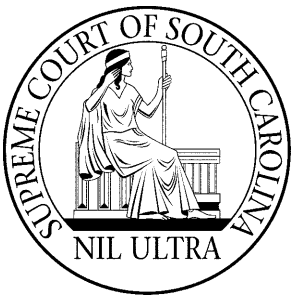

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 29

July 23, 2007
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of William F.
"Troup" Partridge, Respondent.

Opinion No. 26359
Submitted June 25, 2007 – Filed July 18, 2007

DEFINITE SUSPENSION

Henry B. Richardson, Disciplinary Counsel, of Columbia, for Office of Disciplinary Counsel.

Desa Ballard, of West Columbia, for respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR. In the agreement, respondent admits misconduct and consents to a definite suspension from the practice of law of up to one (1) year. He requests the suspension be made retroactive to the date of his November 3, 2006 interim suspension. In the Matter of Partridge, 371 S.C. 20, 637 S.E.2d 309 (2006). We accept the agreement and impose a one year suspension. The suspension shall not be made retroactive to the date of respondent's interim suspension. The facts, as set forth in the agreement, are as follows.

FACTS

Respondent was admitted to the South Carolina Bar in 2003. Initially, he was employed as a law clerk to Circuit Court Judge Wyatt Saunders. Thereafter, he was employed by the South Carolina Attorney General's Office.

During respondent's employment with the Attorney General's Office, Matthew Boland (Boland), a family friend, asked respondent to provide assistance in connection with a ticket issued in Newberry County. The ticket charged Boland with speeding 85 mph in a 55 mph zone, a 6 point violation. The ticket was returnable before Newberry County Magistrate Mark English.[1]

Respondent suggested Boland and/or Boland's father contact respondent's father, a lawyer who practiced law in Newberry County. Respondent believed that Boland and/or Boland's father contacted respondent's father but he had no actual knowledge of whether or not his own father assisted Boland until later.

It is now known that respondent's father had a conversation with his son-in-law, Newberry County Magistrate Joseph Beckham,[2] concerning the Boland ticket. Magistrate Beckham then had a conversation with the officer who issued Boland's ticket. As a result, the officer agreed to mark the ticket "not guilty."

Thereafter, Magistrate English heard the case against Boland. Boland did not appear at the hearing and the officer made no comment to Magistrate English when the case was called for trial. Magistrate English marked the ticket "425" and "NRVC" and sent it to the South Carolina

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[1] The handling of the traffic ticket has previously been the subject of two judicial disciplinary opinions. See In the Matter of English, 367 S.C. 297, 625 S.E.2d 919 (2006); In the Matter of Beckham, 365 S.C. 637, 620 S.E.2d 69 (2005).

[2] Respondent's sister is married to Magistrate Beckham.

Department of Motor Vehicles (DMV) for processing as a "guilty/defendant did not appear or paid [sic] fine" ticket case. The officer, however, checked the "appeared" box (which was not true) and the "not guilty" box on the ticket.

In June 2004, Boland's father contacted respondent. He told respondent he understood that Boland had been found not guilty, but that Boland had received notice from the DMV that his driver's license was going to be suspended because of the conviction.

Respondent personally visited the Magistrate's Office and obtained a copy of the ticket in issue. He discovered there was a discrepancy in the records. One ticket contained marks indicating Boland had appeared for trial and was found guilty and another reflected Boland had been found not guilty.

Respondent telephoned Magistrate English and inquired how Boland could address the discrepancy in the records. Respondent states he inquired if a petition for a writ of mandamus was the proper procedure for seeking to clarify the records concerning the ticket. Magistrate English informed ODC, however, that respondent threatened to file a petition for a writ of mandamus to correct the ticket. Other than the statements of Magistrate English and respondent, there is no evidence to substantiate either version of events.

Thereafter, respondent and Judge Saunders discussed the discrepancy in the tickets over the telephone. Initially, respondent told ODC he did not have a telephone conversation with Judge Saunders, but later acknowledged that he did have such a conversation.

Respondent believes he provided a copy of the ticket to his father. However, he may have given the ticket to Boland or Boland's father.

At approximately 1:00 p.m. on June 11, 2004, Boland came to respondent's office in Columbia to have his affidavit notarized. Respondent arranged for a co-worker to notarize the affidavit. Respondent represents

that, at the time, he was unaware that his father had prepared pleadings,[3] including an affidavit, for Boland to file pro se.

On June 11, 2004, the pleadings were presented by someone to Judge Saunders for his signature.[4] The same day, Judge Saunders signed the proposed order requiring Magistrate English to appear before him the next business day for purposes of correcting the error in the records. The same day, respondent visited Judge Saunders' chambers and, at the judge's request, arranged to have the pleadings served on Magistrate English.

Respondent called the Sheriff of Newberry County regarding service, then delivered the pleadings to a sheriff's deputy for service on Magistrate English. The Sheriff states respondent advised him that the Attorney General wanted the papers served. Respondent denies having made this assertion. Other than the statements of the Sheriff and respondent, there is no evidence to substantiate either version of the events.

At the hearing held before Judge Saunders, Boland, pro se, appeared with his father. Neither respondent nor his father appeared at the hearing. After Judge Saunders suggested that Magistrate English, Boland, and Boland's father discuss the matter, Magistrate English changed the ticket to "not guilty."

In April 2005, ODC was conducting investigations related to Magistrates English and Beckham. Respondent was asked to voluntarily appear before ODC to give testimony detailing his knowledge of Boland's ticket.

On April 14, 2005, respondent voluntarily appeared before Disciplinary Counsel. He was sworn as a witness and gave testimony under

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[3] The pleadings included a proposed rule to show cause order requiring Magistrate English to appear before Judge Saunders.

[4] According to the Agreement, evidence is inconclusive as to how the pleadings reached Judge Saunders.

oath. Respondent testified he did not know who had prepared the pleadings which were presented to and signed by Judge Saunders. Disciplinary Counsel asserts respondent did know who had prepared the pleadings, but intentionally withheld that information from ODC. Respondent claims he did not know his father had prepared the pleadings until he discussed the matter with his father after the examination. However, respondent acknowledges he was not fully forthcoming about his knowledge of Boland's ticket when he was examined under oath and that he testified he did not know the answers to certain questions when, in fact, he did.

When he was examined under oath by Disciplinary Counsel, respondent voluntarily produced certain documents he had in his possession related to Boland's ticket. One document provided to ODC (the letter from DMV to Boland requiring him to surrender his driver's license) contained handwriting which had been obliterated using "white out." In response to questions from ODC, respondent represented he did not know who had placed the "white out" on the document. The information obliterated by the "white out" was facsimile information from the person who faxed the DMV letter to respondent and respondent's facsimile number at the Attorney General's Office which had been written on the document by its sender.

According to respondent, after providing his testimony in April, he spoke with his father and learned his father had prepared the pleadings. Respondent wrote ODC and requested an opportunity to correct certain answers he had given in his April examination.

On May 24, 2005, respondent was again sworn and examined under oath. Some of the answers he gave to the questions by ODC conflicted with answers given in the April 2005 examination. Respondent did, however, disclose that his father had prepared the pleadings for Boland.

At the May 2005 interview, respondent falsely stated he did not know until the pleadings had been served that they related to Boland and the ticket. However, at the previous April interview, respondent had testified he was surprised to see that the pleadings given to him by Judge Saunders on June 11, 2004 for filing and service related to Boland and the ticket. Further,

respondent's father had stated under oath that he was present during respondent's telephone call to the Newberry County Sheriff to make arrangements for effecting service of the pleadings on Magistrate English and saw respondent holding the pleadings in his hand. Respondent acknowledges that he was aware when he filed the pleadings with the clerk and delivered them to a deputy sheriff (who came to his father's house to pick up the pleadings) that they were related to Boland and the ticket.

As part of a judicial grievance matter, Magistrate Beckham was examined under oath on May 26, 2005, in Columbia. After the examination, Magistrate Beckham met respondent at his home.[5] Respondent's father happened by respondent's house. Respondent, his father, and Magistrate Beckham discussed the events related to Boland's ticket. Based on statements subsequently made by respondent's now estranged wife, ODC alleged respondent sought to instruct his father and Magistrate Beckham how to answer questions related to Boland's ticket so their explanations would be consistent. Respondent represents that the conversation began with Magistrate Beckham reciting what he recalled of the examination by ODC earlier that day, which led to a discussion among respondent, his father, and Magistrate Beckham as to what each of them recalled about the matter.

Respondent represents that he did not instruct anyone on how to answer questions and that he did not undertake any effort to make the stories consistent. Respondent points out that he, his father, and Magistrate Beckham had already testified under oath before ODC so all they were doing was comparing experiences. In sworn testimony before ODC, respondent stated he did not recall a "meeting" to discuss the ticket, but now recalls there was such a meeting. ODC believes that the meeting was a chance get together rather than a scheduled meeting.

[5] At that time, respondent and this wife, Magistrate Beckham's sister, resided in Columbia.

LAW

Respondent admits that by his misconduct he has violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.2(d) (lawyer shall not counsel client to engage in or assist client in conduct lawyer knows is criminal or fraudulent); Rule 1.7(a) (lawyer shall not represent client if representation of that client will be directly adverse to another client); Rule 1.11(d) (lawyer who serves as public employee shall not violate Rule 1.7, RPC); Rule 3.3(a) (lawyer shall not knowingly make false statement of material fact to a tribunal); Rule 3.3(d) (in ex parte proceeding, lawyer shall inform tribunal of all material facts which will enable tribunal to make an informed decision); Rule 3.5(a) (lawyer shall not seek to influence a judge by means prohibited by law); Rule 8.1(a) (lawyer shall not knowingly make false statement of material fact in connection with a disciplinary matter); Rule 8.4(a) (it is professional misconduct for lawyer to violate the Rules of Professional Conduct or knowingly assist or induce another to do so); Rule 8.4(d) (it is professional misconduct for lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct that is prejudicial to the administration of justice); and Rule 8.4(g) (it is professional misconduct for lawyer to knowingly assist a judge in conduct that is a violation of the applicable rules of judicial conduct or other law). In addition, respondent admits that his actions constitute grounds for discipline under the following provisions of Rule 7, RLDE, Rule 413, SCACR: Rule 7(a)(1) (it shall be a ground for discipline for a lawyer to violate the Rules of Professional Conduct) and Rule 7(a)(5) (it shall be a ground for discipline for a lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute).

CONCLUSION

We accept the Agreement for Discipline by Consent and suspend respondent from the practice of law for one (1) year. The suspension shall not be retroactive to the date of respondent's interim suspension. Within fifteen days of the filing of this opinion, respondent shall file an affidavit

demonstrating he has complied with the requirements of Rule 30 of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Cohen's Drywall Co. Inc., Appellant,

v.

Sea Spray Homes, LLC, Robin C. Wahler, Susan C. Wahler, and Plantation Federal Bank, Respondents.

