

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,  
And Stonecrest Villas of Tega Cay Owners'  
Association, Inc.  
.....Respondents

**RECEIVED**  
JUL 31 2013  
**SC Court of Appeals**

---

**AFFIDAVIT OF BRETT DRESSLER**

The undersigned, being first duly sworn, deposes and says:

1. My name is Brett Dressler. I am over the age of 18. I have personal knowledge of the facts contained in this affidavit. I have never been convicted of a felony or a crime of dishonesty.

2. I am a lawyer licensed to practice law in the states of South Carolina, North Carolina and Texas. I am also licensed to practice before all Federal district courts in South Carolina and North Carolina. I am licensed to practice before the Fourth Circuit of Appeals. I hold a commission in the United States Army Reserve in the rank of Major and I am a member in good standing of

the United States Army Judge Advocate General's Corps. For the last three years, I was a member of the Ethics Committee for the Mecklenburg County Bar in North Carolina, where I investigated, reported and made recommendations on grievances filed by members of the public against local lawyers. I have held an AV rating from Martindale-Hubbell since approximately 2005. I have never been reprimanded, disciplined or cautioned by any state or federal court, tribunal or government agency for unethical conduct.

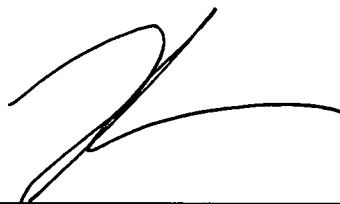
3. I am lead counsel for the Association on its affirmative claims for relief against the developer, general contractor and subcontractor. I work for Sellers, Hinshaw, Ayers, Dortch and Lyons, PA (hereinafter SHADL). I only represent the Association in connection with its affirmative claims for relief against the entities responsible for the construction defects at issue in this lawsuit. The Association has paid my firm only for services rendered in connection with prosecuting its claims against the developer, general contractor and subcontractor.

4. I do not represent the Association in connection with the claims filed by the Plaintiffs/ Appellants against the Association. Those claims are being defended by Curtis Dowling, who works for a different law firm altogether. The Association's insurance carrier has paid for Mr. Dowling's representation of the Association in accordance with that company's determination of its rights and responsibilities under its insuring agreement with the Association. The insuring agreement does not provide for coverage to pay to litigate affirmative claims for relief against the at-fault parties. Thus, the Association had no choice but to hire counsel at its own expense to pursue a recovery against the at-fault parties. Regardless of whether it hired me or Mr. Dowling, the Association nevertheless would have had to pay a lawyer to prosecute its affirmative claims for relief. Our signature page on the answer and complaint filed with the Lower Court indicate that I am counsel only on the claims against the developer and subcontractors. (See Exhibit 1).

5. My firm does not and has never had a conflict of interest in connection with this case. My firm has only represented the Association. Within 60 days after the Developer's resignation, the Association filed suit against it for construction defects. At no time has my firm ever provided legal advice to the Developer, including Stonecrest Villas of Tega Cay, LLC and/or Fankhauser Property Group, Inc.

6. Subsequent to the Developer's resignation, the Board members of the Association were elected by the membership at large (more than once during the pendency of this action).

This the 30<sup>th</sup> day of July, 2013



\_\_\_\_\_  
Brett Dressler

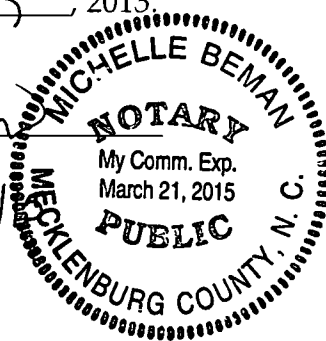
Sworn to and subscribed before me,

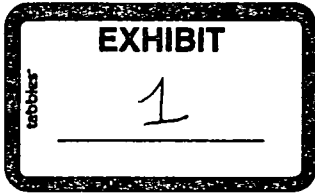
This the 30<sup>th</sup> day of July, 2013.

Michelle Beman

Notary Public

My Commission Expires: 3/21





STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Juontonio Pinckney,  
Plaintiff,

Civil Action No. 2010-CP-46-2326

v.

Brock L. Fankouser, Fankhauser Property  
Group, Inc., and Stonecrest Villas of Tega  
Cay, Home Owners Association, Inc.,

Defendants.

Fankhauser Property Group, Inc.,

Third-Party Plaintiff,

v.

Exterior Expressions of North Carolina,  
Inc., Al-Mega Construction, Inc., Procar,  
Inc., The Southeastern Group, Inc., Lucas  
Lawn and Landscape, Inc., and Jose  
Simenez, Individually and d/b/a M&L  
Roofing Co., LLC and/or MB Roofing  
Company,

Third-Party Defendants.

Stonecrest Villas of Tega Cay Home  
Owners Association, Inc.,

Third Party Plaintiff,

v.

Stonecrest Villas of Tega Cay, LLC,

Third-Party Defendant.

