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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

Judge G. D. Morgan

Case No. 2024-CP-23-00312
Appellate Case No.: 2024-00417

Christopher Jones,

Appellant,

v.

D&B Real Estate Ventures, LLC.;
Darius Jones; Bradley Robinson,

Respondents.

**RESPONDENTS' MEMORANDUM OF LAW
IN OPPOSITION TO APPELLANT'S MOTION TO STAY**

HOLDER, PADGETT, LITTLEJOHN + PRICKETT, LLC
M. Stokely Holder
S.C. Bar No. 73892
sholder@hplplaw.com

Ra'na Heidari
SC Bar No. 104501
rheidari@hplplaw.com
P.O. Box 1804
Greenville, South Carolina 29602
(864) 335-8808
Attorneys for Respondents

Greenville, South Carolina
April 22, 2024

I. Introduction

Respondents, D&B Real Estate Ventures, LLC (“D&B”), Darius Jones (“Jones”), and Bradley Robinson (“Robinson”) (collectively, "Respondents")¹, hereby submit this memorandum in opposition to the “Emergency Petition to Order All Matters Stayed and Request for Immediate Intervention” sought by Appellant Christopher Jones ("Appellant").

The *pro se* Appellant appears to have made it a career to pursue fraud as a means to achieve his ends, and the underlying case seems but another in a long list of attempts by the Appellant to take advantage of honest, hard-working citizens of this State.² This ‘Appeal’ together with the ‘Emergency Petition’ shed further light on the motives of the Appellant to hold hostage the Property of the Respondents – entirely innocent, unwitting parties that now find themselves the latest victims of Appellant.

Respondents respectfully request that this Court deny Appellant’s petition in its entirety for the reasons set forth herein.

II. Factual Background

This most recent charade of Appellant began with what appeared at first to be a traditional real estate transaction whereby Respondent D&B entered into a contract with Appellant to sell Appellant a residential property owned by Respondent with the address of 331 Loop Street, Greenville, South Carolina 29609 (the “Property”). D&B originally intended to perform updates before selling the Property, but instead decided to take advantage of recent appreciation in the area and sell it as-is.

¹ Jones and Bradley are the two (2) members of D&B.

² The public records of this State are replete with civil proceedings and criminal convictions against Appellant for mostly fraud-based schemes, including, without limitation, those involving the unauthorized practice of law.

As the November 30, 2023, Closing Date approached for D&B's sale to Appellant, the Appellant told a story to Respondents of how Appellant was a real estate broker who would be flipping the Property to an investor as of the closing. The Appellant explained that 'the investor' preferred for certain updates to be performed to the Property before the investor would agree to purchase it. With this premise, Appellant offered to make the updates to the Property himself so long as D&B would extend the closing date. D&B agreed to an extension of December 30, 2023, with the clear understanding between the parties that the Appellant would be performing the updates at his own risk and without any obligation on behalf of Respondents to pay for Appellant's work.

As the new closing deadline of December 30, 2023, approached, the Appellant attempted to get Respondents to agree to pay Appellant for the (wholly unfinished) work done by Appellant on the Property. As part of Appellant's efforts, he provided a draft contract which included demonstrably unfavorable terms to the Respondents. After some back-and-forth, it became clear to the Respondents that a reasonable construction contract was not going to be entered so the Respondents refused to sign one – as evidenced by the blank signature lines in the contract form attached to the Appellant's Complaint as "Exhibit C". *See Exhibit C, Complaint.*

The Respondents appeared for the closing, ready, willing, and able to close on the sell of the Property to Appellant. However, Appellant was a no-show at the closing, having provided no notice of any kind to the Respondent about Appellant's unwillingness or inability to close.

To the shock of Respondents, Appellant thereafter served Respondents with the subject Mechanic's Lien, *Lis Pendens*, and Complaint without any prior notice. In response, the Respondents filed the subject Motion to Dismiss, or in the alternative, Motion for Summary Judgment, which was subsequently granted by the Honorable G.D. Morgan.

This appeal was filed by Appellant after receipt of a Form 4 Order of the trial court that read, in pertinent part, as follows:

This matter is before the Court on Defendants' Motion to Dismiss, or in the alternative, Motion for Summary Judgement and Defendants' Motion to Quash Subpoena. Based on a review of the file, submissions of the parties, and oral arguments, Defendants' Motion to Dismiss is granted. Defendants' Counsel is to prepare a formal order.

It is so ordered.

See March 13, 2024, Form 4 Order, p. 2.

