STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

CASE NO.: 2009-CP-15-0595

THE SPRIGGS GROUP, P.C., ... Respondent,

v.

GENE R. SLIVKA, ... Petitioner.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner hereby certifies that a Petition for Rehearing regarding the Order that is the subject of this petition was made by the Petitioner on February 21, 2013 and finally ruled on by the Court of Appeals on March 22, 2013.

QUESTIONS PRESENTED

I. Did the Court of Appeals err in holding that the services provided by Respondent in January, 2009, was "labor" because it constituted "work of making the real estate suitable as a site for the building or structure," which is a portion of the Mechanic's Lien Statute that is not applicable to this case?

II. Did the Court of Appeals err by expanding the legislated definition of "labor" contained in § 29-5-10(a) of the South Carolina Code (2007), to include what was, at most, contract administration services of a design professional?

III. Did the Court of Appeals err in finding that the Petitioner abandoned several defenses to the applicability of, and his liability under, South Carolina Code Ann. § 27-1-15, all of which presented novel questions and all of which were noticeably and repeatedly raised throughout trial and the appeal?

IV. Did the Court of Appeals erred in upholding the award of staff member fees?

V. Did the Court of Appeals erred in finding that the respondent's recovery under the Mechanic's Lien Statute was not limited to the amount of the cash bond posted by the Petitioner in this matter?

STATEMENT OF THE CASE

1. History of the Case

This matter stems from a dispute between the Petitioner, Mr. Gene R. Slivka, and the Respondent, The Spriggs Group, PC, regarding the provision of architectural services for the Petitioner's home and several outbuildings on property located in Colleton County known and often referred to as "New Julianton Plantation." The buildings include the main house, a conservatory with attached potting shed, a grotto, a stable, and two garages, all in historical style. Respondent provided architectural services pursuant to a written agreement included in a letter prepared by the Respondent dated November 17, 2006, hereinafter "Agreement." (R. pp. 346-353) The agreement states that it includes a "fee proposal to complete the architectural and engineering work with restrictions and limitations noted," and sets forth a fee of $161,500 (which the parties do not dispute was later modified to $151,402). Id. It is uncontested that Petitioner paid one half of the fee at the outset of the project. The balance was to be paid at the conclusion of the project.

Dissatisfied with the Respondent's services, in December 2008 Petitioner picked up his remaining drawings and told Respondent that he did not want any more drawings. (R. p. 265, lines 20-25) In February 2009, Petitioner was presented with invoices 0609-2, 0609-3, 0609-4, and 0609-5, all dated February 9, 2009, which total $198,834.53, rather than $76,201.00, the balance of the agreed upon contract price. (R. pp. 354-363) These charges included charges for tasks and work that had been performed by Respondent, since more than two years before, and never billed. Id. Petitioner disputed the additional charges and Respondent filed a mechanic's lien on April 13, 2009, in the amount of $198,834.53. (R. pp.

376-386) In the invoices attached to the Affidavit of Account included with the lien there were no charges for time during the ninety day period which preceded the filing of the lien. Id. To release the encumbrance on his property, on May 12, 2009, Petitioner posted a bond to release the mechanic's lien in the amount of $265,112.71, an amount equal to one and one-third the amount of the recorded lien. (R. pp. 387-391) On May 21, 2009, Respondent issued additional Invoice 0509-6, for services regarding an appraisal. (R. p. 364) On July 8, 2009, Respondent brought suit to foreclose on its mechanic's lien. (R. pp. 31-54) Respondent answered and initiated counterclaims including slander of title based on the timing of the lien. (R. pp. 55-67) Subsequently, on November 16, 2009, Respondent issued yet another invoice, Invoice 0609-7, for Construction Phase Services during the time period January 1-13, 2009. (R. p. 365)

On March 15, 2010, over nine months after litigation on the mechanic's lien had been initiated, Respondent sent Petitioner and his prior counsel a demand pursuant to S.C. Code Ann. § 27-1-15. (R. pp. 366-375) Petitioner, being in the midst of litigation with Respondent over the subject of the demand letter, did not formally respond to the demand letter. On May 5, 2010, Respondent amended its complaint to add a cause of action for Failure to Comply with S.C. Code Ann. § 27-1-15 to its causes of action which included Enforcement of Claim Against Mechanic's Lien Bond, Breach of Contract, Breach of Contract Accompanied by Fraudulent Acts, and Unjust Enrichment/Quantum Meruit. (R. pp. 68-93) Petitioner answered again alleging counterclaims. (R. pp. 94-104)

The Respondent filed a Motion for Summary Judgment on January 31, 2011, and a Motion to Strike Petitioner's counterclaims. (R. pp. 453-40 and 438-448) Petitioner also

filed a Motion for Summary Judgment. (R. pp. 449-452) At the hearing, Petitioner agreed to withdraw certain counterclaims. Respondent's motion for summary judgment as to its claims against Petitioner was denied. (R. pp. 2-3)[1] The parties proceeded to trial on all of Plaintiff's causes of action and on Petitioner's counterclaim for slander of title.

