

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Hon. John C. Hayes, III
Presiding Circuit Court Judge

Court of Appeals Case No. 2012-213730
(Consolidated case no. 2010-CP-46-2326)

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SC Court of Appeals

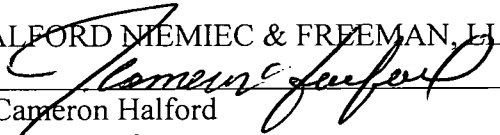
Juontonio Pinckney, et al. Appellants,
v.
Epcon Communities, Inc., Epcon Communities Franchising, Inc.,
Brock L. Fankhauser, Fankhauser Property Group, Inc.,
Stonecrest Villas of Tega Cay, LLC,
and
Stonecrest Villas of Tega Cay Owners' Association, Inc. Respondent

APPELLANTS' RETURN AND OBJECTIONS
TO RESPONDENT MOTION TO FILE SEPARATE BRIEFS ON
JANUARY 23, 2013 AND APRIL 5, 2013 ORDERS

Appellants Pinckney, et al here file their return and objections to the motion by COA private counsel to file separate briefs and memorandums. For the reasons stated below, the court of appeals should deny Respondent's motion. Appellants' return is supported by the attached affidavit of Ismael Gonzelez pursuant to SCACR 204(c)(3).

Respectfully submitted,

HALFORD NIEMIEC & FREEMAN, LLP


J. Cameron Halford
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MEMORANDUM IN OPPOSITION

Appellants object to Respondent's motion as frivolous, unnecessary, and overly burdensome requiring duplicative argument and memorandums by Appellants. To date, the regime has litigated the case through the efforts of two (2) firms, *jointly*, over months of depositions, successive motions, oral arguments, and memorandums of law submitted to the lower court. Respondent's private counsel now seeks to evade stipulated fact and arguments premised as novel, specifically by private counsel. The novel arguments were advanced in the court below and in notices of cross appeal to this court. (*See*, cross notice of appeal dismissed 7/3/2013.). In a case raising novel questions of law, the appellate court is free to decide the question with no particular deference to the lower court. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000) (citing S.C. Const. Article V, §§ 5 and 9, S.C. Code Ann. § 14-3-320 and 330 (1976 & Supp. 2005)). The admitted novelty of arguments advanced specifically by private counsel are premised on the authority of *Queen's Grant Villas Horizontal Property Regimes I-V, vs. Daniel International Corp.*, 286 S.C. 555, 335 S.E.2d 365 (Sup. Ct. 1985). The novel arguments are likewise premised upon the trial court's incorporated reference of the *Pulliam v. MUI Carolina Corporation, et al.*, 2008-CP-46-2158 ruling preceding the January 23, 2013 decision granting summary judgment.

Not until the dismissal of respondent's cross appeal does private counsel *now* seek to characterize the issues it desires to brief, *separately*, as pure questions of law isolated from novel argument and stipulated facts. [*See*, Respondent 7/17/2013 motion p. 2 ¶(2), line 5.] When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. *WDW Properties*


vs. *City of Sumter*, 342 S.C. 6, 535 S.E.2d 631 (2000). Private counsel seeks to do so by motion characterizing that their respective “share” of briefing should involve, merely, questions of law to be reviewed in isolation. Separate briefing is desired to isolate questions of law in a vacuum to evade litigation strategy pursued under conflict for years prior to the entry of the January 23, 2013 and April 5, 2013 orders. The motion is frivolous or filed for improper delay, compounding the conflict of interest that has existed since appearance of private counsel in this case. ¹

The motion is improper and not in compliance with South Carolina Appellate Court Rules: It is not properly supported by required citations of authority. Nor is it supported by affidavit per SCACR 240(c)(2) and 240 (c)(3). The motion is likewise filed without joint effort, or signature, of respondent’s “non-private” counsel evidencing the conflict of interest described in the attached affidavit. ²

For the above reasons, Appellants respectfully request that the court deny the relief sought by private counsel as unnecessary, unduly burdensome to Appellants, and not in compliance with South Carolina Appellate Court Rules. Appellants, pursuant to SCACR 240(c), support this motion by affidavit of Ismael Gonzalez. Appellants’ counsel requests attorneys’ fees and sanctions awarded in the discretion of the court of appeals pursuant to SCACR 269 for the necessity of responding to the motion.

Respectfully submitted,

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1. Respondent's cross appeal was dismissed by this court on July 3, 2013 and remitted to the circuit court on July 19, 2013. The motion by private counsel seeks to circumvent the order by separate briefing. Irrespective of under what circumstances the regime engaged both "private" and "non-private" counsel, the regime chose to litigate this case jointly with two (2) firms. Because this litigation strategy has persisted for over three (3) years and is filed without joint support, Appellants respectfully submit that the regime should not now through its private counsel be permitted to request separate briefing in a manner that will be overly burdensome to the twelve appellants.
 2. Case No. 2013-DE-L-0924 is a private grievance filed individually by plaintiff Ismael Gonzalez. The audio recording of the alleged conflict described is of record with the lower court file through unopposed deposition exhibit of plaintiff Thea-Eve Vicari, and submitted by memorandum attachment exhibit to the circuit court.

PROOF OF SERVICE

I certify that I have served the foregoing Appellants' Pinckney, et al return, objections and affidavit in opposition to the July 25, 2013 motion of COA private counsel by depositing a copy of the same in the United States mail this 25 day of July, 2013 addressed as follows:

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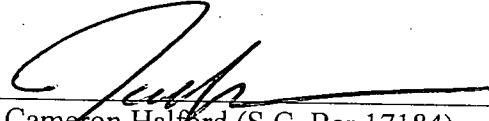
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