



**OPINIONS  
OF  
THE SUPREME COURT  
AND  
COURT OF APPEALS  
OF  
SOUTH CAROLINA**

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**ADVANCE SHEET NO. 12  
March 19, 2025  
Patricia A. Howard, Clerk  
Columbia, South Carolina  
[www.sccourts.org](http://www.sccourts.org)**

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**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

The State, Respondent,

v.

James Elbert Daniels, Jr., Petitioner.

Appellate Case No. 2023-001170

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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Appeal From Horry County  
Robert E. Hood, Circuit Court Judge

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Opinion No. 28268  
Heard March 11, 2025 – Filed March 19, 2025

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**CERTIORARI DISMISSED AS IMPROVIDENTLY  
GRANTED**

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Deputy Chief Appellate Defender Wanda H. Carter, of  
Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Deputy  
Attorney General Donald J. Zelenka, Senior Assistant  
Deputy Attorney General Melody Jane Brown, and  
Senior Assistant Attorney General J. Anthony Mabry, all

of Columbia; and Solicitor Jimmy A. Richardson, II, of  
Conway, all for Respondent.

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**PER CURIAM:** We granted certiorari to review the court of appeals' decision in *State v. Daniels*, 439 S.C. 500, 888 S.E.2d 9 (Ct. App. 2023). After careful consideration of the Appendix and briefs, the writ of certiorari is

**DISMISSED AS IMPROVIDENTLY GRANTED.**

**KITTREDGE, C.J., FEW, JAMES, HILL and VERDIN, JJ., concur.**



**THE STATE OF SOUTH CAROLINA**  
**In The Supreme Court**

In the Matter of Henry N. Portner, Respondent.

Appellate Case No. 2024-000699

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Opinion No. 28269

Submitted February 27, 2025 – Filed March 19, 2025

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**DISBARRED**

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Disciplinary Counsel William M. Blich, Jr., and Deputy  
Disciplinary Counsel Ericka M. Williams, both of  
Columbia, for the Office of Disciplinary Counsel.

Henry N. Portner, of Rancho Mirage, CA, pro se.

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**PER CURIAM:** On December 21, 2023, the Supreme Court of Florida granted Respondent's petition for disciplinary revocation without leave to seek readmission, thus revoking Respondent's license to practice law in Florida and terminating the disciplinary matters that were pending against him.<sup>1</sup> Respondent was placed on administrative suspension in South Carolina on March 15, 2024, for nonpayment of annual license fees.

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<sup>1</sup> These disciplinary matters involved practice-related allegations lodged by Respondent's clients, a complaint regarding numerous lawsuits in which Respondent represented consumers challenging timeshare purchases, and multiple complaints regarding Respondent's failure to comply with the terms of several injunctions. These complaints were at various stages of investigation and prosecution. Rather than continuing to participate in the disciplinary process, Respondent filed a petition for disciplinary revocation on August 31, 2023, seeking to terminate his bar membership in Florida.

On April 30, 2024, the Office of Disciplinary Counsel (ODC) notified this Court of Respondent's permanent disciplinary revocation in Florida. This Court subsequently issued a notice to ODC and Respondent directing the parties to file within thirty days any exceptions to the imposition of identical discipline in South Carolina. Respondent timely filed a response, arguing that reciprocal discipline in South Carolina is unwarranted.<sup>2</sup>

Upon notice that another jurisdiction has disciplined a lawyer admitted to practice in South Carolina, Rule 29(b), RLDE, provides the lawyer and ODC have thirty days to submit any claims as to why the imposition of identical discipline in this state would be unwarranted and the reasons for that claim. Rule 29(d), RLDE, provides that upon the expiration of that thirty-day period, this Court "*shall impose the identical discipline*" unless certain conditions exist, including that "the misconduct established warrants substantially different discipline in this state." Rule 29(d)(4), RLDE (emphasis added). Additionally, this Court may decline to impose reciprocal discipline if it finds that "it appears clearly upon the face of the record from which the discipline is predicated" that the other jurisdiction's proceeding was "so lacking in notice or opportunity to be heard as to constitute a deprivation of due process." Rule 29(d)(1), RLDE. The burden is on the party seeking different discipline to demonstrate that the imposition of the same discipline is inappropriate. *In re Walters*, 400 S.C. 625, 629, 735 S.E.2d 635, 637 (2011) (citing Rule 29(d), RLDE).

In his response to the notice of discipline, Respondent argues in a conclusory fashion that the allegations in the Florida disciplinary proceedings were unfounded and that he was "strong-armed" into resigning his membership Florida Bar. Specifically, Respondent claims that there was essentially no viable alternative when faced with the threat of "unduly burdensome" disciplinary proceedings, as there is no option to resign from the Florida Bar if a lawyer has grievances pending against him at the time he wishes to resign. Respondent argues he was forced to make this choice at a particularly vulnerable time when he was suffering multiple

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<sup>2</sup> Respondent's disciplinary history includes two public reprimands in Florida—one in 2010 and one in 2013. Reciprocal discipline was not imposed in South Carolina because Respondent failed to comply with Rule 29(a), RLDE, and did not notify ODC within fifteen days of the imposition of discipline in another jurisdiction.

serious, undisclosed health conditions and faced multiple surgeries. He also (incorrectly) claims he has already "retired" from the practice of law in South Carolina and, thus, reciprocal discipline would be merely punitive.<sup>3</sup>

Because Respondent presented no evidence that he was not afforded the requisite due process in Florida, we find Respondent failed to meet his burden of demonstrating that imposition of identical discipline in South Carolina is inappropriate. *See Selling v. Radford*, 243 U.S. 46, 50–51 (1917) (establishing that reciprocal attorney discipline is constitutional, so long as the original disciplinary proceedings afforded the lawyer due process and setting forth due process criteria that are mirrored in Rule 29, RLDE); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (establishing that assertions made without legal argument or supporting authority are insufficient to demonstrate error and will not be considered).

Turning to the question of what constitutes "identical discipline" in this matter, Rule 3-5.1(g) of the Florida Rules of Discipline defines a disciplinary revocation as follows:

A disciplinary revocation is *tantamount to a disbarment*. A respondent may petition for disciplinary revocation in lieu of defending against allegations of disciplinary violations. If accepted by the Supreme Court of Florida, a disciplinary revocation terminates the respondent's status as a member of the bar. A former bar member whose disciplinary revocation has been accepted may only be admitted again upon full compliance with the rules and regulations governing admission to the bar. Like disbarment, disciplinary revocation terminates the respondent's license and privilege to practice law and requires readmission to practice under the Rules of the Supreme Court Relating to Admissions to the Bar. No application for readmission may be tendered until the later of 5 years after the date of the order of the Supreme Court of Florida granting the petition for disciplinary revocation, or another period of time in excess of 5 years contained in that order.

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<sup>3</sup> A review of the Attorney Information System reveals that until his March 2024 administrative suspension, Respondent remained a regular member of the bar in good standing in South Carolina.

*Rule 3-5.1 - GENERALLY*, R. Regul. Fl. Bar 3-5.1 (emphasis added).

Based on the above definition and this Court's precedent, we find that the "identical discipline" in this matter is disbarment. *See In re Meehan*, 427 S.C. 446, 449, 832 S.E.2d 275, 276-77 (2019) (finding disbarment to be the appropriate disciplinary sanction for an attorney who had resigned in lieu of discipline in Texas, in part because a South Carolina resignation in lieu of discipline must be a voluntary action, which is inconsistent with this Court ordering an attorney to resign).<sup>4</sup>

Respondent is hereby disbarred from the practice of law in South Carolina. Within fifteen (15) days of the date of this opinion, Respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30 of Rule 413, SCACR, and shall also surrender his Certificate of Admission to the Practice of Law to the Clerk of this Court.

**DISBARRED.**

**KITTREDGE, C.J., FEW, JAMES, HILL and VERDIN, JJ., concur.**

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<sup>4</sup> The other basis for imposing disbarment in *Meehan*—namely, that the consequences of a resignation in lieu of discipline differed between Texas (non-permanent) and South Carolina (permanent)—is not implicated in the present matter, as the Florida order granting Respondent's disciplinary revocation explicitly provided that Respondent's revocation is permanent.

