaged in the amount of \$81,160.59 as a result of the fraud.

### CONCLUSIONS OF LAW

#### A. ARM's claim for Breach of Contract

ARM has asserted a claim for breach of contract asserting that it is owed \$55,085.52 based on the total construction costs plus its fee of 15%. The Court has concluded that the parties' Agreement was in the form of a cost plus a fee with a guaranteed maximum price of \$395,000. Plaintiff acknowledges that it has been paid \$413,247.05 from the Golsons but maintains that the additional amount due is a result of "extras" incurred on the Project. Having found that Plaintiff has not satisfied its burden of demonstrating that the costs incurred plus the appropriate fee do not exceed the amounts paid by the Golsons, I conclude that the Golsons did not breach any obligations

under its contract with ARM. The Plaintiff is entitled to recover only upon a finding that he has proved by the preponderance of the evidence that the Defendants did, in fact, breach the contract between the two parties. In other words, the Golsons duties under the Agreement have been discharged upon a finding that all payments have been made as contemplated under the Agreement. Restatement (Second) of Contracts § 235 (1981). Indeed, as a result of the fraudulent misrepresentations by ARM and Mazloom, the Golsons have paid in excess of that required by the Agreement. ARM has failed to establish a claim for breach of contract.

**B. ARM's claim for Quasi-Contract/Quantum Meruit/Unjust Enrichment**

Plaintiff is not entitled to relief on its claims of quasi-contract, quantum meruit and unjust enrichment. Quantum meruit, unjust enrichment and restitution are equivalent terms for equitable remedies for a contract implied by law or quasi-contract. Recognizing that these principles are difficult and confusion easily results, the court has made an extensive evaluation into how quantum meruit is different from an expressed contract or contract implied in fact. *Myrtle Beach Hospital, Inc. v. City of Myrtle Beach*, 341 S.C. 1, at 8, 532 S.B.2d 868, at 872 (2000); *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259,261,440 S.E.2d 129,130 (1994). After applying the facts to this situation, the Court concludes that the remedy of quantum meruit is not available here. Quantum meruit is not available if the services and materials for which the Plaintiff is seeking to recover are encompassed in an express contract. *Swanson v. Stratos*, 350 S.C. 116, 122,564 S.E.2d 117,120 (S.C. App. 2002); *Columbia Wholesale Co.*, 440 S.E.2d at 130-131 (1994). The Plaintiff pled in its Complaint that it entered into an express contract with Defendants and I have found that the parties did, in fact, enter into a cost-plus contract with a guaranteed maximum price.

Even if there was no contract encompassing Plaintiff's claims for recovery, the court finds that ARM, under the facts of this case, would still not be entitled to an award under quantum

meruit. The elements of quantum meruit are: 1) a benefit conferred on the defendant by the plaintiff; 2) realization of that benefit by the defendant; and, 3) retention by the defendant of the benefit *under conditions that make it unjust for him to retain it without paying its value*. (Emphasis added). *Earthscapes Unlimited, Inc. v Ulbrich*, 390 S.C. 609, 703 S.E.2d 221 (2010); *Columbia Wholesale*, 312 S.C. 259, 440 S.E.2d 129 (1994); *Shirley's Iron Works, Inc. v City of Union*, 387 S.C. 389, 693 S.E.2d 1 (S.C. App. 2009). Having found that Plaintiff, through Mazloom, misrepresented the costs incurred on the Project such that the Golson's overpaid for the work, I conclude that Plaintiff cannot satisfy the elements under the equitable principles of quantum meruit and unjust enrichment.

**C. Golsons' claim for Breach of Contract- ARM**

"This being an action for the breach of contract, the burden was upon the [plaintiff] to prove the contract, its breach, and the damages caused by such breach." *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). "The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach." *Id.* "The purpose of an award of damages for breach of contract is to put the plaintiff in as good a position as he would have been in if the contract had been performed." *Minter v. GOCT, Inc.*, 322 S.C. 525, 528, 473 S.E.2d 67, 70 (Ct. App. 1996). "The proper measure of compensation is the loss actually suffered by the plaintiff as a result of the breach." *Id.*

Having found ARM was only able to establish it earned \$327,204.56 for its project costs and fee and having found the Golsons paid ARM \$395,000.00 plus \$18,247.05 in out of pocket material costs, for a total of \$413,247.05 based on the false representations of ARM, the Court finds that ARM breached the Agreement with the Golsons. As a result of said breach, the Court

finds the Golsons paid ARM \$86,042.50 in excess of what the parties' Agreement required with said amount representing the loss actually suffered by the Golsons as a result of the breach.

