

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 CA 0876

CARR STONE, INC.

VERSUS

MASHA SHAD, WIFE OF/AND DARIUS SHAD AND RON VACCARO  
CONSTRUCTION COMPANY, INC.

**Judgment rendered December 21, 2018.**

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Appealed from the  
22<sup>nd</sup> Judicial District Court  
In and for the Parish of St. Tammany, State of Louisiana  
Trial Court No. 2016-13367  
Honorable Dennis J. Waldron, Judge Ad Hoc

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WAYNE J. JABLONOWSKI  
SLIDELL, LA

ATTORNEY FOR  
PLAINTIFF-APPELLANT  
CARR STONE, INC.

BAILEY D. MORSE  
COVINGTON, LA

ATTORNEY FOR  
DEFENDANTS/PLAINTIFFS-IN-  
RECONVENTION-APPELLANTS-  
MASHA SHAD, WIFE OF/AND  
DARIUS SHAD

FRANCIS R. WHITE, III  
COVINGTON, LA

ATTORNEY FOR  
DEFENDANT/DEFENDANT-IN-  
RECONVENTION-APPELLEE  
RON VACCARO CONSTRUCTION  
COMPANY, INC.

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**BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.**

*Welch, J. concurs without reasons.*

*Chutz, J. concurs without reasons.*

**PETTIGREW, J.**

This case involves multiple appeals of the trial court's February 26, 2018 judgment, wherein defendants Masha and Darius Shad were ordered to pay plaintiff, Carr Stone and Tile, Inc. ("Carr Stone"), \$21,236.10, plus judicial interest, and \$6,000.00 in attorney fees, on a suit on an open account. The trial court further recognized Carr Stone's right to pursue a lien and seizure and/or sale of the Shads' property in question, if necessary. The trial court denied Carr Stone's claims against defendant Ron Vaccaro Construction Company, Inc. ("Vaccaro"), denied Vaccaro's cross-claim against the Shads, and denied the Shads' reconventional demand against Vaccaro. The Shads and Carr Stone appealed, and Vaccaro answered the appeal. For the reasons that follow, we reverse in part, amend and, as amended, affirm, and render.

**FACTS AND PROCEDURAL HISTORY**

According to the record, Vaccaro entered into a verbal contract with the Shads to perform work at a house located at 54 Cardinal Lane in Mandeville. The property is owned by the Shad Living Trust ("the Trust"), and the Shads, as trustees and beneficiaries under the Trust, have the right to use and enjoy the residence. The initial contract amount, \$737,202.00, increased to over \$955,000.00 with the numerous change orders submitted on the project.

The renovations to the Shads' residence included several bathrooms. In connection therewith, the parties requested pricing from Carr Stone regarding stone and tile services for the project, including fabrication and installation of stone tops and floor and wall tile. Vaccaro and the Shads accepted the proposals and pricing from Carr Stone, and Vaccaro entered into a verbal contract with Carr Stone for the work. Ronald Vaccaro, president of Vaccaro, testified that Carr Stone would directly invoice Vaccaro for work done on the project, and Vaccaro would request payment from the Shads through an Application for Payment ("AFP"). Vaccaro paid Carr Stone deposits for its work as it proceeded.

With regard to the materials for the Shad project—in particular, the master bathroom—Paula Pike, a salesperson at Carr Stone, testified that she was at the residence

when one of Carr Stone's installers measured for the job. Based on measurements provided by Carr Stone, the Shads purchased the materials for the master bathroom from the Stone Gallery and provided same to Vaccaro and Carr Stone for installation. Like they did with all the stone and tile purchased for the project, the Shads paid the invoice for the master bathroom materials (\$45,606.18) directly to the Stone Gallery. Ms. Pike testified that the total amount invoiced by Carr Stone on the Shad project was \$81,198.00. At the time of trial, the total amount due and owing on the invoices was \$22,236.10.

