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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G.D. Morgan, Circuit Court Judge

Case No. 2024-CP-23-0312
Appeals Case# 2024-0417

Christopher Jones,

Appellant

v.

D&B Real Estate Ventures, LLC

Respondents,

**APPELLANTS' REPLY
AND SUPPORTING MEMORANDUM OF LAW**

April 25, 2024

s/ Christopher Jones
Christopher Jones
309 Perry Ave
Greenville, South Carolina 29601
Appellant

WHEREFORE, The Appellant prays for, and seeks an emergency action by the South Carolina Court of Appeals to immediately strike the most recent pleadings and respectfully rescind the Order of the Honorable Judge G.D. Morgan to cancel the Mechanic's Lien and Lis Pendens, or in the alternative, require the Respondents to post a sufficient bond with the Court to protect the integrity of this Appeal.

The Appellant further prays that this Honorable Court to;

1. Grant an Order demonstrating the case was under Rule 241, SCACR the automatic stay.
2. Grant an Order Extending the automatic stay through the duration of appeal.
3. Issue an Order rescinding all actions taken after the Notice of Appeal.
4. Issue an Order requiring Respondents to post bond on appeal.
5. Issue an Order requiring Respondents to pay Appellant costs for this motion.

April 25, 2024

Respectfully submitted.

s/Christopher Jones
Christopher Jones, Appellant
309 Perry Avenue
Greenville, SC 29601

MEMORANDUM OF LAW

I. The Automatic Stay

Pursuant to the Court's decision in C-Sculptures, LLC #3 v. Brown Opinion #4827 Submitted December 1, 2010 – Filed April 27, 2011

KONDUROS, J.: C-Sculptures argues the master-in-equity erred in finding the foreclosure of its mechanic's lien against the home of Gregory and Kerry Brown (the Browns) was stayed pending their appeal of the arbitration award in the underlying lawsuit between the parties. We affirm.[1]

Rule 241(a), SCACR, sets forth the general rule regarding stays after a following a notice of appeal.

General Rule. As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.

C-Sculptures argues the denial of the Browns' motion to vacate should be treated like the denial of a Rule 60(b) motion. However, C-Sculptures cites no authority for this proposition, and we are unpersuaded by its general argument. The South Carolina Supreme Court has ruled the execution of a judgment is not generally stayed by the denial of a Rule 60(b) motion because the denial of such a motion grants "no relief" to the movant so that there is nothing to stay. *Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP*, 375 S.C. 423, 426, 653 S.E.2d 274, 276 (2007). However, Rule 60(b) motions are made by parties seeking relief from a judgment for some reason other than the merits of the case. Here, the Browns raise none of the reasons listed in Rule 60(b) for setting aside the arbitrator's ruling. They simply disagree with his decision. As such, the denial of their

motion to vacate is more akin to a traditional appeal on the merits. **Therefore, we find no error in the master's ruling that the foreclosure action was stayed during the pendency of the Browns' appeal to this court.**

C-Sculptures maintains the master erred in finding the circuit court's order confirming the arbitration award did not direct the delivery of land or payment of money thereby necessitating the payment of a bond by the Browns to stay the execution. We disagree.

In this case, Respondents are requesting that the Appellant pay a bond in the event the Court finds for Appellant and rules the automatic stay was and is in place at the time of their continued filing. Unlike the C-Sculpture case, this judgment does not direct a money payment. In fact, Appellant is the only party to be at risk of irreparable harm. If there is any bond to be had, it should be on the part of the Respondents. Respondents have not disputed the **one and only Contract** in the case. Applying the Court's reasoning in the C-Sculpture's' case, Appellant should not be required to post any bond whatsoever.

Section 18-9-130(A)(1) of the South Carolina Code (Supp. 2010) provides "[a] notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution." In this case, the master's order stated "[c]ounsel for C-Sculptures acknowledged during argument that the trial court's order is not one directing the payment of money." Because C-Sculptures did not file a motion to alter or amend that finding within the order, it is the law of the case. See *Judy v. Martin*, 381 S.C. 455, 459, 674 S.E.2d 151, 153 (2009) ("[A]n unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal."). There is no order directing payment in this case.

Relative to the above, there is no judgment directing the sale or delivery of possession of real property. Appellant never asserted possession of this property to even necessitate an imposition that he had somehow taken possession of the Loop Street property.

The exemptions noted in this Section simply does not apply to this case in any manner. The March 13, 2024 Order of Judge Morgan was appealed to the South Carolina Court of Appeals, at that point all jurisdiction ceased. There is no lawful argument to that point.

Section 18-9-170 of the South Carolina Code (1985) indicates if the judgment appealed from directs the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless the party against whom judgment is entered obtains a bond with two sureties guaranteeing the property will not be wasted during the pendency of the appeal. The master found the circuit court's confirmation order did not "direct the sale or delivery of real property" because it did not order the sale of the property but rather referred the case to the master for foreclosure proceedings. We agree with the master that the foreclosure proceedings would "contemplate an order for the sale of the Browns' real property and setting the terms and conditions of that sale." The foreclosure decree would be the type of order covered by section 18-9-170, not the circuit court's order confirming the arbitration award. See *Gerald v. Gerald*, 31 S.C. 171, 182, 9 S.E. 792, 796 (1889) ("This language [found in the predecessor to section 18-9-170] shows that the intention was to embrace appeals from judgments of foreclosure, for that is a judgment directing the sale of real property . . .") (emphasis added). There are no orders directing the sell or delivery of the possession of real property in this case. In addition, there are no orders directing a conveyance or instrument in this case. Similarly, Respondents' assertions pursuant to 18-9-160, are not relevant here.

Because the foreclosure proceedings were stayed pursuant to Rule 241, SCACR, and because the circuit court's order confirming the arbitration award did not direct the payment of money or the sale or delivery of real property, the order of the master is AFFIRMED.

Appellant asserts that Rule 241, SCACR, and its application to stay the proceedings as the general rule once the Notice of Appeal is filed and served upon the parties in the case. As this language clearly set forth the operation of the filing of the Notice of Appeal. The status quo is ordinarily preserved as the case heads to appellate review. The Respondents were properly served, the Clerk of Court was properly served, and the Notice of Appeal was

entered into the lower court index of the case by the Clerk. Yet, Respondents clearly chose to run afoul of Rule 241 SCACR and the jurisdiction of the South Carolina Court of Appeals' specific jurisdiction over this case, and continued execution of judgment in this case with the lower Court without lawful jurisdiction to do so.

Rule 241, SCACR makes no mention of "*Formal Order*". Judge Morgan's Form 4 Order states, "This ends the case!!!" Respondents' argument on this issue is fatally flawed. If Plaintiff was forced to await a "Formal Order", the time to perfect the appeal under South Carolina Appeals Court Rules, would have likely expired before Respondents filed their *Formal Order*. Any movement in the case after the filing of the Notice of Appeal, regardless of the commands of the Order are automatically stayed. Furthermore, this case is not exempted pursuant to S.C. 18-9-160. There are no conveyances or instruments in terms of this Statute which is applicable in this case. This is a breach of contract case, pure and simple. Appellant properly appealed the March 13, 2024 Order of the Honorable Judge Morgan. By execution of the cancellation of the lis pendens and filed mechanic's lien, Respondents erroneously granted themselves an undeserved win-fall through the execution of judgment while ignoring the appeal. Rule 241, SCACR is clear and unambiguous. Counsel for Respondents and the lower Court knew this to be true. Nevertheless, Respondents would have this Honorable Court to re-write the Rules to suit their desired end. However, when equally and fairly applied, the Notice of Appeal automatically stayed this case and its execution of judgment as a matter of law.

