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**Apr 14 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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Case No. 2024-CP-08-00191

(Appellate Case No. 2024-002034)

John Lively and Tracey Lively ..... Plaintiffs/Appellants

v.

Charleston Custom Homes and Remodeling, LLC, William E. Danielson, Jr.,  
and Steven P. Edmunds ..... Defendants

Of whom

William E. Danielson, Jr. is ..... Respondent.

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INITIAL BRIEF OF RESPONDENT  
WILLIAM E. DANIELSON, JR.

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W. James Flynn  
S.C. Bar No. 15830  
CHARTWELL LAW  
4000 S. Faber Place Drive  
Charleston, SC 29405  
Phone: (704) 313-6645  
Fax: (610) 666-7704  
Email: [jflynn@chartwelllaw.com](mailto:jflynn@chartwelllaw.com)

David S. Cobb  
S.C. Bar No. 66569  
Turner Padgett Graham and Laney, P.A.  
40 Calhoun Street, Suite 200  
Charleston, SC 29401  
Phone: (843) 576-2803  
Fax: (843) 577-1629  
Email: [dcobb@turnerpadgett.com](mailto:dcobb@turnerpadgett.com)

*Counsel for Respondent*

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## **COUNTER-STATEMENT OF ISSUES ON APPEAL**

- I. Did the circuit court properly deny the appellants' motion to amend their complaint to add an equitable lien claim given that such an amendment would be futile?
  
- II. Did the trial court properly grant the appellee's motion to strike the lis pendens that the appellants placed on the respondent's residence given that this action does not affect title to the respondent's residence?

## **STATEMENT OF THE CASE**

In June 2021, Appellants John and Tracey Lively (hereinafter "the Livelys") contracted with Charleston Custom Homes and Renovation, LLC (hereinafter "CCH") to renovate their home on Daniel Island. Respondent William E. Danielson (hereinafter "Danielson") and Steven Edmunds are the sole members of CCH. CCH was the general contractor on the project. Edmunds and CCH are not parties to this appeal.

The Livelys filed this action on January 23, 2024, and filed an Amended Summons & Complaint against CCH, Danielson, and Edmunds the same day. The Amended Complaint contains causes of action against all three defendants for fraud, negligent misrepresentation, breach of contract accompanied by a fraudulent act, breach of contract, and violation of South Carolina's Unfair Trade Practices Act. The Livelys also seek through their Amended Complaint to pierce the corporate veil to recover personal assets of Danielson and Edmunds. The Livelys' Amended Complaint seeks monetary damages but contains no demand for non-monetary equitable remedies. CCH, Danielson, and Edmunds have denied liability.

The Livelys filed a lis pendens on May 1, 2024 on the home owned and inhabited by Danielson and his wife. The Livelys subsequently filed an Amended Motion for Leave to Amend on June 4, 2024, seeking to add a cause of action for equitable lien against Danielson, to

add Palmetto Green Landscaping & Design as a defendant, and to add a negligence claim against CCH and Palmetto Green due to alleged construction defects.

This appeal concerns two Orders by Judge Jennifer B. McCoy. In a Form 4 Order filed on September 23, 2024, Judge McCoy granted the Livelys' motion to add a cause of action for negligence and to Palmetto Green Landscaping and Design as a Defendant, but denied their motion to add an equitable lien claim against Danielson. In the second Order filed on October 17, 2024, Judge McCoy granted Danielson's Motion to Strike the lis pendens that the Livelys placed on his residence. The Livelys later moved to alter or amend both orders, which Judge McCoy denied via a Form 4 Order filed on November 5, 2024. This appeal followed.

### **STANDARD OF REVIEW**

"[A] motion to amend is addressed to the sound discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice." *Pruitt v. Bowers*, 330 S.C. 483, 489, 499 S.E.2d 250, 253 (Ct. App. 1998). "The trial judge's finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred." *Berry v. McLeod*, 328 S.C. 435, 450, 492 S.E.2d 794, 802 (Ct. App. 1997).

As to the standard of review of the trial court's Order striking the Livelys' lis pendens, Danielson submits that this Court should apply the standard of review used when examining a motion to dismiss. A lis pendens filed in conjunction with an action involving the same real estate is merely another form of pleading. It is premised upon and must be filed in time in conjunction with an underlying complaint involving an issue of property. *See Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 48, 567 S.E.2d 881, 896 (Ct. App. 2002), *citing South Carolina Nat'l Bank v. Cook*, 291 S.C. 530, 354 S.E.2d 562 (1987).