FILED  
2010 AUG -5 PM 3:58  
YORK COUNTY, SC


**SUMMONS ON THIRD PARTY  
COMPLALINT**

TO: THIRD-PARTY DEFENDANT STONECREST VILLAS OF TEGA CAY, LLC  
ABOVE-NAMED:

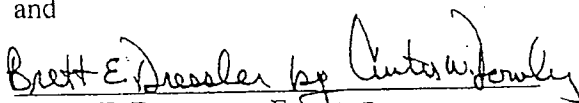
YOU ARE HEREBY SUMMONED and required to Answer the Third-Party  
Complaint in this action, a copy of which is herewith served upon you, and to serve a

copy of your answer on the subscribers at their offices, Barnes, Alford, Stork & Johnson, LLP, 1613 Main Street, Post Office Box 8448, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Third-Party Complaint within the time aforesaid, the Third-Party Plaintiff Stonecrest Villas of Tega Cay Home Owners Association, Inc. in this action will apply to the Court for the relief demanded in the Third-Party Complaint and will seek a default judgment against you.

This the 5<sup>th</sup> day of August, 2010.

  
CURTIS W. DOWLING, ESQUIRE  
BARNES, ALFORD, STORK & JOHNSON, LLP  
1613 Main Street (29201)  
P.O. Box 8448  
Columbia, South Carolina 29202  
803.799.1111 (Office)  
803.254.1335 (Fax)  
curtis@basjlaw.com  
Attorneys for Stonecrest Villas of Tega Cay

and

  
BRETT E. DRESSLER, ESQUIRE  
SELLERS, HINSHAW, SYERS, DORTCH &  
LYONS, P.A.  
301 S. McDowell Street  
Charlotte, NC 28204  
704.377.5050 (Office)  
704.339.0172 (Fax)  
bdressler@sellershinshaw.com  
Attorneys for Stonecrest Villas of Tega Cay  
Condominium Owners Association, Inc.  
(Cross-Claims and Third-Party Complaint)

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Juontonio Pinckney,

Plaintiff,

v.

Brock L. Fankauser, Fankauser Property  
Group, Inc., and Stonecrest Villas of Tega  
Cay, Home Owners Association, Inc.,

Defendants.

Fankauser Property Group, Inc.,

Third-Party Plaintiff,

v.

Exterior Expressions of North Carolina,  
Inc., Al-Mega Construction, Inc., Procar,  
Inc., The Southeastern Group, Inc., Lucas  
Lawn and Landscape, Inc., and Jose  
Simenez, Individually and d/b/a M&L  
Roofing Co., LLC and/or MB Roofing  
Company,

Third-Party Defendants.

Stonecrest Villas of Tega Cay Home  
Owners Association, Inc.,

Third Party Plaintiff,

v.

Stonecrest Villas of Tega Cay, LLC,

Third-Party Defendant.

Civil Action No. 2010-CP-46-2326

FILED  
CLERK OF COURT  
YORK COUNTY, S.C.  
2010 AUG -6 PM 3:38  
COURT HOUSE  
YORK, S.C.

**ANSWER, CROSS-CLAIM AND  
THIRD-PARTY COMPLAINT OF  
DEFENDANT STONECREST VILLAS  
OF TEGA CAY HOMEOWNERS  
ASSOCIATION, INC.  
(Jury Trial Demanded)**

Defendant Stonecrest Villas of Tega Cay, Home Owners Association, Inc., reserving all rights under motions within or separately filed, answering the Complaint herein, will respectfully show unto the Court as follows<sup>1,2,3,4</sup>:

**FOR A FIRST DEFENSE**  
(Response to Factual Allegations)

1. Defendant denies each and every allegation of the Complaint except for those things specifically admitted below.
2. Paragraphs 1 and 2 are admitted, upon information and belief.
3. Paragraph 3 is admitted with the exception that the correct identity of the Defendant is Stonecrest Villas of Tega Cay Condominium Owners Association, Inc. (See footnote 4).
4. Paragraph 4 is admitted.<sup>5</sup>
5. Defendant lacks sufficient knowledge or information to admit the allegations of paragraph 5.

---

<sup>1</sup> Any and all inconsistent material is pled in the alternative pursuant to Rule 8(e)(2), SCRPC and such other law as is applicable. Such inconsistent material may—or may not—be specifically designated as such.

<sup>2</sup> To the extent material appearing in one defense is applicable to another defense and not inconsistent with the other defense, the material is to be deemed incorporated into the other defense.

<sup>3</sup> To the extent material appearing herein is inconsistent with existing law, the Defendant respectfully requests to argue in good faith for a change in the law. Nothing pled in any portion of the Answer, Cross-Claim and Third-Party Complaint is to be deemed a waiver of any defense available to the Defendant or consent to this Court exercising jurisdiction over the matter or over this Defendant.

<sup>4</sup> The Defendant is incorrectly identified. The proper party is Stonecrest Villas of Tega Cay Condominium Owners Association, Inc.

<sup>5</sup> Upon information and belief, Defendant Brock E. Fankhauser's last day as President of the Association was June 30, 2010.

