

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2016-002379

RECEIVED

JAN 24 2017

SC Court of Appeals

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

v.

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,

Of Whom

John Steven Goodwin, Louise C. Goodwin, Gary E. Owens, and Joyce M. Owens are Appellants,

REPLY IN SUPPORT OF
MOTION TO DISMISS APPEAL

Charles T. Smith (S.C. Bar #5070)
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Respondents Bonnie N. Charlton,
Ronald L. Charlton, and Bayside Property, Inc.

Baldwin Construction Company, Inc. v. Graham, 357 S.C. 227, 593 S.E.2d 146 (2004),

and the present appeal are remarkably similar.

- In both cases the respondents commenced the actions to foreclose liens on real property.
- In both cases the appellants served simple *pro se* answers.
- In both cases the appellants obstructed and delayed the actions by failing to cooperate in discovery.¹
- In both cases the appellants moved to amend their answers to assert claims on multiple theories not previously at issue and to entitle the appellants to a trial by jury when a request for a jury trial had not been previously made.
- In both cases the lower court found the relief requested by the appellants would be unduly prejudicial to the other parties.
- In both cases the lower court denied the appellants' motions to amend their answers.

In the *Baldwin, supra*, appeal, the Court of Appeals affirmed the lower court's denial of appellants' motions to amend their answers. The Supreme Court granted certiorari and vacated the Court of Appeals' opinion because the denial of a motion to amend an answer is an interlocutory order and is not immediately appealable.

In the present appeal, the Goodwins and Owenses ask this Court to reject the analysis and holding in *Baldwin, supra*. Instead the Goodwins and Owenses argue:

A better approach for the Court's analysis may be to first determine whether the motion to amend was timely and meritorious.²

¹ Copies the Order dated April 26, 2016 compelling discovery and the Order dated August 31, 2016 compelling discovery are attached.

² Appellants' Memorandum in Response to Motion to Dismiss Appeal at page12.

How this Court should determine whether the proposed twelve (12) new counter-claims, cross-claims and third party claims involving seven (7) new third party defendants are meritorious is unclear.

First determining whether the Goodwins' and Owenses' proposed amendments are meritorious before considering whether the denial of their motion to amend their answers is an interlocutory order "puts the cart before the horse." This approach was specifically criticized in *Baldwin, supra*.

This mortgage foreclosure has been pending since August 31, 2012. This appeal is the second interlocutory appeal filed by the Goodwins and Owenses. Respondents respectfully request that this appeal be dismissed because the denial of a motion to amend an answer is an interlocutory order and is not immediately appealable.

Charles T. Smith

Charles T. Smith (S.C. Bar # 5070)
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Respondents Bonnie N. Charlton,
Ronald L. Charlton, and Bayside Property, Inc.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-22-00934

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

vs.)

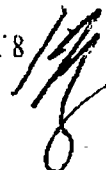
ORDER

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. Waruszewski, 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.)

FILED
GEORGETOWN COUNTY, S.C.
2016 APR 27 PM 3:38
ALMA Y. WHITE
CLERK OF COURT

This action came before me on April 18, 2016, for hearings on three discovery motions: a Motion for Order Compelling Discovery filed by Plaintiffs, a Motion for Protective Order filed by Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens, and a Motion for Entry of an Order Compelling Discovery and Assessing Discovery Sanctions filed by Defendant South Bay Properties, LLC. Present for the hearing were: Charles T. Smith, attorney for



Plaintiffs, K. Douglas Thornton and John M. Leiter, attorneys for Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens, and Kristen G. Atkins, attorney for Defendant South Bay Properties, LLC.

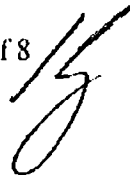
This is a mortgage foreclosure action. The Complaint alleges Plaintiffs are the owners and holders of a promissory note and mortgage executed by Defendant South Bay Properties, LLC, the payments due on the note and mortgage are in default and the conditions of the note and mortgage have been broken. The Complaint alleges the other Defendants are made parties to this action because they may have or claim interests in the real property that is subject to the mortgage. The Complaint prays the amount due on the note and mortgage be determined, the subject property be sold under the direction of the Court, the proceeds of the sale be applied first to the costs and expenses of this action and then to the amount due on the note and mortgage, and that the Court grant such other and further relief as may be just and proper.

