

**IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

SOUTHERN COATINGS, INC.

CASE NO.: 2018-010783-CA-01

Plaintiff,

vs.

STAR LAKES ASSOCIATION, INC.,
a Condominium Association,

Defendant.

_____ /

DEFENDANT, STAR LAKES ASSOCIATION, INC.'S NOTICE OF APPEAL

NOTICE IS GIVEN, pursuant to Rules 9.030(b)(1)(A) and 9.110 of the Florida Rules of Appellate Procedure, that Defendant, **STAR LAKES ASSOCIATION, INC.** ("Defendant"), appeals to the Third District Court of Appeal regarding the Final Judgment by Judge entered by this Court on June 14, 2023, at 12:33 PM (the "Final Judgment") along with the Order Denying Defendant's Motion for Rehearing entered on August 4, 2023, at 9:24 PM. A true and correct copy of the Final Judgment is attached hereto as Exhibit "A," and a true and correct copy of the Order Denying Defendant's Motion for Rehearing is attached hereto as Exhibit "B." The nature of the attached Final Judgment is that of a final order.

RECEIVED, 08/22/2023 11:02:23 AM, Clerk, Third District Court of Appeal

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served via E-Service to Bradley A. Friedman, Esq., Bradley A. Friedman, P.A., brad@friedmanlaw.com, and Andrew M. Schwartz, Esq., Andrew M. Schwartz, P.A. d/b/a Andrew M. Schwartz Legal Team, at sbc@amslegalteam.com, ams@amslegalteam.com, associate@amslegalteam.com, paralegal@amslegalteam.com, receptionist@amslegalteam.com, on this 21st day of August, 2023.

Respectfully submitted,

/s/ Robert J. Mansen

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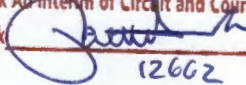
STATE OF FLORIDA, COUNTY OF MIAMI-DADE

I **HEREBY CERTIFY** that the foregoing is a true and correct copy of the Original on file in this office

8-22 AD 20 23

Deputy Clerk Ad Interim of Circuit and County Courts

Deputy Clerk



12602



**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2018-010783-CA-01
SECTION: CA25
JUDGE: Valerie R. Manno Schurr

Southern Coatings, Inc.

Plaintiff(s)

vs.

Star Lakes Association, Inc.

Defendant(s)

_____/

FINAL JUDGMENT BY JUDGE

FINAL JUDGMENT OF LIEN FORECLOSURE AND DAMAGES FOR PLAINTIFF

THIS MATTER came before the Court on December 12, 2022, in person, and March 27, 2023, via Zoom, for a Final Non-Jury trial. The parties concluded the presentation and admission of all evidence on March 27, 2023, including closing arguments. The Court, having fully and carefully considered all evidence presented and admitted during the trial, and having fully considered all legal issues as framed by the parties in their pleadings and their presentations at trial, having reviewed the court file and record, having heard final argument of counsel, and after being otherwise duly advised in the premises, finds as follows:

The matter presented involved a roofing contract entered into on August 10, 2016 between Southern Coatings, Inc. ("Southern Coatings"), the Plaintiff, as the roofing contractor, and Star Lakes Association, Inc. ("Star Lakes"), as the owner. The roofing contract, the "Contract", admitted into evidence as Exhibit 1, provided that Plaintiff was to reroof the property known as 251 NE 187th Street, Building 8, Miami, Florida, described as

STAR LAKES ESTATES NO. 8, a Condominium according to the Declaration of Condominium thereof, recorded under Clerk's File No. 69R-111486 in Official Records Book 6460, Page 320 of the Public Records of Miami-Dade County, Florida.