**AS TO THE FIRST CAUSE OF ACTION**  
(Breach of Contract)

6. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

7. Paragraph 2 is admitted, upon information and belief.

8. Paragraphs 3, 4, 5 and 6 are denied as to this Defendant.

9. As to paragraph 7, Defendant denies that the Plaintiff is entitled to any recovery against this Defendant.

**AS TO THE SECOND CAUSE OF ACTION**  
(Construction Defect)

10. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

11. Paragraphs 2, 3, 4, 5, 6 and 7 are not directed to this Defendant and, therefore, no response is required. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant arising from the allegations directed at Defendants Fankhauser and FPG are denied.

**AS TO THE THIRD CAUSE OF ACTION**  
(Negligence and Negligent Supervision)

12. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

13. Paragraphs 2 and 3 are admitted.

14. Paragraph 4 is denied as to this Defendant.

15. Paragraph 5 is admitted, upon information and belief.

16. Paragraphs 6, 7 and 8 are denied as to this Defendant.

17. As to paragraph 9, Defendant denies that the Plaintiff is entitled to any recovery against this Defendant.

**AS TO THE FOURTH CAUSE OF ACTION**  
(Breach of Implied Warranty – Habitability)

18. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

19. Paragraphs 2, 3, 4, 5, 6, 7 and 8 are not directed to this Defendant and, therefore, no response is required. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant arising from the allegations directed at Defendants Fankhauser and FPG are denied.

**AS TO THE FIFTH CAUSE OF ACTION**  
(Breach of Implied Warranty - Fitness for Partake Purpose)

20. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

21. Paragraphs 2, 3, 4, 5 and 6 are not directed to this Defendant and, therefore, no response is required. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant arising from the allegations directed at Defendants Fankhauser and FPG are denied.

**AS TO THE SIXTH CAUSE OF ACTION**  
(Breach of Express Warranty)

22. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

23. As to paragraph 2, 3 and 4, Defendant lacks information sufficient upon which to form a belief as to the truth of the allegations regarding what Plaintiff is

informed and believes as to this Defendant and, therefore, denies them and demands strict proof thereof.

24. Paragraphs 5 and 6 are denied as to this Defendant.

25. As to paragraph 7, Defendant denies it breached any warranties to the Plaintiff and further denies that Plaintiff is entitled to an award of attorney's fees.

**AS TO THE SEVENTH CAUSE OF ACTION**  
(Strict Liability)

26. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

27. Paragraphs 2 and 3 are admitted, upon information and belief.

28. As to paragraph 4, Defendant lacks information sufficient upon which to form a belief as to the truth of these allegations and, therefore, denies them and demands strict proof thereof.

29. As to paragraph 5, Defendant lacks information sufficient upon which to form a belief as to the truth of these allegations.

30. Paragraphs 6 and 7 are denied as to his Defendant.

31. As to paragraphs 8 and 9, Defendant lacks information sufficient upon which to form a belief as to the truth of these allegations. To the extent that these allegations in any way seek to impose liability on this Defendant, such liability of this Defendant arising from the allegations directed at Defendants Fankhauser and FPG are denied.

32. Paragraph 10 is denied as to this Defendant.

**AS TO THE EIGHTH CAUSE OF ACTION**  
(Breach of Fiduciary Duty)

33. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

34. Paragraph 2 is admitted.

35. As to paragraph 3, Defendants admit only that certain payments are to be paid by members as set forth in the Bylaws.

36. As to paragraph 4, while it is admitted that certain rights and duties exist between the parties, it is denied that a fiduciary relationship exists between the Plaintiff and this Defendant.

37. Paragraph 5 is denied as to this Defendant.

38. As to paragraph 6, Defendant lacks information sufficient upon which to form a belief as to the truth of these allegations

39. Paragraph 7 is denied as to this Defendant.

40. Paragraphs 8 and 9 are denied as to this Defendant.

41. As to paragraph 10, Defendant denies any liability to the Plaintiff.

42. Paragraph 11 is denied as to this Defendant.

**AS TO THE NINTH CAUSE OF ACTION**  
(Unfair Trade Practices Act)

43. Defendant realleges the allegations contained above in response to the allegations of paragraph 1.

44. Paragraphs 2, 3, 4, 5, 6, 7 and 8 are denied as to this Defendant.

**FOR A SECOND DEFENSE**

(Rule 12(b)(6), SCRCP—Failure to State Facts)

45. With regard to some or all causes of action appearing in the Complaint, the Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted and thus, those causes of action should be dismissed.

**FOR A THIRD DEFENSE**

(Attorney's Fees – Not Recoverable)

46. With regard to some or all of the causes of action appearing in the Complaint, the Complaint fails to state facts sufficient to constitute causes of action on which the recovery of attorney's fees are allowed.

**FOR A FOURTH DEFENSE**

(Improper Identify of the Defendant)

47. The Defendant is improperly identified in this action.

**FOR A FIFTH DEFENSE**

(Standing)

48. With regard to some or all causes of action appearing in the Complaint, the Plaintiff lacks standing.

**FOR A SIXTH DEFENSE**

(Proximate Cause)

49. No acts or omissions on the part of this Defendant were the proximate cause or cause in fact of some or all damages allegedly suffered by the Plaintiff (the existence of such damages being denied); therefore, the Plaintiff's action is barred in whole or in part.

