

EXHIBIT B

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

FOR THE NINTH JUDICIAL CIRCUIT

TCC OF CHARLESTON, INC.,)

CASE NO. 2016-CP-10-2955

Plaintiff,)

vs.)

CONCORD AND CUMERLAND, LLC.,)

CONCORD & CUMBERLAND HPR,)

LEO HALL, DIANE HALL, BEA H.)

SMITH, MARGARET C. POPE,)

WILLIAM D. FOSTER, JR., GENE G.)

FOSTER, MATTISO J.MACGILLNRAY,)

TERESA MACGILLIVRAY, PAMELA)

L.VAUGHN, NELIA A. PATRICIO,)

Trustee of the Nelia A. Patricio Revocable)

Trust Agreement, STUART D. REEVES,)

EDWARD T. STROM, BARBARA)

K.HENDERSON, JAMES R. CLARICE,)

PAUL A. BRIM, ROBERT K. SEIDL,)

JENNIFER M. SEIDL, ROBERT)

KENNETH SEIDL,II, M. BERT)

STOREY, THOMAS R. MATHER,)

EDWARD T. STROM, 304 CONCORD)

& CUMBERLAND, LLC, MARION M.)

SIMPSON F/KA MARION MOORE)

MCDONALD SIMPSON, KATHY)

GARDNER, GREGORY J. GARDNER,)

FREEMAN WATERFRONT)

PROPERTIES, LLC, JO-ANN COOPER,)

BETTY Y. SEGAL, ROBERT M. LEVIN)

AND BONITA K. LEVIN, DONALD D.)

LEONARD, BETTY L. BEATTY,)

MATTELLEN, LLC, AND THOMAS R.)

DEBNAM, Trustee of the Trust)

Agreement of Thomas R. Debnam,)

Defendants.)

RECEIVED

Mar 11 2021

SC Court of Appeals

**ORDER GRANTING PARTIAL
SUMMARY JUDGMENT TO BETTY L.
BEATTY**

In this action, TCC of Charleston, Inc. (“TCC”) seeks to recover payment from the defendants for work performed under a written contract with Concord and Cumberland HPR (the “HPR”), for extensive repairs to condominium units located at 175 Cumberland Street in Charleston, South Carolina. TCC asserts causes of action for mechanic’s lien foreclosure, breach of contract and “Equity.”

This matter came before me upon the motion of Betty L. Beatty (“Beatty” or “Mrs. Beatty”) for summary judgment upon TCC’s first cause of action for mechanic’s lien foreclosure. Mrs. Beatty owns a unit at 175 Cumberland Street. Her motion is based upon the grounds that TCC’s lien dissolved due to TCC’s failure to serve its lien upon her within the time required under S.C. Code §29-5-90. This motion was originally filed on May 8, 2020, was briefed and was fully argued before the Honorable Jennifer B. McCoy on May 28, 2020. Judge McCoy declined to rule upon the motion and referred the case to me by order dated August 11, 2020, to decide *inter alia*, this motion.

A hearing was held in this court on November 5, 2020, and a second hearing was held on January 27, 2021, so that the court could rule upon all outstanding motions. Beatty was represented by Edward D. Buckley, Jr. and TCC was represented by Andrew K. Epting, Jr. and Jaan Rannik in both hearings. Having reviewed the court record, the parties’ respective motions, memoranda, attachments and exhibits, affidavits, written objections and rebuttals to those objections, and having considered the oral arguments of counsel, and the applicable law, I hereby grant Beatty’s motion. For the reasons set forth below, TCC’s First Cause of Action for Foreclosure of Mechanic’s Lien is dismissed, and the Lien filed in this action shall be removed from the public record, that lien having dissolved as a matter of law. Having prevailed in

defeating TCC's mechanic's lien claim against her, Beatty is entitled to an award of reasonable attorney's fees and costs pursuant to S.C. Code §29-5-20(A).

APPLICABLE LAW

A. Summary Judgment

Rule 56(c) of the South Carolina Rules of Civil Procedure provides for judgment as a matter of law where "there is no genuine issue as to any material fact." "A party against whom a claim, counterclaim, or cross-claim is asserted, or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." Rule 56(b), SCRPC. Summary judgment is appropriate when "the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRP. "The purpose of summary judgment is to expedite disposition of cases [that] do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (S.C. 2001).