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Marvin Gipson, Respondent,

v.

Coffey & McKenzie, P.A., Petitioner.

Appellate Case No. 2023-001880

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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Appeal From Clarendon County  
Kristi F. Curtis, Circuit Court Judge

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Opinion No. 28270  
Heard January 14, 2025 – Filed March 19, 2025

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**DISMISSED AS IMPROVIDENTLY GRANTED IN  
PART AND REVERSED IN PART**

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Steven Smith McKenzie and Alexander Colson Craven,  
both of Coffey & McKenzie, P.A., of Manning, for  
Petitioner.

Benjamin Allen Dunn, II, of Ormond Dunn, of  
Columbia, for Respondent.

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**JUSTICE HILL:** In a negligence case, a party who loses a sum of money due to another's wrongful conduct is entitled to recover the full amount as damages. In other words, he is entitled to be made whole. The question in this case is, when the

wrongdoer returns some of the money to the wronged party, may the wronged party still seek to recover the entire amount as damages from the wrongdoer? Stating the question would seem to answer it. But the answer must wrestle with the counterintuitive principle known as the collateral source rule, a doctrine that denies a wrongdoer the benefit of monies paid not on his behalf from an independent source to which he did not contribute.

Marvin Gipson sold a piece of real estate and asked Petitioner law firm, Coffey & McKenzie, P.A. (Coffey), to close the sale for him. The sale netted Gipson proceeds of \$10,036. Coffey, acting on email instructions it thought came from Gipson, wired the proceeds to a bank account in California. It turned out this account was owned by a hacker, who had accessed Gipson's email and sent wiring instructions using an email address almost identical to Gipson's. After discovering the hack, Coffey was able to recover \$1,516.89 from the hacker's bank, and the firm returned this amount to Gipson.

Gipson sued Coffey for negligence. A jury awarded Gipson \$10,036. The trial court denied Coffey's motion to reduce the verdict by the \$1,516.89 already returned to Gipson. The court of appeals affirmed, holding the jury's damage award was reasonable, and in any event, the recovered funds derived from a collateral source. *Gipson v. Williamson*, Op. No. 2023-UP-324 (S.C. Ct. App. filed Oct. 4, 2023). We granted certiorari. Because we conclude the money returned was not from a collateral source, we reverse in part.

## I.

During the trial, Gipson admitted Coffey had given him the \$1,516.89, telling the jury he just wanted to be made whole. In its charge on the law, the trial court explained what this meant in terms of the damages the jury could award:

Actual damages are to compensate the plaintiff for the plaintiff's injury or loss and to put the plaintiff as near as possible in the same position that the plaintiff was in before the incident occurred. In other words, actual damages would be the actual losses and expenses which the plaintiff has suffered because of the defendant's negligence.

This was faithful to the general measure of damages in negligence cases not involving personal injury.

We may not disturb the amount of a jury's damages award in a negligence case if it is within the range of evidence. See *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993) ("The jury's determination of damages . . . is entitled to substantial deference."); *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 44–45, 691 S.E.2d 135, 146–47 (2010) (affirming jury's actual damages award because the injured party presented sufficient evidence to support the award of actual damages).

Here, both the trial court and the court of appeals upheld the jury's verdict, pointing out the jury knew Coffey had already paid the \$1,516.89 in recovered funds to Gipson. Both courts reasoned the jury nevertheless chose to award Gipson the entire amount of the sales proceeds, and the jury was free to make that choice.

However, in his motion to reduce the verdict, Coffey was, in essence, asking that the \$1,516.89 the firm gave back to Gipson be credited against the amount of the verdict. Coffey believed that if the verdict amount was not so reduced, Gipson would receive a double recovery of the \$1,516.89.

So do we. The law's refusal to allow a double recovery is fundamental. *Riley v. Ford Motor Co.*, 414 S.C. 185, 195, 777 S.E.2d 824, 830 (2015); *Hawkins v. Hatton*, 10 S.C.L. (1 Nott & McC.) 318, 319 (1818) ("It is unreasonable, that a party should have more than one satisfaction for the same injury . . ."). A trial judge may invoke this basic common law rule to ensure the verdict amount comports with the plaintiff's actual loss. The trial judge should have therefore granted Coffey's motion to reduce the verdict and prevent a double recovery.

## II.

Under the collateral source rule, the jury's verdict would not amount to a double recovery if the \$1,516.89 came from an independent, collateral source. The collateral source rule states that the amount of damages a wrongdoer is legally obligated to pay the party he has injured will not be reduced by amounts a third party, independent of the wrongdoer, has paid the injured party, as long as the wrongdoer has not contributed to the funds paid and they were not paid on the wrongdoer's behalf. *In re W.B. Easton Constr. Co., Inc.*, 320 S.C. 90, 92, 436 S.E.2d 317, 318 (1995). The idea underlying the collateral source rule is that "a wrongdoer should not receive a windfall simply because the injured party received compensation from an independent source." *Atkinson v. Orkin Exterminating Co., Inc.*, 361 S.C. 156, 172, 604 S.E.2d 385, 393 (2004). Put another way, if a source unconnected to the

wrongdoer pays the loss, that fortuity does not absolve or reduce the wrongdoer's responsibility to pay for the injury he caused.

The first American stirrings of the rule appeared, well camouflaged, in the mid-nineteenth century, *see The Monticello*, 58 U.S. 152, 155–56 (1854), and debuted in our state a few decades later, *see Bridger v. Asheville & S.R. Co.*, 27 S.C. 456, 460, 3 S.E. 860, 862 (1887). Although it may appear in many contexts, the collateral source rule most often arises when the injured party has received money for the injury from one of the following sources of benefits: (1) insurance policies, *see Bardsley v. Gov't Emps. Ins. Co.*, 405 S.C. 68, 80, 747 S.E.2d 436, 442 (2013) (underinsured property damage benefits); (2) employment benefits, *Powers v. Temple*, 250 S.C. 149, 155–59, 156 S.E.2d 759, 762–63 (1967) (disability payments by employer); (3) gratuities, *New Found. Baptist Church v. Davis*, 257 S.C. 443, 446–47, 186 S.E.2d 247, 248–49 (1972) (donation of construction services); (4) social legislation benefits, *Haselden v. Davis*, 353 S.C. 481, 485, 579 S.E.2d 293, 295 (2003) (Medicaid payments). *See* Restatement (Second) of Torts § 920A cmt. c (Am. L. Inst. 1979) (listing common collateral sources).

As we have said, a source will be deemed collateral only if it has no connection to the wrongdoer. Payment made by the wrongdoer to a person he has injured is not payment from a collateral source. Restatement (Second) of Torts, *supra*, at § 920A. Nor is a payment made by a joint tortfeasor. *Id.*; *In re W.B. Easton Constr. Co., Inc.*, 320 S.C. at 92, 463 S.E.2d at 318; *see generally* Note, *Unreason in the Law of Damages: The Collateral Source Rule*, 77 Harv. L. Rev. 741 (1964); Eugene C. Covington, Jr., "Collateral Source Rule" in 1 *South Carolina Damages* at 3-1 (2004).

Coffey's return of the \$1,516.89 to Gipson was not a payment from a collateral source. The \$1,516.89 represented the residual balance languishing in the hacker's California bank account. The return of these funds was not a windfall. The return was made by Coffey, the wrongdoer. The source of the funds was therefore direct, not collateral. In the alternative, it could be said the source of the funds was the hacker, a joint tortfeasor.

Because we hold the collateral source rule does not apply, Coffey was entitled to have the verdict reduced by the \$1,516.89 it had repaid Gipson.

Although we also granted certiorari on an issue concerning expert testimony, we dismiss the writ as to that issue as improvidently granted.



**REVERSED IN PART AND DISMISSED AS IMPROVIDENTLY GRANTED  
IN PART.**

**KITTREDGE, C.J., FEW, J., Acting Justices Milton Gary Kimpson and Maite  
D. Murphy, concur.**

**THE STATE OF SOUTH CAROLINA**  
**In The Court of Appeals**

TCC of Charleston, Inc., Appellant/Respondent,

v.

Concord and Cumberland, LLC, 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, 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, Respondents,

Of which Concord & Cumberland HPR is the Respondent/Appellant.