On June 30, 2011, Petitioner made a formal offer to settle the matter in the amount of $100,00.00 pursuant to the procedures in the Mechanic's Lien Statute, the initial statutory course selected by the Respondent when it filed its mechanic's lien action. (R. p. 461) Respondent made no response other than to file a Motion to Strike said offer. (R. pp. 462-464)

2. The Evidence Presented at Trial.

The Respondent presented two and a half days of testimony in which it asserted its position that additional charges in its invoices were made due to changes and demands of the owner and were justified by the contract. Mr. Thomas Bozeman testified that items that were not contemplated by the scope of the original agreement were billed pursuant to the contract. (R. p. 201, line 5- p. 202, line 8) The Agreement provides in Paragraph 18, that "[Respondent] will provide any requested construction phase services by the project architect or staff on an hourly basis." (R. p. 350) In Paragraph 19, it further provides that "Once we begin construction documents, any changes in room layouts, sizes, window locations, door locations and exterior elevation design will be performed on an hourly basis." Id. Invoice

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[1] Said order indicates, "Motions for Summary Judgment are denied in part and granted in part. Formal Orders are to be submitted." Subsequently the parties withdrew claims on which the motions were granted and therefore no formal orders were submitted.

0609-2 states that it is for "design and preparation of final drawings" but indicates an amount due of $163,574.00, an amount in excess of $85,000.00 over the remaining balance of the agreed upon fee. (R. pp. 354-363) Mr. Ken Spriggs testified Invoice 0609-02 was billed by a "formula" charging for additional work by the sheet, not by the hour as set forth in the Agreement. (R. p. 274, line 12 - p. 277, line 19 and pp. 354-363) Mr. Bozeman admitted that he did not advise the Petitioner when he was performing tasks not covered by the original scope of services, or that he was going to bill him extra for it. (R. p. 202, lines 9-23)

The Petitioner asserted the position that items that the Respondent claims were additional were or should have been contemplated when the original agreement was made. Petitioner also asserted that Respondent had a duty to advise Petitioner in advance of performing and charging for work that Respondent considered to be "additional." Respondent admitted that he never informed Petitioner that he was incurring additional charges. Mr. Andy Bozeman of The Spriggs Group admitted that what was basic and what was additional (with the exception of preparation of drawings for a retaining wall) was completely subjective. (R. p. 204, lines 3-17) Mr. Gene Slivka testified that with the exception of charges related to a construction meeting and the design of a garden wall, neither Mr. Spriggs nor Mr. Bozeman ever told him that items he requested did not fall within the fee contemplated in the original agreement. (R. p. 298, lines 15-20) He testified that Mr. Spriggs decided what the charges were and did not inform him of them for two years. (R. p. 301, lines 13-25) Mr. Scott Harvey, an expert on architectural standards and practices, testified on behalf of the Respondent. (R. p. 309, line 25 - p. 310, line 22) Mr.

Harvey offered the opinion that an architect who fails to inform an owner that he has requested something that falls outside of the original scope of work has violated rules of professional conduct and the applicable standard of care. (R. p. 311, lines 4-23)

Mr. Slivka testified that in response to the mechanic's lien he had to borrow $265,000.00 to bond off the lien, as it affected the title to his property. (R. p. 125, lines 9-23) He had paid roughly $50,000.00 in interest over a three year period. Id. This was required as the mechanic's lien filed by the Respondent affected not only his home, but all property that he owned. Id.