The uncontroverted testimony of the President of Southern Coatings, Scott Biederman, was credible. Scott Biederman's testimony indicated that Plaintiff prepared the August 16, 2016 Contract based upon the bid sheet provided RAS Engineering, P.A. ("RAS"). The 2016 RAS Building #8 Roof Assessment Report was admitted into evidence as Exhibit 8. The Report provided an assessment of the condition of the Building 8 roof and recommended replacement of the roof. The Report is clear that the assessment was "limited to the visual observations made on the roof surface. RAS cannot comment of the condition of the systems and areas beyond such as structural framing, trusses....". Exhibit 8, Page 6. The photographic evidence of the condition of the roof and the condominium units were admitted with the RAS Report and detail the rotting trusses as well as gaping holes in the ceilings. The testimony of Elios Cruz, the job supervisor for the Star Lakes project on behalf of Southern Coatings, corroborated the photographic evidence that the trusses were rotted and there were holes in ceilings. Scott Biederman testified that he executed the contract on behalf of Plaintiff, and Rocio Alonso executed the Contract as an authorized member of the Board of Defendant, on behalf of Defendant Star Lakes. The parties admitted the deposition of Rocio Alonso as Exhibit 12. Rocio Alonso testified credibly that she was aware of the very poor condition of the roofs. She stated that "There were holes in some of those ceilings and roofs that were so bad, that I am not surprised that there would have to be a very extensive replacement of wood." Rocio Alonso went on to state that "What I knew for sure is that the conditions on those units were so bad that anyone—I don't know anything about roofing, but I would expect that when I see the ceilings caved in and the insulation hanging down and buckets on the floor

to catch the water, yes, I would expect that the situation would warrant having to change a lot of wood. And again, I repeat, I know nothing about roofing.”. Based upon the testimony presented, it is clear that neither Plaintiff nor the Defendant knew of the exact extent of the poor condition of the wood substrate and trusses until the tear-off occurred.

During direct examination of Scott Biederman, he indicated that following the installation of the wood and trusses, he instructed his office to prepare invoices for the additional wood utilized in the construction of the new roof. Scott Biederman further testified that his office prepared “change orders” for the wood instead of invoices. The Court finds that the bid sheet, which is part and parcel to the Contract, clearly and expressly indicates in Bid Items 2, 3 and 4, that the quantities of wood and wood trusses was unknown at the time the Contract was executed. Bid Item 2 clearly denotes “TBD”, or to be determined. All three (3) Bid Items contained blank amounts for Bid Amount in dollars. As an initial point, the Court finds that amount and the cost of wood was unknown when the Contract was executed by the parties and was to be determined during the roofing process.

As an additional point, the Court finds that the submission of the invoices by Plaintiff were **not** change orders as defined by Florida Statute 713.01(11). To that point, Defendant incorrectly relies upon *JD's Asphalt Engineering Corp. v. Arch Insurance Company*, 329 So.3d 165 (Fla. 3rd DCA 2021). In *JD's Asphalt*, JD, the contractor, sued for its retainage payment and change orders. JD's sued the bond company based on the performance bond held by Arch on behalf of the owner of the project. The trial court granted Arch's summary judgment motion on the change orders as the court found they were not in writing. The trial court further found that the retainage claim was time barred pursuant to Florida Statute. The Court finds that *JD's* is not applicable to the case at bar. *JD's* fails to state what the nature of the change orders involved or whether the materials and labor sought as change orders was contemplated by the

underlying contract. Further, JD's involved a payment bond and not the owner of the subject property.

Scott Biederman testified that the base contract amount for the Building 8 Contract totaled \$146,362.00, but that the amount was not reflective of additional wood that may be needed. Scott Biederman and Elios Cruz both testified, credibly, that the wood substrate supporting the roof, as well as the trusses under the substrate, were completely rotted and unusable and that new wood was required pursuant to the Florida Building Code and the Miami-Dade County Building Code. Scott Biederman, who has been in the roofing business in Broward County, Florida for 40 years, further testified that once a roof is opened and the wood is exposed, the wood must be replaced immediately and covered so that the residences are not exposed to rainstorms and further water damage. Scott Biederman further stated that a roofer cannot construct a new roof over a rotted wood substrate and trusses as it would never pass inspection and further, would create a serious hazard for any vendor walking on the roof. Scott Biederman stated that once the tear-off was completed, they immediately purchased wood and wood trusses to replace the existing rotted wood components as it was its duty under the Contract.