In *C-Sculpture v. Brown*, this Court set forth elements which are similar to this case and should fine Appellant in this case was subject to the automatic stay. Appellant seeks the same applicable results as in *C-Sculpture's* case.

When viewing Respondent's Response, the Respondents have abandoned their argument to the automatic stay and focused on the Formal Order instead. At no [point did Respondent argue the Notice of Appeal was not timely filed, that the Notice of Appeal was not properly served. Therefore, with all things considered, Appellant should succeed on this issue. The only relevant issue before the Court.

Somehow, Respondents and the lower Court invoked a Contract for construction only and ran with it. However, at all times and expressly within the transcript of the case, Appellant all but yelled that **THERE IS ONLY ONE APPLICABLE CONTRACT IN THIS CASE AND RESPONDENTS BREACHED IT!!**

Appellant argued that the Section 40-11-370 does not apply to this suit because there is not a contract to engage in construction. Appellant entered into a South Carolina Residential Buy And Sell Contract which authorized Appellant "hire" contractors. Respondents do not dispute the only true Contract in the case. Respondents chose to demur and not file an Answer to the Complaint, therefore Respondents waived any denial or objection to the applicable claims made by Appellant in the case. See Exhibit A

II. Breach of Contract

See 4715 - Maro v. Lewis Opinion No. 4715 Heard February 17, 2010 Filed July 28, 2010

The Appellant argued that the Contract subject to the suit was in-fact the South Carolina Residential Buy and Sell Contract between Christopher Jones and D&B Real Estate Ventures, LLC. Respondents without question breached this South Carolina Buy and Sell Contract for the purchase of 331 Loop St. Greenville, SC 29609.

First, this property was completely burnt-out and gutted. There were no walls, no ceilings. The floors were damaged to the point of no use. The single bathroom had to be completely replaced among other things. The parties stipulated and agreed that Appellant would make the repairs. Item #9 of the S.C. Residential Buy and Sell Contract authorized Buyer to hire professional, electricians, plumbers and contractors to perform the work. The Appellant performed as the Contract dictated. Because the title to this property was not clear contrary to the Residential Contract statement that the property possessed good and marketable title. Once attorney Andrew Jones notified this Appellant, the Appellant immediately contacted Darius Jones and was propositioned by Darius Jones that D&B Real Estate Ventures, LLC would buy the property back from Appellant. On the surface

this fair, however as the matter prolonged Darius Jones and D&B Real Estate stalled for over a month with lofty plans but no money. Appellant grew tired and filed the Breach of Contract suit. Respondents never executed a construction contract with Appellant therefore S.C. 40-11-370 is not relevant to this case, even if it was relevant, Appellant hired Sylvester Golden, a licensed South Carolina Contractor for over thirty-five years. Despite the baseless assertions of the Respondents, the only victim in this case is the Appellant. At no point in the course of their dealings did Respondents expend any money for any reason to Appellant or any agent for Appellant. Not a single dime is spent by Respondents. They suffered no loss, suffered no risks, and now would ask the Court to grant them this underserved win-fall. Justice requires Respondents that Respondents not benefit from this breach because they do not dispute that Appellant is responsible for **all** improvements to 331 Loop Street Greenville, SC. See **Exhibit B**

In Maro v. Lewis, "This being an action for the breach of contract, the burden was upon the plaintiff to prove the contract, its breach, and the damages caused by such breach." Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). "The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach." Id. "The purpose of an award of damages for breach of contract is to put the plaintiff in as good a position as he would have been in if the contract had been performed." Minter v. GOCT, Inc., 322 S.C. 525, 528, 473 S.E.2d 67, 70 (Ct. App. 1996). "The proper measure of compensation is the loss actually suffered by the plaintiff as a result of the breach." Id.

Here, in the instant case, apart from the directed verdict issue, Respondents entered an enforceable contract with Appellant. Further, Respondents admits breaching the contract by not fulfilling several of his obligations as seller. Therefore, at this juncture, the Court must determine whether Appellant presented sufficient evidence Respondent's breach proximately caused him to lose money and is now attempting to sell the property. Viewing the evidence in the light most favorable to Appellant's breach of contract claim, the Court should find the trial court erred in granting Respondent's motion for to dismiss for the specific reasons stated.

This is a factual conflict in both parties' stories that clearly lies within the jury's domain. A jury could infer from the evidence that Appellant could have closed on the property had Respondent's truly demonstrated a clear and unencumbered title to the property. The lower Court erred by not considering this issue.

Under the second scenario, a jury could infer that Appellant is entitled to expenses, profits, or both pursuant to the terms of the contract. The Court should find that the evidence demonstrates Respondent's duty, their breach, and that the breach proximately caused Appellant's damages. First, Respondents owed a duty to disclose potential encumbrances regarding the property to Appellant. Second, Respondent's breached this duty by failing to notify Appellant of at least the issues known by attorney Andrew Jones. Finally, the Court is asked to please find that one could construe entering into a contract with the purchaser of the property and giving that purchaser expressed authorization to hire contractors for property whereby the title is not clear for sale, as breaching the conditions of the exclusive contract agreement between Appellant Christopher Jones and Respondents D/B Real Estate. Accordingly, this Court of Appeals should find the record includes sufficient evidence to survive the Respondent's motion to dismiss, and the trial court should have submitted the case to a jury. See Exhibit C

B. Breach of Contract Accompanied by a Fraudulent Act

Regarding the title to the property 331 Loop Street Greenville, SC attorney Andrew Jones was retained to perform the title search. Unbeknownst to Appellant, Andrew Jones was familiar with Respondents and this specific property since 2016 when Darius Jones transferred property to D&B Real Estate Ventures, LLC. On December 27, 2023 Andrew Jones sent Appellant a text that "there were problems with this property title. After further discussion with Andrew Jones, he informed Appellant that Respondents knew the issues with the title because attorney Andrew Jones performed a past title search and found multiple family members were owners of the property, so Darius Jones had attorney Andrew Jones transfer property as "No Title Search" is listed on the deed to the property. See Exhibit D

To recover for breach of contract accompanied by a fraudulent act, a plaintiff must establish (1) the contract was breached; (2) the breach was accomplished with a fraudulent intention; and (3) the breach was accompanied by a fraudulent act. Minter, 322 S.C. at 529-30, 473 S.E.2d at 70. "In an action for breach of contract accompanied by a fraudulent act, the fraudulent act element is met by any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design." Perry v. Green, 313 S.C. 250, 254, 437 S.E.2d 150, 152 (Ct. App. 1993).

The record contains some evidence of a breach of contract accompanied by a fraudulent act, this action should have survived a motion to dismiss. Appellant presented some evidence of both fraudulent intent and fraudulent action as well. A jury could find Respondent's hid this title issue from Appellant and that Respondent's hid these actions in an attempt to get free or reduced costs for improvements to the Loop Street property. Therefore, Appellant will argue that the Court of Appeals reverse the trial court's grant of Respondent's motion to dismiss on the cause of action for breach of contract.