Appellate Case No. 2021-000272

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Appeal From Charleston County  
Mikell R. Scarborough, Master-in-Equity

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Opinion No. 6106  
Heard June 11, 2024 – Filed March 19, 2025

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**AFFIRMED IN PART, REVERSED IN PART, AND  
REMANDED**

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Jaan Gunnar Rannik, of Epting & Rannik, LLC; and  
Michelle N. Endemann, both of Charleston, for TCC of  
Charleston, Inc.

F. Cordes Ford, IV, of Womble Bond Dickinson (US)  
LLP, of Charleston, for Concord and Cumberland, LLC;  
Leo Hall; Diane Hall; Bea H. Smith; Margaret C. Pope;  
William D. Foster; Jr., Donald D. Leonard; Mattellen,  
LLC; Thomas R. Debnam; Gregory J. Gardner; Freeman  
Waterfront Properties, LLC; Jo-Ann Cooper; Betty Y.  
Segal; Robert M. Levin; Bonita K. Levin; Robert  
Kenneth Seidl, II; M. Bert Storey; Thomas R. Mather;  
304 Concord & Cumberland, LLC; Marion M. Simpson;  
Kathy Gardner; Edward T. Strom; Barbara K.  
Henderson; James R. Clarke; Paul A. Brim; Robert K.  
Seidl; Jennifer M. Seidl; Gene G. Foster; Mattison J.  
MacGillivray; Teresa MacGillivray; Pamela L. Vaughn;  
Nelia A. Patricio; and Stuart D. Reeves.

Robert Andrew Walden, of Womble Bond Dickinson  
(US) LLP, of Charleston, for Concord and Cumberland  
HPR.

William Cole Shannon, of Charleston; Edward D.  
Buckley, Jr. and Russell Grainger Hines, of Clement  
Rivers, LLP, of Charleston; all for Betty L. Beatty.

W. Siau Barr, Jr., of Clement Rivers, LLP, of Charleston,  
for 304 Concord & Cumberland, LLC and Betty L.  
Beatty.

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**VINSON, J.:** TCC of Charleston, Inc. (TCC) appeals the master-in-equity's (the master's) order denying its motions to amend a statement of account and for attorney's fees and granting its motion to confirm an arbitration award. It also

appeals the master's order granting the motion for summary judgment, motion for dismissal, motion to deposit funds, and motion for attorney's fees filed by Concord & Cumberland Horizontal Property Regime (the HPR) and individual unit owners of a condominium owned by the HPR. TCC appeals the master's orders granting partial summary judgment and awarding attorney's fees to Betty Beatty, an individual who owned one of the units in the condominium, and awarding attorney's fees to unit owners other than Beatty. TCC argues the master erred in (1) finding TCC's mechanic's lien was not timely served and dissolving the mechanic's lien due to an error on the statement of account, (2) not allowing discovery before dismissing the lien, (3) holding the HPR's deposit of a judgment into court stopped interest from accruing, (4) denying TCC's motion for attorney's fees, and (5) granting attorney's fees to the HPR. The HPR cross appealed, arguing the master erred in granting TCC's motion to confirm the arbitration award, which the HPR asserts occurred after the circuit court erred in failing to vacate or modify TCC's arbitration award, because the arbitration panel disregarded a sworn lien waiver and release when issuing its award to TCC, failed to issue a reasoned award, and allocated a portion of the award to a project that was not part of TCC's claim. We affirm the master's order granting the HPR's motions to dismiss and for summary judgment, granting TCC's motion to confirm the arbitration award, and denying TCC's motions to amend statement of account and for attorney's fees. We also affirm the Master's order granting summary judgment to Beatty. We reverse and remand the master's award of attorney's fees to the HPR and to Beatty.

## **FACTS AND PROCEDURAL HISTORY**

This appeal arises from a repair project at condominiums located at 175 Concord Street in Charleston. The HPR, which owned the condominiums, hired TCC as the general contractor on the project. On February 27, 2014, the HPR and TCC signed a contract with a guaranteed maximum price (GMP) of \$3,923,939.00. Once work on the project began, TCC discovered that the condition of the condominium differed from what TCC contemplated when it submitted its bid, and TCC requested 134 proposed change orders (PCOs) during the course of the work. The HPR paid \$1,953,145.00 of the amount billed in the PCOs, which increased the total price of the project to \$5,877,084.00 by February 2016. The HPR paid the PCOs on a cost-plus basis.<sup>1</sup>

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<sup>1</sup> "Cost-plus" meaning the HPR would pay TCC the cost of its services and an additional amount for profit.

On June 6, 2016, TCC filed a complaint for foreclosure of mechanic's lien, breach of contract, and quantum meruit against the HPR. TCC also filed a lis pendens, notice of mechanic's lien, a statement of account, and a motion to compel arbitration. TCC requested \$2,385,503.57 plus interest for labor and materials used on the project and unpaid by the HPR. This amount arose from Payment Application 18, a payment application being a request for payment for ongoing work. Both the complaint and the statement of account, which TCC president John David Griffith signed, stated the last day of work on the project was March 17, 2016. On June 10, 2016, TCC filed an amended complaint and notice of mechanic's lien along with the original statement of account against the HPR and the individual unit owners. The amended complaint and statement of account added the unit owners as parties and stated the last day of work on the project was March 17, 2016. An amended lis pendens was filed June 16, 2016. An affidavit of service shows that Beatty was served with the lis pendens, complaint, and notice of the mechanic's lien on June 22, 2016.

The HPR filed an answer to the amended complaint, but it agreed to arbitration pursuant to its contract with TCC. On December 30, 2016, the circuit court entered a consent order staying the action and allowing arbitration to proceed between the HPR and TCC. The arbitration panel conducted a merits hearing in January 2019, and the parties submitted proposed orders. On April 16, 2019, the arbitration panel issued the arbitration award finding TCC "performed additional work outside the scope of the work which was not approved and was not paid," and that TCC was entitled to payment for PCOs 143, 144, 144R, and unpaid retainage. The panel awarded TCC \$2,023,074.45 for the claims asserted in the arbitration proceeding.

TCC filed a motion for prejudgment interest, costs of arbitration, and attorney's fees and costs, along with affidavits from its counsel. The HPR filed a motion for reconsideration, arguing the form of the award was improper because the panel failed to issue a reasoned award.<sup>2</sup> The HPR also contended no agreements between the parties amended their contract to change its form from a GMP to a cost-plus contract, and therefore "no reliable evidence . . . exists between the

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<sup>2</sup> *Tully Constr. Co./A.J. Pegno Constr. Co., J.V. v. Canam Steel Corp.*, No. 13 CIV. 3037(PGG), 2015 WL 906128, at \*15 (S.D.N.Y. Mar. 2, 2015) (stating a reasoned award is "an award that is provided with or marked by the detailed listing *or mention of* expressions or statements offered as a justification . . . [for] the decision of the [arbitrator]" (alterations in original) (quoting *Cat Charter, LLC v. Schurtenberger*, 646 F.3d 836, 844 (11th Cir. 2011)).

parties which contemplated that TCC would bill for and recover its total costs for [the] project." On June 12, 2019, TCC filed a motion to lift the stay of the case in the circuit court so it could seek confirmation of the arbitration award and pursue its other claims against the HPR and the unit owners. The HPR filed a motion for change of award in the arbitration proceeding, arguing the arbitration award compensated TCC for Payment Application No. 17 in the amount of \$648,542.79, a payment application TCC did not dispute the HPR had already paid. To preserve its right to judicial review, the HPR also filed a motion to vacate the arbitration award or, alternatively, to modify or correct the arbitration award in the circuit court, arguing that the panel did not render a reasoned award, made an evident miscalculation, and manifestly disregarded the law as to the enforceability of sworn signed lien waivers. The HPR argued that the "Conditional Release and Waiver of Lien" (the lien waiver) that was signed by TCC and attached to Pay Application No. 17 and other Pay Applications barred TCC's recovery.

