

RECEIVED

Apr 17 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.

FINAL BRIEF OF APPELLANTS

Brian A. Autry, SC Bar No.: 69401
David L. Paavola, SC Bar No.: 100714
Caitlin S. Cameron, SC Bar No.: 106286
KENISON, DUDLEY & CRAWFORD, LLC
440 Knox Abbott Drive, Suite 510
Cayce, South Carolina 29033
(864) 242-4899
Email: autry@conlaw.com
Email: paavola@conlaw.com
Email: cameron@conlaw.com
Attorneys for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES ON APPEAL1

INTRODUCTION AND STATEMENT OF THE CASE.....2

STATEMENT OF THE FACTS3

STANDARD OF REVIEW5

ARGUMENT7

 I. The Last Day of Work is a Disputed Issue of Material Fact and Granting
 Summary Judgment Before Discovery Started Was Error7

 II. The Lower Court Erred in Releasing the Lis Pendens Before Appellants’
 Motion to Reconsider and During the Pendency of this Appeal12

CONCLUSION.....14

TABLE OF AUTHORITIES

Cases

<i>Beaver Excavating, Co. v. WJM Leasing, LLC</i> , Case No 2019CV0937, 2020 Ohio Misc. LEXIS 878 (June 17, 2020)	10
<i>Butler Contracting, Inc. v. Court Street, LLC</i> , 369 S.C. 121, 631 S.E.2d 252 (2006)	8, 9
<i>Cobb v. Maccaro</i> , 310 S.C. 303, 423 S.E.2d 156 (Ct. App. 1992)	13
<i>F.B. Mattson Co. v. Tarte</i> , 719 A.2d 1158 (Conn. 1998)	9
<i>Knight v. Am. Nat. Fire Ins. Co.</i> , 831 F.Supp. 1284 (D.S.C. 1993)	6
<i>Lanham v. Blue Cross & Blue Shield of S.C., Inc.</i> , 349 S.C. 356, 563 S.E.2d 331 (2002)	6, 7
<i>Spence v. Wingate</i> , 395 S.C. 148, 716 S.E.2d 920 (2011)	5
<i>Wood v. Hardy</i> , 235 S.C. 131, 110 S.E.2d 157 (1959)	8

Statutes

S.C. Code Ann. § 14-3-330(2)	13
S.C. Code Ann. § 29-5-10	13
S.C. Code Ann. § 29-5-90	8
S.C. Code Ann. § 29-5-110	13

Rules

Rule 56(c), SCRCP	5, 6
Rule 59(e), SCRCP	12
Rule 203(b)(1), SCACR	12
Rule 241(a), SCACR	13
Rule 241(b), SCACR	13

STATEMENT OF ISSUES ON APPEAL

- I. Did the lower court err in granting summary judgment and in dismissing Moats Construction, Inc.'s mechanic's lien where there were material factual disputes as to Moats Construction's last date of work on the Project and discovery had not yet begun?

- II. Did the lower court err in denying Moats Construction's request to maintain the status quo of its lis pendens and mechanic's lien during the pendency of this appeal?

INTRODUCTION AND STATEMENT OF THE CASE

In 2023, Moats Construction, Inc. (“Moats Construction”) and The Green Man, LLC (“Green Man”) were hired by Respondents as subcontractors to perform work and provide services to improve real property located at 2900 N. Main Street, 2902 N. Main Street, and 2916 N. Main Street in Anderson, South Carolina for the eventual construction of a Whataburger restaurant. Moats Construction and Green Man provided services to Respondents in 2023 and 2024 and have not been fully paid. Moats Construction and Green Man filed suit on October 28, 2024, asserting various causes of action, including to foreclose on mechanic’s liens filed in July 2024. (R. p. 39 (Complaint)). Appellants filed an Amended Complaint on February 17, 2025. (R. p. 51 (Am. Complaint)).