**FOR A SEVENTH DEFENSE**  
(Alleged Damages Caused by Third-Party)

50. Some or all damages allegedly sustained by the Plaintiff (the existence of such damages being denied) were a direct or proximate result of the acts or omissions of another party or parties over whom this Defendant had no control or duty to control. The Defendant pleads the acts of another party or parties as a complete defense to all claims.

**FOR AN EIGHTH DEFENSE**  
(Waiver)

51. With regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred by the doctrine of waiver.

**FOR A NINTH DEFENSE**  
(Estoppel)

52. With regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred by the doctrine of estoppel.

**FOR A TENTH DEFENSE**  
(Assumption of Risk)

53. With regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred by the Plaintiff's assumption of risk.

**FOR AN ELEVENTH DEFENSE**  
(Intervening Causes)

54. Some or all damages allegedly sustained by the Plaintiff (the existence of such damages being denied) were a proximate result of one or more independent, efficient, intervening causes which the Defendant pleads as a bar to this action.

FOR A TWELFTH DEFENSE  
(Punitive Damages)

55. An award of punitive damages under South Carolina law violates the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution and the Excessive Fines Clause of the South Carolina Constitution in that:

- a. The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;
- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. Any award of punitive damages based upon the wealth of the Defendants violates due process guarantees;
- d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it can be argued that a standard governing the imposition of punitive damages exists, the standard is void for vagueness and ambiguity;
- f. The claim for punitive damages violates the equal protection and due process clauses of the United States Constitution, Article 1, Section 3 of the South Carolina Constitution, and the Excessive Fines Clause of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendant and other factors which are constitutionally impermissible; and

g. The claim for punitive damages violates the Federal Doctrine of Separation of Powers and Article 1, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

**FOR A THIRTEENTH DEFENSE**  
(South Carolina Unfair Trade Practices Act Inapplicable)

56. The South Carolina Unfair Trade Practices Act is inapplicable to the allegations contained in the Complaint directed at this Defendant.

**FOR A FOURTEENTH DEFENSE**  
(Statute of Limitations)

57. The Plaintiff alleges an ongoing course of conduct which supposedly resulted in his damages. This ongoing course of conduct is stated to precede the specific transaction complained of herein and appears to have persisted for some time prior to this action. Accordingly, the Defendants plead the statute of limitations as a complete defense to some or all of the Plaintiff's claims.

**FOR A FIFTEENTH DEFENSE**  
(Laches)

58. The Plaintiff alleges an ongoing course of conduct which supposedly resulted in his damages. This ongoing course of conduct is stated to precede the specific transaction complained of herein and appears to have persisted for some time prior to this action. Accordingly, the Defendant pleads the doctrine of laches as a complete defense to some or all of the Plaintiff's claims.

**FOR A SIXTEENTH DEFENSE**  
(Meeting of the Minds)

59. To the extent a contract or other duties arose between the Defendant and the Plaintiff, the contracts terms did not include those allegedly breached by the Defendant nor did the duties require the Defendant to take any action that has not been taken or abstain from any action that has been taken because there was no meeting of the minds with regard to those contract terms or duties.

**FOR A SEVENTEENTH DEFENSE**  
(Failure to Mitigate)

60. With regard to some or all causes of action appearing in the Complaint for which the Plaintiff seeks damages, the Plaintiff's claims are barred in whole or in part because of the Plaintiff's or their agents' failure to mitigate damages.

**FOR A EIGHTEENTH DEFENSE**  
(Impossibility of Performance)

61. To the extent a contract or other duties arose between the Defendant and the Plaintiff, the Defendant's performance of such duties was rendered impossible in a manner that excused performance.

**FOR A NINETEENTH DEFENSE**  
(Plaintiff's Own Negligence)

62. The Plaintiff's own negligence, gross negligence, recklessness, or willfulness contributed to his damages in a manner which should reduce or completely bar any award in this matter.

**FOR A TWENTIETH DEFENSE**  
(Acquiescence)

63. With regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred by the doctrine of acquiescence.

**FOR A TWENTY-FIRST DEFENSE**  
(Frustration of Purpose)

64. To the extent a contract or other duties arose between the Defendant and the Plaintiff, the Defendant's performance of such duties was discharged under the doctrine of frustration of purpose.

**FOR A TWENTY-SECOND DEFENSE**  
(Course of Conduct)

65. The Plaintiff alleges an ongoing course of conduct which supposedly resulted in his damages. This ongoing course of conduct was approved of by the Plaintiff. The Plaintiff is now barred from complaining about this course of conduct.

**FOR A TWENTY-THIRD DEFENSE**  
(Election of Remedies)

66. The Plaintiff will be subject to an election of remedies should he prevail on some or all of their causes of action.

**FOR A TWENTY-FOURTH DEFENSE**  
(Defenses of other Defendants)

67. Defendant incorporates by reference any defenses pled by other Defendants which apply to Plaintiff's claims against this Defendant and which are not inconsistent with this Defendant's other defenses stated herein.