On August 12, 2019, the arbitration panel issued a corrected arbitration award, stating the arbitration award included amounts from PCOs 143, 144R, and 146, and that in calculating interest the panel mistakenly referred to Pay Application No. 17 instead of the PCOs included in the award. In response to the HPR's argument regarding the lien waiver, the panel stated, "Credible testimony at the hearing was presented . . . that TCC and [the] HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project." The panel went on to find,

[S]ome of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by HPR which arose and existed as of the date of the execution of the [lien waiver]. Knowing that TCC had signed [the lien waiver], [the] HPR nonetheless agreed to PCOs; signed the Change Orders; and made payment for claims that may have otherwise been released or barred by the [lien waiver]. [The] HPR cannot now claim that the [lien waiver] bar[s] TCC's claims.

The panel issued a corrected award of \$2,016,066.73 for TCC and included an explanation of how it reached that award. The award included work TCC completed on a stone tower with an inefficiency adjustment of twenty-five percent. The panel found the contract between TCC and the HPR did not contain a prevailing party attorney's fee provision and no statutory authority was provided as a basis for attorney's fees. Therefore, the arbitration panel found it did not have jurisdiction to hear motions for attorney's fees, and TCC and the HPR's requests for

attorney's fees were both denied without prejudice so they could seek attorney's fees in the circuit court. The panel awarded TCC for costs for arbitration fees and other expenses. It also corrected the interest calculation and found TCC was entitled to recover interest on the sum of PCOs 143, 144R, and 146 and retainage.

The HPR filed a motion for change of the corrected arbitration award, arguing it did not pay TCC for PCOs or claims submitted after signing the lien waiver attached to Pay Application No. 17. It also contended the arbitration award should not include costs for the stone tower because a claim for its cost was never submitted to arbitration. The arbitration panel issued an order denying the HPR's motion for change on October 23, 2019. The HPR then filed a motion to vacate the corrected arbitration award or, alternatively, to modify or correct the corrected arbitration award in the circuit court, again arguing the arbitration panel manifestly disregarded the law, did not issue a reasoned award, and issued the award based on matters not submitted to the panel.

The circuit court heard the motion to vacate on December 16, 2019, and issued an order denying the HPR's motion on January 30, 2020. The circuit court found that the award was a reasoned award because the factual inferences and legal conclusions in the nine-page order were sufficient to support the panel's findings. It found the arbitration panel did not manifestly disregard the law in declining to enforce the lien waiver based on the explanation given in the corrected arbitration award and "a contemporaneous email from [the] HPR's agent confirming the agreement." The circuit court also found no error or manifest disregard of the law in the arbitration panel's finding that the GMP provided in the contract was overcome by the agreement between TCC and the HPR to fix out-of-scope items and compensate TCC on a time and material basis. The circuit court found that the arbitration panel did not err in including TCC's work related to the stone tower in its award because the work was within the scope of the arbitration agreement. Finally, the circuit court found no technical issue with the arbitration award to make it subject to modification or correction under section 15-48-140 of the South Carolina Code (2005).

The HPR filed a motion to reconsider, alter, or amend judgment, which the circuit court denied on May 1, 2020. In its order denying the motion to reconsider, the circuit court clarified that it did not rely on the email sent by the HPR's agent when issuing its order denying the HPR's motion to vacate, stated its reference to the email was harmless error because it had a separate basis for concluding there was no manifest disregard of the law, and redacted the reference to the email from its previous order. The HPR appealed the orders to this court, but the appeal was

dismissed because the circuit court did not confirm the arbitration award when it ruled, and therefore the issue was not immediately appealable.

On December 6, 2019, during the stay of the mechanic's lien cause of action due to arbitration, the HPR filed a motion for summary judgment, arguing that the action against it to foreclose the mechanic's lien could not stand because a mechanic's lien could not be filed against the HPR under the Horizontal Property Act.<sup>3</sup> On May 8, 2020, after the stay was lifted, Beatty filed a motion for partial summary judgment, arguing TCC's mechanic's lien dissolved according to section 29-5-90 of the South Carolina Code (2007) when TCC failed to serve her with the notice or certificate of lien on or before June 15, 2016, within ninety days from the last day of work, March 17, 2016. On May 11, 2020, the HPR filed a motion to deposit funds, requesting the circuit court allow it to deposit TCC's arbitration award into the court to stop the accrual of interest pursuant to Rule 67, SCRPC. On May 22, 2020, TCC filed a motion to amend its pleading.

The circuit court heard the HPR's motion for summary judgment, Beatty's motion for partial summary judgment, the HPR's motion to deposit funds, and TCC's motion to amend on May 28, 2020. The circuit court granted TCC's motion to amend its complaint but did not rule on the remaining motions, instead referring the matter to the master. On August 24, 2020, TCC filed its second amended complaint, which did not include a reference to March 17, 2016, as the last day of work on the project. The second amended complaint included causes of action for foreclosure of mechanic's lien, breach of contract, and equity. TCC also filed a motion to confirm its arbitration award. On September 11, 2020, TCC filed a motion for attorney's fees as the prevailing party in arbitration.

The HPR filed a motion to dismiss TCC's second amended complaint, arguing a mechanic's lien could not be filed against the HPR; TCC's breach of contract and equity claims should be dismissed for lack of subject matter jurisdiction because they were adjudicated in arbitration; and the mechanic's lien cause of action should be dismissed based on insufficient service of notice of the lien. The HPR also filed a motion for attorney's fees related to the mechanic's lien claim. On October 1, 2020, TCC filed a motion to amend a statement of account "to correct the date last worked and to conform the statement of account to an issue submitted to and decided by the arbitration panel."

The master held a hearing on the parties' motions on November 5, 2020. During the hearing, the master denied TCC's motion to amend the statement of account,

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<sup>3</sup> S.C. Code Ann. §§ 27-31-10 to -430 (2007 & Supp. 2024).



finding TCC could not change the last day of work that was set forth in the verified statement of account, which was March 17, 2016. The master then found the lien was not perfected according to the statute because TCC failed to serve notice of the lien on all owners within ninety days of the last day of work. The master also dismissed the mechanic's lien cause of action against the HPR and stated he would confirm TCC's arbitration award.

On November 30, 2021, TCC submitted a response and objections to filings and submissions of Beatty and a response and objections to filings and submissions of the HPR. TCC argued an inaccuracy in the statement of account could not invalidate its mechanic's lien and that the master should not grant Beatty's and the HPR's requests for attorney's fees. The HPR filed a motion to strike TCC's response to its filings and submissions from the record, arguing TCC made false assertions and arguments regarding issues the master ruled on already. On January 17, 2021, the individual unit owners filed a motion for summary judgment, arguing there was no genuine issue of material fact as to TCC's mechanic's lien claim because TCC failed to perfect the lien by serving notice to the unit owners within ninety days of the last day of work and as to TCC's breach of contract and equity claims because TCC failed to plead any of the elements needed to assert such claims.

On February 16, 2021, the master issued an order denying TCC's motion to amend the statement of account and motion for attorney's fees. In addition, the master granted TCC's motion to confirm the arbitration award and the HPR's motions to dismiss and for summary judgment, to deposit funds, and for attorney's fees, which it stated it would award in a separate order. The master found TCC was bound by the date given as the last day of work on its sworn statements of account and by the fact that the HPR and certain unit owners admitted in their answer to TCC's allegations in its initial and first amended complaint that the last date of work was March 17, 2016. The master found TCC's mechanic's lien was dissolved because it failed to perfect the lien with ninety days and because the HPR could not be subject to the mechanic's lien by law. The master also held TCC's breach of contract claim against the HPR was decided by arbitration, and to the extent a breach of contract claim against the individual unit owners survived arbitration, TCC failed to state a breach of contract claim against unit owners in its second amended complaint. The master found the arbitration also disposed of TCC's quantum meruit claim. Further, he dismissed TCC's equity claim, which it brought to seek attorney's fees, reasoning the arbitration panel determined no contractual basis existed to award attorney's fees and that the dismissal of TCC's mechanic's lien claim barred any statutory basis to award attorney's fees. The master

confirmed the arbitration award and granted the HPR's motion to deposit funds, finding depositing the arbitration award into the court would stop the accrual of interest. The master denied TCC's motion for attorney's fees because the contract between TCC and the HPR did not provide for attorney's fees and there was no statutory basis for attorney's fees once the mechanic's lien was dissolved. He granted the HPR's motion for attorney's fees because it was the prevailing party in the foreclosure of the mechanic's lien cause of action.