Appeal from Georgetown County
Benjamin H. Culbertson, Master-in-Equity

Opinion No. 26360
Heard June 5, 2007 – Filed July 23, 2007

REVERSED

Steven L. Smith, of Smith & Koontz, of Charleston, for Appellant.

Joe M. Crosby, of Crosby Law Firm, of Georgetown, for Respondents.

CHIEF JUSTICE TOAL: This appeal arises out of the trial court's dismissal of an action to enforce a mechanics' lien on the basis that the action was not timely filed. We reverse.

FACTUAL / PROCEDURAL BACKGROUND

Appellant Cohen's Drywall Co., Inc. ("Appellant") performed work on and provided materials for the construction of a residence owned by Respondents Robin C. Wahler and Susan Wahler ("Respondents"). In April 2004, after completing work on the residence, Appellant properly filed a mechanics' lien against the Respondents' property. Shortly after Appellant filed the mechanics' lien, Respondents posted a cash bond to release the property from the mechanics' lien with the Georgetown County Clerk of Court and recorded the release of the lien with the Georgetown County Register of Deeds Office.

Approximately four months after Respondents posted the cash bond to release the real property from the lien, Appellant brought an action to enforce the mechanics' lien. Appellant named the real property as the subject of the enforcement action, and Appellant commenced the initial action within the six-month time limit provided in S.C. Code Ann. § 29-5-120 (2005). Subsequent to the initial filing, Appellant discovered that Respondents had posted a cash bond to release the real property from the lien. Appellant then amended the averments of its complaint to identify the bond as the subject of the enforcement action. This amendment occurred after the expiration of the time limit for bringing an action to enforce the mechanics' lien.

Respondents filed a motion to dismiss the enforcement action and a motion to release the bond alleging that Appellant failed to bring the action to foreclose the mechanics' lien against the bond within the six-month time limit. The trial court granted Respondents' motion to dismiss and released the bond from the lien. This appeal followed and this Court certified the case from the court of appeals pursuant to Rule 204(b), SCACR. Appellant raises the following issue for this Court's review:

Did the trial court err in granting Respondents' motion to dismiss the enforcement action and motion to release the cash bond from the mechanics' lien?

STANDARD OF REVIEW

The foreclosure of a mechanics' lien is an action at law. *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 127, 631 S.E.2d 252, 256 (2006). In an action at law, tried without a jury, an appellate court will not disturb the trial court's findings of fact unless they are wholly unsupported by the evidence or unless it clearly appears the findings are controlled by an error of law. *Id.* (citing *Townes Assocs. Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)).

LAW / ANALYSIS

Appellant argues that the trial court erred in granting Respondents' motion to dismiss the enforcement action and motion to release the cash bond which secured the mechanics' lien. Specifically, Appellant alleges that the trial court erred in interpreting the relevant statutes to require Appellant to commence a separate action against the cash bond to enforce its mechanics' lien. Instead, Appellant argues its original enforcement action naming the Respondents' real property as the subject of the action is sufficient to secure foreclosure on the bond. We agree.

The procedures for the establishment and enforcement of a mechanics' lien are provided by statute. *See* S.C. Code Ann. §§ 29-5-10 *et seq.* (2005). The Code provides:

> Unless a suit for enforcing the lien is commenced, and notice of pendency of the action is filed, within six months after the person desiring to avail himself thereof ceases to labor on or furnish labor or material for such building or structures, the lien shall be dissolved.

S.C. Code Ann. § 29-5-120.

Generally, a mechanics' lien is enforced against the real property upon which the services were performed or materials provided. *See* S.C. Code Ann. §§ 29-5-10 to -21. However, the Code provides that the property may be released from a mechanics' lien under certain circumstances. S.C. Code Ann. § 29-5-110.

> At any time after service and filing of the statement required under § 29-5- 90 the owner or any other person having an interest in or lien upon the property involved may secure the discharge of such property from such lien by filing in the office of clerk of court or register of deeds where such lien is filed his written undertaking, in an amount equal to one and one-third times the amount claimed in such statement, secured by the pledge of United States or State of South Carolina securities, by cash or by a surety bond executed by a surety company licensed to do business in this State, and upon the filing of such undertaking so secured the lien shall be discharged and the cash, securities or surety bond deposited shall take the place of the property upon which the lien existed and shall be subject to the lien. . . . Unless suit for enforcement of the lien is commenced as required by § 29-5-120, the undertaking herein required shall be null and void and the principal therein shall have the right to have it canceled and such cash or securities deposited or pledged or surety bond filed shall be released from the lien herein provided.

Id.

As the statute provides, compliance with any number of bond procedures allows a property owner to release his property from the mechanics' lien. *See also Shelley Constr. Co. v. Sea Garden Homes, Inc.*, 287 S.C. 24, 27, 336 S.E.2d 488, 490 (Ct. App. 1985). This allows "the owner to convey or encumber the property free and clear of the mechanics' lien." *Id*.

All of the statutory requirements for the enforcement of a mechanics' lien must be strictly followed. *Butler Contracting, Inc.*, 369 S.C. at 130, 631

S.E.2d at 257. The failure to adhere to the requirements of the statutes will result in the dissolution of the lien, although such failure does not preclude an action on the debt. *Shelley Constr. Co.*, 287 S.C. at 27, 336 S.E.2d at 490.

Turning to our analysis of the question presented in this case, in order to be properly filed, the relevant statutes require only that a suit for enforcement of the mechanics' lien be commenced within six months of the last provision of services or materials for the construction of the building. Tellingly, neither statute requires a lien holder to name a substituted cash bond or other undertaking as the subject of the enforcement action. *See Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (noting that in construing a statute, its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation). In the absence of such a requirement, we interpret § 29-5-110 as an instructional mechanism to the court directing that a judgment on a foreclosed mechanics' lien be executed against a cash bond or other secured undertaking if one has been substituted in accordance with the statutory requirements. To reach a contrary interpretation would impose a continuing record-checking obligation on the holder of the mechanics' lien that the statutes do not contemplate.

In the instant case, Appellant commenced the enforcement action well before the expiration of the statutory time limit. We find that the statutes do not require the Appellant to bring the enforcement action against the cash bond. Therefore, Appellant's amendment of the complaint was unnecessary and Appellant timely commenced the action to enforce the mechanics' lien.

Accordingly, we hold that the trial court erred in granting Respondents' motion to dismiss Appellant's enforcement action and motion to release the cash bond.

CONCLUSION

For the foregoing reasons, we reverse the trial court's decision. We direct that the cash bond be reposted, and we remand the case for further proceedings consistent with this opinion.

MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Cletus K. Okpalaeke, Respondent.

Opinion No. 26361
Submitted June 20, 2007 – Filed July 23, 2007

DISBARRED

Henry B. Richardson, Jr., Disciplinary Counsel, and Barbara M. Seymour, Senior Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Cletus K. Okpalaeke, of Columbia, pro se.

PER CURIAM: This is an attorney disciplinary matter. The Office of Disciplinary Counsel ("ODC") brought formal charges against Respondent Cletus K. Okpalaeke based upon several alleged acts of misconduct. The panel of the Commission on Lawyer Conduct ("the Panel") found that Respondent committed numerous acts of misconduct and recommended that Respondent be disbarred from the practice of law. Neither ODC nor Respondent, who is in default, objected to the Panel's findings or recommendation. We accept the Panel's report, and we hereby disbar Respondent from the practice of law.

FACTUAL/PROCEDURAL BACKGROUND

In 2005, ODC formally charged Respondent with multiple ethical violations arising out of several otherwise unrelated events. The record

indicates that despite attempted service by certified mail and by agents of the South Carolina Law Enforcement Division, Respondent was never served with these formal charges. The record also indicates that Respondent has not filed an answer to these charges. In early 2006, upon request from ODC, the Panel ordered that Respondent be held in default.[1]

The formal charges in this matter describe approximately nine different instances of misconduct. Briefly summarized, these instances include:

A. The Drivers' License and Office Management Matters

Respondent attended law school in Minnesota and graduated in 1993. Respondent moved to South Carolina in 1996, and Respondent was sworn in to the practice of law in South Carolina July 23, 1997.[2] When Respondent moved to South Carolina, he had a valid Minnesota drivers' license. Respondent did not obtain a South Carolina drivers' license after his relocation. Instead, Respondent drove using his Minnesota license until it expired. Respondent then drove without a valid license until he was arrested

[1] The record illustrates that in 2005, the SLED agent attempting to serve Respondent had discussions with Respondent's neighbor and also the current owner of Respondent's former place of business. Both individuals professed that they had not seen Respondent in over a year and that Respondent had previously indicated that he would shortly be moving to the country of Nigeria. According to the United States Immigration and Customs Enforcement Division, the last entry on Respondent's passport is dated December 24, 2004 and indicates that Respondent left the United States for Amsterdam, Holland, via the Atlanta International Airport. SLED has placed Respondent's information in the Treasury Enforcement System so that local law enforcement will be notified if Respondent re-enters the United States.

[2] Respondent was born in Lagos, Nigeria, and moved to the United States to attend Winona State University in Winona, Minnesota, in 1980. Respondent received his undergraduate degree from that institution in 1990. Respondent attended William Mitchell College of Law in St. Paul, Minnesota, and graduated in June 1993.

in 1999 for driving under the influence of alcohol and for driving without a valid license. Respondent pled guilty to these charges.

Respondent's law office was a solo practice, and Respondent rented office space from a friend, Doe. Respondent allowed Doe, a non-lawyer, to manage major aspects of Respondent's law practice. Respondent gave Doe signatory authority on Respondent's operating and trust accounts, and Respondent also gave Doe supervisory authority over the office while Respondent was out of the country.

According to ODC, Respondent failed to deposit client funds into his trust account and commingled his funds with client funds when he processed settlements through his operating account. Respondent also allowed Doe to handle client settlements without the supervision of an attorney and Respondent disbursed client settlement funds from his operating account in the form of checks made payable to "cash." According to ODC, eleven checks drawn on Respondent's operating/trust account were returned for insufficient funds during a six month period in 2000. During that same period, ODC alleged that the balance in this account dropped below zero thirty-four times.

B. The Court Reporter Matter

Respondent ordered copies of a deposition transcript and failed to pay the court reporter who prepared the transcript. When the court reporter attempted to collect on the bill from Respondent, Respondent asserted that it was his client's obligation to pay the bill. Eventually, the court reporter sought assistance from the presiding judge, who wrote Respondent two letters insisting that Respondent pay the bill. Although Respondent ultimately settled his client's case for an amount that would have covered the bill, the client reneged on the settlement and refused to sign the release. Respondent never paid the bill, and the bill now totals $4,219.80.

C. The Jury Questionnaire Matter

In connection with the same lawsuit, Respondent ordered a copy of a jury questionnaire packet. The invoice provided to Respondent requested payment of $344.06. Respondent did not pay this bill and instead asked his client to do so. The client did not pay the bill, however, and the bill allegedly remains unpaid.

D. The Client A Matter

Respondent received a call from a non-lawyer assistant who worked for an attorney who had been suspended from the practice of law. The assistant asked whether Respondent would take over some of the suspended attorney's cases. After speaking with the suspended attorney, Respondent agreed to review some of the files. One of these files pertained to an automobile collision claim for Client A.

