

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2009-CP-22-1045

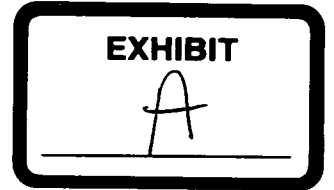
John Steven Goodwin, Louise C. Goodwin,)
Thomas I. Puckett and Brenda C. Puckett,)
Robert Nahama and Jeanne E. Nahama,)
Thomas Holland and Sharon Louise)
Holland, Joyce C. Sobel, Robert W.)
Waruszewski, Richard N. Taylor, Robert)
K. Spillers (a/k/a Robert Spillers), and)
Deborah T. Spillers (a/k/a Deborah)
Spillers), Patrick A. DiAngelo and)
Deborah A. DiAngelo, Gary E. Owens and)
Joyce M. Owens, Fount L. Shults and)
Lynda M. Shults, and Dennis Ridgeway)
and Teresa Lynn Ridgeway,)

Plaintiffs,)

vs)

Landquest Development, LLC, Kyle C.)
Corkum, South Bay Properties, LLC, C.)
R. Thomson and Sons, LLC, Ronald L.)
Charlton, Bonnie N. Charlton, James R.)
Charlton and Bayside Property, Inc., The)
City of Georgetown, Hartford Casualty)
Insurance Company, Hartford Fire)
Insurance Company, and National Land)
Sales, Inc., f/k/a Source One Communities,)
LLC, a/k/a Source One Signature)
Communities,)

Defendants.)



**ORDER DENYING MOTIONS TO
RESTORE AND TO CONSOLIDATE**

FILED
GEORGETOWN COUNTY, S.C.
2013 MAR 27 AM 10:30
ALMA Y. WHITE
CLERK OF COURT

This action came before the Court on March 7, 2013 for consideration of motions by John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens to restore this action to the docket and to consolidate this action with the action entitled *Bonnie N. Charlton et al. v. South*

Bay Properties, LLC, et al. (case number 2012-CP-22-00934). Arguments in support of the motions were presented by John M. Leiter and K. Douglas Thornton, attorneys for the Plaintiffs. Arguments in opposition to the motions were presented by Lawrence M. Hershon, attorney for Hartford Casualty Insurance Company and Hartford Fire Insurance Company, Elise F. Crosby, attorney for The City of Georgetown, and Charles T. Smith, attorney for Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc.

FACTS

This action concerns a real estate development in the City of Georgetown known as Harbor Club on Winyah Bay. The Goodwins purchased Lot 160 on September 17, 2007 and the Owens purchased Lot 94 on December 21, 2007. The other Plaintiffs purchased lots in Harbor Club on Winyah Bay between September 17, 2007 and December 21, 2007.

The Complaint, filed July 9, 2009, alleges twelve causes of action and names twelve defendants. The causes of action include claims for breach of contract, violation of the South Carolina Unfair Trade Practices Act, negligent misrepresentation, fraud, violation of the Interstate Land Sales Full Disclosure Act, violation of the South Carolina Uniform Land Sales Full Disclosure Act, equitable lien and civil conspiracy pertaining to the real estate development. The Complaint also alleges there was an amalgamation of corporate interests, entities and activity so as to establish a joint venture partnership between various Defendants.

This action was struck from the docket on July 22, 2011 due to the bankruptcy of South Bay Properties, LLC. The bankruptcy was dismissed twenty days later on August 12, 2011.

The motion to restore this action to the docket was not filed until January 22, 2013, eighteen months after the action was stricken.

ANALYSIS

Graham v. Dorchester County School District, 339 S.C. 121, 528 S.E.2d 80 (Ct. App. 2000) addressed a similar factual situation. There the trial court dismissed the case with prejudice because Graham's motion to restore, made after the time allowed by Rule 40(j), SCRPC, was not timely. The Court of Appeals stated: "Rule 40(j) required motions to restore be made within one year of the case being stricken to take advantage of the tolling of the statute of limitations." 528 S.E.2d at 82. The statute of limitations had expired on Graham's cause of action by the time the motion to restore was filed so the decision of the trial court was affirmed.

Maxwell v. Genez, 356 S.C. 617, 591 S.E.2d 26 (2003) arose from an automobile accident. The action was stricken from the docket on April 13, 1999. On May 1, 2000, one year and eighteen days after the case was stricken, Maxwell moved to restore the case. The circuit court denied Maxwell's motion to restore. The Court of Appeals found there was good cause to enlarge the time for filing the motion to restore and reversed the circuit court. The Supreme Court stated:

"Rule 40(j) does not require that a party move to restore the case to the docket within one year after it was stricken. Instead, the unambiguous language provides that, if the claim is restored within one year after it is stricken, the statute of limitations is tolled for that period. . . . A party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of...

Rule 40(j); the party simply cannot take advantage of the one year tolling period provided by the rule.” 591 S.E.2d at 28.

The Supreme Court concluded that the Court of Appeals erred in holding that the one year deadline established by Rule 40(j) may be extended for good cause and reversed the Court of Appeals’ decision allowing restoration of the case.

In the present action the statute of limitations on the Plaintiffs’ claims was not tolled by Rule 40(j) because the motion to restore the action to the docket was filed more than one year after the action was stricken. 11 U.S.C.A. §108(c) provided the Plaintiffs an extension of time because of South Bay Property, LLC’s bankruptcy. But, the extension of time expired thirty days after notice of the termination or expiration of the bankruptcy stay. The bankruptcy was dismissed on August 12, 2011, seventeen months before the motion to restore was filed. Therefore, I find and conclude that the Plaintiffs’ claims are barred by the statute of limitations and restoration of this case should be denied. Since restoration of this case is denied, consolidation of this case with *Bonnie N. Charlton et al. v. South Bay Properties, LLC, et al.* (case number 2012-CP-22-00934) is moot.

CONCLUSION

The motions to restore this action to the docket and to consolidate this action with *Bonnie N. Charlton et al. v. South Bay Properties, LLC, et al.* (case number 2012-CP-22-00934) are denied.

AND IT IS SO ORDERED.



Benjamin H. Culbertson
Resident Circuit Court Judge

March 26, 2013