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SC Court of Appeals

ELECTRONICALLY FILED - 2026 Aug 18 4:53 PM - GREENVILLE - COMMON PLEAS - CASE#2024CP2307423

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 2024-CP-23-07423

New Silver Lending LLC,)
Plaintiff,)
-vs-) TRANSCRIPT OF TESTIMONY
Key-Line Capital Investment)
Group, LLC, et al,)
Defendants.)
_____)

June 29, 2026
Greenville, South Carolina

B E F O R E:

Honorable Charles B. Simmons, Jr.
Master in Equity

A P P E A R A N C E S:

John Farrell, Esquire
Attorney for Plaintiff

Michael Dodd, Esquire
Attorney for Key-Line Capital
Investment Group, LLC

Duffy Powers, Esquire
Attorney for Builders FirstSource

Danette Hanks, CCR
Court Reporter

1 THE COURT: This is 2024-7423; in
2 the matter of New Silver versus Key-Line Capital.
3 Here today on quite a few motions. I'm not altogether
4 sure exactly which motions we're addressing, but we'll
5 resolve that in just a moment. But if I could have
6 the attorneys identify yourselves and who you're here
7 on behalf of this morning.

8 MR. FARRELL: I'm John Farrell. I'm
9 here on behalf of the plaintiff, New Silver Lending.

10 THE COURT: All right.

11 MR. DODD: Michael Dodd. I'm here
12 on behalf of Key-Line Capital, Kia Keyton, and Alvin
13 Keyton.

14 THE COURT: All right. And Mr.
15 Powers, you're here on behalf of who?

16 MR. POWERS: Builders FirstSource.

17 THE COURT: Okay. Now, from my
18 review of the file, it appears that the last order I'm
19 seeing was an order denying the motion for summary
20 judgment that was filed March 26, 2026. And in that
21 order, it noted that there was no contest over
22 execution of the note and mortgage, but there was
23 simply an issue relative to what was due.

24 And subsequent to that, plaintiff has filed an
25 updated or renewed motion that we'll address in just a

1 moment.

2 Now, Mr. Dodd, there are several motions that
3 have been filed by you, and I'm not sure whether
4 they're ripe to be heard here this morning. One is a
5 motion to withdraw that was filed June 19th. So, what
6 is the status on that motion, please, sir?

7 MR. DODD: And so, Your Honor, at
8 this time, I would withdraw that motion. I had a
9 previous, I guess, dispute with my client, but we've
10 been able to resolve that at least for the time being.
11 And the client has asked me to appear today on their
12 behalf.

13 THE COURT: All right. And then
14 also, if today's motions were set by agreement of all
15 attorneys on May 15 of 2026, and then Mr. Dodd, late
16 Friday afternoon, June 6 at 4:30, you filed a motion
17 for continuance. So let me hear from you on that.

18 MR. DODD: Thank you, Your Honor.
19 And we did file a motion to continue as the court's
20 record reflects, and as is probably evident by the
21 fact that we did file a motion to withdraw. There's
22 been some communication issues with the client, but we
23 have resolved those at this time. And as a result of
24 that, some of the documents that we intended to have
25 for this motion, but also some of the follow-up

1 related to discovery specifically that we addressed at
2 the previous hearing has not, has not completely been
3 resolved. We have, we have followed up with New
4 Silver with a deficiency letter related to some
5 discovery.

6 Additionally, we have not received any discovery
7 responses at all from the Linden Park Property Owners
8 Association. And we have followed up with them on
9 that, but at this time, their attorney has only told
10 us that they don't -- that they're not a plaintiff,
11 and they're not a lender, and that they're not
12 responding. And so we've got an outstanding issue on
13 that as it relates to discovery.

14 Additionally, and it is late, and I'll
15 acknowledge that, but Alvin Keyton, on behalf of Key-
16 Line Capital, and I emailed the parties an email this
17 morning, and I do now have, which I could send to
18 everybody, a signed affidavit of this exact statement.
19 But the statement we believe raises an issue of fact,
20 of material fact related to the dealings between New
21 Silver and Key-Line Capital in terms of the draw
22 requests under their executed documents, as well as
23 the dealings between the association and New Silver
24 and Key-Line, and how all of those things created the
25 situation that we're in now.