**FOR A TWENTY-FIFTH DEFENSE**  
(Economic Loss Rule)

68. With regard to some or all claims for damages appearing in the Complaint, the Plaintiff's claims are barred, in whole or in part, by the economic loss rule.

**FOR A TWENTY-SIXTH DEFENSE**  
(Arbitration)

69. Defendant reserves all rights it may have to demand binding arbitration.

FOR A TWENTY-SEVENTH DEFENSE

(Additional Defenses)

70. Defendant places the Plaintiff on notice that it will subsequently move to amend this Answer to assert other defenses should it appear through discovery or continued fact investigation that any additional defenses are available.

FURTHER ANSWERING THE COMPLAINT AND BY WAY OF CROSS-CLAIM AGAINST BROCK FANKHAUSER AND FANKHAUSER PROPERTY GROUP, INC. AND BY WAY OF THIRD-PARTY COMPLAINT AGAINST STONECREST VILLAS OF TEGA CAY, LLC.

(Factual Background)

1. The allegations of the above paragraphs are realleged to the extent they are relevant and not inconsistent with the allegations of the claims which follow.

2. Defendant Stonecrest Villas of Tega Cay Condominium Owners Association, Inc., ("Association"), is a non-profit corporation organized and existing under the laws of the State of South Carolina with its principal place of business in York County, South Carolina.

3. Defendant Fankhauser Property Group, Inc. ("FPG"), is a corporation organized and existing under the laws of the State of North Carolina which is authorized to conduct business in the State of South Carolina, and was the general contractor for construction of the Stonecrest Villas at Tega Cay Condominium project (the "Project").

4. Third-Party Defendant Stonecrest Villas of Tega Cay, LLC ("Stonecrest"), upon information and belief, is the developer of the Project.

5. Defendant Brock Fankhauser is a resident and citizen of Mecklenburg County, North Carolina, and is the owner, principal and president of Defendant FPG, and is the sole member of Defendant Stonecrest. At all relevant time herein, Defendant Fankhauser was the President of Defendant Association.

6. On February 26, 2007, Stonecrest, as Declarant, filed a Master Deed of Stonecrest Villas of Tega Cay Horizontal Property Regime ("Master Deed") pursuant to the South Carolina Horizontal Property Act, recorded in Book 8852 at page 149 of the public registry of the York County Clerk of Court.

7. The Master Deed states that the Defendant Stonecrest deemed it desirable to create the Defendant Association which will be delegated and assigned the powers of maintaining and administering the common elements and facilities on the property.

8. Article V, Section 5.4(a) of the Master Deed states that the "Association shall be responsible for the maintenance and repair of all Common Elements, including the Limited Common Elements, and except for maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, employees or invitees, which shall be the responsibility of that Owner."

9. Article V, Section 5.1, of the Master Deed defines the Common Elements to include among other things, all portions of the Buildings (as defined in the Master Deed) located outside the Units (as defined in the Master Deed), roofs, foundations, and exterior and interior load bearing walls.

10. The Project was constructed in or about 2007.

11. After the Project was completed, Third-Party Defendant Stonecrest and/or Defendant FPG maintained control of the Defendant Association. Defendant Fankhauser was the president of the Defendant Association at all relevant times herein. Defendant Fankhauser resigned his position with the Association in June 2010 after this litigation was commenced.

12. Upon information and belief, in or about 2009, individual condominium

unit owners within Stonecrest Villas of Tega Cay, including Plaintiff herein, experienced water intrusion into their units. The neighborhood clubhouse also experienced water intrusion.

13. The Common Elements and other portions of the Project for which the Association is responsible for maintenance, repair and replacement are collectively referred to herein as the "Improvements."

14. The Improvements were constructed by Third-Party Defendant Stonecrest and/or FPG, acting by and through its agents, representatives and employees, or acting through contractors and suppliers selected by said Defendants.

15. There exists defects and deficiencies in the workmanship and material used by the Third-Party Defendant/Defendants in the construction of the Improvements including, without limitation, defects and deficiencies in the workmanship and materials used in connection with the construction and installation, including but not limited to:

- a. Failing to install a proper waterproofing, including a moisture barrier, concurrently with the masonry veneer building exterior directly contributing to water infiltration into individual unit owners residences and the Common Elements;
- b. Improperly constructing brick masonry at window sill structures to divert rain water intrusion properly from the individual unit owners residences and the Common Elements;
- c. Improperly sealing brick masonry veneer exterior walls to prevent water infiltration into individual unit owners residences and the Common Elements;
- d. Failing to install proper flashing and internal drainage to prevent water infiltration into individual unit owners residences and the Common Elements;

- e. Failing to install proper weep holes to permit water drainage away from and behind the masonry veneer exterior;
- f. Failing to install a moisture barrier to prevent water intrusion and seepage through the masonry veneer exterior;
- g. Failing to provide a proper slope around brick masonry ledges and wall transitions to deflect water flow away from individual unit owners residences and the Common Elements;
- h. Failing to properly grade and slope exterior foundation walls to prevent surface water intrusion per code; and
- i. Failing to properly gutter the condominiums to properly divert rainwater away from the individual unit owners residences and the Common Elements.

