

EXHIBIT B

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN)

CASE NO.: 2012-CP-22-00934

Bonnie N. Charlton, Ronald L. Charlton,)
and Bayside Property, Inc.,)

Plaintiffs,)

vs.)

ORDER DENYING MOTION TO ALTER
OR AMEND ORDER FILED 8/31/16

South Bay Properties, LLC, Stantec)
Consulting Services, Inc. f/k/a Trico)
Engineering Consultants, Inc., Milone)
& MacBroom, Inc., John Steven Goodwin,)
Louise C. Goodwin, Thomas I. Puckett,)
Brenda C. Puckett, Robert Nahama,)
Jeanne E. Nahama, Thomas Holland)
Sharon Louise Holland, Joyce K. Sobel,)
Robert W. Waruszewskiu, Richard N.)
Taylor, Robert K. Spillers (a/k/a Robert)
Spillers) Deborah T. Spillers (a/k/a Deborah)
Spillers), Patrick A. DiAngelo, Deborah A.)
DiAngelo, Gary E. Owens, and Joyce M.)
Owens, Fount L. Shults, Lynda M. Shults,)
Dennis Ridgeway, Teresa Lynn Ridgeway)
and Georgetown County Forfeited Land)
Commission,)

Defendants.)

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ALMA Y. WHITE
CLERK OF COURT

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SC Court of Appeals

On August 15, 2016, hearings were conducted on two discovery motions: a Motion for Order Compelling Discovery filed by Plaintiffs on June 15, 2016, and a Motion for Sanctions filed by Plaintiffs on July 25, 2016. Present for the hearing were: Charles T. Smith, attorney for Plaintiffs, and K. Douglas Thornton, attorney for Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens (hereinafter "the Defendants"). By an Order

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dated and filed August 31, 2016, the Defendants were ordered to properly respond to certain discovery requests.

The matter now before the Court is the Defendants' Motion to Alter or Amend Order filed 8/31/16. Present for the hearing were: Charles T. Smith, attorney for Plaintiffs, K. Douglas Thornton and John M. Leiter, attorneys for the Defendants, and Kristen G. Atkins, attorney for South Bay Properties, LLC. Having carefully considered the grounds presented in the motion and the arguments of counsel, I find and conclude that the Motion to Alter or Amend should be denied.

The Defendants' Motion to Alter or Amend requests four alterations or amendments of the Order.

A. Redaction of that part of the Order found on page 2, third full paragraph, as follows:

At the beginning of the hearing the Defendants asked that this matter be stayed pending a ruling on the Defendants' Rule 59(e) motion pending before Judge Seals in this action and/or a ruling on Plaintiffs' ~~Petition for a Writ of~~ Certiorari pending before the Supreme Court in Civil Action No. 2009-CP-22-1045. The request was denied.

The Defendants assert that the finding was included in the Order in order to attempt to obviate the hearing of the Defendants' motion to stay the trial of this case or to identify issues for trial.

In fact, the finding was included in the Order at the request of the Defendants' counsel. K. Douglas Thornton's letter to Charles T. Smith, dated August 18, 2016, stated:

I would ask that the Order include a reference to my argument and request, that this foreclosure action be stayed, pending a determination of the Rule 59(e) Motion which is pending before Judge Seals, and/or a final ruling by the Supreme

Court on your Writ of Certiorari. Although Judge Crosby denied this request, I disagree with his ruling and wish to preserve the matter for appeal.

Mr. Thornton's letter to the Court dated August 19, 2016, forwarded a copy of his letter to Mr. Smith and requested that the Court require that the findings described in his August 18, 2016, letter be included in Order.

B. Correction of that part of the Order found on page 3, second line of the first full paragraph, as follows:

Plaintiffs' interrogatory number 6 asked for the date each Defendant claims to have first acquired an equitable lien on the property that is **the subject of this action.** (emphasis added)

The Defendants assert that the emphasized wording is designed to enlarge the scope of issues before this Court and to exonerate the Plaintiffs from liability in Defendants' Case Number 2009-CP-22-1045.

