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Mar 13 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh

Case No. 2024-CP-04-02229
Appellate Case No. 2025-001549
Appellate Case No. 2025-002012

Moats Construction, Inc. and The Green Man, LLC,

Appellants,

v.

APB Partnership, LLC, Wesley Edwards, 2916 N. Main, LLC, W.H. Bass, Inc., Whataburger
Restaurants, LLC, and United Community Bank,

Respondents.

APPELLANT’S REPLY IN SUPPORT OF ITS MOTION TO REINSTATE LIS PENDENS
AND MECHANIC’S LIEN DURING PENDENCY OF APPEAL

The South Carolina Supreme Court confronted a situation almost identical to the present case in *Lebovitz v. Mudd*, 289 S.C. 476, 347 S.E.2d 94 (1986), where it ruled that a writ of supersedeas was unnecessary to restore a prematurely cancelled lis pendens pending appeal because of the automatic stay. In *Lebovitz*, a “circuit judge issued an order granting [a] motion to dismiss . . . and cancelling [] lis pendens notices.” *Id.* at 478, 347 S.E.2d at 95. Consistent with that order, the “clerk of the lower court immediately cancelled the notices.” *Id.* In addition to filing an appeal, the aggrieved parties sought “a writ of supersedeas in the event the cancellation of lis pendens [was] not automatically stayed.” *Id.*

The South Carolina Supreme Court denied the writ of supersedeas as *unnecessary* because “the cancellation of a notice of lis pendens is directly appealable under [S.C. Code Ann.] § 14-3-330” and an “appeal acts as an automatic stay of further proceedings upon the order.” *Id.* at 479, 347 S.E.2d at 96. Therefore, because “the lower court improperly cancelled the lis pendens notices within ten days of the order of cancellation” and the aggrieved parties timely appealed, the “cancellation [was] *void* and the notices . . . remain[ed] effective during the pendency of th[e] appeal.” *Id.* (emphasis added) (citing Rule 62(a), SCRCPP).

The same analysis applies here. The circuit court entered its Lien Order dismissing the lis pendens and mechanic’s lien on June 17, 2025 (Exhibit 1 to Motion), and the public index reflects that the Lis Pendens was cancelled on the same date (Public Index Case 2004LP0400388 (showing “Disposition” as “LP Cancelled” on “06/17/2025”), attached hereto as **Exhibit A**). Because the lis pendens was improperly cancelled and the underlying order was timely appealed, the lis pendens should remain in effect during the pendency of this appeal. No further analysis is required.

This result is consistent with the effect of Rule 241’s automatic stay as described in *Tillman. Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 50-51 (Ct. App. 2012) (“[T]he appealed order *may not be carried out or enforced during the pendency of the appeal*. This is the purpose of a stay under Rule 241—to determine whether the appealed *order* may be carried out or enforced” (emphasis added)).

Respondents’ argument that Appellant was required to seek supersedeas turns Rule 241(c), SCACR, on its head. Supersedeas is sought *where there is an exception to the automatic stay*, meaning that the relief in the appealed order will move forward regardless of the notice of appeal. Rule 241(c), SCACR (“After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule. In *a case subject to an exception*, any

party may move for an order imposing a supersedeas of matter decided in the order . . . after service of the notice of appeal.”). Respondents have not identified any exception to the automatic stay in this case. Because the automatic stay is in place, it was Respondents’ obligation to move to lift the automatic stay, not Appellant’s obligation to ask the court to enforce the automatic stay. If Respondents desire to have the lis pendens removed from their property during the pendency of this appeal, they always have the option pursuant to the Mechanic’s Lien Statute to post a bond to release the mechanic’s lien from the property. S.C. Code Ann. § 29-5-110.¹

Nonetheless, if this Court prefers Appellant move for a writ of supersedeas to correct the premature dismissal of the lis pendens, Appellant will happily do so.² Either way, the result is the same—the lis pendens should remain in effect during the pendency of this appeal.

