

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

RECEIVED

JUL 29 2013

SC Court of Appeals

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

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

AFFIDAVIT OF ISMAEL GONZALEZ

My name is Ismael Gonzalez and I am one of the twelve appellants in this case. I make this affidavit in opposition to the motion by the association's private counsel. I am 59 years old, and I own 709 Ledgestone Court in the Stonecrest development. I have never been convicted of a crime of dishonesty, and I make this affidavit of my own personal knowledge except those things stated on information and belief, the same I regard to be truthful and accurate.

I believe the COA's motion is strategically designed to overburden the twelve appellant litigants, as we are forced to pay for the efforts on two fronts. Our litigants, and the entire community, have already been assessed *twice* under the master deed for the business interests of the association's private firm. In addition to paying for our own

counsel, we have had to pay for the litigation services of the Sellers firm. We have also been assessed for yet more litigation involving soils commenced by the Sellers firm in April, 2013. In December, 2012 our community under the existing board was assessed for attorneys fees for this firm under a "revised" budget. The community had not voted to approve the legal fees being incurred beforehand. I believe the revised budget to be in violation of our restrictive covenants. Many people have been forced to pay these assessments under protest. If the assessments are not paid, our homes will have liens placed against them.

I believe the Sellers Hinshaw Ayers Dortch & Lyons P.A. law firm has operated under a conflict of interest throughout this litigation. The firm attorneys were tape recorded advising both the developer and the COA transition board. I believe it was a conflict of interest to represent the community in this defect litigation when the association had, through its carrier, counsel that the owners would not have been assessed for. Instead, the association board that was hand-picked by Fankhauser chose to utilize two law firms throughout this case pursued a strategy that has taxed the entire community under what I believe is a conflict of interest. This is the reason that I filed a grievance against the firm and its attorneys in Case Number 2013-DE-L-0924. An audio recording of the conflict of interest exists in this file, recorded and published to the community website by the board president David Cook. I am responsible for downloading and bringing this audio to our counsel.

Our twelve litigants engaged counsel and paid to file suit when it became clear the association, under Fankhauser, would do nothing to help us. I am aware that the builder and COA board had notice of very serious problems in the construction and design of our

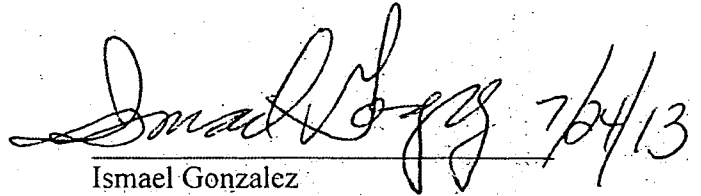
homes, yet did not file suit and were pursuing attempted scopes of repair different than that proposed by insurance carriers. Under the guise of test case repairs, board members got temporary repairs to their homes through Fankhauser's company. Yet, the repairs failed to stop water intrusion in these homes, including board member Paulette Iadanza's unit. My personal home had exhibited slab distress since year 2007 which remains unresolved. I believe had plaintiffs not filed suit, Fankhauser would never have resigned the board control nor transitioned the community. As controlling interest of the association, he knew of forensic reports detailing the severity of the problems in our community.

The new board was hand-picked by the developer at transition. The recording made at the interview with attorney Timonhy G. Sellers evidences that the boards pre-July 1, 2010 director (Brock Fankhauser) was not going to direct the association to take legal action against himself or his corporate interests. I believe the builder's hand-picked board continued the developer's conflict of interest through the developer's choice of counsel. The association has allegedly procured a \$2.62 million dollar settlement as of January, 2013. Yet, to date, our homes remain in a state of disrepair and our common elements are deteriorating while yet more cases are filed over subsurface defects. I believe the settlement the COA procured as against various parties including Fankhauser will not be sufficient to repair the defects that exist in the community, whether above or below the soils, and our home continues to deteriorate in value.

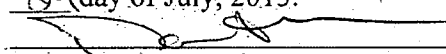
We should not have to pay yet more for this conflict of interest where the board's private counsel wishes to engage in separate briefing duties. The association should not be permitted to increase the burden upon the appellants that will occur if separate briefing

and memorandums are required. Our litigants, and the entire community, have been taxed enough under the litigation strategy chosen by our board and its choice of private counsel.

Further, affiant sayeth not.


Ismael Gonzalez

Sworn to and subscribed before me this
24 day of July, 2013.


Notary Public.

My commission expires: July 16, 2016



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July 25, 2013

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Juontonio Pinckney, et al. v. Brock L. Fankhauser, et al.*
South Carolina Appellate Case No.: 2013-000327
York County Consolidated Case No.: 2010-CP-46-2326


Dear Ms. Kitchings:

Please find enclosed an original and six copies of Appellants' Return, Objections and Affidavit in response to the July 17, 2013 motion of the association requesting separate briefing along with proof of service to all counsel.

Please file the originals and return a filed copy to our firm in the envelope provided. Please contact me with any questions or concerns. Thank you for your assistance.

With regards, I am

Respectfully,


J. Cameron Halford

JCH/klw
Enclosures

cc: (U.S. mail)
Brett Dressler, Esquire
Curtis Dowling, Esquire
Graham P. Powell, Esquire
Brad Cranshaw, Esquire
Michael B.T. Wilkes, Esquire

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