

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
Case No. 2013-000327; 2013-001248

APPEAL FROM YORK COUNTY
Court of Common Pleas

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

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,
AndStonecrest Villas of Tega Cay Owners'
Association, Inc. Respondents

**RESPONDENT'S REPLY TO THE APPELLANT'S
RETURN AND OBJECTIONS TO MOTION TO FILE SEPARATE BRIEFS ON
JANUARY 23, 2013 AND APRIL 5, 2013 ORDERS**

Brett Dressler
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Facsimile: 704.927.2868
Attorney for Respondent-Cross-Appellant

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SC Court of Appeals

On July 17, 2013, Respondent, Stonecrest Villas of Tega Cay Owners' Association, Inc., pursuant to Rule 208 of the South Carolina Appellate Court Rules, filed a Motion to File Separate Briefs Relating to the January 23, 2013 and April 5, 2013 Orders. The purpose of this Motion was to provide the Court with an orderly and succinct method in which to brief the issues before the Court. Simply, the January 23, 2013 Order only relates to the dismissal of Appellant's claims for damages to the common-elements due to the settlement. The April 5, 2013 Order involves the dismissal of all of the remaining of Appellants' claims against the Respondent, which claims are based on various legal theories that are unrelated to the issue of whether more than one party can collect for damages to the common elements.

Appellant's Return to Respondent's motion erroneously suggests that there is a nefarious motive or reason for Respondent's motion. First, the standard of review of the Lower Court's Orders is unaffected by the manner in which the law is presented to the Court, i.e., one or two briefs. Second, Respondent cannot respond to the assertion that "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" because Respondent does not understand this argument. (See Return at p .3).

From the inception of this litigation, Curtis W. Dowling, Esq. and Barnes Alford Stork & Johnson, L.L.P. has represented the Respondent Association in the defense of the claims brought by Appellant. Brett Dressler has represented Respondent Association in the affirmative claims brought by the Association as such claims were

not (and typically are not) covered by insurance. See Affidavit of Brett Dressler. There is little legal overlap between Mr. Dowling's efforts to defend the Association against the Plaintiffs/Appellants' claims against it and Mr. Dressler's affirmative construction defect claims against the Developer, general contractor and subcontractors.

The Association has never contended that the January 23, 2013 Order is related to the April 5, 2013 Order. Rather, the Association contended that the January 23, 2013 Order is related to the Lower Court's August 27, 2012 Order denying the Association's Motion for Judgment on the Pleadings.

Appellants also appear to assert that the appearance of two attorneys on behalf of the Association creates a conflict of interest for the undersigned. This contention is irrelevant to Respondent's Motion, was never raised in the lower court, is not true and is illogical. First, Mr. Dowling consents to the Motion to file separate briefs; therefore, there is not a conflict among the attorneys. Second, neither Mr. Dressler nor his firm has ever represented or given legal advice to the developer or the developing entities. (See Affidavit of Brett Dressler).¹

Third, the personal attacks in the Return and the accompanying affidavit of Mr. Gonzalez are unwarranted and unprofessional. This lawsuit has proceeded with two attorneys handling two separate issues for the Respondent Association for three years. Now, Appellants' counsel has submitted an affidavit by one of the Appellants, which

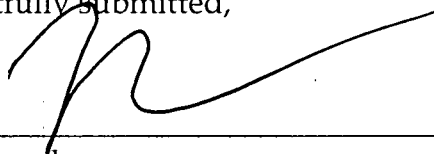
¹ The infamous recording referenced in Mr. Gonzalez' affidavit is advice given *to the Association* for the developer to resign from the Board given the conflict of interest that existed between the Association and the developer over the systemic water intrusion.

makes bold and personal attacks on Respondent's counsel. These statements are irrelevant to the current motion and should be stricken from the record.

Respondent made this motion pursuant to the Court's inherent powers to govern the content and format of the briefs before the Court, which specifics are set forth in Rule 208. This Motion to file a separate brief is similar in nature to a motion to extend the page limits. Respondent asserts that separate briefs will aid the Court in its understanding of the appeals before it and the evidence presented to the Lower Court when it considered the separate motions leading to the January 23, 2013 and April 5, 2013 orders. Respondent did not request additional pages for a consolidated brief because Respondent did not believe such would accomplish the goal. However, if the Court determines that an increase in page limit would be more appropriate, Respondent would appreciate such consideration. Respondent is simply trying to streamline the respective arguments.

Accordingly, Respondent respectfully requests that it be permitted to file separate briefs relating to the January 23, 2013 and April 5, 2013 Orders, or in the alternative for an increase in the page limit by an additional twenty pages.

Respectfully submitted,



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July 30, 2013

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In The Court of Appeals
Case No. 2013-000327

APPEAL FROM YORK COUNTY
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Brock L. Fankhauser, Fankhauser Property Group, Inc.,
Stonecrest Villas of Tega Cay, LLC, and
Stonecrest Villas of Tega Cay Owners' Association, Inc.Respondent

PROOF OF SERVICE

I certify that I have served the foregoing **RESPONDENT'S REPLY TO RETURN AND OPPOSITION TO MOTION TO FILE SEPARATE BRIEFS ON JANUARY 23, 2013 AND APRIL 5, 2013 ORDERS** on counsel for Appellants Juontonio Pinckney, et al, J. Cameron Halford, Halford Niemiec & Freeman L.L.P., 238 Rockmont Drive, Fort Mill, South Carolina 29708, by depositing a copy in the U.S. Mail, postage prepaid, on July 17, 2013 with all other parties served by U.S. Mail.

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July 30, 2013
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July 30, 2013

Via Federal Express

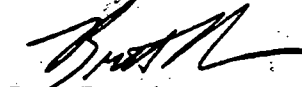
Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *Juontonio Pinckney, et al. v Brock L. Fankhauser, et al.*
Consolidated Case No.: 2010-CP-46-2326

Dear Ms. Kitchings:

Please find enclosed originals and seven copies of Respondent's Reply to the Appellant's Return and Objections to Motion to File Separate Briefs on January 23, 2013 and April 5, 2013 Orders and the Affidavit of Brett Dressler in the above matter. Please file the originals and return a file-stamped copy to me in the enclosed envelope. By copy of this letter, I am serving all counsel of record with the same. Thank you.

Sincerely,



Brett Dressler

BED/mb

Enclosures

cc: J. Cameron Halford, Esquire
Curtis W. Dowling, Esquire
Graham P. Powell, Esquire
Mike Wilkes, Esquire
J. Derham Cole, Esquire
Bradford W. Cranshaw, Esquire

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