According to ODC, Client A, a resident of New York, had a potential personal injury claim and Client A's mother had consulted the suspended attorney about pursuing this claim. Respondent reviewed this file, contacted Client A's mother, and agreed with the mother that Respondent would send letters of protection to Client A's medical providers. In these letters, Respondent indicated that Client A had retained Respondent's firm to represent him in connection with the accident. According to ODC, these representations were false because Respondent had no intention of representing Client A unless the at-fault party was willing to pay a settlement in the matter.

Respondent also allegedly agreed with Client A's mother that he would send a "scare letter" to the at-fault party. In the letter, Respondent falsely indicated that he had been retained by Client A and Respondent accused the at-fault party of perjuring himself in traffic court. Respondent demanded payment of Client A's claim and Respondent asserted that if the party did not settle the case within two weeks, Respondent would contact the local judge and prosecutor for the purpose of pursuing perjury charges. Respondent received no response and took no further action.

E. The Property Dispute Matter

A party involved in a dispute over the purchase of real property retained Respondent to represent him in the dispute. On his client's behalf, Respondent sent a letter to the adverse party in the dispute informing the party of Respondent's representation. The letter additionally accused the adverse party of extortion and grand larceny. Furthermore, the letter indicated that Respondent had contacted the solicitor's office, who had in turn been in contact with the sheriff and the South Carolina Law Enforcement Division about the matter. The letter stated that Respondent intended to file a civil action based on the dispute and the letter indicated that the solicitor was going to handle the criminal case. Respondent further asserted in the letter that he believed the adverse party "would likely serve prison time" as a result of his conduct.

According to ODC, Respondent's representations that he had been in contact with the solicitor's office and with law enforcement were false. In response to this letter, the adverse party offered to refund Respondent's client's money in exchange for a release. Seeking additional information, Respondent replied to this offer and requested a response from the adverse party within three days. Respondent asserted that after that time he would "not be able to stop the process of this action and [the adverse party] will be picked up."

F. The Process Server Matter

The complainants in this matter are process servers who were retained to serve a summons, complaint, and interrogatories on Respondent's client. The complainants attempted to serve Respondent's client at her workplace, but the woman who answered the door at the building alleged that Respondent's client was not present at that time. The complainants waited outside the business, observed Respondent's client leave the building, and attempted to serve Respondent's client in the parking lot when she returned. The complainants photographed their attempt to serve Respondent's client, but the client denied that she was the person named in the pleadings. The

client threw the pleadings back at the complainants and then closed the gate to the parking lot, locking the complainants inside the lot.

The client then instructed an employee to call Respondent. When Respondent arrived, he used his car to further block the complainants' exit and he asserted that the complainants' photographing his client violated his client's rights. The complainants asked that they be allowed to leave, but Respondent refused to move his vehicle. The complainants eventually phoned the police, and after the police arrived, Respondent moved his vehicle so the complainants could leave.

G. The Custody Dispute Matter

Respondent represented a defendant in a custody dispute in family court. In connection with the case, Respondent issued three subpoenas listing Respondent as the attorney for the plaintiff, even though Respondent represented the defendant. One subpoena was served on the Department of Social Services requesting responses to discovery, and a second subpoena was served on the plaintiff's landlord demanding information regarding the plaintiff's rental agreement. The third subpoena was directed to the defendant's child's doctor and requested discovery responses. According to ODC, these subpoenas violated several court rules. The record discloses that the family court held a sanction hearing relating to this conduct and that the judge admonished Respondent for his conduct.

H. The Client B Matter

Respondent received approximately $18,000.00 in settlement of a claim brought by his client, Client B. Respondent issued a check from his office account to Client B for $11,000.00 as her portion of the settlement. The check was returned to Client B's bank due to Respondent's account lacking funds sufficient to cover the check. Client B made several attempts to obtain her money from Respondent, and although Respondent eventually issued a second check to Client B, this check contained no date and the letter accompanying the check requested that it not be negotiated until Respondent confirmed that there were funds sufficient to cover it. According to ODC,

Client B has still not received her portion of the settlement proceeds from her claim.

I. The Client C Matter

Respondent collected $17,000.00 for Client C and failed to pay her medical bills. According to ODC, Respondent has not responded to the notice of an investigation in this matter.

PANEL'S RECOMMENDATION

The Panel noted that because Respondent did not appear at the disciplinary hearing, Respondent was deemed to have admitted the factual allegations of the formal charges and conceded to ODC's recommended sanction. *See* Rule 24(b), RLDE, Rule 413, SCACR. Based upon these facts and ODC's recommendations, the Panel found that Respondent violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.15 (failing to safekeep client funds); Rule 1.3 (diligence); Rule 3.4 (fairness to opposing party and counsel); Rule 4.1 (truthfulness in statements to others); Rule 4.3 (dealing with an unrepresented person); Rule 4.4 (respect for rights of third persons); Rule 4.5 (threatening criminal prosecution); Rule 5.3 (failing to adequately supervise nonlawyer employee); Rule 5.5 (assisting in the unauthorized practice of law); Rule 8.1 (cooperation in disciplinary matters); Rule 8.4(b) (committing a criminal act); Rule 8.4(d) (dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(e) (conduct prejudicial to the administration of justice).

ODC recommended that Respondent be disbarred from the practice of law, and the Panel held that even without Respondent's concession of the appropriateness of this sanction, disbarment was the proper punishment in this matter. The Panel based this finding on two aggravating factors. First, the Panel held that this matter presented multiple violations including repeated conduct calling Respondent's honesty and integrity into question. Second, the Panel held that Respondent's failure to answer the charges or appear at the disciplinary hearing indicated an obvious disinterest in the

practice of law. For these reasons, the Panel recommended that Respondent be disbarred from the practice of law.

DISCUSSION

The South Carolina Supreme Court possesses the ultimate responsibility of determining sanctions in attorney disciplinary matters. *In re Rushton*, 286 S.C. 543, 544, 335 S.E.2d 238, 238 (1985). The instant case presents several different acts of serious misconduct, and after fully considering the misconduct at issue, we hold that disbarment is the appropriate sanction in this matter.

As we have recounted, Respondent failed to properly disburse settlement money in both the Client B and Client C matters, threatened criminal prosecution in order to gain advantage in a civil matter, was untruthful in statements and conduct towards others, and systematically failed to properly oversee and fulfill the financial obligations of his law practice. Such conduct reflects extremely poorly on the legal profession and has the potential to inflict direct harm on members of the general public. In short, we agree with the Panel that the instant case presents repeated conduct calling Respondent's honesty and integrity into question.

Furthermore, we agree with the Panel's finding that Respondent's conduct indicates an obvious disinterest in the practice of law. By all accounts, Respondent has left this jurisdiction with no apparent intention of returning. Respondent departed this jurisdiction with the knowledge that disciplinary action against him was imminent,[3] and since his departure, Respondent has shown no regard for the status of his license to practice law in South Carolina. As this Court has noted, a central purpose of the attorney disciplinary process is to protect the public from unscrupulous or indifferent lawyers. *In re Hall*, 333 S.C. 247, 251, 509 S.E.2d 266, 268 (1998). Furthermore, we have disbarred attorneys who fail to answer formal charges or appear at hearings before the Panel or this Court in egregious cases. *See,*

[3] This Court refused to accept an Agreement for Discipline by Consent between Respondent and ODC in December 2004.

e.g., In re Wofford, 330 S.C. 522, 500 S.E.2d 486 (1998). Respondent has violated numerous provisions of Rule 7 of the Rules for Lawyer Disciplinary Enforcement, set forth in Rule 413, SCACR, by violating the Rules of Professional Conduct; by failing to respond to a lawful demand from a disciplinary authority; by being convicted of a serious crime; by engaging in conduct tending to pollute the administration of justice or bring the court or legal profession into disrepute, or demonstrating an unfitness to practice law; by violating the oath of office; and by willfully violating the financial record keeping requirements contained in Rule 417, SCACR. In light of this misconduct, the Panel's recommended sanction of disbarment is more than adequately justified.

CONCLUSION

We conclude Respondent's misconduct warrants disbarment from the practice of law. Within fifteen (15) days of the date of this opinion, Respondent shall file an affidavit with the Clerk of this 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 Court.

Within thirty (30) days of the date of this opinion, ODC and Respondent shall file a restitution plan with the Court. In the plan, Respondent shall agree to pay restitution to any party who incurred losses as a result of his misconduct in connection with this matter. Furthermore, in addition to all other requirements Respondent must meet to be reinstated under Rule 413, no petition for reinstatement shall be accepted until Respondent has filed proof that he has made full restitution to all institutions and individuals who have lost money as a result of his misconduct, including restitution to the Lawyers' Fund for Client Protection for any payment it may make.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Milton
Demetrios Stratos, Respondent.

Opinion No. 26362
Submitted June 21, 2007 – Filed July 23, 2007

PUBLIC REPRIMAND

Henry B. Richardson, Jr., Disciplinary Counsel, and Ericka M. Williams, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Milton Demetrios Stratos, of Mount Pleasant, pro se.

PER CURIAM: The Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR, in which respondent admits misconduct and agrees to the imposition of either an admonition or public reprimand. We accept the agreement and issue a public reprimand. The facts, as set forth in the agreement, are as follows.

FACTS

Respondent was appointed to represent a client in connection with the appeal of his August 2, 2005 criminal convictions.[1] On February 17, 2006, the South Carolina Court of Appeals wrote respondent and instructed him to contact the Office of Appellate Defense within ten (10) days to request a transcript in his client's case and to also provide a copy of the correspondence to the Court. The Court of Appeals notified respondent that an Initial Brief and Designation of Matter would be due to be served and filed within thirty (30) days of the date respondent received the transcript.

On February 28, 2006, respondent wrote his client and urged him to consider using the Office of Appellate Defense to handle his appeal as respondent lacked the necessary experience and/or aptitude in perfecting appeals. On March 3, 2006, the client responded by letter and informed respondent that the proper course of action would be for respondent to file a motion to withdraw from the case. In that letter, the client also informed respondent that he would not consider using the Office of Appellate Defense to handle his appeal.

On March 10, 2006, the Court of Appeals dismissed the client's appeal due to respondent's failure to secure the required transcript and his failure to provide the necessary information to the Court. On March 29, 2006, the Clerk of the Court of Appeals issued a remittitur to the Charleston County Clerk of Court after respondent failed to file a Petition for Reinstatement of the appeal.

On April 19, 2006, the Supreme Court of South Carolina dismissed the client's appeal and denied the client's motion to reinstate the appeal. However, the Court noted that the denial was without prejudice to the client to seek relief under White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

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[1] The client was convicted of murder and possession of a weapon during the commission of a violent crime.