The master also issued an order granting partial summary judgment to Beatty, again finding that TCC's mechanic's lien was dissolved because it failed to timely serve Beatty with notice of the lien within ninety days of March 17, 2016, the last day of work asserted in its initial pleadings and on the face of the lien. The master also held Beatty was entitled to attorney's fees after reviewing the factors from *Jackson v. Speed*.<sup>4</sup> The master stated he reviewed the affidavit of Beatty's counsel and, "*in camera*, detailed time records entered upon his firm's billing software" that reflected "the hours each attorney or legal staff member expended upon each task as described in the narrative billing entry for each task." Later the master issued Form 4 orders awarding Beatty \$76,000 in attorney's fees and the HPR and the unit owners other than Beatty \$250,553.70 in attorney's fees. TCC filed a motion for reconsideration regarding the award of attorney's fees, which the master denied. In his order denying TCC's motion to reconsider, the master stated he reviewed the unredacted attorney's fees affidavits *in camera*, declined to apply the *Jackson* factors "to each entry for attorney's fees requested," and stated the attorney's fees requested related only to the mechanic's lien cause of action. This appeal followed.

## **TCC'S ISSUES ON APPEAL**

- I. Did the master err in finding TCC's lien was not timely served based on the date in the statement of account when all parties were timely served based upon the actual date of the last work?
- II. Did the master err in dissolving the lien based upon an error in the statement of account and in denying TCC's motion to amend the statement of account to use the last day of work and not the earlier date of substantial completion?

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<sup>4</sup> 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) (holding courts "should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services").

- III. Did the master err in dismissing TCC's lien without allowing TCC discovery?
- IV. Did the master err in holding that a deposit of a judgment into the court would stop contractual interest on the amount owed to TCC?
- V. Did the master err in denying TCC's motion for attorney's fees and TCC's request that confirmation and appeal not occur until adjudication of TCC's claims was final?
- VI. Did the master err in (1) granting the HPR an award of attorney's fees on the foreclosure cause of action and awarding them in excess of \$250,000 in attorney's fees, including fees incurred at a time when the foreclosure cause of action was stayed by court order and (2) denying TCC's motion for reconsideration?
- VII. Did the master err in (1) granting Betty Beatty summary judgment as to TCC's lien claims and awarding her \$76,000 in attorney's fees as a prevailing party and (2) denying TCC's motion for reconsideration?

### **THE HPR'S ISSUES ON APPEAL**

- I. Did the circuit court err in failing to vacate the arbitration award when the arbitration panel applied the doctrines of waiver or estoppel to disregard a conditional release and waiver of lien, thereby resulting in a manifest disregard of contract law?
- II. Did the circuit court err in failing to vacate the arbitration award when the arbitration panel exceeded its powers by agreeing to issue a "Reasoned Award" then provided an award steeped in conclusory statements that did nothing but cause confusion and uncertainty within the arbitration process?
- III. Did the master err in failing to modify the arbitration award when the arbitration panel exceed its power by failing to give effect to the lien waiver?
- IV. Did the master err in failing to modify the arbitration award when the arbitration panel exceeded its powers by allocating a portion of the award to costs incurred on another project that was not referred to arbitration and was not a part of TCC's claim?

## STANDARDS OF REVIEW

"When reviewing the grant of a summary judgment motion, [an appellate] court applies the same standard that governs the trial court under Rule 56(c), SCRPC; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 490, 732 S.E.2d 205, 208-09 (Ct. App. 2012). "In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party." *Byers v. Westinghouse Elec. Corp.*, 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *S. Glass & Plastics Co.*, 399 S.C. at 490, 732 S.E.2d at 209 (quoting *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004)).

"An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC." *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Id.* "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id.* "Dismissal under Rule 12(b)(6) is improper if the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory." *Id.* "The trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law." *Id.*

"An arbitrator's award may be vacated when the arbitrator exceeds his or her powers [ ]or manifestly disregards or perversely misconstrues the law." *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009). "A court may vacate an arbitration award under the manifest disregard standard only when a plaintiff has shown that: (1) the disputed legal principle is clearly defined and is not subject to reasonable debate; and (2) the arbitrator refused to apply that legal principle." *Jones v. Dancel*, 792 F.3d 395, 402 (4th Cir. 2015). "However, for a court to vacate an arbitration award based upon an arbitrator's manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable." *Gissel*, 382 S.C. at 241, 676 S.E.2d at 323. "This standard is met only when the award is the product of an intentional or reckless flouting of the

law, not a mere error in interpreting it." *Waldo v. Cousins*, 442 S.C. 662, 665, 901 S.E.2d 276, 278 (2024).

"The decision to award or deny attorney[']s fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009). "An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." *Id.* (quoting *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008)). "Similarly, the specific amount of attorney[']s fees awarded pursuant to a statute authorizing reasonable attorney[']s fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.* (quoting *Layman*, 376 S.C. at 444, 658 S.E.2d at 325). "However, where the issue of the amount of attorney[']s fees awarded depends on the [c]ourt's interpretation of 'reasonable' attorney[']s fees as contained in the [statute], the interpretation of the statute is a question of law that the [c]ourt reviews de novo." *S.C. Dep't of Transp. v. Revels*, 411 S.C. 1, 8, 766 S.E.2d 700, 704 (2014).

## **TCC'S APPEAL**

### **I. Dissolving the Mechanic's Lien<sup>5</sup>**

TCC argues the mechanic's lien was timely served and filed because the date of last work was January 23, 2017, not March 17, 2016, and that this was proven by evidence in the record. It contends the arbitration panel determined the last day of work was January 23, 2017, when it awarded damages for the stone tower, which was not completed on March 17, 2016. TCC maintains that the issue of the last day of work was res judicata because the circuit court allowed it to amend its initial pleadings to correct the date. TCC further contends this ruling became the law of the case and was binding on the master. TCC asserts an error in the date of last work on a statement of account was not a basis for invalidating a mechanic's lien because the day of last work is not required for a statement of account. TCC argues timely service on the HPR constituted timely service on the unit owners and that the burden on the contractor to serve notice of a mechanic's lien on owners who did not live at the property in question within ninety days of last work

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<sup>5</sup> We address the TCC's Issues I through III together under this heading.

prevents a contractor from enforcing its lien rights. TCC asserts the master erred in preventing further discovery to determine how and when the unit owners first received notice of the mechanic's lien and the lawsuit. We disagree.

"Mechanic's liens in South Carolina are purely statutory and may only be acquired and enforced in accordance with the statutes creating them." *Preferred Sav. & Loan Ass'n, Inc. v. Royal Garden Resort, Inc.*, 295 S.C. 268, 271, 368 S.E.2d 78, 80 (Ct. App. 1988), *aff'd*, 301 S.C. 1, 389 S.E.2d 853 (1990).

A person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate . . . by virtue of an agreement with ... the owner of the building or structure . . . shall have a lien upon the building or structure and upon the interest of the owner of the building or structure in the lot of land upon which it is situated to secure the payment of the debt due to him.

S.C. Code Ann. § 29-5-10(a) (2007). Under section 29-5-90, a statement of account designating the amount due must be served and filed "within ninety days after he ceases to labor on or furnish labor or materials for such building or structure." "[T]o perfect and enforce the lien against the property, the person claiming it must . . . serve and record a certificate of lien within ninety days after he ceases to furnish labor or materials . . . ." *Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 27, 336 S.E.2d 488, 490 (Ct. App. 1985).

The North Carolina Court of Appeals has stated, "It is well established that a lien is lost if the steps required to perfect it are not taken in the manner and within the time prescribed by law." *Strickland v. Gen. Bldg. & Masonry Contractors, Inc.*, 207 S.E.2d 399, 400 (N.C. Ct. App. 1974). In *Strickland*, a North Carolina case with similar facts that our supreme court cited in *Preferred Savings*, the appellant stated in his notice and claim of lien that "material . . . was last furnished upon [the] property on March 28, 1973," meaning more than 120 days had passed since the last day of work when he filed the notice on July 27, 1973. *Id.* The North Carolina Court of Appeals found,

Although the claim of lien filed by plaintiff contains information not required by the statute, it reveals on its face that it was filed more than 120 days after the stonework was last furnished by plaintiff. Thus all

potential purchasers or lenders interested in the subject property and relying on the public record would be advised that the claim of lien had not been filed in accordance with the statute, and was not enforceable against the property.