16. As a result of the deficiencies in the construction of the Project by Third-Party Defendant Stonecrest and FPG and the resulting damage, Defendant Association has been sued as set forth in Plaintiff's Complaint which is incorporated by reference herein.

17. Defendant Association contends that the fault lies with Defendants FPG and Fankhauser and Third-Party Defendant Stonecrest.

**FOR A FIRST CAUSE OF ACTION**  
(Negligence as to Stonecrest, FBG and Fankhauser)

18. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

19. Defendant Fankhauser is the sole shareholder of Defendant FPG and the sole member of Third-Party Defendant Stonecrest (Defendants Fankhauser and FPG and

Third-Party Defendant Stonecrest are collectively referred to as the "Fankhauser Defendants.)

20. The Fankhauser Defendants were negligent as is more fully set forth in Paragraphs 15(a) through (i), supra.

21. The Fankhauser Defendants failed to properly oversee and supervise the construction of the Project by its agents, employees, and subcontractors which resulted in Project being constructed not in a good and workmanlike manner.

22. The Fankhauser Defendants were negligent and/or careless in failing to properly carry out their tasks and by failing to employ construction practices and methods that conformed with project plans, applicable building codes, industry standards, and/or manufacturers' instructions.

23. As a direct and proximate result of the negligence of the Fankhauser Defendants, Defendant Association has been sued by Plaintiff herein and other unit owners for the development and construction of the Project by the Fankhauser Defendants, and faces liability for the work performed by or at the direction of the Fankhauser Defendants.

24. As direct and proximate result of the negligence of the Fankhauser Defendants, Defendant Association has been damaged in an amount greater than \$7,500.00, and is entitled to a judgment against the Fankhauser Defendants in an amount necessary to properly compensate Defendant Association for damage to the Common Elements and any amount it may be required to compensate Plaintiff as a result of these Defendants' negligence.

**FOR A SECOND CAUSE OF ACTION**  
(Equitable Indemnity – Fankhauser Defendants).

25. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

26. The Fankhauser Defendants were under a duty by virtue of the duties that they took on the Project as set forth herein to comply with the Project plans and specifications, applicable building codes, industry standards, manufacturers' instructions, and to properly oversee and supervise its agents, employees, and subcontractors.

27. The Fankhauser Defendants were negligent and/or careless in failing to properly carry out their tasks or by improperly instructing others to carry out their tasks and by failing to employ practices and methods of construction in compliance with Project plans and specifications, applicable building codes, industry standards, manufacturers' instructions, and failing to properly oversee and supervise its agents, employees and subcontractors.

28. Defendant Association is entitled to equitable indemnity from the Fankhauser Defendants, individually and severally, for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay the Plaintiff herein as result of the negligence of the Fankhauser Defendants.

**FOR A THIRD CAUSE OF ACTION**  
(Breach of Implied Warranty of Habitability and  
Workmanlike Construction – Fankhauser Defendants)

29. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

30. The Improvements are being infiltrated by water caused by the defects in

construction caused by the Fankhauser Defendants.

31. The Fankhauser Defendants impliedly warranted, for the benefit of the Association and all individual unit Owners, that the construction of the Project, including the Improvements which are a part thereof, the proper quality, care, adequacy, suitability, and workmanship of the labor and materials that they provided on the Project.

32. The Fankhauser Defendants have breached their obligations and duties under the implied warranties of habitability, quality and fitness. As a result of Defendants' breach of implied warranties as set forth herein, Defendant Association has been damaged in an amount in excess of \$7,500.00, and has incurred special damages.

33. Defendant Association is entitled to judgment against the Fankhauser Defendants for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiff herein as result of such breaches of warranty.

**FOR A FOURTH CAUSE OF ACTION**  
(Breach of Implied Warranty of Fitness for Particular  
Purpose – Fankhauser Defendants)

34. The allegations contained in the foregoing paragraphs are incorporated by reference herein.

35. Defendant Association is informed and believes that the Fankhauser Defendants' unworkmanlike construction resulted in the breach of an implied warranty of fitness for a particular purpose wherein the Improvements do not prevent water infiltration and seepage into individual units and/or the Common Elements.

36. As a direct and proximate result of the Fankhauser Defendants' un-workmanlike construction, Defendant has incurred economic and structural damages to the Improvements in amounts to be proven at trial of this matter exceeding \$7,500.

37. The Fankhauser Defendants, at the time of contracting, knew that Defendant Association would utilize the clubhouse for Association related activities and that individual unit owners would use their units as a family dwelling.

38. As a result of the Fankhauser Defendants' un-workmanlike construction, the Improvements and their components are not fit for the particular purpose for which they were intended, and the structural components of the Improvements home are not fit to prevent water intrusion into individual unit owners' residences or the Common Elements.