1 There's allegations, and there's actually been a
2 subsequent motion filed in a different case involving
3 Key-Line Capital and Linden Park for an amendment to
4 their answer to bring some counterclaims that we
5 believe Mr. Keyton has discovered through the
6 discovery process, where New Silver and Linden Park
7 created this issue with a lien and refused to accept
8 payment, and then refused to issue the draws, which
9 created a breach of the contract between New Silver
10 and Key-Line Capital, where this was all over the bill
11 of a residential construction project in Linden Park
12 Homeowners Association and the dealings between the
13 parties. And it's clear from the beginning, or the
14 outset of the time the loan was issued, that was --
15 that repayment or refinance or all that was contingent
16 upon the completion of the residential construction
17 project. And so ---

18 THE COURT: And I apologize.

19 MR. DODD: In any event, all that
20 would make a continuance appropriate, Your Honor.

21 THE COURT: This is a 2024 case.
22 Has any of these issues ever been raised before this
23 morning during this motion hearing?

24 MR. DODD: And again, Your Honor,
25 I appreciate the question. I understand that I cannot

1 speak for what happened before I was involved, and I
2 didn't get involved in this case until 2026, I believe
3 it was, or till late in the game. And so I can't
4 speak to what did or didn't happen prior to that time.

5 But we have, we have issues of what we believe
6 are proper requests for discovery in this case to the
7 parties, and those issues have not been resolved. And
8 so as it relates to a motion for summary judgment, we
9 believe until we are -- had an opportunity for those
10 issues to be addressed and discovery to be completed,
11 that summary judgment wouldn't be appropriate at this
12 time.

13 THE COURT: What's your response,
14 what's your response to Mr. Farrell's supplement to
15 his motion for summary judgment that he had filed
16 requests to admit that were never responded to, and so
17 under the rules they were deemed admitted. So, what's
18 the court to do with all that?

19 MR. DODD: And again, Your Honor,
20 that was -- unfortunately that was part of our
21 conflict with our client was getting responses from
22 him. I don't have, I don't have a firm response from
23 him on those, or from Key-Line Capital on those. But
24 certainly, we intend to.

25 Mr. Keyton intends to be able to testify at

1 trial, and we believe that his testimony would raise
2 material issues of fact that the trier of fact, the
3 court, would have to determine which, which -- whether
4 his statements or the documents or the statements from
5 the plaintiff would be given more weight.

6 And so even if those things are deemed admitted,
7 like that the loan documents are, are the ones that
8 were executed, we believe that there will be testimony
9 and evidence presented that would allow the court to
10 potentially look outside the four corners of those
11 documents to, to grasp the agreement between these
12 parties because it's very clear in looking at it that
13 there's more than ---

14 THE COURT: If the note and the
15 mortgage and the amounts due are deemed admitted under
16 the rules of civil procedure, can the court allow your
17 client to come back in and say, Hey, I know you didn't
18 answer. I know they're deemed admitted. But now you
19 can come in and argue that that really wasn't the
20 case.

21 MR. DODD: Well, well, the -- so
22 the court could, could deem those things to be
23 admitted and say these are the documents that were
24 signed. So these are -- they speak for themselves on
25 the face of these documents. Here's what they say.

1 But if we're talking about extraneous parol
2 evidence that was a part of the dealings between Key-
3 Line Capital and New Silver from the beginning of
4 time; not, not something that happened after the
5 execution of the contract, but was a part of, and
6 we've got emails and other things that, that allude to
7 that, that it was clear that there was an issue
8 related to the draw requests that were made to New
9 Silver that would have allowed Mr. Keyton to continue
10 with the construction of the property that weren't
11 made. Other things like that, that even if those
12 documents are exactly what they say they are, and
13 we're not disputing that he entered into a loan
14 agreement for those amounts, it's clear from the
15 course of dealings between these parties that they had
16 an agreement that was contingent upon New Silver
17 giving draws when they were supposed to give draws.

18 THE COURT: Let me, let me hear
19 from Mr. Farrell because this matter was set for 30
20 minutes, and I've got a really full docket this
21 morning. And I don't want to use up the 30 minutes
22 allotted just for your client's contention.

23 So, Mr. Farrell, let me hear from you.

24 MR. FARRELL: I'll try to go real
25 quick for you, Your Honor. Just as a little

1 clarification, the order from the summary judgment, I
2 believe we did an amended order where your ruling was
3 in abeyance. Just for the record. I believe you were
4 going to hold the decision in abeyance until we have
5 this hearing again.

6 THE COURT: Okay. Thank you.

7 MR. FARRELL: But the thing about the
8 order, the order from that hearing, discovery was
9 supposed to be performed within 30 days. New Silver
10 Lending, the plaintiff, provided all discovery
11 responses within two weeks of the hearing. We have
12 not heard anything about any deficiency in the
13 discovery since -- until four o'clock on Friday
14 afternoon, June 26, which is about three business
15 hours before the hearing.

16 They've had three months to contest that or to
17 say there were any issues, but the defendant had or
18 the plaintiff has provided its whole file. It sets
19 forth the date of the draw disbursements. If you'll
20 notice, the last date is August 17, 2024. The note
21 went into default in September of 2024. So once
22 there's a default, there's no obligation to provide a
23 draw to the borrower.