Defendant South Bay Properties, LLC did not answer the Complaint and is in default. Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens answered the Complaint by qualified denials admitting they claim an interest in the subject property and denying other allegations in the Complaint.

I. Motion for Order Compelling Discovery

Plaintiffs moved for an order directed to Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens compelling discovery.

Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens claim a first priority equitable lien on the subject property superior to Plaintiffs' mortgage. Whether

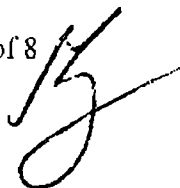


these Defendants have a first priority equitable lien on the subject property superior to Plaintiffs' mortgage is relevant to the subject matter of this action. " Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." Rule 26(b)(1), SCRPC.

Plaintiffs served Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens with interrogatories in accordance with Rule 33, SCRPC, and with requests for production of documents in accordance with Rule 34, SCRPC. The Defendants did not timely object to the interrogatories and did not answer the interrogatories. The Defendants did not timely object to the requests for production and did not produce the requested documents.

Plaintiffs served Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens with notices of deposition duces tecum in accordance with Rule 30(b)(5), SCRPC, and with deposition subpoenas duces tecum in accordance with Rule 45, SCRPC. The Defendants produced some, but not all, of the documents described in the notices of deposition duces tecum and the deposition subpoenas duces tecum. The Defendants did not provide a description of the documents, communications, or things not produced as required by Rule 45(d)(2)(A), SCRPC.

Defendant John Steven Goodwin refused to answer numerous questions at his deposition relying upon his motion for protective order. His counsel argued that the issue of whether the Defendants have a first priority equitable lien on the subject property superior to Plaintiffs' mortgage is not relevant to this foreclosure action and is not a proper subject for discovery. The Defendants'

A handwritten signature in black ink, appearing to be the initials 'JS' or similar, written in a cursive style.

claim to a first priority equitable lien on the subject property superior to Plaintiffs' mortgage is relevant to this foreclosure action and is a proper subject for discovery.

The Defendants' return to the motion for order compelling discovery requests that the motion be denied on the grounds Plaintiffs' discovery requests exceed the scope of reasonable discovery, are not likely to lead to the production of relevant or probative information, and would be unduly burdensome, expensive and time consuming. The five interrogatories submitted by Plaintiffs are specifically authorized by Rule 33, SCRPC. The three requests for production submitted by Plaintiffs request the documents the Defendants contend support their claim to an equitable lien on the subject property, the documents referenced in the Defendants' answers to interrogatories and the documents the Defendants intend to offer as evidence at trial. The questions asked at the deposition of Defendant John Steven Goodwin are relevant to this foreclosure action and a proper subject for discovery. Plaintiffs' discovery requests do not exceed the scope of reasonable discovery and do not appear to be unduly burdensome, expensive or time consuming.

Therefore I find and conclude the Motion for Order Compelling Discovery should be granted.

II. Motion for Protective Order

Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens moved to stay their scheduled depositions, or, in the alternative, to limit the scope of the depositions.

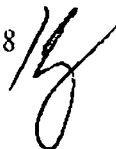
The motion argues that the Defendants' claim to a first priority equitable lien on the subject property superior to Plaintiffs' mortgage is not relevant in this action to foreclose Plaintiffs' mortgage. The object of a suit in foreclosure is to settle the priority of liens on the mortgaged property and to sell the property for the payment of the liens.

There are evident differences between a suit at law to establish a money demand and a proceeding in equity to foreclose a mortgage. The sole object of the suit at law on a money demand is to establish the debt and to obtain payment of the money in satisfaction of the judgment; it has no direct relation to specific property either real or personal, while in an action to foreclose a mortgage of real estate the purpose of the proceeding is to defeat the mortgagor's equity of redemption by establishing the liens upon specific property, settling their priority, selling the property for the payment of the lien debts, and finally making settlement through the officer of the court conducting the sale. The controlling purpose of the action of foreclosure is to subject specific property to the payment of the debt and to collect such debt by sale. The object of the action is thus stated in the case of *Ex parte Jones*, 47 S. C. 393, 25 S. E. 285: "In this case the very object of the suit in foreclosure was to settle the priority of liens on the mortgaged property, and to sell the property for the payment thereof."

Foxworth v. Murchison National Bank, 136 S.C. 458, 134 S.E. 428, 429-430 (1926)

The Defendants' claim to a first priority equitable lien on the subject property superior to Plaintiffs' mortgage is relevant in this action.