Accordingly, Appellant requests the Court to order the restoration of the lis pendens and mechanic’s lien during the pendency of this appeal.

/s/ David L. Paavola
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¹ Respondents’ arguments about waiver and default are likewise red herrings. As our Supreme Court has said, “Appellate courts should not apply preservation rules ‘in a technical manner as if this is some sort of game of “gotcha” elevating form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.’” *Cone v. State*, 443 S.C. 487, 494, 905 S.E.2d 368, 372 (2024) (quoting *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023)). Appellants raised this issue to the lower court, the lower court held a hearing and issued an order, and Appellant timely appealed. Nothing more was required.

² If supersedeas is required, it would be impractical for Appellant to first file in the circuit court, as Respondents have already argued that the lower court lacks jurisdiction to hear such a request. Even if Appellant was required to first file a writ of supersedeas with the lower court, the Court should consider Appellant’s request to the lower court (Exhibit 2 to Motion), supporting memorandum (**Exhibit B**), and oral argument (**Exhibit C**, Transcript of Hearing), to have satisfied this requirement.

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March 13, 2026
Cayce, South Carolina

EXHIBIT A



Anderson County Tenth Judicial Circuit Public Index



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Switch View

Moats Construction, Inc., , plaintiff, et al VS Apb Partnership, Llc , defendant, et al

Case Number:	2024LP0400388	Court Agency:	Common Pleas	Filed Date:	10/28/2024
Case Type:	Lis Pendens	Case Sub Type:	Lis Pendens	File Type:	Jury
Status:	Cancelled	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	LP Cancelled	Disposition Date:	06/17/2025	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties **Judgments** **Tax Map Information** **Associated Cases** **Actions** **Financials**

Agency	Case #	External	Relationship	Description	Case Filed Date	Disposition Date	Case Status	Disposition
Common Pleas	2024CP0402229	N	COCS	Associated by LP to CP Transfer	06/17/2025		Pending	

EXHIBIT B

ELECTRONICALLY FILED - 2025 Aug 26 1:00 PM - ANDERSON - COMMON PLEAS - CASE#2024CP0402229

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Moats Construction, Inc., and The
Green Man, LLC,

Plaintiffs,

vs.

APB Partnership, LLC; Wesley
Edwards; 2916 N Main, LLC, W.H.
Bass, Inc., Whataburger Restaurants,
LLC, and United Community Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

C.A. No.: 2024-CP-2229

**PLAINTIFF’S MEMORANDUM OPPOSING
PREMATURE RELEASE OF LIS PENDENS**

Plaintiff Moats Construction, Inc. (“Moats”) files this Memorandum Opposing the Premature Release of its Lis Pendens during its appeal of Court’s Order Discharging Mechanic’s Liens, Releasing Lis Pendens, and Dismissing Plaintiffs’ Causes of Action for Lien Foreclosure, (the “Order”), filed June 17, 2025. On the same day as entry of the Court’s Order, June 17, 2025, the Lis Pendens was also dismissed. This dismissal was entered before the 10-day period in Rule 59(e), SCRCF, to file a motion to reconsider and before the thirty-day period within which to file a notice of appeal.

On June 27, 2025, Moats filed a Motion to Reconsider, which the Court denied on July 3, 2025. Moats had thirty days after entry of the Court’s order denying its motion to reconsider to file its Notice of Appeal. Rule 203(b)(1), SCACR. Prior to the end of this thirty-day period, Moats became aware that its Lis Pendens had been cancelled and Moats brought this matter to the Court’s attention by letter on July 16, 2025. On August 1, 2025, Moats filed its Notice of Appeal of the Court’s Order discharging its mechanic’s lien on property owned by APB Partnership, LLC.