The wording in the Order is the same wording used in Plaintiffs' interrogatory number 6. The wording neither enlarges the scope of issues before this Court nor exonerates the Plaintiffs from liability in Defendants' Case Number 2009-CP-22-1045.

C. Revision of that part of the Order found on pages 5 and 6, as follows:

The Defendants argued that *Regions Bank v. Wingard Properties Inc. et al.*, 394 S.C. 241, 715 S.E.2d 348 (S.C. App. 2011) requires a judicial determination of the existence and formation of equitable liens. As this is a hearing on discovery motions, the Court cannot make findings of fact regarding the timing etc. of liens.

The Defendants assert that although the Court correctly acknowledged the Defendants' argument under *Regions Bank*, the Court failed to correctly apply the ruling.

Regions Bank summarizes many of the legal principals applicable to equitable liens.

“For an equitable lien to arise, there must be a debt, specific property to which the debt attaches, and an expressed or implied intent that the property serve as security for payment of the debt.” *First Fed. Sav. & Loan Ass'n of S.C. v. Finn*, 300 S.C. 228, 231, 387 S.E.2d 253, 254 (1989). An equitable lien is a “mere floating equity until a judgment or decree subjecting the property to the payment of the debt or claim is rendered.” *Horry Cnty. v. Ray*, 382 S.C. 76, 83–84, 674 S.E.2d 519, 524 (Ct. App. 2009) (internal citation and quotation marks omitted). Even though an equitable lien is not judicially recognized until a judgment is entered declaring its existence, the lien relates back to the time it was created by the conduct of the parties. *Id.* at 84, 674 S.E.2d at 524. Whether an equitable lien exists that would take priority over a mortgage must be considered in conjunction with other well-recognized equitable principles. *Id.* Equitable liens must rest on an express or implied contract; moral obligations do not sustain equitable liens. *Carolina Attractions, Inc. v. Courtney*, 287 S.C. 140, 145, 337 S.E.2d 244, 247 (Ct. App. 1985). *Id.* 394 S.C. at 250, 715 S.E.2d at 353

A judgment recognizing or rejecting the existence of an equitable lien must be based upon findings of fact. The discovery motions before the Court do not provide a basis for the Court to make findings of fact.

D. Revision of that part of the Order found on page 6, as follows:

The Defendants argued that Plaintiffs waived any objection to the Defendants' response to Plaintiffs' interrogatory number 5 by failing to ask the Defendants, at their depositions, as to the expected testimony of these witnesses. The Court is not persuaded that Plaintiffs' choice of questions to ask at the Defendants' depositions constituted a waiver of any objection to the Defendants' responses to Plaintiffs' interrogatories.

The Defendants assert that this conclusion constitutes an error of law in that the Plaintiffs consciously failed to seek this information at the Defendants' depositions. No authority is cited by the Defendants to support this assertion.

As authorized in Rule 33(b)(7), SCRCP, Plaintiffs' interrogatory number 5 stated: “For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or

observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses." This Court's order dated April 26, 2016, directed the Defendants to properly answer Plaintiffs' interrogatories, including Plaintiffs' interrogatory number 5.

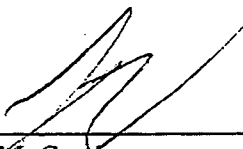
The sequence and timing of discovery is governed by Rule 26(d), SCRPC, which provides:

Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

No orders have been issued concerning the sequencing of discovery in this action. The Plaintiffs' decision not to seek this information at the Defendants' depositions does not relieve the Defendants from complying with this Court's order dated April 26, 2016, and properly responding to Plaintiffs' interrogatory number 5.

Therefore, I find and conclude the Motion to Alter or Amend should be denied.

AND IT IS SO ORDERED.



Joe M. Crosby
Master in Equity for Georgetown County

October 31, 2016