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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Appellate Case No. 2026-001151

Brownswood Farms Property Owners Association, Inc.,………………….. Appellant,

v.

Corey B. Prescott and Corey S. Prescott,……………………………….. Respondents.

APPELLANT'S INITIAL BRIEF

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II. Whether the master erred by declaring Brownswood's lien satisfied and canceled of record upon the Prescotts' payment of $2,573.32 when the secured amount was disputed and the only account statement identified in the order was dated July 12, 2023.

STATEMENT OF THE CASE

This is an appeal of an order releasing the lien of the Appellant, Brownswood Farms Property Owners Association, Inc. ("Brownswood"), from real property formerly owned by the Respondents, Corey B. Prescott and Corey S. Prescott ("Prescotts"). (R.p.). On May 26, 2023, Brownswood filed a lis pendens, summons, and complaint to begin a foreclosure action against 1501 Thoroughbred Boulevard, Johns Island, SC 29455 ("Property"), which the Prescotts had purchased on December 12, 2013, and still owned at the time the complaint was filed. (R. p.). Brownswood was foreclosing on the notice of lien it filed on May 27, 2021, for delinquent assessments owed by the Prescotts. (R. p.). The complaint alleged that $2,343.00 was due in assessments, attorney's fees and costs. (R. p.). On July 12, 2023, the Prescotts were served with the lis pendens, summons and complaint. (R.p.). On August 6, 2023, the Prescotts, filed an answer generally denying the allegations of the complaint and setting forth the following defenses: "no authority," "failure to establish debt," "unclean hands/equitable defenses," "failure to comply with covenants." and statute of limitations. (R.p.). The Prescotts' answer also requested a jury trial. (R.p.). On February 6, 2024, Brownswood filed a motion to strike the Prescotts' jury demand and to refer the case to the master-in-equity. (R.p.). The Prescotts filed a motion for summary judgment on June 26, 2024. (R.p.). A hearing was scheduled for July 9, 2024, on Brownswood's motion to strike the Prescotts' jury demand and refer the case to the master-in-equity, but just prior to the hearing, the Prescotts agreed to a consent to an order striking the jury demand and referring the case to the master-in-equity, and a consent order was filed on July 8, 2024. (R.p.). On March 10, 2025, Brownswood filed a memorandum in opposition to the Prescotts' motion for summary judgment. (R.p.). On April 22, 2025, Brownswood filed an affidavit of Chris Curam, a director on the Board of Directors of Brownwood, stating that the board of directors for Brownswood made the decision to foreclose on the Property. (R.p.). On August 11, 2025, the master-in-equity issued an order denying the Prescotts' motion for summary judgment. (R.p.). On March 11, 2026, the Prescotts filed a motion for emergency relief requesting that the master-in-equity release Brownswood's lien to allow the Property to be sold. (R.p.). On March 16, 2026, Brownswood filed a memorandum in response to the Prescotts' motion for emergency relief. (R.p.). After a virtual hearing on March 16, 2026, the master-in-equity issued a Form 4 order ("Order"), ordering the satisfaction and cancellation of record Brownswood's lien against the Property upon the Prescotts paying $2,573.32 to Brownswood. (R.p.). On March 26, 2026, Brownswood filed a motion to alter or amend the Form 4 Order ("59(e) Motion"). (R.p.). Brownswood also filed a notice of appeal on March 26, 2026. (R.p.). On April 2, 2026, the Court of Appeals issued an order dismissing the appeal, pursuant to *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986), followed by its Remittitur on April 22, 2026. (R.pp.). On May 2, 2026, the Prescotts filed a motion for civil contempt and equitable relief against Brownswood. (R.p.). On May 14, 2026, Brownswood filed a motion for relief pursuant to Rule 60(b)(2) and 60(b)(3) and a memorandum in response to the Prescott's motion for civil contempt and equitable relief, to supplement Brownswood's 59(e) motion, and in support of Rule 60(b)(2) and 60(b)(3) motions. (R. p.). On at least six occasions, Brownswood requested that the master-in-equity issue an order ruling on Brownswood's motion to alter or amend the Order. (R. p.). However, as shown by the master-in-equity's emails to the parties, the master-in-equity declined to issue a ruling on the 59(e) motion until the parties appeared for the trial scheduled for May 19, 2026, and if necessary, May 20, 2026. (R. p.). Brownswood filed a notice of appeal on May 18, 2026. (R.p.).