According to the president of Carr Stone, Randy Powell, there is always a "waste factor" when ordering tile, *i.e.*, an amount of tile that is ordered above the actual square footage of the actual dimensions of any given job. The overage accounts for breakage, which occurs in shipping, storage, and installation, and allows for future repairs, if necessary. Moreover, tiles often have to be cut to fit the dimensions of a particular layout, rendering what remains of the cuts and tile slivers to be thrown away. Mr. Powell explained that typically there is a 10 to 15 percent waste factor, but with oval tile or specialty tile, the waste factor is 15 to 20 percent. Mr. Powell indicated that the tile ordered for the Shads' master bathroom was a specialty tile, such that he would expect the waste factor to be, at minimum, 15 to 20 percent. He further added that the amount of excess materials on the Shad project was not "outside the norm" and no different than what he had seen on any other project in his 27 years of business.

Towards the end of the project, a dispute arose between Vaccaro and the Shads regarding the materials overage for the master bathroom. Vaccaro and Carr Stone attributed the overage to a design change made by the Shads concerning the master bathroom. The Shads denied that any design change occurred after the materials were ordered. They maintained that the overage was the result of a miscalculation of the amount needed for the master bathroom.

Throughout the course of the project, Vaccaro regularly submitted AFPs to the Shads, who typically remitted payment within 7 days. However, when the Shads received the initial AFP 14, dated December 2015, the Shads refused to pay the balance due of \$152,853.00. Included in this AFP were amounts charged by Carr Stone for its tile/stone

work on the bathrooms. In an email to Vaccaro, the Shads delineated certain items that they wanted adjusted out of their bill before they would pay the remainder of the AFP.<sup>1</sup> According to the record, Vaccaro credited the Shads \$23,317.00 for tile/stone work performed by Carr Stone and submitted a revised AFP 14 with a new balance due and owing in the amount of \$129,536.00.

Mr. Powell testified that he never approved a credit on behalf of Carr Stone for the Shads. Moreover, he maintained that he never represented to Vaccaro that Carr Stone was relieving Vaccaro of any liability under the account. Mr. Powell acknowledged that he met with Mr. Shad and Ronald Vaccaro at the residence sometime after the credit had been applied to the Shads' account to discuss several "punch list" items that the Shads wanted addressed. During the meeting, there was a heated discussion between Mr. Shad and Mr. Powell regarding the money that was owed by the Shads to Carr Stone. When Mr. Powell asked about the outstanding balance, Mr. Shad never mentioned the credit applied to the AFP 14 by Vaccaro and instead simply replied to Mr. Powell that he did not owe him any more money.

Carr Stone filed suit against the Shads and Vaccaro in August 2016 for balance due on an open account (La. R.S. 9:2781), to enforce lien (pursuant to Louisiana's Private Works Act, La. R.S. 9:4801, et seq.), and for unjust enrichment. The Shads answered the petition, generally denying the allegations therein and asserting various affirmative defenses. Vaccaro also filed a general denial to said petition and later filed a cross claim against the Shads, alleging that if Vaccaro was held liable to Carr Stone for the amount due, it was entitled to indemnity from the Shads. Vaccaro also sought judgment against the Shads for the balance of \$6,000.00 due and owing by the Shads to Vaccaro for work done on their residence. The Shads subsequently filed an *ex parte* motion for leave to file a reconventional demand against Vaccaro to assert a newly discovered damage claim against Vaccaro, which was denied.

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<sup>1</sup> Although the Shads' email refers to AFP 15, it is clear that the changes they are referring to in said email pertain to the initial AFP 14, as the line items referenced therein are identical to the line items in the initial AFP 14, but not all appear in AFP 15.

The matter proceeded to a bench trial on the merits on February 2 and February 6, 2018. The trial court heard from several witnesses and numerous documents were introduced into evidence. After considering same, the trial court rendered judgment from the bench finding in favor of Carr Stone and against the Shads ordering the Shads to pay Carr Stone \$21,236.10, plus judicial interest, court costs, and \$6,000.00 in attorney fees. The trial court further recognized Carr Stone's Statement of Claim on the property, denied Carr Stone's claims against Vaccaro, denied Vaccaro's claims against the Shads, and as previously indicated, denied the Shads' reconventional demand against Vaccaro. A judgment in accordance with the trial court's findings was signed on February 26, 2018. The instant appeals followed.