**D. Golsons' claim for Fraud- ARM and Mazloom**

The Golsons, in their Amended Answer, Counterclaim and Third-Party Complaint, have alleged fraud against Arm and Mazloom. While the cause of action contains a heading of constructive fraud, the pleading alleges the elements of actual fraud and the Court will review the claim for one of actual fraud.<sup>13</sup> Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Ardis v. Cox*, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1992); *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984).

This Court finds that there is clear and convincing evidence in the Record that ARM and Mazloom engaged in fraud. As set forth above, the Record is replete with multiple examples of fabricated or falsified invoices. Furthermore, as a result of the fraud, requests for payment were submitted by ARM and Mazloom representing actual costs incurred when, in fact, those costs had not been incurred in connection with the building of the Golsons' home. Furthermore, ARM and Mazloom attempted to bolster the fraudulent scheme by presenting checks as evidence of costs

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<sup>13</sup> To establish constructive fraud, all elements of actual fraud except the element of intent must be established. *O'Quinn v. Beach Associates*, 272 S.C. 95, 249 S.E.2d 734 (1978). Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud while intent to deceive is an essential element of actual fraud. The presence or absence of such an intent distinguishes actual fraud from constructive fraud. *Giles v. Lanford & Gibson, Inc.*, 285 S.C. 285, 328 S.E.2d 916 (Ct. App.1985). The Golsons plead and there is evidence in the Record to support that ARM and Mazloom engaged in fraudulent misrepresentation with intent to deceive.

incurred when, in fact, those checks had been fabricated and not tendered as payment. There is ample testimony from several of ARM's subcontractors that supports the conclusion that Mazloom made concerted efforts to conspire or otherwise coordinate the production of false invoices reflecting payment had been received by the subcontractors in cash when such payments had not been paid. Testimony also reflects invoices being presented as costs incurred by ARM that were either inflated or for work not performed on the Golsons' residence. The Court finds that there is clear and convincing evidence that these actions were taken by ARM and Mazloom with knowledge of the false representations and intended and calculated to deceive the Golsons. Furthermore, having no knowledge of the falsity of the represented costs, the Golsons relied on these representations and said representations were material to the process and resulted in ARM and Mazloom receiving payment for which they were not entitled.

Having found the total amount of fraudulent activity is \$81,160.59 of overstated costs, the Court finds that the Golsons were damaged as a result of the fraud. The Record reflects that the Golsons have presented evidence satisfying the elements of fraud against both ARM and Mazloom, who was the sole engineer and proponent of the fraud. Having found that ARM is liable to the Golsons for breach of contract in the amount of \$86,042.50 and recognizing that the damages of \$80,360.59 for the fraud is subsumed in the contract damages and in order to avoid a double recovery, the Court declines to issue an award for damages against ARM for fraud. However, the Court has found that Mazloom, in his individual capacity, engaged in fraud; and thus, finds Mazloom liable for the fraud damages in the amount of \$81,160.59. Furthermore, the Court finds that Mazloom's conduct is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. *Magnolia North Property Owners Ass'n., Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012). The comprehensive, concerted

and complex scheme of fraudulent activity engaged in by Mazloom was willful, wanton and reckless, which merits an award of punitive damages. *Sample v. Gulf Ref. Co.*, 183 S.C. 399, 410, 191 S.E. 209, 214 (1937)). The Court awards the Golsons punitive damages as against Mazloom for \$42,678.86, which equates to the fee earned as a result of the actual proven cost of the work.