The instant Appeal was filed by Appellant despite the lower court's Form 4 Order clearly indicating that a more full and complete order was to follow.³

On April 10, 2024, the lower court filed its Formal Order granting the Respondents' Motion to Dismiss pursuant to Rule 12(b)(6), SCRCF for failure to state a claim upon which relief can be granted. The Formal Order also instructed the execution and filing of instruments to cancel the underlying *Lis Pendens* and frivolous Mechanic's Lien.

Appellant then filed the subject 'Emergency Petition' requesting an intervention to stay all matters related to the Property and to preserve Appellant's perceived rights pending appellate review.

III. Standard of Review

The primary issue Appellant asserts for review stems from the trial court's granting of Respondents' Motion to Dismiss under Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure*.

³ The Respondents incorporate herein by reference its Motion to Dismiss Appeal, filed prior to the submittal of this Memorandum.

a. De Novo Review for Rule 12(b)(6) Dismissals

The dismissal of the Appellant’s complaint under Rule 12(b)(6) for failure to state a claim is subject to *de novo* review by the appellate court. *See Santos v. Harris Inv. Holdings, LLC*, 439 S.C. 214, 218, 886 S.E.2d 483, 485 (Ct. App. 2023).

b. Abuse of Discretion in Procedural Matters

While the *de novo* standard strictly applies to the initial assessment of the record under Rule 12(b)(6), *SCRCP*, subsequent procedural decisions made by the trial court—such as those concerning stays of enforcement actions—are reviewed for abuse of discretion. “Such an abuse arises when the judge issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support. It is incumbent upon the party seeking relief pursuant to S.C. R. Civ. P. 60(b)(1) to show the applicability of one of the qualifying grounds.” *Paul Davis Sys. v. Deepwater of Hilton Head, LLC*, 362 S.C. 220, 222, 607 S.E.2d 358, 359 (Ct. App. 2004)

This standard assesses whether the trial court’s decision was made within a range of permissible decisions and was not arbitrary or capricious, ensuring that the trial court had a reasonable basis for its decision and adhered to legal principles.

With regard to a court's cancellation of a *lis pendens*, S.C. Code Ann. § 15-11-40 states, in relevant part, that “[t]he court in which the action was commenced, in its discretion at any time after the action is settled, discontinued, or abated. . . may order the notice authorized by this chapter to be cancelled” S.C. Code Ann. § 15-11-40 (2003).

“The foreclosure of a mechanic's lien is an action at law in South Carolina. In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence reasonably supporting them. The judge's findings

are equivalent to a jury's findings in a law action.” *EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 614, 635 S.E.2d 922, 923 (Ct. App. 2006).

IV. Arguments

a. Appellant’s Appeal Should be Dismissed as Premature.

Appellant’s appeal should be dismissed as premature in accordance with Respondents’ Motion to Dismiss.

Under Rule 241, SCACR an automatic stay of enforcement from a trial court order does not come into effect until a final, appealable order is issued. A Form 4 order, as initially issued in this case, is a preliminary order that explicitly anticipates a forthcoming detailed order. Therefore, any appeal actions taken prior to the issuance of this complete order are considered premature and not in compliance with proper appellate procedures.

Upholding the dismissal will preserve the orderly conduct of litigation and ensure that the appellate process remains a mechanism for reviewing only those cases that have been properly presented and fully adjudicated at the trial court level.

b. Even Considering the Formal Order, it is Not Subject to the Automatic Stay because it Directs the Execution of Instruments in Accordance with S.C. Code Ann. § 18-9-160.

In addition to dismissing the Complaint, the trial court’s Formal Order directed the execution and filing of a Cancellation of Lis Pendens and Cancellation of Mechanic’s Lien.

Pursuant to Rule 241, SCACR, an automatic stay generally applies to matters resolved in a final order upon the filing of a notice of appeal, intended to preserve the status quo during appellate review. Exceptions to Rule 241, SCACR are critical in determining its application. Specifically, Rule 241(b)(3) references exceptions such as those found in S.C. Code Ann. § 18-9-160. *See* S.C. App. Ct. R. 24; *see also* S.C. Code Ann. § 18-9-160. S.C. Code Ann. § 18-9-160 stipulates that the execution of judgments directing the execution of conveyances or other

instruments are not to be stayed until the instrument shall have been executed and deposited with the clerk with whom the judgment is entered.

Appellant's latest motion mistakenly applies the general context of Rule 241, SCACR to the current matter. The Formal Order directed the execution and filing of instruments to cancel the *Lis Pendens* and to cancel the frivolous Mechanic's Lien. Therefore, in accordance with S.C. Code Ann. § 18-9-160 and Rule 241(b)(3), the Rule 241(a), SCACR, automatic stay is not effective as to prevent the execution and filing of those instruments. To construe this otherwise would be to greenlight fraudulent schemes such as Appellant's to tie up a litigant's real property without justification during the duration of appeals.

c. In the alternative, Appellant should be required to post a bond.

