STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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SC Court of Appeals

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

Moats Construction, Inc. and The Green Man, LLS, ... Appellants,

v.

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

BRIEF OF RESPONDENTS APB PARTNERSHIP, LLC, WESLEY EDWARDS, 2916 N. MAIN, LLC

John S. Nichols
Bluestein Thompson Sullivan, LLC
PO Box 7965
Columbia, South Carolina 29202
(803) 779-7599
john@bluesteinattorneys.com

Daniel L. Draisen
The Injury Law Firm, PC
2006 N. Main Street
Anderson, South Carolina 29621
(864) 888-8887
daniel@injuredSC.com

Attorneys for Respondents

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II. Did the circuit court correctly deny Appellant's request to reinstate the lis pendens and mechanic's lien while the appeal is pending?

Counter-Statement of the Case

On October 28, 2024, Appellant Moats Construction Company filed a summons and complaint against Respondents APB Partnership, LLC, Wesley Edwards, 2916 N. Main, LLC and others. (R. pp. 39-51). Appellant alleged it contracted to perform site improvement and development work on Respondent's property in preparation for building a "Whataburger" restaurant. In December 2023, W.H.Bass, a contractor for the project, engaged Appellant "to conduct demolition, utility services, and construction services on the Properties." (R. p. 43, ¶ 23). Appellant alleged it "satisfied, performed, and completed all demolition, construction services, and site related work at the Properties" but had not been paid. (R. p. 43, ¶ 26).

Appellant alleged that on "July 3, 2024, and within ninety days from last supplying labor or materials on the Project," Appellant filed and served its mechanic's lien. (R. p. 43, ¶¶ 23, 28). Appellant sought, among other relief, foreclosure of its mechanic's lien filed against Respondents. (R. pp. 48-49, ¶¶ 66-81). Appellant attached its statement of work performed which showed the last charges for actual work or supplies was on April 3, 2024. (Exh. B, R. pp. 36-39; see also Mechanic's Lien Notice filed July 7, 2024, Exh. B, R. 36-39 (entry for July 2, 2024 is for "finance charge"; last entry for work or materials was April 2, 2024).

On March 10, 2025, Respondents filed their Answer, Counterclaims and Cross-Claims. (R. pp. 67-93). Respondents asserted Appellant completed its work in the first part of February 2024. (R. p. 80, ¶ 95).

On April 8, 2025, Appellant filed a Reply to the counterclaims. (R. pp. 89-93).

On April 29, 2025, Respondents filed a motion to dismiss and discharge the Mechanic's Lien. (R. pp. 94-194). The circuit court held a hearing on the motion on June 5, 2025. The parties

submitted information outside the pleadings and the court converted the motion to one for summary judgment. (R. p. 285, ll. 10-15; Order R. p. 12).

On June 17, 2025, the circuit court entered an order dissolving the mechanic's lien because Appellant failed to timely foreclose the liens. The court also canceled the lis pendens Appellant had filed against Respondents' property, and dismissed the foreclosure action with prejudice. Finally, the court declared Respondents to be the prevailing parties but left the issue of attorneys fees and costs for later determination.

On June 27, 2025, Appellant filed a motion to reconsider and a supplemental motion to reconsider the circuit court's order. On July 3, 2025, the circuit court entered a Form 4 order denying the motion. Appellant filed and served a Notice of Appeal on August 1, 2025.

On August 26, 2025, Appellant filed a memorandum with the circuit court claiming service of its notice of appeal stayed release of the lis pendens, and requesting the court order the clerk to reinstate the lis pendens pending the outcome of the appeal. On August 27, 2025, the circuit court held a hearing and entered a Form 4 order denying the motion and requesting counsel prepare a formal order. The court entered the formal order on September 4, 2025.

On October 1, 2025, Appellant filed and served a Notice of Appeal from the September 4, 2025 order.

Standard of Review

This Court's standard of review of an order granting summary judgment is the same standard employed by the circuit court. "Rule 56(c)[, SCRCP] ... provides that the moving party is entitled to summary judgment 'if the [evidence before the court] show[s] 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." *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (quoting Rule 56(c), SCRCP); *Charles Blanchard Construction Corp v. 480 King Street, LLC*, 447 S.C. 295, 926 S.E.2d 935 (2026).

