

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 CHARLES BICKERSTAFF, M.D., )  
 and BARBARA MAGERA, M.D. )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 ROGER PREVOST d/b/a )  
 PREVOST CONSTRUCTION, INC. )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2004-CP-10-3867

**RECEIVED**

MAY 04 2016

**SC Court of Appeals**

**FILED**  
 2016 APR 25 AM 11:33  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

ORDER ON DEFENDANTS' MOTION TO  
 FORECLOSE LIEN ON PLAINTIFFS'  
 DISTRIBUTIONAL INTEREST IN B.O.B.  
 PROPERTIES, LLC AND ON PLAINTIFFS'  
 MOTION TO REDUCE JUDGMENT

The above case came before me on January 6, 2015 pursuant to the Defendant, Prevost Construction, Inc.'s Motion to Foreclose its charging lien against the Plaintiffs' distributional interest in B.O.B. Properties, LLC.

Also before me was the Plaintiffs' Motion to Reduce the judgment previously granted to the Defendant, Prevost Construction, Inc., by the amount of a settlement the Defendant received as a result of a separate lawsuit where the Defendant foreclosed its judgment liens against Plaintiffs' property which involved a priority dispute with First Citizens Bank and Trust Company, Inc.

After careful consideration of the Court records relative to this matter and the arguments of counsel, I find that the Defendant, Prevost Construction, Inc's motion should be granted and that the Plaintiffs' Motion to Compel and reduce judgment should also be granted.

The Defendant, Prevost Construction, Inc., has two unsatisfied judgments against the Plaintiffs. The first judgment is in the amount of \$6,437.62 together with interest in the amount of \$242,116.99 as of September 12, 2014 for a total due of \$248,554.61 as of September 12, 2014.

The second judgment is in the amount of \$6,437.62 together with interest in the amount of \$5,100.42 as of September 12, 2014 for a total due of \$11,538.20 as of September 12, 2014.

The Defendant, Prevost Construction, Inc., was previously granted a charging lien against the Plaintiffs' distributional interest in B.O.B. Properties, LLC pursuant to South Carolina Code Section §33-44-504 by this Court's Order dated August 8, 2012. The Plaintiffs are the sole members of B.O.B. Properties, LLC which owns real estate in Charleston and Berkeley County.

On March 27, 2012 the Defendant, Prevost Construction, Inc., commenced an action against the Plaintiffs and First Citizens Bank and Trust Company, Inc., to foreclose its judgment liens against two (2) parcels of property owned by the Plaintiff in Charleston County. The action involved a priority dispute between the Defendant's judgment liens and First Citizens Bank's Mortgage. The action resulted in a settlement paid on behalf of First Citizens Bank and Trust Company, Inc. to the Defendant, Prevost Construction in the amount of \$175,000.00 which settlement was paid on July 17, 2014. Pursuant to the settlement the Defendant is required to return twenty-five (25%) percent of the Defendant's recovery against the Plaintiffs.

The Plaintiffs argue that the Defendant, Prevost Construction, Inc.'s judgment should be reduced by the amount of the settlement obtained as a result of foreclosure of its judgment liens. The Court agrees that the settlement was not a collateral source as it was directly related to the Defendant, Prevost's foreclosure of its judgment lien.

The total due on Prevost's judgment as of July 17, 2014 was the sum of \$256,014.96, as shown by the Pay Off sheet which is attached hereto as Exhibit "A". After deducting for the settlement received by Prevost Construction, Inc., in the amount of \$175,000.00 and after giving Prevost credit for the repayment of twenty-five (25%) percent of his net recovery there is a balance due to Prevost Construction, Inc., of \$101,268.70 as of July 17, 2014. Per diem interest accrues at the per diem rate of \$64.37 of and from July 17, 2014.



## CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The Plaintiffs are entitled to reduce the Defendant, Prevost Construction, Inc.'s judgments by the amount of the settlement received by Prevost Construction, Inc., in the amount of \$175,000.00 which was received on July 7, 2014, however, the Defendant shall be given credit for twenty-five (25%) percent of the balance due on the judgments.
2. The balance due on the judgments of Prevost Construction, Inc., is \$101,268.70 as of July 17, 2014 with interest running thereafter that per diem rate of \$64.37.
3. The Defendant, Prevost Construction, Inc., is entitled to the foreclosure of its charging lien on the Plaintiffs' distributional interest in B.O.B. Properties, LLC.
4. The Defendant is entitled to have the Plaintiffs' distributional interest in B.O.B. Properties, LLC sold at public auction after due advertisement.

It is, therefore

**ORDERED, ADJUDGED AND DECREED** as follows:

1. That there is due on the Judgment held by Defendant the total sum of , is \$101,268.70 as of July 17, 2014 with interest running thereafter that per diem rate of \$64.37. to the date of sale or the date of payment in the event Defendant is not the highest bidder.
2. That on default of payment at or before the time herein indicated, the Plaintiffs' distributional interest in B.O.B. Properties, LLC, shall be sold at public auction, at the front entrance of the Charleston County Courthouse., Charleston, South Carolina on the following terms, that is to say:

The sale shall be for cash, and the highest bidder shall be required to make a cash deposit of five (5%) percent of the bid as earnest money and as evidence of good faith, provided, however, the Master-In-Equity shall determine whether the Defendant or any other lien holder shall be entitled to apply the debt due it against its bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of its bid by depositing the said five (5%) percent cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the Master-In-Equity may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of its bid within thirty (30) days of the final acceptance of this bid, then the Master-In-Equity shall readvertise and resell the Plaintiffs' distributional interest in B.O.B. Properties, LLC on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of the bids in cash as prescribed above. The Master-In-Equity shall return all deposits except the deposit securing the highest bid.

3. That since no personal or deficiency judgment has been requested, the bidding shall not remain open, but shall be final as of the date of the sale.

4. That the Master-In-Equity, by advertisement according to law, shall give notice of the time and place of such sale, and the terms thereof; that the Master-In-Equity shall transfer and convey the Plaintiffs' distributional interest in B.O.B. Properties, LLC to the purchaser, or purchasers; and that the Defendant, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers, should fail to comply with the terms thereof, the Master-In-Equity may advertise the said property for sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured.

5. That the Master-In-Equity shall apply the proceeds of the sale as follows:

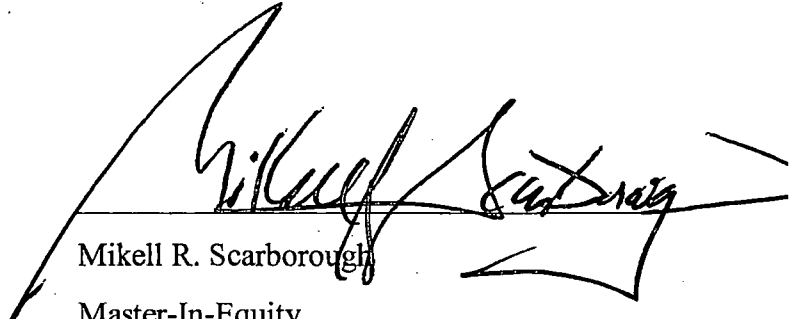
FIRST: To payment of the amount of costs and expenses of this action, including the costs of advertising the Notice of Sale.

NEXT: To the payment to the Defendant or its attorney of the amount of Defendant's total debt, as hereinabove set forth, or so much thereof as the purchase money will pay the same.

NEXT: Any surplus funds to be held subject to further Order of this Court in accordance with the law and custom of this Court.

6. And it is further ORDERED, ADJUDGED AND DECREED that the Plaintiffs and all persons or entities whomsoever claiming under them, be forever barred and foreclosed of all right, title, interest, in the Plaintiffs' distributional interest in B.O.B. Properties, LLC.

**AND IT IS SO ORDERED!**

  
Mikell R. Scarborough  
Master-In-Equity

Charleston, South Carolina  
4/25, 2016.