The Order is immediately appealable because it affects a substantial right in that it dismisses and discharges Moats's statutory right to a mechanic's lien and strikes a portion of Moats's pleading and legal claims to foreclose the mechanic's lien. S.C. Code Ann. § 14-3-330(2) (order affecting substantial rights immediately appealable); *see Cobb v. Maccaro*, 310 S.C. 303, 306, 423 S.E.2d 156, 157 (Ct. App. 1992) (holding that "a motion to dissolve a mechanic's lien is governed by the law relating to a summary judgment").

The general rule is that the filing of the notice of appeal automatically stays the matters decided and relief ordered in the appealed order:

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.

Rule 241(a), SCACR (emphasis added). Limited exceptions to the general rule are "found in statutes, court rules, and case law." Rule 241(b), SCACR. Some exceptions are listed in Rule 241(b), SCACR, but none are applicable to this situation—money judgments; judgments directing the delivery of documents or personal property; judgments directing execution of conveyances; judgments directing sale or delivery of possession of real property, etc.

There is no exception to the automatic stay in the Mechanic's Lien Statute, S.C. Code Ann. § 29-5-10, et seq., and no provision requiring an appeal bond. Accordingly, the general rule applies to this situation and the matters decided and the relief ordered in the appealed Order are stayed pending the outcome of the appeal.

Pursuant to the Mechanic's Lien Statute, APB Partnership, LLC, and Wesley Edwards always have the option to post a bond to release the mechanic's lien from the property should they desire to sell the property during the pendency of the appeal. S.C. Code Ann. § 29-5-110.

However, if the mechanic's lien and lis pendens are permitted to be released before the appeal is concluded and then APB Partnership, LLC sells its property, Moats will have lost a significant statutory right to foreclose on the property if it is successful on appeal.

For these reasons, Moats requests that the Court order the Lis Pendens reinstated and the Mechanic's Lien to stay in place during the pendency of the appeal of the Order.

KENISON, DUDLEY & CRAWFORD, LLC

s/ David L. Paavola

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Attorneys for Plaintiffs

August 26, 2025
Columbia, South Carolina

P R O C E E D I N G S

* * * * *

1
2
3 THE COURT: All right. Moats Construction.

4 (Parties approached.)

5 THE COURT: All right. Now, historically, I'm
6 trying to remember. I dissolved the lis pendens on
7 this property.

8 MR. DRAISEN: Your Honor, this arises out of a
9 mechanics lien. What you agreed to do was you
10 ordered that the mechanics lien was not timely. And
11 so the result of the mechanics lien being thrown out
12 was that the underlying foreclosure action and
13 the -- once they got a cause of action foreclosure
14 of the mechanics lien, and the lis pendens were then
15 cancelled as a result.

16 THE COURT: Okay. So, Mr. Paavola, you think
17 that that -- because I ruled against you, you get to
18 keep the lien on the -- on the record; is that
19 right?

20 MR. PAAVOLA: Yes, Your Honor.

21 THE COURT: Do you have any authority for that?

22 MR. PAAVOLA: Yeah, we filed a memo yesterday
23 with the Court and what ---

24 THE COURT: I was in trial yesterday. I
25 haven't read them.

1 MR. PAAVOLA: I understand. The general rule
2 is that when you file a notice of appeal, it stays
3 the matters in the judgement. And so ---

4 THE COURT: If the stay is being admitted, it
5 gets kicked off.

6 MR. PAAVOLA: It stayed -- I'm sorry?

7 THE COURT: If it stays, the action is what it
8 was. It means that the -- the lien had been
9 dissolved and it's no longer there. That would be
10 the status on appeal.