B. Perfecting a Mechanic's Lien

Mechanic's liens are creatures of statute, and the requirements of the statute must be strictly followed. *Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724, 729 (S.C. Ct. App. 2020). Sections 29-5-10 to 440 of the South Carolina Code (2007 & Supp. 2019) set forth the requirements for establishing and enforcing a mechanic's lien. The statutes establish three (3) distinct steps in that process, namely (1) creation, (2) perfection, and (3) enforcement of the lien. *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., LLC*, 409 S.C. 331, 340, 762 S.E.2d 561, 565. For the lien to become enforceable, the lien must be perfected and enforced in compliance with South Carolina's mechanic's lien statutes. The lien arises inchoate when the

labor is performed or material is furnished, but the lien has not been perfected until the statutory requirements are met. *Id.* at 341, 762 S.E.2d at 256. The procedures for enforcing a mechanic's lien must be strictly followed; the court is "not at liberty to depart from the plain meaning of the language contained in the mechanic's lien statute." *Morehead Construction, Inc. v. Enterprise Bank of South Carolina*, 410 S.C. 386, 765 S.E.2d 1 (Ct. App. 2014).

To perfect and enforce the lien against the property, the person claiming it must: (1) record and serve a certificate of lien, containing a sworn statement of account within ninety (90) days after he ceases to furnish labor or materials; (2) bring suit to foreclose the lien within six (6) months after he ceases to furnish labor or materials; and (3) file notice of pendency of the action within six (6) months after he ceases to furnish labor and materials. If the person claiming the lien fails to take any one of these steps, the lien against the property is dissolved by operation of law. *Kitchen Planners*, 432 S.C. at 267, 851 S.E.2d at 729 (Ct. App. 2020). Here, the uncontroverted facts establish that TCC failed to serve the lien upon Beatty within 90 days of March 17, 2016, the date sworn under oath to be the last date of work. TCC's president has sworn to this fact under oath in four (4) sworn statements: two (2) verified complaints and two (2) sworn statements of account. TCC sought to perfect and enforce a lien for work performed no later than March 17, 2016. That lien expired on June 15th, prior to service of the lien upon Mrs. Beatty on June 22, 2016.

BACKGROUND

TCC originally filed suit against the HPR, filing its Summons, Verified Complaint, Notice and Certificate of Mechanic's Lien, Statement of Account, and Motion to Stay and Compel Arbitration on June 6, 2016. TCC filed a Lis Pendens on June 10, 2016. In its Verified

Complaint and sworn Statement of Account TCC stated that it last furnished labor or materials on March 17, 2016. Apparently realizing that it could not enforce a mechanic's lien against the HPR under South Carolina Law, Plaintiff filed an Amended Summons and Amended Verified Complaint, Amended Notice and Certificate of Mechanic's Lien and Amended Statement of Account adding each unit owner, including Beatty, as a defendant on June 10, 2016. An Amended Lis Pendens was filed on June 16, 2016. TCC realleged under oath in its Amended Verified Complaint and Statement of Account that March 17, 2016 was the date of last furnishing labor or materials. Mrs. Beatty was served via process server on June 22, 2016; the transmittal letter from TCC's counsel to Beatty is dated June 21, 2016. Thus, Beatty was served ninety-seven days after the March 17th date asserted by TCC. Mrs. Beatty moved for partial summary judgment on the grounds that there is no dispute of material fact that service was not timely under the mechanic's lien statute and that she is entitled to judgment upon the FIRST CAUSE OF ACTION for mechanic's lien foreclosure as a matter of law.

The March 17th date of last furnishing labor and materials is crucial to perfection of TCC's lien. TCC has attested under oath, on the public record, and on four (4) occasions, that March 17, 2016, was the date it ceased providing labor or materials for which it sought to perfect and enforce its lien. In response to Beatty's summary judgment motion, TCC contends that date is incorrect and that it should be allowed to present evidence contradicting its prior sworn statements and public record filings which state unequivocally that March 17, 2016, was the date it ceased work.