3. Trial Motions, Verdict and Post-trial Motions

At the close of the Respondent's case, Petitioner and Respondent made cross-motions for directed verdict as to the claim under S.C. Code Ann. § 27-1-15. (R. p. 285 line 7 - p. 290, line3) Petitioner also moved for a directed verdict regarding the timeliness of the lien. (R p. 290, line 4 - p. 294, line 17) Respondent withdrew the *quantum meruit* action. (R. p. 294, lines 19-15) Petitioner also moved for a directed verdict as to Respondent's breach of contract action. (R. p. 295, line 1 - p. 297, line 15). All motions were denied (R. p. 297, lines 16-23)

Following the Petitioner's case, Respondent moved for a directed verdict as to the Petitioner's slander of title action on the grounds that the lien was timely. (R. p. 314, lines 1-20) This motion was denied. Id. Petitioner also renewed his directed verdict motions as to the claim under § 27-1-15 and the Mechanic's Lien Statute. (R. p. 315, line 4- p. 318, line 9) Over Petitioner's objections, the trial judge ruled that both causes of action would be submitted to the jury. (R. p. 318, line 12 - p. 319, line 14) Respondent's claims for Breach

of Contract Accompanied by a Fraudulent Act was also withdrawn prior to the submission of the case to the jury.

After deliberations, the jury found for the Respondent on the causes of action of foreclosure of mechanic's lien, breach of contract, and claims under S.C. Code Ann. § 27-1-15. (R. p. 333) The Jury found for the Respondent as to the Petitioner's slander of title claim. Id. The jury awarded the Petitioner $173,990.53 in actual damages. (R. p. 334) Both parties reserved the right to make post-trial motions within ten days.

Petitioner made his post trial motions on August 1, 2011. (R. pp. 522-535) The grounds for said motion included that Petitioner was entitled to judgment as a matter of law on the Respondent's mechanic's lien because it was not timely and that Petitioner was entitled to judgment, as a matter of law, on the grounds that when Respondent's claim under S.C. Code Ann. § 27-1-15 was made, the lawsuit was pending and discovery was on-going and that the Petitioner had paid an amount equal to one and one third of the lien in the form of a bond with the court. Id. Said motion was denied. (R. pp. 4-13) Petitioner filed a Rule 59(e), SCRCP motion asking the court to alter, amend or reconsider its order. (R. pp. 567-573) Said motion was denied. (R. pp. 24-25)

Respondent moved the court for attorneys fees, costs, and interest based on both S.C. Code Ann. § 27-1-15 and the Mechanic's Lien Statute. (R. pp. 465-521) Respondent asked for all attorneys fees, costs, and prejudgment interest beginning from the date that invoices were sent to the Petitioner in February, 2009. Id. Petitioner filed a memorandum in opposition to said motion on the grounds that the fees, costs and interest sought by the Respondent were not leally supportable by statute and were excessive. (R. pp. 536-554) The

Court awarded the Respondent attorneys fees and costs in the amount of $235,030.31 and prejudgment interest in the amount of $37,413.92, thus ordering that a judgment in the total amount of $446,434.76 be entered against the Petitioner. (R. pp. 14-18) Petitioner filed a motion to reconsider said order. (R. pp. 576-586) Said motion was denied. (R. pp. 26-30)

ARGUMENT

I. THE COURT OF APPEALS SHOULD NOT HAVE HELD THAT THE SERVICES PROVIDED BY RESPONDENT IN JANUARY 2009 WAS "LABOR" BECAUSE IT CONSTITUTED "WORK OF MAKING THE REAL ESTATE SUITABLE AS A SITE FOR THE BUILDING OR STRUCTURE," SINCE THAT PORTION OF THE MECHANIC'S LIEN STATUTE THAT IS NOT APPLICABLE TO THIS CASE.

Improperly disregarding the legislatively supplied definition of "labor," the Court of Appeals held that the discussions between Respondent's employee, Mr. Bozeman, and an engineer and plumber, which took place in January, 2009, (R. 199) constituted "labor" under the statute because it was "work of making the real estate suitable as a site for the building or structure" under S.C. Code Ann. § 29-5-10. However, the statutory language cited and relied upon by the Court of Appeals is not applicable to this case.

The statute provides:

> As used in this section, **labor** performed or furnished in the erection, alteration, or repair of any building or structure upon any real estate includes the preparation of plans, specifications, and design drawings and **the work of making the real estate suitable as a site for the building or structure.** The work is considered to include, but not be limited to, the grading, bulldozing, leveling, excavating, and filling of land (including the furnishing of fill soil), the grading and paving of curbs and sidewalks and all asphalt paving, the construction of ditches and other drainage facilities, and the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes, and the disposal of any construction and demolition debris, as defined in Section 44-96-40(6), including final disposal by a construction and demolition landfill. Id. (emphasis added).

