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 REPLY BRIEF OF APPELLANTS

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I. Summary Judgment Was Premature Because of Unanswered Factual Disputes

The last date of furnishing labor or materials is the key date when evaluating the timeliness of a mechanic's lien. *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 129, 631 S.E.2d 252, 256-57 (2006). As such, identifying this date is material to the enforcement of the lien or its dismissal. There is a genuine dispute between Appellant and Respondents about this last date of work and whether Appellant's completion of demobilization on April 29, 2024, constituted furnishing labor for completion of its contract. This factual dispute necessarily requires discovery and submission to a fact finder for resolution. Granting summary judgment before any discovery could be completed on this disputed factual issue was plainly premature. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 363, 563 S.E.2d 331, 334 (2002) ("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. This means . . . that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.").

This factual inquiry will necessarily require discovery into certain key factual issues if Respondents contend that Moats's work on April 29, 2024, was not its last date of work, including:

- Whether Moats's demobilization was necessary for the proper performance of its contract;
- Whether Moats's demobilization was done for the purpose of fully completing the contract, not merely as a gratuity or act of friendly accommodation;
- Whether Moats's demobilization was done for the purpose of extending the period for perfecting the lien; and
- Whether there was an unreasonable delay between substantial completion of the work and completion of demobilization.

Contrary to lower court's and Respondents' position, there is no legal requirement that an owner's request precedes the final date of furnishing of labor or materials. (R. p. 11 (Order ¶ 6); Respondents Br. at 14). A contractor who is furnishing labor or materials for the proper performance of its contact is not beholden to the owner's request that such final work be provided. *Butler*, 369 S.C. at 130-31, 631 S.E.2d at 257. Following the lower court's ruling to its logical extent, because Moats finished demobilization at its own initiative it has no lien rights, but had Moats simply waited until the owner demanded that it finish demobilizing and remove its materials from the job site, it would then have been able to argue for an extension of the last date of work because of the owner's request. This would be an absurd result.

For these reasons, summary judgment was premature and the court's order should be overturned.

II. The Court Has Jurisdiction to Correct the Lower Court's Failure to Maintain the Status Quo

Respondents do not dispute that Appellants timely moved to reconsider, and then appealed, the lower court's order releasing the lis pendens on Respondents' property. As a matter of black letter law, those actions *automatically* stayed enforcement of that order. Respondents have identified no basis for disregarding that law here.

The lower court issued a formal order releasing the lis pendens and directing the clerk of court to cancel the same on June 17, 2025. (R. p. 15, 17 (Lien Order at 7, 9)). Appellants timely filed a motion to reconsider ten days later. (R. p. 254; *see* Rule 59(e), SCRCP). During that time, the lower court was prohibited from executing or taking any action to enforce its ruling. Rule 62(a), SCRCP. Nonetheless, the clerk of court immediately canceled the lis pendens after entry of the court's order on June 17. (R. p. 265). The court later denied Appellants' motion to reconsider,

after which Appellants timely filed a notice of appeal. (R. p. 20 (Form 4 Order, July 3, 2025); Notice of Appeal, Aug. 1, 2025); *see* Rule 203(b)(1), SCACR).

The effect of this notice on the lower court's order is clear, as Respondents point to no exception to the automatic stay under Rule 241, SCACR, which stays *all 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). The Court of Appeals aptly described this rule in *Tillman v. Oakes*, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012), where it stated,

> When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order, particularly the immediate effectiveness of relief ordered; and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending. The answer to the first question is governed by the stay and supersedeas provisions o f Rule 241. **If a stay exists**, either **automatically under Rule 241(a)** or by supersedeas under Rule 241(c), **the 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—not to determine whether the *action* may proceed in the lower court while the appeal is pending.

Id. at 254–55, 728 S.E.2d at 50–51 (bold emphasis added). In short, Appellants' notice of appeal stayed the lower court's order canceling the lis pendens on Respondents' property, and the lower court is prohibited from taking any action to carry out or enforce that decision while the appeal is pending.

As a matter of course, lower courts frequently issue orders that grant one party relief and negatively affect another's substantial rights. If a court could simply "hurry up" and enforce those decisions (e.g., cancel a lis pendens or dismiss a mechanic's lien) before the parties have time to move for reconsideration or file an appeal, it would make a mockery of the civil and appellate

rules. In requesting that the lower court reinstate the lis pendens, Appellants were merely asking the court to comply with those rules by restoring the parties to the status quo and staying the relief granted in the challenged order.

Moreover, even if Respondents are correct that the notice of appeal divested the lower court of jurisdiction to act on Appellants' request, their argument misses the point that *this* Court has such jurisdiction.[1] The South Carolina Supreme Court confronted an almost identical situation in *Lebovitz v. Mudd*, 289 S.C. 476, 347 S.E.2d 94 (1986). In that case, 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 request for supersedeas was unnecessary, however, as "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), SCRCP).

[1] The trial court's—and Respondents'—reliance on a statute allowing the circuit court to cancel a notice of lis pendens "in its discretion at any time" is similarly without merit. (Resp'ts' Initial Br. at 20 (citing S.C. Code Ann. § 15-11-40).) The statute allows a court to cancel a lis pendens "on application of a person aggrieved and on good cause shown and on a notice as directed or approved by the court" only "*after the action is settled*, discontinued, or abated." S.C. Code Ann. § 15-11-40 (emphasis added). Respondents have not established compliance with the notice and good cause requirements, and this action is obviously not "settled, discontinued, or abated." *Id.* Therefore, the statute is inapposite.

Respondents' arguments about waiver and default are likewise red herrings. (*See* Resp'ts' Initial Br. at 19–20.) 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 timely raised these issues to the lower court, the court held a hearing on the issues at which Respondents participated, and the court issued a final order "Discharging Mechanic's Liens, Releasing Lis Pendens, and Dismissing [Appellants'] Causes of Action for Lien Foreclosure." (R. p. 9 (Lien Order at 1 (formatting altered))). In seeking reconsideration of this order, Appellants were not further required to ask the court to issue a stay that Appellants believed (correctly) was supposed to happen automatically. *See* Rule 62(a), SCRCP. Appellants' notice of appeal continued that stay. *See* Rule 241(a), SCACR. Appellants need not have done more.

CONCLUSION

There are genuine issues of material fact as to last date of work; therefore, the trial court erred in granting summary judgment. In addition, because there are no exceptions to the automatic stay, the general rule applies and *all* matters decided and relief ordered[2] in the appealed Lien Order should have been stayed pending the outcome of this appeal. The trial court's failure to do so was error.

[2] *Cf.* Rule 242(d)(1), SCACR ("A question presented [to the Supreme Court in a petition for writ of certiorari] will be deemed to include every subsidiary question fairly comprised therein.").

Respectfully submitted,

s/David L. Paavola

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PROOF OF SERVICE

I certify that the Appellants' Final Reply 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 Hoefer and Clara Elizabeth Weston, counsel for Respondent United Community Bank, by email sent to their primary e-mail addresses, phoefer@robinsongray.com and lweston@robinsongray.com on April 17, 2026.

s/ David L. Paavola

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