

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

) FOR THE FIRST JUDICIAL CIRCUIT

Wescott Apartments, LLC,

) CASE NO.: 2018-CP-18-2066

Plaintiff,

)
)
)

v.

) **ORDER GRANTING SUMMARY**
) **JUDGMENT PURSUANT TO RULE 56,**
) **SCRCP**

LMW, LLP and William E. Bailey,
individually,

)
)
)

) **IN FAVOR OF**
) **WESCOTT APARTMENTS, LLC,**
) **FRONT STREET CONSTRUCTION**
) **SERVICES, LLC, AND TRAVELERS**
) **CASUALTY AND SURETY COMPANY**
) **OF AMERICA**

Defendants.

)
)
)

LMW, LLP,

)
)
)

Third-Party Plaintiff,

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)
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v.

)
)
)

JUL 29 2019

Brabham Construction, LLC, Front Street
Construction Services, LLC, Wescott
Apartments, LLC and Travelers Casualty and
Surety Company of America,

)
)
)

SC Court of Appeals

Third-Party Defendants.

)
)
)

This case came before the Court by way of a Motion for Summary Judgment pursuant to Rule 56, SCRCP filed on March 18, 2019 on behalf of Plaintiff Wescott Apartments, LLC (“Wescott”), Third-Party Defendants Front Street Construction Services, LLC (“Front Street”) and Travelers Casualty and Surety Company of America (“Travelers”) (collectively “Moving Parties”). A hearing on the motion was held on May 28, 2019 in the Dorchester County Court of Common Pleas.

As an initial matter, pursuant to Rule 52, SCRCP, findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 56, SCRCP, such as this motion.

Upon the analysis and consideration of both the oral and written arguments and submittals by counsel (initial and supplemental), the pleadings of record, the evidence and exhibits before the Court, as well as the applicable law, I hereby grant the Moving Parties' Motion for Summary Judgment. This Court entered a Form 4 Order granting the Motion for Summary Judgment on May 29, 2019.

The Court hereby collectively adopts Argument numbers 1, 2, and 3 contained in Wescott, Front Street and Travelers' Memorandum of Law in Support of their Motion for Summary Judgment filed on May 22, 2019 and supplemented on May 28, 2019, as well as the arguments contained in the Moving Parties' Notice of Motion and Motion for Summary Judgment filed on March 18, 2019, as the Court's basis in granting their Motion for Summary Judgment.

Because the Court has granted the Moving Parties' Motion for Summary Judgment, pursuant to S.C. Code Ann. §29-5-120(B), the Court hereby orders that the following mechanic's liens are released, discharged and vacated from the property owned by Wescott (Dorchester County Tax Parcel No. 162-00-00-037.000)(more particularly described on the legal descriptions of the mechanic's liens of record):

1. Mechanic's Lien in the amount of \$148,000.00 recorded by LMW, LLP in the Register of Deeds Office for Dorchester County, South Carolina on October 23, 2018 at Lien Book 2018, Page 5106-5109, Number 2018026455 (Exhibit 7 of Moving Parties' Documents in Support); and
2. Mechanic's Lien in the amount of \$412,179.00 recorded by LMW, LLP in the Register of Deeds Office for Dorchester County, South Carolina on November 15, 2018 at Lien Book 2018, Page 5476-5479, Number 2018028341 (Exhibit 8 of Moving Parties' Documents in Support).

Pursuant to the Court's decision to release, discharge and vacate the above mechanic's liens, the Court also orders that the surety bond procured and recorded by Wescott and Travelers to release the above mechanic's liens pursuant to S.C. Code Ann. §29-5-110 shall also be vacated and released:

1. Surety Bond and Amended Surety Bond for Release of Mechanic's Lien originally recorded in Book 2018, Page 5106, and amended in Book 2018, Page 5476 and Book 2018, Page 5577, by Travelers Casualty and Surety Company of America and Wescott to secure the release of the above Mechanic's Liens recorded by LMW, LLP on the property owned by Wescott pursuant to S.C. Code Ann. §29-5-110.

The Court grants 1) summary judgment in favor of Wescott on its declaratory judgment action; 2) summary judgment in favor of the Moving Parties on LMW, LLP's claims for bond foreclosure; 3) summary judgment in favor of the Moving Parties on LMW, LLP's claim of quasi-contract; 4) summary judgment in favor Front Street and the Moving Parties on LMW, LLP's claim of breach of contract; and 5) summary judgment in favor of the Moving Parties on LMW, LLP's claim of constructive trust.

The only claims remaining in this action as a result of the Court's decision are the third-party claims of LMW, LLP against Brabham Construction, LLC¹. The caption of this case shall be amended accordingly.

Pursuant to the stipulation of the Moving Parties contained in the Motion for Summary Judgment and Memorandum in Support of Summary Judgment, Wescott shall dismiss its

¹ Wescott Apartments, LLC is incorrectly listed on the caption in this case as a third-party defendant when it is the Plaintiff in this action. Pursuant to Rule 14, SCRPC, a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person *not a party* to the action, not an existing party. The Court addressed the claims of LMW, LLP against Wescott as counterclaims rather than third-party claims, in accordance with the allegations of LMW, LLP's Amended Answer, Counterclaim and Third-Party Complaint filed on December 20, 2018, not the incorrect caption.

remaining claims against LMW, LLP within fifteen (15) days of this Order becoming a final judgment in this case that is not appealed. If the Order does not become a final judgment or is appealed, Wescott shall not be obligated to dismiss the remaining claims.

IT IS SO ORDERED.

Brian M. Gibbons
Presiding Circuit Court Judge

_____, 2019.
St. George, South Carolina



Dorchester Common Pleas

Case Caption: Wescott Apartments, Llc VS LMW, LLP , defendant, et al

Case Number: 2018CP1802066

Type: Order/Summary Judgment

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Smith | Closser | Wheeler, P.A.

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July 25, 2019

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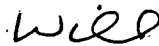
RE: Wescott Apartments, LLC v. LMW, LLP, et al.
Appellant - LMW, LLP
Appellate Case No. 2019-001182
SCW File No. 18-328

Dear Ms. Allen:

Pursuant to your request, enclosed please find a copy of an Order to confirm the caption in the above referenced matter.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



William K. Kalivas

WKK/pmr

Enclosures

cc: Jamie A. Khan, Esquire
John D. Harrell, Sr., Esquire
Robert W. Harrell, III, Esquire

Smith | Closser | Wheeler, P.A.

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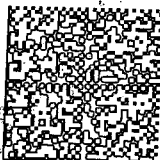
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