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**Mar 31 2021**

**SC Court of Appeals**

**EXHIBIT A**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) FOR THE NINTH JUDICIAL CIRCUIT  
) CASE NO. 2016-CP-10-2955

TCC OF CHARLESTON, INC. )  
)  
Plaintiff, )  
vs. )

CONCORD & CUMBERLAND HPR, LEO )  
HALL, DIANE HALL, BEA H. SMITH, )  
MARGARET C. POPE, WILLIAM D. )  
FOSTER, JR., GENE G. FOSTER, )  
MATTISON J. MACGILLIVRAY, )  
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. CLARKE, )  
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/K/A MARION MOORE )  
MCDONALD SIMPSON, KATHY )  
GARDNER, GREGORY J. GARDNER, )  
FREEMAN WATERFRONT )  
PROPERTIES, LLC, JOHN FREEMAN, )  
JO-ANN COOPER, BETTY Y. SEGAL, by )  
and through her Assignee, DONALD D. )  
LEONARD, 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. )

**ORDER DENYING PLAINTIFF'S  
MOTION FOR RECONSIDERATION**

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Plaintiff TCC of Charleston, LLC (TCC) filed its Motion for Reconsideration or Clarification, pursuant to Rules 59(e), 60(a), and 60(b), SCRCP on March 12, 2021, of this court's

orders awarding attorney's fees in this matter. The Court awarded \$76,000 in attorney fees and costs to Defendant Betty Beatty by order entered February 19 and a Form 4 Order filed February 22, 2021. The Court awarded \$250,553.70 in attorney fees and costs to the remaining defendants by order of Judgment and Form 4 both entered on March 3, 2021.

TCC's motion seeks a ruling as to how the court exercised its discretion in its award of attorney fees, principally contending, that no attorney fees should be awarded prior to the lifting of the stay in this action on May 1, 2020. Furthermore since the court viewed the unredacted attorney's fees affidavits *in camera*, Plaintiffs were unable to review the basis for all charges assessed, and claim this requires specific findings to satisfy due process. Plaintiffs also contend defendants are estopped from pursuing attorney fees prior to May 1, 2020.

Defendants' memorandum in opposition to the motion states numerous grounds including the motion is too late to contest the February 16 order as beyond the 10 day time limit of Rule 59(e), that Rule 60 does not apply here, and also waiver and estoppel. I conclude as a matter of law that the 59(e) motion is too late as to Beatty's order but timely as to the remaining defendants.

Notwithstanding the Arbitration Award to Plaintiffs in excess of \$2 Million dollars (this court entered judgment on behalf of Plaintiff in a Form 4 Order on March 11, 2021 in the amount of \$2,216,899.06), in my February 16, 2021 Order, I stated how this court determined that Defendants were the prevailing parties in the foreclosure of mechanic's lien action filed against all Defendants by Plaintiff. As such, based upon court precedent, Defendants were entitled to an award of attorneys' fees. As stated therein, while the amount of fees and expenses to be awarded is discretionary, the question of Defendants' entitlement to fees is not. Utilities Construction Co., Inc. v. Wilson, 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996).

Defendants submitted their time entries and fee affidavits, and I found that Defendants had met the 6 factor test for an award of a reasonable attorney's fee pursuant to authority. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997). The court considered and made findings as to 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. The court is unsure of what level of review Plaintiff seeks; however, this court, having reviewed the request and found the amount of fees and costs to be reasonable, declines to make specific findings applying the 6 factor test to **each entry** for attorney's fees requested.

Instead the court reviewed the time sheets and affidavits of the very competent Defense counsel: F. Cordes Ford, Henry Grimball, and Andrew Walden and the court record in this case. Significant to this court's findings of attorney fees was the fact that counsel specifically did not seek attorney fees for all activity in the case but only as it related to the issue of attorney fees applicable to the mechanics lien cause of action. Both parties acknowledged that there was no contractual basis for attorney fees. Accordingly, the only basis for awarding attorney fees was necessarily by statute; i.e., the mechanics lien foreclosure action. Jackson, supra.

In particular, Mr. Ford's affidavit of November 2020, states he specifically divided his time into 3 stages with the third stage applying to the period following TCC's request for attorney fees from April 27, 2019 to November 15, 2020. (see Aff. Para 5). In addition, in Aff. Para. 6, Ford states that all fees sought by Mr. Walden and Mr. Grimball were incurred after TCC filed its Motion for Attorney Fees. I would note that almost all the attorney fees awarded to Betty Beatty were incurred after the claim for attorney fees was filed by Plaintiff. I have given her credit for

filing the answer to the initial complaint and awarded no fees while the matter was stayed during the arbitration proceeding.

As to Plaintiff's Rule 60 motion, I find no basis to overturn the judgment and award of attorney's fees and none has been submitted in this motion.

This has been a hard fought and highly contested case and this court expects that will continue; however, while there is a significant battle over who is the prevailing party (since Plaintiff received a substantial arbitration award and this court, based upon precedent, found defendants prevailed on the statutory claim which entitled them to attorney fees), this court believes this is a matter now ripe for determination by the appellate courts of this state.

Accordingly, the Plaintiff's motion is DENIED.

IT IS SO ORDERED!

March \_\_, 2021

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The Honorable Mikell R. Scarborough  
Master-In-Equity for Charleston County

**SIGNATURE PAGE TO FOLLOW**



Charleston Common Pleas

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

So Ordered

s/Mikell R. Scarborough 3062