STANDARD OF REVIEW

Like an action to foreclose a real estate mortgage, an action to foreclose a homeowners association's assessment lien is an action in equity. *Dockside Asss'n v. Detyens,* 294 S.C. 86, 88, 362 S.E.2d 874, 875 (1987). In an appeal from an action in equity, tried by a judge alone, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2008). The appellate court may decide questions of law in an equity case without any particular deference to the trial court. *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000) (citing S.C. Code Ann. § 14-8-200 (Supp. 1998)).

STATEMENT OF FACTS

This appeal arises from an action by Brownswood to foreclose its lien on the Property. (LP, S&C). After the Prescotts failed pay the assessment due on the Property for January 2021, Brownswood requested its attorneys file a lien against the Property on May 27, 2021, for unpaid assessments (at that time, Charleston County did not have e-recording, so there was a significant lag time between the date the lien was mailed to Charleston County Register of Deeds' Office and the date the lien was recorded). (5/14/2026 Memo). Brownswood's attorneys also sent a letter to the Prescotts by both certified mail and regular United States first class mail informing the Prescotts that a lien had been filed against their Property for unpaid assessments. (R. p.). The Prescotts did not respond to Brownswood's attorney letter. On September 27, 2022, and after not receiving a response from the Prescotts, Brownswood's attorneys mailed a letter to the Prescotts informing them that Brownswood had approved moving forward with a foreclosure action if the Prescotts did not contact Brownswood's attorneys within ten days. (R. p.). This letter was also mailed by certified mail and regular United States first-class mail. (MSJ). This foreclosure action began after the Prescotts again failed to respond to Brownswood.

After the Prescotts were served with the lis pendens, summons, and complaint, they retained an attorney who contacted Brownwood's attorney by email on July 12, 2023, and in the email the Prescotts' attorney stated the Prescotts "received no notice of any failure to make payment, a notice of lien, or any indication that they did not make any payments when due." (Plaintiff's memorandum in opposition to Defendant's MSJ, Exhibit B). The Prescotts' attorney requested copies of any notices sent to the Prescotts regarding the assessments and the notice of lien that was filed. (R. p. - Plaintiff's memorandum in opposition to Defendant's MSJ, Exhibit B). Brownwood's attorney responded by email that same day, July 12, 2023, with (1) a ledger providing a breakdown of the account and showing the account balance at that time of $2,573.32; (2) a copy of the letter mailed to the Prescotts notifying them of the filing of the notice of lien; and (3) a copy of the letter mailed to the Prescotts notifying them of Brownwood's' intent to foreclose. (R. p. - Plaintiff's memorandum in opposition to Defendant's MSJ, Exhibit B).

In the email exchange between Brownswood's and the Prescotts' attorneys, Brownswood's attorney asked if the Prescotts had documentation that they had provided a new address to Brownswood's management company, MJS, Inc. ("MJS"), as it appeared that the problem may have been caused by the Prescotts moving around during the time they owned the Property. (Plaintiff's memorandum in opposition to Defendant's MSJ, Exhibit B). By email on July 13, 2023, the Prescotts' attorney responded stating that the Prescotts had the same address in Florence since 2019, and that they had no record of providing MJS with the Pennsylvania address to which the notices were sent. (R. p. - Plaintiff's memorandum in opposition to Defendant's MSJ, Exhibit B). In the email on July 13, 2023, the Prescotts' attorney also stated they were willing to resolve the matter by paying $1,090.00, which represented the three years of delinquent assessments, without any payment for the costs of collection incurred by Brownswood. (R. p. - Plaintiff's memorandum in opposition to Defendant's MSJ, Exhibit B).

On August 4, 2023, Brownswood's attorney provided to the Prescotts' attorney via email: (1) a copy of each assessment notice sent by MJS to the Prescotts for the assessments due since 2019; and (2) a change of address form that the Prescotts submitted to MJS on December 21, 2017, changing their mailing address to 316 12th Street, Ambridge, PA 15003 ("Pennsylvania address"). (R. p. - Plaintiff's memorandum in opposition to Defendant's MSJ, Exhibit B). MJS's records showed that from December 2018 through December 2022, the notices to the Prescotts regarding the assessments were sent to the Pennsylvania address provided by the Prescotts. (R. p. - Plaintiff's memorandum in opposition to Defendant's MSJ, Exhibit A). The Prescotts did not provide any evidence that they had provided MJS with written notice that the Prescotts had changed their address from the Pennsylvania address. Despite the information provided, the Prescotts proceeded to litigate the foreclosure and thereafter filed their answer, which demanded a jury trial, and later their motion for summary judgment.