*Id.* at 400-01.

Section 27-31-230(a) of the Horizontal Property Act states that "[n]o lien arising subsequent to recording the master deed or lease as provided in this chapter, and while the property remains subject to this chapter, shall be effective against the property." The statute goes on to state that "[d]uring such period liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common elements appurtenant to such apartment . . . ." *Id.*

When a party files a notice of lien under Section 29-5-90 he is asserting that at a time within ninety days before the notice he has performed work for which he is entitled to assert a lien. Because the party asserts in his notice the work has already been performed, the date of cessation of the labor for which the lienor seeks payment must be a date before the notice of lien is filed and not after.

*Preferred Sav. & Loan Ass'n, Inc.*, 295 S.C. at 272-73, 368 S.E.2d at 81.

We hold the master did not err in dissolving TCC's mechanic's lien based on its failure to serve the lien within ninety days of the last day of labor it provided in its statement of account. *See* § 29-5-90 (stating a lien will dissolve if "the person desiring to avail himself thereof" does not serve and file the statement of account designating the amount due "within ninety days after he ceases to labor on or furnish labor or materials for [the subject] building or structure"). In its initial complaint, first amended complaint, and statement of account, TCC stated the last day of work on the condominium occurred on March 17, 2016. While errors in the statement of account do not invalidate a lien, in this case the last day of work included in the initial complaint, first amended complaint, and statement of account show that TCC failed to serve its mechanic's lien on the individual unit owners within ninety days of the last day of work on the project as the statute required. *See Strickland*, 207 S.E.2d at 400 (finding a lien could not be enforced against a property because the dates included on the notice and claim of lien showed it was not filed within 120 days of the last day of work as required by

statute, even though the last day of work was not required information for the notice).

Although TCC amended its complaint a second time to remove reference to the last day of work as March 17, 2016, we hold TCC is bound by the date of last work asserted in its statement of account. *See Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 279, 851 S.E.2d 724, 731 (Ct. App. 2020) ("Kitchen Planners is bound by the dates asserted in its pleadings and on the face of the lien."), *aff'd as modified*, 440 S.C. 456, 892 S.E.2d 297 (2023). Moreover, we hold TCC cannot assert that the last day of work occurred January 23, 2017—six months after it filed the mechanic's lien in June 2016—because the party filing a mechanic's lien asserts work that has already been performed. *See Preferred Sav. & Loan Ass'n, Inc.*, 295 S.C. at 272-73, 368 S.E.2d at 81 ("Because the party asserts in his notice the work has already been performed, the date of cessation of the labor for which the lienor seeks payment must be a date before the notice of lien is filed and not after.").

Additionally, we hold the issue of the last day of work is not res judicata because the arbitration panel did not make any findings about the last day of work in its original or corrected award. *See Sealy v. Dodge*, 289 S.C. 543, 545, 347 S.E.2d 504, 505 (1986) ("In order to establish a plea of res judicata, three elements must be established: (1) identity of parties; (2) identity of subject matter; and (3) adjudication of the issue in the former suit."). The arbitration panel's inclusion of the cost of the stone tower in its award did not include any discussion of the date of last work. Likewise, the master did not include any findings regarding the last day of work in its order allowing TCC to amend its pleadings. Thus, the issue of the last day of work has not been adjudicated in a previous action. Accordingly, we reject TCC's argument that the last day of work was res judicata.

Further, we hold that service upon the HPR did not constitute service on the individual unit owners, such as Beatty. Because the statute states liens may only be created against each unit and not against the entire property, we hold the unit owners must be timely served to meet the requirements for filing and serving a mechanic's lien even if the HPR was timely served. *See* § 27-31-230(a) ("No lien arising subsequent to recording the master deed or lease as provided in this chapter, and while the property remains subject to this chapter, shall be effective against the property. During such period liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common elements appurtenant to such apartment....."); *Shelley Constr. Co.*, 287 S.C. at 27, 336 S.E.2d at 490 ("[T]o perfect and enforce the lien against the property, the person claiming it must: (1) serve and record a certificate of lien



within ninety days after he ceases to furnish labor or materials; (2) bring suit to foreclose the lien within six months after he ceases to furnish labor or materials; and (3) file notice of pendency of the action within six months after he ceases to furnish labor or materials." (citations omitted)).

Next, we hold the master did not err in refusing to permit further discovery to establish when and how unit owners received notice of the lien and cause of action. Section 27-31-230(a) required TCC to file and serve notice of the mechanic's lien on the unit owners. Thus, determining that the unit owners had notice of the lien from another source would have been irrelevant on the issue of whether TCC perfected the lien. *See* § 29-5-90 (stating a lien will dissolve if "the person desiring to avail himself thereof" does not serve and file the statement of account designating the amount due "within ninety days after he ceases to labor on or furnish labor or materials for [the subject] building or structure"). The record shows Beatty did not receive service of notice of the lien until June 22, 2016, which was more than ninety days after the last day of work on March 17, 2016. The process server stated in his affidavit that he was able to serve several unit owners when he gained access to the building on June 22, 2016, but he was unable to serve the majority of the unit owners at that time. The record does not include evidence that TCC served any unit owners with notice of the mechanic's lien within ninety days of the last day of work. Accordingly, we hold the master did not err in finding further discovery was not required to determine when the unit owners became aware of the mechanic's lien.

For the foregoing reasons, we hold the master did not err in finding TCC's mechanic's lien dissolved when it failed to serve the individual unit owners within ninety days of the last day of work asserted on the face of the lien. Accordingly, we affirm the master's denial of TCC's motion to amend its statement of account and grant of the HPR's motions for summary judgment and to dismiss because there was no genuine issue of material fact or theory of law TCC could recover under once the mechanic's lien dissolved. *See S. Glass & Plastics Co.*, 399 S.C. at 490, 732 S.E.2d at 208-09 ("When reviewing the grant of a summary judgment motion, [an appellate] court applies the same standard that governs the trial court under Rule 56(c), SCRCF; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."); *Cap. City Ins. Co.*, 382 S.C. at 99, 674 S.E.2d at 528 ("The trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law.").

## **II. Accrual of Interest**

TCC argues the master erred in holding the HPR's payment of the judgment into the court halted the accrual of interest on the judgment because the contract between the parties provided for interests on late payments and depositing funds into court does not stop contractual interest. It contends the panel did not err in holding TCC to be the prevailing party in arbitration and that the panel's holding bound the HPR. We agree.

Rule 67, SCRCP, provides, in part, "In an action in which any part of the relief sought is a judgment for a sum of money . . . a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum . . . ." Our supreme court has held that "a judgment debtor's deposit of funds into court pursuant to Rule 67 pending his own appeal stops the accrual of interest on the judgment." *Renaissance Enters., Inc. v. Ocean Resorts, Inc.*, 334 S.C. 324, 326, 513 S.E.2d 617, 618 (1999). However, our supreme court clarified that "a deposit into court pursuant to Rule 67 does not stop the accrual of interest *provided by contract*." *Id.* at 327, 513 S.E.2d at 619. Therefore, we hold the master erred in finding the HPR's payment of the judgment into the court halted the accrual of interest because, here, the interest was contractual. *See id.* (holding "a deposit into court pursuant to Rule 67 does not stop the accrual of interest provided by contract"). Article 15.2 of the contract between TCC and the HPR states "[p]ayments due and unpaid under the [c]ontract shall bear interest from the date payment [was] due." In its order, the arbitration panel noted that article 15.2 of the contract between TCC and HPR provided for interest on payments due and unpaid and found TCC was entitled to recover contractual interest on PCOs 143, 144R, and 146 at a rate of 4%. Thus, we hold the master erred in finding that the HPR's deposit of the arbitration award into the court would stop interest from accruing pursuant to Rule 67, SCRCP.

