

# EPTING & RANNIK

ATTORNEYS AT LAW

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March 26, 2021

VIA EMAIL

Jenny Abbot Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, S.C. 29201  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

RE: *TCC of Charleston, Inc. v. Concord & Cumberland, LLC*  
Appellate Case No. 2021-000272

Dear Ms. Kitchings,

I write on behalf of Appellant TCC of Charleston, Inc. (“TCC”) to provide notice as directed in the case of *Hudson v. Hudson*<sup>1</sup> that TCC filed a post-trial motion subsequent to the filing of this appeal. **Exh. A.** Before notice was provided to this Court, the motion was ruled upon. **Exh. B.** Accordingly, it is Appellant’s understanding that the filing and deciding of that motion was proper pursuant to *Hudson* and that it has no impact on the status of this appeal. Should that be incorrect, Appellant stands ready to take direction from this Court.

Appellant will be serving and filing a notice of appeal of this most recent order and will move at that time that the Court consolidate it with this appeal.

With thanks and kindest regards,

EPTING & RANNIK



Jaan G. Rannik

Cc: Cordes Ford, Esq.  
Ed Buckley, Esq.

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<sup>1</sup> 290 S.C. 215 (1986).

RECEIVED

Mar 26 2021

SC Court of Appeals

# EXHIBIT A



TCC of Charleston, Inc. (“TCC”) moves this Court pursuant to Rules 59(e), 60(a), and 60(b), S.C.R.C.P.<sup>1</sup> to revisit and clarify this Court’s orders of February 16 and March 3 and the award of attorneys’ fees to Defendants. The orders as proposed by counsel and filed by the Court note that the amount of fees is discretionary and that the Court reviewed *in camera* “each time entry and the itemized costs to determine the reasonableness of the time entered and the costs incurred.” TCC of course has had no opportunity to review these time entries.

So that the appellate court may have a clear record before it, TCC requests this Court set forth how it exercised its discretion to award fees, namely:

- How fees relating to the foreclosure action were awardable to Concord and Cumberland HPR (“the HPR”) prior to May 1, 2020. Only fees relating to the foreclosure cause of action are awardable. *Utilities Constr. C. v. Wilson*, 321 S.C. 244, 250 (Ct. App. 1996). There can be no contention the stay of the foreclosure action was not lifted before May 1, 2020, evidenced by communications from HPR’s counsel that:

The HPR’s position is that the Arbitration Panel retains jurisdiction at this point, and thus we have not consented to lift the stay.

**Exh. A** (August 28, 2019); and:

We do object to lifting the stay, as we think the Motion to Lift [the stay] is subject to the Motion to Vacate or Correct [the arbitration award].

**Exh. B** (December 12, 2019). The stay was only lifted upon denial of the HPR’s motion to reconsider the denial of the motion to vacate, which was entered May 1,

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<sup>1</sup> This Court has jurisdiction to consider a timely post-trial motion filed after the notice of appeal. *Hudson v. Hudson*, 290 S.C. 215, 216 (1986) (“We now hold that the service and filing of a Notice of Appeal before the filing of timely post-trial motions under Rule 59 by any party does not deprive the lower court of jurisdiction to consider the motions.”). To the extent a motion is timely as to one order and untimely as to another, errors in orders or judgments “arising from any oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party . . . .” Rule 60(a), S.C.R.C.P.

2020. Approximately half of the hours for which the HPR seeks an award of fees occurred prior to the lifting of the stay.

Leaving aside that the panel ruled Trident was the prevailing party in the arbitration and that the HPR's efforts prior to May 1, 2020 could only relate to attempting to vacate the award in favor of Trident<sup>2</sup>; and leaving aside that the HPR is estopped to now benefit from an inconsistent position, Trident cannot examine the entries provided to the Court *in camera*, and accordingly, due process requires this Court to set forth how the entries before May 1, 2020 relate to foreclosure.

- How the Court determined that the fees sought by the HPR related to the foreclosure action rather than relating to:
  - The three motions (and extensive briefing) to reconsider, vacate, or correct the arbitration award filed before the arbitration panel on May 17, 2019, July 16, 2019, and September 7, 2019;
  - The motion to vacate the arbitration award filed in circuit court November 18, 2019;
  - The motion to reconsider denial of the motion to vacate the arbitration award filed in circuit court February 10, 2020;
  - Appeal of denial of the motion to vacate the arbitration award filed June 1, 2020; and
  - The motion to deposit fees filed in circuit court filed May 11, 2020.
- How fees awarded to Ms. Beatty prior to May 11, 2020 related to the foreclosure action. Mr. Buckley's affidavit states that Mr. Michael Molony "began representing Beatty [*sic*] L. Beatty in defense of this mechanic's lien foreclosure action filed by TCC" beginning in "late June 2016." However, the foreclosure action was stayed as to all individual Defendants until May 1, 2020 and no pleading was filed until January 17, 2020. Indeed, Ms. Beatty did not move for

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<sup>2</sup> The HPR acknowledges that the foreclosure cause of action was not before the arbitration panel and that the stay of the foreclosure action pending arbitration remained in place until denial of the HPR's motion for reconsideration on May 1, 2020.

summary judgment until May 11, 2020. Further, while TCC's counsel is aware that Mr. Molony and Mr. Siau Barr were involved in defending a separate defendant, Betty Segal, TCC or its counsel were never advised of any involvement on behalf of Ms. Beatty by Mr. Barr prior to January 17, 2020 or by Mr. Molony at any time.