Article XIII, Section 13.2 of the Amended and Restated Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Brownswood Farms ("Declaration"), which were recorded in the Register of Deeds Office for Charleston County on July 16, 2012, in Book 264 at page 231, provides, in part, the following:

> Any notice required to be sent to any Member or Owner under the provision of this Declaration and service of any legal proceedings shall be deemed to have been properly sent and received when personally delivered or mailed, post paid, to the last known address of the person who appears as that person authorized to receive notice or to vote as shown on the records of the Association at the time of mailing. . . .
>
> It shall at all times be the responsibility of any Owner to file written notice with the Association of the name and address of the person authorized to receive written notification from the Association or the Developer as to the Assessments, or infractions of the Regulations. . . .

(R. p. - Defendant's MSJ, Exhibit B). Under the Declaration, the "Association" is defined as Brownswood, and the Prescotts are an "Owner." (R. p. - Defendant's MSJ, Exhibit B).

The Prescotts' motion for emergency relief ("Emergency Motion") filed on March 11, 2026, sought to have the court use its equitable powers to extinguish Brownswood's lien, or, in the alternative, to allow the Prescotts to deposit an amount into court that would allow the lien to be removed. (Prescotts' EM). The reason for the "emergency" motion was that the Prescotts had a contract to sell the Property and the closing was scheduled for March 26, 2026. (Prescotts' EM). On March 16, 2026, only five days after the Prescotts filed their Emergency Motion, the parties appeared before the master-in-equity for a non-evidentiary, virtual hearing on the Emergency Motion. After the hearing, the master-in-equity issued the following order:

> This matter came before the Court on Defendant's Motion for Emergency Relief, filed March 11, 2026, in order to allow Defendants to sell their house located at 1501 Thoroughbred Boulevard, Johns Island, SC. The parties have had difficulty communicating and the only evidence presented to support the POA's filed lien is an itemized statement dated July 12, 2023 with a total of $2,573.32. This sum includes assessments, legal fees, and costs incurred. Defendants contend that Plaintiff has not properly authorized the filing of this foreclosure action, pursuant to the amended restrictive covenants. Plaintiff contends additional fees and costs have accrued. The Court hereby orders Defendants to pay the sum of $2,573.32 in satisfaction of the lien filed in this action. This sum may either be paid directly to Plaintiff's counsel in satisfaction of the debt which would end this matter or paid into Court as an offer of judgment, in which case it will allow the property to be sold free and clear from Plaintiff's lien, which is hereby satisfied and canceled of record though the equitable powers of this Court. *See Winrose HOA v. Hale*, 428 S.C. 563, 837 S.E.2d 47 (2019).[1]

(3/16/2026 Order).

ARGUMENTS

I. The March 16, 2026, Order is immediately appealable because it declared Brownswood's recorded assessment lien satisfied and canceled of record, thereby summarily disposing of Brownswood's foreclosure action.

[1] *Winrose* addressed the gross inadequacy and inequity of a foreclosure sale that transferred substantial homeowner equity to a third party for a nominal bid. No comparable facts exist here. The Prescotts voluntarily sold the Property for $479,500, received substantial net proceeds, and retained $25,000 in escrow for Brownswood's outstanding lien. Brownswood seeks determination and preservation of its disputed claim, not acquisition of the Prescotts' equity through an inadequate foreclosure sale. The master-in-equity may have misplaced reliance on *Winrose*.

"The right of appeal arises from and is controlled by statutory law." *Hagood v. Sommerville,* 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (citing *North Carolina Fed. Sav. and Loan Ass'n* v. *Twin States Dev. Corp.,* 289 S.C. 480, 347 S.E.2d 97 (1986)). "An appeal may ordinarily be pursued only after a party has obtained a final judgment." *Id.* at 194-95, 607 S.E.2d at 708. (citing *Mid-State Distributors, Inc. v. Century Importers, Inc.,* 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993); S.C. Code Ann. § 14-3-330(1) (1976); Rule 72, SCRCP; Rule 201(a), SCACR)). "The determination whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330." *Id.* at 195, 607 S.E.2d at 708. "An order must generally fall into one of several categories set forth in that statute in order to be immediately appealable." *Id.* (citations omitted).