11 MR. PAAVOLA: Your Honor, I think the reading
12 of the stay is that the stay that the Court matters
13 decided in the order of the relief granted is what
14 the rule says, so it would stay whatever relief ---

15 THE COURT: If I'm wrong, I'm wrong. I'm sure
16 there's a rule here that I'm not familiar with and I
17 just...

18 MR. DRAISEN: I have the rule. Do you want me
19 to hand it up?

20 THE COURT: Sure. Let -- let's show it to
21 Mr. Paavola.

22 MR. DRAISEN: I believe he has a copy.

23 MR. PAAVOLA: Okay.

24 MR. DRAISEN: It's actually discretionary upon
25 the Court, Judge, pursuant to Section 15-11-40. And

1 what it says, Judge, is the Court meets the actions
2 commenced in its discretion at the time or after the
3 action is in this case discontinued. May cancel or
4 order the cancellation of the Clerk of Court of the
5 lis pendens. In this case ---

6 THE COURT: What were the facts? I can't
7 remember.

8 MR. DRAISEN: This -- this is the Whataburger
9 property, Judge.

10 THE COURT: This is what?

11 MR. DRAISEN: The Whataburger restaurant.

12 THE COURT: Who?

13 MR. DRAISEN: Whataburger.

14 THE COURT: Oh, that's out there on Concord?

15 MR. DRAISEN: Concord and Main. Yes, sir.
16 This development was done by W.H. Bass. They built
17 the building for Whataburger. My client is the
18 underlying landowner to the property.

19 THE COURT: Is it your family?

20 MR. DRAISEN: What's that?

21 THE COURT: Is it your family?

22 MR. DRAISEN: It's Wes Edwards, my dad's
23 partner.

24 THE COURT: Okay.

25 MR. DRAISEN: And owned that whole -- whole

1 corner. And so we have a ground lease with them.
2 They built the building on it.

3 Mr. Moats was hired to do some -- some of the
4 site work on the property. We contend at first he
5 did some work for us. He was later then hired
6 directly by W.H. Bass to do work related to the
7 Whataburger construction. So our position and our
8 answer has been all along, we didn't hire him. We
9 don't have anything to do with it. If anybody owes
10 him any money, it's Whataburger, not us, but he
11 filed a mechanics lien.

12 We came into court and said the mechanics lien
13 was not perfected properly. It wasn't foreclosed
14 timely. Remember he had -- you may remember he had
15 cones out there, those orange cones, that he left.
16 And that was the substantial work that was left to
17 be done, and you ruled and said that's not enough.
18 That's not enough work for you to have extended the
19 deadline. That was the basis of your ruling.

20 THE COURT: I got it. Okay. I got it.

21 Now, Mr. Paavola, I keep cutting you off. I'll
22 be glad to hear from you.

23 MR. PAAVOLA: Yes, Your Honor. Under the
24 appellate court rules, the automatic stay goes into
25 effect under Rule 241 and states matters in the

1 order. So I guess what we're saying is, you issued
2 the order in June. The same day you issued the
3 order, the lis pendens was cancelled. I believe
4 that was probably on my end. That was probably an
5 administerial administrative oversight. The one
6 thing is we didn't have a ten-day period to move to
7 alter and amend, so it was cancelled the same day as
8 your order before our ten days to move to alter and
9 amend which we did before our notice of appeal.

10 So when we -- when we found out it cancelled --
11 that was cancelled, my guess is that was probably an
12 administrative oversight. Someone jumped the gun
13 before it was our time to do it because the general
14 rule, once you file the notice of appeal, everything
15 is stayed. It is status quo.

16 If they want to move to lift the stay, they can
17 do that, but they haven't done that. And so, you
18 know, that's -- that's how the rules provide.
19 Nothing to change. Should be status quo, unless
20 they're asking for a lis pendens stay. In that
21 case, they post the bond because the lis pendens is
22 lifted, the property was sold, and my client
23 ultimately is shown to be correct on appeal. Then
24 he's lost his right to propose the property and the
25 lis pendens to the property.

1 So that's why it's -- you know, they're really
2 putting this on their head. It should be stayed.
3 Everything status quo. If they want to move
4 otherwise, they can have them. And that's -- again,
5 I thought it was admin -- administrative oversight.
6 Of course, if they have to lift it.

