

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

GENERAL JURISDICTION DIVISION

CIVIC CONSTRUCTION COMPANY, INC.,
a Florida corporation,

CASE NO.: 2019-014151-CA-10

Plaintiff,

3024-2030

v.

C REYES CONSTRUCTION CORP.,
a Florida corporation, and

Defendant.

C REYES CONSTRUCTION CORP.,
a Florida corporation,

Plaintiff,

v.

STORTFORD NV, a foreign corporation and
EUROAMERICAN GROUP, INC.,
a Florida corporation,

Defendants.

AMENDED NOTICE OF APPEAL

NOTICE IS GIVEN that Defendant/Counter-Plaintiff, C REYES CONSTRUCTION CORP. ("C Reyes"), by and through its undersigned counsel, hereby files its Amended Notice of Appeal. In doing so, C Reyes appeals to the Third District Court of Appeal the Amended Final Judgment dated September 27, 2024; specifically, the trial court's rulings in the Amended Final Judgment: (1) declining to award prejudgment interest to C Reyes; and (2) declining to enter a final judgment against CIVIC CONSTRUCTION COMPANY, INC. (A true and correct copy of the Amended Final Judgment is attached hereto as Exhibit "A")

The rendition of the Amended Final Judgment was delayed by the Appellee's filing of a timely Motion for Rehearing/New Trial, which was denied by the trial court on October 23, 2024. (A true and correct copy of the Order denying the Motion for New Trial is attached as Exhibit "B")

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2024, a true and correct copy of the foregoing was furnished to the Clerk of Court and all counsel of record listed for this case via the Florida Courts E-Filing Portal.

Respectfully submitted,

/s/ Daniel R. Vega, Esq.

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C REYES CONSTRUCTION, CORP

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

JUAN FERNANDEZ-BARQUIN, Clerk of the Court and Comptroller, Miami-Dade County

Deputy Clerk



EXHIBIT "A"

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

CASE NO: 2019-014151-CA-01

SECTION: CA07

JUDGE: Daryl E. Trawick

Civic Construction Company et al

Plaintiff(s)

vs.

C Reyes Construction Company, Inc. et al

Defendant(s)

_____ /

Amended *DET*
FINAL JUDGMENT

THIS CAUSE came before the Court for a jury and bench trial from September 9, 2024, through September 16, 2024, on (i) Plaintiff/Counter-Defendant, Civic Construction Company, Inc.'s ("Civic") Complaint seeking damages against Defendant/Counter-Plaintiff C Reyes Construction Corp. ("C Reyes") for Breach of Contract, (ii) C Reyes' Counterclaim against Civic for Breach of Contract and (iii) C Reyes' Complaint seeking to foreclose a construction lien against Defendants, STORTFORD NV ("Stortford") and BELLA ISLA, LLC's ("Bella Isla") (collectively, the "Owners") real property located at 31 Venetian Way, Miami Beach, Florida 33139 (the "Property").

The competing breach of contract claims between Civic and C Reyes were duly tried before a jury. C Reyes construction lien foreclosure action was tried before the Court. On the competing claims for breach of contract between Civic and C Reyes, the jury rendered a verdict in favor of C Reyes and against Civic on both Civic's Complaint for breach of contract and C Reyes' Counterclaim for breach of contract, finding that Civic breached the contract between Civic and C Reyes and awarding C Reyes damages in the principal amount of \$529,908.38.

Final Judgment of Foreclosure of Construction Lien Against Owners

a. *Findings of Fact and Conclusions of Law*

With respect to C. Reyes' claim to foreclose its construction lien [D.E. 29] the Court is bound by the Jury's determination of damages on C. Reyes' claim for breach of contract, and the amount of C. Reyes' lien must be consistent therewith. *See, e.g., Latner v. Preusler & Assocs.*, 11 So. 3d 388, (Fla. 5th DCA 2009) ("we conclude that, based on the verdict [which awarded \$0 on the contractor's breach of contract claim] and the lack of objection at the time the verdict was returned, the trial court had no alternative but to enter judgment for appellants [on the lien claim]").^[1] *See also Ashley N. Pogue v. Jennifer Garib*, 254 So. 3d 503 (Fla. 4th DCA 2018) a judge is expressly "not permitted to 'sit as a seventh juror'".