24 Additionally, let me get through this for you, so
25 I don't hold you up too much. I was going to say

1 about the requests to admit, those were served on
2 March 31st. It's been almost three months, and they
3 haven't responded. I don't, you know, that's an issue
4 with them. They were served and they didn't respond,
5 so they're deemed in second position.

6 As far as the HOA claim, the closing statement
7 has on line 1303 and 1304 that those liens were going
8 to be paid off at closing. The title commitment, the
9 marked up title commitment, removed any liens and
10 represented the claimant for being in the first
11 position. The title policy came out and it confirmed
12 that the lender would be in first position.

13 The defendant directed the closing attorney to
14 withhold the lien amounts that were set forth on the
15 closing statement in escrow. So the lender wanted to
16 secure their position as first priority by the title
17 claim. So there's no collusion as the defendants are
18 saying. It's merely a title claim for two liens that
19 were supposed to be paid off at closing that the
20 defendant later went back to the closing attorney and
21 said, Do not pay these.

22 So there's no collusion -- there's no relation
23 between the HOA lien and the lender's priority other
24 than the fact that if there were two liens on the
25 property that needed to be paid off or were supposed

1 to be paid off at closing.

2 And I believe that's about it, Your Honor. Other
3 than the -- you know, the delay, it's prejudicial to
4 client. The defendant hasn't made a payment since
5 August of 2024. That's a year and 10 months. And you
6 know, we had this hearing in March, and I totally
7 understand, you know, you ordered discovery. The
8 plaintiff complied with discovery within two weeks,
9 had 30 days, but turned everything over, responded. I
10 don't know if counsel, opposing counsel, has had an
11 opportunity to review all the documents, but a lot in
12 his deficiency letter was actually addressed and is in
13 the file.

14 So I just think it's an unreasonable delay.
15 They've had three months to iron out these issues,
16 file any additional motions, and that's our position.
17 It is prejudicial to my client. They're, they're
18 having carrying costs and all that.

19 THE COURT: All right. Mr. Powers,
20 do you wish to weigh in one way or the other, sir?

21 MR. POWERS: No, sir, Your Honor.

22 THE COURT: Okay. All right, Mr.
23 Dodd, be glad to hear from you.

24 MR. DODD: Your Honor, I would
25 just, I would just point out that the fact that they

1 -- the plaintiff takes the position that it was the
2 defendant that directed the withholding of those
3 payment creates -- for those liens creates a material
4 issue of fact because that is not the defendant's
5 position. And so with, with reference to that, and
6 with this being a motion for summary judgment, we
7 believe that creates a material issue of fact that
8 would warrant a hearing and allow Mr. or Mrs. Keyton
9 or any other representative from Key-Line Capital to
10 give evidence and testimony on that issue to determine
11 if that changes the court's decision at all.

12 THE COURT: All right. Here,
13 here's where I feel like I have to come down. I
14 start, it's a 2024 case. None of the issues that are
15 being addressed here this morning have ever been
16 raised in pleadings or otherwise. The order, previous
17 order on summary judgment issues, clearly set up
18 discovery deadlines. Also, the requests to admit were
19 unanswered, and so under the rules of civil procedure,
20 they're deemed admitted.

21 And Mr. Dodd, you're such a fine advocate, and I
22 appreciate your passionate arguments on it. But I
23 just think that when I look at the totality of the
24 circumstances, I have no option but to grant the
25 motion.

1 So, Mr. Farrell, if you would start working on an
2 order, and of course, send it to all the attorneys
3 before you email it directly to my court reporter, Ms.
4 Hanks.

5 MR. FARRELL: I'll do that, Your
6 Honor.

7 THE COURT: All right. If we could
8 have it within the next 14 days.

9 MR. FARRELL: Thank you.

10 THE COURT: Okay. Thank you. That
11 concludes the hearing.

12 MR. DODD: Thank you, Your Honor.

13

14 **END OF REQUESTED TRANSCRIPT OF RECORD**

1 The undersigned, Danette P. Hanks, Court
2 Reporter, Office of Master in Equity for Greenville
3 County, South Carolina does hereby certify that the
4 foregoing is a true, accurate and complete transcript
5 of record of all of the proceedings had and evidence
6 introduced in the hearing of the captioned case,
7 relative to appeal, before The Honorable Charles B.
8 Simmons, Jr., as Master in Equity for Greenville
9 County, South Carolina on the 29th day of June, 2026.

10 I do further certify that I am neither of kin,
11 counsel, nor interest to any parties hereto.

12

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August 18, 2026

14

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Danette P. Hanks

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Danette P. Hanks, CCR