Should this Court decide not to dismiss Appellant's appeal and grant an automatic stay, Appellant should be required to post a bond in conjunction with Rule 241(c), SCACR. This bond would secure the stay and ensure that any potential damages incurred by the Respondents during the appeal process are adequately covered.

Under Rule 241, SCACR, the court may require a bond or other security in certain situations to protect the interests of all parties involved. This is particularly relevant in cases where the stay might cause substantial harm to other parties or where the appeal does not rest on a solid legal foundation. Factors influencing the court's decision to require a bond include the likelihood of success on the merits, the potential for irreparable harm to the appellant without a stay, the impact of the stay on other parties, and the public interest *See Hilton v. Braunskill*, 481 U.S. 770, 107 S. Ct. 2113 (1987) (citing *Va. Petroleum Jobbers Asso. v. Fed. Power Com.*, 104 U.S. App. D.C. 106, 259 F.2d 921, 923 (1958)).

The requirement for a bond is a safeguard that balances the appellant's need for a stay against the potential adverse effects on other parties. The specific provisions for covering waste, taxes, and interest ensure that the property retains its value and that other parties do not bear undue financial burden due to the appeal. In *Stokes-Craven Holding Corp. v. McKenzie*, the court emphasized that while the appellate process is critical for ensuring justice, it should not unduly prejudice other parties or the public interest. *See Stokes-Craven Holding Corp. v. McKenzie*, 416 S.C. 517, 787 S.E.2d 485 (2016).

If his appeal is granted a stay, it is crucial to impose a bond or undertaking to prevent any potential waste on the Property and to secure financial coverage for the lost opportunity to sale the Property, the maintenance, taxes, insurance, such other costs of retention, as well as any other financial liabilities that will apply during the stay. This bond will safeguard the interests of the Respondents and ensure that the Property remains a viable asset, regardless of the appeal's duration or outcome.

While Appellant contends that a stay is necessary to prevent harm to his interests, the court must also consider the potential impact on the Respondents and the integrity of the judicial process. The court must critically assess the strength of Appellant's legal position and the likelihood of his success on appeal. In assessing whether to grant a stay in the appeal filed by Appellant, it is essential to systematically evaluate the factors as established by precedent in *Hilton v. Braunskill*. *See Hilton v. Braunskill, supra*.

The first factor to consider is whether Appellant has shown a strong likelihood of prevailing on the merits of his appeal. Given the clear statutory prohibitions against claims by unlicensed contractors due to their lack of standing, as outlined in South Carolina Code Ann. § 40-59-30, and the straightforward application of this law in his case, Appellant's likelihood of overturning the

dismissal of its Mechanic's Lien and *Lis Pendens* seems minimal, at best⁴. The legal framework is explicit, and previous rulings such as *Lenz v. Walsh*, 362 S.C. 603, 608 S.E.2d 471 (Ct.App. 2005) and *Duckworth v. Cameron*, 270 S.C. 647, 244 S.E.2d 217 (1978) reinforce the strict adherence to licensing laws. Therefore, this factor does not support the granting of a stay.

The second factor involves determining whether Appellant will suffer irreparable harm without a stay. The harm must be both significant and unable to be remedied through compensatory measures at a later date. In Appellant's case, while financial losses might be claimed, these are generally quantifiable and compensable, thus not meeting the threshold of irreparability. Given the nature of the case, it is challenging to argue that financial compensation could not remedy any damages he claims. Furthermore, the statutory framework and existing precedents do not support a scenario where his professional or personal circumstances would suffer irreparably from the enforcement of the trial court's decision pending appeal.

The third factor assesses the potential harm a stay might cause to other interested parties. If the stay were granted without requiring a bond or other security, as discussed, the Respondents might face undue risks related to the Property's value, their holding costs due to inability to sell the Property in the interim, maintenance, taxes, insurance, potential repairs, and legal clarity. Given that the Property might be subject to further legal action or devaluation, allowing a stay without stringent conditions could significantly harm the Respondents, thereby making this factor another argument against granting an unconditional stay.

The final consideration is the public interest. Upholding rigorous professional standards and ensuring that property rights are not encumbered by legally baseless claims align with public

⁴ The Mechanic's Lien and *Lis Pendens* are the only points of leverage that the Appellant can exert in its frivolous claims because they would be deemed clouds on the title to the Property, preventing the Respondents from selling the Property during the pendency of the litigation when the Lien and *Lis Pendens* are deemed valid.

interest. Granting a stay that might allow an unlicensed contractor to circumvent clear statutory requirements could set a detrimental precedent, affecting public trust in the judicial and regulatory systems designed to uphold construction, real estate, and professional standards.