An appellate court applies the same standard of review as the trial court when addressing a motion to dismiss. *See Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 5, 732 S.E.2d 876, 878 (2012), *citing Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint. *Id.* "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory," dismissal is improper. *Id.* Questions of law may be decided with no particular deference to the trial court." *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

## ARGUMENT

### **I. The trial court correctly denied the Livelys' Amended Motion to Amend their Amended Complaint as an amendment would be futile.**

The trial court correctly denied the Livelys' attempt to add an equitable lien claim against Danielson via an amended complaint on the basis that adding this equitable claim would be futile. First, the requirements for an equitable lien to arise are not present. Second, the Livelys have an adequate legal remedy should they prove liability and entitlement to damages.

A court's decision to deny a motion to amend should not be based on the court's perception of the merits of an amended complaint. *Patton v. Miller*, 420 S.C. 471,490-91, 804 S.E.2d 252, 262 (citing *Tanner v. Florence Cty. Treasurer*, 336 S.C. 552, 558-60, 521 S.E.2d 153, 156-57 (1999)). In rare cases, however, a trial court may deny a motion to amend if the amendment would be clearly futile. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) ("Although leave to amend should generally be 'freely given,' . . . it may be denied where the proposed amendment would be futile."), *rev'd on other grounds*, 401

S.C. 1, 736 S.E.2d 242 (2012); 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1487 (3d ed. 2010) ("If a proposed amendment is not clearly futile, then denial of leave to amend is improper.").

“For an equitable lien to arise, there must be a debt, specific property to which the debt attaches, and an expressed or implied intent that the property serve as security for payment of the debt.” *Chase Home Finance, LLC v. Risher*, 405 S.C. 202, 209, 746 S.E.2d 471, 475 (Ct. App. 2013) (citing *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct. App. 2011)). The requirements for an equitable lien are not present in this matter. The Livelys and CCH entered into a contract. There are no contractual provisions calling for Danielson’s home to serve as security for a debt. There is no contract between the Livelys and Danielson. There is no allegation of any agreement outside of the written contract between the Livelys and CCH that Danielson’s home would serve as security should there be a dispute between the parties. There is no allegation that the parties expressly or impliedly agreed that Danielson’s personal residence would serve as security for payment of debt.

Moreover, the *Chase Home Finance* court noted that “equity is generally only available when a party is without an adequate remedy at law.” *Id.* (citing *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 449 (Ct. App. 2011)). Clearly, the Livelys would have an adequate remedy at law if they somehow prevailed on the claims presented against Danielson and/or the remaining defendants. The Livelys’ Amended Complaint seeks monetary damages, an adequate remedy at law.

The Livelys additionally allege for the first time through their Initial Brief to this Court that they also have a potential remedy against Danielson for imposition of a constructive trust.

This Court should not consider a constructive trust claim for the primary reason that the Livelys did not attempt to add such a claim through the motion which is subject to this appeal.

If the potential addition of a constructive trust claim were properly before this Court, the analysis of this claim would be similar to that of the Livelys' futile equitable lien claim. A constructive trust claim would also be futile because equitable relief is unnecessary and unavailable due to the existence of an adequate remedy for money damages available at law. See *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876 (2012); *Monteith v. Harby*, 190 S.C. 453, 3 S.E.2d 250, 251 (1939); *Key Corporate Capital, Inc. v. County of Beaufort*, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) ("[E]quitable relief is generally available where there is no adequate remedy at law . . .").

Based upon the foregoing, the Livelys attempt to amend to assert a cause of action for equitable lien is futile. Accordingly, the Court should uphold the trial court's denial of the Livelys' Amended Motion to Amend.

**II. The trial court was correct in striking the lis pendens the Livelys put on Danielson's personal residence as this action is not one "affecting title to real property."**

S.C. Code Ann. §15-11-10 is the statute controlling notices of lis pendens and requires that the action in which a lis pendens is filed be one "affecting the title to real property." The trial court correctly struck the lis pendens filed by the Livelys against Danielson's personal residence on the basis that this action does not affect title to Danielson's real property.

To recap, the Livelys' Amended Complaint contains causes of action against Danielson for fraud, negligent misrepresentation, breach of contract accompanied by a fraudulent act, breach of contract, and violation of South Carolina's Unfair Trade Practices Act. These claims are based upon the Livelys' allegations, which are again denied, that Danielson overcharged

them for work on their home and used the money to pay for construction of his own home. The Livelys argue that this gives them an interest in Danielson's home. In support of this argument, the Livelys cite *Finley v. Hughes*, 106 F. Supp. 355 (E.D.S.C. 1952).

In *Finley*, a decision by the United States District Court for the Eastern District of South Carolina, the defendant sought to cancel a lis pendens, arguing that the action as set forth in the complaint did not warrant or authorize the filing of the lis pendens. The plaintiff alleged that the defendant purchased real estate with funds he held in trust for the plaintiff, that the defendant used building materials belonging to the plaintiff for improvements, and that defendant diverted funds and brick products from the plaintiff's business for defendant's private use. The plaintiff asserted a claim to establish a constructive trust against the real estate described in the complaint, alleging that the sums of money shown by an accounting as due and owing by the defendant to the plaintiff supported the claim.