**E. Golsons' Claim for Breach of Contract Accompanied by Fraudulent Act- ARM**

In order to have a claim for breach of contract accompanied by a fraudulent act, the plaintiff must establish three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract, not merely to its making; and (3) a fraudulent act accompanying the breach. *Harper v. Ethridge*, 290 S.C. 112, 119, 348 S.E.2d 374, 378 (Ct. App. 1986). The fraudulent act is any act characterized by dishonesty in fact or unfair dealing. *Id.* "Fraud," in this sense, "assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence." *Conner v. City of Forest Acres*, 348 S.C. 454, 466, 560 S.E.2d 606, 612 (2002) (citation omitted).

As propounded upon above, the Court finds that ARM breached its contract with the Golsons, and did so with fraudulent intent. Further, for the reasons set forth above, I conclude that ARM's fraudulent actions were numerous and willful. ARM fabricated invoices and other evidence of payment with the dishonest intentions of procuring funds from the Golsons to which ARM was not entitled. While certain evidence presented at trial could be explained or rationalized as a misunderstanding on the part of Mazloom and ARM, it would require this Court to turn a blind eye to clear and concise testimony from ARM's own subcontractors exposing the fraudulent activities. This Court is not willing to do so and, therefore, concludes that ARM breached the

contract with said breach accompanied by fraudulent intent. The Court finds that the fraudulent acts were contemporaneous with and subsequent to the breach and were sufficiently connected to the breach itself to warrant recovery against ARM for punitive damages. *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 336 S.E.2d 502 (Ct. App. 1985); *Smith v. Canal Ins. Co.*, 275 S.C. 256, 269 S.E.2d 348 (1980). South Carolina has long recognized a plaintiff's right to recover punitive damages for a breach of contract accompanied by fraudulent act. *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 654, 780 S.E.2d 263, 273 (Ct. App. 2015). The Court awards the Golsons punitive damages as against ARM for \$42,678.86, which equates to the fee earned as a result of the actual proven cost of the work.

**F. Slander of Title- ARM**

"[T]o maintain a claim for slander of title, the plaintiff must establish (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and (5) causes special damages (6) as a result of diminished value of the property in the eyes of third parties." *Huff v. Jennings*, 319 S.C. 142, 149, 459 S.E.2d 886, 891 (Ct. App. 1995). "Wrongfully recording an unfounded claim against the property of another generally is actionable as slander of title." *Huff*, 319 S.C. at 149, 459 S.E.2d at 891. However, when an action is privileged, such as a pleading, there can be no claim against it. *See Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002). (finding that a lis pendens was another form of pleading and was absolutely privileged against slander of title action). Conversely, this case involves a mechanics lien, not a lis pendens. "[A]llegations in pleadings are privileged even if false and malicious, this rule would not apply to a lien as it is strictly construed and is not a pleading." *Carl E. Jones Dev., Inc. v. Wilson*, 149 Ga. App. 679, 681, 255 S.E.2d 135, 137 (1979). The Court finds a mechanics lien is not a form of pleading, and therefore is not privileged against a slander of title action.

On May 11, 2018 ARM filed a mechanics lien against the Golson's property for \$55,085.52. On November 27, 2018, Judge Newman ordered the mechanic's lien dissolved for failing to file and serve the lien as required by S.C. Code Ann § 29-5-90. While Plaintiff argues that it is premature for this Court to consider the Slander of Title claim, this Court cannot ignore the procedural status of the case, which includes an order of dissolving the mechanic's lien filed by the Plaintiff and a cause of action asserted by the Defendants and evidence received by this Court supporting said claim for Slander of Title.

The filing of the mechanics' lien constituted a false statement that was derogatory to the Golsons' title. ARM knew or should have known that the lien was invalid, as ARM knew the date when he last worked on the property and knew that the 90-day period for filing had passed. ARM's filing of the lien diminished the property in the eyes of third parties and forced the Golsons to spend money on attorney's fees to remove the lien, thus causing special damages. See, *Solley v. Navy Federal Credit Union*, 397 S.C. 192, 723 S.E.2d 597 (Ct. App. 2012)(homeowner claim against bank for slander of title for failing to remove an invalid mortgage against home awarded fees and costs associated with removing the cloud on her title, including attorney's fees). Because the disparagement is false and caused damage, malice is to be presumed. "Malice merely means a lack of legal justification and is to be presumed if the disparagement is false, if it caused damage, and if it is not privileged." *Id.*