Respondent APB Partnership, LLC owns the real property at 2900 N. Main and 2902 N. Main. Respondent 2916 N. Main, LLC owned the real property at 2916 N. Main during the pertinent construction period, but then sold this property before Appellants were able to file their mechanic’s lien. Wesley Edwards is believed to control these Respondents through his common ownership. (R. pp. 54-55 (Am. Complaint ¶¶ 18, 22-23)). In April 2025, in response to the Amended Complaint, APB Partnership, LLC, 2916 N. Main, LLC, and Wesley Edwards (collectively, the “APB Defendants”) filed a Motion to Dissolve Mechanic’s Liens, Dismiss Plaintiffs’ Claims for Foreclosure of Mechanic’s Liens, and Dismiss Defendants APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC. (R. p. 94 (Motion Dissolve)). Appellants filed a Memorandum in Opposition to the Motion to Dissolve along with a supporting affidavit from Russell Moats raising factual disputes as to the last date of work. (R. p. 195 (Mem. Oppn Mot. Dismiss); p. 212 (Affidavit Russell Moats)). APB Defendants filed a reply brief in support of their motion. (R. p. 248 (Reply Support Motion Dissolve)).

On June 5, 2025, the court heard argument on APB Defendants’ Motion to Dissolve and

that same day issued a Form 4 Order granting the motion. (R. p. 6). On June 17, 2025, the court entered a formal Order Discharging Mechanic's Liens, Releasing Lis Pendens, and Dismissing Plaintiffs' Causes of Action for Lien Foreclosure. (R. p. 9 (Order, or the "Lien Order")). The court granted APB Defendants' motion to dissolve the mechanic's liens, dismissed the two mechanic's lien foreclosure causes of action, and released the corresponding lis pendens, but it denied APB Defendants' request to dismiss them from the case entirely. (R. pp. 12, 15 (Order at 4, 7)). Respondents conceded that Green Man did not file to foreclose its liens within the required six months. On June 27, 2025, Appellant filed a Motion to Reconsider (R. p. 254) and supplement (R. p. 260). The court denied the motion to reconsider on July 3, 2025. (R. p. 20). On August 1, 2025, Appellants filed a notice of appeal. (Notice of Appeal).

On the same day that the Lien Order was entered, and before Appellants' time to move for reconsideration or to file its appeal, court administration dismissed Appellants' lis pendens. Counsel for Appellants wrote to the court believing this to be an administrative error. (R. p. 265 (Ltr. J. McIntosh (July 16, 2025))). On August 27, 2025, the court held a hearing on Appellants' request to reinstate the lis pendens during the pendency of this appeal and denied this request the same day. (R. p. 23). A formal Order Denying Plaintiff's Request to Reinstate Lis Pendens was entered on September 4, 2025. (R. p. 26). On October 1, 2025, Appellants filed a notice of Appeal. (Notice of Appeal).

Both appeals have been consolidated by this Court.

STATEMENT OF THE FACTS

Moats Construction is a commercial construction contractor and demolition company. (R. p. 212 (Russell Moats Aff. ¶ 4)). Green Man is a waste removal and recycling company that also provides construction site storage containers and portable restrooms. (R. p. 213 (Moats Aff. ¶ 16)). Moats Construction and Green Man were hired by the Respondents in 2023 to perform

construction related services on 2900 N. Main, 2916 N. Main, and 2902 N. Main Street in Anderson, S.C. (collectively, the “Properties”), for site development for the construction of a Whataburger restaurant (the “Project”). (R. p. 53-55 (Am. Compl. ¶¶ 11, 22-23, 25)). Moats Construction’s work included demolition, site grading, erosion control, storm drainage, sewer, and utility work. (R. p. 212, 218 (Russell Moats Aff. ¶ 8 and Exhibit 5 attached thereto)). The Green Man provided dumpsters, portable toilets, and Conex containers. (R. p. 213 (Moats Aff. ¶ 16)).