As the Supreme Court recently explained:

> "In determining whether any triable issue of fact exists, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party." *Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997). To survive summary judgment, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Kitchen Planners*, 440 S.C. at 462, 892 S.E.2d at 301 (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "In that way, '[a] motion for summary judgment is akin to a motion for a directed verdict' because '[i]n each instance, one party must lose as a matter of law.' " *Id.* (alterations in original) (quoting *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984)).

Isaac v. Onions, ___ S.C. ___, ___, 915 S.E.2d 492, 496 (2025).

Disputed facts must be "material" to the inquiry before the Court. *See, e.g., Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986) ("the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact") (emphasis by the Court). The *Anderson* Court added:

> As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted. *See generally* 10A C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2725, pp. 93–95 (1983). This materiality inquiry is independent of and separate from the question of the incorporation of the evidentiary standard into the summary judgment determination. That is, while the materiality determination rests on the substantive law, it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs. Any proof or evidentiary requirements imposed by the substantive law are not germane to this inquiry, since materiality is only a criterion for categorizing factual disputes in their relation to the legal elements of the claim and not a criterion for evaluating the evidentiary underpinnings of those disputes.

Anderson, 477 U.S. at 248.

Facts

The underlying litigation arises out of disputes surrounding the construction of the Whataburger restaurant in Anderson, South Carolina, on property Respondents own. (R. p. 54, ¶¶ 14, 16). Whataburger Restaurants, LLC, entered into a construction contract with W.H. Bass, Inc., to improve the existing structures on the property and build the restaurant. (R. p. 54, ¶. 18; p. 99). W.H. Bass engaged Appellant to do certain work on the project. (R. p. 55, ¶ 23). Although Appellant alleged it had a contract with Respondents, Appellant's counsel admitted "[t]here are no written contracts signed by the parties by [Appellant] for work done on the property...." (R. p. 283, ll. 18-24).

Viewing the case most favorably for Appellant, although it had completed its work in December 2023 or January 2024, W.H. Bass asked Appellant to do additional work. (R. p. 55,¶¶ 23, 26). However, Appellant claimed it had not been paid for the work. (R. p. 55, ¶ 26).

The key fact is the date Appellant last performed work on the project. Appellant filed its list pendens and mechanic's lien on July 3, 2024 (R. pp. 30-38) and filed its action to foreclose the lien on October 28, 2024. (R. p. 39). Viewing the evidence most favorably for Appellant, its filing of the mechanic's lien was timely. The issue is whether the last date Appellant did any meaningful work on the property was no earlier than April 28, 2024, so that the suit was timely filed.

Cole Miller, the project manager for W.H. Bass who had oversight for the Anderson Whataburger project, provided an affidavit dated April 21, 2025, in which he stated that Appellant "demobilized from the site on April 3, 2024 and provided no further labor or materials to the project for that date." (R. p. 97, ¶¶ 2, 13). The affidavit contained email exchanges

between Mr. Miller and R.T. Moats, Appellant's owner. On April 3, 2024, Mr. Moats emailed Mr. Miller stating Appellant was "at the end of the job." (R. p. 148). At 10:08 a.m. on April 4, 2024, Mr. Miller wrote:

> Russell [Moats]
>
> Good morning. We noticed on the cameras that you came to the site late last night and stayed until around 9:30. *This was after your confirmation via email at 2:42 [p.m.] yesterday that you would not be continuing work on the job site.* We're not sure what the motive was, but while on site you damaged our concrete sub's form boards and damaged their auger. You will be liable for that damage.
>
> *At this point, you have voluntarily removed yourself from the project and are no longer allowed on our job site.* We will be putting a gate on the entrance and locking it up when Joe isn't there.
>
> For the materials you've had delivered (sewer pipe, backflows, clean-outs/lids, etc.), those will need to stay on site. As mentioned before, we will handle those invoices directly with the suppliers.
>
> We are still open to coming to an agreement on an amount owed that matches the work you've performed.
>
> Thanks,
>
> Cole Miller