TCC's original summons and verified complaint, dated May 19, 2016, was filed on June 6, 2016. That complaint asserted claims against the HPR only. The complaint, in paragraph 9, reads as follows:

9. That in accordance with their agreements the Plaintiff furnished the agreed-upon material and services to the Defendants which were used in the work, and on related structures on the subject property, that material and services improved the property, and *the last date of such furnishing materials and services was March 17, 2016.*

(emphasis added).

TCC's president, John David Griffith, verified the Complaint by VERIFICATION dated May 19, 2016. In the Verification, Mr. Griffith swore under oath that he was an officer of TCC, and that he had been authorized by TCC to make the verification. As to the facts of the Complaint, he swore to the following:

“... I have read the foregoing Complaint and know the contents thereof and that based upon my own personal knowledge, the facts therein are true and correct.”

TCC's president also swore to that fact in TCC's Statement of Account attached to the Complaint as Exhibit “A”. In Exhibit “A”, paragraph 4, TCC's president, Mr. Griffith swore under oath to the following:

4. That the last day work was performed or materials provided to the property described in EXHIBIT B was March 17, 2016.

Four days after filing its verified Complaint and sworn Statement of Account, TCC filed an Amended Complaint on June 10, 2016, which Amended Complaint purports to assert claims against the HPR and all the owners of units within the HPR. Paragraph 10 of the Amended Complaint contains the identical language which is quoted above as paragraph 9 of the original Complaint, alleging that “[T]he last date of such furnishing of materials and services was March 17, 2016.”

Mr. Griffith, TCC's president, on June 10, 2016, again verified the Amended Complaint, attesting unequivocally that “[B]ased upon my own personal knowledge, the facts as alleged

therein are true and correct.” This was the *third* sworn attestation under oath that March 17, 2016 was the date TCC ceased work. TCC attached to its Amended Complaint as Exhibit “A”, a second sworn statement of account dated June 10, 2016, and signed by its president, Mr. Griffith. This was TCC’s *fourth* sworn attestation under oath that March 17, 2016 was the date it ceased work. The June 10, 2016 statement of account was filed with the Charleston County Register of Deeds at Book 0560, Page 116.¹

Several months after the Amended Complaint was filed, the mechanic’s lien claims were stayed by order of Judge Roger M. Young, Sr. filed December 30, 2016, while TCC and the HPR took their contractual dispute to arbitration as required under the terms of their contract. The Panel of Arbitrators determined that March 8, 2016, was the date of substantial completion of TCC’s work, and awarded interest from that date. The Panel of Arbitrators made no findings regarding the last date labor or materials were supplied to the project. After the panel of arbitrators issued its final, corrected award, the stay was lifted by order of the Honorable Deadra L. Jefferson, filed January 30, 2020. Judge Jefferson also found that March 8, 2016, was the date of substantial completion. From June 2016 until May 2020, TCC made no effort to either change, amend, or contradict its four (4) sworn statements that March 17, 2016 was the date of last work.

The instant motion was filed by Beatty on May 8, 2020. On May 22, 2020, TCC filed its “Objection to Proceeding,” Memorandum in Opposition to Pending Summary Judgment Motions and Response to Motion to Deposit Funds. TCC also moved on May 15, 2020 for leave to amend its complaint. Notably, this proposed Second Amended Complaint removed any reference to the date upon which TCC last performed work or provided materials, instead alleging in Paragraph 12 that TCC timely gave the Defendants notice of the statement of account

¹See TCC’s Motion to Amend Statement of Account filed October 1, 2020.

and timely served and filed its lien relative to the date of last work as determined by the Panel of Arbitrators. The Panel of Arbitrators made no finding regarding the date of last work. The only date contained within the Panel of Arbitrators' corrected award is March 8, 2016, which the panel determined to be the date of substantial completion.