The motion also argues that because there is another action pending between some of the parties in this action and others who are not parties to this action (*Goodwin, et al. v. Landquest Development, LLC, et al.*, 2009-CP-22-01045), discovery in this action should be stayed until the Defendants are allowed to assert in this action the same claims they assert in *Goodwin, et al. v. Landquest Development, LLC, et al.* or until the Defendants are allowed to have the two actions consolidated. ~~Neither of these events is likely to happen in the near future.~~ By an order filed November 16, 2015, the Honorable William H. Seal, Jr. denied the Defendants' request to amend their Answers to assert in this action the same claims they assert in *Goodwin, et al. v. Landquest Development, LLC, et al.* and *Goodwin, et al. v. Landquest Development, LLC, et al.* is currently pending before the South Carolina Supreme Court. The Defendants have not shown why discovery



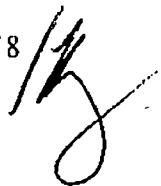
regarding their claim to a first priority equitable lien superior to Plaintiffs' mortgage should be indefinitely postponed.

Therefore I find and conclude the Motion for Protective Order should be denied.

III. Motion for Entry of an Order Compelling Discovery and Assessing Discovery Sanctions

Defendant South Bay Properties, LLC moved to compel Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens to produce the documents described in the deposition subpoenas duces tecum, to answer questions asked at depositions regarding any matter not privileged which is relevant to the subject matter of this action and to require Defendant John Steven Goodwin to pay the costs and reasonable attorneys' fees associated with his failure to produce documents described in his deposition subpoena duces tecum, with his refusal to answer questions at his deposition and with the preparation, filing and prosecution of the motion. The motion noted that counsel for Defendant South Bay Properties, LLC traveled from North Carolina to Georgetown, South Carolina to participate in the properly noticed depositions of the Defendants.

Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens objected to consideration of the motion because the motion was served less than ten days before the hearing. To the extent the motion seeks to compel the Defendants to produce the documents described in the deposition subpoenas duces tecum and to answer questions asked at depositions regarding any matter not privileged which is relevant to the subject matter of this action, the motion presents substantially the same issues as Plaintiffs' Motion for Order Compelling Discovery so the Defendants received adequate notice. To the extent the motion seeks to require the Defendants to pay costs and attorneys' fees, Defendant South Bay Properties, LLC was aware of the Defendants'

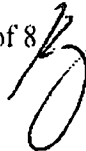
A handwritten signature in black ink, appearing to be the initials 'JG' followed by a stylized flourish.

Motion for Protective Order prior to traveling to the scheduled depositions so an award of costs and attorneys' fees would not be appropriate.

Therefore I find and conclude the Motion for Entry of an Order Compelling Discovery and Assessing Discovery Sanctions should be granted to the extent the motion seeks to compel the Defendants to produce the documents described in the deposition subpoenas duces tecum and to answer questions asked at depositions regarding any matter not privileged which is relevant to the subject matter of this action and should be denied to the extent the motion seeks an award of costs and attorneys' fees.

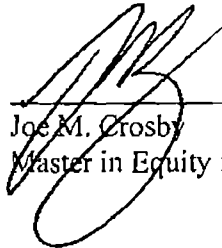
Therefore, I order, adjudge and decree:

1. Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens shall answer Plaintiffs' Interrogatories dated December 7, 2015, in accordance with Rule 33, SCRCF, on or before June 17, 2016.
2. Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens shall produce the documents described in Plaintiffs' Requests for Production dated December 7, 2015, in accordance with Rule 34, SCRCF, on or before June 17, 2016.
3. Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens shall produce the documents described in Plaintiffs' Deposition Subpoenas Duces Tecum dated December 21, 2015, in accordance with Rule 45, SCRCF, on or before June 17, 2016. If any information subject to the subpoenas is withheld, the claim of privilege shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the Plaintiffs to contest the claim.



4. Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens shall answer all questions asked of them at depositions regarding any matter, not privileged, which is relevant to the subject matter of this action.
5. Plaintiffs' and Defendant South Bay Properties, LLC's requests for attorneys' fees and costs are denied.

AND IT IS SO ORDERED.