In their appeal, the Shads assign the following specifications of error:

1. The trial court committed reversible error in concluding that the Sworn Statement of Claim filed by Carr Stone against the Shads, and the property they occupy, is valid and complies with the requirements set forth in La. R.S. 9:4822. However, and only if the court finds that the Statement of Claim is valid and enforceable ... pursuant to La. R.S. 9:4806, the privilege is limited to the Shads' usufructuary interest in the immovable.
2. It was reversible error for the trial court to deny the [Shads'] Peremptory Exception of Non-Joinder under La. Code of Civil Procedure article 641.
3. The trial court committed reversible error in holding the Shads solely responsible for all amounts allegedly due and owing to Carr Stone and absolving Vaccaro of any and all liability under its agreement with Carr Stone.
4. Alternatively, and in the event this Court affirms the trial court's judgment against the Shads, the trial court erred in failing to recognize the [Shads'] right to indemnity from Vaccaro pursuant to La. R.S. 9:4801, [*et seq.*]
5. In the further alternative, the trial court committed reversible error by relieving Carr Stone and Vaccaro of any responsibility for deficient workmanship performed at the residence.

Carr Stone has also appealed the trial court's February 26, 2018 judgment, assigning the following as error for our review:

1. The trial court committed error by finding and holding, contrary to the evidence and law, that [Vaccaro] is not liable to Carr Stone for the balance due it for the work performed at the residence of [the Shads], 54 Cardinal Lane, Mandeville, LA.

2. The trial court committed error by, contrary to the evidence and law, that [Vaccaro] was not liable to Carr Stone for interests, costs and attorney fees under the terms of [Carr Stone's] invoices and/or Louisiana's Open Account Statute [La. R.S. 9:2781].

Vaccaro answered the appeal, raising as its sole assignment of error the trial court's denial of its \$6,000.00 contract claim and its indemnity claim against the Shads.

## **DISCUSSION**

### ***VALIDITY OF THE STATEMENT OF CLAIM AND PRIVILEGE (The Shads' Assignment of Error No. 1)***

The Louisiana Private Works Act ("the Act") provides a method for contractors and others to recover the costs of labor and/or materials from a party with whom there is no contract. La. R.S. 9:4801, *et seq.* A claim against the owner of the immovable is secured by filing a lien against the immovable on which, in this case, the materials were incorporated or labor was performed. The purpose of a statement or claim of privilege is to give notice to the owner (and the contractor) of the existence of the claim and to give notice to persons who may deal with the owner that a privilege is claimed on the property. **Simms Hardin Co., LLC v. 3901 Ridgelake Drive, L.L.C.**, 2012-469 (La. App. 5 Cir. 5/16/13), 119 So.3d 58, 65-66, writ denied, 2013-1423 (La. 9/27/13), 123 So.3d 726.

The Act is in derogation of general contract law, and thus must be strictly construed. Nevertheless, in interpreting the Act, we must not overlook the legislative intent and fundamental aim of the Act, which is to protect materialmen, laborers, and subcontractors who engage in construction and repair projects. **Bernard Lumber Co., Inc. v. Lake Forest Const. Co., Inc.**, 572 So.2d 178, 181 (La. App. 1 Cir. 1990). Moreover, strict construction cannot be so interpreted as to permit purely technical objections to defeat the real intent of the statute, which is to protect materialmen, laborers, and subcontractors who engage in construction projects. **Hibernia Nat. Bank v. Belleville Historic Dev., L.L.C.**, 2001-0657 (La. App. 4 Cir. 3/27/02), 815 So.2d 301, 305-306, writ denied, 2002-1177 (La. 6/14/02), 818 So.2d 785.

Louisiana Revised Statutes 9:4822(G) provides, in pertinent part, that a statement of a claim or privilege:

- (1) Shall be in writing.
- (2) Shall be signed by the person asserting the same or his representative.
- (3) Shall reasonably identify the immovable with respect to which the work was performed.
- (4) Shall set forth the amount and nature of the obligation giving rise to the claim or privilege and reasonably itemize the elements comprising it including the person for whom or to whom the contract was performed, material supplied, or services rendered.

In their first assignment of error, the Shads argue that Carr Stone's lien affidavit fails to meet the statutory requirements of La. R.S. 9:4822 and is unenforceable. They assert that while the lien affidavit appears to satisfy the first three elements of La. R.S. 9:4822(G), the fourth element was not sufficiently met. In the alternative, the Shads argue that even if the Statement of Claim and Privilege is valid and enforceable, any privilege afforded by the lien is limited to the Shads' usufructuary interest in the property as set forth in La. R.S. 9:4806(C). In response, Carr Stone argues that attached to its Statement of Claim and Privilege were invoices detailing specifically the work that was performed at the Shads' residence. Carr Stone maintains that these invoices were sufficient to itemize the work that comprised the claim, and, accordingly, the trial court's decision should be affirmed. We agree with Carr Stone.