39. The Fankhauser Defendants have breached their obligations and duties under the implied warranty of fitness for a particular purpose. As a result of Defendants' breach of implied warranty as set forth herein, Defendant Association has been damaged in an amount in excess of \$7,500.00, and has incurred special damages.

40. Defendant Association is entitled to judgment against the Fankhauser Defendants for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiff herein as result of such breaches of warranty.

**FOR A FIFTH CAUSE OF ACTION**  
(Breach of Fiduciary Duty – Fankhauser Defendants)

41. The allegations contained the foregoing paragraphs are incorporated by reference herein.

42. Defendant Fankhauser was the sole member and president of Third-Party Defendant Stonecrest and the sole shareholder and president of Defendant FPG. Defendants Stonecrest and FPG were under the total control of Defendant Fankhauser. Defendant Fankhauser was a member of the Board of Directors of the Association and owed a fiduciary duty to the Defendant Association.

43. Defendant Fankhauser was in control of the Association at all times relevant herein, and promoted the Association, and therefore, had a fiduciary duty to the Defendant Association.

44. Defendant Fankhauser had a fiduciary duty to Defendant Association due to the special relationship that existed between the two.

45. This duty required, among other things, that the Fankhauser Defendants act in the best interests of Defendant Association to ensure that all Common Areas and Improvements were constructed and turned over to the Association in a reasonable state of repair.

46. As a member of the Board of Directors, Defendant Fankhauser acted in his own interests in breach of his duties as a Board Member.

47. Defendant Fankhauser breached his duty by failing to ensure that the Improvements were turned over to Defendant Association in a good state of repair.

48. The Fankhauser Defendants breached their duties by failing to ensure that the Improvements were constructed in a good and workmanlike manner.

49. As a result of Defendants' breach of fiduciary duties as set forth herein, Defendant Association has been damaged in an amount in excess of \$7,500.00, and has incurred special damages.

50. Defendant Association is entitled to judgment against the Fankhauser Defendants for costs and expenses incurred in order to protect its interests and any amounts Defendant Association may be required to pay Plaintiff herein as result of such breaches of fiduciary duty.

**FOR A SIXTH CAUSE OF ACTION**  
(Unfair Trade Practices Act Violations – Fankhauser Defendants)

51. The allegations contained the foregoing paragraphs are incorporated by reference herein.

52. The Fankhauser Defendants owed Defendant Association certain fiduciary duties as hereinabove described, thereby creating a special relationship between the parties.

53. The conduct of the Fankhauser Defendants, jointly and severally, created false assurances to the Defendant Association that Defendants would act in the best interest of the Association, which assurances were false and constitute methods of unfair and deceptive acts and practices declared unlawful by South Carolina law.

54. The Fankhauser Defendants, jointly and severally, knew or should have known, due to the existing privities and restrictive covenants and the necessity to take immediate action to protect the Improvements, yet Defendants deliberately failed to act with diligence whereby the Association and individual unit owners continue to experience inaction, procrastination, further water intrusions, interior damages, and mold.

55. Defendant Association and others have suffered an ascertainable loss of money, property damages, diminution of property value and special damages proximately caused by Defendants' deceptive acts and practices which are pled upon information and belief to wit:

- a. By falsely advertising, pricing, offering for sale, falsely warranting, and falsely binding properties per restrictive covenants where the Association is undercapitalized, making it difficult to serve the Association's and owners'/residents' needs to prevent water intrusion, proper maintenance and/or proper diligence to preserve the Association's and owners' properties and property values.
- b. By creating an Owners Association where Defendant Fankhauser knew, or should have known, that a conflict of interest would exist between his duties as developer, contractor and that of HOA chairman and president to enforce covenants and adequately protect the Association's and owners' properties and interests.
- c. By falsely charging dues and assessments where Defendant Association, by and through Defendant Fankhauser, failed to honor duties to preserve and protect the Improvements as required by restrictive covenants.
- d. Upon information and belief, by willfully and knowingly applying property assessments for development of adjacent commercial tracts instead of properly capitalizing Defendant Association and acting promptly to remedy defects existing in the Improvements and individual residences.
- e. By violation of duties imposed by restrictive covenants where the Fankhauser Defendants knew, or should have known, of the need to act promptly to prevent Defendant Association and individual unit owners from further property damage.

f. By misrepresentation of warranties described above where Defendants knew, or should have known, the falsity of the warranties.

56. The Fankhauser Defendants' conduct affects the public interest at large; the same conduct has occurred with at least four Stonecrest owners, has been repeated, and affects commerce at large within York County.

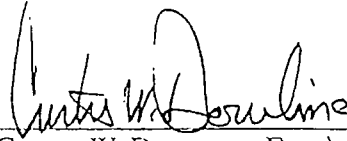
57. Damages and special damages suffered by Defendant Association and others would not have occurred but for the Fankhauser Defendants' unfair and deceptive acts and should be legally deterred.

58. Defendant Association is informed and believes that it is entitled to an award, of actual and trebled damages pursuant to South Carolina Code Ann. §39-5-140(a), *et seq*, together with any costs associated with prosecution of this action.

