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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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.

APPELLANTS' FINAL BRIEF

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July 15, 2025

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RULES

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STATEMENT OF THE ISSUE ON APPEAL

1. Did the trial court abuse its discretion in denying the appellants leave to amend their complaint to add an equitable remedy filed by the appellants where the original complaint alleged appellants' funds were used to build respondent Danielson's home and where respondent Danielson had refused to respond to discovery?
2. Did the trial court err in striking the plaintiffs' *lis pendens* when the complaint properly alleged an interest in the property to which the *lis pendens* attached?

STATEMENT OF THE CASE

In or about June of 2021, appellants John and Tracey Lively (hereinafter “the Livelys”) contracted with respondent Charleston Custom Homes and Renovation, LLC (hereinafter “CCH”) to renovate their home on Daniel Island. R. at 27-105. Respondent William E. Danielson (hereinafter “Danielson”) and defendant Stephen P. Edmunds (hereinafter “Edmunds”; not a party to this appeal) are the sole members of CCH. R. at 128. Danielson was the general contractor on the project.

CCH contracted to renovate the Livelys’ home for the ‘Guaranteed Contract Price’ of \$2,394,854.00, plus any change orders signed by the Livelys and CCH. Complaint, Ex A; R. at 30. CCH was also obligated to keep an accounting of all sums spent by the Livelys, which it admitted it failed to do. Complaint, Ex. C; R. at 38. CCH also acknowledged there were no change orders on the project. Complaint, Ex. B; R. at 107. CCH was paid primarily from a mortgage the Livelys secured from TD Bank against their home. R. at 16.

Despite the clear language of their contract, CCH and Danielson continued to represent to the Livelys that the project was overbudget and demanded that additional sums be paid to CCH for the work. As a result of Danielson’s representations, the Livelys paid directly to CCH amounts including:

Date	Amount
August 25, 2022	\$50,000.00
December 20, 2022	\$81,106.09
January 10, 2023	\$206,722.98
March 7, 2023	\$120,000.00

R. at 116-125. Over several months and despite numerous requests for information on the reason for these payments, CCH and Danielson refused to provide complete information and the Livelys were at a loss as to why they were being asked to pay CCH so much over and above the Guaranteed Contract Price. R. at 110.

The Livelys paid CCH \$697,549.07 out of their own pocket. In total, CCH has been paid \$3,178,952.09 for the project. Under the plain language of the contract, CCH has been overpaid \$784,098.09. Still, the renovation was not timely completed and was not finished for more than 500 days past the agreed deadline.

The public record shows that Danielson was in serious financial distress at the time he was overbilling the Livelys. For example, Danielson and Edmundson were parties to a foreclosure action in which they were personal guarantors on a note with a high-risk lender. The lender claimed they owed it \$2,689,000. In the spring of 2023, a judgment was entered against Danielson for more than \$2.5 million. See *FTF Lending, LLC v. DE Broad Street, LLC, et al.*, Case No. 2022-CP-10-4818. In addition, another customer of CCH also sued it and Danielson alleging many of the same financial irregularities alleged by the Livelys. See *Charleston Custom Homes and Remodeling, LLC v. Dicker*, Case No. 2023-CP-10-2403. Danielson was also the subject of two mechanic's liens actions while renovation of the Livelys' home was ongoing. See *Southern Lumber and Millwork, Inc. v. Danielson, et al.*, Case No. 2023-CP-10-00512 and *Buck Lumber and Building Supply, Inc. v. Danielson, et al.*, Case No. 2024-CP-10-01392.

Despite all of these financial hardships and a clear inability to pay his own bills while renovating the Livelys' home, Danielson was building a multimillion-dollar home for himself in the same neighborhood as the Livelys. Danielson admitted he had not maintained the accounting he promised. R. at 110. Danielson admitted there were no change orders on the Lively project. R.

at 107. The only accounting in the Livelys' possession showed that CCH had been overpaid by them for their renovation more than \$700,000. Public records showed there was only a small line of credit on Danielson's property, not sufficient to build his home. Danielson was the subject of numerous other collection suits and a judgment exceeding \$2.5 million.

Accordingly, the Livelys' original complaint in this case alleged:

Also, while under contract with the Livelys, Danielson was building his own home in the same neighborhood as the Livelys. On information and belief, the home is worth more than \$3 million dollars. However, until September of 2023, there was only a line of credit of less than \$400,000 on the property. Danielson is believed to have used cash paid by the Livelys to CCH for the construction of their home to pay for the construction of his own.

R. at 19; Complaint, ¶ 31(b). However, a claim for equitable lien or constructive trust was mistakenly omitted from the complaint.