The Shads rely on the cases of **Tee It Up Golf, Inc. v. Bayou State Const., L.L.C.**, 2009-855 (La. App. 3 Cir. 2/10/10), 30 So.3d 1159, and **Bradley Elec. Services, Inc. v. 2601, L.L.C.**, 2011-0627 (La. App. 4 Cir. 12/14/11), 82 So.3d 1242, in which appellate courts found contractors had failed to perfect their liens. In **Tee It Up Golf**, the appellate court found the lien was not perfected because the Statement of Claim failed to reasonably identify the immovable with respect to which the work was performed and listed only lump sum amounts owed and did not identify the elements that comprised the amounts owed. **Tee It Up Golf**, 30 So.3d at 1161-1162. Similarly, in **Bradley Elec. Services**, the appellate court found the contractor's lien invalid because the lien included only a lump sum statement of the amount owed and did not itemize the elements comprising the lien. **Bradley Elec. Services**, 82 So.3d at 1244.

Upon review, we find Carr Stone's lien distinguishable from the invalid liens filed in **Tee It Up Golf** and **Bradley Elec. Services**. The lien filed by Carr Stone clearly

identified that the lien was for \$24,323.10 and "for labor performed and/or materials sold, delivered and actually used in improvements" by Carr Stone to the Shads' property, located at 54 Cardinal Lane in Mandeville. Moreover, attached to the lien affidavit were Carr Stone's invoices, which specifically listed the rooms in which work was performed, the work that was performed in each room, and the amount charged for the work. As noted by Carr Stone in brief, these invoices, together with the description in the lien affidavit that the claim was for work performed and/or materials supplied and actually used in the construction at the Shads' property located at 54 Cardinal Lane, "reasonably identify the immovable, and set forth the amount and reasonably itemize the elements that comprise the lien." See 225 Baronne Complex, LLC v. Roy Anderson Corp., 2016-0492 (La. App. 4 Cir. 12/14/16), 2016WL7238975, \*5-6, writ denied, 2017-0326 (La. 4/7/17), 218 So.3d 116. Therefore, we find Carr Stone's lien met all the procedural requirements to constitute a valid lien pursuant to La. R.S. 9:4822.

However, we agree with the Shads that pursuant to La. R.S. 9:4806(C), the privilege afforded by the lien is limited to the Shads' usufructuary interest in the property.<sup>2</sup> Thus, we amend the trial court's February 26, 2018 judgment to provide accordingly.

***FAILURE TO NAME INDISPENSABLE PARTY  
(The Shads' Assignment of Error No. 2)***

The Shads argue that because the Trust is the naked owner of the property in question, the Trust is an indispensable party that should have been joined as a party in this action. Noting that the Shads have the right to the use and enjoyment of the property and were the parties who contracted with Vaccaro, Carr Stone maintains that the Shads were the correct parties to this suit as they are the owners of the property as defined in La. R.S. 9:4806.<sup>3</sup>

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<sup>2</sup> "The privilege granted by R.S. 9:4801 and 4802 affects only the interest in or on the immovable enjoyed by the owner whose obligation is secured by the privilege." La. R.S. 9:4806(C).

<sup>3</sup> An owner, co-owner, naked owner, owner of a predial or personal servitude, possessor, lessee, or other person owning or having the right to the use or enjoyment of an immovable or having an interest therein shall be deemed to be an owner." La. R.S. 9:4806(A).



Indispensable parties to an action are those whose interests in the subject matter are so interrelated that a complete and equitable adjudication of the controversy cannot be made unless they are joined in the action. See La. Code Civ. P. art. 641. The failure to join an indispensable party may be noticed by an appellate court on its own motion. La. Code Civ. P. arts. 645 and 927. The jurisprudence of this state holds that a party is indispensable only when the facts clearly establish that no complete and equitable adjudication of the controversy can be made in his absence. **Carter v. Baton Rouge City-Parish Employees' Retirement System**, 612 So.2d 765, 767 (La. App. 1 Cir. 1992).