At all times relevant to the Project, Appellants believed Respondent Wesley Edwards to be the owner of the Properties or to be operating directly on behalf of the owners. (R. p. 212 (Moats Aff. ¶¶ 5-6)). Respondent APB Partnership, LLC (“APB”) is the owner of real property located at 2900 N. Main Street (TMS No. 122-12-02-005) and 2902 N. Main Street (TMS No. 122-12-02-003). (R. p. 52 (Am. Compl. ¶ 3)). Wesley Edwards is the registered agent for APB Partnership. (R. p. 241 (Exhibit 11 to Moats Aff.)). During construction, 2916 N. Main, LLC owned the real property located at 2916 N. Main Street in Anderson. (R. p. 54 (Am. Compl. ¶ 4)). In late 2023 and early 2024, these Properties were improved for the construction of a Whataburger restaurant located at 2900 N. Main Street Anderson, S.C. (the “Project”). (R. pp. 54-55 (Am. Compl. ¶¶ 21-23)). Appellants’ understanding is that the Respondents worked together to develop the Properties into a Whataburger. (R. p. 212 (Moats Aff. ¶ 5)).

Throughout the Project, Appellants understood that the Properties were owned by Wes Edwards, or entities controlled by him, and that he was developing his properties into a Whataburger restaurant. (R. pp. 212, 214 (Moats Aff. ¶ 5 and attached Exhibit 1 (August 2023 email from Wes Edwards to Russell Moats discussing his development into a Whataburger)); p. 215 (Exhibit 2 (September 2023 text message from Tim Burdette to Russell Moats identifying Wes Edwards as the owner of the Properties)); p. 216 (Exhibit 3 (April 2, 2024 text from Wes Edwards

to Russell Moats inquiring about the status of his sewer project)). On or about December 2023, Appellants were also engaged by W.H. Bass to perform work on the Project on behalf of the Respondents. (R. p. 55 (Am. Compl. ¶¶ 23-25); p. 212 (Moats Aff. ¶ 8)).

Moats Construction performed work for the Respondents on the Project from August 2023 to April 29, 2024. (R. p. 54 (Am. Compl. ¶ 22); p. 213 (Moats Aff. ¶ 14)). Moats Construction obtained the grading permit for the Project and held it until the certificate of occupancy was issued, which was after April 2024. (R. p. 212 (Moats Aff. ¶ 7)). Moats Construction continued work on the Project through April 29, 2024, even though Respondents still owed amounts to Moats Constructions from as far back as October 2023 and December 2023. (R. p. 213 (Moats Aff. ¶ 17)).

In April, 2024, Moats Construction finally pulled off the Project due to non-payment. It completed demobilization on April 29, 2024. (R. p. 213 (Moats Aff. ¶¶ 12-14)). Moats filed its mechanic's lien on July 3, 2024, and completed service by July 15, 2024, within 90 days of demobilization. (R. p. 213, 232-47 (Moats Aff. ¶¶ 17, 18, and Exhibits 10-13 attached thereto)). This suit was filed on October 28, 2024, within the six-month statutory deadline following demobilization.

STANDARD OF REVIEW

“An appellate court applies the same standard used by the trial court under Rule 56(c) when reviewing the grant of a motion for summary judgment.” *Spence v. Wingate*, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011).

Summary judgment is only appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter

of law.” Rule 56(c), SCRCF. “A fact is deemed ‘material’ if proof of its existence or nonexistence would affect the disposition of the case under the applicable law.” *Knight v. Am. Nat. Fire Ins. Co.*, 831 F.Supp. 1284, 1285 (D.S.C. 1993) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). “An issue of material fact is ‘genuine’ if the evidence offered is such that a reasonable jury might return a verdict for the non-movant.” *Id.*

“Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact.” *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002) (citing *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991)). When deciding whether a genuine issue of material fact exists, the court must view “the evidence and all inferences which can be reasonably drawn therefrom . . . in the light most favorable to the nonmoving party.” *Id.* at 361-62, 563 S.E.2d at 333 (citing *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)).

“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Id.* at 363, 563 S.E.2d at 334 (citing *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000)). “Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts.” *Id.* at 362, 563 S.E.2d at 333 (citing *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000)). “Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” *Id.* at 363, 563 S.E.2d at 334 (citing *Baughman*,

306 S.C. 101, 410 S.E.2d 537). “This means . . . that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Id.*

ARGUMENT

The lower court dissolved Moats Construction’s mechanic’s lien when there was a genuine dispute of material fact about Moats Construction’s last date of work and before the parties had engaged in any discovery. This was premature and error. The lower court also dissolved Moats Construction’s lis pendens on the Properties before its motion to reconsider was filed and despite this pending appeal. This was also error.