When respondent received initial notice of his appointment to represent the client, he erroneously assumed he was appointed to represent the client at trial in General Sessions Court. Respondent filed the customary discovery motions with the trial court (which respondent now acknowledges was of no relevance since his client had already been convicted). Respondent wrote one letter dated February 28, 2006 to the Office of Appellate Defense wherein he requested a return telephone call regarding the client's case. Respondent represents that he made several telephone calls to the Office of Appellate Defense but never received a response to his communications. Prior to May 11, 2006, respondent did not file any pleadings, make any appearances with the South Carolina Court of Appeals, or take any meaningful action on behalf of his client's appeal.

On November 19, 2006, after receiving notice of his client's complaint from ODC, respondent met with his client for the first time. As a result of his neglect of his client's appeal and his failure to adequately and timely communicate with his client, respondent's client lost his right to have his appeal heard by the South Carolina Court of Appeals and/or the Supreme Court of South Carolina.

LAW

Respondent acknowledges that his misconduct constitutes grounds for discipline under the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, specifically Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct), Rule 7(a)(5) (it shall be ground for discipline for lawyer to engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute), and Rule 7(a)(6) (it shall be ground for discipline for lawyer to violate the oath of office). Respondent admits that by his misconduct he has violated the Rules of Professional Conduct, Rule 407, SCACR, particularly Rule 1.1 (lawyer shall provide competent representation to a client), Rule 1.3 (lawyer shall act with reasonable diligence and promptness in

representing a client); Rule 1.4 (lawyer shall keep client reasonably informed about status of a matter and promptly comply with reasonable requests for information); 8.4(a) (it is professional misconduct for lawyer to violate Rules of Professional Conduct); and Rule 8.4(e) (it is professional misconduct for lawyer to engage in conduct prejudicial to the administration of justice).

CONCLUSION

We find that respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his misconduct.

PUBLIC REPRIMAND.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Raymond Skiba, d/b/a Skiba Landscaping and Construction, Respondent,

v.

Marjorie Sue Gessner and Terral Monty Matlock, Appellants.

Appeal From Horry County
Steven H. John, Circuit Court Judge

Opinion No. 26363
Heard June 7, 2007 – Filed July 23, 2007

REVERSED

James P. Stevens, Jr., of Stevens Law Firm, P.C., of Loris, for appellant.

David J. Canty, of David J. Canty, P.A., of Myrtle Beach, for respondent.

JUSTICE MOORE: Respondent was hired by appellant's[1] then fiancée, Terral Matlock, to perform lot clearing and the removal of unmarked trees, roots, and ground debris in return for $13,200. Appellant did not pay respondent for the work, but instead sent respondent a complaint letter, which stated the scope of respondent's work included root-raking and cleaning of the lot to prepare it for landscaping.[2] Respondent perfected a mechanic's lien and later brought an action for foreclosure. Appellant answered and filed a counterclaim that respondent left the job unfinished and that she had to hire someone else to complete the work.

At the conclusion of the trial, the trial court granted appellant's motion to dismiss on the ground that respondent violated S.C. Code Ann. § 40-11-30 (2001),[3] by not having a contractor's license. The court noted that the work for which respondent contracted fell within the definition of general construction because it was an improvement of any kind to real property. Pursuant to S.C. Code Ann. § 40-11-370 (Supp. 2006), which states that an entity which does not have a valid license as required by Chapter 40 may not bring an action at law or in equity to enforce the provisions of a contract, the court found that because respondent did not have a license, he could not bring an action against appellant. The court dismissed appellant's counterclaim alleging that respondent left the job unfinished and caused damage to the property for lack of proof.

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[1]Appellants were not yet married at the time the work was completed. Appellant Matlock's motion for summary judgment was granted on the basis he had no property interest in the lot. Accordingly, for purposes of this appeal, we will only be referring to Appellant Gessner.

[2]Appellant asserts, however, that her position has always been that the site work was for the purpose of improving the real estate for the erection of a residence.

[3]Section 40-11-30 provides that "[n]o entity or individual may practice as a contractor by performing . . . contracting work for which the total cost of construction is greater than five thousand dollars for general contracting . . .."

Respondent then filed a motion for reconsideration. During the hearing on the motion, the trial court allowed appellant to amend her complaint to add the affirmative defense of illegality of the contract. The court further concluded that the case should be re-opened so that the parties could take more depositions and could produce the rules and regulations of the Department of Labor, Licensing, and Regulation as they relate to § 40-11-30.

At the next hearing, the deposition of Ron Galloway, the administrator of the South Carolina Contractor's Licensing Board was submitted. Galloway stated he had reviewed the documents between the parties and concluded no building was involved in the contract and that respondent's work was not in preparation for a building site. He stated it was simply "moving dirt." Galloway stated that clearing, grubbing, and removing debris does not require a contractor's license and that respondent's work was exempt from the licensing requirement.

The court concluded respondent was not required to have a license to perform the work requested by appellant, and therefore, that the contract was not illegal as it had earlier ruled. In its order, the trial court found that respondent was entitled to $14,700; however, the court subtracted $6,300 for respondent's improper removal of trees. Accordingly, the court found respondent was entitled to $8,400 plus prejudgment interest.

ISSUE

Did the trial court properly find in respondent's favor?

DISCUSSION

At the time respondent perfected his mechanic's lien and brought the foreclosure action, it was understood by the parties that respondent's work had been completed in preparation for appellant's subsequent building of a home on the property. During the trial, appellant determined that the contract was illegal because respondent did not have a contractor's license at the time the work was performed. At this point, the trial court originally correctly dismissed respondent's action on the ground the contract was illegal. *See*

S.C. Code Ann. § 40-11-30 (2001) (no individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five thousand dollars for general contracting); S.C. Code Ann. § 40-11-20(8) (2001) ("'General construction' means the installation, replacement, or repair of a building, structure, . . .or improvement of any kind to real property.").

It is apparent that when respondent discovered that he was required to have a license to legally perform the work for appellant, he decided to take an inconsistent position. It is at this point when respondent claimed that his work was actually not in preparation for a building, but was in preparation for landscaping. After hearing Galloway's deposition, the trial court concluded respondent was not required to have a license to perform the work.

Because the work performed by respondent, as respondent now claims, was for the purpose of preparing the lot for landscaping and not for any work related to a building or structure, appellant contends a mechanic's lien cannot attach to the property. Appellant's argument is based on S.C. Code Ann. § 29-5-10(a) (2007), which states that for a person to have a mechanic's lien, the person must perform or furnish labor or furnish materials that are "actually used in the erection, alteration, or repair of a building or structure upon real estate." Section 29-5-10(a) provides that the "labor performed or furnished in the erection, alteration, or repair of any building or structure upon any real estate includes the . . . work of making the real estate suitable as a site for the building or structure."

A mechanic's lien exists only by virtue of statute; therefore, one's right to a mechanic's lien is wholly dependent upon the language of the statute creating it. Clo-Car Trucking Co., Inc. v. Clifflure Estates of South Carolina, Inc., 282 S.C. 573, 320 S.E.2d 51 (Ct. App. 1984) We are not at liberty to depart from the plain meaning of the mechanic lien's statutory language. *Id.*

In Clo-Car, the Court of Appeals found that land cleared and graded for the purpose of a road is not a building or a structure within the meaning of the statute. The Court of Appeals concluded that under § 29-5-10, a mechanic's lien cannot attach to land or to an owner's interest in land where

the work done is unconnected with and forms no integral part of the erection, alteration, or repair of either a building or a structure of some description. *See also* George A.Z. Johnson, Jr., Inc. v. Barnhill, 279 S.C. 242, 306 S.E.2d 216 (1983) (to establish a mechanic's lien, it is generally necessary that the labor performed go into something which has attached to and become a part of the real estate, adding to the value thereof).

On the current facts of this case, respondent's work was completed for the purpose of preparing the land for landscaping and not in connection with the erection, alteration, or repair of a building or structure. Accordingly, a mechanic's lien could not attach and the trial court erred by finding in favor of respondent. Therefore, the decision of the trial court is

REVERSED.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Chem-Nuclear Systems, LLC, Plaintiff,

v.

South Carolina Board of Health and Environmental Control, Defendant,

and Sierra Club, Intervenor.

ORIGINAL JURISDICTION

Opinion No. 26364
Heard June 20, 2007 – Filed July 23, 2007

RELIEF GRANTED

M. Elizabeth Crum, and Sara S. Rogers, both of McNair Law Firm, of Columbia; and Mary D. Shahid, of McNair Law Firm, of Charleston, for Plaintiff.

Carlisle Roberts, Jr., of Columbia, for Defendant.

James S. Chandler, Jr., and Amy E. Armstrong, both of South Carolina Environmental Law Project, of Pawleys Island; and Robert Guild, of Columbia, for Intervenor.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Special Counsel Robert D. Cook, and

Assistant Attorney General Thomas Parkin C. Hunter, all of Columbia, for Amicus Curiae.

JUSTICE BURNETT: We accepted this case in our original jurisdiction to determine the application and effect of Act No. 387, 2006 S.C. Acts 387, ("Act 387") to an appeal pending before the South Carolina Board of Health and Environmental Control (Board) on the effective date of Act 387.

FACTUAL/PROCEDURAL BACKGROUND

Chem-Nuclear Systems, LLC, ("Chem-Nuclear") operates a low-level radioactive waste disposal facility in Barnwell County. Chem-Nuclear's facility is licensed by the State of South Carolina through the Department of Health and Environmental Control (DHEC). On March 15, 2004, DHEC's Office of Environmental Quality Control renewed Chem-Nuclear's license for the facility.

Sierra Club subsequently filed a contested case with the Administrative Law Court (ALC), challenging the renewal of Chem-Nuclear's license. The ALC upheld the license renewal. Sierra Club v. S.C. Dep't of Health & Envtl. Control and Chem-Nuclear Sys., LLC, Docket No. 04-ALJ-07-0126-CC (S.C. Admin. Law Ct. Oct. 13, 2005). Sierra Club then appealed the ALC's decision to the Board pursuant to S.C. Code Ann. § 1-23-610 (2005) amended by Act 387 § 5 (codified at S.C. Code Ann. § 1-23-610 (Supp. 2006)). Prior to the effective date of Act 387, the Board notified Sierra Club, Chem-Nuclear, and DHEC—the parties to the appeal—that the Board would lose its jurisdiction to hear the appeal when Act 387 became effective. The appeal remained pending before the Board on the effective date of Act 387, and the Board, at the request of the Attorney General, subsequently reversed its position and informed the parties that it did have jurisdiction to hear Sierra Club's pending appeal.

In response, Chem-Nuclear filed this action requesting a declaration that Act 387 deprives the Board of jurisdiction to review the pending appeal in Sierra Club.

ISSUE

Did Act 387 deprive the Board of jurisdiction to hear an appeal from the ALC's decision in Sierra Club v. South Carolina Department of Health and Environmental Control and Chem-Nuclear Systems, LLC, Docket No. 04-ALJ-07-0126-CC (S.C. Admin. Law Ct. Oct. 13, 2005), which was pending before the Board on the date Act 387 became effective?