On the issue of the ownership of the property, the trial court made the following findings:

I do find that [the Shads] were both, as admitted, trustees of the trust that owns this particular piece of property that has been the subject of this litigation, and the Court finds that they acted with either real and/or apparent authority as being authorized not only to make these requests for work to be done on that property, but it would appear that they enjoy this property, what appears to be a very beautiful home. And it is for all of these reasons that the Court denied the other requests that were made on behalf of them by their attorney.

We agree with the trial court that the Shads as trustees of the Trust acted with every authority granted to them as set forth in the quitclaim deed executed by them on October 8, 2014, with regard to the property. The complete adjudication of this controversy was possible without the Trust being joined in as a party to the action. The Shads clearly had authority to do what they want with the property and, in fact, did just that when they contracted with Vaccaro for over \$900,000.00 in construction work performed on the property. The Trust is not an indispensable party. This assignment of error is without merit.

***Liability of Vaccaro  
(The Shads' Assignment of Error No. 3/Carr Stone's Assignment of Error No. 1)***

The Shads argue that the trial court erred in absolving Vaccaro of any and all liability based on its agreement with Carr Stone. They maintain that based on the evidence in the record, all quotes and/or proposals from Carr Stone were addressed to Vaccaro; all charges by Carr Stone were invoiced to Vaccaro; and all payments were

made by Vaccaro to Carr Stone. Thus, the Shads contend, if there is any amount due and owing by Vaccaro to Carr Stone, those charges are not the responsibility of the Shads.

Carr Stone maintains that although there was no formal written contract between Carr Stone and Vaccaro, there were still valid and enforceable agreements pursuant to La. Civ. Code arts. 1906<sup>4</sup> and 1927.<sup>5</sup> Carr Stone argues that it was "to perform its itemized scopes of work, and Vaccaro was to pay Carr [Stone] the amounts quoted in its proposals."

On the issue of Vaccaro's liability, the trial court found as follows:

[T]his Court finds that the [Vaccaro] is not -- is not legally obligated to Carr Stone for any of the damages allegedly deemed for them to be responsible for in this petition. This Court would relieve the [Vaccaro] of any obligation under law to in any way reimburse the [Carr Stone] for any damages that they suffered as a result of this nonpayment. The Court bases this conclusion on the fact that it feels that there was an agreement, if you will, between the parties, more particularly [Vaccaro] and between [Carr Stone], to merely provide services in connection with the overall work that the [Vaccaro] was doing with [the Shads]. While they may have agreed to take the payments as the work proceeded from [the Shads] and collect it, so to speak, and then turn it over to Carr Stone, the Court finds that their role was a very limited role as an intermediary, if you will, and I find that there is no basis in fact or law for holding them responsible for any of the monetary damages that may have been suffered by Carr Stone. The relief that has been provided is against [the Shads] in particular with Carr Stone.

According to Ronald Vaccaro, when the issue arose about the amount Carr Stone was owed on the project, he explained to Mr. Powell that Vaccaro could not pay Carr Stone on the outstanding bill without the Shads paying Vaccaro the amount due. Further, we note that in brief, Vaccaro does not dispute Carr Stone's contract claim against it. Vaccaro specifically acknowledged, "Carr Stone contracted with Vaccaro Construction, properly performed its work under the subcontract, and is due \$21,236.10 for that work."

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<sup>4</sup> "A contract is an agreement by two or more parties whereby obligations are created, modified, or extinguished." La. Civ. Code art. 1906.

<sup>5</sup> Louisiana Civil Code article 1927 provides:

A contract is formed by the consent of the parties established through offer and acceptance.

Unless the law prescribes a certain formality for the intended contract, offer and acceptance may be made orally, in writing, or by action or inaction that under the circumstances is clearly indicative of consent.

Unless otherwise specified in the offer, there need not be conformity between the manner in which the offer is made and the manner in which the acceptance is made.

It is clear from our review of the record that Vaccaro contracted with Carr Stone as a subcontractor for, and on behalf of, the Shads.