**WHEREFORE**, Defendant Association prays the Court that:

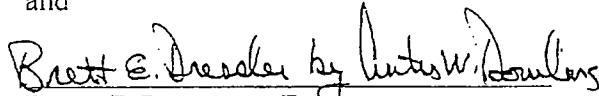
1. The Plaintiff's Complaint be dismissed with Prejudice;
2. It have and recover judgment against the Defendant Brock L. Fankhauser, Fankhauser Property Group, Inc., and Third Party Defendant Stonecrest Villas of Tega Cay, LLC, on Defendant Association's First through Sixth Causes of Action as set out hereinabove;
3. It be awarded actual, consequential, incidental, and punitive damages as against the Fankhauser Defendants in the discretion of the court and jury;
4. It be awarded any special damages as may be proven by Defendant Association;
5. It receive a trial by jury of the matters alleged herein; and

6. It be awarded such other and further relief as the Court may deem just and proper.



CURTIS W. DOWLING, ESQUIRE  
BARNES, ALFORD, STORK & JOHNSON, LLP  
1613 Main Street (29201)  
P.O. Box 8448  
Columbia, South Carolina 29202  
803.799.1111 (Office)  
803.254.1335 (Fax)  
curtis@basjlaw.com  
Attorneys for Stonecrest Villas of Tega Cay

and



BRETT E. DRESSLER, ESQUIRE  
SELLERS, HINSHAW, SYERS, DORTCH &  
LYONS, P.A.  
301 S. McDowell Street  
Charlotte, NC 28204  
704.377.5050 (Office)  
704.339.0172 (Fax)  
bdressler@sellershinshaw.com  
Attorneys for Stonecrest Villas of Tega Cay  
Condominium Owners Association, Inc.  
(Cross-Claims and Third-Party Complaint)

August 5, 2010

CERTIFICATE OF SERVICE

The undersigned employee of Barnes, Alford, Stork & Johnson, LLP certifies that he or she has, on the date below, served the below document(s) upon the below person(s) via first class mail.

DOCUMENT(S) SERVED:

- Answer, Cross-Claim and Third-Party Complaint of Defendant Stonecrest Villas of Tega Cay Homeowners Association, Inc.

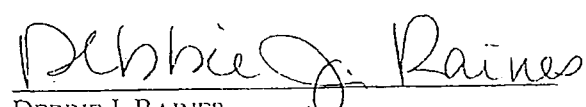
PERSON(S) SERVED:

J. Cameron Halford, Esquire  
Halford, Niemiec & Freeman, LLP  
238 Rockmont Drive  
Fort Mill, SC 29708

Morgan S. Templeton, Esquire  
Graham P. Powell, Esquire  
145 King Street, Suite 302  
P. O. Box 1200  
Charleston, SC 29402

Thomas F. Dougall, Esquire  
Law Offices of Thomas F. Dougall  
1700 Woodcreek Farms Road, Suite 100  
Elgin, SC 29045

2010 AUG -6 PM 3:58  
DEBBIE J. RAINES  
CLERK OF COURT  
YORK COUNTY, SC

  
DEBBIE J. RAINES

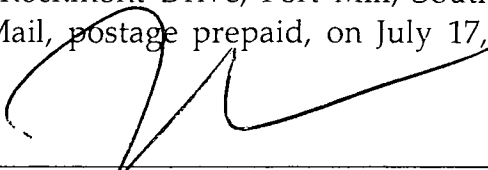
August 5, 2010

---

PROOF OF SERVICE

---

I certify that I have served the foregoing **AFFIDAVIT OF BRETT DRESSLER** 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.



---

Brett Dressler  
State Bar Number 77650  
301 S. McDowell Street, Suite 410  
Charlotte, North Carolina 28204  
Telephone: 704.377.5050  
Facsimile: 704.927.2868  
Attorney for Respondent

July 30, 2013

Other Counsel of Record Served:

(Via U.S. Mail)  
Curtis W. Dowling, Esquire  
Barnes Alford Stork & Johnson, L.L.P.  
Post Office Box 8448  
Columbia, South Carolina 29202  
*Attorney for Stonecrest Villas of Tega Cay Owners' Association, Inc.*

(Via U.S. Mail)  
Graham P. Powell, Esquire  
Wall, Templeton & Haldrop, P.A.  
145 King Street, Suite 300  
Charleston, South Carolina 29401  
*Attorney for Brock L. Fankhauser, Fankhauser Property Group, Inc. and Stonecrest Villas of Tega Cay, L.L.C.*

(Via U.S. Mail)  
Mike Wilkes, Esquire  
J. Derham Cole, Esquire  
Wilkes Law Firm, P.A.  
127 Dunbar Street, Suite 200  
Spartanburg, South Carolina 29306  
*Attorneys for Epcon Communities, Inc. and Epcon Communities Franchising, Inc.*

(Via U.S. Mail)

Bradford W. Cranshaw, Esquire

Grier, Cox & Cranshaw, LLC

Post Office Box 2823

Columbia, South Carolina 29202-2823

*Attorney for Epcon Communities, Inc. and Epcon Communities Franchising, Inc.*