The Honorable Judge Jennifer McCoy scheduled a hearing on these motions for May 28, 2020. On May 22, 2020, six (6) days prior to the scheduled hearing, TCC filed an affidavit from TCC's project superintendent, Ryan Tomberlin, which directly contradicts the four (4) prior sworn statements of TCC's president regarding alleged dates TCC performed work at the project. The only explanation in Mr. Tomberlin's affidavit for Mr. Griffith's contradictory testimony is found in paragraph 3, stating:

3. TCC believed substantial completion of the project was March 17, 2016.

The four (4) sworn statements by TCC's president make no mention of the term substantial completion. Instead, Mr. Griffith swore in each prior statement that he was an officer of TCC, that he had been authorized by the corporation to make the statement on its behalf, and that the last date it provided labor and materials for the project was March 17, 2016. TCC, through Mr. Tomberlin's affidavit, made no effort to explain why Mr. Griffith swore to the facts as he did. Notably, Mr. Griffith, TCC's president, made no effort to explain or correct his prior sworn statements prior to the May 28, 2020 hearing.

This motion and others were argued before Judge Jennifer B. McCoy on May 28, 2020. However, she declined to rule on them. Instead, she granted TCC's motion to amend and authorized it to file a Second Amended Complaint which deletes all reference to any date of cessation of work at the project. She entered an order of August 11, 2020, referring this matter

to me and directing that this Court decide the remaining motions, including Beatty's motion for summary judgment. This Court scheduled those motions for hearing on November 5, 2020.

On October 1, 2020, four (4) months after the parties argued this motion before Judge McCoy and a month before this Court's hearing, TCC filed a motion to amend its statement of account. The proposed revised statement of account, prepared for the signature of Mr. Griffith, is unsigned. It does, however, delete any reference to the date when TCC ceased working on the project. Even if signed, the proposed statement of account would directly contradict the testimony given by Mr. Griffith in four (4) filings provided to this court and filed of record, and it offers no explanation regarding his prior attestations. Exhibit 3 to the motion is an affidavit of Mr. Griffith dated September 25, 2020, which states in pertinent part, the following: 1) That he was involved in the Concord and Cumberland project from its beginning, and he signed the verified complaint and statement of account relating to the project; 2) that when he signed the statement of account, he referred to the date of substantial completion; and 3) that additional work was performed through August, 2017.

TCC filed a subsequent Memorandum in Opposition to Beatty's motion on October 27, 2020. In its Memorandum, TCC did not explain why Mr. Griffith swore under oath that the last date of work was March 17, 2016. Instead, TCC refiled the affidavit of Mr. Tomberlin and a number of Exhibits, including a document identified as EXHIBIT D which purports to be a payroll summary for Heather Dagg, listing her hours for the months of December, 2016 and January, 2017.

At the November 5, 2020 hearing, the Court issued its oral ruling which, among other things, granted Beatty's summary judgment motion. As requested by the court, Beatty submitted a proposed order granting her motion, and she submitted an attorney's fee affidavit in support of

her claim for fees. TCC objected to the proposed order on November 30, 2020, filing with the court a document entitled “TCC Omnibus Response and Objections to Filings and Submittals of Betty Beatty.” Beatty responded to TCC’s “Omnibus Response” by letter dated December 3, 2020. The court scheduled the hearing on January 27, 2021 to hear all outstanding motions.

Argument was presented before me on November 5, 2020, and again on January 27, 2021. The Court has considered the record, the parties’ respective memoranda, attachments and exhibits, written objections and rebuttals to objections, and considered the oral arguments of counsel and the applicable law.

LEGAL ANALYSIS

Mechanic’s liens are purely statutory and can only be acquired and enforced in accordance with the conditions of the statute creating them. *Shelley v. Sea Garden Homes, Inc.*, 287 S.C. 24, 336 S.E.2d 488 (Ct. App. 1985). The lien arises inchoate when the labor is performed or material is furnished. However, to be valid, the lien must be perfected and enforced in compliance with the Mechanic’s Lien Statutes, S.C. Code §29-5-10 to 430.

In order to defeat Beatty’s motion for summary judgment, TCC seeks to contradict or disprove its prior sworn statements. It seeks to amend the statement of account in order to eliminate the March 17, 2016, date which it swore to be true and correct. By doing so, TCC has asked the Court to disregard the date provided in the statement of account filed of record. TCC has submitted an affidavit and other documents contradicting its prior testimony in order to create an issue of fact. TCC must be held to the date that it attested and swore to in multiple documents filed of record. There is no question that the date of service of process, June 22, 2016, is more than ninety days after March 17, 2016, the date TCC has sworn to be the last day it provided labor and materials. The lien TCC filed and sued upon sought payment for work

performed on or before March 17, 2016. That lien was served upon Beatty on the 97th day after the last date of work for which TCC claimed a lien, and the lien constituted a cloud upon the title to Mrs. Beatty's property.