Section 14-3-330 provides, in relevant part, the following:

> The Supreme Court shall have appellate jurisdiction for corrections of errors of law in law cases, and shall review upon appeal:
>
> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from inferior court or jurisdiction, and final judgments in such actions […]
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
>
> (3) A final order affecting a substantial right made in any special proceeding […]

S.C. Code Ann. § 14-3-330 (1976, as amended). Although S.C. Code Ann. § 14-3-330 states it applies to "law cases," the Supreme Court has held that it is applicable to equity cases as well. See *Kriti Ripley, LLC v. Emerald Inv., LLC,* 404 S.C. 367, 379, 746 S.E.2d 26, 32 (2013) (stating section 14-3-330 applies to equity cases as well as law cases) (citing *Ex parte Wilson*, 367 S.C. 7, 12 n.2, 5625 S.E.2d 205, 207 n.2 (2005)). "[A]n appellate court should look to the effect of an interlocutory order to determine its appealability[.]“ *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 303, 705 S.E.2d 475, 479 (Ct. App. 2011).

In the present case, the Order "satisfied and canceled of record" Brownswood's lien on the Property upon the Prescotts' payment of $2,573.32. (R. p. - 3/16/2026 Order). The only cause of action set forth in Brownwood's complaint was its cause of action for foreclosure of its lien. (R. p. - Complaint). By releasing the lien, the Order was, in effect, a decision on the merits as to Brownswood's only cause of action, as foreclosure was not possible without the lien. The Order is therefore immediately appealable under S.C. Code Ann. § 14-3-330(1). *See Stone v. Thompson,* 426 S.C. 291, 294-95, 826 S.E.2d 868, 869-70 (2019) ("An order involves the merits under § 14-3-330(1) when it finally determines some substantial matter forming the whole or part of a cause of action or a defense.") (citing *Mid-State Distributors, Inc. v. Century Importers, Inc.,* 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993)); *see also Cobb v. Maccaro,* 310 S.C. 303, 305-06, 423 S.E.2d 156, 157 (Ct. App. 1992) (Court discusses section 14-3-330 in the appeal of a mechanic's lien action and states that the "statutory authority to dissolve a lien is in the nature of summary judgment because it is only available when there is no genuine issue of material fact."). At the end of the hearing on March 16, 2026, the master even stated that he was "basically taking out the foreclosure aspect of this case." (R. p. - Transcript of 3/16/2026 Hearing, p. 17). Because the Order was a decision on the merits as to Brownswood's only cause of action, it is immediately appealable under S.C. Code Ann. § 14-3-330(1).

The Order is also immediately appealable under S.C. Code Ann. § 14-3-330(2), as the Order affects a substantial right of Brownswood. S.C. Code Ann. §§ 14-3-330(1) and 14-3-330(2) are not mutually exclusive, so an order may fall under both subsections. *Link v. School Dist. of Pickens Cnty.,* 302 S.C. 1, 6, 393 S.E.2d 176, 178 (1990). "Orders affecting a substantial right ‘discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.’” *Edwards v. Suncom,* 369 S.C. 91, 94, 611 S.E.2d 529, 530 (2006) (quoting *Mid-State Distributors,* 310 S.C. at 335 n.4, 426 S.E.2d at 780 n.4). The Order had the effect of dismissing Brownswood’s only cause of action, so it is immediately appealable under section under S.C. Code Ann. § 14-3-330(2). *See Ex parte South Carolina Farm Bureau Mut. Ins. Co.,* 314 S.C. 487, 490 n.2, 431 S.E.2d 252, 253 n.2 (1993) (Order denying summary judgment was interlocutory but was appealable under S.C. Code Ann. § 14-3-330(2)(c) because it had the effect of striking a portion of the appellant’s answer); *see also RM Contractors, LLC v. Wiggins,* 294 N.C.App 172, 176, 903 S.E.2d 365, ___ (Ct. App. 2024) (Trial court order that “struck” plaintiff’s claim of a mechanic’s lien had the effect of preventing plaintiff’s action to enforce the lien, therefore, the order was immediately appealable as affecting a substantial right of the plaintiff). The Order therefore affected a substantial right of Brownswood and is immediately appealable under S.C. Code Ann. § 14-3-330(2).