III. Quantum Meruit

In a similar case, Rose Electric also argues the trial court erred in finding it could not recover under quantum meruit because it did not prove Southern unjustly retained a benefit without paying for its value. We agree.

"[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy." Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 1, 8, 532 S.E.2d 868, 872 (2000). In order to recover under the theory of quantum meruit, a plaintiff must prove: "1) a benefit conferred by the plaintiff upon the defendant; 2) realization of that benefit by the defendant; and 3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." Swanson v. Stratos, 350 S.C. 116, 121, 564 S.E.2d 117, 119 (Ct. App. 2002).

“Courts addressing a claim of unjust enrichment by a subcontractor against a property owner have typically denied recovery when the owner in fact paid on its contract with the general contractor.” *Williams Carpet Contractors*, 400 S.C. at 326, 734 S.E.2d at 180 (quoting *Columbia Wholesale Co.*, 312 S.C. at 262–63, 440 S.E.2d at 131).

In this case, Respondents have zero monies nor given any consideration whatsoever for the improvements to 331 Loop Street Greenville, SC. It is not disputed that the value of the work and materials is near \$40,000. Appellant requested time and time again to simply be reimbursed for the his investment in this property. Since filing this suit, Respondents enjoy this benefit unjustly.

Southern paid \$203,277.00 to Cooler Erectors pursuant to its October 22, 2010 contract. The total contract price for the building was \$213,385.00.¹ Southern retained \$10,103 from the contract price because “the work contained within the scope of the contract had not been completed.” The original Residential Buy and Sell Contract outline a permissible scope of work. This was a benefit that Respondents retained from the work performed by Appellant’s licensed residential builder, but did not pay for.

We find Southern's offer to pay Rose Electric a prorated share of the retainage creates a sufficient equitable remedy. However, in this case, Respondents never offered to pay Appellant for the past work without a construction contract to perform new work. A subcontractor that is owed a debt for labor or materials furnished and used in the erection of a building has a lien upon the building and the land to secure the payment due. S.C. Code Ann. § 29–5–10 (2007). “However, in no event shall the aggregate amount of any liens on the improvement exceed the amount due by the owner.” S.C. Code Ann. § 29–5–20 (2007). “In the event the amount due the contractor by the owner is insufficient to pay all the lienors acquiring liens as herein provided it is the duty of the owner to prorate among all just claims the amount due the contractor.” S.C. Code Ann. § 29–5–60(A) (2007).

Of the \$213,385.00 total price of the project, Southern paid Cooler Erectors \$203,277.00. Southern retained \$10,103 because “the work contained within the scope of the contract had not been completed.” When Cooler Erectors abandoned the job site, two other sub-

contractors filed mechanic's liens on the property to secure payment. Rose Electric's lien claimed it was owed \$54,339.13 on the construction agreement, a concrete supplier claimed a lien of \$14,528.20, and a plumber claimed a lien of \$10,210.93. The three subcontractors' claims totaled \$79,139.26.

Had Rose Electric proceeded with its mechanics' lien foreclosure action, its recovery would have been limited to 68.74% of the retainage, totaling \$6,948.24. However, Rose Electric abandoned its mechanics' lien cause of action prior to trial and proceeded only on its quantum meruit cause of action. While Rose Electric did not invoke the mechanics' lien statute as a theory for recovery, we find the statute provides a framework for determining what recovery is proper in quantum meruit cases involving construction contracts. Where, as here, a building owner has paid a general contractor a substantial amount of the contract price, we find the mechanics lien statutes, and their limitations, are a proper measure of the subcontractor's damages against the property owner in a quantum meruit action.

Furthermore, the mechanics' lien statutes do not distinguish between liens that settle prior to trial and those that continue to trial. Rather, "it is the duty of the owner to prorate among all just claims the amount due the contractor." § 29-5-60(A). Southern did that in this case. We find the trial court properly included all liens filed against Southern when considering the amount of the retainage to which Rose Electric was entitled. ²

A defendant is not relieved of its responsibility to pay for a benefit because the defendant offered to pay prior to trial. Here, Southern has retained \$10,103 of the contract price, but has recognized the full benefit of Rose Electric's services. The trial court erred in finding Rose Electric could not prove Southern retained a benefit without paying for it to the extent of the retainage. Accordingly, we reverse and direct the trial court to enter judgment for Rose Electric for \$6,948.24—the amount of its prorated share of the retainage.

Based on Southern's offer to pay for the change orders, the trial court found Rose Electric failed to prove Southern retained a benefit under conditions that make it unjust for it to retain the benefit without paying its value. As discussed previously, there is no authority

to support the assertion that a defendant is relieved of its responsibility to pay for a benefit because the defendant offered to pay prior to trial. Rose Electric modified the electrical plans to better suit Southern's work process; Southern has realized the benefit of Rose Electric's services; and Southern has not paid for those services. See Swanson, 350 S.C. at 121, 564 S.E.2d at 119 (noting the elements of quantum meruit are: "1) a benefit conferred by the plaintiff upon the defendant; 2) realization of that benefit by the defendant; and 3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value"). We find Rose Electric is entitled to be paid the stipulated price for its work and remand to the trial court to enter judgment in the amount of \$10,755.39 for those services.

We reverse and remand to the trial court to modify its judgment to include an award of damages to Rose Electric in the amount of \$17,703.63 and to address Rose Electric's claim for prejudgment interest.

For the foregoing reasons, the decision of the trial court is REVERSED AND REMANDED.

FOOTNOTES

1. Rose Electric challenges the trial court's finding that the total cost of the project was \$213,385.00, and that the architectural plans were included in the total project price. We recognize in an action in equity, this court may find the facts based on our own view of the preponderance of the evidence. *First Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 567, 511 S.E.2d 372, 379 (Ct. App. 1998). "However, we are not required to disregard the findings of the trial [court] who saw and heard the witnesses and was in a better position to judge their credibility." *Id.* Evidence supported both Rose Electric and Southern's respective position. We find the issue of whether the architectural plans were intended to be part of the contract price was an issue of credibility. Accordingly, we adopt the trial court's finding that the total contract price of the project included the architectural plans.

2. Rose Electric argues Southern should not be able to use their payments to Cooler Erectors as a defense to Rose Electric's quantum meruit claim because Cooler Erectors

was not a licensed general contractor in South Carolina. We disagree that Cooler Erector's status as an unlicensed general contractor prohibits Southern from relying on its payments to Cooler Erectors as a defense in this case. Section 40-11-370 of the South Carolina Code (2011) prohibits unlicensed contractors, like Cooler Erectors, from attempting to enforce a contract they entered into. That statute does not prohibit individuals who contract with unlicensed general contractors from alleging payment to those contractors as a defense to claims by subcontractors.

We affirm the trial court's determination that Cooler Erector's status as an unlicensed general contractor is irrelevant to this case.

IV. The Lis Pendens And Mechanic's Lien

See 3521 - Pond Place Partners, Inc. v. Poole **Opinion No. 3521**

Heard May 8, 2002 - Filed June 17, 2002

The purpose of a notice of pendency of an action is to inform a purchaser or encumbrancer that a particular piece of real property is subject to litigation. Shelley Constr. Co. v. Sea Garden Homes, Inc., 287 S.C. 24, 336 S.E.2d 488 (Ct. App. 1985); Wooten v. Seanch, 187 S.C. 219, 196 S.E. 877 (1938). "A properly filed lis pendens binds subsequent purchasers or encumbrancers to all proceedings evolving from the litigation." South Carolina Nat'l Bank v. Cook, 291 S.C. 530, 532, 354 S.E.2d 562, 562 (1987). Generally, the filing of a lis pendens places a cloud on title which prevents the owner from freely disposing of the property before the litigation is resolved. Shelley Constr., 287 S.C. at 24, 336 S.E.2d at 491-492.