(R. p. 148)(emphasis added). At 12:57 p.m. on April 4, 2024, Mr. Moats responded:

> Good afternoon, Cole!
>
> Well let's see, we told everyone that if you didn't pay the outstanding bill or give assurances and proof of payment by 5pm yesterday *we would be demobilizing from the [site]*, which means, as I'm sure you know, removing all of our equipment from the project [site]. *Which we did.*"
>
> You are correct that we were out there late removing our equipment due to having to move, re-position and clean the temporary storage containers that we had furnished to the site, as well as safe up any existing work that had been in-progress. All documented.

> We did not want to leave an un-safe [site] as *we had also removed our traffic control* and there is regular foot traffic across the site at all hours due to numerous vagrants in the area and also customers frequenting the adjacent shops.
>
> Your site superintendent had relocated with his telehandler both of the temporary storage Conex containers from where they had originally been delivered on a dry and level area, and left them for us to pickup in the mud. Thanks for that.
>
> And, WH Bass will be charged for that also I can assure you.
>
> Also in making our work safe we also backfilled the remaining large curb island, which as you know is part of a Grading scope of work that you wanted completed by tomorrow 04/05/24. We could not do that prior to yesterday because there was so much "stuff", to put it nicely, in the way.
>
> So all we did was the remaining backfill *so that work would be complete* and the area not continue to hold water where all of your other forces had excavated and just left them un-covered, and we have before and after pictures of that work we did yesterday *on the way out*.
>
> I am not sure about damaging any concrete forms in that process. How would we have damaged concrete forms by backfilling an island[?] Didn't you all want everything completed like "yesterday", or by tomorrow at the latest correct?
>
> Also, not sure what good a gate is going to do on this site. You have 3 wide open areas front back and side of the property. You may want to go with an entire temporary fence, *but why do that at the end of the job* Cole? Aren't you wrapping things up now? You should have done that months ago buddy.

(R. pp. 144-145; See also R. p. 98, ¶ 15) (emphasis added).

At the hearing Appellant's counsel agreed "they did pull up the materials and equipment on April 3rd. There's no doubt." (R. p. 285, ll. 16-19). Counsel contended Appellant left traffic cones on the site that "were still functioning as they were supposed to, as intended." (R. 285, ll. 19-23). Counsel added that Mr. Moats met with City officials on April 12 or 13, 2024, to discuss sewer and water line caps. (R. p. 286, ll. 1-8).

Arguments

I. The Circuit Court Correctly Ruled That There Was No Genuine Issue of Material Fact Regarding Whether Appellant Failed to File its Action to Foreclose its Mechanic's Lien Within Six Months of the Last Date of Work on the Construction Project

Appellant contends that whether the work in allegedly removing the traffic cones on April 29, 2024, sufficed to extend the deadline to file the action for foreclosure of its mechanic's lien is a question of fact to be resolved by a jury so that summary judgment was improper. The Court should not be persuaded by this argument.

The circuit court found, viewing the facts in a light most favorable to Appellant, that Appellant failed to foreclose on its mechanic's lien within six months as required by S.C. Code Ann. § 29-5-120 (Supp. 2024). The court held under applicable law, there is no genuine issue of material fact as to whether Appellant last performed work on April 3, 2024 so that filing the action on October 28, 2024, was too late. The circuit court found:

A. "[I]t would be unreasonable (based on the alleged scope of the work done) to allow [Appellant] a lien time extension until April 29, 2024." (R. p. 11, ¶ 5).

B. "[T]he incidental work done by [Appellant] 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." (R. p. 11, ¶ 6).

C. "Even if the Court extended the date of demobilization to April 13[, 2024], (the date [Appellant] 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." (R. p. 11, ¶ 7).

D. "As a result of [Appellant's] failure to foreclose its Mechanic's Lien within the statutory timeframe, [Appellant's] Mechanic's Lien[]... dissolved by operation of law and [is] of no force." (R. p. 12, ¶ 10).