II. Whether the master erred by declaring Brownswood’s lien fully satisfied and canceled of record upon the Prescotts’ payment of $2,573.32 when the secured amount was disputed and the only account statement identified in the order was dated July 12, 2023.

It was an abuse of discretion for the master to satisfy and cancel of record Brownswood’s lien upon the Prescotts’ payment of $2,573.32. “An abuse of discretion occurs when the trial court’s decision is unsupported by evidence or controlled by an error of law.” *County of Richland v. Simpkins,* 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct App. 2002) (citing *Ledford v. Pennsylvania Life Ins. Co.,* 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976)). There is no dispute that the Property was subject to the lien held by Brownswood.

Section 7.1(b) of Article VII of the Declaration provides, in part, that “[a]ssessments, together with interest thereon, and other Costs of Collection shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which such Assessments are levied." (Defendant's MSJ, Ex. A) Section 7.1(a) of the Declaration defines "Costs of Collection" as "any collection fees, attorney's fees., late fees, administrative fees and charges, and court costs incurred in collecting the Assessments […]" (Defendant's MSJ, Section A). Section 11.1 of the Declaration provides that, when the owner of a lot is delinquent on payment of assessments, the Brownswood board of directors may bring an action to foreclose the lien on the lot against which the assessment is due. (Defendant's MSJ, Ex. A).

"Restrictive covenants are contractual in nature and bind the parties thereto in the same manner as any other contract." *Seabrook Island Property Owners Ass'n v. Pelzer*, 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct. App. 1987). Courts are "without authority to alter an unambiguous contract by construction or to make new contracts for the parties." *U.S. Bank Trust, N.A v. Bell*, 385 S.C. 364, 379, 684 S.E.2d 199, 207 (Ct. App. 2009). "A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Id.* (quoting *S.C. Dep't of Tranps. v. M & T Enters. of Mt. Pleasant, LLC,* 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008)). The Declaration unambiguously provided that the lien on the Property would secure the unpaid assessments, interest, late fees, and the costs of collection, including attorney's fees. Therefore, it was an abuse of discretion for the master to satisfy and cancel of record the lien on the Property upon the Prescotts' payment of $2,573,32, which the record clearly showed was the amount due on the account on July 12, 2023.

Brownswood believes the master's decision in the Order was most likely governed in large part by the master's stance generally toward homeowner's association's foreclosures. This stance can be found in the transcript of the hearing on March 16, 2026, where the master states:

> From an equitable standpoint, I don't find it equitable that the plaintiff should proceed to foreclosure. It is my practice, just so y'all know, that I don't foreclose on anybody for less than ten thousand dollars anyway. Best I can tell, this is a thousand dollar lien. I'm not going to foreclose on any event, and I don't include attorney's fees in that anymore. I'm done with that.

(3/16/2026 Transcript p. 17).

Thus, the master expressly stated his consistent position, although unsupported by law, that he is not going to allow homeowner's associations to foreclose unless the debt amount is at least ten thousand dollars, exclusive of attorney's fees, regardless of the facts and circumstances of the particular case or the impact to the other homeowners in the community.

In the present case, the assessments due at the time the foreclosure action was filed totaled $1,090.00, ***which represented three years' worth of assessments***. (Plaintiff's memorandum in opposition to Defendant's MSJ, Exhibit). There were no interest or late fees added to the delinquency, and Brownswood's attorneys fees were a direct result of Prescott's contested litigation. (Plaintiff's memorandum in opposition to Defendant's MSJ, Exhibit). It is worth noting, unless Brownswood's annual assessments increased dramatically, it would take approximately ***twenty-five years*** for the Prescotts' delinquency to reach the ten-thousand-dollar threshold set by the master. Foreclosure should not be the first option for a homeowner's association attempting to collect delinquent assessments, but it must be an option in order to enforce payment, especially after years of non-payment. If homeowners knew they could forego paying assessments for twenty-five years without having to worry about foreclosure, more than a few homeowners would delay payment. A money judgment alone against the homeowner may not be enough to encourage the homeowner to pay, especially when a money judgment is difficult to collect, expires after ten years and cannot be renewed. *See Gordon v. Lancaster,* 425 S.C. 386, 391-93, 823 S.E.2d 173, 175-77 (2018) (Discussing S.C. Code § 15-39-30 in holding that a judgment lien is extinguished after ten years). Meanwhile, the other homeowners in the community bear the consequences and expense of other's nonpayment.