A lis pendens may be filed "[i]n an action affecting the title to real property not more than twenty days before filing the complaint or at any time afterwards with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and the description of the property in that county affected thereby." S.C. Code Ann. 15-11-10 (1977). Since the filing of a lis pendens is an extraordinary privilege granted by statute, strict compliance with the

statutory provisions is required. See Cook, 291 S.C. at 532, 354 S.E.2d at 563 (1987) (finding a complaint filed more than twenty days after the filing of the lis pendens renders the lis pendens invalid).

The lis pendens mechanism is not designed to aid either side in a dispute between private parties. Rather, lis pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, i.e., the fact of a suit involving property. Thus, it notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject to the judgment, without any substantive rights.

51 Am. Jur. 2d Lis Pendens 2 (2000).

Therefore, an action "affecting the title to real property" clearly allows the filing of a lis pendens by an interested party in order to protect their ownership interest in the property subject to the litigation. Such actions include actions attempting to set aside a fraudulent conveyance of real property, see Lebovitz v. Mudd, 293 S.C. 49, 358 S.E.2d 698 (1987); Dickerson v. Oliphant, 160 S.C. 288, 158 S.E. 546 (1931); Berger v. Shea, 258 S.E.2d 621 (Ga. Ct. App. 1979); and actions to establish a constructive trust over real estate, see Finley v. Hughes, 106 F.Supp. 355 (E.D.S.C. 1952); Kelly v. Perry, 531 P.2d 139 (Ariz. 1975). They also include actions to quiet title, see Stewart v. Fahey, 481 P.2d 519 (Ariz. Ct. App. 1971); actions to establish the existence of an easement, see Procacci v. Zacco, 402 So.2d 425 (Fla. Dist. Ct. App. 1981); actions to reform deeds to resolve a boundary dispute, see Houska v. Frederick, 447 S.W.2d 514 (Mo. 1969); actions for specific performance, see Panfel v. Boyd, 371 S.E.2d 222 (Ga. Ct. App. 1988); Hauptman v. Edwards, Inc., 553 P.2d 975 (Mont. 1976); Wendy's of South Jersey v. Blanchard Mgmt. Corp. of N.J., 406 A.2d 1337 (N.J. Super. Ct. Ch. Div. 1979); and actions for mortgage foreclosures, see Palmer v. Shelby Plaza Motel, Inc., 443 So.2d 285 (Fla. Dist. Ct. App. 1983). Where no real property is implicated, however, like when the enforcement of a lien is against the substitute security under the "bonding out" procedure of the mechanic's lien statute rather than against the original real property itself, a notice of pendency of action need not be filed. Shelley Constr. Co. v. Sea Garden Homes, Inc., 287 S.C. 24, 336 S.E.2d 488 (Ct. App. 1985); see also Hansen v. Kohler, 550 P.2d 186 (Utah 1976) (distinguishing the case of Birch v. Fuller, 337 P.2d 964 (Utah 1959), in which the court found no privilege

for filing a lis pendens because no court action was filed in conjunction with the lis pendens making it not filed in accordance with the law and, therefore, not actionable under slander of title); Atkinson v. Fundaro, 400 So.2d 1324 (Fla. Dist. Ct. App. 1981) (finding no privilege for the filing of a lis pendens on property that had absolutely no involvement in the underlying litigation); Ex parte Boykin, 656 So.2d 821, 826 n.4 (Ala. Civ. App. 1994) (Noting that "[o]ne who places a lis pendens notice on property without a 'colorable claim' of right to or interest in the property subjects themselves to a claim for slander of title.").

The lis pendens was not actually dissolved at the time of the court's order:

As a general rule, the service of a notice of appeal in a civil matter act to automatically stay matters decided in the order on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the trial judge, appellate court, or judge or justice thereof. See Exhibit B

SECTION 29-5-250. Recovery for part performance.

When the owner fails to perform his part of the contract and by reason thereof the other party, without his own default, is prevented from completely performing his part, he shall be entitled to a reasonable compensation for as much as he has performed in proportion to the price stipulated for the whole and the court shall adjust his claim accordingly.

SECTION 29-5-110. Release of lien upon filing written undertaking and security.

At any time after service and filing of the statement required under Section 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. In the event of judgment for the person filing such statement in a suit brought pursuant to the provisions of this chapter, such judgment shall be paid out of the cash deposited or, in event of pledge of securities, it shall be paid from the proceeds of a sale of so much of the pledged securities as shall be necessary to satisfy such judgment or, in event of the filing of a surety bond, the surety company issuing such bond shall pay such amount found due, not to exceed the amount of the bond. Unless suit for enforcement of the lien is commenced as required by Section 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.

SECTION 29-5-40.

Notice to owner before lien attaches when laborer was employed by someone other than owner.

Whenever work is done or material is furnished for the improvement of real estate upon the employment of a contractor or some other person than the owner and such laborer, mechanic, contractor or materialman shall in writing notify the owner of the furnishing of such labor or material and the amount or value thereof, the lien given by Section 29-5-20 shall attach upon the real estate improved as against the true owner for the amount of the work done or material furnished. But in no event shall the aggregate amount of liens set up hereby exceed the amount due b The standard for dismissal under South Carolina Rule of Civil Procedure 12(b)(6) is difficult to satisfy. A complaint should not be dismissed for failure to state a claim “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *O’Ryan v. Dehler Nfrg. Co., Inc.*, 99 F.Supp. 2d 714, 718 (E.D.Va. 2000); *Gibson v. Boy Scouts of America*, 360 F.Supp. 2d 776 (E.D.Va. 2005). “Motions to dismiss for failure to state a claim are granted sparingly and with caution in order to make certain that plaintiff is not improperly denied a right to have his claim adjudicated . . .”

Agora, Inc. v. Axxess, Inc., 90 F.Supp. 2d 697, 699 (D.Md. 2000) (quoting 5A Charles A. Wright & Arthur R. Miller, FED. PRACTICE & PROCEDURE, Civil 2d § 1349 at 192-93 (1990)). When considering a Rule 12(b)(6) motion, the Court “construe[s] the complaint in the light most favorable to the plaintiff, read[s] the complaint as a whole, and take[s] the facts asserted therein as true.” Skillstorm, Inc. v. Electronic Data Systems, LLC, --- F.Supp. 2d ---, 2009 WL 3316358, *3 (E.D.Va. 2009) (citing Mylan Lab., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993)).

Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003), cert. denied (citing Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999)). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Williams v. Condon, 347 S.C. 227, 553 S.E.2d 496 (Ct. App. 2001). Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995); see also Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987) (noting trial court must dispose of motion for failure to state cause of action based solely upon allegations set forth on face of complaint); Williams, 347 S.C. at 233, 553 S.E.2d at 499 (finding that trial court’s ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff).