E. "Viewing the undisputed facts in a light most favorable to [Appellant], [Respondents] are entitled to judgment as a matter of law and are entitled to (partial) Summary Judgment in this matter as to [Appellant's] ... causes of action for Foreclosure of Mechanic's Lien." (R. p. 12, ¶ 11).

These rulings are correct and this Court should affirm.

Section 29-5-120 provides:

> (A) Unless a suit for enforcing the lien is commenced and notice of pendency of the action is filed within six months after the person desiring to avail himself of it ceases to labor on or furnish labor or material for the building or structure, *the lien must be dissolved.*

S.C. Code Ann. § 29-5-120(A). As the Supreme Court observed:

> In South Carolina, mechanics' liens are purely statutory and may be acquired and enforced only in accordance with the terms and conditions set forth in the statutes creating them. *Multiplex Bldg. Corp. v. Lyles*, 268 S.C. 577, 235 S.E.2d 133 (1977); *accord Skiba v. Gessner*, 374 S.C. 208, 212, 648 S.E.2d 605, 606 (2007) (stating "one's right to a mechanic's lien is wholly dependent upon the language of the statute creating it"); *Butler Contracting, Inc. v. Court St., L.L.C.*, 369 S.C. 121, 130, 631 S.E.2d 252, 257 (2006) (observing mechanics' lien statutes "must be strictly followed"). The statutory process encompasses several steps, including the (1) creation, (2) perfection, and (3) enforcement of the lien. *See generally* S.C. Code Ann. §§ 29-5-10 to -440 (2007 & Supp.2013) (governing mechanics' liens).

Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C., 409 S.C. 331, 340, 762 S.E.2d 561, 565 (2014). The Court added:

> For an inchoate lien to become valid, the lien must be perfected and enforced in compliance with South Carolina's mechanic's lien statutes. *Preferred*

> *Sav. & Loan Ass'n v. Royal Garden Resort, Inc.*, 301 S.C. 1, 389 S.E.2d 853 (1990). To perfect and enforce a lien, one must timely complete the following three steps found in sections 29-5-90 and 29-5-120 of the South Carolina Code: (1) serve and file a notice or certificate of the lien, (2) commence a lawsuit to enforce the lien, and (3) file a lis pendens. *See* S.C. Code Ann. §§ 29–5–90 & –120 (2007); [*Butler Contracting, Inc. v. Court St., LLC*, 369 S.C. 121, 129, 631 S.E.2d 252, 256 (2006)]; *see also* 22 S.C. Jur. *Mechanics' Liens* §§ 15 to 19 (1994) (discussing procedures). The trigger for determining when all three of these events must be performed is the date when the supplier ceases furnishing labor or materials.

Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., L.L.C., at 342, 762 S.E.2d at 566.

The circuit court held anything Appellant did after it admittedly ceased work and demobilized on April 3, 2024, did not in good faith extend the time for filing the action to foreclose the mechanic's lien. This ruling is correct.

As the Supreme 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 deadline to serve and record a mechanic's lien begins running from the date the last material was furnished or work performed, regardless of whether such material or work is insignificant and regardless of whether the final work is delayed, provided the reason for the delay is not to improperly extend the period for perfecting the lien. * * *
>
> * * * [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.

Butler Contracting, Inc. v. Court St., L.L.C., at 130-131, 631 S.E.2d at 257-258, citing *Wood v.*

Hardy, 235 S.C. 131, 110 S.E.2d 157 (1959) (emphasis added).

By his own account in the emails to Mr. Miller, Mr. Moats had completed all relevant work under Appellant's agreement with W.H. Bass *and* fully "demobilized" by April 3, 2024. The only evidence otherwise is Appellant's claim that it continued with the project by meeting with City officials on April 13, 2024, and then pulling some traffic cones on April 29, 2024. Accepting these assertions as true, there is no evidence these things were done at the request of W.H. Bass or Respondents. Furthermore, Mr. Moats specifically said they were "on the way out" the prior day and Mr. Miller specifically told him not to return to the site no later than April 4, 2024. (R. pp. 144-145, 148). There is no genuine issue of material fact as to when Appellant was done with the work and had "demobilized," that date being no later than April 3, 2024.[1]