Appellant may argue that the stay is necessary to prevent irreversible actions regarding the Property that could affect his rights if his appeal were successful. However, given that the underlying dismissal was based on his lack of licensure - a clear statutory ground that is unlikely to be overturned on appeal - and “woefully lacking” pleadings for a Misrepresentation claim, Appellant’s argument for a stay lacks merit. The enforcement of judgments pertaining to dismissal for statutory non-compliance does not warrant a stay, as it does not alter the state of things but merely confirms them.

Given these considerations, the factors weigh heavily against granting Appellant a stay without stringent conditions such as securing a bond. The public interest and the balance of harms particularly underscore the need for caution in granting judicial relief that could potentially undermine clear statutory mandates and affect parties adversely. If a stay is to be considered, it must be accompanied by measures that safeguard the interests of all parties and the integrity of the legal process, as indicated by the analysis of these four critical factors.

Should this court decide to grant a stay, the Respondents respectfully request that it require Appellant to post a bond. This requirement would protect the Respondents from potential losses and uphold the judicial system's responsibility to balance interests fairly during the appellate process. Such a measure ensures that all parties are safeguarded while Appellant pursues his appeal, maintaining the integrity and fairness of the legal proceedings.

V. Conclusion

The Respondents respectfully the Court to deny the Appellant's Petition. In the alternative, the Respondents respectfully request an Order from this Court requiring any stay to be enforceable only upon the lower court's determination of a proper bond to be obtained by Appellant.

Respectfully submitted this 22nd day of April 2024.

HOLDER, PADGETT, LITTLEJOHN + PRICKETT, LLC

Greenville, SC

s/ M. Stokely Holder

M. Stokely Holder
S.C. Bar No. 73892
sholder@hplplaw.com

Ra'na Heidari
SC Bar No. 104501
rheidari@hplplaw.com
P.O. Box 1804
Greenville, South Carolina 29602
(864) 335-8808
Attorneys for Respondents

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In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

THE HONORABLE G.D. MORGAN

Appellate Case No. 2024-00417
Circuit Court Case No. 2024-CP-23-00312

CERTIFICATE OF SERVICE

I, the undersigned attorney for the Respondents, D&B Real Estate Ventures, LLC, Darius Jones and Bradley Robinson, do hereby certify that I have served the Respondents' Reply to Appellant's Emergency Petition to Order All Matters Stayed and Request for Immediate Intervention on the Appellant, Christopher Jones by sending a copy via email to intljonesc@gmail.com and via mail to 309 Perry Ave., Greenville, SC 29601. I also certify that I have served the Respondents' Reply to Appellant's Emergency Petition to Order All Matters Stayed and Request for Immediate Intervention on the South Carolina Court of Appeals by depositing it in the United States Mail, postage prepaid, on April 22, 2024, addressed to The Honorable Jenny Abbott Kitchings, Clerk of Court, P.O. Box 11629, Columbia, SC 29211, and by electronic mail at: ctappfilings@sccourts.org.



M. Stokely Holder

SC Bar No.: 73892

Ra'na Heidari

SC Bar No.: 104501

Raford W. Bussey, Jr.

SC Bar No.: 103943

Holder, Padgett, Littlejohn + Prickett, LLC

800 E. North Street

Greenville, SC 29601

864-335-8808

sholder@hplplaw.com

rheidari@hplplaw.com

rbussey@hplplaw.com

*Attorneys for the Respondents D&B Real Estate Ventures, LLC, Darius Jones and Bradley
Robinson*

April 22, 2024

Carolyn G. Denney

Reply to: Greenville
direct: 864.558.9440
fax: 864.248.4090
cdenny@hplplaw.com

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Via U.S. Mail and Email

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

**RE: Christopher Jones v. D&B Real Estate Ventures, LLC; Darius Jones; Bradley
Robinson
Circuit Court Case No.: 2024-CP-23-00312
Appellate Case No.: 2024-00417**


Dear Ms. Kitchings,

Please find enclosed herewith for service upon the court Respondents' Memorandum in Opposition to Appellant's Emergency Petition to Order All Matters Stayed and Request for Immediate Intervention, along with a Certificate of Service for same.

Should you have any questions or concerns, feel free to contact our office.

Regards,

HOLDER PADGETT LITTLEJOHN + PRICKETT, LLC



Carolyn Denney
Paralegal

Enclosures

cc: *Christopher Jones*