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Feb 22 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge
Walton J. McLeod IV, Circuit Court Judge

Appellate Case No. 2020-001406
Civil Action No. 2017-CP-32-02204

ARM Quality Builders, LLC, d/b/a ARM Quality Builders, Appellant,

v.

Joseph A. Golson and Lycia B. Golson and Branch Banking Trust Company, Respondents,

AND

Joseph A. Golson and Lycia B. Golson, Third-Party Respondents,

v.

Ahmad Mazloom, Third-Party Appellant.

RENEWED MOTION FOR *IN CAMERA* REVIEW OF EXHIBIT

E. Wade Mullins III
Chelsea J. Clark
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, S.C. 29260

Attorneys for Respondents

BACKGROUND

This matter is before the Court on appeal from multiple orders entered following motion hearings and a trial in the underlying case. As part of one underlying order, Respondents and Third-Party Respondents Joseph A and Lycia B. Golson (“Respondents” or the “Golsons”) received an award of attorney’s fees. This award was made in conjunction with the dissolution of the mechanic’s lien filed by Appellant, ARM Quality Builders, LLC. Respondents previously requested that this Court allow the attorney’s fee statement considered by the Lower Court in connection with the award of fees to be submitted for similar *in camera review* during the appeal. The Court requested additional analysis in support of the motion. Respondents’ now renew their motion, including additional analysis in support of the request.

MOTION

In reviewing Respondents’ request for an award of fees after successfully challenging Appellant’s mechanic’s lien, Judge Clifton Newman reviewed a statement of the fees incurred by Respondents *in camera* to avoid any waiver of attorney-client or work product privilege that may result from public filing, or even filing under seal, of the statement. Detailed fee statements like the one submitted can include privileged topics of conversation with clients, work product and strategy of counsel, as well as mental impressions of counsel. As this Court well knows, attorneys in this state must be exceedingly cautious about protecting privileged information. The privilege is “based upon a wise policy that considers that the interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to this professional advisor.” *Tobacoville USA, Inc. v. McMaster*, 387 S.C. 287, 293, 692 S.E.2d 526, 529 (2010). Because of this caution, the document was never received by Appellants and therefore is not

included in the filed Record. Respondents seek to follow the same protective procedure during the instant appeal.

Under the factors set forth in Rule 41.1 SCRC, the Respondents assert: (1) nondisclosure of documents is needed to ensure a fair hearing because opposing parties cannot fairly receive details of the work of opposing counsel; (2) the need for witness cooperation is not relevant in this matter; (3) Respondents expect the documents to be and remain confidential due to attorney-client or work product privilege and provided the statement to the Lower Court with such expectation; (4) there is little to no public significance connected to this suit, and none connected to the specific document in question ; (5) the disclosure of the documents would undermine the purpose of the attorney-client or work product privilege; (6) although the redaction of documents is available as an alternative, it is not guaranteed to shield all information protected by attorney-client or work product privilege; and (7) the public interest is best served by nondisclosure of the documents to protect attorney-client and work product privilege.

Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 12, 630 S.E.2d 464, 470 (2006), establishes four additional factors the Court may consider. The Respondents assert: (8) the public interest in the proceeding is to prevent disclosure of documents protected by the attorney-client or work product doctrine; (9) the private or public status of the litigants is not relevant in this matter; (10) the nondisclosure of the documents would not provide any information to the public pertaining an important historical event; (11) the public does not have access to the information contained in the records; and (12) while a particular decision would not sustain or offend the fundamental interests of public access, it could sustain or offend the policy to protect confidential documents under the attorney-client or work product doctrine. The vast majority of the details of this case are publicly available on C-Track or the Public Index. The document Respondents seek to protect is material

to the Court's review of Appellant's arguments about the award of fees, but the document is not so unusual or notable as to be of value to the public. The statement simply reflects the work of counsel in preparing to confront the mechanic's lien issues in this case. However, that work includes attorney strategy and client communications. The public does have a strong interest in protecting documents containing that type of information from the public view. Notably, Appellant does not object to this Court applying the same *in camera* review method employed by Judge Newman below. Because the public will suffer little to no prejudice due to *in camera* review, but could suffer prejudice if the relationship between attorney and client is not guarded, Respondents believe that *in camera* review is appropriate relief under these specific circumstances.

REQUESTED RELIEF

Therefore, Respondents move for the Court's approval to submit the fee statement *in camera*; for the Court's approval to have the document considered as part of the Record for the Court's review; and for the Court's direction that the document not be published on C-Track or provided to the opposing party. If this relief is not approved, Respondents move for the Court's approval to allow Respondents to submit a redacted version of the fee statement for supplementation of the Record.

[remainder of page intentionally blank]

CONSULTATION

Counsel for Respondents has previously consulted with Counsel for Appellants, who does not oppose this motion to submit the same document reviewed by Judge Newman to the Court of Appeals in the same fashion as below.

Respectfully submitted,

BRUNER, POWELL, WALL & MULLINS, LLC

s/ Chelsea J. Clark

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Attorneys for Respondents

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February 21, 2022

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APPEAL FROM LEXINGTON COUNTY
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The Honorable Clifton Newman, The Honorable Walton J. McLeod, IV
Lexington County

Appellate Case No. 2020-001406
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v.

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Branch Banking and Trust Company, Respondents,

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v.

Ahmad Mazloom, Third-Party Appellant.

PROOF OF SERVICE

I, the undersigned employee of Bruner, Powell, Wall & Mullins, LLC, do hereby certify that I have served the Appellants/Third-Party Appellants with the Respondents' **Renewed Motion for *In Camera* Review of Exhibit** by electronic mail and by depositing copies of same in the United States Mail, with sufficient postage affixed thereto, on the 21st day of February, 2022, addressed as follows:

James Randall Davis, Esq.,
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*Attorneys for Appellant/Third-Party
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s/Lacey E. Segars
Lacey E. Segars, Paralegal
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February 21, 2022

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February 21, 2022

VIA HAND DELIVERY

South Carolina Court of Appeals

Attn: The Honorable Jenny Abbott Kitchings

Clerk of Court

1220 Senate Street

Columbia, South Carolina 29201

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SC Court of Appeals

Re: *ARM Quality Builders, LLC, d/b/a ARM Quality Builders v. Joseph A. Golson and
Lycia B. Golson, et al*
Appellate Case No. 2020-002406
BPWM File: 7-2873.100

Dear Ms. Kitchings:

Enclosed please find the *Renewed Motion for In Camera Review of Exhibit* regarding the above referenced matter. I am hand delivering a hard copy of the same and enclosing a check for \$50.00 to cover the filing fee. I am serving all other parties in this matter by copy of this letter and email. Please let me know if the Court requires anything further.

Thanking you, and with kind regards, I am

Very truly yours,

Lacey Segars

Lacey E. Segars

Paralegal