During the trial, the Owners, by and through their counsel, stipulated that: (1) C Reyes timely served its Notice to Owner pursuant to section 713.06, Florida Statutes; (2) the Lien was recorded within 90 days of the date on which C Reyes last furnished labor, materials, or services to the Property; and (3) that C Reyes' action to foreclose the Lien was filed within one year of C Reyes recording the Lien.

Accordingly, pursuant to the jury's verdict (which the Court adopts), the evidence presented at trial and the stipulations made by the Owners regarding the lien, C Reyes is entitled to foreclose its lien against the Property in the amount of \$529,908.38, which shall bear post-judgment interest from this date forward at the statutory rate.

The Court declines to award pre-judgment interest as calculated by C. Reyes. A review of C. Reyes' claim for lien foreclosure belies any such award. In its Amended Complaint, C. Reyes' prayer for relief is limited to a judgment "recognizing C. Reyes' Claim of Lien . . . rendering a money judgment against [Owners] . . . and [ordering] that the real property subject to C. Reyes' Claim of Lien be sold to pay C. Reyes' claim". The Amended Complaint fails to reference or

request pre-judgment interest at all. [D.E. 29] Accordingly, C. Reyes has waived any right to seek or collect pre-judgment interest.

In addition, even if pre-judgment interest could theoretically be available for C. Reyes' breach of contract and/or lien foreclosure claim, there is no record evidence liquidating that interest as of a date certain. The jury *did not* fix any particular date for any particular loss to C. Reyes. Where damages are "liquidated by the jury's verdict," prejudgment interest is "to be calculated from the date of the jury verdict until the date of entry of the final judgment." *Albanese Popkin Hughes Cove, Inc. v. Scharlin*, 141 So. 3d 743, 747-48 (Fla. 3d DCA 2014).

The "fixed date of loss" element requires that the record show "when the particular pecuniary losses awarded by the jury occurred." *Id.* at 747 (original emphasis). "[I]f a plaintiff establishes that he sustained out-of-pocket loss, prejudgment interest must be awarded from the date of the loss." *Sterling Vill. of Palm Beach Lakes Condo.*, 255 So. 3d [*27] at 872 (citation omitted). Thus, when "a verdict liquidates a claim and fixes it as of a prior date, interest should follow from that date." *Bosem v. Musa Holdings, Inc.*, 46 So. 3d 42, 45 (Fla. 2010) (citations and internal quotation marks omitted; emphasis added).

But where, as here, the verdict *does not* establish a date of loss, the record must establish that date. *Albanese Popkin*, 141 So. 3d at 747. "The relevant dates for determining when prejudgment interest began to accrue . . . are the dates [plaintiff] sustained actual pecuniary losses." *Ariz. Chem. Co. v. Mohawk Indus., Inc.*, 197 So. 3d 99, 106 (Fla. 1st DCA 2016) (emphasis added).

"Hence, the only possible date that liquidated [C Reyes'] claim for prejudgment interest purposes was the date the jury rendered its verdict." *Albanese Popkin*, 141 So. 3d at 747. This principal was clearly expressed by the court in *Citizens Prop. Ins. Corp. v. Amat*, 198 So. 3d 730, 735 (Fla. 2d DCA 2016) as follows:

Here, the request for prejudgment interest was first raised after the jury returned its verdict, and there was no indication that the jury was determining the amount of the loss for any date other than the date of the verdict.

Id. (emphasis is supplied). Here, there was no request in the verdict for the jury to determine the date of breach and the date from which prejudgment interest flows and C Reyes has now made this request in the lien action for the very first time in its proposed findings of fact and conclusions of law.

Further, Florida law recognizes that a party may at once pursue a claim for breach of contract and lien foreclosure. *See Bonita Real Estate Partners, LLC v. SLF IV Lending, L.P.*, 222 So. 3d 647, 652 (Fla. 2d DCA 2017). However, “it is axiomatic that a party can only recover once on the same debt.” *Id.* (quoting *Hammond v. Kingsley Asset Mgmt., LLC*, 144 So. 3d 673, 675 (Fla. 2d DCA 2014) and *Royal Palm Corp. Ctr. Ass’n v. PNC Bank, N.A.*, 89 So. 3d 923, 933 Fla. 4th DCA 2012)). Accordingly, at the time of judgment, a party must elect its remedy. It is “impermissible” for a Court to issue a judgment that “simultaneously allow[s] the plaintiff to execute on the money judgment *and* foreclose on the subject property . . .” *Royal Palm*, 89 So. 3d at 933; *see also Farah v. Iberia Bank*, 47 So.3d 850 (Fla. 3d DCA 2010) (striking language stating “for which let execution issue” from the money judgment where the court had already set a foreclosure sale date in the same final judgment). Here, C. Reyes’ lien foreclosure claim carries statutory entitlement to attorney’s fees and its breach of contract claim carries no such right.

