

This matter involves four actions for the foreclosure of mechanics liens against real estate owned by the defendant, Harvey Lee Burns, on the Old Spartanburg Road in Greenville County. Pursuant to an order of this Court dated December 16, 1976, the actions were consolidated and referred to the Master in Equity for Greenville County. A hearing was held by the Master on December 16, 1976, and on March 7, 1977 the Master's Report was filed, to which the defendant-landowner, Harvey Lee Burns, has filed exceptions. On May 5, 1977, these exceptions were argued before me.

The Master's Report contains ninety findings and conclusions, to which Burns has filed fifty-six exceptions. These exceptions relate to three basic issues:

- a. Consent of the landowner to the furnishing of labor and materials within the meaning of Section 45-251 of the Code of Laws for 1962;
- b. The admissibility into evidence or the effect, as evidence, of the unrecorded lease;
- c. Equitable principles applicable.

As is hereinafter set forth, the issue of consent is deemed to be controlling.

From the record it appears that Burns owns a tract of land, containing approximately five and one-half acres, at the intersection of the Old Spartanburg Road and Pelham Road. This tract is triangular in shape, and on the third side of the triangle the Yorktown Apartments are situated. The acreage is commercial and has been developed by the landowner into a number of shops within the past years. The landowner's residence is also located on the tract.

On April 16, 1973, Burns entered into a written agreement with Mom's Delight, Inc., whereby a small portion of the larger tract was ground leased for a period of five years, with options to the lessee to renew the lease for three additional five year terms. The lease authorized lessee to use the property for the purpose of operating thereon a food service, selling chicken or other food products. In April of 1975, the lease was assigned, with the landowner's consent, to Donald D. Greer and Lawrence E. McNair. The leased site is often referred to in the record as the "Lil' Farmer" project.