The Livelys' suit was filed against CCH, Danielson, and Edmunds on January 24, 2024.¹ R. at 13. CCH answered on March 26, 2024, asserting some affirmative defenses, but no counterclaims and essentially admitting the Livelys' accounting. R. at 128. On March 13, 2024, the Livelys served their First Set of Interrogatories and Requests for Production on the defendants. Many of the questions in those requests centered on the accounting aspects of the case. The defendants failed to timely respond to discovery, forcing the Livelys to file their first motion to compel discovery. On May 1, 2024, the Livelys filed a *lis pendens* on Danielson's home based on their allegation that Danielson had absconded with their overpayment for his personal construction project. At that point, the Livelys realized a claim an equitable claim regarding the misappropriated funds had been inadvertently omitted from their original complaint. R. at 134. Accordingly, on May 28, 2024, the Livelys filed a motion for leave to amend their complaint to

¹ An amended complaint correcting an error in the name of CCH was filed that same day and is the pleading served on Danielson.

add the claim. The Livelys filed an amended motion to amend their complaint on June 4, 2024, to add a subcontractor defendant and a negligence claim. R. at 149. Danielson moved to strike the *lis pendens* without stating any grounds for the relief. R. at

A hearing was set for the Livelys' motion to compel and motion for leave to amend, and on Danielson's motion to strike before the Honorable Jennifer B. McCoy on September 19, 2024, at 11:00am. Minutes before the hearing, Danielson filed a memorandum with exhibits in support of its motion to strike. R. at 164. Danielson's brief relied on many documents he should have served in discovery in April, which the Livelys had never received, and giving them no opportunity to fully respond with additional evidence. Essentially, Danielson had one-sided trial on the issue of an equitable remedy.

Danielson argued the *lis pendens* was improper because his home was not a subject of the action, notwithstanding the allegation he had defrauded the Livelys to pay for it. Judge McCoy denied the motion to amend as to the equitable claim and granted the motion to strike the *lis pendens*. R. at 1. The effect of the denial of the motion to amend was to grant summary judgment on the claim without allowing the Livelys the opportunity to prove their claims in discovery.

The Livelys timely filed a motion to alter or amend pursuant to Rule 59, SCRCP. R. at 546. Judge McCoy denied the motion by form order dated November 5, 2024. R. at 10. This appeal ensued.

On February 10, 2025, the Livelys were forced to file their second motion to compel responses to the same discovery requests because Danielson refused to fully respond, despite being ordered to do so.² R. at 548.

² Appellant is including this material in the record to show the degree to which the respondents will go to hide their fraudulent activity.

STANDARD OF REVIEW

On appeal, this court reviews the denial of a motion for leave to amend a complaint for an abuse of discretion or to determine that “a manifest injustice has occurred.” *Duncan v. CRS Serrine Eng'rs, Inc.*, 337 S.C. 537, 542, 524 S.E.2d 115, 118 (Ct. App. 1999). However, “leave to amend should be freely granted when justice requires and does not prejudice any other party.” Rule 15(a), SCRPC. The burden for showing prejudice is on the party who opposes the request. *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182–83, 826 S.E.2d 585, 588–89 (2019). “Although leave to amend should generally be ‘freely given,’ this court has held that it may be denied where the proposed amendment would be futile.” *Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010), rev'd, 401 S.C. 1, 736 S.E.2d 242 (2012). A futile amendment is one which, even if true, would be invalid at law.

ARGUMENT

- I. **The trial court abused its discretion in denying the appellants’ leave to amend their complaint to add an equitable remedy where the original complaint alleged appellants’ funds were used to build respondent Danielson’s home and where respondent Danielson had refused to respond to discovery.**

The trial court abused its discretion in failing to allow for the amendment of the Livelys complaint to seek equitable remedies, such as an equitable lien, against Danielson.

First, Danielson did not articulate, and the trial court did not find, any actual prejudice by the amendment. In some pleading, Danielson claimed the *lis pendens* prohibited him from refinancing the mortgage on the property to take equity out of it. It is unclear how that is prejudicial to avoid an amendment to the complaint. If the Livelys fears are accurate—and Danielson still refuses to produce discovery responses to show they are not—then the Livelys money was used to build Danielson’s house and he was simply seeking to take their money out of it again and use it

for his own purpose. Surely the “prejudice” anticipated by Rule 15 does not include the perpetuation of a fraud.

Second, the trial court abused its discretion by determining the motion on the basis of the one-sided record crafted by Danielson using discovery information he has refused to produce to the Livelys. At the pleading stage, the allegations of the complaint are taken as true. *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009). Here, however, having not responded to discovery for six months at the time of the hearing and nearly a year as of this filing, Danielson appeared at court with exhibits and other information never provided to the Livelys and the trial judge relied on that information. The Livelys were forced to argue the motion with one hand tied behind their backs and without any regard to their due process rights to confront the evidence in the case. The trial court abused its discretion as a result.