The portion of the statute relied on by the Court of Appeals, specifically, "**the work of making the real estate suitable as a site for the building or structure,**" refers to site work. (Emphasis added.) The statute goes on to describe "the work" to include obvious site work activities including grading and paving. Neither the engineer nor plumber who spoke with Mr. Bozeman in January, 2009, were involved in site work, and there is no evidence in the record that site work was being performed at the Petitioner's property at that time. Thus, the portion of the statute relied upon by the Court of Appeals to affirm the result is not even applicable to this case.

II. THE COURT OF APPEALS SHOULD NOT HAVE EXPANDED THE LEGISLATED DEFINITION OF "LABOR" CONTAINED IN § 29-5-10(A) OF THE SOUTH CAROLINA CODE (2007) TO INCLUDE CONTRACT ADMINISTRATION SERVICES OF A DESIGN PROFESSIONAL.

A. Contract administration services are clearly not within the legislatively provided definition of "labor" and the court of appeals was without authority to expand the legislative definition.

"The cardinal rule of statutory construction is for the Court to ascertain and effectuate the intent of the legislature." Riverwoods, LLC, v. County of Charleston, 349 S.C. 378, 563 S.E.2d 651 (S.Ct. 2002), citing E.g., Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229 (S.Ct. 2001). "The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.' " Id. citing Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (S.Ct. 2000). Had the legislature decided to include contract administration of a design professional in its definition of "labor" it could have done so but did not. The Court of Appeals has improperly expanded the definition of "labor" to include

off-site contract administration services, which is clearly prohibited by established South Carolina Law. See, Clo-Car Trucking Co, Inc., v. Cluffure Estates of S.C., 282 S.C. 573, 320 S.E.2d 51 (Ct. App. 1984).

B. **There is no evidence that the conversations of Respondent's employees in January 2009 were actually used in the "erection, alteration, or repair" of improvements to Petitioner's property.**

The record is devoid of any evidence establishing that the information provided by Mr. Bozeman was actually used in the "erection, alteration, or repair" of the improvements on Petitioner's property, which is a threshold proof requirement for Respondent to be entitled to protection of the Mechanic's Lien Statute. Since that cannot be established, the work in January, 2009 is not protected by the Mechanic's Lien Statute.

This highlights why the legislature was specific about what activities of a design professional constituted "labor" under the statute. If an architect's thoughts, telephone conversations, or mere observation of construction, are deemed to be "labor," it is impossible to establish that they were actually used in the erection, alteration or repair of improvements.

For this reason, and for the reasons set forth fully in the Petitioner's briefs filed in this matter, Respondent's activities in January, 2009, do not fall within any statutory definition of "labor" within the Mechanic's Lien Statute. Therefore, as no work by the Respondent performed during the ninety days prior to the filing of its mechanic's lien falls within the statute's definition of labor, the Respondent's lien was untimely. Accordingly, Petitioner's Petition for Certiorari must be granted at to this issue.

Additionally, because the mechanic's lien was not timely as a matter of law, the Petitioner is entitled to a new trial on all issues, including his counterclaims. As set forth in

Petitioner's Brief, the Respondent's wrongfully filed lien may serve as a basis for an action for slander of title. Huff v. Jennings, 319 S.C. 142, 459 S.E.2d 886 (S.C.App., 1995). Petitioner is also entitled to his attorneys fees as the prevailing party under the Mechanic's Lien Statute. As S.C. Code Ann. § 29-5-10(b) contemplates one verdict in the action, the entire matter must be reversed and remanded, including the award of $173,990.53 on the breach of contract claim, since the damages and attorneys fees which should be awarded to Petitioner for defending Respondent's faulty lien should be off-set against that award.

III. THE COURT OF APPEALS SHOULD NOT HAVE HELD THAT A QUESTION OF THE APPEALABILITY OF A STATUTE SHOULD HAVE BEEN SUBMITTED TO THE JURY.

A. Whether discovery in pending litigation, at the time the demand is received, satisfies the statutory requirement to investigate is a question for the court, not the jury.

Like the trial court, the Court of Appeals erred in holding that the question of Petitioner's investigation, after receiving the § 27-1-15 demand, was a question of fact for the jury. This is clearly in error.

Once litigation is filed, as it was by Respondent eight months prior to the § 27-1-15 demand, the conduct of the parties is governed by the South Carolina Rules of Civil Procedure. Adherence to those rules, and the obligations and limitations placed upon the parties by them, is unique to the litigation process. A jury is not qualified, or competent, to assess the fairness or reasonableness of the statutorily required investigation in the context of on-going litigation since a jury is unfamiliar with the processes of litigation, the tools of discovery available to parties, and the obligations and limitation of the parties pursuant to the rules.