The judge noted that the only question for determination was whether or not the plaintiff's constructive trust claim affected the title to the real property described in the complaint. The judge found, in his opinion, that this claim did affect title to the real property described in the complaint and therefore denied the cancellation of the lis pendens.

*Finley* is inapplicable here as there is no constructive trust claim in the instant case. The Livelys' claims against Danielson arise out of allegations that they paid CCH more than they should have under their contract with CCH. The line of thinking behind why this would entitle them to file a lis pendens against Danielson's residence seems to be based upon their speculation that Danielson used funds that did not rightfully belong to CCH or him for the construction of his own home. Danielson has denied these allegations.

The Livelys' position is not supported under the law. Under their line of thinking, almost any plaintiff involved in a commercial dispute seeking payment of money against an individual defendant who owns a home could file a lis pendens simply by alleging that the individual defendant may have used funds at issue to pay for a portion of the individual defendant's home.

*Pond Place Partners v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002), addresses the purpose of a notice of lis pendens in South Carolina as follows:

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. *Id.* 351 S.C. at 21, 567 S.E.2d at 889, *citing* 51 *Am. Jur. 2d Lis Pendens* §2 (2000).

The *Pond Place Partners* opinion lists actions "affecting the title to real property" to include those attempting to set aside a fraudulent conveyance of real property, those to establish a constructive trust, (citing *Finley*), those to quiet title, and to establish existence of an easement, those to reform deeds to resolve a boundary dispute, those for specific performance, and those involving mortgage foreclosures. *Id.* 351 S.C. at 21-22, 567 S.E.2d at 889-890. The *Pond Place Partners* Court cited *Atkinson v. Fundaro*, 400 So.2d 1324 (Fla. Dist. Ct. App. 1981), which found "no privilege for the filing of a lis pendens on property that had absolutely no involvement in the underlying litigation." *Id.* 351 S.C. at 23, 567 S.E.2d at 890.

Again, the Livelys' claims against Danielson are for fraud, negligent misrepresentation, breach of contract accompanied by a fraudulent act, breach of contract, and violation of South Carolina's Unfair Trade Practices Act. The claims are associated with allegations that CCH charged the Livelys more for work on the Livelys home than should have been charged under the written contract between the Livelys and CCH. None of the Livelys' claims are the type listed in

the *Pond Place Partners* opinion as those “affecting title to real property.” And there is no other precedent supporting the Livelys’ lis pendens on Danielson’s home as being one “affecting title to real property.”

Based upon the foregoing, the trial court correctly struck the lis pendens placed on Danielson’s home.

### CONCLUSION

The trial court correctly denied the Livelys’ attempt to amend their Amended Complaint to add an equitable lien claim against Danielson because the requirements for such a claim are not present, and because an adequate remedy at law exists. The trial court also correctly struck the lis pendens that the Livelys placed on Danielson’s personal residence as their action is not one “affecting title to real property.”

Accordingly, based upon the foregoing, Danielson respectfully requests that the Court affirm the trial court’s two orders in full to deny the Livelys’ motion to amend and to strike the lis pendens on Danielson’s personal residence.

Dated: April 14, 2025.

Respectfully submitted:

s/W. James Flynn  
W. James Flynn  
S.C. Bar No. 15830  
CHARTWELL LAW  
4000 S. Faber Place Drive  
Charleston, SC 29405  
Phone: (704) 313-6645  
Fax: (610) 666-7704  
Email: [jflynn@chartwelllaw.com](mailto:jflynn@chartwelllaw.com)

s/David S. Cobb  
David S. Cobb  
S.C. Bar No. 66569  
Turner Padgett Graham and Laney, P.A.  
40 Calhoun Street, Suite 200  
Charleston, SC 29401  
Phone: (843) 576-2803  
Fax: (843) 577-1629  
Email: [dcobb@turnerpadgett.com](mailto:dcobb@turnerpadgett.com)

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**PROOF OF SERVICE**

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I hereby certify that on this 14th day of April, 2025, I electronically filed the forgoing *Initial Brief of Respondent William E. Danielson, Jr.* with the South Carolina Court of Appeals via email and I served a copy via email on the following counsel for Appellant:

David K. Haller  
S.C. Bar No. 13411  
HALLER LAW FIRM  
604 Savannah Highway  
Charleston, SC 29407  
T: 843-224-7860  
dhaller@hallerlawfirm.com

Dated: April 14, 2025

Respectfully submitted,

s/W. James Flynn

W. James Flynn

S.C. Bar No. 15830

CHARTWELL LAW

4000 S. Faber Place Drive

Charleston, SC 29405

Phone: (704) 313-6645

Fax: (610) 666-7704

Email: [jflynn@chartwelllaw.com](mailto:jflynn@chartwelllaw.com)

*Attorneys for Respondent*