Accordingly, we reverse that portion of the trial court's February 26, 2018 judgment that denied Carr Stone's claims against Vaccaro. Moreover, as indicated *infra*, we find that Carr Stone's claim was not a claim on an open account,<sup>6</sup> but rather a claim pursuant to the Act, La. R.S. 9:4801, *et seq.* Therefore, we find no legal basis for the trial court's \$6,000.00 award of attorney fees against the Shads and, accordingly, reverse said award. We amend the judgment to provide as follows: **"IT IS ORDERED** that defendants, Masha and Darius Shad and Ron Vaccaro Construction Company, Inc., *in solido*, are to pay to the plaintiff, Carr Stone and Tile, Inc., the full sum of \$21,236.10, plus judicial interest from legal demand and court costs."

***Right to Indemnity  
(The Shads' Assignment of Error No. 4)***

The Shads contend on appeal that if the judgment against them stands, they enjoy a statutory right of indemnification against Vaccaro pursuant to La. R.S. 9:4802(F).<sup>7</sup> In response, Vaccaro argues that the statute in question "does not provide and is not susceptible to a reading that an owner who improperly refuses to pay for services provided is entitled to be reimbursed by the general contractor when required to pay for those services." Vaccaro maintains that the Shads received the benefit of Carr Stone's work and did not pay for it. Thus, Vaccaro asserts, the Shads should be required to pay. Moreover, Vaccaro argues insofar as any award is entered in favor of Carr Stone and against Vaccaro, an indemnity award in favor of Vaccaro and against the Shads should also be entered.

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<sup>6</sup> An "open account" includes any account for which part or all of the balance is past due, whether or not the account reflects one or more transactions and whether or not at the time of contracting, the parties expected future transactions. See La. R.S. 9:2781(D).

<sup>7</sup> Louisiana Revised Statutes 9:4802(F) provides as follows:

A contractor shall indemnify the owner for claims against the owner arising from the work to be performed under the contract. A subcontractor shall indemnify the owner, the contractor, and any subcontractor from or through whom his rights are derived, for amounts paid by them for claims under this part arising from work performed by the subcontractor.

Indemnification, in its most basic sense, simply means reimbursement. **Naquin v. Louisiana Power & Light Co.**, 2005-2104 (La. App. 1 Cir. 11/17/06), 951 So.2d 228, 231, writ denied, 2006-2979 (La. 3/9/07), 949 So.2d 441. Indemnification is based on the principle that everyone is responsible for his own wrongdoing, and if another person has been compelled to pay a judgment that ought to have been paid by the wrongdoer, then the loss should be shifted to the party whose wrongful conduct caused the loss. **Nassif v. Sunrise Homes, Inc.**, 98-3193 (La. 6/29/99), 739 So.2d 183, 185.

Based on our thorough review of the record and the applicable law, we agree with Vaccaro regarding the indemnity issue. Vaccaro's liability in this case stems solely from the Shads' refusal to pay the amount due and owing to Carr Stone for the work it performed. As this court has amended the judgment below to provide for judgment in favor of Carr Stone and against Vaccaro, we likewise amend the judgment to enter an indemnity award in favor of Vaccaro and against the Shads in the amount of \$21,236.10, plus judicial interest.

***Responsibility for Deficient Workmanship  
(The Shads' Assignment of Error No. 5)***

The Shads argue that the trial court erred in relieving Carr Stone and Vaccaro of their obligations regarding certain punch list items by correcting defective workmanship and/or replacing the deficient materials. In response, Carr Stone notes that the trial court, after listening to the evidence presented, deducted \$1,000.00 from the award to Carr Stone for these punch list items. Accordingly, we find no merit to the Shads' argument herein.

The trial court's reasons for judgment provides as follows on this issue:

I do take into consideration, as well, the so-called punch list issue. And having reached the conclusion that I have reached, I will render judgment in favor of Carr Stone at this time against both Ms. Masha and Mr. Darius Shad as prayed for. The amount that this Court will order that they be responsible for paying is \$21,236.10, not the \$22,236.10 that was prayed for originally in the petition of the plaintiff. The Court credits, if you will, \$1,000 to Mr. and Mrs. Shad as to those punch list items that may have to be addressed by someone -- who that may be will be left up to the Shads, if they decide that the punch list items should be corrected -- that may have been involved -- that may have involved, excuse me, the work performed particularly by Mr. Powell and his company, Carr Stone.