Appellant contends Mr. Moats' affidavit creates a question of fact for a jury to resolve regarding whether allegedly removal of traffic cones on April 29, 2024, extended the time for filing and serving the action to foreclose the mechanic's lien. (App. Br. pp. 7-8). Appellant contends this "work" qualified as "furnish[ing] labor" pursuant to S.C. Code Ann. § 29-5-90 (Supp. 2024). Appellant points out that the *Butler* Court observed the "statute does not specify any particular amount of materials or labor which must be furnished." (App. Br. p. 8). The Court should not be persuaded by this argument.

Butler cited to *Wood v. Hardy* for the principle that "the statute does not specify any particular amount of materials or labor which must be furnished." *Butler*, at 130, 631 S.E.2d at

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[1] The other company Appellant owns, The Green Man, LLC, provided waste removal and portable restrooms, dumpsters and Conex containers under contract with W.H. Bass. (App. Br. pp. 3-4). Appellant's counsel admitted that Green Man pulled its final containers from the job site by April 12, ,2024, so that the action Green Man filed on October 28, 2024, was not timely. (R. p. 283, ll. 1-12). Counsel agreed Green Man's lien must be dissolved. (R. p. 283, ll. 7-8).

257. Importantly, the *Butler* Court went further in quoting *Wood* (quoted above) that the rule applies when the claimant does additional work or supplies additional materials "in good faith at the request or the owner or for the purpose of fully completing the contract....irrespective of the value thereof." *Butler*, at 130-131, 631 S.E.2d at 257. Only under those circumstances will the reasonable performance of "trivial or inconsequential" work or materials extend the time for filing the action to foreclose the mechanic's lien.

In *Butler,* the contractor asked Butler "to provide a single box of ceiling tiles to replace water-damaged tiles." *Butler*, at 131, 631 S.E.2d at 258. The Court stated:

> The trial court correctly ruled that [Butler], in this instance, furnished additional materials which were necessary for the proper performance of the contract, and *did so in good faith at the request of Contractor* or for the purpose of fully completing the contract. [Butler] did not provide the materials merely as a gratuity or an act of friendly accommodation; nor did [Butler] provide the materials merely to improperly extend the period for perfecting its lien.
>
> [Butler] routinely provided such materials on its projects to properly complete the job and foster a good reputation. Although it was not explicitly required by contract to leave surplus tiles on site or replace tiles damaged by others during the construction process, the parties implicitly considered the provision of such materials necessary to comply with the contract and fulfill the duty of good faith and fair dealing which is an implied term of every contract.

Butler, at 130-132, 631 S.E.2d at 258.

In *Wood v. Hardy,* the claimant, Wood, was a supplier of materials for a contractor building a home for Hardy. Wood believed the home was complete on September 8, 1956, when Hardy moved in. However, Hardy complained to Wood that the kitchen sink did not drain properly. Wood sent a plumber back to the dwelling with two pipe joints which costs $4.12. The plumber made the repair and Wood made no additional charge to Hardy.

Wood filed his mechanic's lien on December 18, 1956, and commenced the action to

foreclose on January 21, 1957. Hardy claimed the lien was not filed within 90 days after any work was done or materials were furnished, and further that furnishing the pipe joints was so trivial or inconsequential "that such did not keep [Wood's] mechanic's lien alive." *Wood v. Hardy*, at 135-136, 110 S.E.2d at 159.

The Supreme Court surveyed cases from other jurisdictions and held:

> We conclude that the respondent, in good faith, *and at the request of the appellant*, did furnish materials and do additional work *necessary for the completion of his contract*, and that having filed his lien within 90 days after the furnishing of such labor and materials, even though the value thereof was insignificant, the filing of such lien was timely made.

Wood v. Hardy, at 140, 110 S.E.2d at 161 (emphasis added).