I. The Last Date of Work is a Disputed Issue of Material Fact and Granting Summary Judgment Before Discovery Started Was Error.

The lower court erred in granting summary judgment at such an early stage of litigation when there were disputed issues of material fact as to Moats Construction’s last date of furnishing labor or materials on the Project and when discovery had not even started. Accordingly, the lower court’s grant of summary judgment should be reversed and the mechanic’s lien restored.

The APB Defendants assert that Moats Construction’s last date of work was April 3, 2024, and, as such, any liens were required to be filed and served within 90 days, or by July 2, 2025, and foreclosed within 180 days. (R. p. 95-96 (Mot. Dissolve at 2-3)). Moats Construction disputed this last date of work and contended that it continued to furnish labor and materials until April 29, 2024, and foreclosed within the statutory six-month requirement. (R. p. 213 (Moats Aff. ¶ 14)).

As part of its scope of work, Moats Construction installed traffic control devices and performed work on site grading, sewer, and water installation. (R. p. 212, 218 (Moats Aff. ¶ 8 and Exhibit 5 thereto)). Appellants’ photographs show that Moats Construction’s traffic control devices were still on site after April 3, 2024, and were not fully demobilized until April 29, 2024. (R. p. 213 (Moats Aff. ¶¶ 12-14)). Ninety days from April 29, 2024, is July 28, 2024. Moats filed

its mechanic's lien on July 3, 2024, and attempted to locate Wesley Edwards at the registered agent address of 2902 N. Main Street on that same day. (R. p. 213, 241 (Moats Aff. ¶ 17 and Exhibit 11 attached thereto)). Russell Moats was unable to locate Wesley Edwards at this address so he posted both liens on the Properties on that same day to serve the property owner. (R. p. 213 (Moats Aff. ¶ 18)). Service was made by the sheriff's department by July 15, 2024, showing that the lien was filed and service completed within the 90-day statutory period based on Moats Construction's last date of work. (R. p. 213, 232-47 (Moats Aff. ¶¶ 17-18, and attached Exhibits 10-13 thereto)).

The lower court erred in concluding that demobilization on April 29, 2024, was not work done within Moats Construction's contract and that it had to be done at the owner's request to trigger the lien period. (R. p. 11 (Order ¶ 6)). The work performed by Moats Construction on April 29, 2024, qualified as "furnish[ing] labor" under the mechanic's lien statute. S.C. Code Ann. § 29-5-90. Mobilization and demobilization are work that are part of every construction contract. (R. p. 212 (Moats Aff. ¶ 8)). It takes labor to demobilize.

The South Carolina Supreme Court has previously held that the mechanic's lien statute does not specify any amount of materials or labor that must be "furnished" under the statute to begin the statutory 90-day period. *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 130, 631 S.E.2d 252, 257 (2006) ("[T]he statute does not specify any particular amount of materials or labor which must be furnished") (citing *Wood v. Hardy*, 235 S.C. 131, 133-136, 110 S.E.2d 157, 157-59 (1959)). In *Wood v. Hardy*, the homeowner argued that "the minor plumbing repair [\$4] was so 'trivial or inconsequential' that it was insufficient to extend the time for serving a mechanic's lien beyond the date the bulk of materials and labor had been provided." *Id.* The South Carolina Supreme Court disagreed, noting that the mechanic's lien statute does not specify any amount of labor or materials that must be furnished. *Id.*

In *Butler Contracting, Inc. v. Court Street, LLC*, the South Carolina Supreme Court ruled that the delivery of a single box of ceiling tiles for a repair was sufficient furnishing of materials to be the trigger date for the 90-day lien period. *Id.* at 132, 631 S.E.2d at 258. The *Butler* Court explained:

[W]here 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.

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 (Conn. 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) [omitted additional cited cases in opinion]. . . .

Id. at 130-31, 631 S.E.2d at 257-58. Work performed that is “necessary for the proper performance of his contract” and done in good faith at the request of the owner or “for the purpose of fully completing the contract” will start the lien period. *Id.* As an example of activities that qualify as furnishing labor, in *Butler* the South Carolina Supreme Court cited *F.B. Mattson Co. v. Tarte*, 719 A.2d 1158 (Conn. 1998), wherein a roofer’s work to remove scaffolding and roofing brackets qualified as furnishing labor and the start of the mechanic’s lien service period. *Id.*

Here, Moats Construction’s equipment and traffic control devices were still being used at the Properties beyond the April 3, 2024 date that APB Defendants claim was the last date of work.