We find no error in this ruling by the trial court and decline to disturb same.

***Vaccaro's \$6,000.00 Claim Against the Shads  
(Vaccaro's Answer to the Appeal)***

Vaccaro argues that the trial court erred in denying Vaccaro's \$6,000.00 contract claim against the Shads. Vaccaro contends that the amount was testified to by Ronald Vaccaro and was not disputed by the Shads. According to the record, Ronald Vaccaro indicated that the disputed amount was shown on AFP 17, dated November 6, 2016. Thus, Vaccaro maintains, this portion of the trial court's judgment should be reversed and judgment should be entered in favor of Vaccaro and against the Shads in the amount of \$6,000.00.

We agree with Vaccaro. A review of the record confirms the \$6,000.00 amount due and owing to Vaccaro by the Shads. In fact, when asked about any amounts due and owing on the general contract, Mr. Shad acknowledged an error in calculation on his part and indicated that he "accepted" the \$6,000.00 amount. Thus, we reverse that portion of the trial court's February 26, 2018 judgment that denied Vaccaro's claims against the Shads and render judgment against the Shads and in favor of Vaccaro in the amount of \$6,000.00, plus legal interest from November 6, 2016, until paid, plus all costs.

***Vaccaro's Liability for Attorney Fees and/or Costs Based on Open Account Statute  
(Carr Stone's Assignment of Error No. 2)***

Carr Stone argues on appeal that the invoice balance due to Carr Stone in the instant case falls within the definition of an "open account" as set forth in La. R.S. 9:2781.<sup>8</sup> As such, Carr Stone contends Vaccaro became liable to it for its costs and attorney fees associated with collecting on said account. Vaccaro notes that an open account exists only when key parts of the agreement, such as the price and scope of

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<sup>8</sup> Louisiana Revised Statutes 9:2781(D) provides, in pertinent part, as follows:

"[O]pen account" includes any account for which a part or all of the balance is past due, whether or not the account reflects one or more transactions and whether or not at the time of contracting the parties expected future transactions. "Open account" shall include debts incurred for professional services, including but not limited to legal and medical services. For the purposes of this Section only, attorney fees shall be paid on open accounts owed to the state.

work, are not determined. Vaccaro asserts that the quotes provided by Carr Stone that form the basis for the contract with Vaccaro in this case are precise and complete. Thus, Vaccaro maintains, Carr Stone's claim is not a claim on an open account, and Carr Stone is not entitled to recover attorney fees and costs under La. R.S. 9:2781. We agree with Vaccaro on this issue. We find that Carr Stone's claim is not a claim on an open account, but rather a claim pursuant to the Act, La. R.S. 9:4801, *et seq.* And, as previously noted, there is no legal basis for the awarding of attorney fees in the instant case. This assignment of error is without merit.

### **DECREE**

For the above and foregoing reasons, we reverse that portion of the trial court's February 26, 2018 judgment that denied Carr Stone's claims against Vaccaro and reverse that portion of the judgment that awarded attorney fees against the Shads. We amend the judgment to provide as follows: **"IT IS ORDERED** that defendants, Masha and Darius Shad and Ron Vaccaro Construction Company, Inc., *in solido*, are to pay to the plaintiff, Carr Stone and Tile, Inc., the full sum of \$21,236.10, plus judicial interest from legal demand and court costs." We reverse that portion of the trial court's February 26, 2018 judgment that denied Vaccaro's claims against the Shads and render judgment against Masha and Darius Shad, in favor of Ron Vaccaro Construction Company, Inc., in the amount of \$6,000.00, plus legal interest from November 6, 2016, until paid, plus all costs. We amend the trial court's February 26, 2018 judgment to provide that the lien afforded by the Statement of Claim as filed on behalf of Carr Stone and Tile, Inc. is limited to the Shads' usufructuary interest in the property. We further amend the judgment to enter an indemnity award in favor of Ron Vaccaro Construction Company, Inc. against Masha and Darius Shad in the amount of \$21,236.10, plus judicial interest. All costs associated with this appeal are assessed equally among the parties, Carr Stone and Tile, Inc., Masha and Darius Shad, and Ron Vaccaro Construction Company, Inc.

**REVERSED IN PART; AMENDED AND, AS AMENDED, AFFIRMED; RENDERED.**