Likewise, the jury was unaware that Respondents moved for summary judgment on its' claims, and made a directed verdict motion, both of which were denied. The significance of these denials, with respect to how it reflects the legal position of the parties, was not known by the jury, and should not have been known by the jury. Therefore, whether a party performed a "reasonable investigation" as required by § 27-1-15, where litigation is pending between the parties, at the time the demand is received, is a question for the Court, not a jury, and to hold otherwise is in error.

IV. THE COURT OF APPEALS SHOULD NOT HAVE FOUND THAT THE PETITIONER ABANDONED HIS DEFENSES UNDER UNDER SOUTH CAROLINA CODE § 27-1-15, ALL OF WHICH ARE NOVEL QUESTIONS, AND WERE PRESERVED AND ARGUED THROUGHOUT THE TRIAL AND APPEAL.

A. Petitioner cited all applicable statutory and case law, fully developed its arguments at the trial court level and on appeal, and did not abandon any defenses or arguments relative to the interpretation or application of § 27-1-15

Apparently not wanting to address the applicability of § 27-1-15 to the facts of this case, the Court of Appeals surprisingly, and in error, held that Petitioner's defenses were abandoned because the arguments were conclusory and without a citation to authority. This finding by the Court of Appeals is remarkably incorrect.

The application of § 27-1-15 to the facts of this case presents three novel issues. First, as previously discussed, does *bona fide*, good faith discovery in active litigation, as a matter of law, satisfy the "reasonable investigation" requirement of § 27-1-15 when the demand is made while the parties are engaged in litigation? Second, when the parties have legally valid, opposing claims and defenses, and the questions of which party is owed money,

and how much is owed, are submitted to the jury after the denial of all motions for directed verdict, can one party face liability under the statute for unreasonably failing to pay money it may not have owed? Finally, where a demand under the statute is made after a mechanics lien claim has commenced, and after a party has complied with the cash bond requirements of the Mechanic's Lien Statute, can the party posting the cash bond face liability under § 27-1-15 for failing to pay money that he has already paid into the court? The fact that there are not cases on point should not prejudice Petitioner.

Black's Law Dictionary defines conclusory as "expressing a factual inference without stating the underlying facts on which the inference is based," *284 (Seventh Ed.1999)*. The Court of Appeals' characterization of Petitioner's arguments relating to § 27-1-15 is incorrect given Petitioner's were neither inferential nor without proof. There has been no assertion made that the record is factually incorrect. Indeed, the demand for payment was made while litigation was pending, which formed the basis of the trial court's denial of Respondent's motion for directed verdict. This is a matter of record, not inference. Similarly, Petitioner's payment of the cash bond to the court has been established in the trial court and is also a matter of record. Making the next logical step to assert that these two factual scenarios show the reasonableness of Petitioner's actions goes to the heart of § 27-1-15 and its requirements. Answering whether Petitioner's undisputed actions, in the context of the facts of this case, constitute a violation of the statute is a purely legal decision that ultimately should have been made by the trial court judge in favor of Petitioner.

Exhaustively, in both the trial court and on appeal, Petitioner articulated and argued that the plain language of § 27-1-15 did not support the claims given the facts of the case.

The relevant statutes were repeatedly cited as was all relevant case law, and no arguments in this respect were abandoned by Petitioner.

B. **As a matter of law, there can be no liability under § 27-1-15 when the demand is made at a point where the parties have competing claims and defenses against each other and the issue of which party owes money, and how much, is actually submitted to a jury**

To date, no one, not even the Court of Appeals, can say how much, if anything, Petitioner owed Respondent at the time of the demand pursuant to § 27-1-15. This is because the parties had valid claims and defenses against one another up until the time the case was submitted to the jury. Thus, as a matter of law, the plain language of the statute establishes that Petitioner can have no liability under § 27-1-15, for unreasonably failing to pay a sum that he may not have owed.

As the trial court ruled in denying directed verdicts as to this cause of action and all causes of action alleged by the Respondent, there is no evidence that any portion of the claims could be deemed "proper" prior to the award of the jury. As the case law is clear, the fact that the Petitioner did not prevail does not, in and of itself, entitle the Respondent to recovery under the statute. The case law cited by the Petitioner supports his position as well. Carolina Steel Corp. v. Palmetto Bridge Consts., 444 F.Supp. 2d 577 (D.S.C. 2006). Further, as a matter of law, Petitioner can not be said to have violated § 27-1-15 for failing to pay what he may not have owed.