JD's Asphalt Engineering Corp. v Arch Insurance Company is Inapplicable to this Action

Defendant Star Lakes Association, Inc. ("Star Lakes") relies heavily upon the case *JD's Asphalt Engineering Corp. v Arch Insurance Company*, 329 So.3d 196 (Fla. 3rd DCA 2021). First, the contractor in *JDs Asphalt* filed suit against the bond, held by Arch Insurance Company. The first issue examined by the Court was whether the claim by JD was out of statute. The trial court held that the retainage portion of the claim was time barred under the bond statute. The appellate court did not address the any other issue. Secondly, in *JD's*, the owner was not a party to the lawsuit. In the case at bar, the Plaintiff is the roofing contractor,

Southern Coatings. The Defendant is the owner, Star Lakes. *JD's*, which is heavily relied upon by Defendant, does not address the issue of unsigned change orders nor does it involve a surety company. It is inapplicable to the case at bar.

Ajax Paving Industries, Inc. v Charlotte County and C.O.B.A.D. Constr. Corp. v. School Bd. Of Broward County are Controlling

The testimony and evidence admitted during trial clearly demonstrated that the wood and wood trusses that were installed by Plaintiff after the tear-off was contemplated within the Contract. The testimony of Rocio Alonso was clear and convincing that the Defendant was aware that the wood and wood trusses were in poor condition and that additional charges for the wood were contemplated and expected based upon her observations and discussions. In *Ajax Paving Industries, Inc. v Charlotte County*, 752 So.2d 143 (Fla. 2nd DCA 2000), Ajax entered into a written agreement with the County to build a roadway. The contract called for approximately 45,000 cubic yards of fill. Ajax used in excess of 87,000 cubic yards of fill during the project. Ajax submitted invoicing for the extra fill. In reversing summary judgment in favor of the County, the Court noted that the cases relied upon by the County, and as Star Lakes is relying upon in the case at bar, *Southern Roadbuilders, Inc. v Lee County*, 495 So.2d 189 (Fla. 2nd DCA 1986), *County of Brevard v Miorelli Engineering, Inc.*, 703 So.2d 1049 (Fla. 1997) and *W&J Construction Corporation v. Fanning/Howey Associates*, 741 So.2d 582 (Fla. 5th DCA 1999) were inapplicable. In the cases relied upon by Defendant, the change orders or extra payment sought were for items not contemplated by the underlying contract. In *Ajax*, the contractor was seeking payment for work and materials clearly addressed in the original written contract. The additional costs for fill were part and parcel of the underlying contract. Accordingly, the Court reversed and remanded.

In the case at bar, the Court finds the testimony and documentary evidence clearly

provides that the parties were not provided a complete assessment of the roofing substrate. The Court finds that the necessity of additional wood was contemplated within the bid sheet that the additional wood was part and parcel to the Contract and were not change orders as the wood was not for extra work.

The April 10, 2017 Claim of Lien is Valid and Enforceable

Defendant contends that the Claim of Lien recorded by Plaintiff on April 10, 2016 is invalid as the lien represented amounts not authorized by Defendant pursuant to 713.31, Florida Statute. Defendant relies upon *Skidmore, Owings and Merrill v. Volpe Const. Co., Inc.*, 511 So. 2d 642, 644 (Fla. 3d DCA 1987) (citing *Hobbs Const. and Development, Inc. v. Presbyterian Homes of Synod of Florida*, 440 So. 2d 673 (Fla. 1st DCA 1983) as controlling. Scott Biederman testified that the lien amount was based upon the unpaid retainage and the requests for additional wood that was contemplated under the Contract. Not only are the cases cited by Defendant are inapplicable as the Court finds the requests for additional payment to be valid and enforceable, *Sharrard v. Ligon*, 892 So.2d 1092 (Fla. 2nd DCA 2004) provides that a good faith dispute as to the amount due does not constitute a willful exaggeration that would invalidate a lien. The credible testimony belied the fact the lien comprised of unpaid invoices for extra wood as contemplated under the Contract and therefore, is valid and enforceable. The Court finds that the Financial History, which was admitted into evidence as Exhibit 3 and which was based upon the credible testimony of Jessica Maldonado, the bookkeeper for Plaintiff, to be controlling as to the amounts due and owing to Plaintiff.