(R. p. 213 (Moats Aff. ¶¶ 12-13)). Moats Construction continued its scope of work on the Project meeting with City of Anderson personnel on April 12 or 13, 2024. (R. p. 213 (Moats Aff. ¶ 12)). Completing demobilization by April 29, 2024, qualifies as furnishing labor, and it was not for the purpose of extending the time to file a lien or an unreasonable delay. Moats Construction's demobilization was part of the scope of its contract and therefore its completion on April 29, 2024, was within the scope of work and there did not need to be a separate request from the owner for Moats Construction to return to the property like there was in *Butler* when the owner requested the special delivery of the extra box of tile. The lower court erred in ruling otherwise.

Other courts have denied summary judgment on a similar set of facts when the question is whether demobilization qualified as furnishing labor, ruling that this is a disputed issue of fact. *See., e.g., Beaver Excavating, Co. v. WJM Leasing, LLC*, Case No 2019CV0937, 2020 Ohio Misc. LEXIS 878 (June 17, 2020) (declining to grant summary judgment because it was a question of fact of whether demobilization was necessary to complete the project the plaintiff was hired to do and within the scope contemplated in the parties' contract).

If the APB Defendants disputed that demobilization was part of the parties' contract, or argued that Moats Construction unreasonably delayed its demobilization, or argued that Moats Construction was trying to extend the lien dates, these are all factual disputes requiring discovery and the court should have denied APB Defendants' motion to dismiss and allowed the parties to engage in discovery of these disputed facts.

On summary judgment, the facts must be viewed in a light most favorable to the non-moving party. Here, the court relied heavily on Russell Moats' April 4, 2024 email stating that Moats Construction demobilized from the work site on the previous day. (R. p. 10 (Order at 2)). However, Russell Moats was not given an opportunity to provide testimony to explain this email

and it is contradicted by other evidence showing that demobilization was not complete on this date, as reflected in Russell Moats' sworn affidavit and accompanying pictures showing Moats Construction's traffic control devices still functioning for their intended purpose at least as late as April 12, 2024, and that Moats Construction did not fully demobilize until April 29, 2024, (R. p. 213 (Moats Aff. ¶¶ 12-14)), and that the Respondents never took steps to switch the required demolition permit out of Moats Construction's name for the City of Anderson's final inspection on July 1, 2024, (R. p. 262 (Exhibit A to Supplement Mot. Reconsider)). If the last date of work is the final day of demobilization on April 29, 2024, then Moats Construction's liens were timely. These facts remained in dispute when the lower court heard APB Defendants' motion for summary judgment.

The lower court also erred in concluding that it would be unreasonable for Moats Construction to have waited to collect its traffic control devices until April 29, 2024, based on an April 4, 2024 email about demobilization. (R. p. 11 (Order ¶ 5)). Russell Moats's sworn affidavit shows that (1) the traffic control devices were still in use at least through April 12, 2024 based on photographs, (R. p. 213, 229 (Moats Aff. ¶ 12 & Exhibit 7 (photograph))); (2) Russell Moats continued to interface with Anderson County officials at least through April 12 or 13, 2024, (R. p. 213 (Moats Aff. ¶13)); and (3) demobilization was completed on April 29, 2024, (R. p. 213 (Moats Aff. ¶ 14)). Based on these facts, viewed in a light most favorable to Moats Construction, April 29, 2024, was the last date of work and was not an unreasonable date to finish demobilization. At a minimum, it is a disputed issue of fact for a fact finder to decide whether the work done on April 29, 2024, was labor furnished as part of the contract, or whether there was an unreasonable delay between April 12-13, 2024, and April 29, 2024. These are not questions that could have been

resolved against Moats Construction based on the record before the court and before discovery was complete.

As the moving party, the APB Defendants had the burden of proof to demonstrate the absence of a genuine issue of material fact. As reflected by the record before the lower court, there were numerous disputes of material fact that precluded summary judgment before discovery was complete. As such, the lower court erred in granting summary judgment and should be reversed.