LAW/ANALYSIS

Act 387, which was signed into law on June 9, 2006, and became effective on July 1, 2006, substantially reformed the South Carolina Administrative Procedures Act in order "to provide a uniform procedure for contested cases and appeals from administrative agencies." Act 387 § 53. Sections 55 and 57 of Act 387 are crucial to the outcome of this declaratory judgment action. These sections provide:

Savings clause

SECTION 55. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 57. This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). The language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

The right of appeal arises from and is controlled by statutory law. Hagood v. Sommerville, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). Generally, the repeal of a statute without a savings clause operates retroactively to expunge pending claims, but a proper savings clause will have the effect of preserving a pending suit. S.C. Dep't of Natural Res. v. McDonald, 367 S.C. 531, 535, 626 S.E.2d 816, 818 (Ct. App. 2006); Deltoro v. McMullen, 322 S.C. 328, 333, 471 S.E.2d 742, 745 (Ct. App. 1996), superseded by statute on other grounds as stated in Badeaux v. Davis, 337

S.C. 195, 522 S.E.2d 835 (Ct. App. 1999). Accordingly, Sierra Club's pending appeal was preserved by Section 55, a savings clause, in Act 387.

Prior to the enactment of Act 387, the Board had jurisdiction to review final decisions of the ALC, *i.e.*, Sierra Club's appeal. S.C. Code Ann. § 1-23-610 (2005) amended by Act 387 § 5 (codified at S.C. Code Ann. § 1-23-610 (Supp. 2006)). Yet, under Act 387, the Court of Appeals has jurisdiction over appeals from final decisions of the ALC. See Act 387 §§ 5, 15.[1] In this

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[1] Section 5 of Act 387 (codified at S.C. Code Ann. § 1-23-610 (Supp. 2006)) states, in relevant part:

> (A) For quasi-judicial review of any final decision of an administrative law judge of cases involving departments governed by a board or commission authorized to exercise the sovereignty of the State, except the Department of Natural Resources and the Department of Health and Environmental Control, a petition by an aggrieved party must be filed with the appropriate board or commission and served on the opposing party not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right. A party aggrieved by a final decision of a board in such a case is entitled to judicial review of that decision by the court of appeals under the provisions of (A) of this section.
>
> (B) For judicial review of a final decision of an administrative law judge of cases in which review is not governed by subsection (A), including cases involving the Department of Natural Resources and the Department of Health and Environmental Control, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

Section 15 of Act 387 (codified at S.C. Code Ann. § 14-8-200 (Supp. 2006)) provides the Court of Appeals with "jurisdiction over any case in which an

action, we must determine whether Act 387 changed the forum for Sierra Club's pending appeal from the Board to the Court of Appeals.

Section 57 requires Act 387 to apply "to any actions pending on or after the effective date." Clearly, Sierra Club's appeal was pending on the effective date of Act 387. However, Section 57 creates an exception to this general rule of applicability and mandates the former law continue to apply to "appeals of Department of Health and Environmental Control . . . [Office of] Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court." The license at issue in this case was renewed by DHEC's Office of Environmental Quality Control, but the ALC was divested of jurisdiction and the Board obtained jurisdiction over the case when Sierra Club filed a petition for review of the ALC's decision with the Board. See generally Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997) (service of notice of intent to appeal divests the lower court of jurisdiction over the order appealed). Therefore, Sierra Club's appeal was before the Board, not the ALC or the circuit court, on the effective date of Act 387, and consequently, the exception in Section 57 to apply the former law to certain cases that were pending before the ALC or circuit court on July 1, 2006, is not applicable to Sierra Club's appeal. See Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994) ("When statutory terms are clear and unambiguous, there is no room for construction and courts are required to apply them according to their literal meaning."). Pursuant to the plain language of Section 57, the Board does not currently have jurisdiction over the appeal in Sierra Club.

Sierra Club opposes this construction of Sections 55 and 57. Sierra Club contends this construction leaves it without an avenue for an appeal because it can no longer timely perfect an appeal in the Court of Appeals. See Rule 203, SCACR (requiring notice of appeal to be filed within 30 days after receipt of the decision); Act 387 § 5 (codified at S.C. Code Ann. § 1-23-

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appeal is taken from an order, judgment, or decree of the circuit court, family court, a final decision of an agency, or a final decision of an administrative law judge. This jurisdiction is appellate only. . . ."

610 (Supp. 2006)) (same). This argument is without merit. Section 55, the savings clause, acts not only to preserve Sierra Club's right to appeal the ALC's final decision but also to preserve Sierra Club's perfected appeal of the decision. See Deltoro, 322 S.C. at 333, 471 S.E.2d at 745 ("[A] proper savings clause will have the effect of preserving a pending suit."). Because Section 55 preserves Sierra Club's pending appeal, Sierra Club is not required to re-perfect its appeal in the Court of Appeals; instead, Section 57 effectively transfers jurisdiction to the Court of Appeals of Sierra Club's appeal. See Act 387 § 57 ("For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."); *Cf.* Rule 204(a), SCACR ("In the event that the notice of appeal is filed in the wrong appellate court, the appellate court in . . . which the matter is filed shall issue an order transferring the case to the appropriate appellate court.").

CONCLUSION

We declare the Board does not have jurisdiction under Act 387 to hear the pending appeal in Sierra Club, but the Court of Appeals has jurisdiction over the appeal. Accordingly, we order the appeal in Sierra Club be transferred to the Court of Appeals pursuant to Section 57 of Act 387.

TOAL, C.J., MOORE, WALLER and PLEICONES, JJ., concur.

The Supreme Court of South Carolina

In re: Amendments to the South Carolina Appellate Court Rules

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O R D E R

The South Carolina Bar has proposed amending Rule 410(c)(2), SCACR, to increase the annual license fee for active members by $55. Additionally, because the Legislature has repealed S.C. Code Ann. § 40-5-30, the Bar is no longer required to deposit fees with the State Treasurer. Therefore, the Bar requested that the provision in Rule 410(c)(2) be deleted.

We grant the Bar's request to amend Rule 410(c)(2), SCACR, as set forth in the attachment to this Order. The amendments are effective immediately.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ E. C. Burnett, III J.

s/ Costa M. Pleicones J.

Columbia, South Carolina

July 19, 2007

Rule 410
SOUTH CAROLINA BAR

. . .

(c) Duties and Powers.

. . .

(2) The annual license fee for active members who have been admitted to practice law in this State or any other jurisdiction for three years or more shall be $245.00 plus the amount specified in (3) below. The license fee for all other members shall be in lesser amounts as may be provided for in the Bylaws of the South Carolina Bar plus the amount specified in (3) below. The license fee shall be payable on or before January 1st of each year. All income and assets shall be handled separately by the South Carolina Bar, as prescribed in its Constitution and Bylaws.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

In the Matter of the Care and Treatment of Kenneth J. White, Respondent,

v.

The State of South Carolina, Appellant.

Appeal From Chester County
Kenneth G. Goode, Circuit Court Judge

Opinion No. 4277
Submitted May 1, 2007 – Filed July 18, 2007

REVERSED AND REMANDED

Assistant Appellate Defender Lanelle C. Durant, of Columbia for Respondent.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Attorney General Deborah R. J. Shupe and Assistant Attorney General R. Westmoreland Clarkson, all of Columbia, for Appellant.

WILLIAMS, J.: On July 5, 2005, the State commenced an action pursuant to the South Carolina Sexually Violent Predator Act (the Act),[1] alleging Kenneth White (White) met the statutory criteria for confinement as a sexually violent predator. Based on the Act, the State sought White's commitment in a secure facility for long-term care, control, and treatment. The circuit court found no probable cause existed to establish White was a sexually violent predator and accordingly dismissed the action. We reverse and remand.

FACTS

White has a long history of sexually violent behavior toward women. In July 2002, White entered his victim's home, forced her into a bedroom, and used aggravated force to rape her. Based on this incident, he was arrested and charged with criminal sexual conduct in the first degree. White pled guilty to criminal sexual conduct in the second degree and was sentenced to ten years in prison, suspended to six months with a five-year probation period.

In January 2004, White sexually assaulted his former girlfriend at his residence. White asked the victim to come to his house, but when she arrived, he became increasingly angry with the victim for ending their relationship. He then threw her on the bed, choked her, and sexually assaulted her. White was again charged with criminal sexual conduct in the first degree. White entered a nolo contendre plea to criminal sexual conduct in the third degree and was sentenced to five years in prison, suspended to fourteen months with a five-year probation period.

Before White's release, the Director of the Department of Corrections notified the Attorney General and the multidisciplinary team that White, as a potential sexually violent predator, was to be released from confinement. The multidisciplinary team reviewed his case and determined White satisfied the definition of a sexually violent predator. Thereafter, the prosecutor's review committee reviewed the

[1] S.C. Code Ann. § 44-48-10 et seq. (Supp. 2006).

multidisciplinary team's recommendation and found probable cause to believe White was a sexually violent predator.

Based on the multidisciplinary team's and the prosecutor's review committee's recommendations, the State filed a petition in circuit court to commit White to the South Carolina Department of Mental Health. The circuit court found the petition set forth sufficient facts to establish probable cause that White met the statutory criteria for commitment. The circuit court subsequently held a probable cause hearing.

At the probable cause hearing, in addition to the July 2002 and January 2004 convictions, the State attempted to supplement its petition with: (1) incident reports showing White repeatedly stalked, sexually assaulted, and threatened a third victim over a five-year period, which resulted in White being charged and arrested for unlawful use of a telephone, harassment, violation of a restraining order, and assault; (2) an incident report that charged White with raping a fourth victim whom he had stalked for over a year and a half; and (3) a statement from the mother of White's son who claimed their relationship was "filled with lies, deception, control, physical and mental abuse, and continued infidelity" and "if released, [White] pose[d] an extreme danger to society."

White objected to the introduction of the documents detailing these offenses on the grounds that the incidents did not result in convictions, and only conduct resulting in criminal convictions may be considered under the Act. The circuit court sustained this objection.

In response, the State argued that even if the circuit court considered only White's two convictions, his conduct met the diagnostic criteria for sexual paraphilia as set forth in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). The State then attempted to admit a copy of the definition of sexual paraphilia from the DSM-IV into evidence, but White objected, claiming no basis existed to submit the document. The State argued because the DSM-IV is a recognized treatise and because the Act

expressly allows documentary evidence to be considered at a probable cause hearing, the document should be admitted. However, the court disagreed and sustained White's objection.

The circuit court held the State failed to establish probable cause to commit White under the Act and dismissed the case. This appeal follows.

LAW/ANALYSIS

By way of background, the Act provides for the involuntary civil commitment of sexually violent predators who are "mentally abnormal and extremely dangerous." § 44-48-20. To determine whether a person can be committed as a sexually violent predator under the Act, a series of steps must occur. First, the multidisciplinary team, appointed by the Director of the Department of Corrections, must determine whether the person meets the definition of a sexually violent predator.[2] § 44-48-50. The multidisciplinary team may rely on the person's records, which "include, but are not limited to, the person's criminal offense record, any relevant medical and psychological records, treatment records, victim's impact statement, and any disciplinary or other records formulated during confinement or supervision." Id.