A. TCC cannot change the date asserted in its statement of account.

TCC, in its opposition to Beatty's motion and in its motion to amend its statement of account, argues that Section 29-5-100 expressly allows correction of inaccuracies in the statement of account. TCC also argues that amendment of the statement of account is proper, because the amendment of the statement of account, as a pleading, should be liberally allowed. However, neither S.C. Code §29-5-100 nor our rules of civil procedure allow a mechanic's lien claimant to alter the date of last work or materials set forth in its sworn statement of account, which must, by statute, be filed of record and which, upon filing, becomes a cloud upon the title to the owner's property. (emphasis supplied).

1. An incorrect date of completion is not considered an excusable inaccuracy under Section 29-5-100.

S.C. Code §29-5-100 contemplates and excuses certain inaccuracies in a statement of account. That section states that certain errors in the property description or in the amount due will not invalidate the statement of account. The statute is silent as to an inaccuracy as to the dates of work, and the Court cannot read into the statute an exception that would allow TCC to amend its statement of account to change the date it verified as its last day of work. The rules of statutory interpretation are clear: the General Assembly is presumed to intend for the words of a statute to mean what they say. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (S.C. 2000). Likewise, where the General Assembly chose not to include words within a statute, this Court cannot add language to the plain language of the statute. *Id.* By omitting timing errors among those inaccuracies which will be forgiven, I must presume the legislature meant to do so.

Accordingly, Section 29–5–100 provides no basis for TCC to alter or delete its date of last work at the project. On its face, the lien TCC filed, recorded in the public record, and sued upon, seeks payment for work performed no later than March 17, 2016.

2. Statements of Account are not pleadings which may be amended.

TCC cites Rule 15, SCRPC, in support of its effort to amend its statement of account to delete the last date of furnishing materials or labor. Amendments to the pleadings in a mechanic’s lien action are allowed under Section 29–5–180 of the mechanic’s lien statute and Rule 15, SCRPC. However, TCC has not submitted any South Carolina case law allowing amendment of the last date of performing labor or providing materials service in a lien claimant’s statement of account. The Court has been unable to find any as well. This dearth of authority makes sense, because a statement of account is not a pleading and thus is not subject to amendment under Rule 15, SCRPC. Rule 7 of our South Carolina Rules of Civil Procedure is entitled “Pleadings Allowed,” and section (a) of the Rule delineates the form of pleadings recognized in this state. The rule makes no mention of a statement of account. After listing the pleadings allowed, the Rule specifically states that no other pleadings shall be allowed, except that the court may order a reply to an answer or a third-party answer; and there may be a reply to affirmative defenses as provided in Rule 8(c). Rule 7, SCRPC. Therefore, a statement of account is not a pleading as defined by Rule 7, SCRPC, and cannot be amended under Rule 15, SCRPC. Amendments are permitted, if at all, pursuant to S.C. Code §29-5-100 and only to correct inaccuracies in the property description or the amount of the lien.

B. The Court cannot disregard TCC’s four sworn statements that March 17, 2016 was the date of last furnishing work or materials.

The filing of a mechanic’s lien places a cloud upon the title to real property by providing record notice of the nature of the claim. In *Preferred Savings and Loan Ass’n., Inc. v. Royal*

Garden Resort, Inc., 295 S.C. 268, 273, 368 S.E.2d 78, 81 (S.C. Ct. App. 1988), *aff'd*, 301 S.C. 1, 389 S.E.2d 853 (S.C. 1990), the Court of Appeals held that the date of cessation of labor must pre-date the notice of lien. (emphasis supplied). The court recognized that matters of public record must be reliable for title examiners who find a lien of record. *Id.* In reaching its holding, the court cited with approval the North Carolina case of *Strickland v. General Building and Masonry Contractors, Inc.*, 22 N.C.App. 729, 207 S.E.2d 399 (N.C. Ct. App. 1974).