Based upon the foregoing, it is hereby

ORDERED AND ADJUDGED as follows:

1. This Court finds that the Plaintiff, Southern Coatings, Inc., has a valid construction lien

against the property described herein **STAR LAKES ESTATES NO. 8**, for the amount of \$50,471.20. The testimony of Scott Biederman pertaining to the discrepancy in the amount due as to the amount stated in the April 10, 2017 Claim of Lien was based upon a good faith dispute and was not a willful exaggeration. Further, the Court finds that the Claim of Lien recorded by Southern Coatings, Inc. upon Star Lakes Association, Inc. is superior to any respective liabilities of the Association or its members. Plaintiff is the prevailing party in Count I of the Verified Complaint, Enforcement of Lien and Foreclosure.

2. The Court further finds that Star Lakes Association, Inc. breached the August 10, 2016 Construction Contract as it failed to remit payment for invoices for materials that were clearly contemplated. The Court further finds that Plaintiff, pursuant to the terms and conditions of the Contract, is entitled to interest at the rate of 18% per annum commencing on May 3, 2018, in the per diem amount of \$24.89. The Court finds that Plaintiff is entitled to the principal amount of \$50,471.20 and interest through March 27, 2023 in the amount of \$44,528.21. Plaintiff is the prevailing party in Count II of the Verified Complaint, Breach of Contract.
3. Based upon the testimony of Denise Brooks, the corporate representative of Star Lakes, no written objection was issued to Plaintiff pertaining to the April 3, 2018 statement issue by Plaintiff to Defendant. Denise Brooks testified that that she made oral objections to the invoice but could not state with any specific details the dates of the oral objection or to whom the objections were made. Denise Brooks further testified that she believed she sent an email objection but could not produce any such emails. Accordingly, Plaintiff is the prevailing party for Count III of the Verified Complaint, Account Stated.
4. This Court further finds that Southern Coatings, Inc., as the prevailing party as to the Verified Complaint, and further finds that pursuant to the Contract and Florida Statute,

Chapter 713.29, Southern Coatings, Inc. is entitled to its reasonable attorney's fees and costs. In order to advance the timely adjudication of the Plaintiff's prevailing party claim for court costs and attorney's fees, Plaintiff's counsel is DIRECTED to compile and transmit to Defendant's counsel all of Plaintiff counsel's supporting cost documentation as well as Plaintiff's counsel's timesheets showing the amount of time expended by Plaintiff's counsel in this matter within 15 days of entry of this Judgment.

5. Amounts Due and Owing. Plaintiff is due:

Principal due:	\$50,471.20
Interest from May 3, 2018 to March 27, 2023 based Upon per diem rate of \$24.89	\$44,528.21
Court Costs:	
Filing fee	\$ <u>TBD</u>
Service of Process	\$ <u>TBD</u>
Depositions (Transcripts)	\$ <u>TBD</u>
 SUBTOTAL	 \$ <u>94,99.41</u>
 Attorney fees*	 \$ <u>TBD</u>
 GRAND TOTAL	 \$ _____

*Pursuant to Florida Rule of Civil Procedure 1.525, the Court reserves jurisdiction to

determine the amount of costs and attorney's fees.

FOR WHICH LET EXECUTION ISSUE FORTHWITH.

6. **Interest.** The grand total amount referenced in Paragraph 5 shall bear interest from this date forward at the prevailing legal rate of interest, 6.58% a year.

