

**SQUARE DEAL SIDING
COMPANY, INC.**

VERSUS

STEPHANIE THALLER

* **NO. 2008-CA-0757**
* **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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BELSOME, J., CONCURS IN PART AND DISSENTS IN PART.

I dissent in the majority's failure to award attorney's fees.

Damages for wrongly filed liens are permissible when the lien recordation is made in bad faith or with malice. *See Dickson v. Moran*, 344 So.2d 102, (La. App. 2 Cir. 1977) and *Grover v. Carter*, 498 So.2d 132 (La. App. 5 Cir. 1987). This record establishes that Mr. Schmalz accepted a \$10,000.00 partial payment upon the condition that all punch list items would be completed prior to the balance being paid. He testified in court that he had no intention of completing the punch list items, but agreed to those terms in order to get the \$10,000.00. He subsequently filed a lien for the balance of the contract without meeting the agreed upon conditions. Clearly, Mr. Schmalz acted in bad faith.

Accordingly, attorney's fees should have been awarded at the trial court level and additional fees at the appellate level. Therefore, a minimum amount of \$15,000.00 in attorney's fees should be awarded to the Thallers.

I join the majority in all other aspects of the opinion.