“A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case.” Flateau, 355 S.C. at 202, 584 S.E.2d at 415; see Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999); see also Baird, 333 S.C. at 527, 511 S.E.2d at 73 (declaring that if the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997) (concluding that motion to dismiss cannot be sustained if facts alleged in complaint and inferences reasonably deducible therefrom would entitle plaintiff to relief on any

theory of the case). In deciding whether the trial court properly granted the motion to dismiss, this Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. See Gentry, 337 S.C. at 5, 522 S.E.2d at 139; see also Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999) (explaining that looking at facts in light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief).

The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987). The trial court's grant of a motion to dismiss will be sustained if the facts alleged in the complaint do not support relief under any theory of law. Tatum v. Medical Univ. of South Carolina, 346 S.C. 194, 552 S.E.2d 18 (2001); see also Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 491 S.E.2d 272 (Ct. App. 1997) (stating motion must be granted if facts and inferences reasonably deducible from them show that plaintiff could not prevail on any theory of the case).

"Dismissal of an action pursuant to Rule 12(b)(6) is appealable." Williams, 347 at 233, 553 S.E.2d at 500. Upon review of a dismissal of an action pursuant to Rule 12(b)(6), the appellate court applies the same standard of review implemented by the trial court. Id.

In Ashcroft v. Iqbal, __ U.S. __, 129 S. Ct. 1939, 173 L. Ed. 2d 868 (2009), the Court held that on a motion to dismiss for failure to state a claim (a) the Court looks at facts, not conclusions; (b) the pleaded facts must state a plausible claim; and (c) a claim is not plausible if it alleges facts equally or more consistent with lawful conduct.

The facts in this case are simple. There was a contract between the parties. There was required performance for a specific amount of consideration. The plaintiffs fulfilled their obligations under the terms of the lawfully binding contract. The defendants failed to pay after receiving a sizeable construction loan because of the work performed by the plaintiffs, thereby causing a breach of the contract.


Plaintiffs have alleged sufficient claims that if proven true, would in-fact entitle plaintiffs to the relief sought in the Complaint. The allegations stated in the Complaint are supported by facts, the law and a conclusion that the flow from the application of the law would entitle plaintiffs to relief. The plaintiffs believe their claims survive the "No Set of Facts Test", *Conley v. Gibson*, 355 U.S. 41, 46-48 (1957). The lower Court never considered the facts in the Complaint because the lower court did not look beyond Respondent's 40-11-370 demurrer.

There is ample legal sufficiency to show Plaintiffs are entitled to relief under this Complaint. *A Complaint should not be dismissed for failure to state a claim* unless it appears beyond a doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. See *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) also *Neitzke v. Williams*, 109 S. Ct.1827, 1832 (1989). Rule 12(b)(6) does not countenance dismissals based on a judge's disbelief of a complaint's factual allegations. In applying the *Conley* standard, the Court will "accept the truth of the well-pleaded factual allegations of the Complaint."

WHEREFORE, the Appellant Christopher Jones prays unto this Honorable Court that the Court of Appeals find the Automatic Stay was in place at the April 9, 2024 and April 10, 2024, filings. The Court is asked to please find that an automatic stay should be continued throughout the appeal. Appellant also pray that he is not required to post bond for this appeal.

April 25, 2024

Respectfully submitted.



Christopher Jones
309 Perry Ave
Greenville, SC 29601

EXHIBIT A

Please see Item #9



AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (RESIDENTIAL)

PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.

1. PARTIES: This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Equity Works LLC, Christopher Jones ("Buyer"), and Seller(s), D and B Real Estate Investments LLC, ("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing. Guest and Brady Attorney at Law
(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to initially cause this primary Contract to be binding on all Parties.
(E) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
(F) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.

BUYER SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

CJ (initials) BUYER(s) acknowledges receipt of the SC Disclosure of Brokerage Relationships form and is receiving Client Customer service in this transaction.

DJ (initials) SELLER(s) acknowledges receipt of the SC Disclosure of Brokerage Relationships form and is receiving Client Customer service in this transaction.

2. PURCHASE PRICE: \$ 105,000.00 One Hundred Five Thousand Payable by transfer of Good Funds via Finance or a combination of Finance and Cash USD or Cash USD. Verification of Cash available for Closing is attached not attached to be Delivered before This Contract is is not contingent upon the sale and closing of Buyer's real property and SCR504 is is not attached.

3. PROPERTY: Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying in same operable condition, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address 331 Loop St Unit # City Greenville State of South Carolina Zip 29609 County of Greenville Lot Block Section/Phase Subdivision Other Tax Map 0176000105500

Parties agree that no personal property will transfer as part of this sale, except described below and/or in attachment(s):

[CJ] BUYER [] BUYER [DJ] SELLER [] SELLER [] BUYER [] BUYER [] SELLER [] SELLER []

4. CONVEYANCE/CLOSING/POSSESSION: "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before November 30, 2023 ("Closing Date"). Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): Equity Works LLC

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. EARNEST MONEY: Total \$ 1,000.00 (USD) Earnest Money is paid as follows: \$ 1,000.00 accompanies this offer and \$ _____ will be paid by 6 P.M. on November 3, 2023 (date) and Earnest Money is in the form of check cash other (e.g. wire) _____ to be a Credit to Buyer at Closing or disbursed only as

Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Guest and Brady Attorney at Law as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request. If Earnest Money is not delivered by the agreed upon date above Seller may terminate the contract by delivering Notice of Termination to the Buyer.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, MEDIATION AGREEMENT) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ _____ SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. TRANSACTION COSTS:
A. TRANSACTION COSTS

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs.

- 1) Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (including but not limited to mortgage insurance, title insurance lender/owner, flood, insurance, and hazard insurance) discount points, interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor.
2) Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes prorated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.
3) The following costs in addition to the costs above will be the considered [] Seller's or [X] Buyer's transaction costs. If no box is checked these costs will be added to Seller's transaction costs.
a) All costs to obtain information from or pertaining to owners' association (e.g. printing or document fees charged to requesting party by the HOA)
b) Private and/or Public Transfer Fees
c) Any costs similar to transfer fees (e.g. certificate of assessment, capital contributions, working capital, estoppel fees or otherwise named but similar fees)

[C] BUYER [] BUYER [D] SELLER [] SELLER
[] BUYER [] BUYER [] SELLER [] SELLER

4) At Closing, Seller will pay Buyer's transaction costs not to exceed \$ _____, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

HOA dues and assessments are not considered transactions costs and are addressed by the closing attorney as needed per paragraph 22. A transfer fee is a nonrecurring fee that is being assessed solely because of a transfer in property ownership.

B. HOA Assessments (Special, Nonrecurring, Unexpected, Non-Budgeted, Etc.)

This does not apply to HOA Dues or Membership Fees. Select only one of the Following Options

Option 1: Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer. Any remainder of the balance due on a Special Assessment approved prior to closing will be paid in full by the Seller at Closing.

Option 2: Seller shall be responsible for the portion of any Special Assessments approved prior to Closing that are due in the calendar year of Closing. Any remaining Special Assessment payments in subsequent years are the responsibility of the Buyer. Parties direct Closing Attorney to make the appropriate adjustments per Paragraph 22 of this agreement. Special Assessments approved after Closing shall be the responsibility of the Buyer.