7. **Lien on Property.** Plaintiff, whose address is **2241 NW 22nd Street, Suite 104, Pompano Beach, FL 33069**, has a valid lien on the property. Accordingly, this Final Judgment shall encumber all units in Star Lakes Association, Inc., Building 8, located at 251 NE 187th Street, Miami, Florida 33179, more particularly described as:

(STAR LAKES ESTATES NO. 8, a Condominium according to the Declaration of Condominium thereof, recorded under Clerk's File No. 69R-111486 in Official Records Book 6460, Page 320 of the Public Records of Miami-Dade County, Florida.

Property address: **251 NE 187th Street, Building 8, Miami, Florida 33179**

8. Accordingly, and pursuant to Florida Statute 718.121(2), an additional construction lien is hereby enforceable against each unit of STAR LAKES BUILDING NO. 8 in an amount equal to that percentage of the Final Judgment which is equivalent to each unit's pro-rata share of the common expenses. The percentage for each Unit

contained within Building 8 as pursuant to the Declaration of Condominium for Star Lakes Estates No. 8, Recorded in ORB 6460, Page 320, Miami Dade Public Records, the Units contained within Building 8 possess the following percentage of ownership in the common elements for Building 8:

<u>Unit</u>	<u>Percentage</u>
801	4.0
802	3.5
803	2.9
804	3.2
805	2.9
806	2.9
807	3.2
808	2.9
809	2.9
810	3.9
811	4.1
812	3.6
814	3.0
815	3.2
816	3.0
817	3.0
818	3.2

819	3.0
820	3.0
821	4.0
822	4.2
823	3.7
824	3.2
825	3.3
826	3.2
827	3.2
828	3.3
829	3.2
830	4.1

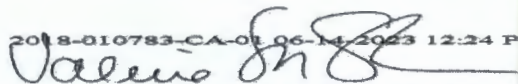
This lien shall be an equitable lien on all the units in the Defendant's Property according to their respective percentage shares of the common expenses of the condominium and for their respective liabilities for association fees.

9. It is further ordered and adjudged that Defendant, STAR LAKES ASSOCIATION, INC, shall complete under oath Florida Rule of Civil Procedure Form 1.977(b) (fact information sheet), including all required attachments, and serve it upon Plaintiffs' counsel, within 45 days from the date of this final judgment, unless the final judgment is satisfied, or post-judgment discovery is stayed. Jurisdiction of this case is retained by this Court to enter any orders which may become necessary or proper to compel the

Defendant to complete Form 1.977(b), including all required attachments, and to serve it upon Plaintiffs' counsel.

10. Jurisdiction of this overall case is retained to enter appropriate orders and to issue further orders that are proper, including to the setting of a sale of the common elements contained in Building 8 to satisfy this Final Judgment.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 14th day of June, 2023.

2018-010783-CA-01 06-14-2023 12:24 P


2018-010783-CA-01 06-14-2023 12:24 PM

Hon. Valerie R. Manno Schurr

CIRCUIT COURT JUDGE

Electronically Signed

Final Order as to All Parties SRS #: 3 (Non-Jury Trial)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

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**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2018-010783-CA-01
SECTION: CA25
JUDGE: Valerie R. Manno Schurr

Southern Coatings, Inc.

Plaintiff(s)

vs.

Star Lakes Association, Inc.

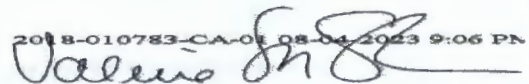
Defendant(s)

ORDER DENYING DEFENDANT'S MOTION FOR REHEARING

THIS CAUSE came before the Court Sua Sponte on the Defendant's Motion for Rehearing dated June 29, 2023 and the Court having reviewed the same, it is hereby;

ORDERED AND ADJUDGED that said Motion is hereby **DENIED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 4th day of August, 2023.

2018-010783-CA-01 08-04-2023 9:06 PM


2018-010783-CA-01 08-04-2023 9:06 PM

Hon. Valerie R. Manno Schurr

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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