The Petitioner presented both statutory and case law to support his position, and the Court of Appeals is in error in finding that he abandoned his argument on appeal. Therefore, Petitioner's Petition for Certiorari must be granted as to this issue.

C. **As a matter of law, there can be no liability under § 27-1-15 where demand is made after the institution of a mechanic's lien action and money, exceeding the amount of the demand, has been deposited into the court pursuant to the requirements of the Mechanic's Lien Statute.**

Additionally, it is undisputed that at the time the § 27-1-15 demand was received, Petitioner had already deposited the sum of $265,012.71 with the court in response to Respondent's filing of his mechanic's lien. Thus, by requiring that Petitioner pay some (unknown) amount in response to the demand would have resulted in his having to pay twice. As a matter of law, under the circumstances, it cannot be said that his failure to pay some (unknown) sum, in response to the § 27-1-15 demand, was unreasonable.

V. THE COURT OF APPEALS SHOULD NOT HAVE UPHELD THE AWARD OF STAFF MEMBER FEES, WHICH ARE NOT "ATTORNEY'S FEES".

In its opinion, the Court of Appeals cites the cases of McElveen v. McElveen, 332, S.C. 593, 502, 506 S.E.2d 1, 11 (Ct. App. 1998) and Charleston Lumber Co. v. Miller Housing Corp., 318 S.C. 471, 484, 458 S.E.2d 431, 439 (Ct. App. 1995) in upholding the award of staff member fees as part of its attorney's fees award. First, neither of these cases involves the interpretation of the South Carolina Mechanic's Lien Statute or S.C. Code Ann. § 27-1-15. Additionally, neither the Court of Appeals, nor the Respondent cites any case law that support the contention that staff fees may be included as "attorney's fees" under either S.C. Code Ann. § 29-5-10 or § 27-1-15. For this reason and under the legal authority set forth in Petitioner's Brief, Petitioner's Petition for Certiorari must be granted as to this issue.

VI. THE COURT OF APPEALS SHOULD NOT HAVE FOUND THAT THE RESPONDENT'S RECOVERY UNDER THE MECHANIC'S LIEN STATUTE WAS NOT LIMITED TO THE AMOUNT OF THE CASH BOND POSTED BY THE PETITIONER IN THIS MATTER.

The Court of Appeals holds that S.C. Code Ann. § 29-5-110 limits only the "judgement" awarded pursuant to the Mechanic's Lien Statute and not the award of attorney's fees which it contends were made pursuant to a separate statute. This contention is in error. The statute makes no distinction between components of a total judgment and the Court of Appeals is not authorized to create fictional components to justify an excessive award under the statute. The trial court ordered that "judgment," in the total amount of $446,434.76, be entered. (R. 19-23)

Regarding mechanic's lien actions where a cash bond has been posted, S.C. Code Ann. § 29-5-110 specifically provides that "[i]n the event of judgment for the person filing such statement in a suit brought pursuant to the provisions of this chapter, **such judgment shall be paid out of the cash deposited."** (Emphasis added). This would mean that the total amount including both the attorney's fees and the prejudgment interest upheld by the Court of Appeals must be paid out of the $266,012.71 cash bond and is therefore limited to that amount.

Therefore, the judgment entered in this matter pursuant to the South Carolina Mechanic's Lien Statute is in violation of S.C. Code Ann. § 29-5-110. For the reasons set forth in the Petitioner's Brief and the argument herein, Petitioner's Petition for Certiorari must be granted.

CONCLUSION

Based on the foregoing, the Court's Opinion filed February 6, 2013, is in error and therefore, Petitioners ask this Court to grant the petition for a writ of certiorari.

Respectfully submitted,

April 18, 2013

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PROOF OF SERVICE

I certify that I have served the Appellants' Petition for Writ of Certiorari and Appendix to Petition for Writ of Certiorari on The Spriggs Group, P.C. by depositing a copy of it in the United States Mail, First Class postage prepaid, on April 19, 2013, addressed to their attorneys of record, A. Bright Ariail, Esquire and James A. Bruorton, IV, Esquire, Rosen, Rosen, & Hagood, LLC 151 Meeting Street, Suite 400, Charleston, South Carolina 29401.

April 18, 2013

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