Our mechanic's lien statute does not require that the statement of account include a date when labor and materials were last provided. S.C. Code Ann. § 29-5-90 (1976). However, in order to effectuate the policy considerations discussed in *Preferred Savings*, a claimant who includes a date of last performing work in their statement of account must be held to it. In *Strickland*, the North Carolina Court of Appeals addressed this very issue. There, the claimant filed his notice and claim of lien on July 27, 1973 with a statement declaring that materials were last furnished upon the property on March 28, 1973. *Id.* This was beyond North Carolina's requirement that the claim of lien be filed no later than 120 days after the furnishing of last labor. N.C. Gen. Stat. Ann. § 44A-12 (2019). North Carolina, like South Carolina, did not require that a claimant state in his claim of lien the date of last furnishing labor or materials. *Compare* S.C. Code Ann. §29-5-90 (1976) *with* N.C. Gen. Stat. Ann. §44A-12 (2019). The North Carolina Court of Appeals in *Strickland* held that, even though the date of last furnishing is not required by statute, it cannot be treated as "a mere surplusage," because to do so "would do injury to the purpose of the lien statute." It would require title examiners to go outside the public record to discover the true date of last furnishing which, in turn, would "impose an undue burden on the title examiner and would damage the principle of reliance upon the public record." *Id.* at 400-01.

The South Carolina Court of Appeals recently affirmed the above stated law in the *Kitchen Planners* case, *supra*. In *Kitchen Planners*, a contractor filed a complaint and a lien stating that it provided labor and materials “beginning in or around March 16, 2015 and continuing through August 18, 2015. The contractor served the owner with the lien on November 17, 2015 ----- 91 days later ----- and the owner then filed a motion to dismiss the mechanic’s lien as untimely. The Circuit Court dismissed the foreclosure action, and the contractor appealed. The contractor argued that it could cure the timeliness issue by amending its pleadings to assert a later date when it actually finished work on the project. The Court of Appeals disagreed and affirmed the Circuit Court. In doing so, the Court of Appeals found that the contractor was bound by the dates asserted in its pleadings and on the face of the lien. Thus Kitchen Planners’ lien dissolved, because it failed to serve the lien within ninety (90) days of the last date it supplied labor or materials on the project.

Here, TCC did not serve Betty Beatty until June 22, 2016. Anyone examining the title would see that TCC swore to March 17, 2016, as the last date of furnishing materials or labor. TCC did not file the affidavit of service evidencing service of the lien upon Mrs. Beatty until November 3, 2020, more than four (4) years after serving her. Anyone examining title to the property between June 10, 2016 and November 3, 2020 would conclude that Beatty had not been served and that the lien was dissolved. After the affidavit of service was filed, the examiner would conclude that the service of process occurred more than 90 (ninety) days after the date set forth in the sworn statements of account and the verified complaints, and that the lien was expired. Therefore, the public record advises anyone examining it that the lien had expired. In order to effectuate the policy reasons articulated by our Court of Appeals in *Preferred Savings*,

and *Kitchen Planners*, TCC must be held to the March 17, 2020 date asserted in its sworn statement of account. TCC's lien dissolved before it was served on Mrs. Beatty.

ATTORNEY'S FEES

Beatty has prevailed in defeating TCC's mechanic's lien claim. She is, therefore, entitled to an award of her attorney's fees. While the amount of fees to be awarded is discretionary, the question of her entitlement to fees is not. *Utilities Construction Co., Inc. v. Wilson*, 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996).

In determining a reasonable attorney's fee, the court has considered the following six factors: 1) the nature, extent and difficulty of the case; 2) the time necessarily devoted to the case; 3) the professional standing of counsel; 4) the contingency of compensation; 5) the beneficial results obtained; and 6) the customary legal fees for similar services. *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997).

I have reviewed the affidavit of Edward D. Buckley, Jr. and have reviewed, *in camera*, detailed time records entered upon his firm's billing software. I have also reviewed the court record in this case.

1. Nature, extent and difficulty of the case.

This case presented a multi-million dollar mechanic's lien claim and involved the potential interplay of the arbitration award in TCC's contract claim, application of the provisions of the mechanic's lien statutes, competing claims for attorney's fees, the filing of record by the plaintiff of multiple sworn statements, which it subsequently sought to retract, and hearings before a circuit judge and this court. It was complex, difficult and hotly contested.