### **III. Denial of TCC's Attorney's Fees**

TCC argues the master erred in denying its motion for attorney's fees because the parties' agreement to arbitrate included language establishing the prevailing party in the arbitration would be entitled to attorney's fees. The basis of TCC's argument is language in the "Fees and Expenses of Arbitrators" section of the parties' agreement to arbitrate, which states "the [a]rbitrators shall assess, in whole or in part, their fees and expenses incurred in connection with the [a]rbitration as a part of their award in accordance with S.C. Code § 15-48-110 [(2005)] and the fee provision contained in the Mechanic's Lien Laws." TCC contends it moved for an award of attorney's fees as the prevailing party as defined by the mechanic's lien laws and that the arbitration agreement included a section stating the arbitrators would award fees in accordance with the mechanic's lien laws. We disagree.

We hold the master did not err in denying TCC's motion for attorney's fees because neither the arbitration agreement nor the contract between TCC and the HPR provided for attorney's fees. *See Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993) ("The general rule is that attorney's fees are not recoverable unless authorized by contract or statute."). Section 15-48-110 states that "Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award." We find that arbitration agreement does not account for the payment of attorney's fees for the prevailing party, only the payment of fees and expenses of the arbitrators. Although section 29-5-10(a) allows for an award of attorney's fees to the prevailing party for the costs that arises from enforcing and defending a mechanic's lien, here, the lien dissolved because TCC failed to serve the lien on the unit owners and the HPR was not subject to the lien. Thus, the unit owners prevailed as to the mechanic's lien action. Accordingly, we hold there was no statutory basis for the award of attorney's fees to TCC and the master did not err in denying TCC's motion for attorney's fees for the mechanic's lien claim.

#### **IV. The HPR's Attorney's Fees**

TCC argues the master erred in awarding attorney's fees to the HPR after erring in invalidating TCC's mechanic's lien. TCC contends that even if this court finds the master did not err in invalidating the lien, the attorney's fees awarded to the HPR are inconsistent with the law because the HPR should only recover fees spent defending the mechanic's lien action. TCC contends the HPR made no effort to differentiate between fees incurred from its efforts to overturn the arbitration award and its pursuit of summary judgment in the mechanic's lien cause of action in its counsel's affidavits, and any fees incurred while the mechanic's lien cause of action was stayed cannot form the basis of the HPR's award for attorney's fees. We reverse the award of attorney's fees to the HPR.

We hold the master erred in awarding attorney's fees to the HPR without making specific findings of fact regarding the *Jackson* factors on the record. *See Jackson*, 326 S.C. at 308, 486 S.E.2d at 760 (listing the factors to be considered when awarding attorney's fees); *see also Griffith v. Griffith*, 332 S.C. 630, 646, 506 S.E.2d 526, 534-35 (Ct. App. 1998) ("Our case law and court rules make clear that when a contract or statute authorizes an award of attorney's fees, the trial court must make specific findings of fact on the record for each of the required factors to be considered."). In his order dissolving the lien, the master stated the HPR was entitled to attorney's fees as the prevailing party in the lien foreclosure action and

stated attorney's fees would be awarded in a separate order. In a Form 4 order, the master awarded the HPR attorney's fees without any findings as to the *Jackson* factors. In its order denying TCC's motion to reconsider, the master stated it "considered and made findings" as to the *Jackson* factors, found the amount of fees and costs to be reasonable, and declined to make specific findings as to each entry to attorney's fees requested.

Further, we hold the record does not contain sufficient evidence on each *Jackson* factor to support the amount of the master's award. *See Blumberg*, 310 S.C. at 494, 427 S.E.2d at 661 ("[A]bsent sufficient evidentiary support on the record for each factor, the award should be reversed and the issue remanded for the trial court to make specific findings of fact."). The master awarded attorney's fees to the HPR for the mechanic's lien cause of action, not for the arbitration action. The work logs provided to TCC by the HPR appear to include a summary of the work done in the hours recorded, but the summaries are all redacted.<sup>6</sup> The master stated in his order denying TCC's motion to reconsider the award of attorney's fees that he reviewed the unredacted attorney's fees affidavits *in camera*, but the unredacted work logs are not included in the record. Therefore, we hold the master erred in awarding attorney's fees to the HPR because the master did not make specific findings as to the *Jackson* factors and the record does not include sufficient evidentiary support for each factor. We reverse and remand the master's award of attorney's fees to the HPR for a hearing regarding the issue of attorney's fees with unredacted attorney's fees affidavits provided to TCC.

## **V. Beatty's Motion for Partial Summary Judgment**

TCC argues the master erred granting Beatty's motion for partial summary judgment and awarding her \$76,000 in attorney's fees for hours billed between 2016 and 2019, when the foreclosure cause of action for which the master awarded attorney's fees was stayed. It also contends the master erred in dissolving the mechanic's lien, and the correction of that error will entitle TCC to recover fees. We disagree.

We hold the master did not err in granting partial summary judgment to Beatty because the lien dissolved when TCC failed to timely serve notice of the lien upon the unit owners. *See* § 29-5-90 (stating a lien will dissolve if "the person desiring to avail himself thereof" does not serve and file the statement of account

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<sup>6</sup> We question how a determination could be made that the work was necessarily related to the matters in question utilizing the redacted work logs.

designating the amount due "within ninety days after he ceases to labor on or furnish labor or materials for [the subject] building or structure").

However, we hold the master erred in awarding \$76,000 in attorney's fees to Beatty's counsel for the mechanic's lien cause of action. Although the master made specific findings of fact as to the *Jackson* factors when awarding the attorney's fees, we hold the evidence in the record does not support the award of \$76,000 in attorney's fees to Beatty. *See Jackson*, 326 S.C. at 308, 486 S.E.2d at 760 (listing the factors to be considered when determining a reasonable award of attorney's fees); *Blumberg*, 310 S.C. at 494, 427 S.E.2d at 661 ("[A]bsent sufficient evidentiary support on the record for each factor, the award should be reversed and the issue remanded for the trial court to make specific findings of fact."). Beatty filed her pleading on January 17, 2020, over three years after the first amended complaint was filed, and she filed her motion for summary judgment on May 11, 2020, arguing TCC failed to serve her with the lien within ninety days of the last day of work. According to the master's order granting Beatty partial summary judgment, Beatty's counsel presented itemized records of the hours each attorney and legal staff member spent on the case to the master *in camera*, but these itemized records are not included in the record on appeal. After granting her motion for summary judgment and dissolving the lien, the master awarded Beatty \$76,000 in attorney's fees. We hold the record on appeal does not include evidence to support the master's award of attorney's fees to Beatty based on factors such as the nature, extent, and difficulty of the case and the time necessarily devoted to the case. *See Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp.*, 295 S.C. 208, 211-12, 367 S.E.2d 696, 698 (1988) (reversing and remanding for redetermination of attorney's fees because an award of \$125,000 was "outrageous and shocking to the conscience of the court" and it was "necessary to take evidence on the reasonableness of the fees"). Accordingly, we reverse and remand the master's award of \$76,000 in attorney's fees to Beatty for a hearing regarding the issue of attorney's fees with the unredacted attorney's fees affidavits provided to TCC.

## **THE HPR'S APPEAL**

### **I. Lien Waiver**

The HPR argues the circuit court erred in failing to vacate or correct the arbitration award when the arbitration panel disregarded the conditional release and waiver of lien that accompanied Pay Application No. 17 and that TCC signed. It contends the lien waiver was self-authenticated, uncontested, and unambiguous and therefore not enforcing the waiver amounted to a "manifest disregard of the law." The HPR also contends TCC cannot bring an equitable estoppel claim because it

cannot prove lack of knowledge or means of acquiring knowledge of the meaning of the unambiguous lien waiver. We disagree.

