

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

MOATS CONSTRUCTION, INC. and THE GREEN MAN, LLC,

Plaintiffs,

v.

APB PARTNERSHIP, LLC, WESLEY EDWARDS, 2916 N. MAIN, LLC, W.H. BASS, INC., WHATABURGER RESTAURANTS, LLC, and UNITED COMMUNITY BANK,

Defendants.

C/A No. 2024-CP-04-02229

ORDER DISCHARGING MECHANIC'S LIENS, RELEASING LIS PENDENS, AND DISMISSING PLAINTIFFS' CAUSES OF ACTION FOR LIEN FORECLOSURE

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SC Court of Appeals

This matter came on for hearing before the Court on the 5th day of June, 2025 pursuant to Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC's Motion to Dissolve Mechanic's Liens, Dismiss Plaintiffs' Claims for Foreclosure of Mechanic's Liens, and to Dismiss Defendants APB Partnership, LLC, Wesley Edwards and 2916 N. Main, LLC. In attendance at the hearing were the Plaintiffs, Moats Construction, Inc. and The Green Man, LLC, and their attorney David L. Paavola, Esq., of Kenison, Dudley & Crawford, LLC, and Daniel L. Draisen, Esq. of The Injury Law Firm, P.C., attorney for Defendants APB Partnership, LLC, Wesley Edwards, and 2196 N. Main, LLC. Christopher B. Major, Esq., attorney for Defendant Whataburger Restaurants, LLC, and C. Elisabeth Weston, Esq., attorney for United Community Bank, were also present

but did not participate and took no position on Defendants' Motion. All parties were properly notified of the date, time, and location of the hearing.

Having reviewed the pleadings, Affidavits, and exhibits, and heard fully the arguments of counsel, Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC's Motion is **GRANTED**. I make the following findings of fact and conclusions of law:

FINDINGS OF FACT:

1. Even if the Court, when viewing the facts in a light most favorable to the Plaintiffs, were to find that the Plaintiffs timely filed and served their Mechanic's Liens upon the APB Defendants *within ninety (90) days* after Plaintiffs ceased to labor on or furnish labor or materials to the Property as is required by S.C. Code of Laws § 29-5-90 (which is disputed), I find that the Plaintiffs failed to foreclose the liens within the statutory six (6) month timeframe in which to do so.

2. Based on an e-mail from Moats, Moats states on April 4, 2024 at 12:57 pm:

“we told everyone that if you didn't pay . . . we would be demobilizing from the sight [sic], which means, as I'm sure you know, **removing all of our equipment from the project sight [sic]. Which we did.**” “we did not want to leave an un-safe sight [sic] **as we had also removed our traffic control.**”

3. Mr. Moats, by his own statement, admits that Moats demobilized from the job site on April 3, 2024.

4. In his Affidavit, Mr. Moats asserts that Moats still had traffic control devices (i.e., orange road cones) on the job site after April 3, 2024, that Moats only partially demobilized on April 3, 2024, and that Moats did incidental work to remove the cones and some materials from the job site on April 29, 2024 which extended the time within which it had to file its Mechanic's Lien.
5. Assuming that the traffic cones belonged to Moats, and that it either intentionally or accidentally failed to remove its traffic cones and materials from the job site when it took everything else off the site, I find that it would be unreasonable (based on the alleged scope of incidental work done) to allow Moats a lien time extension until April 29, 2024, some twenty-six (26) additional days after pulling off the job site, to return to the site to remove easily movable cones or materials.
6. I find that the incidental work done by Moats in removing the remaining traffic cones on April 29, 2024 was not done to a) complete construction, or b) done at the owner or General Contractor's request.
7. Even if the Court extended the date of demobilization to April 13 (the date Moats claims it met with City officials on the jobsite), the Summons and Complaint would have had to have been filed on or before October 13, 2024.
8. The Summons and Complaint in this matter were filed on October 28, 2024, well beyond the statutory six (6) month timeframe in which to do so.
9. During the hearing, counsel for The Green Man, LLC acknowledged to the Court that The Green Man, LLC did not file an action to foreclose its Mechanic's Liens within the statutory six (6) month timeframe, and that its foreclosure actions were not timely filed.

10. As a result of Plaintiffs' failure to foreclose its Mechanic's Liens within the statutory timeframe, Plaintiffs' Mechanic's Liens, and each of them, dissolved by operation of law and are of no force and effect.

11. Viewing the undisputed facts in a light most favorable to the Plaintiffs, Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC are entitled to judgment as a matter of law and are entitled to (partial) Summary Judgment in this matter as to Plaintiffs' Fifth and Sixth causes of action for Foreclosure of Mechanic's Lien.

CONCLUSIONS OF LAW:

While Defendants' Motion was filed as a Motion to Dismiss, matters outside the pleadings were presented by the parties and allowed by the Court in the form of Affidavits and exhibits. Pursuant to SCRCP, Rule 12(b):

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

As such, the Court treats Defendants' Motion as one for Summary Judgment pursuant to SCRCP, Rule 56, having given the parties reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.

