

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Kimball Jackson, Circuit Court Judge  
York County

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Case No. 2011-CP-46-00796

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Ralph Wayne Parsons, Jr. and Louise C. Parsons

Respondents,

v.

John Wieland Homes and Neighborhoods  
of the Carolinas, Inc., Wells Fargo Bank, N.A.  
and South Carolina Bank & Trust, N.A.

Defendants,

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JUL 22 2013

Of whom John Wieland Homes and Neighborhoods  
of the Carolinas, Inc. is the,

Appellant.

**SC Court of Appeals**

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RESPONDENTS' REPLY TO APPELLANT'S PETITION FOR REHEARING

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The Respondent submits that the Appellant's Petition for Rehearing and Rehearing *en banc* is for the most part simply a repeat of arguments previously addressed in the primary briefs. This Reply is submitted for the limited purpose of responding to Appellants' arguments regarding the Court's reference to the South Carolina Disclosure Act, S.C. Code Ann. Section 27-50-40 and the Appellants overly broad application of the ruling in Landers v. Federal Deposit Insurance, Corp., 402 S.C. 100 739 SE 2d 209 (2013) and Carlson v. S.C. State Plastering, Op. No. 5143 (Ct. App. Filed June 12, 2013).

### **Disclosure Act**

This Court referred to the Disclosure Act as support for proposition that hazard substances buried on real property would not be anticipated or foreseeable by a reasonable consumer. The reference to the Disclosure Act in no way suggests that the Court found that the Disclosure Act applied to this transaction. The Court simply noted that the Disclosure Act requires disclosure of the presence of hazardous materials. The fact that hazardous materials must be disclosed does not suggest that they must be anticipated. To the contrary, there is good reason to require the disclosure of hazardous materials since this would not be foreseeable to a reasonable consumer.

### **Landers & Carson**

The Appellant argues that Landers derogates the holdings in Aiken and Partain. Respondent submits that the Appellant's argument is not supported by a reasonable reading of the Landers opinion.

Landers involved a claim for breach of contract, constructive termination and slander. The Plaintiff in Landers argued that the scope of the arbitration clause in the employment agreement did not cover the Plaintiff's claims.

Importantly, for this case, the Plaintiff in Landers did not argue that the circumstances leading to the claim were outrageous and unforeseeable. Neither Aiken nor Parlain are cited or mentioned at all in the opinion. The reality is that Landers simply is not applicable to this case.

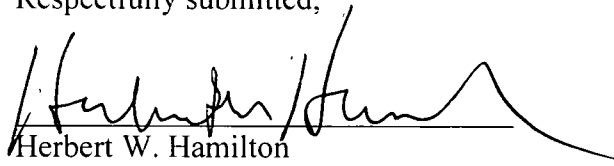
Similarly, Carlson does not apply here either. The Plaintiff in Carlson argued that the arbitration clause only applies to claims arising in contract. There is no argument in Carlson that the claims are based on unforeseeable or outrageous conduct. The Court

cites Landers only for the proposition that broad arbitration clauses can apply to tort claims. Id. p. 9.

Based on the foregoing and the arguments in the primary brief, Respondents request that the Petition for Rehearing and Rehearing *en banc* be denied.

Respectfully submitted,

July 17, 2013

A handwritten signature in black ink, appearing to read 'Herbert W. Hamilton', is written over a horizontal line.

Herbert W. Hamilton  
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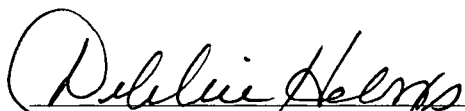
CERTIFICATE OF SERVICE

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The undersigned, an employee of Hamilton Martens & Ballou, LLC certifies that the Respondents' Reply to Appellant's Petition for Rehearing was served upon other counsel of record by depositing same in the United States Mail, with sufficient postage affixed and addressed as follows:

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John Wieland Homes and Neighborhoods of the Carolinas, Inc.

July 17, 2013

  
Debbie Helms, Legal Assistant