II. The Lower Court Erred in Releasing the Lis Pendens Before Appellants' Motion to Reconsider and During the Pendency of this Appeal.

On the same day as entry of the Lien Order, the corresponding lis pendens was also dismissed. This dismissal was entered before the 10-day period in Rule 59(e), SCRCP, to file a motion to reconsider and before the thirty-day period within which to file a notice of appeal, Rule 203(b)(1), SCACR. The lis pendens should not have been dismissed during the motion to reconsider period or once Appellants filed their notice of appeal. The court's refusal to restore the lis pendens during the pendency of this appeal was error.

On June 27, 2025, Moats Construction filed a Motion to Reconsider the lower court's order dissolving its mechanic's lien. (R. p. 254). The Court denied this motion on July 3, 2025. (R. p. 20). Moats Construction then 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 Construction became aware that its lis pendens had been cancelled and it brought this matter to the court's attention by letter on July 16, 2025. (R. p. 265). On August 1, 2025, Moats filed its Notice of Appeal of the Lien Order. The lower court then heard argument on release of the lis pendens on August 27, 2025.

The Lien Order is immediately appealable because it affects a substantial right in that it dismisses and discharges Moats Construction's statutory right to a mechanic's lien and strikes a

portion of Moats Construction’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 Lien Order should have been stayed pending the outcome of this appeal.

Pursuant to the Mechanic’s Lien Statute, Respondents 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 this 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 APB Partnership sells its property, then Moats will have lost a significant statutory right to foreclose on the property if it is successful on this appeal.

For these reasons, the lower court erred in denying Moats Construction's request to reinstate the lis pendens and for the mechanic's lien to stay in place during the pendency of this appeal.

CONCLUSION

The lower court erred in granting summary judgment to the APB Defendants when there was a genuine issue of material fact as to Moats Construction's last date of work on the Project and when discovery had not even started. As such, the lower court's grant of summary judgment and dismissal of Moats Construction's mechanic's lien should be reversed.

Additionally, the lower court erred in refusing to restore the lis pendens and mechanic's lien during the pendency of this appeal. Therefore, the Court should restore the lis pendens and mechanic's lien until an appeal of this matter is fully concluded.

Respectfully submitted,

s/David L. Paavola
Brian A. Autry, SC Bar No.: 69401
David L. Paavola, SC Bar No.: 100714
Caitlin S. Cameron, SC Bar No.: 106286
KENISON, DUDLEY & CRAWFORD, LLC
440 Knox Abbott Drive, Suite 510
Cayce, South Carolina 29033
(864) 242-4899
Email: autry@conlaw.com
Email: paavola@conlaw.com
Email: cameron@conlaw.com
Attorneys for Appellants

April 17, 2026
Cayce, South Carolina

RECEIVED
Apr 17 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.

PROOF OF SERVICE

I certify that the Appellants' Final Opening Brief has been served on John S. Nichols and Daniel L. Draisen, counsel for Respondents APB Partnership, LLC, Wesley Edwards, and 2916 N. Main, LLC by email sent to their primary e-mail addresses listed in the Attorney Information System, john@bluesteinattorneys.com and daniel@injuredsc.com; on Dana Woodrum Lang, counsel for Respondent, W.H. Bass, Inc., by email sent to her primary e-mail address, dana.lang@wbd.-us.com; on Christopher B. Major, counsel for Respondent, Whataburger Restaurants, LLC, by email sent to his primary e-mail address, cmajor@hsblawfirm.com; on Paul Hamilton Hoefler and Clara Elizabeth Weston, counsel for Respondent United Community Bank, by email sent to their primary e-mail addresses, phoefler@robinsongray.com and lweston@robinsongray.com on April 17, 2026.

s/ David L. Paavola

David L. Paavola, SC Bar No.: 100714
KENISON, DUDLEY & CRAWFORD, LLC
440 Knox Abbott Drive, Suite 510
Cayce, South Carolina 29033
Telephone: (864) 242-4899
Email: paavola@conlaw.com
Attorney for Appellant

April 17, 2026