Finally, C. Reyes overreaches in its proposed order, seeking immediate execution on a verdict returned Monday, September 16, 2024. C Reyes well knows that Rule 1.550(a) provides as follows: “**No execution** or other final process shall issue until the judgment on which it is based has been recorded nor **within the time for serving a motion for new trial** or rehearing, and if a motion for new trial or rehearing is timely served, until it is determined; provided execution or other final process may be issued on special order of the court at any time after judgment.”

(emphasis added). Execution must be stayed pending those post-trial motions. And execution is particularly inappropriate here where C. Reyes has failed to properly elect its remedy (that is, foreclosure or pursuit of a money judgment).

Order^[2]

Based on the forgoing it is **FURTHER ORDERED AND ADJUDGED THAT:**

1. This Court has jurisdiction over the parties and the subject matter of this cause. The allegations contained in C Reyes' Lien Foreclosure Complaint have been proven by competent evidence, and the equities in this case are with C Reyes.
2. C Reyes is a lienor under Florida's Construction Lien Law, and has a valid construction lien against the following described real property located in Miami-Dade County:

ALL OF LARKMI, a resubdivision of El Retiro, according to the Plat thereof recorded in Plat Book 41, at Page 68, of the Public Records of Miami Dade County, Florida

Folio No.: 02-3233-006-0010

(the "Property").

3. C Reyes shall have and recover under its Lien, the principal amount of \$529,908.38, subject to prevailing party attorneys' fees and costs as may be awarded (upon timely filed motion) to C Reyes pursuant to sections 57.041 and 713.29, Florida Statutes.
4. If the total sum due as set forth above (i.e., \$529,908.38) with interest at the statutory rate, and costs and attorney's fees which may be hereinafter awarded by the Court is not paid, the Clerk of this Court shall sell the Property at public sale on the 27th day of January, 202~~4~~⁵ at 9:00 a.m. to the highest bidder or bidders for cash, except as set forth hereinafter, at

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<https://www.miamidade.realforeclose.com/>, the Clerk's website for online auctions, in accordance with Section 45.031, Florida Statutes (2024). C Reyes may cancel the Sale on notice to the Clerk and without order of the Court. The Court shall set the Sale to take place in accordance with the Court's hearing on the C Reyes motion to tax attorney's fees and costs and assessed against the Owners and the Property.

5. C Reyes shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk without further order of the Court if C Reyes is not the purchaser of the Property at the Sale. If C Reyes is the purchaser, the Clerk shall credit C Reyes' bid as necessary without further order of the Court with the total sum due hereunder with interest and costs accruing subsequent to this judgment or such part of it as is necessary to pay the bid in full. The Clerk shall receive the service charge imposed in Section 45.031, Florida Statutes, for services in making, recording, and certifying the Sale and title that shall be assessed as costs. If prior to the Sale, Owners tender payment pursuant to a bankruptcy plan or forbearance agreement, then C Reyes or its attorneys may certify to the Clerk of this Court that the amount due to C Reyes hereunder shall be credited by the amount of such tendered payments without further order of this Court.
6. On the filing of the Certificate of Sale of the Property, the Owners' right of redemption as prescribed by section 45.031, Florida Statutes (2024) shall be terminated.
7. After confirmation of the Sale of the Property whether confirmation is by the Clerk's filing the Certificate of Title or by order of this Court ruling on objections to the Sale, the Clerk shall distribute the proceeds of the Sale in accordance with Form 1.996 of the Florida Rules of Civil Procedure, as much as they are sufficient, by paying: first, all of C Reyes' costs; second, documentary stamps affixed to the certificate; third, C Reyes' attorneys' fees and costs, if awarded by the Court; fourth, the total sum due to C Reyes, less items paid, plus interest at the rate prescribed by law from this date to the date of the Sale; and, last, by retaining any amount remaining pending the further order of this Court.