Incidental work extends the time for a lien only when performed to complete the scope of work or at the behest of the owner or General Contractor. Removing easily moveable traffic cones, even if they belong to Moats (which is disputed) were not done to complete the work and Moats does not even allege that this was done at the behest

of the owner or General Contractor. Additionally, such work must be in good faith and not merely to extend the lien.

In Wood v. Hardy, 110 S.E.2d 157, 235 S.C. 131 (S.C. 1959), the South Carolina Supreme Court held:

The only requirement of the law is that the account be filed within ninety (90) days after he ceases to labor on or furnish labor or materials for such building or structure.'

In 57 C.J.S. Mechanics' Liens § 125, at page 632, it is said:

'* * * The statute runs from the date of the last item, even though the doing of the last item of work is somewhat delayed, provided the delay is not for the purpose of extending the period for giving notice. * * *'

In the case of Breeding v. Melson, 4 W.W.Harr. 9, 34 Del. 9, 143 A. 23, 25, 60 A.L.R. 1252, it appeared that certain labor and material were furnished by the plaintiff from March, 1921, to October, 1921, after which time nothing further was furnished by him until April, 1922, when labor and material of the value of \$3.40 were furnished. The record discloses that the building constructed was a moving picture theater and was temporarily opened in September, 1921, the windows being closed with metal, and that the defendant waited until April, 1922, for the plaintiff to get the necessary material for him to complete the building as he had contracted to do. **The Court held that in order to extend the time for filing of a mechanic's lien, the work performed or materials furnished must be required by the contract, and what is done must be done in good faith for the purpose of fully performing the obligation of the contract, and not for the mere purpose of extending the time for filing the lien.** The Court said, in upholding the validity of the filing of the lien within 30 days after the expiration of 90 days from the completion of the building, pursuant to statute, that the lien was valid. We quote from the Opinion the following:

'* * * It is quite true that very little material was supplied by the plaintiff, and that the value of the same was insignificant, but that fact cannot have any bearing on his status as a contractor, as the statute does not specify that any particular amount of labor or material shall be furnished.'

In District Heights Apartments, Section D-E v. Noland Company, Inc., 202 Md. 43, 95 A.2d 90, 94, 39 A.L.R.2d 387, it was said:

* * * But where a claimant, after a contract is substantially completed, does additional work or furnishes additional material which is necessary for the proper performance of his contract, and which is done in good faith at the request of the owner or for the purpose of fully completing the contract, and not merely as a gratuity or act of friendly accommodation, the period for filing the lien will run from the doing of such work or the furnishing of such materials, irrespective of the value thereof. *Harrison v. Stouffer*, 193 Md. 46, 65 A.2d 895. * * *

In *Butler Contracting v. Court Street*, 631 S.E.2d 252, 369 S.C. 121 (S.C. 2006),

the South Carolina Supreme Court states:

The position adopted in *Wood*, as reflected in foreign precedent cited in that 1959 opinion, has not changed substantially in more recent cases from other courts. "[W]hen an unreasonable period of time has elapsed since substantial completion of the work, the performance of trivial services or the furnishing of trivial materials generally will not extend the time for filing the certificate past the date of substantial completion.... If, however, subsequent to the date of substantial completion, trivial services or materials are provided at the request of the owner, rather than at the initiative of the contractor for the purpose of saving a lien, the furnishing of such work or material will extend the commencement of the period for filing a certificate of mechanic's lien." *F.B. Mattson Co. v. Tarte*, 247 Conn. 234, 719 A.2d 1158, 1161 (1998) (holding that, although roofing project had been substantially completed more than a month earlier, deadline to file mechanic's lien began to run upon removal of scaffolding and roofing brackets from property at request of owner); accord *Franklin Bldg. Supply Co. v. Sumpter*, 139 Idaho 846, 87 P.3d 955, 959-61 (2004) (deadline to file mechanic's lien began to run when builder purchased a sheet of cedar and locking door handle for house, not when certificate of occupancy was issued several weeks earlier; although dollar value of items was minimal, they were actually used in constructing and repairing the home, were reasonably necessary to complete construction and punch list according to terms of contract, were not merely trivial or insubstantial, and purchases were not intended to extend time for filing lien); *Interstate Elec. Servs. Corp. v. Cummings Props., LLC*, 63 Mass.App.Ct. 295, 825 N.E.2d 1059, 1063-64 (2005) (mere delay in completing contract and performance of trifling items of work have never been held under Massachusetts statute fatal to maintenance of a mechanic's lien when work was done in good faith and was necessary to a complete performance of the contract); *Security Ben. Life Ins. Corp. v.*

Fleming Companies, 21 Kan.App.2d 833, 908 P.2d 1315, 1321-22 (1995) (for purposes of mechanic's lien filing deadline, store checkout system installer last performed work on date it set up direct store delivery system and trained employees on its use; although other work was completed earlier, work performed on that date was necessary to comply with terms of contract); 53 Am.Jur.2d Mechanics' Liens § 211 (1996).