If the multidisciplinary team finds the person meets the definition of a sexually violent predator, it then refers the case to the prosecutor's review committee. Id. Relying on the person's relevant records and the multidisciplinary team's recommendation, the prosecutor's review committee must determine whether probable cause exists to commit the person as a sexually violent predator. § 44-48-60. If the prosecutor's review committee determines probable cause is present, the Attorney

[2] Under the Act, a "sexually violent predator" is a person who (1) has been convicted of a sexually violent offense; and (2) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. § 44-48-30(1).

General may file a petition in circuit court to request a probable cause hearing. § 44-48-70.

At the probable cause hearing, the court considers the State's petition, which may be supplemented by additional documentary evidence or live testimony. § 44-48-80(B). If probable cause exists, the person is transferred to a secure facility for evaluation by a court-approved qualified expert. § 44-48-80(D). Within sixty days of the probable cause hearing, a trial must be conducted, at which the State must convince the court or jury beyond a reasonable doubt that the person is a sexually violent predator. § 44-48-90.

The State first argues the circuit court erred when it refused to consider White's past unadjudicated sexual offenses at the probable cause hearing. In response, White argues only conduct resulting in criminal convictions may be taken into account at the probable cause hearing because the Act is triggered only by such conduct. We agree with the State.

The Act does not specifically define whether the circuit court can consider a person's "criminal offense record" at the probable cause hearing, nor does the Act specify what "offenses" the circuit court can consider. § 44-48-80. As such, we must first resolve whether the circuit court can rely on a person's criminal offense record. If so, we must then determine what offenses the circuit court can permissibly consider in its probable cause determination.

In construing a statute, this Court should not consider the particular clause being construed in isolation, but we should read the clause in conjunction with the purpose of the whole statute and the policy of the law. South Carolina Coastal Council v. South Carolina State Ethics Comm'n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991). Statutory provisions should be given a reasonable construction consistent with the purpose of the statute. Jackson v. Charleston County Sch. Dist., 316 S.C. 177, 181, 447 S.E.2d 859, 861 (1994). Statutes that are part of the same act must be read together. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569,

570 (1989). Statutes must be read as a whole and sections that are part of the same general statutory scheme must be construed together and each given effect, if reasonable. Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992).

The Act states that a "person's records," including a "person's criminal offense record," may be considered by the multidisciplinary team and the prosecutor's review committee in determining whether a person is a sexually violent predator. §44-48-50. The State's petition, submitted to the circuit court at the probable cause hearing, is based in part on the recommendations and reports of the multidisciplinary team and the prosecutor's review committee. §§ 44-48-50 to -80. The Act does not explicitly limit the multidisciplinary team and the prosecutor's review committee to considering only convictions when they make their respective decisions. §§ 44-48-50, 44-48-60. By reading these statutes together, if the circuit court can consider the State's petition at a probable cause hearing, it follows that the circuit court can likewise consider any prior relevant offenses, which may be contained in the State's petition.

Because the circuit court can take into account relevant criminal offenses, we must next determine what offenses are appropriate to consider. Based on our review, we find "offense" to mean either (1) convictions and crimes not resulting in convictions or (2) only convictions. Consequently, this term in the Act is ambiguous.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction, and a court must apply the statute according to its literal meaning. Univ. of S. California v. Moran, 365 S.C. 270, 276, 617 S.E.2d 135, 138 (Ct. App. 2005). However, when the legislature chooses not to define a term in a statute, courts will interpret the term in accord with its usual and customary meaning. City of Camden v. Brassell, 326 S.C. 556, 560, 486 S.E.2d 492, 494 (Ct. App. 1997) (citations omitted).

As "offense" is not defined in the Act, the term's customary and usual meaning is instructive in ascertaining the legislature's intent. Offense is commonly defined as "a violation of the law; a crime, often a minor one." Black's Law Dictionary 885 (7th ed. 2000). Further, "the terms 'crime,' 'offense,' and 'criminal offense' are all said to be synonymous, and ordinarily used interchangeably." 22 C.J.S. Criminal Law § 3 (2007). Distinguished from a crime or offense, a conviction is "[t]he act or process of judicially finding someone guilty of a crime [or] [t]he judgment . . . that a person is guilty of a crime." Black's Law Dictionary 271 (7th ed. 2000). It follows that while a conviction cannot occur without the commission of an offense, an offense can occur without necessarily resulting in a conviction. As such, both convictions and offenses not resulting in convictions can be considered under the Act based on the term's usual and customary meaning.

Because the legislature fails to limit or is silent on whether offenses can include only convictions, we must assume the legislature intended to include both convictions and offenses not resulting in convictions. Cf. State v. Prince, 335 S.C. 466, 475-76, 517 S.E.2d 229, 234 (Ct. App. 1999) (In finding that an "act of violence" can include an act against property under this State's aggravated stalking statute, this Court held, "[T]hat our legislature specifically chose not to define 'act of violence' buttresses our conclusion. Had the legislature intended for that term to be defined narrowly, it could easily have inserted limiting language. Instead, there is no limitation on the term. We decline to impliedly limit our statutory scheme to acts of bodily injury when the legislature expressly did not do so.").

Further, our Act is modeled after Kansas' Sexually Violent Predator Act, so we find Kansas' treatment of this matter to be illustrative. In re Matthews, 345 S.C. 638, 649, 550 S.E.2d 311, 316 (2001) (stating South Carolina's Act is based on Kansas' Sexually Violent Predator Act). In Matter of Hay, the defendant challenged the introduction of prior uncharged conduct at his trial for civil commitment as a sexually violent predator, claiming it was inadmissible. 953 P.2d 666, 677 (Kan. 1998). The Kansas Supreme Court admitted the evidence, finding it was either a necessary element

of the charged conduct or relevant, despite its prejudicial nature, to the ultimate issue. Id. The court held, "[E]vidence of prior conduct, charged and uncharged, [is] material evidence in [a sexual predator] case." Id. at 678. In buttressing its conclusion, the court also stated, "In assessing whether an individual is a sexually violent predator, prior sexual history is highly probative of his or her propensity for future violence." Id. (citation omitted).

Similarly, our Supreme Court has stated that "past criminal history is directly relevant" to proving a person is a sexually violent predator. In re Corley, 353 S.C. 202, 206, 577 S.E.2d 451, 453 (2003). Further, "a person's dangerous propensities are the focus of the . . . Act," so admission of previous offenses that are similar to one another is proper when directly relevant to the ultimate issue. Corley, 353 S.C. at 206-07, 577 S.E.2d at 453-54.

In this case, evidence of White's criminal sexual offenses not resulting in convictions was directly relevant to the circuit court's probable cause determination.[3] Consequently, we find the circuit court erred when it refused to admit White's previous unadjudicated offenses into evidence.

The State also avers that the circuit court erred when it dismissed this action based on its finding that no probable cause existed to establish White is a sexually violent predator. We agree.

On appeal, this Court will not disturb the circuit court's finding on probable cause unless found to be without evidence that reasonably supports the circuit court's finding. In re Tucker, 353 S.C. 466, 470, 578 S.E.2d 719, 721 (2003).

The State petitioned the circuit court to determine whether probable cause existed to believe White was a sexually violent

[3] In so holding, we are not stating past convictions and prior offenses not resulting in convictions that have no bearing on whether a person is a sexually violent predator should be admissible.

predator. As stated earlier, a "sexually violent predator" is a person who (1) has been convicted of a sexually violent offense; and (2) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. § 44-48-30(1)(a) & (b).

In this case, it is undisputed that White satisfies the first prong of section 44-48-30(1). His previous convictions for second and third degree criminal sexual conduct are qualifying offenses under the Act. § 44-48-30(2)(b) & (c). Thus, the determinate factor is whether he suffers from a mental abnormality such that he is likely to commit acts of sexual violence in the future.

At the probable cause hearing, the State attempted to introduce evidence that White suffers from sexual paraphilia[4] based on the diagnostic criteria set forth in the DSM-IV.[5] We initially note the circuit court properly excluded the DSM-IV as the State failed to lay the proper foundation for its admission. The State's attempt to introduce a photocopied definition of sexual paraphilia as "what a doctor's probable diagnosis would be" was improper without additional corroborating evidence or testimony from an expert or witness. See Rule 803(18), SCRE (stating that a learned treatise is admissible if "established as a reliable authority by the testimony or admission of the

[4] Sexual paraphilia involves "recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving . . . the suffering or humiliation of . . . nonconsenting persons . . . that occur over a period of at least 6 months." DSM-IV 566 (4th ed. 1994).

[5] The DSM-IV is an authoritative resource in diagnosing mental abnormalities and personality disorders. See Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 159, 511 S.E.2d 699, 704 (Ct. App. 1999) (The "(DSM-IV) . . . is a widely used manual by psychiatrists to define mental diagnostic categories and is published by the American Psychiatric Association.").

witness or by other expert testimony or by judicial notice."). To indicate that White suffers from the specific sexual disorder of sexual paraphilia without further testimony or evidence mandates the exclusion of the DSM-IV.[6]

Although the circuit court excluded the DSM-IV, the State proffered evidence to establish probable cause. First, the State presented White's two previous convictions, both of which involved nonconsenting victims and were of a sexually violent nature. Further, the State attempted to introduce numerous documents regarding White's unadjudicated assaults against other nonconsenting female victims. His unadjudicated conduct and convictions establish a reasonable basis to believe that White suffers from some type of mental abnormality or personality disorder. As such, the second prong of section 44-48-30(1) is satisfied.

Accordingly, the circuit court's finding of no probable cause is not supported by the evidence.

CONCLUSION

The circuit court committed reversible error when it excluded the State's evidence regarding White's past unadjudicated offenses. Because the Act does not expressly prohibit the introduction of prior offenses that are relevant to determining whether a person is a sexually violent predator, it was error to exclude this evidence.

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[6] Despite the exclusion of the DSM-IV, we believe a finding of probable cause is consistent with prior South Carolina case law. In In re Care and Treatment of Beaver v. State, our Supreme Court stated the circuit court erred in holding the State failed to provide sufficient evidence to show the defendant suffered from a mental abnormality. Specifically, the Supreme Court stated that "the State's inability to provide mental health evidence does not prevent a finding of probable cause." 372 S.C. 272, 278, 642 S.E.2d 578, 582 (2007).

Because the evidence supports a finding of probable cause, we reverse and remand to the circuit court. On remand, the circuit court shall direct that White be transferred to an appropriate secure facility for evaluation by a court-approved qualified expert.

REVERSED and REMANDED.[7]

HUFF and BEATTY, JJ., concur.

[7] We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

James Bostic, Respondent,

v.

American Home Mortgage Servicing, Inc. Appellant.

Appeal From Florence County
Thomas A. Russo, Circuit Court Judge

Opinion No. 4278
Heard June 6, 2007 – Filed July 18, 2007

REVERSED AND REMANDED

David M. Souders and Nancy W. Hunt, both of Washington, D.C. and Jeffrey L. Silver and Donald W. Tyler, Jr., both of Columbia, for Appellant.