Because TCC has no opportunity to review and challenge the entries or the relatedness of the entries to the lien foreclosure cause of action, due process entitles it to more than the summary set forth in the orders provided to and adopted by this Court that the Court exercised its discretion and reviewed *in camera* "each time entry and the itemized costs to determine the reasonableness of the time entered and the costs incurred." This is especially so as the undersigned counsel has spent a reciprocal amount of time responding to the various motions and represents to this Court that the effort expended in defending the motions seeking to vacate, reconsider, and deposit funds and in seeking and obtaining dismissing of the HPR's premature appeal was significantly greater than the efforts relating to the foreclosure action,<sup>3</sup> as shown by nearly half of the HPR's fee request predating May 1, 2020.

**Respectfully submitted,**

**EPTING & RANNIK, LLC**

This 12th day of March, 2021  
Charleston, SC

/s/ Jaan Rannik  
Jaan G. Rannik  
46A State Street  
Charleston, South Carolina 29401  
843-377-1871  
843-377-1310 (fax)  
[jgr@epting-law.com](mailto:jgr@epting-law.com)

*ATTORNEY FOR TCC OF CHARLESTON, INC.*

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<sup>3</sup> Especially so as there was no argument that foreclosure would not lie against the HPR, which is why the individual homeowners were added to the suit to begin with.

# EXHIBIT A

**To:** Caroline Crisler. Leonard <[cleonard@charlestoncounty.org](mailto:cleonard@charlestoncounty.org)>; Andrew K. Epting <[ake@epting-law.com](mailto:ake@epting-law.com)>; Laura Dukes Beck <[LBeck@charlestoncounty.org](mailto:LBeck@charlestoncounty.org)>

**Cc:** Martha S. Dennis <[MDennis@charlestoncounty.org](mailto:MDennis@charlestoncounty.org)>; Jaan Rannik <[jgr@epting-law.com](mailto:jgr@epting-law.com)>; Walden, Andrew <[Andrew.Walden@wbd-us.com](mailto:Andrew.Walden@wbd-us.com)>

**Subject:** RE: TCC v. Concord and Cumberland, 2016-CP-10-2955

All -

The HPR's position is that the Arbitration Panel retains jurisdiction at this point, and thus we have not consented to lift the stay. In short, the Panel has recently modified its prior Orders and made new findings, which we are reviewing.

I am not opposed to setting the Motion to Lift the Stay for hearing, but if it is set too soon, it may well be premature. I agree it would not be prudent to add the Motion to Vacate for hearing at this time.

Kind regards - Cordes

### **Cordes Ford**

Partner

Womble Bond Dickinson (US) LLP

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**From:** Caroline Crisler. Leonard <[cleonard@charlestoncounty.org](mailto:cleonard@charlestoncounty.org)>

**Sent:** Wednesday, August 28, 2019 12:01 PM

**To:** Andrew K. Epting <[ake@epting-law.com](mailto:ake@epting-law.com)>; Laura Dukes Beck <[LBeck@charlestoncounty.org](mailto:LBeck@charlestoncounty.org)>

**Cc:** Ford, Cordes <[Cordes.Ford@wbd-us.com](mailto:Cordes.Ford@wbd-us.com)>; Martha S. Dennis <[MDennis@charlestoncounty.org](mailto:MDennis@charlestoncounty.org)>; Jaan Rannik <[jgr@epting-law.com](mailto:jgr@epting-law.com)>

**Subject:** RE: TCC v. Concord and Cumberland, 2016-CP-10-2955

I can put the Motion to List Stay on a roster. Unless all of you agree, I think it would not be prudent to add the Motion to Vacate that has been filed until the Motion to Lift Stay has been heard and ruled on. Let me know how you would like to proceed. THANKS

# EXHIBIT B

## Jaan Rannik

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**From:** Andrew K. Epting  
**Sent:** Thursday, December 12, 2019 16:17  
**To:** Ford, Cordes  
**Cc:** Jaan Rannik; Walden, Andrew  
**Subject:** RE: hearing next week

Ok, we will argue the stay and then you can argue the substituted vacation motion. We will not go forward with the SJ motion

*Drew*

Andrew K. Epting, Jr., LLC  
46A State Street  
Charleston SC 29401  
843-377-1871

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**From:** Ford, Cordes [mailto:Cordes.Ford@wbd-us.com]  
**Sent:** Wednesday, December 11, 2019 5:00 PM  
**To:** Andrew K. Epting <ake@epting-law.com>; Walden, Andrew <Andrew.Walden@wbd-us.com>  
**Cc:** Jaan Rannik <jgr@epting-law.com>  
**Subject:** RE: hearing next week

Drew –

We do object to lifting the stay, as we think the Motion to Lift is subject to the Motion to Vacate or Correct. When the court resolves the latter, perhaps Monday, or perhaps sometime thereafter, and perhaps after remand, the stay might then be lifted, and the most recent motion would become ripe.

We are prepared to have the prior motion to vacate subsumed into (or substituted by) the most recent one and heard Monday if the Court allows. In the event the stay is lifted, do you object to going forward with our most recent motion?

Thanks and best – Cordes

**Cordes Ford**  
Partner  
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# EXHIBIT B



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