Joe M. Crosby
Master in Equity for Georgetown County

April 26, 2016

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

South Bay Properties, LLC, Stante)
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.)

FILED
GEORGETOWN COUNTY, S.C.
2016 AUG 31 PM 3:59
ALPHA Y. WHITE
CLERK OF COURT

This action came before me on August 15, 2016, for hearings 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").

This is a mortgage foreclosure action. The Complaint alleges Plaintiffs are the owners and holders of a promissory note and mortgage executed by South Bay Properties, LLC, the payments due on the note and mortgage are in default and the conditions of the note and mortgage have been broken. The Complaint alleges the other defendants are made parties to this action because they may have or claim interests in the real property that is subject to the mortgage. The Complaint prays the amount due on the note and mortgage be determined, the subject property be sold under the direction of the Court, the proceeds of the sale be applied first to the costs and expenses of this action and then to the amount due on the note and mortgage, and that the Court grant such other and further relief as may be just and proper.

South Bay Properties, LLC did not answer the Complaint and is in default. John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens answered the Complaint by qualified denials admitting they claim an interest in the subject property and denying other allegations in the Complaint.

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-22-01045. The request was denied.

I. Motion for Order Compelling Discovery

Plaintiffs' Second Set of Interrogatories was served on the Defendants on May 4, 2016. The Defendants did not timely object to the interrogatories and did not timely answer the interrogatories.



Plaintiffs filed and served the Motion for Order Compelling Discovery on June 15, 2016. The Defendants served their Answers to Plaintiffs' Second Interrogatories on July 20, 2016.

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. The Defendants objected to the interrogatory on the grounds it seeks attorney-client or attorney work product privileged information. "The attorney-client privilege protects against disclosure of confidential communications by a client to his attorney." *State v. Owens*, 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992). "The attorney work product doctrine protects from discovery documents prepared in anticipation of litigation" *Tobacoville USA, Inc. v. McMaster*, 387 S.C. 287, 692 S.E.2d 526 (2010). The Defendants filed a Lis Pendens alleging that they have an equitable lien and served an Answer in this action admitting they claim an interest in the subject property. The Defendants publicly claim an equitable lien. No facts or authority were presented at the hearing to support the objection that the information requested in Plaintiffs' interrogatory 6 qualifies as attorney-client communications or is a document prepared in anticipation of litigation. The validity and priority of the asserted lien is relevant in this mortgage foreclosure action. Therefore the objection, that the date each Defendant claims to have first acquired an equitable lien is privileged information, is overruled.

Subject to the objection that the date each Defendant claims to have first acquired an equitable lien is privileged information, the Defendants responded to Plaintiffs' interrogatory number 6 by directing Plaintiffs to the complaint filed in civil action no. 2009-CP-22-01045. That complaint asserts twelve causes of action against twelve separate defendants and includes one hundred seventy (170) numbered paragraphs of allegations and fifty-one (51) typed pages. None of the allegations in the complaint specifically state the date the Defendants claim to have first acquired an equitable lien.

Rule 33, SCRPC, requires that: "Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer." The Defendants' response to Plaintiffs' interrogatory number 6 does not satisfy the requirements of Rule 33, SCRPC.

Plaintiffs' interrogatory number 7 asked for the total amount each Defendant claims is secured by an equitable lien. The Defendants responded that they have not yet determined the full amount of their damages. Rule 33, SCRPC, anticipates that additional information may become available as litigation progresses and provides: "The interrogatories shall be deemed to continue from the time of service, until the time of trial of the action so that information sought, which comes to the knowledge of a party, or his representative or attorney, after original answers to interrogatories have been submitted, shall be promptly transmitted to the other party." But, this provision does not authorize delaying a response to an interrogatory until all information is known. The Defendants' response to Plaintiffs' interrogatory number 7 does not satisfy the requirements of Rule 33, SCRPC.

Plaintiffs' interrogatory number 9 asked for the total amount owed each of the Defendants by South Bay Properties, LLC. The Defendants responded by referencing their response to Plaintiffs' interrogatory number 7. The Defendants' response to Plaintiffs' interrogatory number 9, like the Defendants' response to Plaintiffs' interrogatory number 7, does not satisfy the requirements of Rule 33, SCRPC.