The Court finds Plaintiff's publicized statement that it had a valid interest in the Golsons' real property was false, was derogatory to the Golsons' title, malicious, and caused the Golsons special damages. Having found the Plaintiff's mechanics lien not to be privileged, and that the mechanics lien constituted a false and malicious statement that damaged Defendants, the Golson's are entitled to special and punitive damages. However, given that Judge Newman issued an award

for attorney's fees in connection with the dismissal of the mechanic's lien (which would be an appropriate measure of damages for slander of title), I decline to award any additional damages in connection with the Slander of Title.<sup>14</sup>

**ACCORDINGLY, based upon the above findings as applied to the law of this State, it is hereby ORDERED, ADJUDGED and DECREED as follows:**

1. Judgment is hereby entered against ARM Quality Builders, LLC d/b/a ARM Quality Builders in favor of Joseph A. Golson and Lycia B. Golson, in the principal amount of \$86,042.50 for breach of contract along with punitive damages in the amount of \$42,678.86 based on the finding that the breach of contract was accompanied by fraudulent intent.
2. Judgment is hereby entered against Ahmad Mazloom in favor of Joseph A. Golson and Lycia B. Golson, in the principal amount of \$81,160.59 for fraud along with punitive damages in the amount of \$42,678.86.

**IT IS SO ORDERED.**

[ELECTRONIC SIGNATURE ON THE FOLLOWING PAGE]

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<sup>14</sup> The Golsons also asserted causes of action for negligent misrepresentation, fraud in the inducement, violation of the SC Unfair Trade Practices Act and Alter Ego/Piercing Corporate Veil. Having found that ARM and Mazloom engaged in actual fraud in the performance of the obligations under the Agreement, the Court does not find recovery under a theory of negligent misrepresentation or fraud in the inducement under the facts of this case. Moreover, the facts of this case do not warrant a finding that the elements for violation of the SC Unfair Trade Practices Act have been met. Lastly, the Court finds that there is insufficient evidence in the Record to pierce the corporate veil and find individual liability on the breach of contract action. This finding simply relates to the elements of a piercing action and has no relevance to this Court's finding that Mazloom is individually liable for his fraudulent actions.

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2017CP3202204

ELECTRONICALLY FILED - 2020 Aug 07 4:53 PM - LEXINGTON - COMMON PLEAS - CASE#2017CP3202204

ARM Quality Builders LLC Joseph A Golson	ARM Quality Builders Lycia B Golson	Joseph A Golson Branch Banking and Trust Company LLC Ahmad Mazloom	Lycia B Golson Ahmad Mazloom
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<b>PLAINTIFF(S)</b>	<b>DEFENDANT(S)</b>
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  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:

**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. 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)
Joseph A Golson and Lycia B Golson	ARM Quality Builders Llc	\$128,721.36
Joseph A Golson and Lycia B Golson	Ahmad Mazloom	\$123,839.45

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

Judge Code

Date

**For Clerk of Court Office Use Only**

ELECTRONICALLY FILED - 2020 Aug 07 4:53 PM - LEXINGTON - COMMON PLEAS - CASE#2017CP3202204

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

James Randall Davis PO Box 489 Lexington, SC  
29071-0489

Edward Wade Mullins III PO Box 61110 Columbia, SC  
29260-1110  
Caitlin Creswick Heyward 1237 Gadsden Street, Suite 200  
M Law Office Of Childs Cantey Thrasher LLC Columbia, SC  
29201  
Chelsea Jaqueline Clark PO Box 61110 Columbia, SC 29260

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Court Reporter

\_\_\_\_\_  
Lisa M. Comer - Clerk of Court

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Lexington Common Pleas

**Case Caption:** ARM Quality Builders LLC , plaintiff, et al VS Joseph A Golson  
**Case Number:** 2017CP3202204  
**Type:** Order/Other

It Is So Ordered

s/ Walton J. McLeod

Electronically signed on 2020-08-07 15:44:09 page 49 of 49