Patrick J. McLaughlin, of Florence, for Respondent.

BEATTY, J.: American Home Mortgage Servicing, Inc. (American Home) appeals the circuit court's order granting summary judgment in favor of James Bostic. American Home argues the circuit court erred in finding that Bostic satisfied the "request" requirement of the Recording Statutes, specifically sections 29-3-310 and 29-3-320 of the South Carolina Code, by sending via certified mail a check for the payoff amount of his mortgage. We reverse and remand.

FACTS

On June 3, 1977, Bostic entered into a mortgage agreement with Security Savings and Loan Association of Florence to secure a loan in the amount of $22,475.00, on a parcel of land in Florence. At some point during the course of the mortgage, American Home acquired the note and became the successor mortgagee.

On January 26, 2005, Bostic obtained a statement for the payoff amount on the loan, which American Home listed as $4,848.23. The payoff amount included a "release fee" and a "recording fee." On February 4, 2005, Bostic sent by certified mail a cashier's check to the order of American Home in the amount of $4,848.23. Three days later, American Home received and signed for Bostic's check. Bostic claimed to have contacted American Home numerous times by telephone to inquire about the release of the payoff documents. According to Bostic, he was informed that the release documents would be sent directly to him and they were in the mail.

On May 16, 2005, American Home sent Bostic a letter, stating the loan "has been paid in full effective 02/11/2005. The payoff release documents will be mailed within 60-90 days from this date." Another letter, with identical wording, was sent by American Home to Bostic on May 18, 2005.

On May 31, 2005, Bostic, through counsel, sent American Home's two locations a certified letter which stated in pertinent part:

> As more than 90 days have elapsed since this loan was paid off and the mortgage satisfaction has not been provided to Mr. Bostic nor filed with the court, you are in violation of §29-3-310, S.C. Code Ann. (2004). I hereby request that you tender, within thirty days, the mortgage satisfaction to our office, along with a penalty check for the amount of $11,237.50, which represents half of the amount of the debt secured by the mortgage, which Mr. Bostic is entitled to pursuant to S.C. Code Ann. (2004) §29-3-320.

On June 3 and June 6, 2005, both American Home locations respectively received and signed for the two demand letters.

Having received no further response from American Home, Bostic filed a Complaint dated June 14, 2005, in which he alleged the following causes of action: (1) violation of section 29-3-310 of the South Carolina Code; (2) breach of contact with fraudulent intent; and (3) breach of contract. In terms of damages, Bostic sought the statutory penalty provided in sections 29-3-310 and 29-3-320, as well as actual and punitive damages pursuant to the contract claims. In its Answer, dated September 16, 2005, American Home generally denied the allegations and asserted that it had complied with the statutory provisions by filing Bostic's mortgage satisfaction on August 29, 2005.

Both parties filed cross-motions for summary judgment. After a hearing, the circuit court issued an order on March 6, 2006, in which it granted Bostic's motion for summary judgment and denied American Home's motion. Specifically, the court held:

> The Court finds, as a matter of law, that the Plaintiff's payment of the payoff amount ($4,848.23) which included the "Release fee" and "Filing fee," which was sent by certified mail, and accepted and retained by Defendant, was sufficient to satisfy the request requirement of § 29-3-310 S.C. Code Ann. (2004). Additionally, taking the evidence in the light most favorable to [American Home], [American Home] failed to comply with its

> own correspondence which stated that the mortgage satisfaction would be filed within 60-90 days of May 16, 2005.
>
> The Court further finds that [American Home's] failure to file [Bostic's] mortgage satisfaction until August 29, 2005 constitutes a violation of § 29-3-310 S.C. Code Ann. (2004), and subjects [American Home] to the statutory penalty section § 29-3-320 S.C. Code Ann. (2004).

Additionally, the court ordered the parties to schedule a hearing to determine damages. American Home appeals the circuit court's order.[1]

STANDARD OF REVIEW

The circuit court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). "In determining whether any triable issues of fact exist, the circuit court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." RWE NUKEM Corp. v. ENSR Corp., Op. No. 26320 (S.C. Sup. Ct. filed Apr. 30, 2007) (Shearouse Adv. Sh. No. 18 at 21). "'[I]n considering cross motions, the court should draw all inferences against each movant in turn.'" Id. at 24 (quoting 73 Am. Jur. 2d Summary Judgment § 43 (2001)). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most

[1] As evident from the circuit court's order, Bostic's breach of contract claims were not at issue during the hearing on the motions for summary judgment. Accordingly, we confine our analysis to Bostic's cause of action involving the imposition of a statutory penalty.

favorable to the non-moving party below." Vaughan v. McLeod Reg'l Med. Ctr., 372 S.C. 505, ___, 642 S.E.2d 744, 746 (2007).

"The issue of interpretation of a statute is a question of law for the court. We are free to decide a question of law with no particular deference to the circuit court." Catawba Indian Tribe of South Carolina v. State, 372 S.C. 519, ___, 642 S.E.2d 751, 753 (2007) (citations omitted).

DISCUSSION

American Home argues the circuit court erred in holding Bostic's submission of the payoff check satisfied the "request" requirement of the Recording Statutes.[2]

The Recording Statutes that American Home references are sections 29-3-310 and 29-3-320 of the South Carolina Code.

Section 29-3-310 provides:

> Any holder of record of a mortgage who has received full payment or satisfaction or to whom a legal tender has been made of his debts, damages, costs, and charges secured by mortgage of real estate shall, at the request by certified mail or other form of delivery with a proof of delivery of the mortgagor or of his legal representative or any other person being a creditor of the debtor or a purchaser under him or having an interest in any estate bound by the mortgage and on tender of the fees of office for entering satisfaction, within three months after the certified mail, or other form of delivery, with a proof of delivery, request is made, enter satisfaction in the proper office on the mortgage which shall forever thereafter discharge and satisfy the mortgage.

[2] Although American Home raises two separate issues, we have consolidated them into one issue in the interest of brevity and clarity.

S.C. Code Ann. § 29-3-310 (2007) (emphasis added). In conjunction, section 29-3-320 provides the statutory penalty for those mortgagees that fail to comply with section 29-3-310. Section 29-3-320 states:

> Any holder of record of a mortgage having received such payment, satisfaction, or tender as aforesaid who shall not, by himself or his attorney, within three months after such certified mail, or other form of delivery, with a proof of delivery, request and tender of fees of office, repair to the proper office and enter satisfaction as aforesaid shall forfeit and pay to the person aggrieved a sum of money not exceeding one-half of the amount of the debt secured by the mortgage, or twenty-five thousand dollars, whichever is less, plus actual damages, costs, and attorney's fees in the discretion of the court, to be recovered by action in any court of competent jurisdiction within the State. And on judgment being rendered for the plaintiff in any such action, the presiding judge shall order satisfaction to be entered on the judgment or mortgage aforesaid by the clerk, register, or other proper officer whose duty it shall be, on receiving such order, to record it and to enter satisfaction accordingly.
>
> Notwithstanding any limitations under Sections 37-2-202 and 37-3-202, the holder of record of the mortgage may charge a reasonable fee at the time of satisfaction not to exceed twenty-five dollars to cover the cost of processing and recording the satisfaction or cancellation. If the mortgagor or his legal representative instructs the holder of record of the mortgage that the mortgagor will be responsible for filing the satisfaction, the holder of the mortgage shall mail or deliver the satisfied mortgage to the mortgagor or his legal representative with no satisfaction fee charged.

S.C. Code Ann. § 29-3-320 (2007).

Because our decision in this case requires us to determine what constitutes a "request" as referenced in the above-outlined statutes, we are guided by the principles of statutory construction.

"South Carolina has long recognized the principle that penal statutes are to be strictly construed." Hinton v. South Carolina Dep't of Prob., Pardon, and Parole Servs., 357 S.C. 327, 332, 592 S.E.2d 335, 338 (Ct. App. 2004). "Furthermore, even though penal statutes are to be strictly construed, 'the canons of construction certainly allow the court to consider the statute as a whole and to interpret its words in the light of the context.'" Rorrer v. P.J. Club, Inc., 347 S.C. 560, 567, 556 S.E.2d 726, 730 (Ct. App. 2001)(quoting State v. Standard Oil Co. of N.J., 195 S.C. 267, 288, 10 S.E.2d 778, 788 (1940)). "We should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law." Rorrer, 347 S.C. at 567, 556 S.E.2d at 730.

The primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). "The first question of statutory interpretation is whether the statute's meaning is clear on its face." Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002). If a statute's language is plain, unambiguous, and conveys a clear meaning, then "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of particular words." Sloan v. South Carolina Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 468, 636 S.E.2d 598, 606-07 (2006).

As previously stated, our analysis will be focused on the limited question of what constitutes a "request" within the meaning of the Recording Statutes. Our review of this state's appellate decisions reveals that there is no case specifically addressing this issue.[3] Therefore, we rely on secondary authority for a general definition of "request" and then turn to case law from other jurisdictions which discuss the specifics of this term in the context of recording statutes.

The term "request" as related to the mortgage satisfaction procedure has been defined as follows:

> A demand or request to the mortgagee to enter satisfaction of the mortgage is a condition precedent to the right to sue for the statutory penalty. No particular form of words is necessary for this demand; it is sufficient if it informs the mortgagee with reasonable certainty that an entry of satisfaction of the particular mortgage is requested.

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[3] In his motion for summary judgment and in his brief, Bostic cites several cases from this court that he believes are significant because they discuss sections 29-3-310 and 29-3-320. See Rowell v. Whisnant, 360 S.C. 181, 186-87, 600 S.E.2d 96, 99 (Ct. App. 2004) (discussing section 29-3-310 and finding creditor was not required to satisfy note and mortgage until debtor paid appropriate amount of attorney's fees due under the note); Swindler v. Swindler, 355 S.C. 245, 254-55, 584 S.E.2d 438, 443 (Ct. App. 2003) (applying Article 3 of the Uniform Commercial Code to note secured by a mortgage on real property and remanding with instructions to enter satisfaction of the mortgage in accordance with section 29-3-310); Kinard v. Fleet Real Estate Funding Corp., 319 S.C. 408, 412-13, 461 S.E.2d 833, 835-36 (Ct. App. 1995) (holding mortgagor's remittal of recording fees constituted "tender of the fees of office for entering satisfaction" pursuant to section 29-3-310 and affirming trial court's award of statutory penalty allowed by section 29-3-320). Although these cases are tangentially instructive, we do not believe they are dispositive given the interpretation of a "request" was not at issue.