In the instant case, Moats would have the Court believe that it reasonably took Moats some *twenty-six (26) additional days* after pulling off the jobsite to return to the site to remove its easily movable traffic cones and remaining materials. The Court declines to do so.

Based upon the pleadings in this case, the Affidavits and exhibits attached to Defendants' Motion, and the Affidavit and exhibits filed by Moats, Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC are entitled to the discharge Plaintiffs' Mechanic's Liens, to release of the Lis Pendens, and to dismissal of the Plaintiffs' causes of action for Foreclosure of Mechanic's Liens with prejudice.

To the extent that Plaintiffs asserted other causes of action based on contract or equity against Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC, Defendants' Motion as to those causes of action is denied at this time.

Pursuant to SC Code, Ann., Section 29-5-20, et seq., Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC are hereby determined and declared to be the prevailing party in the within matter with regard to Plaintiffs' Mechanic's Lien causes of action. As such, Defendants are entitled to an award of attorney's fees and costs incurred in defending the matter. If Defendants seek an award of attorney's fees and costs, Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC shall

submit to the Court, with copies to opposing counsel, an appropriate Affidavit of Attorney's Fees and costs. Any party wishing to contest the amount requested may request a hearing on Defendants' request for an award of attorney's fees and costs within ten (10) days of submission, and upon filing a hearing request the Clerk of Court is directed to set such hearing at the next available term of court.

IT IS THEREFORE ORDERED, ADJUDGE AND DECREED that:

1. The Mechanic's Lien dated July 2, 2024 and filed by Moats Construction, Inc. on real estate owned by 2916 N. Main, LLC on July 3, 2024 in the Office of the Register of Deeds for Anderson County, South Carolina in Book 65 at Page 112 is hereby dissolved and the Register of Deeds is directed to mark same discharged and released of record.
2. The Mechanic's Lien dated July 2, 2024 and filed by Moats Construction, Inc. on real estate owned by APB Partnership, LLC on July 3, 2024 in the Office of the Register of Deeds for Anderson County, South Carolina in Book 65 at Page 121 is hereby dissolved and the Register of Deeds is directed to mark same discharged and released of record.
3. The Mechanic's Lien dated July 2, 2024 and filed by The Green Man, LLC on real estate owned by 2916 N. Main, LLC on July 3, 2024 in the Office of the Register of Deeds for Anderson County, South Carolina in Book 65 at Page 129 is hereby dissolved and the Register of Deeds is directed to mark same discharged and released of record.
4. The Mechanic's Lien dated July 2, 2024 and filed by The Green Man, LLC on real estate owned by APB Partnership, LLC on July 3, 2024 in the Office of the Register of Deeds for Anderson County, South Carolina in Book 65 at Page 136 is hereby dissolved and the Register of Deeds is directed to mark same discharged and released of record.

5. The Amended Mechanic's Lien dated February 19, 2025 and filed by Moats Construction, Inc. on real estate owned by APB Partnership, LLC on February 20, 2025 in the Office of the Register of Deeds for Anderson County, South Carolina in Book 67 at Page 29 is hereby dissolved and the Register of Deeds is directed to mark same discharged and released of record.
6. The Lis Pendens filed in the within case, C/A No. 2024-CP-04-02229, on the property of the Defendants, 2900 N. Main Street, Anderson, SC 29621, **TMS# 122-12-02-005**, 2902 N. Main Street, Anderson, SC 29621, **TMS# 122-12-02-003**, and 2916 N. Main Street, Anderson, SC 29621, **TMS# 122-12-02-002**, is hereby cancelled and the Clerk of Court is directed to mark same cancelled of record.
7. Plaintiffs' Fifth and Sixth causes action for Foreclosure of Mechanic's Lien are hereby dismissed with prejudice.
8. As the prevailing party with regard to Plaintiffs' Mechanic's Lien causes of action, pursuant to SC Code, Ann., Section 29-5-20, et seq., Defendants are entitled to an award of attorney's fees and costs incurred in defending the matter. If Defendants seek an award of attorney's fees and costs, Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC, by and through its attorney, shall submit to the Court, with copies to opposing counsel, an appropriate Affidavit of Attorney's Fees and costs. Any party wishing to contest the amount requested may request a hearing on Defendants' request for an award of attorney's fees and costs within ten (10) days of submission and, upon filing a hearing request, the Clerk of Court is directed to set such hearing at the next available term of court.

IT IS SO ORDERED.

(e-signature affixed hereto)

R. Lawton McIntosh,
Circuit Court Judge

Date: _____



Anderson Common Pleas

Case Caption: Moats Construction Inc , plaintiff, et al VS Apb Partnership Llc ,
defendant, et al

Case Number: 2024CP0402229

Type: Order/Summary Judgment

S/R. LAWTON McINTOSH

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