Appellant has produced no evidence that anything it may have done after April 3, 2024, was at the request of W.H. Bass or Respondents. In fact, the only evidence is that Respondents specifically told Appellant on April 4, 2024, not to return to the site after April 3, 2024. Furthermore, Appellant produced no evidence that anything it did after April 3, 2024, was necessary for the completion of his agreement with W.H. Bass. *Butler* and *Wood* are both meaningfully distinct from this case and do not aid Appellant's argument.

Appellant points out the *Butler* Court cited to *F.B. Mattson Co., Inc. v. Tarte*, 719 A.2d 1158 (Conn. 1998), describing it as follows: "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." (App. Br. p. 9). What Appellant conspicuously omitted was the Supreme Court's full parenthetical in *Butler* – "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 the scaffolding and roofing brackets from property *at request of owner*." (emphasis added).

An examination of *Mattson* reveals that Mattson, the roofing contractor, substantially completed replacement of a mansion's deteriorating copper roof by October 3, 1995, but by that time the owner had fallen behind in payment. Mattson stopped work on the property on October 10, 1995, but left the scaffolding and roofing brackets in place. That same date the owner transferred the property to Tarte, its president and one-third owner. Tarte then requested that Mattson remove the scaffolding and roofing brackets from the property. On November 10, 1995, Mattson sent two workers to the premises and they worked all day removing the scaffolding and brackets. Mattson performed no other work after that date. Matttson recorded its mechanic's lien on January 25, 1996.

The trial court found the lien was timely filed. On appeal, the Appellate Court held, as a matter of law, that Mattson ceased work on October 3, 1995, the date of substantial completion so that its filing of a mechanic's lien was late. The Supreme Court issued a writ of certiorari and reversed. The Court observed:

> We previously have concluded that, although the general rule is that the time period for filing a certificate of mechanic's lien commences on the last date on which services were performed or materials were furnished[,] when work has been substantially completed and the contractor unreasonably has delayed final completion, the time period for filing a certificate of mechanic's lien will be computed from the date of substantial completion. Moreover, when 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.* Thus, in order for the date on which a contractor ceased "performing ... services or furnishing ... materials" within the meaning of § 49–34 to be computed as the date of substantial completion, rather than as the date on which services or materials actually were last rendered or furnished, the

> following conditions must be satisfied: (1) the contractor must have unreasonably delayed final completion; and (2) any services or materials rendered by the contractor subsequent to the date of substantial completion must have been furnished at the contractor's initiative, rather than at the owner's request.

F.B. Mattson Co., Inc. v. Tarte, at 1161 (emphasis added)(citations omitted). *Mattson* therefore belies Appellant's argument that "there did not need to be a separate request from the owner for [Appellant] to return to the property" because the work Appellant claims it did (removing traffic cones) "was part of the scope of its contract"[2] and "within the scope of work...." (App. Br. p. 9-10).

Appellant argues "[o]ther courts have denied summary judgment on a similar set of facts when the question is whether demobilization qualified as furnishing labor, ruling this is a disputed issue of fact." (App. Br. p. 10). The only case Appellant cites is *The Beaver Excavating Co. v. WJM Leasing, LLC*, C.A. No. 2019-CV-0937 (Ohio Com. Pl. 2019), 2020 WL 7862732. The Court should disregard this cited authority.

First, the order is a trial court order. "Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Rule 268(d)(2), SCACR. *See, also, Ford v. Beaufort County Assessor*, 398 S.C. 508, 515 n. 3, 730 S.E.2d 335, 339 n. 3 (Ct. App. 2014) (in an appeal from the ALC, this Court stated the ALC's order in an unrelated case was not "binding authority"; Court cited 21 C.J.S. § *Courts* 212 (2006) ("Trial or inferior court decisions are not precedents binding other courts, including appellate courts or other judges of the same trial court.")); *Higgins v. Medical University of South Carolina*, 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (parties may not

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[2] Recall that counsel admitted Appellant had no written contract setting forth any "scope of work." (R. p. 283, ll. 19-24).

rely on facts and legal conclusions within trial court orders except when trying to establish collateral estoppel).