59 C.J.S. Mortgages § 483 (1998 & Supp. 2007) (discussing cases involving the penalties or damages which relate to the release or satisfaction of mortgages). Another secondary authority provides a more detailed analysis:

> A notice or request to the mortgagee that he or she enter a satisfaction or execute a release of a satisfied mortgage is a condition precedent to a right of action for the statutory penalty for a failure to do so. Usually, the statutes do not prescribe the form or substance of the notice, and it is held that the notice or request may be either written or oral, and need not be presented in any particular form. In this respect, it is generally held that a demand to satisfy is sufficient which calls to the attention of the mortgagee the fact that the indebtedness secured by the mortgage has been paid, and requests in consideration of that payment that a satisfaction of the mortgage be executed or entered. The language of the notice must, however, in its fair and reasonable meaning, inform the mortgagee as to what is desired . . . Moreover, the request not only must be worded in proper terms, but must also, where written, be signed by the proper party or parties, and be delivered to the proper person.

55 Am. Jur. 2d Mortgages § 440 (1996 & Supp. 2007) (analyzing cases involving the satisfaction and discharge of mortgages).

Although we have reviewed numerous cases from other jurisdictions, we narrow our focus to a case issued by the Pennsylvania Supreme Court rather than engage in a lengthy recitation of cases. See generally J.Q.L., Annotation, Validity and Construction of Statute Allowing Penalty and Damages Against Mortgagee Refusing to Discharge Mortgage on Real Property, 56 A.L.R. 335 (1928 & Supp. 2007) ("In a number of jurisdictions . . . statutes have been passed which, although varying somewhat in their specific provision, provide in general that a mortgagee who has received payment of the mortgage debt must enter a satisfaction thereof on the mortgage record, or execute a release of the mortgage, within a certain period after having been requested to do so by the mortgagor; and that, on his failure to do so, he may be held liable by the mortgagor, for a definite sum, and for

additional damages which the mortgagor may have sustained as a result of the mortgagee's refusal.").

In O'Donoghue v. Laurel Savings Association, the Pennsylvania Supreme Court analyzed state mortgage statutes, which are similar to our statutes,[4] and considered the question of what constitutes a "request" to mark a mortgage satisfied for the purposes of imposing a statutory penalty pursuant to the Mortgage Satisfaction Law.[5] O'Donoghue v. Laurel Sav. Ass'n, 728 A.2d 914 (Pa. 1999).

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[4] O'Donoghue v. Laurel Sav. Ass'n, 728 A.2d 914, 916 (Pa. 1999) (discussing 21 P.S. §§ 681 & 682). Section 681 provides:

> Any mortgagee of any real or personal estates in the Commonwealth, having received full satisfaction and payment of all such sum and sums of money as are really due to him by such mortgage, shall, at the request of the mortgagor, enter satisfaction either upon the margin of the record of such mortgage recorded in the said office or by means of a satisfaction piece, which shall forever thereafter discharge, defeat and release the same; and shall likewise bar all actions brought, or to be brought thereupon.

Section 682 states:

> And if such mortgagee, by himself or his attorney, shall not, within forty-five days after request and tender made for his reasonable charges, return to the said office, and there make such acknowledgement as aforesaid, he, she or they, neglecting so to do, shall for every such offence, forfeit and pay, unto to party or parties aggrieved, any sum not exceeding the mortgage-money, to be recovered in any Court of Record within this Commonwealth, by bill, complaint or information.

[5] We note this court has previously referenced a Pennsylvania appellate decision. Kinard, 319 S.C. at 414, 461 S.E.2d at 836 (stating that no South Carolina case interpreting section 29-3-320 had been located and relying on a decision of the Pennsylvania Supreme Court).

In O'Donoghue, the mortgagors obtained three loans from the predecessor to Laurel Savings Association (Laurel) in 1978 and 1980. On June 22, 1988, the mortgagors entered into a refinancing agreement with Laurel which resulted in a Laurel representative marking on the loan settlement sheet that the original three loans had been satisfied. Id. at 915. In July or August of 1992, the mortgagors discovered that the original three loans appeared on their credit report as outstanding debt even though they had been paid in full. By letter dated November 17, 1992, the mortgagors through an attorney demanded that Laurel immediately mark each loan satisfied. Laurel complied within eight days of the demand letter. Ten months later, the mortgagors filed a Complaint alleging they had suffered damages as a result of Laurel's negligence. Included in their twelve causes of action, the mortgagors requested the imposition of a statutory fine for Laurel's failure to satisfy the mortgages pursuant to the state mortgage satisfaction law. Id. Subsequently, the trial court granted Laurel's motion for summary judgment on this cause of action. On appeal, the Superior Court affirmed the summary judgment order, finding that a written request for satisfaction was necessary before a mortgagee was obligated to record satisfaction of a mortgage. Id. at 916. The Court further held that Laurel complied with the mortgage satisfaction law because the demand letter dated November 17, 1992, was the first written request for satisfaction and Laurel recorded the satisfaction within eight days of receiving the letter. Id.

The Pennsylvania Supreme Court granted the mortgagors' Petition for Allowance of Appeal. On appeal, the Court affirmed, but modified, the Superior Court's decision. The Court held "[t]he language of the statute and the common and ordinary meaning of the word 'request' lead us to conclude that the Mortgage Satisfaction Law does not mandate a written request, and that a verbal request will suffice." Id. at 918. In reaching this conclusion, the Court dissected the mortgage satisfaction law and differentiated between the satisfaction of a mortgage and marking the mortgage satisfied. Specifically, the Court stated:

> The statute does not automatically obligate a mortgagee to mark the mortgage satisfied upon receipt of all money due pursuant to the loan. Instead, a mortgagor has an affirmative duty to make his or her desire to have the mortgage marked satisfied known to the mortgagee before an obligation arises. 21 P.S. § 682. Thus, to prove entitlement to the fine pursuant to 21 P.S. § 682, a mortgagor must demonstrate the following: (a) he has paid all sums due and owing pursuant to the mortgage; (b) he requested the mortgagee to satisfy the mortgage; and (c) the mortgagee failed to mark the mortgage satisfied within forty-five days of the request.

Id. at 917. In determining what constitutes a "request," the Court found the Superior Court erred in reading a writing requirement into the statute. Id. Relying on secondary authority, the Supreme Court concluded "[t]he ordinary meaning of the term request . . . encompasses either verbal or written expression." Id. Based on this conclusion, the Supreme Court additionally found that "a verbal agreement that the mortgagee will record the payment of the mortgage fulfills the request requirement of Section 681 and 682." Id. at 918. Ultimately, the Supreme Court affirmed the Superior Court's decision on the ground that the verbal exchange between the mortgagor and Laurel during the refinancing negotiations, prior to the demand letter, was not sufficient to constitute a "request." Because the demand letter constituted the first "request" and Laurel promptly complied with it, the Supreme Court found Laurel did not violate the mortgage satisfaction law. Id. at 919.

Guided by the principles in the above discussion and keeping in mind our primary responsibility, to effectuate the intent of the Legislature, we conclude the term "request" in the Recording Statutes, specifically sections 29-3-310 and 29-3-320, does not mandate a particular format. Instead, the request must operate to inform the mortgagee of the mortgagor's desire for the satisfied mortgage to be recorded. Once the mortgage has been satisfied and the mortgagor expresses this desire, it is incumbent upon the mortgagee "to promptly record the extinguishment of the lien." See Kinard v. Fleet Real Estate Funding Corp., 319 S.C. 408, 412, 461 S.E.2d 833, 835 (Ct. App.

1995) ("Clearly, the legislative intent in enacting these statutes was to provide an incentive for the mortgagee, once it no longer has a monetary interest in the mortgage loan, to promptly record the extinguishment of the lien."). Because the Legislature has not issued a specific directive that a "request" must be written or in some particular format, we decline to read such requirement into the statute.

American Home, however, contends the Legislature's decision to amend the statute in 1999 to require that a request be sent via certified mail is evidence that the Legislature wanted to "strengthen" the request requirement and, thus, the mortgagor is required to send a written request. Act No. 67, 1999 S.C. Acts 226. We disagree with this contention, and instead believe the Legislature added the certified mail requirement in order for the mortgagor and the mortgagee to definitively establish the beginning of the three-month period in which the mortgagee was required to record the mortgage satisfaction. Additionally, we note the statute does not restrict the method of verification to only certified mail, but instead, provides the mortgagor may make the request "by certified mail or other form of delivery." S.C. Code Ann. § 29-3-310 (2007) (emphasis added). Thus, it would be permissible under the statute for a mortgagor to make an oral request to the mortgagee and then the mortgagee acknowledge the request either verbally or through another form of communication such as a letter or electronic mail.

Turning to the facts of the instant case, we disagree with the circuit court's decision that American Home violated section 29-3-310 and was subject to the statutory penalty under section 29-3-320.

As previously discussed, we find a written request is not mandated by section 29-3-310. Instead, we believe the statute is satisfied if the mortgagor: (1) makes a "request," either verbal or written, in which he expresses his desire for the mortgagee to satisfy the mortgage and; (2) demonstrates that the mortgagee has received or agreed to this request.

Here, we find that Bostic's payoff check sent by certified mail was insufficient to constitute a "request" within the meaning of the statute.

Clearly, the cashier's check without additional correspondence, either verbal or written, did not affirmatively convey to American Home that Bostic expressly desired to have his mortgage recorded as satisfied. By sending the payoff check, Bostic effectively satisfied his mortgage. However, this check was only the first step in the mortgage satisfaction process. In order for Bostic to recover the statutory penalty under section 29-3-320, he had to satisfy the condition precedent of making a "request" for American Home to record his mortgage as satisfied.

Bostic asserts that his alleged telephone conversations with American Home after he mailed the payoff check could be construed as a "request." However, there is no evidence in the record that an American Home representative spoke with Bostic. Because this case was presented to the circuit court at the summary judgment stage and there is no definitive evidence that a verbal agreement was reached during these telephone conversations, we cannot find that American Home was given a sufficient "request" which obligated it to mark the mortgage satisfied within the statutory time period.

Alternatively, Bostic contends the letters from American Home dated May 16 and 18, 2005, implicitly indicate that American Home understood that he had made a "request." Specifically, Bostic points to the text of the letters which states that American Home would mail to Bostic the payoff release documents within sixty to ninety days. These letters, however, do not reference that a "request" was made by Bostic. The letters merely indicate that American Home acknowledged that it had received the payoff amount and that the mortgage was paid off. This acknowledgement, however, did not automatically entitle Bostic to the statutory penalty. Instead, Bostic would only have been entitled to the statutory penalty if he paid off the mortgage, affirmatively made a verifiable "request" to American Home, and American Home failed to comply with the request within the statutorily-prescribed time period. Bostic, however, failed to present evidence that the parties engaged in a verbal exchange in which Bostic orally made a "request" and American Home agreed to honor this request.

As we read the limited record, Bostic's certified letter dated May 31, 2005, which was received by American Home on June 3 and June 6, 2005, was the only correspondence which satisfied the "request" requirement within the meaning of section 29-3-310. American Home filed Bostic's mortgage satisfaction within ninety days of this "request." Thus, given the record before us, there is no evidence that American Home violated the provisions of section 29-3-310 which would subject it to the statutory penalty under section 29-3-320.

Accordingly, we reverse the grant of summary judgment to Bostic and remand for trial.

Based on the foregoing, the circuit court's order is

REVERSED AND REMANDED.

ANDERSON and HUFF, JJ., concur.