7 THE COURT: All right.

8 MR. DRAISEN: Your Honor, our position is
9 essentially, it's sort of the cart before the horse
10 situation. I don't disagree that the proposition
11 that when the Court issued its order in this case,
12 they would've had ten days to file the motion to
13 reconsider. They did file it and the Court denied
14 it.

15 And then they -- then they filed the notice of
16 appeal. So as the procedural matter, I mean, number
17 one is, I'm not even sure what we're here on and
18 whether or not the Court has jurisdiction now that
19 the appeal has been filed, unless you go back to the
20 argument you just heard under Rule 241 in the other
21 case as to whether or not we're looking at a
22 supersedeas file of some kind, which the Court has
23 jurisdiction if they filed their appeal. We're here
24 today post-appeal arguing about whether or not the
25 Court should or shouldn't have released the lis

1 pendens in this case.

2 Our argument is, you properly released the lis
3 pendens in this case because when the mechanics lien
4 was dismissed, it was no longer a basis for the lis
5 pendens. They still have breach of contract and
6 quantam meruit causes the facts in this case.

7 So I think there's a jurisdictional problem
8 with coming in now on an argument about the lis
9 pendens because there's an appeal pending on the
10 whole dismissal of the mechanics lien. I think that
11 jurisdiction is now at the Court of Appeals.

12 THE COURT: All right. Gentlemen -- oh, go
13 ahead.

14 MR. PAAVOLA: Your Honor, I was just going to
15 say is that you can see it in the Court's docket
16 when the lis pendens was cancelled the day you
17 issued this report and before we even moved to
18 reconsider. I mean, it's clearly an
19 administrative -- it happened. Jumped the gun. It
20 happened before it was even proper to happen, if it
21 should've happened at all, but at least should've
22 waited until we had a chance to ask you to
23 reconsider. And that's not going to happen, so I
24 think we're just asking for the administrative fix,
25 and that's why we wrote the Court. We didn't -- we

1 C E R T I F I C A T E O F R E P O R T E R

2
3 STATE OF SOUTH CAROLINA

4 COUNTY OF ANDERSON

5
6 I, the undersigned, Lisa Scott, Circuit Court
7 Reporter for the Tenth Judicial Circuit of the State
8 of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the hearing of the
12 captioned cause, relative to appeal in the Circuit
13 Court for Anderson County, South Carolina, on the
14 27th day of August, 2025.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17
18 December 2, 2025

19
20 /s/Lisa Scott

21
22 *Lisa Scott*
23 *Circuit Court Reporter*
24
25

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v.

APB Partnership, LLC, Wesley Edwards, 2916 N. Main, LLC, W.H. Bass, Inc., Whataburger Restaurants, LLC, and United Community Bank,

Respondents.

PROOF OF SERVICE

I certify that the APPELLANT'S REPLY IN SUPPORT OF ITS MOTION TO REINSTATE LIS PENDENS AND MECHANIC'S LIEN DURING PENDENCY OF APPEAL has been served on John S. Nichols and Daniel L. Draisen, counsel for Respondents APB Partnership, LLC, Wesley Edwards, and 2619 N. Main, LLC, by email sent to their primary e-mail addresses listed in the Attorney Information System, john@bluesteinattorneys.com, daniel@injuredsc.com, Paul H. Hoefler and C. Elizabeth Weston, counsel for Respondent United Community Bank, by email sent to their primary e-mail addresses listed in the Attorney Information System, phoefler@robinsongray.com and lweston@robinsongray.com, Dana Woodrum Lang, counsel for WH Bass, Inc., by email sent to her primary e-mail address listed in the Attorney Information System, dana.lang@wbd-us.com, and Christopher B. Major, counsel for Whataburger Restaurants, LLC, by email sent to his primary e-mail address listed in the Attorney Information System, cmajor@hsblawfirm.com, on March 13, 2026.

[Signature page to follow]

s/David L. Paavola

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March 13, 2026

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