Even so, the Ohio trial court's order is distinct from this case in very meaningful ways. Beaver had left the jobsite but months later a Beaver employee performed approximately three hours of "demobilizing" and cleanup work at the Property (the critical date). The employee returned to the jobsite *at the specific request and instruction of the general contractor* for Beaver to remove the equipment and tools it had left behind. The evidence demonstrated the Beaver employee was at the jobsite for about 3 ½ hours completing the "demobilization," which was equipment Beaver used in earthmoving for repair work on a water line, work on a welder foundation, and work on the general contractor's "flute machine foundation." Thus, the last "work" done for "demobilization" in *The Beaver Excavating* was more than simply retrieving traffic cones, and the return to the site was at the specific request of the general contractor.

The Ohio trial court noted the first issue was whether the work was "trivial work" done simply to extend the time for filing the lien. *Id.*, citing *Specialty Minerals, Inc. v. Dunbar Mechanical, Inc.*, 164 Fed.Appx. 539, 541-42 (6th Cir. 2005) ("Work performed that can be characterized as 'trivial, *i.e.*, unnecessary to the completion of the project' does not extend the last day of performance as required by [Ohio] R.C. § 1311.06(B)(3)."). The Ohio trial court stated the test was whether the work was "a necessary part of the proper completion and performance of the work which the lien claimant undertook to do, and an attempt in good faith to perform the contract, and not merely an effort to extend the time for filing an affidavit for a lien." Finally, the Ohio trial court stated that determination in that case was a jury question.

In this case, the only evidence is that Appellant did no work on the site after April 3,

2024. Although viewed most favorably for Appellant there is evidence Appellant may have returned to the jobsite on April 29, 2024, to retrieve traffic cones, there is no evidence Appellant did this at anyone's request. Appellant also put forth evidence one of its employee met with city officials at the site on April 13, 2024, but did not retrieve all of the traffic cones that date. There is no evidence that retrieving the traffic cones and tools was work that was necessary to complete the work on the project for which Appellant was hired by W.H. Bass.

Importantly, Mr. Moats stated in the April 4, 2024, email that he had "demobilized," or had removed all of its equipment, by that date. Appellant did not file its summons and complaint until October 28,2024, or beyond the statutory six month deadline.

Finally, unlike *The Beaver Excavating Company* case, there is no evidence anyone invited Appellant back to the jobsite to meet with City officials, further "demobilize," or retrieve the traffic cones. In fact, Appellant was told expressly on April 4, 2024, not to return.

Appellant contends Mr. Moats' affidavit creates a material issues of fact as to whether recovering traffic cones was part of the "demobilization," whether it was unreasonable for Appellant to wait until April 29, 2024 to retrieve the traffic cones, and whether complete "demobilization" was within the scope of Appellant's agreement with W.H. Bass. (App. Br. pp. 10-11). Once again, Appellant admitted there was no written contract setting forth the scope of work Appellant was to complete, and there is no evidence Respondents or W.H. Bass invited Appellant back to the site to retrieve traffic cones. In fact, the only evidence is that Appellant declared it was done on April 3, 2024, and Respondents specifically told Appellant not to return to the site on April 4, 2024. There is no dispute, much less a genuine dispute, of those material facts.

This Court should reject Appellant's arguments and affirm the trial court's rulings.

II. The Circuit Court Correctly Denied Appellant's Request to Reinstate the Lis Pendens and Mechanic's Lien While the Appeal Is Pending

Appellant contends the circuit court erred in dismissing the lis pendens before Appellant had the opportunity to seek reconsideration pursuant to Rule 59, SCRCP, as well as before the 30-day period to "file" a notice of appeal. (App. Br. pp. 12-13). This Court should rule that it lacks jurisdiction to address this issue or, alternatively, should affirm.