Plaintiffs' interrogatory number 10 asked for the factual basis for the amount each Defendant claims he/she is owed by South Bay Properties, LLC. The Defendants responded that they are still in the process of making this determination. Rule 33, SCRPC, does not excuse delaying a response

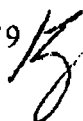
to an interrogatory until all information is known. The Defendants' response to Plaintiffs' interrogatory number 10 does not satisfy the requirements of Rule 33, SCRPC.

Plaintiffs' interrogatory number 12 asked about the Defendants' claim of an express or implied intent that specific property would serve as security for payment of the amount owed each of the Defendants by South Bay Properties, LLC. Specifically the Defendants were asked:

- a. the date the intent arose;
- b. the factual basis for the claim such an intent existed;
- c. the specific words and actions evidencing such an intent;
- d. the identity of the specific property that was intended to serve as security for the debts; and
- e. the terms and conditions of the security agreement.

The Defendants responded by stating they were unsure of the date the express or implied intent arose and by referring Plaintiffs to the allegations in the complaint filed in civil action no. 2009-CP-22-01045. That complaint asserts twelve causes of action against twelve separate defendants and includes one hundred seventy (170) numbered paragraphs of allegations and fifty-one (51) typed pages. None of the allegations in the complaint specifically state the information requested in Plaintiffs' interrogatory number 12. "For an equitable lien to arise, there must be a debt owing from one person to another, specific property to which the debt attaches, and an intent, expressed or implied, that the property will serve as security for the payment of the debt." *Doe v. Roe*, 323 S.C. 445, 453, 475 S.E.2d 783, 787 (Ct. App. 1996). The Defendants' response to Plaintiffs' interrogatory number 12 does not satisfy the requirements of Rule 33, SCRPC.

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.

Plaintiffs' interrogatory number 13 asked for the factual basis for each Defendant's claim that his/her equitable lien is senior to Plaintiffs' mortgage. The Defendants responded by objecting that the interrogatory calls for a legal conclusion and by referring Plaintiffs to the allegations in the complaint filed in civil action no. 2009-CP-22-01045. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact. Rule 33(d), SCRPC. Plaintiffs' request for the factual basis for the Defendants' claim that their equitable lien is senior to Plaintiffs' mortgage is appropriate and the Defendants' objection is overruled. None of the allegations in the complaint filed in civil action no. 2009-CP-22-01045 specifically state the factual basis for the Defendant's claim that their equitable lien is senior to Plaintiffs' mortgage. The Defendants' response to Plaintiffs' interrogatory number 13 does not satisfy the requirements of Rule 33, SCRPC.

II. Motion for Sanctions

This Court's Order dated April 26, 2016, provided that: "Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens shall answer Plaintiffs' Interrogatories dated December 7, 2015, in accordance with rule 33, SCRPC, on or before June 17, 2016." The Defendants did not serve responses to Plaintiffs' Interrogatories until July 20, 2016.

Plaintiffs' filed and served their Motion for Sanctions on July 25, 2016. The Defendants served their Supplemental Answers to Plaintiffs' First Set of Interrogatories on August 9, 2016, and their Return to Plaintiffs' Motion for Sanctions on August 11, 2016.



Plaintiffs' Motion for Sanctions focused on the sufficiency of the Defendants' responses to Plaintiffs' interrogatory number 3 and Plaintiffs' interrogatory number 5. At the hearing Plaintiffs' counsel acknowledged that the Defendants' supplemental answer satisfied the concerns regarding the response to Plaintiffs' interrogatory number 3 leaving only the Defendants' response to Plaintiffs' interrogatory number 5 at issue.

As is specifically 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." For twenty-three (23) witnesses the Defendants did not set forth a summary of the important facts known to or observed by the witness or provide a copy of a statement taken from such witness. Instead the Defendants repeatedly stated:

"This witness is expected to testify as to all matters within his knowledge or observation, as well as his relevant conclusions and opinions, regarding all matters relevant or probative to the issues raised in all pleadings in any civil action related to 'Harbor Club at Winyah Bay,' in which he has been named a party Plaintiff or Defendant."

This recital does not inform Plaintiffs of the important facts known to or observed by the witnesses.