7. FINANCE: Buyer's obligation under this Contract is is not contingent upon obtaining financing of a 30 year or 15 year or other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a maximum _____ % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing by _____ (date) and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions by _____ (date) (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If the Buyer changes their Lender during the Financing Period they must notify the seller in writing within _____ calendar days. Absent written approval by the Seller, Buyer cannot change lender if the closing date agreed upon in Paragraph 4 will change as a direct result. If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): _____ FHA VA Conventional Seller
 Other _____. An FHA VA Financing Addendum is is not attached. Additional financing terms are are not attached.

8. DUE DILIGENCE:

The DUE DILIGENCE PERIOD begins upon the Effective Date and shall expire at 6 P.M. on **November 10, 2023** (date). Any extension to this date must be made in writing and agreed to by both Parties.

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate Inspections and Repair Requests, Seller to obtain Repair estimates, Buyer and Seller to negotiate Repairs, and Buyer to potentially timely/properly Due Diligence terminate or buy.

During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for Inspections. Buyer is not required to inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

- (1) Conduct/obtain Inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR310 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period.

[CJ] BUYER [_____] BUYER [DJ] SELLER [_____] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [_____] SELLER

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract only by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ _____ USD Good Funds.

DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD: The Buyer agrees to buy and Seller agree to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed in writing by the Parties in this Contract.

9. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for Inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will grant the Buyer the right to perform a final walkthrough inspection of the property within 48 hours prior to the closing date. Seller will keep all utilities operational through Closing unless otherwise agreed:

Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the Inspections

Other _____ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

10. APPRAISED VALUE:

This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Calendar Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

This Contract is **not** contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

11. WOOD INFESTATION REPORT: If the Property to be sold has been previously occupied, this Contract is contingent not contingent upon the Buyer Seller having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the Buyer Seller. Buyer Seller shall deliver timely Notice of and shall deliver to Closing a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than _____ calendar days prior to Closing. If the Buyer is responsible for having the Property inspected as indicated above, but does not have the Property timely inspected for the report's required Delivery time frame, the Buyer waives any and all rights under the terms of this section. The Seller makes no warranties with regard to matters covered by such infestation report or any other improvement unless specifically stated in this Contract.

If the wood infestation report reveals the presence or indication of or damages by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish the Buyer with a CL100 wood infestation report by a qualified/licensed/bonded pest control operator (dated no earlier than 30 calendar days prior to Closing) that the Property is free from infestation or any damage herein mentioned; or documentation that the infestation has been treated and damage has been repaired as appropriate in a workmanlike manner on or before closing and reported by an appropriate licensee. State law and regulations control CL100 issues. If the Seller does not make the repairs and treatment, the Buyer shall have the option to (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Contract by Delivering Notice of Termination to the Seller. If the Property to be sold has not been previously occupied, Seller shall certify that the Dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide at Closing to the Buyer a written certification from a qualified/licensed/bonded pest control operator. The obligations of the Seller under this Section terminate after the Closing.

[CJ] BUYER [_____] BUYER [DJ] SELLER [_____] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [_____] SELLER

12. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

13. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

14. HOME WARRANTY COMPANY OPTIONAL COVERAGE ("HWC"): Parties agree that a Home Warranty ordered by _____ with at least twelve months of coverage after Closing Date will will not be provided by Closing and \$ _____ will be paid by _____ to the Home Warranty Company. Buyer to pay any deficit and surplus reverts to payor. Proposed HWC and type of HWC: _____

NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

15. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Calendar Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount sufficient for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

16. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing). Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers have met requirements of SC Code 27-50-70 and Brokers are not responsible or liable for any information in the CDS. CDS is not a substitute for the Buyers and Inspectors inspecting the Property (related issues/onsite/offsite) "Property issues" for all needs.

Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

17. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect Your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain Inspections of all Property issues per their needs.

18. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

19. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker may may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

[CJ] BUYER [_____] BUYER [DJ] SELLER [_____] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [_____] SELLER

20. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

21. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms; and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

22. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance (including any non-special assessments assessed due to increased premiums), EMS service, fuel/consumables, and all other non-special assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel.

23. DEFAULT:

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
 - (i) Deliver Notice of Default to Seller and terminate Contract; and
 - (ii) Pursue any remedies available to Buyer at law or equity; and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
 - (i) Deliver Notice of Default to Buyer and terminate Contract; and
 - (ii) Pursue any remedies available to Seller at law or equity; and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.
- (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
- (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

24. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party. Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System 803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation). Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

25. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

26. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

[C/] BUYER [_____] BUYER [D/] SELLER [_____] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [_____] SELLER

SELLER: ^{Authenticate} Darius Jones Date: 11/20/2023 Time: _____
D and B Real Estate Investments LLC

SELLER: _____ Date: _____ Time: _____

SELLER: _____ Date: _____ Time: _____

SELLER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

Buyer's Agent/Company **Buyer's Agent License #/LLR Office Code**

Buyer's Agent's Email Address **Buyer's Agent Telephone Number**

Joshua Dial **Diamond Realty & Investments**

Seller's Agent/Company **Seller's Agent License #/LLR Office Code**

thedialcompany@gmail.com **(864)200-8059**

Seller's Agent's Email Address **Seller's Agent Telephone Number**

REALTOR® is the registered collective membership mark which may be used only by those real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict professional Code of Ethics. The South Carolina Association of REALTORS® (SCR) owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, alteration, or reproduction of any part of SCR copyright content as well as the use of the name "South Carolina Association of REALTORS®" in connection with any written or electronic format without the prior written consent of SCR. SCR makes no representation as to the legal adequacy of this form or the information added for a specific transaction and recommends that Parties consult a SC attorney prior to signing to ensure the completed form meets your legal need.

[CJ] BUYER [_____] BUYER [DJ] SELLER [_____] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [_____] SELLER

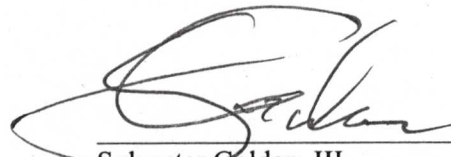
EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

AFFIDAVIT OF SYLVESTER GOLDEN III

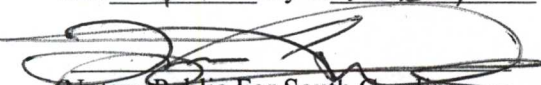
Personally appeared before me, Sylvester Golden, III first being duly sworn and testifies as follows:

1. I am over the age of Eighteen (18) and competent to make the following statements.
2. I make this affidavit on my own personal knowledge, information and beliefs.
3. I am the Licensed South Carolina Residential Builder (10702) and did contract with Christopher Jones for multiple projects since September 10, 2023.
4. I have been actively working with Christopher Jones regarding 331 Loop Street Greenville, SC 104 N. Line Street Ext Greer SC and 815 West Rutledge Ave Gaffney SC.
5. I am responsible for all disciplines of work at these locations.
6. Chris Jones provided me with his authorization to renovate 331 Loop Street Greenville SC
7. My subcontractors performed a number of tasks at 331 Loop Street including repairing the roof with new 25 year architectural shingles. Repair of the entire floor systems and all walls and bathrooms. To name a few.
8. I have been paid by Chris Jones and there are currently no outstanding balance for 331 Loop St.
9. I am available to give live Court testimony as to these specific facts.
10. I give this affidavit and statement under oath and under the penalties of perjury.
11. All Statements are true and correct.