8. After confirmation of the Sale of the Property either by the Clerk's filing the Certificate of Sale or by order of this Court ruling on objections to the Sale, the Owners and all persons claiming by, through, under, or against them since the filing of the Complaint herein, shall be forever foreclosed of all right, title, interest, estate, or claims in the property being sold, and the purchaser at the Sale shall be let into possession thereof.
9. That immediately after the confirmation of the Sale of the Property, either by the Clerk's issuance of the Certificate of Sale or by order to this Court ruling on any objections to the Sale, the Clerk shall issue a writ of possession at the request of C Reyes pursuant to Rule 1.580 of the Florida Rules of Civil Procedure.
10. On the request of the purchaser at foreclosure Sale, the Clerk shall issue a writ of possession of Property to accomplish possession by purchaser without further order of Court pursuant to Rule 1.580 of the Florida Rules of Civil Procedure.
11. This Judgment is an in rem judgment of foreclosure on the above-referenced Lien only. Jurisdiction of this action is retained to enforce the terms of this Judgment and address all properly raised post-judgment claims or matters, including, without limitation, writs of possession, deficiency judgments and orders taxing attorneys' fees and costs.
12. **NOTICE PURSUANT TO SECTION 45.031(1)(a), FLA. STAT. (2024) IF THE ABOVE-REFERENCED PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.**

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

13. NOTICE PUSUANT TO SECTION 45.031(1)(b), FLA. STAT. (2024) IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT OF MIAMI DADE, (305)-275-1155 at 73 W. FLAGLER STREET, MIAMI, FLORIDA 33130, WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR PROPERTY OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT LEGAL SERVICES OF GREATER MIAMI, INC. AT 4343 W. FLAGLER STREET, MIAM, FLORIDA 33134, (305)-576-0080 TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT LEGAL SERVICES OF GREATER MIAMI, INC. FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

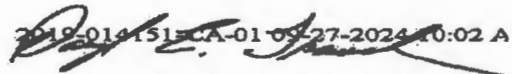
14. The Court reserves jurisdiction over the parties and this action to enter further orders that are

proper, including, without limitation, writs of possession, deficiency judgments, and orders relating to attorney's fees, interest, and costs.

[1] While Civic and Owner agree that Court is bound by the Jury's Verdict, they expressly reserve their right to timely move for a new trial and further object to the Jury's award pursuant to Rule 1.530, Fla. R. Civ. P.

[2] If the Court were to enter a Foreclosure Judgment at this time, Civic and Owners submit the following language. Of course, the submission of such language is not intended to suggest that Civic or Owners agree with the Verdict, and Civic and Owners expressly reserve their rights to and notify the Court of their intent to seek relief under Rule. 1.530.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 27th day of September, 2024.

2019-014151-CA-01 09-27-2024 10:02 A


2019-014151-CA-01 09-27-2024 10:02 AM

Hon. Daryl E. Trawick

CIRCUIT COURT JUDGE

Electronically Signed

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

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

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Physically Served:

EXHIBIT "B"

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

CASE NO: 2019-014151-CA-01

SECTION: CA07

JUDGE: Daryl E. Trawick

Civic Construction Company et al

Plaintiff(s)

vs.

C Reyes Construction Company, Inc. et al

Defendant(s)

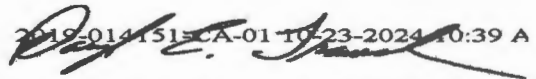
**ORDER DENYING PLAINTIFF/COUNTER-DEFENDANT, CIVIC CONSTRUCTION
COMPANY, INC.'S AND DEFENDANTS BELLA ISLA, LLC AND STORTFORD NV'S
MOTIONS FOR NEW TRIAL**

THIS CAUSE having come before this Court on Plaintiff/Counter-Defendant, CIVIC CONSTRUCTION COMPANY INC.'s October 2, 2024 Motion for New Trial (the "Civic Motion"), and Defendants, BELLA ISLA, LLC and STORTFORD NV's October 14, 2024 Motion for New Trial that only joined in the arguments raised by the Civic Motion, and the Court having reviewed the Motion, the Response in Opposition filed by Defendant/Counter-Plaintiff, C REYES CONSTRUCTION CORP., having heard argument of counsel, and otherwise being fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that:

1. For the reasons stated on the record, the Motions are DENIED in its entirety.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 23rd day of October, 2024.


2019-014151-CA-01 10-23-2024 10:39 A

2019-014151-CA-01 10-23-2024 10:39 AM

Hon. Daryl E. Trawick

CIRCUIT COURT JUDGE

Electronically Signed

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

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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