First, Appellant points out that the court dismissed the lis pendens "[o]n the same day as entry of the Lien Order," which was entered on June 17, 2025. (App. Br. p. 12). Appellant filed and served its motion to reconsider on June 27, 2025, well aware that the Order, entitled "Order Discharging Mechanic's Liens, *Releasing Lis Pendens*, and Dismissing Plaintiff's Causes of Action," (emphasis added) had the effect of releasing the lis pendens. (Order of June 17, 2025). Furthermore, the mandate in the order expressly canceled the lis pendens. (Order of June 17, 2025, p. 9, ¶ 6). Despite that knowledge, Appellant failed to raise this issue in its Rule 59 motion and a supplemental Rule 59 motion, both filed on June 27, 2025, which was the earliest opportunity that the issue was available. *See, e.g.*, *Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 453 S.E.2d 908 (Ct. App. 1995) (party must raise alleged error at the first opportunity to preserve issue for appeal). Appellant has therefore waived this issue for appeal.

Second, after the circuit court entered the Form 4 order on July 3, 2025, summarily denying the motions to reconsider, Appellant filed and served a notice of appeal on August 1, 2025, from those orders. The circuit court was thereafter deprived of jurisdiction to consider any complaint regarding the release of the lis pendens. Rule 205, SCACR, provides:

> Upon the service of the notice of appeal, *the appellate court shall have exclusive jurisdiction over the appeal*; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Rule 205, SCACR (emphasis added). *See, also, Greenville Bistro, L.L.C. v. Greenville Cnty.*, 435 S.C. 146, 171, 866 S.E.2d 562, 575 (2021) (explaining the operation of Rule 205). The release of the lis pendens is a matter affected by the issues in this appeal.

Although Appellant brought this issue to the circuit court's attention by a letter dated July 17, 2025 (or 30 days after the June 17, 2025, order and 14 days after the July 3, 2025, order denying the Rule 59 motion), Appellant did not file any kind of motion raising the issue prior to filing and serving its notice of appeal on August 1, 2025. Thereafter, Appellant filed its "Memorandum Opposing Premature Release of Lis Pendens" on August 26, 2025, but the circuit court lacked jurisdiction to address the issue in the Memorandum as this issue was a matter affected by the appeal. Rule 205, SCACR. Although the circuit court issued a form order on August 27, 2025, and a more formal order on September 4, 2025, denying the request, the circuit court actually lacked jurisdiction to do so (or to address this issue at all).

Third, in its order denying Appellant's request, the circuit court pointed out that the court had the authority to order the lis pendens canceled pursuant to S.C. Code Ann. § 15-11-40 (2005) (providing the court in which an action was commenced, in its discretion at any time after the action is settled, discontinued, or abated, on application of a person aggrieved and on good cause shown and on a notice as directed or approved by the court, may order a notice of lis pendens to be canceled by the county clerk in the office where the notice was filed or recorded). Appellant does not challenge this ruling on appeal so it is the law of the case. *E.g.*, *Ulmer v. Ulmer*, 369

S.C. 486, 490, 632 S.E.2d 858, 861 (2006) ("A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case."); *First Union Nat. Bank of S.C. v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) ("[An] unchallenged ruling, right or wrong, is the law of the case and requires affirmance.").

Finally, the circuit court held that under the statute the mechanic's lien dissolved by operation of law, and since the mechanic's lien was the sole basis for the lis pendens, the court, in its discretion, ordered its cancellation. (R. 38). That ruling is correct.

Section 29-5-120 provides that unless a mechanic's lien claimant brings the action to foreclose within six months, "the lien *must* be resolved." S.C. Code Ann. § 29-5-120(A) (Supp. 2024) (emphasis added). "Under the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement." *Richland County v. South Carolina Department of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018).

The circuit court acted appropriately under the plain language of Section 29-5-120. Appellant has not appropriately raised this issue either before the trial court or before this Court. The Court should decline to address it or, alternatively, should affirm the circuit court's order.

Conclusion

For the reasons stated the Court should affirm the circuit court's order as to Issue I. The Court should decline to address Appellant's Issue II or, alternatively, should affirm as well.

Respectfully submitted,

/s/ John S. Nichols
John S. Nichols
Bluestein Thompson Sullivan, LLC
PO Box 7965
Columbia, South Carolina 29202
(803) 779-7599
john@bluesteinattorneys.com

Daniel L. Draisen
The Injury Law Firm, PC
2006 N. Main Street
Anderson, South Carolina 29621
(864) 888-8887
daniel@injuredSC.com

Attorneys for Respondents

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