Sylvester Golden, III
609 Laurens Rd
Greenville South Carolina 29605
864-520-8436

Date: 3/6/24

Sworn to and subscribed before Me,
This 6 day of MARCH

Notary Public For South Carolina



Notary Public for South Carolina
My Commission Expires: Aug 10, 2033

[Print this page](#)

Board: Residential Builders

SYLVESTER GOLDEN III

GREENVILLE, SC 29607

Status: ACTIVE

License number: 10702

License type: Home Builders

Expiration: 06/30/2024

First Issuance Date: 03/08/1991

Bond on file expires: 05/04/2024

Board Public Action History:

[View Orders](#)

[View Other License for this Person](#)

	Order Date	Name	License Type	License Number
View	5/14/2018	GOLDEN, SYLVESTER III	RBB	10702

[File a Complaint against this licensee](#)

EXHIBIT C

RECEIVED

Mar 13 2024

SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Christopher Jones,

Plaintiff/Appellant

v.

Greenville County Case No. 2024-CP-23-00312

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

Defendants/Respondents

NOTICE OF APPEAL

Notice is hereby given that Christopher Jones, plaintiff in the above-captioned case, hereby appeals to the South Carolina Court of Appeals from the order of The Honorable G.D. Morgan, Greenville County Circuit Judge. The Order was filed on March 13, 2024 and was posted in the Greenville County Public Index where Appellant acknowledge being served and receiving a copy thereof on the same March 13, 2024.

March 13, 2024

Respectfully submitted.

/s/Christopher Jones
Christopher Jones, Appellant
309 Perry Avenue
Greenville, SC 29601

RECEIVED

Mar 13 2024

SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Christopher Jones,

Plaintiff/Appellant

v.

Greenville County Case No. 2024-CP-23-00312

D&B Real Estate Ventures, LLC

Darius Jones,

Bradley Robinson,

Defendants/Respondents

CERTIFICATE OF SERVICE

I, Christopher Jones, hereby affirm under the penalty of perjury that I have served, by Certified U.S. Mail, returned receipt requested, a copy of the Notice of Appeal, Order and Certificate of Service, in this action, on the Defendants D&B Real Estate Ventures, LLC et al;, and did serve the Greenville County Judge Morgan and the Greenville County Clerk at the address below,

DELIVERED TO

M. Stokely Holder
800 E. North Street
Greenville, SC 29601
Attorney for Defendants

Greenville County Court of Common Pleas
Honorable G.D. Morgan
Greenville County Master In Equity
305 East North Street
Greenville, SC 29601

March 13, 2024

s/ Christopher Jones

EXHIBIT D

Greenville County Register of Deeds a

Search Criteria: Search Type: All Names; Name: D&B Real estate

Page 1 of 1
Date: 04/22/2024
4:07 PM

Instr #	Book	Page	Filed	Name	Other Name	Doc Type	Legal Description	Satisfied	Perm
1. 2024020181	0157	0879	04/10/2024	D&B REAL ESTATE R VENTURES LLC	JONES CHRISTOPHER E	MECHANICS LIEN ORDER	ORDER GRANTING DISMISSAL OF MECH LIEN BK 0157-0241		Y
2. 2016016435	2483	4473	03/10/2016	D&B REAL ESTATE E VENTURES LLC	JONES DARIUS R	DEED	LT 6 = 0.110 ACS MAPLE ST WASHINGTON HEIGHTS		Y
3. 2016016434	2483	4465	03/10/2016	D&B REAL ESTATE E VENTURES LLC	JONES DARIUS AKA R	DEED	SEE INSTRUMENT		Y



Greenville Common Pleas

Case Caption: Christopher Jones vs. D & B Real Estate Ventures Llc , defendant, et al
Case Number: 2024CP2300312
Type: Order/Other

So Ordered

G.D. Morgan Jr.

Electronically signed on 2024-04-09 18:12:47 page 7 of 7

April 10, 2024 11:53:42 AM

Rec: \$10.00

E-FILED IN GREENVILLE COUNTY, SC

Timothy J. Hanney

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	C.A. No.: 2024-CP-23-00312
)	
Christopher Jones,)	ORDER GRANTING DEFENDANTS'
)	MOTION TO DISMISS
Plaintiff,)	
)	(Cancelling Lis Pendens in
vs.)	2024-LP-23-00058, and
)	Cancelling Mechanic's Lien in
D&B Real Estate Ventures, LLC; Darius)	ROD Book MI 0157 at Pages 0241-0246)
Jones ; Bradley Robinson)	
)	
Defendants.)	

This matter is before this Court upon a Motion to Dismiss filed by Defendants D&B Real Estate Ventures, LLC, Darius Jones, and Bradley Robinson ("Defendants").

BACKGROUND

On January 16, 2024, the Plaintiff Christopher Jones ("Plaintiff") filed a Mechanic's Lien (the "Lien") against property owned by Defendant D&B Real Estate Ventures, LLC, with an address of 331 Loop Street, Greenville, South Carolina 29609 (the "Property"). The Lien was filed in the Greenville Register of Deeds Office under Book MI 0157 at Pages 0241-0246. It was attached as Exhibit A to the Plaintiff's Complaint.

On the face of the Lien, it states the following above the Plaintiff's notarized signature:

**Claimant, Christopher Jones furnished the following Labor, Materials or Services:
Construction Services, Finances, Material, Labor and Funds.**

1. **By virtue of a duly executed, legally binding verbal and written contract and approval, Claimant contracted with other contractors and subcontractors to improve the above-**

ELECTRONICALLY FILED - 2024 Apr 10 9:11 AM - GREENVILLE - COMMON PLEAS - CASE#2024CP2300312

mentioned property by purchasing materials, installing materials, assist with new addition design-build home, pre-engineering, infrastructure work, negotiations, and consulting, installing HVAC hardware, new electrical, plumbing, insulation, clearing & cutting trees and provided comprehensive planning for residential housing occupancy. Darius Jones and Bradley Robinson for D & B Real Estate Ventures, LLC assured Petitioner that the funds would be paid to the Petitioner by Respondents. The Respondents proposed to reimburse Petitioner for the funds he committed to this property. Petitioner has provided materials, services and finances up until this date to the property located at 331 Loop Street Greenville, SC 29609. As of the time of the filing of this document, Claimant Christopher Jones has not received payment, nor due consideration.

2. Labor, finances, material, and services were furnished in connection with improvement and operations of the property located **331 Loop Street Greenville, South Carolina 29609**
3. **Tax Map #0176-00-0.120.00** in the County of Greenville. A legal description of the property is attached as Exhibit "A".
The name and address **D & B Real Estate Ventures, LLC 331 Loop Street Greenville, SC 29609**
4. Claimant claims a Mechanic's Lien against the said property for the amount of **\$45,610.51** by virtue and authorization of the Owners along with a legally binding agreement, and authorization to perform the work. Claimants contracted with D & B Real Estate Ventures, LLC for the benefit of the property and the Owners Darius Jones and Bradley Robinson.

Dated: January 16, 2024; Christopher Jones, Lien Administrator, 330 East Coffee Street Greenville, SC 29601:

By:  Christopher Jones, Lien Administrator

I am ___ am not XX required to be licensed or registered as required by South Carolina Code Annotated § 29-5-15.

See *Lien*, pp. 1-2.

The next page of the Lien includes a Verified Statement of Account, which the Plaintiff also signed before a notary as further certification of the purported work and debt amounts giving rise to the Lien. See *Lien*, p. 3.