Third, the amendment was not clear futile. Again, allegations in the complaint are taken as true. *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

The complaint alleged:

Also, while under contract with the Livelys, Danielson was building his own home in the same neighborhood as the Livelys. On information and belief, the home is worth more than \$3 million dollars. However, until September of 2023, there was only a line of credit of less than \$400,000 on the property. **Danielson is believed to have used cash paid by the Livelys to CCH for the construction of their home to pay for the construction of his own.**

R. at 19. Complaint, ¶ 31(b)(emphasis added).

These claims are not novel; South Carolina courts have long recognized an equitable remedy against one who takes money or material from another and puts it into their land unjustly. To properly allege a claim for equitable lien, a plaintiff must *allege* a debt, specific property to which the debt attaches, and an intent that the property is security for a debt. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct. App. 2011). “If one person,

having money belonging to another in his hands, wrongfully uses it for the purchase of lands, taking the title in his own name, then equity will impress a constructive trust upon the new property for the benefit of the original cestui que trust who has thus been defrauded.” *Finley v. Hughes*, 106 F. Supp. 355, 356 (E.D.S.C. 1952).

Here, the Livelys alleged that Danielson used fraud to obtain money from them to build his house. This is money stolen (as debt), put into the house (the property), which the Livelys want back (security).³ If Danielson ever fully responds to discovery, perhaps someday he will be vindicated of the fraud he now seems so clearly to have committed. At this stage, however, it is not the Livelys’ burden to prove that; their only burden is to allege facts to support the law. Having met their burden, the trial court erred in declining the amendment. Accordingly, the trial court’s ruling should be reversed.

II. Did the trial court err in striking the plaintiffs’ *lis pendens* when the complaint properly alleged an interest in the property to which the *lis pendens* attached?

The trial court erred in striking the *lis pendens* on the grounds that the property to which it attached—Danielson’s home—was not an issue in the case. As argued above, the Livelys properly alleged money intended for their home project was used to build Danielson’s home. The Livelys now have remedies under theories of equitable lien, constructive trust, or both, meaning they properly allege an interest in the property. Accordingly, the court erred in striking the *lis pendens*.

As Danielson cited to the trial court:

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

³ A claim for constructive trust would also be viable. “A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty.” *SSI Medical Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990). Courts of equity rely on constructive trusts to remedy a fraud, which is what the Livelys have alleged here. *McNair v. Rainsford*, 330 S.C. 332, 356–57, 499 S.E.2d 488, 501 (Ct. App. 1998).

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.

Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002). However, what Danielson failed to cite was that South Carolina courts have long allowed a *lis pendens* to be placed on property by plaintiffs attempting to protect their equitable rights to property:

The doctrine of *lis pendens* applies to all suits or actions which directly affect real property, and not only those which involve the question of title, but also those which are brought to establish an equitable estate, interest, or right in specific real property or to enforce any lien, charge, or encumbrance against it, there being in some cases a *lis pendens*, although at the commencement of the suit there is no present vested interest, claim, or lien in or on the property which it seeks to charge. It has also been held to apply in the case of a proceeding to ... establish a trust, or ... to suits for the settlement and adjustment of partnership interests.

Finley v. Hughes, 106 F. Supp. 355, 356 (E.D.S.C. 1952). In *Finley*, the plaintiff asserted, among other things, that “building materials belonging to the plaintiff have gone into the improvements” on the subject property. *Id.* at 356. *Finley* asserted both an equitable lien and a constructive trust on the property. The *Finley* court ruled the *lis pendens* was proper.

Here, the Livelys have properly asserted claims in equity for the return of the funds intended for their home but potentially invested into Danielson’s home. Third party purchasers—and mortgage lenders—are entitled to know of this case and imperfections in Danielson’s title. Since the proposed amended complaint properly alleged these rights, the trial court erred in striking the *lis pendens* and the trial court’s order should be reversed.

CONCLUSION

The trial court erred in not granting appellants' motion to amend and striking its *lis pendens*. The burden was on Danielson to show prejudice in the amendment or that the amendment was futile; he failed in both regards. South Carolina courts have long allowed plaintiffs to assert equitable rights in property when their funds were used—legitimately or fraudulently—to buy or improve another person's property. Danielson is not prejudiced because he cannot benefit from his fraud. Further, a *lis pendens* is a proper way to warn third parties that the plaintiff claims an interest in a particular piece of property. The trial court erred in striking the plaintiffs' *lis pendens*. For these reasons, the decisions of the trial court should be reversed and remanded.

The appellants pray for the relief requested herein, and such other relief as the court deems just, prudent, and proper.

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PROOF OF SERVICE

I, the undersigned counsel for appellants John Lively and Tracey Lively, affirm that I served the Appellant’s Final Brief on counsel for the respondents by email on July 15, 2025, to the address listed below.

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