We hold the circuit court did not err in upholding the arbitration award. *See Grp. III Mgmt., Inc. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 149, 819 S.E.2d 781, 785 (Ct. App. 2018) ("[T]he scope of judicial review for an arbitrator's decision 'is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all.....'" (alteration in original) (quoting *Three S Del., Inc. v. DataQuick Info Sys., Inc.*, 492 F.3d 520, 527 (4th Cir. 2007))). The arbitration panel stated that the lien waiver did not bar TCC's claims because "some of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by the HPR which arose and existed as of the date of the execution of the [lien waiver]." The arbitration panel also stated, "Credible testimony at the hearing was presented .....that TCC and [the] HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project." The arbitration panel found the HPR could not make payments for claims that may have been otherwise released or barred by the lien waiver then use the lien waiver to circumvent paying TCC for its work. We agree with the circuit court that the arbitration panel's finding that the HPR's payments of the claims overcame the lien waiver did not demonstrate a manifest disregard of the law. *See Gissel*, 382 S.C. at 241, 676 S.E.2d at 323 ("An arbitrator's award may be vacated when the arbitrator exceeds his or her powers []or manifestly disregards or perversely misconstrues the law."). We hold the arbitration panel did not err in finding the nature of the agreement between the parties changed when they became aware of additional work required to complete the project. *See Jones*, 792 F.3d at 402 ("A court may vacate an arbitration award under the manifest disregard standard only when a plaintiff has shown that: (1) the disputed legal principle is clearly defined and is not subject to reasonable debate; and (2) the arbitrator refused to apply that legal principle."). Therefore, we hold the circuit court did not err in upholding the arbitration award because the arbitration panel did not manifestly disregard the law in determining the appropriate award for TCC.

## **II. Reasoned Award**

The HPR argues the circuit court erred in failing to vacate the arbitration award when the arbitration panel provided "scant reasoning, few findings of fact, not a single conclusion of law, and no colorable justification for the amount rewarded." Therefore, it contends the panel failed to produce a "[r]easoned [a]ward" as required, and "thereby exceeded its power." We disagree.

*Tully*, a New York case the HPR cites to support its argument regarding the need for a "reasoned award," states, "Many courts in this District have found that a 'reasoned award' requirement means 'that the arbitrator is obligated to present 'something short of findings [of fact] and conclusions [of law] but more than a simple result.'"" *Tully*, 2015 WL 906128, at \*14 (alterations in original) (quoting *Fulbrook Cap. Mgmt. LLC v. Batson*, 14 Civ. 7564(JPO), 2015 WL 321889, at \*5 (S.D.N.Y. Jan. 26, 2015)). This court has stated, "It is well settled that arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable' and if a ground for the award can be inferred from the facts, the award should be confirmed." *Renaissance Enter., Inc. v. Ocean Resorts, Inc.*, 310 S.C. 395, 399, 426 S.E.2d 821, 823 (Ct. App. 1992).

We hold the circuit court did not err in failing to vacate the arbitration award. *See Gissel*, 382 S.C. at 241, 676 S.E.2d at 323 ("An arbitrator's award may be vacated when the arbitrator exceeds his or her powers []or manifestly disregards or perversely misconstrues the law."); *Renaissance Enters., Inc.*, 310 S.C. at 399, 426 S.E.2d at 823 ("It is well settled that arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable' and if a ground for the award can be inferred from the facts, the award should be confirmed."). Initially, we note that *Tully*, an unpublished New York case, is not controlling authority in South Carolina. However, even if *Tully* were controlling, we hold that the findings included in the corrected arbitration award met the requirements of a reasoned award. *See Tully*, 2015 WL 906128, at \*14 ("[A] 'reasoned award' requirement means 'that the arbitrator is obligated to present 'something short of findings [of fact] and conclusions [of law] but more than a simple result'""(alterations in original) (quoting *Fullbrook Cap. Mgmt. LLC*, 2015 WL 321889 at \*5)). Moreover, we hold that the findings of the corrected arbitration award meet the requirements for an arbitration award under South Carolina Law. *See Renaissance Enters., Inc.*, 310 S.C. at 399, 426 S.E.2d at 823 ("It is well settled that arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable' and if a ground for the award can be inferred from the facts, the award should be confirmed."). The arbitration panel's nine-page corrected arbitration award includes findings regarding the scope of TCC's work on the project, an explanation of why the arbitration panel determined the lien waiver did not bar TCC's claims, a correction of TCC's award with an explanation of the calculation of the total award, a denial of attorney's fees without prejudice, an award of arbitrators' fees, and a corrected interest calculation. Because the arbitration panel made such

findings rather than simply stating a result, we hold it provided a barely colorable factual and legal basis for the award. Therefore, we hold the reasoning set forth in the award was sufficient and the master did not err by refusing to vacate the arbitration award for not being a reasoned award.

### **III. Failure to Modify the Award**

The HPR argues, in the alternative to vacatur, the circuit court erred in not reducing "the award by the value of all costs TCC claims to have incurred prior to February 8, 2016, but which TCC did not present in or through Pay Application No. 17." It contends that, taking the lien waiver into consideration, TCC's award would be \$414,078.71, plus costs incurred after February 8, 2016. The HPR asserts that this court could also remand this matter to the circuit court or arbitration panel for further findings on the cost in alternative to correcting the award itself. We disagree.

We hold the circuit court did not err in affirming the arbitration award without modifying the award. *See* § 15-48-140(a) (stating a court can modify or correct an arbitration award only in the event of (1) "an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award"; (2) an award on a matter not submitted to the arbitrator that may be corrected without affecting the merits of the decision regarding properly submitted issues; and (3) imperfections in the award in "a matter of form, not affecting the merits of the controversy"). The arbitration panel stated it did not believe the lien waiver barred TCC's claims because the HPR "agreed to the PCOs; signed the Change Orders; and made payment for claims that may have otherwise been released or barred by the [lien waiver]." The arbitration panel then awarded damages based on the evidence TCC presented of its work on the project, which included unpaid PCOs, retainage itemized in an exhibit, a portion of the disputed amount, and a portion of the amount requested for the stone tower. The arbitration panel did not miscalculate the figures, award TCC based on matters not submitted to the panel, or provide an imperfect form of award. Therefore, we hold the HPR did not provide evidence of any grounds for modification of the award under section 15-48-140. *See Renaissance Enters., Inc.*, 310 S.C. at 399, 426 S.E.2d at 823 ("It is well settled that arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable' and if a ground for the award can be inferred from the facts, the award should be confirmed."). Accordingly, we hold the circuit court did not err in upholding the arbitration award because it was not subject to modification or correction.



#### **IV. Stone Tower Arbitration Award**

The HPR argues the corrected arbitration award is based on costs not submitted to the panel because it included amounts allocated to the stone tower. It argues TCC's claim as related to its work on the stone tower was not referred to arbitration and did not arise until it was included in the prehearing brief. The HPR contends there was "no evidence to suggest that the stone tower claim was actually served upon or delivered to the HPR for payment, and the claim was never the subject of any discovery." The HPR argues any portion of the award based the stone tower claim must be removed because the matter was not submitted to the circuit court or the arbitration panel and the HPR was not on notice of it. We disagree.

We hold the circuit court did not err in upholding the arbitration award because TCC's work on the stone tower was included in the arbitration agreement. *See Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) ("The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise."); *id.* at 597, 553 S.E.2d at 118 ("To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim."). The arbitration agreement states that "certain disputes have arisen regarding performance and payment on the [p]roject," and defines the project as TCC's contract with the HPR "to perform exterior repairs to Concord & Cumberland located at 175 Concord Street, Charleston, South Carolina." TCC requested \$29,000 in its trial brief filed in the arbitration proceeding because it "was asked to assist with the leaking in the stone tower after the project was complete." The arbitration panel awarded TCC \$23,733.86 for its work on the stone tower, adjusting the amount TCC requested by an inefficiency factor of twenty-five percent. We hold TCC's work on the stone tower falls within the scope of the arbitration agreement, which stated the project included "exterior repairs to Concord & Cumberland" performed by TCC. *See id.* at 597, 553 S.E.2d at 118 ("Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration."); *id.* ("Furthermore, unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered."). Accordingly, we hold the circuit court did not err in affirming the arbitration panel's award of \$23,733.86 for TCC's work on the stone tower, and we affirm on this issue.

#### **CONCLUSION**

Based on the foregoing, we affirm the master's order granting the HPR's motions to dismiss and for summary judgment, granting TCC's motion to confirm the arbitration award, and denying TCC's motions to amend statement of account and for attorney's fees. We also affirm the Master's order granting summary judgment to Beatty. We reverse and remand the master's award of attorney's fees to the HPR and to Beatty.

**AFFIRMED IN PART, REVERSED IN PART AND REMANDED.**

**GEATHERS and HEWITT, JJ., concur.**