On the day after filing the Lien, January 17, 2024, the Plaintiff filed a Complaint with the following title in its caption: "Foreclosure of Mechanic's Lien". The Complaint was filed against each of the above-referenced Defendants despite the Property being owned by only Defendant D&B Real Estate Ventures, LLC, as shown on the Lien. The Complaint asserts the following six (6) causes of action: (1) Foreclosure of Mechanic's Lien; (2) Quantum Meruit; (3) Unjust Enrichment; (4) Breach of Contract; (5) Violation of S.C. Code § 27-1-15; and (6) Misrepresentation. The relief sought in the Complaint is the same amount referenced in the Lien, \$45,610.51.

In each of the first five (5) Causes of Action plead by Plaintiff, reference is made by Plaintiff to the purported labor and materials provided by Plaintiff towards the Property.

The Sixth Cause of Action pled by Plaintiff includes just one paragraph that reads as follows:

34. Defendants deliberately misrepresented that the correct and truthful status of the title to 331 Loop Street Greenville SC bearing Tax Map No. 0176-00-0.120.00. Plaintiff will evidence demonstrating that the title to this property is not unencumbered. According to attorneys Bracknell Shuler and Andrew Jones Jr., stated to Plaintiff that the title to this property is not clear to close with title insurance. Defendants intentionally misrepresented to Plaintiff that there was a recent title search prior to Plaintiff contract.

See *Complaint*, p. 7.

The Plaintiff also filed a *Lis Pendens* on January 17, 2024, under 2024-LP-23-00058 (the “*Lis Pendens*”).

On February 7, 2024, Defendants filed a Motion to Dismiss or in the alternative, Motion for Summary Judgment.

A hearing was held on March 7, 2024, with attorney M. Stokely Holder present for Defendants, and Plaintiff appearing *pro se*.

STANDARD OF REVIEW

A Motion to Dismiss under Rule 12(b)(6), SCRPC, may be granted if the alleged facts and inferences to be drawn therefrom, viewed in the light most favorable to the plaintiff, do not entitle the plaintiff to relief on any theory. *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 634 S.E.2d 5 (Ct.App. 2006).

LAW AND ANALYSIS

S.C. Code Ann. § 40-59-30(B) provides that a person who has “not procured a license or registered with the commission and is required to do so by law may not file a mechanic’s lien or bring an action at law or in equity to enforce the provisions of a contract for residential building.” *S.C. Code Ann. § 40-59-30(B)*. At the hearing, the Plaintiff admitted to the fact that he is not licensed as a residential builder or a specialty contractor.

In an effort to avoid the implications of the above-referenced statute, the Plaintiff stated that he merely subcontracted the work at issue to a licensed builder. Not only does this run contrary to the Plaintiff’s own sworn pleadings, that arrangement would still be violative of the relevant statutory scheme. See *S.C. Code Ann. § 40-59-20(6)* (“‘Residential builder’ means one who constructs, superintends, or offers to construct or superintend the construction, repair,

improvement, or reimprovement of a residential building or structure ... when the cost of the undertaking exceeds five thousand dollars. Anyone who engages or offers to engage in such undertaking in this State is considered to have engaged in the business of residential building.”(emphasis added).

The Plaintiff’s own allegations, and sworn statements attached thereto, state that he performed over Five Thousand Dollars (\$5,000.00) worth of construction work on the Property. The Plaintiff admits that he doesn’t have a residential builders license. Accordingly, the Plaintiff doesn’t have legal standing to pursue his claims for the work he alleged to perform on the Property, and Plaintiff’s lien is considered frivolous under S.C. Code Ann. § 29-5-15. Therefore, Plaintiff’s causes of action must be dismissed, the *Lis Pendens* shall be dismissed, and the Mechanic’s Lien shall be cancelled of record by the filing of this Order in the Register of Deeds Office.

The Plaintiff’s Six Cause of Action for Misrepresentation is also clearly defective. To establish a cause of action for Misrepresentation, sufficient allegations of fact must be present in the Complaint to address all elements of fraud/misrepresentation or the Complaint will be considered ‘fatally defective’. *Mutual Savings & Loan Ass’n v. McKenzie*, 274 S.C. 630, 633, 266 S.E.2d 423 (1980). From what can be discerned from the Plaintiff’s one paragraph Cause of Action for Misrepresentation, it is woefully lacking and in does not satisfy the pleading requirements for a claim of fraud/misrepresentation in this State.

Of further note, Plaintiff’s Prayer for Relief specifically states that he is seeking the same \$45,610.51 in damages for his Sixth Cause of Action (Misrepresentation) as he is seeking under his Second, Third, Fourth and Fifth Causes of Action. The allegations in each of those prior

causes of action relate specifically to the purported materials and labor the Plaintiff alleges to have provided towards the Property, and they each (together with the First Cause of Action) make clear that the amount is reflective of the debt owing for such materials and service. Accordingly, the same ground for dismissing the Plaintiff's first five Causes of Action (violation of S.C. Code Ann. § 40-59-30(B)) is an additional ground for dismissing the Plaintiff's Sixth Cause of Action.

CONCLUSION

After considering the pleadings, arguments from the parties, and the applicable law, the Court GRANTS the Defendants' Motion and hereby orders that: **(1) the Plaintiff's Complaint against Defendants shall be dismissed; (2) the *Lis Pendens* shall be cancelled of record by the filing of this Order in 2024-LP-23-00058; and (3) the Lien shall be cancelled of record by the filing of this Order in the Greenville County Register of Deeds Office.**

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE FOLLOWS

Certificate of Electronic Notification

Recipients

M. Holder - Notification transmitted on 03-13-2024 10:49:31 AM.

Raford Bussey - Notification transmitted on 03-13-2024 10:49:30 AM.

Joye Coleman - Notification transmitted on 03-13-2024 10:49:30 AM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2024CP2300312

Official File Stamp: 03-13-2024 10:49:21 AM

Court: CIRCUIT COURT

Common Pleas

Greenville

Case Caption: Christopher Jones vs. D & B Real Estate Ventures Llc , defendant, et al

Document(s) Submitted: Order/Electronic Form 4-Dismissed
Order/Electronic Form 4

Filed by or on behalf of: Grenville D. Morgan

This notice was automatically generated by the Court's auto-notification system.

-

The following people were served electronically:

M. Stokely Holder for D & B Real Estate Ventures Llc et al

Raford W Bussey, Jr. for D & B Real Estate Ventures Llc et al

Joye S Coleman for Darius Jones, Bradley Robinson

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Christopher Jones for Christopher Jones

Christopher Jones for Christopher Jones

RECEIVED

Apr 29 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G.D. Morgan, Circuit Court Judge

Case No. 2024-CP-23-0312
Appeals Case# 2024-0417

Christopher Jones,

Appellant

v.

D&B Real Estate Ventures, LLC

Respondents,

PROOF OF SERVICE

I certify that I have served Appellants' Reply to Respondents via email and by depositing the same in the U.S. Mail with sufficient postage affixed thereto. By personally depositing a copy to the Counsel of record for Respondents M. Stokely Holder at 800 East North St Greenville SC 29601 on April 26, 2024

April 26, 2024

s/ Christopher Jones
Christopher Jones
309 Perry Ave
Greenville, South Carolina 29601
Appellant