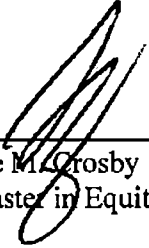
The Defendants argued that Plaintiffs waived any objection to the Defendants' response to Plaintiffs' interrogatory number 5 by failing to ask the Defendants, at their depositions, as to the expected testimony of these witnesses. The Court is not persuaded that Plaintiffs's choice of questions to ask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

Plaintiffs' counsel acknowledged at the hearing that John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens have been deposed and the Defendants do not need to provide further information concerning the facts known to or observed by these four witnesses. The Defendants' counsel acknowledged at the hearing that the Defendants do not know what important facts are known to or observed by the other witnesses.

Therefore, I order, adjudge and decree:

1. Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens shall answer Plaintiffs' Second Set of Interrogatories dated May 4, 2016, in accordance with Rule 33, SCRCF.
2. Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens shall provided Plaintiffs' counsel, not less than thirty days before trial, a summary sufficient to inform the Plaintiffs of the important facts known to or observed by each witness they plan to call to testify at trial other than John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens.
3. If Defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens chose to present an expert witness at trial to quantify the damage to their credit, Plaintiffs must be notified of the expert witness not less than thirty (30) days before trial.
4. Plaintiffs' requests for attorneys' fees and costs are denied.

AND IT IS SO ORDERED.



Joe M. Crosby
Master in Equity for Georgetown County

August 31, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2016-002379

RECEIVED

JAN 24 2017

SC Court of Appeals

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

v.

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,

Of Whom

John Steven Goodwin, Louise C. Goodwin, Gary E. Owens, and Joyce M. Owens are Appellants,

CERTIFICATE OF SERVICE

Charles T. Smith (S.C. Bar #5070)
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Respondents Bonnie N. Charlton,
Ronald L. Charlton, and Bayside Property, Inc.

I certify that on the 23rd day of January, 2017, I served Respondents' Reply in Support of Motion to Dismiss Appeal by depositing copies in the United States Mail, with sufficient postage affixed, addressed to:

K. Douglas Thornton, Esquire
Thornton Law Firm, LLC
1025 Third Avenue
Conway, SC 29526
Attorney for John Steven Goodwin, Louise C.
Goodwin, Gary E. Owens and Joyce M.
Owens

John M. Leiter, Esquire
Law Offices of John M. Leiter, PA
1203 48th Avenue N, Suite 109
Myrtle Beach, SC 29577
Attorney for John Steven Goodwin, Louise C.
Goodwin, Gary E. Owens and Joyce M.
Owens

Charles T. Smith
Charles T. Smith (S.C. Bar #5070)
608 Cypress Street
Georgetown, South Carolina 29440
(843) 545-6578
Attorney for Respondents Bonnie N. Charlton,
Ronald L. Charlton, and Bayside Property, Inc.

(843) 545-6578

CHARLES T. SMITH
ATTORNEY AND COUNSELOR AT LAW
608 CYPRESS STREET
GEORGETOWN, SOUTH CAROLINA 29440

charles.smith@scbar.us

January 23, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
JAN 24 2017
SC Court of Appeals

Re: Bonnie N. Charlton, et al. v. South Bay Properties, LLC, et al.
Appellate Case Number 2016-002379

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of Respondents' Reply in Support of Motion to Dismiss Appeal and the Certificate of Service. By copies of this letter copies of the Reply are being served on Appellants' counsel.

Sincerely,

Charles T. Smith

Charles T. Smith

Enclosures

cc: Bonnie N. Charlton
K. Douglas Thornton, Esquire
John M. Leiter, Esquire



Retail

P

US POSTAGE PAID
\$7.20

Origin: 29440
Destination: 29211
1 Lb 8.00 Oz
Jan 23, 17
4533200440-12

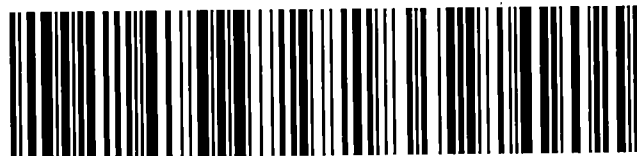
1024

PRIORITY MAIL® 2-Day

Expected Delivery Day: 01/25/2017

B012

USPS TRACKING NUMBER



9505 5104 2866 7023 0492 57

Charles T. Smith
608 Cypress Street
Georgetown, SC.29440

RECEIVED

JAN 24 2017

SC Court of Appeals

To: The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, South Carolina 29211



**PRIORITY®
MAIL**

UNITED STATES POSTAL SERVICE

Visit us at usps.com



Label 107R, January 2008