2. The time necessarily devoted to the case.

Beatty's counsel has presented *in camera* his firm's detailed itemized records reflecting the hours each attorney or legal staff member expended upon each task as described in the narrative billing entry for each task. The hourly rate for each billing entry is included as well. Each expense is itemized upon the billing records.

The total time expended by Mr. Buckley, his partners, associates and professional staff, from June 23, 2016, through February 1, 2021, equals 265.2 hours. I have reviewed each time entry and the itemized costs to determine the reasonableness of the time entered and the costs incurred.

3. Professional Standing of Counsel.

The court is familiar with the professional standing of Beatty's counsel, and they are experienced, well qualified and well respected in the legal community. Attorneys practicing in this court fall upon a scale representing a wide range of experience and competence from inexperienced or minimally qualified to highly skilled advocates. Beatty's attorneys are at the top of that scale.

4. Contingency of Compensation.

Beatty's counsel is not working on a contingent fee basis, so this factor is not applicable.

5. Beneficial Results Obtained.

Beatty's counsel succeeded in defeating a lien claim where the contractor had obtained an arbitration award in excess of \$2,000,000.00 against the HPR. Opposing counsel had presented to the Panel of Arbitrators an attorney's fee affidavit seeking fees of approximately \$900,000.00 in 2019, and if the plaintiff had prevailed upon its lien claim, its fees to date likely

would have exceeded \$1,000,000.00 over and above its unpaid contract claim. Beatty's condominium is now free of liens, and she does not face the prospect of owing additional attorney's fees to the plaintiff. These results are very beneficial to Mrs. Beatty.

6. Fees Customarily Charged in Similar Cases.

The hourly rates and tasks performed in defense of this case are within the range of fees charged by comparable attorneys for comparable services. The total fees sought by Beatty's counsel, \$78,453.50, pales in comparison to the fees previously sought by plaintiff's counsel in connection with the arbitration award.

Based upon the foregoing factors, I have determined that Beatty is entitled to reasonable attorney's fees in the sum of \$ 75,000.00 together with costs in the amount of \$ 1000 .

CONCLUSION

In June 2016, TCC filed upon the public record four sworn statements representing to the parties, the court, and everyone examining those records that March 17, 2016, was the last day labor and materials were supplied to the project. TCC sought to perfect and sue upon a lien for work performed on or before March 17, 2016. Beatty was served June 22, 2016, after TCC's lien dissolved by operation of law on June 16, 2016. The Court holds that a lien claimant who chooses to include a date of last service in his verified statement of account filed with the Register of Deeds is bound by the date the claimant chose to insert and cannot retroactively perfect a dissolved lien by amending its statement of account to delete that date. There is no dispute of material fact that TCC failed to perfect its lien and that its lien dissolved by operation of law.

For the reasons set forth above, Beatty's motion is granted, and IT IS HEREBY ORDERED as follows:

- 1) Judgment is entered in favor of Beatty upon TCC's FIRST CAUSE OF ACTION for mechanic's lien foreclosure;
- 2) The *Lis Pendens* and mechanic's lien upon Beatty's unit shall be removed from the public record within five (5) days of the entry of this order;
- 3) Having prevailed by successfully defeating TCC's mechanic's lien foreclosure action, Beatty is entitled to her attorney's fees pursuant to S.C. Code § 29-5-10(a); and
- 4) Beatty is awarded attorney's fees and costs in the amount of \$76,000.00 and the Clerk of Court shall enter judgment against TCC of Charleston, Inc. in that amount in favor of Betty L. Beatty.

IT IS SO ORDERED.

Mikell R. Scarborough
Master-in-Equity
Charleston County

Dated: _____



Charleston Common Pleas

Case Caption: Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant,
et al
Case Number: 2016CP1002955
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

TCC OF CHARLESTON INC

CONCORD AND CUMBERLAND LLC , DEFENDANT, ET AL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<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 : _____

RECEIVED

Mar 11 2021

SC Court of Appeals

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)
BETTY L. BEATTY	TCC of Charleston, Inc	\$76,000.00
		\$
		\$
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

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Charleston Common Pleas

Case Caption: Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant,
et al
Case Number: 2016CP1002955
Type: Order/Form 4

So Ordered

s/Mikell R. Scarborough 3062