The restrictive covenants set forth in Brownswood's Declaration unambiguously provided that Brownswood was entitled to a lien on property to secure the payment of assessments, and the costs and attorney's fees associated with the collection of delinquent assessments. The Declaration also unambiguously provided that Brownswood was entitled to foreclose its lien. Therefore, it is an abuse of discretion for the master to set an artificial threshold below which foreclosure will not be granted.

Even if the master was inclined to release the lien on the Property, the lien should not have been released for the amount of $2,573.32, which was the amount due on July 12, 2023. At the non-evidentiary hearing on March 16, 2026, Brownswood's attorney stated that the amount secured by the lien had increased considerably due to the Prescotts' failure to pay assessments to Brownswood since that time and the actions of the Prescotts in contesting the foreclosure action. (Transcript of 3/16/2026 Hearing). Brownswood's attorney also requested that, if the court was going to release the lien, an additional $8,000.00 should be added to the debt to cover the costs of any trial. (Transcript of 3/16/2026 Hearing). The Court denied Brownswood's request. (Transcript of 3/16/2026 Hearing). If the Court was going to release Plaintiff's lien to allow the sale to go through, the Court should have set a bond that would have covered any potential loss by Brownswood. *See* S.C. Code Ann. § 18-9-170 (bond required to stay execution of judgment directing the sale or delivery of property when the judgment is on appeal) and § 29-5-110 (bond for release of mechanic's lien).

Additionally, the court's dispositive ruling on the Prescotts' Emergency Motion was tantamount to summary judgment, without affording Brownswood the due process to which it was entitled. First, extinguishing Brownswood's lien upon which its foreclosure action was based is a summary disposition of Brownswood's foreclosure cause of action – which was Brownswood's entire case. Second, Rule 6(d), SCRCP, requires written motions and notice of the hearing thereof to be served not later than ten days before the time specified for the hearing, unless a different time period is fixed by the court for cause shown. Despite the Prescotts' Emergency Motion being stylized as an "emergency," it was not. The Prescotts could have paid Brownswood the payoff amount or, as they did, put funds aside in escrow to resolve Brownswoods claim. Additionally, Rule 56(c), SCRCP, requires a motion for summary judgment motion to be served at least ten days before a hearing. The Prescotts' Emergency Motion was scheduled for hearing five days after it was filed, presumably because they stylized the motion as an "emergency." Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Baird v. Charleston Cnty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999) (citing *Baughman v. AT & T*, 306 S.C. 101, 410 S.E.2d 537 (1991)). Although the Emergency Motion requested relief necessary to permit a closing, the master-in-equity went further and conclusively adjudicated the amount of the secured debt and declared the lien "satisfied and canceled of record." Brownswood was not given a reasonable opportunity to present the authenticated ledger, assessment history, fee records, and testimony necessary to litigate that dispositive issue. The master's failure to comply with the notice requirements under the Rules of Civil Procedure stripped Brownswood of a meaningful opportunity to prepare for dispositive relief. The resulting prejudice violated Brownswood's due process rights.

Third, the Order specifically found "the only evidence presented to support the POA's filed lien is an itemized statement[…]" The Prescotts failed to submit *any* evidence, whether by affidavits, deposition testimony, or discovery responses, as required by the South Carolina Rules of Civil Procedure. Despite many factual issues in dispute, the master rendered a summary disposition order in favor of the Prescotts. Such ruling is akin to that found in the case of *Sea Pines Co. v. Kiawah Island Co.*, where the South Carolina Supreme Court held that a trial judge has the authority to vacate a mechanic's lien, and that this authority "may be somewhat likened to a judge's authority to grant a summary judgment *if there is no genuine issue of material fact to be determined*, or his authority to direct a verdict when the evidence is susceptible of only one reasonable inference. *Sea Pines Co. v. Kiawah Island Co., Inc.*, 268 S.C. 153, 157, 232 S.E.2d 501, 502 (1977). The Supreme Court held, however, the judge to whom an application for relief is made may not try disputed facts. *Id.* In *Sea Pines*, the trial court vacated a mechanic's lien, without a trial on the disputed facts/issues. *Id.* The South Carolina Supreme Court found the trial court erred in vacating and discharging the lien and the lienor was entitled to reversal and remand to the lower court to resolve the factual disputes properly. *Id.* at 160, 232 S.E.2d at 504.

More recently, in *Greens of Rock Hill, LLC v. Rizon Commercial Contracting, Inc.*, this Court reiterated that the vacatur of a mechanic's lien is analogous to the granting of summary judgment if there are no genuine issues of material fact to be determined. *Greens of Rock Hill, LLC v. Rizon Commercial Contracting, Inc.*, 411 S.C. 152, 156, 766 S.E.2d 876, 878-879 (Ct. App. 2014).

Under *Sea Pines* and *Rizon*, the summary satisfaction and cancellation of a lien is appropriate only when no genuine factual dispute requires adjudication. Here, the amount secured was expressly disputed, the master-in-equity even acknowledged this disputed fact in his Order and that Brownswood's contended that later charges had accrued. There was no evidence in the record to establish that the July 12, 2023, statement remained the full balance in March 2026.

Brownswood is entitled to a trial on the disputed facts and issues in this case, before the court can vacate or extinguish its lien upon which its entire foreclosure case is based.

Furthermore, at the time of the hearing on March 16, 2026, and even prior to the filing of the Prescotts' Emergency Motion on March 11, 2026, the Prescotts, their attorney, and the closing attorney were also aware that the payoff amount of $15,123.97 could be paid in full satisfaction of the debt owed to Brownswood. After the hearing on March 16, 2016, Brownswood subpoenaed the closing file for the sale of the Property and received a copy from J. Michael Cippola, an attorney with Cippola Cox, LLC, the law firm which handled the closing. (5/14/2026 Memorandum). The closing attorney received the payoff from Brownswood's attorney at 10:08 a.m. on March 10, 2026. (5/14/2026 Memorandum/Closing file, pp. 104-107). Walker Willcox, the Prescotts' attorney, was fully aware of the payoff being received by the closing attorney on March 10, 2026. (*See* 5/14/2026 Memorandum/Closing File, p. 124; email from Walker Willcox on March 10, 2026, at 5:54 p.m., stating "We have a payoff which I hope makes the buyers feel better. I will talk to clients and be in touch."). Thus, the Prescotts were aware that they could have paid $15,123.97 to satisfy the debt secured by the lien, rendering the "emergency" nature of their motion misleading, at best.

Whether there was enough equity in the Property for the sale to go through was also never in doubt. As shown by the settlement statement, the Property sold for $479,500.00. (5/14/2026 Memorandum/Closing File pp. 7-9.). After the payoffs and expenses of the closing were paid, the Prescotts received $224,746.78 from the closing proceeds, *not* including the $25,000.00, which is still being held in escrow to pay the debt owed to Brownswood, if needed. *Id.*

It was disingenuous for the Prescotts to allege that the Association in any way impeded the closing of the Property. Brownswood's payoff was provided to the closing attorney on March 10, 2026, which was prior to Prescotts' Emergency Motion and the hearing on the Emergency Motion on March 16, 2026. Instead of agreeing to the payoff, the Prescotts filed a motion to contest it and tried to get the Association to accept a payoff that was one-sixth of the actual payoff. Meanwhile, the Prescotts received proceeds totaling $224,746.78 from the closing, which, as stated above, does not include the $25,000.00 still being held in escrow. Despite all of the above, the master refused to rule on Brownswood's 59(e) Motion to reconsider his summary disposition of Brownswood's foreclosure action and expects Brownswood to accept a small fraction of the debt owed to it without an evidentiary hearing. The master's decision comes at the expense of all other dues-paying homeowners within Brownswood, while the Prescotts earn more than $224,000.00 from the sale without having paid assessments for years since 2020.

CONCLUSION

For the reasons set forth above, the master-in-equity's March 16, 2026, Order should be reversed, the lien reinstated, and the case remanded for an evidentiary hearing on Brownswood's foreclosure cause of action.

Respectfully submitted,

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